HARRIS CORPORATION

STANDARD GENERAL PROVISIONS - TIME AND MATERIALS / LABOR HOURS (FOR NASA PROGRAMS) AND FAR/NFS FLOWDOWN PROVISIONS

For Time and Materials Purchase Orders for Non-Commercial Items under a U.S. National Aeronautics and Space Administration Contract

ITEM 1 - ARTICLES APPLICABLE TO ALL ORDERS

DEFINITIONS AND RULES OF CONSTRUCTION

As used throughout this Purchase Order, the following terms are defined as specified below unless otherwise specifically stated:

“Buyer” means Harris Corporation, a corporation organized and existing under the laws of the state of Delaware, and all of its wholly owned subsidiaries and affiliates.

“Buyer’s Representative” means the agent of Buyer with the actual authority to make legally binding commitments on behalf of Buyer as designated on the Purchase Order or Subcontract.

“Cost or pricing data” means cost or pricing data as defined in FAR 2.101.

“Day” or “Days” means calendar day(s). All periods of days referred to in this Order shall be measured in calendar days. Where a date referenced in this Order falls on a weekend or federal holiday, the date shall be deemed to fall on the next business day unless otherwise specified.

“DFARS” means the Defense Federal Acquisition Regulation Supplement.

“FAR” means the Federal Acquisition Regulation.

“Government” means the Government of the United States, unless otherwise specified.

“Government Contract” means Buyer’s contracts with the Department of Defense or one of Buyer’s contracts with a higher-tier contractor with contracts with the Department of Defense.

“Item” means goods, parts, components, supplies, or items including, without limitation, those part numbers, model numbers, and/or descriptions set forth on the face of this Order, and shall also include computer software or hardware (including any software, firmware or other hardwired logic embedded within the hardware) delivered or to be delivered under this Order.

“Parties” means Buyer and Seller, and, if the context requires, their employees, officers, agents (including without limitation, carriers and riggers), subcontractors, wholly-owned subsidiaries, and others acting at their respective direction and control or under contract to either.

“Purchase Order” or “Order” means any Purchase Order or Subcontract issued hereunder, including written change notices, supplements, amendments, and other written modifications thereto, together with any referenced certifications, certificates (including Seller’s Annual Certification), exhibits, attachments or other documents, and includes these terms and conditions, and the Statement of Work, if any.

“Seller” means the legal entity performing work pursuant to this Order and, if the context requires, its employees, officers, agents (including without limitation, carriers and riggers), subcontractors, and others acting at its direction and control under contract to it.

“Seller’s Annual Certification” means the certifications and representations set forth in Harris’ Annual Certification document, attested to and executed by a duly authorized representative of Seller’s company.

“Services” means any labor, performance of a duty, or effort supplied by Seller incidental to the sale of Items by Seller under this Order including, without limitation, installation, repair, and maintenance services. The term “Services” shall also include, without limitation, any effort specifically required by this Order, including all associated efforts such as design, engineering, repair, maintenance, technical, construction, consulting, professional, or other services.

1. CONTENTS AND ORDER OF PRECEDENCE: This Order integrates, merges, and supersedes any prior offers, negotiations, and agreements concerning the subject matter hereof and constitutes the entire agreement between the Parties and shall govern the performance and/or delivery of Items and/or Services provided pursuant to the Order. Seller expressly represents that in accepting this Order it does not rely and has not relied upon any written or oral representation, warranty, or statement not set forth in the Order and that it will not have any right or remedy arising out of any representation, warranty, or other statement not expressly set out in this Order. The clauses of this Order shall be construed and interpreted as consistent whenever possible. Any conflicts in this Order shall be resolved by giving precedence in the following order:

(a) the Purchase Order;
(b) these Terms and Conditions (which are incorporated by reference in any Purchase Order issued hereunder); and
(c) the Statement of Work, Specifications, or Requirements.

These Terms and Conditions shall be construed and interpreted as consistent whenever possible. In the event of a conflict in the Articles contained in Item 1 and applicable clauses contained in Item 2, the applicable clauses in Item 2 shall control to the extent necessary for Buyer to comply with Buyer’s Government Contract. No other clause or provision supersedes the FAR and DFARS clauses applicable to Buyer’s Government Contract.

2. ACCEPTANCE OF THIS ORDER: Any of the following acts by Seller shall constitute acceptance of this Order:

(a) execution of the acceptance copy of this Order and receipt by Buyer;
(b) initiation of any aspect of performance, or notification to Buyer that Seller is commencing performance, under this Order;
(c) shipping of any Items in performance of this Order; or
(d) acceptance of any form of payment, partial or complete, under this Order.

Any additional or different terms proposed by Seller, including any contained in Seller’s acknowledgment, are rejected unless expressly agreed to in writing by Buyer's Representative.

Seller’s staff shall perform such work as may be ordered by Buyer. The entire direction, scope, control, and interpretation of any work to be performed by Seller’s staff shall be made exclusively and solely at the discretion of Buyer. Seller shall at all times employ persons to perform the tasks who are fully experienced and properly qualified to perform the same.

In accordance with the Department of Defense Priorities and Allocations System (“DPAS”), codified at 15 C.F.R. § 700, Seller must sign and return the Order acceptance copy within ten (10) working days of Seller’s receipt if this Order is DX rated, within fifteen (15) working days after receipt if DO rated. For unrated Orders, Seller shall sign and return the Order acceptance copy within ten (10) days after receipt.

3. ALLOWABLE COST AND PAYMENT:

(a) Except as provided in this Article, payment will be made in accordance with FAR 52.232-7, Payments under Time-and-Materials and Labor-Hour Contracts. Substitute “Buyer” for “Government” or “United States” and substitute “Buyer’s Representative” for “Contracting Officer,” “Administrative Contracting Officer,” and “ACO” throughout the clause. In paragraph (d), “30 days” is changed to “60 days” and “85 percent” is changed to “75 percent.” In Subparagraph (g)(2), “6 years” is changed to “5 years.” Paragraph (i) is deleted.

(b) Except as provided in this Article, payment for materials under a time-and-materials contract will be made in accordance with FAR
52.216-7, Allowable Cost and Payment. “Buyer” replaces “Government” or “United States” throughout the clause, except in paragraphs (a)(3) and (b)(1)(ii)(F) where “and Buyer” is inserted after “Government.” Substitute “Buyer’s Representative” for “Contracting Officer,” “Administrative Contracting Officer,” and “ACO” throughout the clause except in paragraph (g) where “or Buyer’s Representative” is inserted after “Contracting Officer.” For purposes of final indirect cost rate determinations in paragraph (d), the terms “cognizant Federal Agency official” and “appropriate Government representative” maintain their original meaning. Subparagraph (b)(4) and paragraph (g) are deleted. In subparagraph (b)(2)(B) the term “6 years” is deleted and replaced with the term “5 years, 9 months.” The blank in paragraph (a)(3) is filled-in with the word “30th,” unless otherwise specified in the Order.

(c) Payments. Payment shall be made in accordance with the Purchase Order. Each payment made shall be subject to reduction to the extent of amounts which are found by Buyer, Buyer’s Customer, or Seller not to have been properly payable. Seller shall promptly notify Buyer of any overpayments and remit the overpayment amount to Buyer along with a description of the overpayment, including the circumstances of the overpayment, affected Order and delivery order number if applicable, and affected Order line item or subline item if applicable. Buyer, and any affiliate of Buyer, may withhold, deduct, and/or setoff all money due, or which may become due, from Buyer or any affiliate of Buyer, arising out of Seller’s performance under this Order or any other transaction Buyer and its affiliates may have with Seller.

(d) No subcontract placed under this Order shall provide for payment on a cost-plus-a-percentage-of-cost basis, and any fee payable under cost-reimbursement subcontracts shall not exceed the fee limitations in paragraph 15.404-4(c)(4)(i) of the FAR.

(e) If Seller, its subcontractor, or prospective subcontractor at any tier fails to submit accurate, complete and current cost or pricing data, and as a result of that failure, the government reduces Buyer’s prime contract, Buyer may recover from Seller an amount equal to the reduction as well as any other costs incurred including attorney’s fees.

4. ARTICLE HEADINGS: The headings and subheadings of Articles contained herein are used for convenience and ease of reference and do not limit the scope or intent of the Article.

5. ASSIGNMENT AND SUBCONTRACTING: Neither this Order itself, nor any interest or obligation hereunder, shall be assigned or transferred by Seller without the prior written consent of Buyer. Seller shall not subcontract the furnishing of any of all or substantially all of complete Items or Services required by this Order, without the prior written approval of Buyer; however, this Article shall not be construed to require the approval of contract of employment between Seller and personnel assigned for Services hereunder. Seller shall flow down all applicable requirements, including the clauses set forth in Item 2, to Seller’s subcontractors and assignees, if any. Seller further agrees to select subcontractors (including vendors or suppliers) on a competitive basis to the maximum practical extent consistent with the objectives and requirements of this Purchase Order. Seller shall remain primarily responsible for the performance of obligations which it subcontracts hereunder and shall reasonably supervise such work. However, Seller may assign rights to be paid amounts due, or to become due, to a financing institution if Buyer is promptly furnished a signed copy of such assignment reasonably in advance of the due date for payment of any such amounts. Amounts assigned to an assignee shall be subject to setoffs or recoupment for any present or future claims of Buyer against Seller. Buyer shall have the right to make settlements and adjustments in price with Seller without notice to the assignee. Seller shall give Buyer immediate written notice of any action or suit filed and prompt notice of any claim made against Seller by any subcontractor or vendor that, in the opinion of Seller, may result in litigation related in any way to this Order, with respect to which Seller may be entitled to reimbursement from Buyer.

6. AUDIT, INSPECTION OF RECORDS: Buyer and Seller’s Customer, including the Government and regulatory authorities, if Buyer agrees with the customer’s request to audit Seller’s records and/or Seller consents to permit Buyer to audit Seller’s records and/or, facilities, including the records and/or facilities of Seller’s assignees or subcontractors, if any; (e) in connection with internal investigations of alleged violations of law including the U.S. Foreign Corrupt Practices Act; or (f) any type of litigation. Seller shall keep reasonably detailed records of direct labor costs, material costs, and all other costs of the performance of this Order for a period of no less than four (4) years from the date of final payment or termination of any warranty or Item support under this Order, whichever is later. Seller shall provide Buyer, Buyer’s Customer, and regulatory authorities access to all facilities involved in the Order and to all applicable records.

7. BANKRUPTCY: If Seller enters into proceedings relating to bankruptcy, whether voluntary or involuntary, Seller shall furnish by certified mail written notification of the bankruptcy to Buyer. This notification shall include the date on which the bankruptcy petition was filed and the identity of the court where the bankruptcy petition was filed.

8. BUYER’S RIGHT TO USE INFORMATION DISCLOSED BY SELLER: Unless otherwise expressly set forth in this Order or a separate written agreement, Buyer shall have the right to use, for any purpose, information concerning Seller’s items, manufacturing methods or processes which Seller has disclosed to Buyer prior to or during the performance of this Order. In the event of a conflict between the terms of this Article and the terms and conditions of any separately executed and applicable Non-Disclosure Agreement between Buyer and Seller, the terms and conditions of the Non-Disclosure Agreement shall control.

9. APPLICABLE LAW AND DISPUTES:

(a) This Agreement, irrespective of the place of performance, shall be governed by, subject to, and construed in accordance with the laws of the State of Florida, excluding its choice of law rules, except that the federal common law of government contracts, as enunciated and applied by federal judicial bodies, boards of contracts appeals, and quasi-judicial agencies of the Government, shall be used to construe and interpret any U.S. Government contract clauses and certifications.

(b) Any disputes under this Order that are not disposed of by mutual agreement of the Parties may be decided by recourse to an action at law or in equity. Until final resolution of any dispute hereunder, Seller shall diligently proceed with performance of this Order as directed by Buyer.

(c) Seller consents to personal jurisdiction in the state of Florida and any litigation under this Order must be brought exclusively in a court of competent jurisdiction in the state of Florida, without regard to conflicts of law principles. The Parties hereby mutually agree to waive their respective rights to trial by jury. The rights and remedies herein reserved to Buyer shall be cumulative and additional to any other or further rights and remedies provided in law or equity. Subject to any specific clauses in this Order, Seller shall be liable for any damages incurred by Buyer as a result of Seller’s failure to perform its obligations in the manner required by this Order.


10. CHANGES AND EQUIVALENT ADJUSTMENTS:

(a) Buyer may at any time and without notice to third parties, including sureties (if any), by written instructions from Buyer’s Representative to Seller, unilaterally make changes to these terms and conditions and/or in the Services to be performed or the Items to be furnished hereunder in any one or more of the following:

(1) drawings, designs or specifications;

(2) method of shipment or packing;

(3) time and/or place of delivery, inspection or acceptance;

(4) the quantity of Items ordered or Services to be performed;

(5) the statement of work;
(6) method or manner of performance of the work; and
(7) property, facilities, equipment, or materials, to be provided under this Order.

(b) During performance of this Order, Seller shall not make any changes in the Services to be performed or in the design of Items or manufacturing of Items to be furnished by Seller under this Order, including any changes to the process, manufacturing location, or use of suppliers, without advance notification to and written approval of Buyer. Items or Services that have changed without prior notification and consent shall be nonconforming Items or Services under this Order. Changes shall not be binding upon Buyer, except when confirmed in writing by a Buyer’s Representative. The issuance of information, advice, approvals or instructions by Buyer’s technical personnel or other representative shall be deemed expressions of personal opinion only, and shall not affect Buyer’s and Seller’s rights and obligations hereunder, unless the same is in writing signed by Buyer’s Representative and which expressly states that it constitutes an amendment to this Order. If Seller considers that Buyer’s conduct constitutes a change, Seller shall notify Buyer’s Representative immediately in writing as to the nature of such conduct and its effect upon Seller’s performance.

(c) If any written change under this Article causes an increase or decrease in the estimated allocation of hours by labor category, any equitable adjustment in price to which Seller may be entitled as a result of such change must be made and the Order modified in writing accordingly, provided however, that any equitable adjustment in price to which Seller may be entitled as a result of an increase in the quantity of Items or Services ordered shall not exceed the funded value or unit price established for such Items or Services herein.

(d) Any claim by Seller for adjustment must be submitted in writing in the form of a complete change proposal, fully supported by factual information, advice, approvals or instructions by Buyer’s technical personnel or other representative. The issuance of information, advice, approvals or instructions by Buyer’s technical personnel or other representative shall be deemed expressions of personal opinion only, and shall not affect Buyer’s and Seller’s rights and obligations hereunder, unless the same is in writing signed by Buyer’s Representative and which expressly states that it constitutes an amendment to this Order. If Seller considers that Buyer’s conduct constitutes a change, Seller shall notify Buyer’s Representative immediately in writing as to the nature of such conduct and its effect upon Seller’s performance.

(e) If any written change under this Article causes an increase or decrease in the estimated allocation of hours by labor category, any equitable adjustment in price to which Seller may be entitled as a result of such change must be made and the Order modified in writing accordingly, provided however, that any equitable adjustment in price to which Seller may be entitled as a result of an increase in the quantity of Items or Services ordered shall not exceed the funded value or unit price established for such Items or Services herein.

(f) Any claim by Seller for adjustment must be submitted in writing in the form of a complete change proposal, fully supported by factual information, advice, approvals or instructions by Buyer’s technical personnel or other representative. The issuance of information, advice, approvals or instructions by Buyer’s technical personnel or other representative shall be deemed expressions of personal opinion only, and shall not affect Buyer’s and Seller’s rights and obligations hereunder, unless the same is in writing signed by Buyer’s Representative and which expressly states that it constitutes an amendment to this Order. If Seller considers that Buyer’s conduct constitutes a change, Seller shall notify Buyer’s Representative immediately in writing as to the nature of such conduct and its effect upon Seller’s performance.

(g) If requested by Buyer, Seller shall identify that portion of its claim for which it believes the Government is liable and shall execute the certification above, substituting “the Government” for “Buyer” as to such amount. Buyer may submit Seller “pass through” claims against the Government at its sole discretion. In no event shall the Seller acquire any direct claim or direct cause of action against the Government.

(h) If Buyer and Seller are unable to agree upon an equitable adjustment in the event of any change directed by Buyer, the matter will be resolved in accordance with the disputes provisions of Article 9. Nothing contained herein, including failure of the Parties to agree upon any equitable adjustment to be made under this Article, shall excuse Seller from proceeding without delay with the Order as changed by Buyer’s written direction.

(i) In the event that Seller submits a claim to Buyer that satisfies the requirements of this Article, notwithstanding any other provisions in this Order, any decision of Buyer’s Customer under Buyer’s Government Contract which binds Buyer shall bind both Buyer and Seller to the extent that it relates to this Order.

(j) Nothing in this clause nor any authorization or offer that may be made shall be deemed to constitute acceptance or acknowledgment by Buyer of the validity of Seller’s claim or any part thereof, nor be deemed to limit or in any way to restrict Buyer from taking any actions, including available remedies, it deems appropriate to protect its own interests.

11. COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS: Seller agrees to comply with all applicable national, state, provincial and local laws, orders, rules, regulations, and ordinances. Seller shall procure all licenses/permits, pay all fees, and other required charges and shall comply with all applicable guidelines and directives of any local, state and/or federal government authority.

(a) Buyer may proceed as provided for in subparagraph (c) below, as a result of any violation of applicable laws, rules, regulations, ordinances, or this Order by Seller, its officers, employees, agents, suppliers, or subcontractors at any tier:

(1) Buyer’s contract price or fee is reduced;
(2) Buyer’s costs are determined to be unallowable;
(3) any fines, penalties, withholdings, or interest are assessed on Buyer; or
(4) Buyer incurs any other costs or damages.

(b) Buyer may also proceed as provided for in subparagraph (c) below where submission of certified cost or pricing data is required or requested at any time prior to or during performance of this Order, if Seller or its lower-tier subcontractors:

(1) submit and/or certify cost or pricing data that are defective with notice of applicable cutoff dates; and
(2) upon Buyer’s request to provide certified cost or pricing data, submit cost or pricing data, whether certified or not certified at the time of submission, as a prospective subcontractor, and any such data are defective as of the applicable cutoff date on Buyer’s Certificate of Current Cost or Pricing Data;
(3) claim an exception to a requirement to submit cost or pricing data and such exception is invalid;
(4) furnish data of any description that is inaccurate; or,
(5) such data causes the U.S. Government to allege any of the foregoing, and, as a result:

(i) Buyer’s contract price or fee is reduced;
(ii) Buyer’s costs are determined to be unallowable;
(iii) any fines, penalties, withholdings, or interest are assessed on Buyer; or
(iv) Buyer incurs any other costs or damage.

(c) Upon the occurrence of any of the circumstances in subparagraphs (a) and (b) above, Buyer may make a reduction of corresponding amounts (in whole or in part) in the price of this Order or any other contract with Seller, and/or may demand payment (in whole or in part) of the corresponding amounts. Seller shall promptly pay amounts so demanded. In the case of withholding(s), Buyer may withhold the same amount from Seller under this Order.

(d) Additionally, upon occurrence of any of the circumstances in subparagraph (b) above, Buyer shall be liable and shall pay Buyer at the time any overpayment is repaid: (1) simple interest on the amount of such overpayment to be computed from the date(s) of overpayment to Seller to the date Buyer is repaid by Seller at the applicable underpayment rate effective for reach quarter prescribed by the Secretary of the Treasury under 26 U.S.C. § 6621(a)(2); and (2) a penalty equal to the amount of the overpayment, if Seller knowingly submitted cost or pricing data which were incomplete, inaccurate, or non-current. Notwithstanding the remedies available to Buyer under this Article, Seller shall indemnify and hold harmless Buyer from and against any and all loss or damage, including Buyer’s costs, attorneys’ fees, and any penalties resulting from any and all determinations by Buyer’s Customer set forth in this Article.
12. **COMPLIANCE WITH THE U.S. FOREIGN CORRUPT PRACTICES ACT**: Seller represents that it is familiar with and will strictly comply with the requirements of the U.S. Foreign Corrupt Practices Act of 1977, as amended. Seller will not offer, pay or promise to pay, give, or authorize payment of any money or anything of value to any government or public official (including political parties, officials or candidates for political office) for the purpose of influencing any act or decision of such official in his official capacity, including failure to perform his official function. Seller agrees that no expenditures for other than lawful purposes will be made with respect to the performance of this Order.

13. **GRATUITIES/KICKBACKS**: No gratuities (in the form of entertainment, gifts, travel, or anything of value) or kickbacks were offered or given by Seller, or by any agent or representative of Seller to any officer or employee of Buyer’s Customer or Buyer. This restriction specifically prohibits the direct or indirect inclusion of any kickback amounts in any invoices or billings submitted under this Order or any other agreement with Buyer. Buyer may, by written notice to Seller, immediately terminate the right of Seller to proceed under this Order if it is found that gratuities (in the form of entertainment, gifts, travel or anything of value) or kickbacks were offered or given by Seller, or by any agent or representative of Seller, to any officer or employee of Buyer’s Customer or Buyer.

14. **CONFIDENTIAL RELATIONSHIP**:

(a) Seller shall treat as proprietary and confidential all specifications, drawings, blueprints, nomenclature, samples, models and other information supplied by Buyer, except for any such information provided by the Government to which the Government has other than unlimited rights, in which case Seller shall use and disclose the information in accordance with applicable provisions and/or restrictive markings concerning Seller’s use and disclosure of such information. Unless the written consent of Buyer is first obtained, Seller shall not in any manner advertise, publish, or release for publication, including without limitation by news releases, articles, brochures, advertisements, or speeches, any statement mentioning Buyer or the fact that Seller has furnished or contracted to furnish to Buyer Items and/or Services required by this Order, or quote the opinion of any employees of Buyer. Seller shall not disclose any information relating to this Order to any person not authorized by Buyer to receive it. Seller shall use the information supplied by Buyer only to accomplish work covered by this Order and for no other purpose. Upon completion, all information is to be either returned to Buyer upon Buyer’s written request or destroyed by Seller in which case Seller shall provide Buyer with a Certificate of Destruction. In the event of a conflict between the terms of this Article and the terms and conditions of any separately executed and applicable Non-Disclosure Agreement between Buyer and Seller, the terms and conditions of the Non-Disclosure Agreement shall control.

(b) Seller is expressly prohibited from communicating with Buyer’s Customer with respect to Buyer’s Government Contract and/or the Order without Buyer’s prior express consent. However, nothing in this Article 15 shall be construed to restrict the discussion of day-to-day operational issues or any material matter pertaining to payment to or utilization of Seller. Any authorized communications, other than those expressly provided for herein, between Seller and Buyer’s Customer shall be conducted in the presence of Buyer’s Representative unless otherwise agreed by the Parties.

15. **TERMINATION**:

(a) Default. Buyer may terminate this Order for default in whole or in part by written notice to Seller if:

1. Seller becomes insolvent or makes a general assignment for the benefit of creditors;
2. a petition under any bankruptcy act or similar statute is filed by or against Seller;
3. Seller fails to make delivery of the Items or to perform the Services within the time specified in this Order;
4. Seller fails to perform any of the other obligations of this Order, or fails to make progress, so as to endanger performance of this Order, in accordance with its terms;
5. Seller’s financial condition endangers completion of performance, (provided with respect to (4) and (5) Seller fails to remedy any such condition within seven (7) days from the date of receipt of a notice from Buyer concerning the existence of the condition);
6. it is found that gratuities (in the form of entertainment, gifts, travel or anything of value) or kickbacks were offered or given by Seller, or by any agent or representative of Seller, to any officer or employee of Buyer’s Customer or Buyer;
7. control of Seller changes. A change of control includes: (a) the sale, lease or exchange of a substantial portion of Seller’s assets used for the production of the Items; (b) the sale or exchange of a controlling interest in the shares of Seller; or (c) the execution of a voting or other change of control. Seller will provide Buyer with written notice of change of control within ten (10) days after the change of control has become effective. Buyer will have sixty (60) days from the date that Buyer receives written notice from Seller within which to notify Seller of its decision to terminate this Order. The effective date of the termination will be no sooner than thirty (30) days after the effective date of the written notice of termination according to the terms of notice;
8. Seller fails to agree upon any deletion, amendment, or addition to this Order which is required by statute, executive order, applicable regulations, or is otherwise deemed appropriate by Buyer as a result of or relating to a modification of Buyer’s Government Contract;
9. Seller is sanctioned, suspended, or debarred by the Government;
10. it is found that Seller has a potential, actual or apparent personal or organizational conflict of interest related to or arising out of its performance of this Order and Buyer determines that such conflict(s) cannot be adequately avoided or mitigated;
11. Seller’s business systems are deemed inadequate by the Defense Contract Audit Agency or the Defense Contract Management Agency; or
12. if the Government does not consent to the award of the Order or subcontract.

(b) **Termination for Convenience**

1. Buyer may terminate this Order for its convenience in accordance with FAR 52.249-6 except as otherwise noted, replace “Government” with “Buyer” and “Contracting Officer” with “Buyer’s Representative”.
2. The settlement proposal shall be submitted to Buyer’s Representative within 30 days with full supporting documentation for all costs claimed.
3. If this Order is terminated for convenience solely by Buyer, audits and examinations of records, as required by Buyer, shall be performed by Buyer or an independent certified public accounting firm, mutually acceptable to Buyer and Seller. The cost of independent audits and examinations of records shall be paid by Buyer. Notwithstanding anything to the contrary, Buyer shall not be liable for special or consequential damages.

(c) **Applicable Procedures**

1. In the event Buyer terminates this Order for default, in whole or in part, Buyer may procure, upon such terms and in such manner as Buyer deems appropriate, Items or Services similar to those canceled. Seller shall continue the performance of this Order to the extent not canceled under the provisions of this Article.
2. After receipt of notice of such termination for default or convenience, and upon Buyer’s direction, Seller shall stop work under this Order on the date and to the extent specified in the notice of termination, and shall transfer title and deliver to Buyer satisfactorily completed work and such work in process as directed by Buyer. Payment for completed Items delivered to and accepted by Buyer shall be at the price set out in the Order. Buyer may...
withhold from Seller moneys otherwise due Seller for completed Items and/or materials in such amounts as Buyer determines necessary to protect Buyer against loss due to outstanding liens or claims against said Items or materials.

16. DELAYS AND NOTICE OF LABOR DISPUTES:

(a) Seller shall not be liable for any delays in delivery caused by circumstances beyond its reasonable control including acts of God or of the public enemy, fire, floods, epidemics, quarantine restrictions, strikes or freight embargoes, provided that:

1. Seller immediately gives written notice to Buyer of any difficulty or anticipated difficulty in meeting the delivery schedule set forth in the Order;
2. Seller immediately gives written notice to Buyer of any actual or potential situation that is delaying, or threatens to delay the timely performance of the Order, including an actual or potential labor dispute;
3. the delay does not materially affect Buyer’s scheduling on any system or process.

(b) When any delays in delivery occur, Seller encounters difficulty in meeting performance requirements or Seller anticipates difficulty in complying with the delivery schedule or date, Seller shall immediately give notice thereof to Buyer. If requested by Buyer, Seller shall use additional effort, including premium effort, to avoid or minimize delay to the maximum extent possible. All of the costs of the additional effort shall be borne by Seller. The rights and remedies pursuant to this Article are in addition to rights and remedies provided to Buyer under this Order.

(c) Notwithstanding the above, if such delays extend for more than thirty (30) days from the delivery or performance date or threatens Buyer’s delivery commitments under its Government Contract, Buyer may terminate such part of this Order remaining to be performed without liability to Buyer except for the fair value of work already completed and accepted.

17. DELIVERY: Shipments made pursuant to this Order must be shipped as specified in the Purchase Order. If Seller does not use Buyer’s specified carrier(s) and Buyer incurs additional freight cost as a result, such additional freight cost shall be Seller’s responsibility. Moreover, unless otherwise specified, Seller hereby agrees to the following:

(a) Buyer reserves the right to refuse shipments made in advance of the schedule set forth in this Order. If Seller tenders items for delivery to Buyer in advance of the delivery date specified in Buyer’s delivery schedules, Buyer may, in its absolute discretion, either (i) refuse delivery, return early deliveries at Seller’s expense, and require re-delivery at Seller’s expense on the delivery date, or (ii) retain such Items and make payment in accordance with the original payment schedule in the Purchase Order regardless of the actual date of delivery. Seller bears the risk of loss of all Items delivered in advance of the delivery date specified in Buyer’s delivery schedules.

(b) Overshipment allowances require prior Buyer authorization, and will be applied to the entire Order. Unauthorized over shipments shall be returned to Seller at Seller’s sole expense. Seller has the right to deem over shipments uneconomical to return, relieving Buyer of responsibility to return or pay for the over shipment.

(c) Time is of the essence in Seller’s performance of the Order, and Seller shall deliver Items and Services by the delivery due date specified in Buyer’s delivery schedules. If Seller tenders Items for delivery to Buyer after the delivery due date specified in Buyer’s delivery schedules:

1. Buyer may, in its sole discretion, refuse late deliveries.
2. If Buyer agrees to accept deliveries after the contracted delivery date, the Parties agree that delays which are not excusable or mutually agreed upon shall be subject to liquidated damages of one percent (1%) of the total order value per day, up to a maximum amount of twenty-five percent (25%) of the Purchase Order value, for each day delivery or performance is delayed beyond the date set forth in the Schedule of this Purchase Order. Such liquidated damages shall be paid by Seller within sixty (60) days of Buyer’s acceptance of such deliveries. Buyer’s right hereunder to recover liquidated damages for Seller’s delayed performance is not an exclusive remedy for delay and shall be in addition to all other rights and remedies that Buyer has under this Order and at law and equity. The liquidated damages amount shall be subtracted from the line item value. If the delivery delay was as a result of any action taken on the part of Buyer, Seller shall notify Buyer in writing at the time the delay occurs and request that Buyer waive liquidated damages provided herein. Failure to notify Buyer will result in liquidated damages. Seller may not refuse shipment of said line item to avoid late delivery liquidated damages.

3. If Buyer agrees to accept deliveries after the delivery date has passed, Buyer shall have the right to direct Seller to make shipments by the most expeditious means and the total cost of such expedited shipment and handling shall be borne by Seller.

4. Acceptance of late deliveries shall not be deemed a waiver of Buyer’s right to hold Seller liable for any loss or damage resulting therefrom, nor shall it act as a modification of Seller’s obligation to make future deliveries in accordance with the delivery schedule set forth in this Order.

5. Seller at the request of Buyer, shall provide a written explanation for the root cause of the delay, Seller’s corrective action plan to address the late deliveries and assurances that Seller will make all future deliveries in accordance with the Order requirements and schedule.

18. WARRANTY:

(a) Seller warrants that all the Items and Services furnished hereunder shall:

1. conform fully with all requirements of this Order, including any and all specifications, drawings, and performance requirements;
2. conform to approved sample or samples, if any;
3. unless detailed designs have been furnished by Buyer, be fit for the use intended by Buyer whether expressed or reasonably implied;
4. be free from defects in material, workmanship, design and fabrication;
5. be free from security interests, liens or encumbrances and of good title; and
6. be performed with that degree of skill and judgment normally exercised by recognized professionals delivering or performing the same or similar Services. In the event that an employee of Seller should prove to be unsatisfactory during that employee’s first eighty (80) billable hours of work on Buyer’s Order, Buyer may request the removal of Seller’s employee from performance of the Order with no billable charges incurred.

(b) Seller guarantees all Services and Items, parts, components, and assemblies furnished hereunder against any defects in design, material, or workmanship for eighteen (18) months from the date of acceptance at Buyer’s location. In the case of latent defects, Buyer’s rights to corrective action by Seller shall commence upon Buyer’s discovery of the latent defect and notification of Seller thereof.

(c) Neither approval by Buyer of Seller’s design or material used nor Buyer’s inspection of same shall relieve Seller from any obligations under the warranties set forth in this Article.

(d) The word “Item(s)” as used herein includes parts, components, assemblies, materials, equipment, services and data required under this Order.

(e) Any Item(s) or Services corrected or replaced pursuant to this Article shall be subject to all provisions of this Article to the same extent as Item(s) and Services initially delivered.

(f) The aforesaid warranties shall survive acceptance and payment and shall run to Buyer, its customers and the users of these Item(s) and
Services shall not be deemed to be the exclusive rights of Buyer but shall be in addition to other rights of Buyer under law, equity, and the terms of this Order.

(g) Seller shall furnish Buyer a certificate of Seller’s compliance with these Article 18 warranty conditions upon Buyer’s request.

19. QUALITY CONTROL/INSPECTION/REJECTION/ACCEPTANCE:

(a) Seller shall establish and maintain a quality management system acceptable to Buyer for the Items or Services purchased under this Order. Seller shall permit Buyer to review procedures, practices, processes and related documents to determine such acceptability. Seller shall have a continuing obligation to promptly notify Buyer of any violation or deviation from Seller’s approved inspection/quality control system and to advise Buyer of the quantity and specific identity of any Items or Services provided to Buyer during the period of any such violation or deviation. Seller will maintain the accepted quality management system throughout the duration of the Order. If Seller learns of any violations of its obligations under this Article Seller shall within forty-eight (48) hours so notify Buyer and within sixty (60) days must rectify the non-compliance issues. If the violation is not corrected and certification has not taken place within this time frame, then Buyer at its sole discretion may terminate this Order. Seller will notify Buyer of any significant changes that affect quality within twenty-four (24) hours of that change. These changes include – but are not limited to – change in key management or personnel, change in source of supply of key materials, and change in address or site configuration.

(b) Buyer and/or its customer, to the extent practicable at all times and places including the period of manufacture or performance, may inspect and test material, work in process, services, and supplies. This Order may include requirements for design, test, inspection, verification (including production process verification), use of statistical techniques for product acceptance, and related instructions for acceptance by Buyer, and as applicable critical items including key characteristics and requirements for test specimens (e.g., production method, number, storage conditions) for design approval, inspection/verification, investigation or auditing. This Order grants Buyer and its customer the right to so inspect and test, but not the obligation. Seller retains the obligation to ensure proper inspection and testing.

(c) Seller shall not provide non-conforming Items or Services. Buyer shall have the right to reject any Items or Services or lots of Items which it determines are defective in material or workmanship or otherwise not in conformity with the requirements of this Order and to require their correction or replacement, or to provide other disposition direction for the non-conforming Items or Services. Rejected Items or Services shall be removed or if permitted or required by Buyer, corrected in place by and at the expense of Seller promptly after notice, and shall not thereafter be tendered for acceptance unless the former rejection or requirement of correction is disclosed. If Seller fails to promptly replace, correct, or remove such Items or Services or lots of Items which are required to be removed, Buyer may:

(1) replace or correct such Items or Services and charge to Seller the cost occasioned Buyer thereby; or
(2) pay for such Items or Services at a reduced price which is equitable under the circumstances; or
(3) cancel this Order, or any portion thereof, for default as provided in Article 15; or
(4) exercise any other applicable rights or remedies.

(d) If Buyer rejects any Items or Services as non-conforming, and Seller fails to inform Buyer in writing of the manner in which Seller desires that Buyer dispose of non-conforming Items or Services within forty-eight (48) hours of notice of Buyer’s rejection of non-conforming Items or Services (or such shorter period as is reasonable under the circumstances), Buyer will be entitled to dispose of the non-conforming Items or Services without liability to Seller, provided, however, that in any event Buyer may elect to arrange for the shipment of any non-conforming Items or Services back to Seller at Seller’s expense. Seller will bear all risk of loss with respect to all non-conforming Items or Services and will promptly pay or reimburse all costs incurred by Buyer to return, store or dispose of any non-conforming Items or Services.

(e) If any inspection or test is made by Buyer and/or its customer on the premises of Seller or a lower tier subcontractor, Seller without additional charge shall provide all reasonable facilities and assistance for the safety and convenience of Buyer and/or customer inspectors in the performance of their duties. In the case of rejection, Buyer shall not be liable for any reduction in value of samples used in connection with such inspection or test. All inspections and tests by Buyer and/or its customer shall be performed in such a manner as not to unduly delay the work. Buyer reserves the right to charge to Seller any additional cost of inspection and test when Items or Services are not ready at the time such inspection and test was specified by Seller or when reinspection or retest is necessitated by prior rejection. Unless otherwise provided herein, final inspection and acceptance or rejection of Items or Services shall be made as promptly as practicable after delivery to Buyer’s facility. Buyer’s failure to inspect or accept or reject Items or Services in a timely manner shall neither relieve Seller from full compliance with all requirements of this Order, nor impose responsibility on Buyer therefore.

(g) Seller shall provide and maintain an inspection system acceptable to Buyer covering the Items or Services hereunder. Records of all test and inspection work by Seller shall be kept complete and available to Buyer and/or its customer for one (1) year following completion of this Order, or for six (6) years following completion of an order pursuant to a U.S. Government Contract or subcontract.

(h) Inspection and test by Buyer or its customer of any Items or Services or lots thereof does not relieve Seller from any responsibility regarding defects or other failures to meet Order requirements which may be discovered prior to acceptance or during the warranty period set forth in Article 18. In the event Seller discovers an Item or Service is non-conforming subsequent to performance or delivery, Seller shall promptly notify Buyer. Disposition shall be in accordance with paragraphs (c) and (d) of this Article.

(i) If, prior to or at the time of final acceptance or within the warranty period, it was known or should be known by Buyer that said Items or Services would not or did not conform to the requirements of this Order, final acceptance shall not be construed as a waiver of any rights Buyer may have with respect to the Items or Services purchased under this Order, notwithstanding the failure of Buyer to timely inform Seller of such nonconformance.

(j) Final acceptance by Buyer of the Items or Services provided hereunder shall take place only after complete delivery of all Items or Services in accordance with the delivery schedule specified herein or later agreed upon by the Parties in writing and after final inspection of those Items or Services by Buyer and Buyer’s Customer. Final acceptance shall be contingent upon agreement by Buyer and Buyer’s Customer that the Items or Services conform to the requirements of this Order. Final acceptance by Buyer shall be conclusive, except for latent defects, negligent or intentional misrepresentations by Seller that a nonconformity or defect would be or had been cured or did not exist, acceptance induced by false or negligent assurances of Seller, or as otherwise provided in this Order or applicable law. Seller shall not consider acceptance to be Buyer’s Final acceptance until Buyer issues a Final Acceptance Document. Final acceptance by Buyer of the Items or Services delivered hereunder shall not limit or affect the warranty or indemnity granted by Seller hereunder.

20. ITEM CONTENT: Seller agrees to provide to Buyer all Item content information required to satisfy both Buyer’s content reporting obligations and Buyer’s Customers’ reporting obligations.

21. RISK OF DAMAGE/INDEMNIFICATION/INSURANCE:

All personal property belonging to Buyer in Seller’s custody or possession, shall be at Seller’s risk from loss or damage from all hazards. Seller agrees, to the fullest extent permitted by applicable law, to indemnify and hold harmless Buyer, its officers and employees, from and against any and all claims, liabilities, causes of action, losses, costs, damages and expenses by reason of
property damage or personal injury, including death, of whatsoever nature or kind, including special, incidental or consequential damages, for any reason, arising out of or as a result of Seller activity or omissions under this Order, whether arising out of the actions or inactions of Seller or of its employees, subcontractors, and lower tier subcontractors. Seller and its subcontractors and lower tier subcontractors shall maintain, at their own expense:

(a) Commercial General Liability (“CGL”) insurance, with limits of at least $2,000,000 combined single limit for bodily injury and property damage per occurrence and $2,000,000 annual aggregate

(b) Automobile Liability insurance shall be for an amount of at least $2,000,000 combined single limit for bodily injury and property damage per accident

(c) Worker’s Compensation as prescribed by the law of the state or nation in which work is performed

(d) Employer’s Liability with limits of at least $2,000,000 for each occurrence: All CGL and automobile liability insurance shall designate Harris, its affiliates, and its directors, officers, and employees as additional insureds. All such insurance must be primary and non-contributory and required to respond and pay prior to any other insurance or self-insurance available. Insurance companies providing coverage must be rated by A-M Best with at least an A-VII rating.

Seller and Seller’s subcontractors shall furnish, prior to the start of work or at such other time as Harris requires, certificates or adequate proof of the foregoing insurance. The policies shall be endorsed to provide thirty (30) days written notice of cancellation to Harris. Any other coverage available to Harris shall apply on an excess basis.

Seller agrees that Seller, Seller’s insurer(s) and anyone claiming by, through, under or on Seller’s behalf shall have no claim, right of action or right of subrogation against Harris and Harris’ Customer based on any loss or liability insured against under the foregoing insurance.

22. MODIFICATION OF ORDER: This Order contains all the agreements of the Parties with respect thereto and no course of dealing or usage of the trade shall be applicable unless expressly incorporated in this Order. The terms and conditions contained in this Order may not be added to, modified, superseded or otherwise altered except by a written instrument signed by Buyer’s Representative and delivered by Buyer to Seller. Modifications of this Order shall be handled pursuant to Article 10, Changes and Equitable Adjustments. Each shipment received from Seller shall be deemed to be exclusive of any and all conditions, terms and conditions contained in this Order notwithstanding any terms and conditions that may be contained in any acknowledgment, invoice, correspondence or other documents of Seller, and notwithstanding Buyer’s act of accepting or paying for any shipment or similar act of Buyer.

23. NO WAIVER OF CONDITIONS: Buyer’s failure to insist upon or enforce strict compliance by Seller with any aspect of this Order shall not be deemed a waiver or relinquishment to any extent of any of Buyer’s rights; rather, the same shall remain in full force and effect. Waiver of a right under this Order shall not constitute a waiver of any other right, waiver or default under this Order.

24. PACKING: Unless otherwise specified in this Order, Seller shall be responsible for safe and adequate packing conforming to the requirements of carriers’ tariffs or, in the absence of such requirements, conforming to the best commercial practices. All expendable packaging materials must be legally and economically disposable or recyclable. Seller shall separately number all cases, packages, etc., showing the corresponding numbers on the invoices. An itemized packing slip, bearing this Order number must be placed in each container. No extra charge shall be made for packaging or packing materials unless authority therefore is set forth in this Order.

25. PATENT/INTELLECTUAL PROPERTY INDEMNITY BY SELLER:

(a) Seller warrants that the Items and Services performed and delivered under this Order will not infringe or otherwise violate the intellectual property rights of any third party in the United States or any foreign country. For Items and Services delivered hereunder, Seller shall be liable for, defend, indemnify and hold harmless Buyer, and each subsequent purchaser or user thereof, from all loss or damage of any kind (including all costs and expenses including attorneys’ fees) arising out of any and all allegations, actions, proceedings, claims, or awards for any infringement, misappropriation, or wrongful use suit or action, including, without limitation, any proceeding under 28 U.S.C. § 1498; alleging that manufacture, use or sale infringes any patent, trademark, copyright, trade secret, mask work right or other proprietary or intellectual property right (collectively “Infringement Claim(s)” in connection with any Items, software or data furnished hereunder, whether such are provided alone or in combination with other Items, software or processes. Seller hereby agrees to defend any and all such actions, at Seller’s expense, if requested to do so by Buyer. If, however, the Infringement Claim arises as a necessary consequence of Seller’s compliance with Buyer’s drawings and specification, which describe that aspect of the Items and Services upon which the Infringement Claim is based, Seller shall have no obligation to indemnify Buyer.

(b) Seller and Buyer agree to notify each other in writing as soon as they become aware of a challenge of infringement or wrongful use in connection with any such Items, software or data furnished hereunder. Seller, if required to indemnify Buyer under this Article, shall promptly assume and diligently conduct the entire defense of such Infringement Claim at its own expense. Buyer shall have the right to reasonably reject counsel selected by Seller and the right to reject any settlement that would negatively impact Buyer as determined solely by Buyer. Buyer shall have the right to participate with Seller in determining the strategy to defend any such suit or action, and shall have the right, with the permission of the court, to intervene in any such Infringement Claim.

(c) Notwithstanding any of the above provisions, Buyer shall have the further right, at its own election, to supersede Seller in the defense of any such Infringement Claim and thereafter to assume and conduct the same according to Buyer’s sole discretion. Upon Buyer’s election, Seller shall be released from its obligation to pay for attorneys’ fees and court costs. Further, Seller, if requested in writing by Buyer, shall cooperate with Buyer in Buyer’s defense of any alleged Infringement Claim.

(d) If the use or sale of Items or Services, in respect to which Seller indemnifies Buyer, is enjoined as a result of such Infringement Claims, Seller, at no expense to Buyer, shall obtain for Buyer and its customers, the right to use and sell said Items or Services or shall substitute equivalent Items or Services acceptable to Buyer and extend this patent indemnity with respect to such equivalent Items or Services. In the event that Seller is unable to secure such right of use for Buyer or its customer or to secure equivalent Items or Services as a substitute, Seller will indemnify Buyer and its customer for any and all losses or damages sustained by reason of such injunction.

(e) This indemnity and hold harmless shall not be considered an allowable cost under any provisions of this Order except with regard to allowable insurance costs. Seller’s obligation to defend, indemnify, and hold harmless Buyer and its customers under this Article shall not apply to the extent FAR 52.227-1, Authorization and Consent, applies to Buyer’s Government Contract for infringement of a U.S. patent and Buyer and its customers are not subject to any actions for claims, damages, losses, costs, and expenses, including reasonable attorneys’ fees by a third party.

26. RIGHTS IN DATA AND INVENTIONS:

(a) Definitions:

(1) Intellectual Property. Intellectual Property means inventions, discoveries and improvements, know-how, works of authorship, technical data, drawings, specifications, process information, reports and documented information, and computer software.

(2) Background Intellectual Property. Background Intellectual Property means Intellectual Property that is (i) in existence prior to the effective date of this Order or (ii) is designed, developed or licensed after the effective date of this Order independently of both the work undertaken or in connection with this Order, and the proprietary information and Intellectual Property of the other party to this Order.

(3) Foreground Intellectual Property. Foreground intellectual property means intellectual property conceived, created, acquired, developed, derived from or based on development performed under this Order or information supplied by
Buyer, or first actually reduced to practice by Seller in connection with this Order.

(b) All Intellectual Property supplied to Buyer by Seller shall be disclosed to Buyer on a non-proprietary basis and may be used and/or disclosed by Buyer without restriction, unless:

(1) otherwise required by the U.S. Government Regulations included in Item 2 hereto, or

(2) Buyer has executed a separate agreement restricting the use and disclosure of such Intellectual Property.

(c) Foreground Intellectual Property. Unless otherwise expressly agreed in writing to the contrary and subject to paragraph (g) below, all Foreground Intellectual Property developed exclusively with Buyer monies (i.e., development was accomplished entirely with monies paid by Buyer to Seller that are not subject to recovery by Buyer under a government contract) and not subject to paragraph (d) below is hereby assigned to Buyer and shall be proprietary to Buyer, shall be used by Seller only for purposes of providing Items or Services to Buyer pursuant to this Order, and shall not be disclosed to any third party without Buyer’s express written consent. All such Foreground Intellectual Property shall be promptly provided to Buyer on request or upon completion of this Order. Any work performed pursuant to this Order which includes any copyright interest shall be considered a “work made for hire.” The tangible medium storing copies of all reports, memoranda, or other materials in written form, including machine-readable form, prepared by Seller and furnished to Buyer pursuant to this Order shall become the sole property of Buyer.

(d) Inventions. Subject to paragraph (g) below, any invention constituting Foreground Intellectual Property is hereby assigned to Buyer and Buyer shall own all right, title, and interest in such property. Seller shall execute all documents necessary to perfect Buyer’s interest in and title thereto, including, without limitation, assigning any and all right, title and interest Seller has in any such invention to Buyer. Seller shall ensure that any third party with whom Seller has subcontracted to deliver Items or Services, and Seller’s employees, also executes and assigns any and all rights, titles, and interest in any such invention to Buyer. Seller shall, within two (2) months after conception or first actual reduction to practice of any invention constituting Foreground Intellectual Property and prior to completion of the Order, disclose in writing to Buyer all inventions, whether or not patentable, in sufficient technical detail to clearly convey the invention to one skilled in the art to which the invention pertains. Seller shall promptly execute all written instruments, and assist as Buyer reasonably directs in order to file, acquire, prosecute, maintain, enforce and assign Buyer’s invention rights. Seller hereby irrevocably appoints Buyer and any of Buyer’s officers and agents as Seller’s attorney in fact to act on Seller’s behalf and instead of Seller, with the same legal force and effect as if executed by Seller, with respect to executing any such written instruments.

(e) Seller-Owned Intellectual Property. Seller shall retain ownership of all Background Intellectual Property and of any Foreground Intellectual Property not assigned to Buyer pursuant to these paragraphs (c) and (d) (collectively, “Seller-Owned Intellectual Property”). Unless otherwise expressly agreed in writing to the contrary and in addition to U.S. Government’s Intellectual Property rights, Seller grants to Buyer an nonexclusive, irrevocable, sublicensable, paid-up, royalty-free worldwide right to make, have made, sell, offer for sale, use, execute, reproduce, display, perform, distribute (internally or externally) copies of, and prepare derivative works of any and all Seller-Owned Intellectual Property in the performance of its Government Contract or higher-tier contract obligations (including obligations of follow-on contract or contracts for subsequent phases of the same program).

(f) Buyer-Owned Intellectual Property. Buyer shall retain ownership of all Buyer Intellectual Property provided hereunder and of any Foreground Intellectual Property assigned to Buyer pursuant to this paragraph (c) above (collectively, “Buyer-Owned Intellectual Property”). Buyer grants to Seller a non-exclusive, royalty-free right during the term of this Order to use, reproduce, modify, practice and prepare derivative works of any Buyer-Owned Intellectual Property solely as necessary for Seller to perform its obligations under this Order. Seller shall not, without Buyer’s prior written consent, use Buyer-Owned Intellectual Property or any derivative works of any of the Buyer-Owned Intellectual Property in any manner not authorized under this Order, including, but not limited to, developing, manufacturing, offering for sale or selling any item or service which utilizes or is enabled by Buyer-Owned Intellectual Property.

(g) Nothing in this Article shall modify or alter any rights that the U.S. Government may have in any items or services, including technical data or computer software deliverables to the U.S. Government. Applicable Government procurement regulations incorporated into this Order dealing with such rights in Intellectual Property are not intended to, and shall not, unless otherwise required by applicable law, obviate or modify any greater rights which Seller may have previously granted to Buyer pursuant to prior agreements between the Parties.

27. SHIPPING INSTRUCTIONS: Seller shall comply with Buyer’s routing and shipping instructions. If Buyer’s routing and shipping instructions are not attached to the Purchase Order or have not been previously received by Seller, Seller shall immediately request the Instructions from Buyer. Seller shall remain liable for any and all additional charges which accrue as a result of Seller’s failure to comply with Buyer’s Routing and Shipping Instructions.

28. SUSPENSION OF WORK/STOP WORK ORDER: Buyer shall have the right to direct Seller in writing to suspend all or any part of the work for a period of time not to exceed ninety (90) days, and for any further period as the Parties may agree, unless extended by Buyer’s Customer. Upon receipt of the written notice, Seller shall immediately comply with the terms of the notice and shall take all reasonable measures to mitigate the costs allocable to the suspended portion of the work.

(a) If work is suspended, an adjustment may be made in accordance with the provisions of Article 10 for any increase in the time and the cost (exclusive of profit) of performing this Order necessarily caused by such suspension prior to inception of costs in excess of the funded value, and this Order may be modified in writing accordingly.

(b) A claim shall not be allowed under this Article unless the claim, in an amount stated, is asserted in writing within thirty (30) days after Buyer’s issuance of the notice of termination of the suspension. Suspension may only be terminated by written notice from Buyer, regardless of the expiration of the original or extended suspension period. When the suspension has been terminated, Seller shall immediately commence performance, notwithstanding the fact that there is no agreement as to a revised schedule or the cost of completing this Order.

29. TAXES: Unless otherwise notified by Buyer in writing, the price of this Order includes and Seller shall be responsible for the payment of any Federal, State, and Local taxes, duties, tariffs, transportation taxes, or other similar taxes or fees which are required to be imposed upon the Items or Services ordered hereunder by Buyer or Buyer’s Customer, unless Seller obtains any applicable exemptions. Seller represents that its price does not include any taxes, impositions, charges or exactions for which it is eligible to obtain and/or has obtained a valid exemption certificate or other evidence of exemption. Any taxes included in this Order shall be itemized separately in Seller’s invoice.

30. TITLE AND RISK OF LOSS: Unless otherwise specified in the Order, Seller shall bear the risk of loss and damage to all Items to be supplied hereunder until final acceptance by Buyer. Buyer shall have equitable title to all Items for which interim, partial or progress payments have been furnished to Seller.

31. TOOLS, MATERIALS AND INFORMATION: Refer also to Article 26, Rights in Data and Inventions. If any designs, sketches, drawings, blueprints, patterns, dies, molds, models, tools, gauges, equipment or special appliances should be made or procured by Seller especially for producing the Items covered by this Order, then immediately upon manufacture or procurement they shall become the property of Buyer. Seller shall maintain a current inventory list of the foregoing. Except for tools, material and information owned by the Government or to which the Government has unlimited rights, any such item or any materials or any engineering data or other technical or proprietary information related thereto furnished or paid for by Buyer shall: (a) become and shall be identified as property of Buyer, (b) be held by Seller on consignment at Seller’s risk, (c) be used exclusively in the production and/or provision for Buyer of Items and/or Services required by this Order, and (d) be subject to disposition by Buyer at any and all times and upon demand they shall be returned to Buyer. Seller shall maintain procedures for the adequate accountability, storage, maintenance and inspection of such items and shall make such records available to Buyer upon request.
32. **FURNISHED PROPERTY:**

(a) Buyer may provide to Seller property owned by either Buyer or its customer (“Furnished Property”) as set forth in the Order. Furnished Property shall be used only for the performance of this Order.

(b) Title to Furnished Property shall be retained by Buyer or its customer. Seller shall clearly mark (if not already marked) all Furnished Property to show ownership. While Furnished Property is in Seller’s possession, Seller shall prevent the comingling of Furnished Property with other materials in Seller’s possession, except in accordance with Buyer’s written instructions.

(c) Except for reasonable wear and tear, Seller assumes all risk of loss, destruction, or damage of Furnished Property while in Seller’s possession, custody, or control. Upon request, Seller shall promptly provide Buyer with adequate proof of insurance against such risk of loss. Seller shall promptly notify Buyer of any loss or damage. Without additional charge, Seller shall manage, maintain, and preserve Furnished Property in accordance with good commercial practice.

(d) At Buyer’s request or at completion of this Order, Seller shall submit, in an acceptable form, inventory lists of Furnished Property and shall deliver or make such other disposition in accordance with instructions from Buyer.

(e) With respect to government-furnished property, or property to which the Government may take title under this Order: (1) if for time-and-materials or labor hour Order, the clause at FAR 52.245-1 shall apply and is incorporated by reference. (2) Seller shall provide to Buyer immediate notice of any disagreement, withdrawal of approval, or nonacceptance by the Government of its property control system.

33. **SPECIAL TOOLING, SPECIAL TEST EQUIPMENT, AND FACILITIES:**

(a) Unless specifically provided to the contrary in this Order, Seller warrants that the estimated cost set forth in this Order does not include as a direct charge to this Order the cost of any special tooling, test equipment, or facilities as the same are defined in FAR 2.101. Any such special tooling, test equipment or facilities to be charged to Buyer will be covered by a separate Purchase Order.

(b) Seller represents that it now has or can readily procure without the assistance of Buyer or the Government all facilities necessary for the performance of this Order, except as set forth herein.

34. **EXPORT CONTROL COMPLIANCE:** Seller, at its sole expense, agrees to comply with all laws and regulations of the United States and other countries related to exports and imports including obtaining all required authorizations from the U.S. or other applicable governments. Seller shall immediately notify Buyer’s Representative if Seller’s export privileges are denied, suspended, or revoked in whole or in part by any U.S. or other Government entity or agency. Buyer may deem Seller’s failure to comply with the requirements of this Article a material failure to perform under this Order that shall subject Seller to termination in accordance with Article 15, Termination.

(a) ITAR Controlled Hardware, Technical Data or Services.

(1) Seller is hereby notified that certain hardware (e.g., finished goods, parts, components, accessories, attachments, samples, prototypes, test equipment, firmware, software, or systems), technical data (e.g., technical specifications, drawings, photos, instructions, or other technical information in any form), and/or services provided by Buyer for purposes of this Order are or may be subject to the International Traffic in Arms Regulations (“ITAR”) (22 C.F.R. §§ 120-130). In addition, Seller is hereby notified that hardware, technical data, and/or services sold by Seller that are designed, developed, modified, adapted or configured from hardware, technical data, and/or services provided by Buyer or may also be subject to the ITAR. The ITAR is accessible at the U.S. Department of State, Directorate of Defense Trade Controls (“DDTC”) website at http://www.pmddtc.state.gov.

(2) If Seller is a manufacturer of Defense Articles or related Technical Data and/or exports Defense Articles or Defense Services, Seller represents that it is properly registered with the U.S. Department of State and will maintain said registration in order to be eligible to engage in the manufacture and/or export of Defense Articles and Defense Services as required by the ITAR (22 C.F.R. § 122.1(a)).

(b) Goods, Technology, Software Subject to U.S. Export Administration Regulations.

(1) Seller is hereby notified that certain hardware (e.g., finished goods, parts, components, accessories, attachments, samples, prototypes, test equipment, firmware, software, or systems), technology (e.g., technical specifications, drawings, photos, instructions, or other technical information in any form), and/or software provided by Buyer for purposes of this Order are or may be subject to the Export Administration Regulations (“EAR”). In addition, Seller is hereby notified that the hardware, technical data, and/or software sold by Seller that is derived from hardware, technology, and/or software provided by Buyer are or may also be subject to the EAR. The EAR is accessible at the U.S. Department of Commerce, Bureau of Industry and Security website at http://www.bis.doc.gov.

(2) The EAR restrict the shipment, transmission, or transfer of certain of Buyer’s and Seller’s controlled hardware, technology, technical data and/or software from the U.S. to foreign countries, as well as to foreign persons located inside the U.S. (also referred to as a “deemed export”). Seller is advised and acknowledges that certain controlled hardware, technology, technical data and/or software may not be exported out of the U.S. or to a non-U.S. person inside the U.S. without prior authorization of the U.S. Government. Seller will be informed by Buyer of the export control status (i.e., jurisdiction and categorization of all hardware, technical data, and/or services provided to Seller by Buyer). Hardware and technical data will be clearly marked as export controlled or not. Seller agrees that it will abide by all restrictions and requirements in the ITAR, including that Seller not transfer or provide access to any ITAR-controlled hardware, technical data, or services provided by Buyer to non-U.S. persons employed by or associated with Seller, whether located in the U.S. or not, without U.S. Government authorization and permission from Buyer.

(c) Seller agrees that it will inform Buyer of the export control status (i.e., jurisdiction and categorization) of all hardware, technical
data, technology, software, and/or services sold to Buyer under this Order to include clearly marking all hardware and/or technical data.

(d) Anti-Boycott Laws and Regulations.

(1) Seller is hereby notified that, as outlined in greater detail in 15 C.F.R. § 760.2, the following are prohibited under the EAR: refusing or agreeing to refuse to do business with or in a boycotted country or with a national of boycotted country or a boycotted person; refusing to employ or otherwise discriminating against a U.S. person in deference to a boycott request on the basis of race, religion, sex, or national origin; furnishing information about the race, religion, sex, or national origin of the U.S. person or any owner, officer, director, or employee of a domestic concern or controlled in fact non-U.S. affiliate in response to a boycott request; furnishing information about any person’s past, ongoing, or proposed future relationships (or the absence of relationships) with other parties if the information is sought for boycott-related reasons; providing information about any person’s association with or support for any charitable or fraternal organization supporting a boycotted country, and paying, honoring, confirming, or otherwise implementing a letter of credit that contains any prohibited boycott requirement or request.

(2) Seller is advised and acknowledges that it may be responsible for complying with any applicable anti-boycott laws, regulations, and guidance.

(3) Seller also certifies to Buyer that it does not, and shall not, participate or comply with any boycott (both domestic and international), or boycott-related request or engage in any restrictive trade practices which are in contravention of a Government law or regulation including 15 C.F.R. Part 760.

(e) Where Seller is a signatory under a Buyer export authorization, Seller shall provide prompt notification to Buyer’s Representative in the event of changed circumstances including, but not limited to, ineligibility, a violation or potential violation of applicable export regulations including, but not limited to, those that could affect Seller’s performance under this Contract.

(f) Seller shall indemnify Buyer and be solely responsible for all losses, costs, claims, causes of action, damages, liabilities and expense, including attorneys’ fees, all expense of litigation and/or settlement, and court costs, arising from any act or omission of Seller, its officers, employees, agents, suppliers, or subcontractors at any tier, in the performance of any of its obligations under this clause.

(g) U.S. Economic and Trade Sanctions. Seller understands that the Office of Foreign Assets Control (“OFAC”) of the U.S. Department of the Treasury administers and enforces economic and trade sanctions based on US foreign policy and national security goals against targeted foreign countries, and regimes, terrorists, international narcotics traffickers, those engaged in activities related to the proliferation of weapons of mass destruction, and other activities related to the proliferation of weapons of mass destruction, and other threats to the national security, foreign policy, or economy of the United States. Seller agrees that it will comply with these OFAC administered regulations and policies, and will not transfer any Items or Services to or from, or otherwise engage with entities or persons listed on the Specially Designated Nationals (“SDN”) List. The SDN List is accessible at http://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx. Seller further agrees that it will not engage in unauthorized transactions, including the transfer any Items or Services to or from, with persons or entities identified on any other U.S. government screening list, including those identified on the U.S. government’s Consolidated Screening List. The Consolidated Screening List can be found here: http://2016.export.gov/ecd/eg_main_023148.asp.

(h) Hardware, Technology, or Technical Data Received Without Marking. Seller is hereby notified that, to the extent it should receive any hardware, technology, or technical data from Buyer that is not marked as export controlled (i.e., under the ITAR or EAR), Seller must treat such hardware, technology, or technical data in conformance with the most restrictive standard potentially applicable unless it requests and receives specific written instructions from Buyer that releases Seller from this requirement.

(i) Items Requiring Approved BATF Permits. If performance under this Purchase Order requires Seller to export out of the U.S. machine guns, destructive devices, explosives, and certain other firearms, as defined in 27 C.F.R. Part 179, Seller also certifies to Buyer that it does not require access to classified information, Seller, at its sole expense, agrees to notify Buyer if any deliverable under this Contract is restricted by applicable export control documentation with Buyer upon request. Seller acknowledges that certain hardware, Technology, or Technical Data Received Without Marking. Seller is hereby notified that, to the extent it should receive any hardware, technology, or technical data from Buyer that is not marked as export controlled (i.e., under the ITAR or EAR), Seller must treat such hardware, technology, or technical data in conformance with the most restrictive standard potentially applicable unless it requests and receives specific written instructions from Buyer that releases Seller from this requirement.

(j) Record Keeping. Seller agrees to bear sole responsibility for all regulatory record keeping associated with the use of licenses and license exceptions/exemptions. Without limiting the foregoing, Seller agrees that it will not transfer any export controlled item, data, or services, to include transfer to foreign persons employed by or associated with, or under contract to Seller or Seller’s lower-tier suppliers, without the authority of an export license, agreement, or applicable exemption or exception. Seller agrees to share its applicable export control documentation with Buyer upon request. Seller agrees to notify Buyer if any deliverable under this Contract is restricted by export control laws or regulations. Seller shall immediately notify Buyer’s Representative if Seller is, or becomes, listed in any Denied Parties List or if Seller’s export privileges are otherwise denied, suspended or revoked in whole or in part by any U.S. Government entity or agency.

(k) Upon Buyer’s request, Seller shall provide a report of all sources outside the United States utilized by Buyer or its lower-tier subcontractors in the fulfillment of this Order, including the names and locations of the sources, and a description of the items or services obtained from such sources.

35. FOREIGN PERSONS: The Seller acknowledges that certain hardware (e.g., finished goods, parts, components, accessories, attachments, samples, prototypes, test equipment, firmware, software, or systems), technical data (e.g., technical specifications, drawings, photos, instructions, or other technical information in any form), and/or services provided by Buyer for purposes of this Order may be controlled by the ITAR or the EAR, and may require U.S. Government export authorization before assigning any Foreign Person (as defined in 22 CFR 120.16, which includes foreign governments, business entities, groups and international organizations) to perform work under this Order or before granting access to Foreign Persons to any technical data obtained under, generated, translated, or delivered in performance of this Order. Any request for export authorization must include the information required by applicable export laws and regulations (reference ITAR, EAR or Chapter 10 of the National Industrial Security Program Operating Manual).

36. CLASSIFIED REQUIREMENTS: In the event this Order requires access to classified information, Seller, at its sole expense, agrees to comply with all laws and regulations of the United States related to such classified requirements, including obtaining all required authorizations from the U.S. pursuant to, among other requirements, those set forth in the National Industrial Security Program Operating Manual (“NISPOM”) and any specific agency supplements to the NISPOM or other classified requirements as directed by Buyer. A copy of the NISPOM is available for download at http://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodm/522022M.pdf.

37. CUSTOMS:

(a) Credits and Refunds. Transferable credits or benefits associated with or arising from Items purchased under this Order, including offset or trade credits, export credits or rights to the refund of duties, taxes or fees (collectively, “trade credits”), belong to Buyer. Seller will, at its expense, provide all information necessary (including written documentation and electronic transaction records in Buyer-approved formats) to permit Buyer to receive these trade credits. Seller will furthermore, at its expense, provide
Buyer with all information, documentation, and electronic transaction records relating to the items necessary for Buyer to fulfill any customs-related obligations, origin marking or labeling requirements and certification or local content reporting requirements, to enable Buyer to claim preferential duty treatment for items eligible under applicable trade preference regimes, and to make all arrangements that are necessary for the items to be covered by any duty deferral or free trade zone programs(s) of the country of import. Seller will, at its expense, provide Buyer or Buyer’s nominated service provider with export documentation to enable the items to be exported, and obtain all export licenses or authorizations necessary for the export of the items unless otherwise indicated in this Order, in which event Seller will provide all information as may be necessary to enable Buyer to obtain such licenses or authorization(s). Buyer retains the right to assign any trade credits to third parties. Seller shall include this clause, for the benefit of Buyer, in all lower-tier purchase orders and subcontracts awarded in the performance of this Order. Seller shall maintain a record of its purchases under this Order or subcontract and Buyer reserves the right to review such record not more often than every six (6) months to determine availability of trade credits. This Article 37 shall survive two (2) years beyond the completion of this Order.

(b) Customs-Trade Partnership Against Terrorism. To the extent any item covered by this Order is to be imported into the United States, if requested by Buyer, Seller shall comply with all applicable recommendations or requirements of the Bureau of Customs and Border Protection’s Customs-Trade Partnership Against Terrorism (“C-TPAT”) initiative. Upon request, Seller shall certify in writing its compliance with all applicable recommendations or requirements of the C-TPAT initiative.

38. NEW MATERIAL:

(a) “Material,” as used in this clause, includes, but is not limited to raw material, parts, items, components and end items. “New,” as used in this clause, means previously unused or composed of previously unused materials allowing for typical in-factory or site use including, but not limited to integration, installation, assembly, test, burn-in, training, troubleshooting, and rework as required.

(b) Unless Buyer specifies in writing otherwise, Seller shall deliver New Material under this contract that is fully warranted and does not contain any counterfeit material. Material verification includes documentation that Seller is purchasing product directly from the original equipment manufacturer or authorized franchised distributor. In addition, the New Material is of such age or so deteriorated, due to storage factors, as to impair its usefulness or safety.

39. COUNTERFEIT PARTS:

(a) As used herein, “Counterfeit Parts” means Items or separately identifiable components of items that:

1. Are an unauthorized copy or substitute of an Original Equipment Manufacturer or Original Component Manufacturer (collectively, “OEM”) Item;
2. Do not contain proper external or internal materials or components required by the OEM and are not constructed in accordance with OEM design;
3. Have been re-worked, re-marked, re-labeled, repaired, refurbished, or otherwise modified from OEM design but not disclosed as such or are represented as OEM authentic or new; or
4. Have not passed successfully all OEM-required testing, verification, screening, and quality control processes.

(b) Seller shall not furnish Counterfeit Parts to Buyer and shall implement an appropriate system to ensure that Items furnished to Buyer under this Order are not Counterfeit Parts. Seller’s system shall include, but is not limited to, the direct procurement of Items or components of Items from OEMs or authorized suppliers and/or testing or inspection in accordance with accepted government- and industry-recognized techniques to ensure the authenticity of Items.

(c) If Seller becomes aware or suspects that it has furnished Counterfeit Parts to Buyer under this Order, Seller shall promptly notify Buyer of such no later than thirty (30) days from that discovery. Seller shall replace, at Seller’s own expense, such Counterfeit Parts with OEM or Buyer-approved items that conform to the requirements of this Order. Seller shall be liable for all costs related to the replacement of Counterfeit Parts and any testing or validation necessitated by the installation of authentic Items or components of Items after Counterfeit Parts have been replaced.

40. CONFLICT MINERALS:

(a) “Conflict Minerals” means, most commonly, tin, tantalum, tungsten, and gold (3TG) and any other mineral or its derivatives determined by the U.S. Secretary of State to be financing conflict in the Democratic Republic of the Congo or an adjoining country.

(b) Seller represents that it has adopted and will maintain a supply chain policy and procedure to conduct, and require its suppliers to conduct, a reasonable inquiry to determine whether the Items supplied to Buyer contain Conflict Minerals and whether the source of any such Conflict Minerals not derived from recycled or scrap materials may be the Democratic Republic of the Congo or an adjoining country. If so, Seller shall perform due diligence to identify the facilities used to process such Conflict Minerals and make efforts to identify the location of each mine or location of origin of such Conflict Minerals with the greatest possible specificity.

(c) Seller shall provide written certifications concerning Conflict Minerals contained in Items supplied to Buyer by Seller as Buyer may request from time to time. Seller acknowledges that Buyer will rely on the accuracy and completeness of each such certification.

41. PROHIBITED SOFTWARE:

(a) This clause only applies to Services/Items that include the delivery of software.

(b) As used herein, “Prohibited License” means the General Public License (“GPL”) or Lesser/Library GPL, the Artistic License (e.g., PERL), the Mozilla Public License, the Netscape Public License, the Sun Community Source License, the Sun Industry Standards License, or variations thereof, including without limitation licenses referred to as “GPL-Compatible, Free Software License.”

(c) As used herein, “Prohibited Software” means software that incorporates or embeds software in, or integrates software in connection with, as part of, bundled with, or alongside any open source, publicly available, or “free” software, library or documentation; or software that is licensed under a Prohibited License; or software provided under a license that:

1. subjects the delivered software to any Prohibited License, or
2. requires the delivered software to be licensed for the purpose of making derivative works or be redistributable at no charge; or
3. obligates Buyer to sell, loan, distribute, disclose or otherwise make available or accessible to any third party:
   (i) the delivered software, or any portion thereof, in object code and/or source code formats; or
   (B) any Items incorporating the delivered software, or any portion thereof, in object code and/or source code formats.

(d) Unless Seller has obtained Buyer’s prior written consent, which Buyer may withhold in its sole discretion, Seller shall not use in connection with this Order, or deliver to Buyer, any Prohibited Software.

(e) Seller agrees to defend, indemnify, and hold harmless Buyer, its customers and suppliers from and against any claims, damages, losses, costs, and expenses, including reasonable attorneys’ fees, to the extent
Seller causes Buyer to use or deliver Prohibited Software in connection with this Order.

42. **COMPLIANCE WITH HAZARDOUS SUBSTANCES AND WASTE RECYCLING LAWS:**


(b) Seller hereby represents and warrants, based on its qualitative determination, that the Items contain no asbestos containing materials or mercury, polychlorinated biphenyls (“PCBs”), nor were they manufactured with prohibited Ozone Depleting Substances (“ODSs”), and Seller will not introduce into the Items or any replacements any materials that contain asbestos or PCBs, nor manufacture the Items with prohibited ODSs.

(c) Buyer may sell products containing Seller’s Items in California and other states, and Seller shall disclose in writing to Buyer all materials and components in the Items, and the amounts therein, that require labeling under California’s Proposition 65 or the laws of other states.

(d) As soon as Seller is aware of any non-compliance but in no event any later than before the shipment of any Item, Seller shall identify in writing to Buyer (e.g., in a Safety Data Sheet (“SDS”), or other writing):

- (1) any and all components and materials contained in the Items that may require recycling or other treatment during the product lifecycle under the laws and regulations implementing the Environmental Laws; and
- (2) the location of any component or material that is hazardous within the meaning of the WEEE Directive or other Environmental Laws, and any Item that is required by the Environmental Laws to be marked shall be so marked by Seller.

(e) Seller shall, upon request, provide Buyer with written confirmation of its compliance with the Environmental Laws, in the form, manner and within the timeframe reasonably directed by Buyer, including but not limited to, evidence that Supplier has registered, notified and communicated supplied materials for Buyer’s intended use as required by REACH.

(f) Buyer shall have the right to audit, at its own expense, Seller’s compliance with the Environmental Laws. Seller shall provide Buyer with all such information and documentation that it may reasonably require (including access to its staff and facilities) to enable Buyer to satisfy itself of Seller’s compliance with all Environmental Laws and that the warranty contained in subsection (a) above remains true and accurate.

(g) Seller shall bear all costs and expenses, including those related to recycling or taking back the Items, arising out of or related to either Buyer or Seller complying with the Environmental Laws and placing the Items on, or their importation into, any jurisdiction worldwide.

(h) Seller shall indemnify and hold Buyer harmless from any cost, expense, liability or damage suffered by Buyer by reason of any breach or alleged breach of any of the Environmental Laws arising out of or related to the Items.

43. **TOXIC, HAZARDOUS OR CARCINOGENIC SUBSTANCES AND SUBSTANCES OF VERY HIGH CONCERN (SVHC):**

(a) Seller represents and warrants that the following are not prohibited or restricted by any laws or regulations of any country or other jurisdiction in the world:

- (1) the Items, and substances contained therein including parts, subparts, components, and chemical constituents;
- (2) substances used in the manufacture of the Items, including its parts, subparts, components and chemical constituents;
- (3) use of the Items in the manner intended, and
- (4) substances required for the maintenance of the Items provided under this Order.

(b) Laws and regulations referenced in subparagraph (a) above include, without limitation, those of:

- (1) the United States through a Department or Agency such as the EPA acting under the Toxic Substances Control Act (“TSCA”) (15 U.S.C. § 2601 et seq.), as amended by the Frank R. Launtenberg Chemical Safety for the 21st Century Act, or the Federal Insecticide, Fungicide, and Rodenticide Act (“FIFRA”) (21 U.S.C. § 346a et seq.) and their implementing regulations;
- (2) individual states in the U.S.;
- (3) the European Community through European Community Council Directive of 27 July 1976 “on the approximation of the laws, regulations and administrative provisions of the Member States relating to restrictions on the marketing and use of substances of certain dangerous substances and preparations” (76/769/EEC) and other Directives and Regulations;
- (4) the European Community through EC 1907/2006 REACH;
- (5) nations in the European Community that have implemented legislation concerning 76/769/EEC and other Directives; and
- (6) nations that are not in the European Community but which implement legislation similar to 76/769/EEC and other Directives (collectively, the “Toxic Substance Laws”).

(c) Seller represents and warrants that:

- (1) each chemical substance, including chemical substances contained in the Items delivered under this Order, is on the Inventory List (see 40 C.F.R. § 710) published by the EPA pursuant to the TSCA (15 U.S.C. § 2601 et seq.) (b) the European Inventory of Existing Commercial Chemical Substances (EINECS) or the European List of Notified Chemical Substances (ELINCS); or (c) any equivalent lists in any other jurisdictions to which Byer informs Seller or Seller knows the Items likely will be shipped to or through. Seller represents and warrants that each chemical substance constituting or contained in Items is registered if required, under Regulation (EC) No 1907/2006 (“REACH”), is not restricted under Annex XVII of REACH and if subject to authorization under REACH is authorized for Byer’s use at the time of such delivery;

- (2) delivery of any Items, including their chemical constituents, under this Order shall be made in accordance with transportation, labeling and other requirements for Toxic Substance Laws enacted by any government or regulatory body anywhere in the world; and

- (3) the Items, including their chemical constituents, shall meet the Toxic Substance Laws requirements of all jurisdictions, including under any applicable exclusions, exceptions or waivers, such that Buyer may freely transport, export, import, use, maintain, market and sell the Item or article throughout the world.

(d) Where there are regulations or restrictions pertaining to the Items, Seller shall:
(1) inform Buyer of such regulations or restrictions in writing, specifying the jurisdictions in which the Item is regulated;
(2) provide Buyer with a written copy of the appropriate compliance recommendations on handling or use; and
(3) obtain Buyer’s written approval for the delivery of any Items that are regulated or restricted.

(c) Seller shall establish a process to assure that current governmental and safety requirements under the Toxic Substances Laws on restricted, toxic and hazardous substances/materials are in compliance, relative to the purchased Items as stated on purchase orders.

(1) a potential safety hazard or unsafe condition in any of the Items or Services produced hereunder, or is advised of such by competent authorities of any government having jurisdiction over such Items, materials or Services, it will immediately advise the other party by the most expeditious means of communication. When any change occurs that affects requirements or recommendations for safe handling, use, or disposal Seller shall provide Buyer with a copy of any new restriction on handling, use, or disposal and receive approval from Buyer before shipment.

(b) Expenses associated with the correction of a safety hazard or unsafe condition as identified in (a) above, caused by or associated with Items or Services produced by Seller, including reasonable attorneys’ fees, court costs, expenses, and the like, if they become necessary, shall be solely Seller’s responsibility, subject only to any other arrangement negotiated by the Parties in light of the particular facts and circumstances then existing.

(c) Seller agrees to protect, defend, hold harmless, indemnify, and reimburse Buyer, its officers, directors, agents, employees, distributors, dealers, affiliates, insurers, and customers during the term of this Order and any time thereafter for any and all costs and expenses (including, but not limited to, reasonable attorneys’ fees and expenses, overhead, settlements, judgments, and court costs) arising out of or related to any Environmental Laws and Toxic Substances Laws liability, demand, lawsuit, or claim alleging or asserting in whole or in part:

(1) any Failure of Items or Services to comply with applicable specifications, warranties, and certifications under this Order (including those set forth in Seller’s Annual Certification);
(2) the negligence or fault of Seller in design, testing, development, manufacture, or otherwise with respect to Items or parts thereof;
(3) claims, demands, or lawsuits that, with respect to the Items or any parts thereof allege product liability, strict product liability, or any variation thereof;
(4) any claim based on the death or bodily injury to any person, destruction or damage to property, or contamination of the environment and any associated clean-up costs; or
(5) any claim based on the negligence, omissions or willful misconduct of Seller or any of Seller’s agents, subcontractors, employees or anyone acting on behalf of Seller.

(d) Buyer agrees to protect, defend, hold harmless, and indemnify Seller in a similar fashion from and against any liability, claim, demands, or cost or expense that is the result of design or other special requirements specified by Buyer and actually incorporated in the Items or Services over the written objection of Seller. Buyer also agrees to protect, defend, hold harmless, and indemnify Seller in a similar fashion from and against any liability, claim, demands, or cost or expense arising out of death of or injury to any person or damage to tangible property which is the result of the negligence or other fault of Buyer.

(e) Should Buyer’s use, or use by its distributors, subcontractors or customers, of any Items or Services purchased from Seller be enjoined, be threatened by injunction, or be the subject of any legal proceeding, Seller shall, at its sole cost and expense, either:

(1) substitute fully equivalent non-infringing Items or Services;
(2) modify the Items or Services so that they no longer infringe, but remain fully equivalent in functionality;
(3) obtain for Buyer, its distributors, subcontractors or customers the right to continue using the Items or Services; or,
(4) if none of the foregoing is possible, refund all amounts paid for the infringing Items or Services.

(f) Seller shall without limitation as to time, defend, indemnify and hold Buyer harmless from all items which may be asserted against property covered hereunder, including without limitation mechanic’s liens or claims arising under Worker’s Compensation or Occupational Disease

44. OZONE DEPLETING SUBSTANCES: Seller agrees that the Items delivered hereunder shall be accurately labeled for ODSs in accordance with the requirements of Section 611 of the 1990 Clean Air Act Amendments and the regulations promulgated thereunder, including but not limited to requirements contained in 40 C.F.R. §§ 82.114 and 82.116. At Buyer’s request, Seller shall certify in a form satisfactory to Buyer whether the Items were manufactured with a controlled substance, as defined in 40 C.F.R. § 82.104.

45. HAZARDOUS CONDITIONS/INDEMNIFICATION:

(a) Seller shall comply with applicable Environmental Laws and Toxic Substances Laws, including any specifications included by Buyer as part of this Order. Seller shall comply with the appropriate revision and section of MIL-STD-882 or Buyer equivalent, which Buyer will make available upon Seller’s request. In the event that Seller or Buyer learns of any issue relating to
46. INDEMNITY AGAINST CLAIMS:

(a) Seller shall keep its work and all items supplied by it hereunder and Buyer premises free and clear of all liens and encumbrances, including mechanic’s liens, in any way arising from performance of this Order by Seller or by any of its vendors or subcontractors. Seller may be required by Buyer to provide a satisfactory release of liens as a condition of final payment. All personal property belonging to Buyer in Seller’s custody or possession shall be at Seller’s risk from loss or damage from all hazards.

(b) To the extent not covered by the Patent/Intellectual Property Indemnity provision in Article 25, Seller shall, without limitation, indemnify, save, and hold harmless Buyer and its customer(s) and their respective officers, directors, employees and agents harmless from and against every liability, claim of liability, allegation, judgment, cost, expense, attorneys’ fees, cause of action, loss or damages whatsoever, including, without limitation, any and all claims (including claims under Workers’ Compensation or Occupational Disease laws) and resulting costs, expenses and liability which arise from personal injury, death, or property loss or damage arising out of or as a result of Seller activity or omissions under this Order, including, without limitation, latent defects in such Services or other Items, whether arising out of the actions or inactions of Seller or of its employees, subcontractors, and lower tier subcontractors.

(c) Seller agrees to notify Buyer as soon as practicable of any such claim described in subparagraph (b) above. Seller, if required to indemnify Buyer under this Article, shall promptly assume and diligently conduct the entire defense of such claim at its own expense. Buyer shall have the right to reasonably reject counsel selected by Seller and the right to reject any settlement that would negatively impact Buyer as determined solely by Buyer. Buyer shall have the right to participate with Seller in determining the strategy to defend any such suit or action, and shall have the right, with the permission of the court, to intervene in any such claim.

(d) Notwithstanding any of the above provisions, Buyer shall have the further right, at its own election, to supersede Seller in the defense of any such claim and thereafter to assume and conduct the same according to Buyer’s sole discretion. Upon Buyer’s election, Seller shall be released from its obligation to pay for attorneys’ fees and court costs. Further, Seller, if requested in writing by Buyer, shall cooperate with Buyer in Buyer’s defense of any alleged claim.

(e) In the event Buyer should bring action to enforce the indemnification provisions of this Article and prevail in such action, Seller agrees that Buyer shall be entitled to be awarded its reasonable attorneys’ fees and costs.

47. ETHICAL STANDARDS OF CONDUCT:

(a) Buyer is committed to conducting its business fairly, impartially, and in an ethical and proper manner. Buyer’s expectation is that Seller also will conduct its business fairly, impartially, and in an ethical and proper manner. Buyer’s further expectation is that Seller will have (or will develop) and adhere to a code of ethical standards and comply with Buyer’s Supplier Code of Conduct, available at: https://www.harris.com/sites/default/files/supplier-code-of-conduct-may_2017.pdf. If Seller has cause to believe that Buyer or any employee or agent of Buyer has behaved improperly or unethically under this contract, Seller shall report such behavior to appropriate Buyer Points of Contact (“POCs”). Buyer’s Code of Conduct contains listings of its POCs and is available on http://www.harris.com. Seller’s employees are required to conduct company business with integrity and maintain a high standard of conduct in all business-related activities.

(b) Seller shall not participate in any personal business, or investment activity that may be defined as a conflict of interest, whether real or perceived. As a material obligation hereunder, Seller must immediately notify Buyer if, at any time during the term of this Order, Seller becomes aware that it has an actual or potential conflict of interest, as defined by FAR 9.5 or DFAR 252.209-7009, including without limitation a relationship of any nature which may affect or which may reasonably appear to affect Seller’s objectivity or ability to perform the Work (“Conflict of Interest”).

(c) Seller Compliance: In performing its obligations under this Order, Seller will not use child labor as defined by local law, will not use forced or compulsory labor, will not physically abuse labor and will respect employees’ rights to choose whether to be represented by third parties and to bargain collectively in accordance with local law. In addition, in all wage and benefit, working hours and overtime and health, safety and environmental matters, Seller will comply with all applicable laws and regulations. Seller further agrees that, if requested by Buyer, it shall demonstrate, to the satisfaction of Buyer, compliance with all requirements in this paragraph. Buyer shall have the right to inspect any site of work for Buyer and, failure to comply with the obligations in this paragraph shall be cause for immediate termination without penalty or further liability to Buyer.

48. KEY PERSONNEL: Seller may not remove or substitute personnel identified as Key Personnel in the Order from the Work, and Seller may not reduce the contribution of identified Key Personnel from the amount contemplated herein without the prior written consent of Buyer. Should any Key Personnel leave the employ of Seller, or otherwise become unavailable, Seller shall, in consultation with Buyer, promptly replace such person with another person of comparable experience and qualifications.

49. NON-SOLICITATION: During the term of this Order, and for a period of twelve (12) months following termination of this Order, Seller shall not, directly or indirectly, solicit for employment, employ or otherwise engage the services of employees or individual consultants of Buyer. This clause shall not restrict any employee from responding to or accepting offers of general employment from either party.

50. GENERAL RELATIONSHIP: Seller’s relationship to Buyer in the performance of this Order is that of an Independent Contractor. Neither Seller nor any of the persons utilized by Seller to furnish materials or perform work or Services under this Order are employees of Buyer. Seller shall, at its own expense, comply with all applicable laws and regulations and assume all liabilities and obligations imposed by such laws and regulations with respect to this Order. Seller agrees that neither it nor its personnel are employees of Buyer, or provided any benefits provided or rights guaranteed by Buyer, or by operation of law, to Buyer’s respective employees, including but not limited to group insurance, liability insurance, disability insurance, paid vacation, sick leave or other leave, retirement plans, health plans, stock options and the like. Seller shall be responsible for and hold harmless Buyer and its customers from and against all losses, costs, claims, causes of action, damages, liabilities, and expenses, including attorneys’ fees, all expenses of litigation and/or settlement, and court costs, arising from any act or omission of Seller, its officers, employees, agents, suppliers, or subcontractors at any tier, in the performance of any of its obligations under this Order. Buyer shall be solely responsible for all liaison and coordination with Buyer’s Customer(s), including the Government, as it affects the applicable Government Contract, this Order, and any related contract. Unless otherwise directed in writing by Buyer’s Representative, all documentation requiring submittal to, or action by, the Government or the Contracting Officer shall be routed to, or through, Buyer’s Representative, or as otherwise permitted by this Order.

51. EQUAL OPPORTUNITY:

(a) 41 C.F.R. § 60-741.5(a). This contractor and subcontractor shall abide by the requirements of 41 C.F.R. § 60-741.5(a). This regulation prohibits discrimination against qualified individuals with disabilities, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities.

(b) 41 C.F.R. § 60-300.5(a). This contractor and subcontractor shall abide by the requirements of 41 C.F.R. § 60-300.5(a). This regulation prohibits discrimination against qualified protected veterans, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans.

(c) This contractor and subcontractor shall abide by the requirements of 41 C.F.R. Parts 60-1, 60-20, and 60-50 as set forth under EO 11246 and as amended under EO 13672, specifically section 202 and section 203, where these regulations prohibit discrimination on the bases of race, color, religion, sex, sexual orientation, gender identity, or national origin and require affirmative measures to prevent discrimination on those bases from occurring.

52. SEVERABILITY: If any part, term, or provision of this Order shall be held void, illegal, unenforceable, or in conflict with any law of a
federal, state, or local government having jurisdiction over this Order, the validity of the remaining portions of provisions shall not be affected thereby. In the event that any part, term or provision of this Order is held void, illegal, unenforceable, or in conflict with any law of the federal, state, or local government having jurisdiction over this Order, Seller agrees to negotiate a replacement provision, construed to accomplish its originally intended effect, that does not violate such law or regulation.

53. **SURVIVABILITY:** If this Order expires, is completed, or is terminated for default or convenience, Seller shall not be relieved of those obligations contained in this Order including, but not limited to, the following provisions:


   (b) Those flowdown provisions that, by their nature, should survive.

54. **CERTIFICATIONS:**

By accepting this Order, Seller certifies to the best of its knowledge and belief that:

   (a) Seller and/or any of its principles are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any federal agency;

   (b) there is no litigation or proceeding pending, and that none are anticipated (e.g. claims of fraud, waste or abuse, debarment proceedings, or criminal allegations, against it or any of its officers or employees that may restrict, invalidate or void the Items or Services contemplated by this Order or render the continuation of such Order inadvisable);

   (c) Seller has reviewed the Order and that no person that it provides to perform any services included therein has any legal restrictions as a result of government service that would be pertinent to the Order that would prevent such person from reasonably performing the work contemplated (e.g., post-employment restrictions related to representing a company to the government, accepting compensation for these services or improperly using or disclosing non-public information in these duties);

   (d) if this effort includes support for a competitive proposal, that no person Seller provides for performance of this Order will have worked on the same or a directly related effort for any company in competition with Buyer for this work; and

   (e) Seller has taken reasonable steps to identify and prevent the conflicts referenced above related to Seller or the personnel Seller provides for performance of this Order.

   (f) a duly authorized representative of Seller has attested to and executed Seller’s Annual Certification.

Seller further agrees to furnish to Buyer or directly to Buyer’s Customer, upon Buyer’s request, any certificate required to be furnished under any provisions of this Order, including the clauses set forth and incorporated in Item 2 of this Order.
ITEM 2 – FAR AND NFS CLAUSES APPLICABLE IF THIS ORDER IS PLACED UNDER BUYER CONTRACT CONTAINING SUCH CLAUSES

In addition to the provisions of Item 1, the following provisions shall apply to the Order as required by the terms of Buyer’s Government Contract, by operation of law or regulation, or by the terms of the specific clauses. Buyer is flowing down to Seller certain provisions and clauses from the FAR and NASA FAR Supplement (NFS), (all herein “USG Clauses”). These USG Clauses are hereby incorporated by reference, as applicable, and in the manner set forth below (including any parenthetical information regarding applicability, bracketed information regarding modifications to the USG Clauses. For certain USG Clauses, Buyer has provided parenthetical language describing the circumstances in which the USG Clauses apply to the Order. This parenthetical language may not encompass all situations where the USG Clauses apply and Seller is responsible for confirming whether the USG Clauses are applicable to the Order.

The effective version of the USG Clauses shall be the version in effect as of the date this Order is issued unless a different version appears in Buyer’s Government Contract, in which case the version in Buyer’s Government Contract applies. The Parties hereby agree to amend this Item 2 to include any additional or revised USG Clauses incorporated in Buyer’s Government Contract that are applicable to the performance of this Order. The Parties shall handle any such amendments of this Item 2 under Article 10 “Changes and Equitable Adjustments” of this Order. Seller shall flow down to its lower-tier subcontractors all applicable USG Clauses and any other requirements of this Order and applicable law so as to enable and ensure that Buyer and Seller comply with all applicable requirements of Buyer’s Government Contract.

It is intended by the Parties that these USG Clauses shall apply to Seller in such manner as is necessary to reflect the position of Seller as a subcontractor to Buyer, and to ensure Seller’s obligations to Buyer and to the Government, and to enable Buyer to meet its contract obligations to the Federal Government. Consequently, in interpreting and applying USG Clauses flowed down to Seller, and as context requires, the terms “Contractor” and “Offeror” shall mean Seller, the term “Contract” shall mean this Order, and the term “Government”, “Contracting Officer” and equivalent phrases shall mean Buyer and/or Buyer’s Representative. However, as an exception to the foregoing, the terms “Government” and “Contracting Officer” do not change in the following circumstances:

(a) in the phrases “Government Property,” “Government-Furnished Property,” and “Government-Owned Property”;
(b) in the Patent Rights clauses incorporated therein, if any;
(c) when a right, act, authorization or obligation can be granted or performed only by the Government or a Contracting Officer or his/her duly-authorized representative;
(d) when title to property is to be transferred directly to the Government;
(e) when access to proprietary financial information or other proprietary data is required, except as otherwise provided in this Order; and
(f) where specifically modified in this Order.

USG Clauses flowed down by Buyer to Seller pursuant to this provision may require submission of certificates. All such required representations and certifications made by Seller in connection with flow down of USG Clauses, including all such certifications submitted by Seller with its offer, are hereby incorporated in this Order by reference. Seller shall, with respect to applicable USG Clauses flowed down pursuant to this provision, furnish to Buyer (or directly to the Government upon request of Buyer) any certificate required to be furnished by any USG Clause and any certificate required by any further U.S. law, ordinance, or regulation with respect to Seller’s compliance with the terms and provisions of U.S. laws, ordinances, or regulations. As used in this paragraph, the word “certificate” shall include any plan or course of action or record keeping function, as, for example, a small business subcontracting plan for which flow down is required.

Seller shall indemnify and hold Buyer harmless from and against any price reduction in Buyer’s Government Contract, as well as Buyer’s reasonable attorneys’ fees and other direct costs to defend Government Contract claims when said reduction is attributable to the failure of Seller or Seller’s subcontractors to seek payment only of allowable costs and to properly discharge applicable duties under the Truth in Negotiation Act and Cost Accounting Standards clauses incorporated by reference in accordance with this provision.

1. FAR CLAUSES:

In addition to the provisions of Item 1, the following provisions shall apply to the Order as required by the terms of Buyer’s Government Contract, by operation of law or regulation, or by the terms of the specific clauses. The following FAR Clauses are hereby incorporated by reference, as applicable, and made a part of this Order.

(a) APPLICABLE TO ALL ORDERS:

52.203-19 Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements
52.204-7 System for Award Management
52.204-19 Incorporation by Reference of Representations and Certifications
52.209-5 Certification Regarding Responsibility Matters
52.209-7 Information Regarding Responsibility Matters
52.209-9 Updates of Publicly Available Information Regarding Responsibility Matters
52.209-10 Prohibition on Contracting with Inverted Domestic Corporations
52.211-5 Material Requirements
52.215-9 Changes or Additions to Make-or-Buy Program (Alt I and/or II apply if included in Buyer’s Government Contract)
52.222-21 Prohibition of Segregated Facilities
52.222-26 Equal Opportunity and Alt I
52.222-50 Combating Trafficking in Persons [Alt I is applicable if included in Buyer’s Government Contract]
52.223-6 Drug-Free Workplace
52.223-19 Compliance with Environmental Management Systems
52.224-1 Privacy Act Notification
52.225-13 Restrictions on Certain Foreign Purchases
52.227-3 Patent Indemnity
52.242-1 Notice of Intent to Disallow Costs [delete paragraph (a)(2)]]
52.242-4 Certification of Final Indirect Costs
52.242-15 Stop-Work Order [“90 days” is modified to read “180 days” in paragraph (a)]
52.244-6 Subcontracts for Commercial Items
52.245-1 Government Property (Alternates I and II apply if included Buyer’s Government Contract)
52.246-6 Inspection – Time-and-Material and Labor-Hour
52.246-9 Inspection of Research and Development (Short Form)
52.247-64 Preference for Privately Owned U.S.-Flag Commercial Vessels (in Paragraph (c)(2)(i) “20” is changed to “10” and in Paragraph
(c)(2)(ii) “30” is changed to “20”; Alternates I and II apply if in Buyer’s Government Contract

52.247-68 Report of Shipment (REPSHIP)

(b) ORDERS EXPECTED TO EXCEED $3,500 ALSO INCLUDE:

52.222-19 Child Labor – Cooperation With Authorities and Remedies

52.222-54 Employment Eligibility Verification (applies if this Order exceeds $3,500 except for commercial services that are part of the purchase of a COTS item, performed by the COTS provider, and are normally provided for that COTS item)

52.223-18 Encouraging Contractors to Ban Text Messaging While Driving

(c) ORDERS EXPECTED TO EXCEED $10,000 ALSO INCLUDE:

52.222-40 Notification of Employee Rights Under the National Labor Relations Act (applies if Order will be performed wholly or partially in the United States) [DEC 2010]

(d) ORDERS EXPECTED TO EXCEED $15,000 ALSO INCLUDE:

52.222-20 Contracts for Materials, Supplies, Articles and Equipment Exceeding $15,000

52.222-36 Equal Opportunity for Workers with Disabilities

(e) ORDERS EXPECTED TO EXCEED $30,000 ALSO INCLUDE:

52.204-10 Reporting Executive Compensation and First-Tier Subcontract Awards

(f) ORDERS EXPECTED TO EXCEED $35,000 ALSO INCLUDE:

52.209-6 Protecting the Government’s Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment [Seller shall furnish to Buyer the information required by Paragraph (c)]

(g) ORDERS EXPECTED TO EXCEED THE SIMPLIFIED ACQUISITION THRESHOLD OR $150,000 ALSO INCLUDE:

52.202-1 Definitions

52.203-3 Gratuities

52.203-5 Covenant Against Contingent Fees

52.203-6 Restrictions on Subcontractor Sales to the Government

52.203-7 Anti-Kickback Procedures [in paragraph (c)(4) delete “The Contracting Officer may” and replace with “To the extent the Contracting Officer has made an offset in Buyer’s Government Contract or directed Buyer to withhold an amount, Buyer may . . . .”]

52.203-8 Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity

52.203-12 Limitation on Payments to Influence Certain Federal Transactions

52.203-17 Contractor Employee Whistleblower Rights and Requirement to Inform Employees of Whistleblower Rights

52.204-5 Women-Owned Business (Other Than Small Business)

52.215-2 Audit and Records – Negotiation (Alt I, Alt II, and/or III apply if included in Buyer’s Government Contract)

52.215-14 Integrity of Unit Prices [exclude Paragraph (b), but include Paragraph (b) in Alternate I]

52.219-8 Utilization of Small Business Concerns

52.222-17 Nondisplacement of Qualified Workers

52.222-35 Equal Opportunity for Veterans (applies to Orders that exceed $150,000 unless exempted by rules, regulations, or orders of the Secretary of Labor) and Alt I

52.222-37 Employment Reports Veterans (unless exempted by rules, regulations or orders of the Secretary of Labor)

52.227-1 Authorization and Consent

52.227-2 Notice and Consent Regarding Patent and Copyright Infringement

52.242-13 Bankruptcy

52.244-2 Subcontracts

52.248-1 Value Engineering (Alternates I and/or II apply if in Buyer’s Government Contract)

(i) ORDERS EXPECTED TO EXCEED $700,000 ALSO INCLUDE:

52.219-9 Small Business Subcontracting Plan (DEVIATION 2016-O0009) (Also applies to Orders in excess of $1.5 million for construction of a public facility and does not apply to small business concerns; Alt II and Alt III apply if included in Buyer’s Government Contract)

52.219-16 Liquidated Damages – Subcontracting Plan (Also applies to Orders in excess of $1.5 million for construction of a public facility and does not apply to small business concerns)

(j) ORDERS EXPECTED TO EXCEED $5,500,000 ALSO INCLUDE:

52.214-26 Audit and Records – Sealed Bidding

52.215-12 Subcontractor Certified Cost or Pricing Data

52.215-13 Subcontractor Certified Cost or Pricing Data – Modifications

52.215-22 Limitations on Pass-Through Charges – Identification of Subcontract Effort

52.215-23 Limitations On Pass-Through Charges (Alt I applies if in Buyer’s Government Contract

52.242-3 Penalties for Unallowable Costs

52.203-13 Contractor Code of Business Ethics and Conduct (applies where performance period is more than 120 days) [“Government” and “Contracting Officer” do not change]
52.203-14 Display of Hotline Posters (applies unless this Order is for the acquisition of a commercial item or is performed entirely outside the United States)

52.215-15 Pension Adjustments and Asset Reversions (applies to Orders for which certified cost or pricing data will be required)

52.215-18 Reversion or Adjustment of Plans for Postretirement Benefits (PRB) Other Than Pensions (applies to Orders for which certified cost or pricing data will be required)

52.215-19 Notification of Ownership Changes (applies to Orders for which certified cost or pricing data will be required)

52.215-20 Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data (applies to Orders for which certified cost or pricing data will be required Alt I, Alt II, Alt III, and/or Alt IV apply if included in Buyer's Government Contract)

52.215-21 Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data - Modifications (applies if submission of certified cost or pricing data or data other than certified cost or pricing data may be required for modifications; Alt I – IV apply if included in Buyer’s Government Contract)

(k) ORDERS EXPECTED TO EXCEED $10,000,000 ALSO INCLUDE:

52.222-24 Preaward On-Site Equal Opportunity Compliance Evaluation

(l) ORDERS ALSO INCLUDE THE FOLLOWING UNLESS OTHERWISE EXEMPT:

52.203-15 Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009 (applies if the Order is funded in whole or in part with Recovery Act funds)

52.203-16 Preventing Personal Conflicts of Interest (applies to Orders that include a requirement for services by contractor employee(s) that involve acquisition functions closely associated with inherently governmental functions for, or on behalf of, a federal agency or department)

52.204-2 Security Requirements (applies if work involves access to classified information)

52.204-9 Personal Identity Verification of Contractor Personnel (applies if work requires routine access to a Federally-controlled facility and/or to a Federally-controlled information system)

52.204-21 Basic Safeguarding of Covered Contractor Information Systems (applies if the Order may result in federal contract information residing in or transiting through its information system)

52.207-5 Option to Purchase Equipment (applies if Order involves a lease with option to purchase)

52.208-8 Required Sources for Helium and Helium Usage Data (applies if Order involves a major helium requirement)

52.211-15 Defense Priority and Allocation Requirements (applies to Orders that contain a DPAS rating)

52.215-10 Price Reduction for Defective Certified Cost or Pricing Data (Applies if the submission of certified cost or pricing data is required) [Seller shall provide Buyer or, upon Buyer’s request, the Government, with cost or pricing data and execute a Certificate of Current Cost or Pricing Data in substantially the form prescribed in FAR 15.406-2; the term “Contracting Officer” in (c)(1) remains the Government Contracting Officer]

52.215-20 Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data – Modifications (applies if the submission of certified cost or pricing data or data other than certified cost or pricing data may be required for modifications; Alt I – IV apply if included in Buyer’s Government Contract)

52.222-1 Notice to the Government of Labor Disputes (applies if Buyer’s Government Contract involves programs or requirements that have been designated under 48 C.F.R. § 22.101-1(e))

52.222-4 Contract Work Hours and Safety Standards Act - Overtime Compensation (applies where the Order requires or involves the employment of laborers or mechanics; in addition, Buyer may withhold or recover from Seller any sums the Contracting Officer withholds or recovers from Buyer because of a violation of this provision by Seller or Seller’s subcontractor)

52.222-29 Notification of Visa Denial (applies if Seller is required to perform in or on behalf of a foreign country)

52.222-41 Service Contract Labor Standards (applies if the Order exceeds $2,500 and is subject to the Service Contract Labor Standards statute)

52.222-43 Fair Labor Standards Act and Service Contract Labor Standards—Price Adjustment (Multiple Year and Option Contracts) (applies if the Order is subject to FAR 52.222-41, Service Contract Labor Standards, and is a multiple-year contract or contract with options to renew which exceeds SAT)

52.222-55 Minimum Wages under Executive Order 13658 (applies if the Order is subject to the Service Contract Labor Standards statute or the Wage Rate Requirements statute and is to be performed in whole or in part in the United States)

52.222-62 Paid Sick Leave Under Executive Order 13706 (applies if the Order is subject to the Service Contract Labor Standards statute or the Wage Rate Requirements statute and is to be performed in whole or in part in the United States)

52.223-5 Pollution Prevention and Right-To-Know Information (applies to Orders that provide for performance, in whole or in part, on a
52.229-7 Notice of Radioactive Materials (applies to Orders that involve servicing of items containing radioactive material requiring specific licensing under the regulations issued pursuant to the Atomic Energy Act of 1954 or other radioactive matter not requiring specific licensing where the specific activity is greater than 0.002 microcuries per gram or the activity per item equals or exceeds 0.01 microcuries) [insert “60” in the first sentence of Paragraph (a)]

52.229-11 Ozone-Depleting Substances and High Global Warming Potential Hydrofluorocarbons (applies if the Order involved manufactured end products that may contain or be manufactured with ozone-depleting substances)

52.229-12 Maintenance, Service, Repair, or Disposal of Refrigeration Equipment and Air Conditioners (applies to Orders that include the maintenance, service, repair, or disposal of refrigeration equipment or air conditioners)

52.229-2 Privacy Act (applies if the Order requires the design, development, or operation of a system of records on individuals)

52.229-3 Privacy Training (applies if the Order involves access to a system of records, handling of personally identifiable information, or work connected with a system of records)

52.229-5 Buy American Act—Supplies (applies if the clause is included in Buyer’s Government Contract unless specifically exempted by Buyer in writing)

52.229-7 Waiver of Buy American Act for Civil Aircraft and Related Articles (applies if the Order is for civil aircraft and related articles and the value is less than $191,000)

52.229-8 Duty-Free Entry (applies if, under this Order, supplies identified in the Schedule to be accorded duty-free entry will be imported into the customs territory of the United States or other foreign supplies in excess of $15,000 may be imported into the customs territory of the United States) [Change “20 calendar days” to “30 calendar days” in Paragraph (c)(1), and “10 calendar days” to “20 calendar days” in Paragraph (c)(2)]

52.229-26 Contractors Performing Private Security Functions Outside the United States (applies if the clause is included in Buyer’s Government Contract unless specifically exempted by Buyer in writing)
require security of information technology, and/or are for the design, development, or operation of a system of records using commercial information technology services or support services)

52.243-6 Change Order Accounting (applies if the Order involves supply and research and development work of significant technical complexity and numerous changes are anticipated)

52.245-9 Use and Charges (applies if included in Buyer’s Government Contract)

52.247-63 Preference for U.S.-Flag Air Carriers (applies to Orders involving international air transportation)

52.247-67 Submission of Transportation Documents for Audit (applies when Seller is a first-tier supplier and transportation will be reimbursed as a direct charge to the Order) [Delete Paragraph (a)(2)]

52.251-1 Government Supply Sources (applies when the Seller is authorized to acquire supplies or services from a government supply source)

2. COST ACCOUNTING STANDARDS:
The following provisions pertaining to Cost Accounting Standards are applicable as stated in the Purchase Order.

52.230-2 Cost Accounting Standards
52.230-3 Disclosure and Consistency of Cost Accounting Practices
52.230-4 Disclosure and Consistency of Cost Accounting Practices—Foreign Concerns
52.230-5 Cost Accounting Standards—Educational Institution
52.203-6 Administration of Cost Accounting Standards

3. NFS CLAUSES:
If the Purchase Order identifies a NASA contract number, the following NFS clauses, in addition to or in lieu of FAR clauses set forth above, are hereby incorporated by reference, as applicable, and made a part of this Order. Any NFS clauses without a specified effective date are effective as of the date of the corresponding FAR clause.

(a) APPLICABLE TO ALL ORDERS:
1852.203-71 Requirement to Inform Employees of Whistleblower Rights
1852.225-70 Export Licenses
1852.225-71 Restrictions on Funding Activity with China
1852.225-72 Restriction on Funding Activities with China - Representation
1852.227-11 Patent Rights - Ownership by the Contractor
1852.227-14 Rights in Data - General
1852.227-17 Rights in Data - Special Works
1852.227-72 Designation of New Technology Representative and Patent Representative
1852.228-75 Minimum Insurance Coverage
1852.232-80 Submission of Vouchers for Payment
1852.245-70 Contractor Requests for Government Furnished Property
1852.245-72 Liability for Government Property Furnished for Repair or Other Services (applies to Orders for repair, modification, rehabilitation, or other servicing of government property)

1852.246-73 Human Space Flight Item

(b) APPLIES IF THE VALUE OF THE ORDER IS EXPECTED TO EXCEED $100,000:
1852.244-70 Geographic Participation in the Aerospace Program

(c) APPLIES IF THE VALUE OF THE ORDER IS EXPECTED TO EXCEED $500,000:
1852.223-75 Major Breach of Safety or Security

(d) APPLIES IF THE VALUE OF THE ORDER IS EXPECTED TO EXCEED $5,000,000:
1852.203-70 Display of Inspector General Hotline Posters

(e) APPLIES IF THE VALUE OF THE ORDER IS EXPECTED TO EXCEED $50,000,000:
1852.234-2 Earned Value Management System (Alt I applies if the value of the subcontract is less than $50 million)

(f) APPLICABLE AS INDICATED:
1852.204-75 Security Classification Requirements (applies if work to be performed under an Order requires security clearance)
1852.204-76 Security Requirements for Unclassified Information Technology Resources (applies if the Contract requires contractors to have physical or electronic access to NASA's computer systems, networks, IT infrastructure or use information systems to generate store, process, or exchange data with NASA)
1852.208-81 Restrictions on Printing and Duplicating (applies where the Order requires printing or copying in excess of 5,000 production units)
1852.209-71 Limitation of Future Contracting (applies if the Order may give rise to a potential organizational conflict of interest)
1852.211-70 Packaging, Handling and Transportation (applies where the Order is for deliverable items, including software, designated as Class I (mission essential), Class II (delicate or sensitive), or Class III (requires special handling or monitoring)
1852.213-70 Offeror Representations and Certifications—Other Than Commercial Items (applies to a simplified acquisition exceeding the micro-purchase threshold that is for other than commercial items)
1852.216-74 Estimated Cost and Fixed Fee (applies to cost-plus-fixed-fee Order)
1852.216-75 Payment of Fixed Fee (applies to cost-plus-fixed-fee Order)
1852.216-76 Award Fee for Service Contracts (applies to an award-fee Order when the contract deliverable is the performance of a service)
1852.216-77 Award Fee for End Item Contracts (applies to an award-fee Order where the contract deliverables are hardware or other end items for which total contractor performance cannot be measured until the end of the contract)
1852.216-80 Task Ordering Procedure (applies to an indefinite-delivery task order Order; if the Order does not require 533M reporting, use the clause with Alternate I)
1852.216-81 Estimated Cost (applies to a cost-no-fee Order that is not a cost sharing or facilities contract)
1852.216-84 Estimated Cost and Incentive Fee (applies to a cost-plus-incentive-fee Order)
1852.216-85 Estimated Cost and Award Fee (applies to an award-fee Order; if the Order includes performance incentives, Alternate I applies)
1852.216-88 Performance Incentive (applies when the primary Order deliverable is hardware and the total estimated cost and fee is greater than $25 million)
1852.216-89 Assignment and Release Forms (applies when FAR 52.216-7, Allowable Cost and Payment, is included in the Order)
1852.223-70 Safety and Health Measures and Mishap Reporting (applies to the Order when work will be conducted completely or partly on federally controlled facilities)
1852.223-71 Authorization for Radio Frequency Use (applies when radio frequency equipment authorization is required for a device involved in contract performance)
1852.223-72 Safety and Health (Short Form) (applies to the Order exceeds the SAT and work will be conducted completely or partly on a federally controlled facility)
1852.223-73 Safety and Health Plan (applies to the Order exceeds the SAT, work will be conducted completely or partly on a Federally-controlled facility, and the safety and health plan will be evaluated in source selection as approved by the source selection authority)
1852.223-74 Drug and Alcohol-Free Workforce (applies to the Order in which an employee in a sensitive position performs work)
1852.223-76 Federal Automotive Statistical Tool Reporting (applies where the Order is required to operate government-owned or -leased motor vehicles)
1852.227-70 New Technology - Other than a Small Business Firm or Nonprofit Organization (applies to the Order that is not a small business or nonprofit organization)
1852.227-71 Requests for Waiver of Rights to Inventions (applies to the Order containing NASA FAR Supp. 1852.227-70)
1852.227-84 Patent Rights Clauses (applies to the Order when in solicitations for experimental, developmental, or research work to be performed in the United States when the eventual awardee may be a small business or a nonprofit organization)
1852.227-85 Invention Reporting and Rights – Foreign (applies to the Order where performance of research, experimental design, engineering, or developmental work is contemplated)
1852.227-86 Commercial Computer Software - License (applies to the Order where it is considered appropriate for the acquisition of existing computer software)
1852.227-88 Government-Furnished Computer Software and Related Technical Data (applies to the Order when involves use of government-furnished computer software and/or related technical data in any way)
1852.228-71 Aircraft Flight Risks (applies in a cost-reimbursement Order for the development, production, modification, maintenance, or overhaul of aircraft or furnishing of aircraft)
1852.228-76 Cross-Waiver of International Space Station Activities (applies to the Order where work involves Protected Space Operations relating to the International Space Station and the value is above the SAT)
1852.228-77 Cross-Waiver of Liability for Science or Space Exploration Activities Unrelated to International Space Station (applies to the Order where work involves launches for science or space exploration activities unrelated to the International Space Station and the value is above the SAT)
1852.231-81 Contract Funding (applies where FAR 52.232-22, Limitation of Funds, is included in the Order)
1852.234-1 Notice of Earned Value Management System (applies to the Order involving development or production and institutional projects with a value exceeding $20,000,000 and other major acquisitions as designated by a project manager under OMB Circular A-11)
1852.235-70 Center for Aerospace Information (applies to Orders involving research and development work)
1852.235-71 Key Personnel and Facilities (applies to the Order predicated upon possession of special capabilities)
1852.235-73 Final Scientific and Technical Reports (applies to a research and development contracts and cost-reimbursement supply subcontract involving research and development work)
1852.235-74 Additional Reports of Work—Research and Development (applies to a research and development Order and cost-reimbursement supply subcontract involving research and development work when periodic reports are required for monitoring subcontract performance)
1852.236-73 Hurricane Plan (applies to a construction Order at sites that experience hurricanes)
1852.237-70 Emergency Evacuation Procedures (applies to the Order for on-site support services where emergency evacuations of the NASA installation may occur, e.g., snow, hurricanes, tornadoes, earthquakes or other emergencies)
1852.237-71 Pension Portability (applies to a service Order if the prime contract requires pension portability, subcontracted labor dollars exceed $2,500,000 and ten percent of the total prime contract labor dollars, and additional conditions are met)
1852.237-72 Access to Sensitive Information (applies to the Order that may involve access to sensitive information)
1852.237-73 Release of Sensitive Information (applies to the Order that may involve access to sensitive information)
1852.242-71 Travel Outside of the United States (applies to a cost-reimbursement Order where a contractor may travel outside of the United States and it is appropriate to require government approval) [substitute “45 days” for “30 days” in Paragraph (b)]
1852.242-72 Denied Access to NASA Facilities (applies to the Order will be working onsite at a NASA facility)
1852.242-73 NASA Contractor Financial Management Reporting (applies to the Order when any of the NASA Form 533 series of report is required)
1852.242-78 Emergency Medical Services and Evacuation (applies to the Order that requires travel outside the
1852.245-71 Installation-Accountable Government Property (applies to the Order when government property is made available for work on a NASA installation and the government maintains accountability for the property)

1852.245-73 Financial Reporting of NASA Property in the Custody of Contractors (applicable to cost reimbursement contracts and in all contracts in which the contractor has custody of NASA owned-property with a value of $10 million or more, unless all property to be provided is subject to the clause at 1852.245–71, Installation-Accountable Government Property)

1852.245–74 Identification and Marking of Government Equipment (applies to the Order that requires the delivery of government equipment)

1852.245-75 Property Management Changes (applies to the Order that provides for progress payments or include FAR Part 45 property clauses)

1852.245-76 List of Government Property Furnished Pursuant to FAR 52.245-1 (applies to the Order where contractor is accountable for government property)

1852.245-77 List of Government Property Furnished Pursuant to FAR 52.245-2 (applies to the Order that incorporates FAR 52.245–2, Government Property Installation Operation Services)

1852.245-78 Physical Inventory of Capital Personal Property (applies to the Order that provides government property)

1852.245-79 Records and Disposition Reports for Government Property with Potential Historic or Significant Real Value (applies to the Order when, after consultation with the center Historic Preservation Officer, it is determined that the items acquired for or produced by the Order are likely to have historic significance or increased value due to their use in support of NASA projects and program)

1852.245-80 Government Property Management Information (applies to the Order when it is known, or there is a reasonable chance, that Government property will be provided to the subcontractor for contract performance)

1852.245-81 List of Available Government Property (applies to the Order when government property is made available for contract performance)

1852.245-82 Occupancy Management Requirements (applies to the Order that requires performance on or in any NASA Center, installation, facility, or other NASA-owned property)

1852.245-83 Real Property Management Requirements (applies to the Order that involves the acquisition, construction, modification, demolition, or management of real property)

1852.246-72 Material Inspection and Receiving Report (applies to the Order that provides for separate and distinct deliverables, even if the deliverables are not separately priced)

1852.247-71 Protection of the Florida Manatee (applies to the Order that involves deliveries or vessel operations, dockside work, or disassembly functions that involve the use of waterways inhabited by manatees)