

SAIC STT Standard Terms and Conditions

THE FOLLOWING TERMS AND CONDITIONS APPLY TO THE SALE OF PRODUCTS AND SERVICES (COLLECTIVELY CALLED “PRODUCTS”) AND THE LICENSING OF RELATED SOFTWARE OFFERED BY SCIENCE APPLICATIONS INTERNATIONAL CORPORATION’S SECURITY AND TRANSPORTATION TECHNOLOGY BUSINESS UNIT (HEREINAFTER CALLED “SAIC”) FOR THE CONSIDERATION SPECIFIED IN THE ACCOMPANYING QUOTATION OR CONTRACT. THESE TERMS AND CONDITIONS ARE HEREBY INCORPORATED BY REFERENCE INTO ANY QUOTATION OR CONTRACT (ALL COLLECTIVELY REFERRED TO AS THE “CONTRACT”) AND SHALL TOGETHER WITH ANY ADDITIONAL TERMS AND CONDITIONS SET FORTH IN THE ACCOMPANYING QUOTATION OR CONTRACT, REPRESENT THE GOVERNING TERMS AND CONDITIONS, NOTWITHSTANDING ANY CONTRADICTORY, MODIFYING OR ADDITIONAL TERMS OR CONDITIONS THAT MAY BE CONTAINED IN A BUYER’S REQUEST FOR QUOTATION, PURCHASE ORDER, OR OTHER DOCUMENTATION. BUYER’S ACCEPTANCE OR OPERATIONAL USE OF ANY PRODUCTS DELIVERED BY SAIC SHALL CONSTITUTE THE BUYER’S FULL ACCEPTANCE OF THESE TERMS AND CONDITIONS. SHOULD BUYER NOT ACCEPT THESE TERMS AND CONDITIONS, SAIC REQUIRES THAT THE PRODUCTS BE PROMPTLY RETURNED TO SAIC FOR CREDIT AS MAY BE APPLICABLE.

1. Prices

SAIC’s offer is subject to adjustment in price and delivery schedule in the event that different quantities or other specifications are required than are set forth in the offer. Prices are subject to change due to the imposition by any lawful taxing authority of any additional tax, levy, assessment or other burden on, or related to the goods or services proposed. Unless otherwise specified, this offer is valid for ninety (90) days from the date of submission.

2. Payment Terms and Remit To Addresses

Except as otherwise set forth in the offer, prices are in US dollars and payment shall be made 100% in advance prior to shipment.

Subject to SAIC credit approval, SAIC may extend payment terms of net thirty 30 days or otherwise negotiate partial or milestone payments. SAIC shall submit invoices upon shipment of goods, completion of milestones, or performance of services as provided in the payment schedule of SAIC’s offer. Partial deliveries shall be allowed. If terms are extended, then late payments will be subject to an interest charge of 1% of the unpaid balance per month, accruing from the 31st day. If Buyer fails to make any payment to SAIC as required, SAIC shall have the right exercisable at SAIC’s sole discretion, in addition to its other rights and remedies, to cease further performance. SAIC shall have a lien upon and may retain or repossess any and all deliverables if Buyer does not make full payment to SAIC when due.

Except as otherwise set forth in the offer, payments shall be made in US Dollars and shall be remitted electronically to the following EFT address:

Science Applications International Corporation
Citibank, N.A.
399 Park Avenue
New York, New York 10043
Account No. 30547584
ABA No. 021000089
SWIFT: CITIUS33
Contact: Indira Devi
(302) 324-6377

Any payment by check shall be remitted to the following lockbox address:

Science Applications International Corporation
P.O. Box 223058
Pittsburgh, PA 15251-2058

3. Acceptance By Buyer

Except as otherwise set forth in the offer, the Products and services delivered under the Contract shall be deemed accepted at the time they are delivered, in accordance with Article 9, or when services are rendered. Buyer shall notify SAIC in writing within 10 days of receipt or completion of installation by SAIC of the Products and/or services of any claim for shortage or failure of the Products and/or services to meet the requirements set forth in the Contract.

4. Force Majeure

Neither party shall be liable for any failure of or delay in performance of its obligations (except for payment obligations) under the Contract to the extent such failure or delay is due to circumstances beyond its reasonable control, including, without limitation, acts of God; acts of a public enemy; fires; floods; power outages; wars; contagious illness or disease provoking government-imposed quarantines; prohibitions on travel or restrictions on commerce; civil disturbances; sabotage; terrorism; accidents; insurrections; blockades; embargoes; storms; explosions; labor disputes; failures of common carriers; Internet Service Providers; or other communication devices; acts of cyber criminals, acts of any governmental body whether civil or military, foreign or domestic; failure or delay of third parties or governmental bodies from whom a party is obtaining or must obtain approvals, franchises or permits; and/or inability to obtain labor, materials, equipment or transportation. Any such delays shall not be a breach of or failure to perform the Contract or any part thereof and the date on which the obligations hereunder are due to be fulfilled shall be extended for a period equal to the time lost as a result of such delays.

5. Buyer Furnished Items (BFI)

Buyer shall provide the BFI as outlined in SAIC's offer. The BFI shall be in a form and condition acceptable for its intended use as determined by SAIC. Buyer warrants that Buyer has the rights to

provide any such BFI under the Contract. Should the BFI be inaccurate, inadequate or not in a condition for its intended use or not be provided in accordance with the Contract schedule, SAIC reserves the right to adjust price and/or delivery schedule.

6. Permits, Licenses and Fees

- A. Buyer shall provide the following items in support of the project: All necessary permits, licenses, leases, certification and other special requirements contained in the quotation and/or contract for operation of the equipment for the Buyer/End User's intended purpose and any required civil or construction work, including third party inspections and others as may be required by law or regulation. Both parties shall comply with all laws and regulations governing the possession, use, handling, transfer or disposal of hazardous and/or radioactive materials required in the performance of the Contract. At Buyer/End User's request, SAIC shall assist Buyer/End User in obtaining the licenses and permits necessary to facilitate the performance of any services, installation and operation of the goods and software furnished under the Contract, including by providing Buyer/End User with all necessary technical information, operators' manuals, maintenance materials and technical specifications. Except as provided for in the Contract, additional assistance requested by Buyer/End User shall be provided by SAIC on a time and materials basis. Any license or permit fee imposed for the performance of work shall be borne by the Buyer/End User.
- B. Licensing and Operation of VACIS: Buyer/End User shall be solely responsible for licensing arrangements for the radioactive sources and shall include SAIC as an additional licensee in order to permit SAIC to provide installation and maintenance support services. Buyer/End User shall include provisions in its license to allow for a spare radioactive source in the event a Source change-out is required to minimize downtime. Buyer/End User shall ensure that the equipment is operated solely by personnel who have completed SAIC-approved training in the areas of (1) risks associated with radiation; (2) radiation safety practices and principles; and (3) the proper use of equipment. Failure by Buyer and/or End User to obtain and furnish SAIC with a copy of a suitable radiation use license which allows delivery of the VACIS inspection products and permits/controls proper operation of the unit, shall result in cancellation of the Contract and a restocking fee equal to thirty percent (30%) of the full purchase price.

VACIS inspection products are designed as a tool to aid in the evaluation of the content of cargo containers and/or vehicles. VACIS inspection products are designed and intended to provide a visual display of the relative densities of various items within cargo containers and vehicles. This information, along with any other supporting data, may be compared against manifests and/or used to identify potential suspect items/areas within a container or vehicle which may warrant further inspection/evaluation/or action. Since VACIS inspection products use radioactive sources in this process, the End User is responsible for obtaining and abiding by all necessary and appropriate approvals from the applicable cognizant regulatory agencies or authorities in their country of use. Buyer/End User is responsible for safely operating the system in accordance with all SAIC instructions/manuals and training and any applicable regulations/requirements of the jurisdictions in which the system will be operated. Buyer/End User shall consult with the relevant licensing authority regarding whether and in what manner disclosures (including signage) should be made to persons who may be scanned by VACIS inspection products as incidental occupants of vehicles. SAIC is not responsible for any claims, actions or liabilities associated with the improper installation, operation or maintenance of the products. Improper operation would include, but not be limited to, failure to comply with any conditions, requirements, safety measures and procedures provided or required by SAIC and/or any cognizant regulatory agency. Improper installation would include, but not be limited

to, installation that deviates from the installation guidelines and/or instructions provided by SAIC. Improper maintenance would include, but is not limited to, failure to maintain the equipment in the manner, and in accordance with the maintenance guidelines and/or instructions provided by SAIC.

7. Site Access

Site access shall be unhindered and available to SAIC in order to perform the required work without interruption in accordance with the Contract schedule. SAIC's inability to gain access to the site due to Buyer's actions or omissions or any circumstances beyond the direct control of SAIC including, but not limited to, delays, inconvenience or damage sustained due to interference by utility appurtenances or the operation of moving the same shall be considered extra work and SAIC reserves the right to adjustment of price and/or delivery schedule.

8. Differing Site Conditions

SAIC shall notify the Buyer of any conditions at the installation site(s) differing from those indicated in the Contract, including any unknown or subsurface physical conditions at the site(s) differing from those specified by Buyer. If such conditions so differ and cause an increase in SAIC's cost of, or the time required for performance of any part of the work under the Contract, SAIC reserves the right to adjustment of price and/or delivery schedule.

9. Delivery

Except as otherwise set forth in the offer, all goods shall be shipped FCA (Vista, California) per Incoterms 2000. If requested, shipping and handling charges will be prepaid by SAIC and invoiced to the Buyer at actual cost. Buyer shall bear the risk of loss or damage to the goods from any casualty subsequent to delivery to the delivery point. Physical title to the Products shall pass to Buyer upon delivery to the freight carrier.

If the Buyer is unable to accept delivery, at no fault of SAIC, at the delivery time specified in the contract, the Buyer shall authorize SAIC in writing to ship the Products in place at SAIC's facility, or other mutually agreed upon location, and will acknowledge acceptance of the Products including title, risk of loss, and commencement of warranty.

10. Proprietary Information

The design, production and operation of the Products, in any form, are proprietary information and trade secrets of SAIC. Buyer agrees that it will keep in confidence and prevent the disclosure to any unauthorized person or persons, any and all proprietary or confidential information related to the Products that is disclosed to Buyer pursuant to this Agreement. Buyer shall not modify, reverse engineer, improve or otherwise change any Products or parts thereof, or any of SAIC's proprietary rights related thereto, and shall not use, incorporate or in any way use any of SAIC's proprietary rights or confidential information (whether disclosed separately or embodied in any of the Products) in Buyer's own products or business activities. Buyer acknowledges that, in the event of Buyer's breach of any of the foregoing provisions, SAIC will not have an adequate remedy in money or damages and that SAIC shall therefore be entitled to seek preliminary or permanent injunctive relief, against such breach from any court of competent

jurisdiction. SAIC's right to obtain such injunctive relief shall not be construed as any limit of its right to seek further legal and equitable remedies.

11. Intellectual Property Rights

SAIC shall solely own and have exclusive worldwide right, title and interest in and to all United States and foreign patents, trademarks, service marks, copyrights, mask works, trade secrets, software and all other intellectual and industrial property rights in any way related to the Products and all modifications, improvements and derivative works related thereto ("Product Intellectual Property Rights" or "Product IPR"). Title to all such Product IPR shall at all times remain with SAIC, and Buyer's use thereof shall be restricted under the non-exclusive licenses granted by SAIC in Section 11.A and 11.B below.

- A. (License to Buyer for End Use) Subject to Buyer's performance of all obligations hereunder, SAIC hereby grants to Buyer a personal, non-exclusive, royalty-free, non-transferable and indivisible license to use Product IPR only as they are contained in the Products and for no other purpose. Buyer shall not remove SAIC trademark notices, copyright notices, patent markings or mask work notices on or in the Products or on any other materials supplied by SAIC.

Buyer acknowledges that all rights to and goodwill associated with any trademarks related to the Products (the "Marks") belong to SAIC.

With respect to software related to the Products, subject to Buyer's performance of all obligations hereunder, SAIC hereby grants to Buyer a personal, non-exclusive, royalty-free, non-transferable (with no right of sublicense) and indivisible license to use the software, only as it is contained in the Products and for no other purpose.

Buyer agrees that it will not challenge or attack SAIC's rights in any Marks, and will not take or fail to take any action which, by taking or failure to take such action, has a result of impairing such rights of SAIC, will not use the Marks on goods or services other than to identify the Products, and will not do anything else inconsistent with the rights of SAIC.

- B. (License to Buyer to sublicense for end use or distribution) Notwithstanding the foregoing, Buyer may transfer this license on a permanent basis to an end user customer of the Products provided (a) any such transfer is subject to the term and conditions of this Article 11 and the end user customers' agreement to be bound by such terms and conditions, (b) no copies of the IPR or software are retained by the Buyer, and (c) Buyer remains liable for any breach of this Agreement by either Buyer or end user customer.
- C. Check if applicable [] and attach SLA: If SAIC furnishes Buyer with separately executable software ("Software") under the Contract, such Software is furnished under a personal, non-exclusive, non-transferable license for the purpose of operating the goods delivered under the Contract for their intended use under the terms and conditions of the SAIC Standard Software License Agreement incorporated by reference into the Contract and attached hereto. Title and full ownership of the Software shall remain with SAIC.

12. Publicity

Buyer shall not use SAIC's name or any trademarks relating to the Products in any publicity or advertising campaign without the prior written permission of SAIC. Upon execution of this Agreement, either Party may issue a press release regarding the subject matter of this Agreement upon receipt of written approval of that press release from the other party.

13. Assignment

The Contract is not assignable without the prior written consent of SAIC. Any attempt by the Buyer to assign any of the rights, duties or obligations of the Contract without such consent shall be null and void.

14. Notices

All notices required or permitted under the Contract shall be in writing and shall be deemed to have been given upon personal delivery, upon receipt of delivery service or courier transmittal, or upon facsimile to the party with confirmation of transmission received.

15. Indemnification

Buyer and End User each shall assume full and exclusive responsibility for use of the Products after the first to occur of delivery or purchase and Buyer shall indemnify, defend and hold SAIC harmless from all claims, actions, damages, expenses, liabilities and losses, regardless of the legal theory, including but not limited to breach of contract, warranty, negligence, strict liability, statutory or regulatory liabilities or other tort, including without limitation attorney's fees and court costs, incurred that in any way arise out of or relate to: (a) improper installation, the maintenance, modification or operation of the Products, including without limitation by Buyer or any of its customers or end users; (b) defects or other deficiencies with any component parts, equipment, software or materials produced, manufactured, assembled, distributed, resold or supplied by any person or entity other than SAIC that are incorporated into or used in any way with the Products; (c) any amount in excess of the limit of SAIC's liability to Buyer set forth in Article 17, Limitation of Liability, of the SAIC Standard Terms and Conditions that SAIC is required to pay in respect of claims arising out of or relating to the Contract; and/or (d) any transaction Buyer enters into or engages in with any party other than SAIC, including any customers, end users or other parties involving or relating to the Products.

16. Patent And Copyright Indemnification

SAIC at its own expense will defend and indemnify Buyer and Buyer's customer against any action brought against Buyer or Buyer's customer to the extent that it is based on a claim that any SAIC Product used within the scope of the contract hereunder willfully infringes a U.S. patent or copyright at the time of entering into the contract, provided Buyer notifies SAIC promptly in writing of the action (and all prior claims relating to such action) and SAIC shall lead the defense and all negotiations for its settlement or compromise. In the event any SAIC Product becomes, or in SAIC's opinion is likely to become, the subject of a claim of infringement of a patent or copyright, SAIC may at its option (1) secure the Buyer's right to continue using the SAIC product; (2) replace or modify it to make it non-infringing; (3) upon return of all infringing SAIC Products, refund to Buyer the price actually paid by Buyer for the infringing

Product, or (4) substitute for the infringing Product another suitable, non-infringing Product. SAIC shall have no liability for any claim of copyright or patent infringement based on (1) use of other than a current unaltered release of the Product available from SAIC if such infringement would have been avoided by the use of such current unaltered release or (2) use or combination of the SAIC Product with programs or data not supplied by SAIC. SAIC extends no indemnity whatever against infringement claims against non-U.S. patents, copyrights or other intellectual property.

THE FOREGOING STATES THE ENTIRE LIABILITY OF SAIC TO BUYER AND BUYER'S CUSTOMER WITH RESPECT TO INFRINGEMENT OF ANY COPYRIGHTS OR PATENTS OF SAIC PRODUCTS OR ANY PARTS THEREOF.

17. Limitation of Liability

SAIC's total liability to Buyer and all liabilities arising out of or relating to the Contract, from any cause or causes asserted by Buyer/End User or any other third party, and regardless of the legal theory asserted, including but not limited to, breach of contract, warranty, negligence, strict liability, or statutory or regulatory liability, shall not, in the aggregate, exceed the amounts actually paid to SAIC under the Contract, or under the specific delivery order at issue, whichever is less.

In no event shall either party be liable to the other for any special, indirect, incidental, consequential, punitive, exemplary or economic damages (including, but not limited to lost profits and lost business opportunity) arising out of or relating to the Contract, regardless of the legal theory under which such damages are sought, and even if the parties have been advised of the possibility of such damages or loss.

Any claim by Buyer/End User relating to the Contract, other than in warranty, must be made in writing and presented to SAIC within one year after the earlier of: (1) the date on which Buyer accepts the deliverable at issue; or (2) the date on which SAIC completes performance of the services specified in the Contract. Any claim under warranty must be made within the time specified in the applicable warranty clause.

18. Taxes (Applicable to goods and services delivered or performed in the U.S.A.)

The prices set forth herein do not include sales, or use taxes or gross receipts taxes or other applicable state or local government taxes which may be applicable to the goods and/or services delivered hereunder. Unless SAIC receives a sales tax certificate which exempts the goods and/or services from such taxes, SAIC shall invoice and Buyer shall reimburse SAIC for the tax in addition to the stated prices set forth herein.

19. Taxes and Duties (Applicable to goods and services delivered or performed outside the U.S.A.)

- A. The Contract price, including the prices in any subcontracts, does not include any taxes, including VAT, GST, withholding taxes, duties, assessments, liens, or similar charges levied upon SAIC by an entity other than the U.S. government or a political subdivision thereof (hereinafter "Foreign Taxes"), which could be incurred by SAIC as a result of the Contract. If SAIC, its subcontractors, or their respective employees are required to pay any Foreign Taxes, or any penalties and/or interest assessed with respect to Foreign Taxes (hereinafter "Foreign Penalties") the Contract price shall be correspondingly increased to reimburse SAIC for the full amount of Foreign Taxes or Foreign

Penalties. If SAIC, its subcontractors, or their respective employees are required to file a return or report with respect to any Foreign Taxes, the Contract price shall be correspondingly increased to reimburse SAIC for the full cost to prepare and file any such return or report (“Foreign Return Charges”). If no further payments are due to SAIC under the Contract, Buyer shall reimburse SAIC for all Foreign Taxes, Penalties and Return Charges within 30 days of receiving an invoice for such amounts from SAIC.

- B. If SAIC is required to collect VAT or similar sales or use taxes, SAIC will charge Buyer such amount as a separate item on its invoice or provide a separate invoice if no further invoices are issued under the contract. If SAIC is not registered to collect VAT or similar taxes, Buyer will pay such amounts directly to the taxing authority.
- C. If after the effective date of the Contract, there are any changes or developments which may result in an increase in any foreign taxes, and/or any new foreign taxes or assessments are levied, or if the methods of administering or the rates of any foreign taxes and assessments are changed, and such new taxes, assessments, or changes result in an increased potential tax liability of SAIC, its subcontractors or their respective employees financial responsibility hereunder, the Contract price shall be correspondingly increased.

20. Import/Export Regulations

- A. (Applicable for sales to Buyers and/or shipments outside the United States) Buyer agrees that SAIC’s performance under the Contract is subject to all of the required and continuing United States (U.S.) Government approvals, clearances, regulations, and export licenses. In the event SAIC is unable to obtain or maintain any required approvals, clearances and/or export or import licenses, SAIC shall be excused from its obligation to provide those goods or services set forth in the Contract for which such approvals, clearances and/or export or import licenses are required.

Commodities will be exported in accordance with U.S. export regulations, including but not limited to the International Traffic in Arms Regulations, the Export Administration Regulations, the regulations promulgated by the U.S. Department of Treasury and all other applicable U.S. laws and regulations (collectively, the “export regulations”). Diversion contrary to U.S. law is prohibited. The commodities may not be resold, transferred, transshipped or re-exported without prior authorization by the U.S. Government.

- B. (Applicable to U.S. Buyers who intend to export shipments outside the U.S.) SAIC’s hardware, software, and technical data, as defined by the U.S. Government are subject to the U.S. export regulations. Direct or indirect exportation/transfer contrary to U.S. law is prohibited. Buyer assumes all responsibility for securing commodity classifications, export licenses, shipment, and record keeping in accordance with applicable export regulations of the U.S. Government.
- C. Resales and Re-Export of Products. Buyer acknowledges that: a) any commodities and/or technical data consisting of or contained in Products provided subject to these terms are of U.S. and subject to the U.S. export regulations; b) that all sales of Products hereunder are routed transactions within the meaning of the U.S. export regulations; and c) that any export or re-export thereof must be in compliance with the U.S. export regulations. Buyer agrees that it shall not export or re-export, directly or indirectly any commodities and/or technical data (or direct products thereof) ordered subject to these terms in any form to (i) destinations in Country Group E:2, as specified in Supplement No. 1 to Part 740 of the EAR as modified from time to time by the U.S. Bureau of Industry and Security, (ii)

destinations that are otherwise controlled or embargoed under U.S. export regulations or (iii) entities or individuals which are listed on prohibited lists such as the Table of Denial orders maintained pursuant to such laws or regulations.

21. Changes

SAIC may suggest or Buyer may request changes within the scope of the Contract and applicable specifications. Should any such suggested changes cause an increase or decrease in the purchase price, or in the delivery or installation schedule, or affect any other Contract provisions, SAIC shall submit a proposed adjustment to the purchase price, schedule and/or any other provision affected by the change. Upon reaching a mutual agreement in writing thereto, SAIC shall proceed with such change.

22. Termination or Cancellation

- A. Termination: Either party may only assert that the Contract is terminated for default pursuant to a material breach by the other party. In all such cases, the breaching party shall be afforded a reasonable period of time to remedy such material breach, but in any event not less than 30 days from the date that the breaching party receives a written cure notice from the asserting party specifying the nature of the breaching party's failure to comply with a material provision of the Contract.
- B. Cancellation: Cancellation of the Contract or any part thereof shall result in a restocking fee to be charged to Buyer equal to 30% of the full purchase price of the cancelled items. Cancellation will be honored only within thirty (30) calendar days from Contract placement. SAIC will submit an invoice for the restocking fees and Buyer shall remit payment for such restocking fees within 30 days after receipt of invoice. Credits due Buyer for prior amounts paid against cancelled items shall be applied to future payments due by Buyer, or reimbursed by SAIC within thirty (30) days of receipt of Buyer's invoice or credit notice, if no future payments are due.

23. Warranties

- A. The Products: The Products are provided with a return to factory warranty against defects in materials and workmanship. The warranty term for all VACIS Products is one (1) year from the date the Products are placed at the disposal of the Buyer at the named place of delivery. The warranty term for all other SAIC Products is ninety (90) days from the date the Products are placed at the disposal of the Buyer at the named place of delivery. Repairs of defects will be performed by SAIC at no charge to the Buyer, subject to the limitations herein. To request warranty service, the Buyer must call SAIC's service coordinator for a return material authorization number. Buyer shall ship any defective parts in accordance with SAIC's return instructions together with any required documentation including details of the problems or failure, freight prepaid, to SAIC's repair facility. Upon receipt at SAIC's repair facility, SAIC shall be responsible for the costs and risk of loss of returning the repaired or replaced equipment to the Buyer. SAIC will retain and own all parts removed from the repaired equipment.
- B. Service and Repairs (if applicable): SAIC warrants service and repairs (hereinafter "Services") against defects in materials and workmanship for a period of 90 days after the of date of service or repair. SAIC warrants that the Services provided under this Agreement shall be performed with that degree of skill and judgment normally exercised by recognized professional firms performing the same or

substantially similar Services. In the event of any breach of the foregoing warranty, provided Customer has delivered to SAIC timely notice of such breach as hereinafter required, SAIC shall, at its own expense, in its discretion either (1) re-perform the non-conforming Services and correct the non-conforming Services to conform to this standard; or (2) refund to Customer that portion of the Price received by SAIC attributable to the non-conforming Services. No warranty claim shall be effective unless Customer has delivered to SAIC written notice specifying in detail the non-conformities within 90 days after performance of the non-conforming Services or tender of the non-conforming Deliverables.

- C. SAIC Software Warranty: SAIC warrants only that the Software will for a period of one (1) year from the date of delivery (the “Software Warranty Period”) conform to the software documentation provided by SAIC (the “Software Warranty”). If it is determined that, during the Software Warranty Period, the Software does not operate according to the documentation, SAIC’s only responsibility will be to provide one or more of the following forms of software support, the choice of form being at SAIC’s sole discretion: (i) to use commercially reasonable efforts to rectify any non-conformance with the Software Warranty in respect of Software that is returned at Buyer’s expense to SAIC for repair, or (ii) to provide assistance by way of telephone or e-mail consultation (the “Software Support”). SAIC does not warrant or guarantee that the Software is free of viruses, significant bugs, programming errors, or other harmful components.
- D. Third-Party Equipment, Software and Documentation (“third-party materials”): Warranties for third party materials are warranted by the original equipment manufacturer(s) and such warranties shall pass through to the Buyer as extended to SAIC. To request warranty service for third-party materials, the Buyer shall notify SAIC of the defect with the material and the fault which caused the defect in order to receive a return authorization. SAIC, in support of the manufacturer’s warranty, shall coordinate any such warranty returns, their repair, and return of goods to the Buyer. The Buyer shall ship any defective parts, freight prepaid, to SAIC after receiving an SAIC return authorization. The repair or replacement of goods under warranty is subject to the manufacturer’s warranty and the limitations of paragraph (E) below.
- E. The warranties listed above are valid only if the Buyer uses the items properly, within the operating specifications and instructions supplied by SAIC and only makes maintenance adjustments within the tolerances listed in the maintenance or operating manuals provided. Any and all warranties will be void and will not apply to failures or damage to hardware caused by sources outside the goods furnished hereunder including, but not limited to, events such as: misuse whether by fault, negligence, or otherwise, damage from peripheral power sources or equipment not delivered with the original system, conditions resulting from improper use of the equipment or operation of equipment outside the specified environmental conditions, conditions resulting from any modifications or repairs to the equipment other than made by SAIC or SAIC’s vendor, acts of God, war, riots, insurrections, or Force Majeure events. SAIC shall not be liable for loss of profit, indirect, consequential, or special damages arising from any breach of warranty.
- F. Any trouble calls or other costs incurred by SAIC for repair of an item returned with “no trouble found” or which has a voided warranty shall be billed to the Buyer at the current service parts and labor rates, portal to portal, with the explanation of said misuse, abuse, or damage. Likewise, calls required because of operational errors, maladjustment’s, broken or disconnected cables, or other failures created and caused outside the direct control of SAIC or Buyers maintenance personnel not following the maintenance guidelines provided shall be billed as described in this paragraph.

- G. THE EXPRESS WARRANTIES AND REMEDIES IN THIS ARTICLE ARE THE SOLE AND EXCLUSIVE WARRANTIES AND REMEDIES PROVIDED BY SAIC. SAIC SPECIFICALLY DISCLAIMS AND BUYER WAIVES ANY OTHER WARRANTIES, EXPRESS OR IMPLIED, EITHER IN FACT OR BY OPERATION OF LAW, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF MERCHANTABILITY, NON-INFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE, STATUTORY OR OTHERWISE, AS WELL AS ANY WARRANTIES ALLEGED TO HAVE ARISEN FROM CUSTOM, USAGE OR PAST DEALINGS BETWEEN THE PARTIES.
- H. WITHOUT LIMITING THE FOREGOING, SAIC FURTHER DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTY OR REPRESENTATION THAT THE PRODUCTS WILL IMAGE, OR IN FACT WILL IDENTIFY, THE PRESENCE OR ABSENCE OF ANY SPECIFIC TYPE OF CONTRABAND OR TARGET SUBJECT WITHIN ANY SCANNED ITEM OR CONTAINER, AND IDENTIFICATION OF ANY SUCH CONTRABAND OR TARGET SUBJECT IS SOLELY THE OPERATORS RESPONSIBILITY. IN ADDITION, SAIC DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTY OR REPRESENTATION THAT VACIS INSPECTION PRODUCTS ARE INTENDED OR SUITABLE FOR USE IN ROUTINE SCANS OF HUMAN BEINGS, EXCEPT IN THE CASE OF PORTAL VACIS FULLSCAN, A PRODUCT SPECIFICALLY DESIGNED FOR THE SCANNING OF VEHICLES AND THE INCIDENTAL HUMAN OCCUPANTS THEREOF WHEN USED IN ACCORDANCE WITH THE PORTAL VACIS FULLSCAN OPERATOR MANUAL AND APPLICABLE REQUIREMENTS OF COGNIZANT REGULATORY AGENCIES OR AUTHORITIES IN THEIR COUNTRY OF USE.

24. Modifications, Complete Agreement

No modifications of these Terms and Condition shall be effective unless in writing and signed by authorized representatives of the parties. The Contract constitutes the complete and exclusive statement of the agreement between the parties and supersedes all proposals, oral or written, and all other communications between the parties relating to the subject matter of the Contract.

SAIC's proposal and these Terms and Conditions shall be included in the Contract by reference.

25. Applicable Law and Disputes

- A. The Contract shall be interpreted, construed and governed by, and the relations between the parties determined by the laws in force in the State of California, United States of America.
- B. Should any disputes or differences of any kind arise between the Buyer and SAIC, in connection with or arising out of the Contract, or the performance hereunder, these will be settled by mutual agreement, which after having been written and signed by both parties, will become final and binding upon both Parties.
- C. If no binding agreement can be reached, then the Buyer and SAIC will have the right to proceed to resolve the dispute through arbitration as follows: (1) For Buyers within the United States, arbitration shall be conducted according to the Rules of the American Arbitration Association ("AAA") before one or more arbitrator(s) appointed in accordance with such rules; (2) For Buyers outside the United States, arbitration shall be conducted under the Rules of Conciliation and Arbitration of the International Chamber of Commerce by one or more arbitrator(s) appointed in accordance with such

rules. The Arbitrator's decision will be final, binding and irrevocable upon both the Buyer and SAIC and not subject to any direct or indirect legal means. Arbitration shall take place in San Diego, California, United States of America.

- D. The judgment rendered by the Arbitrator upon the award may be entered in any court having jurisdiction for the purposes of obtaining an order of enforcement or judicial acceptance of the award, as the case may be. Buyer and SAIC hereby waive any immunity, sovereign or otherwise, that it would otherwise have to such jurisdiction and agrees that its rights, obligations and liabilities hereunder shall be determined in the same manner and to the same extent as those of a private litigant under like circumstances.
- E. The Arbitrator's award may include compensatory damages against either party, but under no circumstances will the Arbitrator be authorized to nor shall he or she award consequential, special, punitive or multiple damages against either party.

26. Severability

If any provision of the Contract is held by a court of competent jurisdiction to be void, invalid or unenforceable, the remaining provisions shall remain in full force and effect.

27. Order of Precedence

In the event of a conflict arising between the documents constituting a formal offer or quotation, the following descending order of precedence shall be given: (a) the formal quotation to which these terms are attached; (b) these terms and conditions; and (c) and the Statement of Work or specification referenced or attached hereto; (d) any other attachments.

28. Right of Approval

Acceptance of any order stemming from this quotation is contingent on disclosure by the Buyer of all parties to the transaction, including the Buyer, intermediaries and end users who will bear interest, title or operational authority over the equipment at every stage. Such additional parties shall be subject to due diligence and approval by SAIC, at its sole discretion.

29. Survival

The provisions of paragraphs 6, 10, 11, 15, 16, 17, 18, 19, 20, 23 and 25 above shall survive termination, cancellation or expiration of the Contract.