



Purchase Order Terms and Conditions

Direct Commercial | R2 | 14 September 2020

- Definitions.** "Buyer" means Kihomac entity or affiliate listed as the "Purchaser" or "Buyer" on the applicable Purchase Order. "Seller" means the business entity to which this purchase order is addressed, including Seller's principal if Seller is acting as a broker or agent. "Order" means this purchase order, including all terms and conditions on the face and reverse side and all specifications, quality requirements and drawings referenced in this Order or issued hereunder. "Goods" means those parts, materials, data, or other property or services that are the subject of this Order. "Commercial Item" means a commercially available item meeting the definition at FAR2.101.
- Contract Formation & Acceptance.** (a) If this Order is deemed to constitute acceptance of an offer, such acceptance is expressly made conditional on Seller's assent to the terms of this Order, and shipment of any part of the Goods or other commencement of performance will be deemed to constitute such assent. (b) Any additional or different terms in any offer or acknowledgement by Seller are expressly rejected by Buyer and will not be deemed accepted by Buyer unless Buyer's acceptance thereof is in writing and specifically refers to each such additional or conflicting term. (c) Seller's commencement of performance, acceptance of the purchase order in any manner, or the absence of a signed acknowledgment within 10 (ten) manufacturing days upon receipt of purchase order shall conclusively evidence Seller's acceptance of the purchase order as written. (d) The Order may not be amended, modified or otherwise supplemented unless such amendment, modification or supplement is in writing and signed by both Seller and Buyer. Furthermore, Seller and Buyer expressly agree that the terms and conditions of the Order cannot be altered or amended by parole evidence of course of performance, course of dealing or usage of trade.
- Relationship of the Parties.** (a) The Seller and Buyer are independent contractors. Nothing in the purchase order shall be deemed to create a partnership, joint venture, franchise, employment, or agency relationship between the parties. Neither party shall have the power of authority to bind or obligate the other party.
- Invoicing; Payment; Price Warranty.** (a) A separate original invoice is required for each shipment under this Order. (b) Buyer will pay for the Goods within 45 days after the later of the date of Buyer's receipt of the applicable invoice or the date acceptable Goods are received by Buyer (but not earlier than the specified delivery date). (c) Seller warrants that the prices charged to Buyer are no higher than the lowest prices charged to any other customer of Seller or any of Seller's affiliates during the past twelve months for the same or comparable Goods.

Invoices shall be sent to:

KIHOMAC

3800 North Fairfield Rd

Layton, Utah 84041

Attn: Ms. Lani Bair

Ph: 385-515-4233

email: ap@kihomac.com

- Order Changes.** (a) Buyer may at any time, by written notice to Seller, make changes in the drawings, specifications, quantities, delivery schedules and shipping instructions under this Order. (b) If any such change increases or decreases the cost of performing or the time required for performance of this Order, an equitable adjustment in prices and/or schedules will be considered by Buyer provided that any claim by Seller for such adjustment is presented in writing with supporting documentation to Buyer within 10 business days from the date of Buyer's notice to Seller. (c) No changes whatsoever will be initiated by Seller without Buyer's written approval.

6. **Taxes.** (a) Prices stated include all taxes directly applicable to the Goods unless otherwise specified. Notwithstanding the foregoing, Buyer will only be liable for such federal, state and local taxes that Seller is required by law to collect from Buyer.
7. **Shipping and Delivery.** (a) Goods will be suitably prepared for shipment to secure the lowest transportation rates (unless a premium method is specified on the purchase order) and comply with all carrier regulations. (b) No charges are allowed for packing, crating, freight express, or cartage unless explicitly authorized by purchase order. (c) Material shall be described in bills of lading in accordance with current national mode of freight or uniform freight classification, whichever is applicable. (d) Buyer's order numbers and symbols, and identification numbers must be plainly marked on all invoices, packages, bills of lading and shipping orders. (e) Packing lists shall accompany each box or package shipment showing Buyer's Order number and symbol item number and description materials. (f) Buyer's count or weight shall be conclusive on shipments not accompanied by packing lists. (g) Shipping receipts or bills of lading shall be sent to Buyer on the date material is shipped.
8. **Routing, Risk of Loss, Excess Shipments and Delays.** (a) Time is of the essence in the performance of this Order by Seller and Seller will take all necessary action, both normal and extraordinary, to ensure timely deliveries. (b) Buyer may select mode of transportation, routing of, and carrier for the Goods. Seller will be liable for excess transportation costs resulting from deviation from Buyer's instructions or promised delivery dates. (c) Seller will bear the risk of loss until the delivery point specified in the Order or, if not so specified, until delivery at destination. (d) Buyer's weight and count are conclusive, and Buyer will have no liability for payment for Goods delivered in excess of the quantity ordered. Excess Goods may be returned to Seller at Seller's expense. (e) If, prior to time for delivery of the Goods, Seller has reason to believe that it will be unable to meet its delivery schedule, Seller will immediately notify Buyer in writing, will indicate the cause of delay and will use its best efforts to cure the anticipated delay. Upon receipt of notice of the anticipated delay or upon occurrence of an actual delay, Buyer may (I) direct expedited routing of Goods, with excess costs paid by Seller, or (II) cancel the Order and purchase substitute Goods elsewhere, with excess costs and expenses paid by Seller.
9. **Inspection of Goods; Rejection of Goods and Revocation of Acceptance.** (a) All Goods and related facilities will be subject to test and inspection by Buyer, Buyer's customers, and any applicable government agencies at all places and all times, including during the period of manufacture. (b) Seller will provide at no cost all reasonable facilities and assistance required for any such inspections or tests conducted at Seller's premises. (c) Buyer's action in paying for or accepting any Goods will not constitute a waiver of any rights or remedies of Buyer, including Buyer's right to revoke acceptance and return any part of the Goods or the right to make a claim for damages because of the failure of the Goods to conform to the purchase order. (d) For all non-conforming Goods, Seller will provide Buyer, at Buyer's election, a full refund or replacement of the Goods, at Seller's risk and expense, including transportation costs both ways. (e) Buyer may, at its option, purchase substitute Goods in lieu of non-conforming Goods, and Seller will be liable for the difference in costs, less expenses saved by Buyer. (f) Buyer's rights herein will be in addition to all other rights of Buyer under applicable law.
10. **Quality; Warranties.** (a) Seller warrants that all Goods delivered will strictly conform to the Order and all applicable specifications, quality documents and drawings, will be of good design, material, and workmanship, will be free of defects, will be merchantable and fit for their intended purpose, and will meet all applicable industrial and governmental safety standards. (b) Seller further warrants that Seller will have title to and the right to sell such Goods at the time of delivery, and that all such Goods will be new (unless otherwise specified in this Order) at the time of delivery. (c) Seller will also transfer to Buyer the warranties on goods and services incorporated into Goods. All warranties will survive any inspections, delivery, acceptance or payment by Buyer, and will run to Buyer, its successors, assigns, customers and users of Goods. (d) Seller will repair or replace, without cost to Buyer, all defective or nonconforming Goods, and pay for all other resulting damage, loss or claims arising out of defective or nonconforming Goods. (e) Seller's warranties with respect to repaired or replaced Goods will be the same as the warranties given with respect to the original Goods. (f) No approval of Seller's designs, drawings, samples, test results, procedures, processes, schedules or other items by Buyer under this Order will in any way limit or diminish Seller's warranties hereunder.



Purchase Order Terms and Conditions

Direct Commercial | R1 | 30 April 2018

11. **Indemnification.** (a) Seller agrees to defend, indemnify and hold Buyer, including its officers, directors, employees, parent, subsidiaries, affiliates and agents (collectively, the "Indemnified Party"), harmless of and from any claim, loss, cost, damage, settlement or judgment arising out of Seller's provision of Goods to the Indemnified Party or the presence of Seller's employees, agents or subcontractors on the Indemnified Party's premises. (b) This duty to defend, indemnify and hold harmless extends to any legal claim or proceeding, whether based on contract, warranty, infringement, strict liability in tort, negligence or other legal theory, and also extends not only to third party claims but also to any loss suffered directly by the Indemnified Party. Buyer is entitled to control Seller's defense of Buyer hereunder.
12. **Insurance.** (a) Seller will furnish, upon request, to Buyer a certificate of insurance showing that Seller has obtained insurance coverage in the following minimum amounts (or such higher minimum amounts as Buyer may, in its sole discretion, specify in writing): (i) Worker's Compensation - statutory limits for the state or states in which the work is to be performed; (ii) Employer's Liability - \$1,000,000; (iii) Commercial General Liability - \$1,000,000 combined single limit per occurrence including Premises and Operations, Independent Contractors, Contractual Liability and Products and Completed Operations coverages; and (iiii) Automobile Liability (including owned, hired and non-owned vehicles) - \$1,000,000, combined single limit per occurrence. (b) Such certificate will set forth the insurance company, amount of coverage, the policy numbers, and date of expiration, and will include a thirty days notice of cancellation to Buyer clause. (c) Buyer must be named as an additional insured party under each of these policies with the exception of the worker's compensation policy. (d) Such insurance coverage must be maintained by Seller at all times while it is performing work under this Order. (e) Compliance by Seller with these insurance requirements does not affect Seller's indemnification or other liabilities under this Order.
13. **Tooling.** (a) Buyer will be the owner of any equipment, tooling or fixturing furnished or paid for by Buyer (collectively, "Buyer tooling"). (b) Seller will, to the extent feasible, identify Buyer tooling as Buyer directs and will dispose of Buyer tooling only in accordance with Buyer's written instructions. (c) Seller assumes complete liability for any Buyer tooling and Seller agrees to pay for all repair, maintenance and replacement of Buyer tooling. (d) Unless otherwise authorized in writing by Buyer, Seller will use Buyer tooling solely in the performance of purchase orders for Buyer. (e) Buyer reserves the right to request and receive a list of Buyer tooling in Seller's possession and to audit such list against Buyer tooling at Seller's facilities.
14. **Materials.** (a) If Buyer furnishes any material for fabrication under this Order, then: (i) Seller will not substitute any other material in such fabrication without Buyer's written consent; (ii) Buyer's title to such materials shall not be affected by incorporation or attachment to any other property; (iii) Seller will maintain strict accountability to ensure positive individual lot integrity of finished product; and (iiii) all such material (except that which becomes normal industrial waste or is replaced at Seller's expense) will be returned in the form of product or unused material to Buyer. (b) Inaccuracies, out of tolerance conditions or inadequacies in quality of materials accepted by Seller will not excuse performance in strict accordance with the applicable specifications, quality documents and drawings. (c) Any industrial waste/scrap from Buyer-furnished material will, if requested by Buyer, be owned by Buyer and collected and segregated by Seller for pick-up by Buyer. (d) Any industrial waste/scrap from Buyer-furnished material in excess of the allowance specified by Buyer will result in Seller being debited for the cost of the excess materials plus appropriate labor and overhead burdens.
 - 14.1. **Hazardous Materials.** (a) "Hazardous material," as used in this section, includes any material defined as hazardous under the latest version of Federal Standard No. 313 (including revisions adopted during the term of the contract). (b) The offeror must notify the buyer of hazardous material, as defined in paragraph (a) of this section, to be delivered under this contract. Notification shall take place PRIOR to delivery. The hazardous material deliverables

shall be properly identified and clearly marked as hazardous and include any applicable identification number, such as National Stock Number or Special Item Number. (c) The seller agrees to submit, for each item as required prior to delivery, a Material Safety Data Sheet, meeting the requirements of 29 CFR 1910.1200(g) and the latest version of Federal Standard No. 313, for all hazardous material identified in paragraph (b) of this clause. Data shall be submitted in accordance with Federal Standard No. 313, whether or not the apparently seller is the actual manufacturer of these items. Failure to notify the buyer or submit the Material Safety Data Sheet prior to delivery may result in the seller being disqualified as an approved Seller and from all future orders.

15. Counterfeit Parts Prevention.

- 15.1 For purposes of this Section, "Work" consists of those parts delivered under the Purchase Order that are the lowest level of separately identifiable items (e.g., articles, raw materials, components, goods, and assemblies). "Counterfeit Work" means Work that is or contains unlawful or unauthorized reproductions, substitutions, or alterations that have been knowingly mismarked, misidentified, or otherwise misrepresented to be an authentic, unmodified part from the original manufacturer, or a source with the express written authority of the original manufacturer or current design activity, including an authorized aftermarket manufacturer. Unlawful or unauthorized substitution includes used Work represented as new, or the false identification of grade, serial number, lot number, date code, or performance characteristics. "Suspect Counterfeit Work" means Work for which credible evidence (including, but not limited to, visual inspection or testing) provides reasonable doubt that the Work is authentic.
- 15.2 Seller shall not deliver Counterfeit Work or Suspect Counterfeit Work to Buyer under the Purchase Order.
- 15.3 Seller shall only purchase products to be delivered or incorporated as Work to Buyer directly from the original component manufacturer ("OCM")/original equipment manufacturer ("OEM"), or through an OCM/OEM authorized distributor chain. Seller may use another source only if: (i) the foregoing sources are unavailable, (ii) Seller's inspection and other counterfeit risk mitigation processes will be employed to ensure the authenticity of the Work, and (iii) Seller obtains the advance written approval of Buyer.
- 15.4 Seller shall maintain counterfeit risk mitigation processes in accordance with industry recognized standards and with any other specific requirements identified in the Order.
- 15.5 Seller shall immediately notify Buyer with the pertinent facts if Seller becomes aware or suspects that it has delivered Counterfeit Work or Suspect Counterfeit Work. When requested by Buyer, Seller shall provide documentation that authenticates traceability and enables tracking of the affected items through the supply chain back to the applicable OCM/OEM.
- 15.6 This clause applies in addition to and is not altered, changed, or superseded by any quality provision, specification, statement of work or other provision included in the Order addressing the authenticity of Work. To the extent such provisions conflict with this clause, this clause prevails.
- 15.7 In the event that Work delivered under the Order constitutes or includes Counterfeit Work, Seller shall, at its expense, promptly replace such Counterfeit Work with genuine Work conforming to the requirements of the Order. Notwithstanding any other provision in the Order, Seller shall be liable for all costs relating to the removal and replacement of Counterfeit Work, including without limitation Buyer's costs of removing Counterfeit Work, of installing replacement Work and of any testing necessitated by the reinstallation of Work after Counterfeit Work has been exchanged. In the event that Work delivered under the Order constitutes or includes Suspect Counterfeit Work, Seller shall, at its expense, promptly prove that such Suspect Counterfeit Work is authentic. If Seller is unable to prove such authenticity to Buyer's sole satisfaction, the provisions of this paragraph regarding Counterfeit Work shall apply. The remedies contained in this paragraph are in addition to any remedies Buyer may have at law, equity or under other provisions of the Order.

- 15.8 At the request of Buyer, Seller shall provide a certification that the Work provided to Buyer does not contain any Counterfeit Work or Suspect Counterfeit Work. Certification may also include or require the submission of an original certificate of conformance, original test reports, or other data traceable to approved labs or other entities to ensure an item is as claimed. Buyer may request clear identification of the name and location of supply chain intermediaries from the OCM/OEM to the direct source of the Work for Seller; and where available, the batch identification of the OCM/OEM for the Work, such as date codes, lot codes, or serial numbers.
- 15.9 Seller shall include paragraphs (15.1) through (15.8) and this paragraph (15.9) of this clause or equivalent provisions in lower tier subcontracts for the delivery of items that will be included in or furnished as Work to Buyer.
16. **Buyer's Property; Confidentiality.** (a) Buyer retains title and ownership of all information, materials and intellectual property furnished to Seller in connection with performance of this Order, and the same will be: (i) treated as Buyer's confidential information, segregated from Seller's property, and individually marked and identified as Buyer's property; (ii) used by Seller exclusively for the purpose of completing this Order; and (iii) returned to Buyer at Buyer's direction or upon completion, termination, or cancellation of this Order, along with all copies or reproductions, unless otherwise agreed in writing by Buyer. (b) All Specifications or Samples furnished by Buyer to Seller for rendering or production or any other purposes, shall be considered proprietary and confidential information of Buyer. (c) Seller shall not publish or disclose in any way any of Buyer's confidential information to any third party, or use any of Buyer's confidential information for any purpose other than for the purpose as contemplated by the Purchase Order. (d) All of Buyer's confidential information and all copies thereof (including, without limitation, all materials containing or embodying any of Buyer's confidential information) are and shall remain the sole property of Buyer and shall be returned promptly to Buyer upon completion or termination of the activity for which Seller has obtained such confidential information.
17. **Cancellation/Termination for Convenience.** (a) Buyer may, at any time by written notice to Seller, terminate all or any part of the Order for Buyer's convenience, in which event Seller agrees to stop work immediately as to the terminated portion of the Order and to notify subcontractor(s) to stop work, and protect and preserve property in its possession in which Buyer has an interest. (b) If the Order is terminated, in whole or in part, for Buyer's convenience, Seller shall be paid an amount, to be mutually agreed upon, which shall be adequate to cover the reasonable cost of Seller's actual performance of work under the Order to the effective date of termination, plus a reasonable profit thereon provided that no amount shall be paid to Seller for (i) any anticipatory profits related to work under the Order not yet performed, or (ii) costs incurred due to Seller's failure to terminate work as ordered on the effective date of termination. (c) Buyer shall have no obligation to make any of the aforementioned payments to Seller, either for completed items or in connection with terminated work in process, unless Seller shall establish to Buyer's satisfaction that such completed items, or the work in process, including materials, are unusable in connection with Seller's other business. (d) In no event shall the termination charges and all previous payments made under the Order exceed the total Order value shown on the face of the Order.
18. **Termination for Default.** (a) Buyer may, by written notice, terminate this entire Order or any part of the Order for default in the following circumstances: (ii) Seller fails to deliver the items or perform the services required by the Order and these Order Terms and Conditions within the time specified in the Order, or any extension granted by Buyer in writing; or (iii) Seller fails to perform under any of the other provisions of the Order and these Order Terms and Conditions or fails to make progress so as to endanger performance of the Order in accordance with its terms and Seller does not cure, or submit to Buyer a plan to cure, such failure to Buyer's reasonable satisfaction within a period of ten (10) days after receipt of notice from Buyer specifying the failure; or (iii) Seller becomes insolvent or makes a general assignment for the benefit of creditors, or files or has filed against it a petition of bankruptcy or reorganization,

or pursues any other remedy under any other law relating to relief for debtors, Buyer deems that Seller is insolvent or in the event a trustee or receiver is appointed for Seller's property or business.

18.1. (a) If the Order is entirely or partially terminated by Buyer under this provision, Buyer may procure, upon such terms and in such manner, as Buyer may deem appropriate, items or services similar to those terminated. Seller will be liable to Buyer for any and all re-procurement costs for similar items or services, including any price for similar items or services that is higher than the price applicable to the Order; provided, however, that Seller will continue the performance of the Order to the extent not terminated. Seller will not be liable for any additional costs if Seller notifies Buyer in writing within ten (10) days of the existence of the cause that Seller's failure to perform the Order: (i) arises out of causes beyond the control and without the fault or negligence of Seller. These causes may include, but are not restricted to, acts of God or of the public enemy, acts of a government in its sovereign capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; or (ii) is caused by the default of a vendor or subcontractor to Seller, so long as the default arises out of causes beyond the control of both the Seller and the vendor or subcontractor, and the subcontracted items or services were not obtainable from other sources in sufficient time to permit Seller to meet the required delivery schedule.

18.2. (a) If the Order is entirely or partially terminated under this section, Buyer, in addition to any other rights, may require Seller to: (i) Transfer title and deliver to Buyer, in the manner and to the extent directed by Buyer, any completed items and any partially completed items and materials, parts, components, tools, dies, jigs, fixtures, plans, drawings, information, software, and contract rights (hereinafter called "Contract Materials") as the Seller has specifically produced or acquired for the performance of the part of the Order that has been terminated; and/or (ii) Protect and preserve property in the possession of Seller in which Buyer has an interest.

18.3. (a) Payment for completed items delivered to and accepted by Buyer, and for the protection and preservation of property, will be in an amount agreed upon by Seller and Buyer. (b) Buyer may withhold from amounts otherwise due Seller for such completed items or Contract Materials such sums as Buyer determines to be necessary to protect Buyer against loss because of outstanding liens or claims; and/or

18.4. (a) If, after notice of termination under this section, it is determined that Seller was not in default, or that the default was excusable, the rights and obligations of the parties will be the same as if the notice of termination had been issued pursuant to the section entitled "Termination for Convenience."

19. **End of Life.** (a) In the event Seller intends to replace or discontinue the manufacture of a Good, Seller will give Buyer at least 6 months prior written notice and accept additional Orders for such Good until the end of the 6- month notice period. Seller may not discontinue manufacture of a Good until all outstanding Orders for such Good have been filled.

20. **Compliance with Laws; U.S. Export Controls.** (a) In performing work under this Order, Seller and its subcontractors will comply with all applicable federal, state, and local laws, and the rules and regulations of any governmental authority. This includes strict compliance with all applicable export control laws, labor laws and regulations of the United States and all applicable trade regulations under U.S., foreign or other relevant jurisdictions. Buyer reserves the right to cancel any Order without penalty or liability to Buyer in the event Seller's performance under this Order does not comply with such laws, rules and regulations. Seller will defend, indemnify and hold Buyer harmless for any non-compliance by Seller or its subcontractors.

20.1 Equal Opportunity: This contractor and subcontractor shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity 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. Contractor/Subcontractor



Purchase Order Terms and Conditions

Direct Commercial | R1 | 30 April 2018

agrees to comply with all the provisions set forth in 29 CFR Part 471, Appendix A to Subpart A (Executive Order 13496).

21. **Government Contracts.** For purchase orders placed by Buyer in support of and/or relating to a U.S. Government Contract:
 - 21.1 the Federal Acquisition Regulation ("FAR") and, as applicable, the Defense Federal Acquisition Regulation Supplement ("DFARS") clauses identified on Appendix A are incorporated by reference as set forth at length herein;
 - 21.2 any appendices to the Order that may include additional FAR and/or DFARS clauses shall also be incorporated by reference as if set forth at length herein; and,
 - 21.3 references to the terms "Government" and "Contractor" contained in the FAR and DFARS clauses shall be deemed revised to include Buyer and Seller, respectively.
22. **DPAS Rating.** (a) If the Purchase Order (including the face thereof or any clauses applicable hereto pursuant to Section 21 above) indicates that it is a rated order certified for national defense use, then Seller is required to follow all the provisions of the Defense Priorities and Allocations System regulation (15 CFR Part 700) in obtaining controlled materials and other products, services and materials needed to fill the Order. (b) If this is a DX rated order, Seller must promptly provide Buyer with written acceptance or rejection of the Purchase Order within ten (10) working days after receipt. (c) If this is a DO rated order, Seller must promptly provide Buyer with written acceptance or rejection of this order within fifteen (15) working days after receipt. (d) Seller must include in any written rejection of a rated order the reasons for the rejection. Seller's written acknowledgement of a rated order shall constitute written acceptance of the DPAS rating.
23. **Commerciality Determination.** (a) Seller shall notify Buyer/Subcontract Administrator immediately upon discovery that any of the service(s) provided by it to Kihomac would no longer be considered a Commercial Item under FAR part 2.101.
- 24.
25. **Assignment; Subcontracting.** (a) Seller may not assign its rights or obligations under this Order either voluntarily or by operation of law without the prior written consent of Buyer. (b) Seller may not subcontract all or any substantial part of this Order without the prior written consent of Buyer. (c) Any consent of Buyer will not relieve Seller of its contractual obligations under this Order.
26. **Applicable Law; Disputes.** (a) The interpretation of this Order and the rights and obligations of the parties hereto will be construed and governed by the laws enacted in the state of Virginia, except that Virginia's choice of law rules will not be invoked for the purpose of applying the law of another jurisdiction. (b) The U.N. Convention on Contracts for the International Sale of Goods will not apply to this Order. (c) The parties agree that, in any effort to enforce the terms and obligations hereunder, the complaining party will first notify the other party in writing of the alleged dispute and the parties will attempt in good faith to resolve the dispute through prompt discussion and meeting between representatives having decision-making authority regarding the dispute. (d) If the dispute is not resolved by the 30th day after written notice of the dispute was first made, the complaining party may seek appropriate legal action provided that either party may seek preliminary injunctive or other equitable relief at any time to prevent irreparable harm. (e) The parties agree to personal jurisdiction in the state and federal courts in the state of Virginia.

27. **Cumulative Remedies; Set-Off.** (a) All of Buyer's rights and remedies under this Order or at law are cumulative and non-exclusive. (b) Payment to Seller under this Order is subject to set-off or recoupment for any present or future claims that Buyer or its affiliates may have against Seller or its affiliates.
28. **Limitation of Buyer's Liability.** (a) Any liability of Buyer for any breach of any term or condition imposed upon it, whether such term or condition is contained in this Order or otherwise, will not exceed the purchase price for the Goods involved in the alleged breach. (b) Buyer will not under any circumstance be liable for consequential or incidental damages.
29. **Disclosure of Information and Publicity.** (a) Seller shall not, and shall require that its subcontractors at any tier shall not, publish any information developed under this Contract, nor disclose, confirm, or deny any details about the existence or subject matter of this Contract, or use Buyer's name in connection with Seller's sales promotion or publicity without prior written approval of the Buyer.
30. **Gratuities.** (a) Seller warrants that neither it nor any of its employees, agents, or representatives have offered or given, or will offer or give, any gratuities to Buyer's employees, agents or representatives for purposes of securing the purchase order or securing favorable treatment under the Purchase Order. (b) If it is found that gratuities (in the form of entertainment, gifts or otherwise) are offered by Seller, or any agent or representative of Seller, to any employee of Buyer or its agents or representatives with a view toward securing favorable treatment with respect to the awarding or performing of any purchase order issued by Buyer to Seller, Buyer may, by written notice to Seller, terminate the Order in accordance with Section 18, Termination for Default, in addition to the exercise of any other rights or remedies provided to Buyer by law or in equity.
31. **Force Majeure.** (a) Neither party shall be responsible for its failure to perform due to causes beyond its control such as acts of God, fire, war, riots, freight embargoes, or acts of civil or military authorities. (b) If services or materials are to be delayed by such causes, Seller shall immediately notify Buyer in writing and Buyer may either elect to extend the period of performance of the contract, or, should the delay caused by Force Majeure extend beyond 30 days, Buyer may terminate the contract at no cost to Buyer.
32. **Right to Pursue a Claim Direct Against the Government.** (a) Except as may be expressly set forth in this Document with the Government Contracting Officer's express consent, the SUBCONTRACTOR shall not acquire any direct claim or direct course of action against the US Government. (b) Buyer may elect to sponsor seller's claims against the Government.
33. **Entire Agreement.** (a) This Order constitutes the entire agreement between the parties with respect to the subject matter herein and therein and supersedes all previous proposals, both oral and written, negotiations, representations, commitments, writings and all other communications between the parties. (b) No waiver, alteration, modification or addition to this Order will be binding unless expressly agreed to in writing and signed by duly authorized representatives of Buyer and Seller. (c) A waiver of any of the terms or conditions hereof will not be deemed a continuing waiver, but will apply solely to the instance to which the waiver is directed.



Schedule A

Commercial Items flow-downs for purchases under federal programs. – FAR 52.244-6 and DFARS 252.244-7000.

For Purchase Orders placed by Buyer in support of and/or relating to a U.S. Government Contract, the following Government contract clauses are applicable and are hereby incorporated by reference into the Order with the same force and effect as if set forth in full text. The version in effect as of the date of the applicable prime contract shall apply unless otherwise notified. Where necessary to make the clauses set forth in this Appendix A applicable to the order, the term "Contractor" shall mean "Subcontractor", "Seller" or "Seller"; the term "Contract" or "Subcontract" shall mean "Purchase Order"; the term "Government" shall mean "Kihomac"; and the term "Contracting Officer" shall mean "Kihomac Authorized Agent". The clauses can be found in Title 48, C.F.R., or at www.acquisition.gov. Please note, a dollar threshold or a certain condition may trigger the applicability of the clause. It is each party's responsibility to assess applicability.

FAR Clauses. The following FAR clauses apply as defined by the respective FAR clause 52.244-6 for all purchase orders over the micro-purchase threshold as defined at FAR 2.101:

- 52.203-15 Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009 (applicable if prime contract is funded with Recovery Act funds)
- 52.203-19, Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements
- 52.204-21 Basic Safeguarding of Covered Contractor Information Systems (applicable if Federal contract information is received from Seller during performance of Buyer's Order)
- 52.212-4 Contract Terms and Conditions – Commercial Items
- 52.212-5 Contract Terms and Conditions – For subcontracts for the Acquisition of Commercial Items or Commercial Components
- 52.222-21 Prohibition of Segregated Facilities
- 52.222-26 Equal Opportunity
- 52.222-35 Equal Opportunity for Veterans
- 52.222-36 Equal Opportunity for Workers with Disabilities
- 52.222-37 Employment Reports on Veterans
- 52.222-40 Notification of Employee Rights Under the National Labor Relations Act
- 52.222-50 Combating Trafficking in Persons
- 52.222-55 Establishing a Minimum Wage for Contractors
- 52.222-62 Paid Sick Leave Under Executive Order 13706
- 52.223-11 Ozone Depleting Substances
- 52.223-18 Encouraging Contractor Policies to Ban Text Messaging While Driving
- 52.224-3 Privacy Training
- 52.225-1 Buy American – Supplies
- 52.225-26 Contractors Performing Private Security Functions Outside the United States
- 52.232-40 Providing Accelerated Payments to Small Business Subcontractors
- 52.232-29 Unenforceability of Unauthorized Obligations
- 52.233-4 Applicable Law for Breach of Contract Claim
- 52.244-6 Subcontracts for Commercial Items
- 52.245-1 Government Property (applicable if Government furnished property will be used in performance of Buyer's Order)
- 52.246-4 Inspection of Services-Fixed Price
- 52.246-11 Higher-Level Contract Quality Requirements
- 52.247-63 Preference for U.S. Flag Air Carriers

52.247-64 Preference for Privately Owned U.S. Flag Commercial Vessels

Applicable to all Purchase Orders over \$30,000:

52.204-10 Reporting Executive Compensation and First-Tier Subcontract Awards (applicable if Buyer is the Prime Contractor)

Applicable to all Purchase Orders over \$35,000:

52.209-6 Protecting the Government's Interest when Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment

Applicable to all Purchase Orders over \$150,000:

52.203-3 Gratuities

52.203-12 Limitation on Payments to Influence Certain Federal Transactions

52.203-16 Preventing Personal Conflicts of Interest (applicable if performing acquisition functions closely associated with inherently governmental functions)

52.211-15 Defense Priority and Allocation Requirements (applicable if Buyer's Order has a DPAS rating)

52.222-40 Notification of Employee Rights Under the National Labor Relations Act

Applicable to all Purchase Orders over \$700,000:

52.219-8, Utilization of Small Business Concerns (note: except subcontracts with small business concerns)

52.215-20 Requirements for Cost or Pricing Data or Information Other than Cost or Pricing

52.215-21 Requirements for Cost or Pricing Data or Information Other than Cost or Pricing Data-Modifications

Applicable to all Purchase Orders over \$5,500,000:

52.203-13 Contractor Code of Business Ethics and Conduct

DFARS Clauses. The following DFARS clauses apply for all purchase orders over the micro-purchase threshold (\$3,500) as defined at FAR 2.101:

252.244-7000 Subcontracts for Commercial Items and Commercial Components

252.204-7000 Disclosure of Information (applicable if Seller will have access to or generate unclassified information that may be sensitive and inappropriate for release to the public) (Replace "The Contracting Officer" and "contracting activity" with Kihomac)

Applicable to all Purchase Orders marked as Critical Safety Items:

252.246-7003 Notification of Potential Safety Issues

Applicable Commercial Standards:

Aerospace Standard AS9100 Rev D.

Aerospace Standard AS5553