ORBITAL ATK
ORBITAL SCIENCES CORPORATION
PURCHASE ORDER (Government)
TERMS AND CONDITIONS

1. ACCEPTANCE – This Commercial Purchase Order (“Order”) constitutes an offer by BUYER which is accepted by SELLER solely in accordance with the terms set forth herein and is effective upon the earlier of SELLER’s (i) signing and returning the acknowledgement copy hereof or (ii) commencement of work described herein or (iii) delivery, in whole or in part, of deliverable products or items (“Products”) set forth under this Order. This Order integrates, merges, and supersedes any prior or contemporaneous offers, negotiations, communications, (including any terms found in any SELLER form) and agreements concerning the subject matter hereof and constitutes the entire agreement between the parties. Unless expressly accepted in writing by BUYER, additional or differing terms or conditions proposed by SELLER or included in SELLER’s acknowledgment are objected to by BUYER and have no effect.

2. ADDENDA – The SELLER acknowledges that it has thoroughly examined all schedules, exhibits, specifications, statements of work drawings, data, information and riders which may be attached hereto and referenced herein as part of this Order. The SELLER further acknowledges that it has available to it all required specifications, drawings and data incorporated in this Order, and that such specifications, drawings and data are complete and adequate to enable SELLER to perform all work required herein in accordance with all technical specifications, requirements documents and delivery schedule set forth herein. SELLER shall strictly comply with the requirements set forth in all Addenda.

3. APPLICABLE LAW/DISPUTES – This Order shall be construed in accordance with and governed by the laws of the Commonwealth of Virginia without giving effect to the provisions, policies, or principles thereof relating to choice or conflict of laws. All disputes arising out of or related to this Order shall be adjudicated in a court of competent jurisdiction within the Commonwealth of Virginia. The parties each agree to irrevocably submit and consent to the exclusive jurisdiction and venue of courts located in Virginia and waive their rights to challenge the personal jurisdiction of those courts over it. SELLER shall be obligated as a material condition of this Order to continue performing all of its obligations under the Order (including any proposed changes which are the subject of a dispute) in a diligent and timely manner notwithstanding a dispute between the parties. This clause shall survive completion of and/or termination, in any manner whatsoever, of this Order.

4. ASSIGNMENT AND SUBCONTRACTING –
   a. No assignment of any rights, including rights to monies due hereunder or delegation of any duties under this Order shall be binding upon BUYER unless its written consent has been first obtained. This Order shall be binding upon and shall inure to the benefit of the parties and their permitted successors and assigns.
   b. The SELLER shall not procure from a third party any completed or substantially completed Products without BUYER’s prior written approval.

5. BUYER APPROVAL – BUYER approval or inspection of documents and/or deliverables (including, without limitation, designs, data, and analysis), shall not relieve the SELLER of the responsibility for any error, deficiency, or noncompliance which may exist in the documents and/or deliverables. The SELLER shall be responsible for meeting all Order requirements irrespective of any BUYER approval or inspection.

6. BUYER FURNISHED PROPERTY – Unless otherwise provided in this Order, all property provided to SELLER by BUYER shall be provided “AS IS” and without warranty. While in the custody of SELLER, SELLER shall manage, maintain, and preserve such property in accordance with good commercial practice. BUYER shall have access at all reasonable times to the premises on which such BUYER property is located for the purpose of inspecting or retrieving that property when necessary. Title to any property, including material, tools and/or equipment either (i) to be furnished to SELLER by BUYER for this Order or (ii) to be acquired by SELLER for performance of this Order, shall remain with or shall vest in BUYER. Title to such property shall not be affected by incorporation or attachment to other property. Use of such property other than in performance of this Order must be authorized in writing by BUYER in advance. With the exception of reasonable wear and tear, SELLER shall bear the risk of loss for such property. At the completion or termination of this Order, or when instructed by BUYER, SELLER shall deliver such property to BUYER, F.O.B. SELLER’s address. BUYER shall not be liable for any late delivery of any such equipment or delivery of such equipment that is in a condition not suitable for its intended purpose.

7. CHANGES –
   a. All amendments, directions and changes to this Order must be identified as such in writing and executed by an authorized representative of BUYER.
   b. BUYER may at any time by a written direction (via a Purchase Order modification signed by an authorized official) make unilateral changes within the general scope of this Order in any one or more of the following: (i) statement of work, drawings, designs, specifications (ii) method of shipping or packing (iii) delivery schedule and destination (iv) increases or decreases in the scope of this Order (v) place of inspection and/or final inspection, or (vi) amount of BUYER furnished equipment. If any such change causes an increase or decrease in the cost of or the time required for the performance of this Order, an equitable adjustment shall be made in the price or delivery schedule or both, and this Order shall be modified in writing accordingly. Any claim by SELLER for adjustment under this provision must be submitted in writing within twenty (20) calendar days from the date that the change is directed together with pertinent cost or pricing data sufficient to permit Buyer to evaluate any such claim. Where the cost of property made obsolete or excess as a result of change is included in the SELLER’s claim for adjustment (and supported by inventory schedules to be submitted within three (3) months from the date of change), the BUYER shall have the right to prescribe the manner of disposition or such property. Failure of the parties to agree upon any adjustment to be made under this clause shall not excuse SELLER from immediately proceeding with the Order as changed or as directed by an authorized representative of the BUYER.
   c. Issuance of information, advice, approvals or instructions by a representative of BUYER other than an authorized representative of BUYER’s Purchasing Department shall not modify BUYER’s or SELLER’s rights and obligations hereunder or be the basis for a price/schedule adjustment.
   d. Any SELLER requested waiver or deviation to Product specifications, form, fit or function requires BUYER’s express written approval.
   e. The SELLER shall notify BUYER of any changes in the product and/or process, changes of critical suppliers and any changes of manufacturing facility location used to manufacture the product being procured. The SELLER shall flow these and all applicable flow downs to their suppliers. SELLER shall also notify Buyer of any pending or contemplated future action to discontinue Work purchased pursuant to this PO and shall provide Buyer with a “Last Time Buyer Notice” at least twelve (12) months prior to the actual discontinuance.

8. COMPLIANCE WITH LAWS - SELLER shall comply with all applicable laws and ordinances and all orders, rules and regulations thereunder. Notwithstanding any other provision of this Order, SELLER shall indemnify and hold BUYER harmless from, and reimburse it for any and all costs, damages and expenses (including attorney’s fees) suffered or occasioned to it through any failure of SELLER to comply with this provision. Any breach of this clause shall be deemed a material breach of this Order.

9. NONDISCRIMINATION - SELLER represents and warrants that it will not discriminate against any employee or applicant for employment because of race, color, religion, disability, sex, national origin, age, physical or mental disability, veteran status, genetic characteristic or any other unlawful criteria and that it shall comply with all applicable laws.
against discrimination and all applicable rules, regulations and orders issued thereunder or in implementation thereof. BUYER is a Government contractor. If applicable, the Equal Opportunity Clauses set forth in 41 C.F.R. §§60-1.4(a), 60-250.5(a), 60-300.5(a) and 60-741.5(a) and the employee notice found at 29 C.F.R. Part 471, Appendix A to Subpart A are incorporated by reference herein. Finally, but also only if applicable, SELLER shall: (1) abide by the requirements of 41 C.F.R. §60-300.5(a); this regulation prohibits discrimination against disabled veterans, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans; and (2) abide by the requirements of 41 C.F.R. §60-741.5(a); this regulation prohibits discrimination against qualified individuals on the basis of disability, and requires affirmative action by prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities.

10. CONFIDENTIAL RELATIONSHIP – Except as required by law or regulation, or performance of this Order, SELLER shall not in any manner advertise or publish or release for publication any statement (including technical data) disclosing the existence or terms of this Order without Buyer’s advance written consent. To the extent a disclosure is required by law or regulation, SELLER shall submit the proposed disclosure to Buyer at least seven business days in advance of its release.

11. DELIVERY –

a. SELLER’s timely performance is a material term of this Order. SELLER shall notify BUYER as soon as practicable if SELLER believes that a delivery will be late.

b. The SELLER is not authorized to deliver product in advance of delivery schedule requirements set forth in this Order without BUYER’s advance written approval.

c. If BUYER agrees, in writing, to accept any Product delivery after the delivery date specified in Order, SELLER shall make shipment by the most expeditious means via premium transportation at no additional cost to BUYER.

d. Acceptance of deliveries under this clause 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 the SELLER’s obligation to make future deliveries in accordance with the delivery schedule as set forth in this Order.

e. The SELLER shall furnish sufficient labor and management personnel, plant and equipment and any other resources required in performance of this Order and shall work such hours, including overtime, additional shifts, weekend and holiday work, as may be required to ensure compliance with the delivery dates as set forth herein at no change in Order price.

12. INSPECTION –

a. All work to be delivered and services to be performed under this Order shall be subject to inspection and test by BUYER and its customers at all reasonable times and places. If any inspection or test is made on SELLER’s premises, SELLER shall, without additional charge, provide BUYER with all information, facilities and assistance necessary for safe and convenient inspection.

b. All work shall be subject to inspection and Final Acceptance at Destination notwithstanding any payment or other prior inspections.

c. BUYER may reject and hold at SELLER’s expense, subject to SELLER’s disposal, all work that does not conform to applicable specifications, drawings, samples, or descriptions. Without limiting any other rights or remedies it may have as provided herein or at law or equity, BUYER, at its option, may (i) require SELLER to repair or replace at SELLER’s expense any work which fails to meet any requirement of this Order; (ii) require SELLER to refund the price of any such work; (iii) elect to retain and repair any such work with an appropriate reduction from the price otherwise due SELLER to offset BUYER’s costs of affecting necessary correction; or (iv) recover by offset or otherwise for any and all damages and costs incurred by BUYER as a result of such rejection. Neither Final Acceptance, payment, nor any limitations contained in Article 30 “Warranty”, shall relieve SELLER from responsibility for the correction or replacement of defective Products arising due to fraud, gross mistakes amounting to fraud, or for latent defects.

d. SELLER shall maintain an inspection system suitable to BUYER and in compliance with any additional quality standard incorporated in this Order.

13. INTELLLECTUAL PROPERTY –

a. Drawings, data, designs, inventions and other technical information supplied by BUYER in connection herewith will be deemed and shall remain BUYER’s property and shall be held in confidence by SELLER. Upon completion of this Order, SELLER shall promptly return these items to BUYER together with all copies or reprints thereof in SELLER’s possession or control, and SELLER shall make no further use of any such information derived therefrom without BUYER’s prior written consent.

b. SELLER agrees that BUYER shall be the owner of all new inventions, technology, designs, works of authorship, mask works, technical information, computer software (including source code, executables databases and applicable technical documentation), business information and other information first conceived, developed or otherwise generated in the performance of this Order. Upon BUYER’s request, SELLER shall assign to BUYER all right, title and interest of the SELLER or its employees for any of the above, and to perform all acts (at BUYER’s expense) and execute all papers necessary to vest in BUYER full right, title and interest therein. If any pre-existing intellectual property of SELLER is included in any of the above, SELLER grants to BUYER an irrevocable, nonexclusive, worldwide, royalty-free license to: (i) make, have made, sell, offer for sale, use, execute, reproduce, display, perform, distribute (internally or externally) copies of, and prepare derivative works based upon, such pre-existing materials and derivative works thereof; and (ii) authorize others to do any, some or all of the foregoing.

c. If at any time during the performance of this Order SELLER suspends business operations or business operations or becomes bankrupt or insolvent or if at any time within five (5) years from the end date of this Order, SELLER, for any reason, discontinues acceptance of follow-on orders for Products ordered hereunder, BUYER shall have a royalty-free, worldwide, irrevocable, nonexclusive license to use and license others to use SELLER’s software, patents, designs, processes, know-how, drawings, and technical data relating to the supplies and services as defined in this Order solely for purposes of producing and selling Products required to be supplied by the BUYER’s existing or follow-on orders with its customers.

14. EXPORT CONTROL –

a. SELLER hereby represents that neither SELLER nor any parent, subsidiary or affiliate of SELLER is included on any of the restricted party lists maintained by the U.S. Government, including the Specially Designated Nationals List administered by the U.S. Treasury Department’s Office of Foreign Assets Control (“OFAC”), Denied Parties List, Unverified List or Entity List maintained by the U.S. Commerce Department’s Bureau of Industry and Security (“BIS”), or the List of Statutorily Debarred Parties maintained by the U.S. State Department’s Directorate of Defense Trade Controls, or the consolidated list of asset freeze targets designated by the United Nations, European Union, and United Kingdom. SELLER shall immediately notify BUYER in writing, or any parent, subsidiary or affiliate of SELLER becomes listed on any of the above lists or if SELLER’s export privileges are otherwise denied, suspended or revoked in whole or in part by any U.S. or non-U.S. government entity or agency.

b. Notwithstanding any other provisions in this Order, the SELLER understands and agrees that certain restrictions are placed on the export of certain data, hardware and services in accordance with United States law. SELLER agrees that it will comply with those restrictions. SELLER shall further notify BUYER if any
delivered under this Order is restricted by those laws. As necessary to support this Order, the SELLER at its own expense, shall prepare any necessary documentation and shall request any necessary United States Government approval. In the event that approval to export such Data or hardware is denied, significantly delayed or returned without action or contains restrictions or limitations which prohibit the transfer of required data or hardware by the United States Department of State or Department of Commerce, both BUYER and SELLER shall not be considered to have breached its contractual responsibilities with respect to this Order. In such an event, the Order may be deemed terminated for convenience in accordance with clause 29, Termination, of this Order.

c. In the event SELLER furnishes services to BUYER that are subject to trade restrictions, or SELLER personnel are asked to attend discussions involving information subject to trade restrictions, SELLER hereby certifies that any and all SELLER representative(s) involved therein shall be a “U.S. Person” as set forth in clause 120.15 of the International Traffic in Arms Regulations (“ITAR”). The SELLER acknowledges that it understands the use or sale of such a “U.S. Person” as defined above, no SELLER personnel shall be exposed to ITAR and/or Export Administration Regulation controlled technical data, unless otherwise covered under an appropriate Export License, Technical Assistance Agreement, ITAR Exemption or Exception.

15. FORCE MAJEURE – In the event that the SELLER is reasonably delayed at any time during the performance of this Order by acts of God or the public enemy, Government action in its sovereign capacity, labor strikes, epidemic, lockouts, fire, sabotage or other sever and unforeseen causes which are beyond the control and without the fault or negligence of the SELLER or its suppliers, SELLER shall promptly notify BUYER and the delivery dates set forth in this Order may be extended for a period equivalent to the time lost by reason of any or all of the aforementioned causes. However, no such extension shall be granted by BUYER unless the SELLER notifies BUYER within twenty-four (24) hours after the SELLER is made aware of the occurrence of delay or of a potential delay. In such an event, the SELLER shall submit to BUYER a written claim thereof together with information sufficient to support such claim, including written evidence of the period of such delay, within twenty (20) calendar days after each such act or occurrence. Such delivery date extension shall be the SELLER’s sole remedy for such delays under the performance of this Order. BUYER shall be excused from performance and shall not be in default in respect of any obligation hereunder to the extent that the failure to perform such obligation is due to a Force Majeure event.

16. HAZARDOUS MATERIAL AND SAFETY – The SELLER warrants that prior to the delivery or transfer of any chemical substance or hazardous material to BUYER, SELLER shall provide BUYER with the appropriate Material Safety Data Sheet (“MSDS”) prior to such delivery of any such chemicals or hazardous materials. The SELLER shall comply with all BUYER safety and health policies and procedures while on site at any BUYER facility.

17. INDEMNIFICATION AND INSURANCE – SELLER shall take all necessary precautions to prevent occurrence of any injury, including death, to any person or any damage to any property arising out of any acts or omissions of SELLER, its agents, employees or subcontractors. SELLER shall indemnify BUYER (and its officers, agents, employees and subcontractors) for, and hold BUYER (and its officers, agents, employees and subcontractors) harmless from, any liability, losses, damages, claims and expenses arising out of or connected with any act or omission of SELLER, its agents, employees, or subcontractors except for injury or damage due solely to SELLER’s negligence or other fault. SELLER shall maintain such liability, property damage and workman’s compensation insurance, as will be required to protect BUYER from any of said risks and any claims under applicable workmen’s compensation acts. At a minimum, the SELLER will maintain Commercial General Liability Insurance protection in an amount not less than $10,000,000 combined single limit coverage per occurrence, as recorded on a submitted Certificate of Insurance, which shall remain in force through Order completion. BUYER must be notified 30 calendar days in advance of any change which is not compliant with the listed requirements. In addition, if SELLER operations involve the use of a motor vehicle in the performance of this Order, a minimum of $500,000 Business Automobile Liability Insurance must be maintained through Order completion. SELLER shall name BUYER as Additional Insured on all insurance types except workman’s compensation and shall provide their certification of insurance reflecting this endorsement at the time of order placement. This clause shall survive completion of and/or termination, in any manner whatsoever, of this Order.

18. INTELLECTUAL PROPERTY INDEMNITY

a. SELLER shall defend BUYER (and its offices, agents, employees and subcontractors), BUYER’s customers, and any subsequent owners, users or operators of the Products delivered under this Order against all claims and in all proceedings alleging violation of another party’s intellectual property rights in the manufacture or sale of any Products delivered or work performed under this Order, and SELLER shall indemnify and hold such parties harmless from any resulting liabilities and losses SELLER’s obligations shall not apply to infringement caused by designs developed and furnished by BUYER or to any alleged infringement arising from the use or sale of Products delivered under this Order in combination with items not delivered by SELLER if such alleged infringement would not have occurred from the use or sale of such items solely for which they were designed or sold to BUYER.

b. If the use or sale of any Product, in respect to which SELLER indemnifies BUYER, is enjoined as a result of any action or proceeding, SELLER, at no expense to BUYER, shall obtain for BUYER and its customers, the right to use and sell said Product or shall substitute an equivalent item acceptable to BUYER and extend this indemnity with respect to such equivalent Product. In the event that SELLER is unable to secure such right of use or sale for BUYER and/or its customer, or to secure an equivalent Product as a substitute, SELLER shall indemnify BUYER and its customers for any and all losses or damages sustained by reason of such injunction.

c. This clause shall survive completion of and/or termination, in any manner whatsoever, of this Order.

19. LIMITATIONS OF LIABILITY –

a. Notwithstanding any other provision of this Order, BUYER shall have no liability for any costs, damages or other liabilities, whether arising from claims under this Order or from claims arising in tort, at law or in equity, apart from payments due in accordance with the terms hereof. SELLER shall not be entitled to any indirect, punitive, incidental, special or consequential damages.

b. SELLER’s maximum liability to BUYER shall not exceed the total firm fixed price of this Order, except in the event of SELLER’s fraud, or in the event of any SELLER obligation under Article 12 (“Inspection”) Article 30 (“Warranty”) or under any provision requiring Seller to indemnify Buyer or maintain insurance. There shall be no limitation of liability for the BUYER’s reasonable legal fees and expenses if BUYER is obligated to assume its own defense due to the SELLER’s breach of its obligation to defend BUYER under Article 18, Intellectual Property Indemnity, herein.

c. This clause shall survive completion of and/or termination, in any manner whatsoever, of this Order.

20. NON-REPRESENTATION – It is understood and agreed that the SELLER is an independent contractor in the performance of its obligations hereunder and that its employees shall not be deemed to be BUYER’s employees under any circumstance. The SELLER shall have no power or right, express or implied, to commit, obligate or make any representations on behalf of BUYER.

21. NO WAIVER –The rights and remedies provided to BUYER under this Order shall be cumulative and in addition to any rights and remedies provided by law or equity. The failure of BUYER in any one or more instances to insist upon exact performance of any of the provisions of this Order or to exercise any right or privilege shall not be construed as thereafter waiving any provisions, rights or privileges which shall continue and remain in full force and effect.

22. BUYER INSIGHT - For BUYER’s customers to perform their
management role, they must be provided insight into certain Seller tasks and milestones. Such insight shall include the attendance at meetings, reviews and tests; and obtaining or reviewing certain documents. The SELLER shall allow BUYER’s customers the same amount of insight into the SELLER’s operations as is required by the BUYER in accordance with this Order. Notwithstanding the foregoing, under no circumstance shall the SELLER act upon any direction given to it by any BUYER customer.

23. ORDER OF PRECEDENCE – The following order of precedence shall govern in the event of a conflict between any provisions contained in this Order: (i) provisions contained in the text of the Order excluding Attachments; (ii) Terms and Conditions; (iii) the Specifications and/or Statement of Work and (iv) other provisions of the Order, whether attached or incorporated by reference. The headings of Articles clauses herein are used for convenience and ease of reference only and do not limit the scope or intent of the Article nor shall any priority be implied by the order in which they appear in the Order.

24. PACKING, MARKING AND SHIPPING –
   a. SELLER shall pack, mark and deliver all Products in accordance with the requirements of this Order so as to be in compliance with transportation regulations and the best commercial practice for protection and shipment and shall secure the most advantageous transportation service and rates consistent therewith. Any expense incurred by BUYER as a result of improper preservation, packaging, packing, marking or method of delivery shall be reimbursed by SELLER. A packing list showing this Order number, part numbers, line item and serial number shall be included with each delivery, and each container shall be marked to show the Order number. SELLER shall provide the original Bill of Lading with Order number to BUYER as instructed. Any transportation charges paid by SELLER for which SELLER is entitled to reimbursement shall be shown on SELLER’s invoice as a separate line item with the received freight bill attached to the invoice.
   b. The SELLER shall be solely liable for packaging design and all charges for design, boxing, drayage, bundling, dunnage, containers, preparation, packing, crating, cartage or storage as described herein shall be included in the Order price. BUYER reserves the right to specify the mode of shipment. The SELLER shall use FAA approved waivers for non-radiographic inspection.

25. INVOICING AND PAYMENT – SELLER shall submit separate invoices to BUYER for each delivery made by SELLER under this Order. Unless otherwise specified in this Order, an invoice shall not be issued prior to delivery and payment will not be made by BUYER prior to Final Acceptance/inspection of conforming items and submission of a proper invoice.

26. PRICES – Unless otherwise stated on the face of this Order, SELLER represents that the price of this Order: (i) includes all federal, state or local taxes, fees, excises, duties, and/or charges which are now or may be hereafter imposed with respect to the manufacture and sale of Products herein; and (ii) includes all charges or costs associated with the suitable packaging, packaging, preparation for delivery, crating, or cartage of the Products ordered. The SELLER warrants that the price stated in this Order is not greater than that charged the SELLER’s most favored customer for like quantities and conditions of sale. The SELLER shall refund any amount paid by SELLER which is in excess of the price charged any of the SELLER’s other customers for the same or similar supplies within one (1) year of the date of this Order.

27. RESOLUTION OF CONFLICTS AND DISCREPANCIES – The SELLER shall comply with this Order and all referenced documents as written. SELLER shall request clarification of any discrepancies and/or inconsistencies with BUYER in a timely manner and before proceeding with any work in question. If the SELLER determines during the performance of this Order, that any portion of this Order is inaccurate, inconsistent or incomplete, it shall promptly notify BUYER in writing specifying full particulars and request resolution before proceeding with the work effort in question. In the event that the SELLER fails to contact BUYER in a timely manner or proceeds with any work in question to resolve said discrepancies and/or inconsistencies, the SELLER shall be deemed to have proceeded on its own accord and shall be solely responsible for any errors and associated cost and/or schedule impacts resulting therefrom. The SELLER acknowledges that it is an expert fully competent in all phases of the work involved in producing and supporting the work called for under this Order, including but not limited to the designing, testing, developing, manufacturing, improving, overhauling and servicing of the Products. The SELLER agrees that BUYER and BUYER’s customers are entitled to and have relied upon the SELLER as an expert and the SELLER shall not deny any responsibility or obligation hereunder to BUYER or BUYER’s customers on the grounds that BUYER or BUYER’s customers provided recommendations and/or assistance in any phase of the work involved in producing or supporting the Products, including but not limited to the acceptance by BUYER or specifications, data or the product.

28. SEPARABILITY – The invalidity in whole or in part of any provision of this Order shall not affect the validity of any other provision or any remaining portions which shall remain in force and effect as if this Order had been executed with the invalid portion thereof removed. It is the intention of the parties hereto that they would have executed the remaining portion of this Order without including therein any such portion which may for any reason be hereafter declared invalid. Any such invalidity shall not constitute a waiver of BUYER’S right to demand strict compliance with the Order as written.

29. TERMINATION -
   a. For Convenience: BUYER may terminate this Order for its convenience, in whole or in part by issuance of a Notice of Termination specifying the extent of the termination and the effective date. SELLER shall stop all work as specified in the Notice of Termination and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this Order, SELLER shall be paid a percentage of the Order price reflecting the work performed or products accepted by BUYER prior to the notice of termination, plus reasonable costs SELLER can demonstrate to the satisfaction of BUYER have resulted from the termination. SELLER shall not be paid for any work performed or costs incurred which reasonably could have been avoided. In no event will BUYER compensate SELLER as a result of a termination for convenience for (1) lost or anticipated profits, (2) unabsorbed indirect costs or overhead or (3) any sum in excess of the price of this Order
   b. For Default: BUYER may terminate this Order, in whole or in part, for default in the event that SELLER (i) fails to comply with any of the terms of this Order; (ii) fails to make progress so as to endanger performance of this Order; (iii) fails to provide adequate assurance of future performance; (iv) becomes insolvent or makes a general assignment for the benefit of creditors; (v) admits in writing to its inability to pay debts as they mature; (vi) has a trustee or receiver appointed or (vii) files or has filed against it a petition under any bankruptcy act or similar statute. SELLER shall have ten (10) calendar days (or such longer period as BUYER may authorize in writing) to cure any such failure after receipt of notice of default. Following a termination for default of this Order, SELLER shall be compensated only for services and products actually delivered and accepted by BUYER. BUYER may require SELLER to deliver to BUYER any supplies and materials, manufacturing materials, and manufacturing drawings that SELLER has specifically produced or acquired for the terminated portion of this Order. BUYER and SELLER shall agree on the amount of payment for these other deliverables.
   c. By terminating this Order, BUYER does not waive any rights and remedies available to it under applicable law and equity, including without limitation, cancellation of this Order. If after termination for default under this Order, it is determined that SELLER was not in default, such termination shall be deemed a termination for convenience.
   d. In the event a portion of the Order is terminated under provisions (a) or (b) above, SELLER shall be required to continue all remaining work not terminated or cancelled.

30. WARRANTY - SELLER warrants that all representations made to BUYER related to this ORDER were accurate at the time made. Seller
further warrants that items delivered under this Order are free from defects in design, material, and workmanship and strictly conform to all applicable specifications, drawings, samples, referenced technical documents, and all other requirements of the Order. Such warranties, together with SELLER’s service warranties and guarantees, if any, shall survive inspection, test, acceptance of, and payment for the Products and shall run to BUYER, its successors, assigns and customers. BUYER remedies under this Warranty shall include the remedies identified in Article 12, “Inspection”. Except for latent defects, fraud or such gross mistakes that amount to fraud, SELLER’s obligations under this clause shall be limited to addressing defects and nonconformance that occur within twenty-four (24) months from date of Products delivery to BUYER or to BUYER’s customer. All warranties, both express and implied, shall be construed as conditions as well as promises, shall not be deemed to be exclusive and shall survive receiving inspection, Final Acceptance and payment. Any Product replaced or corrected under this provision shall carry the unexpired portion of the original warranty or twelve (12) months whichever is greater. When return, correction or replacement is required, all transportation charges and responsibility for loss or damage to any such products while in transit shall be borne by the SELLER. This clause shall survive completion of and/or termination, in any manner whatsoever, of this Order.

31. STOP WORK - Upon written notice from BUYER, SELLER shall stop all work under this Order for up to ninety (90) calendar days, or for such longer period of time as the parties may agree. SELLER will, upon receipt of such notice, immediately take all reasonable steps to minimize the incurrence of costs allocable to this agreement for the stop work term. Upon expiration of the stop work term, BUYER will either terminate this Order (or a portion of this Order) or notify the Seller that work should resume. In the event that SELLER incurs additional costs as a direct result of a stop work order issued by BUYER, SELLER may submit a written claim to BUYER within 20 calendar days from expiration of the stop work period. Such claim shall be supported by pertinent cost data sufficient for BUYER to evaluate the claim.

32. TITLE AND RISK OF LOSS - All risk of loss or damage to Products to be delivered under this Order shall remain with the SELLER until all Products are delivered to BUYER at the Destination set forth in this Order. Title to Products shall remain with the SELLER until receiving inspection and final acceptance has taken place at the Destination set forth in this Order in accordance with the “Inspection” clause herein, however such passage of title shall, in itself, not constitute Product acceptance by BUYER. The SELLER shall bear all risk of loss or damage to Products rejected by BUYER, after notice of rejection until such Products are redelivered to BUYER, except for loss, destruction or other damage to such rejected Products resulting solely from the gross negligence of an officer, agent, or employee of BUYER acting within the scope of their employment. All Products to be delivered to BUYER hereunder shall be free and clear of any and all liens and encumbrances whatsoever.

33. CONFLICT MINERALS - SELLER shall reasonably cooperate with BUYER’s efforts to comply with the Conflict Minerals provision of the Dodd-Frank Wall Street Reform and Consumer Protection Act and any implementing regulations of the Securities and Exchange Commission. Such SELLER cooperation shall include performing appropriate due diligence on its supply chain to determine if Conflict Minerals sourced from the Democratic Republic of the Congo or adjoining countries directly or indirectly supported armed groups from the Democratic Republic of the Congo or adjoining countries.

34. COUNTERFEIT PARTS -

a. For purposes of this clause, the term “Parts” consists of those parts delivered under this Order that are the lowest level of separately identifiable items (e.g., articles, components, goods, and assemblies). The term “Counterfeit Part” means a Part that fulfills any or all of the following: 1) is or contains items misrepresented as having been designed, produced and/or tested under an approved system or other acceptable method; 2) is an item altered to resemble a product without authority or right to do so, or is an imitation of another product, with the intent to mislead or defraud by presenting the imitation as original or genuine; 3) is an approved Part that has reached a design life limit or has been damaged beyond possible repair, but is altered and misrepresented as acceptable; or 4) is a used, refurbished, sample, or reclaimed item passed off as a new one.

b. SELLER agrees and shall ensure that SELLER and SELLER’s personnel shall deliver no Counterfeit Parts to BUYER. SELLER shall only purchase items to be delivered or incorporated as Parts directly from the original component manufacturer/original equipment manufacturer, or through an authorized distributor. Parts shall not be delivered from independent distributors or brokers unless approved in advance in writing by BUYER. SELLER shall, at its expense, promptly replace any delivered Counterfeit Part with a genuine Part conforming to the requirements of this Order. Notwithstanding any other provision herein, SELLER shall be liable for all costs relating to the removal and replacement of Counterfeit Parts, including without limitation costs borne by BUYER, its customer or subcontractor associated with removing Counterfeit Parts, of reinstalling replacement Parts and of any testing necessitated by the need to identify the Counterfeit Parts and the reinstallation of Parts after Counterfeit Parts have been exchanged. The remedies contained in this clause are in addition to any remedies BUYER may have at law, equity or under other provisions of this Order.

35. ORDERS UNDER GOVERNMENT CONTRACTS - If this Order is placed in support of a U.S. Government prime contract or higher-tier subcontract, this Order incorporates, and SELLER shall comply with, the additional terms contained herein:

(a) The Federal Acquisition Regulation (FAR), Department of Defense FAR Supplement (DFARS), NASA FAR Supplement (NFS) or other agency FAR supplements identified herein, are incorporated by reference with the same force and effect as if set forth in full text. Whenever necessary to make the context of the clauses applicable to this Order, the term “Contractor” shall mean SUBCONTRACTOR, the term “Contract” shall mean this Order, and the term “Government”, “Contracting Officer” and equivalent phrases shall mean BUYER, except the terms “Government” and “Contracting Officer” do not change: (a) in the phrases, “Government Property”, “Government-Furnished Property”, and “Government-Owned Property”; (b) in the patent clauses incorporated herein, (c) when a right, act, authorization or obligation can be granted or performed only by the Government or the Contracting Officer or a 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 specifically otherwise provided herein, and (f) where specifically modified herein. Any reference to a “Disputes” clause shall mean the “Disputes” clause of this Order.

(b) The SUBCONTRACTOR agrees to flow-down all applicable FAR, DFARS, NFS, or other agency clauses to its lower-tier suppliers. The SUBCONTRACTOR further agrees that all notifications and other communications required by these clauses shall be made to BUYER’s Subcontract Administrator, unless this Order specifically provides otherwise.

(c) The effective version of each provision listed below shall be the same version as that which appears in BUYER’s prime contract, or higher-tier subcontract under which this Order is issued. If the substance of any of the clauses listed below is different from the substance of the clause actually incorporated in the Prime Contract or higher tier subcontract referenced herein, the substance of the clause incorporated by in said contract shall apply instead. If, during the performance of the Order, SUBCONTRACTOR discovers any conflict, error, ambiguity or discrepancy within this Section or between this Section and any other part of the Order, SUBCONTRACTOR shall promptly report it to BUYER’s Subcontract Administrator in writing, who shall issue appropriate clarifying guidance to SUBCONTRACTOR. Although BUYER has made every effort to include every potentially applicable clause in this document, any clauses the inclusion of which in this Order is mandatory under a statute or regulation, shall be considered to be included by operation of law, even if it has been omitted from this Order.

(d) SUBCONTRACTOR agrees that upon the request of BUYER it will execute amendments to this Order to incorporate additional provisions herein or to change provisions hereof, as BUYER may reasonably deem necessary in order to comply with the provisions of
the applicable Prime Contract (or higher tier subcontract), provisions of amendment to such Prime Contract and/or provisions of any launch or re-entry licenses issued by the Federal Aviation Administration. If any such amendment to this Order causes an increase or decrease in the cost of, or the time required for, performance of any part of the work under this Order, an equitable adjustment may be made pursuant to the “Changes” clause of this Order.

(e) For the purposes of this attachment the term “Order” shall mean the contractual document entered into by the parties including, but not limited to, a purchase order, subcontract, long term agreement, and/or release. “SUBCONTRACTOR” shall mean Seller, the supplier of goods and/or services in the contractual document entered into by the parties.

(f) Special Notes:

(1) Insert “and BUYER” after “Government” in this clause.

(2) Insert “or BUYER” after “Government” in this clause.

(3) Insert “and BUYER” after “Contracting Officer” throughout this clause.

SECTION 1.0
CLAUSES APPLICABLE TO ALL ORDERS

52.203-12 LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (This clause applies only if this Order exceeds $150,000.)

52.203-13 CONTRACTOR CODE OF BUSINESS ETHICS AND CONDUCT (Applicable if the Order’s period of performance is more than 120 days and exceeds $5,000,000. Note 1 applies. Disclosures made under this clause shall be made directly to the government entities listed in the clause.)

52.204-2 SECURITY REQUIREMENTS (This clause is included if this Order requires access to classified information.)

52.204-9 PERSONAL IDENTITY VERIFICATION OF CONTRACTOR PERSONNEL (Applicable where subcontractor will have physical access to federally controlled facility or federal information system.)

52.204-10 REPORTING EXECUTIVE COMPENSATION AND FIRST-TIER SUBCONTRACT AWARDS (Applicable only if included in Prime Contract and the value of this Order is $25,000 or more. Only paragraph (a) and subparagraph (c)(3) apply. The first phrase of subparagraph (c)(3) is revised to read as follows: “Unless otherwise directed by the BUYER, by the 10th business day of the month following the month of award of this Order, and annually thereafter, the SUBCONTRACTOR shall report the names and total compensation of each of the five most highly compensated executives of SUBCONTRACTOR for the SUBCONTRACTOR’s preceding completed fiscal year at http://www.fsrs.gov) This information will be made available to the public.

52.209-6 PROTECTING THE GOVERNMENT’S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT (Paragraph (b) is deleted and replaced with the following: “Neither SUBCONTRACTOR nor any of its principals are debarred, suspended or proposed for debarment by the federal government.”)

52.211-15 DEFENSE PRIORITY AND ALLOCATION REQUIREMENTS (Applicable only if Defense Priority and Allocation System (DPAS) Requirements are invoked on Order)

52.212-5 CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS—COMMERCIAL ITEMS

52.215-20 REQUIREMENTS FOR COST OR PRICING DATA AND DATA OTHER THAN COST OR PRICING DATA—

52.215-21 REQUIREMENTS FOR COST OR PRICING DATA AND DATA OTHER THAN COST OR PRICING DATA—

MODIFICATIONS

52.219-8 UTILIZATION OF SMALL BUSINESS CONCERNS

52.222-21 PROHIBITION OF SEGREGATED FACILITIES

52.222-26 EQUAL OPPORTUNITY

52.222-35 EQUAL OPPORTUNITY FOR VETERANS (This clause applies only if this Order is or is expected to be $100,000 or more.)

52.222-36 AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES (Applies if this Order exceeds $10,000.)

52.222-40 NOTIFICATION OF EMPLOYEE RIGHTS UNDER THE NATIONAL LABOR RELATIONS ACT (Applies if this Order exceeds $10,000.)

52.222-50 COMBATING TRAFFICKING IN PERSONS (In paragraph (e) Note 1 applies.)

52.222-54 EMPLOYMENT ELIGIBILITY VERIFICATION (Applicable to services and construction orders that: (1) exceed $3,000; and (2) include work performed in the United States. This clause does not apply to orders for commercial services that are (a) part of the purchase of a Commercially Available Off the Shelf (COTS) item or an item that would be a COTS item, but for minor modifications (b) performed by the COTS provider, and (c) are normally provided for that COTS item.)

52.223-11 OZONE DEPLETING SUBSTANCES (Applicable if this Order includes supplies manufactured with or contains ozone-depleting substances.)

52.225-1 BUY AMERICAN ACT—SUPPLIES (Applies if this Order contains other than domestic components.

52.225-5 TRADE AGREEMENTS (Applies if this Order contains other than U.S. made or designated country end products as specified in the clause.)

52.225-13 RESTRICTIONS ON CERTAIN FOREIGN PURCHASES

52.227-19 COMMERCIAL COMPUTER SOFTWARE—RESTRICTED RIGHTS (Applicable to Orders involving the acquisition of existing computer software.)

52.244-6 SUBCONTRACTS FOR COMMERCIAL ITEMS

52.245-1 GOVERNMENT PROPERTY (Applicable where government property involved in performance of Order; “Contracting Officer” means “BUYER” except in the definition of Property Administrator and in paragraph h(1)(iii) and where it is unchanged, and in paragraphs (c) and (h)(4) where it includes BUYER. “Government” is unchanged in the phrases “Government property” and “Government furnished property” and where elsewhere used except in paragraph (d)(1) where it means BUYER and except in paragraphs (d)(2) and (g) where the term includes BUYER. For Orders under DOD Prime Contracts, Class Deviation 2007-00012 applies.

52.247-64 PREFERENCE FOR PRIVATELY OWNED U.S. FLAG COMMERCIAL VESSELS (This clause applies only if this Order exceeds $100,000.)

DFARS CLAUSES

252.203-7002 REQUIREMENT TO INFORM EMPLOYEES OF WHISTLEBLOWER RIGHTS

252.204-7012 SAFEGUARDING OF UNCLASSIFIED CONTROLLED TECHNICAL INFORMATION (Reports required under paragraph (d) shall be made through Buyer. Note 3 applies to paragraph (d)(5).

252.211-7003 ITEM IDENTIFICATION AND VALUATION (Applicable if this Order requires items that contain unique item identification. In paragraphs (c)(3)(i), (c)(4)(i), (d), (e) and (f) “Contractor” shall mean “SUBCONTRACTOR”, all reports required to be submitted under this clause shall be submitted to Buyer at a location to be provided; delete
paragraph (g) and insert the following in lieu thereof: “(g) Lower Tier Subcontracts.  SUBCONTRACTOR shall include this clause, including this paragraph (g), in all lower tier subcontracts issued under this Order for the acquisition of components identified herein as requiring UID.”

252.223-7001 HAZARD WARNING LABELS (Applicable if this Order requires the delivery of hazardous materials.)

252.223-7002 SAFETY PRECAUTIONS FOR AMMUNITION AND EXPLOSIVES (Applicable only if the articles furnished under this Order contain ammunition or explosives, including liquid and solid propellants.  Note 1 applies.  Note 2 applies to paragraph (g)(1).  In paragraph (g)(1)(ii) delete “prime” and “substituting its name for references to the Government.”)

252.223-7003 CHANGE IN PLACE OF PERFORMANCE AMMUNITION AND EXPLOSIVES (Applicable if DFARS 252.223-7002 applies to this Order.  Note 4 applies.)

252.223-7007 SAFEGUARDING SENSITIVE CONVENTIONAL ARMS, AMMUNITION AND EXPLOSIVES (Applicable if this Order is for the development, production, manufacture, or purchase of arms, ammunition and explosives or when arm, ammunition and explosives will be provided to SUBCONTRACTOR as Government Furnished Property.)

252.223-7008 PROHIBITION OF HEXAVALENT CHROMIUM

252.225-7001 BUY AMERICAN AND BALANCE OF PAYMENTS PROGRAM (This clause is substituted in lieu of FAR 52.225-1.  Applicable if this Order includes other than domestic components.)

252.225-7007 PROHIBITION ON ACQUISITION OF UNITED STATES MUNITIONS LIST ITEMS FROM COMMUNIST CHINESE MILITARY COMPANIES (Applicable if SUBCONTRACTOR is supplying items on the U.S. Munitions list.)

252.225-7009 RESTRICTION ON ACQUISITION OF CERTAIN ARTICLES CONTAINING SPECIALTY METALS (Paragraph (d) is deleted.)

252.225-7012 PREFERENCE FOR CERTAIN DOMESTIC COMMODITIES

252.225-7021 TRADE AGREEMENTS (Applicable if items delivered under the Order contain other than U.S.-made, qualifying country or designated country end products.  Applicable in lieu of FAR 52.225-5.)

252.225-7048 EXPORT-CONTROLLED ITEMS

252.226-7001 UTILIZATION OF INDIAN ORGANIZATIONS, INDIAN OWNED ECONOMIC ENTERPRISES AND NATIVE HAWAIIAN SMALL BUSINESS CONCERNS (Applicable if this contract exceeds $500,000.  In subparagraph (i)(1) “Contractor” shall mean “BUYER.”)

252.227-7015 TECHNICAL DATA – COMMERCIAL ITEMS (Note 1 applies.)

252.227-7019 VALIDATION OF RESTRICTIVE MARKINGS-COMPUTER SOFTWARE

252.227-7037 VALIDATION OF RESTRICTIVE MARKINGS ON TECHNICAL DATA

252.239-7018 SUPPLY CHAIN RISK (Applicable if this Order involves the development or delivery of any information technology, whether acquired as a service or as a supply.)

252.244-7000 SUBCONTRACTS FOR COMMERCIAL ITEMS

252.246-7003 NOTIFICATION OF POTENTIAL SAFETY ISSUES (Applicable if this Order is for (i) parts identified as critical safety items; (ii) systems and subsystems, assemblies and subassemblies integral to a system; or (iii) repair, maintenance, logistics support, or overhaul services for systems and subsystems assemblies and subassemblies integral to a system.  SUBCONTRACTOR shall provide notifications to BUYER and the Subcontract Administrator identified to SUBCONTRACTOR.)

252.246-7007 CONTRACTOR COUNTERFEIT ELECTRONIC PART DETECTION AND AVOIDANCE SYSTEM

252.247-7023 TRANSPORTATION OF SUPPLIES BY SEA (Applicable in lieu of FAR 52.247-64 in all Orders for ocean transportation of supplies.  In the first sentence of paragraph (g), insert a period after “Contractor” and delete the balance of the sentence.  Paragraph (f) and (g) shall not apply if this Order is at or below $100,000.)

252.247-7024 NOTIFICATION OF TRANSPORTATION OF SUPPLIES BY SEA (Applicable if this Order meets the criteria set forth in paragraph (b)(2)(i) of the clause.)

252.249-7002 NOTIFICATION OF ANTICIPATED CONTRACT TERMINATION OR REDUCTION (Applies if Order equals or exceeds $650,000.  Delete paragraph (d)(1) and the first five words of paragraph (d)(2).)

NFS CLAUSES

1852.204-76 SECURITY REQUIREMENTS FOR UNCLASSIFIED INFORMATION TECHNOLOGY RESOURCES

1852.208-81 RESTRICTIONS ON PRINTING AND DUPLICATING (This clause applies only if printing or duplicating exceeds the limits defined in paragraph (c) of the clause.)

1852.211-70 PACKAGING, HANDLING AND TRANSPORTATION

1852.219-76 NASA 8 PERCENT GOAL

1852.223-70 SAFETY AND HEALTH (Applicable when any of the conditions in NASA FAR Supplement 1823.7001(a) exist.  Add “and BUYER Subcontract Administrator” after Contracting Officer in paragraph (i).  Note 2 applies to paragraph (g)(1).)

1852.223-71 FREQUENCY AUTHORIZATION (Applicable if this Order requires the development, production, test or operation of a device for which a radio frequency is required.)

1852.223-72 SAFETY AND HEALTH (SHORT FORM) (Applicable if NFS 1852.223-70 does not apply.)

1852.223-74 DRUG AND ALCOHOL FREE WORKFORCE (Applicable if work under this Order is performed by an employee in a sensitive position as defined in the clause.)

1852.225-70 EXPORT LICENSES

1852.227-19 COMMERCIAL COMPUTER SOFTWARE - RESTRICTED RIGHTS (undated) (Modifies FAR 52.227-19)

1852.227-86 COMMERCIAL COMPUTER SOFTWARE-LICENSEING (Applicable for the purchase of existing computer software in accordance with FAR 27.405(b)(2).  Replaces FAR 52.227-19, insert “and BUYER” after “Contracting Officer” throughout this clause.)

1852.228-76 CROSS- WAIVER OF LIABILITY FOR INTERNATIONAL SPACE STATION ACTIVITIES
52.246-16 RESPONSIBILITY FOR SUPPLIES

52.247-63 PREFERENCE FOR U.S. – FLAG AIR CARRIERS
(Applicable if this Order involves international air transportation.)

52.249-2 TERMINATION FOR CONVENIENCE-FIXED-PRICE
(FAR 52.249-2 is revised as follows:

Note 2 applies to the first time “Government” appears in paragraphs (b)(4) and (b)(6). It applies to all of paragraph (b)(8) and it applies to the second time “Government” appears in paragraph (d). In paragraph (m)(4) “Government” means PRIME CONTRACTOR and the Government.

Paragraph (c): “120 days” to “60 days”.

Paragraph (f): “15 days” to “30 days,” and “45 days” is changed to “60 days”.

Paragraph (e): The time for submission for the final termination settlement proposal is changed from “1 year” to “6 months” from the effective date of termination.

Paragraph (l): The time for submission of a proposal for an equitable adjustment after a partial termination is changed from “90 days” to “45 days” from the effective date of the termination.

Settlements and payments under this clause may be subject to the approval of the Contracting Officer.)

52.249-8 DEFAULT (FIXED PRICE SUPPLY AND SERVICE)
(FAR 52.249-8 is revised as follows: Note 2 will apply to the second and third time that “government” appears in paragraph (e). Timely performance is a material element of this Order.

Paragraph (a): Change the cure period from “10 days” to “7 days”.

Section 2.1 - Clauses that Apply if this Order Exceeds $15,000:

52.222-20 CONTRACTS FOR MATERIALS, SUPPLIES, ARTICLES, AND EQUIPMENT EXCEEDING $15,000

Section 2.2 - Clauses that Apply if this Order Exceeds $100,000:

52.222-37 EMPLOYMENT REPORTS ON VETERANS (This clause is applicable only if FAR 52.222-35 applies.)

Section 2.3 - Clauses that Apply if this Order Exceeds $150,000:

52.203-6 RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT

52.203-7 ANTI-KICKBACK PROCEDURES

52.203-8 CANCELLATION, RESCISSION, AND RECOVERY OF FUNDS FOR ILLEGAL OR IMPROPER ACTIVITY

52.203-10 PRICE OR FEE ADJUSTMENT FOR ILLEGAL OR IMPROPER ACTIVITY

52.203-17 CONTRACTOR EMPLOYEE WHISTLEBLOWER RIGHTS AND REQUIREMENT TO INFORM EMPLOYEES OF WHISTLEBLOWER RIGHTS

52.215-2 AUDIT AND RECORDS – NEGOTIATION (Insert “and BUYER” after “Contracting Officer” and “Comptroller General Of the United States”)

52.215-14 INTEGRITY OF UNIT PRICES

52.222-4 CONTRACT WORK HOURS AND SAFETY STANDARDS

52.227-1 AUTHORIZATION AND CONSENT (This clause applies if the Prime Contract contains this clause; ALTERNATE I applies as indicated in the clause.)

52.227-2 NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT (Note 2 applies.)

52.248-1 VALUE ENGINEERING (Note 1 applies in paragraphs (c)(5) and (m) and Note 2 applies where “Government” precedes “cost” throughout.)

Section 2.4 - Clauses that Apply if this Order Exceeds $650,000:

52.219-9 SMALL BUSINESS SUBCONTRACTING PLAN (This clause does not apply to small business concerns. It applies if this Order offers further subcontracting opportunities and is expected to equal or exceed $650,000; $1,000,000 for construction of any public facility. The SUBCONTRACTOR’s subcontracting plan is incorporated herein by reference.)

Section 2.5 - Clauses that Apply if this Order Exceeds $700,000:

52.215-10 PRICE REDUCTION FOR DEFECTIVE CERTIFIED COST OR PRICING DATA (This clause applies if cost or pricing data is required from the SUBCONTRACTOR or any sub-tier Supplier. Note applies except the first time “Contracting Officer” appears in paragraph (c)(1). Rights and obligations under this clause shall survive completion of work under the Order and final payment under this Order.)

52.215-11 PRICE REDUCTION FOR DEFECTIVE CERTIFIED COST OR PRICING DATA – MODIFICATIONS (This clause applies if cost or pricing data is required from the SUBCONTRACTOR or any sub-tier Supplier for modifications. Note 2 applies except the first time “Contracting Officer” appears in paragraph (d)(1). Rights and obligations under this clause shall survive completion of the work under the Order and final payment under this Order. As required by applicable law or regulation, the SUBCONTRACTOR shall provide cost or pricing data and execute a Certificate of Current Cost or Pricing Data in substantially the form prescribed by FAR 15.406-2. In addition to any remedies provided by law, if BUYER is subjected to any liability as a result of the SUBCONTRACTOR’s failure to comply with this requirement, then the SUBCONTRACTOR agrees to indemnify and hold BUYER harmless to the full extent of any loss, damage or expense (excluding BUYER’s overhead and profit) resulting from such failure.)

52.215-12 SUBCONTRACTOR COST OR PRICING DATA (Applicable if not otherwise exempt under FAR 15.403.)

52.215-13 SUBCONTRACTOR COST OR PRICING DATA – MODIFICATIONS (Applicable for modifications if not otherwise exempt under FAR 15.403.)

Section 2.6 - Clauses that Apply if this Order Exceeds $5,000,000:

52.203-14 DISPLAY OF HOTLINE POSTERS

Section 2.7 - Clauses that Apply under Described Circumstances:

52.219-28 POST AWARD SMALL BUSINESS PROGRAM REREPRESENTATION (This clause applies if SUBCONTRACTOR represented itself previously as a small business)

52.223-7 NOTICE OF RADIOACTIVE MATERIALS (This clause applies only if this Order is for radioactive material meeting the criteria outlined in this clause. In the blank insert “30”)

52.225-9 BUY AMERICAN ACT-CONSTRUCTION MATERIALS (Applicable only to construction contracts performed in the U.S.)

52.227-3 PATENT INDEMNITY (Applicable if included in the Prime Contract)

52.227-10 FILING OF PATENT APPLICATIONS – CLASSIFIED (This clause applies only if this Contract covers or is likely to cover classified subject matter).

52.227-11 PATENT RIGHTS - RETENTION BY THE CONTRACTOR (This clause applies if this Order is for experimental, developmental, or research work and (1) the SUBCONTRACTOR is a small business or (2) this Order is
with a non-profit organization.)

52.228-3 WORKER’S COMPENSATION INSURANCE (Applicable if specified in the Prime Contract.)

52.229-10 STATE OF NEW MEXICO GROSS RECEIPTS AND COMPENSATING TAX (Applicable if criteria in FAR 29.401-4 are met.)

52.234-4 EARNED VALUE MANAGEMENT SYSTEM (Applicable if specified in the Prime Contract.)

52.246-7 INSPECTION OF RESEARCH AND DEVELOPMENT — FIXED PRICE (Applicable if fixed price Orders involving research and development. Note 1 applies, except in paragraphs (d) through (f).)

52.247-5 FAMILIARIZATION WITH CONDITIONS (Applicable to Orders for transportation or for transportation related services.)

52.251-1 GOVERNMENT SUPPLY SOURCES (Applicable to Orders that may authorize the SUBCONTRACTOR to acquire Supplies or Services from a Government supply source.)


52.203-15 WHISTLEBLOWER PROTECTIONS UNDER THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 (SEC.1553, PUB.L.111-5) (“RECOVERY ACT”) (Applicable to all Orders funded under Recovery Act.)

52.204-11 AMERICAN RECOVERY AND REINVESTMENT ACT—REPORTING REQUIREMENTS (Only the following requirements of this clause apply: SUBCONTRACTOR shall provide to BUYER not later than the 5th day following the end of each calendar quarter the information required by subparagraphs (d)(10)(i), (ix), (x), and (xi) of this clause. This information will be made available to the public as required by section 1512 of the Recovery Act)

52.225-21 REQUIRED USE OF AMERICAN IRON, STEEL, AND OTHER MANUFACTURED GOODS—BUY AMERICAN ACT—CONSTRUCTION MATERIALS (Applicable to Recovery Act funded Orders involving construction)

SECTION 3.0
ADDITIONAL DFARS CLAUSES APPLICABLE TO ALL CONTRACTS/ORDERS UNLESS A COMMERCIAL ITEM CERTIFICATION HAS BEEN RECEIVED (IF INCLUDED IN BUYER’S CONTRACT)

252.204-7000 DISCLOSURE OF INFORMATION

252.208-7000 INTENT TO FURNISH PRECIOUS METALS AS GOVERNMENT FURNISHED MATERIAL

252.211-7007 REPORTING OF GOVERNMENT-FURNISHED EQUIPMENT IN THE DOD ITEM UNIQUE IDENTIFICATION REGISTRY (Applicable if this Order requires Government property in SUBCONTRACTOR’s possession to contain unique item identification.)

252.215-7000 PRICING ADJUSTMENTS (Applicable if FAR 52.215-12 or 52.215-13 applies to this Order.)

252.222-7000 RESTRICTIONS ON EMPLOYMENT OF PERSONNEL (Applicable if included in Prime Contract.)

252.223-7004 DRUG-FREE WORKPLACE

252.223-7006 PROHIBITION ON STORAGE AND DISPOSAL OF TOXIC AND HAZARDOUS MATERIALS

252.225-7002 QUALIFYING COUNTRY SOURCES AS SUBCONTRACTORS

252.225-7006 RESTRICTIONS ON ACQUISITION OF SPECIALTY METALS

252.225-7013 DUTY-FREE ENTRY (Applies in lieu of FAR 52.225-8. The prime contract number and identity of the Contracting Officer are contained elsewhere in this Order. If this information is not available, contact the BUYER Subcontract Administrator.)

252.225-7028 EXCLUSIVE POLICIES AND PRACTICES OF FOREIGN GOVERNMENTS

252.227-7013 RIGHTS IN TECHNICAL DATA — NONCOMMERCIAL ITEMS (Applicable in lieu of FAR 52.227-14.) (Note 1 applies.)

252.227-7014 RIGHTS IN NONCOMMERCIAL COMPUTER SOFTWARE AND NONCOMMERCIAL COMPUTER SOFTWARE DOCUMENTATION (Applicable in lieu of FAR 52.227-14.)

252.227-7016 RIGHTS IN BID OR PROPOSAL INFORMATION

252.227-7018 RIGHTS IN NONCOMMERCIAL TECHNICAL DATA AND COMPUTER SOFTWARE — SMALL BUSINESS INNOVATIVE RESEARCH (SBIR) PROGRAM

252.227-7019 VALIDATION OF ASSERTED RESTRICTIONS — COMPUTER SOFTWARE

252.227-7025 LIMITATIONS ON THE USE OR DISCLOSURE OF GOVERNMENT FURNISHED INFORMATION MARKED WITH RESTRICTIVE LEGENDS (For paragraph (c)(1), Note 1 applies.)

252.227-7026 DEFERRED DELIVERY OF TECHNICAL DATA OR COMPUTER SOFTWARE

252.227-7027 DEFERRED ORDERING OF TECHNICAL DATA OR COMPUTER SOFTWARE

252.227-7028 TECHNICAL DATA OR COMPUTER SOFTWARE PREVIOUSLY DELIVERED TO THE GOVERNMENT (The definitions for “contract” and “subcontract” shall not apply herein, except for the first reference to contract. Note 2 applies.)

252.227-7030 TECHNICAL DATA — WITHHOLDING OF PAYMENT (Note 2 applies to paragraph (b).)

252.227-7038 PATENT RIGHTS-OWNERSHIP BY THE CONTRACTOR (LARGE BUSINESS) (Applicable if (1) SUBCONTRACTOR is not a small business or nonprofit organization subject to FAR 52.227-11 and (2) the Order is for experimental, developmental or research work.)

252.227-7039 PATENTS – REPORTING OF SUBJECT INVENTIONS (Applicable if FAR 52.227-11 applies to this Order.)

252.228-7005 ACCIDENT REPORTING AND INVESTIGATION INVOLVING AIRCRAFT, MISSILES, AND SPACE LAUNCH VEHICLES (In paragraph (b) note 1 applies.)

252.234-7002 EARNED VALUE MANAGEMENT SYSTEM (Applicable if included in the Prime Contract.)

252.236-7000 MODIFICATION PROPOSALS - PRICE BREAKDOWN

252.243-7001 PRICING OF CONTRACT MODIFICATIONS
252.203-7004 DISPLAY OF FRAUD HOTLINE POSTERS (Applies in lieu of 52.203-14)

Section 3.7 - DFARS Clauses that Apply under Described Circumstances:

252.204-7010 REQUIREMENT FOR CONTRACTOR TO NOTIFY DOD IF THE CONTRACTOR’S ACTIVITIES ARE SUBJECT TO REPORTING UNDER THE US INTERNATIONAL ATOMIC ENERGY AGENCY ADDITIONAL PROTOCOL (Applies if this PO is subject to the provisions of the International Atomic Energy Agency Additional Protocol US-IAEAAP)

Section 3.1 - DFARS Clauses that Apply if this Order Exceeds $150,000:

252.203-7001 PROHIBITION ON PERSONS CONVICTED OF FRAUD OR OTHER DEFENSE-RELATED FELONIES (In this clause, the terms “contract”, “contractor and “subcontract” shall not change in meaning in paragraphs (a) and (d). Delete paragraph (g).)

Section 3.2 - DFARS Clauses that Apply if this Order Exceeds $500,000:

252.225-7010 COMMERCIAL DERIVATIVE MILITARY ARTICLE—SPECIALTY METALS COMPLIANCE CERTIFICATE When applicable, SUBCONTRACTOR must complete and return the certificate to the Buyer’s Procurement Agent)

Section 3.3 - DFARS Clauses that Apply if this Order Exceeds $650,000:

252.219-7003 SMALL, SMALL DISADVANTAGED AND WOMEN-OWNED SMALL BUSINESS SUBCONTRACTING PLAN (DoD CONTRACTS) (Applicable if FAR 52.219-9 applies to this Order.)

Section 3.4 - DFARS Clauses that Apply if this Order Exceeds $1,000,000:

252.222-7006 RESTRICTIONS ON THE USE OF MANDATORY ARBITRATION AGREEMENTS

Section 3.5 - DFARS Clauses that Apply if this Order Exceeds $1,500,000:

252.225-7004 REPORT OF INTENDED PERFORMANCE OUTSIDE THE UNITED STATES AND CANADA—SUBMISSION AFTER AWARD (Applicable to Orders that could be performed in the United States or Canada.)

Section 3.6 - DFARS Clauses that Apply if this Order Exceeds $5,000,000:

252.203-7003 AGENCY OFFICE OF THE INSPECTOR GENERAL (Applicable when FAR 52.203-13 applies to the Prime Contract and this Order)
SURCHARGE ADJUSTMENT TO THE COST
BEARER (Applies if this Order involves use of motor carriers, brokers, or freight forwarders)

SECTION 4.0
ADDITIONAL NFS CLAUSES APPLICABLE TO ALL CONTRACTS/ORDERS UNLESS A COMMERCIAL ITEM CERTIFICATION HAS BEEN RECEIVED (IF INCLUDED IN BUYER’S CONTRACT)

Section 4.1. - NASA FAR Supplement (NFS) Clauses applicable to all Orders for other than Commercial Items Unless Exemptions or Thresholds Apply:

1852.219-74 USE OF RURAL AREA SMALL BUSINESSES
1852.219-75 SMALL BUSINESS SUBCONTRACTING REPORTING
(Applicable if FAR 52.219-9 applies to this Contract.)
1852.223-75 MAJOR BREACH OF SAFETY OR SECURITY
1852.227-11 PATENT RIGHTS-RETENTION BY THE CONTRACTOR (SHORT FORM) (Applicable if this Order includes, at any tier, experimental, developmental, research work and SUBCONTRACTOR is a small business concern or domestic nonprofit organization. Reports required by this clause shall be filed with the agency identified in this Order. If no agency is identified, contact the BUYER Subcontract Administrator identified in this Order.)
1852.227-14 RIGHTS IN DATA GENERAL (Modifies FAR 52.227-14.)
1852.227-70 NEW TECHNOLOGY (This clause applies if Order is for experimental, developmental, research, design or engineering work and the SUBCONTRACTOR is other than a small business or non-profit organization.)
1852.227-71 REQUESTS FOR WAIVER OF RIGHTS TO INVENTIONS (Applicable whenever NASA FARs 1852.227-70 applies to this Order. SUBCONTRACTOR’s petitions to the Contracting Officer shall be made through BUYER.)
1852.227-72 DESIGNATION OF NEW TECHNOLOGY REPRESENTATIVE AND PATENT REPRESENTATIVE. (Applicable if this Order contains either of the clauses at FAR 52.227-11 or 52.227-70. The following are designated to administer the rights per NFS 1827.305-370: New Technology Representative: Chief, Technology Utilization Office LAO1, George C. Marshall Space Flight Center, Marshall Space Flight Center, AL 35812. Patent Representative: Chief, Intellectual Property Counsel CCO1, George C. Marshall Space Flight Center, Marshall Space Flight Center, AL 35812.)
1852.245-70 CONTRACTOR REQUESTS FOR GOVERNMENT-OWNED EQUIPMENT

SECTION 5.0
OTHER APPLICABLE TERMS

Section 5.1: Notification of Employee Rights Supplement
29 CFR Part 471, Appendix A, Subpart A – Notification of Employee Rights Under Federal Labor Laws is included in the terms of this Order.

Section 5.2. - Indemnification for Defective Pricing and Violation of the Anti-Kickback Statute or the Procurement Integrity Act
The SUBCONTRACTOR, its Subcontractors, agents, and/or employees agree to indemnify and save harmless and defend Buyer from and against any and all fines, penalties, offsets, claims, demands, actions, debts, liabilities, judgments, costs and attorney’s fees, costs and profit disallowed or reduced by Buyer’s customer arising out of claims on account of, or in any manner predicated upon (1) submission by SUBCONTRACTOR, its Subcontractors, agents and/or employees of alleged or confirmed defective pricing data or (2) violation of the Anti-Kickback Act of 1986 (41 U.S.C. Section 51-58) by SUBCONTRACTOR or any of its suppliers or subcontractors, including indirect suppliers (such as a supplier to one of SUBCONTRACTOR’s direct suppliers) or (3) any other government or contractual requirement for cost or pricing data submitted by the SUBCONTRACTOR, its Subcontractors, agents and/or employees to Buyer or any other party.

Section 5.3 – Certifications and Representations
By entering into this Order, SUBCONTRACTOR confirms that it has completed Buyer’s Supplemental Representations and Certifications form and that SUBCONTRACTOR’s completed form is included in this Order (including, without limitation, Buyer’s Commercial Item Determination Form, if applicable). SUBCONTRACTOR acknowledges that Buyer has relied upon SUBCONTRACTOR’s certifications and representations contained herein and in any written offer, proposal or quote, or periodic submission. By entering into an Order, SUBCONTRACTOR republishes the certifications and representations submitted with its written offer, including any periodic submission to Buyer, and oral offers/quotations made at the request of Buyer, and SUBCONTRACTOR makes those certifications and representations set forth in the FAR clauses referenced above. SUBCONTRACTOR shall immediately notify Buyer of any change of status regarding any certification or representation.