

Iridium Satellite LLC - Purchase Order

Terms and Conditions

1. **ORDER ACCEPTANCE.** Commencement of performance pursuant to this Purchase Order (PO) constitutes acceptance by Seller. All shipments shall be deemed to have been made pursuant to the terms of this offer. All other terms are null and void.

2. **PRICE/PAYMENT.** Seller's price shall not be higher than those shown on this PO. Unless otherwise provided on the face of the PO, Iridium Satellite LLC (Buyer) shall pay Seller within net 30 days receipt of a proper invoice and Seller shall not invoice Buyer until Seller's services/goods have been accepted in accordance with Article 19-*Inspection and Acceptance*. Seller warrants the authenticity of any instructions provided from Seller's network and email domain and agrees that payment made by Buyer in good faith reliance on instructions provided by Seller or by any person purporting to be Seller will be deemed to fully satisfy Buyer's payment obligations under this PO.

3. **QUANTITIES.** Shipments must equal exact amounts ordered. Over shipments shall be held at Seller's risk and expense for a reasonable time awaiting return shipping instructions. Shipping charges for returns shall be at Seller's expense.

4. **DELIVERY.** TIME IS OF THE ESSENCE for this PO. Delivery shall be in strict accordance with the schedule set forth in the PO. If deliveries are not made at the specified time, Buyer reserves the right to cancel in whole or in part or to purchase elsewhere and hold the Seller accountable for all costs and expenses arising from such cancellation or re-procurement.

5. **STATEMENT OF SERVICES.** Seller agrees to use its independent skill and expertise to provide certain services and/or goods as more specifically described in the PO. Seller also agrees to make itself available to perform such services throughout the period of performance specified in the PO and to be reasonably available to meet with Buyer's manager or designee as requested by Buyer from time to time.

6. **SELLER RESPONSIBILITIES.** As an independent contractor, the mode, manner, method and means used by Seller in the performance of services identified in the PO shall be of Seller's selection and under the sole control and direction of Seller. Seller shall be responsible for all risks incurred in the operation of Seller's business and shall enjoy all the benefits thereof. Any persons employed by or subcontracting with Seller to perform any part of Seller's obligations hereunder shall be under the sole control and direction of Seller and Seller shall be solely responsible for all liabilities and expenses thereof. Buyer shall have no right or authority with respect to the selection, control, direction, or compensation of such employees or subcontractors.

7. **INDEMNITY.** Seller shall indemnify Buyer and hold it harmless for, from and against claims, losses, damage, and expense, including reasonable attorneys' fees, arising out of or incident to the performance or non-performance of Seller's duties under this PO.

8. **WARRANTY.** Seller warrants that all goods or services delivered hereunder to be of good quality, material, and workmanship, and free from defect. Seller further warrants all goods to be merchantable, fit for the intended purpose and to conform strictly to the specifications, drawings, or sample specified or furnished. Seller also warrants that: (a) Seller has the full right and authority to enter into this PO and perform its obligations hereunder; (b) Seller has the right and unrestricted ability to assign all rights to its Work Product (as defined in Article 28 below) to Buyer as set forth in Articles 28 and 29 (including without limitation the right to assign any Work Product created by Seller's employees or contractors); (c) the Work Product has not heretofore been published in its entirety; and (d) the Work Product will not infringe upon any copyright, patent, trademark, right of publicity or privacy, or any other proprietary right of any

person, whether contractual, statutory or common law. This warranty shall survive any inspection, delivery, acceptance, or payment by Buyer of the goods or services.

9. **LAWS AND REGULATIONS.** Seller agrees to comply, at Seller's own expense, with the provisions of all state, local, and federal laws, regulations, ordinances, requirements and codes which are applicable to the performance of the services or delivery of goods hereunder, and to obtain and maintain in force and effect at all times any and all permits, licenses, or authorizations required for the performance of the services and its obligations hereunder.

10. **BUYER'S PROPERTY.** All material, including tools, furnished or specifically paid for by the Buyer shall be the Buyer's property, shall be subject to removal at any time without additional cost upon demand by Buyer, shall be used only in filling orders from the Buyer, shall be kept separate from other materials or tools, and shall be clearly identified as the property of the Buyer. Seller assumes all liability for loss or damage to Buyer's Property, with the exception of normal wear and tear, and agrees to supply detailed statements of inventory at monthly intervals or as otherwise agreed upon.

11. **TAXES.** Except as may be otherwise provided in this PO, the contract price does not include any applicable federal, state, or local taxes in effect on the date of this PO. To the extent requested, all taxes included in the price shall be set forth in detail in Seller's invoice. Buyer may be exempted from such taxes by furnishing Contractor a copy of its valid tax exemption certificate when applicable.

12. **ASSIGNMENT.** Seller shall not delegate any duties, nor assign any rights or claims under this PO, or for breach thereof, without prior written consent of Buyer, and any such attempted delegation or assignment shall be void. Buyer may assign this PO upon providing written notice to Seller. Subject to the foregoing, this PO will be for the benefit of Buyer's successors and assigns and will be binding on Seller's subcontractors or delegates.

13. **SETOFFS.** Buyer shall have the right to set off any amounts which Seller may owe to Buyer, whether arising under the PO or otherwise, against any amounts which are or may become payable by Buyer to Seller under the PO or otherwise.

14. **CHANGES.** Buyer may, at any time by written notice to Seller, make changes in the schedules, drawings, quantities, designs, and specifications. Seller shall obtain the written approval of Buyer to any increase or decrease in the costs or the time required for performance under the PO by virtue of such change prior to commencing performance under the PO incorporating the change or such claim shall be considered waived. Without limiting the foregoing, no payment will be made to Seller for the furnishing of any services or supplies not described in the PO except as provided by a change order approved by Buyer. Approved change orders will result in a written revision to this PO.

15. **TERMINATION.** Buyer may terminate this PO in whole or in part for its convenience at any time by notice to Seller. Upon any termination, expiration or completion of this PO, Seller (i) shall immediately discontinue all use of Buyer's Confidential Information delivered under this PO; (ii) shall delete any such Buyer Confidential Information from Seller's computer storage or any other media, including, but not limited to, online and off-line libraries; and (iii) shall return to Buyer, or, at Buyer's option, destroy, or permanently delete all copies of such Confidential Information then in Seller's possession. Seller shall be paid for all goods or services provided to and accepted by Buyer prior to the date of receipt of the notice of termination.

Buyer may terminate this PO in whole or in part for default in the event that the Seller breaches any of its material obligations hereunder and does not cure such breach within ten (10) days of receipt of notice from Seller. Upon such termination, Seller shall be paid for all goods or services provided to and accepted by Buyer prior to the date of receipt of the notice of termination. Seller shall reimburse Buyer for any costs that it may incur to have the requested services or goods provided by either Buyer's own personnel or the personnel of

another Seller ("Re-procurement Costs). Buyer shall use reasonable efforts to mitigate such Re-procurement Costs. The Parties also agree that such Re-procurement Costs shall not be considered "indirect damages" for purposes of the Limitation of Liability clause set forth below.

16. **INSOLVENCY.** Buyer may terminate this PO in the event Seller commences any proceeding, voluntary or involuntary, in bankruptcy or insolvency by or against Seller, including any proceeding under the applicable Federal or State bankruptcy law currently in effect, or in the event of the appointment, with or without the Seller's consent, of an assignee for the benefit of creditors or of a receiver without any liability whatsoever.

17. **TITLE TO SPECIFICATIONS.** Buyer shall at all times have title to all drawings and specifications furnished by Buyer to Seller and intended for use in connection with this PO. Seller shall not disclose such drawings and specifications to any person, firm, or corporation other than Buyer's or Seller's employees, subcontractors, or government inspectors. The Seller shall, upon Buyer's request, promptly return all drawings and specifications to the Buyer.

18. **TITLE AND RISK OF LOSS.** Title and risk of loss shall pass to Buyer at the F.O.B point identified in the PO, provided, however, that the risk of loss shall remain with Seller as to goods which are not accepted by Buyer or which are rejected by Buyer. Unless otherwise specified, all shipments shall be F.O.B. destination.

19. **INSPECTION AND ACCEPTANCE.** All goods and services supplied by Seller under this PO shall be subject to inspection and test by Buyer prior to final acceptance. If any of the goods or services are defective in material or workmanship or otherwise not in conformity with the requirements of this PO, Buyer shall have the right to either reject them or to require their correction, and to return them at Seller's risk and expense, including transportation and handling costs.

20. **WAIVER.** No waiver of any of the provisions of this PO shall be deemed, or shall constitute, a waiver of any other provisions hereof (whether or not similar) nor shall such waiver constitute a continuing waiver, and no waiver shall be binding unless executed in writing by the Buyer making the waiver.

21. **COMPLETE AGREEMENT.** Except as provided in Article 37 below, this PO is the full and final agreement of the parties, and no written or oral communication between the parties before the execution of this PO will modify or amend the agreement. This PO may be modified only by a written document signed by both parties.

22. **ATTORNEYS' FEES.** In the event it becomes necessary for either party to employ an attorney to enforce compliance with the terms, and conditions of this PO, said party, if successful in enforcing its rights shall be entitled to reimbursement from the other party for reasonable attorneys' fees and costs and expenses incurred in such enforcement as determined by the court.

23. **GOVERNING LAW/VENUE.** This PO shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia, without regard to application of conflict of law principles. All disputes shall be resolved by a court of competent jurisdiction in the Commonwealth of Virginia. EACH PARTY HEREBY VOLUNTARILY, UNCONDITIONALLY AND IRREVOCABLY WAIVES TO THE FULLEST EXTENT PERMITTED BY LAW TRIAL BY JURY IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM UNDER OR RELATED TO THIS PO, WHETHER AT LAW OR IN EQUITY, BROUGHT BY EITHER PARTY.

24. **FEDERAL PRIME CONTRACT FLOW-DOWN PROVISIONS.** To the extent Seller is performing services or providing goods under a prime contract that Buyer may have with the U.S. Federal Government, Seller shall comply with all applicable flow down provisions set forth in that prime contract including but not limited to the following statutes and regulations:

- i. 52.203-13, Contractor Code of Business Ethics and Conduct (Pub. L. 110-252, Title VI, Chapter 1 (41 U.S.C. 251), if the PO exceeds

\$5,000,000 and has a performance period of more than 120 days. In altering this clause to identify the appropriate parties, all disclosures of violation of the civil False Claims Act or of Federal criminal law shall be directed to the agency Office of the Inspector General, with a copy to the Contracting Officer.

- ii. 52.203-15, Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009 (Section 1553 of Pub. L. 111-5) if the PO is funded under the Recovery Act.
- iii. 52.204-21, Basic Safeguarding of Covered Contractor Information Systems.
- iv. 52.219-8, Utilization of Small Business Concerns (15 U.S.C. 637(d)(2) and (3)), if the PO offers further subcontracting opportunities. If the PO (except POs to small business concerns) exceeds \$650,000 (\$1.5 million for construction of any public facility), the Seller must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities.
- v. 52.222-26, Equal Opportunity (E.O. 11246).
- vi. 52.222-35, Equal Opportunity for Veterans (38 U.S.C. 4212(a)).
- vii. 52.222-36, Affirmative Action for Workers with Disabilities (29 U.S.C. 793).
- viii. 52.222-40, Notification of Employee Rights Under the National Labor Relations Act (E.O. 13496) if flow down is required in accordance with paragraph (f) of FAR clause 52.222-40.
- ix. 52.222-50, Combating Trafficking in Persons (22 U.S.C. 7104(g)).
- x. 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (46 U.S.C. App. 1241 and 10 U.S.C. 2631).
- xi. Section 503 of the Rehabilitation Act of 1974 (41 CFR 60-741.4).
- xii. Vietnam Era Veteran's Readjustment Assistance Act of 1974 (41 CFR 60-250.4), which equal opportunity clauses are hereby incorporated by reference.

To the extent that Seller is providing goods or services to Buyer under a prime contract that Buyer may have with the U.S. Department of Defense, Seller shall also be required to comply with the following statutes and regulations to the extent applicable under this PO:

- xiii. 252.204-7012, Safeguarding Covered Defense Information and Cyber Incident Reporting.
- xiv. 252.223-7008, Prohibition of Hexavalent Chromium, if the subcontract is for supplies, maintenance and repair services, or construction materials.
- xv. 252.225-7039, Contractors Performing Private Security Functions (Section 862 of Pub. L. 110-181, as amended by section 853 of Pub. L. 110-417 and sections 831 and 832 of Pub. L. 111-383), if the subcontract will be performed in areas of contingency operations, complex contingency operations, or other military operations or exercises designated by the Combatant Commander.
- xvi. 252.227-7015, Technical Data—Commercial Items, if applicable (see 227.7102-4(a)) if flow down is required in accordance with paragraph (e) of DFARS clause 252.227-7015.
- xvii. 252.227-7037, Validation of Restrictive Markings on Technical Data, if applicable (see 227.7102-4(c)), if the subcontract or supplier at any tier requires the delivery of technical data.
- xviii. 252.236-7013, Requirement for Competition Opportunity for American Steel Producers, Fabricators, and Manufacturers (Pub. L. 110-329, Division E, Section 108).
- xix. 252.237-7010, Prohibition on Interrogation of Detainees by Contractor Personnel (Section 1038 of Pub. L. 111-84) if the subcontract may require subcontractor personnel to interact with detainees in the course of their duties.
- xx. 252.237-7019, Training for Contractor Personnel Interacting with Detainees (Section 1092 of Pub. L. 108-375) if the subcontract may require subcontractor personnel to interact with detainees in the course of their duties.
- xxi. 252.239-7018, Supply Chain Risk.
- xxii. 252.246-7003, Notification of Potential Safety Issues, if flow down is required in accordance with paragraph (f) of DFARS clause 252.246-

7003.

xxiii. 252.247-7023, Transportation of Supplies by Sea (10 U.S.C. 2631) if flow down is required in accordance with paragraph (h) of DFARS clause 252.247-7023.

xxiv. 252.247-7024, Notification of Transportation of Supplies by Sea (10 U.S.C. 2631).

For purposes of these flow-down provisions, all references to "Contractor" shall mean "Seller."

25. Contractor Standards of Conduct. Seller agrees to abide by Iridium's Supplier Standards of Conduct (as updated from time to time) and posted at <https://www.iridium.com/idr-file/359990>.

26. PROHIBITED TELECOMMUNICATIONS TECHNOLOGY OR SERVICES. Seller represents, covenants, and warrants that the Services it will provide to Iridium under this PO do not, and will not at any time in the future, incorporate any covered telecommunications equipment or services as described or contemplated in 48 C.F.R. § 52.204-25 (FAR 52.204-25) and 48 C.F.R. § 52.204-7018 (DFARS 252.204-7018), and/or the list of equipment and services covered by section 2 of the Secure Networks Act, 47 U.S.C. §§ 1601-1609 ("Prohibited Technology"), whether as an essential component or critical technology of any Services, or any deliverable provided to Iridium under this PO. Seller also represents, warrants, and covenants that it is not an affiliate or subsidiary of any company specifically identified as a producer of Prohibited Technology. Seller will immediately notify Iridium in writing if it becomes aware of any Prohibited Technology being offered provided or sold to Iridium under this PO or any other agreement. Seller shall insert the substance of this Section (26) in all subcontracts or other contractual agreements or arrangements which may arise from or be used in connection with or related to this PO in any way.

27. TYPE AND GOVERNMENT APPROVALS, ROHS, REACH, AND CONFLICT MINERALS.

- i. Type and Government Approvals. All Products and Services purchased by Iridium from Seller shall fully comply with and include the approval to import, export and be operated in accordance with all government laws and regulations, including certifications, homologation, etc. for countries and locations worldwide that the Products and related Work Product will be operating in.
- ii. RoHS, REACH. Notwithstanding the above, Seller is and remains solely responsible for the full compliance of delivered Products or parts of Products with any applicable rules and regulations ("Legislations") on: (1) the restriction of hazardous substances ("RoHS") and all further releases as well as all national or local regulations issued in execution of the aforesaid RoHS Legislations; and (2) Products, parts of Products or substances with the requirements of Regulation (EC) No. 1907/2006 ("REACH") as of 18 December 2006 as amended or varied and all further releases as well as any national regulations issued in execution of this Regulation. Therefore, all delivered Products or parts of Products must be suitable and fit for RoHS and REACH compliant production and sale. Iridium reserves the right to cancel blanket or single Orders, and Seller will indemnify and hold Iridium harmless from any claim, liability, loss, damage, judgment and external responsibility, irrespective of their legal ground, and to bear any and all harm, loss or damage arising to Iridium's disadvantage in the event of default.
- iii. Conflict Minerals. As Iridium is required by SEC regulations to disclose the use of certain Conflict Minerals in the manufacturing of products that it sells to the general public. Under these SEC regulations, Conflict Minerals is defined as gold, tantalum (columbite-tantalite), tin (cassiterite) and tungsten (wolframite) that originates in the Democratic Republic of Congo or any adjoining countries. Seller agrees that it shall not knowingly include such Conflict Minerals in any Products that it delivers to Iridium. Seller also agrees it shall provide to Iridium an annual certification that provides that neither it nor any of its subcontractors or suppliers have used or

included such Conflict Minerals in any Product delivered to Iridium or any component thereof.

28. OWNERSHIP OF WORK PRODUCT. Seller hereby irrevocably assigns, grants and conveys to Buyer all right, title and interest now existing or that may exist in the future in and to any documents, developments, work products, know-how, designs, processes, inventions, techniques, trade secrets, or ideas, and all intellectual property rights related thereto, that are specifically developed and paid for under this PO (collectively the "Work Product"), including all copyrights, trademarks and other intellectual property rights (including but not limited to patent rights and trade secret rights) relating thereto.

Seller agrees that any and all Work Product shall immediately become and remain the property of Buyer and that Seller will immediately disclose to Buyer all Work Product. Seller agrees to execute, at Buyer's request and expense, all documents and other instruments necessary or desirable to confirm such assignment or rights and ownership. In the event that Seller does not, for any reason, execute such documents within a reasonable time of Buyer's request, Seller hereby irrevocably appoints Buyer as Seller's attorney-in-fact for the purpose of executing such documents on Seller's behalf. Seller shall not attempt to register any works created by Seller pursuant to this PO at the U.S. Copyright Office, the U.S. Patent & Trademark Office, or any foreign copyright, patent, or trademark registry. Seller retains no rights in the Work Product and agrees not to challenge Buyer's ownership of the rights embodied in the Work Product. Seller further agrees to assist Buyer in every proper way to enforce Buyer's rights relating to the Work Product in any and all countries, including, but not limited to, executing, verifying and delivering such documents and performing such other acts (including appearing as a witness) as Buyer may reasonably request for use in obtaining, perfecting, evidencing, sustaining and enforcing Buyer's rights relating to the Work Product.

29. ARTIST'S, MORAL, AND OTHER RIGHTS. If Seller has any rights, including without limitation "artist's rights" or "moral rights," in the Work Product which cannot be assigned (the "Non-Assignable Rights"), Seller agrees to waive enforcement worldwide of such rights against Buyer. In the event that Seller has any such rights that cannot be assigned or waived Seller hereby grants to Buyer a royalty-free, paid-up, exclusive, worldwide, irrevocable, perpetual license under the Non-Assignable Rights to (i) use, make, sell, offer to sell, have made, and further sublicense the Work Product, and (ii) reproduce, distribute, create derivative works of, publicly perform and publicly display the Work Product in any medium or format, whether now known or later developed.

30. INDEPENDENT CONTRACTOR. Seller is an independent contractor and its employees shall not be considered employees of Buyer. Nothing in this PO is intended to, or should be construed to; create a partnership, agency, joint venture, or employment relationship. Seller is not authorized to represent that it is an agent, employee, or legal representative of Buyer and Seller is not authorized to make any representation, contract, or commitment on behalf of Buyer or incur any liabilities or obligations of any kind in the name of or on behalf of Buyer.

31. CONFIDENTIALITY. Unless otherwise provided in a separate Nondisclosure Agreement covering the provision of goods and services under the PO, Seller agrees to hold Buyer's Confidential Information (as defined below) in strict confidence and not to disclose such Confidential Information to any third parties. Seller also agrees not to use any of Buyer's Confidential Information for any purpose other than performance of Seller's Services hereunder. "Confidential Information" as used in this PO shall mean all information disclosed by Buyer to Seller, or otherwise, regarding Buyer or its business obtained by Seller pursuant to Services provided under this PO that is not generally known in Buyer's trade or industry and shall include, without limitation, (a) concepts and ideas relating to the development and distribution of content in any medium or to the current, future and proposed products or services of Buyer or its subsidiaries or affiliates; (b) trade secrets, drawings, inventions, know-how, software programs, and software source documents; (c) information regarding plans for research, development, new service offerings or products, marketing and selling, business plans, business forecasts, budgets and

unpublished financial statements, licenses and distribution arrangements, prices and costs, suppliers and customers; and (d) any information regarding the skills and compensation of employees, contractors or other agents of Buyer or its subsidiaries or affiliates. Confidential Information also includes proprietary or confidential information of any third party who may disclose such information to Buyer or Seller in the course of Buyer's business.

Seller obligations set forth in this Section shall not apply with respect to any portion of the Confidential Information that Seller can document by competent proof that such portion: (i) is in the public domain through no fault of Seller; (ii) has been rightfully independently communicated to Seller free of any obligation of confidence; or (iii) was developed by Seller independently of and without reference to any information communicated to Seller by Buyer. In addition, Seller may disclose Seller's Confidential Information in response to a valid order by a court or other governmental body, as otherwise required by law.

Seller's nondisclosure obligations hereunder will survive termination, expiration or completion of this PO for a period of ten (10) years from the termination, expiration or completion of this PO and will be binding upon the Receiving Party's heirs, successors, and assigns.

Seller acknowledges that if it breaches its nondisclosure obligations under this PO, Buyer will not have an adequate remedy at law. Therefore, Buyer shall be entitled to seek an immediate injunction against an alleged breach or anticipated breach of this PO from any court of competent jurisdiction. The right to seek and obtain injunctive relief shall not limit Buyer's right to pursue other remedies.

All Confidential Information furnished to Seller by Buyer is the sole and exclusive property of Buyer or its suppliers or customers. Upon request by Buyer, Seller agrees to promptly deliver to Buyer the original and any copies of such Confidential Information.

32. ADVERTISEMENT. Seller shall not issue any advertising, public announcements, or releases, nor make any other public references to Buyer and/or this PO without the prior written consent of Buyer. Such consent will not be unreasonably withheld.

33. LIMITATION OF LIABILITY. EXCEPT WITH RESPECT TO DAMAGES ARISING UNDER ARTICLES 31-CONFIDENTIALITY OR 7-INDEMNITY OF THIS PO, NEITHER PARTY SHALL BE LIABLE FOR INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES ("INDIRECT DAMAGES") OF ANY KIND WHATSOEVER, WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN ANY EVENT, BUYER'S TOTAL LIABILITY TO SELLER SHALL NOT EXCEED THE AMOUNT PAID BY BUYER TO SELLER DURING THE PERFORMANCE OF THIS PO.

34. INSURANCE. Seller will obtain, at its own expense, General Liability (GL) insurance coverage for services performed under this PO and (if available under state law) worker's compensation coverage.

35. SUBCONTRACTING. Seller may not subcontract or otherwise delegate its obligations under this PO without Buyer's prior written consent. Such consent will not be unreasonably withheld.

36. SEVERABILITY. Should any provisions of this PO be held by a court of law to be illegal, invalid or unenforceable, the legality, validity, and enforceability of the remaining provisions of this PO shall not be affected or impaired thereby.

37. WAIVER. The failure of either Party to enforce, in any one or more instances, any of the terms or conditions of this PO shall not be construed as a waiver of the future performance of any such term or condition.

38. INCORPORATION OF OTHER CONTRACT TERMS. The Parties acknowledge that a separate written contract may exist which addresses the Parties obligations concerning Seller's provision of the goods or services requested on the cover page of this PO and has been signed/executed by both Parties.

Provided this PO is issued within the period of performance of that separate contract, the Parties agree that the terms and conditions of that contract shall be incorporated by reference into this PO.

39. ORDER OF PRECEDENCE. The Parties agree that to the extent the terms of this PO are inconsistent with the terms of a separate contract which has been incorporate by reference in accordance with Article 38 above, the terms and conditions of that separate contract shall prevail.