

**GENERAL PROVISIONS AND FAR & DFARS FLOWDOWN PROVISIONS  
FOR FIXED-PRICED SUBCONTRACTS/PURCHASE ORDERS FOR  
NON-COMMERCIAL ITEMS UNDER 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 Subcontract Administrator” means the person listed below in Article 6(b) who is authorized to administer and/or execute this Subcontract.
- (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) “Party” shall mean Buyer or Seller, individually.
- (e) “Parties” shall mean Buyer and Seller, collectively.
- (f) “Seller” means the party identified on the face of this Subcontract with whom Buyer is contracting.
- (g) “Subcontract” 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 “Subcontract” shall also mean the release document for the Work to be performed.
- (h) “Work” means all required labor, articles, materials, supplies, goods, and services constituting the subject matter of this Subcontract.

### **2. ACCEPTANCE OF SUBCONTRACT/TERMS AND CONDITIONS**

- (a) This Subcontract (including all Exhibits, Attachments, and any Task Order(s) issued hereunder) 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 Subcontract.
- (c) Additional or differing terms or conditions proposed by Seller or included in Seller’s acknowledgment are objected to by Buyer and have no effect unless expressly accepted in writing by Buyer’s subcontract 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 Subcontract at the time of acceptance.

### 3. APPLICABLE LAWS

- (a) This Subcontract and any matter arising out of or related to this Subcontract 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 Subcontract 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 Subcontract, 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 Subcontract.
- (1) If: (i) Buyer's contract cost or fee is reduced; (ii) Buyer's costs are determined to be unallowable; (iii) any fines, penalties, or interest are assessed on Buyer; or (iv) Buyer incurs any other costs or damages; as a result of any violation of applicable laws, orders, rules, regulations, or ordinances by Seller, its officers, employees, agents, suppliers, or subcontractors at any tier, Buyer may proceed as provided for in (3) below.
- (2) Where submission of cost or pricing data is required or requested at any time prior to or during performance of this Subcontract, if Seller or its lower-tier subcontractors: (i) submit and/or certify cost or pricing data that are defective; (ii) with notice of applicable cutoff dates and upon Buyer's request to provide cost or pricing data, submit cost or pricing data, whether certified or not certified at the time of submission, as a prospective subcontractor, and any such data are defective as of the applicable cutoff date on Buyer's Certificate of Current Cost or Pricing Data; (iii) claim an exception to a requirement to submit cost or pricing data and such exception is invalid; (iv) furnish data of any description that is inaccurate; or if (v) the U.S. Government alleges any of the foregoing; and, as a result, (A) Buyer's price or fee is reduced; (B) Buyer's costs are determined to be unallowable; (C) any fines, penalties, or interest are assessed on Buyer; or (D) Buyer incurs any other costs or damages; Buyer may proceed as provided for in paragraph (3) below.
- (3) Upon the occurrence of any of the circumstances, other than withholdings, identified in paragraphs (1) and (2) above, Buyer may make a reduction of corresponding amounts (in whole or in part) in the costs and fee of this Subcontract or any other contract with Seller, and/or may demand payment (in whole or in part) of the corresponding amounts. Seller shall promptly pay amounts so demanded. Such sums shall not be considered allowable costs under any provision of the Subcontract. In the case of withholding(s), Buyer may withhold the same amount from Seller under this Subcontract.
- (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.
- (f) Equal Opportunity for Vietnam Era Veterans' Readjustment Assistance Act (VEVRAA) Protected Veterans. (1) The clause at 41 CFR 60-300.5(a) is incorporated herein by reference. The clause applies if this Subcontract is for \$100,000 or more, unless exempted by the rules, regulations, or orders of the Secretary issued pursuant to VEVRAA. As used in the clause, "contractor" means "Seller." This clause applies in addition to FAR 52.222-35 if included in this Subcontract. (2) Buyer and Seller shall abide by the requirements of 41 CFR 60-300.5(a). This regulation prohibits discrimination against qualified protected veterans, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans.
- (g) Equal Opportunity for Workers with Disabilities. (1) The clause at 41 CFR 60-741.5 is incorporated herein by reference. The clause applies if this Subcontract is excess of \$10,000, unless exempted by the rules, regulations, or orders of the Secretary issued pursuant to section 503 of the Act, as amended. As used in the clause, "contractor" means "Seller." This clause applies in addition to FAR 52.222-36 if included in this Subcontract. (2) Buyer and Seller shall abide by the requirements of 41 CFR 60-741.5(a). This regulation prohibits discrimination against qualified individuals on the basis of disability, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities.

#### 4. **ASSIGNMENT**

Any assignment of Seller's rights or delegation of Seller's duties shall be void 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 Subcontract shall inure to the benefit of and shall be binding upon the valid successors and assigns of the Parties.

#### 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 Subcontract, and any related contract. Seller shall not communicate with the Customer or the U.S. Government in connection with this Subcontract, 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. **SUBCONTRACT MANAGEMENT**

- (a) Seller shall direct and/copy shall correspondence relating to this Subcontract to the attention of Buyer's Subcontract Administrator. Buyer's Subcontract Administrator is the only person authorized to make changes to price and all other terms and conditions of this Subcontract. Any changes made by any Buyer personnel other than Buyer's Subcontract Administrator shall be void and without effect and shall not provide the basis for any equitable adjustment to the Subcontract 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 Subcontract:

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 Subcontract 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 Subcontract and shall not be the basis for any equitable adjustment.
- (f) Seller shall immediately notify Buyer's Subcontract Administrator in writing whenever Seller receives a change request from any representative of Buyer other than Buyer's Subcontract Administrator which could affect the terms and conditions, price, performance, schedule, or any other provision of this Subcontract.

**7. DISPUTES**

- (a) Buyer and Seller agree to enter into negotiations to resolve any dispute arising under or relating to this Subcontract. 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:
- (i) 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 Subcontract, 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.

- (ii) 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 Subcontract 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.
- (iii) 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 Subcontract pending final resolution of any dispute, request for relief, claim, appeal, or action arising under or relating to the Subcontract.
- (f) The rights and obligations described in this clause shall survive completion, expiration, termination, and final payment of this Subcontract.

#### 8. **ELECTRONIC CONTRACTING**

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

#### 9. **EXPORT CONTROL**

- (a) 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 Subcontract, 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").
- (b) Seller shall control the disclosure of, and access to, controlled items or technical data provided by Buyer related to performance of this Subcontract 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.

- (c) Subject to applicable Trade Control Laws, Seller shall provide Buyer with the export control classification of any commodity or technology including software.
- (d) 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.
- (e) 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.
- (f) 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 Subcontract and shall comply with all reasonable requests from Buyer for information regarding any such violations.
- (g) 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 subcontract 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 Subcontract.
- (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 Subcontract. 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 Subcontract.
- (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) Except for reasonable wear and tear, Seller shall be responsible for, and 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 Subcontract, 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 Subcontract.

**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 Subcontract, 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 Subcontract 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 Subcontract 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 Subcontract. Buyer assumes no liability for Seller personnel.

**14. BUYER INFORMATION**

Information provided by Buyer to Seller shall remain the property of Buyer. Seller agrees to comply with the terms of any Non-Disclosure Agreement with Buyer and to comply with all proprietary information markings and restrictive legends applied by Buyer to anything provided hereunder to Seller. Seller agrees not to use any Buyer-provided information for any purpose except to perform this Subcontract and agrees not to disclose such information to third parties without Buyer's prior, written consent.

**15. SELLER INFORMATION**

- (a) Seller shall not provide any proprietary information to Buyer without the Parties' prior execution of a Non-Disclosure Agreement.
- (b) Seller agrees that any technical data and computer software furnished to Buyer as a required deliverable under this Subcontract will be free from confidential, proprietary, or restrictive-use markings that are not expressly permitted by applicable § or DFARS clauses incorporated in this Subcontract ("Nonconforming Markings"). On behalf of the U.S. Government, Buyer may notify Seller of such a Nonconforming Marking. If Seller fails to remove or correct such marking within sixty (60) days after such notification, Buyer may, notwithstanding any other provision of this Subcontract, 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.

**16. ENTRY ON BUYER PROPERTY**

- (a) Access by non-U.S. citizens to Buyer-owned or controlled premises/property/worksites 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/worksites. 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/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 subcontractors, in performance of work on Buyer-owned 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 Subcontract 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/worksites, 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 Subcontract, then Seller and its subcontractors shall procure and maintain for the performance of this Subcontract 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 Subcontract. 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 Subcontract.
- (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 Subcontract 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 Subcontract 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) In addition to the Government's rights in data and inventions, Seller agrees that Buyer, in the performance of its obligations under its higher-tier contract with the Customer (including obligations of follow-on contracts or contracts for subsequent phases of the same program), shall have an unlimited, irrevocable, paid-up, royalty-free right to make, have made, sell, offer for sale, use, execute, reproduce, display, perform, distribute (internally or externally) copies of, and prepare derivative works, and authorize others to do any, some or all of the foregoing, any and all, inventions, discoveries, improvements, maskworks and patents, as well as any and all data, copyrights, reports, and works of authorship, conceived, developed, generated, or delivered in performance of this Subcontract.
- (d) All reports, memoranda, or other materials in written form (including machine readable form) prepared by Seller pursuant to this Subcontract 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 Subcontract shall become the sole property of Buyer.
- (f) No other provision in this Subcontract shall be construed to limit the liabilities or remedies of the Parties under this clause.

#### **18. OFFSET CREDIT/COOPERATION**

This Subcontract has been entered into in direct support of Buyer's international offset programs. All offset benefit credits resulting from this Subcontract are the sole property of Buyer and shall be applied to the offset program of Buyer's choice. Seller agrees to assist Buyer in securing appropriate offset credits from the respective country government authorities.

#### **19. PACKING AND SHIPMENT**

- (a) Unless otherwise specified, Seller shall pack all Work in accordance with good commercial practice. No charges will be allowed for packing, crating, freight, local cartage, and/or any other such services unless so specified in this Subcontract. 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 Subcontract. 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 Subcontract 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 Subcontract, 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 that Work at a unit price to be negotiated, but in no event higher than the unit price provided in this Subcontract. 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's obligations under this clause shall extend for two (2) years beyond the effective

date of this Subcontract, irrespective of whether the Subcontract is completed/terminated within the two (2) year period.

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

- (a) Unless otherwise provided, tender of payment shall be net forty-five (45) days, 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. Buyer shall have a right of setoff against payments due or at issue under this Subcontract or any other contract between the Parties.
- (b) Buyer shall have a right of setoff against payments due or at issue under this Subcontract. 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 Subcontract shall be resolved in accordance with the following, in descending order of precedence: (i) Face of the Purchase Order, release document, or schedule (including any continuation sheets), as applicable; (ii) Section I of this Subcontract; (iii) Section II and III of this Subcontract; and (iv) the Statement of Work.

**23. PRIORITY RATING**

If so identified, this Subcontract is a "rated order" certified for national defense use, and Seller shall follow all the requirements of the Defense Priorities and Allocation System Regulation (15 C.F.R. Part 700).

**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 Subcontract, 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 Subcontract or the delivery of Prohibited Software.

**25. QUALITY CONTROL SYSTEM; INSPECTION**

- (a) 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 Subcontract. Seller shall permit Buyer to review procedures, practices, processes, and related documents to determine such acceptability.
- (c) Records of all quality control inspection work by Seller shall be kept complete and available to Buyer and its customers.
- (d) 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 Subcontract (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 Subcontract. Buyer shall perform inspections, surveillance, reviews, and tests so as not to unduly delay the Work.
- (e) 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.
- (f) 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.

**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 Subcontract or the subject matter hereof, without Buyer's prior written approval.

**27. SEVERABILITY**

Each paragraph and provision of this Subcontract is severable. Should any provision of this Subcontract 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 Subcontract, each of which shall remain in full force and effect.

**28. SURVIVABILITY**

Any provisions of this Subcontract, which by their terms and conditions contemplate survival beyond any completion or expiration or earlier termination of this Subcontract, shall survive such completion or expiration or earlier termination of this Subcontract. Such provisions shall include Articles 3, 7, 8, 9, 13, 14, 16, 17, 24, 26, 31, and 33, and the use and confidentiality restrictions for Proprietary Information in any Non-Disclosure Agreement executed by the Parties.

**29. TIMELY PERFORMANCE**

- (a) Seller's timely performance is a critical element of this Subcontract. The Work required under the Subcontract shall be completed and delivered in accordance with the delivery schedule specified herein. Seller's failure to do so shall constitute a material breach of this Subcontract.
- (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 Subcontract (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 Subcontract 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 Subcontract.
- (c) Buyer's rights and remedies in, related to, or arising out of this Subcontract 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 Subcontract shall conform to all specifications and requirements of the Subcontract 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 Subcontract in the same manner and to the same extent as Work originally delivered under this Subcontract, 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 Subcontract price.

### 32. **COUNTERFEIT PARTS**

- (a) 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.
- (b) 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 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.
- (c) Whenever Seller shall receive, either before or after shipment of Work under this Subcontract, 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 Subcontract.
- (d) 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.
- (e) The following FAR provisions are incorporated herein by reference:
  - a. DFARS 252.246-7007 Contractor Counterfeit Electronic Part Detection and Avoidance System (latest revision).
  - b. DFARS 252.246-7008 Sources of Electronic Parts (latest revision)

### 33. **GENERAL INDEMNIFICATION**

- (a) 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 Subcontract, or (2) failure to comply with all applicable local, state, and federal laws and regulations in the performance of this Subcontract. 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 Subcontract 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 statute 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 Subcontract 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 Subcontract, Seller shall be paid a percentage of the Subcontract 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 Subcontract price. Seller shall continue to perform all work not terminated.

#### 35. **TERMINATION FOR DEFAULT**

- (a) Buyer may terminate all or any part of this Subcontract by written notice to Seller if: (i) Seller fails to perform the work within the time specified by this Subcontract or any written extension; (ii) Seller fails to perform any other provision of this Subcontract or fails to make progress, so as to endanger performance of this Subcontract, 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 Subcontract, 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 Subcontract 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 Subcontract. Seller shall protect and preserve property in its possession in which Buyer has an interest.
- (b) Buyer shall pay for completed work delivered and accepted in accordance with the prices set forth in the Subcontract. 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 Subcontract 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.
- (c) If, after termination of the Subcontract 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 Subcontract 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 Subcontract.

37. **COMPLETE AGREEMENT/MODIFICATIONS**

This Subcontract 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 Subcontract. Except as provided herein, no amendment or modification of this Subcontract shall bind either Party unless it is in writing and is signed by Buyer's Subcontract 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**

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 (a) terminate the Subcontract, (b) require Seller to provide adequate assurance of performance, and/or (c) put in place special controls regarding the proprietary information that Buyer has provided to Seller hereunder.

#### 41. **UTILIZATION OF SMALL BUSINESS CONCERNS**

- (a) Seller agrees to actively seek out and provide the maximum practicable opportunities for small businesses, small disadvantaged businesses, women-owned small businesses, minority business enterprises, historically black colleges and universities and minority institutions, Historically Underutilized Business Zone small business concerns and U.S. Veteran and Service-Disabled Veteran Owned small business concerns to participate in the lower-tier subcontracts Seller awards to the fullest extent practicable and consistent with the efficient performance of this Subcontract.
- (b) Seller is hereby notified that, under 15 U.S.C. 645(d), any person who misrepresents a firm's business size or socioeconomic status as defined in FAR 52.219-9 in order to obtain a contract to be awarded under the preference programs established pursuant to sections 8(a), 8(d), 9 or 15 of the Small Business Act or any other provision of Federal law that specifically references section 8(d) for a definition of program eligibility, shall: (i) be punished by imposition of a fine, imprisonment, or both; (ii) be subject to administrative remedies, including suspension and debarment; and (iii) be ineligible for participation in programs conducted under the authority of the Act. Socioeconomic status for subcontracts includes the list of concerns in FAR 52.219-9 as well as women-owned small business concerns, Historically Black College or University or Minority Institutions, Indian organizations or Indian-owned economic enterprises, rural area small business concerns, foreign business concerns, joint ventures, and/or a large minority business concerns or women-owned large business concerns.

#### 42. **CHANGES**

- (a) Buyer's Subcontract Administrator may, without notice to sureties and in writing, direct changes within the general scope of this Subcontract in any of the following: (i) technical requirements and descriptions, specifications, statement of work, drawings or designs; (ii) shipment or packing methods; (iii) place of delivery, inspection or acceptance; (iv) reasonable adjustments in quantities or delivery schedules or both; (v) amount of Buyer-furnished property; and, if this Subcontract includes services, (vi) description of services to be performed; (vii) time of performance (e.g., hours of the day, days of the week); and (viii) place of performance. Seller shall comply promptly with such direction. Except for the rights granted to Buyer under this Article 42, a change pursuant to this Article 42 shall not give rise to nor authorize any other modification of or amendment to the terms and conditions of this Subcontract.
- (b) If such change increases or decreases the cost or time required to perform this Subcontract, Buyer and Seller shall negotiate an equitable adjustment in the price or schedule, or both, to reflect the increase or decrease. Buyer shall modify this Subcontract in writing accordingly. Unless otherwise agreed in writing, Seller must assert any claim for adjustment to Buyer's Subcontract Administrator in writing within twenty-five (25) days and deliver a fully supported proposal to Buyer's Subcontract Administrator within forty-five (45) days, after Seller's receipt of such direction. Buyer may, at its sole discretion, consider any claim regardless of when asserted. If Seller's proposal includes the cost of property made obsolete or excess by the change, Buyer may direct the disposition of the property. Seller has the burden to support the amount of Seller's claim for equitable adjustment. Buyer shall have the right to verify the amount of Seller's claim. Failure of the Parties to agree upon any adjustment shall not excuse Seller from performing in accordance with Buyer's direction.
- (c) If Seller considers that Buyer's conduct constitutes a change, Seller shall notify Buyer's Subcontract Administrator promptly in writing as to the nature of such conduct and its effect upon Seller's performance.

Pending direction from Buyer's Subcontract Administrator, Seller shall take no action to implement any such change.

43. **ETHICAL CONDUCT**

- (a) 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.
- (b) This Subcontract also incorporates by reference FAR 52.203-11 and FAR 52.209-6, as applicable. Seller certifies upon executing this Subcontract: (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 Subcontract; 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.

44. **SUSPENSION OF WORK**

By written notice to Seller, Buyer has the right to immediately suspend performance under this Subcontract with a written Stop Work Order. In the event of such direction, Seller shall cease all performance, cancel all outstanding procurements, and take no further steps toward delivery except those necessary for immediate and orderly shutting down of the work, and for securing any inventory obtained in the course of performance. Buyer shall not be liable to Seller for any expenses incurred by Seller during any Stop Work period.

45. **RECORDS**

Seller shall maintain, for a period of four (4) years following final payment under this Subcontract, 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 make such records available to Buyer and its representatives or Customer for audit and inspection.

46. **INSURANCE**

Unless otherwise specified by Buyer in writing, and in addition to other requirements set forth herein, Seller shall maintain and cause Seller's lower-tier subcontractors to maintain during the term of this Subcontract:

- (a) workers' compensation insurance as prescribed by the law of the state or nation in which the Work is performed;
- (b) employer's liability insurance with limits of at least \$500,000 for each occurrence;
- (c) automobile liability insurance if the use of motor vehicles is required hereunder, with limits of at least \$1,000,000 combined single limit for bodily injury and property damage per occurrence; and
- (d) Commercial General Liability ("CGL") insurance, ISO 1988 or later occurrence form of insurance, including, without limitation, Blanket Contractual Liability and Broad Form Property Damage, with limits of at least \$1,000,000 combined single limit for bodily injury and property damage per occurrence.

All CGL and automobile liability insurance shall designate Buyer, its affiliates, and its directors, officers, and employees (all referred to as "Buyer") as additional insured. All such insurance must be primary and non-contributory and required to respond and pay prior to any other insurance or self-insurance available. If specifically requested by Buyer, Seller and Seller's lower-tier subcontractors shall furnish, prior to the start of Work, certificates or adequate proof of the foregoing insurance, including, without limitation, endorsements and policies. The policies evidencing required insurance shall contain an endorsement to the effect that any cancellation or any material change adversely affecting the interest of Buyer or Buyer's Customer shall not be effective (1) for such period as the laws of the state in which this Subcontract is to be performed prescribe, or (2) until thirty (30) days after the insurer or Seller gives written notice to Buyer, whichever period is longer. Any other coverage available to Buyer shall apply on an excess basis. Seller agrees that Seller, Seller's insurer(s), and anyone claiming by,

through, under, or in Seller's behalf shall have no claim, right of action, or right of subrogation against Buyer and Buyer's Customer based on any loss or liability insured against under the foregoing insurance. Insurance companies providing coverage under this Subcontract must be rated by A. M. Best with at least an A-rating. Seller's obligation to obtain the foregoing insurance does not waive or release Seller's liabilities or duties to indemnify under this Subcontract.

47. **CERTIFICATIONS AND REPRESENTATIONS**

- (a) Buyer has relied on the certifications and representations submitted by Seller to Buyer in connection with the award of this Subcontract. 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 and understands and agrees that Buyer may request subsequent representations and certifications in relation to this Subcontract. Those subsequent representations and certifications also are hereby incorporated as well into this Subcontract by reference.

## **SECTION II: FAR FLOWDOWN PROVISIONS**

### **A. INCORPORATION OF FAR CLAUSES**

The Federal Acquisition Regulation (FAR) 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 Subcontract. The revision date for each clause is the date applicable at the time of subcontract award. The Contracts Disputes Act shall have no application to this Subcontract. Any reference to a “Disputes” clause shall mean Article 7 in Section I of this Subcontract.

### **B. GOVERNMENT SUBCONTRACT**

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

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

1. “Commercial Item” means a commercial item as defined in FAR 2.101.
2. “Contract” means this Subcontract.
3. “Contracting Officer” shall mean the U.S. Government Contracting Officer for Buyer’s U.S. Government prime contract under which this Subcontract 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 Subcontract.

### **C. NOTES**

1. Substitute “Buyer” for “Government” or “United States” throughout this clause.
2. Substitute “Buyer’s Subcontract Administrator” for “Contracting Officer”, “Administrative Contracting Officer”, and “ACO” throughout this clause.
3. Insert “and Buyer” after “Government” throughout this clause.
4. Insert “or Buyer” after “Government” throughout this clause.
5. Communication/notification required under this clause from/to Seller to/from the Contracting Officer shall be through Buyer.
6. Insert “and Buyer” after “Contracting Officer”, throughout the clause.
7. Insert “or Buyer’s Subcontract Administrator” after “Contracting Officer”, throughout the clause.

### **D. 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 Subcontract 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. If any such amendment to this Subcontract causes an increase or decrease in the cost of, or the time required for, performances of any part of the work under this Subcontract, an equitable adjustment shall be made pursuant to Article 42 in Section I of this Subcontract.

### **E. 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.



**F. FAR FLOWDOWN CLAUSES**

**REFERENCE TITLE**

**1. The following FAR clauses apply to this Subcontract:**

- (a) 52.204-10 REPORTING EXECUTIVE COMPENSATION AND FIRST-TIER SUBCONTRACT AWARDS
- (b) 52.211-5 MATERIAL REQUIREMENTS (Note 2 applies).
- (c) 52.215-20 REQUIREMENTS FOR COST OR PRICING DATA OR INFORMATION OTHER THAN COST OR PRICING DATA (Note 2 applies).
- (d) 52.215-21 REQUIREMENTS FOR COST OR PRICING DATA OR INFORMATION OTHER THAN COST OR PRICING DATA - MODIFICATIONS (Note 2 applies).
- (e) 52.219-8 UTILIZATION OF SMALL BUSINESS CONCERNS. Seller must include this clause in all subcontracts that offer further subcontracting opportunities.
- (f) 52.222-21 PROHIBITION OF SEGREGATED FACILITIES. Seller must include this clause in every subcontract and purchase order that is subject to the Equal Opportunity clause of this Subcontract.
- (g) 52.222-26 EQUAL OPPORTUNITY
- (h) 52.222-55 MINIMUM WAGES UNDER EXECUTIVE ORDER 13658
- (i) 52.225-13 RESTRICTIONS ON CERTAIN FOREIGN PURCHASES. Seller must flow down this clause to all subcontracts at all tiers.
- (j) 52.225-26 CONTRACTORS PERFORMING PRIVATE SECURITY FUNCTIONS OUTSIDE THE UNITED STATES
- (k) 52.227-14 RIGHTS IN DATA – GENERAL. Applies unless Buyer’s customer under the Prime Contract is DoD. Seller must flow this clause down to all tiers without alteration, except to identify the parties.
- (l) 52.232-40 PROVIDING ACCELERATED PAYMENTS TO SMALL BUSINESS SUBCONTRACTS. Applies if payments are accelerated by USG
- (m) 52.234-1 INDUSTRIAL RESOURCES DEVELOPED UNDER DEFENSE PRODUCTION ACT TITLE III (Notes 1 and 2 apply). Seller must include the substance of this clause in every subcontract issued in support of the Subcontract.
- (n) 52.242-13 BANKRUPTCY (Notes 1 and 2 apply).
- (o) 52.242-15 STOP-WORK ORDER (Notes 1 and 2 apply).
- (p) 52.243-1 CHANGES - FIXED PRICE (Notes 1 and 2 apply).
- (q) 52.244-6 SUBCONTRACTS FOR COMMERCIAL ITEMS. To the maximum extent practical, Seller shall incorporate, and require its subcontractors, to all tiers, to incorporate commercial items as components of items to be supplied under this Subcontract and shall insert designated clauses in subcontracts. See clause 52.244-6 (c)(1) for the listing of

clauses to be inserted in subcontracts for commercial items. This clause 52.244-6 must be flowed down to all tiers.

- (r) 52.246-2 INSPECTION OF SUPPLIES - FIXED PRICE (Note 2 applies. Note 3 applies, except in paragraph (b) the second time “Government” appears, and in subparagraphs (f), (h), (j), and (i), where Note 1 applies).
- (s) 52.246-4 INSPECTION OF SERVICES - FIXED PRICE (Note 3 applies, except in paragraphs (e) and (f) where Note 1 applies).
- (t) 52.247-64 PREFERENCE FOR PRIVATELY OWNED U.S. FLAG COMMERCIAL VESSELS. Seller must include the substance of this clause to all subcontracts and purchase orders, at all tiers. FAR 52.244-6(c) (1) (ix) and 52.212-5(e)(1)(xiv) require the inclusion of this clause in subcontracts for commercial items that may involve international air transportation.
- (u) 52.249-2 TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (FIXED-PRICE) (Notes 1 and 2 apply. Note 4 applies to the first time “Government” appears in subparagraphs (b)(4) and (b)(6), it applies to all of subparagraph (b)(8), and it applies to the second time “Government” appears in paragraph (d). In paragraph (n), “Government” means “Buyer and the Government”. In paragraph (c), “120 days” is changed to “60 days”. In paragraph (d), “15 days” is changed to “30 days”, and “45 days” is changed to “60 days”. In paragraph (e), “1 year” is changed to “6 months”. Paragraph (g) is deleted. In paragraph (l), “90 days” is changed to “45 days”. Settlements and payments under this clause may be subject to the approval of the Contracting Officer).
- (v) 52.249-8 DEFAULT (FIXED-PRICE SUPPLY AND SERVICE) (Notes 1 and 2 apply, except Note 1 is not applicable to paragraph (c). Note 4 applies to the second and third time “Government” appears in paragraph (d). Timely performance is a material element of this Subcontract).

**2. The following FAR clauses apply to this Subcontract if the value of this Subcontract equals or exceeds \$10,000:**

- (a) 52.222-36 AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES
- (b) 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.

**3. The following FAR clauses apply to this Subcontract if the value of this Subcontract equals or exceeds \$25,000:**

- (a) 52.222-35 EQUAL OPPORTUNITY FOR VETERANS
- (b) 52.222-37 EMPLOYMENT REPORTS ON VETERANS

**4. The following FAR clauses apply to this Subcontract if the value of this Subcontract equals or exceeds \$150,000:**

- (a) 52.203-6      **RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT.** Seller must include the substance of this clause in all subcontracts, at all tiers, which exceed the simplified threshold.
- (b) 52.203-7      **ANTI-KICKBACK PROCEDURES.** Seller must include the substance of this clause in all subcontracts, at all tiers, which exceed the simplified threshold.
- (c) 52.203-11     **CERTIFICATION AND DISCLOSURE REGARDING PAYMENT TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS**
- (d) 52.203-12     **LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS.** Seller must include the substance of this clause in all subcontracts, at all tiers, which exceed the simplified threshold.
- (e) 52.203-16     **PREVENTING PERSONAL CONFLICTS OF INTEREST.** Seller must include the substance of this clause in all subcontracts, at all tiers, which exceed \$5,000,000 except when the subcontract is: (1) for the acquisition of a commercial item; or (2) is performed entirely outside the United States.
- (f) 52.215-2      **AUDIT AND RECORDS-NEGOTIATION** (Applicable if: (1) Seller is required to furnish cost or pricing data, or (2) the Subcontract requires Seller to furnish cost, funding, or performance reports. Note 3 applies). Seller must flow down this clause to all tiers in all subcontracts that exceed the simplified threshold in FAR Part 13 and: (1) that are cost reimbursement, incentive, time and material, labor hour, or price re-determineable type of combination of these; (2) for which cost or pricing data are required; or (3) that require the subcontractor to furnish reports as discussed in paragraph (e) of this clause.
- (g) 52.215-14     **INTEGRITY OF UNIT PRICES** (Delete paragraph (b) of the clause). Seller must include the substance of this clause, less paragraph (b), in all subcontracts for other than: acquisitions at or below the simplified acquisition threshold in FAR Part 2; construction or architect-engineer services under FAR Part 36; utility services under FAR Part 41; services where supplies are not required; commercial items; and petroleum products.
- (h) 52.215-22     **LIMITATIONS ON PASS-THROUGH CHARGES - IDENTIFICATION OF SUBCONTRACT EFFORT**
- (i) 52.215-23     **LIMITATIONS ON PASS-THROUGH CHARGES.** This clause applies to all cost-reimbursement subcontracts that exceed (i) \$150,000 if included in Buyer's customer RFP or customer contract issued before October 1, 2010, or (ii) \$150,000 if included in Buyer's customer RFP issued on or after October 1, 2010, or if the Prime Contract was issued prior to October 1, 2010 but was amended after October 1, 2010 to increase the Simplified Acquisition Threshold. If the Prime Contract is with DoD, then this clause applies to all cost-reimbursement subcontracts and fixed price subcontracts, except those identified in 15.408(n)(2)(i)(B)(2), that exceed the threshold for obtaining cost or pricing data in accordance with FAR 15.403-4. In paragraph (c), "Contracting Officer" shall mean Buyer. It is applicable at all tiers.
- (j) 52.222-4      **CONTRACT WORK HOURS AND SAFETY STANDARDS ACT - OVERTIME COMPENSATION.** Seller shall insert the provisions set forth in paragraphs (a) through (d) of this clause in subcontracts that may require or involve the employment of laborers or mechanics and require subcontractors to include these provisions in any such lower-tier subcontracts. Seller shall be responsible for compliance by any subcontractor or lower tier subcontractor with the provisions set forth in paragraphs (a) and (d) of this clause.

- (k) 52.227-2 NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT (Notes 2 and 4 apply). Must be flowed down to all subcontracts at any tier for supplies and services expected to exceed the simplified threshold at FAR 2.101.
- (l) 52.248-1 VALUE ENGINEERING (Note 1 applies, except in subparagraphs (c)(5) and (m), where Note 3 applies and except in (b)(3), where Note 4 applies, and where “Government” precedes “cost” throughout. Note 2 applies).

**5. The following FAR clauses apply to this Subcontract if the value of this Subcontract equals or exceeds \$700,000:**

- (a) 52.219-9 SMALL BUSINESS SUBCONTRACTING PLAN. Applicable at all tiers if Seller is not a small business. Note 2 is applicable to paragraph (c) only. Seller’s subcontracting plan is incorporated herein by reference).
- (a) 52.215-12 SUBCONTRACTORS COST OR PRICING DATA. Applicable if not otherwise exempt under FAR § 15.403). In each subcontract that exceeds the threshold for the submission of certified of certified cost or pricing data at FAR 15-403-4, when entered into, Seller shall insert either --- (1) The substance of this clause, including this paragraph (c), if paragraph (a) of this clause requires submission of certified cost or pricing data for the subcontractor; or (2) The substance of this clause at FAR 52.215-13, Subcontractor Cost or Pricing Data – Modifications.
- (b) 52.215-13 SUBCONTRACTOR COST OR PRICING DATA – MODIFICATIONS. Applicable for modifications if not otherwise exempt under FAR § 15.403). Seller shall insert the substance of this clause in each subcontract, at all tiers, in each subcontract that exceeds the threshold for submission of certified cost or pricing data at FAR 15.403-4 on the date of agreement on price or the date of award, whichever is later.

**6. The following FAR clauses apply to this Subcontract if the value of this Subcontract exceeds \$5,500,000:**

- (a) 52.203-13 CONTRACTOR CODE OF BUSINESS ETHICS AND CONDUCT. Applicable if not otherwise exempt under FAR 3.1004 (a)). Seller must include the substance of this clause in all subcontracts, at all tiers, that have a value in excess of \$5,500,000 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.
- (b) 52.203-14 DISPLAY OF HOTLINE POSTER(S). Applicable if not otherwise exempt under FAR 3.1004 (b)). Seller must include the substance of this clause in all subcontracts, at all tiers, that exceed \$5,500,000, except when the subcontract: (1) is for commercial items or; (2) is performed entirely outside the United States.

**7. The following FAR clauses apply to this Subcontract as indicated:**

- (a) 52.203-5 COVENANT AGAINST CONTINGENT FEES
- (b) 52.203-10 PRICE OR FEE ADJUSTMENT FOR ILLEGAL OR IMPROPER ACTIVITY
- (c) 52.203-11 CERTIFICATION AND DISCLOSURE REGARDING PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS

- (d) 52.203-15 WHISTLEBLOWER PROTECTIONS UNDER THE RECOVERY AND REINVESTMENT ACT OF 2009. Seller must include the substance of this clause in all subcontracts, at all tiers. FAR 52.244-6(c)(1)(ii) requires the flow-down of this clause in contracts for commercial items.
  
- (e) 52.204-2 SECURITY REQUIREMENTS. Applicable if the Work requires access to classified information). Seller agrees to insert terms that conform substantially to the language of this clause in subcontracts, at all tiers, but excluding any reference to the “Changes” clause of this Subcontract, that involve access to classified information.
  
- (f) 52.204-9 PERSONAL IDENTITY VERIFICATION OF CONTRACTOR PERSONNEL. Applicable when the subcontractor is required to have routine physical access to a Federally controlled facility and/ or routine access to a Federally controlled information system. Seller shall insert this clause in all subcontracts, at all tiers, where the subcontractor is required to have routine physical access to a Federally-controlled information system.
  
- (g) 52.209-6 PROTECTING THE GOVERNMENT’S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED OR PROPOSED FOR DEBARMENT. Applicable for subcontracts that exceed \$30,000. Not applicable for commercial items. Unless this is a Subcontract for the acquisition of commercial items, Seller shall include the requirements of this clause (appropriately modified for the identification of the parties (in each subcontract, at all tiers, that (1) exceeds \$30,000 in value; and (2) is not a subcontract for commercially off-the-shelf items.
  
- (h) 52.211-5 MATERIAL REQUIREMENTS
  
- (i) 52.214-26 AUDIT AND RECORDS – SEALED BIDDING. Seller must include this clause in all subcontracts, at all tiers, expected to exceed the threshold in FAR 15.403-4(a)(1) for submission of cost or pricing data. Seller must include this clause in all subcontracts, at all tiers, expected to exceed the threshold in FAR 15.403-4(a)(1) for submission of cost or pricing data. If Alternate 1 applies, Seller shall insert a clause containing the provisions of the Alternate 1 clause in all subcontracts, at all tiers.
  
- (j) 52.214-28 SUBCONTRACTOR COST OR PRICING DATA – MODIFICATIONS – SEALED BIDDING. Applicable when the Subcontract exceeds the threshold for submission of certified cost or pricing data at FAR 15.403-4(a)(1). Seller must include this clause in all subcontracts, at all tiers, expected to exceed the threshold in FAR 15.403-4(a)(1) for submission of cost or pricing data.
  
- (k) 52.215-10 PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA. Applicable if submission of cost or pricing data is required. Notes 2 and 4 apply except the first time “Contracting Officer” appears in subparagraph (c)(1). Rights and obligations under this clause shall survive completion of the Work and final payment under this Subcontract).
  
- (l) 52.215-11 PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA – MODIFICATIONS. Applicable if submission of cost or pricing data is required for modifications. Notes 2 and 4 apply except the first time “Contracting Officer” appears in subparagraph (d)(1). Rights and obligations under this clause shall survive completion of the Work and final payment under this Subcontract).
  
- (m) 52.215-15 PENSION ADJUSTMENTS AND ASSET REVERSIONS. Applicable if this Subcontract meets the applicability requirements of FAR § 15.408(g). Note 5 applies). Seller must include the substance of this clause in all subcontracts which meet the applicability of FAR 15.408(g).

- (n) 52.215-16 FACILITIES CAPITAL COST OF MONEY. Applicable only if this Subcontract is subject to the Cost Principles at FAR Subpart 31.2 and Seller's proposed facilities capital cost of money in its offer.
- (o) 52.215-17 WAIVER OF FACILITIES CAPITAL COST OF MONEY. Applicable only if this Subcontract is subject to the Cost Principles at FAR Subpart 31.2 and Seller did not propose facilities capital cost of money in its offer.
- (p) 52.215-18 REVERSION OR ADJUSTMENT OF PLANS FOR POST -RETIREMENT BENEFITS (PRB) OTHER THAN PENSIONS. Applicable if this Subcontract meets the applicability requirements of FAR § 15.408(j). Note 5 applies). Seller must include the substance of this clause in all subcontracts which meet the applicability of FAR 15.408(j).
- (q) 52.215-19 NOTIFICATION OF OWNERSHIP CHANGES. Applicable if this Subcontract meets the applicability requirements of FAR § 15.408(k). Note 5 applies. Seller must include the substance of this clause in all subcontracts which meet the applicability of FAR 15.408(k).
- (r) 52.216-7 ALLOWABLE COST AND PAYMENT
- (s) 52.222-1 NOTICE TO THE GOVERNMENT OF LABOR DISPUTES
- (t) 52.222-41 SERVICE CONTRACT ACT OF 1965
- (u) 52.222-50 COMBATING TRAFFICKING IN PERSONS. Seller must include the substance of this clause in all subcontracts, at all tiers, for the acquisition of services. FAR 52.212-5(e)(1)(ix) and 52.244-6 (c)(1)(viii) require the inclusion of this clause in subcontracts for commercial items. *A formal compliance plan is required for any portion of a contract with an estimated value in excess of \$500,000 for supplies acquired outside the United States or for services performed outside the United States. Contractors furnishing commercially available off-the-shelf items (COTS items) may not engage in trafficking activities but the clause exempts them from the requirement to implement a formal trafficking compliance plan.*
- (v) 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 Subcontract.
- (w) 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 Subcontract.
- (x) 52.222-54 EMPLOYMENT ELIGIBILITY VERIFICATION
- (y) 52.223-3 HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA. Applicable if this Subcontract involves hazardous material. Notes 2 and 3 apply, except for paragraph (f), where Note 4 applies.
- (z) 52.223-7 NOTICE OF RADIOACTIVE MATERIALS. Applicable to Work containing covered radioactive material. In the blank insert "30", Notes 1 and 2 apply). Seller must include this clause in all subcontracts at all tiers for radioactive materials meeting the criteria in paragraph (a) of the clause.



- (aa) 52.223-11 OZONE-DEPLETING SUBSTANCES. Applicable if the Work was manufactured with or contains ozone-depleting substances.
- (ab) 52.223-18 ENCOURAGING CONTRACTOR POLICIES TO BAN TEXT MESSAGING WHILE DRIVING. Seller shall insert the substance of this clause in all subcontracts, at all tiers, that exceed the micro-purchase threshold.
- (ac) 52.225-1 BUY AMERICAN ACT-SUPPLIES. Applicable if the Work contains other than domestic components. Note 2 applies to the first time “Contracting Officer” is mentioned in paragraph (c).
- (ad) 52.225-5 TRADE AGREEMENTS. Applicable if the Work contains other than U.S. made, designated country, Caribbean, or NAFTA country end products.
- (ae) 52.225-8 DUTY FREE ENTRY. Applicable if supplies will be imported into the Customs Territory of the United States. Note 2 applies.
- (af) 52.225-19 CONTRACTOR PERSONNEL IN A DESIGNATED OPERATIONAL AREA OR SUPPORTING A DIPLOMATIC OR CONSULAR MISSION OUTSIDE OF THE UNITED STATES. Seller shall incorporate the substance of this clause in all subcontracts, at all tiers, that require subcontractor personnel to perform outside the United States. See paragraph (q) of the clause for the list of performance criteria that subject subcontractor personnel to this clause.
- (ag) 52.227-1 AUTHORIZATION AND CONSENT. Applicable only if the Prime Contract contains this clause. Seller must flow this clause down to all subcontracts at any tier for supplies and services expected to exceed the simplified threshold at FAR 2.101.
- (ah) 52.227-3 PATENT INDEMNITY (APR 1984)
- (ai) 52.227-9 REFUND OF ROYALTIES. Applicable when reported royalty exceeds \$250. Note 1 applies except for the first two times “Government” appears in paragraph (d). Note 2 applies. The substance of this clause must be included in any subcontract at any tier in which the amount of royalties reported during negotiation of the subcontract exceeds \$250.
- (aj) 52.227-10 FILING OF PATENT APPLICATIONS-CLASSIFIED SUBJECT MATTER. Applicable if the Work or any patent application may cover classified subject matter. Seller must flow this clause down to all subcontracts at any tier that cover or are likely to cover classified subject matter.
- (ak) 52.227-11 PATENT RIGHTS-OWNERSHIP BY THE CONTRACTOR. Applicable and must be flowed to all subcontracts, at any tier, if this Subcontract includes, experimental, developmental, or research work and Seller is a small business concern or domestic nonprofit organization. Reports required by this clause shall be filed with the agency identified in this Subcontract. If no agency is identified, contact Buyer’s Subcontract Administrator.
- (al) 52.227-13 PATENT RIGHTS – OWNERSHIP BY THE GOVERNMENT. Seller must flow down this clause to all subcontracts, at all tiers, for experimental, developmental or research work.
- (am) 52.228-3 WORKER’S COMPENSATION INSURANCE (DEFENSE BASE ACT). Seller must flow down this clause to all subcontracts at all tiers.

- (an) 52.228-4 **WORKER'S COMPENSATION AND WAR-HAZARD INSURANCE OVERSEAS.** Seller must insert in all subcontracts, at all tiers, under this Subcontract, a clause similar to paragraph (a) or paragraph (b), or both, depending on applicability of the circumstances in either paragraph.
- (ao) 52.228-5 **INSURANCE - WORK ON A GOVERNMENT INSTALLATION.** Applicable if this Subcontract involves Work on a Government installation. Note 2 applies. Note 4 applies to paragraph (b). Unless otherwise specified by this Subcontract, the minimum kinds and amount of insurance shall be as described in FAR § 28.307-2. Seller must flow down this clause to all lower tiers.
- (ap) 52.229-10 **STATE OF NEW MEXICO GROSS RECEIPTS AND COMPENSATING TAX**
- (aq) 52.230-2 **COST ACCOUNTING STANDARDS.** When referenced in this Subcontract, full CAS coverage applies. "United States" means "United States or Buyer." Delete paragraph (b) of the clause.
- (ar) 52.230-3 **DISCLOSURE AND CONSISTENCY OF COST ACCOUNTING PRACTICES.** When referenced in this Subcontract, modified CAS coverage applies. "United States" means "United States or Buyer". Delete paragraph (b) of the clause.
- (as) 52.230-6 **ADMINISTRATION OF COST ACCOUNTING STANDARDS.** Applicable if FAR § 52.230-2 or FAR § 52.230-3 applies.
- (at) 52.233-3 **PROTEST AFTER AWARD.** In the event Buyer's customer has directed Buyer to stop performance of the Work under the Prime Contract under which this Subcontract is issued pursuant to FAR § 33.1, Buyer may, by written order to Seller, direct Seller to stop performance of the Work called for by this Subcontract. "30 days" means "20 days" in subparagraph (b)(2). Note 1 applies except the first time "Government" appears in paragraph (f). In paragraph (f), add after "33.104(h)(1)" the following: "and recovers those costs from Buyer").
- (au) 52.236-13 **ACCIDENT PREVENTION.** Seller must flow down this clause in all subcontracts to all tiers.
- (av) 52.237-2 **PROTECTION OF GOVERNMENT BUILDINGS, EQUIPMENT AND VEGETATION.** Applicable if Work is performed on a Government installation. Note 2 applies. Note 4 applies to the second time "Government" appears in the clause.
- (aw) 52.242-17 **GOVERNMENT DELAY OF WORK**
- (ax) 52.243-6 **CHANGE ORDER ACCOUNTING.** Applicable if the Prime Contract requires Change Order Accounting. Note 2 applies.
- (ay) 52.245-1 **GOVERNMENT PROPERTY.** Applicable if Government property is furnished in the performance of this Subcontract. Except for paragraphs (i) and (j), Note 1 applies except in the phrases "Government property," "Government-furnished property," and in references to title to property. Note 2 applies. Add the following to paragraph (m): "Seller shall provide Buyer with immediate notice of any disapproval, withdrawal of approval, or non-acceptance by the Government of property control system." Disposition of property under paragraphs (i) and (j) shall be coordinated with Buyer.
- (az) 52.247-63 **PREFERENCE FOR U.S.-FLAG AIR CARRIERS.** Applicable if this Subcontract involves international air transportation). Seller must flow down the substance of this

clause to all subcontracts and purchase orders, at all tiers, that may involve international air transportation.

**G. CERTIFICATIONS AND REPRESENTATIONS**

- (1) **This clause contains certifications and representations that are material representations of fact upon which Buyer will rely in making awards to Seller. By submitting its written offer, or providing oral offers/quotations at the request of Buyer, or accepting any Subcontract, Seller certifies to the representations and certifications as set forth below in this clause. These certifications shall apply whenever these terms and conditions are incorporated by reference in any Subcontract, agreement, other contractual document, or any quotation, request for quotation (oral or written), request for proposal, or solicitation (oral or written), issued by Buyer. Seller shall immediately notify Buyer of any change of status with regard to these certifications and representations.**

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

- (1) *Definitions.* As used in this provision—"Lobbying contact" has the meaning provided at 2 U.S.C. 1602(8). The terms "agency," "influencing or attempting to influence," "officer or employee of an agency," "person," "reasonable compensation," and "regularly employed" are defined in FAR 52.203-12, "Limitation on Payments to Influence Certain Federal Transactions".
- (2) *Prohibition.* The prohibition and exceptions contained in FAR 52.203-12 are hereby incorporated by reference in this provision.
- (3) *Certification.* Seller represents, by signing its offer, hereby certifies to the best of its knowledge and belief that no Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on its behalf in connection with the awarding of the Prime Contract or this Subcontract.
- (4) *Disclosure.* If any registrants under the Lobbying Disclosure Act of 1995 have made a lobbying contact on behalf of the offeror with respect to this Subcontract, the offeror shall complete and submit, with its offer, OMB Standard Form LLL, Disclosure of Lobbying Activities, to provide the name of the registrants. The offeror need not report regularly employed officers or employees of the offeror to whom payments of reasonable compensation were made.
- (5) *Penalty.* Submission of this certification and disclosure is a prerequisite for making or entering into this Subcontract imposed by 31 U.S.C. 1352. Any person who makes an expenditure prohibited under this provision or who fails to file or amend the disclosure required to be filed or amended by this provision, shall be subject to a civil penalty of not less than \$10,000, for each such failure.

**(b) FAR § 52.209-5 Certification Regarding Responsibility Matters.**

- (1) Seller certifies that, to the best of its knowledge and belief, that Seller and/or any of its Principals, (as defined in FAR § 52.209-5,) are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency.

- (2) Seller shall provide immediate written notice to Buyer if, any time prior to award of any contract, it learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

(c) **FAR § 52.222-22 Previous Contracts and Compliance Reports.**

Seller represents that if it has participated in a previous contract or subcontract subject to the Equal Opportunity clause (FAR § 52.222-26) (i) Seller has filed all required compliance reports and (ii) that representations indicating submission of required compliance reports, signed by proposed subcontractors, will be obtained before subcontract awards.

(d) **FAR § 52.222-25 Affirmative Action Compliance.**

Seller represents (1) that it has developed and has on file at each establishment, affirmative action programs required by the rules and regulations of the Secretary of Labor (41 C.F.R. §§ 60-1 and 60-2), or (2) that in the event such a program does not presently exist, Seller will develop and place in operation such a written Affirmative Action Compliance Program within 120 days from the award of this Subcontract.

### **SECTION III: DFARS FLOWDOWN PROVISIONS**

#### **A. INCORPORATION OF DFARS CLAUSES**

The Defense Federal Acquisition Regulation Supplement (DFARS) clauses referenced below are incorporated herein by reference, with the same force and effect as if they were given in full text, and are applicable, including any notes following the clause citation, to this Subcontract. The revision date for each clause is the date applicable at the time of subcontract award. The Contracts Disputes Act shall have no application to this Subcontract. Any reference to a “Disputes” clause shall mean Article 7 in Section I of this Subcontract.

#### **B. GOVERNMENT SUBCONTRACT**

This Subcontract is entered into by the Parties in support of a U.S. Government contract.

As used in the clauses referenced below and otherwise in this Subcontract:

1. “Commercial Item” means a commercial item as defined in FAR § 2.101.
2. “Contracting Officer” shall mean the U.S. Government Contracting Officer for Buyer’s government prime contract under which this Subcontract is entered.
3. “Contractor” or “Offeror” means Seller, the party identified on the face of this Subcontract with whom Buyer is contracting.
4. “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.
5. “Subcontract” means this subcontract between Buyer and Seller.

**C. NOTES**

1. Substitute "Buyer" for "Government" or "United States" throughout this clause.
2. Substitute "Buyer's Subcontract Administrator" for "Contracting Officer", "Administrative Contracting Officer", and "ACO" throughout this clause.
3. Insert "and Buyer" after "Government", throughout this clause.
4. Insert "or Buyer" after "Government" throughout this clause.
5. Communication/notification required under this clause from/to Seller to/from the Contracting Officer shall be through Buyer.
6. Insert "and Buyer" after "Contracting Officer" throughout the clause.
7. Insert "or Buyer's Subcontract Administrator" after "Contracting Officer" throughout the clause.

**D. AMENDMENTS REQUIRED BY PRIME CONTRACT**

Seller agrees that, upon Buyer's request, it will negotiate in good faith with Buyer relative to amendments to this Subcontract 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. If any such amendment to this Subcontract causes an increase or decrease in the cost of, or the time required for, performances of any part of the work under this Subcontract, an equitable adjustment shall be made pursuant to Article 42 in Section I of this Subcontract.

**E. 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.

**F. DoD FAR SUPPLEMENT (DFARS) FLOWDOWN CLAUSES**

1. **The following DFARS clauses apply to this Subcontract:**

REFERENCE	TITLE
(a) 252.204-7012	SAFEGUARDING COVERED DEFENSE INFORMATION AND CYBER INCIDENT REPORTING (DEVIATION 2016-O0001). The Seller shall include this clause in all subcontracts, at all tiers.
(b) 252.211-7003	ITEM UNIQUE IDENTIFICATION AND VALUATION (APPLICABLE IF SPECIFICALLY REQUIRED FOR THE SUBCONTRACT). If Seller acquires, by subcontract, any item(s) for which unique item identification is required in accordance with paragraph (c) (1) of this clause, Seller shall include this clause in the applicable subcontracts, at all tiers.
(c) 252.225-7008	RESTRICTION ON ACQUISITION OF SPECIALTY METALS OF SPECIALTY METALS. Seller shall insert the substance of this cause in subcontracts, at all tiers, for items containing specialty metals to the extent necessary to ensure compliance of end products.
(d) 252.225-7009	RESTRICTION ON ACQUISITION OF CERTAIN ARTICLES CONTAINING SPECIALTY METALS. Seller shall insert the substance of this cause in subcontracts, at all tiers, for items containing specialty metals to the extent necessary to ensure compliance of end products.

- (e) 252.227-7013 RIGHTS IN TECHNICAL DATA - NON-COMMERCIAL ITEMS (Applicable in lieu of FAR § 52.227-14). Seller must flow this clause down to all tiers without alteration, except to identify the parties, whenever any noncommercial technical data is to be obtained from a subcontractor or supplier under the prime contract.
- (f) 252.227-7014 RIGHTS IN NON-COMMERCIAL COMPUTER SOFTWARE AND NON-COMMERCIAL COMPUTER SOFTWARE DOCUMENTATION (Applicable in lieu of FAR § 52.227- 14). Seller must flow this clause down to all tiers without alteration, except to identify the parties, whenever any noncommercial computer software documentation is to be obtained from a subcontractor or supplier under the Prime Contract.
- (g) 252.227-7016 RIGHTS IN BID OR PROPOSAL INFORMATION. Seller shall include this clause in all subcontracts or similar contractual instruments and require its subcontractors to so without alteration except to identify the parties.
- (h) 252.227-7019 VALIDATION OF ASSERTED RESTRICTIONS – COMPUTER SOFTWARE. Seller must flow this clause down to all tiers, without alteration, except to identify the parties, in all subcontracts, purchase orders, or similar contractual instruments requiring the furnishing of computer software to the Government in performance of this Subcontract.
- (i) 252.227-7025 LIMITATIONS ON THE USE OR DISCLOSURE OF GOVERNMENT-FURNISHED INFORMATION MARKED WITH RESTRICTIVE LEGENDS (For paragraph (c)(l), Note 3 applies).
- (j) 252.227-7026 DEFERRED DELIVERY OF TECHNICAL DATA OR COMPUTER SOFTWARE (Note 1 applies).
- (k) 252.227-7027 DEFERRED ORDERING OF TECHNICAL DATA OR COMPUTER SOFTWARE (Note 1 applies).
- (l) 252.227-7028 TECHNICAL DATA OR COMPUTER SOFTWARE PREVIOUSLY DELIVERED TO THE GOVERNMENT (The definitions for “contract” and “subcontract” shall not apply herein, except for the first reference to contract. Note 4 applies).
- (m) 252.227-7030 TECHNICAL DATA - WITHHOLDING OF PAYMENT (Notes 1 and 2 apply to (a); Note 4 applies to (b)).
- (n) 252.227-7033 RIGHTS IN SHOP DRAWINGS. Seller must flow this clause down to all subcontractors at any tier (except for commercial items).
- (o) 252.227-7037 VALIDATION OF RESTRICTIVE MARKINGS ON TECHNICAL DATA. Seller or subcontractor agrees to insert this clause in contractual instruments with its subcontractors or suppliers, at any tier, requiring the delivery of technical data (except for commercial items).
- (p) 252.228-7005 ACCIDENT REPORTING AND INVESTIGATION INVOLVING AIRCRAFT, MISSILES, AND SPACE LAUNCH VEHICLES (In paragraph (a), Note 5 applies. In paragraph (b), Note 3 applies).
- (q) 252.231- 7000 SUPPLEMENTAL COST PRINCIPLES
- (r) 252.243-7001 PRICING OF CONTRACT MODIFICATIONS



- (s) 252.244-7001 CONTRACTOR PURCHASING SYSTEM ADMINISTRATION
  - (t) 252.246-7007 CONTRACTOR COUNTERFEIT ELECTRONIC PART DETECTION AND AVOIDANCE SYSTEM
  - (u) 252.246-7008 SOURCES OF ELECTRONIC PARTS
  - (v) 252.247-7024 NOTIFICATION OF TRANSPORTATION OF SUPPLIES BY SEA (Applicable if this Subcontract meets the criteria set forth in paragraph (b)(2)(ii) of the clause. Notes 1 and 2 apply).
2. **The following DFARS clauses apply to this Subcontract if the value of this Subcontract equals or exceeds \$150,000:**
- (a) 252.203-7001 PROHIBITION ON PERSONS CONVICTED OF FRAUD OR OTHER DEFENSE CONTRACT- RELATED FELONIES (In this clause, the terms “contract”, “contractor”, and “subcontract” shall not change in meaning in paragraphs (a) thru (d). Delete paragraph (g). Note 5 applies).
  - (b) 252.247-7023 TRANSPORTATION OF SUPPLIES BY SEA. 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).
  - (c) 252.249-7002 NOTIFICATION OF ANTICIPATED CONTRACT TERMINATION OR REDUCTION (Note 2 applies). Not later than 60 days after Seller receives notice of anticipated termination or reduction, Seller shall provide notice to each of its subcontractors with a subcontract value of \$150,000 or more,
3. **The following DFARS clauses apply to this Subcontract if the value of this Subcontract equals or exceeds \$700,000:**
- (a) 252.225-7004 REPORTING OF INTENDED PERFORMANCE OUTSIDE THE UNITED STATES AND CANADA – SUBMISSION AFTER AWARD
4. **The following DFARS clauses apply to this Subcontract if the value of this Subcontract equals or exceeds \$1,500,000:**
- (a) 252.211-7000 ACQUISITION STREAMLINING (Note 1 applies). Seller must flow this clause down to all subcontracts, at all tiers, over \$1.5 million awarded in support of this Subcontract.
5. **The following DFARS clauses apply to this Subcontract as indicated:**
- (a) 252.204-7000 DISCLOSURE OF INFORMATION
  - (b) 252.215-7000 PRICING ADJUSTMENTS. Applicable if FAR § 52.215-12 or § 52.215-13 applies to this Subcontract.
  - (c) 252.219-7003 SMALL BUSINESS SUBCONTRACTING PLAN (DoD CONTRACTS). Applicable if FAR § 52.219-9 applies to this Subcontract. The FAR clause, 52.219-9, which this clause supplements, is a mandatory flow down clause.

- (d) 252.222-7000      **RESTRICTIONS ON EMPLOYMENT OF PERSONNEL.** Seller must flow this clause down to all subcontracts at all tiers.
  
- (e) 252.223-7001      **HAZARD WARNING LABELS.** Applicable if this Subcontract requires the delivery of hazardous materials.
  
- (f) 252.223-7002      **SAFETY PRECAUTIONS FOR AMMUNITION AND EXPLOSIVES.** Applicable only if the articles furnished under this Subcontract contain ammunition or explosives, including liquid and solid propellants. Notes 2, 3, and 5 apply to paragraphs g(1)(i) and e(1)(ii). Note 3 applies. Delete “prime” in g(1)(ii) and add “and Buyer’s Subcontract Administrator”. Delete in g(1)(ii) “substituting its name for references to the Government”). Seller must flow this clause down to all subcontracts at all tiers which involve ammunition or explosives except for those involving inert components.
  
- (g) 252.223-7003      **CHANGE IN PLACE OF PERFORMANCE - AMMUNITION AND EXPLOSIVES.** Applicable if DFARS 252.223-7002 applies to this Subcontract. Notes 2 and 4 apply.
  
- (h) 252.223-7006      **PROHIBITION ON STORAGE AND DISPOSAL OF TOXIC AND HAZARDOUS MATERIALS.** Seller must flow this clause down to all subcontracts, at all tiers, which requires, may require, or permits a subcontractor to treat or dispose of non DoD-owned toxic or hazardous materials as defined in this clause.
  
- (i) 252.223-7007      **SAFEGUARDING SENSITIVE CONVENTIONAL ARMS, AMMUNITION, AND EXPLOSIVES.** Applicable if this Subcontract is for the development, production, manufacture, or purchase of arms, ammunition, and explosives or when arms, ammunition, and explosives will be provided to Seller as Government Furnished Property. If any subcontract, at any tier, involves the development, production, manufacture, or purchase of AA&E, or if AA&E will be provided to the subcontractor as GFP, at any tier, Seller must flow this clause down at every tier.
  
- (j) 252.223-7008      **PROHIBITION OF HEXAVALENT CHROMIUM.** Seller shall include the substance of this clause in all subcontracts, at all tiers, for suppliers, maintenance and repair services, or construction materials.
  
- (k) 252.225-7001      **BUY AMERICAN ACT AND BALANCE OF PAYMENTS PROGRAM.** Applicable in lieu of FAR § 52.225-1 and FAR § 52.225-5 if the Work contains other than domestic components.
  
- (l) 252.225-7003      **REPORT OF INTENDED PERFORMANCE OUTSIDE THE UNITED STATES AND CANADA – SUBMISSION WITH OFFER.** Applicable if (1) the offer exceeds \$12.5 million in value; and (2) the offeror is aware that the offeror or a first tier subcontractor intends to perform any part of the contract outside the United States and Canada that exceeds \$650,000 in value and could be performed inside the United States or Canada.
  
- (m) 252.225-7016      **RESTRICTION ON ACQUISITION OF BALL AND ROLLER BEARINGS.** Applicable if the Work supplied under this Subcontract contains ball or roller bearings. Note 2 applies. Seller must include this clause in all subcontracts and purchase orders at all tiers, unless items acquired are: (1) commercial items other than ball or roller bearings or; (2) items that do not contain ball or roller bearings.
  
- (n) 252.225-7021      **TRADE AGREEMENTS.** Applicable in lieu of FAR § 52.225-1 and FAR § 52.225-5 if the Work contains other than domestic components.

- (o) 252.225-7033 WAIVER OF UNITED KINGDOM LEVIES. Applicable if this Subcontract is with a United Kingdom firm. Note 2 applies. Note 3 applies to the second reference to "U.S. Government" in paragraph (a)). Seller must flow this clause down to all tiers where a lower tier subcontract exceeding \$1 million with a U.K. firm is anticipated.
- (p) 252.225-7043 ANTI-TERRORISM/FORCE PROTECTION POLICY FOR DEFENSE CONTRACTOR OUTSIDE THE UNITED STATES. Applies where Seller will be performing or traveling outside the U.S. under this Subcontract. For paragraph (c), see applicable information cited in DFARS § 225.7401.
- (q) 252-226-7001 UTILIZATION OF INDIAN ORGANIZATIONS, AND INDIAN-OWNED ECONOMIC ENTERPRISES AND HAWAIIAN SMALL BUSINESS CONCERNS. Applies only when included in Buyer's Prime Contract and if this Subcontract is more than \$500,000. In (f)(1), "Contractor" shall mean "Buyer". Note 2 applies to (c) the first time "Contracting Officer" appears).
- (r) 252.227-7012 PATENT LICENSE AND RELEASE CONTRACT. Whenever any technical data for noncommercial items is to be obtained from a subcontractor or supplier for delivery, Seller shall use this same clause in the subcontract or other contractual instrument, and require its subcontractors or suppliers to do, without alteration, except to identify the parties.
- (s) 252.227-7015 TECHNICAL DATA – COMMERCIAL ITEMS
- (t) 252.227-7026 DEFERRED DELIVERY OF TECHNICAL DATA OR COMPUTER SOFTWARE
- (u) 252.227-7027 DEFERRED ORDERING OF TECHNICAL DATA OR COMPUTER SOFTWARE
- (v) 252.227-7030 TECHNICAL DATA – WITHHOLDING OF PAYMENT
- (w) 252.227-7038 PATENT RIGHTS – OWNERSHIP BY THE SUBCONTRACTOR (LARGE BUSINESS)
- (x) 252.235-7003 FREQUENCY AUTHORIZATION. Applicable if this Subcontract requires developing, producing, constructing, testing, or operating a device requiring a frequency authorization. Note 2 applies. If the Subcontract calls for the developing, producing, testing, or operating a device for which a radio frequency authorization is required, this clause must be flowed down to all tiers (except for commercial items).
- (y) 252.211-7007 REPORTING OF GOVERNMENT-FURNISHED EQUIPMENT in the DoD Unique Identification (IUID) Registry
- (z) 252.225-7007 PROHIBITION ON ACQUISITION OF UNITED STATES MUNITIONS LIST ITEMS FROM COMMUNIST CHINESE MILITARY COMPANIES. Seller shall include this clause in all subcontracts, at all tiers, for items covered by the United States Munitions List.
- (aa) 252.225-7013 DUTY FREE ENTRY. Seller must flow this clause down, to all tiers, for qualifying country components; or non-qualifying country components for which Seller estimates that the duty will exceed \$200 per unit.
- (ab) 252.244-7000 SUBCONTRACTS FOR COMMERCIAL ITEMS AND COMMERCIAL COMPONENTS (DOD CONTRACTS). Seller shall include the terms of the listed

clauses, if applicable, in subcontracts, at all tiers, for commercial items or commercial components.

(ac) 252.246-7001 WARRANTY OF DATA

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