

CT-5

NORTHROP GRUMMAN CORPORATION

PURCHASE ORDER TERMS AND CONDITIONS GOVERNMENT TIME BASED – SERVICES

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1. DEFINITIONS.

- A. BUYER means the Northrop Grumman Corporation subsidiary, Sector, or business unit identified on the face of the Order.
- B. BUYER'S 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 or printed document, computer or electronically stored, software, or any other tangible form of expression.
- D. DFARS means the Defense Federal Acquisition Regulation Supplement
- E. FAR means the Federal Acquisition Regulation
- F. ORDER means the instrument of contracting including the Purchase Order and all referenced documents.
- G. PARTIES means Buyer and Seller collectively.
- H. PRIME CONTRACT means the contracting instrument issued to Buyer or Buyer's higher tier customer by the U.S. Government for the acquisition of Products.

- I. PRODUCT means those goods, supplies, reports, computer software, data, materials, articles, items, parts, components or assemblies, and any related services described in the Order.
- J. 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, and includes any information marked with a restrictive legend as prescribed in DFARS 252.227-7013 or 252.227-7014 or in FAR 52.227-14.
- K. SELLER means the party with whom Buyer is contracting.
- L. SERVICES means Seller's time and effort, including any goods, supplies, materials, articles, items, parts, components or assemblies (Products) incidental to the performance of the Service.

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. FAR/DFARS Clauses
- E. Statement of Work.
- F. Specification/Drawing
- G. Other Referenced Documents.

4. - 9. RESERVED.

10. WARRANTY.

Notwithstanding inspection and acceptance by Buyer, Seller warrants that all Services performed under this Order will be performed in accordance with the standards of care and diligence normally exercised by persons performing such Services in the industry, be free from defects in workmanship, and conform to the requirements of the Order. Seller shall correct or re-perform any defective or non-conforming Services at no cost to the Buyer. If Buyer does not require correction or re-performance, Buyer shall be entitled to an equitable adjustment.

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 in (1) description of Services, (2) time of performance (i.e., hours of the day, days of the week, etc.), and (3) place of performance of the Services.
- B. If the change causes an increase or decrease in the cost or time required to perform this Order, whether or not changed by the Change Order or Purchase Order Change Notice, an equitable adjustment shall be made in the purchase price and/or delivery schedule and the Order shall be modified 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. Buyer has the right to examine any of Seller's pertinent books and records for the purpose of verifying Seller's claim.
- E. 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 affect an exchange of information with Seller's per-

sonnel 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.

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."

15. RESERVED.

16. BUYER'S PROPERTY.

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. GOVERNMENT PROPERTY.

- A Title - (1) The Buyer or Government shall retain title to all Buyer or Government furnished property, as applicable. (2) Title to all property purchased by Seller for which Seller is entitled to be

reimbursed as a direct item of cost under this Purchase Order shall pass to and vest in the Government/Buyer upon the vendor's delivery of such property. (3) Title to all other property, the cost of which is reimbursable to Seller, shall pass to and vest in the Government/Buyer upon

- (i) Issuance of the property for use in Purchase Order performance;
- (ii) Commencement of processing of the property or use in Purchase Order performance; or
- (iii) Reimbursement of the cost of the property by Buyer, whichever occurs first.

(4) All Government furnished property, all property acquired by Seller, title to which vests in the Government under this paragraph (collectively referred to as "Government property"), and all Buyer furnished property is subject to the provision of this clause. Title to Buyer-furnished property or Government property shall not be affected by its incorporation into or attachment to any property not owned by Buyer or the Government, nor shall Government or Buyer furnished property become a fixture or lose its identity as personal property by being attached to any real property.

- B If, in connection with the performance of this purchase order, any property is furnished to Seller by Buyer or by the Government, Seller shall assume the risk of, and be responsible for, any loss, theft, destruction of or damage to the property while in Seller's possession or control except to the extent that this purchase order provides for the relief of Seller from such liability. In the absence of such approval, Seller shall return all such property in as good a condition as when received except for reasonable wear and tear for the utilization of such property in accordance with the provisions of the prime contract. As indicated, Seller shall establish and maintain a system in accordance with the property provisions listed below. Seller shall also notify Buyer if its property system deemed inadequate or the Risk of Loss provision has been withdrawn by the Government.
- C The Buyer and/or a Buyer representative from the Property organization may request information periodically to satisfy inventory and/or financial requirements of the Customer. Buyer and/or the Northrop Grumman Corporation (NGC) Property organization will request Seller to appoint an individual as Point of Contact to enable communication regarding Property, as required. NGC Property oversight will be dependent upon: Adequacy of Seller's documented property procedures, Seller/Buyer history, Seller's Property Management System reviews and Seller's ability to provide NGC timely and accurate inventory and property reports.
- D Unless specifically provided in this Purchase Order, Seller warrants that the estimated cost set forth in this Purchase Order does not include as a direct charge the cost of any special tooling, special test equipment, or equipment as are defined in FAR Part 2 and/or **52.245-1**. Any such special

tooling, special test equipment or equipment to be acquired/fabricated in the performance of or charged to this order, will be brought to the Buyer's immediate attention and as required, will be covered by a separate purchase order.

- E The Seller shall have a process to create and provide reports of Property: (1) Discrepancies incident to shipment and the receipt; (2) Loss, Damage or Destruction (LDD); (3) Periodic Physical Inventory Reports and related discrepancies to be submitted in accordance with FAR **52.245-1 (f)(iv)** as required; (4) Government written notification of System Adequacy (Summary of Findings) or Inadequate System Rating and Corrective Actions, if applicable; (5) As property becomes excess a list of property and/or material will be provided to NGC (NGC will provide template when required); and (6) Any specific reports as required by the Buyer's Property Management organization. (7) If an LDD is required for Government or Buyer furnished property, the Buyer shall be notified in writing within a reasonable period of time with a preliminary report and/or as soon as the facts become known a formal LDD report will be submitted to the Buyer in accordance with FAR **52.245-1 (1)(vi)(B)**.
- F The Buyer and/or a Buyer's representative from the Property organization shall have the right, at all reasonable times, to visit the Seller's plant or such parts thereof as may be engaged in work relating to this purchase order, for the purpose of verification and/or determining continued adequacy of the Seller's Property Management System. Seller shall receive prior notice of any visit made pursuant to this clause.

18. RESERVED.

19. NOTIFICATION OF STATUS CHANGES.

- A. By accepting this Order, Seller certifies that most recent representations and certifications provided by Seller continue to remain valid and unchanged. 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 the Order.
- B. In addition, Seller shall promptly notify Buyer's Authorized Purchasing Representative whenever a Government Defense Contract Audit Agency (DCAA) review of Seller's Accounting System or Billing System results in a determination of "Disapproved" by the Divisional Administrative Contracting Officer (DACO) and provide Buyer a copy of the disapproval letter.

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. Seller may assign to a bank, trust company, or other financing institution including any Federal lending agency, claims for money due or to become due to Seller from Buyer under this Order, provided:
 - (1) The assignment is limited to one party, covers all amounts payable under the Order and not already paid, is not subject to further assignment, and is made specifically subject to reduction and set-off or recoupment for any present or future claim or claims or indebtedness which Buyer may have against Seller;
 - (2) Seller furnishes to Buyer written notice of assignment and a true copy of the instrument of assignment.
- 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 pur-

poses 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, statutory 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.

- A. 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 against Buyer. Seller shall also maintain, at their sole cost and expense, Employer Liability insurance in the amount of \$1,000,000.
- B. 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 – 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.
- C. 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.
- D. 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.
- E. 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.

- F. 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.

- A. Seller shall comply with all applicable Federal, State and local laws, statutes, rulings, ordinances, orders, and regulations in effect on the date of this Order.
- B. Seller certifies that the Products called for by this Order have been or will be produced in full compliance with Sections 6, 7, 12, and 15 of the Fair Labor Standards Act of 1938 (29 U.S. Code 201-219), as amended, and of regulations and orders of the United States Department of Labor under Section 14 thereof.

29. CHOICE OF LAW.

Both Parties agree that, irrespective of the place of performance of this Order, 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 conflict of law.

30. - 31. RESERVED.

32. EXPORT AND IMPORT COMPLIANCE.

- A. Export Compliance. Seller is advised that its 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 – 2796 (Arms Export Control Act) and 22 Code of Federal Regulations 120-130 (International Traffic in Arms Regulations) or 50 United States Code 2401 – 2420 (Export Administration Act) 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) that it has disclosed to Buyer's Representative in writing the country in which it is incorporated or otherwise organized to do business, or if a natural person, all citizenships and US immigration status. Seller shall comply with any and all Export Laws and Regulations, and any license(s) issued thereunder.

- B. Foreign Personnel/Persons. Seller shall not give any Foreign Person (including Seller's own non-US employees or affiliates) access to Technical Data, software or Defense Articles, or provide an unauthorized Defense Service as those terms are defined in the applicable Export Laws and Regulations without the prior written consent of Contractor/Buyer. Any request for such consent must state the intended recipient's citizenship(s), and status under 8 U.S.C. 1101 and 8 U.S.C. 1324 (the "Immigration and Naturalization Act"), and such other information as Buyer may reasonably request. No consent granted by Buyer in response to Seller's request under this paragraph b. 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.
- C. 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. 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.
- D. 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.
- 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" or in any other way identify Buyer in any advertisement, display, news release, or other public disclosure without Buyer's prior written consent.
- 35. COMPLIANCE WITH AND APPLICABILITY OF THE OFFICE OF FEDERAL PROCUREMENT POLICY (OFPP) ACT OF 1988 (41 USC 423).**
Seller represents that during the conduct of the procurement of which this Order forms a part, it has complied with and will continue to comply with the requirements of FAR 52.203-10 and Section 27 of the OFPP Act as implemented in FAR. Seller further agrees that it shall indemnify and hold harmless Buyer from and against any loss, cost or damage incurred by Buyer under Buyer's contract with its customers as a result of or in connection with Seller's violation of the OFPP Act.
- 36. INDEMNITY FOR DEFECTIVE COST OR PRICING DATA.**
Seller hereby indemnifies and agrees to hold Buyer harmless from any and all price or cost reductions made pursuant to the FAR 52.215-10 "Price Reduction for Defective Cost or Pricing Data" clause or the FAR 52.215-11 "Price Reduction for Defective Cost or Pricing Data – Modifications" clause, or any other provisions of the prime contractor higher-tier subcontract under which this Order is issued, and from and against any and all cost disallowances or non-recognitions of costs under such prime contractor subcontract, if such price or cost reduction, cost disallowance or non-recognition of costs arises or results directly or indirectly because:
- A. Seller, or any Seller subcontractor at any tier or prospective subcontractor hereunder, furnished cost or pricing data that were not complete, accurate and current as certified in Seller's Certificate of Current Cost or Pricing Data; or
- B. Seller, or any Seller subcontractor or prospective subcontractor at any tier hereunder, furnished data of any description that were not accurate.
- Accordingly, without limitation of the foregoing, the price of this Order shall be reduced and the Order shall be modified in writing as necessary to reflect the full amount of any and all such price or cost reductions and any and all such cost disallowances or non-recognitions of costs. The rights and remedies of Buyer under or pursuant to this indemnity shall be cumulative and additional to any other or further rights and remedies provided under this Order or at law or in equity.
- 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. - 46. RESERVED.

47. 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 or representatives (hereinafter "Employees") performing Services under this Order shall at all times be under Seller's direction and control. 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.

48. SELLER'S EMPLOYEES.

- A. All personnel assigned by Seller to perform the Services to be furnished hereunder shall be capable, skilled, qualified and competent to perform such Services.
- B. Buyer may require Seller to remove from its or customer's premises any employee, agent, or representative of Seller, or any of its subcontractors, Buyer deems incompetent, careless or otherwise objectionable. Seller shall remove such employee, agent or representative from the premises immediately.
- C. At all times Seller shall use suitable safety precautions, including, as a minimum, those safety precautions issued in instructions and directions by Buyer or Buyer's customer. Such safety precautions shall include, but not be limited to, the use of proper materials, tools, equipment and other safeguards, as appropriate.
- D. Seller and Seller's personnel shall also comply with all applicable rules, regulations and orders of the Occupational Safety and Health Act of 1970 (P.L. 91-596, 29 USC 651-678), as amended, and all applicable safety laws, rules, regulations and orders of the United States and the State wherein this Order is being performed. Seller agrees to defend, hold harmless, and indemnify Buyer from and against any noncompliance by Seller with any of the above laws, rules, regulations and orders as may be applicable.
- E. If this Order requires Seller's personnel to enter Buyer's or Buyer's customer's premises, Seller agrees to have its personnel, engaged in the performance of Services hereunder, report to Buyer's plant, at times to be specified by Buyer, at Seller's expense (unless otherwise herein specified), for at-

tendance at a training session or sessions concerning Buyer's or its customer's standards and procedures relating to on-site rules of behavior, work schedule, security procedures and any other standards and procedures adhered to by Buyer's or customer's employees.

49. CITIZENSHIP ELIGIBILITY REQUIREMENTS.

- A. Employees of Seller who perform Services under this Order shall be citizens of the United States of America (U.S.), its possessions or territories, or lawful permanent residents as defined by 8 United States Code (U.S.C.) 1101(a)(20), or protected individuals as defined by 8 U.S.C. 1324b(a)(3). Seller shall provide Form P0-F162, ITAR Certification/Visitor Badge Request, not later than 10 days after notice of award of a purchase order. Seller shall promptly notify Buyer of any changes to the Certification. Failure to provide the Certification, or notice of changes, may result in termination of the purchase order for default.
- B. Upon the request of Buyer, Seller shall submit verification of citizenship, lawful permanent resident status, protected individual status, or employment eligibility status to Buyer for each employee who will perform Services under this Order. Examples of documents that may be considered satisfactory are state birth certificates, U.S. passports, U.S. naturalization papers, and "green" cards (I-551) issued by the U.S. Department of Immigration and Naturalization. Consistent with IRCA, the order of presentment of such documents shall be the sole prerogative of Seller's employees. If these documents are not available, a compilation of other evidence may suffice.
- C. Employees of Seller not listed on the Certification of Employees or providing individual proof of U.S. citizenship, or other status as described in subparagraph B. above, may be denied access to Buyer's premises.

50. BADGES AND PLANT SECURITY.

If this Order requires Seller's personnel to enter Buyer's or Buyer's customer's premises, Seller agrees to have its personnel, engaged in the performance of Services hereunder, report to Buyer's plant, at times to be specified by Buyer, so that Buyer may provide said personnel with identification badges, which will permit such personnel to enter and leave the premises where the work is to be performed. Seller further agrees that said badges shall be worn by said personnel, in a conspicuous place upon the person of each of its personnel, when such personnel are in, on, or about the premises. Seller further agrees to abide by and comply with, and require its Employees to abide by and comply with, such rules and regulations pertaining to plant security as may be prescribed by Buyer and/or the Buyer's Customer.

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. SERVICE RATES AND INVOICING.

- A. The rates for straight time and overtime work, which Seller will bill Buyer, for Services furnished under this Order, shall be those set forth in this Order. Buyer shall make no payment for work performed during holiday, or other overtime periods, unless such work is expressly authorized by Buyer.
- B. Seller represents that the rates set forth in this Order include all profit, wages, salaries, overhead, taxes, and other costs and expenses.
- C. Seller shall send a separate invoice for each shipment according to the Buyer Invoice Instructions which is incorporated herein and available on the NGC On-line Automated Supplier Information System (OASIS) https://oasis.northgrum.com/nu_cp_oasis.htm. No invoice shall be issued prior to completion of Services or shipment of Products. Payment due dates, including discount periods, will be calculated from the date of acceptance of Service or Product, or receipt of correct invoice, whichever is later. Payment of invoice shall not constitute approval or acceptance of Services or Products rendered. At any time prior to final payment under this Order, Buyer may have invoices audited as to validity. Payment of Seller's invoices shall be subject to adjustment for any amounts found upon audit or otherwise to have been improperly invoiced. Any amounts owing to Buyer by Seller may be set off against amounts otherwise due to Seller under this Order.
- D. All work performed beyond the stated expiration date or total funding of the order will be at the suppliers "own risk". No legal liability on the part of Northrop Grumman may arise until the Seller receives written notice from the buyer that the period of performance has been extended and funding is available.

53. - 91. RESERVED.

92. BACKGROUND INVESTIGATIONS.

- A. Seller must complete Background Investigations (BI) on all new or rehired Seller personnel who will perform services hereunder on premises under the ownership or control of Buyer. The BI's are required prior to issuance by Buyer of long-term visitor badges or unescorted access badges to Buyer's site(s) for more than sixty (60) days or a cumulative of sixty (60) days in a twelve (12) month period. This requirement does not apply to Seller's employees who are currently in possession of a long-term badge.
- B. Sellers are responsible for completing background investigations and will certify via Form P0-F162 that the BI has been completed and a thorough review of the investigative report disclosed only favorable information. At a minimum, BI's will include:
 - 1. A criminal convictions check
 - 2. A check of Seller's employees Department of Motor Vehicles records for violations of any kind;

- 3. Verification of asserted college degrees and professional licenses or other professional or educational certifications

- C. The Seller must notify and obtain approval in writing from Buyer's Authorized Purchasing Representative prior to assignment of Seller's personnel to a site owned or under the control of Buyer when a particular BI has been completed and the investigation report disclosed unfavorable/adverse information in the following area(s):

- 1. Education and/or professional background
- 2. License(s) or certification(s)
- 3. Criminal and/or driving record.

"Unfavorable/adverse information" includes but is not limited to any criminal conviction, misdemeanor or felony, any driving violation that appears on the information provided by the Department of Motor Vehicles, failure of an educational or professional institution to acknowledge completion of a degree, license or certification, and the like. Buyer shall have the ultimate and sole determination as to whether the investigation report contains "unfavorable/adverse information."

93 - 94. RESERVED.

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. - 198. RESERVED.

199. FAR/DFARS PROVISIONS/CLAUSES.

- A. The FAR and DFARS clauses cited in paragraph C. 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. Whenever said clauses include a requirement for the resolution of disputes between the parties in accordance with the "Disputes" clause herein, the dispute shall be disposed of in accordance with the clause entitled "Disputes" in these Terms and Conditions
- B. 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 repre-

sentative (2) when title to property is to be transferred directly to the Government, and (3) in FAR 52.227-1, 52.227-2, 52.246-23 and DFARS 252.227-7013 and 252.227-7014.

C. FAR and DFARS clauses:

Clause	FAR Reference
Gratuities 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
Restrictions on Subcontractor Sales to the Government NOTE: Applicable to any Order greater than \$100,000.	52.203-6
Anti-Kickback Procedures NOTE: The substance of this clause, except subparagraph (c)(1), is applicable to any Order and all lower-tier subcontracts which exceed \$100,000. Seller shall immediately notify Buyer of any alleged violations involving any of Buyer's or Seller's employees.	52.203-7
Limitation on Payments to Influence Certain Federal Transactions NOTE: Applicable to any Order greater than \$100,000.	52.203-12
Security Requirements NOTE: Delete paragraph (c.) NOTE: Applicable if the Order involves access to classified information.	52.204-2
Material Requirements	52.211-5
Defense Priority and Allocation Requirements	52.211-15
Audit and Records – Negotiation NOTE: Applicable to any Order greater than \$100,000.	52.215-2
Price Reduction for Defective Cost or Pricing Data NOTE: Applicable to any Order when cost or pricing data are required.	52.215-10
Price Reduction for Defective Cost or Pricing Data – Modifications NOTE: Applicable if FAR 52.215-10 is not applicable to this Order.	52.215-11
Subcontractor Cost or Pricing Data NOTE: Applicable to any Order when cost or pricing data are required.	52.215-12
Subcontractor Cost or Pricing Data – Modifications NOTE: Applicable if FAR 52.215-12 is not applicable to this Order.	52.215-13
Integrity of Unit Prices NOTE: Delete paragraph (b) NOTE: Applicable to any Order greater than \$100,000.	52.215-14

Clause	FAR Reference
Pension Adjustments and Asset Reversions 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
Facilities Capital Cost of Money NOTE: Applicable only if this Order is subject to the Cost Principles at FAR Subpart 31.2 and the Seller proposed Facilities Capital Cost of Money in its offer.	52.215-16
Waiver of Facilities Capital Cost of Money NOTE: Applicable only if this Order is subject to the Cost Principles at FAR Subpart 31.2 and the Seller did not propose Facilities Capital Cost of Money in its offer.	52.215-17
Reversion or Adjustment of Plans for Postretirement Benefits (PRB) Other than Pensions 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
Notification of Ownership Changes 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
Requirements for Cost or Pricing Data or Information Other than Cost or Pricing Data – Modifications	52.215-21
Allowable Cost and Payment	52.216-7
Utilization of Small Business Concerns	52.219-8
Small Business Subcontracting Plan NOTE: Applicable to any Order greater than \$500,000.	52.219-9
Notice to the Government of Labor Disputes	52.222-1
Contract Work Hours and Safety Standards Act – Overtime Compensation NOTE: Applicable to all subcontracts at any tier	52.222-4
Walsh-Healey Public Contracts Act NOTE: Applicable to any Order greater than \$10,000.	52.222-20
Prohibition of Segregated Facilities	52.222-21
Equal Opportunity	52.222-26
Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans NOTE: Applicable to any Order of \$25,000 or more.	52.222-35
Affirmative Action for Workers With Disabilities NOTE: Applicable to any Order greater than \$10,000.	52.222-36

Clause	FAR Reference
Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans NOTE: Applicable to any Order of \$25,000 or more.	52.222-37
Notification of Employee Rights Concerning Payment of Union Dues or Fees	52.222-39
Hazardous Material Identification and Material Safety Data	52.223-3
Notice of Radioactive Materials	52.223-7
Ozone-Depleting Substances	52.223-11
Toxic Chemical Release Reporting	52.223-14
Privacy Act	52.224-2
Buy American Act – Supplies	52.225-1
Duty-Free Entry	52.225-8
Restrictions on Certain Foreign Purchases	52.225-13
Utilization of Indian Organizations and Indian-Owned Economic Enterprises	52.226-1
Authorization and Consent NOTE: Applicable only if contained in the controlling prime contract.	52.227-1
Notice and Assistance Regarding Patent and Copyright Infringement NOTE: Applicable to subcontracts of \$100,000 or more except when both complete performance and delivery are outside the United States, its possessions and Puerto Rico, unless supplies are ultimately to be shipped into one of those areas.	52.227-2
Refund of Royalties	52.227-9
Filing of Patent Applications – Classified Subject Matter	52.227-10
Patent Rights – Retention by the Contractor (Short Form) NOTE: Applicable to Small Business firms or nonprofit organizations.	52.227-11
Patent Rights – Retention by the Contractor (Long Form) NOTE: Applicable to other than Small Business firms or nonprofit organizations.	52.227-12
Insurance – Work on a Government Installation NOTE: Applicable on any Order that requires work on a Government installation.	52.228-5
Interest	52.232-17
Industrial Resources Developed Under Defense Production Act Title III	52.234-1
Accident Prevention	52.236-13

Clause	FAR Reference
Protection of Government Buildings, Equipment, and Vegetation	52.237-2
Bankruptcy	52.242-13
Stop Work Order NOTE: The 90 day period in the first and fourth sentences of paragraph (a) is changed to 120 days.	52.242-15
Competition in Subcontracting	52.244-5
Subcontracts for Commercial Items	52.244-6
Government Property (Cost-Reimbursement, Time-and-Material, or Labor-Hour Contracts)	52.245-5
Special Tooling NOTE: Applicable to any Order that involves special tooling. NOTE: In paragraph (j) change “180 days” to “240 days” and “90 days” to “150 days”.	52.245-17
Special Test Equipment NOTE: Applicable to any Order which involves the acquisition or fabrication of Special Test Equipment. NOTE: The phrase “30 days” in paragraphs (b) and (c) shall be changed to “45 days.”	52.245-18
Inspection – Time-and-Material and Labor-Hour	52.246-6
Preference for U.S. Flag Air Carriers NOTE: Applicable to any Order and lower-tier subcontracts that involve international air transportation.	52.247-63
Preference for Privately Owned U.S.-Flag Commercial Vessels	52.247-64
Value Engineering NOTE: Applicable to all Orders of \$100,000 or more except as specified in FAR 48.201(a). NOTE: Substitute “Buyer” for “Contracting Officer” and “Government” throughout, except where used in the term “Government costs” and in paragraph (m) where “Government” shall mean “Government and/or Buyer”.	52.248-1

Clause	DFARS Reference
Prohibition on Persons Convicted of Fraud or Other Defense Contract Related Felonies NOTE: Applicable to any Order of \$100,000 or more.	252.203-7001
Subcontracting with Firms That Are Owned or Controlled by the Government of a Terrorist Country.	252.209-7004
Acquisition Streamlining NOTE: Applicable to any Order of \$1,000,000 or more.	252.211-7000
Pricing Adjustments NOTE: Applicable when it is contemplated that Cost or Pricing Data will be required.	252.215-7000

Clause	DFARS Reference
Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan (DoD Contracts) NOTE: Applicable to any Order anticipated being valued at \$500,000 or more.	252.219-7003
Hazard Warning Labels NOTE: Applicable to any Order which requires delivery of hazardous materials.	252.223-7001
Safety Precautions for Ammunition and Explosives NOTE: Applicable to any Order involving articles furnished containing ammunition or explosives.	252.223-7002
Change in Place of Performance – Ammunition and Explosives NOTE: Applicable if DFARS 252.223-7002 applies to the Order.	252.223-7003
Safeguarding Sensitive Conventional Arms, Ammunition, and Explosives NOTE: Applicable to any Order and all lower-tier subcontracts involving arms, ammunition and explosives.	252.223-7007
Buy American Act and Balance of Payments Program	252.225-7001
Qualifying Country Sources As Subcontractors	252.225-7002
Quarterly Reporting of Actual Contract Performance Outside the United States NOTE: Applicable to any Order greater than \$550,000.	252.225-7006
Preference for Certain Domestic Commodities NOTE: Applicable to any Order greater than \$100,000.	252.225-7012
Duty – Free Entry	252.225-7013
Preference for Domestic Specialty Metals Alternate I	252.225-7014
Restriction on Acquisition of Hand or Measuring Tools NOTE: Applicable to any Order greater than \$100,000.	252.225-7015
Restriction on Acquisition of Ball and Roller Bearings NOTE: Applicable to any Order and all lower-tier subcontracts if Product supplied contains ball or roller bearings.	252.225-7016
Trade Agreements	252.225-7021
Restriction on Acquisition of Polyacrylonitrile (PAN) Carbon Fiber	252.225-7022
Restriction on Acquisition of Forgings	252.225-7025
Exclusionary Policies and Practices of Foreign Governments	252.225-7028
Restriction on Acquisition of Carbon, Alloy, and Carbon Steel Plate	252.225-7030

Clause	DFARS Reference
Waiver of United Kingdom Levies	252.225-7033
Buy American Act – Free Trade Agreements – Balance of Payments Program	252.225-7036
Contractor Personnel Supporting a Force Deployed Outside the United States	252.225-7040
Antiterrorism/Force Protection for Defense Contractors Outside the United States	252.225-7043
Utilization of Indian Organizations, Indian-Owned Economic Enterprises, and Native Hawaiian Small Business Concerns	252.226-7001
Rights in Technical Data – Noncommercial Items	252.227-7013
Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation	252.227-7014
Technical Data—Commercial Items	252.227-7015
Rights in Bid or Proposal Information	252.227-7016
Validation of Asserted Restriction – Computer Software	252.227-7019
Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends	252.227-7025
Deferred Delivery of Technical Data or Computer Software	252.227-7026
Deferred Ordering of Technical Data or Computer Software	252.227-7027
Technical Data – Withholding of Payment	252.227-7030
Validation of Restrictive Markings on Technical Data	252.227-7037
Patents – Reporting of Subject Inventions	252.227-7039
Accident Reporting and Investigation Involving Aircraft, Missiles, and Space Launch Vehicles	252.228-7005
Supplemental Cost Principles	252.231-7000
Frequency Authorization and Alternate I	252.235-7003
Protection Against Compromising Emanations	252.239-7000
Telecommunication Security Equipment, Devices, Techniques and Services	252.239-7016
Pricing of Contract Modifications	252.243-7001
Subcontracts for Commercial Items and Commercial Components (DoD Contracts)	252.244-7000

Clause	DFARS Reference
Reports of Government Property NOTE: Applicable if Government Property is provided or acquired under this Order. Seller shall submit its required reports to Buyer. In paragraph (a)(3), change October 31 to October 10.	252.245-7001
Warranty of Data	252.246-7001
Notification of Potential Safety Issues	252.246-7003

Clause	DFARS Reference
Transportation of Supplies by Sea 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 sub-contract is at or below \$100,000. NOTE: Paragraph (c), first sentence has been modified as to read "The Seller and its subcontractors may request that the 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.	252.247-7023
Notification of Transportation of Supplies by Sea	252.247-7024
Notification of Anticipated Contract Termination or Reduction NOTE: Applicable to all Orders of \$500,000 or more when Seller is first-tier subcontractor or \$100,000 or more when Seller is lower-tier subcontractor.	252.249-7002