

## General Provisions for Orders for Commercial Items Acquired under U.S. Government Contracts

NNS: Appendix A-DOD COMMERCIAL  
INGALLS: Form SBF P9482

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### 1. DEFINITIONS. [\(back to top\)](#)

- A. BUYER means Huntington Ingalls Incorporated, a subsidiary of Huntington Ingalls Industries (HII), acting through Buyer's authorized purchasing representative at its Ingalls or Newport News Shipbuilding division.
- B. DFARS means the Defense Federal Acquisition Regulation Supplement.
- C. FAR means the Federal Acquisition Regulation.
- D. ORDER means the instrument of contracting including the order form and all documents it references (including but not limited to these general provisions, plans, specifications, and regulations).
- E. PARTIES means Buyer and Seller collectively.
- F. PRIME CONTRACT means the by the U.S. Government's contract for the acquisition of Products.
- G. PRODUCT means those goods, supplies, reports, computer software, parts list, data, materials, articles, items, parts, components or assemblies, drawings, procedures, manuals, forms, test reports, and any Services described in this Order. For purposes of the "Inspection" provision, the term "Product" also includes but is not limited to raw materials, components, and intermediate assemblies that comprise the Product.
- H. SELLER means the party with whom Buyer is contracting.
- I. SERVICES means Seller's time and effort, including any Products, supplies, materials, articles, items, parts, components or assemblies incidental to the performance of the Service.

**2. HEADINGS. [\(back to top\)](#)**

Headings in this Order are for reference only and shall not limit or affect the meaning or interpretation of this Order.

**3. LANGUAGE AND CURRENCY. [\(back to top\)](#)**

All communications and submittals shall be in English and all payments, rebates, credits, other financial transactions or dollar amounts related to or referenced in this Order shall be in United States Dollars.

**4. ACCEPTANCE OF OFFER AND BUYER AUTHORIZATION. [\(back to top\)](#)**

- A. This Order is Buyer's offer to Seller and is limited to the terms and conditions herein. Seller's acknowledgement, acceptance of payment, or commencement of performance shall be conclusive evidence of acceptance of this offer as written.
- B. Buyer's authorized purchasing representative has sole authority to make contractual commitments on behalf of Buyer, to provide contractual direction, and to change this Order's requirements by written modification.
- C. Buyer's engineering, technical personnel, and other representatives are not authorized to make contractual changes or provide contractual direction for this Order.
- D. Any additional or different terms in Seller's acceptance are hereby rejected and shall not apply to this Order.

**5. ORDER OF PRECEDENCE. [\(back to top\)](#)**

- A. Any inconsistency between parts of this Order shall be resolved by giving precedence in the following order:
  - (i) The purchase order form issued to Seller and any subsequent modifications or changes thereto exclusive of items (ii) through (vi).
  - (ii) Any HII division supplement or program-specific "Additional Provisions" (including regulations referenced therein), or other special provisions to these General Provisions (also referred to as terms and conditions) as invoked in this Order.
  - (iii) These General Provisions (including referenced regulations herein).
  - (iv) Statement of Work.
  - (v) Specification/Drawing.
  - (vi) Other referenced documents.
- B. Seller shall immediately bring any inconsistencies in the Order documents to Buyer's attention in writing. Unless Seller timely notifies Buyer of inconsistencies in the Order documents and Buyer fails to resolve such inconsistencies, Seller shall not use such inconsistencies as a defense against a breach of contract claim by Buyer for Seller's failure to perform under this Order, nor shall Seller use any such inconsistencies as a basis for any claim of any kind by Seller against Buyer.

**6. ASSIGNMENT. [\(back to top\)](#)**

Seller shall not assign this Order without Buyer's prior written consent, which will not be unreasonably withheld. Prior to any sale or merger of Seller to an unrelated third party, Seller will execute any documents requested by Buyer in connection with the transfer of any rights or obligations under this Order.

**7. ENTIRE AGREEMENT. [\(back to top\)](#)**

This Order constitutes the entire agreement between the Parties. The Parties shall not be bound by any other statements or understandings, oral or written, not set forth in this Order.

**8. DOD RATED ORDER. [\(back to top\)](#)**

- A. This is a rated Order certified for national defense use and supports Buyer's work under a Prime Contract with the U.S. Government. The applicable priority rating is as stated in the header text of this Order. Seller shall comply with the defense priorities and allocation system regulation (15 CFR Part 700) and all other applicable regulations for obtaining controlled Products and other Products and Services needed to fill this Order.
- B. Seller shall include the substance of this provision in all subcontracts Seller places in support of this Order.

**9. PACKING AND SHIPPING. ([back to top](#))**

- A. Seller shall ensure the Product is properly packaged and shipped pursuant to Buyer's carrier routing/shipping instructions, which are incorporated herein and available at:  
*Newport News Shipbuilding* – <http://supplier.huntingtoningalls.com/sourcing/index.html>  
*Ingalls Shipbuilding* – <https://spars.huntingtoningalls.com/procurement/index.html>
- B. Seller shall be liable to buyer for any damage resulting from improper Product packaging. Seller will not pack or ship items corresponding to multiple Orders or multiple line items within a single Order unless Seller has separately identified the packing and shipping costs of each line item being shipped.

**10. DELIVERY, TITLE. ([back to top](#))**

- A. The Free On Board (FOB) point shall be as designated in this Order. Title shall pass to Buyer upon delivery; however, passing of title shall not relieve Seller of any other obligations under this Order.
- B. All deliveries shall comply with the applicable quantities and schedules set forth in this Order. Seller shall not ship quantities in excess of those specified in this Order, and Buyer shall have no obligation to return or pay for any excess quantities. Buyer may return the shipment or store early deliveries at Seller's cost.
- C. Whenever it appears Seller will not meet the delivery schedule, Seller shall immediately notify Buyer in writing of the reason and estimated length of the delay. This notice shall not affect the Buyer's rights or remedies. Seller shall make every effort to avoid or minimize the delay and shall pay any additional cost incurred by either party because of late delivery.
- D. If Seller is unable to meet the required delivery schedules for any reason other than a change directed by Buyer, Buyer shall have the option to terminate the Order or obtain the Products from sources other than Seller and to reduce Seller's Order quantities accordingly at no increase in unit price, without any penalty to Buyer. The rights accorded Buyer pursuant to this paragraph D shall not limit Buyer's rights under the "Termination for Default" provision of this Order.
- E. All Parties expressly agree that time is and shall remain of the essence in performing this Order. No acts of Buyer, including without limitation, modifications to this Order or acceptance of late deliveries, shall constitute a waiver of this provision.

**11. DELIVERY OF SELLER DATA. ([back to top](#))**

All drawings, procedures, manuals, forms, test reports, software (including software documentation) and other data required under this Order ("Seller Data") shall comply with the terms of this Order. Seller Data shall be delivered to Buyer on or before the time specified in this Order, or if no time is specified, upon Product delivery. Seller shall submit Seller Data to the Buyer address on the first page of this Order unless otherwise specified. Buyer may withhold payment if Seller fails to deliver any Seller Data required by this Order. If Seller includes Seller Data with the Product shipment, Seller shall enclose all required Seller Data in the first box of the shipment and mark the shipment, *CERTIFICATES AND/OR TEST REPORTS ENCLOSED*.

**12. LIENS. ([back to top](#))**

All Products furnished under this Order shall be free of all liens, claims, charges, and encumbrances of any kind. Upon request, Seller shall provide formal releases from Seller's subcontractors to Buyer. Buyer may discharge any lien, claim, charge, or encumbrance if Seller, at Buyer's request, fails to do so and Seller shall reimburse Buyer for the reasonable costs thereof.

**13. TAXES. ([back to top](#))**

Seller shall not collect any sales or use taxes inasmuch as Buyer has direct pay permits held for Mississippi and Virginia. Seller shall pay all other State, Federal, and local taxes, assessments and duties applicable to Products or Seller's performance hereunder.

#### **14. INVOICES. [\(back to top\)](#)**

Unless otherwise specified in this Order, payment shall be made before the later of (A) the 30th day after the designated billing office receives a proper invoice from Seller or (B) the 30th day after Buyer's receipt of (i) supplies delivered at Buyer's facility or such other facility as designated by Buyer or (ii) services performed. Any prompt payment or other discounts offered by Seller shall be specified in the Order. For Orders issued by the Newport News Shipbuilding division, Seller shall submit invoices electronically in PDF format to [Invoices@hii-nns.com](mailto:Invoices@hii-nns.com). For Orders issued by the Ingalls Shipbuilding division, Seller shall submit invoices electronically in PDF format to [AccountsPayableBox@hii-ingalls.com](mailto:AccountsPayableBox@hii-ingalls.com). For Ingalls Shipbuilding division Orders only: if Seller is unable to submit invoices electronically and is authorized by Buyer to submit hard copy invoices, the invoices shall include the Order number and Order Item Number and be mailed to Ingalls Shipbuilding, Attn: Accounts Payable, M/S 1090-41, 1000 Access Road, Pascagoula, MS 39567. Buyer may set-off any amount(s) due from Seller to Buyer, liquidated or unliquidated, against payments due to Seller under this or any other Order. At any time, Buyer or its customer may audit Seller's invoices to verify their accuracy, completeness, and compliance with the terms of this Order. Buyer may adjust Seller's invoices for any amounts found upon audit or otherwise to have been improperly invoiced. For progress payments, the Seller shall certify that invoiced amounts are commensurate with the value of the work accomplished, and Seller shall note "Final Invoice" on the final billing documents sent to Buyer.

#### **15. CONFLICT MINERALS DISCLOSURE. [\(back to top\)](#)**

Pursuant to Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 and its implementing regulations, Buyer is required to identify the presence and source of Conflict Minerals (gold, tantalum, tin or tungsten) contained in Buyer's manufactured products. Buyer's Conflict Minerals compliance program information is located here: <https://hii.com/legal/conflict-minerals-report/>. Seller shall be familiar with this information and make all reasonable efforts to assist Buyer in identifying the presence and source of Conflict Minerals contained in the products sold by Seller to Buyer.

- A. If Seller's Products contain gold, tantalum, tin, or tungsten, Seller agrees to provide Buyer with a completed Conflict Minerals Reporting Template ("CMRT") version 6.4 or later, available at <http://www.responsiblemineralsinitiative.org/reporting-templates/cmrt/>, with "Product" selected under the "Declaration Scope or Class" field.
- B. Seller shall submit any CMRT on the Source Intelligence web platform. If Seller has previously registered with Source Intelligence, Seller may use its existing username and password at [www.sourceintelligence.net](http://www.sourceintelligence.net). If Seller is not registered, instructions may be obtained by emailing [hii@sourceintelligence.com](mailto:hii@sourceintelligence.com) or by calling toll free in the United States 1-855-207-8015.
- C. If the status of any Product(s) changes during performance of this Order, then Seller must within 30 days complete and submit updated information as provided in paragraph A above.
- D. If Buyer determines that any representation made by Seller pursuant to this provision is inaccurate or incomplete in any respect, or Seller fails to timely submit the information required by this provision, then Buyer may, at its option, either withhold up to 10% of the Order price until such information is provided or terminate this Order pursuant to the provision of this Order titled "Termination for Default."

#### **16. WARRANTY. [\(back to top\)](#)**

- A. Seller warrants that all Products delivered under this Order will:
  - (i) Be free from defects in materials, workmanship, and manufacturing processes; and
  - (ii) Conform to all requirements of this Order.
- B. The warranty period shall begin upon Buyer's acceptance of the Product and end 12 months after preliminary acceptance by Buyer's customer of the end product incorporating the Product provided by Seller under this Order. In computing the warranty period, any time that a Product delivered under this Order is prevented from entering service or is taken out of service on account of any Product deficiency shall be excluded from the warranty period.

- C. Seller's Products are deficient if they fail to meet any of the performance obligations set forth in paragraph A of this provision.
- D. Seller shall promptly remedy all deficiencies that arise during the warranty period at no cost to Buyer. If Seller fails to remedy the deficiency within a reasonable time after having been notified, Buyer may remedy the deficiency and charge to Seller any increased costs Buyer or its customer incurs or make an equitable reduction in the Order price. If Buyer corrects deficiencies in the Product, Seller shall pay Buyer's actual costs and Buyer's labor at Buyer's fully-burdened hourly rates (as appropriate) utilizing the then-current Government-approved rate set authorized for change-order activity.
- E. Buyer's approval of any documentation prepared by Seller or Buyer's participation in design reviews or first article approval process shall not relieve Seller of any obligation under this warranty.
- F. Buyer's rights under this provision shall be assignable to and enforceable by Buyer's successors and customers.
- G. Seller shall immediately notify Buyer of any deficiencies during the performance of this Order and the warranty period. Seller shall promptly provide a written notice to Buyer's authorized purchasing representative describing the deficiency and Seller's plan to remedy the deficiency. Seller's notice shall in no way affect the rights and remedies of Buyer.
- H. Nothing herein shall relieve Seller of its liability for latent defects, fraud or such gross mistakes amounting to fraud, regardless of when such defects or deficiencies are discovered. The rights of Buyer set forth in this provision shall be in addition to, and not in lieu of, any other right Buyer has under this Order, by law, or in equity.

#### **17. CHANGES. [\(back to top\)](#)**

- A. Buyer may at any time by written order make changes within the general scope of this Order including but not limited to the following items:
  - (i) drawings, designs, specifications, planning, and/or other technical documents;
  - (ii) method of shipment, packaging, or packing;
  - (iii) place of delivery;
  - (iv) reasonable adjustments in quantities or delivery schedules or both;
  - (v) place of inspection;
  - (vi) place of acceptance;and, if services are procured:
  - (vii) description of services to be performed;
  - (viii) time of performance (*i.e.*, hours of the day, days of the week, etc.) of the services; and
  - (ix) place of performance of the services.
- B. If the change causes an increase or decrease in the cost or time required to perform this Order, the Parties shall negotiate an equitable adjustment in the price or schedule, or both, to reflect the increase or decrease. Buyer shall modify this Order in writing accordingly.
- C. Seller must submit any claim for adjustment within 15 days of the receipt of the written Order in writing to Buyer or Seller unconditionally waives such claim. If Seller claims the cost of any property made obsolete or excess by the change, Buyer shall have the right to prescribe the manner of disposition of the property to include the right to acquire that property for the cost claimed.
- D. Buyer may examine any of Seller's pertinent books and records to verify Seller's claim.
- E. Seller shall immediately proceed with the performance of this Order as changed. Failure to agree to any adjustment shall be a dispute within the meaning of the "Disputes" provision. Seller shall not be entitled to any claim for changes unless authorized in writing by Buyer.

#### **18. EQUITABLE ADJUSTMENTS. [\(back to top\)](#)**

A request for equitable adjustment submitted by Seller shall include the legal basis for the request and all types of adjustments in the total amounts to which Seller asserts entitlement. Seller shall provide Buyer sufficient detail to reasonably support Seller's proposal for a request for equitable adjustment or for which Buyer's customer may require in evaluating such request. Further, Seller agrees that, if required by Buyer, it will execute a release, in

form and substance satisfactory to Buyer, as part of the settlement of a request for equitable adjustment. Failure of Seller and Buyer to agree on any proposed adjustment or change claimed by Seller shall not excuse Seller from diligently proceeding with performance of this Order.

#### **19. TERMINATION FOR DEFAULT. [\(back to top\)](#)**

- A. Buyer may terminate this Order in whole or in part at any time without liability if Seller:
- (i) Fails to deliver the Products within the time specified in this Order, or
  - (ii) Fails to perform any of the other provisions of this Order or so fails to make progress as to endanger performance of this Order in accordance with its terms, including the completion of Products within the time set forth in this Order, and in either of these two circumstances does not cure such failure within a period of ten days (or such longer period as Buyer may authorize in writing) after receipt of notice from Buyer specifying such failure, or
  - (iii) Becomes insolvent or fails to provide additional assurances of financial solvency when it reasonably appears that Seller is or will not be financially solvent and additional assurances are requested by Buyer.
- If Buyer terminates part of the work under this Order, Seller shall continue performance of this Order to the extent not terminated.
- B. Refund of Payments. Seller shall, upon termination by Buyer due to default by Seller, return any payments Seller received under this Order for the terminated (unperformed) work.
- C. If, after a default termination, it is determined that Seller was not in default, or that the default was excusable, the rights and obligations of the Parties shall be the same as if the termination had been issued for the convenience of Buyer.
- D. The rights and remedies of Buyer provided in this provision shall not be exclusive and are in addition to any other rights and remedies provided by law or in equity or otherwise provided under this Order.

#### **20. TERMINATION FOR CONVENIENCE. [\(back to top\)](#)**

- A. Buyer may terminate this Order in whole or in part at any time for its sole convenience. Buyer will terminate by delivering to Seller a Notice of Termination specifying the extent of termination and the effective date. After receipt of a Notice of Termination, Seller shall immediately proceed with the following obligations:
- (i) stop work as specified in the notice;
  - (ii) place no further subcontracts or orders (referred to as subcontracts in this clause); and
  - (iii) terminate all subcontracts to the extent they relate to the work terminated.
- B. Buyer's sole obligation to Seller in the event of a termination for convenience shall be to pay Seller a percentage of the Order price corresponding with the percentage of the terminated work actually performed prior to the notice of termination, plus Seller's reasonable expenses incurred as a direct result of the termination. No amount will be allowed for anticipated profit on the terminated work. The amount paid shall be reduced by the reasonable resale or salvage value of any undelivered work or uncompleted work in progress. Seller shall submit to Buyer supporting documentation in sufficient detail to justify any termination payments requested from Buyer. Seller will not be paid for any work performed or costs incurred that could reasonably have been avoided.

#### **21. SUSPENSION OF WORK. [\(back to top\)](#)**

Buyer may, by written notice, suspend work under this Order at any time. Upon receipt of such notice, Seller shall immediately comply with its terms and, during the work suspensions, take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the suspension notice. If the suspension of work ordered under this provision results in an increase in the time required for, or in Seller's cost properly allocable to, the performance of any part of this Order, Buyer shall make an adjustment in the delivery schedule or Order price or both. Seller shall assert its right to an adjustment no later than 20 days after the work suspension is lifted.

#### **22. DISPUTES. [\(back to top\)](#)**

- A. The Parties shall submit any dispute arising under or related to this Order in writing to equivalent ascending levels of management of the respective Parties up to the Senior Executive of the Supply Chain Management

organization placing the Order and Seller's equivalent executive level. If the Parties cannot resolve a dispute after good faith negotiations, within 90 days from the date the written dispute is properly received by the other party, or such additional time as the Parties agree upon, in writing, either party may bring suit against the other in accordance with paragraph B.

- B. Exclusive venue for suits at law or equity arising under or related to this Order shall be:
- (i) United States District Court for the Eastern District of Virginia or Newport News Circuit Court for orders issued by Huntington Ingalls Incorporated-Newport News Shipbuilding division.
  - (ii) United States District Court for the Southern District of Mississippi or the Circuit Court of Jackson County, Mississippi for orders issued by Huntington Ingalls Incorporated-Ingalls Shipbuilding division.
- C. Irrespective of the place of contracting or performance, this Order shall be construed and interpreted according to the law of the state of the Huntington Ingalls Incorporated facility issuing this Order, as identified in the Order, without regard to that state's conflict of laws principles.
- D. Seller shall proceed diligently with performance of the Order, as directed by Buyer, pending any informal resolution, lawsuit, appeal, or final decision referred to in this provision, or the settlement of any dispute.
- E. Seller shall file suit for breach or any other dispute arising under or related to this Order within two years after the cause of action accrues, or by the otherwise applicable statute of limitations, whichever period is shorter.
- F. If the Government:
- (i) makes a decision or determination,
  - (ii) takes an action, or,
  - (iii) in the case of a claim filed with the Contracting Officer, fails to take an action within the time limits specified in the "Disputes" clause in Buyer's Prime Contract ("deemed denial"), on a matter arising under or related to the Buyer's Prime Contract, and such decision, determination, action, or deemed denial relates to or affects the Parties' rights and interests under this Order ("Government Action"), then any dispute between Buyer and Seller as relates to the Government Action shall be resolved under paragraph G, which shall be Seller's sole remedy for such disputes. Except as otherwise provided in paragraph G, all other disputes between Buyer and Seller will be resolved under paragraph A of this provision.
- G. Notwithstanding any provisions herein to the contrary, Government Actions shall be final and binding on Seller, and Seller shall have no recourse against Buyer for such Government Action or Buyer's implementation thereof, except for Buyer or Seller appeals pursuant to the terms of this provision.
- (i) If Buyer elects to appeal a Government Action pursuant to the "Disputes" clause in Buyer's Prime Contract, whether at Buyer's election or at Seller's request, Seller shall:
    - a) assist Buyer in every reasonable manner; and
    - b) be afforded a reasonable opportunity to participate in the prosecution of the appeal to the extent Seller's interest may be affected thereby. Buyer will not enter into an agreement to settle an appeal that affects Seller's interest without Seller's written consent.
  - (ii) If Buyer does not appeal a Government Action, Buyer will promptly notify Seller. In such case, Buyer may, in its sole and absolute discretion, permit Seller to prosecute the appeal of the Government Action for Buyer and reasonably assist Seller in prosecuting the appeal if requested by Seller. Seller shall keep Buyer informed of the progress of any such appeal by providing Buyer with copies of all pleadings and other relevant documents. Seller shall provide Buyer drafts of pleadings or other documents within sufficient time for Buyer to review before the filing deadline.
  - (iii) Any decision on or settlement of an appeal brought pursuant to subparagraphs G(i) or G(ii) of this provision shall be binding upon Seller insofar as it relates to or affects the Parties' rights and interests under this Order, and Seller shall have no recourse against Buyer as a result of the decision or settlement or Buyer's implementation thereof. Further, if as a result of any decision or settlement described in the immediately preceding sentence, Buyer is unable to obtain reimbursement from the Government under the Prime Contract for, or is required to refund or credit to the Government, any amount with respect to any item of cost or fee for which Buyer has reimbursed Seller, Seller shall, on demand, promptly repay such amount to Buyer.

- (iv) Each party shall bear its own costs for prosecuting appeals brought pursuant to subparagraph G(i) of this provision. Seller shall bear the cost of prosecuting appeals brought pursuant to subparagraph G(ii) of this provision (including reasonable attorney fees) and any other costs incurred by Buyer:
  - a) in assuring itself of the validity of Seller's appeal; and
  - b) assisting Seller in the prosecution of the appeal.
- (v) Before submitting a claim under this paragraph (G), Seller shall:
  - a) certify its claim in the same manner and format as required of Buyer under its Prime Contract with the Government; and
  - b) provide Buyer with such other assurances as Buyer may require.
- (vi) Nothing in this provision 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 restrict Buyer from taking any actions, including available remedies, it deems appropriate to protect its own interests.

### 23. INSURANCE. [\(back to top\)](#)

- A. During the period of performance and any associated warranty periods of this Order, Seller and its subcontractors (collectively, "Seller" for purposes of this provision) shall, at their sole cost and expense, procure and maintain all required insurance policies as set forth below.
- B. For all Orders, Seller shall maintain (i) Employer Liability insurance in the amount of at least \$1,000,000, (ii) Workers' Compensation insurance with coverage as required by the most current laws of the state or foreign jurisdiction in which the work is performed, and (iii) Commercial General Liability insurance with coverage having a minimum combined single limit of \$2,000,000 per occurrence and \$4,000,000 in the aggregate for bodily injury and property damage.
- C. Insurance coverage described herein must be in place and effective prior to commencement of any activity that is the subject of this Order and Seller shall provide evidence that the required insurance is in place in the form of a certificate of insurance (COI). COIs are required to be submitted for the following:
  - (i) Commercial General Liability Insurance: Whenever performance requires work on a Government installation, Buyer's premises or premises under the care, custody or control of Buyer or Buyer's customer, Seller and its subcontractors shall, at their sole cost and expense, procure and maintain Commercial General Liability Insurance with coverage having a minimum combined single limit of \$2,000,000 per occurrence and \$4,000,000 in the aggregate for bodily injury and property damage. Coverage shall include but not necessarily be limited to, premises and operations, products and completed operations and contracts.
  - (ii) Automobile Liability Insurance: When Seller's performance requires driving onto a U.S. Government installation, Buyer's premises or premises under the care, custody or control of Buyer or Buyer's customer, Seller shall procure and maintain Automobile Liability Insurance with coverage having at least a Combined Single Limit of \$2,000,000 for bodily injury and property damage covering all owned, hired and non-owned vehicles.
  - (iii) United States Longshore & Harbor Workers' Compensation Act Insurance: Seller shall procure and maintain appropriate coverage under the Longshore and Harbor Workers' Compensation Act if any Seller employee will be performing work over water or within any adjacent jurisdiction of the LHWCA.
  - (iv) Defense Base Act Workers' Compensation Insurance: Seller shall maintain Defense Base Act Workers' Compensation if work hereunder is being performed in connection with public work contracts, or with any United States Government Agency where physical work occurs on United States military bases or on any lands used by the United States for military purposes outside of the United States.
  - (v) Professional Liability Insurance: Whenever Seller provides design and/or engineering services, Seller shall, in addition to the other applicable insurance noted herein, procure and maintain professional liability (errors and omissions) insurance with coverage having minimum limits of \$1,000,000 per claim and \$2,000,000 in the aggregate.
  - (vi) [Reserved].

(vii) Cargo and Builder's All Risk Property Insurance: If this Order includes ship-in-place terms, milestone payments, and/or Buyer provides material to Seller, Seller shall procure and maintain Cargo Insurance if Seller is responsible for the risk of transportation and/or Builder's All Risk Property Insurance, or All Risk Property Insurance, with coverage having minimum limits equivalent to the value of the Product(s) or shipment, as applicable, and naming Buyer as loss payee.

(viii) [Reserved].

(ix) Pollution Liability Insurance: If this Order is for transportation, handling and/or disposal of asbestos, radiological or any other hazardous waste, material or substances, Seller shall procure and maintain Pollution Liability Insurance with coverage having a minimum limit of \$5,000,000.

(x) Marine Insurance: If this Order is for water-based work, such as but not limited to dredging services, tugs, ship towing services, ship pilots or crews, Seller shall procure and maintain Vessel Pollution Liability Insurance with coverage having a minimum limit of \$5,000,000, Marine General Liability Insurance with coverage having a minimum limit of \$5,000,000, Protection and Indemnity Insurance with coverage having a minimum limit of \$5,000,000, and Marine Hull and Machinery Insurance with coverage having a minimum limit of the agreed value of the vessel.

(xi) Construction-Related Insurance: If this Order is for facility construction, renovation or excavation services, Seller shall procure and maintain Builder's All Risk Property Insurance with coverage having a limit equal to the construction value of the project.

- D. If a COI is required to be submitted for any insurance coverage required in paragraph C above, a COI shall also be submitted for the insurance coverages required in paragraph B above.
- E. No later than fifteen (15) days prior to the expiration of any insurance policy required by this provision, Seller shall provide to Buyer a COI evidencing the renewal of such policy. Seller shall cause its insurers to provide Buyer with thirty (30) days' prior written notice of cancellation of, or material change to, any insurance policy required hereunder.
- F. Coverage shall not exclude claims brought in the United States and all insurance required as a part of this Order shall be placed with insurance companies that are authorized to do business under the laws of the state(s) or foreign jurisdiction in which the work is being performed and shall be in a form reasonably acceptable to Buyer with a current A.M. Best financial rating of no less than A-, VIII.
- G. All liability coverage required hereunder shall be primary and not contributory to any other insurance available to Buyer, and Seller's insurers shall provide a waiver of subrogation in favor of Buyer for each required liability coverage hereunder. Seller shall add Buyer as loss payee as Buyer's interests may appear to Seller's Cargo, All Risk Property and Builder's All Risk Property Insurance coverages. In addition, Seller shall add Buyer as an additional insured to all insurance policies required hereunder except Workers' Compensation, Employer's Liability and Professional Liability.
- H. Seller agrees to defend, indemnify and hold Buyer harmless in connection with any claim or suit by any employee of Seller against Buyer, its employees, agents and assigns to the maximum extent permitted by law; in addition, Seller's Liability Insurance will insure Seller's indemnity and defense obligation with respect to such claim or suit. Seller waives any statutory or common law protections that would otherwise protect it against all such obligations listed in this paragraph.

## **24. BUYER OR GOVERNMENT PROPERTY. [\(back to top\)](#)**

- A. If Buyer or Government property (which includes Government property furnished to or acquired by Seller) is used by Seller in conjunction with this Order, Seller shall control and maintain such property in accordance with a system that meets the requirements of FAR 52.245-1 (as invoked in the provision of this Order titled "FAR/DFARS Clauses/Provisions"). Seller shall assume the risk of, maintain adequate insurance, and be responsible for, any loss, theft, destruction of or damage to all such property while such property is in Seller's possession or control.
- B. Seller shall use Buyer or Government property only for performing this Order. Seller shall not modify, cannibalize, or make alterations to Buyer or Government property unless this Order specifically identifies the modifications, alterations or improvements as work to be performed. Excluding property authorized to be consumed in the

performance of this Order, Seller shall return such property in as good a condition as when received except for reasonable wear and tear, or in the case of property to be overhauled or repaired, in such better condition as may be required by the terms of this Order.

- C. Any Buyer or Government property that is furnished to Seller under this Order shall be furnished “as is.” Accordingly, Buyer disclaims any warranty of suitability and or serviceability.
- D. Buyer and Government shall retain title to all Buyer or Government property used by Seller in connection with this Order. Title to such property shall not be affected by its incorporation into or attachment to any property not owned by Buyer or the Government, nor shall Buyer or Government property become a fixture or lose its identity as personal property by being attached to any real property.
- E. Seller shall immediately discharge any lien, other than a lien held by Buyer or the Government, on Buyer or Government property.
- F. The requirements related to accounting for Buyer or Government property used by Seller in connection with this Order also shall apply to scrap generated from Seller’s use of such property; provided, however, that Buyer may authorize or direct Seller to omit such scrap from inventory disposal schedules.

## **25. REPRESENTATIONS AND CERTIFICATIONS. [\(back to top\)](#)**

- A. As of the time it accepts this Order, Seller represents and warrants that:
  - (i) Seller has submitted to Buyer SBF P9152, Huntington Ingalls Incorporated Supplier Data & Certifications, which is incorporated herein by reference; and
  - (ii) Seller’s information disclosed on SBF P9152 is current, accurate and complete.
- B. If Seller’s information as disclosed in the SBF P9152 changes prior to acceptance of this Order or during performance of this Order, Seller shall complete and submit to Buyer a revised SBF P9152.

## **26. PROPRIETARY INFORMATION. [\(back to top\)](#)**

- A. For purposes of this Order, “Proprietary Information” means all information Buyer furnishes to Seller that is marked or identified as proprietary. Proprietary Information includes any Personal Information provided to or used by Seller in performance of the Order. Personal Information is any information from or about a person that either identifies that person directly or that makes that person identifiable when it is combined with other information from or about that person from any source.
- B. Seller will treat all Proprietary Information (including, but not limited to, all copies, improvement, modifications, and derivations) as Buyer’s property regardless of the medium on which such Proprietary Information is stored or communicated. In making copies of Proprietary Information, Seller will preserve any legend, marking, or stamp contained on the Proprietary Information that identifies the data as Proprietary Information. Seller further agrees to affix the following legend “HII Proprietary” on:
  - (i) all improvements, modifications, and derivations of Proprietary Information; and
  - (ii) any Proprietary Information extracted from Buyer’s computer systems or otherwise provided by Buyer to Seller if not already marked.
- C. Seller may disclose Proprietary Information to its subcontractors as required for the performance of this Order, provided each such subcontractor first assumes by written agreement the same obligations imposed on Seller under this Order relating to Buyer’s Proprietary Information.
- D. If a separate proprietary information or non-disclosure agreement relating to the subject matter of this Order exists between the Parties, all Proprietary Information shall be protected pursuant to such proprietary information or non-disclosure agreement.
- E. If no separate proprietary information or non-disclosure agreement exists between the Parties, Seller will keep Proprietary Information confidential and, except as provided herein, (i) not disclose such Proprietary Information to any other person except to its officers, agents and employees who are under an obligation to keep such Proprietary Information confidential and have a need to know such Proprietary Information to fulfill Seller’s obligation under this Order, and (ii) treat such Proprietary Information with the same degree of care as Seller uses in handling its own proprietary or confidential information and – in all events – with not less than reasonable

care. Seller will use Proprietary Information only for purposes necessary for performing this Order and will return Proprietary Information to Buyer upon completion of the work to be performed under this Order unless Buyer expressly agrees to the contrary in writing.

- F. Upon discovery by Seller of any inadvertent or accidental disclosure of Proprietary Information, Seller shall notify Buyer promptly and take all commercially reasonable steps to retrieve such disclosed Proprietary Information and to cease and prevent any further disclosure of the Proprietary Information.

## **27. COMPUTER SOFTWARE AND DATABASES. [\(back to top\)](#)**

Seller shall test all computer software and/or databases (including the media it is delivered on) for computer viruses before delivery of such software and/or databases in any medium or in any system. All software and/or databases delivered by Seller shall contain no known viruses that are detectable with the latest version of commercially available virus detection software. In addition, Seller shall test any software and/or databases received from Buyer or Buyer's customer for viruses prior to use in performing this Order. Seller shall provide Buyer with immediate written notice of any viruses detected in Buyer-provided software and/or databases. Unless otherwise agreed in writing, any license agreement covering the use of any computer software and/or databases delivered under this Order must be paid-up and perpetual, shall not contain any routine to disable the computer software and/or databases in the future, and shall permit transfer to Buyer's customer. No copy-protection devices, codes, or systems shall be used that would prevent Buyer or Buyer's customer from copying delivered software and/or data; however, a license agreement or other Order terms may specify a maximum number of copies that may be made. Any limited rights or other legend(s) permissibly applied under this Order shall be digitally included on the same media as the delivered software and/or databases, and also displayed in human-readable form on a visible surface of the media carrying the digital software and/or databases.

## **28. EXPORT AND IMPORT COMPLIANCE. [\(back to top\)](#)**

- A. Seller's performance of this Order may involve the use of or access to articles, technical data, or software subject to export controls under 22 United States Code 2751 – 2796 (Arms Export Control Act) and 22 Code of Federal Regulations 120-130 (International Traffic in Arms Regulations) or 50 United States Code 2401 – 2420 (Export Administration Act) and 15 Code of Federal Regulations 768 – 799 (Export Administration Regulations) and their successor and supplemental laws and regulations (collectively hereinafter referred to as the "Export Laws and Regulations"). Seller represents and warrants that it is either:
- (i) A U.S. Person as that term is defined in the Export Laws and Regulations; or
  - (ii) That it has disclosed to Buyer's Representative in writing the country in which it is incorporated or otherwise organized to do business, or if a natural person, all citizenships and U.S. immigration status.
- B. Seller shall comply all Export Laws and Regulations, and any license(s) issued thereunder.
- C. Seller shall not give any Foreign Person (including Seller's own non-U.S. employees or affiliates) access to Technical Data, software or Defense Articles, or provide an unauthorized Defense Service as those terms are defined in the applicable Export Laws and Regulations, without the prior written consent of Buyer. Any request for such consent must state the intended recipient's citizenship(s), and status under 8 U.S.C. 1101 and 8 U.S.C. 1324 (the "Immigration and Naturalization Act"), and such other information as Buyer may reasonably request. No consent granted by Buyer in response to Seller's request under this paragraph C shall relieve Seller of its obligations to comply with paragraph B of this provision, nor shall any such consent constitute a waiver of the requirements of paragraph B, nor constitute consent for Seller to violate any requirement of the Export Laws and Regulations. All capitalized terms in this paragraph not otherwise defined in this Order shall have the meaning set forth in the Export Laws and Regulations.
- D. Seller shall place the following statement on documents containing technical data controlled by either the Arms Export Control Act or the Export Administration Act: "WARNING – This document contains technical data whose export is restricted by the Arms Export Control Act (Title 22, U.S.C. Sec. 2751, et seq.) or the Export Administration Act of 1979, as amended, Title 50, U.S.C., App 2401, et seq. Violations of these export laws can result in severe

criminal penalties. Disseminate in accordance with terms of OPNAVINST 5510.161.” Additional marking requirements may be included elsewhere in this Order.

- E. The substance of this provision shall be incorporated into any lower-tier subcontract entered into by Seller for the performance of any part of the work under this Order involving export-controlled information.

## 29. INFORMATION SECURITY. [\(back to top\)](#)

- A. Seller shall implement administrative, physical and technical safeguards to adequately protect Buyer-provided information (“Buyer Information”) in accordance with any law, regulation or contractual obligations applicable to such information. For Buyer Information stored in an electronic database or transmitted electronically, Seller shall comply with any Buyer-specified safeguards set forth in this Order, or if no such safeguards are specified herein, Seller’s safeguards shall be no less rigorous than the Center for Internet Security’s CIS Controls™, found at <https://www.cisecurity.org/controls/>.
- B. If Seller becomes aware of any compromise of Buyer Information (an “Incident”), Seller shall take appropriate immediate actions to investigate and contain the Incident and any associated risks, including notification to Buyer within seventy-two (72) hours after learning of the Incident. As used in this clause, “compromise” means that information has been exposed to unauthorized access, inadvertent disclosure, known misuse, loss, destruction, or alteration other than as required to perform this Order.
- C. Upon request, Seller shall provide reasonable assurances to Buyer of compliance with the requirements of this provision, and reasonable cooperation in connection with an investigation regarding the nature and scope of any Incident. Any costs incurred by Buyer or Seller in investigating or remedying Incidents shall be borne by Seller.
- D. All Buyer Information shall be encrypted (i) if transmitted externally by Seller via any electronic network, or (ii) during electronic storage if potentially accessible by any electronic network external to Seller or otherwise by non-authorized users.
- E. This provision is intended to set forth minimum information security requirements and does not alter, change or supersede any more stringent information security requirements found in other contractual obligations agreed to between the parties.

## 30. SITE CONDITIONS. [\(back to top\)](#)

If Seller is required to perform work at Buyer’s or its customer’s site, Seller shall inspect the location of the work and be familiar with its condition at the time of Order award. Seller will not be entitled to a claim for increased cost or schedule adjustment if Seller failed to inspect the site prior to the award of this Order, or for any circumstance that Seller should reasonably have discovered through such site inspection.

## 31. HAZARDOUS MATERIALS. [\(back to top\)](#)

“*Hazardous material*” means any material defined as hazardous under the latest version of Federal Standard No. 313 as maintained by the General Services Administration (GSA).

### A. Safety Data Sheets (SDS):

Seller shall not provide any hazardous materials or products containing hazardous materials unless Buyer has approved the Safety Data Sheet (SDS) for the product. SDS provided by Seller shall meet requirements of the United States Occupational Safety and Health Administration (OSHA) Hazard Communication Standard. **Placement of this Order does not constitute approval. If no SDS was approved prior to Order placement, then no hazardous material may be delivered to the Buyer unless and until the Buyer approves the SDS.**

If at any time during performance of this Order, there is a change in the composition of the products or a revision to Federal Standard No. 313, which renders incomplete or inaccurate the submitted SDS, Seller shall promptly notify the Buyer and resubmit the SDS.

Shipments of hazardous materials or products containing hazardous materials shall have a copy of most recent SDS securely attached to external packaging.

Seller must ensure that the most current SDS for its product has been provided to Buyer’s technical authority and that the SDS provided to Buyer’s technical authority matches the subsequent hazardous material shipping documents. Seller shall notify Buyer and obtain Buyer’s approval prior to shipment if the SDS for a shipment is different than the SDS previously provided for the same product.

Delay to Buyer’s receipt of shipment and any transportation costs due to return of product for reasons of an unapproved, inconsistent or incomplete SDS/MSDS are at Seller’s expense.

**B. Prohibited Hazardous Materials Constituents:**

This section applies to the extent that a Product does not require an SDS because it is considered an “article” by the OSHA Hazard Communication Standard. Except as agreed to in writing by Buyer, or as specified in this Order, the hazardous material constituents in Prohibited Hazardous Materials Constituents Table shall not be included in or come in direct contact with any products furnished under this Order. This requirement applies to all ingredients in such Products (e.g., newly formulated coatings) and all materials of construction in such Product, including sub-component materials (e.g., batteries, circuit boards), applied coatings, applied primers, lubricants, adhesives, and any other consumables that remain on the delivered product. A hazardous material constituent that is an impurity, i.e., a trace amount that is not an ingredient and does not contribute to the function or usefulness of the product, is excluded from these requirements.

<b>Prohibited Hazardous Materials Constituents Table</b>		
Asbestos	Lead & Lead Compounds	Beryllium and Beryllium Compounds
Barium & Barium Compounds, including Barium Sulfate	Mercury & Mercury Compounds	Methylene Chloride
Brass and Bronze w/ >1% Lead	Ozone Depleting Substances (ODS) Class 1	Arsenic & Arsenic Compounds in Coatings
Boron Trifluoride	Polychlorinated Biphenyls (PCBs)	Benzene in Coatings
Cadmium & Cadmium Compounds	Selenium & Selenium Compounds	Organometallic Compounds in Coatings
Chromium & Chromium Compounds	Silver & Silver Compounds	

Seller may use “readily available information” to determine whether the product furnished under this Order includes or has come in direct contact with the hazardous material constituents identified in Prohibited Hazardous Materials Constituents Table. “Readily available information” sources include:

- (i) Actual knowledge or process knowledge
- (ii) SDS
- (iii) Technical data sheets
- (iv) Manufacturing data.

Except as specified in this Order, chemical analysis, testing, monitoring or certification is not required to determine whether the product includes or has come in direct contact with the hazardous material constituents identified in the Prohibited Hazardous Materials Table. At Buyer’s request, Seller’s “readily available information” shall be made available to the Buyer’s technical authority.

**C. Notifications and Processes for Hazardous Materials:**

Seller shall obtain approval from Buyer’s technical authority (for Orders issued by the Newport News Shipbuilding (NNS) division, via the [Vendor Information Request \(VIR\)](#) or similar process as applicable to this Order) in the following circumstances:

- (i) If there is a change to the product involving the hazardous material constituents identified in the Prohibited Hazardous Materials Table, including the addition, deletion, or change in the type, concentration, usage, or location of a hazardous material constituent.
- (ii) If Seller becomes aware that the product to be delivered under this Order includes or has come in direct contact with any of the hazardous material constituents identified in the Prohibited Hazardous Materials Table, based on “readily available information.”
- (iii) If the product specifications allow for an alternative that includes a hazardous material constituent identified in the Prohibited Hazardous Materials Table and the Seller desires to select such alternative.

For Orders issued by NNS, the VIR shall include in form [NN9168](#) or similar document a description of the new or changed information, the source of the “readily available information,” and how to physically distinguish between the old and new product (serial numbers, model numbers, physical appearance, etc.).

**D. Services on Site:**

Buyer will not accept or manage hazardous materials unless otherwise specified in this Order. In no event shall title to hazardous material pass to Buyer. Seller shall be responsible for the cost of proper management of hazardous material and hazardous waste that results from the Work. Unless otherwise specified in their Order, all hazardous waste that arises out of or results from any work on Buyer’s property shall be provided to Buyer’s collection area in accordance with site rules. Hazardous waste that arises out of or results from any work on Buyer’s customer’s property will be handled in accordance with site rules. Upon request Seller shall submit to Buyer upon work completion a summary report which shall detail all waste generated at Buyer’s or Buyer’s customer’s property.

Buyer shall not be liable for any personal injury, disease or death, loss or damage, or any claim of any party, including, but not limited to the Seller’s employees or agents, in any way arising out of or resulting from any exposure or claimed exposure to any hazardous or toxic material (for example, without limitation, asbestos) that is present at the work site.

**E. Additional Prohibitions:**

- (i) **PROHIBITION OF YELLOW WRAPPINGS OR PROTECTION DEVICES.** Seller shall not use yellow wrapping material or attached yellow protection devices such as caps or plugs.
- (ii) **BRASS AND COPPER BLACK OXIDE COATED THREADED FASTENER PROHIBITION.** Seller shall not use brass or copper black oxide coated threaded fasteners when installing or replacing threaded fasteners in the accomplishment of any work required by this Order.

**32. INDEMNIFICATION. ([back to top](#))**

Seller shall indemnify and hold harmless Buyer, Buyer’s parent and affiliates, and their respective directors, officers, and employees (collectively, for the purposes of this provision, “Buyer”), from and against any and all liabilities, claims, losses, and expenses arising out of Seller’s performance of this Order in each of the following instances:

- A. For the acts and omissions of Seller, its employees, subcontractors, or agents, except where Buyer is solely negligent.
- B. For the failure of Seller, its employees, subcontractors or agents to comply with any other laws, regulations or ordinances.
- C. When Buyer sponsors a claim on Seller’s behalf as provided for in the Disputes provision of this Order, for any misrepresentation of fact or fraud made by Seller, its employees, subcontractors, or agents in connection with such claim, or a defect in Seller’s certification in relation to Buyer’s sponsorship of such claim.
- D. For any allegation of patent, copyright, or trademark infringement or allegation of trade secret misappropriation arising from Seller’s work or the Products.
- E. For failure by Seller, its subcontractors, employees, or agents, to comply with the requirements of the Export and Import Compliance provision, including breach of the warranty in paragraph A of that provision.

In any of the above instances, Seller shall, at its own cost, defend Buyer against such claims, losses, and liabilities, and, it shall pay Buyer's reasonable attorney fees and expenses, related to carrying out and enforcing the terms of this provision, as those costs are incurred. Buyer has the right to conduct such defenses if it so chooses.

**33. FORCE MAJEURE. ([back to top](#))**

Neither party shall be liable to the other for delays resulting from causes beyond its control and without its fault or negligence including, but not restricted to, acts of God or of the public enemy, acts of the Government in either its sovereign or contractual capacity, inability of the Government to pay the prime contractor timely, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, or unusually severe weather (each, a "Force Majeure Event"). Seller shall not be liable for its subcontractor's delays if arising from causes beyond the control and without the fault or negligence of both Seller and such subcontractor and only when Seller could not have obtained the supplies or services from other sources in sufficient time to permit Seller to meet the required delivery schedule. Upon the occurrence of a Force Majeure Event, the affected party shall notify the other party as soon as possible in writing. Any relief shall be limited to an extension of delivery dates or times of performance to the extent caused by the Force Majeure Event.

**34. INDEPENDENT CONTRACTOR. ([back to top](#))**

Seller is an independent contractor. Seller shall have exclusive control and direction over its employees' performance of the work; and be responsible for all payroll functions for its employees. No persons employed by Seller or Seller's subcontractors shall be deemed an employee or agent of Buyer for any purpose.

**35. RELEASE OF INFORMATION AND ADVERTISING. ([back to top](#))**

Except as required by law, Seller shall not publicly release any information with respect to this Order or its subject matter without the prior written approval of Buyer. Additionally, Seller shall not use Buyer's name or in any other way identify Buyer in any advertisement, display, news release, or other public disclosure without Buyer's prior written consent.

**36. COMPLIANCE WITH LAWS. ([back to top](#))**

Seller shall comply with all applicable foreign and United States federal, state and local laws, statutes, rulings, ordinances, orders, and regulations in performing this Order.

**37. BUSINESS CONDUCT. ([back to top](#))**

Buyer has implemented a comprehensive Ethics and Business Conduct Program, which includes a "Supplier Code of Conduct." The Supplier Code of Conduct is available at: [https://supplier.huntingtoningalls.com/wp-content/uploads/2022/11/HII-SUPPLIER-Code-of-Ethics-Booklet\\_2022.pdf](https://supplier.huntingtoningalls.com/wp-content/uploads/2022/11/HII-SUPPLIER-Code-of-Ethics-Booklet_2022.pdf). Seller shall have management systems in place to support compliance with the principles addressed in the Supplier Code of Conduct. Buyer shall have the right to pursue corrective actions, up to and including termination of this Order, for Seller's violation of any of the principles set forth in the Supplier Code of Conduct.

**38. CONTINUING TERMS AND SEVERABILITY. ([back to top](#))**

The "Proprietary Information," "Insurance," "Indemnification" "Release of Information and Advertising," and "Warranty" provisions shall survive termination or cancellation of this Order. If any provision in this Order is or becomes void or unenforceable by force or operation of law, all other provisions shall remain valid and enforceable.

**39. NON-WAIVER. ([back to top](#))**

Buyer's failure to enforce any provision of this Order shall not constitute a waiver of the provision or prejudice Buyer's right to enforce that provision at any subsequent time against Seller. Buyer's payment shall not be deemed an acceptance or approval of any defective or unsatisfactory material or workmanship, or a waiver of Buyer's right to later reject the same. The rights and remedies conferred upon Buyer under this Order shall be cumulative and in addition to the rights and remedies granted by law for Seller's breach of contract.

**40. BANKRUPTCY. ([back to top](#))**

If Seller enters into voluntary or involuntary proceedings relating to bankruptcy or insolvency, Seller shall provide notice to Buyer by email and certified mail within five days of the initiation of such proceedings. Seller's notice shall include the date of filing, the identity of the court in which the petition was filed, and a listing of all of Buyer's Orders against which final payment has not been made. This obligation remains in effect until final payment under this Order. In the event Seller enters into proceedings relating to bankruptcy or insolvency, whether voluntary or involuntary, ceases operations, or fails to respond to notices under this Order, Buyer may, at Buyer's sole discretion, pay to Seller's subcontractors at any tier those amounts Seller owes to such subcontractors under this Order to obtain such subcontractor's performance owed to Seller in connection with this Order and Buyer shall be entitled to set-off such amounts Buyer pays to such subcontractors from any amount owed to Seller under this Order.

**41. PROGRAM MANAGEMENT. ([back to top](#))**

- A. Program Management. Seller will develop and submit a written project plan within 30 days of Buyer's request that, in a format specified by Buyer, outlines tasks, sub-tier deliverables, and detailed schedules for Order performance. Seller shall update the project plan at regular intervals but no less than monthly. Seller shall immediately notify Buyer if Seller becomes aware it will not meet project plan deadlines.
- B. Program Reviews. Buyer may request a program review to assess Seller's performance of this Order. Program reviews will be held at mutually agreed upon locations and each party will bear its own costs and expenses in connection therewith.
- C. No Waiver. Any project management assistance provided to Seller by Buyer or acceptance by Buyer of deficient performance is solely for the purpose of mitigating risk to Order performance. In providing project management assistance, Buyer does not waive any of its rights under the other provisions of this Order.

**42. EQUAL EMPLOYMENT OPPORTUNITIES. ([back to top](#))**

The requirements in 41 CFR 60-1.4 (a)(1)-(8) are incorporated into this Order. Seller and Seller's subcontractors at every tier shall comply with the requirements found therein.

**43. OBSOLESCENCE. ([back to top](#))**

By accepting this Order, Seller represents that it has in its possession or has the ability to obtain all necessary equipment, subassemblies, material, components, and items (collectively referred to as "Parts") required to perform the Order. If during the performance of this Order Seller becomes aware that any Products or Parts will be going out of production or will no longer be commercially available in the future, Seller shall notify the Buyer of such obsolescence. Seller shall specifically identify those Products or Parts by name or title, part number(s), function, and name and location of manufacturer. Should any Parts that Seller intended to use in performance of this Order become obsolete and unavailable to Seller, Seller shall identify and propose alternative Parts for approval by Buyer and, if necessary, the Government, and Seller shall be responsible for any increase in cost necessary to obtain and qualify such alternative Parts to ensure full compliance with the requirements of this Order.

**44. ADDITIVE MANUFACTURING (A.K.A., 3D PRINTING). ([back to top](#))**

Seller shall provide advance written notice and obtain Buyer's written approval for additively manufactured parts or supplies that Seller intends to provide under this Order. Seller shall flow down the substance of this clause to its subcontractors under this Order.

**45. CYBERSECURITY. ([back to top](#))**

Buyer has implemented a Supply Chain Cybersecurity Compliance and Risk Mitigation Program (SC3RMP) to assess and mitigate cybersecurity risks, raise awareness, and develop proportionate and effective defenses of and across Buyer's subcontractors. A critical element of SC3RMP is Buyer's use of Exostar's Onboarding Module (OBM), which provides a secure platform to report the status of a company's compliance with DFARS 252.204-7012, and more specifically the security requirements of NIST SP 800-171. Upon request of Buyer, Seller agrees to register and

maintain an active account with Exostar OBM (located at [https://www.myexostar.com/?ht\\_kb\\_category=onboarding-module](https://www.myexostar.com/?ht_kb_category=onboarding-module)) and to complete the Exostar OBM cybersecurity questionnaire. Seller also agrees to provide Buyer with information reasonably required by Buyer to assess and address any cybersecurity risks identified by SC3RMP.

**46. FAR/DFARS CLAUSES/PROVISIONS. [\(back to top\)](#)**

- A. The FAR and DFARS clauses listed below are incorporated by reference and made part of this Order with the same force and effect as though set forth in full text. Seller shall incorporate into each lower-tier subcontract placed in support of this Order all applicable clauses in accordance with the flowdown requirements specified in such clause.
- B. The terms “Contractor” means “Seller,” “Contracting Officer” means “Buyer,” “Contract” means this Order and “Government” means “Buyer or the Government.” However, the words “Government” and “Contracting Officer” do not change when a right, act, authorization or obligation can be granted or performed only by the Government or the Prime Contract contracting officer or duly authorized representative.
- C. Unless a clause or parenthetical specifies or references a monetary threshold, thresholds for Truthful Cost and Pricing Data (referred to as “TCPD,” and formerly known as TINA), the Simplified Acquisition Threshold (SAT), and the Micro Purchase Threshold (MPT) are those found in the definitions at FAR 2.101. Applicable thresholds are those in effect in the FAR on the date of Order award unless otherwise indicated.
- D. Whenever the FAR or DFARS clauses include a requirement for dispute resolution in accordance with the “Disputes clause,” the dispute shall be disposed subject to the provision entitled “Disputes” in this Order.
- E. The full text of a clause may be accessed electronically at <https://www.acquisition.gov/>.

FAR CLAUSES/PROVISIONS		
CLAUSE NUMBER	CLAUSE NAME	CLAUSE DATE
52.202-1	Definitions <i>(“solicitation” means the Buyer’s customer’s solicitation under which this Order is issued)</i>	(Jun 2020)
52.203-6	Restrictions on Subcontractor Sales to the Government <i>(applies to Orders over the SAT) (ALT I applies to commercial items)</i>	(Jun 2020)
52.203-13	Contractor Code of Business Ethics and Conduct <i>(applies to Orders that exceed the threshold at FAR 3.1004(a) and that have a performance period of more than 120 days. The Parties shall make all disclosures of violation of the civil False Claims Act or of Federal criminal law to the Office of the Inspector General of the agency issuing the prime contract under which this Order is issued, with a copy to the Contracting Officer of the prime contract.)</i>	(Nov 2021)
52.203-15	Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009 <i>(applies to ARRA funded Orders only)</i>	(Jun 2010)
52.203-19	Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements	(Jan 2017)
52.204-2	Security Requirements <i>(applies to Orders requiring access to classified information, delete paragraph (c))</i>	(Mar 2021)
52.204-9	Personal Identity Verification of Contractor Personnel <i>(applies to Orders requiring access to a Federally-controlled facility or information system; contact Buyer for procedures)</i>	(Jan 2011)

FAR CLAUSES/PROVISIONS		
CLAUSE NUMBER	CLAUSE NAME	CLAUSE DATE
52.204-21	Basic Safeguarding of Covered Contractor Information Systems <i>(applies to Orders (including those for acquisition of commercial items, other than commercially available off-the-shelf items), in which the Seller may have "Federal contract information," as that term is defined in paragraph (a) of this clause, residing in or transiting through its information system)</i>	(Nov 2021)
52.204-23	Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities	(Nov 2021)
52.204-25	Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment	(Nov 2021)
52.204-27	Prohibition on ByteDance Covered Application	(Jun 2023)
52.211-5	Material Requirements <i>(the clause's requirement that Contracting Officer approval be obtained before using "surplus property" applies also to residual inventory resulting from terminated Government contracts or purchase orders awarded thereunder)</i>	(Aug 2000)
52.211-15	Defense Priority and Allocation Requirements	(Apr 2008)
52.219-8	Utilization of Small Business Concerns	(Oct 2022)
52.222-19	Child Labor - Cooperation with Authorities and Remedies <i>(except paragraph (a))</i>	(Dec 2022)
52.222-21	Prohibition of Segregated Facilities	(Apr 2015)
52.222-26	Equal Opportunity	(Sep 2016)
52.222-35	Equal Opportunity For Veterans <i>(applies to Orders valued at or above the threshold at FAR 22.1303(a))</i>	(Jun 2020)
52.222-36	Equal Opportunity For Workers with Disabilities <i>(applies to Orders over the threshold at FAR 22.1408(a))</i>	(Jun 2020)
52.222-37	Employment Reports on Veterans <i>(applies to Orders valued at or above the threshold at FAR 22.1303(a))</i>	(Jun 2020)
52.222-40	Notification of Employee Rights Under the National Labor Relations Act <i>(applies to Orders over \$10,000)</i>	(Dec 2010)
52.222-50	Combating Trafficking In Persons	(Nov 2021)
52.222-54	Employment Eligibility Verification <i>(applies to Orders for services over \$3,500 for work performed in the United States)</i>	(May 2022)
52.225-13	Restrictions on Certain Foreign Purchases	(Feb 2021)
52.227-1	Authorization and Consent <i>(applies to Orders that exceed the SAT; Alt I applies to Research and Development Orders; Alt II applies to communication services)</i>	(Jun 2020)
52.227-2	Notice and Assistance Regarding Patent and Copyright Infringement <i>(applies to Orders over the SAT)</i>	(Jun 2020)
52.232-40	Providing Accelerated Payments to Small Business Subcontractors <i>(applies only to Orders with small business concerns)</i>	(Mar 2023)
52.244-6	Subcontracts for Commercial Products and Commercial Services	(Nov 2023)
52.246-2	Inspection of Supplies – Fixed Price	(Aug 1996)
52.246-4	Inspection of Services – Fixed Price	(Aug 1996)
52.246-6	Inspection – Time-and Material and Labor Hour	(May 2001)

DFARS CLAUSES/PROVISIONS		
CLAUSE NUMBER	CLAUSE NAME	CLAUSE DATE
252.203-7002	Requirement to Inform Employees of Whistleblower Rights	(Dec 2022)
252.203-7003	Agency Office of the Inspector General	(Aug 2019)
252.204-7000	Disclosure of Information	(Dec 1991)
252.204-7004	Antiterrorism Awareness Training for Contracts <i>(applies to all Orders under which Seller will require routine physical access to a Federally-controlled facility or military installation)</i>	(Jan 2023)
252.204-7012	Safeguarding Covered Defense Information and Cyber Incident Reporting <i>(applies if covered defense information is provided to, or delivered by, Seller under this Order; Seller shall also provide Buyer with any reports it receives from lower tier subcontractors pursuant to this clause)</i>	(Jan 2023)
252.204-7015	Notice of Authorized Disclosure of Information for Litigation Support	(Jan 2023)
252.204-7018	Prohibition on the Acquisition of Covered Defense Telecommunications Equipment or Services	(Jan 2023)
252.204-7020	NIST SP 800-171 DoD Assessment Requirements	(Nov 2023)
252.211-7003	Item Unique Identification and Valuation <i>(applies to Orders when any item is listed as requiring unique item identification)</i>	(Jan 2023)
252.223-7006	Prohibition on Storage, Treatment, and Disposal of Toxic or Hazardous Materials—Basic <i>(applies only when performing work on a DoD facility)</i>	(Sep 2014)
252.223-7008	Prohibition of Hexavalent Chromium <i>(applies to Orders for supplies, maintenance and repair services, or construction materials)</i>	(Jan 2023)
252.225-7001	Buy American and Balance of Payments Program-Basic	(Jan 2023)
252.225-7007	Prohibition on Acquisition of Certain Items from Communist Chinese Military Companies <i>(applies to Orders for items covered by the United States Munitions List and the 600 series of the Commerce Control List)</i>	(Dec 2018)
252.225-7008	Restriction on Acquisition of Specialty Metals	(Mar 2013)
252.225-7009	Restriction on Acquisition of Certain Articles Containing Specialty Metals <i>(except paragraphs (d) and (e)(1); Sellers using the minimal content exception in paragraph (c)(6) shall submit a “Good Faith Estimate” on a form designated by Buyer)</i>	(Jan 2023)
252.225-7012	Preference for Certain Domestic Commodities	(Apr 2022)
252.225-7052	Restriction on the Acquisition of Certain Magnets, Tantalum, and Tungsten	(Jan 2023)
252.227-7013	Rights in Technical Data - Other than Commercial Products and Commercial Services & Alt II (Mar 2022) <i>(applies only to technical data if any portion was developed at Government expense)</i>	(Mar 2023)
252.227-7014	Rights in Other Than Commercial Computer Software and Other Than Commercial Computer Software Documentation <i>(applies only to computer software or computer software documentation any portion was developed at Government expense)</i>	(Mar 2023)

DFARS CLAUSES/PROVISIONS		
CLAUSE NUMBER	CLAUSE NAME	CLAUSE DATE
252.227-7015	Technical Data – Commercial Products and Commercial Services & Alt. I (Mar 2022) <i>(applies to Orders for technical data for commercial products or services developed in any part at private expense)</i>	(Mar 2023)
252.227-7016	Rights in Bid or Proposal Information	(Jan 2023)
252.227-7019	Validation of Asserted Restrictions - Computer Software <i>(applies to Orders with deliverables for computer software)</i>	(Jan 2023)
252.227-7037	Validation of Restrictive Markings On Technical Data	(Jan 2023)
252.232-7017	Accelerating Payments to Small Business Subcontractors—Prohibition on Fees and Consideration	(Apr 2020)
252.234-7004	Cost and Software Data Reporting System—Basic <i>(applies to Orders over \$50 million)</i>	(Nov 2014)
252.235-7003	Frequency Authorization--Basic <i>(applies to Orders requiring radio frequency authorization)</i>	(Mar 2014)
252.239-7016	Telecommunications Security Equipment, Devices, Techniques, and Services <i>(applies to Orders that require securing telecommunications)</i>	(Dec 1991)
252.244-7000	Subcontracts for Commercial Products or Commercial Services (DoD Contracts) <i>(supplements FAR 52.244-6)</i>	(Jan 2023)
252.246-7003	Notification of Potential Safety Issues <i>(applies to Orders for Products identified as: (i) 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, subassemblies, and parts integral to a system)</i>	(Jan 2023)
252.246-7007	Contractor Counterfeit Electronic Part Detection and Avoidance System <i>(excluding the introductory text and including only paragraphs (a) through (e)) (applies to Orders requiring delivery of electronic parts or assemblies containing electronic parts)</i>	(Jan 2023)
252.246-7008	Sources of Electronic Parts <i>(applies to Orders for electronic parts or assemblies containing electronic parts, unless Seller is the original manufacturer)</i>	(Jan 2023)
252.247-7023	Transportation of Supplies by Sea - Basic <i>(applies to Orders over the SAT; if this Order is below the SAT, only paragraphs (a) through (e), and paragraph (i), apply)</i>	(Jan 2023)