

**GENERAL TERMS AND CONDITIONS WITH FAR FLOWDOWN PROVISIONS FOR SUBCONTRACTS/PURCHASE ORDERS FOR COMMERCIAL ITEMS UNDER A US GOVERNMENT PRIME CONTRACT**

**SECTION I: GENERAL TERMS AND CONDITIONS**

**DEFINITIONS:** The following terms shall have the meaning set forth below:

"Buyer" means InDyne, Inc. or INDYNE

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"FAR" means the Federal Acquisition Regulation in effect on the date of the purchase order.

"Government" means the United States of America or any department or agency thereof.

"Purchase Order" and "Order" are used interchangeably and shall mean this "Contract".

"Seller" means the individual, partnership, corporation or associations, their heirs or assigns, contracted to furnish the items or services described in this Purchase Order.

**ACCEPTANCE OF CONTRACT/ORDER:** This Contract integrates, merges, and supersedes any prior offers, negotiations, and agreements concerning the subject matter hereof and constitutes the entire agreement between the parties. This Contract becomes a binding contract, subject to the terms and conditions hereof, when reasonably accepted by acknowledgment, acceptance of payment, or commencement of performance.

**VALIDITY, CONSTRUCTION, INTERPRETATION:** The validity, construction and interpretation of this Order and the rights and duties of the parties to this transaction shall be governed by the laws of the State of Maryland. The invalidity in whole or in part of any provision of this order shall not affect the validity of any other provisions. State law applies only when Federal common law of government contracts is not dispositive.

**MODIFICATIONS, REMEDIES AND NON-WAIVER:** This Order contains all the terms and conditions and provisions of this transaction, and no agreement or other understanding in any way modifying the conditions hereof will be binding upon Buyer unless made in writing and executed by an authorized representative of the Buyer. Failure of INDYNE to insist upon strict performance shall not constitute a waiver of any of the requirements of any specifications or drawings or a waiver of any default. No waiver of a breach of any provision of this order shall constitute a waiver of any other breach of such provision.

**COMPLIANCE WITH LAWS:** Seller warrants that it is in compliance with all applicable laws, rules and regulations of government authority covering production, sale and delivery of the materials and/or services specified herein.

**INFORMATION DISCLOSED AND CONFIDENTIAL RELATIONSHIP:** No information or knowledge, heretofore or hereafter disclosed to the Buyer in connection with this Order shall be deemed to be confidential or proprietary, unless otherwise expressly agreed to in writing. Seller agrees to treat as strictly confidential all information supplied by INDYNE and agrees not to disclose any information in relation to this Order to any person not entitled to receive it.

**EXPORT CONTROL:** Seller shall comply with all applicable U.S. export control laws and economic sanctions laws and regulations, specifically including but not limited to the International Traffic in Arms Regulations (ITAR), 22 C.F.R. 120 et seq.; the Export Administration Regulations, 15 C.F.R. 730-774; and the Foreign Assets Control Regulations, 31 C.F.R. 500-598 (collectively, "Trade Control Laws"). Without limiting the foregoing, Seller shall not transfer any export controlled item, technical data, technology, or service, including transfers to foreign persons employed by or associated with, or under contract to Seller or Seller's lower tier suppliers, unless authorized in advance by an export license (such as Technical Assistance Agreement (TAA) or Manufacturing License Agreement (MLA), license exception or license exemption, collectively, "Export Authorization"), as required. Seller shall include this clause or equivalent provisions in lower tier subcontracts for the delivery of items that will be included in or delivered as Work to INDYNE. Seller shall immediately notify INDYNE upon learning that any lower tier subcontractor with which it engages has become listed on the Restricted Parties List. **Seller shall be responsible for all**

**losses, costs, claims, causes of action, damages, liabilities and expense, including attorney's 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.**

**ETHICAL CONDUCT:** Seller will be familiar and will strictly comply with all laws and regulations on bribery, corruption, and prohibited business practices. Seller and its affiliates have not and will not, for the purpose of influencing or inducing anyone to influence decisions in favor of INDYNE or any of its affiliates, offer, promise, or make or agree to make, directly or indirectly, (a) any political contributions of any kind or any payment to or for the benefit of any public official, whether elected or appointed, (b) any payments for gifts, meals, travel, or other value for a government employee or his/her family members, or (c) any payments or gifts (of money or anything of value) to anyone. INDYNE shall not reimburse Seller for any such political contributions, payments, or gifts. By accepting this Order, 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.

**ASSIGNMENTS AND SUBCONTRACTS:** This Order shall not be assigned or transferred without written consent of an INDYNE Procurement Representative. Seller agrees that it will not subcontract the furnishing of any of the completed or substantially completed articles required by this order without prior written approval of an INDYNE Procurement Representative.

**BANKRUPTCY:** In the event of any proceedings, voluntary or involuntary, in bankruptcy or insolvency by or against Seller, including any proceeding under the Chandler Act, or in the event of an appointment, with or without the Seller's consent, of an assignee for the benefit of creditors or of a receiver, then Buyer may cancel this order for default and hold Seller accountable for any additional costs or damages incurred by Buyer.

**DISCOUNT:** INDYNE will strive to take any discount offered by the seller. The date of the cash discount calculation is the date material is received or the date an acceptable invoice is received whichever is later.

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

**OFFSET:** If INDYNE is fined or penalized as a result of any violation of any law or Federal regulation by Seller or Seller's lower-tier suppliers, or where this Order is pursuant to an INDYNE prime contract, if the Government reduces INDYNE's pay or prime contract as a result of actions by Seller or Seller's lower-tier suppliers, INDYNE shall reduce the amount of Seller's pay or the amount of this Purchase Order by the same amount. If INDYNE has already paid Seller, Seller shall, upon demand from INDYNE, promptly repay to INDYNE the amount of the offset. Exercise of INDYNE's rights under this clause shall not be a waiver of any rights INDYNE has under any other clause or provisions of this Order, or at law.

**FOR WORK ON GOVERNMENT PROPERTY:** In the event Seller, its officers, employees, agents, suppliers, or subcontractors at any tier enter premises occupied by or under the control of INDYNE, the Government, or third parties in the performance of this Purchase Order, Seller shall defend, indemnify, and hold harmless INDYNE, its officers, employees and agents from any claim, suit, loss, cost, damage, expense (including attorney's fees), or liability by reason of property damage or personal injury (including

death) to any person, including Seller's employees, of whatsoever nature or kind arising out of, as a result of, or in connection with such performance occasioned in whole or in part by the actions or omissions of Seller, its officers, employees, agents, suppliers, or subcontractors at any tier. Seller shall take all precautions necessary, special or otherwise and shall be responsible for compliance with all Federal, state, and local safety and environmental laws in performance of work hereunder. Without in any way limiting the foregoing undertakings, Seller and its suppliers and subcontractors at any tier shall maintain public liability and property damage insurance in prudent and reasonable limits set forth below. The requirement to provide insurance under this Order shall not in any manner limit or qualify the liabilities and obligations assumed by Seller under this Order.

**PATENT INDEMNITY BY SELLER:** Seller agrees to defend and hold harmless Buyer, its customers and those for whom Buyer may act as agent, from all loss or damage by reason of any and all actions or proceedings charging infringement of any patent, trademark or copyright by reason of sale or use of any merchandise furnished hereunder, except merchandise for which the Buyer furnished complete specifications.

**INSURANCE:** (a) Seller and its subcontractors shall maintain for the performance of this Contract the following insurances:

- (1) Workers' Compensation insurance meeting the statutory requirements where Work will be performed;
- (2) Employer's Liability (EL) in the amount of \$1 million per each accident or per each employee for disease;
- (3) Commercial General Liability (CGL) including Products Liability and Completed Operations liability in the amount of \$1 million per occurrence and \$2 million in the aggregate annually, or in such higher amounts as INDYNE may require;
- (4) Automobile Liability (AL) insurance covering third party bodily injury and property damage with a minimum of \$1 million per occurrence limit, or in such higher amounts as INDYNE may require; and
- (5) Such other insurance as INDYNE may require.

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

**PRICE WARRANTY:** Seller represents that the price or prices specified in this order do not exceed the current selling prices for the same or substantially similar items whether to the Government or to any other purchaser, taking into account the quantity under consideration. The Seller further represents that to the best of his knowledge, information and belief, the prices to be charged for items covered by this order are not in excess of prices permitted by any applicable law or regulations and Seller agrees forthwith to refund any amounts paid by Buyer in excess of lawful amounts.

**CHANGES:** An INDYNE Buyer may at any time by issuing a written order to Seller, make changes within the general scope of this Order. If any such change causes an increase or decrease in the cost of, or the time required for the performance of any part of the work, INDYNE shall make an equitable adjustment in the Purchase Order price and/or delivery schedule, and modify this

Purchase Order accordingly. Changes to the delivery schedule will be subject to a price adjustment only.

(c) Seller must assert its right to an equitable adjustment under this clause within thirty (30) days from the

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date of receipt of the written change order from INDYNE. If Seller's proposed equitable adjustment includes the cost of property made obsolete or excess by the change, INDYNE shall have the right to prescribe the manner of disposition of the property.

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

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

(b) Until final resolution of any dispute hereunder, Seller shall diligently proceed with the performance of this Order as directed by INDYNE. Except as may be expressly set forth in this T&C document with the Government Contracting Officer's express consent, the subcontractor/vendor shall not acquire any direct claim or direct course of action against the Government.

**TERMINATION:** The Buyer may terminate this Order as follows:

**For Convenience.** The Buyer may terminate performance under this Order, in whole or in part, if the Buyer determines that a termination is in the best interests of the Buyer and the Government. After receipt of a Notice of Termination, the Seller will immediately cease all work hereunder. The Seller may submit a proposal for costs associated with the termination but not including future costs or profits. The parties will then negotiate a settlement.

**For Default.** The Buyer may terminate this Order for Default if the Seller (1) Fails to deliver in accordance with the schedule set forth herein, or (2) Fails to make progress hereunder so as to endanger performance of this Order or (3) Fails to perform any other provisions of this Order. The Seller shall have ten (10) days (or such longer period as INDYNE may authorize in writing) to cure any such failure after receipt of notice from INDYNE. Default involving delivery schedule delays shall not be subject to the cure provision. Following termination for default, Seller shall be liable for any excess costs for similar work if procured by INDYNE. Payment is in order only for any work actually delivered and accepted. Seller shall continue all Work not terminated or cancelled.

**SECTION II: FAR FLOWDOWN PROVISIONS**

**INCORPORATION OF FAR AND DFAR CLAUSES**

The Federal Acquisition Regulation (FAR) and Defense Federal Acquisition Regulation Supplement (DFARS) 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 during the performance of this Order. When a FAR clause uses a word or term that is defined in the FAR, the word or term shall have the same meaning as in the definition in FAR 2.101 in effect on the date of this Contract unless (i) a different definition is expressly set forth in this Contract; or (ii) the part, subpart, or section of the FAR where the clause is prescribed provides a different meaning; or (iii) the word or term is defined in FAR Part 31, for use in the cost principles and procedures. If the date or substance of any of the clauses listed below is different than 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.

**FAR DEFINITIONS**

"Commercial Item" means a commercial item as defined in FAR 2.101.

"Contract" means this Contract.

"Contractor" means Seller, acting as the immediate first-tier subcontractor to INDYNE.

**STOP WORK ORDER:** The Buyer may, at any time, by written order to seller, require the Seller to stop all, or any part, of the work called for by this Order. Upon receipt of the order the Seller shall immediately comply with the terms and take all reasonable steps to minimize the incurrence of costs. If the Stop Work Order is canceled or the period of the order or any extension thereof expires, the Seller shall resume work. The Buyer shall make an equitable adjustment in the delivery schedule or Order price, or both, as appropriate provided the Seller asserts its right to an adjustment within 30 days after the end of the period of work stoppage.

**PACKING:** Seller shall be responsible for safe packing, which must conform to the requirements of the carrier's tariff. An itemized packing slip bearing the Order number and any other markings as called for in the Order shall be produced by Seller for each container in a shipment.

**DELIVERY:** If Seller fails to make delivery in accordance with promised delivery date or schedule, or fails to comply with any of the instructions, terms or conditions applicable to this Order, Buyer may either agree to a revised delivery date or schedule, or terminate this order for cause pursuant to the Termination Clause.

**REJECTIONS:** INDYNE reserves the right to reject and receive full credit for any article or articles that are defective as to material, workmanship, quality or otherwise, or which are not in conformity with the specifications, drawings or the sample approved by INDYNE. INDYNE reserves the right to declare full valuation or insure (whichever is applicable) for the benefits of and at the expense of the Seller.

**WARRANTIES:** In addition and without prejudice to all warranties expressed or implied by law, Seller warrants that all articles or materials covered by this Order will conform to the drawings, specifications, or other descriptions, and will be of good material and workmanship and free of defects.

**RESPONSIBILITY FOR PROPERTY:** Unless otherwise provided in this order, Seller assumes the risk and responsibility for loss or damage to any INDYNE or Government property provided to the Seller. This risk and responsibility excludes reasonable wear and tear, or to the extent the property is consumed in performing or fulfilling the Order.

**GOVERNMENT WORK:** If the face of this Order bears a Government Contract number, Section 204 of Executive Order 11246 (as amended) Executive Order 11375 and Rules and Regulations of the Secretary

"Prime Contract" means the contract between INDYNE and the US Government or between INDYNE and its higher-tier contractor in support of a contract with the US Government.

"Subcontract" means any contract placed by Contractor or lower-tier subcontractors under this order.

**The Subcontractor shall include all required flow down clauses into any and all lower tier subcontract.**

**FAR FLOWDOWN CLAUSES**

**The following FAR clauses apply to this Order:**

- 52.209-6 PROTECTING THE GOVERNMENT'S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENTS (SEP 2006)
- 52.219-8 UTILIZATION OF SMALL BUSINESS CONCERNS (MAY 2004) (If this Order, except subcontracts to small business concerns, exceeds \$750,000 (\$1,000,000 for construction), the subcontractor must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities.)

of Labor, Title 4, CFR Chapter 60 pertaining to *Non-Segregated Facilities* shall be applicable.

**INSPECTION OF SUPPLIES AND SERVICES:** INDYNE and the Government has the right to inspect and test all supplies or services called for by the Purchase Order, to the extent practicable, at all places and times. INDYNE or the Government shall perform inspections and tests in a manner that will not unduly delay the work.

**INFORMATION OF INDYNE AND ITS' CUSTOMERS:** The Seller agrees not to use any INDYNE, or INDYNE Customer information for any purpose except to perform this order and agrees not to disclose such information to third parties. Nothing in these Terms and Conditions shall be construed or interpreted to limit or in any way restrict the rights of the Government in regard to data it owns or has a right to use, including the right to authorize the subcontractor's use of such data.

**EQUAL OPPORTUNITY:** INDYNE is an equal opportunity employer, and, as such, INDYNE may only enter into Contracts or Purchasing Agreements with vendors found in compliance with Title XI of the Federal Civil Rights Act, Executive Order 11426. Non-compliance with the aforementioned orders is grounds for termination of such Contract Agreement.

To the extent applicable, all parties agree that they will abide by the provisions of 41 CFR 60-1.4 and 29 CFR Part 471 Appendix A to Subpart A. Additionally, this contractor and subcontractor shall abide by the requirements of 41 CFR 60-300.5(a) and 41CFR 60-741.5(a). This regulation prohibits the discrimination against qualified protected veterans and qualified individuals on the basis of disability, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans and qualified individuals with disabilities. **UTILIZATION OF SMALL AND SMALL DISADVANTAGED BUSINESS CONCERNS AND WOMEN OWNED SMALL BUSINESSES:** Seller hereby agrees to use its best efforts to ensure that small and small disadvantaged businesses, and women-owned small businesses, as defined in statute or regulation by the Small Business Administration, have the maximum practicable opportunity, consistent with the efficient performance of this Purchase Order, to participate in lower tier orders issued pursuant to this Order.

- 52.222-21 PROHIBITION OF SEGREGATED FACILITIES (FEB 1999)
- 52.222-26 EQUAL OPPORTUNITY (MAR 2007)
- 52.222-36 AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES (JUN 1998) (Applies if Order equals or exceeds \$10,000)
- 52.225-13 RESTRICTIONS ON CERTAIN FOREIGN PURCHASES (FEB 2006)
- 52.244-6 SUBCONTRACTS FOR COMMERCIAL ITEMS (MAR 2007)
- 52.247-64 PREFERENCE FOR PRIVATELY OWNED US-FLAG COMMERCIAL VESSELS (FEB 2006)

**The following FAR clauses apply as indicated:**

- 52.204-2 SECURITY REQUIREMENTS (AUG 1996) (Applicable is the Work involves access to classified information. Delete paragraph (c) of the clause.)
- 52.204-9 PERSONAL IDENTITY VERIFICATION OF CONTRACTOR PERSONNEL (SEP 2007) (Applicable where the Contractor will have physical access to a federally-controlled facility or access to federal information systems.)
- 52.222-41 Service Contract Act of 1965 (NOV 2007) (Applicable if this Order is for services covered by the Service Contract Act of 1965.)

- 52.219-16 LIQUIDATED DAMAGES – SUBCONTRACTING PLAN (JAN 1999)
- 52.230-2 COST ACCOUNTING STANDARDS (APR 1998) (Applicable for negotiated procurements over \$750,000) unless an exception is applicable and documented
- 52.215-12 SUBCONTRACTOR COST OR PRICING DATA (OCT 1997) (If applicable - procurements over \$750,000)
- 52.215-13 SUBCONTRACTOR COST OR PRICING DATA – MODIFICATIONS (OCT 1997) (If applicable - procurements over \$750,000)

**The following DFARS clauses apply as indicated:**

- 252.244-7000 SUBCONTRACTS FOR COMMERCIAL ITEMS AND COMMERCIAL COMPONENTS (DOD CONTRACTS) (JAN 2007)
- 252.225-7014 PREFERENCE FOR DOMESTIC SPECIALITY METALS, ALTERNATE I (10 USC 2441 note)
- 252.246-7003 NOTIFICATION OF POTENTIAL SAFETY ISSUES
- 252.247-7023 TRANSPORTATION OF SUPPLIES BY SEA (10 USC 2631)
- 252.247-7024 NOTIFICATION OF TRANSPORTATION OF SUPPLIES BY SEA (10 USC 2631)
- 252.237-7023 CONTINUATION OF ESSENTIAL CONTRACTOR SERVICES (OCT 2010)

**The following FAR clauses apply to this Order if the Order equals or exceeds \$150,000:**

- 52.203-6 RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT (SEP 2006)
- 52.203-11 CERTIFICATION AND DISCLOSURE REGARDING PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (SEP 2007)
- 52.203-12 LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (SEP 2007)
- 52.215-2 AUDITS AND RECORDS – NEGOTIATION (JUN 1999) (Applicable per clause and if order exceeds current FAR simplified acquisition threshold.)
- 52.222-35 EQUAL OPPORTUNITY FOR SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS (SEP 2006)
- 52.222-37 EMPLOYMENT REPORTS ON SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS (SEP 2006)

**The following FAR clauses apply to this Order if the Order equals or exceeds \$500,000:**

- 52.219-9 SMALL BUSINESS SUBCONTRACTING PLAN (NOV 2007) Alternate II (OCT 2001) (Applicable if the Contractor is not a small business)

### SECTION III. CERTIFICATIONS AND REPRESENTATIONS

(1) This section contains certifications and representations that are material representations of fact upon which INDYNE will rely in making awards to Contractor. By submitting its written offer, or providing oral offers/quotations at the request of INDYNE, or accepting any Contract, Contractor certifies to the representations and certifications as set forth below in this section. These certifications and representations 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 INDYNE. Contractor shall immediately notify INDYNE of any change of status with regard to these certifications and representations.

(2) SELLER represents and warrants that the Work provided under this Contract constitutes a "Commercial Item" as defined in FAR 2.101.

(3) The following clauses of the Federal Acquisition Regulation (FAR) are incorporated herein by reference, with the same force and effect as if they were given in full text, and are applicable to this Contract.

In each clause incorporated below, substitute "INDYNE" for "Government" and "Contracting Agency", and "INDYNE Procurement Representative" for "Contracting Officer" throughout.

#### (a) FAR 52.203-11 Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions (Applicable to solicitations and contracts exceeding \$150,000)

(1) Definitions. As used in this provision--

"Lobbying contact" has the meaning provided at 2 U.S.C. 1602(8).

The terms "agency," "influencing or attempting to influence," "officer or employee of an agency," "person," "reasonable compensation," and "regularly employed" are defined in the FAR clause of this solicitation entitled "Limitation on Payments to Influence Certain Federal Transactions" (52.203-12).

(2) Prohibition. The prohibition and exceptions contained in the FAR clause of this solicitation entitled "Limitation on Payments to Influence Certain Federal Transactions" (52.203-12) are hereby incorporated by reference in this provision.

(3) Certification. Contractor hereby certifies to the best of its knowledge and belief that 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 its behalf in connection with the awarding of this contract.

(4) Disclosure. If any registrants under the Lobbying Disclosure Act of 1995 have made a lobbying contact on behalf of the offeror with respect to this contract, Contractor shall complete and submit, with its offer, to INDYNE, OMB Standard Form LLL, Disclosure of Lobbying Activities, to provide the name of the registrants. Contractor need not report regularly employed officers or employees of the offeror to whom payments of reasonable compensation were made.

(5) Penalty. Submission of this certification and disclosure is a prerequisite for making or entering into this contract imposed by 31 U.S.C. 1352. Any person who makes an expenditure prohibited under this provision or who fails to file or amend the disclosure required 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 Responsibility Matters (Applies to Contracts that exceed \$150,000)

(1) The SELLER certifies, to the best of its knowledge and belief, that --

(i) The SELLER and/or any of its Principals --

(A) Are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency;

(B) Have not, within a three-year period preceding this offer, been convicted of or had a civil judgment rendered

against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, violating Federal criminal tax laws, or receiving stolen property; and

(C) Are not presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in paragraph (a)(1)(i)(B) of this provision; and

(D) Have not within a three-year period preceding this offer, been notified of any delinquent Federal taxes in an amount that exceeds \$3,000 for which the liability remains unsatisfied.

(1) Federal taxes are considered delinquent if both of the following criteria apply:

(i) The tax liability is finally determined. The liability is finally determined if it has been assessed. A liability is not finally determined if there is a pending administrative or judicial challenge. In the case of a judicial challenge to the liability, the liability is not finally determined until all judicial appeal rights have been exhausted.

(ii) The taxpayer is delinquent in making payment. A taxpayer is delinquent if the taxpayer has failed to pay the tax liability when full payment was due and required. A taxpayer is not delinquent in cases where enforced collection action is precluded.

(ii) The SELLER has not within a three-year period preceding this offer, had one or more contracts terminated for default by any Federal agency.

(2) "Principals," for the purposes of this certification, means officers; directors; owners; partners; and, persons having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a subsidiary, division, or business segment, and similar positions).

This Certification Concerns a Matter Within the Jurisdiction of an Agency of the United States and the Making of a False, Fictitious, or Fraudulent Certification May Render the Maker Subject to Prosecution Under Section 1001, Title 18, United States Code.

(b) The SELLER shall provide immediate written notice to the INDYNE Procurement Representative if, at any time prior to contract award, the SELLER learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

(c) A certification that any of the items in paragraph (a) of this provision exists will not necessarily result in withholding of an award under this solicitation. However, the certification will be considered in connection with a determination of the SELLER's responsibility. Failure of the SELLER to furnish a certification or provide such additional information as requested by the INDYNE Procurement Representative may render the SELLER non-responsible.

(d) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by paragraph (a) of this provision. The knowledge and information of a SELLER is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

(e) The certification in paragraph (a) of this provision is a material representation of fact upon which reliance was placed when making award. If it is later determined that the SELLER knowingly rendered an erroneous certification, in addition to other remedies available to INDYNE, INDYNE may terminate the contract resulting from this solicitation for default.

#### (c) FAR 52.209-6 Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment (Sep 2006)

1) SELLER certifies that, to the best of its knowledge and belief, that SELLER and/or any of its Principals, (as defined in FAR 52.209-6) are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency.

(2) SELLER shall provide immediate written notice to INDYNE 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.

### SECTION IV. QUALITY ASSURANCE REQUIREMENTS

1. Seller shall notify INDYNE of nonconforming products or services.

2. Seller shall obtain INDYNE approval for non-conforming material disposition.

3. Seller shall notify INDYNE of changes in product and/or process, changes of sub-tier Seller(s), changes in facility location and obtain Company (InDyne) approval when required. When statistical techniques are used for acceptance the organization shall notify INDYNE or evidence on provided supporting documents.

4. Seller shall flow down all requirements to supply chain and sub-tier Sellers including all customer, statutory and regulatory requirements applicable to the order.

5. INDYNE, their customer, and regulatory authorities shall be granted right of access to the applicable areas of all facilities, at any level of the supply chain involved in the Order and to all applicable records.

6. Record Retention. Unless a longer period is specified in this Purchase Order or by law or regulation, Seller shall retain all records related to this Purchase Order for three (3) years from the date of final payment received by Seller. Records related to this Contract include, but are not limited to, financial, proposal, procurement, specifications, production, inspection, test, quality, shipping and export, and certification records. At no additional cost, Seller shall timely provide access to such records to the US Government and/or INDYNE upon request.

7. Persons performing activity to produce materials or provide services to be delivered/provided with this order are contributing to the conformity of INDYNE's services and are by extension participants in driving product safety and shall ensure that persons are aware of the importance and meaning of ethical behavior.

8. Where approval of products, services, methods, processes, equipment, release activity, competencies, qualification, verification or validation on your site, special requirements, key characteristics or critical items apply they will be stated in the item description.

9. All Sellers will be approved by INDYNE and will have a recognized Quality Management System or appropriate controls to address QMS Requirements. All Sellers are evaluated on quality (conformity) of products and services and on time delivery.

10. The Seller is required to have a counterfeit and suspect parts awareness and prevention program including appropriate training and provisions to report occurrences to INDYNE where impact is possible.