

McWane, Inc. Terms and Conditions of Purchase

- 1. ENTIRE AGREEMENT:** Buyer may agree from time to time to purchase Goods and/or Services, which together with the terms on the face hereof, supersede any other or inconsistent terms of Seller. These terms and conditions, any applicable order for Goods and/or Services from Buyer (an "Order") and any other specifications of Buyer constitute the entire agreement between the parties with respect to Goods and Services (collectively the "Agreement"). Neither this Agreement, nor any modification, amendment or waiver to it, nor any cancellation, change or return of any Order, will be binding on Buyer until agreed in writing by Buyer's authorized representative. No representation, promise or term not set forth herein has been or may be relied on by Seller, and any terms not contained in this Agreement are expressly objected to and rejected. Buyer's acceptance of any Order, whether oral or written, is based on the express condition that Seller agrees to all terms and conditions of this Agreement. Seller's acknowledgment of this Agreement, the delivery of Goods or performance of Services referenced herein or the presentation of an invoice by Seller will constitute Seller's acceptance of these terms and conditions.
- 2. COVERAGE OF AGREEMENT:** This Agreement will govern and control all Goods and Services provided by Seller to Buyer, now or in the future, regardless of whether performed pursuant to written Order(s) issued by Buyer, other written agreement(s) executed by the parties, and/or verbal request(s) issued by Buyer, and will remain in effect until either party will provide the other with sixty (60) days advance written notice of termination. The term "Buyer" will include McWane, Inc. and any subsidiary or division thereof and their employees, agents, officers, directors, successors and assigns. The term "Seller" will refer to the vendor providing Goods and Services to Buyer, together with its employees, agents, subcontractors, suppliers and all other persons performing Services or supplying Goods on Seller's behalf. The terms "Goods" or "Services" whether used together or separately, and wherever appearing herein will both mean (i) any and all products, supplies, materials, processes and/or equipment and/or (ii) any and all services, work or labor of any kind furnished or performed by Seller pursuant to this Agreement and any subsequent amendments, changes or modifications hereof.
- 3. CONTRACT PRICE; TERMS OF PAYMENT; TRANSPORTATION:** The cost of Goods and Services performed by Seller will be those specifically set forth in any applicable Order, except that Buyer will receive the benefit of any price declines to actual time of shipment. Unless otherwise stipulated in any applicable Order, Goods will be shipped DAP (Delivered At Place) (per Incoterms 2010). Title will pass to Buyer only upon delivery to Buyer's specified end destination on Buyer's shipping date AND acceptance by Buyer.
- 4. RELATIONSHIP OF PARTIES:** Seller will at all times be an independent contractor with respect to Goods and Services and not an agent or employee of Buyer. Any services provided by Seller will be carried on by Seller according to its own methods subject only to specifications and agreements outlined in this Agreement or pursuant to any applicable Order. Seller will have full and exclusive control of its employees engaged in the performance of any Services or manufacture or delivery of any Goods.
- 5. INSPECTION:** Seller will inspect and test all Goods prior to shipment. Notwithstanding any other inspection or testing or prior payment, all Goods and Services will be subject to inspection and approval by Buyer within a reasonable time after delivery to ensure compliance with plans and specifications at all times, but such approval will not relieve Seller of its duty to ensure proper performance of Services, for which it is solely responsible. The right to perform such inspections will not be construed as a reservation by Buyer of the right to control Seller's work. Buyer reserves the right to reject and refuse any Goods and Services that do not comply with the terms of this Agreement or Buyer's specifications.
- 6. SELLER'S RESPONSIBILITIES: TIME IS OF THE ESSENCE IN THIS AGREEMENT.** Seller will: (1) perform Services diligently and complete Services and deliver Goods in accordance with the provisions of this Agreement; (2) maintain the jobsite free of waste material and rubbish and clear the jobsite upon completion of contracted Services; (3) provide all necessary safeguards for protection and maintenance of Services performed; and (4) repair and restore or replace (at Buyer's option) any real or personal property belonging to Buyer which Seller may damage or destroy while performing Services and provide all accessories or parts required for Buyer's use of any Goods at no additional charge. Seller performs Services at its OWN RISK. The safety of all persons employed by Seller, and/or any other person who enters upon Buyer's premises for reasons relating to Services, will be solely Seller's responsibility. Seller will enforce strict discipline and maintain good order among its employees and will not employ any unfit person or anyone not skilled in Services assigned to him. Seller will take all reasonable measures and precautions for the safety of its employees and subcontractors so as to prevent injuries to any person who enters upon Buyer's premises and will comply with all applicable provisions of federal, state and local safety laws. Such measures and precautions will include without limitation utilizing all safeguards and warnings necessary to protect against any conditions on Buyer's premises. Seller will confine all equipment and its personnel to that area of Buyer's premises where Services are to be performed and to any other area which Buyer may permit Seller to use. Pursuant to the provisions of the Occupational Safety and Health Act of 1970 ("OSHA"), Seller will furnish its employees a place of employment free from recognized hazards that cause or may cause death or serious physical harm to its employees and will comply with all pertinent standards promulgated under OSHA. It is specifically understood that these duties will be the exclusive responsibility of Seller. Buyer will have no responsibility to ensure that Seller provides a safe working environment and/or complies with occupational safety and health rules, but Buyer will maintain Material Safety Data Sheets to the extent required by OSHA and will have them available in its engineering and/or personnel office for inspection and copying by Seller. Seller is responsible for inspecting and complying with the Material Safety Data Sheets requirements and for making all other necessary inquiries or investigation in order to ensure a safe workplace. Seller will inform its employees of, and require their compliance with, Buyer's emergency response plan.
- 7. INDEMNITY:** Seller will be responsible to the fullest extent permitted by applicable law to indemnify, defend and hold Buyer harmless from and against any and all claims, losses, suits, damages, liabilities, settlements, expenses and costs (including without limitation attorneys' fees and other costs of litigation) that, directly or indirectly, arise from or relate to (1) any breach or violation of any of the terms of this Agreement, including any warranty or guarantee; (2) sickness, disease, death or injury ("Injuries") to any person or persons, including without limitation those Injuries that result solely or concurrently from Buyer's negligence; and (3) injury to

property (including loss of use thereof) of Buyer or others arising out of or in any way connected with the Goods or performance of Services, including without limitation those that result solely or concurrently from Buyer's negligence; provided, however, that Seller will have no obligation to indemnify Buyer for claims or losses described in clause (2) and/or (3) above that arise solely from the intentional misconduct of Buyer. Seller warrants that any Goods and processes purchased pursuant to this Agreement, and the sale and/or use thereof, will not infringe any U.S. Letter Patent. Seller agrees to defend and indemnify Buyer from and against all claims, damages, actions or causes of action at law or in equity, together with all expenses and attorneys' fees, incident to any infringement or claimed infringement of any patent(s) and/or license(s) arising from the use or sale of Goods. In the event that Seller provides to Buyer any Goods or process to be utilized by Buyer subsequent to Seller's completion of Services, Seller will, at no expense to Buyer, provide to Buyer upon final payment a paid-up, irrevocable, royalty-free, nonexclusive license to operate said Goods and/or perform said processes. In the event that Seller is unable to secure such license, Seller will, at no expense to Buyer, modify the Goods so as to render them non-infringing or will remove the Goods and replace them with Goods which will not infringe upon any licenses or patents, provided they continue to meet the specifications of this Agreement.

8. INSURANCE: Seller will maintain and require its subcontractors to maintain in effect throughout the entire term of this Agreement insurance coverage (under an "occurrence" policy form) with an insurance company(ies) and in an amount satisfactory to Buyer in its sole discretion insuring: (a) Seller's indemnity obligations under this Agreement; (b) workers compensation for occupational diseases and for Injuries sustained by, or death resulting to, employees of Seller or its subcontractors as required by law; and (c) Seller's and/or Buyer's liability for any property damage, Injuries or death sustained by any person or persons, including Seller's employees, which was in any manner caused by, arising from or related to Goods or Services performed by Seller and/or the condition of Buyer's land, buildings, equipment or vehicles, regardless of whether the alleged injury or damage was caused or alleged to be caused in whole or in part by the conduct of Buyer. Said policy(ies) will name Buyer as an additional insured on the policy(ies) unless otherwise agreed by Buyer in writing. Policy(ies) maintained pursuant to this paragraph will be primary, not excess or contributory, in regard to any other applicable policy(ies) Buyer might have. All policies of insurance will waive any and all rights of subrogation against Buyer. Prior to the commencement of any Services, Seller will furnish certificates of insurance satisfactory to Buyer (or if Buyer so directs, copies of the actual insurance policies) from each insurance carrier stating that the insurance will not be canceled, non-renewed or modified until the expiration of at least thirty (30) days after written notice of such cancellation or change has been received by Buyer. The insurance required by this paragraph will not limit Seller's liability to Buyer under this Agreement or limit the rights or remedies available to Buyer at law or in equity.

9. DEFAULT; REMEDIES: Each of the following will constitute an event of "Default" by Seller: (i) failure to complete Services or deliver Goods within the time or with the quality specified or guaranteed in this Agreement; (ii) failure to comply with any provisions of this Agreement including breach of any warranty or guarantee; or (iii) adjudication of Seller as bankrupt or Seller's making a general assignment for the benefit of creditors or appointment of a receiver on account of Seller's insolvency. Upon Seller's Default, Buyer may immediately, without prejudice to any other right or remedy it may have at law or in equity: (1) terminate the relationship with Seller or any pending Orders with Seller and obtain a return of all money already paid to Seller for Goods and Services, or, at its sole option and without liability to Seller, suspend Services or delivery of Goods and/or exclude Seller from Buyer's premises until Seller furnishes satisfactory evidence that such Default has been cured; (2) take possession of any of Buyer's samples and materials held by Seller; (3) finish Services or correct any non-conformity at Seller's expense by whatever method Buyer deems expedient; (4) reject, repair or replace non-conforming Goods or Services or procure same or similar Goods or Services from another source, in which case Seller will be liable to Buyer for any additional costs or expenses incurred by Buyer; or (5) require Seller to correct or cure any non-conformity at Seller's expense. In addition, Buyer reserves all other rights and remedies available to it at law or in equity. Seller agrees to cooperate with Buyer in any way reasonably required to complete Services or purchase replacement Goods. In such case, Buyer will pay for that portion of Services previously completed by Seller, subject to the terms and provisions above. In addition to its other remedies, Buyer will have a right of set-off and may withhold from time to time out of monies due Seller, amounts sufficient to fully compensate Buyer for any loss or damage resulting from any Default or breach by Seller. As an alternative, Buyer may, in its sole discretion, extend the delivery or completion schedule or waive any deficiencies in performance; provided, however, that no such waivers or extensions will be binding unless in writing and signed by Buyer's authorized representative. Buyer will have the right at any time to require adequate assurances of Seller's performance. In any action or proceeding between Buyer and Seller, Buyer will be entitled to recover all of its attorneys' fees, expenses and other costs of litigation if it prevails on its cause(s) of action or defense(s).

10. WARRANTIES AND GUARANTEES: Seller warrants that it has clear title to all Goods furnished and that they are free of all liens, encumbrances and security interests. Unless otherwise specified in writing by Buyer, all Goods provided by Seller will be new. In addition to all warranties prescribed by law or given by Seller, all Goods and Services (including any approved samples) will be of good quality, will conform to the requirements of this Agreement and Buyer's specifications, descriptions and drawings, will be merchantable and fit for Buyer's intended use and will be free from defects in design, material and workmanship. All Services provided by Seller will be performed by qualified and competent personnel in a professional manner using the highest standards of quality and workmanship. In the event that Seller encounters unknown or latent conditions which could impair the performance or quality of Goods or Services, Seller will give immediate notice of the nature of such condition to Buyer. Seller will obtain from subcontractors and vendors all available warranties and guarantees with respect to design, materials, workmanship, equipment and supplies furnished for the benefit of Buyer. Should a subcontractor or vendor seek to defend on grounds that Seller committed error, Buyer may enforce this warranty

against Seller and Seller will resolve all such issues with the subcontractor/vendor. This warranty will survive Buyer's acceptance of Goods or Services.

11. CHANGES AND EXTRAS: Buyer reserves the right to make changes to Services or Goods upon written request to Seller. Before proceeding with any Services involving possible claims for extra compensation, Seller will submit in writing to Buyer a detailed proposal related to the projected increase or decrease occasioned by such contemplated change and will secure from Buyer a written document describing such Goods and fixing Seller's compensation. If Buyer and Seller cannot promptly agree on the change in price and/or that the matters under discussion constitute a change in Services, Buyer may, at its sole discretion, order Seller to proceed under protest in accordance with Buyer's interpretation of the matter in dispute. Buyer and Seller will then continue to negotiate an agreement. Seller will not make any changes in Goods or Services (regardless of net cost effect) without prior written consent of Buyer.

12. LIENS: Seller will pay, satisfy and discharge all mechanics', suppliers', materialmen's and other liens and all claims, obligations and liabilities which may be asserted against Buyer or its property by reason of, or as a result of, Seller's acts or omissions relating to furnishing of Goods or performance of Services governed or controlled by this Agreement.

13. SUBLETTING AND ASSIGNING: Seller will not assign any contract and/or purchase order or sublet or delegate any part of Services to be performed on Buyer's premises without the prior written consent of Buyer. In the event that such consent is given, it will not relieve Seller from any of its obligations under this Agreement or of any contract, Order or agreement (whether written or oral) between Buyer and Seller. Any transferee or subcontractor will be considered Seller's agent and, as between Buyer and Seller, Seller will be and remain liable as if no such transfer or subletting had been made. Any attempted assignment, sublet or delegation in contravention of this paragraph will be void. Notwithstanding the above, however, this Agreement and the terms and conditions contained herein are enforceable against Seller's successors and permitted assigns.

14. LABOR RELATIONS: Seller will promptly undertake all reasonable efforts to prevent or resolve any strikes or other labor disputes among its employees or the employees of its subcontractors. If such a dispute occurs, Seller will take all reasonable actions to minimize any disruption of performance of Services. Seller will immediately advise Buyer in writing of any possible labor dispute which may affect the performance of Services.

15. COMPLIANCE WITH LAWS: Seller in the performance of this Agreement, will comply with all applicable federal, state and local laws, codes, regulations and ordinances, including all environmental laws and all applicable Equal Opportunity requirements including those set forth in Executive Order 11246 and the Vietnam Era Veterans Readjustment Assistance Act of 1974, and regulations promulgated thereunder, the full version of which is found on Attachment A to this Agreement and incorporated herein by this reference. Seller will not discriminate against any person because of race, creed, color, national origin, religion, age or sex in any term or condition of employment in violation of any state or federal laws. Seller will give all notices required by laws bearing on the performance of Services or Seller's employment practices. Seller will obtain, at its sole expense, all necessary permits and licenses prior to commencement of Services and make copies of all such permits and licenses available to Buyer upon request. If Services involve or require Seller to transport or dispose of any material or waste, prior to beginning Services, Seller will furnish Buyer with copies of all applicable or required permits and licenses and notify Buyer in writing of the final and any interim destination of the material or waste, including in such notice verification that the place of disposal is validly authorized and permitted to accept the material or waste. In connection with this Agreement, the parties shall comply with all applicable international trade laws, including but not limited to laws and regulations regarding export controls, economic sanctions, trade embargoes and anti-boycott restrictions, and all applicable anti-corruption laws, including but not limited to the U.S. Foreign Corrupt Practices Act (as amended) and the United Kingdom Bribery laws.

16. TAXES: Seller will pay all contributions, taxes and premiums payable under federal, state and local laws measured upon the payroll of employees engaged in performance of Services under this Agreement, including FICA and unemployment compensation premiums and all excise, transportation, occupational and other taxes applicable to receipts under this Agreement and on all Goods or Services furnished.

17. CHOICE OF LAW; SUBMISSION TO JURISDICTION; CONSENT TO VENUE: This Agreement and all rights and obligations hereunder will be governed by and construed in accordance with the laws of the State of Alabama, U.S.A., without regard to its conflict of laws provisions. The United Nations Convention on Contracts for the International Sale of Goods will not apply to this Agreement. The parties irrevocably agree that the exclusive venue for resolution of all claims, suits, actions and proceedings between the parties will be the state and federal courts of Alabama, U.S.A., to which jurisdiction Seller hereby irrevocably submits. Seller waives any objection or defense that Seller is not personally subject to the jurisdiction of the state and federal courts of Alabama, U.S.A.; that venue of the action is improper; and that the action, suit or proceeding is brought in an inconvenient forum. In addition to any other mode of service of process authorized by law, Seller consents to service of process by registered or certified mail.

18. WAIVER: No waiver of any provision, right or remedy contained in this Agreement, including the terms of this paragraph, is binding on, or effective against, Buyer unless expressly set forth in writing and signed by Buyer's authorized representative. Seller expressly agrees that no right or remedy provided for in this Agreement can be waived through course of dealing, course of performance or trade usage. Seller expressly agrees and acknowledges that reliance on any waiver without the written consent of Buyer is unreasonable. Waiver by Buyer of any breach will be limited to the specific breach so waived and will not be construed as a waiver of any subsequent breach. Buyer's approval or consent to any action proposed by Seller will not be considered an agreement to the propriety, fitness or usefulness of the proposed action, and will not affect Seller's obligation to strictly comply with this Agreement and all related Orders.

19. FORCE MAJEURE: Other than as set forth herein, neither party will be liable for delays in performance caused by acts of God, strikes or labor disturbances or other delays in performance due to any contingency beyond the party's control. In the event of any

such occurrence, the period for the party's performance affected thereby will be extended for such period as reasonably required under the circumstances.

20. CUMULATIVE NATURE OF REMEDIES: Buyer's remedies under this Agreement are cumulative and in addition to any other remedies available to Buyer, whether at law, equity or otherwise.

21. SEVERABILITY: If any provision or part of a provision contained in this Agreement is held by a court of competent jurisdiction to be contrary to law or public policy, the remaining provisions of the Agreement will remain in full force and effect.

22. CONSTRUCTION: No provision of this Agreement may be construed against Buyer as the drafting party.

23. ARBITRATION: At Buyer's sole option and discretion, any disputes, claims or controversies (individually or collectively, a "Dispute") between Seller and Buyer arising out of or relating to the transactions contemplated by this Agreement, including without limitation any claim based on or arising from an alleged tort, may be resolved by binding arbitration in accordance with Title 9 of the U.S. Code and the Commercial Arbitration Rules of the American Arbitration Association (the "AAA"). The Dispute will be arbitrated in Birmingham, Alabama, U.S.A. Defenses based on statutes of limitation and similar doctrines will be applicable in any such proceeding, and the commencement of an arbitration proceeding under this Agreement will be deemed the commencement of an action for such purposes. The parties will select arbitrators in accordance with the Commercial Arbitration Rules of the AAA. The AAA will designate a panel of ten (10) potential arbitrators knowledgeable in the subject matter of the Dispute. Seller and Buyer each shall designate, within thirty (30) days of the receipt of the list of potential arbitrators, one of the potential arbitrators to serve, and the two arbitrators so designated shall select a third arbitrator from the eight remaining candidates. Notwithstanding the foregoing, Buyer reserves the right to resolve or bring any Dispute in a court of competent jurisdiction in accordance with paragraph 17 of these Terms and Conditions.

McWane, Inc. Terms and Conditions of Purchase
Attachment A

Equal Opportunity Requirements

The following language, required by Executive Order 11246 to be included in contracts with the federal government and the contractor's subcontracts related to federal contracts, is incorporated in and made a part of this Agreement.

During the performance of this Agreement, the parties agree as follows:

- (1) The parties will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The parties will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Each party agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by applicable contracting officers setting forth the provisions of this nondiscrimination clause.
- (2) Each party will, in all solicitations or advertisements for employees placed by or on behalf of such party, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
- (3) Each party will send to each labor union or representative of workers with which such party has a collective bargaining agreement or other contract or understanding, a notice to be provided by the applicable agency contracting officer, advising the labor union or workers' representative of such party's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (4) Each party will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (5) Each party will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to such party's books, records, and accounts by the applicable contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (6) In the event of a party's non-compliance with the nondiscrimination clauses of this Agreement or with any of such rules, regulations, or orders, this Agreement may be canceled, terminated or suspended in whole or in part and such party may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, Recently Separated Veterans, and Other Protected Veterans.

A. Neither party to this Agreement will discriminate against any employee or applicant for employment because he or she is a special disabled veteran, veteran of the Vietnam era, recently separated veteran, or other protected veteran in regard to any position for which the employee or applicant for employment is qualified. Each party agrees to take affirmative action to employ, advance in employment and otherwise treat qualified individuals without discrimination based on their status as a special disabled veteran, veteran of the Vietnam era, recently separated veteran, or other protected veteran in all employment practices, including the following:

- i. Recruitment, advertising, and job application procedures;
- ii. Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff and rehiring;
- iii. Rates of pay or any other form of compensation and changes in compensation;
- iv. Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;
- v. Leaves of absence, sick leave, or any other leave;
- vi. Fringe benefits available by virtue of employment, whether or not administered by the employer;
- vii. Selection and financial support for training, including apprenticeship, and on-the-job training under 38 U.S.C 3687, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;
- viii. Activities sponsored by the employer including social or recreational programs; and
- ix. Any other term, condition, or privilege of employment.

B. Each party agrees to immediately list all employment openings which exist at the time of the execution of this Agreement and those which occur during the performance of this Agreement, including those not generated by this Agreement and including those occurring at an establishment of such party other than the one wherein this Agreement is being performed, but excluding those of independently operated corporate affiliates, at an appropriate local employment service office of the state employment security agency wherein the opening occurs. Further, listing employment openings with the state workforce agency job bank where the opening occurs or with the local employment service delivery system where the opening occurs will satisfy the requirement to list jobs with the appropriate employment service office.

C. Listing of employment openings with the local employment service office pursuant to this clause shall be made at least concurrently with the use of any other recruitment source or effort and shall involve the normal obligations which attach to the placing of a bona fide job order, including the acceptance of referrals of veterans and nonveterans. The listing of employment openings does not require the hiring of any particular job applicants or from any particular group of job applicants, and nothing herein is intended to relieve a party hereto from any requirements in Executive orders or regulations regarding nondiscrimination in employment.

D. Whenever a party to this Agreement becomes contractually bound to the listing provisions in paragraphs B and C of this clause, it shall advise the state employment security agency in each state where it has establishments of the name and location of each hiring location in the state: *Provided*, That this requirement shall not apply to state and local governmental contractors. As long as a party is contractually bound to these provisions and has so advised the state agency, there is no need to advise the state agency of subsequent contracts. Each party may advise the state agency when it is no longer bound by this Agreement clause.

E. The provisions of paragraphs B and C of this clause do not apply to the listing of employment openings which occur and are filled outside of the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, Guam, and the Virgin Islands.

F. As used in this clause:

i. All employment openings includes all positions except executive and top management, those positions that will be filled from within the party's organization, and positions lasting three days or less. This term includes full-time employment, temporary employment of more than three days' duration, and part-time employment.

ii. Executive and top management means any employee: (a) Whose primary duty consists of the management of the enterprise in which he or she is employed or of a customarily recognized department or subdivision thereof; and (b) who customarily and regularly directs the work of two or more other employees therein; and (c) who has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring or firing and as to the advancement and promotion or any other change of status of other employees will be given particular weight; and (d) who customarily and regularly exercises discretionary powers; and (e) who does not devote more than 20 percent, or, in the case of an employee of a retail or service establishment who does not devote as much as 40 percent, of his or her hours of work in the work week to activities which are not directly and closely related to the performance of the work described in (a) through (d) of this paragraph F. ii.; *Provided*, that (e) of this paragraph F.ii. shall not apply in the case of an employee who is in sole charge of an independent establishment or a physically separated branch establishment, or who owns at least a 20-percent interest in the enterprise in which he or she is employed.

iii. Positions that will be filled from within the party's organization means employment openings for which no consideration will be given to persons outside the party's organization (including any affiliates, subsidiaries, and parent companies) and includes any openings which the party proposes to fill from regularly established "recall" lists. The exception does not apply to a particular opening once an employer decides to consider applicants outside of his or her own organization.

G. Each party agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.

H. In the event of a party's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.

I. Each party agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Deputy Assistant Secretary for Federal Contract Compliance, provided by or through the applicable contracting officer. Such notices shall state the rights of applicants and employees as well as the party's obligation under the law to take affirmative action to employ and advance in employment qualified employees and applicants who are special disabled veterans, veterans of the Vietnam era, recently separated veterans, or other protected veterans. Each party must ensure that applicants or employees who are special disabled veterans are informed of the contents of the notice (e.g., the party may have the notice read to a visually disabled individual, or may lower the posted notice so that it might be read by a person in a wheelchair).

J. Each party will notify each labor organization or representative of workers with which it has a collective bargaining agreement or other contract understanding, that such party is bound by the terms of the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, and is committed to take affirmative action to employ and advance in employment qualified special disabled veterans, veterans of the Vietnam era, recently separated veterans, and other protected veterans.

K. Each party will include the provisions of this clause in every subcontract or purchase order of \$25,000 or more, unless exempted by the rules, regulations, or orders of the Secretary issued pursuant to the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, so that such provisions will be binding upon each subcontractor or vendor. Each party will take such action with respect to any subcontract or purchase order as the Deputy Assistant Secretary for Federal Contract Compliance may direct to enforce such provisions, including action for noncompliance.