



## PROPULSION CONTROLS ENGINEERING – SUBCONTRACTOR SERVICES GENERAL TERMS AND CONDITIONS

1. **General.** These Terms and Conditions shall be included in, made a part of, and incorporated by reference to each subcontracting purchase order (“Order”) between the parties hereto pursuant to which Contractor (as defined in the Order) shall provide materials and/or services to Propulsion Controls Engineering (“PCE”) according to the specifications contained in the Order (the “Services”). PCE shall be required to provide a copy of these Terms and Conditions only upon the first occasion that Contractor and PCE enter into an Order, and unless subsequently modified, these Terms and Conditions shall apply to each and every subsequent Order for Services between Contractor and PCE. Upon modification of these Terms and Conditions, PCE shall tender to Contractor a current copy of such modified Terms and Conditions, which shall govern each Order subsequently entered into between the parties.

2. **Performance of Services.**

A. **Independent Contractor.** Contractor shall provide the Services to PCE as an independent contractor. Contractor shall be the sole employer and/or principal for all of Contractor’s employees who perform Services hereunder. None of Contractor and/or its employees, subcontractors, or suppliers shall be construed as agents or employees of PCE under any circumstance or for any purpose.

B. **Substitution.** In providing the Services, Contractor shall not substitute materials for those specified without PCE’s prior written approval. If the words “or equal” are used in the Order or specification, proposed equals must be approved in writing, in advance, by PCE.

C. **Changes.** Contractor shall make no changes in the Order without PCE’s prior written consent. PCE may unilaterally make changes to the scope of the Services in writing provided to Contractor, and upon receipt of such change order, Contractor shall proceed as requested without delay. If any change modifies the cost of or time for performance, an equitable adjustment may be made in the price and/or delivery schedule via written amendment only. Any claim for adjustment must be asserted within fifteen (15) days of receipt of the corresponding change order. If any change shall have resulted in any way from an act, omission, or order (actual or constructive) by PCE’s prime contractor, Contractor’s right to and the amount of any equitable adjustment shall depend on the following: (a) Contractor shall have provided PCE written notice of the change in time and form sufficient for PCE to obtain equitable adjustment under PCE’s prime contract; (b) PCE shall be liable to Contractor only to the extent that PCE’s prime contract customer accepts liability or is adjudicated to be liable therefor; and (c) the amount of Contractor’s equitable adjustment, if any, shall not exceed that allowed or awarded to PCE from its prime contractor, less profit or costs (or both) to which PCE is entitled.

D. **Quality Control.**

i. Contractor shall maintain a system of quality control and the Services shall be subjected to appropriate quality assurance tests and/or trials by Contractor at Contractor’s expense prior to completion, which tests and/or trials shall confirm adherence to the Order standards and/or PCE’s quality assurance requirements. Contractor’s quality assurance system shall confirm to the requirement of the “single quality system” (“SQS”) and provide “objective quality evidence” (“OQE”) to PCE that all requirements have been satisfactorily met.

ii. PCE, its customer, and/or applicable regulatory bodies, shall have the right to inspect any of the work and/or Contractor’s quality control documentation, wherever situated, for conformance to Order terms. Notwithstanding, inspection or failure to inspect by PCE, its customer, and/or applicable regulatory bodies, shall neither relieve Contractor of its warranties and covenants nor waive any remedy of PCE hereunder. The Services shall be subject to PCE’s approval and acceptance at the time of completion, regardless of any inspection and/or progress payments made prior to such point.

iii. Contractor shall promptly remedy, at its expense, any deficiency in the Services (including without limitation any non-conforming goods provided to PCE under the terms of the Order) or shall reimburse PCE for the actual cost required to remedy the same.

E. **Accelerated Performance.** Time is of the essence in the performance of the Services. Accordingly, PCE may direct Contractor to accelerate its performance of the Services and require Contractor to



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incur overtime and/or premium days. Upon such request from PCE, Contractor shall so accelerate its performance, and PCE shall pay an additional amount equal only to the premium portion occasioned by such overtime or premium pay (e.g., the difference between regular pay and overtime pay for the period during which the Services are accelerated). If Contractor is behind schedule (as specified in the Order or any document incorporated herein by reference) in breach of the Order and/or these Terms and Conditions, PCE may, in addition to any other remedy hereunder, order accelerated performance pursuant to this paragraph; provided that Contractor shall bear the expense of the premium portion of any overtime or premium pay necessary to bring the performance of the Services back onto the applicable schedule(s).

F. Shipment. All goods subject to this Order must be shipped to PCE via the route that is most expeditious to the schedule or as otherwise specified by PCE, failing which, the difference in carriage and extra cost of drayage will be charged to Contractor's account.

3. Pricing, Invoicing, and Payment. Contractor will be paid for Services actually performed at the prices stated in the Order, less any deduction(s) herein provided, upon submission of invoices and supporting documentation in such form as PCE may reasonably request from time to time. A properly executed Certificate of Completion ("COC") must accompany all subcontractor invoices submitted for payment. A COC must be properly signed as indicated on document and all Objective Quality Evidence (OQE) must be submitted and accepted by the quality assurance department before further processing can occur. ***Seller shall submit a final invoice within forty-five (45) calendar days of work completion. Propulsion Controls Engineering will not process any late invoices exceeding this period.*** Properly documented invoices submitted in accordance with these Terms and Conditions shall be paid in accordance with the NET terms identified on the Purchase Order (PO).

### 4. Contractor's Representations, Warranties, and Covenants.

#### A. General Warranties.

i. Performance of Services. All Services shall be performed in a diligent, professional, and workmanlike manner, with time being of the essence. All Services shall be performed in conformity with the Order, any Incorporated Provisions, and all relevant specifications, plans, and drawings, and otherwise in accordance with good commercial practice. All Services shall be free from defect or deficiency in workmanship. All materials used shall be new, the best of their respective kinds, free from defects, and of a merchantable quality and fit for the intended purposes. If required by PCE, evidence of the kind and quality of material shall be provided.

ii. Licenses and Permits. All permits, authorizations, and licenses required in connection with Contractor's performance of the Services shall be obtained and maintained by Contractor at its separate expense. Contractor shall at all times perform the Services in conformity with applicable federal, state, and local laws, rules, and regulations.

#### B. Employee Requirements.

i. Background Checks. Contractor will perform and provide such background checks and clearance procedures as PCE may reasonably require from time to time in order to obtain and/or maintain security clearance for Contractor employee access to specific PCE worksites, including without limitation, facilities owned or operated by the United States armed forces and/or those of PCE's prime contractors. Contractor shall perform such background checks in compliance with applicable federal, state, and local laws, rules, and regulations. Contractor shall retain all documents relating to such background checks for at least two (2) years from completion of the Services. Upon request by PCE, and as permitted by applicable law, Contractor shall promptly provide PCE with copies of all such documents for employees assigned to perform the Services.

ii. Drug Screening. PCE facilities are drug-free and in compliance with the Drug-Free Workplace Act of 1988. Contractor shall drug test each employee providing Services and each such employee must be drug free at all times while engaged in performing the Services. PCE maintains the right to audit Contractor's drug test results at any time. Contractor shall perform such testing in compliance with applicable federal, state, and local laws, rules, and regulations. Contractor shall retain all documents relating to such testing for at least two (2)



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years from completion of the Services. Upon request by PCE, and as permitted by applicable law, Contractor shall promptly provide PCE with copies of all such documents for employees assigned to perform the Services.

C. Contractor Covenants.

i. Insurance.

a. Contractor shall, at its expense, maintain the following insurances while performing hereunder: (i) standard Insurance Service Office commercial general liability insurance that includes contractors' liability, products/completed operations, bodily injury, and contractual liability coverage, with limits of at least \$1,000,000 per occurrence; (ii) automotive liability insurance with limits of at least \$1,000,000 per occurrence; (iii) all-risk property insurance on all tools, equipment, materials, and other personal property of Contractor and its subcontractors (if any); and (iv) standard workers' compensation and employers' liability insurance applicable to all jurisdictions in which the Services will be performed, covering all employees of Contractor and its subcontractors, and extended to the Outer Continental Shelf Lands Act and/or Longshore and Harbor Workers' Compensation Act, as applicable, with statutory limits for workers' compensation and limits of \$1,000,000 per occurrence for employers' liability.

b. Contractor shall provide PCE with certificate(s) of insurance evidencing the insurance requirements which shall be delivered to PCE in accompaniment with Terms and Conditions; renewals thereof sent to PCE upon expiration of the respective policy terms. PCE shall be named as an additional insured with respect to the Services performed by Contractor under the insurance identified in clauses (i) and (ii) of Section 4(C)(i)(a), above, which policies shall include provisions requiring at least thirty (30) days notice to PCE prior to cancellation. The insurances identified in clauses (iii) and (iv) of Section 4(C)(i)(a), above, shall be specifically endorsed to provide a waiver of subrogation in favor of PCE, its owners, officers, agents, and employees, PCE's prime contractor, the vessel(s) to which the Services pertain, and the owner(s) of such vessel(s). Each policy shall be upon forms and with underwriting security approved by PCE. In the event that Contractor fails to maintain an insurance as required, an insurance fails for any reason (including breach of warranty or policy condition), or an insurer otherwise refuses or is unable to pay, Contractor shall act as self-insurer with respect thereto, accept and pay claims that would have otherwise been submitted to such insurer, and indemnify, defend, and hold PCE harmless (including legal fees and costs) for, against, and from any loss, damage, expense, claim, liability, or suit resulting from such failure or nonpayment.

c. Notices and certificates regarding insurance policies shall be provided in writing to your local office for Propulsion Controls Engineering (PCE), Attention: Insurance Requirements.

ii. Legal Compliance. Contractor and its employees shall comply with all applicable present and future federal, state, and local laws, rules, regulations, and orders, as they relate to the Services, Contractor, or Contractor's employees. Without limiting the foregoing:

a. ITAR/EAR. Contractor and its employees must adhere to all requirements contained in the International Traffic and Arms Regulations ("ITAR"), 22 C.F.R. Subchapter M, Parts 120-130 and Export Administration Regulations ("EAR"), 15 C.F.R. §§ 730-774. While working at PCE facilities, Contractor's employees may have access to technical documents for both military and commercial contracts. Contractor is solely responsible for reading, understanding, and compliance with the ITAR and EAR by it and its employees.

b. Hazardous Materials. Contractor and its employees shall comply with all applicable federal, state, and local laws, rules, and regulations applicable to the management and disposal of hazardous waste, including without limitation the Resource Conservation and Recovery Act ("RCRA"). Contractor shall obtain, maintain, and implement its own certifications, permits, and operating manuals and training required by federal, state, and local law, and shall ensure compliance with the same. Contractor shall likewise comply with applicable laws for water quality, air quality, and pollution control in connection with its performance of the Services. Hazardous waste shall be identified and properly labeled. Hazardous waste must be placed in containers designed and used for collection of such materials.



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c. Prohibition of Gifts and Gratuities. PCE personnel owe complete loyalty to PCE and are forbidden from accepting money or things of value from any supplier of goods and services. Contractor warrants for itself and its agents, owners, stockholders, and other principals that no employee of PCE has any financial interest in Contractor, and that Contractor has not and will not give anything of value to any employee of PCE; except that the foregoing prohibition shall not apply to promotional items or commemorative items having a value of less than twenty-five dollars (U.S. \$25.00) or food and refreshments served during business meetings.

d. Provisions Applicable to Government Contracts

(1) Anti-Kickback Act. The terms of the Anti-Kickback Act of 1986, 41 U.S.C. §§ 51-58, its implementing regulations, and prime contract clauses associated with the Order shall apply to the provisions of Services hereunder, and Contractor shall not provide or attempt to provide any money, fee, commission, gift, gratuity, thing of value, or compensation of any kind directly or indirectly to PCE or any employee of PCE for the purpose of obtaining any Order from PCE;

(2) Federal Procurement Act. The terms of the Office of Federal Procurement Policy Act, 41 U.S.C. § 423, and its implementing regulations shall apply to the provisions of Services hereunder, and Contractor may not directly or indirectly (A) make any offer or promise of future employment or business opportunity, (B) offer, give, or promise to offer or give (either directly or indirectly) any money gratuity or other thing of value to any procurement official, or (C) solicit or obtain, directly or indirectly, from any officer or employee of such agency any proprietary or source selection information regarding any procurement; and

(3) Federal Acquisition Regulations. The Order shall be subject to any applicable Federal Acquisition Regulations (“FAR”) and Defense Federal Acquisition Regulations (“DFAR”) in effect on the effective date of PCE’s associated prime contract, all of which are incorporated herein by this reference. Upon request by Contractor, PCE will either furnish copies of FARs or DFARs incorporated herein or will direct Contractor to publicly available resources to obtain such FARs or DFARs. Also incorporated fully by reference are all restrictions/requirements contained in any such government contract, including but not limited to any Naval Sea Systems Command (“NAVSEA”) requirements pertaining to travel costs, government property, vessel protection, and the Government-Industry Data Exchange Program.

iii. Maximum Permissible Prices. Contractor warrants that the Order prices shall not exceed those maximum prices permissible under any applicable regulations, rules, or orders issued by any authorized governmental agency. If it is subsequently determined that such prices are in excess of any applicable limit, Contractor shall promptly refund such excess.

D. Confidential Information.

i. Use. Contractor shall keep all confidential and proprietary information that is disclosed by PCE to Contractor or otherwise becomes known to Contractor or its Representatives (defined below) in connection with the Services (“Confidential Information”) in strict confidence and shall not disclose, reveal or otherwise make Confidential Information available to any person, or otherwise use the Confidential Information for any purpose other than providing the Services.

ii. Disclosure. Contractor shall limit the disclosure of Confidential Information to only its officers and employees (hereinafter “Representatives”) who have a direct need to know such information in order to perform the Services, which Representatives shall agree to be bound by the provisions of this Section 4(D) before any Confidential Information is disclosed to them. Contractor is legally responsible for any breach of the terms of this Section 4(D) by its Representatives.

iii. Compelled Disclosure. If Contractor or any Representative is or becomes legally required to disclose any Confidential Information, Contractor shall provide PCE with prompt notice prior to disclosure and cooperate fully with PCE in obtaining an appropriate protective order or otherwise objecting to or limiting such disclosure.



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iv. Specific Performance. PCE shall be entitled, without waiver of any other remedy, to injunctive or other equitable relief to require specific performance or otherwise to prevent or remedy a breach of the provisions of this Section 4(D). Contractor expressly waives the defense that a remedy in damages will be adequate and any requirement in an action for specific performance to enforce this Section 4(D) that PCE post a bond or equivalent security as a condition to obtaining such specific performance.

E. Non-Solicitation. While the Services are being performed, and for a period of six (6) months thereafter, neither Contractor nor any Representative shall, directly or indirectly through another person, (a) induce or attempt to induce any employee of PCE to leave PCE's employ, or in any way interfere with the relationship between PCE and any of its employees, or (b) induce or attempt to induce any customer, supplier, licensee, licensor, franchisee or other business relation of PCE to cease doing business with any such person, or in any way interfere with the relationship between any such customer, supplier, licensee or business relation and PCE (including, without limitation, making any statement that is intended or reasonably calculated to disparage or discredit PCE).

F. Intellectual Property. Contractor, on behalf of itself and its employees, assigns to PCE all rights, title, and interest in all materials and information prepared or developed by Contractor and/or its employees in connection with the Services, including, but not limited to, documents, drawings, calculations, maps, sketches, notes, reports, data, designs, technical information, technologies, manufacturing and production processes, models and samples ("PCE IP"), whether delivered to PCE or not. Contractor shall deliver all PCE IP along with any materials furnished to Contractor or its employees by PCE upon request, and in any event upon termination of the Order.

Contractor represents and warrants that it has all right, title, and interest in and to all intellectual property that will be used by it in the performance of the Services. Contractor shall hold and save PCE and its successors and assigns, harmless from and against all and every claim, demand, liability and/or expense of any kind, including without limitation legal and other expenses of defending any suit for infringement of patents or other intellectual property rights, or for the use of any patented or otherwise protected invention, process, article, or device that has been or may be adopted or used in the construction of any of the goods furnished in this Order.

G. Contingent Fees. Contractor has not employed or retained any Person to solicit or secure this Order upon an agreement or understanding for commission, percentage, or brokerage work contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained for the purpose of securing business.

H. Non-Exclusivity of Representations and Warranties. The representations and warranties specified herein shall be in addition to any such standard warranty or guaranty of Contractor and any warranties otherwise created by operation of law. All warranties shall be for the benefit of both PCE and its customers.

### 5. Termination and Remedies.

A. Termination in all Cases. The Order may be terminated:

i. By PCE. (a) After ten (10) days written notice from PCE, if Contractor is in default of any of its representations, warranties, or covenants hereunder, and such default is then continuing; (b) if Contractor becomes insolvent; (c) if Contractor is the subject of a voluntary or involuntary petition in bankruptcy that is not vacated within thirty (30) days of filing; (d) if a receiver or trustee is appointed for Contractor's business and such appointment is not vacated within thirty (30) days of such appointment; (e) if Contractor executes an assignment for the benefit of creditors; or (f) if PCE's customer refuses to accept any or all of the Services for any reason.

In addition, and without limitation of other rights or remedies for Contractor's failure to meet any required delivery schedule, PCE may terminate this Order with respect to of any unperformed portion of the Services, and without liability to PCE, may purchase goods/services identified in this Order elsewhere if Contractor fails to make progress that, in PCE's sole opinion, is necessary to meet the required delivery dates, and to charge Contractor with all damages arising from such cancellation and order with other providers. Notwithstanding the foregoing, if this Order covers goods to be manufactured to specifications and if either delivery or progress thereon is delayed for reasons beyond Contractor's control and PCE shall cancel as above permitted, Contractor shall receive compensation to the



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extent PCE is reimbursed by its customer, and acquires the finished product. Contractor shall: (1) place, as promptly as practical, all subcontracts and purchase orders for all necessary materials or components; (2) adhere to but not unreasonably anticipate the schedule of delivery set forth herein; (3) promptly notify PCE of any anticipated delayed delivery, but without prejudice to PCE's rights hereunder; and (4) cause similar provisions to be included in all subcontracts in purchase orders hereunder.

ii. By Contractor. (a) After ten (10) days written notice from Contractor, if PCE is in default of any of its representations, warranties, or covenants hereunder, and such default is then continuing; (b) if PCE becomes insolvent; (c) if PCE is the subject of a voluntary or involuntary petition in bankruptcy that is not vacated within thirty (30) days of filing; (d) if a receiver or trustee is appointed for PCE's business and such appointment is not vacated within thirty (30) days; or (e) if PCE executes an assignment for the benefit of creditors.

B. Contractor's Post Termination Obligations. Upon written notification of Termination in accordance with Section 5(A)(i), above, Contractor shall:

i. discontinues all Services on the best possible terms;

ii. assign to PCE all rights, title, and interest of Contractor under terminated subcontracts of Contractor, if any;

iii. subject to PCE's prior approval, settle all outstanding liabilities and subcontract clauses;

and

iv as directed by PCE in writing, transfer title and deliver to PCE or such party as PCE designates, fabricated or unfabricated parts, work in-process, and other materials produced or required for the terminated Services, including but not limited to, plans, drawings, or other information as would be required under the Order.

C. Contractor's Post Termination Claims. Within thirty (30) days after receipt of notice of termination in accordance with Section 5(A), Contractor shall submit to PCE, in such form as PCE may reasonably direct, a claim for all costs through the effective date of termination. Any dispute over Contractor's termination claims shall be resolved in accordance with the provisions of Section 7, below. Failure to provide such claim within the period stated shall bar recovery of any damages in connection with such termination.

### 6. Liability and Indemnification.

A. Contractor's Liability and Indemnity. Contractor shall be liable for, and shall indemnify, defend, and hold PCE harmless for, against, and from (including legal fees and costs), any expense, claim, liability, proceeding, or suit arising out of or relating to (a) loss or damage occurring as a result of any breach of Contractor's representations, warranties, or covenants herein; (b) loss or damage to tools, equipment, or other personal property of Contractor or its employees, howsoever caused; (c) loss or damage to real property or personal property of PCE or any other person or entity resulting from performance of the Services by Contractor or its employees; and (d) the bodily injury, illness, or death of Contractor's employees. In furtherance of the foregoing, Contractor waives any immunity from suit or exclusivity of remedy afforded by workers' compensation or similar laws.

B. PCE's Liability and Indemnity. PCE shall be liable for, and shall indemnify, defend, and hold Contractor harmless for, against, and from (including legal fees and costs), any expense, claim, liability, proceeding, or suit arising out of or relating to loss or damage occurring as a result of any breach of PCE's representations, warranties, or covenants herein.

PCE may, in its sole discretion, require that any Contractor claim for damages resulting from an act, omission, or order of PCE's prime contractor be made directly against such prime contractor, and upon such election, Contractor shall have full responsibility for such proceedings and shall bear all expenses, including attorney's fees in connection therewith; provided however, that Contractor shall not be deemed to be the agent or attorney for PCE in connection with such claim or as a result of such election.



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C. Right to Cover. In addition to and without limiting any other right or remedy hereunder, if PCE terminates the Order in whole or in part as provided in Section 5(A), above, PCE may, upon such terms and in such manner as it may deem appropriate, arrange for the completion of the Services by one or more third parties. If the cost to PCE of the work procured to complete the Services exceeds the price for the Services stated in the Order, Contractor shall be liable for such excess in addition to any other damage(s) arising hereunder.

D. Limitation of Liability. No party shall be liable to the other hereunder for any special, indirect, incidental, consequential, or punitive damages, nor any loss of goodwill, data or loss of use arising out of, resulting from, or in any way connected with the performance or breach of the Order, even if such party was advised of the possibility of such damages. In addition to the foregoing, any claim by PCE for indemnification resulting from a breach by Contractor of its warranty made in Section 4(A)(i), above, must be first made via demand to Contractor before the later of (i) ninety (90) days following Contractor's completion and PCE's final acceptance of the Services, or (ii) such later period of time specified in the Order or any Incorporated Provision.

E. Remedies Non-Exclusive. The rights and remedies of the parties provided herein shall not be exclusive and are in addition to any other rights and remedies provided by law.

### 7. Dispute Resolution.

A. Arbitration. In the event any dispute arises between the parties hereto, such dispute or disputes shall be settled by binding arbitration in San Diego, California, in accordance with the rules of the American Arbitration Association then in effect. Any award rendered by the Arbitrator(s) shall be final, binding and non-appealable and judgment may be entered upon it in accordance with the applicable law in any court having jurisdiction thereof.

B. Choice of Laws. This Agreement shall be construed and enforced in accordance with the laws of the State of California without reference to its conflict of laws provisions. In any claim, controversy, dispute, action, or proceeding relating to this Agreement, the non-prevailing party or parties shall pay all litigation expenses of the prevailing party in addition to all other relief granted. If no party wholly prevails, the party or parties that substantially prevail shall be awarded such litigation expenses. Litigation expenses shall include costs and reasonable attorneys' fees incurred by the prevailing party or parties during the proceeding, including upon appeal and in any administrative, quasi-judicial, or arbitration proceeding.

C. Additional Provisions Applicable to Government Contracts. If a Government contract order number appears on the Order, and in addition to the provisions of this Section 7, all claims by either party hereunder shall be subject to the provisions of the Contracts Disputes Act of 1978, 41 U.S.C § 601, et seq.

### 8. Cyber Security/Cyber Incident Reporting.

A. Subcontractor warrants that it shall protect covered contractor information and certifies it is compliant with the requirements of FAR 52.204-21 and, as applicable, DFAR 252.204-7012 and its associated subparts. The Subcontractor and all its employees shall abide by the following additional safeguards:

1. Report any breaches or data leaks as follows:
  - a. If the Subcontract falls under a DoD Prime contract or the breach/data leak concerns DoD contractor information: DIBnet
  - b. For other agencies: contracting officer
  - c. To the Prime Contractor
2. Notify Prime when major changes to processes involving covered contractor information occur.
3. For areas in which compliance is not yet met, Subcontractor warrants that it has a compliance program in place and Subcontractor's program is regularly meeting milestones toward compliance. Subcontractor shall provide copies of its compliance program and milestones upon Prime Contractor's request.
4. Covered contract information is defined in FAR 52.204-21.

B. CMMC/NIST 800-171 Compliance

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1. Seller represents and certifies compliance with DFARS 252.204-7012, or that Seller qualifies for a COTS exception as set forth in DFARS 204.7304.
2. Seller certifies that it:
  - a. Solely provides COTS items as defined in Federal Acquisition Regulation 2.101 and qualifies for exception to DFARS 252.204-7012 as prescribed in 204.7304.  
OR
  - b. Complies with the requirements of 252.204-7012 Safeguarding Covered Defense Information and Cyber Incident Reporting.
3. DFARS 252.204-7020 (This section does not apply to COTS sellers)
  - a. Seller certifies that they have a System Security Plan in place.
  - b. Seller certifies that they have completed the Basic Assessment using the NIST SP 800-171 DoD Assessment Methodology.
  - c. Seller certifies they have entered a score into the DoD Supplier Performance Risk Systems (SPRS).

**9. Miscellaneous.**

A. Incorporated Provisions. In addition to, and without limitation to Section 4(C)(ii), Contractor shall be bound by the provisions of PCE’s associated prime contract (if any) applicable to the Services in the same manner as PCE is bound to its prime contractor thereunder and as though such provisions were a part of these Terms and Conditions (together with any provisions incorporated pursuant to Section 4(C)(ii) hereof, the “Incorporated Provisions”). Without limiting the foregoing, PCE shall have the benefit of all rights, remedies, and redress against Contractor that its prime contractor has against PCE under such document(s) with respect to the Services. In undertaking to perform the Services, Contractor expressly acknowledges that all prime contract documents have been made available to it, and Contractor assumes the obligation to familiarize itself with those provisions of the prime contract documents, identify the Incorporated Provisions specified therein, and ensure compliance with the same by it and its Representatives. Notwithstanding the foregoing sentence, in the case of a direct conflict between the terms of the Prime Contract Documents and the Order and/or these Terms and Conditions, the terms specified in the Order and/or these Terms and Conditions shall prevail; except to the extent that PCE’s rights or remedies under its associated prime contract would be prejudiced thereby, in which case, the Incorporated Provisions shall prevail, but only to the extent necessary to preserve such rights or remedies of PCE thereunder.

B. No Waiver. The failure of either party to insist upon strict performance of any term or condition hereunder or to exercise any rights or remedies shall not be construed as a waiver of rights to assert any of the same or to rely upon any such term or condition at anytime thereafter.

C. Severability. If any provision or the scope of any provision of these Terms and Conditions is unenforceable or too broad in any respect whatsoever to permit enforcement to its full extent, such provision(s) shall nonetheless be enforced to the maximum extent permitted by law, and the parties consent and agree that such provisions shall be curtailed only to the extent necessary to conform to applicable law. In the event of any conflict or inconsistency between any provision of these Terms and Conditions and any schedule, Order, acknowledgement, or similar document issued by either party in connection herewith, the provisions of these Terms and Conditions shall control.

D. Survival. The provisions of Sections 4(D), 4(E), 4(F), and 6 shall survive termination of these Terms and Conditions and any associated Order for any reason.

E. Headings. The headings of the paragraphs of this Agreement are intended solely for convenience of reference and in no way define, limit, or extend the construction of the scope, extent, or intent of these Terms and Conditions or any provision hereof.

F. Counterparts and Facsimile Signatures. These Terms and Conditions and any Order may be executed in two or more identical counterparts, each of which shall be an original and all of which, taken together,



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shall constitute the same instrument. Signatures transmitted by facsimile or other electronic means (including .pdf) shall be effective and binding for all purposes.

G. Assignment. No Order may be assigned by either party, except as specifically permitted herein. This Agreement shall be binding upon and inure to the benefit of the heirs, successors, representatives, and permitted assigns of the parties hereto.

H. Force Majeure. No party shall be responsible for delay or inability to perform hereunder reasonably caused by: acts of God; adverse weather conditions; strikes and/or labor troubles; war; restraint or seizure by government or belligerent party; riot or civil commotion; epidemic; quarantine; embargo; deviation in attempt to save life or property at sea; fire or explosion; or any other cause that is outside the control of the non-performing party; provided that this paragraph shall not excuse a party's failure to perform hereunder if it fails to take timely and commercially reasonable steps to overcome such force majeure circumstance.

I. Notices. All notices, requests and demands that any party is required or may desire to give to any other party under these Terms and Conditions must be in writing delivered to each party at the addresses specified in the latest Order, or to such other address as any party may designate by written notice to all other parties. Each such notice, request and demand shall be deemed given or made as follows: (a) if sent by hand delivery, upon delivery; (b) if sent by mail, upon the earlier of the date of receipt or three (3) days after deposit in the U.S. mail, first class and postage prepaid; (c) if sent by overnight courier, one business day after deposit with such courier with all charges prepaid; and (d) if sent by telecopy or electronic mail, upon receipt.

J. Liens. Neither this Order nor the materials and services covered hereby, nor the payments hereunder, shall be encumbered without PCE's express and prior written permission. Breach of this provision shall give PCE the right to cancel this Order without obligation or liability of any kind.

K. Entire Agreement. The Order, together with these Terms and Conditions and any Incorporated Provisions, constitutes the entire agreement between the parties, and supersedes all other negotiations, discussions, and agreements and understandings with respect to the subject matter. No other terms or conditions shall apply unless added by a written amendment signed by both parties.