NOTE 1 – Commercial Item Terms and Conditions

The Federal Acquisition Regulation (FAR) clauses referenced below; and any others identified in the KAI purchase order, are incorporated herein by reference, with the same force and effect as if they were given in full text. They are applicable at the thresholds indicated, including any notes following the clause citation, during the performance of this Contract.

This Contract is entered into by the Parties in support of a U.S. Government Contract. This contract includes the appropriate flow-down clauses as required by FAR/DFAR and the related Prime Contract, each of which is flown-down to the Contractor and/or Subcontractor. In no event shall the “Contractor or Seller” acquire any direct claim or course of action against the United States Government. No Terms or Conditions contained in the subcontracts will abrogate, limit, restrict, or waive any Government right(s).

Definitions as used in the FAR clauses referenced below and otherwise in this Contract:

1. “Commercial Item” means a commercial item as defined in FAR 2.101.

2. “CONTRACTOR” means the SELLER, as defined in the definitions of this document, acting as the immediate (first-tier) subcontractor to Kay & Associates (KAI).

3. “Prime Contract” means the contract between KAI and the U.S. Government or between KAI and its higher-tier contractor who has a contract with the U.S. Government.

4 “Contract” means this Contract.

5. “Subcontract” includes, but not limited to, a transfer of commercial items between divisions, subsidiaries, or affiliates of the contractor or subcontractor at any tier.

NOTES: The following notes apply to the clauses incorporated by reference below only when specified in the parenthetical phrase following the clause title and date.

1. Substitute "KAI" for "Government" or “United States” as applicable throughout this clause.

2. Substitute "KAI Supply Technician" for "Contracting Officer”, “Administrative Contracting Officer”, and “ACO” throughout this clause.

3. Insert “and KAY” after “Government” or “Contracting Officer”, as appropriate, throughout this clause.

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4. Insert “or KAY” after “Government” throughout this clause.

5. Communication/notification required under this clause from/to SELLER to/from the Contracting Officer shall be through KAI.

6. “Contracting Officer” shall mean the U.S. Government Contracting Officer for KAI’s government prime contract under which this Contract is entered.

As applicable, this contractor and subcontractor shall abide by the requirements of 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 require that covered prime contractors and subcontractors take action to employ and advance in employment qualified individuals without regard to protected veteran status or disability. If applicable, the contractor and subcontractor shall also abide by the requirements 41 CFR § 61-300.10 regarding veterans’ employment reports, 29 CFR § 1602.7 regarding the annual EEO-1 Report, and 29 CFR Part 471, Appendix A to Subpart A, regarding posting a notice of employee labor rights.

Notice to All KAI vendors, suppliers, and subcontractors: Please incorporate, and require subcontractors at all tiers to incorporate, commercial items or non-developmental items as components of items to be supplied under this subcontract.

Order of Precedence. Any inconsistencies in a solicitation or contract shall be resolved by giving precedence in the following order:

1. Applicable FAR/DFAR clauses.
2. Prime Contract clauses and/or requirements.
3. Contract specific requirements

Note: Federal law governs the interpretation and application of FAR/DFARS clauses.

FAR / DFAR FLOWDOWN CLAUSES:

FAR 52.203-13, Contractor Code of Business Ethics and Conduct (Oct 2015) (41 U.S.C. 3509), if the subcontract exceeds $5.5 million 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.

FAR 52.204-25, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment. (Aug 2020)

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FAR 52.204-27, Prohibition on a ByteDance Covered Application.

FAR 52.215-8, Order of Precedence – Uniform Contract Format.

FAR 52.219-8, Utilization of Small Business Concerns (Oct 2014) (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 $700,000 ($1.5 million for construction of any public facility), the subcontractor must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities.

FAR 52.222-35, Equal Opportunity for Veterans (Oct 2015) (38 U.S.C. 4212(a)). (Applies if this Contract is $100,000 or more.)

FAR 52.222-36, Equal Opportunity for Workers with Disabilities (Jul 2014) (29 U.S.C. 793). (Applies if this Contract exceeds $15,000.)

FAR 52.222-37, Employments Reports on Veterans (Feb 2016) (38 U.S.C. 4212). (Applies if this Contract is $100,000 or more.)

FAR 52.222-40, Notification of Employee Rights Under the National Labor Relations Act (Dec 2010) (E.O. 13496), if flow down is required in accordance with paragraph (f) of FAR clause 52.222-40. (Applies if this Contract exceeds $150,000.)

FAR 52.222-50, Combating Trafficking in Persons (Jan 2019) (22 U.S.C. chapter 78 and E.O. 13627) (Applies to all contracts performed inside the United States.)

FAR 52.222-50 Combating Trafficking in Persons, Alternate I (Jan 2019) (22 U.S.C. chapter 78 and E.O. 13627). (Applies to all Contracts performed outside the United States.

(xi) 52.222-55, Minimum Wages under Executive Order 13658 (Dec 2015). (Applies to all Contracts IF construction or services are involved.)

FAR 52.225-26, Contractors Performing Private Security Functions Outside the United States (Jul 2013) (Section 862, as amended, of the National Defense Authorization Act for Fiscal Year 2008; 10 U.S.C. 2302 Note). (Applicable if FAR 25.302-6 (a) conditions are met.)

FAR 52.227-1, Authorization and Consent.

FAR 52.227-14, Rights of Data - General

FAR 52.232-40, Providing Accelerated Payments to Small Business Subcontractors (Dec 2013), if flow down is required in accordance with paragraph (c) of FAR clause

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52.232-40. (Applies to all Contracts.)

FAR 52.244-2, Subcontracts

FAR 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. (Only applies to this Contract if the supplies being transported are being resold or distributed to the Government without adding value.)

DFAR 252.204-7012, Safeguarding Covered Defense Information and Cyber Incident Reporting. (Dec 2019)

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

AS9100D / AS9110C FLOWDOWN:

External Providers selected by KAI shall meet or provide the following, as applicable:

1. External Providers will be in compliance or certified to at least one of the following Quality Management Standards (QMS) (e.g., AS9100, AS9110, AS9120, ISO 9001, and AS9003)
2. As part of the QMS, External Providers must ensure their personnel are aware of their contribution to product or service conformity, their contribution to product safety, and the importance of ethical behavior.
3. External Providers must prevent the use or distribution of unapproved or counterfeit parts.
4. External Providers will notify KAI of any changes to processes, products, or services, including changes of their external providers or location of manufacture, and obtain KAI's approval.
5. External Providers will verify that articles conform to all applicable requirements for materials, processing, inspection, test, non-destructive examination, marking, packaging, preservation and transportation.
6. External Providers will provide the implementation status of each applicable FAA Airworthiness Directive and Manufacturer's Service Bulletin.
7. KAI reserves the right to request access to facilities and/or applicable documented information to ensure and/or validate product and process conformity. This may include the request to provide test specimens for design approval, inspection/verification, investigation, or auditing at any level of the supply chain.
8. External Providers are required to retain documented information related to the products/services purchased for a minimum of 7 years.

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9. KAI reserves the right to notify appropriate stakeholders or regulatory authorities if unapproved parts, product malfunctions, defects, and unairworthy conditions are determined to be caused by External Providers products or services.

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