

## **Standard Commercial or FAR Commercial Fixed-Price Subcontract Terms and Conditions**

**1. Definitions.** As used throughout this Contract, including provisions incorporated by reference, the following terms shall have the meaning set forth below:

- (a) “CDA,” “Cubic” or “Buyer” means Cubic Defense Applications, Inc., the legal entity issuing this order.
- (b) “Buyer’s Authorized Procurement Representative” means the authorized Purchasing Agent, Subcontract Manager, or Contract Manager representing Buyer.
- (c) “Contract” means the contractual instrument (e.g., Agreement, Purchase Order, or Subcontract) into which these Standard Terms and Conditions are incorporated.
- (d) “Contractor” means “Seller”.
- (e) “Goods” means supplies and services provided by Seller.
- (e) “Government” means the Government of the United States of America.
- (f) “Seller” means the person, firm, or corporation executing this Contract with Buyer and which will furnish the Goods provided for herein.

**2. Formation of Contract.** This is Buyer’s offer to purchase the Goods described in this Contract. Acceptance is strictly limited to the terms and conditions included in this document. Buyer objects to, and is not bound by, any term or condition that differs from or adds to this offer, unless specifically agreed to in writing by Buyer’s Authorized Procurement Representative. **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.** Seller’s acceptance of this offer shall be evidenced by commencement of performance or by acceptance of this offer in writing. 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 Contract at the time of acceptance.

Except as may be expressly set forth in this terms and conditions document with the Government Contracting Officer’s express consent, the Subcontractor shall not acquire any direct claim or direct course of action against the US Government.

**3. Changes.** No changes, extras, or other work (whether deemed to be within or outside of the general scope of this Contract or modification of any kind or description) shall be authorized unless agreed to by both parties as evidenced by a written amendment to this order signed by duly authorized representatives of both Buyer and Seller. Seller shall be liable for handling charges and return shipment costs associated with any unauthorized excess quantities delivered to Buyer.

At any time, by written order, Buyer may make changes within the general scope of the Contract in any one or more of the following areas: (1) drawings, designs, or specifications, (2) method of shipment or packing, (3) place of delivery, (4) description of products to be delivered or services to be performed, and (5) delivery schedule.

If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of the work under this Contract, the Contract price, delivery schedule, or both shall be equitably adjusted. Any claim by Seller for an adjustment under this clause must be submitted to Buyer within twenty (20) days from the date Seller received notification of the change. Failure of the parties to agree on the magnitude or extent of an adjustment shall not excuse the Seller from proceeding with the Contract as changed.

**4. Rights and Use of Proprietary Information and Materials.** All (a) proprietary and/or trade secret information; (b) tangible items containing, conveying or embodying such information; and (c) tooling identified as being subject to this clause and obtained, directly or indirectly, from Buyer in connection with this Contract that are clearly marked as "Proprietary" (collectively referred to as "Proprietary Information and Materials") shall remain Buyer's property and shall be protected from unauthorized use and disclosure.

Seller shall use Proprietary Information and Materials only in the performance of and for the purpose of this Contract. The restrictions on disclosure or use of Proprietary Information and Materials by Seller shall apply to all materials derived by Seller or others from Buyer's Proprietary Information and Materials.

Upon the completion, termination, or cancellation of this Contract, or upon Buyer's request at any time, Seller shall return to Buyer all of Buyer's Proprietary Information and Materials and all materials derived therefrom, unless specifically directed otherwise in writing by Buyer. Seller shall not, without the prior written authorization of Buyer, 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 Buyer. Prior to disposing of such parts or other materials as scrap, Seller shall render them unusable. Buyer shall have the right to audit Seller's compliance with this article.

Seller may disclose Proprietary Information and Materials of Buyer to its subcontractors as required for the performance of this Contract, provided that each such subcontractor first agrees in writing to the same obligations imposed upon Seller under this article relating to Proprietary Information and Materials. Seller shall be liable to Buyer for any breach of such obligation by such subcontractor.

The provisions of this article are effective in lieu of any restrictive legends or notices applied to Proprietary Information and Materials. The provisions of this article shall survive the performance, completion, or termination of this Contract for a period of two (2) years. All intellectual property developed under this Contract shall belong

exclusively to Buyer.

**5. New Materials.** Unless the purchase order/subcontract specifies otherwise, Seller represents that the materials (including, but not limited to, raw materials, parts, items, components, supplies, and end products) delivered to Buyer under this Contract are new. New, as used in this clause, means previously unused and composed of previously unused materials. If the Seller believes that furnishing other than new materials will be in Buyer's interest, Seller shall notify Buyer in writing and request authorization to use such materials

**6. Warranty.** Seller warrants that all Goods furnished under this Contract shall conform at time of delivery to all specifications and requirements of this Contract and shall be free from defects in materials and workmanship. To the extent Goods are not manufactured pursuant to detailed designs and specifications furnished by Buyer, the Goods shall be free from design and specification defects. This warranty shall survive inspection, test, acceptance of, and payment for the Goods. This warranty extends to Buyer and its successors, assigns, and customers. Such warranty shall begin with Buyer's final acceptance and run for a period of one year. Unless otherwise provided in this Contract, at Buyer's option, Buyer may (i) return the defective goods for credit or refund or (ii) direct Seller to promptly repair or replace defective goods, or (iii) repair or replace the defective goods using Buyer's employees or third parties and recover the cost of such repair or replacement from Seller. Return to Seller of defective Goods and redelivery to Buyer of corrected or replaced Goods shall be at Seller's expense. Goods required to be corrected or replaced shall be subject to this article in the same manner and to the same extent as Goods originally delivered under this Contract, 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, or replace the Goods, 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 Contract price.

**7. Intellectual Property; Indemnity.** Seller agrees to not incorporate Seller or third party intellectual property into the work product of this Contract without the express prior written permission of Buyer.

Seller shall indemnify, defend, and hold Buyer and its customer harmless from all claims, suits, actions, awards, liabilities, damages, costs, and attorneys' fees related to the actual or alleged infringement of any United States or foreign intellectual property right and arising out of the Goods provided by Seller. Buyer and/or its customer shall duly notify Seller of any such claim, suit, or action; and Seller shall, at its own expense, fully defend such claim, suit or action on behalf of indemnitees.

Seller shall have no obligation under this article with regard to any infringement arising from (a) Seller's compliance with formal specifications issued by Buyer where infringement could not be avoided in complying with such specifications or (b) use or

sale of products in combination with other items when such infringement would not have occurred from the use or sale of those products solely for the purpose for which they were designed or sold by Seller.

For purposes of this article only, the term Buyer shall include the Cubic Corporation, all of its subsidiaries, and all officers, agents, and employees of Buyer.

**8. Schedule.** Seller shall strictly adhere to the shipment or delivery schedules specified in this Contract. Failure of the Seller to meet shipment or delivery schedules may constitute grounds for default termination. In the event of any anticipated or actual delay, Seller shall: (i) promptly notify Buyer in writing of the reasons for the delay and the actions being taken to overcome or minimize the delay; (ii) provide Buyer with a written recovery schedule; and (iii), if requested by Buyer, ship via air or expedited routing to avoid or minimize delay to the maximum extent possible, unless Seller is excused from prompt performance as provided in the "Force Majeure" clause. The added premium transportation costs shall be borne exclusively by Seller. Seller shall not deliver Goods prior to the scheduled delivery dates unless authorized by Buyer.

**9. Inspection/ Quality Control.** Seller shall establish and maintain a Quality assurance system that complies with the Contract's requirements, including Purchase Order notes. Records of all quality control inspection work by Seller shall be kept complete and available to Buyer and its customers.

**10. Seller Notice of Discrepancies.** Seller shall immediately notify Buyer in writing when discrepancies in Seller's process, materials, or approved inspection/quality control system are discovered or suspected which may materially affect the Goods delivered or to be delivered under this Contract.

**11. Packing and Shipping.** All delivered supplies shall be preserved, packaged, packed, and marked in accordance with instructions or specifications referred to or incorporated by reference in this Contract. In the absence of such instructions or specifications, for domestic shipments, the shipment shall be made FOB (Buyer's Facility) utilizing best commercial practice 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.

All shipments against this Contract to be forwarded on one day via the same route must be consolidated. A packing list, showing Buyer's purchase order/subcontract number, Contract item number and description of contents must be included in each package. Buyer's purchase order /subcontract number must appear on all packages, boxes, bills of lading, invoices, correspondence, and other documents pertaining to this Contract. The Government Contract number shown in the Schedule must appear on all of Seller's purchase orders and subcontracts hereunder.

If Seller's deliveries fail to meet schedule, Seller, at its own and sole expense, shall use

an expedited method of shipment requested and specified by Buyer until all deficiencies are corrected and deliveries are on schedule.

**12. Acceptance and/or Rejection.** Buyer shall accept the Goods or give Seller notice of rejection within thirty (30) days after delivery, notwithstanding any payment or prior test or inspection. No inspection, test, delay, or failure to inspect / test or failure to discover any defect or other nonconformance shall relieve Seller of any of its obligations under this Contract or impair any rights or remedies of Buyer or Buyer's customers.

If Seller delivers non-conforming Goods, Buyer may (i) require Seller to promptly correct or replace the Goods at Seller's expense; (ii) return the Goods for credit or refund; (iii) correct the nonconforming Goods at Seller's expense; or (iv) obtain replacement Goods from another source at Seller's expense, and reduce the Contract price by the costs to correct or obtain replacement. Seller shall disclose any corrective action taken. All repair, replacement, and other correction and redelivery shall be completed within the original delivery schedule or such later time as Buyer's Authorized Procurement Representative may reasonably direct.

All costs and expenses and loss of value incurred as a result of or in connection with nonconformance and repair, replacement, or other correction may be recovered from Seller by equitable price reduction or credit against any amounts that may be owed to Seller under this Contract or any other contract between Buyer and Seller.

**13. Termination for Convenience.** Buyer may terminate all or any part of this Contract 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 Contract, the Seller shall be paid a percentage of the contract price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges the Seller can demonstrate, using its standard record keeping system to the satisfaction of the Buyer, have resulted from the termination. The 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 the Dispute Resolution article. Seller must submit all claims within sixty (60) days after the effective date of termination. In no event shall Buyer be obligated to pay Seller any amount in excess of the Contract price. Seller shall continue to perform all work not terminated.

**14. Termination for Default.** Buyer may terminate all or any part of this Contract by written notice to Seller if: (i) Seller fails to deliver the Goods within the time specified by this Contract or any written extension; (ii) Seller fails to perform any other provision of this Contract or fails to make progress, so as to endanger performance of this Contract, 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 Contract, Buyer may acquire, under terms and conditions and in a manner Buyer considers appropriate, Goods similar to those terminated, and the Seller shall be liable to Buyer for any excess costs for those Goods. If the Contract is terminated for default, Buyer may require the Seller to transfer title and deliver to Buyer any completed Goods or partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights that the Seller has specifically produced or acquired for this Contract. Seller shall protect and preserve property in its possession in which Buyer has an interest.

Buyer shall pay for completed Goods delivered and accepted in accordance with the prices set forth in the Contract. 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 under the Dispute Resolution article. Seller must submit all claims within sixty (60) days after the effective date of termination. In no event shall Buyer be obligated to pay Seller any amount in excess of the Contract price. The rights and remedies provided Buyer in this clause are in addition to any other right or remedies provided by law or in equity.

**15. Force Majeure.** Seller shall not be liable for any excess costs or other damages if Seller's failure to perform arises out of causes beyond the control and without the fault or negligence of Seller. Such causes may include, but are not restricted to (a) acts of God or of the public enemy, (b) acts of the Government in its sovereign or contractual capacity, (c) fires, (d) floods, (e) epidemics, (f) quarantine restrictions, (g) strikes, (h) freight embargoes, and (i) unusually severe weather. In each instance, the failure to perform must be beyond the control and without the fault or negligence of Seller. If the delay is caused by a delay of a subcontractor or Seller and if such delay arises out of causes beyond the reasonable control of both, and without the fault or negligence of either, Seller shall not be liable for excess costs unless the goods or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit Seller to meet the required delivery schedules. Seller shall notify Buyer in writing within ten (10) days after the beginning of any such cause.



**16. Payment.** Payment of the Contract price or any portion thereof for Goods delivered shall not constitute acceptance. Buyer shall pay for all Goods within forty-five (45) days from (1) the date Goods are received if Seller is on the “Pay from Receipt Program” or (2) the date of a receipt of an acceptable invoice if later unless the Parties agree to a cash discount for early payment. In the event of early-unauthorized delivery of Goods by Seller, payment shall be computed from the scheduled delivery date, including discount periods. Buyer may pay Seller by electronic funds transfer (EFT) or by check unless otherwise stated in the Contract. Seller shall provide Buyer with its EFT information. Payment is made on the day Buyer gives instructions to execute payment, or the date Buyer’s check is deposited into the U. S. mail, or payment is otherwise tendered. Seller shall promptly repay to Buyer any amounts paid in excess of amounts due Seller.

**17. Taxes.** The prices invoiced under this Contract include, and Seller is liable for and shall pay, all taxes, impositions, charges, and exactions imposed on or measured by this Contract except for applicable sales and use taxes that are separately stated on Seller’s invoice. Prices shall not include any taxes, impositions, charges, or exactions for which Buyer has furnished a valid exemption certificate or other evidence of exemption.

**18. Governing Law.** This Contract shall be governed by and construed in accordance with the laws of the State of California, excluding its conflict of laws principles.

**19. Compliance with Applicable Laws.**

**Federal, State, and Local.** Seller agrees to comply with all applicable laws, orders, rules, regulations, and ordinances. Seller shall procure all licenses/permits, pay all fees, and other required charges and shall comply with all applicable guidelines and directives of any local, state, and/or federal governmental authority.

**Export and National Security Laws.**

Seller agrees to comply with all applicable U.S. export control laws and regulations, specifically including, but not limited to, the requirements of the Arms Export Control Act, 22 U.S.C. §§ 2751-2794, including the International Traffic in Arms Regulation (ITAR), 22 C.F.R. § 120, et seq.; and the Export Administration Act, 50 U.S.C. app. 2401-2420, including the Export Administration Regulations, 15 C.F.R. §§ 730-774; including the requirement for obtaining any export license or agreement, if applicable. Without limiting the foregoing, Seller agrees that it will not transfer any export controlled item, data, or services, to include transfer to foreign persons employed by or associated with, or under contract to Seller or Seller’s lower-tier suppliers, without the authority of an export license, agreement, or applicable exemption or exception.

Seller agrees to notify Buyer if any deliverable under this Contract is restricted by export control laws or regulations.

Seller shall immediately 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 U.S. Government entity or agency.

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.

Where Seller is a signatory under a Buyer export license or export agreement (e.g., TAA, MLA), Seller shall provide prompt notification to Buyer 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 the Seller's performance under this Contract.

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 subcontractors at any tier, in the performance of any of its obligations under this clause.

Seller shall not export, directly or indirectly, any hardware, software, technology, information or technical data disclosed under this Contract to any individual or country for which the U.S. Government requires an export license or other government approval, without first obtaining such license or approval.

Seller further understands that Buyer is a defense contractor providing work for the United States Government, and as such, is under certain mandatory security obligations with regard to access to its facilities and technology. Due to the fact that disclosure of certain information to any individual may be deemed an export, Seller agrees that it will not assign any worker to perform services under this Agreement (including the Seller him or herself) unless that person qualifies as a "U.S. person," defined as:

- i. U.S citizen;
- ii. U.S. nationals, including an alien lawfully admitted for permanent resident (those possessing a valid Form I-550 or "green card");
- iii. Alien admitted following a 1986 amnesty statute;
- iv. Asylee or refugee as defined in 8 U.S.C. 1324(b)(a)(3); or
- v. Alien lawfully admitted for temporary agricultural employment.



Seller further agrees that, should Buyer determine that the work performed under this Agreement will enable persons working for the Seller (including the Seller) to have access to unclassified information that relates to a U.S. Government classified program, or other information regulated by the National Industrial Security Program Operating Manual ("NISPOM"), Seller will not assign any worker to perform services under this Agreement (including the Seller) unless such persons are citizens of the United States.

In addition to the foregoing requirements, Seller will comply with the Immigration Reform and Control Act of 1986 ("IRCA") and in particular, have all its workers fill out an I-9 form, verifying their authorization to work in the United States.

Seller shall indemnify and hold Buyer harmless for all claims, demands, damages, costs, fines, penalties, attorneys' fees, and other expenses arising from Seller's failure to comply with this Article.

**20. Rights and Remedies.** Any failures, delays, or forbearances of either party in insisting upon or enforcing any provisions of this Contract, or in exercising any rights or remedies under this Contract, shall not be construed as a waiver or relinquishment of any such provisions, rights or remedies; rather, the same shall remain in full force and effect. Except as otherwise limited in this Contract, the rights and remedies set forth herein are cumulative and are in addition to any other rights or remedies that the parties may have at law or in equity. If any provision of this Contract is or becomes void or unenforceable by law, the remainder shall be valid and enforceable.

**21. Dispute Resolution.** In the event of any dispute, claim, question, or disagreement (collectively hereinafter referred to as "Disputes") arising from or relating to this Contract or the breach thereof, the parties hereto shall attempt to settle the dispute, claim, question, or disagreement. To this effect, the parties shall consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both parties. If the parties cannot reach such a solution (or agree in writing to mediate the dispute) within a period of thirty (30) days, then, upon written notice by either party to the other, all Disputes shall be finally decided by arbitration to take place in San Diego, California, utilizing the American Arbitration Association (AAA) commercial arbitration rules then in effect. Such arbitration shall take place before a single arbitrator, who is a practicing or retired attorney with at least twenty (20) years' experience in business law. Final and binding arbitration shall provide the sole and exclusive remedy and forum for all Disputes. Any judgment rendered by arbitration may be entered in any court of competent jurisdiction.

The arbitrator shall have no authority to award punitive or other damages not measured by the prevailing party's actual damages, except as may be required by statute. The arbitrator shall award to the prevailing party, if any, as determined by the arbitrator, all of its costs and fees. "Costs and fees" mean all reasonable pre-award expenses of the arbitration, including the arbitrators' fees, administrative fees, travel expenses, out-of-pocket expenses such as copying and telephone, court costs, witness fees, and attorneys' fees.

Each party is required to continue to perform its obligations under this contract pending resolution of any dispute arising out of the contract unless to do so would be impossible under the circumstances. The requirements of this Article shall not be deemed to constitute a waiver of any right of termination under this contract.

**22. Assignment, Delegation, and Subcontracting.** Seller shall not assign any of its rights or interests in this Contract and/or all or substantially all of its performance of this Contract without Buyer's prior written consent, which shall not be unreasonably withheld. Seller shall not delegate any of its duties or obligations under this Contract. Seller may assign its right to monies due or to become due. No assignment, delegation, or subcontracting by Seller, with or without Buyer's consent, shall relieve Seller of any of its obligations under this Contract or prejudice any of Buyer's rights against Seller whether arising before or after the date of any assignment. This Article does not limit Seller's ability to purchase standard commercial supplies or raw materials.

**Seller shall notify Buyer immediately upon any change in ownership of more than fifty percent (50%) of any controlling interest in Buyer. If Seller fails to do so or Buyer objects to the change, Buyer may (a) terminate the Contract, (b) require Seller to provide adequate assurance of performance, and/or (c) put in place special controls regarding Buyer's Confidential information.**

**23. Gratuities.** Seller warrants that neither it nor any of its employees, agents, or representatives have offered or given, or will offer or give, any gratuities to Buyer's employees, agents, or representatives for the purpose of securing this Contract or securing favorable treatment under this Contract.

**24. Publicity.** Except as required by law, Seller shall not issue any press release or make any other public statement relating to this Agreement, any work done under this Agreement or any of the transactions contemplated by this Agreement without obtaining the prior written approval of Buyer as to the contents and the manner of presentation and publication of such press release or public statement.

**25. Equal Employment Opportunity.** Seller agrees to comply with any applicable provisions of the Rehabilitation Act of 1973, the Veteran's Readjustment Act of 1974, and Executive Order 11246, and implementing regulations of the U.S. Department of Labor, which embody governmental policy on equal employment opportunity.

For Commercial Goods acquired under the Federal Acquisition Regulation (FAR), the following FAR provisions are incorporated herein by reference:

52.219-8 Utilization of Small Business Concerns (if the contract exceeds \$700,000), (ii) 52.222-26 Equal Opportunity, (iii) 52.222-35 Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era and Other Eligible Veterans, (iv) 52.222-36 Affirmative Action for Workers with Disabilities, (v) 52.222-41 Service Contract Act of 1965 as Amended, (vi) 52.247-64 Preference for Privately Owned U. S. Flag Commercial

Vessels, and Department of Defense FAR Supplement § 252.225-7008 and 252.225-7009 (if the contract exceeds \$150,000 and requires the delivery of article containing specialty metals).

**26. Order of Precedence.** In the event that two or more provisions in this Contract conflict and there is no reasonable interpretation that resolves the conflict in a manner that is consistent with the entire contract, then the parties shall resolve the conflict using the following descending order of precedence: (1) The Purchase Order, including the notes thereto; (2) the special contract provisions, if any; (3) the drawings, specifications, and statement of work; (4) these general provisions; and (5) the Seller's proposal, if incorporated into this Contract.

**27. Discontinuance of Manufacture.** Should Seller decide to discontinue manufacture of the supplies purchased by Buyer under this contract, Seller: (1) shall provide written notice to Buyer of the intended supply discontinuance; and (2) 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 the supplies at a unit price to be negotiated, but in no event higher than the unit price provided in this contract. In the event one or more "lifetime buy" purchase orders are made during such twelve (12) month period, Seller shall deliver the purchased supplies to Buyer no later than six (6) months after the end of the "lifetime buy" period. Seller's obligations under this clause shall extend for two (2) years beyond the effective date of this Contract, irrespective of whether the contract is completed/terminated within the two (2) year period.

**28. Severability.** If a court of competent jurisdiction determines one or more provisions of this Agreement illegal or invalid, that determination shall not affect the enforceability of the remaining provisions to the extent they can be given effect without the illegal or invalid provision. The parties further agree to negotiate the severed provision to bring the same within the applicable legal requirements to the extent possible.

**29. Non-Commercial Item Determination.** In the event it is determined that the work to be performed under this Contract is not a Commercial Item as defined at FAR § 2.101, then Seller agrees that Buyer's General Provisions and FAR & DFARS Flowdowns for Fixed-Priced Subcontracts/Purchase Orders for Non-Commercial Items Under a U.S. Government Prime Contract and all relevant agency flowdown provisions shall be applicable to this Contract, in lieu of these commercial terms and conditions, effective as of the date of this Contract. Seller agrees to comply with all applicable laws, orders, rules, regulations, and ordinances.

If Buyer's contract price is reduced because of a non-commercial item determination for item(s) provided by the Seller; then the Buyer may make a corresponding reduction, excluding Buyer added G&A, and profit or fee, in the price of this Contract or may demand payment of the corresponding amounts. Seller shall promptly pay amounts so demanded.

### **30. Insurance**

**Minimum Insurance Requirements.** Unless higher amounts or additional coverage are stated elsewhere in this Contract, during the performance of this contract or order, Seller shall maintain the following types of insurance coverage in the minimum amounts stated: Workman's Compensation, Jones Act or similar - Statutory limits

Employer Liability - \$1,000,000 per occurrence

Comprehensive General Liability - \$1,000,000 for personal injury and property damage – Combined single limit per occurrence.

Comprehensive Automobile Liability (If motor vehicles are used during performance of this contract) - \$1,000,000 for personal injury and property damage – Combined single limit per occurrence

**Additional Requirements.**

- i. Seller shall provide a certificate of insurance on request by Buyer from a carrier reasonably acceptable to Buyer (Minimum A.M. Best rating of A- or better), with a thirty-day advance written notice of changes in coverage to Buyer.
- ii. Upon request of Buyer, Seller shall add the Cubic Corporation and Cubic Defense Applications, Inc., as additional insured.
- iii. Seller shall cause its Workers Compensation carrier to waive in writing its right of subrogation against Buyer.
- iv. Buyer may, in its discretion, accept Seller's self-insurance program in lieu of coverage required under this clause.

**31. Indemnification.** Seller agrees to indemnify 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 Contract, or (2) failure to comply with all applicable local, state, and Federal Laws and regulations in the performance of this Contract. 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 statute or source, to the extent of the indemnity set forth in this paragraph or any other indemnification provision set forth herein.

**32. Protection of Property.** At all times Seller shall, and ensure that any of Seller's suppliers shall, use suitable precautions to prevent damage to Buyer's property. If any such property is damaged by the fault or negligence of Seller or any Seller thereof, Seller shall, at no cost to Buyer, promptly and equitably reimburse Buyer for such damage or repair or otherwise make good such property to Buyer's satisfaction. If Seller fails to do so, Buyer may perform the repairs and recover from Seller the cost thereof.

**33. Independent Contractor Relationship.** Seller is an independent contractor in all its operations and activities hereunder. The employees used by Seller to perform work

under this Contract shall be Seller's employees exclusively without any relation whatsoever to Buyer.

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

**34. Prohibited Software.** This clause only applies to the delivery of Goods that include software.

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."

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.

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 Contract, or deliver to Buyer, any Prohibited Software.

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 Contract or the delivery of Prohibited Software.

**35. Work Performed at Buyer's Facilities.** Access by non-U.S. citizens to Buyer's owned or controlled premises/property/worksites is strictly 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. Seller, its agents, employees, and lower-tier 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/worksites. Seller agrees that it and/or its agents, employees, and lower-tier 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/worksites. 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 lower-tier subcontractors, in performance of work on Buyer's owned or controlled premises/property/worksites 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 Contract for Default if Seller fails to comply with any of the provisions of this Article; or (ii) expel from Buyer's owned or controlled premises/property/worksites, any employee, agent, or lower-tier subcontractor of Seller found violating any of the provisions of this Article.

**36. Counterfeit Parts.** Seller shall take every reasonable step to ensure that only new and authentic materials are used in products 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.

Buyer shall impound any suspect/counterfeit parts are furnished by Seller under this Subcontract and notify Seller of this action. Seller shall promptly replace such suspect/counterfeit parts with parts acceptable to the Buyer, and Seller shall be liable for all costs relating to the removal and replacement of said 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 goods 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.

Whenever Seller shall receive, either before or after shipment of Goods under this Contract, notification that any of such Goods (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 nonconforming items, available to other buyers, are discovered during the course of performing this Subcontract.



Providing counterfeit parts to Buyer in support of a U.S. Government contract may potentially constitute fraud under applicable U.S. statutes and regulations.

For Commercial Goods acquired under the Federal Acquisition Regulation (FAR), the following FAR provision is incorporated herein by reference:

DFARS 252.246-7007 Contractor Counterfeit Electronic Part Detection and Avoidance System.

**37. Survivability.** The following provisions shall survive the expiration, completion, or termination of this Contract: Rights and Use of Proprietary Information and Materials, Warranty, Intellectual Property, Governing Law, Export and National Security Laws, Rights and Remedies, Dispute Resolution, Discontinuance of Manufacture, Indemnification, Independent Contractor Relationship, Prohibited Software, Work Performed at Buyer's Facilities, and Counterfeit Parts.

**38. 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 Contract.

**39. Entire Agreement.** This Contract 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 Contract. No amendment or modification of this Contract shall bind either party unless it is in writing and is signed by Buyer's Authorized Procurement Representative and an authorized representative of Seller.

#### **40. 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 exploitive 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 the Federal Acquisition Regulation 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.

#### **41. FAR PROVISIONS FOR COMMERCIAL GOODS**

For Commercial Goods acquired under the Federal Acquisition Regulation (FAR)), the following FAR provisions are incorporated herein by reference (see FAR 52.212-5):

52.203-13, Contractor Code of Business Ethics and Conduct. (Applicable if not otherwise exempt under FAR 3.1004 (a)). The substance of this clause must be included in all subcontracts, at all tiers, that have a value in excess of \$5,000,000 and a performance period of more than 120 days. FAR 52.212-5(e)(1)(i) and 52.244-6(c)(1)(i) require the inclusion of this clause in subcontracts for commercial items.

52.203-15, Whistleblower Protections under the American Recovery and Reinvestment Act of 2009. The substance of this clause must be included in all subcontracts, at all tiers. FAR 52.244-6(c)(1)(ii) requires the flowdown of this clause in contracts for commercial items.

52.204-10, Reporting Executive Compensation and First-Tier Subcontract Awards

52.204-11, American Recovery and Reinvestment Act—Reporting Requirements

52.209-9, Updates of Publicly Available Information Regarding Responsibility Matters

52.209-10, Prohibition on Contracting with Inverted Domestic Corporations

52.219-3, Notice of HUBZone Set-Aside or Sole-Source Award

52.219-4, Notice of Price Evaluation Preference for HUBZone Small Business Concerns

52.219-6, Notice of Total Small Business Set-Aside

52.219-7, Notice of Partial Small Business Set-Aside

52.219-9, Small Business Subcontracting Plan

52.219-13, Notice of Set-Aside of Orders

52.219-14, Limitations on Subcontracting

52.219-16, Liquidated Damages—Subcontracting Plan

52.219-23, Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns

52.219-25, Small Disadvantaged Business Participation Program—Disadvantaged Status and Reporting

52.219-26, Small Disadvantaged Business Participation Program—Incentive Subcontracting

52.219-27, Notice of Service-Disabled Veteran-Owned Small Business Set-Aside

52.219-28, Post Award Small Business Program Representation

52.219-29, Notice of Set-Aside for Economically Disadvantaged Women-Owned Small Business (EDWOSB) Concerns

52.219-30, Notice of Set-Aside for Women-Owned Small Business (WOSB) Concerns Eligible Under the WOSB Program

52.222-3, Convict Labor

52.222-17, Nondisplacement of Qualified Workers

52.222-19, Child Labor—Cooperation with Authorities and Remedies

52.222-21, Prohibition of Segregated Facilities

52.222-37, Employment Reports on Veterans

52.222-40, Notification of Employee Rights Under the National Labor Relations Act. Applicable in subcontracts, at all tiers, that exceed \$10,000 and will be performed wholly or partially in the United States, unless exempted by the rules or regulations or the orders of the Secretary of Labor issued pursuant to section 3 of Executive Order 13496 of January 30, 2009.

52.222-42, Statement of Equivalent Rates for Federal Hires

52.222-43, Fair Labor Standards Act and Service Contract Act—Price Adjustment (Multiple Year and Option Contracts)

52.222-44, Fair Labor Standards Act and Service Contract Act—Price Adjustment

52.222-51, Exemption from Application of the Service Contract Act to Contracts for Maintenance, Calibration, or Repair of Certain Equipment—Requirements. Applicable at all tiers for exempt services under this contract. 52.222-53, Exemption from Application

of the Service Contract Act to Contracts for Certain Services—Requirements. Applicable at all tiers for exempt services under this contract.

52.222-54, Employment Eligibility Verification. Must be flowed down at all tiers.

52.222-55, Minimum Wages under Executive Order 13658

52.222-59, Compliance with Labor Laws (Executive Order 13673)

52.222-60, Paycheck Transparency (Executive Order 13673)

52.222-62, Paid Sick Leave Under Executive Order 13706

52.223-9, Estimate of Percentage of Recovered Material Content for EPA-Designated Items

52.223-15, Energy Efficiency in Energy-Consuming Products. Must be flowed down at all tiers.

52.223-16, IEEE 1680 Standard for the Environmental Assessment of Personal Computer Products

52.223-18, Encouraging Contractor Policies to Ban Text Messaging While Driving. The Seller shall insert the substance of this clause in all subcontracts, at all tiers, that exceed the micro-purchase threshold.

52.225-1, Buy American Act—Supplies

52.225-3, Buy American Act—Free Trade Agreements—Israeli Trade Act

52.225-5, Trade Agreements

52.225-13, Restrictions on Certain Foreign Purchases

52.225-26, Contractors Performing Prove security Functions Outside the United States

52.226-4, Notice of Disaster or Emergency Area Set-Aside

52.226-5, Restrictions on Subcontracting Outside Disaster or Emergency Area

52.226-6, Promoting Excess Food Donation to Nonprofit Organizations. The Seller shall insert this clause in all contracts, task orders, delivery orders, purchase orders, and other similar instruments greater than \$25,000 with its subcontractors and suppliers, at any tier,

52.228-3, Worker's Compensation Insurance (Defense Base Act). Must be flowed down to all subcontracts at all tiers.

52.228-4, Workers Compensation and War-Hazard Insurance Overseas. The Seller must insert in all subcontracts, at all tiers, under this contract, a clause similar to paragraph (a) or paragraph (b), or both, depending on applicability of the circumstances in either paragraph.

52.228-5, Insurance – Work on a Government Installation. Must be flowed down to lower tiers. 52.232-29, Terms for Financing of Purchases of Commercial Items

52.232-30, Installment Payments for Commercial Items

52.232-33, Payment by Electronic Funds Transfer—Central Contractor Registration

52.232-34, Payment by Electronic Funds Transfer—Other than Central Contractor Registration

52.232-36, Payment by Third Party

52.232-40, Providing Accelerated Payments to Small Business Subcontractors

52.233-4, Applicable Law for Breach of Contract Claim

52.237-11, Accepting and Dispensing of \$1 Coin

52.239-1, Privacy or Security Safeguards

52.245-1, Government Property

## **42. DFAR PROVISIONS FOR COMMERCIAL GOODS**

### **The following DFARS clauses apply to this Subcontract:**

252.204-7012 SAFEGUARDING COVERED DEFENSE INFORMATION AND CYBER INCIDENT REPORTING (DEVIATION 2016-O0001)(OCT 2015) The Seller shall include this clause in all subcontracts, at all tiers.

252.244-7000 SUBCONTRACTS FOR COMMERCIAL ITEMS AND COMMERCIAL COMPONENTS (DOD CONTRACTS) (JUN 2013) The terms of the listed clauses, if applicable, shall be included in subcontracts, at all tiers, for commercial items or commercial components.

252.247-7023 TRANSPORTATION OF SUPPLIES BY SEA (APR 2014) (Applicable in lieu of FAR § 52.247-64 in all Subcontracts for ocean transportation of supplies. In the first sentence of paragraph (g), insert a period after “Contractor” and delete the balance of the sentence. Paragraph (f) and (g) shall not apply if this Subcontract is at or below \$150,000. Notes 1 and 2 apply to paragraph (g)).