

# T-16 NORTHROP GRUMMAN SYSTEMS CORPORATION

(Equivalent To Enterprise Terms And Conditions CTM-P-ST-004)

## PURCHASE ORDER TERMS AND CONDITIONS GOVERNMENT COST REIMBURSABLE SUPPLY/SERVICES

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### GENERAL PROVISIONS

#### 1. DEFINITIONS

- A. "Buyer" means Northrop Grumman Systems Corporation, unless a different legal entity is identified on the face of this Order, in which case "Buyer" shall mean such other entity.
- B. "Classified Information" means any information or material, regardless of physical form or characteristics, that is owned by, produced or for, or under the control of the United States Government (U.S.G.), and determined pursuant to Executive Order 12356, April 2, 1982 (47 Federal Register 14874, April 6, 1982) or prior orders to require protection against unauthorized disclosure, and is so designated as "Confidential," "Secret," or "Top Secret." See Federal Acquisition Regulation (FAR) 52.204-2, Security Requirements.
- C. "Procurement Contracting Official (PCO)" means the person authorized by Buyer's cognizant purchasing organization to administer and/or execute this Order and who has authority to make contractual commitments on behalf of Buyer, to provide contractual direction, and to change contractual requirements of this Order.
- D. "Data" means all financial/business information, designs, dimensions, specifications, drawings, patterns, computer files or software, know how, or other information, including but not limited to Technical Data used in the design and manufacture of Products or the provision of Services. Data may be recorded in a written or printed document, computer or electronically stored, software, or any other tangible form of expression.
- E. "Order" means the instrument of contracting, including these terms and conditions and all other referenced documents, and any subsequent changes or modifications.
- F. "Party/Parties" means Buyer and Seller individually/collectively.
- G. "Prime Contract" means the contracting instrument issued to Buyer or Buyer's higher tier customer by the U.S.G. or another end user for the acquisition of Products and/or Services.
- H. "Product(s)" means those goods, supplies, reports, computer software, Data, materials, articles, items, parts, components or assemblies, and any incidental Services described in this Order.
- I. "Seller" means the Party with whom Buyer is contracting under this Order.

- J. "Service(s)" means Seller's time and effort, including any items, articles, Data, or similar materials provided to Buyer which are incidental to the performance of the Service.
- K. "Technical Data" means all designs, dimensions, specifications, drawings, patterns, know-how, or other information concerning the methods, manufacturing processes, equipment, gauges, and tools used in the design, manufacture, assembly, operation, repair, testing, maintenance, or modification of Products. This includes, but is not limited to, information in the form of blueprints, drawings, photographs, plans, instructions and documentation, or similar information used in the performance of Services. Technical Data may be recorded in a written or printed document, computer or electronic file, electro-magnetic tape or disc, software, or any other tangible form of expression. Technical Data also includes unclassified and classified information as defined in the International Traffic in Arms Regulations (ITAR) 22 Code of Federal Regulations (C.F.R.) § 120.10 and Technology, as defined in the Export Administration Regulations (EAR) Part 772 and Supplement 1 to Part 774.
- 2. ACCEPTANCE**
- This Order is Buyer's offer to Seller to purchase the Products and/or Services described in this offer. Any additional terms proposed in Seller's acceptance of Buyer's offer including, but not limited to, shrink-wrapped or click-through terms not specifically negotiated and identified on the Order, which add to, vary from, or conflict with the terms herein are hereby objected to by Buyer. Any such proposed terms shall be void and the terms herein shall constitute the complete and exclusive statement of the terms and conditions of the contract between the Parties and may hereafter be modified only by written instrument executed by the authorized representatives of both Parties. Any of the following shall constitute Seller's unqualified acceptance of this Order and these terms and conditions: (a) acknowledgment of this Order; (b) furnishing of any part of the Products and/or Services under this Order; (c) acceptance of any payment for the Products/Services under this Order; or (d) commencement of performance under this Order.
- 3. ORDER OF PRECEDENCE**
- In the event of any inconsistency between any parts of this Order, the inconsistency shall be resolved by giving precedence in the following order:
- A. Contract Security Classification Specifications
  - B. Change Order Document
  - C. Order Document
  - D. Order Terms and Conditions
  - E. FAR/Defense FAR Supplement (DFARS) and Other Agency Supplemental Clauses
  - F. Statement of Work
  - G. Specifications/Drawings
  - H. Quality/Mission Assurance Requirements
  - I. Supplier Data Requirements List (SDRL)/Data Item Description (DID)
  - J. Other Referenced Documents
- 4. ASSIGNMENT**
- A. Seller shall not assign or transfer, in whole or in part, this Order or any of its rights, payments, claims or interest under this Order without Buyer's prior, written consent.
  - B. Buyer may make direct settlements or adjustments in price, or both, with Seller under the terms of this Order notwithstanding any assignment of claims for money due or to become due under this Order and without notice to the assignee.
- 5. SUBCONTRACTING**
- A. Seller shall not subcontract the entirety or any part of this Order without the prior, written authorization of Buyer, and Seller shall require a like agreement from immediate and lower-tier suppliers. This restriction on subcontracting shall not apply to authorized distributors, dealers, jobbers or industrial suppliers nor shall it apply to purchases of standard commercial articles, including electronic components or raw materials including castings, forgings, and rough welded structures on which Seller will perform further work.
  - B. No subcontract placed under this Order shall provide for payment on a cost-plus-percentage-of-cost basis, any fee payable under cost reimbursement subcontracts shall not exceed the fee limitations in FAR subsection 15.404-4(c), and Seller agrees to select subcontractors/suppliers on a competitive basis to the maximum practical extent consistent with the objectives and requirements of this Order.
- 6. ALLOWABLE COST, FEE AND PAYMENT**
- A. For the performance of this Order, Buyer shall pay the following to Seller:
    - 1. The cost thereof determined by Buyer to be allowed in accordance with FAR 52.216-7 and the provisions of this Order (herein referred to as "Allowable Cost"), plus,
    - 2. Such fixed fee, if any, as may be provided in this Order or, if this is a Cost-Plus-Incentive Fee (CPIF) contract, a fee as determined in accordance with the provisions of the "Incentive Fee" clause herein. Fees paid to Seller's subcontractors and their lower-tier subcontractors under either Cost-Plus-Fixed-Fee (CPFF), Cost-Plus-Award-Fee (CPAF) or CPIF type subcontract which are in excess of the percentage authorized under the FAR for that type of contract, shall not be allowable hereunder. Supplemental to the foregoing, and except as may be expressly provided to the contrary herein, it is agreed that such items of direct and indirect cost as are concurrently and customarily accepted by the U.S.G. as allowable direct and indirect costs under Seller's U.S.G. cost type prime and subcontracts, if any, at the plant(s) of Seller engaged in the performance of this Order for Products or Services similar to those called for by this Order, shall be allowable direct and indirect costs under this Order to the extent such costs are properly allocable to this Order.
  - B. Seller shall maintain complete and accurate books, records, documents, statement of costs, and other evidence and accounting procedures and practices (hereinafter collectively called the "Records") sufficient to reflect properly all direct and indirect costs of whatever nature claimed to have been incurred and anticipated to be incurred for the performance of this Order. Seller agrees to make available at the office of Seller at all reasonable times prior to final payment, and for a period of one year thereafter, any of the Records for inspection, audit or reproduction by any authorized representative of Buyer. Each payment made shall be subject to reduction for amounts included in the related invoice which are found by Buyer upon such audit not to constitute Allowable Cost. Any payment may be reduced for overpayments, or increased for under-payments, on preceding invoices.

- C. Once each month Seller may submit to Buyer, in such form and reasonable detail as Buyer may require, an invoice supported by a statement of cost incurred by Seller in the performance of this Order and claimed to constitute Allowable Cost. For this purpose, except as provided herein with respect to pension, deferred profit sharing and employee stock ownership plan contributions, the term "costs" shall include only those recorded costs which result, at the time of the request for reimbursement, from payment by cash, check, interdivisional notices of payments, or other form of actual payment for Products or Services purchased directly for this Order, together with (when Seller is not delinquent in payment of costs of Order performance in the ordinary course of business) costs incurred, but not necessarily paid, for materials which have been issued from Seller's stores inventory and placed in the production process for use on this Order, for direct labor, direct travel, other direct in-house costs, and properly allocated and Allowable indirect Costs, as is shown by the Records, plus the amount of progress payments which have been paid to Seller's subcontractors under similar cost standards. In addition, when the aforementioned contributions are paid by Seller to the pension, profit sharing, or employee stock ownership plan funds less frequently than quarterly, accrued costs therefore shall be excluded from indirect costs for payment purposes until such costs are paid. If such contributions are paid on a quarterly or more frequent basis, accruals therefore may be included in indirect costs for payment purposes provided that they are paid to the fund within thirty (30) days after the close of the period covered. If payments are not made to the fund within such thirty (30) day period, these contributions shall be excluded from indirect cost for payment purposes until payment has been made. The restriction on payment more frequently than monthly and the requirement of prior payment for Products or Services purchased directly for this Order shall not apply where Seller is a small business concern.
- D. After receipt of each invoice and statement of cost, Buyer shall, except as otherwise provided in this Order and subject to the provision of B. above, make payment thereon within sixty (60) days, as approved by Buyer's PCO. Normally, payment of fee shall be made to Seller as specified in the Order; provided, however, after payment of eighty-five percent (85%) of the applicable fee as determined by Buyer to be appropriate, Buyer may withhold further payment of the fee until a reserve shall have been set aside in an amount which Buyer considers necessary to protect the interests of Buyer, but such reserve shall not exceed fifteen percent (15%) of the total applicable fee as determined by Buyer or one hundred thousand dollars (\$100,000), whichever is less. If this is a CPIF, and in the opinion of Buyer, Seller's performance or cost indicates that Seller will earn a fee less than the target fee, Buyer shall pay on the basis of such lesser fee as determined by Buyer to be appropriate; further, when Seller demonstrates that its performance and incurred costs clearly indicate that Seller will earn a fee significantly in excess of the target fee, Buyer may, in its sole discretion, pay on the basis of such higher fee as is determined by Buyer to be appropriate.
- E. On receipt and approval by Buyer of the invoice designated by Seller as the "Completion Invoice," and upon compliance by Seller with all the provisions of this Order (including, without limitation, the provisions relating to patents and the provisions of F. below), Buyer shall promptly pay to Seller any balance of Allowable Cost and any part of the fee which has been withheld pursuant to C. above or otherwise not paid to Seller. The Completion Invoice shall be submitted by Seller promptly following completion of the work under this Order but in no event later than six (6) months (or such period as Buyer may, in its discretion, approve in writing) from the date of such completion.
- F. Seller agrees that any refunds, rebates, credits, or other amounts (including any interest thereon) accruing to or received by Seller or any assignee under this Order shall be paid by Seller to Buyer, to the extent they are properly allocable to costs for which Seller has been reimbursed by Buyer under this Order. Reasonable expenses incurred by Seller for the purpose of securing such refunds, rebates, credits or other amounts shall be Allowable Costs hereunder when approved by Buyer. Prior to final payment under this Order, Seller and each assignee under this Order whose assignment is in effect at the time of final payment under this Order shall execute and deliver:
  1. An assignment to Buyer, in form and substance satisfactory to Buyer, of refunds, rebates, credits, or other amounts (including any interest thereon) properly allocable to costs for which Seller has been reimbursed by Buyer under this Order; and
  2. A release discharging Buyer (and the Government, if a Government Contract number appears on the face of this Order), its officers, agents and employees from all liabilities, obligations and claims arising out of or under this Order, subject only to the following exceptions:
    - i. Specified claims in stated amounts or in estimated amounts where the amounts are not susceptible to exact statement by Seller; provided such amounts are supportable by Seller's accounting records;
    - ii. Claims, together with reasonable expenses incidental thereto, based upon liabilities of Seller to third parties arising out of performance of this Order; provided that such claims are not known to Seller on the date of the execution of the release, and provided further that Seller gives notice of such claims in writing to Buyer not more than three (3) years after the date of the release or the date of any notice to Seller that Buyer is prepared to make final payment, whichever is earlier; and
    - iii. Claims for reimbursement of costs (other than expenses of Seller by reason of its indemnification of Buyer and the Government against patent liability), including reasonable expenses incidental thereto, incurred by Seller under the provisions of this Order relating to patents.
- G. Buyer shall be entitled at all times to set off (a) any amount owing at any time from Seller to Buyer or any of its affiliated companies; (b) any damages resulting from Seller's default under or breach of any contract (including this Order and these terms or any other order); (c) any adjustment for shortage or rejection and any associated costs, against any amount payable at any time by Buyer or any of its affiliated companies to Seller.

#### **7. INSPECTION AND CORRECTION – DEFECTS**

- A. All Products, Services and Data under this Order shall be subject to inspection and test by Buyer and the U.S.G., to the extent practicable at all times and places including the period of performance and in any event prior to final acceptance. Except as otherwise specifically provided in this Order and notwithstanding the FOB point or any payment or prior inspection at source, final inspection and acceptance by Buyer shall be made at destination. Final inspection shall be made within a reasonable time, but in any event not more than sixty (60) days after receipt by Buyer at destination. Seller shall provide and maintain an inspection system acceptable to Buyer and the U.S.G., covering the work hereunder. Buyer and the U.S.G., through any of its authorized representatives, may inspect the plant(s) of Seller or of any of its subcontractors engaged in the performance of this Order. If any inspection or test is made by Buyer or the U.S.G. on the premises of Seller or a subcontractor, Seller shall provide and shall require its subcontractors to provide all reasonable facilities and assistance for the safety and convenience of Buyer and the U.S.G. inspectors in the performance of their duties. All inspections and tests by Buyer and the U.S.G. shall be performed in such a manner as will not unduly delay performance.
- B. Seller shall furnish to Buyer if requested all the information and Data as may be reasonably required by Buyer in order to perform inspection and acceptance.
- C. Inspection and acceptance of any Product(s) and/or Service(s) by Buyer or the U.S.G. shall not be deemed to alter or affect the obligations of Seller or the rights of Buyer and its customers under the correction of defects requirements below or as may be provided by law.

- D. Buyer's failure to inspect any of the Products hereunder shall neither relieve Seller from responsibility for such Products as are not in accordance with the requirements of this Order nor impose liability on Buyer therefore.
- E. If this Order, including those documents forming a part hereof by reference or incorporation, provides for or requires the submission of any of the Products or Data to Buyer for "First Article Inspection," testing or approval, any such inspecting, testing or approval given by Buyer, prior to final acceptance, shall not relieve Seller of its responsibility for complying with the specifications and other provisions of this Order. Any such inspection, testing or approval shall not be construed as an assumption by Buyer of the responsibility that such Product or Data complies or will comply with the specification or other provisions of this Order.
- F. At any time during performance of this Order or within the times set forth below or at such other time as may be provided in this Order after final acceptance of all of the Products, Services or Data to be delivered or performed under this Order, Buyer may require Seller to remedy by correction or replacement, as directed by Buyer, any failure by Seller to comply with the requirements of this Order, including defects in material or workmanship. Any time devoted to such correction or replacement shall not be included in the computation of the period of time specified below.
- G. Except as otherwise provided below, the allowability of the cost of any such replacement or correction shall be determined as provided in the clause of this Order entitled "Allowable Cost, Fee and Payment" but no additional fee shall be payable with respect thereto. Corrected Products shall not be tendered again for acceptance unless the former tender and the requirement of correction are disclosed.
- H. If Seller fails to proceed with reasonable promptness to perform such replacement or correction, Buyer (1) may by separate contract with third persons or otherwise perform such replacement or correction and charge to Seller any increased cost occasioned Buyer thereby, or may reduce any fee payable under this Order (or require repayment of any fee previously paid) in such amount as may be equitable under the circumstances, or (2) in the case of Products not delivered, may require the delivery of such Products and shall have the right to reduce any fee payable under this Order (or to require repayment of any fee previously paid) in such amount as may be equitable under the circumstances, or (3) may cancel this Order for default.
- I. Notwithstanding the provisions above, Buyer may at any time require Seller to remedy by correction or replacement, without cost to Buyer, any failure by Seller to comply with the requirements of this Order if such failure is due to fraud, lack of good faith or willful misconduct on the part of any Seller's directors or officers, or on the part of any of its managers, superintendents, or other equivalent representatives, who have supervision or direction of (1) all or substantially all of Seller's business, or (2) all or substantially all of Seller's operations at any one plant or separate location in which this Order is being performed; or (3) a separate and complete major industrial operation in connection with the performance of this Order. Buyer may at any time also require Seller to remedy by correction or replacement, without cost to Buyer, any such failure or defective Products caused by one or more individual employees selected or retained by Seller after any such supervisory personnel has reasonable grounds to believe that any such employee is habitually careless or otherwise unqualified.
- J. The above provisions shall apply to any corrected or replacement Product or part or component thereof for a reasonable period of time after final inspection (depending on the requirements or specification and the type and durability of the ordered Product), but in any event, not less than six (6) months from the date of such final acceptance.
- K. Seller shall make its records of all inspection work available to Buyer and to the U.S.G., during the performance of this Order and for such longer period as may be specified in this Order.
- L. Corrected or replaced Products shall be subject to the provisions of this clause in the same manner and to the same extent as Products originally delivered under this Order.
- M. Seller shall have no obligation or liability under this Order to replace Products that were nonconforming at the time of delivery, except as provided in this clause or as may be otherwise provided in this Order.
- N. Except as otherwise provided in this Order, Seller's obligation to correct or replace Buyer or U.S.G. furnished property shall be governed by the "Government or Buyer Property" clause provided herein or such additional property terms as made part of this Order.

## 8. CHANGES

- A. Buyer's PCO may at any time, by written order, and without notice to sureties or assignees, if any, make changes within the general scope of this Order in (1) drawings, designs, statement of work, specifications, planning and /or other technical documents; (2) method of shipment, packaging, or packing; (3) time and place of inspection, delivery or acceptance; (4) reasonable adjustments in quantities and/or delivery schedules; (5) place of performance of the Service; (6) the amount of Buyer/Government furnished property; and (7) terms and conditions required to meet Buyer's obligations under its Prime Contracts, including, but not limited to, any mandatory flow-down clauses.
- B. If any authorized change causes an increase or decrease in the cost or time required to perform this Order, Buyer and Seller shall negotiate an equitable adjustment in the price and/or schedule, to reflect the increase or decrease. Buyer shall modify this Order in writing accordingly.
  - 1. Any claim for adjustment shall be unconditionally waived unless: (i) asserted in writing and delivered to Buyer within fifteen (15) days of the date of the written change order and (ii) a fully supported proposal is delivered to Buyer's PCO within thirty (30) days of the date of the written change order.
  - 2. If Seller claims the cost of any Product made obsolete or excess, Buyer shall have the right to prescribe the manner of disposition of the Product to include the right to acquire that Product for cost claimed.
  - 3. Buyer, its authorized representatives, and its customer have the right to examine any of Seller's pertinent books and records for the purpose of verifying Seller's claim. However, at Seller's request, in lieu of Buyer, a mutually agreeable third party can examine books and records to verify Seller's claim.
- C. Notwithstanding any other provisions of this clause, the estimated cost of this Order and, if this Order is incrementally funded, the funds allotted for the performance of this Order, shall not be increased or considered to be increased except by specific written modification of this Order indicating the new Order estimated or target cost and, if this Order is incrementally funded, the new amount allotted to this Order. Until this modification is made, Seller shall not be obligated to continue performance or incur costs beyond the point established in the "Limitation of Cost" or "Limitation of Funds" clauses in this Order.
- D. Buyer's engineering, technical personnel and other representatives may from time to time render assistance or give technical advice or discuss issues or engage in an exchange of information with Seller's personnel concerning the Products or Services hereunder. No such action shall be deemed to be a change, nor shall it be the basis for an equitable adjustment, and no such action shall relieve Seller of its obligations under this Order.

## 9. GOVERNING LAW

Both Parties agree that, irrespective of the place of performance of this Order, this Order will be governed, construed, and interpreted according to the law of the Commonwealth of Virginia, without regard to its conflict of laws principles. The 1980 United Nations Convention on Contracts for the International Sale of Goods and its related instruments will not apply to this Order.

## **10. DISPUTES**

- A. Any dispute arising under or in connection with this Order with respect to the rights, duties, or obligations of the Parties shall be submitted in writing for resolution to ascending levels of management of the respective Parties.
- B. If a dispute cannot be resolved to both Parties' mutual satisfaction, after good faith negotiations, within ninety (90) days from the date the written claim is received by the other Party, or such additional time as the Parties agree upon in writing, either Party may bring suit only in a state or federal court located in the Commonwealth of Virginia. Seller consents to personal jurisdiction for this purpose in the Commonwealth of Virginia.
- C. Pending any prosecution, appeal, or final decision referred to in this clause, or the settlement of any dispute arising under this Order, both Parties shall proceed diligently, with their respective obligations under this Order.
- D. To the maximum extent permitted by law, the Parties waive any right to a jury trial.
- E. In no event shall Buyer be liable for anticipated profits, incidental or consequential damages. Buyer's liability on any claim, of any kind and for any loss or damage arising out of, connected with or resulting from this Order, or from the performance or breach thereof shall, in no case, exceed the price allocable to the Products and/or Services, or unit thereof, which gives rise to the claim. Buyer shall not be liable for penalties of any description. Any action resulting from any breach on the part of Buyer as to the Products and/or Services delivered hereunder must be commenced within one year after the cause of action has accrued.
- F. In no event shall Seller acquire any direct claim, or direct course of action against the U.S.G. except as approved by Buyer pursuant to this clause or as otherwise authorized by law.

## **11. GOVERNMENT OR BUYER PROPERTY**

- A. Title to all property furnished to Seller by Buyer, or paid for by Buyer or U.S.G. shall remain with Buyer or U.S.G., as applicable. Seller shall not alter or use such property for any purpose or for any other party other than that specified by Buyer, without the prior written consent of Buyer. If Buyer agrees to pay Seller for acquisition of tooling and equipment, either separately or as a stated part of the unit price of Products purchased herein, title to the same shall pass to Buyer or U.S.G., as applicable, upon (i) commencement of processing for use in performance of this Order, or (ii) Buyer payment therefore, whichever occurs first.
- B. Seller shall assume the risk of, and be responsible for, any loss, theft, destruction of or damage to Buyer or U.S.G. property while in Seller's possession or control. If Seller damages any property, Seller shall be responsible for making repairs at no cost to Buyer. Upon Buyer's written request to Seller for any property under this clause, if Seller cannot locate Buyer or U.S.G. property within five (5) days, Seller shall notify Buyer that the item was not located and Seller subsequently has twenty (20) days to find the misplaced property. After such period, if it has not been located, the property shall be deemed "lost" and at Buyer's election, Seller shall either reimburse Buyer for the replacement and all related delay costs, or remake the lost property at no cost to Buyer.
- C. Seller shall return all such property in a condition as good as when received except for reasonable wear and tear. Seller shall establish and maintain a property control system approved by Buyer and in accordance with the provisions of FAR 52.245-1 for the control of U.S.G. or Buyer owned property. Seller shall also notify Buyer if its property system is deemed inadequate by the U.S.G. At all times, Buyer and the U.S.G., as applicable, shall have access to Seller's facilities for the purpose of reviewing its compliance with the management of U.S.G. or Buyer property related to this Order.

## **12. TERMINATION**

Buyer may at any time terminate all or any part of this Order in accordance with the contract clause entitled "Termination (Cost-Reimbursement)" set forth at 52.249-6, as modified in 49.503(a)(4), which clause is hereby incorporated herein and made a part hereof by this reference, except that the term "contract" therein shall mean this Order, the terms "Contracting Officer" and "Government" therein shall mean "Buyer", the term "Contractor" therein shall mean "Seller", paragraphs (e) and (j) thereof are deleted, the period "120 days" in paragraph (d) is changed to "60 days", the period "1 year" in paragraph (f) is changed to "3 months"; provided, however, that if this Order is a first-tier subcontract under a U.S. Government Prime Contract, the period "1 year" in paragraph (f) is changed to "180 days".

## **13. TAXES AND DUTIES**

The price of this Order includes all applicable foreign and domestic federal, state, and local taxes, duties, tariffs, and similar fees ("Taxes") levied upon, or measured by, the sale, the sales price, or use of Products and/or the performance of Services associated with this Order. Seller shall separately list on its invoice (or voucher) any Taxes. Seller shall comply with any reasonable request by Buyer regarding Tax payments under protest and shall make appropriate adjustments to afford Buyer the benefit of any refund or reduction in Taxes.

## **14. INFORMATION OF BUYER AND SELLER**

- A. Unless expressly stated otherwise herein, the exchange of information under this Order shall be governed by this Order and, in particular this clause 14 which supersedes any prior agreement between Buyer and Seller to protect information relating to the purpose of this Order.
- B. "Proprietary Information" means all Data or other information exchanged under this Order in written or other permanent form that is identified in writing at the time of disclosure as proprietary and marked with an appropriate legend, marking or stamp identifying the Data as proprietary to the Party disclosing the information, and includes any information marked with a restrictive legend as prescribed in the DFARS 252.227-7013 or 252.227-7014 or in the FAR 52.227-14. Proprietary Information shall also include information originally disclosed in some other form (e.g., orally or visually) to the extent that the disclosing Party:
  - 1. Identifies the information as proprietary at the time of original disclosure;
  - 2. Summarizes the Proprietary Information in writing;
  - 3. Marks the writing clearly and conspicuously with an appropriate proprietary legend; and,
  - 4. Delivers the writing to the receiving Party within thirty (30) days of the original disclosure.
- C. Seller shall make no use, either directly or indirectly, of any of Buyer's Proprietary Information or any information derived therefrom, except in performing this Order, without obtaining Buyer's written consent and shall return Buyer's Proprietary Information upon Buyer's request. The foregoing limitation on disclosure and use shall not apply to Data or information which (i) was in the rightful possession of the receiving Party without restriction, prior to the first receipt from the disclosing Party; or (ii) now or hereafter, through no act or failure to act on the part of the receiving Party, becomes generally known and available to the public without restriction; or (iii) is hereafter disclosed and made available to a receiving Party without restriction by others having the right to make such disclosure.
- D. Seller agrees that all information heretofore or hereafter furnished or disclosed to Buyer by Seller in connection with the placing or performance of this Order is furnished or disclosed as a part of the consideration for this Order; that such information is not, unless otherwise agreed to by Buyer in writing, to be treated as confidential or proprietary; and that Seller shall assert no claims (other than for patent infringement) by reason of the use or disclosure of such information by Buyer, its assigns, or its customers and Seller shall not place any restrictive markings on such information. Any agreement purporting to provide for the confidential treatment of, or limiting the use of or disclosure of, Seller information so furnished or disclosed, must be in writing and signed by Buyer.

- E. Seller further hereby grants to Buyer a non-exclusive, irrevocable, worldwide, right and license to copy, modify, use and disclose to the U.S.G. or any higher tier contractor, any information received from Seller, including Seller Proprietary Information, for the performance of this Order and any higher tier contract from which this Order is issued.
- F. All documents and other tangible media (excluding Products) transferred in connection with this Order, together with any copies thereof, are and remain the property of Buyer.
- G. Neither the existence of this Order nor the disclosure hereunder of Proprietary Information or any other information shall be construed as granting expressly, by implication, by estoppel or otherwise, a license under any invention or patent now or hereafter owned or controlled by Buyer or Buyer's customer, except as specifically set forth herein.
- H. Seller's obligations with respect to information or Data disclosed hereunder prior to the performance in full, termination or cancellation of this Order shall not, except as expressly set forth herein, be affected by such performance in full, termination or cancellation.
- I. Notwithstanding the foregoing, nothing in this clause is intended to affect the rights or exercise of rights, if any, obtained by the U.S. Government under the "Rights in Technical Data – Noncommercial Items" clause, DFARS 252.227- 7013, and "Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation" clause, DFARS 252.227-7014, or any similar or successor clauses, or other clauses that may be contained in any contracts or subcontracts between Buyer and Seller and any customer.

#### **15. SUBCONTRACT DELIVERABLES**

Seller agrees and acknowledges that all deliverables, or portions thereof, under this Order ("Deliverable Materials") may be incorporated into deliverables under the next higher tier or Prime Contract. Seller hereby grants Buyer the right to deliver the Deliverable Materials or any portion thereof under the next higher tier or Prime Contract. Seller further hereby agrees to deliver the Deliverable Materials under this Order with the appropriate markings required by the Government regulations incorporated into this Order.

#### **16. INTELLECTUAL PROPERTY RIGHTS**

- A. "Intellectual Property" shall mean creations of the mind including: ideas, inventions, works of authorship, and symbols, names, images, and designs embodied in for example, Technical Data, designs, information, computer software, drawings, formulae, specifications, diagrams, processes, know-how, procedures and technology and all legal rights in such creations of the mind.
- B. "Works" shall mean physical manifestations of Intellectual Property created under this Order.
- C. "Background Intellectual Property" shall mean Intellectual Property that is (i) in existence prior to the effective date of this Order or (ii) is designed, developed or licensed by a Party after the effective date of this Order independently of both (A) the Work undertaken or in connection with this Order and (B) the Proprietary Information and Intellectual Property of the other Party to this Order.
- D. "Foreground Intellectual Property" shall mean all Intellectual Property conceived, created, acquired or initially reduced to practice in connection with this Order.
- E. Each Party shall retain and exclusively own all rights in its Background Intellectual Property and in all Foreground Intellectual Property that it creates. Foreground Intellectual Property jointly generated by employees of more than one Party shall be jointly owned. Neither Party shall have any obligation to account to the other Party for income arising from use of the jointly owned Foreground Intellectual Property. Nothing in this clause shall modify or alter any rights that the U.S.G. may have in any Products and/or Services, including Data or software deliverables to the U.S.G.
- F. Seller hereby grants to Buyer a non-exclusive, worldwide, right and license to copy, modify, use, sell, offer for sale and disclose any Work or other deliverable delivered by Seller under this Order for the performance of this Order and any higher tier contract. If the Work or other deliverable contains third party intellectual property, Seller agrees to obtain the rights from the third party that are sufficient for Seller to grant Buyer the rights in the above license. Seller warrants that it has the rights in the Work or other deliverable sufficient to grant to Buyer the above license.

#### **17. INTELLECTUAL PROPERTY INFRINGEMENT WARRANTY AND INDEMNITY**

- A. Seller warrants that the performance of Seller under this Order, including any Services provided by Seller to Buyer, and the sale, use, or incorporation into manufactured Products of all machines, devices, material, software, and firmware which are not of Buyer's design, composition, or manufacture shall be free and clear of infringement of any valid patent, copyright, trade mark, mask works, or other proprietary rights.
- B. Seller shall indemnify, defend, and hold harmless Buyer, its directors, officers, employees, consultants, agents, affiliates, successors, permitted assigns and customers ("Indemnitees") from and against all claims, suits, actions, awards (including, but not limited to, awards based on intentional infringement of patents known at the time of such infringement, exceeding actual damages and/or including attorney's fees and/or costs), liabilities, damages, costs and attorney's fees related to the actual or alleged infringement of any U.S. or foreign intellectual property right (including, but not limited to, any right in a patent, copyright, industrial design or semiconductor mask work, or based on misappropriation or wrongful use of information or documents) and arising out of the performance of Seller under this Order or the manufacture, sale or use of Products delivered by Seller under this Order, or the provision of Services by Seller under this Order, by either Buyer or Buyer's customer ("Infringement Claims"). Buyer and/or its customer will duly notify Seller of any such Infringement Claim and Seller will, at its own expense, fully defend such Infringement Claim on behalf of the Indemnitees. Seller will have no obligation under this clause with regard to any infringement arising from (a) the compliance of Seller's new Product design with formal specifications issued by Buyer where infringement could not be avoided in complying with such specifications or (b) use or sale of Products for other than their intended application in combination with other items when such infringement would not have occurred from the use or sale of those Products solely for the purpose for which they were designed or sold by Seller.
- C. If the manufacture, use or sale of a Product delivered by Seller under this Order is likely to be or is enjoined as a result of a suit, Seller, at no expense to Buyer, shall obtain for Buyer and its customer the right to use and sell the Product or shall substitute an equivalent Product acceptable to Buyer, at its sole discretion, and extend this indemnification thereto.
- D. Notwithstanding the foregoing, when this Order is performed under the authorization and consent of the U.S.G. to infringe U.S. Patents, Seller's liability for U.S. patent infringement under this Order shall be coextensive with Buyer's liability.
- E. For purposes only of this clause and clause 18 below, the term "Buyer" will include Northrop Grumman Corporation and all Northrop Grumman subsidiaries and all directors, officers, agents and employees of Northrop Grumman Corporation or any Northrop Grumman Corporation subsidiary.

## **18. INDEMNIFICATION**

Seller shall indemnify, defend, protect, and hold harmless the Indemnitees, as defined in clause 17 above, from and against all costs, losses, expenses, damages, claims, suits, or any liability whatsoever (including attorneys' fees), arising out of or in connection with the work to be performed hereunder, or the Products to be sold hereunder, or any act or omission of Seller, its agents, employees, or subcontractors, except to any extent otherwise expressly provided for elsewhere within this Order. Seller also agrees to indemnify, defend, and hold harmless the Indemnitees from and against all costs, losses, expenses, damages, claims, suits, or any liability whatsoever (including attorneys' fees), arising out of or in connection with Seller's violation of any applicable laws, executive order or regulation. Buyer will inform Seller of any claim, demand or suit asserted or instituted against it and, to the extent of Buyer's ability to do so, permit Seller to defend the same or make settlement in respect thereof. If Seller fails to indemnify, defend, and hold harmless Buyer as provided in this clause, then Seller shall pay for any damages, attorney's fees, and any other fees, costs, and expenses that may be incurred by Buyer in the defense of any action related to this Order and/or in the prosecution of any action to enforce the provisions of this clause.

## **19. PRICE REDUCTION FOR DEFECTIVE CERTIFIED COST OR PRICING DATA / NON-COMPLIANCE WITH CAS**

- A. Buyer's Prime Contract or subcontract with its customer under which this Order is issued contains a clause that entitles the U.S.G. or a U.S.G. prime contractor or subcontractor to reduce Buyer's contract price, or any costs reimbursable thereunder, where the U.S.G. determines that such price or cost was increased by any significant sum because Seller or any of its subcontractors furnished defective cost or pricing data to Buyer in connection with the award of this Order. Seller shall indemnify, defend, and hold harmless the Indemnitees from and against all costs, losses, expenses, damages, claims, suits, or any liability whatsoever (including attorney's fees), arising out of or in connection with or resulting from such determination and action taken by the customer to the extent that such action is taken on the basis that Buyer's contract, or any cost reimbursable thereunder, was increased by any significant amount because Seller or any of its subcontractors furnished defective cost or pricing data to Buyer in connection with the award of this Order.
- B. As Seller's exclusive remedy for relief from such a determination by the U.S.G., Seller shall have the right to assert in Buyer's name at Seller's expense, Buyer's right to appeal from such determination under the Disputes clause, if any, of Buyer's contract with its customer. The determination of the U.S.G. Contracting Officer or, if such an appeal is taken, the decision on appeal shall be final and conclusive between Buyer and Seller, to the extent provided in such Disputes clause. If Seller desires to assert in Buyer's name and at Seller's expense, Buyer's rights described in such Disputes clause, if any, in Buyer's contract with its customer, to have questions decided by the courts, any final judgment by the courts, is binding upon Seller insofar as it relates to this Order. In the event Buyer does not have the right of appeal to a U.S.G. contract appeals board and is therefore unable to make such right available to Seller, the determination of the U.S.G. Contracting Officer, if binding upon Buyer, shall in turn be binding upon Seller insofar as it relates to this Order; provided, however, if Buyer elects not to bring suit against its customer with respect to any such determination, Buyer shall notify Seller with reasonable promptness and Seller shall have the right to bring suit against the customer in a court of competent jurisdiction in Buyer's name, but at Seller's expense. If Buyer or Seller brings suit against the customer, a final judgment of any such suit shall be binding upon Seller and Buyer under this Order. The rights and obligations described herein shall survive completion of and final payment under, or termination of, this Order.
- C. The provisions hereinabove shall also be applicable to any adjustments in the price of this Order as prescribed in FAR 52.230-2, "Cost Accounting Standards" or FAR 52.230-3, "Disclosure and Consistency of Cost Accounting Practices", if such clause applies.

## **20. INSURANCE**

- A. Seller and its subcontractors, at their sole cost and expense, will at all times, prior to commencement and throughout the period of performance of this Order, maintain with reputable insurance companies that are authorized to do business under the laws of the state(s) in which the work is being performed, insurance coverage in the minimum amounts as indicated below:
  - 1. Worker's Compensation insurance coverage (or DBA insurance) as required by the laws of the state in which the work is performed and such insurance shall provide waiver of subrogation against Buyer.
  - 2. Employer Liability insurance in the amount of \$1,000,000.
  - 3. Commercial General Liability (CGL) with a Combined Single Limit (CSL) of \$2,000,000 bodily injury and/or property damage. Coverage shall include, but not necessarily be limited to, premises and operations, Products and completed operations and contracts.
  - 4. Automobile Liability (AL) with a CSL of \$2,000,000 bodily injury and/or property damage covering all owned, hired and non-owned vehicles.
  - 5. If work involves non-U.S. military aviation Products, Aviation Products Liability with a CGL \$100,000,000.
  - 6. If project involves ownership or lease of an aircraft, Aviation Hull and War Risk for Replacement Cost or Agreed value.
  - 7. For Foreign Direct Sales, such insurance as mandated by the country involved.
  - 8. Additional insurance types and/or limits will be necessary if the work involves extra hazardous operations. The extra hazardous operations include, but are not limited to: dispensing of medical care, operations involving the nuclear hazard, providing professional engineering advice, large construction projects (above \$5,000,000) hazardous waste, food service, crane operation, work above ground, work below ground, and operations involving demolition or explosives.
  - 9. Such other insurance as Buyer may require as set forth in this Order or an attachment hereto.
- B. Seller will name Buyer as an additional insured under all liability policies required under this Order, will provide Buyer certificate(s) of insurance and ten (10) days prior written notice of cancellation or material change of any such coverage. Acceptance of such evidence by Buyer shall not be deemed a waiver or release of such liabilities or Seller's duty to indemnify.
- C. Renewal insurance certificates, if applicable, shall be provided to Buyer at least fifteen (15) days prior to the expiration date of the insurance under each required coverage.

## **21. EXCUSABLE DELAY – FORCE MAJEURE**

Except for a default of Seller's subcontractor at any tier, neither Buyer nor Seller shall be liable for any failure to perform due to any cause beyond its reasonable control and without its fault or negligence. Such causes include, but are not limited to: (1) acts of God or of the public enemy; (2) acts or failure of any government in either its sovereign or contractual capacity; (3) fires, floods, epidemics, terrorism, quarantine restrictions, strikes, freight embargoes, nuclear incident, or any other act or event beyond reasonable control and without the fault of either Party or its subcontractors. In the event that performance of this Order is hindered, delayed, threatened to be delayed, or adversely affected by causes of the type described above, then the Party whose performance is so affected shall immediately notify the other Party's authorized representative in writing, including all relevant information with respect thereof, and shall likewise notify promptly of any subsequent change in the circumstances, and at Buyer's sole option, this Order shall be completed with such adjustments to delivery schedule as are reasonably required by the existence of such cause or this Order may be terminated for convenience.

## 22. LABOR DISPUTES

Whenever Seller has knowledge that any actual or potential labor dispute is delaying or threatens to delay timely performance of this Order, Seller shall immediately give notice to Buyer and provide all relevant information including, but not limited to, nature of dispute, labor organizations involved, contingency plans regarding the protection of Buyer's Order, and estimated duration. Seller shall also provide updated reports throughout the dispute duration. Seller agrees to insert the substance of this clause, including this sentence, in any lower-tier subcontract where a labor dispute might delay timely performance of this Order.

## 23. COMPLIANCE WITH LAWS

- A. Seller shall comply with all applicable federal, state, and local laws, rules, regulations, and ordinances, including, without limitation, section 27 of the Office of Federal Procurement Policy Act (the Procurement Integrity Act), (41 U.S. Code (U.S.C.) 2101-2105) and its implementing regulations. In addition, Seller agrees to promptly provide Buyer any and all information and certifications requested by Buyer in this regard.
- B. Seller shall maintain environmental, health and safety management systems as appropriate to ensure compliance with applicable federal, state and local requirements. Seller further agrees to continuously promote a safe and healthy workplace and a sustainable environment related to water and air quality, water and energy conservation, greenhouse gas emission reductions, solid and hazardous waste reductions. Seller shall convey the requirement of this clause to its suppliers.
- C. Anti-Corruption Compliance. Seller represents, warrants and covenants that:
  1. It has not and will not, directly or indirectly, pay, promise, offer, or authorize the payment of any money or anything of value in connection with this Order to: (i) an officer, employee, agent or representative of any government, including any department, agency, or instrumentality thereof or any person acting in an official capacity thereof; (ii) a candidate for political office, any political party or any official of a political party; or (iii) any other person or entity while knowing or having reason to know that all or any portion of such payment or thing of value will be offered, given or promised, directly or indirectly, to any person or entity for the purpose of assisting Buyer in obtaining or retaining business, or an improper business advantage. Without limiting the generality of the foregoing, Seller shall not directly or indirectly, pay, promise, offer, or authorize the payment of any facilitating payment intended to expedite or secure performance of a routine governmental action, such as, customs clearance on behalf of Buyer.
  2. No gifts, travel expenses, business courtesies, hospitalities or entertainment of any nature have been or will be accepted or made in connection with this Order where the intent of was, or is, to unlawfully influence the recipient of the gift, travel expense, business courtesy, hospitality or entertainment. Seller also represents that any gifts, travel expenses, business courtesies, hospitalities or entertainment offered or provided shall meet the following conditions:
    - i. be permitted under the U.S. Foreign Corrupt Practices Act (FCPA) and the laws and regulations of the country in which this Order will be performed;
    - ii. be consistent with applicable social and ethical standards and accepted business practices;
    - iii. be of such limited value as not to be deemed a bribe, payoff or any other form of improper inducement or payment; and
    - iv. be of such nature that its disclosure will not cause embarrassment for Buyer.
  3. Breach of any of the foregoing provisions of subparagraphs C.1. and C.2. of this clause by Seller shall be considered an irreparable material breach of this Order and shall entitle Buyer to terminate this Order immediately without compensation to Seller.

## 24. EXPORT AND IMPORT COMPLIANCE

- A. Export Compliance.

General. Performance of this Order may involve the use of or access to articles, Technical Data or software that is subject to export controls under 22 U.S.C. 2751-2799 (Arms Export Control Act) and 22 C.F.R. 120-130 (ITAR) or 50 U.S.C. 2401-2420 (Export Administration Act of 1979, as amended), 50 U.S.C. 1701-1706 (International Emergency Economic Powers Act, as amended), and 15 C.F.R. 730-774 (EAR) and their successor and supplemental laws and regulations (collectively hereinafter referred to as the "Export Regulations"). Seller shall comply with any and all Export Regulations, and any license(s) issued there under.

  1. Registration. If Seller is a U.S. entity and is engaged in the business of either exporting or manufacturing (whether exporting or not) defense articles or furnishing defense services, Seller represents that it is registered with the U.S. Department of State's Directorate of Defense Trade Controls, as required by the ITAR, and it maintains an effective export and import compliance program in accordance with the ITAR.
  2. Seller shall not re-transfer any export-controlled information (e.g. Technical Data or software) to any other non-U.S. person or entity (including Seller's dual and/or third-country national employees) without first complying with all the requirements of the applicable Export Regulations. Prior to any proposed re-transfer, Seller shall first obtain the written consent of Buyer. No consent granted by Buyer in response to Seller's request shall relieve Seller of its obligations to comply with the provisions of paragraph A. of this clause or the Export Regulations, nor shall any such consent constitute a waiver of the requirements of paragraph A. hereinabove, nor constitute consent for Seller to violate any provision of the Export Regulations.
- B. Political Contributions, Fees and Commissions.

If this Order is valued in an amount of \$500,000 or more, then in performance of this Order, Seller shall not directly or indirectly pay, offer or agree to pay any political contributions or any fees or commissions.

  1. For purposes of this clause and pursuant to 22 C.F.R. 130.6, "Political Contribution" means any loan, gift, donation or other payment of \$1,000 or more made, or offered or agreed to be made, directly or indirectly, whether in cash or in kind, which is:
    - (a) To or for the benefit of, or at the direction of, any non-U.S. candidate, committee, political party, political faction, or government or governmental subdivision, or any individual elected, appointed or otherwise designated as an employee or officer thereof; and
    - (b) For the solicitation or promotion or otherwise to secure the conclusion of a sale of defense articles or defense services to or for the use of the armed forces of a non-U.S. country or international organization. Taxes, customs duties, license fees, and other charges required to be paid by applicable law or regulation are not regarded as political contributions.
  2. For purposes of this clause and pursuant to 22 C.F.R. 130.5, "Fee or Commission" means any loan, gift, donation or other payment of \$1,000 or more made, or offered or agreed to be made directly or indirectly, whether in cash or in kind, and whether or not pursuant to a written contract, which is:
    - (a) To or at the direction of any person, irrespective of nationality, whether or not employed by or affiliated with Seller; and
    - (b) For the solicitation or promotion or otherwise to secure the conclusion of a sale of defense articles or defense services to or for the use of the armed forces of a non-U.S. country or international organization.



- C. **Export Jurisdiction/Classification.**  
Seller shall provide the applicable Export Control Classification Number (ECCN) or ITAR categorization for all Products furnished by Seller to Buyer, except when Seller is manufacturing to Buyer's design. If Seller is not the Original Equipment Manufacturer (OEM), Seller shall obtain the ECCN or ITAR classification information from its source of supply. Seller will include the ECCN or ITAR designation on its packing slips and shipping documentation and also provide to Buyer on Buyer's request.
- D. **Import Compliance.**  
Seller shall comply with all U.S. Customs laws and regulations (e.g., 19 C.F.R.) and all other applicable U.S.G. regulations pertaining to importations of Products and materials into the U.S. for domestic Orders (Orders issued to entities addressed in the U.S.): Seller shall assume all U.S. import responsibilities, to include designation as U.S. Importer of Record, U.S. Customs clearance, and payment of duty, taxes, and fees for Products entering into the U.S. Unless otherwise agreed in writing, Buyer will not assume any import liabilities for Products procured through a domestic Order.
- E. **Notification.**  
Seller agrees to provide prompt notification to Buyer should any offer, agreement or payment of Political Contributions, Fees or Commissions (as defined herein and pursuant to this Order) be made in contravention of the prohibition in paragraph B above.
- F. Seller agrees to insert the substance of this clause, including this sentence, in any lower-tier subcontract.
- 25. NOTIFICATION OF STATUS CHANGES**
- A. By accepting this Order, Seller certifies that all representations and certifications applicable to this Order included in Corporate Form C-833, "Subcontractor Annual Compliance Certification", and Corporate Form C-832, "Supplier Profile – Responsibility and Capability Questionnaire", both available on Buyer's OASIS website, remain valid. If Seller's status under any of the applicable representations and certifications has changed, Seller must complete and submit to Buyer revised representations and certifications prior to taking any action indicating acceptance as stated on the face of this Order.
- B. Seller agrees to provide prompt notification to Buyer of any event or change in circumstances that could affect Seller's performance under this Order such as ineligibility to contract with U.S.G., debarment, assignment of consent agreement, initiation or existence of a U.S.G. investigation, change in place of performance, decrease in manufacturing capacity, diminishing manufacturing sources or material shortages, increase in production requirements, labor reductions, financial or organizational conflicts of interest, and significant financial conditions requiring any of the preceding changes.
- C. Sellers that have provided anti-corruption compliance due diligence information (e.g., related to Seller's ownership and personnel, subsidiaries and third parties, including but not limited to Buyer's due diligence questionnaire, and related certifications) to a Buyer representative or through Buyer's Global Trust website shall provide Buyer with prompt notification and details of any changes to its owners, officers, directors or other information contained in such due diligence materials, and agrees to promptly cooperate with Buyer and provide additional information reasonably requested related to such changed information. In the event of a material change to the owners, offices, directors or other information contained in the due diligence material supplied to Buyer, Buyer reserves the right to suspend performance under this Order by providing written notice to Seller in order for Buyer to conduct anti-corruption due diligence upon such changed circumstances.
- 26. PROHIBITED ACTIVITIES AND CONTACTS**
- A. **Activity Prohibitions.** For Sellers delivering Products or performing Services outside of the U.S., unless specifically authorized in writing by Buyer, Seller shall not engage in any of the following activities on behalf of Buyer under this Order: acting as an agent of Buyer; marketing or sales promotion; lobbying; freight forwarding; consulting services; performing offset (industrial participation) consulting or brokering services; acting as a distributor or reseller; or activity as a joint venture party.
- B. **Contact Prohibitions.** For Sellers delivering Products or performing Services outside of the U.S., unless specifically authorized in writing by Buyer, Seller shall not contact, either directly or indirectly, public officials of any country other than the U.S., United Kingdom, Canada, Australia, Germany, France, or Italy in furtherance of its performance on behalf of Buyer under this Order.
- 27. RELEASE OF INFORMATION AND ADVERTISING**
- Except as required by law, Seller shall not release to anyone outside Seller's organization any information, or confirmation or denial of same, with respect to this Order or the subject matter hereof without the prior written approval of Buyer. Requests for approval shall be made at least fifteen (15) days before the proposed date for release and shall identify the specific information to be released, the medium to be used, and the purpose for the release. Additionally, Seller shall not use the name "Northrop Grumman" or any other Buyer trade name, any Products, parts thereof or replicas of Products, or in any other way identify Buyer in any advertisement, display, news release, or other disclosure without Buyer's prior written consent. The Parties agree that in the event a news release is so approved and made, such news will recognize Buyer and Seller.
- 28. PARTIAL INVALIDITY, NONWAIVER, REMEDIES**
- A. If any provision in this Order is or becomes void or unenforceable by force or operation of law, or is deemed invalid, the void, unenforceable or invalid portion shall be severable, and the remaining terms and conditions shall remain in full force and effect.
- B. A Party's failure at any time to enforce any provision of this Order shall not constitute a waiver of the provision or prejudice a Party's right to enforce that provision at any subsequent time.
- C. Each of the rights and remedies reserved by Buyer in this Order shall be cumulative and additional to any other or further remedies provided in law or equity or in this Order.
- 29. RELATIONSHIP OF THE PARTIES**
- The relationship of Seller to Buyer shall be that of an independent contractor and nothing herein contained shall be construed as creating any employer/employee, agency, or other relationship of any kind. Seller's employees, agents and/or representatives (hereinafter "Employees") performing under this Order shall at all times be under Seller's direction and control and Seller shall so inform them. Seller shall pay all wages, salaries, and other amounts due its Employees in connection with this Order and shall be responsible for all reports and obligations for its Employees, including, but not limited to, social security and income tax withholdings, unemployment compensation, worker's compensation, and equal employment opportunity reporting. Under no circumstance shall Seller be deemed an agent or representative of Buyer or authorized to commit Buyer in any way.
- 30. ANTI-TRAFFICKING IN PERSONS**
- A. Buyer prohibits its employees, agents, subcontractors, and contract labor from engaging in activities that support or promote trafficking in persons, including, but not limited to, any of the following:
1. Trafficking in persons, including, but not limited to the following:
    - i. sex trafficking; or
    - ii. the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, debt bondage, or slavery.

2. The procurement of a commercial sex act;
  3. The use of forced labor in the performance of company business;
  4. The use of misleading or fraudulent recruitment activities;
  5. Charging employees recruitment fees;
  6. Failing to pay for the return transportation at the end of employment for an employee who is not a national of the country in which the work is taking place and who was brought into that country for the purpose of working;
  7. Providing or arranging housing that fails to meet the host country housing and safety standards; or If required, failing to provide an employment contract, recruitment agreement, or similar work document in writing, in the individual's native language and prior to the individual departing from his or her country of origin.
- B. Seller represents and warrants that it shall abide by and comply with the requirements of this clause. Further, Seller shall require its employees, agents, contract labor and subcontractors to abide by and comply with the requirements of this clause.
  - C. Buyer or its authorized representatives may, at any time, audit all pertinent books, records, work sites, offices, and documentation of Seller in order to verify compliance with this clause. Seller will, in all of its lower-tier subcontracts and contracts relating to this or any other Buyer Order with Seller, include provisions which secure for Buyer all of the rights and protections provided for within this clause.
  - D. Seller acknowledges that if Seller or any of its employees, agents, or contract labor engages in any of the prohibited activities in this clause, this Order is subject to termination.
  - E. Whenever Seller has knowledge, whether substantiated or not, that any actual or suspected violation of this clause has occurred, Seller shall immediately give written notice to Buyer's PCO and provide all relevant information including, but not limited to, the nature of the actual or suspected violation.
  - F. Seller shall provide its full cooperation during any subsequent investigation of the actual or suspected violation by Buyer, Buyer's representative, or cognizant government agency. Seller's cooperation shall include, but not be limited to, permitting inspection of its work sites, offices, and documentation, as necessary to support any investigation.
  - G. Seller shall, at its own expense, defend, indemnify and hold harmless Buyer and its affiliates, and all of their directors, officers, agents, employees, successors and assigns, against any claims, loss, damage or expense, regardless of how arising and even if unforeseeable, including, without limitation, payment of direct, special, incidental and consequential damages and attorney's fees, arising out of, or relating to, Seller's or Seller's employees, agents, subcontractors or contract labor's failure to comply with the requirements of this clause.
  - H. Seller agrees to insert the substance of this clause, including this sentence, in any lower-tier subcontract.

### **31. PLANT SECURITY AND SAFETY**

If this Order requires Seller's personnel to enter premises under the ownership or control of Buyer or Buyer's customer, Seller agrees to abide by and comply with, and require its employees and subcontractors to abide by and comply with, all rules and regulations pertaining to plant security and safety as may be prescribed by Buyer and/or Buyer's customer, including but not limited to, badging, citizenship requirements and background investigations.

### **32. RESERVED**

### **33. SUSPECT/COUNTERFEIT PARTS**

- A. This clause is applicable to all Orders. If DFARS 252.246-7007 and DFARS 252.246-7008 are also applicable to this Order, "Contracting Officer" shall mean "Buyer". Seller shall establish and maintain a material authenticity process that ensures the requirements of these clauses or other authenticity requirements in this Order are met. Seller's obligation to substantiate authenticity shall survive acceptance of and payment for Products delivered under this Order.
- B. Seller shall not furnish suspect counterfeit or counterfeit parts to Buyer under this Order. All material delivered under this Order shall be authentic and traceable to the original manufacturer. Seller shall provide authenticity and traceability records to Buyer upon request. Seller shall immediately notify Buyer if Seller cannot provide electronic parts, components, and/or assemblies traceable to the original component manufacturer or the original equipment manufacturer. Upon receipt of such notification, Buyer reserves the right to terminate this Order at no cost to Buyer or require specific material validation test and inspection protocol requirements to Seller.
- C. If suspect counterfeit or counterfeit parts are furnished under this Order and are found in any of the Products delivered hereunder, such items will be impounded by Buyer. Seller shall promptly replace such suspect/counterfeit parts with parts acceptable to the Buyer. Seller shall be liable for all costs relating to the removal and replacement of said parts, including without limitation Buyer's external and internal costs of removing such suspect/counterfeit parts, of reinserting replacement parts and of any testing or validation necessitated by the reinstallation of Seller's Products after suspect/counterfeit parts have been exchanged. Buyer's remedies described herein shall not be limited by any other clause agreed upon between Buyer and Seller in this Order and are in addition to any remedies Buyer may have at law, equity or otherwise under this Order. At Buyer's request, Seller shall return any removed suspect counterfeit or counterfeit parts to Buyer in order that Buyer may turn such parts over to its U.S.G. customer for further investigation. For purposes of this clause, Seller agrees that any U.S.G. directive/information or GIDEP alert, indicating that such parts are suspect counterfeit or counterfeit, shall be deemed definitive evidence that Seller's Products contain suspect counterfeit or counterfeit parts.
- D. Seller agrees to insert the substance of this clause, including this sentence, in any lower tier subcontract.

### **34. COMPLETE AGREEMENT**

This Order together with all attachments, exhibits, and other items specifically referenced in or attached to this Order is the Parties' final expression of their agreement and is the complete and exclusive statement of all terms and conditions of agreement. This Order supersedes and cancels all prior understandings, proposals, communications, whether oral or written, and agreements between the Parties, whether such understandings, proposals, communications, and agreements were written or oral, concerning the matters addressed in this Order. No course of prior dealings between the Parties, and no usage of trade, shall be relevant to supplement or explain any term used in this Order. The descriptive headings contained in this Order are for convenience of reference only and in no way define, limit or describe the scope or intent of this Order.

## **GENERAL PROVISIONS – PRODUCTS**

### **35. DELIVERY, TITLE, SOURCING**

- A. All Parties expressly agree that time is and shall remain a material element of this Order and no acts of Buyer, including without limitation, modifications to this Order or acceptance of late deliveries, shall constitute a waiver of this provision.
- B. Title free of liens or encumbrances shall pass to Buyer upon acceptance (except as otherwise specified within this Order); however, passing of title shall not relieve Seller of any other obligations under this Order.

- C. All deliveries shall be strictly in accordance with the applicable quantities and schedules set forth in this Order. Buyer reserves the right to (i) return over shipments and early shipments at Seller's expense, (ii) have payment therefore withheld by Buyer until the date that Products or Services are actually scheduled for delivery, or (iii) be placed in storage, for which Seller shall be liable for the cost, until the delivery date specified herein. Unless otherwise provided in this Order, delivery in whole or part shall not be made more than ten (10) days prior to required delivery dates.
- D. Whenever it appears Seller will not meet the delivery schedule, Seller shall immediately notify Buyer of the reason and estimated length of the delay. If Seller's delivery shall fail to meet the delivery schedule, Buyer, without limiting its other rights or remedies, may direct expedited routing, and any excess cost incurred thereby shall be debited to Seller's account. Buyer shall also apply a \$100 administrative charge over and above the freight cost differential for processing the debit.
- E. If Seller is unable to meet the required delivery schedules for any reason, other than a change directed by Buyer, Buyer shall have the option to (1) terminate this Order, or (2) fill such Order or any portion thereof, from sources other than Seller and to reduce Seller's Order quantities accordingly at no increase in unit price, without any penalty to Buyer, or (3) accept late delivery and recover from Seller any costs Buyer incurs caused by the late delivery. This condition shall not limit Buyer's other rights and remedies Buyer may otherwise have under this Order or applicable law.
- F. If Seller intends to source or ship direct from outside of the U.S. to Buyer then, in addition to complying with all applicable Export Regulations, Seller shall provide the name, country and contact information of the non-U.S. sources within ten (10) days after Order acceptance. Seller proposed sources outside of the U.S. must have a reputation for honesty and a company policy prohibiting bribes and facilitating payments intended to expedite or secure performance of a routine governmental action, such as, customs clearance. Buyer retains the right to deny Seller's use of Seller proposed sources within thirty (30) days of Seller notification. Seller shall ensure that Buyer's purchase does not transit through one of the proscribed countries listed in U.S. ITAR, 22 C.F.R. 126.1.

### **36. PACKAGING, PACKING, MARKING**

Seller shall be responsible for ensuring the proper packaging, packing, and marking of Product(s) delivered hereunder in accordance with this Order. Packaging, packing, and marking will conform to the instructions specified or provided by Buyer. Seller must assure package integrity throughout the shipping cycle. Each package and pack shall provide physical, chemical, and cleanliness protection to prevent damage or deterioration of the Product during handling, shipment and storage under anticipated environmental conditions. All materials, fabrication techniques and workmanship shall conform to the requirements specified herein or, if not specified, otherwise meet or exceed good commercial quality and practice. Damage resulting from improper Product packaging will be charged to Seller. Seller must comply with all applicable carrier regulations, including National Motor Freight Classification and Department of Transportation Regulations. No extra charge for packaging or insurance shall be allowed unless specifically noted herein. Products received without proper packaging, packing, marking and/or bar coding as set forth herein may be rejected by Buyer and returned to Seller at Seller's expense.

### **37. INVOICE, TRANSPORTATION**

- A. Seller shall send a separate invoice for each shipment and shall include the following information, as applicable, taken from Buyer's Order: (a) Order number; (b) part serial number (if serialized); (c) part/item number; (d) unit of measure; (e) unit price; (f) unit Export Control Classification Number (ECCN) or ITAR designation; and (g) a brief description of the Product and/or Service. Seller's invoice shall also include: (h) Seller's phone number and address; (i) invoice number; (j) date prepared; (k) item quantity; (l) extended item price; and (m) total invoice value. If Seller's "remit to" address is different than the address indicated on this Order, clearly identify the "remit to" address on the invoice. No invoice shall be issued prior to shipment of Products or completion of Services. Seller shall also provide documentation to support its invoice as Buyer may reasonably require. Buyer reserves the right to return invoices failing to comply with these instructions for re-submittal of a correct invoice. Where Seller is under Evaluated Receipts Settlement (ERS) agreement, no invoice is required, and payment process commences upon receipt of items.
- B. Seller shall utilize Buyer's designated Transportation Management System known as Supply Chain Active Tracking System (SCATS) when delivering Products to Buyer. Access to and information about SCATS can be found via Buyer's On-line Automated Supplier Information System (OASIS) <http://northropgrumman.com/suppliers>. Buyer reserves the right to debit Supplier's account for excessive charges relating to Supplier's failure to comply with routing instructions identified therein.

### **38. OFFSET COMMITMENT**

This clause shall only apply to Orders in excess of \$50,000.00.

- A. Definition: "Offset" means the obligations that Buyer undertakes, in order to market or sell its Products, to assist a customer country in reducing any trade imbalance caused by its purchase of Buyer's Products or to meet other customer country national objectives.
- B. Notwithstanding that this Order is or is not made in direct support of a foreign sale, Seller agrees that it is obligated to support Buyer's Offset commitments as a condition of this Order.
- C. The Offset credits arising out of or resulting from, directly or indirectly, this Order are for the exclusive use of Buyer and may be used by Buyer and any of its affiliates and subsidiaries to fulfill all past, present and future Offset obligations. Seller shall provide all information and assistance to Buyer that Buyer may reasonably request in support of Buyer's efforts to secure Offset credits relating to this Order. In addition, Seller agrees to identify and retain for Buyer's use any rights to Offset credits generated by its suppliers and subcontractors arising out of or resulting from this Order.
- D. Seller shall provide a copy of each purchase order or subcontract placed with a non-U.S. source under this Order in support of Buyer's rights to Offset credit.
- E. Seller shall execute all necessary documents to evidence Buyer's right to use or assign any Offset credits.
- F. Buyer reserves the right to assign Offset credits generated through Seller's efforts under this Order to third parties.
- G. Seller agrees to insert the substance of this clause, including this sentence, in any lower-tier subcontract.

### **39. CUSTOMS-TRADE PARTNERSHIP AGAINST TERRORISM (C-TPAT) PROGRAM**

Buyer supports the U.S. Customs and Border Protection (CBP) in the C-TPAT program. This program is designed to protect the supply chain from the introduction of terrorist contraband (weapons, explosives, biological, nuclear or chemical agents, etc.) in shipments to Buyer originating from off-shore of the U.S., or in drop shipments to Seller's sub-tier suppliers, Buyer's customers or other subcontractors originating from off-shore of the U.S. Seller shipments through U.S. importers, from manufacturers in foreign countries, and brokers/freight forwarders/carriers must be with transportation companies that are C-TPAT validated by the U.S. Customs Service. In addition, Seller agrees to take such reasonable measures as may be required by Buyer to ensure the physical integrity and security of all shipments under this Order against the unauthorized introduction of harmful or dangerous materials, drugs, contraband, weapons or weapons of mass destruction or introduction of unauthorized personnel in transportation conveyances or containers. Such measures may include, but are not limited to, physical security of manufacturing, packing and shipping areas, restrictions on access of unauthorized personnel to such areas; personnel screening to the maximum limits of law or regulations in Seller's or manufacturer's country; and development, implementation and maintenance of procedures to protect the security and integrity of all shipments. Seller shall contact Buyer's PCO for assistance in identifying transportation companies that are validated under the C-TPAT program. Information about C-TPAT can be found at [www.cbp.gov](http://www.cbp.gov).

#### **40. CONFLICT MINERALS**

If Seller is providing Products to Buyer under this Order, Seller shall use commercially reasonable efforts to:

- A. identify whether such Products contain tin, tantalum, gold or tungsten;
- B. determine whether any such minerals originated in covered countries, as defined in Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Act”); and
- C. perform appropriate due diligence on its supply chain in support of Buyer’s obligations under the Act.

In addition, Seller shall, as soon as reasonably practicable following the completion of the calendar year, provide a completed Conflict Minerals Reporting Template, using the form found at <http://www.conflictreesourcing.org/conflict-minerals-reporting-template/>. If requested, Seller will promptly provide information or representations that Buyer reasonably believes are required to meet Buyer’s conflict minerals compliance obligations.

#### **41. DISPOSAL OF PRODUCTS**

Upon completion or termination of this Order and as directed by Buyer, any excess Products, or parts thereof, shall be delivered free of charge to Buyer at the designated delivery point at Seller’s risk and expense or destroyed and the destruction certified by Seller. Seller shall not sell, or otherwise dispose of as scrap or otherwise, any completed or partially completed or defective Products without defacing or rendering such Products unsuitable for use.

### **GENERAL PROVISIONS – SERVICES**

#### **42. SELLER’S EMPLOYEES**

Seller represents and warrants that Seller is an expert, fully competent in all phases of the work involved in producing and supporting all Products and performing all Services purchased under this Order. Buyer may require Seller to remove from Buyer’s or Buyer’s customer’s premises any employee, agent, or representative of Seller, or any of its subcontractors and Buyer shall have the right to request and have replaced any personnel who fail to perform to Buyer’s satisfaction.

#### **43. PRIVACY, CONFIDENTIALITY AND DATA SECURITY**

“Personal Information” means any information relating to an identified or identifiable natural person (such as name, postal address, email address, telephone number, date of birth, Social Security number (or its equivalent), driver’s license number, account number, credit or debit card number, personal identification number, health or medical information, or any other unique identifier or one or more factors specific to the individual’s physical, physiological, mental, economic or social identity), whether such data is in individual or aggregate form and regardless of the media in which it is contained, that may be (i) disclosed at any time to Seller or its Personnel by Buyer or its Personnel in anticipation of, in connection with or incidental to the performance of Services for or on behalf of Buyer; (ii) Processed at any time by Seller or its Personnel in connection with or incidental to the performance of Services for or on behalf of Buyer; or (iii) derived by Seller or its Personnel from the information described in (i) or (ii) above. “Personnel” means employees, agents, consultants or contractors of Seller or Buyer, as applicable. “Process” or “Processing” or “Processed” means any operation or set of operations performed upon Personal Information, whether or not by automatic means, such as creating, collecting, procuring, obtaining, accessing, recording, organizing, storing, adapting, altering, retrieving, consulting, using, disclosing or destroying the data. Seller will ensure that it provides the Services under this Order in accordance with the following requirements:

- A. Seller will hold in strict confidence any and all Personal Information.
- B. Seller will Process Personal Information only on behalf of Buyer and in accordance with Buyer’s written instructions, and only in connection with the Services it provides for Buyer and to fulfill its obligations to Buyer.
- C. Seller will comply with all applicable laws and regulations relating to the privacy, confidentiality or security of Personal Information and applicable provisions of Buyer’s privacy policies, statements or notices that are attached hereto (collectively, “Privacy Requirements”).
- D. In the event a Privacy Requirement, enforcement action, investigation, litigation or claim, or any other circumstance, is reasonably likely to adversely affect Seller’s ability to fulfill its obligations under this Order, Seller will promptly notify Buyer in writing and Buyer may, in its sole discretion and without penalty of any kind to Buyer, suspend the transfer or disclosure of Personal Information to Seller or access to Personal Information by Seller, terminate any further Processing of Personal Information by Seller, and terminate Seller’s Order to provide Services to Buyer, if doing so is necessary to comply with applicable Privacy Requirements.
- E. Subject to applicable law, in the event Seller is required by law or legal process to disclose Personal Information, it will give timely prior written notice of the disclosure to Buyer, so that Buyer may, in its discretion, seek to block the disclosure. Buyer will have the right to defend such action in lieu of and on behalf of Seller. Buyer may, if it so chooses, seek a protective order. Seller will reasonably cooperate with Buyer in such defense.
- F. Seller may disclose Personal Information to a third party if, and only if, it obtains the written consent of Buyer and (1) the disclosure is made to a party that performs Services on behalf of Buyer and the disclosure is made in order to perform Seller’s Services to Buyer; or (2) the disclosure is made to a third party performing clerical, administrative, technical, or security-related Services for Seller, and such disclosure is incidental to the performance of such Services. In either case, Seller will enter into a written agreement with such third party under which the third party agrees it will (i) maintain the confidentiality of the disclosed Personal Information; (ii) not disclose the Personal Information to other third parties without the prior written agreement of Buyer; (iii) use the Personal Information only in connection with performing its obligations under its agreement with Seller; (iv) disclose the Personal Information only to its own personnel who need the information to perform the obligations under the agreement with Seller, and who have been fully advised as to the confidentiality requirements set forth herein; (v) promptly notify Seller of any Information Security Incident (as defined below); and (vi) return to Seller all copies of Personal Information Processed in connection with the relevant Services for which the third party was retained or, upon Seller’s written request (provided that Seller receives Buyer’s prior written approval), securely destroy or, at the option of Buyer, render unreadable or undecipherable, all such Personal Information, including all hard-copy and electronic versions.

- G. Seller will develop, implement and maintain a comprehensive written information security program that complies with applicable Privacy Requirements. Seller's information security program will include appropriate administrative, technical, physical, organizational and operational measures designed to (i) ensure the security and confidentiality of Personal Information; (ii) protect against any anticipated threats or hazards to the security and integrity of Personal Information; and (iii) protect against accidental or unlawful destruction, loss or alteration, unauthorized disclosure or access, and any other unlawful forms of Processing (hereinafter "Information Security Incident"). Seller's information security program will contain standards that are at least as stringent as those set forth in Seller's attached "Information Security-Supplier Hosting Requirements." If the Processing involves the transmission of Personal Information over a network, Seller will implement appropriate measures to protect Personal Information against the specific risks presented by the Processing. Seller will immediately, but in no event later than seventy-two (72) hours after Seller's discovery of the Information Security Incident, notify Buyer in writing of any Information Security Incident. Such notice will summarize in reasonable detail the effect on Buyer, if known, of the Information Security Incident and the corrective action taken or to be taken by Seller. Seller will promptly take all necessary and advisable corrective actions, and will cooperate fully with Buyer in all reasonable and lawful efforts to prevent, mitigate or rectify such Information Security Incident. The content of any filings, communications, notices, press releases or reports related to any Information Security Incident must be approved by Buyer prior to any publication or communication thereof.
- H. Seller will exercise the necessary and appropriate supervision over its relevant Personnel to maintain appropriate privacy, confidentiality and security of Personal Information. Seller will restrict access to Personal Information to those Personnel who need the information to perform obligations under this Order and who have explicitly agreed to legally enforceable and sound confidentiality obligations. Seller will ensure that Personnel with access to Personal Information are periodically trained regarding privacy and security and the limitations on Processing of Personal Information as provided in this Order.
- I. Seller will engage an independent third-party to conduct a security evaluation/certification of Seller's systems that host Personal Information. Seller will provide Buyer copies of the audit report(s). Buyer reserves the right to conduct site surveys of Seller's hosting site and review its physical and information security policies, practices, and procedures on an annual or biennial basis, in Buyer's reasonable discretion.
- J. Seller agrees that any Processing of Personal Information in violation of this Order, Buyer's instructions relating to the protection of Personal Information or any applicable Privacy Requirement, or any Information Security Incident, may cause immediate and irreparable harm to Buyer for which money damages may not constitute an adequate remedy. Therefore, Seller agrees that Buyer may obtain specific performance and injunctive or other equitable relief for any such violation or incident, in addition to its remedies at law, without proof of actual damages.
- K. Seller will not transfer Personal Information outside the country to which it originally was delivered to Seller for Processing (or, if it was originally delivered to a location inside the European Union, outside the European Union) without the explicit written consent of Buyer.
- L. Seller will cooperate with Buyer if a data subject wants to access or amend Personal Information pertaining to him or her.
- M. Seller will immediately inform Buyer in writing of any requests, complaints or investigations regarding Seller's Processing of Personal Information. Seller will respond to such requests, complaints or investigations in accordance with Buyer's instructions and Seller will fully cooperate with Buyer in responding to any such request, complaint or investigation.
- N. Seller will enter into any further privacy or information security agreement requested by Buyer for purposes of compliance with applicable Privacy Requirements. In case of any conflict between this Order and any such further privacy or information security agreement, such further agreement will prevail with regard to the Processing of Personal Information covered by it.
- O. Seller agrees, within thirty (30) days of termination, cancellation, expiration, or other conclusion of this Order, Seller shall return to Buyer all copies of Personal Information Processed in connection with this Order, or, upon Buyer's written request or receipt of Buyer's written approval in response to Seller's request, to securely destroy or, at the option of Buyer, render unreadable or undecipherable, all such Personal Information, including all hard-copy and electronic versions. Seller will provide an appropriate Certificate of Return/Destruction at Buyer's request.
- P. Seller agrees to indemnify and hold harmless Buyer and its officers, employees, directors and agents from, and at Buyer's option defend against, any and all claims, losses, liabilities, costs and expenses, including without limitation third-party claims, reasonable attorneys' fees, consultants' fees and court costs (collectively, "Claims"), to the extent that such Claims arise from, or may be in any way attributable to (i) any violation of this Order; (ii) the negligence, gross negligence, bad faith, or intentional or willful misconduct of Seller or its Personnel in connection with the obligations set forth in this Order; (iii) Seller's use of any contractor providing Services in connection with or relating to Seller's performance under this Order; or (iv) any Information Security Incident involving Personal Information in Seller's possession, custody or control, or for which Seller is otherwise responsible.
- Q. Seller's obligations under this Order will survive the termination of this Order to provide Products and/or Services to Buyer and the completion of all Services subject thereto.

#### **GENERAL PROVISIONS – FAR/DFARS CLAUSES**

##### **44. FAR/DFARS CLAUSES**

The FAR and DFARS clauses cited below are incorporated herein by reference at the effective version found in Buyer's Prime Contract, or higher-tier subcontract under which this Order is a subcontract. The listed FAR and DFARS clauses are incorporated herein as if set forth in full text unless made inapplicable by its corresponding note, if any. Seller shall include the appropriate FAR and DFARS clauses as required in any lower-tier subcontract. Whenever said clauses include a requirement for the resolution of disputes between the Parties in accordance with the FAR "Disputes" clause, the dispute shall instead be disposed of in accordance with the clause entitled "Disputes" in these terms and conditions. Where necessary to derive proper meaning in a subcontract situation from these clauses, "Contractor" means "Seller," "Contracting Officer" means "Buyer," "Contract" means this Order and "Government" means "Buyer or the Government." However, the words "Government" and "Contracting Officer" do not change: (1) when a right, act, authorization or obligation can be granted or performed only by the Government or the Prime Contract Contracting Officer or duly authorized representative, (2) when title to property is to be transferred directly to the Government, and (3) in FAR 52.227-1, 52.227-2, and DFARS 252.227-7013 and 252.227-7014.

Clause	FAR Reference
<b>Gratuities</b> NOTE: As used in this clause, "Government" means "Buyer" (except "Government" means "Buyer or Government" in the phrase "to any officer or employee of the Government"), "hearing" means opportunity to be heard, and "in any competent court", means "pursuant to the Disputes clause contained herein".	52.203-3
<b>Restrictions on Subcontractor Sales to the Government</b> NOTE: Applicable to any Order greater than the simplified acquisition threshold.	52.203-6
<b>Anti-Kickback Procedures</b> NOTE: The substance of this clause, except subparagraph (c)(1), is applicable to any Order and all lower-tier subcontracts which exceed \$150,000. Seller shall immediately notify Buyer of any alleged violations involving any of Buyer's or Seller's employees.	52.203-7
<b>Limitation on Payments to Influence Certain Federal Transactions</b> NOTE: Applicable to any Order greater than \$150,000.	52.203-12
<b>Contractor Code of Business Ethics and Conduct</b> NOTE: Applicable to any Order greater than \$5,500,000 and period of performance greater than 120 days. NOTE: Notwithstanding any alterations to this clause to reflect the relationship between Buyer and Seller, all disclosures of violation of the civil False Claims Act or of Federal criminal law shall be directed to the Office of the Inspector General of the agency issuing the Prime Contract under which this Order is being issued, with a copy to the Contracting Officer of the Prime Contract.	52.203-13
<b>Display of Hotline Poster(s)</b> NOTE: Applicable to any Order greater than \$5,500,000 and period of performance greater than 120 days (commercial items exempt).	52.203-14
<b>Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009</b>	52.203-15
<b>Preventing Personal Conflicts of Interest</b> NOTE: Applicable to any Order greater than \$150,000	52.203-16
<b>Contractor Employee Whistleblower Rights and Requirement To Inform Employees of Whistleblower Rights</b> NOTE: Applicable to any Order greater than the simplified acquisition threshold.	52.203-17
<b>Security Requirements</b> NOTE: Delete paragraph (c). NOTE: Applicable if this Order involves access to Classified Information.	52.204-2
<b>Personal Identity Verification of Contractor Personnel</b>	52.204-9
<b>Reporting Executive Compensation and First-Tier Subcontract Awards</b>	52.204-10
<b>Basic Safeguarding of Covered Contractor Information Systems</b> NOTE: Applicable to all Orders at any tier for other than commercially available off-the-shelf items.	52.204-21
<b>Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended or Proposed for Debarment</b>	52.209-6
<b>Material Requirements</b>	52.211-5
<b>Defense Priority and Allocation Requirements</b> NOTE: Clause is applicable unless this Order provides no DPAS rating.	52.211-15
<b>Audit and Records – Negotiation</b> NOTE: Applicable to any Order greater than the simplified acquisition threshold.	52.215-2
<b>Price Reduction for Defective Certified Cost or Pricing Data</b> NOTE: Applicable to any Order when cost or pricing data are required.	52.215-10
<b>Price Reduction for Defective Certified Cost or Pricing Data - Modifications</b> NOTE: Applicable if FAR 52.215-10 is not applicable to this Order.	52.215-11
<b>Subcontractor Certified Cost or Pricing Data</b> NOTE: Applicable to any Order when cost or pricing data are required.	52.215-12
<b>Subcontractor Certified Cost or Pricing Data - Modifications</b> NOTE: Applicable if FAR 52.215-12 is not applicable to this Order.	52.215-13
<b>Integrity of Unit Prices</b> NOTE: Delete paragraph (b) NOTE: Applicable to any Order greater than the simplified acquisition threshold.	52.215-14
<b>Pension Adjustments and Asset Reversions</b> NOTE: Applicable to any Order when cost or pricing data are required or for which any pre-award or post-award cost determinations will be subject to FAR Part 31.	52.215-15
<b>Facilities Capital Cost of Money</b> NOTE: Applicable only if this Order is subject to the Cost Principles at FAR Subpart 31.2 and Seller proposed Facilities Capital Cost of Money in its offer.	52.215-16
<b>Waiver of Facilities Capital Cost of Money</b> NOTE: Applicable only if this Order is subject to the Cost Principles at FAR Subpart 31.2 and Seller did not propose Facilities Capital Cost of Money in its offer.	52.215-17
<b>Reversion or Adjustment of Plans for Postretirement Benefits (PRB) Other than Pensions</b> NOTE: Applicable to any Order when cost or pricing data are required or for which any pre-award or post-award cost determinations will be subject to FAR Part 31.	52.215-18
<b>Notification of Ownership Changes</b> NOTE: Applicable to any Order when cost or pricing data are required or for which any pre-award or post-award cost determinations will be subject to FAR Subpart 31.2.	52.215-19
<b>Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data</b>	52.215-20
<b>Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data – Modifications</b>	52.215-21

<b>Limitation on Pass-Through Charges</b> NOTE: Applicable to any Order when the total estimated Order value exceeds the threshold for obtaining cost or pricing data in FAR 15.403-4 and the contemplated contract type is expected to be any contract type except those contract types listed in FAR 15.408(n)(2)(i)(B)(2). Seller shall notify Buyer in writing if: (1) Seller changes the amount of subcontract effort after award such that it exceeds 70 percent of the total cost of work to be performed under this Order. The notification shall identify the revised cost of the subcontract effort and shall include verification that Seller will provide added value; or (2) Any subcontractor changes the amount of lower-tier subcontractor effort such that it exceeds 70 percent of the total cost of the work to be performed under its subcontract. The notification shall identify the revised cost of the subcontract effort and shall include verification that the subcontractor will provide added value as related to the work to be performed by the lower-tier subcontractor(s).	<b>52.215-23</b>
<b>Incentive Fee</b> NOTE: Applicable to any CPIF Order or line items	<b>52.216-10</b>
<b>Utilization of Small Business Concerns</b> NOTE: Applicable unless contract is for personal services, or the contract, together with all of its subcontracts, will be performed entirely outside the U.S. and its outlying areas.	<b>52.219-8</b>
<b>Small Business Subcontracting Plan</b> NOTE: Applicable to any Order greater than \$700,000 or lower threshold if effective under older higher-tier contract.	<b>52.219-9</b>
<b>Notice to the Government of Labor Disputes</b>	<b>52.222-1</b>
<b>Payment for Overtime Premiums</b>	<b>52.222-2</b>
<b>Contract Work Hours and Safety Standards – Overtime Compensation</b> NOTE: Applicable to Orders at any tier greater than \$150,000.	<b>52.222-4</b>
<b>Nondisplacement of Qualified Workers</b> NOTE: Applicable to any Order greater than the simplified acquisition threshold.	<b>52.222-17</b>
<b>Contracts for Materials, Supplies, Articles and Equipment Exceeding \$15,000.</b> NOTE: Applicable to any Order greater than \$15,000 or lower threshold if effective under older, higher-tier contract.	<b>52.222-20</b>
<b>Prohibition of Segregated Facilities</b> NOTE: Applicable if Equal Opportunity clause has been determined to apply to this Order.	<b>52.222-21</b>
<b>Equal Opportunity</b> NOTE: Applicable only (i) if this Order is not exempted by Secretary of Labor under Executive Order 11246 as amended per FAR 22.807, and (ii) then only with respect to provisions of subparagraphs (b) (1) through (b)(11) [binding Seller thereto].	<b>52.222-26</b>
<b>Equal Opportunity for Veterans</b> NOTE: Applicable to any Order of \$100,000 or more.	<b>52.222-35</b>
<b>Equal Opportunity for Workers With Disabilities</b> NOTE: Applicable to any Order greater than \$15,000 or lower threshold if effective under older, higher-tier contract.	<b>52.222-36</b>
<b>Employment Reports on Veterans</b> NOTE: Applicable to any Order of \$100,000 or more.	<b>52.222-37</b>
<b>Notification of Employee Rights Under the National Labor Relations Act</b> NOTE: Applicable to any Order greater than \$10,000.	<b>52.222-40</b>
<b>Service Contract Labor Standards</b> NOTE: Applicable only to the extent that such clause is in Buyer's higher-tier contract and this Order is subject to the Service Contract Labor Standards statute.	<b>52.222-41</b>
<b>Combating Trafficking in Persons</b>	<b>52.222-50</b>
<b>Exemption from Application of the Service Contract Labor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment - Requirements</b>	<b>52.222-51</b>
<b>Exemption from Application of the Service Contract Labor Standards to Contracts for Certain Services – Requirements</b>	<b>52.222-53</b>
<b>Employment Eligibility Verification</b> NOTE: Applicable to any Order greater than \$3,500 with a period of performance of 120 days or greater.	<b>52.222-54</b>
<b>Minimum Wages Under Executive Order 13658</b> NOTE: Applicable to Orders subject to the Service Contract Labor Standards statute or the Wage Rate Requirements (Construction) statute	<b>52.222-55</b>
<b>Certification Regarding Trafficking in Persons Compliance Plan</b>	<b>52.222-56</b>
<b>Paycheck Transparency (Executive Order 13673)</b> NOTE: Applicable to Orders at any tier greater than \$500,000, for other than commercially available off-the-shelf items.	<b>52.222-60</b>
<b>Hazardous Material Identification and Material Safety Data</b> NOTE: Entry is considered to be "none" unless Seller explicitly states otherwise within its quotation or proposal. ALT I applies if procurement is for other than the Department of Defense.	<b>52.223-3</b>
<b>Notice of Radioactive Materials</b>	<b>52.223-7</b>
<b>Ozone-Depleting Substances</b>	<b>52.223-11</b>
<b>Encouraging Contractor Policies to Ban Text Messaging While Driving</b>	<b>52.223-18</b>
<b>Privacy Act</b>	<b>52.224-2</b>
<b>Buy American – Supplies</b>	<b>52.225-1</b>
<b>Duty-Free Entry</b> NOTE: Applicable only if such clause is contained in Buyer's higher-tier contract under which any reduced duty-free entry thresholds shall apply. Under paragraph (c)(1), change "20 days" to "30 days." Under paragraph (c)(2), change "10 days" to "20 days".	<b>52.225-8</b>
<b>Restrictions on Certain Foreign Purchases</b> NOTE: Clause is applicable if purchased item is other than commercial item or component per clause at FAR 52.244-6.	<b>52.225-13</b>
<b>Contractors Performing Private Security Functions Outside the United States</b>	<b>52.225-26</b>
<b>Authorization and Consent</b> NOTE: Applicable only if contained in the controlling Prime Contract and to any Order greater than the simplified acquisition threshold.	<b>52.227-1</b>

<b>Notice and Assistance Regarding Patent and Copyright Infringement</b> NOTE: Applicable to any Order greater than the simplified acquisition threshold.	<b>52.227-2</b>
<b>Refund of Royalties</b>	<b>52.227-9</b>
<b>Filing of Patent Applications – Classified Subject Matter</b>	<b>52.227-10</b>
<b>Patent Rights – Ownership by the Contractor</b>	<b>52.227-11</b>
<b>Insurance – Work on a Government Installation</b> NOTE: Applicable on any Order that requires work on a Government installation.	<b>52.228-5</b>
<b>Cost Accounting Standards</b>	<b>52.230-2</b>
<b>Disclosure and Consistency of Cost Accounting Practices</b>	<b>52.230-3</b>
<b>Administration of Cost Accounting Standards</b>	<b>52.230-6</b>
<b>Interest</b>	<b>52.232-17</b>
<b>Limitation of Cost</b>	<b>52.232-20</b>
<b>Limitation of Funds</b>	<b>52.232-22</b>
<b>Unenforceability of Unauthorized Obligations</b>	<b>52.232-39</b>
<b>Providing Accelerated Payments to Small Business Subcontractors</b>	<b>52.232-40</b>
<b>Industrial Resources Developed Under Defense Production Act Title III</b> NOTE: Applicable only if this Order is identified elsewhere herein as stemming from a major system Prime Contract.	<b>52.234-1</b>
<b>Accident Prevention</b>	<b>52.236-13</b>
<b>Protection of Government Buildings, Equipment, and Vegetation</b> NOTE: Applicable to any work performed on a Government installation. "Government" thereunder means Buyer, prime contractor [if not Buyer], and any upper-tier subcontractor.	<b>52.237-2</b>
<b>Bankruptcy</b> NOTE: Any such notification shall be to Buyer. After "for all Government contracts," insert "with Seller".	<b>52.242-13</b>
<b>Stop-Work Order</b> NOTE: The 90 day period in the first and fourth sentences of paragraph (a) is changed to 120 days.	<b>52.242-15</b>
<b>Competition In Subcontracting</b>	<b>52.244-5</b>
<b>Subcontracts for Commercial Items</b>	<b>52.244-6</b>
<b>Government Property and Alternate I</b> NOTE: Applicable to any Order if Government property is furnished to Seller. NOTE: In the phrases "Government Property", "Government-furnished property", and in references to title to property, "Government" shall not mean "Buyer". The following is added as paragraph (n): "Contractor shall provide Buyer immediate notice of any disapproval, withdrawal of approval, or non-acceptance by the Government of its property control system".	<b>52.245-1</b>
<b>Inspection of Services – Cost Reimbursement</b>	<b>52.246-5</b>
<b>Preference for U.S. - Flag Air Carriers</b> NOTE: Applicable to any Order and lower-tier subcontracts that involve international air transportation and are greater than the simplified acquisition threshold.	<b>52.247-63</b>
<b>Preference for Privately Owned U.S. - Flag Commercial Vessels</b>	<b>52.247-64</b>
<b>Value Engineering</b> NOTE: Applicable to any Order of \$150,000 or more except as specified in FAR 48.201(a). NOTE: In paragraph (j), "Contracting Officer" means the U.S. Government Contracting Officer, and, in the legend of paragraph (m), "Government" means both the U.S. Government and Buyer. DOD deviation applies if this Order stems from higher-tier contract with DOD.	<b>52.248-1</b>
<b>Clause</b>	<b>DFARS Reference</b>
<b>Prohibition on Persons Convicted of Fraud or Other Defense Contract Related Felonies</b> NOTE: Applicable to all first-tier Orders greater than the simplified acquisition threshold.	<b>252.203-7001</b>
<b>Display of Fraud Hotline Poster(s)</b> NOTE: Applicable to Orders greater than \$5,500,000, except for Orders for commercial items or lower-tier subcontracts performed entirely outside the U.S.	<b>252.203-7004</b>
<b>Limitations on the Use or Disclosure of Third-Party Contractor Reported Cyber Incident Information</b> NOTE: Applies to Orders for services that include support for the Government's activities related to safeguarding covered defense information and cyber incident reporting.	<b>252.204-7009</b>
<b>Safeguarding Covered Defense Information and Cyber Incident Reporting</b> NOTE: Applicable to all Orders at any tier unless the Order is solely for commercially available off-the-shelf items.	<b>252.204-7012</b>
<b>Limitations on the Use or Disclosure of Information by Litigation Support Contractors</b>	<b>252.204-7014</b>
<b>Notification of Authorized Disclosure of Information for Litigation Support</b>	<b>252.204-7015</b>
<b>Intent to Furnish Precious Metals as Government-Furnished Material</b> NOTE: Applicable to any Order and all lower-tier subcontracts unless it is known that the item being purchased contains no precious metals.	<b>252.208-7000</b>
<b>Subcontracting with Firms that are Owned or Controlled by the Government of a Country that is a State Sponsor of Terrorism.</b> NOTE: Applicable to any Order of \$150,000 or more.	<b>252.209-7004</b>
<b>Acquisition Streamlining</b> NOTE: Applicable to any Order greater than \$1,500,000 and which stems from a Prime Contract under a systems acquisition program.	<b>252.211-7000</b>
<b>Pricing Adjustments</b> NOTE: Applicable when it is contemplated that cost or pricing data will be required.	<b>252.215-7000</b>
<b>Small Business Subcontracting Plan (DOD Contracts)</b> NOTE: Applicable to any Order anticipated to be valued at \$700,000 or lower threshold if effective under older, higher-tier contract.	<b>252.219-7003</b>
<b>Restrictions on the Use of Mandatory Arbitration Agreements</b> NOTE: Failure to comply with this provision will be considered a material breach and, at the sole discretion of Buyer, may result in termination for default or cause.	<b>252.222-7006</b>



<b>Representation Regarding Combating Trafficking in Persons</b> NOTE: Applicable to any Order greater than the simplified acquisition threshold.	252.222-7007
<b>Hazard Warning Labels</b> NOTE: Applicable to any Order which requires delivery of hazardous materials.	252.223-7001
<b>Safety Precautions for Ammunition and Explosives</b> NOTE: Applicable to any Order involving articles furnished containing ammunition or explosives. Government safety representatives may evaluate Seller compliance.	252.223-7002
<b>Change in Place of Performance - Ammunition and Explosives</b> NOTE: Applicable if DFARS 252.223-7002 applies to this Order.	252.223-7003
<b>Safeguarding Sensitive Conventional Arms, Ammunition, and Explosives</b> NOTE: Applicable to any Order and all lower-tier subcontracts involving arms, ammunition and explosives.	252.223-7007
<b>Prohibition of Hexavalent Chromium</b> NOTE: Applicable to any Order for supplies, maintenance and repair Services, or construction materials unless the exceptions listed in DFARS 223.7304 apply.	252.223-7008
<b>Buy American and Balance of Payments Program</b>	252.225-7001
<b>Qualifying Country Sources As Subcontractors</b>	252.225-7002
<b>Prohibition on Acquisition of United States Munitions List Items From Communist Chinese Military Companies</b>	252.225-7007
<b>Restriction on Acquisition of Certain Articles Containing Specialty Metals</b> NOTE: Exclude paragraphs (d) and (e)(1); paragraph (c)(6) is hereby deleted. NOTE: Upon Seller notification of noncompliance with the terms of this clause and the provision of specific information related to the source of the noncompliance, Buyer will facilitate management of the allowance for up to 2% otherwise noncompliant specialty metal content in the end item. The 2% minimal content exception does not apply to and cannot be used to exempt specialty metals contained in high performance magnets.	252.225-7009
<b>Preference for Certain Domestic Commodities</b> NOTE: Applicable to any Order greater than the simplified acquisition threshold.	252.225-7012
<b>Duty – Free Entry</b>	252.225-7013
<b>Restriction on Acquisition of Hand or Measuring Tools</b>	252.225-7015
<b>Restriction on Acquisition of Ball and Roller Bearings</b> NOTE: Applicable to any Order and all lower-tier subcontracts if Product supplied contains ball or roller bearings.	252.225-7016
<b>Trade Agreements</b>	252.225-7021
<b>Restriction on Acquisition of Forgings</b>	252.225-7025
<b>Exclusionary Policies and Practices of Foreign Governments</b>	252.225-7028
<b>Restriction on Acquisition of Carbon, Alloy, and Armor Steel Plate</b>	252.225-7030
<b>Waiver of United Kingdom Levies</b>	252.225-7033
<b>Buy American – Free Trade Agreements – Balance of Payments Program</b>	252.225-7036
<b>Contractor Personnel Supporting U.S. Armed Forces Deployed Outside the United States</b> NOTE: Applicable to all Orders where subcontractor personnel are supporting U.S. Armed Forces deployed outside the U.S.	252.225-7040
<b>Antiterrorism/Force Protection for Defense Contractors Outside the United States</b>	252.225-7043
<b>Export Controlled Items</b>	252.225-7048
<b>Utilization of Indian Organizations, Indian-Owned Economic Enterprises, and Native Hawaiian Small Business Concerns</b>	252.226-7001
<b>Rights in Technical Data – Noncommercial Items</b>	252.227-7013
<b>Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation</b>	252.227-7014
<b>Technical Data - Commercial Items</b>	252.227-7015
<b>Rights in Bid or Proposal Information</b>	252.227-7016
<b>Validation of Asserted Restriction – Computer Software</b>	252.227-7019
<b>Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends</b>	252.227-7025
<b>Deferred Delivery of Technical Data or Computer Software</b>	252.227-7026
<b>Deferred Ordering of Technical Data or Computer Software</b>	252.227-7027
<b>Technical Data – Withholding of Payment</b>	252.227-7030
<b>Validation of Restrictive Markings on Technical Data</b>	252.227-7037
<b>Patent Rights-Ownership by the Contractor (Large Business)</b>	252.227-7038
<b>Patents – Reporting of Subject Inventions</b>	252.227-7039
<b>Ground and Flight Risk</b> NOTE: Applicable if included in Buyer’s higher-tier contract.	252.228-7001
<b>Accident Reporting and Investigation Involving Aircraft, Missiles, and Space Launch Vehicles</b>	252.228-7005
<b>Supplemental Cost Principles</b>	252.231-7000
<b>Frequency Authorization and Alternate I</b> NOTE: Authorization shall be through or coordinated with Buyer’s PCO.	252.235-7003
<b>Protection Against Compromising Emanations</b> NOTE: Applicable to Orders for computer equipment or systems to process Classified Information.	252.239-7000
<b>Cloud Computing Services</b>	252.239-7010
<b>Telecommunications Security Equipment, Devices, Techniques and Services</b>	252.239-7016
<b>Pricing of Contract Modifications</b>	252.243-7001
<b>Subcontracts for Commercial Items</b>	252.244-7000
<b>Warranty of Data</b>	252.246-7001
<b>Notification of Potential Safety Issues</b>	252.246-7003

<b>Contractor Counterfeit Electronic Part Detection and Avoidance System</b> NOTE: Applicable if Standard Note X1066 or X1067 is included in the Order.	<b>252.246-7007</b>
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<b>Sources of Electronic Parts</b>	<b>252.246-7008</b>
NOTE: Applicable if Standard Note X1066 or X1067 is included in the Order.	
<b>Transportation of Supplies by Sea</b>	<b>252.247-7023</b>
NOTE: Applicable in any Order and all lower-tier subcontracts for ocean transportation of supplies. Paragraphs (f) and (g) shall not apply if this Order or any lower-tier subcontract is at or below the simplified acquisition threshold.	
NOTE: Paragraph (c), first sentence has been modified as to read "Seller and its subcontractors may request that Buyer obtain Government authorization for shipment..." "45" is changed to "60" days in paragraph (d) and "30" to "20" in paragraph (e). In paragraph (e), delete "and the division of National Cargo, Office of Market Development, Maritime Administration, U.S. Department of Transportation, Washington, DC 20590." In paragraph (g) "for the purposes of the Prompt Payment clause of this contract" is deleted.	
NOTE: Seller agrees to indemnify and hold Buyer harmless against any loss, damage or expense suffered by Buyer as a result of Seller's failure to comply with the requirements of this clause.	
<b>Notification of Transportation of Supplies by Sea</b>	<b>252.247-7024</b>
<b>Notification of Anticipated Contract Termination or Reduction</b>	<b>252.249-7002</b>