**FOR FIXED-PRICED PURCHASE ORDERS**

**IN SUPPORT OF A U.S. GOVERNMENT PRIME CONTRACT**

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**SECTION I: GENERAL PROVISIONS**

1**. DEFINITIONS**

 The following terms shall have the meanings set forth below:

 (a) “Buyer” means Cubic Defense Applications, Inc., a Delaware corporation with its principal place of business at 9333 Balboa Avenue, San Diego, California 92123.

 (b) “Buyer’s Order Administrator” means the person listed below in Article 6(b) who is authorized to administer and/or execute this Order.

 (c) “FAR” means the Federal Acquisition Regulation, issued as Chapter 1 of Title 48, Code of Federal Regulations. “DFARS” means the Defense FAR Supplement.

(d) “On Time Delivery” (OTD) = No more than 5 days early and zero days late to PO Delivery Date

 (d) “Order” means the instrument of contracting, such as “PO”, “Purchase Order”, or “Task Order”, or other such type designation, including all referenced documents, exhibits, and attachments. If these terms and conditions are incorporated into a “master” agreement that provides for releases (in the form of a Purchase Order or other such document), the term “Order” shall also mean the release document for the Work to be performed.

 (e) “Party” shall mean Buyer or Seller, individually.

 (f) “Parties” shall mean Buyer and Seller, collectively.

 (g) “Prime Contract” means the contract between Buyer and the U.S. Government or between Buyer and its higher-tier contractor who has a contract with the U.S. Government.

 (h) “Seller” means the party identified on the face of this Order with whom Buyer is contracting.

 (i) “Work” means all required labor, articles, materials, supplies, goods, and services constituting the subject matter of this Order.

2. **ACCEPTANCE OF ORDER TERMS AND CONDITIONS**

 (a) This Order (including all Exhibits and Attachments hereto) supersedes any prior offers, negotiations, and agreements concerning the subject matter hereof and constitutes the entire agreement between the Parties.

 (b) Seller’s acknowledgment, acceptance of payment, or commencement of performance shall constitute Seller’s unqualified acceptance of this Order.

 (c) Additional or differing terms or conditions proposed by Seller or included in Seller’s acknowledgment are objected to Buyer and have no effect unless expressly accepted in writing by Buyer’s Order Administrator. In particular, any proposed limitation of Seller’s liability hereunder, limitation of Buyer’s remedies hereunder, or Seller’s disclaimer of warranty is expressly rejected.

 (d) Seller acknowledges that, as part of Seller’s proposal effort, it had an opportunity to review relevant documentation provided by Buyer, including, but not limited to, the Statement of Work. Seller warrants that it did such a review, that it notified Buyer in writing of any missing documentation, deficiencies, or concerns that Seller identified in any such documents, and that the issues raised by Seller were adequately addressed in this Order at the time of acceptance.

3. **APPLICABLE LAWS**

(a) This Order and any matter arising out of or related to this Order shall be governed by the laws of the State of Delaware, without regard to its conflicts of laws provisions, except that any provision in this Order that is (i) incorporated in full text or by reference from the FAR or (ii) incorporated in full text or by reference from any agency regulation that implements or supplements the FAR or (iii) that is substantially based on any such agency regulation or FAR provision, shall be construed and interpreted according to the federal common law of Government contracts as enunciated and applied by federal judicial bodies, boards of contracts appeals, and quasi-judicial agencies of the federal Government.

(b) Seller, in the performance of this Order, shall comply with all applicable local, state, and federal laws, orders, rules, regulations, and ordinances. Seller shall procure all licenses/permits and pay all fees and other required charges. Seller shall comply with all applicable guidelines and directives of any local, state, and/or federal governmental authority. Seller, at its expense, shall provide reasonable cooperation to Buyer in conducting any investigation regarding the nature and scope of any failure by Seller or its personnel to comply with applicable local, state, and federal laws, orders, rules, regulations, and ordinances that may affect the performance of Seller's obligations under this Order.

(c) Seller shall be responsible for compliance with all requirements and obligations relating to its employees under all local, state, and federal statutes, ordinances, rules and obligations including, but not limited to, employer's obligations under laws relating to: income tax withholding and reporting; civil rights; equal employment opportunity; discrimination on the basis of age, sex, race, color, religion, disability, national origin, or veteran status; overtime; minimum wage; social security contribution and withholding; unemployment insurance; employer's liability insurance; worker's compensation; veteran's rights; and all other employment, labor or benefits related laws.

(d) Seller represents that each chemical substance constituting or contained in Work sold or otherwise transferred to Buyer hereunder is on the list of chemical substances compiled and published by the Administrator of the Environmental Protection Administration pursuant to the Toxic Substances Control Act (15 U.S.C. § 2601, et seq.), as amended.

(e) With each delivery hereunder, Seller shall provide to Buyer any Material Safety Data Sheet applicable to the Work in conformance with and containing such information as required by the Occupational Safety and Health Act of 1970 and regulations promulgated thereunder or its state-approved counterpart.

 4. **ASSIGNMENT / SUBCONTRACTING**

(a) Seller shall not assign any of its rights or interests in this Order and/or all or substantially all of its performance of this Order without Buyer’s prior, written consent. Nevertheless, Seller may assign rights to be paid amounts due, or to become due, to a financing institution if Buyer is promptly furnished a signed copy of such assignment reasonably in advance of the due date for payment of any such amounts. Amounts assigned shall be subject to setoff or recoupment for any present or future claims of Buyer against Seller. Buyer shall have the right to make settlements and/or adjustments in price without notice to any assignee financing institution. This Order shall inure to the benefit of and shall be binding upon the valid successors and assigns of the Parties.

(b) Seller shall not subcontract any portion of the Work to be performed hereunder without Buyer’s prior written consent; provided, however, that this prohibition does not limit Seller’s ability to purchase standard commercial supplies or raw materials. Seller’s subcontracting of any duties / obligations under this Order will not relieve Seller of those duties / obligations under this Order.

5. **COMMUNICATION WITH BUYER’S CUSTOMER**

 Buyer shall be solely responsible for all liaison and coordination with its customer (the “Customer”), including the U. S. Government, as it affects the applicable Prime Contract, this Order, and any related contract. Seller shall not communicate with the Customer or the U.S. Government in connection with this Order, except as expressly permitted by Buyer. This clause does not prohibit Seller from communicating with the U.S. Government with respect to (1) matters Seller is required by law or regulation to communicate to the Government, or (2) fraud, waste, or abuse communicated to a designated investigative or law enforcement representative of a Federal department or agency authorized to receive such information.

6. **ORDER MANAGEMENT**

 (a) Seller shall direct and/copy shall correspondence relating to this Order to the attention of Buyer’s Order Administrator. Buyer’s Order Administrator is the only person authorized to make changes to price and all other terms and conditions of this Order. Any changes made by any Buyer personnel other than Buyer’s Order Administrator shall be void and without effect and shall not provide the basis for any equitable adjustment to the Order price or delivery schedule. All changes and amendments must be in writing.

(b) The Parties hereby designate the following individuals as being duly authorized to make contractual commitments under the terms of this Order:

 Buyer:

 Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Title: \_\_\_\_\_\_\_\_\_\_\_\_\_

 Telephone: \_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Fax: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 E-mail: \_\_\_\_\_\_\_\_\_\_@cubic.com

Seller:

 Name: \_\_\_\_\_\_\_\_\_\_\_\_\_

 Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Telephone: \_\_\_\_\_\_\_\_\_\_

 Fax: \_\_\_\_\_\_\_\_\_\_\_

 E-mail: \_\_\_\_\_\_\_\_\_\_\_\_\_

 (c) All notices or other communications of a contractual or administrative nature required hereunder (collectively, “Notices”) shall be in writing and delivered by reputable overnight courier, facsimile, or PDF e-mail. Notices shall be deemed to have been given when received by the Party to whom the communication is directed and shall be sent to the designated representatives listed above.

 (d) Either Party may, by written notice, change its authorized representatives named herein. The effective date of any notice or correspondence in connection with this Order shall be the date on which such written notice is received by the addressee.

 (e) From time to time, Buyer’s engineering and technical personnel may render assistance, give technical advice, exchange information, or engage in discussions with Seller personnel concerning the Work hereunder. No such action shall be deemed to be a change under the “Changes” clause of this Order and shall not be the basis for any equitable adjustment.

(f) Seller shall immediately notify Buyer’s Order Administrator in writing whenever Seller receives a change request from any representative of Buyer other than Buyer’s Order Administrator which could affect the terms and conditions, price, performance, schedule, or any other provision of this Order.

(g) Wherever this Order provides for submittal of Work for approval by an authorized representative of Buyer, such approvals shall not be construed as a complete acceptance as to the adequacy of that Work, nor as an agreement that the Work meet the applicable requirements of this Order. Such approvals are for the purpose of ensuring Buyer that Seller’s approach toward meeting contractual requirements is satisfactory. Such approvals shall in no way relieve Seller of the responsibility for any error, deficiency, or defect which may exist in the submitted Work if it does not meet any of the applicable requirements set forth in this Order.

7. **DISPUTES**

(a) Buyer and Seller agree to enter into negotiations to resolve any dispute arising under or relating to this Order. Both Parties agree to negotiate in good faith to attempt to reach a mutually agreeable settlement within a reasonable amount of time.

(b) Subject to paragraph (c) below, if negotiations are unsuccessful, either Party may initiate legal action in any court of competent jurisdiction. The Parties waive any right to a trial by jury.

(c) Notwithstanding any provisions herein to the contrary:

1. If a decision relating to Buyer’s Prime Contract with the U.S. Government is made by the Contracting Officer and that decision also is related to this Order, that decision, if binding upon Buyer under the Prime Contract shall in turn be binding upon Buyer and Seller with respect to such matter; provided, however, that if Seller disagrees with any such decision made by the Contracting Officer and Buyer elects not to appeal such decision, Seller shall have the right reserved to Buyer under the Prime Contract with the Government to prosecute a timely appeal in the name of Buyer, as permitted by the Prime Contract or by law, Seller to bear its own legal and other costs. If Buyer elects not to appeal any such decision, Buyer agrees to notify Seller in a timely fashion after receipt of such decision and to assist Seller in its prosecution of any such appeal in every reasonable manner. If Buyer elects to appeal any such decision of the Contracting Officer, Buyer agrees to furnish Seller promptly with a copy of such appeal. Any decision upon appeal, if binding upon Buyer, shall in turn be binding upon Seller.
2. If, as a result of any decision or judgment which is binding upon Seller and Buyer, as provided above, Buyer is unable to obtain payment or reimbursement from the Government under the Prime Contract for, or is required to refund or credit to the Government, any amount with respect to any item or matter for which Buyer has reimbursed or paid Seller, Seller shall, on demand, promptly repay such amount to Buyer. Additionally, pending the final conclusion of any appeal hereunder, Seller shall, on demand, promptly repay any such amount to Buyer. Buyer's maximum liability for any matter connected with or related to this Order which was properly the subject of a claim against the Government under the Prime Contract shall not exceed the amount of Buyer’s recovery from the Government.
3. Seller agrees to provide certification that data supporting any claim made by Seller hereunder is made in good faith and that the supporting data is accurate and complete to the best of Seller's knowledge or belief, all in accordance with the requirements of the Contract Disputes Act of 1978 (41 USC §§ 7101-7109) and implementing regulations. If any claim of Seller is determined to be based upon fraud or misrepresentation, Seller agrees to defend, indemnify and hold Buyer harmless for any and all liability, loss, cost, or expense resulting therefrom.

(d) Any dispute not addressed in paragraph (c) above, will be subject to the procedures in paragraphs (a) and (b) of this Article 7.

(e) Seller shall proceed diligently with performance of Order pending final resolution of any dispute, request for relief, claim, appeal, or action arising under or relating to the Order.

(f) The rights and obligations described in this clause shall survive completion, expiration, termination, and final payment of this Order.

(g) The requirements of this Article 7 shall not be deemed to constitute a waiver of any right of termination under this Order.

(h) Seller acknowledges and agrees that it shall not acquire any direct claim or direct course of action against the U.S. Government.

8. **ELECTRONIC CONTRACTING**

If this Order is transmitted electronically, neither Party shall contest the validity of this Order (or any Acknowledgement thereof) on the basis that the Order (or Acknowledgement) contains an electronic signature by duly authorized representatives of both Buyer and Seller.

9. **EXPORT CONTROL**

1. The Parties shall comply with all export and import laws, regulations, decrees, orders, and policies of the United States Government and the Government of any country in which the Parties conduct business pursuant to this Order, including but not limited to the Export Administration Regulations (“EAR”) of the U.S. Department of Commerce, the International Traffic in Arms Regulations (“ITAR”) of the U.S. Department of State, the U.S. Customs & Border Protection Regulations, the Harmonized Tariff Schedule, and the anti-boycott and embargo regulations and guidelines as set forth in the EAR and in the U.S. Department of the Treasury, Office of Foreign Assets Control (collectively, “Trade Control Laws”).
2. Seller shall control the disclosure of, and access to, controlled items or technical data provided by Buyer related to performance of this Order in compliance with all applicable Trade Control Laws. Seller shall not transfer (to include transfer to foreign persons employed by or associated with, or under contract to Seller, or Seller’s lower-tier suppliers or Seller’s non-U.S. subsidiaries) any export controlled item, data, or services, without providing advance notice to Buyer and obtaining the requisite export and/or import authority.
3. Subject to applicable Trade Control Laws, Seller shall provide Buyer with the export control classification of any commodity or technology including software.
4. Seller represents that it maintains an effective export/import control compliance program in accordance with all applicable Trade Control Laws. A copy of process control documents and other documents reasonably requested by Buyer related to Seller’s compliance with applicable Trade Control Laws shall be made available to Buyer upon request.
5. Seller shall promptly notify Buyer if Seller is, or becomes, listed in any Denied Parties List or if Seller’s export privileges are otherwise denied, suspended or revoked in whole or in part by any Governmental entity.
6. Seller shall timely inform Buyer of any actual or alleged violations of any applicable Trade Control Laws, including any suits, actions, proceedings, notices, citations, inquiries, or other communications from any government agency concerning any actual or alleged violations, in Seller’s performance under this Order and shall comply with all reasonable requests from Buyer for information regarding any such violations.
7. If Seller is engaged in the business of either exporting or manufacturing (whether exporting or not) defense articles or furnishing defense services, Seller represents that it is registered with the Office of Defense Trade Controls, as required by the ITAR, and that it maintains an effective export/import compliance program in accordance with the ITAR.

 (h) Where Seller is a signatory under a Buyer export license or export agreement (e.g., TAA, MLA), Seller shall provide prompt notification to Buyer’s Order Administrator in the event of changed circumstances including, but not limited to, ineligibility, a violation or potential violation of the ITAR, and the initiation or existence of a U.S. Government investigation, that could affect Seller’s performance under this Order.

 (i) Seller shall be responsible for all losses, costs, claims, causes of action, damages, liabilities, and expenses (including attorneys’ fees, all expense of litigation and/or settlement, and court costs), arising from any act or omission of Seller, its officers, employees, agents, suppliers, or subcontractor at any tier, in the performance of any of its obligations under this clause.

10. **EXTRAS**

Seller shall not perform or deliver Work in excess of quantities specified in this Order. Seller shall be liable for handling charges and return shipment costs for any excess quantities.

11. **FURNISHED PROPERTY**

(a) Buyer may provide to Seller property owned by either Buyer or its customer (Furnished Property). Seller shall use Furnished Property solely for the performance of this Order.

 (b) Buyer or its customer (as applicable) shall retain title to all Furnished Property. Seller shall clearly mark (if not so marked) all Furnished Property to show such ownership.

 (c) At all times Seller shall, and ensure that any of Seller's suppliers shall, use suitable precautions to prevent damage to Furnished Property. If any such Furnished Property is damaged by the fault or negligence of Seller or any its suppliers, Seller shall, at no cost to Buyer, promptly and equitably reimburse Buyer for such damage or repair or otherwise make good the property to Buyer’s satisfaction. If Seller fails to do so, Buyer may perform the repairs and offset its incurred costs against any amounts otherwise owed to Seller under this Order. Seller shall promptly notify Buyer of any loss or damage to Furnished Property. Without additional charge, Seller shall manage, maintain, and preserve Furnished Property in accordance with good commercial practice.

 (d) At Buyer’s request and/or upon completion of this Order, Seller shall submit, in an acceptable form, inventory lists of Furnished Property and shall deliver or make such other disposal as may be directed by Buyer.

 (e) The Government Property Clause contained in Section II below shall apply in lieu of paragraphs (a) through (d) above with respect to Government-furnished property, or property to which the Government may take title under this Order.

12. **GRATUITIES/KICKBACKS**

(a) Seller shall not offer or give any gratuities (in the form of entertainment, gifts, or otherwise) or kickbacks to any employee of Buyer for the purpose of obtaining or rewarding favorable treatment as a supplier.

 (b) 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 U.S.C. §§ 51-58), both of which are incorporated herein by this specific reference, except that subparagraph (c)(1) of FAR 52.203-7 shall not apply. Seller shall include the substance of this clause in all lower-tier subcontracts, at all tiers, which exceed the simplified acquisition threshold.

13. **INDEPENDENT CONTRACTOR RELATIONSHIP**

This Order does not establish a joint venture, partnership, or any other formal business organization between the Parties except for the relationship set forth herein. Unless otherwise agreed, neither Party may act as the agent of the other Party for any purpose whatsoever. Each Party shall pay all labor compensation and benefits due its respective employees relating to this Order and shall be responsible for all obligations respecting such employees relating to income tax, FICA, and Medicare withholdings, unemployment taxes, pension and retirement plan contributions, and other similar responsibilities. Personnel supplied by Seller hereunder are employees or independent contractors of Seller only and shall not, for any purposes, be considered employees or agents of Buyer. Seller assumes full responsibility for the actions and supervision of such personnel while performing Work under this Order. Buyer assumes no liability for Seller personnel.

Seller represents that all personnel it assigns to provide services to Buyer under this Subcontract / Order are classified and compensated as Seller’s W2 employees.  Seller further represents that it shall comply with all federal and state wage and hour laws applicable to its personnel assigned to work under this Subcontract / Order, including but not limited to, the payment of overtime, meal and rest period obligations, and record keeping obligations.  Seller shall not provide personnel to Buyer to perform work under this Subcontract / Order who are classified or treated by Seller as its independent contractors.

14. **RIGHTS AND USE OF PROPRIETARY INFORMATION AND MATERIALS**

(a) All (i) proprietary and/or trade secret information; (ii) tangible items containing, conveying or embodying such information; and (iii) tooling identified as being subject to this clause and obtained, directly or indirectly, from either Party in connection with this Order that are clearly marked as “Proprietary” (collectively referred to as "Proprietary Information and Materials") shall remain the property of the Disclosing Party or its licensors.

(b) The Receiving Party shall protect all Proprietary Information and Materials received hereunder from unauthorized use and disclosure using the same standard of care that the Receiving Party uses to protect its own Proprietary Information and Materials and, in any event, no less than a reasonable standard of care. The Receiving Party shall use Proprietary Information and Materials received hereunder only in the performance of and for the purpose of this Order. The same restrictions on disclosure and use of Proprietary Information and Materials shall apply to all materials derived by the Receiving Party or others from the Disclosing Party’s Proprietary Information and Materials.

(c) Upon the completion, termination, or cancellation of this Order, or upon the Disclosing Party’s request at any time, the Receiving Party shall return all Proprietary Information and Materials received hereunder and all materials derived therefrom, unless specifically directed otherwise in writing by the Disclosing Party. The Receiving Party shall not, without the prior written authorization of Disclosing Party, sell or otherwise dispose of (as scrap or otherwise) any parts or other materials containing, conveying, embodying or made in accordance with or by reference to any Proprietary Information and Materials of the Disclosing Party. Prior to disposing of such parts or other materials as scrap, the Receiving Party shall render them unusable.

(d) Seller may disclose Proprietary Information and Materials of Buyer to its lower-tier subcontractors as required for the performance of this Order, provided that each such subcontractor first agrees in writing to the same use and confidentiality obligations imposed upon Seller under this Article 14 relating to Proprietary Information and Materials. Seller shall be liable to Buyer for any breach of such obligation by any such subcontractor.

(e) Buyer may disclose Proprietary Information and Materials of Seller as required in order to fulfill the obligations of its Prime Contract.

(f) The provisions of this Article 14 are effective in lieu of any restrictive legends or notices applied to Proprietary Information and Materials and shall survive the performance, completion, or termination of this Order for a period of five (5) years.

15. **ETHICAL CONDUCT**

1. Buyer is committed to conducting its business fairly, impartially, and in an ethical and proper manner, and expects its sellers to do the same. Seller agrees that it has and enforces a Corporate Code of Conduct or Ethics that meets the requirements of FAR 52.203-13, if applicable.
2. This Order also incorporates by reference FAR 52.203-11 and FAR 52.209-6, as applicable.  Seller certifies upon executing this Order: (1) 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 the Prime Contract or this Order; and (2) that neither Seller nor its principles are debarred, suspended, or proposed for debarment by the U.S. Government. Further, Seller shall immediately notify Buyer in writing if Seller is suspended or debarred by the U.S. Government or if it is proposed for suspension or debarment by any agency of the U.S. Government.

16. **ENTRY ON BUYER PROPERTY**

 (a) Access by non-U.S. citizens to Buyer-owned or controlled premises/property/worksite is prohibited unless approved in writing by Buyer in advance. Permanent Residents (i.e., “green card” holders) are foreign nationals and not U.S. citizens for purposes of this Article 16. Seller, its agents, employees, and subcontractors shall take all necessary precautions and such additional precautions as Buyer may prescribe, to prevent the occurrence of any injury to persons or damage to property during the progress of any such work at Buyer’s owned or controlled premises/property/worksite.  Seller agrees that it and/or its agents, employees, and subcontractors will abide by all the current statutory, regulatory or Buyer rules and regulations governing security, safety, and prohibition of alcohol and drugs while on Buyer’s owned or controlled premises/property/worksite.  Seller shall indemnify and hold Buyer, its officers, directors, customers, agents, and employees harmless against all claims, lawsuits, judgments, settlements, liabilities, damages, losses, or expenses (including attorneys’ fees) which may result in any way or arise from any act, or omission on the part of Seller, its agents, employees, or subcontractors, in performance of work on Buyer-owned owned or controlled premises/property/worksite except to the extent that such liability, damage, or loss is due to the gross or willful negligence of Buyer. Seller agrees to pay or reimburse all costs that Buyer may incur in enforcing this indemnity, including but not limited to, attorneys’ fees.  In addition to any other remedies that Buyer may be entitled to, Buyer may, without notice and an opportunity to cure: (i) terminate this Order for default if Seller fails to comply with any of the provisions of this Article 16; or (ii) expel from Buyer-owned or controlled premises/ property/worksite, any employee, agent, or subcontractors of Seller found violating any of the provisions of this Article 16.

 (b) In the event that Seller, its employees, agents, or subcontractors enter the site(s) of Buyer or its customers for any reason in connection with this Order, then Seller and its subcontractors shall procure and maintain for the performance of this Order worker’s compensation, comprehensive general liability, bodily injury, and property damage insurance in reasonable amounts, and such other insurance as Buyer may require. In addition, Seller and its subcontractors shall comply with all site requirements. Seller shall provide Buyer 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 procure and maintain the required insurance. If requested, Seller shall send a “Certificate of Insurance” showing Seller’s compliance with these requirements. Seller shall name Buyer as an additional insured for the duration of this Order. Insurance maintained pursuant to this clause shall be considered primary as respects the interest of Buyer and is not contributory with any insurance which Buyer may carry. “Subcontractor” as used in this clause shall include Seller’s subcontractors at any tier. Seller’s obligations for procuring and maintaining insurance coverages are freestanding and are not affected by any other provisions in this Order.

 (c) Seller shall indemnify and hold Buyer, its officers, employees, and agents harmless from any losses, costs, claims, causes of action, damages, liabilities, and expenses (including attorneys’ fees, all expenses of litigation and/or settlement, and court costs) by reason of property damage or loss or personal injury to any person caused in whole or in part by the actions or omissions of Seller, its officers, employees, agents, suppliers, or subcontractors.

17. **INTELLECTUAL PROPERTY**

(a) Seller warrants that the Work performed or delivered under this Order will not infringe or otherwise violate the intellectual property rights of any third party in the United States or any foreign country. Except to the extent that the U.S. Government assumes liability therefor, Seller shall defend, indemnify, and hold harmless Buyer, 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 out of any action by a third party that is based upon a claim that the Work performed or delivered under this Order infringes or otherwise violates the intellectual property rights of any person or entity. Seller shall, at its own expense, procure for Buyer and/or Buyer's Customer the right to continue using the alleged infringing Work, replace alleged infringing Work with non-infringing Work, or modify alleged infringing Work so that it becomes non-infringing.

(b) Seller's obligation to defend, indemnify, and hold Buyer and its customers harmless under paragraph (a) above shall not apply to the extent FAR 52.227-1 "Authorization and Consent" applies to Buyer's Prime Contract for infringement of a U.S. patent and Buyer and its customers are not subject to any actions for claims, damages, losses, costs, and expenses, including reasonable attorney's fees by a third party.

(c) All reports, memoranda, or other materials in written form (including machine readable form) prepared by Seller pursuant to this Order and furnished to Buyer hereunder shall become the sole property of Buyer.

(e) The tangible medium storing copies of all reports, memoranda or other materials in written form including machine readable form, prepared by Seller and furnished to Buyer pursuant to this Order shall become the sole property of Buyer.

(f) Seller shall not deliver technical data or computer software that contains Nonconforming Markings. On behalf of the Government, Buyer may notify Seller of such a Nonconforming Marking. If Seller fails to remove or correct such marking within thirty (30) days after such notification, Buyer may, notwithstanding any other provision of this Order, ignore or, at Seller’s expense, remove or obliterate any such Nonconforming Marking as may be on technical data or computer software delivered by Seller. As used in this clause "Nonconforming Marking" means any confidential, proprietary, or other restrictive-use markings that are not expressly permitted by applicable FAR, DFARS, or other applicable U.S. Government agency acquisition clauses incorporated into this Order.

18. **CHANGES**

Changes in the terms and conditions of this Order may be made only by written agreement of the Parties.

19. **PACKING AND SHIPMENT**

 (a) All Work shall be preserved, packaged, packed, and marked in accordance with instructions or specifications referred to or incorporated by reference in this Order. In the absence of such instructions or specifications, Seller shall ship the Work utilizing best commercial practices adequate: (i) to assure safe arrival at destination; (ii) for storage and for protection against the elements and transportation, (iii) to comply with carrier regulations appropriate to the method of shipment used, and (iv) to secure lowest transportation cost. No charges will be allowed for packing, crating, freight, local cartage, and/or any other such services unless so specified in this Order. Buyer may charge Seller for damage to or deterioration of any Work resulting from improper packing or packaging.

 (b) Seller shall comply with Buyer’s written shipping instructions at all times during performance of this Order. Seller shall enclose a complete packing list with all shipments. Seller shall mark containers or packages with necessary lifting, loading, and shipping information, including Buyer’s Contract number, item number, dates of shipment, and the names and addresses of consignor and consignee. Bills of lading shall include this Order number.

 (c) Unless otherwise specified, delivery shall be FOB Place of Shipment.

20. **PARTS OBSOLESCENCE**

 Should Seller decide to discontinue manufacture of any Work delivered to Buyer under this Order, Seller: (a) shall provide written notice to Buyer of the intended supply discontinuance; and (b) shall provide Buyer a minimum of twelve (12) months from the written notification date to allow Buyer to place final “lifetime buy” purchase orders for that Work at a unit price to be negotiated, but in no event higher than the unit price provided in this Order. In the event one or more “lifetime buy” purchase orders are made during such twelve (12) month period, Seller shall deliver the purchased Work to Buyer no later than six (6) months after the end of the “lifetime buy” period. Seller’ obligations under this clause shall extend for two (2) years beyond the effective date of this Order, irrespective of whether the Order is completed/terminated within the two (2) year period.

21. **PAYMENTS, TAXES, AND DUTIES**

1. Unless otherwise provided, tender of payment shall be net sixty (60) days using an End of Accumulation Period batch payment process (EOAP). The EOAP batches payments into 30-day (monthly) accumulation periods beginning on the 1st Wednesday of each month. All payments shall be subject to Seller’s actual tender of conforming Work, provided that: (1) such Work satisfies the requirements of this Subcontract as determined by Buyer; and (2) Seller’s invoices are correct. Seller shall submit its invoices in duplicate to Buyer’s Subcontract Administrator.

 (b) Buyer shall have a right of setoff against payments due or at issue under this Order or any other contract between the Parties. Each payment made to Seller shall be subject to reduction to the extent of amounts which Buyer or Seller finds not to have been properly payable, and also shall be subject to reduction for overpayments. Seller shall promptly notify Buyer of any such overpayments found by Seller.

 (c) Buyer shall be deemed to have made payment as of the date of it mails payment or authorizes electronic funds transfer.

 (d) Unless otherwise specified, prices include all applicable federal, state, and local taxes, duties, tariffs, and similar fees imposed by any government, all of which Seller shall list separately on the invoice.

22. **PRECEDENCE**

Any inconsistencies in this Order shall be resolved in accordance with the following, in descending order of precedence: (i) Section II FAR Flow Down Provisions (ii) Section I of this Order; (iii) the Statement of Work.

23. **PRIORITY RATING**

The priority rating of this Order is identified on the cover page of this Order, as certified for National Defense use under DMS Regulation 1 (15 C.F.R. 700) and other applicable regulations and orders of the Bureau of Domestic Commerce in obtaining controlled materials and other products and needed to fill this Order. This Order shall have priority over any contract or order that is not rated, and any contract or order with a lower priority rating.

24. **PROHIBITED SOFTWARE**

 (a) This clause only applies to Work that includes the delivery of software.

 (b) As used herein, “Prohibited License” means the General Public License (“GPL”) or Lesser/Library GPL, the Artistic License (e.g., PERL), the Mozilla Public License, the Netscape Public License, the Sun Community Source License, the Sun Industry Standards License, or variations thereof, including, without limitation, licenses referred to as “GPL- Compatible, Free Software License.”

 (c) As used herein, “Prohibited Software” means software that incorporates or embeds software in, or uses software in connection with, as part of, bundled with, or alongside any (1) open source, publicly available, or “free” software, library or documentation, or (2) software that is licensed under a Prohibited License, or (3) software provided under a license that (a) subjects the delivered software to any Prohibited License, or (b) requires the delivered software to be licensed for the purpose of making derivative works or be redistributable at no charge, or (c) obligates Buyer to sell, loan, distribute, disclose, or otherwise make available or accessible to any third party (i) the delivered software, or any portion thereof, in object code and/or source code formats, or (ii) any products incorporating the delivered software, or any portion thereof, in object code and/or source code formats.

 (d) Unless Seller has obtained Buyer’s prior written consent (which Buyer may withhold in its sole discretion), Seller shall not use in connection with this Order, or deliver to Buyer, any Prohibited Software.

 (e) Seller agrees to defend, indemnify, and hold Buyer, its customers, and its suppliers harmless from and against any claims, damages, losses, costs, and expenses (including reasonable attorneys’ fees) relating to use in connection with this Order or the delivery of Prohibited Software.

25. **QUALITY CONTROL SYSTEM / INSPECTION / ACCEPTANCE**

1. Seller shall provide and maintain a quality control system and inspection system to an industry recognized Quality Standard and in compliance with any other specific quality requirements identified in this Order. Seller shall permit Buyer to review procedures, practices, processes, and related documents to determine such acceptability. Records of all quality control inspection work by Seller shall be kept complete and available to Buyer and its customers.
2. At no additional cost to Buyer, Work shall be subject to inspection, surveillance, and test at reasonable times and places, including Seller's lower-tier suppliers’ locations. Buyer has the right to visit Seller’s and Seller’s lower-tier suppliers’ locations during operating hours to inspect, review, and assess progress and performance under this Order (including, but not limited to, production, schedule, and quality). Any Buyer representative shall be allowed access to all areas used for the performance of the Order. Buyer shall perform inspections, surveillance, reviews, and tests so as not to unduly delay the Work.
3. If Buyer performs an inspection, surveillance, review or test on the premises of Seller or its lower-tier suppliers, Seller shall furnish, and require its lower-tier suppliers to furnish, without additional charge, reasonable facilities and assistance for the safe and convenient performance of these duties.
4. Seller shall promptly notify Buyer in writing of any noted discrepancies in Seller's processes, including any violation of or deviation from Seller’s approved inspection/quality control systems.
5. Buyer shall accept the Work or give Seller notice of rejection within a reasonable time after the date of delivery / performance. No payment, prior test, inspection, passage of title, any failure or delay in performing any of the foregoing, or failure to discover any defect or other nonconformance shall relieve Seller of any obligations under this Order or impair any rights or remedies of Buyer.
6. If Seller delivers defective or non-conforming Work, Buyer may at its option and at Seller's expense: (i) require Seller to promptly re-perform, correct or replace such Work; (ii) correct the Work; or (iii) obtain replacement Work from another source. Return to Seller of defective or non-conforming Work and redelivery to Buyer of corrected or replaced Work shall be at Seller's expense.
7. Seller shall not redeliver corrected or rejected Work without disclosing the former rejection or requirement for correction. Seller shall disclose any corrective action taken. All repair, replacement, and other correction and redelivery shall be completed as Buyer may reasonably direct.

26. **RELEASE OF INFORMATION**

Except as required by law, Seller shall make no public release of any information, or confirmation or denial of same, with respect to this Order or the subject matter hereof, without Buyer’s prior written approval.

27. **SEVERABILITY**

Each paragraph and provision of this Order is severable. Should any provision of this Order be declared void, voidable, unenforceable, or otherwise invalid by a court of competent jurisdiction, such ruling shall not affect the validity of the remaining provisions, terms, and conditions of this Order, each of which shall remain in full force and effect.

28. **SURVIVABILITY**

Any provisions of this Order, which by their terms and conditions contemplate survival beyond any completion or expiration or earlier termination of this Order, shall survive such completion or expiration or earlier termination of this Order. Such provisions shall include Articles 3, 7, 8, 9, 13, 14, 16, 17, 20, 24, 26, 28, 31, 33, and 44.

29. **TIMELY PERFORMANCE**

 (a) Seller’s timely performance is a critical element of this Order. The Work required under the Order shall be completed and delivered in accordance with the delivery schedule specified herein and the definition of On Time Delivery (OTD). Seller’s failure to do so shall constitute a material breach of this Order.

 (b) Unless Buyer has authorized advance shipment in writing, Buyer may store at Seller’s expense, or return, shipping charges collect, all Work received in advance of the scheduled delivery date.

(c) If Seller experiences difficulty in performing the Order (including, but not limited to, any actual or potential labor disputes), Seller shall timely notify Buyer in writing and provide all pertinent details. This notification shall not change any delivery schedule and shall not be construed as a waiver by Buyer of any delivery schedule or date or of any rights or remedies available to Buyer. Seller agrees to insert the substance of this clause, including this sentence, into all relevant lower-tier subcontracts.

 (d) In the event of a termination for convenience or change, no claim will be allowed for any manufacture or procurement in advance of Seller’s normal flow time without Buyer’s prior, written consent.

30. **WAIVERS, APPROVALS, AND REMEDIES**

 (a) A Party’s failure to enforce any provisions of this Order shall not be construed as a waiver of the requirements of such provisions, or as a waiver of that Party’s right thereafter to enforce each such provision.

 (b) Buyer’s approval of documents shall not relieve Seller of its obligation to comply with the requirements of this Order.

 (c) Buyer’s rights and remedies in, related to, or arising out of this Order are in addition to any other rights and remedies provided by law or in equity.

31. **WARRANTY**

(a) Seller warrants that: (i) the Work performed or delivered under this Order shall conform to all specifications and requirements of the Order and shall be free from defects in materials and workmanship; (ii) to the extent the Work is not manufactured pursuant to detailed designs and specifications furnished by Buyer, the Work shall be free from design and specification defects; (iii) the Work shall not infringe any patent, copyright, trademark, or other proprietary right of any third party or misappropriate any trade secret of any third party; (iv) the Work shall be free from liens or encumbrances; (v) all items and components of any deliverable Work are new (not used or reconditioned) and not of such age or so deteriorated as to impair their usefulness or safety; (vi) the Work shall not contain any viruses, malicious code, trojan horse, worm, time bomb, self-help code, back door, or other software code or routine designed to: (a) damage, destroy or alter any software or hardware; (b) reveal, damage, destroy, or alter any data; (c) disable any computer program automatically; or (d) permit unauthorized access to any software or hardware; and (vii) the Work shall not contain any third-party software (including software that may be considered free software or open source software) that: (a) may require any software to be published, accessed or otherwise made available without the consent of Buyer; or (b) may require distribution, copying or modification of any software free of charge.

(b) This warranty shall begin upon final acceptance of the Work by Buyer’s customer and shall survive inspection, test, and payment for the Work. The warranty shall extend for a period of one (1) year, and Buyer shall give Seller notice after discovery of a defect or nonconformance in the Work. The warranty shall run to Buyer and its successors, assigns, and customers. In the event of any defect or nonconformance in the Work, Buyer may, at its option and at Seller’s expense: (i) require prompt correction, replacement, or re-performance of the Work, or (ii) return any deliverable Work for credit or refund. Return to Seller of defective or non-conforming Work and redelivery to Buyer of corrected or replaced Work shall be at Seller's expense. Work requiring correction, replacement, or re-performance shall be subject to the requirements of this Order in the same manner and to the same extent as Work originally delivered under this Order, but only as to the corrected or replaced part or parts thereof. Even if the Parties disagree about the existence of a breach of this warranty, Seller shall promptly comply with Buyer's direction to: (i) repair, rework, replace, or re-perform the Work, or (ii) furnish any materials or parts and installation instructions required to successfully correct the defect or nonconformance. If the Parties later determine that Seller did not breach this warranty, the Parties shall equitably adjust the Order price.

32. **COUNTERFEIT PARTS**

1. Seller shall take every reasonable step to ensure that only new and authentic materials are used in all Work delivered to Buyer. Seller may only purchase parts directly from Original Component Manufacturers (OCM’s) and OCM Franchised Distributors. Use of product that was not provided by these sources is not authorized without Buyer’s express, prior, and written consent. Seller must present compelling support for its request (e.g., OCM documentation that authenticates traceability of the parts to the OVM), and include in its request all actions to ensure that the parts thus procured are authentic/conforming parts.
2. Buyer shall impound any suspect/counterfeit parts are furnished by Seller under this Order and notify Seller of this action. Seller shall promptly replace such suspect/counterfeit parts with parts acceptable to Buyer, and Seller shall be liable for all costs relating to the removal and replacement of those parts (including, without limitation, Buyer's external and internal costs of removing such counterfeit parts, of reinserting replacement parts and of any testing necessitated by the reinstallation of Seller's Work after counterfeit parts have been exchanged). At Buyer’s request, Seller shall return any removed counterfeit parts to Buyer in order that Buyer may turn such parts over to its Government customer for further investigation. Seller agrees that any Government or quasi-Government directive (e.g., GIDEP Alert) shall be deemed definitive evidence that Seller's parts contain counterfeit parts.
3. Whenever Seller shall receive, either before or after shipment of Work under this Order, notification that any of that Work (including any component, part, or material thereof), is the subject of GIDEP Alert, Seller shall promptly furnish such information to Buyer. Seller shall be responsible for ensuring the appropriate failure experience data report(s) (e.g., GIDEP Alert, GIDEP Safe Alert, GIDEP Problem Advisory) are generated whenever failed or non-conforming items, available to other buyers, are discovered during the course of performing this Order.
4. Seller understands and acknowledges that providing counterfeit parts to Buyer in support of a U. S. Government contract may potentially constitute fraud under applicable U.S. statutes and regulations.
5. The following FAR provisions are incorporated herein by reference: (i) DFARS 252.246-7007 Contractor Counterfeit Electronic Part Detection and Avoidance System (latest revision); and (ii) DFARS 252.246-7008 Sources of Electronic Parts (latest revision).

33. **GENERAL INDEMNIFICATION**

1. Seller agrees to indemnify, defend, and hold Buyer, its affiliates, subsidiaries, directors, officers, employees, and agents harmless from and against all actions, causes of action, liabilities, claims, suits, judgments, liens, awards, and damages of any kind and nature whatsoever for (a) property damage, (b) personal injury, (c) death (including, without limitation, injury to or death of employees of Seller or any of its suppliers thereof), (d) expenses, (e) costs of litigation, or (f) legal counsel fees which arise out of, or are in any way related to Seller’s or any of its suppliers’ (1) breach of obligations or responsibilities arising from this Order, or (2) failure to comply with all applicable local, state, and federal laws and regulations in the performance of this Order. This duty to defend, indemnify, and hold harmless extends to any suit, liability, claim, judgment, or demand that may arise out of or in connection with the performance or nonperformance of this Order by Seller or its agents, breach of warranty by Seller or its agents, any defective Work performed or delivered by Seller or its agents, any patent infringement or misappropriation of trade secrets by Seller or its agents, any failure of Seller or its agents to pay royalties, any assertion under workers' compensation or similar acts by persons furnished by Seller or its agents, or any other breach of Seller's obligations hereunder, whether such suit, liability, claim, judgment, or demand is based upon contract, warranty, strict liability in tort, negligence, or other legal theory, and extends not only to "third party claims" but also to any direct loss suffered by Buyer. Buyer will inform Seller of any claim, demand, judgment, or suit asserted or instituted against it to which this provision may apply. "Agents" as used herein includes, but is not limited to, Seller's employees, subcontractors, and suppliers.

(b) Seller’s obligation hereunder is not limited to insurance available to or provided by Seller or any of its suppliers. Seller expressly waives any immunity under industrial insurance, whether arising out of statue or source, to the extent of the indemnity set forth in this Article 33 or any other indemnification provision set forth herein.

34. **TERMINATION FOR CONVENIENCE**

Buyer may terminate all or any part of this Order by written notice to Seller. In the event of such termination, Seller shall immediately cease all work terminated hereunder and cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this Order, Seller shall be paid a percentage of the Order price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges Seller can demonstrate, using its standard record keeping system to the satisfaction of Buyer, have resulted from the termination. Seller shall not be paid for any Work performed or costs incurred that reasonably could have been avoided. Failure to agree shall be deemed a dispute, which shall be resolved under Article 7 above. Seller must submit all claims within sixty (60) days after the effective date of termination. Buyer shall not be obligated to pay Seller any amount in excess of the Order price, and no claim will be allowed for any manufacture or procurement in advance of Seller's normal flow time without Buyer’s prior, written consent. Seller shall continue to perform all work not terminated.

35. **TERMINATION FOR DEFAULT**

1. Buyer may terminate all or any part of this Order by written notice to Seller if: (i) Seller fails to perform the work within the time specified by this Order or any written extension; (ii) Seller fails to perform any other provision of this Order or fails to make progress, so as to endanger performance of this Order, and, in either of these two circumstances, does not cure the failure within ten (10) days after receipt of notice from Buyer specifying the failure; or (iii) in the event Seller declares bankruptcy, suspends its business operation, or initiates any reorganization and/or arrangement for the benefit of its creditors. Seller shall continue work not terminated. If Buyer terminates all or any part of this Order, Buyer may acquire, under terms and conditions and in a manner Buyer considers appropriate, work similar to that terminated, and Seller shall be liable to Buyer for any excess costs for such work. If Buyer terminates the Order for default, it may require Seller to transfer title and deliver to Buyer any completed work or partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights that Seller has specifically produced or acquired for this Order. Seller shall protect and preserve property in its possession in which Buyer has an interest.

1. Buyer shall pay for completed work delivered and accepted in accordance with the prices set forth in the Order. Buyer and Seller shall agree on the amount of payment for in process work or manufacturing materials, title to which has been transferred and delivered to Buyer. Failure to agree shall be deemed a dispute, which shall be resolved pursuant to Article 7 above. Seller must submit all claims within sixty (60) days after the effective date of termination. Buyer shall not be obligated to pay Seller any amount in excess of the Order price. Seller shall continue to perform all work not terminated. Buyer’s rights and remedies under this Article 35 are in addition to any other right or remedies provided by law or in equity.
2. If, after termination of the Order under this Article 35, it is determined that Seller was not in default, the rights and remedies of the Parties shall be as if the Order had been terminated according to Article 34 above.

36. **HEADINGS**

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

37. **COMPLETE AGREMEENT/MODIFICATIONS**

 This Order contains the entire agreement of the Parties and supersedes any and all prior agreements, understandings, and communications between Buyer and Seller related to the subject matter of this Order. No amendment or modification of this Order shall bind either Party unless it is in writing and is signed by Buyer’s Order Administrator and an authorized representative of Seller.

38. **CORPORATE SOCIAL RESPONSIBILITY**

Buyer complies with various laws and regulations in order to ensure a conflict-free and slavery-free supply chain, including the 2010 USA Dodd-Frank Wall Street Reform and Consumer Protection Act Section 1502 and the California Transparency in Supply Chains Act of 2010.  To that end, Buyer requires its suppliers to use due diligence to comply with these legal requirements and to provide product which has neither been manufactured, created nor assembled using slavery or forced labor ; any of the worst forms of child labor, forced or indentured child labor, and child labor that is exploitative and/or interferes with a child’s ability to participate in required schooling; nor directly or indirectly funds non-state armed groups.  The term “conflict minerals” refers to tantalum, tin, tungsten, and gold or their derivatives regardless of their country of origin.  Upon request, Seller shall provide a Conflict Mineral Supply Chain Status for products sold to Buyer. Seller shall advise Buyer if any conflict minerals sold to Buyer are identified to have directly or indirectly funded non-state armed groups. Upon request, Seller shall provide Buyer with evidence that products sold to Buyer by Seller have not been manufactured, created, or assembled using slavery or forced labor.

 Seller represents and warrants that it is in full compliance with FAR 52.222-50 (Combating Trafficking in Persons), 52.222-18 (Certification Regarding Knowledge of Child labor for Listed end Products), and the California Transparency in Supply Chains Act of 2010, and that Seller does not engage in forced labor, slavery, or human trafficking. Seller further represents and warrants that it provides a workplace free of harassment and discrimination, and that Seller’s workplace is safe and sanitary.

39. **COMPLIANCE WITH EMPLOYMENT LAWS & EQUAL EMPLOYMENT OPPORTUNITY (EEO)**

Seller shall be responsible for compliance with all requirements and obligations relating to its employees under all local, state, and federal statutes, ordinances, rules and obligations including, but not limited to, employer's obligations under laws relating to: income tax withholding and reporting; civil rights; equal employment opportunity; discrimination on the basis of age, sex, race, color, religion, disability, national origin, or veteran status; overtime; minimum wage; social security contribution and withholding; unemployment insurance; employer's liability insurance; worker's compensation; veteran's rights; and all other employment, labor or benefits related laws.

The following EEO clause is applicable to covered federal contracts, subcontracts, and purchase orders that exceed $10,000, for work performed in the U.S. or performed outside the U.S. by employees recruited in the U.S:

“The Parties shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities and prohibit discrimination against all individuals based on their race, color, religion, sex, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability.”

40. **CHANGE OF OWNERSHIP / PLACE OF PERFORMANCE**

(a) Seller shall notify Buyer immediately upon any change in ownership of more than fifty percent (50%) of any controlling interest in Seller. If Seller fails to do so or Buyer objects to the change, Buyer (in its sole discretion) may (i) terminate the Order, (ii) require Seller to provide adequate assurance of performance, and/or (iii) put in place special controls regarding the proprietary information that Buyer has provided to Seller hereunder.

(b) If Seller intends to change the place of performance of Work under this Order from the place(s) identified in Seller’s proposal, Seller shall provide prior written notice to Buyer. Notification of changes to the place of performance from within the United States to a location outside the United States shall be provided by Seller to Buyer at least six months in advance.

41. **RECORDS**

Seller shall maintain, for a period of four (4) years following final payment under this Order, accurate records of all matters that relate to its performance of the Work, including, without limitation, all records and backup associated with invoices that Seller has submitted to Buyer, and shall timely provide Buyer and its representatives or Customer with timely access to such records for audit and inspection at no additional cost.

42. **INSURANCE**

During the performance of this Order, Seller shall maintain the types of insurance coverage in the minimum amounts set forth Section III.

43. **CERTIFICATIONS AND REPRESENTATIONS**

(a) Buyer has relied on the certifications and representations submitted by Seller to Buyer in connection with the award of this Order. All such certifications and representations by Seller are incorporated herein by reference and made a part hereof.

(b) Seller agrees to promptly advise Buyer should there be any change in Seller’s status with respect to the matters covered by such representations and certifications during the term of this Order (including changes to its Accounting System and/or related internal control structure or business system(s) that could affect its ability to perform any Work hereunder) and understands and agrees that Buyer may request subsequent representations and certifications in relation to this Order. Those subsequent representations and certifications also are hereby incorporated as well into this Order by reference.

(c) By executing this Order, Seller certifies that it is currently registered in SAM.gov; the information in SAM.gov is true, correct, and accurate; and those certifications are hereby incorporated by reference into this Order as if set out in full text.

1. By submission of its offer, Seller represents that it will not provide or use, as described in DFARS 252.225-7973 Prohibition on the Procurement of Foreign-Made Unmanned Aircraft Systems – Representation (DEVIATION 2020-O0015)
	1. an unmanned aircraft system (UAS) or related services in the performance of any contract, subcontract, or other contractual instrument resulting from this solicitation and
	2. a system for the detection or identification of an unmanned aircraft system (UAS) in the performance of any contract, subcontract, or other contractual instrument resulting from this solicitation.

**SECTION II: FAR AND DFARS FLOWDOWN PROVISIONS**

A. **INCORPORATION OF FAR AND DFARS CLAUSES**

 The Federal Acquisition Regulation (FAR) and Defense FAR 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, including any notes following the clause citation, to this Order. The Contracts Disputes Act shall have no application to this Order. Any reference to a “Disputes” clause shall mean Article 7 in Section I of this Order.

B. **GOVERNMENT ORDER**

This Order is entered into by the Parties in support of a U.S. Government Contract.

As used in the FAR and DFARS clauses referenced below and otherwise in this Order:

* + - 1. “Commercial Item” means a commercial item as defined in FAR 2.101.
			2. Commercial product, commercial services and commercially available off the shelf item have the meanings contained in FAR 2.101

 2. “Contract” means this Order.

 3. “Contracting Officer” shall mean the U.S. Government Contracting Officer for Buyer’s U.S. Government prime contract under which this Order is entered.

 4. “Contractor” and “Offeror” means Seller, acting as the immediate (first-tier) subcontractor to Buyer.

 5. “Prime Contract” means the contract between Buyer and the U.S. Government or between Buyer and its higher-tier contractor who has a contract with the U.S. Government.

 6. “Subcontract” means any contract placed by Seller and any of its lower-tier subcontractors in support of this Order.

C. **AMENDMENTS REQUIRED BY PRIME CONTRACT**

 Seller agrees that, upon the request of Buyer, it will negotiate in good faith with Buyer relative to amendments to this Order to incorporate additional provisions herein or to change provisions hereof, as Buyer reasonably may deem necessary in order to comply with the provisions of the applicable Prime Contract or with the provisions of amendments to the Prime Contract.

D. **PRESERVATION OF THE GOVERNMENT’S RIGHTS**

If Buyer furnishes designs, drawings, special tooling, equipment, engineering data, or other technical or proprietary information (Furnished Items) to which the U.S. Government owns or has the right to authorize the use of, nothing herein shall be construed to mean that Buyer, acting on its own behalf, may modify or limit any rights the Government may have to authorize Seller’s use of such Furnished Items in support of other U. S. Government prime contracts.

**E. FAR Commercial Items Flowdown**

**To the maximum extent practicable, the Subcontractor shall incorporate, and require its subcontractors at all tiers to incorporate, commercial products, commercial services, or non-developmental items as components of items to be supplied under this contract.**

|  |  |  |  |
| --- | --- | --- | --- |
| **Insert X if applicable** | **Reference** | **Title** | **Date** |
|  | **52.244-6** |  **Subcontracts for Commercial Products and Commercial Services.** |  Jun 2023 |
| 52.203-13, Contractor Code of Business Ethics and Conduct (Nov 2021) ( 41 U.S.C. 3509)52.203-15, Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009 (Jun 2010) 52.203-19, Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements (Jan 2017)52.204-21, Basic Safeguarding of Covered Contractor Information Systems (Nov 2021), other than subcontracts for commercially available off-the-shelf items if flow down is required in accordance with paragraph (c) of FAR clause 52.204-21.52.204-23, Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities (Nov 2021) (Section 1634 of Pub. L. 115-91).52.204-25, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment. (Nov 2021) (Section 889(a)(1)(A) of Pub. L. 115-232).52.204-27, Prohibition on a ByteDance Covered Application (Jun 2023) (Section 102 of Division R of Pub. L. 117-328)52.204-30, Federal Acquisition Supply Chain Security Act Orders – Prohibition (Dec 2023) 52.219-8, Utilization of Small Business Concerns (Oct 2018) 52.222-21, Prohibition of Segregated Facilities (Apr 2015).52.222-26, Equal Opportunity (Sept 2016) (E.O.11246).52.222-35, Equal Opportunity for Veterans (Jun 2020) ( 38 U.S.C.4212(a))52.222-36, Equal Opportunity for Workers with Disabilities (Jun 2020)( 29 U.S.C.793).52.222-37, Employment Reports on Veterans (Jun 2020) ( 38 U.S.C.4212).52.222-40, Notification of Employee Rights Under the National Labor Relations Act (Dec 2010) 52.222-50, Combating Trafficking in Persons (Nov 2021) ( 22 U.S.C. chapter 78 and E.O. 13627) Alternate I (Mar 2015) of 52.222-50( 22 U.S.C. chapter 78 and E.O. 13627).52.222-55, Minimum Wages for Contractor Workers under Executive Order 14026 (Jan 2022)52.222-62, Paid Sick Leave Under Executive Order 13706 (Jan 2022) (E.O. 13706)52.224-3, Privacy Training (Jan 2017) ( 5 U.S.C. 552a) if flow down is required in accordance with 52.224-3(f). Alternate I (Jan 2017) of 52.224-352.225-26, Contractors Performing Private Security Functions Outside the United States (Oct 2016) (Section 862, as amended, of the National Defense Authorization Act for Fiscal Year 2008; 10 U.S.C. 2302 Note)52.232-40, Providing Accelerated Payments to Small Business Subcontractors (Nov 2021)52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (Nov 2021) ( 46 U.S.C. 55305 and 10 U.S.C.2631)252.244-7000 Subcontracts for Commercial Items (Dec 2022) (Applies to contracts with DOD) |
| **Insert X if applicable** | **Reference** | **Title** | **Date** |
|  | **52.212-5** | Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Products and Commercial Services. |  June 2023 |

52.203-13, Contractor Code of Business Ethics and Conduct (Nov 2021) ( 41 U.S.C. 3509).

52.203-19, Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements (Jan 2017) (section 743 of Division E, Title VII, of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113-235) and its successor provisions in subsequent appropriations acts (and as extended in continuing resolutions)).

52.204-23, Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities (Nov 2021) (Section 1634 of Pub. L. 115-91).

52.204-25, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment. (Nov 2021) (Section 889(a)(1)(A) of Pub. L. 115-232).

52.204-27, Prohibition on a ByteDance Covered Application (Jun 2023) (Section 102 of Division R of Pub. L. 117-328).

52.204-30, Federal Acquisition Supply Chain Security Act Orders – Prohibition (Dec 2023)

52.219-8, Utilization of Small Business Concerns (Oct 2022)

52.222-21, Prohibition of Segregated Facilities (Apr 2015).

52.222-26, Equal Opportunity (Sep 2015) (E.O.11246).

52.222-35, Equal Opportunity for Veterans (Jun 2020) ( 38 U.S.C. 4212).

52.222-36, Equal Opportunity for Workers with Disabilities (Jun 2020) ( 29 U.S.C. 793).

52.222-37, Employment Reports on Veterans (Jun 2020) ( 38 U.S.C. 4212).

52.222-40, Notification of Employee Rights Under the National Labor Relations Act (Dec 2010) (E.O. 13496)

52.222-41, Service Contract Labor Standards (Aug 2018) ( 41 U.S.C. chapter 67).

52.222-50, Combating Trafficking in Persons (Nov 2021) ( 22 U.S.C. chapter 78 and E.O 13627).

 Alternate I (Mar 2015) of 52.222-50 ( 22 U.S.C. chapter 78 and E.O. 13627).

52.222-51, Exemption from Application of the Service Contract Labor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment-Requirements (May 2014) ( 41 U.S.C. chapter 67)

52.222-53, Exemption from Application of the Service Contract Labor Standards to Contracts for Certain Services-Requirements (May 2014) ( 41 U.S.C. chapter 67).

52.222-54, Employment Eligibility Verification (May 2022) (E.O. 12989).

52.222-55, Minimum Wages for Contractor Workers Under Executive Order 14026 (Jan 2022)

52.222-62, Paid Sick Leave Under Executive Order 13706 (Jan 2022) (E.O. 13706)

52.224-3, Privacy Training (Jan 2017) ( 5 U.S.C. 552a)

 Alternate I (Jan 2017) of 52.224-3.

52.225-26, Contractors Performing Private Security Functions Outside the United States (Oct 2016) (Section 862, as amended, of the National Defense Authorization Act for Fiscal Year 2008; 10 U.S.C. Subtitle A, Part V, Subpart G Note)

52.226-6, Promoting Excess Food Donation to Nonprofit Organizations (Jun 2020) ( 42 U.S.C. 1792)

52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (Nov 2021) ( 46 U.S.C. 55305 and 10 U.S.C. 2631)

|  |  |  |  |
| --- | --- | --- | --- |
| **Insert X if applicable** | **Reference** | **Title** | **Date** |
|  | **252.219-7004** | Small Business Subcontracting Plan (Test Program) |   |
|  | **252.232-7017** | Accelerating Payments to Small Business Subcontractors—Prohibition on Fees and Consideration.(NOTE: Only applicable when awarding to a small business and the clause is in the prime contract) |  |

F. COVID Compliance Clause

The Supplier shall comply with Cubic’s workplace safety requirements, including the Cubic Vaccine Policy for Contracts and related SUBCONTRACTORS/ VENDORS CERTIFICATION OF CUBIC’S MANDATORY COVID-19 VACCINATION POLICY [[CRP-EHS-01](https://www.cubic.com/sites/default/files/2021-12/COVID-19%20Vaccination%20Policy%20US%20Only%20%283%29.pdf)] and all other applicable laws relating to workplace safety and COVID-19 including Executive Order (EO) 14042 on Ensuring Adequate COVID Safety Protocols for Federal Contractors, DFARS 252.223-7999 Ensuring Adequate COVID-19 Safety Protocols for Federal Contractors (Deviation 2021-O009) and FAR 52.223-99 Ensuring Adequate COVID-19 Safety Protocols for Federal Contractors (Oct 2021) (Deviation). The Supplier shall also comply with such other and further protocols and rules as may be announced by Cubic from time to time or required by additional US Government regulations, EOs or under the guidance of the Safer Federal Workforce Task Force.

**Section III: Insurance Requirements**

Seller shall maintain and keep in force throughout the term of this Order the following insurance coverages set forth below.

Seller shall provide Buyer with certificates of insurance for verification and inspection. Such insurance shall be issued by an insurer that is minimum AM Best: A VI rated. The insurance monetary limits required below may be met through the combined use of the insured’s primary and umbrella/excess policies.

* **Commercial General Liability**, in the minimum amount of $1,000,000 occurrence and aggregate limits of liability with respect to each person/organization for bodily injury, property damage, personal and advertising injury arising out of any one occurrence. Such insurance shall: (1) name Cubic Corporation and any subsidiary, division, directors, officers, employees of Cubic Corporation as an Additional Insured; (2) be primary and not excess over or contributory with any other insurance maintained by Seller; (3) shall waive subrogation rights in favor of Cubic Corporation; and (4) shall provide that the referenced insurance may not be cancelled by the carrier for nonpayment of premiums, change in coverage or otherwise, without thirty (30) days’ prior written notice of cancellation to Buyer.

* **Commercial Auto Liability**, in the minimum amount of $1,000,000 combined single limit of coverage for owned or non-owned vehicles with respect to each accident for bodily injury and property damage arising out of any one occurrence. Such insurance shall: (1) name Cubic Corporation and any subsidiary, division, directors, officers, employees of Cubic Corporation as an Additional Insured; (2) be primary and not excess over or contributory with any other insurance maintained by Seller; (3) shall waive subrogation rights in favor of Cubic Corporation; and (4) shall provide that the referenced insurance may not be cancelled by the carrier for nonpayment of premiums, change in coverage or otherwise, without thirty (30) days’ prior written notice of cancellation to Buyer.
* **Workers’ Compensation and Employer’s Liability** that complies with applicable Federal and State workers’ compensation and occupational disease statute upon the employment of greater than two employees include the owner. Such coverage shall also include Employer’s Liability coverage of at least $1,000,000. Such insurance shall waive subrogation rights in favor of Buyer and shall provide that the referenced insurance may not be cancelled by the carrier for nonpayment of premiums, change in coverage or otherwise, without thirty (30) days’ prior written notice of cancellation to Buyer.
* **Commercial Property Insurance**, covering the total value of Seller’s equipment and Buyer’s equipment and product in Seller’s care, custody, and/or control in an amount equal to the Replacement Cost value. Such insurance shall name Cubic Corporation and any subsidiary, division, directors, officers, employees of Cubic Corporation as a Loss Payee/Additional Interest for such equipment and shall provide that the referenced insurance may not be cancelled by the carrier for nonpayment of premiums, change in coverage or otherwise, without thirty (30) days’ prior written notice of cancellation to Buyer.
* **Professional Liability/Errors & Omissions Liability**, in the minimum amount of $1,000,000 per loss and in the aggregate. If the Professional Liability is written on a claims-made form, coverage must be maintained for a minimum of three years after completion of contract and shall provide that the referenced insurance may not be cancelled by the carrier for nonpayment of premiums, change in coverage or otherwise, without thirty (30) days’ prior written notice of cancellation to Buyer.

Seller agrees to waive all rights of subrogation against Buyer with respects to General Liability, Automobile Liability and Workers’ Compensation and agree to indemnify, defend and hold Buyer, its parent corporation, affiliates, their officers, directors, employees and agents (“Buyer Indemnified Parties”) harmless from any liability or loss, arising at any time and from any cause other than solely by reason of the gross negligence or willful act of Buyer, its employees, or its agents.

Any insurance policy that has a Self-Insured Retention (SIR) must retain a minimum threshold no greater than $50,000.

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