



TERMS AND CONDITIONS OF PURCHASE

1. ACCEPTANCE. The terms and conditions hereof become the exclusive and binding agreement between Cogmedix, Inc. ("Buyer", "Purchaser" or "Owner") and the party to whom a Purchase Order is directed ("Seller") covering the purchase of the products or services ordered herein when an order is accepted by acknowledgement or commencement of performance THE GOODS OR SERVICES SET FORTH ON THE PURCHASE ORDER MUST BE SUPPLIED ONLY ON THESE TERMS AND CONDITIONS. ADDITIONAL OR DIFFERENT TERMS PROPOSED BY SELLER BY ACKNOWLEDGEMENT HEREOF WILL NOT BE APPLICABLE UNLESS ACCEPTED IN A SIGNED WRITING BY THE BUYER. ACCEPTANCE OF THE PRODUCTS OR SERVICES DELIVERED UNDER AN ORDER SHALL NOT CONSTITUTE ACCEPTANCE OF SELLER'S TERMS AND CONDITIONS. No change modification or revision of an order shall be effective unless in writing and signed by the Buyer's duty authorized purchasing representative or officer. For avoidance of doubt, THE PURCHASE ORDER IS EXPRESSLY LIMITED TO, AND EXPRESSLY MADE CONDITIONAL ON, SELLER'S ACCEPTANCE OF THE TERMS OF THE ORDER AND THESE PURCHASE ORDER TERMS AND CONDITIONS. BUYER OBJECTS TO ANY DIFFERENT OR ADDITIONAL TERMS.

2. DEFINITIONS. If this Purchase Order is issued in whole or in part for services to be rendered to Buyer or its customer, the term "goods" or "products" as used herein shall, where context requires or permits, be deemed to include such services.

3. PRICES. Seller warrants that the prices to be charged for products or services identified on the Purchase Order are not in excess of prices charged to other customers for similar quantities and delivery requirements. Any price decrease applicable to the products or services that are similar to the products or services ordered herein shall automatically reduce the unit price of the unshipped products or services not yet rendered by a comparable percentage at the time of the price decrease.

4. INVOICES. Invoices shall include the following information: Purchase Order number, product number, description of products, sizes, quantities, unit prices, and extended totals in addition to any other information specified on the Purchase Order. Bill(s) of Lading shall accompany each invoice. In addition, for any invoice labeled as a government contract, no invoice will be passed for payment unless it contains the following certification: "The Seller herein represent that the products and services covered hereby were produced in compliance with the requirements of the Fair Labor Standards Act of 1938, as amended. Seller specifically warrants that it is in compliance with 41 CFR 60-1.4(a), 60-300.5(a), 60-741.5(a) and 29 CFR Part 471, Appendix A to Subpart A or other regulations related to Office of Federal Contract Compliance Programs." Payment of invoice shall not constitute acceptance of products and shall be subject to adjustment for errors, shortages, defects in the products, or other failure of Seller to meet the requirements of the order. Buyer may, at any time, set off any amount owned by Seller or any of its affiliated companies to Buyer.

5. CASH DISCOUNTS. In connection with the discount, if any, offered by Seller for prompt payment, time will be computed from the latest of: (i) the schedule delivery date (ii) the date of actual delivery, or (iii) the date an acceptable invoice is received. Payment is deemed to be made for the purpose of earning the discount on the date of mailing of the Buyer's check. In addition to any other payment discount offered by Seller, Buyer shall receive a discount of three percent (3%) if Buyer makes payment within ten (10) days of the date determined by the formula recited in this section.

6. PAYMENTS. All payments shall be 3% 10 net 45 from the latest of: (i) the schedule delivery date (ii) the date of actual delivery, or (iii) the date an acceptable invoice is received.

7. TIME OF DELIVERY. **TIME IS OF THE ESSENCE WITH THIS ORDER.** Delivery shall be made no later than the time of delivery stated on the Purchase Order, or if no time is stated, then the time shall be the quickest time of the following: (i) any time quoted by Seller to Buyer; (ii) the fastest time that Seller has delivered the same or similar products to any buyer, including Buyer; (iii) the customary time based on past dealings between the parties; (iv) the customary time in the industry.



8. **TAXES AND EXPENSES.** The prices set forth in the Purchase Order include all applicable Federal, State, and local taxes and miscellaneous charges, including, but not limited to, duties, customs, tariffs, imports, and surcharges. All such taxes and charges shall be stated separately on Seller's invoice.
9. **OVERSHIPMENTS.** Buyer reserves the option to return at Seller's expense any shipment of products either in excess of the amount stated on the face of an order, or in advance of the agreed upon schedule. Such shipments will be held at Seller's risk and expense including reasonable storage charges while waiting for shipping instructions. Return shipping charges for excess quantities will be at Seller's expense. Material for which return shipping instructions are not received within a reasonable time, may be destroyed or sold by Buyer at public or private sale and the proceeds, if any, applied toward storage charges.
10. **PACKING AND SHIPMENT.** Unless otherwise specified, when the price of an order is based on the weight of the ordered products, such price is to cover net weight of products ordered only and no charge will be allowed for boxing, crating, crating damage, storage or other packing requirements or any allowance for damage in connection with the foregoing. Unless otherwise specified, all products shall be packed, packaged, marked, and otherwise prepared for shipment in a manner which is: (i) in accordance with good commercial practice, (ii) acceptable to common carriers for shipment at the lowest rate for the particular products and in accordance with ICC regulations, and (iii) adequate to insure safe arrival of the products at the named destination and for storage and protection against weather. Seller shall mark all containers with necessary lifting, handling, and shipping information and also, Purchase Order numbers, date of shipment, and the names of the consignee and consignor. An itemized packaging sheet must accompany each shipment unless otherwise specified. No partial or complete delivery shall be made hereunder prior to the date or dates shown unless Buyer has given prior written consent.
11. **DELIVERY AND RISK OF LOSS.** Unless otherwise specifically provided on the face of an order, the products called for hereunder shall be delivered DDP (Incoterms 2010) to the Buyer's designated plant or plants. Notwithstanding any prior inspections and irrespective of the delivery point named herein, the Seller shall bear all risks of loss, damage, or destruction on the products called for hereunder until final acceptance by Buyer at destination. Further, the Seller shall also bear the same risks with respect to any product rejected by Buyer, provided however, that in either case, the Buyer shall be responsible for any loss occasioned by the gross negligence of its employees acting within the scope of their employment.
12. **WARRANTY.**
- (a) Seller warrants that all products delivered hereunder including all components and raw materials incorporated therein, as well as products corrected under this warranty, shall be new, free from defects in workmanship, materials, and manufacture, shall comply with the requirements of these terms and conditions and compliant with any drawings or specifications incorporated herein or to any samples furnished by Seller, and where design is Seller's responsibility, be free from defects in design. Seller further warrants all products purchased hereunder shall be of merchantable quality and shall be fit and suitable for the purpose intended by Buyer. The foregoing warranties are in addition to all other warranties, whether expressed or implied, and shall survive delivery, inspection, acceptance or payment by Buyer.
 - (b) If any products delivered hereunder do not meet the warranties specified herein or otherwise applicable, Buyer may, at its election: (i) require the Seller to promptly correct, at no cost to Buyer, any defective or non-conforming products by repair or replacement, at the location as specified by Buyer, or (ii) return such defective non-conforming products at Seller's expense to the Seller and recover from the Seller the order price thereof. The foregoing remedies are in addition to all other remedies at law or in equity or under an order, for damages or otherwise shall not be deemed to be exclusive. All warranties shall run to the Buyer and to its customers.
 - (c) Buyer's approval and/or acceptance of the Seller's product or design shall not relieve Seller of the warranties set forth in this clause, nor shall waiver by Buyer of any drawing or specification requirement for one or more of the products constitute a waiver of such requirements for the remaining products to be delivered hereunder unless so stated by Buyer in writing. The provisions of the clause shall not limit or affect the rights of the Buyer under the clause hereof entitled: "Inspection."



- (d) Claims by Buyer under this warranty may be exercised any time within a minimum period of two years after final acceptance unless specifically agreed otherwise in writing.
- (e) These warranties are in addition to any other warranties included herein.

13. INSPECTION.

- (a) All products purchased hereunder shall be subject to inspection and test by Buyer and to all of Buyer's customers to the extent practicable at all times and places during and after the period of manufacture and, in any event, prior to final acceptance. If inspection or test is made by Buyer on Seller's premises, Seller without additional charge shall provide all reasonable facilities and assistance for the safety and convenience of Buyer's inspectors. No inspection or test made prior to final acceptance shall relieve the Seller from responsibility for defects or other failure to meet the requirements of an order.
- (b) In case any product is defective in material or workmanship, or otherwise not in conformity with the requirements of the Purchase Order, Buyer shall have the right either to reject it, require its correction, or conditionally accept it. Buyer reserves the right to return such conditionally accepted products for credit, within a reasonable period of time after receipt in the event that Buyer determines that such products are unsuitable for its purposes. Any product which has been rejected or required to be corrected shall be rejected or corrected by and at the expense of the Seller promptly after notice. If, after being requested by Buyer, the Seller fails to promptly replace or correct any defective product within the delivery schedule, Buyer: (i) may by contract or otherwise, replace or correct such product, and charge to the Seller cost occasioned thereby, (ii) may without further notice terminate an order for default in accordance with the clause hereof entitled "Termination For Default," or (iii) may utilize the deficient product and require an appropriate reduction in price.
- (c) Notwithstanding any prior inspections or payments hereunder, all products shall also be subject to final inspection and acceptance at Buyer's plant within a reasonable time after delivery. Determination of a reasonable time shall take into consideration the nature and complexity of the services performed or goods delivered, but in no event shall such time be less than forty-five (45) days. The Seller shall provide and maintain an inspection system that is acceptable to Buyer. Records of all inspection work shall be kept complete and available to Buyer during the performance of an order and for such further period as the Buyer may determine. Inspections and tests by the Buyer and/or Government do not relieve the Seller of responsibility for defects or other failures to meet Purchase Order requirements discovered before acceptance. No inspection, test, delay, failure to inspect or test, or failure to discover any defect or other nonconformance shall relieve Seller of any of its obligations under this Purchase Order or impair any rights or remedies of Buyer or Buyer's customers.
- (d) Buyer may accept or reject shipments in accordance with its established lot inspection procedures. Where rejection of shipment is appropriately based on Buyer's normal inspection level, then (i) upon Seller's request, and at Seller's sale cost Buyer may elect at its option to conduct 100% testing of such shipment or (ii) where such rejection endangers Buyer's production schedules by reason of the fact that at least some of the products are necessary to meet such production schedules, then Buyer, at its option may charge Seller for the reasonable costs of an above normal level of inspection up to and including 100% inspection of such shipment.. Notice of rejection may be given in any reasonable form, including but not limited to Quality Notifications, Discrepancy Reports, Inspection Reports, Engineering review sheets, annotations on Shipping Instructions or communications via telephone, e-mail, facsimile, or other correspondence.

14. CHANGES. The Buyer may at any time, by a written order, and without notice to sureties or assignees, suspend performance hereunder, increase or decrease the ordered quantities, or make changes in any one or more of the following: (i) Applicable drawing, designs or specifications; (ii) Method of shipment or packing, and or (iii) Place of delivery. If any such change causes an increase or decrease in the cost of, or the time required for performance of an order, an equitable adjustment shall be made in the order price or delivery schedule or both, and the order shall be modified in writing accordingly. No claim by the Seller for adjustment hereunder shall be valid unless asserted in writing accompanied by an estimate of costs within twenty (20) days from the date of receipt by the Seller of the notification of change and in any event, Seller must submit its final claim in writing supporting documentation within the next succeeding twenty (20) day period. Failure of the Seller to either (i) assert a claim within twenty (20) days or (ii) submit a final claim within the next succeeding twenty (20) days as provided above,



shall constitute and unconditional and absolute waiver by the Seller of any rights to make a claim for adjustment. Buyer reserves the right to verify claims hereunder and Seller shall make available to Buyer, upon its request, all relevant books, records, inventories, and facilities for its inspection and audit.

15. TERMINATION FOR DEFAULT.

- (a) It is understood and agreed that time is of the essence under an order or any extension thereof affected by any change order. Buyer may, by written notice, terminate an order in whole or in part if the Seller fails (i) to make delivery of the products or to perform their services within the time specified herein, or any extension thereof by written change order or amendment, or (ii) to replace or correct defective products in accordance with the provisions of those clauses hereof entitled "Warranty" and "Inspection," or (iii) to perform any of the other provisions of an order or to so fail to make progress as to endanger performance in accordance with the terms hereof, including delivery schedules, or (iv) if Seller becomes insolvent, admits in writing its inability to pay its debts as they mature, files a voluntary petition in bankruptcy, makes an assignment for the benefit of creditors or a petition under any bankruptcy law is filed against it.
- (b) In the event of termination pursuant to this clause, Buyer may procure upon such terms and in such manner as Buyer may deem appropriate, products or services similar or substantially similar to those so terminated and Seller shall be liable to Buyer for any express costs occasioned Buyer thereby, provided that in the event, Buyer elects to terminate only a portion of an order to the extent not terminated.
- (c) If an order is terminated pursuant to paragraph (a), Buyer, in addition to any other rights provided herein, may require the Seller to transfer title and delivery to Buyer in the manner, time and the extent directed by Buyer: (i) any completed products, and (ii) such partially completed products and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights as the Seller has produced or acquired for the performance of the terminated part and, (iii) Seller shall grant Buyer a royalty-free, assignable non-exclusive license to use and license other's to use Seller's designs processes, drawings, and technical data substantially relating to the quantity of the products terminated hereunder. Seller shall upon direction of Buyer, protect and preserve property as encompassed in this paragraph in the possession of Seller. Payment for completed products delivered to and accepted by Buyer shall be in an amount agreed upon by the Seller and Buyer, however, such an amount shall not exceed the order price per unit and Seller's obligation hereunder to carry out Buyer's direction as to delivery protection and preservation shall not be contingent upon prior agreement as to such amount.
- (d) If Buyer issues a notice of termination for default and it is subsequently determined that Buyer's termination under this clause is inappropriate, the termination shall be deemed by Buyer and Seller to have been originally issued under Clause 16 (Termination for Convenience) and the rights and liabilities of the parties hereto shall in such event, be governed by such clause.
- (e) Failure of Buyer to enforce any right under this clause shall not be deemed a waiver of any other rights and remedies provided by law or under an order. In the event Seller becomes insolvent, admits in writing its inability to pay its debts as they mature, files a voluntary petition in bankruptcy, makes an assignment for the benefit of creditors or if a petition under any bankruptcy laws is filed against it, Buyer reserves the right in its sole discretion at any time to require adequate assurance of future performance in such form as Buyer may specify, and if such assurance is not given to Buyer promptly, Buyer shall have the right to terminate this agreement in whole or in part forthwith.

16. TERMINATION FOR CONVENIENCE

- (a) Buyer may terminate work under this Purchase Order in whole or from time to time in part, by the giving of written notice to Seller specifying the extent to which performance of work is terminated, and the time of which such termination becomes effective.
- (b) After receipt of such notice and except as otherwise directed by Buyer, the Seller shall stop work under an order to the extent specified in the notice of termination
- (c) Within thirty (30) days after receipt of the notice of termination, the Seller shall submit to Buyer its written termination claim. Failure of the Seller to submit its termination claim as provided herein shall constitute an unconditional and absolute waiver by the Seller of any claim arising from the Buyer's notice of termination.



- (d) Seller shall reasonably assess costs for raw materials, work in process and sub-assemblies as may be included within its termination claim to determine whether or not such items may be used by Seller for the manufacture of associated products or diverted for any other purpose and to correspondingly reduce its termination claim by the value of such items when settlement has been made. Title to any of such items determined not usable by Seller and charged to Buyer in the termination claim shall vest in Buyer upon payment of the claim and shall forthwith be delivered to Buyer.
- (e) Seller's termination claim shall consist solely of the following:
 - (1) Completed products accepted by Buyer that have not been paid. Such complete products shall have a cost obtained by multiplying the number of such products by the unit price therefore as specified in an order
 - (2) Work in process shall not exceed that amount which has been previously released by a formal mechanism from the Buyer in addition to the purchase order. Such amounts shall not include any costs attributable to Seller's products paid or to be paid under subparagraph (e) (1) and shall not exceed the amount that would be paid pursuant to the unit cost on the purchase order.
 - (3) The total sum to be paid to the seller under subparagraph (e) (1) and (2) above, shall not exceed the total order price reduced by the amount of payments otherwise made and as further reduced by the price work not terminated under an order.
- (f) In no event shall Seller be entitled to incidental or consequential damages, anticipated or projected profits, costs of preparing claims, attorney's fees, costs of tooling or equipment of sales, or agent's commissions on the terminated quantity.
- (g) Buyer reserves the right to verify claims hereunder and Seller shall make available to Buyer upon its request, all relevant books, records, inventories and facilities for its inspection and audit. In the event Seller fails to reasonably afford Buyer its rights hereunder, then Seller shall be deemed to have relinquished its claim asserted under the provisions of this clause.

17. **WAIVER.** The failure of Buyer to enforce at any time any of the provisions of an order, or to exercise any election or option provided herein, or to require at any time performance by the Seller of any of the provisions hereof, shall in no way be construed to be a waiver of such provisions, nor in any way to affect the validity of an order or any part thereof, or the right of Buyer thereafter to enforce each and every such provision.

18. **PATENTS, ROYALTIES, AND ENCUMBRANCES.** All products supplied must be free from claims of others with respect to royalties, patent rights and mechanics liens, or other encumbrances and charges. Seller agrees to indemnify and hold harmless the Buyer against all claims, demands, costs and actions for actual or alleged infringements of patent rights in the use, sale or resale of said products.

19. **INDEMNIFICATION.** The Seller shall defend (including payment of attorney's fees and litigation costs), indemnify, protect and hold harmless Buyer and Buyer's customers from: (i) all claims relating to Seller's breach of this contract or any order, (ii) patent infringements resulting from products or services produced hereunder, (iii) bodily injury/death and/or property damage related to products, services or any of Seller's performance of this contract or any order, (iv) problems resulting from late delivery of products or services; (v) loss of use of products; (vi) Seller's negligence or other action or inaction giving rise to any injury; (vii) the use of counterfeit parts in products; (viii) costs of government inquiries and fees related to Seller's performance hereunder; (viii) product liability claims (even if Buyer has been advised of the problems) arising from any product produced hereunder and (ix) any other loss (whether in contract, tort or other cause of action) related to this contract or any order, including, but not limited to, penalties for late delivery as a result of Seller's direct or indirect actions and the costs associated with removing and replacing counterfeit parts.. The Buyer shall notify the Seller of any claim, in a timely manner, and at Seller's request provide technical or access to pertinent information in support of Seller's defense. Seller shall reimburse Buyer for all expenses including expenses for attorney's fees and other costs of litigation. The indemnification obligation of this section shall be in addition to any other indemnification obligations in this agreement, and the remedy allowed herein shall be at no cost to Buyer

20. **BUYER'S PROTECTION IN CONNECTION WITH WORK DONE AT ITS PLANT.** The Seller shall take such steps as may be reasonable, or necessary, to prevent personal injury or property damage during any work hereunder that may be performed by any employees, agents or subcontractors of the Seller at the Buyer's plant and



the Seller shall indemnify and hold harmless the Buyer from and against all loss liability and damages arising from or caused directly or indirectly by any act or omission of such agents, employees, or subcontractors of the Seller, and Seller shall maintain such insurance against public liability and property damage, and such Employees Liability and Compensation and Occupational Disease acts.

21. **COMPLIANCE WITH LAWS.** The Seller warrants that no law, rule or ordinance of the United States, a state or any other governmental agency has been violated in the manufacture or sale of the products or in the performance of services covered by an order, and will defend and hold Buyer harmless from loss, cost, or damage as a result of any such actual or alleged violation. Upon written request by Buyer, Seller agrees to execute and furnish a certification of compliance, which may be on Buyer's form and which shall certify compliance with any applicable Federal, State or Local Laws or Regulations, including, but not limited to FLSA, EEO, OSHA, ROHS and any Economic Control Statutes or Regulations. Seller further agrees to abide by any and all other laws and regulations relating to the confidentiality, non-disclosure or privacy of the information. This covenant shall be in addition to any covenant made by the Seller related to abiding by any laws and shall not create the cancellation of any agreement. Except for those specifically identified in the Purchase Order as not the responsibility of the Seller, Seller agrees that it shall obtain, and shall require its lower-tier subcontractors to obtain, all necessary permits and licenses required for performance of the work under this Purchase Order; pay all fees and other charges required, and shall comply with all applicable laws, codes, regulations, guidelines and directives of any local, State, and/or Federal governmental authority. If work is to be performed outside the U.S., this includes compliance with those of the foreign country; however, this does not authorize any breach of U.S. law to comply with foreign laws, etc. Any such potential conflicts shall immediately be brought to the attention of the Buyer. The cost of such permits, licenses, and compliance is deemed to be included in the cost or price stated in this Purchase Order. This includes, but is not limited to, those in connection with import and export control as well as though in connection with any movement over the public highways of overweight/over-dimensional materials. Seller agrees to insert the substance of the above paragraph in all lower-tier subcontracts under this Purchase Order. Seller agrees to indemnify and hold the Buyer harmless to the full extent of any loss, damages, and expenses, including reasonable attorney's fees, incurred by Buyer as a result of Seller's or its subcontractor's failure to obtain the required permits and licenses for which they are responsible or failure to comply with any Federal, State, or local law or regulation. Seller shall immediately notify Buyer in writing if any permits, licenses, and/or approvals that Seller is required to obtain in performance of this Order are denied, withheld, suspended, revoked, or expired prior to completion of all work required by this Order and its terms. Seller certifies and guarantees that the goods supplied hereunder are in compliance with applicable sections of the Federal Hazardous Substances Act (15 U.S.C. Sec. 2051 et. seq.) as amended, and the Consumer Product Safety Act (15 U.S.C. Sec. 1261 et. seq.) as amended, and lawful standards and regulations thereunder. In accepting an Order Seller represents that the goods to be furnished thereunder were or will be produced in compliance with the requirements of the Fair Labor Standards Act of 1938, as amended, including Section 12(a). Seller shall provide certificates of origin relating to the goods purchased hereunder within the meaning of the rules of origin of the NAFTA preferential duty provisions, which will include a statement as to whether the goods in question were produced in the United States, Mexico, or Canada, or, if the country of origin or manufacture is not NAFTA eligible, then a statement as to the country of origin or manufacture.

22. **GRATUITIES.** Seller warrants that it has not offered or given and will not offer or give to any employee, agent or representative of Buyer, any gratuity with a view toward securing any business from Buyer or influencing such person with respect to the terms, conditions of performance of any contract with or order from Buyer. Any breach of this warranty shall be a material breach of each and every contract between Buyer and Seller. Seller further agrees to implement all ethical practices included in other sections of this contract.

23. **ASSIGNMENTS AND SUBCONTRACTS**

- (a) Seller shall provide Buyer with prior written notice of the prospective award of all significant subcontracts placed by Seller under this Purchase Order. Significant subcontracts are those that are expected to equal or exceed \$500,000 or 50% of the value of this Purchase Order, whichever is lesser.
- (b) Except as may be specifically provided in this Purchase Order, Seller shall not acquire facilities hereunder and Seller shall not direct charge to this Purchase Order the cost of any facility or the alteration to a facility. For the purpose of this requirement, facilities means industrial property (other than material, special tooling, military property, and special test equipment) for production,



maintenance, research, development or test, including real property and rights therein, buildings, structures, improvements, and plant equipment as defined in FAR Part 45.101 and 45.301 and DFARS 245.301.

- (e) Seller shall not subcontract with parties that are debarred, suspended, proposed for debarment, or otherwise declared ineligible for the award of any contracts by any Federal Agency without the prior written approval of the Buyer and the Buyer's Customer.

24. **BUYER-FURNISHED PROPERTY.** All tools or other materials furnished by the Buyer for use in the performance of an order shall remain the property of the Buyer (or of the Buyer's customer as the case may be), shall be used by the Seller in the performance of an order only in accordance with the requirements of the order relating to such use and shall be returned to the Buyer when requested upon the completion or termination of the order to the extent not previously delivered to the Buyer. Seller agrees to exercise reasonable care in the safeguarding and preservation of all Buyer-furnished property and assumes all responsibility for loss, damage or destruction with such property that is within his possession or control.

- (a) Property furnished as-is. If Buyer, Government or Buyer's Customer property is furnished in conjunction with this Purchase Order, it shall be furnished "as is."
- (b) Risk of loss or damage. Unless otherwise noted in the Purchase Order, Seller shall assume the risk of, and be responsible for, any loss, destruction of or damage to property provided to Seller by the Buyer or the Government while such property is in Seller's possession or control.
- (c) Excluding property authorized to be consumed in the performance of this Purchase Order, Seller shall return such property in as good a condition as when received except for reasonable wear and tear, or in the case of property to be overhauled or repaired, in such better condition as may be required by the terms of this Purchase Order.

25. **PATENT LICENSE AND RIGHTS IN WORK PRODUCT.** The Seller, as part consideration for this Purchase Order and without further cost to the Buyer, hereby grants and agrees to grant to the Buyer and to the extent requested by the Buyer to any of Buyer's customers, an irrevocable non-exclusive, royalty-free right and license, with a right to grant sublicenses, to use, sell, offer for sale, import, manufacture and cause to be manufactured, the products or other products embodying any and all inventions and discoveries that was produced resulting from any pre-existing intellectual property of any and all parties. Where Seller's performance on this Purchase Order will result in a unique or customized work product or any work product that was not previously sold in the exact same configuration to any other party, the Seller hereby assigns and agrees to assign all rights and interest to the design, layout, pattern, or arrangement of that work product, and any other intellectual property right arising from such customized order. For works capable of obtaining copyright protection in any jurisdiction in the world, Buyer and Seller hereby agree that all such works shall be treated as Works Made for Hire pursuant to United States copyright law. Unless specified to be delivered under this Purchase Order and unless properly marked in accordance with any other clause in this agreement or addendum to this agreement, Seller shall not provide or disclose any equipment, information, technical data, computer software or computer software documentation ("Information") to Buyer or its representatives that Seller considers to be proprietary, business sensitive, confidential, or to have limited or restricted rights. Seller shall not incorporate any such proprietary, business sensitive, or limited rights Information into any item proposed to be manufactured, produced, or delivered under this Purchase Order without notifying Buyer in advance and receiving Buyer's prior written concurrence. Unless properly marked and in the absence of an appropriate written agreement to the contrary, except as stated above, no information (including knowledge or information about Seller's products, methods, or manufacturing processes which Seller may disclose to Buyer incident to the performance of the work under this order) furnished to Buyer (whether documentary, oral, visual or otherwise) shall be considered confidential or proprietary or require any particular handling or precaution or have any restriction on Buyer's right to use, modify, reproduce, perform, display, release, or disclose such information in whole or in part, in any manner, and for any purpose whatsoever, and to have or authorize others to do so. Accordingly, such Information shall be deemed to be acquired free from any restrictions and shall be deemed to have been disclosed as part of the consideration for this Purchase Order and Seller agrees not to assert any claim (other than a claim for patent infringement) against Buyer by reason of Buyer's use or alleged use thereof. It is Seller's responsibility to control its employees inadvertent disclosure to Buyer of Information not intended to be disclosed.



26. SPECIAL TOOLING. If special tooling used in the performance of an order has been charged to an order, or to an order and other orders placed by this Buyer, title to such special tooling shall vest in the Buyer, at the option of the Buyer. Such tooling is to be used only in the performance of such Purchase Orders unless otherwise approved by the Buyer. The Seller agrees that it will follow normal industrial practice in the identification and maintenance of the property control records on all such tooling and will make such records available for inspection by the Buyer or the Government at all reasonable times. After the termination or completion of such order(s) and upon the request of the Buyer, the Seller shall furnish a list of such tooling in the form requested and shall make such tooling available for disposition by the Buyer. Seller shall provide Buyer with written notice, at least sixty (60) days in advance, of Seller's intention to acquire or fabricate special test equipment in support of the requirements under this Purchase Order. If property/material is provided for use on this Purchase Order (or charged to a cost reimbursement or time and materials order), Seller shall maintain and administer, in accordance with FAR part 45.5, a program for the utilization, maintenance, protection, preservation and accountability of such property/material, and Seller shall comply with all applicable provisions of FAR part 45 regarding the use, control, and responsibility for such Government property.

27. FORCE MAJEURE. Except as otherwise provided in this Purchase Order, Seller shall, at all times, proceed diligently to properly perform this Purchase Order. In the event of an actual or potential delay, or failure of performance because of acts of God, or other causes beyond Seller's control, including but not limited to, labor disputes, Seller shall immediately give notice thereof to Buyer in the event of any of the foregoing

- (a) Late Delivery - Seller shall provide Buyer prompt written notice of any events that will or could cause a delay in delivery under the Purchase Order; and
- (b) Labor Disputes - If the Seller has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this Purchase Order, the Seller shall immediately give written notice, including all relevant information, to the Buyer; and
- (c) Other Delays - Seller shall provide Buyer prompt written notice, including relevant information, when it has knowledge that any permits, licenses, or other approvals required for the performance of this Purchase Order and that are to be obtained by Seller are unable to be obtained or have expired, been cancelled, suspended, revoked, or otherwise rendered invalid.
- (d) This notice shall be informational only, and shall in no way affect the rights or remedies available to Buyer. Buyer has the option of either (i) extending time of performance or (ii) terminating the uncompleted portion of the order at no cost to Buyer.

28. CHANGES IN PROCESS; METHOD; OR LOCATIONS OF MANUFACTURING. Seller agrees that it will not invoice or implement any changes in location, process, or method of manufacturing during their term of an order without Buyer's written consent. Seller further agrees that any contemplated changes in location, process or method of manufacturing will be submitted to Buyer in sufficient time to enable Buyer a reasonable opportunity in which to evaluate such changes. In the event the Seller is providing or proposing to provide to the Buyer an item: (i) that has previously been provided to the Navy for inclusion as Government Furnished Material (GFM) on a previous ship or Class of Ships, or (ii) that the Seller is developing for the Navy under this or another Government program, the Seller shall immediately notify Buyer in writing indicating any specification differences, waivers and/or deviations that were or are in effect for the item(s).

29. NOTICE. All notices to be given or served hereunder shall be given or serviced in writing either in person, by U.S. mail, postage prepaid, or by telegram. All such notices shall be effective upon receipt and addressed as follows:

To Buyer at: 17 Briden Street, Worcester, MA 01605

To Seller at: The address appearing on the Purchase Order or such other address that Buyer or Seller may advise from time to time.

30. INSPECTION OF RECORDS. If the Purchase Order bears an indication that the contract is a government contract, Seller agrees that its books, records and its plant, or such parts of its plant as may be engaged in the performance of an order, shall at all reasonable times be subject to audit and inspection by any authorized representative of any Department of the United States Government.



31. **REMEDIES.** Nothing in this Purchase Order shall be claimed or deemed to limit or exclude those remedies otherwise available to Buyer at law or in equity, and no disclaimers or modifications or attempted disclaimers or modifications of any express or implied warranties relating to the goods by Seller shall be valid or effective.

32. **CAPTIONS.** The captions used herein are for convenience of reference only and shall not be deemed as in any way limiting or extending the terms of the provisions to which such captions refer.

33. **DISPUTES.** Pending the final determination of any dispute arising in connection with an order, Seller will proceed with performance directed by Buyer.

34. **GOVERNMENT CONTRACTS.** When the materials or products furnished are for use in connection with a Government Contract or subcontract, or other applicable procurement instrument, in addition to the above provision, the terms of Exhibit A shall also apply. Any notice on the face of the purchase order indicating that the item is a government contract shall suffice for this purpose.

35. **SEVERABILITY.** The invalidity in whole or in part of any provision shall not affect the validity of any other provision.

36. **GOVERNING LAW, JURISDICTION AND VENUE:** This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts. Buyer and Seller irrevocably agree that all actions or proceedings in any way, manner or respect, arising out of or from or related to this Agreement, the services or any document, instrument or transaction in connection herewith or therewith shall be heard or litigated exclusively in courts having situs within the City of Worcester or part of the suburban area, Commonwealth of Massachusetts. Buyer and Seller consent and submit to the jurisdiction of any local, state or federal court located within said city, county and state and irrevocably waive any right to transfer or change venue of any such action or proceeding or object to the jurisdiction of any such court over the party hereto.

37. **MINORITY, DISABLED, SMALL BUSINESS, HUB-ZONE OR WOMEN OWNED BUSINESS.** Should the accompanying Purchase Order indicate the work must be done by a SOMWBA certified business, or should it contain any other legend regarding the ownership of the business, then Seller agrees and warrants that it shall have all such certifications prior to its beginning work on any item, and that no material change in ownership, control or net worth has occurred since any submission to Buyer.

38. **CONFIDENTIALITY AND NON DISCLOSURE.** Products purchased pursuant to Buyer's specifications or drawings shall not be quoted for sale to others without the Buyer's prior written authorization. Such specification, drawings, samples, or other data furnished by the Buyer shall be treated as confidential information by the Seller, shall remain Buyer's property and shall be promptly returned to Buyer upon request. Any publicity regarding an order (pictures, descriptions or samples thereof) is prohibited except with Buyer's written approval. Information, data, photographs, sketches, advertising, displays, promotional brochures, or other materials related to Work under this Purchase Order, which Seller desires to publish, display, or release internally, to other contractors, to Government agencies, or to the public, requires prior Buyer approval and shall be transmitted to the Buyer at least ten weeks prior to the desired printing or release date. Information and technical data described above may NOT be transmitted over the internet (except in certain cases when suitably encrypted and prior written approvals have been obtained) or posted to an internet home page. Posting information and/or technical data subject to export control on the Web is to be treated as tantamount to public disclosure. This includes descriptive or promotional material which links or relates, directly or indirectly, Seller's product line, manufacturing facilities, or manufacturing capabilities. As part of the approval request, Seller shall identify the specific media to be used, as well as other pertinent details of the proposed release. All releases, regardless of tier of supplier, must have prior written approval of the Buyer (and the Government, when required). Should any information described above be requested, subpoenaed, or otherwise sought by a court of competent jurisdiction or other judicial or administrative authority, this should be promptly brought to the attention of Buyer to permit appropriate measures to be taken to protect the information. Under no circumstances should this information be released to such authority without prior notification and agreement of the Buyer. Seller agrees that this requirement of prior Buyer approval of any release shall survive the



Purchase Order and that Seller shall not for a period of twenty years after issuance of this Purchase Order (or order extension period, if applicable) either directly or indirectly issue any such release without requisite approval of the Buyer, its successors, or assignees. Seller shall include all provisions of this article including this sentence in all lower-tier subcontracts under this Purchase Order. Release or publication of any information, data, speeches, advertisements, press releases, photographs, promotional brochures, technical papers, and the like that is related to the material or services produced or provided in performance of this Purchase Order, as well as reference Columbia Electrical Contractors, Inc. and its parent, Coghlin Companies, Inc. or any of their officers, agents, customers and employees, is prohibited unless prior Buyer written authorization for release or publication has been requested and obtained by Seller in writing. Any terms of a confidentiality agreement or Non-Disclosure Agreement between the parties will remain in full force and effect and shall not be altered by this Purchase Order. Buyer agrees to follow all additional terms in this agreement regarding the security of the data.

39. EHS. Seller represents, warrants, certifies and covenants that: (1) It shall perform all activities required under this Purchase Order and deliver the goods and services required hereunder in compliance with all applicable laws rules and regulations and take appropriate actions to protect local environmental quality; (2) Each chemical substance constituting or contained in goods 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 USC Section 2601 et seq.), as amended and the European Inventory of Existing Commercial Chemical Substances (EINECS) or the European List of Notified Chemical Substances (ELINCS) or equivalent lists in any other jurisdiction to which Buyer informs Seller the goods will likely be shipped; (3) To the extent that any goods or other materials sold or otherwise transferred to Buyer hereunder contain hazardous materials, Seller shall provide all relevant information pursuant to Occupational Safety and Health Act (OSHA) regulations 29 CFR 1910.1200 including a completed Material Safety Data Sheet (OSHA Form 20) and mandated labeling information; and (4) Goods and other materials sold or otherwise transferred to Buyer hereunder shall not contain arsenic, asbestos, benzene, carbon tetrachloride, lead, cadmium, or chemicals restricted under the law of the countries into which Product is shipped, unless expressly agreed otherwise by Buyer in writing;

40. QUALIFICATIONS OF EMPLOYEES. The Buyer will provide notice to the Seller when any Seller employee is found to be unsuitable or otherwise objectionable, or whose conduct appears contrary to the public interest, or if on a government or security contract, inconsistent with the best interest of national security. The Seller shall take appropriate action, including the removal of such employees from working on this contract, at their own expense. The Seller agrees to insert terms that conform substantially to the language of this clause in all subcontracts under this contract. If the item(s) on the Purchase Order or any specifications transmitted therewith is designated as containing ITAR products, SSI or other secure information based on disclosures on the purchase order or markings on any items, then each employee of the Seller who have access to any and all technical data or other information on the project, shall be a citizen of the United States of America, or an alien who has been lawfully admitted for permanent residence. The Seller agrees to provide country of citizenship and evidence of legal status of its employees working under this contract. If the materials are marked as SSI, military critical, classified, or have other more restrictive markings, then the Seller agrees to implement further controls that restrict access to information pursuant to other terms of this Agreement.

41. SUSPENSION/DEBARMENT: The Seller shall provide immediate notice to Buyer in the event of being suspended, debarred or declared ineligible by any federal agency, or upon receipt of a notice of proposed debarment during the performance of this order.

42. ADDITIONAL SPECIFICATIONS. Seller will comply with any technical, performance or quality specification appearing on the face of this order or included with this Purchase Order.

43. EXTRA CHARGES. No extra charges of any kind will be allowed unless specifically agreed to by Purchaser in writing.

44. ENGLISH LANGUAGE. All communications and submittals shall be in the English language.



45. ADDITIONAL CERTIFICATIONS.

- (a) Seller has made all the Representations and Certifications supplied to them by Buyer and all such representations are current, accurate and complete.
- (b) In the performance of this Purchase Order, Seller shall use at least the percentage of recovered materials required by the applicable Purchase Order.
- (c) Seller represents and warrants that Seller or any of its principals: (a) are not presently debarred, suspended, or proposed for debarment or declared ineligible for contracts by any federal agency; (b) have not within a three-year period, preceding its quotation, proposal or award for this order, been convicted of or had a civil judgment rendered against them for the commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state or local) contract or subcontract, violation of Federal or state antitrust statutes in relation to the submission of orders, or
- (d) If the Seller is a foreign person as defined in 22 CFR 120, etc., Seller certifies that it does not comply with the Secondary Arab Boycott of Israel and is not taking or knowingly agreeing to take any action with respect to the Secondary Arab Boycott of Israel.

46. INDEPENDENT CONTRACTOR. Seller is an independent contractor. Seller shall have exclusive control and direction over its employees' performance of the work and be responsible for all the payroll functions of its employees. No persons employed by Seller or Seller's subcontractors shall be deemed an employee of Buyer for any purpose. Neither party shall have the implied or express right to assume or create any obligation on behalf of, or in the name of, the other party through its acts omissions or representations.

47. MERCURY EXCLUSION. Mercury or mercury containing compounds shall not be intentionally added or come in direct contact with hardware or supplies furnished pursuant of this order. Unless expressly identified and authorized in this Purchase Order, all goods, components, supplies delivered under this Purchase Order shall not be, contain, or have come in direct contact with mercury, mercury compounds or with any mercury containing devices employing a single boundary of containment. Mercury containment will be cause for rejection of the goods and correction or replacement shall be at the Seller's expense.

48. EXPORT RELATED REQUIREMENTS:

- (a) Export Compliance. Seller is advised that its performance of this Purchase Order may involve the use of or access to articles, technical data or software that is subject to export controls under 22 United States Code 2751 -2796 (Arms Export Control Act) and 22 Code of Federal Regulations 120-130 (International Traffic in Arms Regulations) or 50 United States Code 2401 - 2420 (Export Administration Act) and 15 Code of Federal Regulations 768 - 799 (Export Administration Regulations), and their successor and supplemental laws and regulations (collectively hereinafter referred to as the "U.S. Export Laws and Regulations").
- (b) Seller represents and warrants that it is either:
 - i. a U.S. Person as that term is defined in the U.S. Export Laws and Regulations, or that
 - ii. it has disclosed to Seller's Representative in writing the country in which it is incorporated or otherwise organized to do business, or if a natural person, all citizenships and U.S. immigration status.
- (c) Seller shall comply with any and all U.S. Export Laws and Regulations, and any license(s) issued thereunder.
- (d) Non-U.S. Personnel. Seller shall not give any non-"U.S. Person" (includes non-US, entities and representatives of non-U.S. entities, regardless of nationality) access to Technical Data, software or Defense Articles, or provide an unauthorized Defense Service as those terms are defined in the applicable U.S. Export Laws and Regulations without the prior written consent of Seller and obtaining all required licenses and approvals. Disclosure of SSI or NNPI is even more restricted. Any request for such consent must state the intended recipient's citizenship(s), and status under 8 U.S.C. 1101 and 8 U.S.C. 1324 (the "Immigration and Naturalization Act"), and such other information as Seller may reasonably request. No consent granted by Seller in response to Seller's



request hereunder shall relieve Seller of its obligations to comply with the provisions of (i) above or the U.S. Export Laws and Regulations, nor shall any such consent constitute a waiver of the requirements of (i) above, nor constitute consent for Seller to violate any provision of the U.S. Export Laws and Regulations.

- (e) Indemnification. Seller shall indemnify and save harmless Buyer and Buyer's customers, from and against any and all damages, liabilities, penalties, fines, costs, and expenses, including attorneys fees, arising out of claims, suit, allegations or charges of Seller's failure to comply with the provisions of this paragraph and breach of the warranty set forth in (a) above. Any failure of Seller to comply with the requirements or any breach of the warranty contained in this paragraph shall be a material breach of this Purchase Order.
- (f) Subcontracts. The substance of this paragraph shall be incorporated into any subcontract entered into by the Seller for the performance of any part of the work under this Purchase Order.

49. NOTIFICATION OF OWNERSHIP OR LEGAL STRUCTURE CHANGES

If the Seller experiences a change in its ownership or legal structure, or becomes aware that such is likely to occur, Seller shall notify Buyer in writing within ten (10) working days of the effective date of the change or of becoming aware of the prospective change, whichever is earlier.

50. ORDER OF PRECEDENCE. Any inconsistencies in this Purchase Order shall be resolved in the following order:

- (a) Any signed written agreement indicating that it takes precedence over this Purchase Order
- (b) Change Orders
- (c) Supplements to the Purchase Order,
- (d) Additional Schedules included by reference on the face of this Purchase order
- (e) Purchase Order,
- (f) Appendices/exhibits/attachments,
- (g) Drawings and specifications,
- (h) Other plans or documents referenced in the Purchase Order.

Seller shall immediately bring any inconsistencies to the attention of the Buyer in writing.

51. NOTIFICATION OF FOREIGN OWNERSHIP OR PLACE OF PERFORMANCE

Seller shall provide Buyer written notice within ten (10) working days of the effective date of the change or of becoming aware of the prospective change, whichever is earlier when: (i) a foreign interest acquires the power, direct or indirect, whether or not exercised, and whether or not exercisable through the ownership of Seller's securities, by contractual arrangements or other means, to direct or decide matters affecting the management or operations of Seller; or (ii) Seller relocates the place of performance outside the United States.

52. ADDITIONAL TERMS. Additional terms shall apply if shown on the face of this order, and are hereby included by reference.

53. CERTIFICATE OF ORIGIN: Seller shall provide certificates of origins for products upon the request of Buyer using such forms and basis of certification as may be requested by Buyer.

54. TRACEABILITY. Seller shall have and operate a process to ensure that all Products, sub-assemblies and the components contained therein supplied to the Buyer are completely traceable back to manufacturer by batch or lot or date code. "Traceable" means that all the Products, sub-assemblies and components supplied by Seller shall be accompanied with original authentic certificates of conformity from the manufacturer of the original component or if not accompanying the component delivered to the Buyer are in the possession of Seller as specified by the Buyer's specification.

55. COUNTERFEIT PARTS: Seller hereby agrees, unless directed otherwise by the Buyer, to procure components through franchised distributors or direct component suppliers. Seller agrees to indemnify and hold the Buyer harmless from and against all costs and expenses for the removal, repair or replacement and reinstallation of counterfeit components (or any other components that are improperly identified by source or in traceability



documents) incorporated into a Product sold by Seller. Seller will: (i) require that its suppliers provide a Certificate of Conformance with each component shipment; (ii) perform incoming inspections of components and paperwork to ensure conformity to Specification; and (iii) maintain and document incoming inspection specifications used for each component used in manufacturing Products.

56. ENVIRONMENTAL PRODUCT STEWARDSHIP. For purposes of this Section, the following terms are defined: (i) “Declaration of Conformity” (or “DoC”) means a signed statement from the authorized representative of the Product’s manufacturer containing its name and address and certifying that the Product model(s) listed by unique identification numbers on the declaration comply with the requirements of the standards or legislation identified on the declaration; and (ii) “Material Declaration” means documentation submitted by you in a form requested by or acceptable to us that provides requested information on the material content or chemical composition of the Products or their packaging, that may include, by way of example and without limitation, any combination of the following: (a) the identity of substances or preparations contained in the Product, such as the Chemical Abstract Service (CAS) numbers and concentrations on a weight to weight basis; (b) weights of components, materials, packaging, or Products; (c) original source of material content or supply chain information; (d) data on engineered nanoscale materials in the Products; (e) labeling, warnings, and hazardous properties; or (f) test data. Sellers acknowledges that when utilized by us for their intended purpose, the Products may become subject to Regulation 1907/2006/EC (“REACH”), the California Safe Drinking Water and Toxic Enforcement Act and its implementing regulations (“CA Prop 65”), as well as transpositions and regulations implementing EU Directive 2011/65/EU (“RoHS Directive”), EU Directive 2006/66/EC (“Battery Directive”), EU Directive 2012/19/EU (“WEEE Directive”), and EU Directive 94/62/EC (“Packaging Directive”), as amended, as well as similar or equivalent regulations and laws in various jurisdictions around the world. To ensure that we may utilize the Products for their intended purpose in compliance with applicable laws and regulations, you shall: (i) establish a management system to comply with all REACH Requirements; (ii) provide us upon request with a Supplier-prepared DoC or Material Declaration; (iii) have appropriate controls and processes in place to ensure the accuracy and to update DoCs and Material Declarations as necessary in response to source, design, or regulatory changes; (iv) retain records of DoCs and Material Declarations for ten (10) years; (v) provide Safety Data Sheets (SDS) and labels in English and in any other language readily available for Products that are subject to SDS and hazard labeling and classification requirements in any jurisdiction; and (v) establish an effective program, including contractual terms, to ensure that its Product, packaging and service-related suppliers and subcontractors comply with substantially similar product stewardship requirements and those set forth in our supplier documents distributed to you by us from time to time. For Products that constitute electrical or electronic equipment (or “EEE”) or that contain batteries, you shall: (i) conform to and comply with all RoHS compliance; (ii) agree to notify us immediately and in writing should you or any of your suppliers determine that non-compliant Product has been shipped, and (a) providing us with identification of non-compliant Product(s), as we are required to notify regulators if it is not contained, (b) stop shipping Product(s), and (c) suggest steps to segregate our stock. Unless otherwise agreed in writing with us, you shall label standalone EEE Products with the symbol for marking EEE and explain the symbol in any relevant operator or user manual. Upon request, you shall either provide us with information on its take back or recycling program for WEEE or provide us with EEE material, component, substance and location information to allow us to comply with requirements to provide information to treatment/recycling facilities.

57. PRODUCT REGULATORY COMPLIANCE. Where requested in writing by us, you represent, warrant, certify, and covenant that the Products and their manufacture will comply with specified regulations pertaining to Restriction of Hazardous Substances (“RoHS”), REACH and/or any other such regulations as may be agreed to in writing by both parties, and any other relevant local, state and national laws and regulations.

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EXHIBIT A

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

(1) **ADDITIONAL DEFINITIONS.** The clauses at FAR 2.101, Definitions, and FAR 52.202-1, Definitions, are incorporated herein by reference. Each clause may identify and define other terms. Unless the context or a specific clause or provision of these terms and conditions specifies or indicates a different meaning, as used in these terms and conditions the following terms shall mean:

- (a) "Contract", "Purchase Order", or "Order" regardless of case has the same meaning throughout these terms and conditions. As used herein, they mean this contract between Buyer and Seller and include letter contracts or other contractual arrangements, as well as written supplements or amendments to them.
- (b) "Contract Administrator" means Buyer's cognizant purchasing representative identified within the Purchase Order.
- (c) "Department of Navy" means the U.S. Department of the Navy, Naval Sea Systems Command or any duly authorized representative thereof including the Contracting Officer for any Prime Contract.
- (d) "Government" or "Federal" means the "United States of America".
- (e) "Lower-tier subcontract" means any agreement entered into by the Seller or Seller's sub-tier supplier(s) in furtherance of the performance of this Purchase Order.
- (f) "Work" means all required articles, materials, supplies, goods, and services constituting the subject matter of this Purchase Order.

(2) **OTHER OBLIGATIONS.** Seller and all its subcontractors shall abide by the requirements of 41 CFR 60-1.4(a), 60-300.5(a), 60-741.5(a) and 29 CFR Part 471, Appendix A to Subpart A. All requirements under the aforementioned statutes, orders and applicable regulations including but not limited to paragraphs 1 through 7 of Executive Order 11246, as amended, are incorporated herein by reference. These requirements 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, gender, gender identity, sexual orientation, 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, sexual orientation, gender identity, national origin, protected veteran status or disability. In addition, the Seller and all its subcontractors will not discharge or in any other manner discriminate against employees or applicants because they have inquired about, discussed, or disclosed their own pay or the pay of another employee or applicant. However, employees who have access to the compensation information of other employees or applicants as a part of their essential job functions cannot disclose the pay of other employees or applicants to individuals who do not otherwise have access to compensation information, unless the disclosure is (a) in response to a formal complaint or charge, (b) in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or (c) consistent with the Seller's legal duty to furnish information.

(3) **DUTY FREE IMPORT:** If a domestic Seller intends to procure any materials from offshore (non U.S.) concerns, and to obtain duty free import under any Buyer's prime contract, Seller must obtain permission from Buyer and advise Buyer, in writing, of Seller's offshore order number and value.

(4) **ADDITIONAL PROVISIONS FOR BUYER OWNED PROPERTY.** Seller shall control and maintain Government or Buyer furnished property in accordance with a system that meets the requirements of FAR Subpart 45.5 and DFARS Subpart 245.5 and, for Government property, the clause herein entitled Government Property. The requirements related to accounting for Buyer or Government property shall also apply to scrap, provided, however, that Buyer may authorize or direct Seller to omit from inventory schedules any scrap consisting of faulty castings or forgings or of cutting and processing waste, such as chips, cuttings, borings, turnings, short ends, circles, trimmings, clippings, and remnants, and to dispose of such scrap in accordance with Seller's normal practice and account for it



as a part of general overhead or other reimbursable costs in accordance with Seller's established accounting procedures.

(5) **ADDITIONAL RIGHTS TO DISCLOSED INFORMATION.** To the extent authorized by the U.S. Government by a direct contract with the Seller for the manufacture of products for direct sale to the U.S. Government, and to the extent that such will not interfere with Seller's performance of this or other orders from the Buyer in effect at the time the Seller enters into such direct contract with the Government, and upon prior written notice to Buyer of such Government authorization and the contract number, the Seller shall have the right to use that data disclosed to Seller which the Government owns or has the right to use or the right to authorize others to use. Seller shall indemnify Buyer for any withholdings, claims, damages and expenses resulting from any assertion by the Government of its rights under DFARS 252.227-7030, "Technical Data - Withholding of Payment" and DFARS 252.246-7001, "Warranty of Data", and arising in whole or in part out of any failure by Seller to deliver technical data or any deficiency in said technical data as delivered, including, but not limited to, the presence of restrictive markings thereon not specifically authorized by this Purchase Order.

(6) **PENALTIES FOR MISREPRESENTATION OF STATUS.** In accordance with FAR 52.219-0, Small Business Subcontracting Plan, invoked in this Purchase Order, Seller is advised that there are penalties and remedies for misrepresentation of business status as small, veteran-owned small business, HubZone small, small disadvantaged, or woman-owned small business for the purpose of obtaining a subcontract, such as this Purchase Order, that is to be included on all or part of any contractor's subcontracting plan.

(7) **INCORPORATION OF FAR CLAUSES.**

(a) Definitions. As used in this clause—

“Commercial item” has the meaning contained in Federal Acquisition Regulation 2.101, Definitions.

“Subcontract” includes a transfer of commercial items between divisions, subsidiaries, or affiliates of the Contractor or subcontractor at any tier.

(b) To the maximum extent practicable, the Seller shall incorporate, and require its subcontractors at all tiers to incorporate, commercial items or non-developmental items as components of items to be supplied under this contract.

(c) (1) The Seller shall abide by, agree with, and insert the following clauses in subcontracts for commercial items:

(i) 52.203-13, Contractor Code of Business Ethics and Conduct (Dec 2008) (Pub. L. 110-252, Title VI, Chapter 1 (41 U.S.C. 251 note)), if the subcontract exceeds \$5,000,000 and has a performance period of more than 120 days. In altering this clause to identify the appropriate parties, all disclosures of violation of the civil False Claims Act or of Federal criminal law shall be directed to the agency Office of the Inspector General, with a copy to the Contracting Officer.

(ii) 52.203-15, Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009 (Section 1553 of Pub. L. 111-5), if the subcontract is funded under the Recovery Act.

(iii) 52.219-8, Utilization of Small Business Concerns (May 2004) (15 U.S.C. 637(d)(2) and (3)), if the subcontract offers further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds \$550,000 (\$1,000,000 for construction of any public facility), the subcontractor must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities.

(iv) 52.222-26, Equal Opportunity (Mar 2007) (E.O. 11246).

(v) 52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (Sept 2006) (38 U.S.C. 4212(a));



(vi) 52.222-36, Affirmative Action for Workers with Disabilities (June 1998) (29 U.S.C. 793).

(vii) [Reserved]

(viii) 52.222-50, Combating Trafficking in Persons (Feb 2009) (22 U.S.C. 7104(g)).

(ix) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (Feb 2006) (46 U.S.C. App. 1241 and 10 U.S.C. 2631), if flow down is required in accordance with paragraph (d) of FAR clause 52.247-64).

(d) The Seller shall include the terms of this clause, including this paragraph (d), in subcontracts awarded under this contract.