

GSC/T-2

NORTHROP GRUMMAN SYSTEMS CORPORATION

PURCHASE ORDER TERMS AND CONDITIONS COMMERCIAL FIXED-PRICE – SUPPLY

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1. DEFINITIONS.

- A. BUYER means the Northrop Grumman Systems Corporation subsidiary, Sector, or business unit identified on the face of the Order.
- B. BUYER AUTHORIZED PURCHASING REPRESENTATIVE means the person authorized by Buyer's cognizant procurement organization to administer and/or execute the Order.
- C. DATA means all financial/business information, designs, dimensions, specifications, drawings, patterns, know how, or other information concerning methods, manufacturing processes, equipment, gauges and tools used in the design and manufacture of Products. Data may be recorded in a written, printed document, computer or electronically stored, software, or any other tangible form of expression.
- D. ORDER means the instrument of contracting including this Purchase Order and all referenced documents.

- E. PARTY/PARTIES mean Buyer and Seller collectively.
- F. PRIME CONTRACT means the contracting instrument issued to Buyer or Buyer's higher tier customer by its customer for the acquisition of Products.
- G. PRODUCTS means those goods, supplies, reports, computer software, data, materials, articles, items, parts, components or assemblies, and any related services described in the Order.
- H. PROPRIETARY INFORMATION means all proprietary data furnished by Buyer to Seller, including, but not limited to, all data 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.
- I. SELLER means the party with whom Buyer is contracting under the Order.

2. ACCEPTANCE.

This Order is Buyer's offer to Seller. Acceptance of this offer is strictly limited to the terms and conditions in this offer. Modifications hereto, to be binding, must be in writing and signed by Buyer's authorized purchasing representative. Seller's acknowledgement, acceptance of payment, or commencement of performance, shall conclusively evidence acceptance of this offer as written. Buyer hereby objects to any additional or different terms contained in Seller's acceptance.

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. Change Order Document
- B. Purchase Order Document
- C. Purchase Order Terms and Conditions
- D. Statement of Work
- E. Specification/Drawing
- F. Other Referenced Documents

4. DELIVERY, TITLE.

- A. The FOB point shall be as designated in the Order. Title 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.
- B. All deliveries shall be strictly in accordance with the applicable quantities and schedules set forth in this Order. Buyer reserves the right to return over shipments and early shipments at Seller's expense. Seller shall be liable for all storage/handling charges incurred as a result of over shipments and early shipments.
- C. Whenever it appears Seller will not meet the delivery schedule, Seller shall immediately notify Buyer of the reason and estimated length of the delay. Seller shall make every effort to avoid or minimize the delay to the maximum extent possible including the expenditure of premium time and most expeditious transportation. Any additional cost caused by these requirements shall be borne by Seller.
- D. 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. This condition shall not limit buyer's rights under the default clause contained herein.
- E. All Parties expressly agree that time is and shall remain of the essence in performing 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.
- F. If Seller is permitted to use terms other than FCA Sellers Premises, Seller shall provide the name and contact information for all freight forwarders, carriers or cartage agents expected to handle Buyer's cargo. Seller shall provide this information to the Buyer not

later than 10 days after order acceptance. Seller proposed freight forwarders, carriers or cartage agents 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 freight forwarders, carriers or cartage agents within 30 days of Seller notification. Seller shall ensure that Buyer's purchase does not transit through one of the Proscribed Countries listed in the U.S. International Traffic in Arms Regulations, 22 CFR 126.1.

5. RESERVED.

6. PAYMENT.

- A. Buyer shall pay Seller the price set forth in this Order for the Services and/or Products specified. Price includes all profit, wages, salaries, overhead, taxes, and other costs and expenses. No overtime, expedite charges, or other premium rates will be paid by Buyer unless authorized by Buyer, in writing.
- B. Seller shall send a separate invoice for each shipment according to the Buyer's Invoice Instructions which are incorporated herein and available on Buyer's On-line Automated Supplier Information System (OASIS): <http://www.northropgrumman.com/suppliers/OASISDocuments/InvoiceInstructions.pdf>. No invoice shall be issued by Seller to Buyer prior to completion of Services or shipment of Products. Payment due dates, including discount periods, will be calculated from the date of acceptance of a properly prepared invoice consistent with the Invoice Instructions referenced herein. Payment of invoice shall not constitute approval or acceptance of Products or Services rendered. At any time prior to final payment under this Order, Buyer may have invoices audited to verify their accuracy, completeness and compliance with the terms of this Order. Payment of Seller's invoices shall be subject to adjustment for any amounts found upon audit or otherwise to have been improperly invoiced.
- C. Any amounts owing to Buyer by Seller may be set off against amounts otherwise due to Seller under this Order.

7. PACKING AND SHIPPING.

Seller shall be responsible for ensuring the proper packaging and shipping of Product hereunder in accordance with Buyer's Purchase Order Terms and Conditions and Buyer's Carrier Routing Instructions which is incorporated herein and available on Buyer's On-line Automated Supplier Information System (OASIS): <http://www.northropgrumman.com/suppliers/OASISDocuments/CarrierRoutingInstructions.pdf> Damage resulting from improper Product packaging will be charged to Seller.

8. INSPECTION AND ACCEPTANCE.

- A. Unless otherwise specified Buyer's final inspection and acceptance shall be at destination. Failure to inspect and accept or reject Products shall not relieve the Seller from responsibility for compliance with Order requirements nor impose liability on Buyer.
- B. Seller shall not substitute materials or accessories without written consent of Buyer.
- C. If the goods are to specifically manufactured for Buyer in accordance with drawings, designs, or specifications furnished by Buyer: (1) Seller shall provide and maintain an inspection and quality control system acceptable to Buyer and provide access to Seller's facilities including all subcontractors facilities used in performance of this order at all reasonable times for inspection by Buyer's agents or employees, and shall provide all tools, facilities, and assistance reasonably necessary for inspection relating to the performance of this purchase order; and (2) Seller shall maintain adequate and authenticated inspection and test documents which relate to work performed under this purchase order for a period of three years after completion of this purchase order, and shall make such records available to Buyer upon request; (3) Seller shall supply Buyer with inspection and test reports, affidavits, certifications, or any other documents as may reasonably be requested by Buyer. Such inspection and test may be performed by third party representatives on behalf of Buyer; (4) Seller shall notify Buyer in writing of any changes in product and/or process definition and obtain Buyer's written approval prior to proceeding; and (5) Seller shall include the substance of this clause in all applicable purchase orders or subcontracts issued in the performance of this order.

9. NONCONFORMING GOODS.

If Seller fails to deliver or delivers over shipments, defective or nonconforming Products, Buyer may:

- A. Accept all or part of the defective or non-conforming Products at an equitable price reduction; or
- B. Reject all or any part of a delivery of defective or non-conforming Products, and demand delivery of conforming Products. All rejected Products shall be shipped to Seller at Seller's expense; or
- C. Make, or have a third party make all repairs, modifications, or replacements necessary to enable such Product to comply in all respects with Order requirements and charge the expense incurred to Seller; or
- D. Terminate this Order for default in whole or in part.

10. WARRANTY.

- A. Seller warrants that all Products delivered under this Order will: be free from defects in materials, workmanship, and manufacturing processes; conform to all requirements of this Order; and be free of all liens and encumbrances. To the extent Products are not manufactured pursuant to detailed design and specifications furnished by Buyer,

Seller warrants that the Product shall be free from design and specifications defects.

- B. If any Product fails to comply in any respect to the warranty set forth above, Seller, at Buyer's option, shall promptly repair or replace the Product. Transportation of replacement Product and return of nonconforming Product shall be at Seller's expense. If repair or replacement of Product is not timely, Buyer may elect to return, repair, replace, or reprocur the nonconforming Product at Seller's expense. All warranties shall run to Buyer and its customers.
- C. Buyer's approval of any documentation prepared by Seller or Buyer's participation in design reviews or first article approval process or similar reviews shall not relieve Seller of any obligation under this warranty.
- D. Buyer's rights under this clause shall, at Buyer's option, be assignable to and enforceable by its successors and customers.
- E. The rights of Buyer set forth in this clause shall be in addition to, and not in lieu of, any other right Buyer may have under this Order, or in law or equity.

11. CHANGES.

- A. Buyer's authorized representative 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.
- B. If the 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 or schedule, or both, to reflect the increase or decrease. Buyer shall modify this Order in writing accordingly.
- C. Any claim for adjustment shall be unconditionally waived unless: (i) asserted in writing and delivered to Buyer within 15 days of the date of the written change order; and (ii) a fully supported proposal is delivered to Buyer's authorized representative within 45 days after Seller's receipt of such direction.
- D. If Seller claims the cost of any Property made obsolete or excess, Buyer shall have the right to prescribe the manner of disposition of the property to include the right to acquire that property for the cost claimed.
- E. Buyer has the right to examine any of Seller's pertinent books and records for the purpose of verifying Seller's claim.
- F. Failure to agree to any adjustment shall be a dispute within the meaning of the "Disputes" clause hereof. However, Seller shall not be excused from proceeding with the Order as changed.

12. BUYER AUTHORIZATION.

- A. The Buyer's Authorized Purchasing Representative has sole authority to make contractual commitments on behalf of the Buyer, to provide contractual direction, and to change contractual requirements as defined in the Order.
- B. Buyer's engineering, technical personnel and other representatives may from time to time render

assistance or give technical advice or discuss or effect an exchange of information with Seller's personnel concerning the Product hereunder. No such action shall be deemed to be a change under the "Changes" clause of this Order and shall not be the basis for an equitable adjustment.

13. DISPUTES.

- A. Any dispute that may arise 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 up to the Senior Executive of the Materiel or Procurement organization placing the Order, and Seller's equivalent executive level.
- B. If a dispute cannot be resolved to both Parties' mutual satisfaction, after good faith negotiations, within ninety (90) calendar 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 only bring suit in federal or state court in the state from which this Order is issued.
- C. Pending any prosecution, appeal, or final decision referred to in this clause, or the settlement of any dispute arising under this Order, Seller shall proceed diligently, as directed by Buyer, with performance of the Order.
- D. To the maximum extent permitted by law, the parties waive any right to a jury trial.

14. TERMINATION FOR CONVENIENCE.

- A. Buyer may terminate performance of work under this Order in whole or, from time to time, in part if Buyer determines that a termination is in its interest. Buyer shall terminate by delivering to Seller a Notice of Termination specifying the extent of termination and the effective date.
 - B. After receipt of a Notice of Termination, and except as directed by Buyer, Seller shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause.
 - 1. Stop work as specified in the notice.
 - 2. Place no further subcontracts or purchase orders (referred to as "Subcontracts" herein) for materials, services, or facilities, except as necessary to complete the continued portion of this Order.
 - 3. Terminate all Subcontracts to the extent they relate to the work terminated.
 - 4. Assign to Buyer, as directed by Buyer, all right, title, and interest of Seller under the Subcontracts terminated, in which case Buyer shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.
 - 5. With approval or ratification to the extent required by Buyer, settle all outstanding liabilities and termination settlement proposals arising from the termination of Subcontracts; the approval or ratification will be final for purposes of this clause.
 - 6. As directed by Buyer, transfer title and deliver to Buyer:
 - (a) The fabricated or unfabricated Products, work in process, completed work, supplies, and other material produced or acquired for the work terminated; and
 - (b) The completed or partially completed plans, drawings, information, and other property that, if the Order had been completed, would be required to be furnished to Buyer.
 - 7. Complete performance of the work not terminated.
 - 8. Take any action that may be necessary, or that Buyer may direct, for the protection and preservation of the property related to this Order that is in the possession of Seller and in which Buyer has or may acquire an interest.
 - 9. Use its best efforts to sell, as directed or authorized by Buyer, any property of the types referred to in subparagraph (6) above; provided, however, that Seller:
 - (a) is not required to extend credit to any purchaser; and
 - (b) may acquire the property under the conditions prescribed by, and at prices approved by Buyer.
- The proceeds of any transfer or disposition will be applied to reduce any payments to be made by Buyer under this Order, credited to the price or cost of the work, or paid in any other manner directed by Buyer.
- C. Seller shall submit complete termination inventory schedules no later than 60 days from the effective date of termination, unless extended in writing by the Buyer upon written request of Seller within this 60 day period.
 - D. After termination, Seller shall submit a final termination settlement proposal to Buyer in the form and with the certification prescribed by Buyer. Seller shall submit the proposal promptly, but no later than three (3) months from the effective date of termination, unless extended in writing by Buyer upon written request of Seller within this three (3) month period. However, if Buyer determines that the facts justify it, a termination settlement proposal may be received and acted on after three (3) months or any extension. If Seller fails to submit the proposal within the time allowed, Buyer may determine, on the basis of information available, the amount, if any, due Seller because of the termination and shall pay the amount determined.
 - E. Subject to paragraph D. above, Seller and Buyer may agree upon the whole or any part of the amount to be paid because of the termination. The amount may include a reasonable allowance for profit on work done. However, the agreed amount, whether under this paragraph E. or paragraph F. below, exclusive of costs shown in subparagraph F.(3) below, may not exceed the total Order price as reduced by:

1. The amount of payments previously made; and
 2. The Order price of work not terminated. The Order shall be amended, and Seller paid the agreed amount. Paragraph F. below shall not limit, restrict, or affect the amount that may be agreed upon to be paid under this paragraph.
- F. If Seller and Buyer fail to agree on the whole amount to be paid because of the termination of work, Buyer shall pay Seller the amounts determined by Buyer as follows, but without duplication of any amounts agreed on under paragraph E. above:
1. The Order price for completed supplies or services accepted by Buyer (or sold or acquired under subparagraph B. (9) above) not previously paid for, adjusted by any saving of freight and other charges.
 2. The total of:
 - (a) The costs incurred in the performance of the work terminated, including initial costs and preparatory expense allocable thereto, but excluding any costs attributable to supplies or services paid or to be paid under subparagraph F.(1) above;
 - (b) The cost of settling and paying termination settlement proposals under terminated Subcontracts that are properly chargeable to the terminated portion of the Order if not included in subparagraph F.(2)(a) above; and
 - (c) A sum, as a profit on subparagraph F. (2) (a) above, determined by Buyer to be fair and reasonable; however, if it appears that Seller would have sustained a loss on the entire Order had it been completed, Buyer shall allow no profit under this subparagraph F. (2) (c) and shall reduce the settlement to reflect the indicated rate of loss.
 3. The reasonable costs of settlement of the work terminated, including:
 - (a) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;
 - (b) The termination and settlement of Subcontracts (excluding the amounts of such settlements); and
 - (c) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory.
- G. Except for normal spoilage, and except to the extent that Buyer expressly assumed the risk of loss, Buyer shall exclude from the amounts payable to Seller under paragraph F. above, the fair value, as determined by Buyer, of property that is destroyed, lost, stolen, or damaged, so as to become undeliverable to Buyer or a buyer.
- H. The cost principles and procedures of Part 31 of the U.S. Federal Acquisition Regulation, in effect on the date of this Order, shall govern all costs claimed, agreed to, or determined under this clause.
- I. In arriving at the amount due Seller under this clause, there shall be deducted:
 1. All unliquidated advance or other payments to Seller under the terminated portion of this Order;
 2. Any claim which Buyer has against Seller under this Order; and
 3. The agreed price for, or the proceeds from sale of, materials, supplies, or other things acquired by Seller or sold under the provisions of this clause and not recovered by or credited to Buyer.
 - J. If the termination is partial, Seller may file a proposal with Buyer for an equitable adjustment of the price(s) of the continued portion of this Order. Buyer shall make any equitable adjustment agreed upon. Any proposal by Seller for an equitable adjustment under this clause shall be requested within 45 days from the effective date of termination unless extended in writing by Buyer.
 1. Buyer may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by Seller for the terminated portion of this Order, if Buyer believes the total of these payments will not exceed the amount to which Seller will be entitled.
 2. If the total payments exceed the amount finally determined to be due, Seller shall repay the excess to Buyer upon demand, together with interest computed at the rate established by the U.S. Secretary of the Treasury under 50 U.S.C. App. 1215(b)(2). Interest shall be computed for the period from the date the excess payment is received by Seller to the date the excess is repaid. Interest shall not be charged on any excess payment due to a reduction in Seller's termination settlement proposal because of retention or other disposition of termination inventory until ten (10) days after the date of the retention or disposition, or a later date determined by Buyer because of the circumstances.
 - K. Unless otherwise provided in this Order, Seller shall maintain all records and documents relating to the terminated portion of this Order for three (3) years after final settlement. This includes all books and other evidence bearing on Seller's costs and expenses under this Order. Seller shall make these records and documents available to Buyer, at Seller's office, at all reasonable times, without any direct charge. If approved by Buyer, photographs, microphotographs, or other authentic reproductions may be maintained instead of original records and documents.

15. TERMINATION FOR DEFAULT.

- A. Subject to paragraphs C and D below, Buyer may terminate this Order in whole or in part, by written notice of default to Seller if Seller:

1. Fails to deliver the supplies or to perform the services within the time specified in this Order or any extension;
 2. Fails to make progress so as to endanger performance of this Order or to perform any of the other provisions of this Order and does not cure that failure within a period of 10 days after receipt of the notice from Buyer specifying Seller's failure to perform; or
 3. Becomes insolvent or makes a general assignment for the benefit of creditors, or files or has filed against it a petition of bankruptcy or pursues any other remedy under any other law relating to the relief for debtors, or in the event a trustee or receiver is appointed for Seller's property or business; or assignment.
- B. If Buyer terminates this Order in whole or in part, it may acquire, under the terms and in the manner Buyer considers appropriate, supplies or services similar to those terminated, and Seller will be liable to Buyer for any excess costs for those supplies or services. However, Seller shall continue the work not terminated. In addition, Buyer may rework or repair any Product in accordance with the Non-Conforming Goods clause herein, at Seller's cost.
- C. If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is beyond the control of both Seller and subcontractor, and without the fault or negligence of either, Seller shall not be liable for any excess costs for failure to perform, unless the subcontracted supplies or services were obtainable from other sources in sufficient time for Seller to meet the required deliver schedule.
- D. If this Order is terminated for default, Buyer may require Seller to transfer title and deliver to Buyer, as directed by Buyer, any (1) completed supplies, and (2) partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (collectively referred to as "manufacturing materials" in this clause) that Seller has specifically produced or acquired for the terminated portion of this Order. Upon direction of Buyer, Seller shall also protect and preserve Property in its possession in which Buyer has an interest.
- E. Buyer shall pay the Order price for completed supplies delivered or services performed and accepted. Seller and Buyer shall agree on the amount of payment for manufacturing materials delivered and accepted and for the protection and preservation of the property.
- F. Buyer shall, at its option, have the right to set off against, or appropriate and apply to the payment or performance of any obligation, sum or amount owing at any time to Buyer under this Order, all deposits, amounts, or balances held by Buyer for the account of Seller, any amounts owed by Buyer to Seller, and any sum Buyer determines to be necessary to protect Buyer against loss because of outstanding liens or claims of former lien holders.
- G. The rights and remedies of Buyer in this clause are in addition to any other rights and remedies provided by Law or under this Order.
- 16. BUYER'S PROPERTY.**
- A. During the term of the Order, Seller shall, at its sole cost and expense, maintain a policy or policies of insurance covering the loss or destruction of or damage to all Buyer materials, tools, and equipment, special or otherwise, in which Buyer has an interest, in the amount of the full replacement value thereof providing protection against all perils normally covered in an "all-risk" policy, including but not limited to, fire, windstorm, hurricane, tornado, sandstorm, explosion, riot, civil commotion, aircraft, earthquake, flood, or other acts of nature during such time as they remain in Seller's possession.
- 17. RESERVED.**
- 18. DISPOSAL OF PRODUCTS.**
- 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. Upon completion or termination of this Order, Seller shall, at Seller's expense, dispose of all Products, including partially completed Products, as required or directed by Buyer.
- 19. RESERVED.**
- 20. TAXES.**
- The price of this Order includes all applicable federal, state, and local taxes, duties, tariffs, and similar fees imposed by any government, all of which shall be listed separately on the invoice. Use or sales taxes for which Buyer has furnished a valid exemption certificate or other evidence of exemption shall not be included.
- 21. ASSIGNMENT.**
- A. Seller shall not assign any of its rights under this Order without Buyer's prior, written consent, except as specifically stated in this clause.
- 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.
- C. Seller shall not furnish or disclose to any assignee under this Order or any other person not entitled to receive the same, any classified document or any of Buyer's Proprietary information (including this Order) until and unless authorized to do so by Buyer's authorized representative.
- 22. SUBCONTRACTING.**
- A. Seller shall not subcontract without the prior written authorization of Buyer for the performance of any service to be provided hereunder, and Seller shall require a like agreement from any immediate and lower-tier suppliers. This is not a restriction on authorized distributors, dealers, jobbers or industrial suppliers.
- B. No subcontract placed under this Order shall provide for payment on a cost-plus-percentage-of-cost basis, and any fee payable under cost-reimbursement subcontracts shall not exceed the fee limitations in subsection 15.404-4(c) of the Federal Acquisition Regulation (FAR).

- C. Any subcontract awarded to a foreign person, as defined in the International Traffic in Arms Regulations or the Export Administration Regulations, must comply with the Export and Import Compliance clause herein.

23. PROPRIETARY INFORMATION.

- A. If a separate Proprietary Information Agreement exists between the Parties, which relates to the subject matter of this Order, then Proprietary Information furnished by one Party to the other Party shall be protected pursuant to such Proprietary Information Agreement.
- B. If no separate Proprietary Information Agreement exists between the Parties, Seller agrees to keep confidential and not to disclose to any other person any Proprietary Information received from Buyer in connection with this Order. Seller further agrees to use Proprietary Information only for purposes necessary for performing this Order, without first obtaining Buyer's written authorization.
- C. Seller may disclose Proprietary Information to its subcontractors as required for the performance of this Order, provided that each such subcontractor first assumes by written agreement the same obligations imposed on Seller under this Order relating to such Proprietary Information.
- D. All documents and other tangible media (excluding Products) containing or conveying Proprietary Information and transferred in connection with this Order, together with any copies thereof, are and remain the property of Buyer.
- E. 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.
- F. Seller's obligations with respect to Proprietary Information 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.
- G. Unless otherwise provided herein, or authorized by Buyer in writing, Seller shall use Proprietary Information and/or data only in the performance of this Order subject to the Government's rights under the Government Property clause.

24. SELLER'S DATA.

Excluding Data marked with an appropriate legend and protected in accordance with a separate Proprietary Information Agreement, any Data, which Seller discloses to Buyer while performing this Order, that Seller has not marked with a limited rights legend in accordance with the applicable rights in technical data and computer software clauses/provisions called out herein shall not be considered proprietary to Seller or in any way restrict Buyer's use of such Data.

25. INFRINGEMENT INDEMNIFICATION.

- A. In lieu of any other warranty by Seller to Buyer against intellectual property infringement, statu-

tory or otherwise, express or implied, Seller will defend, indemnify, and hold harmless Buyer, Buyer's officers, agents, employees, and customers against all suits or actions, claims and liabilities, including costs, based on a claim that use or sale of any Products delivered under this Order infringes any patent, trade secret, copyright, or other intellectual property right of third parties.

- B. Buyer shall notify Seller in writing of such claim and Buyer shall provide Seller with reasonable information and assistance, at Seller's expense, for the defense thereof.
- C. If the use or sale of the Product 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 and extend this indemnification thereto.
- D. Seller's obligation shall not apply to Products manufactured by Seller pursuant to detailed designs developed by Buyer and furnished to Seller under an Order, which does not require research, development, or design work by Seller. Seller's obligation shall also not apply to any infringement arising from the use or sale of Products in combination with Products not delivered by Seller if such infringement would not have occurred but for such combined use unless such combination was reasonably foreseeable.
- E. Notwithstanding the foregoing, when this Order is performed under the authorization and consent of the U.S. Government to infringe United States Patents, Seller's liability for Seller's patent infringement under this Order shall be coextensive with Buyer's liability.

26. INSURANCE.

During the entire Order period Seller and its subcontractors shall, at their sole cost and expense, procure and maintain Worker's Compensation insurance coverage as required by the laws of the state in which the work is performed and such insurance shall provide waiver of subrogation in favor of Northrop Grumman. Seller shall also maintain, at their sole cost and expense, Employer Liability insurance in the amount of \$1,000,000.

- A. Whenever performance requires work on a Government installation, Buyer's premises, or premises under the care, custody or control of Buyer or Buyer's customer, Seller and its subcontractors shall, at their sole cost and expense, procure and maintain the following insurance coverage in the minimum limits indicated:
 - 1. General Liability (Professional Liability, as applicable) - Combined Single Limit \$2,000,000 bodily injury and property damage. Coverage shall include but not necessarily be limited to, premises and operations, products and completed operations and contracts.
 - 2. Automobile Liability - Combined Single Limit \$2,000,000 bodily injury and property damage covering all owned, hired and non-owned vehicles.

- B. All insurance required as a part of this Order shall be placed with insurance companies that are authorized to do business under the laws of the state or states in which the work is being performed and shall be in a form reasonably acceptable to Buyer.
- C. General Liability and Automobile Liability insurance coverage shall provide that Buyer is named as an additional insured and if requested by Buyer, Seller shall provide evidence that the required insurance is in place in the form of insurance certificates.
- D. Insurance coverage described herein must be in place and effective prior to commencement of any activity that is the subject of this Order. Renewal insurance certificates, if applicable, shall be provided to Buyer at least 15 days prior to the expiration date of the insurance under each required coverage.
- E. Buyer and Seller agree to defend, indemnify, and save harmless the other from all damages and liabilities arising out of or in connection with presence on the other's premises pursuant to this Order; provided, however, that such damage and liability shall not have been caused by the negligence of the agents, subcontractors or employees of the indemnified parties.

27. 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 including all relevant information including, but not limited to, nature of dispute, labor organizations involved, estimated impact on Seller's performance 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.

28. COMPLIANCE WITH LAWS.

Seller warrants that it shall comply with all applicable federal, state, or local laws, rules, and regulations in the performance of this Agreement. Seller shall not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin and warrants compliance with Section 508 of the Rehabilitation Act. Where applicable, the Supplier agrees to provide products and services which are Section 508 compliant and agrees to provide a Voluntary Product Accessibility Template® (VPAT®) to Customer Representatives, if requested.

29. GOVERNING LAW.

Both Parties agree that, irrespective of the place of performance of this Order, unless otherwise specifically provided herein, this Order will be construed and interpreted according to the law of the state from which this Order is issued, as identified in the Order, excepting that state's laws on conflicts of laws.

30. ASBESTOS.

Seller shall not provide any Product that contains asbestos and shall submit certification to Buyer on demand that the Products contain no asbestos.

31. 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. 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 Order or Subcontract placed with a foreign 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 shall include the substance of this clause, in favor of Buyer, in its subcontracts issued at all tiers pursuant to this Order.

32. EXPORT AND IMPORT COMPLIANCE.

This provision may not be modified or amended by any addendum, exhibit, attachment, or any other agreement without prior written approval from Northrop Grumman Law Department (Export/Import).

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 United States Code 2751 – 2799 (Arms Export Control Act) and 22 Code of Federal Regulations 120-130 (International Traffic in Arms Regulations or "ITAR") or 50 United States Code 2401-2420 (Export Administration Act of 1979, as amended), 50 United States Code 1701-1706, (International Emergency Economic Powers Act, as amended), and 15 Code of Federal Regulations 768 – 799 (Export Administration Regulations) and their successor and supplemental laws and regulations (collectively hereinafter referred to as the "Export Laws and Regulations"). Seller represents and warrants that it is either 1) a U.S. Person as that term is defined in the Export Laws and Regulations, or 2) a Foreign Person as that term is defined in the Export Laws and Regulations and has disclosed to Buyer's Representative in writing the country in which it is incorporated/authorized/organized to do business, and all nationalities of any dual or third-country national employees who will require access to the data, articles or services provided hereunder. Seller shall comply with any and all Export

Laws and 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. Foreign Persons. Seller shall not re-transfer any export-controlled information (e.g. technical data or software) to any other non-US person or entity (including the Seller's dual and/or third-country national employees) without first complying with all the requirements of the applicable Export Laws and Regulations. Prior to any proposed re-transfer, Seller shall first obtain the written consent of the 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 Laws and 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 Laws and Regulations.

B. Political Contributions, Fees and Commissions.

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

For purposes of this section and pursuant to 22 CFR 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:

- 1) 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
- 2) 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.

For purposes of this section and pursuant to 22 CFR 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:

- (1) To or at the direction of any person, irrespective of nationality, whether or not employed by or affiliated with the Seller; and
- (2) 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. Import Compliance. Both parties shall comply with all U.S. Customs laws and regulations (e.g., 19 CFR) and all other applicable U.S. government regulations pertaining to importations of goods and materials into the United States.

For International Purchase Orders (Purchase orders issued to entities addressed in foreign countries): Specifically, without excluding other regulations, Seller shall comply with and adhere to the commercial invoice requirements detailed in 19 CFR 141 subpart F of the regulations, and provide additional information as requested by the Buyer. Seller shall immediately upon discovery, notify Buyer of any change to the shipment data related to product valuation, quantities shipped, country of origin, port of export and any additional information directed by the Buyer. Seller will timely provide pre-alert shipping information and documentation prior to shipment arrival to the U.S. Buyer will direct Seller where to send pre-alert shipping information and documentation. Pre-alert shipping documentation includes, but is not limited to, a commercial invoice, airway bill, bill of lading, and other required documentation as directed by U.S. regulations and Buyer.

For Domestic Purchase Orders (Purchase orders issued to entities addressed in the United States): Seller shall assume all U.S. import responsibilities, to include designation as U.S. Importer of Record, Customs clearance, duty, taxes, and fees for goods entering into the United States. Unless otherwise agreed in writing, NGC will not assume any import liabilities for goods procured through a domestic purchase order.

D. Indemnification.

Seller shall indemnify and save harmless Buyer from and against any and all damages, liabilities, penalties, fines, costs, and expenses, including attorneys fees, arising out of claims, suit, allegations or charges of Seller's failure to comply with the provisions of this Clause and breach of the warranty set forth in paragraph A or C. Any failure of Seller to comply with the requirements or any breach of the warranty contained in this Clause shall be a material breach of this Order.

E. Subcontracts.

The substance of this Clause shall be incorporated into any lower-tier subcontract or purchase order entered into by the Seller for the performance of any part of the work under this Order.

F. Notification.

Seller agrees to provide prompt notification to Buyer in the event of changes in circumstances such as ineligibility to contract with US Government,

debarment, assignment of consent agreement, and initiation or existence of a US Government investigation, that could affect Seller's performance under this contract. Seller further 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 Section B.

33. RELIANCE.

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.

34. RELEASE OF INFORMATION AND ADVERTISING.

Except as required by law, no public release of any information, or confirmation or denial of same, with respect to this Order or the subject matter hereof, will be made by Seller without the prior written approval of Buyer. Additionally, Seller shall not use the name "Northrop Grumman Systems Corporation" or in any other way identify Buyer in any advertisement, display, news release, or other public disclosure without Buyer's prior written consent.

35 - 36. RESERVED.

37. HEADINGS.

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.

38. PARTIAL INVALIDITY.

If any provision in this Order is or becomes void or unenforceable by force or operation of law, all other provisions shall remain valid and enforceable.

39. NONWAIVER.

A Party's failure at any time to enforce any provision of any Order shall not constitute a waiver of the provision or prejudice a Party's right to enforce that provision at any subsequent time.

40. COMPLETE AGREEMENT.

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, proposal, 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.

41. RESPONSIBILITY FOR CLAIMS/ INDEMNITY.

Seller shall, at its own expense, defend, indemnify and hold harmless Buyer from any claims or suits brought and liabilities and losses sustained by any third party for injury to persons or damage to property, arising in whole or in part out of the acts or omissions of Seller, its subcontractors, agents, or employees in the performance of this Order. If Seller fails to defend, hold harmless, and indemnify 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.

42. ANTI-CORRUPTION COMPLIANCE

Seller represents, warrants and covenants that:

A. It has not and will not, directly or indirectly, pay, promise, offer, or authorize the payment of any money or anything of value to:

1. 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;
2. A candidate for political office, any political party or any official of a political party; or
3. 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.

B. No gift, travel expenses, business courtesies, hospitalities or entertainment of any nature has been or will be accepted or made in connection with this agreement 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:

1. Be permitted under the U.S. FCPA and the laws and regulations of the country in which this agreement will be performed;
2. Be consistent with applicable social and ethical standards and accepted business practices;
3. Be of such limited value as not to be deemed a bribe, payoff or any other form of improper inducement or payment; and
4. Be of such nature that its disclosure will not cause embarrassment for the Buyer.

C. Breach of any of the foregoing provisions of parts A and B of this clause by Seller shall be considered an irreparable material breach of this agreement and shall entitle the Buyer to terminate this agreement immediately without compensation to Seller.

43. PROHIBITED ACTIVITIES AND CONTACTS

A. Activity Prohibitions For Sellers delivering goods or performing services outside of the United States, unless specifically authorized in writing by Buyer, Seller shall not engage in any of the following activities on behalf of the Buyer under this agreement: acting as an agent of the 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 goods or performing outside of the United States, unless specifically authorized in writing by Buyer, Seller shall not contact, either directly or indirectly, public officials of any country other than the United States, United Kingdom, Canada, Australia, Germany, France, or Italy in furtherance of its performance on behalf of Buyer under this agreement.

44. 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:
 - a. sex trafficking, or
 - b. 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.
 - 8) 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 performing in connection with this Order 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 any Buyer Order, include provisions which secure for Buyer all of the rights and protections provided for within this clause, including this audit paragraph.
- 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 and provide all relevant information including, but not limited to, the nature of the actual or suspected violation. Written notice shall be provided to the Buyer's Authorized Representative, as described in the Order.

- 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 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 or labor contract.

45. STOP WORK.

- A. Buyer may, at any time, by written order to Seller, require Seller to stop all, or any part, of the work called for by this Order for a period of up to one hundred and twenty (120) days after the stop work order is delivered to Seller, and for any further period to which the Parties may agree. Any such order shall be specifically identified as a Stop Work Order (SWO) issued pursuant to this clause. Upon receipt of an SWO, Seller shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the SWO during the period of work stoppage. Within the period of the work stoppage specified by the SWO, and any amendments to it, Buyer shall either (1) cancel the SWO, or (2) terminate the work covered by such SWO as provided in "Termination For Convenience", of this Order.
- B. If an SWO issued under this clause is canceled, or the period of the Order or any extension thereof expires, Seller shall resume work. An equitable adjustment shall be made in the delivery schedule or Order price, or both, and the Order shall be modified in writing accordingly, if (1) the stop work results in an increase in the time required for, or in Seller's cost properly allocable to, the performance of any part of this Purchase Order, and (2) Seller submits its proposal for such adjustment within forty-five (45) days after the end of the period of work stoppage. Failure of the Parties to agree to any adjustment to be made under this clause shall not excuse Seller from proceeding with the performance of the Order.

- C. If an SWO is not canceled and the work covered by such SWO is terminated for the convenience of Buyer, the reasonable costs resulting from the SWO shall be allowed in arriving at the termination settlement.

46. PATENTS AND INVENTIONS.

Seller agrees to assign and hereby does assign to Buyer the entire and exclusive right, title, and interest to all designs, models, photographs, drawings, ideas, inventions (whether or not patentable), and improvements whatsoever, conceived, discovered, or developed by Seller, Seller's employees or Seller's subcontractors, specifically related to or in connection with performance of this Order. Seller agrees to promptly disclose to Buyer all such ideas, inventions, and improvements, and, on demand and at Buyer's expense, assist and require and bind Seller's employees to assist, in preparation, execution, and delivery of any disclosures, patent applications or other papers required by Buyer to obtain and enforce patents in the United States and foreign countries, and to execute and deliver to Buyer any assignment or other document which Buyer deems necessary to perfect Buyer's right, title and interest in and to said ideas, inventions, and improvements. Seller shall insert the substance of this clause, in favor of Buyer, in subcontracts at any tier under this Order

47. RIGHTS IN COPYRIGHTS

The Parties expressly agree that all original works of authorship fixed in any tangible form, including software improvements, enhancements, derivative works and mask works, whether specially ordered or commissioned, made by Seller personnel alone or jointly with others in connection with this Order ("Works") shall become and remain the property of Buyer. These Works shall be considered "a work made for hire" and Seller shall assign and hereby assigns all its right, title, and interest in the Works to Buyer. Seller agrees to require its personnel or others hereunder associated with or used by Seller in the performance of this Order to execute all necessary documents to transfer and assign all right, title, and interest in said Works to Buyer

48 - 50. RESERVED.

51. CONFLICT OF INTEREST.

Seller warrants that no conflict of interest exists between the Services and Products to be provided under this Order and Seller's other activities. Seller shall immediately advise Buyer of any such conflict of interest or potential conflict of interest which arises during performance of this Order.

52. - 79. RESERVED.

80. RESPONSE TO AUDIT.

Buyer shall not be prohibited from providing copies of the purchase order to federal and state taxing agencies as requested by either buyer's or government auditors to comply with auditing procedures.

81a. DIVESTITURES - COMMODITY PRODUCTS & SERVICES

- A. Upon Buyer's divestiture of any affiliate, division, business unit, line of business or sector ("divested entity"), Buyer may assign in whole or in part the services that are the subject of this order to that divested entity. Upon execution of an assignment, Buyer shall have no further rights or obligations

with respect to the assigned services (with the exception of any unpaid service fees which remain due on the effective date of such assignment) and the divested entity shall become the "customer" of record for those assigned services. Any such assignment or other transfer of services made to a third party will be subject to the prior written consent of Seller which consent will not be unreasonably withheld or delayed.

- B. Divested entities will have the right, for a period of twelve (12) months post-divestiture, to continue to purchase the products and/or services covered under this order, or Buyer may purchase such products under this order on behalf of the divested entities. If a divested entity wishes to order from Seller directly, Seller reserves the right to require such divested entity to provide financial information sufficient to determine creditworthiness before accepting any orders.
- C. Buyer may access and use the services under the agreement to provide transitional services to the divested entity, including transitional access and use of the services by the divested entity, during the transition period at no additional charge (i.e., no charge other than fees otherwise due to supplier under the agreement as if the divested entity were a part of Buyer) provided that Buyer is and remains current on the payment of all fees due to supplier under the agreement.

81b. DIVESTITURES - IT PRODUCTS & SERVICES.

- A. Upon Buyer's divestiture of any affiliate, division, business unit, line of business or sector ("divested entity"), Buyer may assign in whole or in part the software and/or maintenance services that are the subject of this order to that divested entity. Upon execution of an assignment, Buyer shall have no further rights or obligations with respect to the assigned licenses and/or services (with the exception of any unpaid license and/or maintenance service fees which remain due on the effective date of such assignment) and the divested entity shall become the "customer" of record for those assigned licenses and/or services. Any such assignment or other transfer of licenses to the software and/or maintenance services made to a third party will be subject to the prior written consent of Seller/licensor which consent will not be unreasonably withheld or delayed.
- B. Divested entities will have the right, for a period of twelve (12) months post-divestiture, to continue to purchase the software products and/or maintenance services covered under this order, or Buyer may purchase such licenses under this order on behalf of the divested entities. If a divested entity wishes to order from Seller directly, Seller reserves the right to require such divested entity to provide financial information sufficient to determine creditworthiness before accepting any orders.
- C. For software. In the event of a divestiture, Buyer shall be permitted to use the software products to provide managed services for the divested entity during a period of transition, provided that Buyer's use in such case is only for the divested entity. Once the transition period ceases, Buyer shall assign the licenses to the divested entity as provided in the "divestiture" provision in this

purchase order.

- D. Buyer shall have the unrestricted right to transfer the software license(s) to its parent and/or any subsidiary or affiliate of Buyer upon written notification to Seller/licensor of such transfer without payment of additional costs or fees provided that the number of licenses transferred does not exceed the Buyers total licensed count. In each such instance, Buyer shall inform Seller/licensor of the transfer, and shall provide details on the name and address of assignee, including which products (and how many licenses of each) are being transferred.

**82a. MERGERS AND ACQUISITIONS –
COMMODITY PRODUCTS/SERVICES.**

If Buyer merges with or acquires an entity or entities that have a need for Seller's products and services, Buyer and the acquired entity will be permitted to make purchases using this purchase order and price discounts in support of the acquired entity. If under any existing purchase order with an acquired entity or entities Seller currently provides or agrees to provide services, Buyer and Seller will negotiate a combined agreement sufficient to cover the combined companies so as to avoid any disruption in service.

**82b. MERGERS AND ACQUISITIONS - IT
PRODUCTS/SERVICES.**

- A. If Buyer merges with or acquires entities that have existing licensed software, the merged, or acquired entity's licenses will terminate upon completion of the acquisition or merger and the merger/acquired entity's licenses will be combined with Buyer's existing licenses of the same license type under the terms of this purchase order, provided that Buyer and the merged/acquired entity are both current on maintenance and there are no outstanding receivables against either account. There shall be no transfer fee for combining the licenses, provided; however, that Buyer will true up the merged or acquired licenses to match Buyer's software configuration and license type(s). Maintenance will continue on the combined number of users. Buyer may, at its option, permit an acquired entity to continue to operate its existing software as a standalone operation, but subject to the terms of this purchase order at no additional cost other than continued maintenance fees.
- B. If Buyer merges with or acquires an entity or entities that have a need for Seller's products and services, Buyer and the acquired entity will be permitted to make purchases using this purchase order and price discounts in support of the acquired entity. If under any existing purchase order with an acquired entity or entities Seller currently provides or agrees to provide maintenance services, Buyer and Seller will negotiate a combined maintenance agreement sufficient to cover the combined companies so as to avoid any disruption in service.

83. – 84. RESERVED

85. SOFTWARE CHAIN OF CUSTODY.

Seller represents and warrants that it has policies and procedures in place to ensure that software code used to develop product(s) has been within seller's configuration management and control during the entire

development process. Should buyer determine that seller has supplied product(s) that have failed or do not properly function (i.e. harmful/malicious code embedded into software) due to lapses in the chain of custody, buyer shall promptly notify seller and seller shall at its own expense immediately replace the defective product(s) with product(s) that conform to the software documentation specifications.

86. REPORTING - IT SOFTWARE.

For software. Upon request, seller will submit within 48 hours a copy of the testing procedures and test results used for the product(s) being procured.

87. RESERVED

88. DATA BREACH NOTIFICATION.

Seller will promptly notify buyer of any actual or potential exposure or misappropriation of buyer data ("breach") that comes to seller's attention. Seller will cooperate with buyer and in investigating any such breach, at seller's expense. Seller will likewise cooperate with buyer and, as applicable, with law enforcement agencies in any effort to notify injured or potentially injured parties, and such cooperation will be at seller's expense, except to the extent that the breach was caused by buyer. The remedies and obligations set forth in this subsection are in addition to any others buyer may have including, but not limited to, any requirements in the "Privacy, Confidentiality, and Security" provisions of this Agreement.

89. DATA CONTROL.

Seller will have policies and procedures in place to protect any data that buyer provides, including destruction methods employed and how audit and system log information is protected. Buyer may upon request, review seller's applicable policies and procedures.

90. – RESERVED

91. INTERNET PROTOCOL VERSION 6 (IPV6)

When requested, Seller shall provide a "Supplier's Declaration of Conformity" (SDOC) in compliance with ISO/IEC 17050:2004 to indicate that delivered devices have been tested and approved in an accredited laboratory.

92. RESERVED

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

Buyer has joined with the U.S. Bureau of Customs and Border Protection in the Customs Trade Partnership Against Terrorism (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 originating from off-shore of the United States to Buyer, drop shipments to its sub-tier suppliers, or drop shipments to its customers originating from off-shore of the United States. 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.

Contact the authorized Purchasing Representative for assistance in identifying transportation companies that are validated under the C-TPAT program.

94. SUSTAINABILITY.

Buyer is committed to providing a sustainable environment for its employees, customers, investors, suppliers, and communities. Our goal is to promote resource conservation and environmental responsibility through the use of recycled contents and recovered materials to achieve waste reduction and energy efficiency. Buyer is dedicated to obtaining products and services from suppliers that exceed or comply with all applicable Federal, state and local laws, regulations, and ordinances relating to preservation and protection of the environment, in addition to employing techniques and materials that support sustainability.

To assist Buyer in maintaining its commitment, suppliers of products and services must also demonstrate the same degree of integrity from a social and environmental perspective. The following are the minimum requirements all Buyer's suppliers are expected to satisfy.

- A. Ensure the necessary programs are in place for continuous improvement in the following key areas of sustainability: water, energy, recycling, waste and air,
- B. Ensure that the products and services provided meet the following key sustainability criteria to assist Buyer to become a more sustainable organization: (1) Water and Energy: Products and services are developed in a manner that minimizes energy and water use, (2) Recycling and Waste: Products and services are developed to employ recycled materials, to enable recycling during disposal and utilizing innovative packaging that maximizes the use of recycled materials while diminishing overall waste, (3) Water, Air and Waste: Products and services are developed in a manner that minimizes emissions, effluents, and waste released at all of your facilities and operations.

95. FORCE MAJEURE.

Neither party shall be liable for delays in manufacturing or delivery resulting from any circumstances beyond its reasonable control not occasioned by its fault or negligence, including but not limited to compliance with any sovereign decrees, orders, acts, instructions or priority requests of any federal, state, or municipal government or any department or agency thereof, civil or military, acts of god, fires, floods, strikes, lockouts, embargoes or wars. Upon the happening of any circumstances or causes aforesaid, the affected party shall notify the other party without delay and any relief shall be limited to an extension of delivery dates or times of performance to the extent caused thereby.

96. SUSPECT/COUNTERFEIT PARTS.

If suspect/counterfeit parts are furnished under this Order and are found in any of the goods delivered hereunder, such items will be impounded by Buyer. Seller shall promptly replace such suspect/counterfeit parts with parts acceptable to the Buyer and the 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 counterfeit parts, of reinserting replacement parts and of any testing necessitated by the reinstallation of Seller's goods after counterfeit parts have been exchanged. Buyer's remedies described herein shall not be limited by any other clause which is agreed upon between Buyer and Seller in this Order. At Buyer's request, Seller shall return any removed counterfeit parts to Buyer in order that Buyer may turn such parts over to its customer for further investigation. Seller agrees that any Government or quasi-Government directive, such as a GIDEP alert indicating that such parts are counterfeit, shall be deemed definitive evidence that Seller's parts contain counterfeit parts..

97. PRODUCT VULNERABILITIES.

Within 24 hours of confirming vulnerability in their product line, seller shall notify buyer and provide a corrective action plan to address the issue. This plan should include, but not be limited to: identification of the specific vulnerability; steps to isolate and prevent further occurrences; replacement of the defective product(s); enhanced quality control procedures.