

GENERAL PROVISIONS FOR ORDERS UNDER KESSELING CONTRACT

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

- A. BUYER means Huntington Ingalls Incorporated (HII), a subsidiary of Huntington Ingalls Industries, acting through the Buyer’s authorized purchasing representative.
- B. Buyer’s Customer means Fluor Marine Propulsion, LLC (“FMP”).
- C. DEARS means the Department of Energy Acquisition Regulations
- D. FAR means the Federal Acquisition Regulation.
- E. 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).
- F. PARTIES means Buyer and Seller collectively.
- G. PRIME CONTRACT means the contracting instrument issued by the U.S. Government for the acquisition of Products.
- H. SUBCONTRACT means the contracting instrument awarded by Bechtel Marine Power Company to HII.
- I. 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 the Order. For the 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.
- J. SELLER means the party with whom Buyer is contracting.
- K. 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. [\(back to top\)](#)

The descriptive headings contained in this Order are for convenience or reference only and in no way define, limit or describe the scope or intent 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. BUYER AUTHORIZATION. [\(back to top\)](#)

- A. Buyer’s authorized purchasing representative has sole authority to make contractual commitments on behalf of Buyer, to provide contractual direction, and to change contractual requirements as defined in this Order.
- B. Buyer’s engineering, technical personnel and other representatives may from time to time render assistance or give technical advice or discuss or affect an exchange of information with Seller’s personnel concerning the Products hereunder. No such action shall be deemed to be a change under the “Changes” provision of this Order and shall not be the basis for an equitable adjustment.

5. ACCEPTANCE OF OFFER. [\(back to top\)](#)

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

- B. By acceptance of this Order, Seller agrees that the scope of the work required is understood by Seller; that there are no informal commitments by Buyer to Seller that in any way affect the work under this order; that there are no open or unresolved issues related to this Order except as explicitly stated herein; and that Seller therefore understands and agrees that this Order states the complete agreement of the parties.

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

Neither this Order nor the benefits or obligations thereof shall be assigned or transferred by Seller, except with the prior written consent of Buyer, such consent not to be unreasonably withheld. This Order may be assigned by Buyer to the Government or any designee of the Government, provided that written notice thereof is given to Seller.

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

- A. In the event of any inconsistency between any parts of this Order, the inconsistency shall be resolved by giving precedence in the following order:
 - i. The Order and any modifications or changes thereto exclusive of items (ii) through (vi).
 - ii. Any other special provisions to these General Provisions (also referred to as terms and conditions) as invoked in this order. These General Provisions including referenced FAR and DEARS clauses (and any other regulations referenced therein).
 - iii. Statement of Work.
 - iv. Specification/Drawing.
 - v. Other documents referenced in this Order.
- B. Seller shall immediately bring any inconsistencies to the attention of Buyer in writing, and any inconsistencies in or among any of the foregoing shall not be the basis for any defense of a breach of contract claim brought by Buyer against Seller for Seller's failure to perform under this Order, nor shall any such inconsistencies be the basis for any claim of any kind by Seller against Buyer unless Seller has first timely brought such inconsistencies to Buyer's attention and Buyer has failed to resolve such inconsistencies.

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

This Order constitutes written confirmation of 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.

9. FRAUD OR FALSIFICATION. [\(back to top\)](#)

- A. This Order and activities hereunder are within the jurisdiction of the Department of Energy and the United States Navy. Any knowing and willful act to falsify, conceal or alter a material fact, or any false, fraudulent or fictitious statement or representation in connection with the performance of work under this Order may be punishable in accordance with applicable Federal Statutes.
- B. Seller agrees that all employees engaged in the performance of this purchase order will be, if they have not been previously, informed in writing prior to commencing performance of work under this Order that there is a risk of Federal criminal penalties associated with any falsification, concealment or misrepresentation in connection with work performed under this purchase order. Seller agrees that a signed statement shall be, if it has not been previously, obtained from said employees prior to their commencing performance of work under this Order that they have been so informed. Such statements shall be retained by the Seller for at least three years after final payment on this Order. The Statement shall read as follows:

"This company/division/department/branch performs work under contracts which are within the jurisdiction of departments of the United States Government. Some of the work performed under these contracts affects the national security of the United States and the requirements of these contracts are designed to ensure that essential attributes of the work are carefully checked or inspected and that records accurately reflect the results of all work. Any falsification, concealment or alteration of any material fact, or any false, fraudulent or fictitious statement or

representation in connection with the work under any contract within the jurisdiction of the Government is not only prohibited by company policy, but may also be punishable under Federal Law. Please acknowledge by your signature that you have read and understand the above."

- C. Seller must also agree to include the following statement preprinted on each manufacturing, inspection or test record used in conjunction with the subject subcontract:

Note: The recording of false, fictitious or fraudulent statements or entries on this document may be punishable as a felony under Federal Statute.

- D. Seller shall include all provisions of this Article including this sentence in all lower-tier contracts under this order. Any inability or unwillingness of a lower-tier supplier to comply with this provision should be documented in writing and submitted to the Prime Contractor.

10. RATED ORDER. [\(back to top\)](#)

This Order is for a program which is authorized a DO-E2 rating. Seller is required to follow the requirements of 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.

11. DELIVERY, TITLE. [\(back to top\)](#)

- A. The Freight On Board (FOB) point shall be as designated in this Order. Title shall pass to Buyer upon delivery (except as otherwise specified within this Order); however, passing of title shall not relieve Seller of any other obligations under this Order.
- B. All deliveries shall be strictly in accordance with the applicable quantities and schedules set forth in this Order. Unless otherwise specified in this Order, Seller shall not:
- i. Ship quantities in excess of those specified in this Order. Buyer shall have no obligation to return or pay for any quantities in excess of those specified in this Order. For all other shipments not meeting the requirements of this paragraph, Buyer may return the shipment or store early deliveries at Seller's cost.
 - ii. Combine shipment of materials specified in separate Contract Line Item Numbers (CLINs) of this Order in a single shipment unless the shipping and handling costs of each item shipped under a CLIN are separately identified.
- C. All material deliveries, unless otherwise specified, shall be made to:
- Newport News Shipbuilding
350 Atomic Project Rd
Ballston Spa, NY 12020
Warehouse 73
- D. 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 be informational only, and shall in no way affect the rights or remedies available to Buyer. Seller shall make every effort to avoid or minimize the delay to the maximum extent possible. Any additional cost incurred by Buyer or Seller because of late delivery shall be borne by Seller unless specifically authorized in writing by Buyer.
- E. 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:
- i. Terminate this Order, or
 - ii. Fill this Order or any portion thereof, from sources other than Seller and to reduce Seller's Order quantities accordingly at no increase in unit price, without any penalty to Buyer. The rights accorded Buyer pursuant to this subparagraph D shall not limit Buyer's rights under the "Termination for Default" provision of this Order.
- F. All Parties expressly agree that time is and shall remain of the essence in performing this Order and no acts of Buyer, including without limitation, modifications to this Order or acceptance of late deliveries, shall constitute a waiver of this provision.

12. DELIVERY OF SELLER DATA. [\(back to top\)](#)

All drawings, procedures, manuals, forms, test reports, software (including software documentation) and other data that is required to be delivered 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, 45 days after receipt of this Order. Seller shall submit Seller Data to the Buyer address shown on the first page of this Order unless otherwise specified in this Order. If no delivery information is specified or Seller is unsure of where to send the Seller Data, Seller shall contact Buyer's authorized purchasing representative for further instructions. Buyer may withhold payment if Seller fails to deliver any Seller Data in accordance with the terms of this Order. When furnished with the shipment, Seller shall enclose all required Seller Data in the first box of the shipment and mark, *CERTIFICATES AND/OR TEST REPORTS ENCLOSED*.

13. 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 furnish Buyer with formal releases from Seller's subcontractors. 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.

14. INSPECTION. [\(back to top\)](#)

- A. Except as otherwise provided in this Order, Seller shall maintain an inspection and quality control system acceptable to Buyer to be performed on Products delivered under this Order. As part of the system, Seller shall prepare records evidencing all inspections made under the system and the outcome. Buyer or Buyer's customer shall have the right to perform reviews and evaluations as reasonably necessary to ascertain Seller compliance with an inspection or quality control system that is acceptable. The right of review, whether exercised or not, does not relieve the Seller of its obligations under this Order.
- B. Buyer or Buyer's customer has the right to inspect and test all Products to the extent practicable, at all places and times, including the period of manufacture, and in any event before acceptance. Buyer assumes no contractual obligation to perform any inspection and test for the benefit of Seller. If Buyer or Buyer's customer performs an inspection or test on the premises of Seller or a subcontractor of Seller, Seller shall furnish, and shall require its subcontractors to furnish, at no increase in Order price, all reasonable facilities and assistance for the safe and convenient performance of such inspection and test. Buyer reserves the right to charge to Seller any additional cost of inspection or test by Buyer or Buyer's customer when (1) Products are not ready at the time such inspection or test is required by this Order or has been otherwise scheduled by mutual agreement of the parties, or (2) reinspection or retest of the Products is necessitated by prior rejection.
- C. Buyer has the right either to reject or to require correction of nonconforming Products. Products are nonconforming when they are defective in material or workmanship or are otherwise not in conformity with requirements of this Order. Buyer may reject nonconforming supplies with or without disposition instructions.
- D. Seller shall remove Products rejected or required to be corrected; however, Buyer may require or permit correction in place, promptly after notice, by and at the expense of Seller. Seller shall not tender for acceptance corrected or rejected supplies without disclosing the former rejection or requirement for correction, and, when required, shall disclose the corrective action taken.
- E. Seller, at its own expense, shall promptly rectify any defects discovered during any inspection or test.
- F. If Seller fails to promptly remove, replace, or correct rejected Products that are required to be removed or to be replaced or corrected, Buyer may either:
 - i. Remove, replace, or correct the Product(s) and charge the cost to the Seller, or
 - ii. Terminate this Order for default.
- G. If Buyer elects to correct the deficiencies in the Product(s), then the parties agree that Seller will 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. If Seller fails to correct or replace the

Product(s) within the delivery schedule, Buyer may require their delivery with an equitable price reduction. Failure to agree to a price reduction shall be a dispute.

- H. Products that have been reworked or repaired by Seller after having been rejected by Buyer shall be identified as "Resubmitted." Seller shall annotate the packing slip with the words "Resubmitted Material," the reason for the previous rejection, and the Buyer Inspection Report, Discrepancy Report, or Quality Notification Number if known. If the Products were inspected at source and rejected, such information shall also be annotated on the packing slip.
- I. Seller shall flow down the substance of this provision to all of its suppliers engaged for performance under this Order.
- J. Neither Buyer's in-process inspection nor Buyer's approval of any of Seller's drawings, procedures or other submittals shall: (i) constitute acceptance of any work or (ii) relieve Seller of complying fully with all of the requirements of this Order.

15. TAXES. [\(back to top\)](#)

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

16. INVOICES. [\(back to top\)](#)

Payment shall be made within the later of the following two events: (A) The 30th day (or such other time as specified herein) after the designated billing office receives a proper invoice from Seller; or (B) The 30th day (or such other time as specified in the Order) after Buyer's receipt of: (i) supplies delivered at Buyer's facility or such other facility as designated by Buyer; or (ii) services performed. Unless Seller is part of Buyer's Invoiceless Payment System, Seller shall email all invoices, in duplicate, showing the Order number and Order Item Number to the Huntington Ingalls Incorporated email address on the first page of this Order. 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. Payment of Seller's invoices shall be subject to adjustment for any amounts found upon audit or otherwise to have been improperly invoiced. If Buyer does not fully pay Seller's original invoice because of a performance deficiency, Seller must submit a new invoice for any remaining amounts due after Seller corrects the deficiency that caused the partial payment. The Seller shall ensure the purchase order line item is clearly referenced on each item being invoiced. The Seller shall also ensure the invoice is submitted in the same unit of measure as the purchase order. If the purchase order line items are not referenced and the unit of measure is different from the purchase order, the entire invoice will be rejected and the Seller will need to resubmit the invoice with the proper criteria. If the invoice is for a down payment/milestone payment, the invoice must be submitted with the waiver of lien, insurance papers and Application for Partial Payment and Certification of Milestone Completion and Incurred Cost Form (NN9626). If these documents are not submitted with the invoice, the entire invoice will be reject and the Seller will need to resubmit the invoice with the proper documentation. For progress payments, the Seller shall note "Final Invoice" on the final billing documents sent to Buyer. These actions are necessary to ensure proper closeout of this Order.

17. SUSPECT/COUNTERFEIT PARTS. [\(back to top\)](#)

- A. Seller represents and warrants that it has policies and procedures in place to ensure that none of the Products furnished to Buyer under this Order are or contain "suspect/counterfeit parts" and certifies, to the best of its knowledge and belief, that no "suspect/counterfeit parts" have been or will be furnished to Buyer by Seller under this Order. "Suspect/counterfeit parts" are parts that may be of new manufacture, but are misleadingly labeled to provide the impression they are of a different class or quality or from a different source than is actually the case. The term "suspect/counterfeit parts" also include refurbished parts, with or without false labeling, that are represented as new parts or any parts that are designated as

- suspect by the U.S. Government, including but not limited to parts listed in alerts published by the Defense Contract Management Agency under the Government-Industry Data Exchange Program (GIDEP).
- B. Seller will ensure that suspect/counterfeit parts are not incorporated into any Products. The intentional or unintentional use, incorporation, or delivery of suspect/counterfeit parts is strictly prohibited. This includes a suspect/counterfeit part being provided either as an end item deliverable or as a component or subcomponent of an end item deliverable under this Order.
 - C. Seller represents and warrants that it has policies and procedures in place to ensure that none of the Products furnished to Buyer under this Order are or contain "suspect/counterfeit parts." Seller further certifies, to the best of its knowledge and belief, that no "suspect/counterfeit parts" have or will be furnished to Buyer by Seller under this Order.
 - D. If Seller becomes aware or suspects that it has furnished suspect/counterfeit parts or if Buyer determines, including as a result of alerts from the U.S. Government, that Seller has supplied suspect/counterfeit parts to Buyer and so notifies Seller, Seller shall immediately replace the suspect/counterfeit parts with parts acceptable to Buyer and conforming to the requirements of this Order. Notwithstanding any other provision of this Order, Seller shall be liable for all costs incurred by Buyer to remove and replace the suspect/counterfeit parts, including without limitation all costs incurred by Buyer relating to the removal of such suspect/counterfeit parts, the reinsertion of replacement parts and any testing necessitated by the reinstallation of Seller's Products after suspect/counterfeit parts have been exchanged. All such costs shall be deemed direct damages.
 - E. Seller's warranty against suspect/counterfeit parts shall survive any termination or expiration of this Order.
 - F. Buyer may, at its discretion:
 - i. Remove and or retain or both all Products supplied by Seller that are suspected of being or containing suspect/counterfeit parts pending reporting to the appropriate law enforcement authorities and final disposition of the Products by them. Seller shall be liable for all costs relating to Buyer's removal and retention of the suspect/counterfeit parts.
 - ii. Turn over to the appropriate authorities (*e.g.*, without limitation, the Defense Criminal Investigative Service, Naval Criminal Investigative Service, Federal Bureau of Investigation, Offices of the Inspector General, etc.) any Products suspected of being or containing suspect/counterfeit parts and reserves the right to withhold payment for the Products pending the results of any investigation or proceedings related to the matter.
 - G. Seller shall insert a clause containing all the terms of this provision in all subcontracts under this Order.

18. 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 has implemented a comprehensive Conflict Minerals compliance program, which includes posting relevant information for suppliers at this website: <http://www.huntingtoningalls.com/who-we-are/ethics-compliance/conflict-minerals/>. It is a requirement of this Order that 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, as described further below.

- A. As of the time of award of this Order, Seller represents that:
 - i. The Product(s) Seller will be supplying under this Order do not contain (a) gold or (b) tantalum, tin, or tungsten (derivatives of columbite-tantalite (coltan), cassiterite, and wolframite) or;
 - ii. Alternatively, if the Product(s) contain gold, tantalum, tin, or tungsten, Seller agrees to provide the Buyer with one of the following completed forms prior to delivery of the Product(s):
 - a. The Responsible Minerals Initiative's Conflict Minerals reporting Template ("CMRT") version 6.01 or later, available at <http://www.responsiblemineralsinitiative.org/reporting-templates/cmrt/>, with "Product" selected under the "Declaration Scope or Class" field;
 - b. Written documentation about the source of Conflict Minerals in the Product(s) that provides substantively similar information to that requested by the CMRT.

- B. Any CMRT provided pursuant to paragraph A(ii) above shall be submitted on the web platform of Buyer's conflict minerals data vendor, Source Intelligence. If Seller has previously registered with Source Intelligence, Seller may use its existing username and password at www.sourceintelligence.net. If Seller is not registered, instructions may be obtained by emailing hii@sourceintelligence.com or by calling toll free in the United States, 1-855-207-8015. Any questions regarding this requirement should be addressed to the authorized purchasing representative of Buyer listed on the face of this Order.
- C. If the status of any Product(s) changes during performance of this Order so that the representation or information provided pursuant to paragraph A of this provision is no longer accurate, then Seller must within 30 days complete and submit updated, accurate and current information as provided in paragraph B 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."

19. WARRANTY (FIXED-PRICE ORDERS). ([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;
 - ii. conform to all requirements of this Order; and
 - iii. be free of all liens and encumbrances.
- B. The warranty period shall begin upon Buyer's acceptance of the Product and end 12 months after final acceptance by Buyer's customer of the end product incorporating the Product provided by Seller under this Order. In computing the warranty period, there shall be excluded 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.
- C. For the purposes of this provision, a deficiency occurs when Seller's goods or services fail to meet any of the performance obligations set forth in subparagraphs A(i) through A(iii) of this provision. Seller's notice shall in no way affect the rights and remedies of Buyer.
- D. For all deficiencies that arise during the warranty period, Seller shall promptly remedy the deficiency at no cost to Buyer. If Seller fails to remedy the deficiency within a reasonable time after having been notified of the deficiency, Buyer may, at its option, remedy the deficiency by contract or otherwise and charge to the Seller any increased costs incurred by Buyer or Buyer's customer or make an equitable reduction in the price of this Order. If Buyer elects to correct the deficiencies in the Product, then the parties agree that Seller will 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 or similar reviews shall not relieve Seller of any obligation under this warranty.
- F. Buyer's rights under this provision shall, at Buyer's option, 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 the Buyer's authorized purchasing representative describing the deficiency and Seller's plan to remedy the deficiency. For the purposes of this paragraph G, a deficiency occurs when Seller's Product fails to meet any of the performance obligations set forth in paragraph A of this provision. 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 may have under this Order, or in law or equity.

20. CHANGES. [\(back to top\)](#)

- A. The 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,
 - vii. if services are procured with the Products:
 - viii. description of services to be performed;
 - ix. time of performance (i.e., hours of the day, days of the week, etc.); and
 - x. 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. Any claim for adjustment shall be unconditionally waived unless asserted in writing and delivered to Buyer within 15 days of the receipt of the written Order; If Seller claims the cost of any property made obsolete or excess, Buyer shall have the right to prescribe the manner of disposition of the property to include the right to acquire that property for the cost claimed.
- D. Buyer has the right to examine any of Seller's pertinent books and records for the purpose of verifying 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.

21. EQUITABLE ADJUSTMENTS; WAIVER AND RELEASE OF CLAIMS. [\(back to top\)](#)

Whenever Seller, after receipt of a change made pursuant to the "CHANGES" clause or after assertion of a constructive change under the "NOTIFICATION OF CHANGES" clause, submits any claim for equitable adjustment under the foregoing, such claim shall include all types of adjustments in the total amounts to which the foregoing entitle Seller, including but not limited to adjustments arising out of delays or disruptions or both caused by such change. In support of any Seller request for equitable adjustment brought under the "CHANGES" clause or any other clause of this Order, Seller shall provide Buyer sufficient detail to reasonably support Seller's proposal for a request for equitable adjustment or which Buyer's customer should 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 supplemental agreement providing an 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.

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

- A. Buyer may terminate this Order in whole or in part without liability if Seller:
 - i. Fails to make delivery of 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 those items within the time set forth elsewhere 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 work.
- C. 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 under this Order.
- D. If, after a default termination, it is determined that the 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 the Buyer.

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

- A. Any dispute arising under or related to this Order shall be submitted in writing for resolution 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.
- B. If a dispute cannot be resolved to both Parties' mutual satisfaction, after good faith negotiations, within 90 days from the date the written dispute is received by the other party in accordance with the notice provisions set forth herein, or such additional time as the Parties agree upon, in writing, either party may only bring suit in the appropriate federal or state court in the state listed as Buyer's address in the Order; said forum selection to be made without regard to said state's conflict of laws principles.
- C. Pending any informal resolution, law suit, appeal, or final decision referred to in this provision, or the settlement of any dispute, Seller shall proceed diligently, as directed by Buyer, with performance of this Order.
- D. Seller shall commence an action 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.
- E. 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" provision in the Prime Contract ("deemed denial"), on a matter arising under or related to the Buyer's Contract with FMP, 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 in accordance with subparagraph F, which shall be Seller's sole remedy for such disputes. Except as otherwise provided in subparagraph F, all other disputes between Buyer and Seller will be resolved in accordance with subparagraph B of this provision.

- F. 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, unless and to the extent Buyer or Seller appeals pursuant to the terms of this provision.
- i. If Buyer elects to appeal a Government Action pursuant to the "Disputes" provision 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 elects not to appeal a Government Action, Buyer shall notify Seller with reasonable promptness. When Buyer elects not to prosecute an appeal pursuant to this provision, the Buyer may, in its sole and absolute discretion, permit Seller to prosecute the appeal of the Government Action for Buyer and in such event, Buyer shall, if requested by Seller, reasonably assist Seller in prosecuting the appeal. Seller shall reasonably keep Buyer informed of the progress of ANY SUCH appeal by, among other things, providing Buyer with copies of all pleadings and other relevant documents. For those pleadings and other documents filed by Seller, Seller shall provide Buyer drafts in advance of the filing date sufficient to afford Buyer with a reasonable time to review.
 - iii. Any decision on or settlement of an appeal brought pursuant to subparagraphs F(i) or F(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 paragraph F(i) of this provision. Seller shall bear the cost of prosecuting appeals brought pursuant to paragraph F(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 that Buyer may approve to be appealed hereunder, 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. Seller shall indemnify and hold harmless Buyer, its parent and affiliates and each of their directors, officers, employees, and agents (collectively, for the purposes of this subparagraph, "Buyer") against any and all liabilities, claims, losses, and expenses arising out of: (1) Buyer's sponsoring a claim on Seller's behalf as provided for in this provision, (2) any misrepresentation of fact or fraud on the part of Seller, its employees, subcontractors or agents in connection with such claim; or (3) a defect in Seller's certification.
 - vii. 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.

24. 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 \$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 (for ship-in-place items only), 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 liability 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.

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

- A. If Buyer, Buyer's Customer, or Government property is furnished in conjunction with this Order, it shall be furnished "as is." Unless otherwise noted in this Order, Seller shall assume the risk of, maintain adequate insurance, and be responsible for, any loss, destruction of or damage to property provided to Seller by Buyer or the Government while such property is in Seller's possession or control. 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. Seller shall control and maintain Government- or Buyer-furnished property in accordance with a system that meets the requirements of FAR 52.245-1.
- B. Seller shall use Buyer- or Government-furnished property only for performing this Order, unless otherwise provided for in this Order or approved by Buyer. Seller shall not modify, cannibalize, or make alterations to Buyer- or Government-furnished property unless this Order specifically identifies the modifications, alterations or improvements as work to be performed.
- C. Buyer and Government shall retain title to all Buyer- or Government-furnished property. 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-furnished property become a fixture or lose its identity as personal property by being attached to any real property.
- D. Seller shall immediately discharge any lien, other than a lien held by Buyer or the Government on Buyer- or Government-furnished property.
- E. The requirements related to accounting for Buyer- or Government-furnished property 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.
- F. All Government or Buyer's Customer property not consumed by the work of the Order shall be returned to the Government at completion of work. Seller shall obtain disposition instructions for such Government Property from Buyer. Government Property Seller returns shall be accompanied by a certification of return of Government Property.

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

- A. As of the time of award of 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;
 - (ii) Seller's information disclosed on SBF P9152 is current, accurate and complete;
 - (iii) Neither Seller nor any of its principals is debarred, suspended, or proposed for debarment by the Government.
- B. If Seller's information as disclosed in the SBF P9152 has changed, Seller shall complete and submit to Buyer a revised SBF P9152 prior to acceptance of this Order.
- C. If Seller's information as disclosed in the SBF P9152 changes during performance of this Order, Seller shall complete and submit to Buyer a revised SBF P9152.

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

- A. Proprietary Information for purposes of this Order, means all knowledge no matter how communicated or stored Buyer furnishes to Seller, including, but not limited to, any item identified in writing at the time of disclosure as proprietary and marked with an appropriate legend, marking, or stamp identifying the data as Buyer's Proprietary Information, and includes any information marked with a restrictive legend as prescribed in DFARS 252.227-7013 or 252.227-7014 or in FAR 52.227-14.
- B. Seller will treat all Proprietary Information transferred in connection with this Order; all copies of Proprietary Information; and all improvements, modifications, and derivations of Proprietary Information 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 Buyer's Proprietary Information. Unless otherwise provided in this Order, Seller further agrees to affix the following legend "Huntington Ingalls Industries 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 agreement exists between the Parties, which relates to the subject matter of this Order, then Proprietary Information furnished by one Party to the other Party shall be protected pursuant to such Proprietary Information agreement.
- E. If no separate proprietary information or information exchange and non-disclosure agreement exists between the Parties, Seller will keep Buyer's Proprietary Information confidential and, except as provided herein, (i) not disclose Buyer's 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 Buyer's 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. Unless otherwise provided in DFARS 252.227-7013 or 252.227-7014 or 252.227-7015 or 252.227-7016, or in FAR 52.227-14 or If no separate proprietary information or information exchange and non-disclosure agreement exists between the Parties, no information furnished to Buyer (whether documentary, oral, visual or otherwise) shall be considered confidential or proprietary or require any particular handling or precaution or have any restriction on Buyer's right to use, modify, reproduce, perform, display, release, or

disclose such information in whole or in part, in any manner, and for any purpose whatsoever, and to have or authorize others to do so.

- G. Upon discovery by Seller of any inadvertent or accidental disclosure of Buyer's 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.
- H. The Seller shall not release to anyone outside the Seller's organization any unclassified information, regardless of medium (e.g. film, tape document), pertaining to any part of this Order or any program related to this Order, unless
 - i. The Buyer has given prior written approval; or
 - ii. The information is otherwise in the public domain before the date of release.
- I. Requests for approval shall identify the specific information to be released, the medium to be used, and the purpose for the release. The Seller shall submit its request to the Buyer at least 45 days before the proposed date for release. The Seller agrees to include a similar requirement in each lower-tier order under this Order. Lower-tier suppliers shall submit requests for authorization to release through the Seller to Buyer.

28. PATENT, TRADEMARK, TRADE SECRET, AND COPYRIGHT INDEMNITY. [\(back to top\)](#)

- A. In addition to any other warranty by Seller to Buyer against intellectual property infringement, statutory or otherwise, express or implied, Seller will indemnify and hold Buyer, Buyer's parent and affiliates and each of their officers, directors, employees, and customers ("Indemnified Parties") from and against any and all liabilities, claims, losses, and expenses arising out of any allegation of patent, copyright, or trademark infringement or allegation of trade secret misappropriation (collectively or individually, "Claim") resulting from Indemnified Parties' use, manufacture, or sale (including any re-sale) of any product or service Seller provides to Buyer that Seller authorizes expressly or impliedly under this Order. Seller shall, at its own cost, defend Buyer against such Claims, 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.
- B. Notwithstanding the foregoing, when this Order is performed under the authorization and consent of the U.S. Government to infringe United States Patents, Seller's liability for Seller's patent infringement under this Order shall be coextensive with Buyer's liability.

29. CLASSIFIED INVENTIONS. [\(back to top\)](#)

- A. The Seller shall not file or cause to be filed on any invention discovery conceived or first actually reduced to practice in the course of or under this Order in any country other than the United States, an application or registration for a patent without obtaining written approval of Buyer.
- B. When filing a patent application in the United States on any invention or discovery conceived of or first actually reduced to practice in the course of or under this Order, the subject matter of which is classified for reasons of security, the Seller shall observe all applicable security regulations covering the transmission of classified subject matter. When transmitting the patent application to the United States Patent and Trademark Office, the Seller shall by separate letter identify by agency and number, the Government Contract or Government Contracts which require security classification markings to be placed on the application.

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

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.

31. DATE/TIME PROCESSING REQUIREMENT – INFORMATION TECHNOLOGY. [\(back to top\)](#)

- A. All information technology, whether commercial or noncommercial, delivered under this Order that will be required to perform date/time processing involving dates subsequent to December 31, 1999, shall be “Year 2000 compliant with respect to information technology” (as defined at FAR 39.002) if properly installed, operated, and maintained in accordance with the contract specifications and applicable documentation. If this Order requires that specific deliverables operate together as a system, this requirement shall apply to those deliverables as a system. The “proper exchange” of date/time data shall be in accordance with the interface requirements specification(s) of this Order.
- B. “Information Technology” or “IT,” as used in this provision, means “information technology” as that term is defined at FAR 2.101, and further including those items that would otherwise be excluded by paragraph (3) of that definition.
- C. For line item deliverables that are commercial items (as defined at FAR 2.101), and that include commercial IT, the terms and conditions of the standard commercial warranty covering such commercial IT shall apply in addition to, and to the extent such terms and conditions are consistent with, this requirement. Any applicable commercial warranty shall be incorporated into this contract by attachment.
- D. Notwithstanding any term to the contrary in any other warranty of this Order, or in the absence of any such warranty(ies), the remedies available to Buyer under this provision shall include those provided in the “Inspection” provision of this Order. Nothing in this provision shall be construed to limit any rights or remedies that Buyer or the Government may otherwise have under this Order.
- E. Unless specified elsewhere in this Order, Seller will also deliver to Buyer a report summarizing any Year 2000 compliance testing that was performed, and the results thereof.
- F. The remedies available to Buyer and the Government for noncompliance with this provision shall remain available for 180 days after acceptance of the last deliverable IT item under this Order (including any option exercised hereunder), whichever is later.

32. VIRUS CHECK WARRANTY. [\(back to top\)](#)

Software and hardware provided by the Seller under this order shall not contain computer viruses or other malicious software. In performing this order, the Seller agrees to take precautions to avoid conveying computer viruses or other malicious software to Buyer. Specifically, all computer files, disks, memories, or other media provided by the Seller to Buyer (other than third party supplied software in its original, unopened packing materials) shall be checked by the Seller prior to delivery to Buyer to detect and remove any computer virus or other known malicious software. The virus check that is performed by the Seller shall include checks with current, up-to-date anti-virus software and any virus problems that are found during the check (or later found by Buyer) shall be fixed by the Seller. A statement verifying that the check has been made shall be included by the Seller with the deliverable when it is delivered to Buyer.

33. MARKING REQUIREMENTS. [\(back to top\)](#)

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.

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

- A. Export Compliance. Seller is advised that its performance of this Order may involve the use of or access to articles, technical data or software that is subject to export controls under 22 United States Code 2751 – 2796 (Arms Export Control Act) and 22 Code of Federal Regulations 120-130 (International Traffic in Arms Regulations) or 50 United States Code 2401 – 2420 (Export Administration Act) and 15 Code of Federal Regulations 768 – 799 (Export Administration Regulations) and their successor and supplemental laws and regulations (collectively hereinafter referred to as the “Export Laws and Regulations”). Seller represents and warrants that it is either:
 - 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 US immigration status.
- B. Seller shall comply with any and all Export Laws and Regulations, and any license(s) issued thereunder.
- C. Foreign Personnel/Persons. Seller shall not give any Foreign Person (including Seller’s own non-US employees or affiliates) access to Technical Data, software or Defense Articles, or provide an unauthorized Defense Service as those terms are defined in the applicable Export Laws and Regulations without the prior written consent of 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 or the Export Laws and Regulations, 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.
- D. Indemnification. Seller shall indemnify and hold harmless Buyer, Buyer’s parent and affiliates and each of their respective officers, directors, and employees from any and all liabilities, claims or suits brought and liabilities and losses (including attorney fees), arising out of the failure of Seller, its employees, subcontractors, or agents to comply with the requirements of this provision and breach of the warranty set forth in paragraph A. Seller shall, at its own cost, defend Buyer against such claims, losses, and liabilities, and, it shall pay Buyer’s reasonable attorneys 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. Any failure of Seller to comply with the requirements or any breach of the warranty contained in this provision shall be a material breach of this Order.
- E. Subcontracts. 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.

35. 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 ControlsTM, 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.

36. SITE CONDITIONS. ([back to top](#))

If Seller is required to install or supervise the installation of equipment or to perform services at Buyer's or its customer's site, Seller shall inspect the location of the work at Buyer's or its customer's site and be familiar with its condition at the time of award of this Order. In no event shall either Seller's failure to inspect the site prior to the award of this Order, or any circumstance that Seller should reasonably have discovered through such site inspection, constitute a basis for any claim for increased cost or additional time for performance.

37. HAZARDOUS MATERIALS. ([back to top](#))

Seller's obligations and requirements with respect to hazardous materials, including obligations to communicate with Buyer, are defined as follows in this provision. Neither the requirements of this provision, nor any act or failure to act by Buyer, shall relieve Seller of any responsibility or liability for the safety of any person or property, or of any obligation to comply with the applicable Federal, State, and local laws, codes, ordinances, and regulations (including the obtaining of licenses and permits) in connection with hazardous materials.

"*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) <https://www.gsa.gov/portal/content/101201>.

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 and be in the 16 section format of the United Nations Globally Harmonized System of Classification and Labeling of Chemicals (GHS) format as required by 29 CFR 1910.1200(g). **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. If Seller later determines that the SDS secured to the external packaging does not match the products delivered, Seller must immediately notify Buyer.

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. Repeated non-compliance will result in the Seller being removed from the list of approved suppliers.

B. Prohibited Hazardous Materials:

Except as agreed to in writing by Buyer, or as specified in this Order (e.g., an industry specification or assembly drawing that specifies chromium steel), the hazardous material constituents in Prohibited Hazardous Materials Table shall not be included in or come in direct contact with any products furnished under this order. The products furnished under this Order include 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.

Prohibited Hazardous Materials Table		
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 Table.

“Readily available information” sources include:

- a) Actual knowledge or process knowledge
- b) SDS
- c) Technical data sheets
- d) 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. Additional Notifications Required by Seller Relating to Materials Identified in the Prohibited Hazardous Materials Table:

Seller shall obtain approval from Buyer’s technical authority via the Vendor Information Request (VIR) or similar process as applicable to this order in the following circumstances:

- a) 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.

- b) 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.”
- c) 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 Contractor’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:

- a) **PROHIBITION OF YELLOW WRAPPINGS OR PROTECTION DEVICES.**
Seller shall not use yellow wrapping material or attached yellow protection devices such as caps or plugs.
- b) **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.

38. INDEMNIFICATION-THIRD PARTY CLAIMS. [\(back to top\)](#)

- A. Seller indemnify and hold harmless Buyer, Buyer’s parent and affiliates, and their directors, officers, employees (collectively, for the purposes of this provision, “Buyer”), from any and all liabilities, claims, losses, and expenses, arising from the acts or omissions of Seller, its subcontractors, agents, or employees in the performance of this Order, except where Buyer is solely negligent. Seller shall, at its own cost, defend Buyer against such claims, losses and liabilities, and, it shall pay Buyer’s reasonable attorneys’ 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
- B. Seller shall timely identify to Buyer those conditions of which Seller is aware or of which Seller becomes aware during the performance of this Order which Seller believes could give rise to a liability, obligation, loss, damage, penalty, fine, claim, action, suit, cost, expense, or disbursement or areas of actual or potential noncompliance with the terms and conditions of this contract or applicable law or regulation on the part of Seller, Buyer, or both. At Buyer’s sole discretion, Buyer may direct Seller to take corrective action, as directed by the Contracting Officer or Buyer’s customer and as required elsewhere in this contract.

39. INDEMNIFICATION - GOVERNMENT REQUIREMENTS. [\(back to top\)](#)

In addition to any other remedies provided for in this Order, Seller shall indemnify and hold harmless Buyer, Buyer’s parent and affiliates, and their respective officers, directors, employees and agents (collectively, for the purposes of this provision, “Buyer”) from any and all liabilities, claims, losses and expenses arising out of the failure of Seller, its

employees, subcontractors or agents, in conjunction with this Order:

- a) to comply with any laws, regulations or ordinances;
- b) to comply with any cost principles or Cost Accounting Standards applicable to this Order or to follow Seller's disclosed accounting practices or both;
- c) to furnish complete, accurate or current cost or pricing data when such data were required by law or regulation:
 - (ii) In support of any Truth In Negotiations Act (TINA) certification made by Buyer to the Government; or
 - (iii) In the negotiation of this Order or any modifications thereto.

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.

40. 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, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, or unusually severe weather. Seller shall not be liable for delays of subcontractors or suppliers of Seller only when arising from causes beyond the control and without the fault or negligence of both Seller and such subcontractors or suppliers 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 happening of any circumstances or causes aforesaid, 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 thereby.

41. INDEPENDENT CONTRACTOR. [\(back to top\)](#)

Seller is an independent contractor. Seller shall:

- A. Have exclusive control and direction over its employees' performance of the work; and
- B. Be responsible for all payroll functions for its employees. No persons employed by Seller or Seller's subcontractors shall be deemed an employee of Buyer for any purpose.

42. CONTROL OF VISITORS. [\(back to top\)](#)

- A. Except with the written consent of the Buyer, Seller shall not permit any Visitors to its plants, offices, or facilities to view or examine documents, components, assemblies, or major subassemblies provided for or delivered under this Order, or to obtain information or data concerning such documents, components, assemblies, or major subassemblies.
- B. "Visitor" as used herein means any person who visits Seller's plant, office or facility and does not represent either the Seller, the Buyer, or the Government in the performance of this Order. This includes Foreign Nationals, whose visits may require additional controls above and beyond those necessary for visits by U.S. Citizens. Seller must establish and implement procedures that prevent the release of Classified and Unclassified Naval Nuclear Propulsion Information (NNPI) to Visitors. Seller must also notify the Buyer in advance of any visit to Seller's plant, office, or facility, to view or examine documents, components, assemblies, or major subassemblies provided for or delivered under this order and must ensure similar controls are in effect at all lower tier suppliers.

43. CONTROL OF EMPLOYEES (DEAR 970.5203-3). [\(back to top\)](#)

Seller shall maintain satisfactory standards of employee competency, conduct, and integrity and take such disciplinary action with respect to its employees as may be necessary. In the event Seller fails to remove any employee from the contract work whom Buyer or Buyer's customer deems incompetent, careless, or insubordinate,

or whose continued employment on the work is deemed by Buyer or Buyer's customer to be inimical to the Department's mission, the Buyer or Buyer's customer may require the Seller to remove the employee from work under the contract. This includes the right to direct the Seller to remove its most senior key person from work under the subcontract for serious contract performance deficiencies. Seller shall maintain a competent supervisory representative satisfactory to the Buyer for all work performed under this Order at the site and off the site.

44. WORKPLACE SUBSTANCE ABUSE PROGRAM. [\(back to top\)](#)

Seller shall develop and implement a workplace substance abuse program that complies with the requirements of 10 CFR part 707, Workplace Substance Abuse Programs at DOE Sites, as a condition for award of the subcontract. Seller shall give Buyer a meaningful opportunity to review and approve Seller's program, and allow and assist Buyer in periodically Seller's implementation of the program for effectiveness and compliance with 10 CFR part 707.

45. NON-DISPLACEMENT OF QUALIFIED WORKERS. [\(back to top\)](#)

- A. Consistent with the efficient performance of this contract, Seller shall, except as otherwise provided herein, in good faith offer those employees (other than managerial and supervisory employees) employed under the predecessor contract whose employment will be terminated as a result of award of this contract or the expiration of the contract under which the employees were hired, a right of first refusal of employment under this contract in positions for which employees are qualified. Seller shall determine the number of employees necessary for efficient performance of this contract and may elect to employ fewer employees than the predecessor contractor employed in connection with performance of the work. Except as provided in paragraph B there shall be no employment opening under this contract, and the Seller shall not offer employment under this Order, to any person prior to having complied fully with this obligation. Seller shall make an express offer of employment to each employee as provided herein and shall state the time within which the employee must accept such offer, but in no case shall the period within which the employee must accept the offer of employment be less than 10 days.
- B. Notwithstanding the obligation under paragraph A above, Seller (i) may employ under this Order any employee who has worked for FMP or Buyer for at least 3 months immediately preceding the commencement of this Order and who would otherwise face lay-off or discharge, (ii) are not required to offer a right of first refusal to any employee(s) of the predecessor contractor who are not service employees within the meaning of the Service Contract Act of 1965, as amended, 41 U.S.C. 357(b), and (iii) are not required to offer a right of first refusal to any employee(s) of the predecessor contractor whom the Seller reasonably believes, based on the particular employee's past performance, has failed to perform suitably on the job.
- C. In accordance with Federal Acquisition Regulation 52.222-41(n), the Seller shall, not less than 10 days before completion of this contract, furnish Buyer a certified list of the names of all service employees working under this Order during the last month of contract performance. The list shall also contain anniversary dates of employment of each service employee under this Order and its predecessor contracts with the current or predecessor Buyer.
- D. If it is determined, pursuant to regulations issued by the Secretary of Labor (Secretary), that the Seller is not in compliance with the requirements of this clause or any regulation or order of the Secretary, appropriate sanctions may be imposed and remedies invoked against the Seller, as provided in Executive Order No. 13495, the regulations, and relevant orders of the Secretary, or as otherwise provided by law.
- E. Seller acknowledges and agrees Buyer may take such action with respect to Seller as may be directed by the Secretary as a means of enforcing such provisions, including the imposition of sanctions for non-compliance: provided, however, that if the Buyer, as a result of such direction, becomes involved in litigation with Seller, or is threatened with such involvement, Buyer may request that the United States enter into such litigation to protect the interests of the United States.
- F. In every subcontract entered into in order to perform services under this Order, Seller will include provisions that ensure that each subcontractor will honor the requirements of paragraphs A through B with respect to

the employees of a predecessor subcontractor or subcontractors working under this Order, as well as of a predecessor Seller and its subcontractors. The Seller shall also include provisions to ensure that the subcontractor will provide the Seller with the information about the employees of the subcontractor needed by the Seller to comply with FAR 52.222-41 (n), above. The Seller will take such action with respect to any such subcontract as may be directed by the Secretary as a means of enforcing such provisions, including the imposition of sanctions for non-compliance: provided, however, that if the Seller, as a result of such direction, becomes involved in litigation with a subcontractor, or is threatened with such involvement, the Seller may, through Buyer, request that the United States enter into such litigation to protect the interests of the United States.

46. TRAVEL COSTS. [\(back to top\)](#)

Reimbursement for Seller's travel, subsistence and lodging costs shall be made in accordance with the Federal Acquisition Regulations, the DoD and DoE supplements thereto, and the Federal Travel Regulations.

47. PUBLIC RELEASE OF INFORMATION. [\(back to top\)](#)

- A. Information, data, photographs, sketches, advertising, displays, promotional brochures, or other materials related to work under this order, which Seller desires to publish, display, or release internally, to other contractors, to government agencies, or to the public, shall be submitted to Buyer for approval at least eight weeks prior to the desired printing or release date. This includes descriptive or promotional material which links or relates, directly or indirectly, Seller's product line, manufacturing facilities, or manufacturing capabilities to performance of naval nuclear propulsion work. As part of the approval request, Seller shall identify the specific media to be used as well as other pertinent details of the proposed release. All releases, regardless of tier of supplier, must have the prior approval of Buyer.
- B. Should any information described in (a) above be requested, subpoenaed, or otherwise sought by a court or other judicial or administrative authority, this should be promptly brought to the attention of Buyer to permit appropriate measures to be taken to protect the information. Under no circumstances should this information be released to such authority without prior notification and agreement of the Buyer.
- C. Seller agrees that this requirement of prior Buyer approval of any release shall survive the purchase order and that Seller shall not for a period of twenty years subsequent to the issuance of the purchase order either directly or indirectly issue any such release without the requisite approval of Buyer its successor or assignee.
- D. Seller shall include all provisions of this article including this sentence in all subcontracts under this order.

48. 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.

49. EQUAL EMPLOYMENT OPPORTUNITIES. [\(back to top\)](#)

Buyer, Seller and Seller's subcontractors shall abide by the requirements of the following laws, which are incorporated herein by reference: the EEO Clause of Executive Order 11246, at 41 CFR § 60-1.4(a) (including the pay transparency nondiscrimination clause), the EEO Clause for protected veterans at 41 CFR § 60-300.5(a), the EEO Clause for individuals with disabilities at 41 CFR § 60-741.5(a), and the Notice Clause of Executive Order 13496 regarding Employee Rights under the National Labor Relations Act (NLRA). Among other things, these regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, protected veteran status or disability. For additional obligations that may apply to purchases of \$50,000 or more, including the annual affirmative action plan (AAP) requirement, the annual EEO-

1 Report, and the annual VETS-4212 Report, please see 41 CFR §§ 60-1.7, 60-1.12, 60-2.1, 60-300.10, and 29 CFR §2602.7. Also, note that you may be covered by the minimum wage obligations of Executive Order 13658 and/or Executive Order 13706, establishing Paid Sick Leave for federal contractors. As required by federal regulation, the parties reiterate that:

This contractor and subcontractor shall abide by the requirements of 41 CFR 60-300.5 (a) and 41 CFR 60-741.5(a). These regulations prohibit discrimination against qualified protected veterans and qualified individuals on the basis of disability, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans and individuals with disabilities.

50. CHOICE OF LAW. ([back to top](#))

Both Parties agree that, irrespective of the place of performance of this Order, unless otherwise specifically provided herein, this Order will be construed and interpreted according to the law of the state of the Huntington Ingalls Incorporated facility issuing this Order, as identified in the Order, excepting that state's laws on conflicts of law. Exclusive venue for suits at law or equity arising under or related to this Order shall be:

- A. 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.

51. NON-SOLICITATION. ([back to top](#))

- A. During the term of this Order and for twelve (12) months after termination of this Order, Seller shall not solicit, or attempt to solicit, for employment any technical or professional employee of Buyer who has been assigned to work on this Order. This subsection does not preclude discussions of employment if Buyer's employee initiates the conversation or responds to a public solicitation.
- B. The Parties agree that no adequate remedy at law exists for violations of this section and this section may be enforced by any equitable remedy, including specific performance and injunction, without limiting Buyer's right to obtain such relief as may be available at law.

52. BUSINESS CONDUCT. ([back to top](#))

Buyer has implemented a comprehensive Ethics and Business Conduct Program, which includes a "Supplier Code of Conduct," or expectations that Buyer holds for its suppliers. The "Supplier Code of Conduct" is available at this website: <http://www.huntingtoningalls.com/wp-content/uploads/2016/07/ethicsba.pdf>. Commensurate with the size and nature of Seller's business, Buyer expects Seller to have management systems in place to support compliance with laws regulations, and the expectations related to or addressed expressly within the Supplier Code of Conduct. In the event of a violation for any of the expectations set forth in the Supplier Code of Conduct, Buyer may pursue corrective actions to remedy the situation, up to and including termination of this Order.

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

The "Proprietary Information," "Suspect/Counterfeit Parts," "Insurance," "Indemnification – Government Requirements," "Indemnification – Third Party Claims," "Patent, Trademark, Trade Secret, Ad Copyright Indemnity," "Public Release of Information," and "Warranty" provisions and the indemnification provisions contained in the "Disputes," and "Export And Import Compliance," 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.

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

Buyer's failure at any time 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. No payment made shall 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. Any and all of the rights and remedies conferred upon Buyer under this Order shall be cumulative and in addition to, and not in lieu of, the rights and remedies granted by law for Seller's breach of contract.

55. FINAL RELEASE. [\(back to top\)](#)

Seller's submission to a Buyer of a final invoice under this Order shall also constitute a release discharging the Buyer, the Government, and their respective officers and agents from any and all claims, demands, and liabilities arising under or by virtue of this Order unless such final request for payment expressly and specifically states the claim and factual support for a claim the Seller has against the Buyer, the Government, and their respective officers and agents for any and all claims, demands, and liabilities arising under or by virtue of this Order.

56. BANKRUPTCY. [\(back to top\)](#)

In the event Seller enters into proceedings relating to bankruptcy or insolvency, whether voluntary or involuntary, Seller agrees to furnish to Buyer, by certified mail, written notification of the bankruptcy or insolvency proceeding. This notification shall be furnished within five days of the initiation of such proceedings, and 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.

57. PROGRAM MANAGEMENT. [\(back to top\)](#)

A. Program Management Plan

Seller shall assign a qualified project manager responsible for all technical and programmatic aspects of the work if requests by the Buyer at Order placement or at any time during Order performance.

B. Project Plan

Seller will develop and submit a Project Plan if requested by Buyer. Each Project Plan shall contain tasks and timelines for Order performance including, but not limited to, material procurements, production activities, and development of software and hardware deliverables. Project Plans shall also include tasks performed by Seller's subcontractors, if applicable. Seller shall update the Project Plan at regular intervals, but no less than monthly. Seller and Seller's subcontractors shall utilize best efforts to meet the dates set forth in the Project Plan. If Seller becomes aware that it will not meet the dates as set forth in a Project Plan, Seller shall immediately notify Buyer.

C. Program Reviews

Buyer may request a program review to assess Seller's performance of this Order. Program reviews will be held at a mutually agreed upon location and each party will bear its own costs and expenses in connection therewith.

D. Site Visits

Buyer reserves the right to conduct site visits to monitor Order progress at both Seller's and Seller's subcontractor's facilities. Nothing herein shall modify Buyer's or Buyer's customers' rights under the Inspection provision of these terms and conditions.

E. 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.

58. COMPLIANCE WITH WORKSITE RULES. ([back to top](#)) (applicable only if Seller will be performing work on Buyer's property or a worksite under Buyer's control)

- A. While on Buyer's property/worksite, Seller shall comply with all of Buyer's safety and security rules and regulations to include, but not to be limited to, the Kesselring Site Operation ("KSO") requirements and the general guidance contained in the most recent version of Buyer's safety handbook, Safety Sense Handbook for New Employees, Contractors, and Visitors.
- B. If required, Seller will obtain a background check, at Seller's expense, for all employees as outlined at <https://supplier.huntingtoningalls.com/sourcing/AccessNNS.html>. Background checks shall be obtained through <https://www.backgroundchecks.com/solutions/Huntington>.
- C. Prior to performing Production Work under this Order at KSO or at other locations if informed by Buyer that Seller must be "safety qualified" to perform the work, Seller shall also coordinate with Buyer's Environmental, Health, and Safety (EH&S) Department (O27) to complete the qualification process, and comply with the requirements of Buyer's "Contractor EH&S Resource Manual" which is available under Supplier Resources at this web site:
http://supplier.huntingtoningalls.com/sourcing/Contractor_Safety/index.stm
"Production Work" is defined as operations that involve hazards to personnel, including but not limited to construction, demolition, "hot work," work in enclosed and confined spaces, blasting, painting, material handling, working with hazardous materials or equipment, efforts in direct support of Buyer's Production Work, and similar operations.
- D. If in performance of this order Seller performs work at a third party's worksite, Seller shall comply with all rules and regulations of that worksite, including safety and health rules and procedures, and the use of required personal protective equipment. Seller guarantees strict compliance by all its employees, agents and lower tier subcontractors while on the third party's premises.
- E. In addition to any other remedies Buyer may be entitled to, Buyer may, without notice and an opportunity to cure:
 - i. Terminate this Order for default if Seller fails to comply with any of the provisions of this paragraph; or
 - ii. Expel from Buyer's property/work site, any employee, subcontractor or agent of Seller found violating any of the provisions of this paragraph.
- F. Access by non-U.S. citizens or U.S. citizens holding dual citizenship to Buyer's property/worksite is prohibited unless approved in writing by Buyer.

59. SUBCONTRACTING. ([back to top](#))

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

60. SECURITY CLEARANCES. ([back to top](#)) (applicable only if Seller's employees will require security clearances)

The Seller shall receive an affirmative Foreign Ownership Control or Influence (FOCI) Certification determination to obtain or maintain security clearances. The Seller shall decide on the number of employees requiring security clearances to perform the work under this Order. If the Seller does not have enough security cleared personnel, a list of personnel requiring DOE security clearances for the Seller's performance of work under this Order must be submitted by the Seller to the Buyer within ten (10) working days after date of award. The Seller will be responsible for ensuring that all information required for the processing of each security clearance request is complete and is submitted to the Buyer's Security Department within three (3) weeks after date of award. The Seller is advised on average 90 days may be required for processing DOE security clearance requests after submission of all necessary information. Additional security cleared personnel required by the Seller during performance of this Order shall be processed in the same manner as stated above. Neither the Government, Buyer's customer, nor the Buyer shall be liable for any damages or

assume any responsibility for clearance processing time or its effect on this Order.

61. MEMORY BEARING COMPONENTS. [\(back to top\)](#) *(applicable if Seller will be delivering memory bearing components to the Kesselring Site)*

- A. Once a memory bearing component (computer memory that can retain the stored information even when not powered, including but not limited to, read-only memory, flash memory, most types of magnetic computer storage devices, optical discs, and early computer storage methods such as paper tape and punched cards) has been delivered to the Kesselring Site, Buyer will not grant removal of the component unless Buyer or its customer can conclude that the component is free from any classified or sensitive data and removal of the component is approved by the Buyer (in accordance with the DOE Order 471.2A). Magnetic media is subject to Buyer's or its customer's security regulations and will not be allowed to be removed from Kesselring Site.
- B. Memory bearing components retained by Buyer, in accordance with Buyer's Security Requirements shall be furnished at Seller's cost in accordance with the Contract Cost Principles and Procedures in Part 31 of the FAR as supplemented or modified by DEAR Part 931 in effect on the date of this Purchase Order. Invoicing to support cost shall be submitted for each part replaced or repaired.
- C. For the purposes of this clause, the term "Kesselring Site" means Knolls Atomic Power Laboratory located in West Milton, New York.

62. CYBERSECURITY. [\(back to top\)](#)

Buyer has implemented a Supply Chain Cybersecurity Compliance and Risk Mitigation Program (SC3RMP) help assess and appropriately mitigate cybersecurity risks, raise awareness, and develop proportionate and effective defenses of and across Buyer's suppliers. A critical element of SC3RMP is Buyer's use of Exostar's Partner Information Manager Tool (PIM), 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 PIM (located at <https://my.exostar.com/pages/viewpage.action?pageId=12125152>) and to complete the Exostar PIM cybersecurity questionnaire. Seller also agrees to provide Buyer with information reasonably required by Buyer to assess and address any cybersecurity risks identified by SC3RMP.

63. QUALITY REQUIREMENTS FOR SOURCING CERTAIN PERVASIVE COMMODITIES. [\(back to top\)](#)

- A. Approved supplier sources from which Seller shall procure pervasive commodities can be accessed here: http://supplier.huntingtoningalls.com/sourcing/res_technical.html. Mandatory source requirements are provided below.
- B. Seller shall provide all required certifications, test reports, and/or other non-hardware deliverables as specified in the Order.
- C. Seller shall flow down the substance of this provision to all subcontractors for the procurement of any materials covered under this provision, and shall require its subcontractors to flow down the substance of this provision to any sub-tier providing materials covered by this provision.
- D. If Seller submits a Vendor Information Request ("VIR") to Buyer requesting use of a supplier source other than those listed at the link above, the Seller shall provide the following objective quality evidence ("OQE") in support of the VIR:
 - i. Documentation that Seller's proposed supplier source is capable of attaining and maintaining a quality system that is acceptable to the Buyer in accordance with the Order requirements (e.g., a copy of the source's quality manual and applicable work instructions);
 - ii. All inspections, tests, and/or certifications that demonstrate the furnished material/service is in full compliance with all Order requirements, including any inspection data with inspection results supporting the certificate of conformance. For foundries that produce 70/30 copper nickel castings, additional testing requirements stated herein at (F)(iii) apply;

- iii. Audit documentation of proposed supplier sources including, but not limited to:
 - a. A completed checklist of audit elements based on contract requirements,
 - b. An audit report indicating the level of compliance found during the audit, and
 - c. Any corrective action reports related to the non-conformance documented during the audit with required follow-up actions and completion of those actions.
- iv. Any records of the proposed supplier source's performance for a period of one year; and
- v. Any records of surveillance of the proposed supplier source's product quality activities to assure satisfactory performance and compliance to the Order requirements.
- E. Seller's use of an approved supplier source does not relieve Seller of its responsibility to ensure that all technical, service, and Order requirements are met in performance of this Order.
- F. **Mandatory Source Requirements.** The Seller and its subcontractors shall ensure that Level I, Copper Nickel 70/30 castings (CuNi), Butt Weld and Socket Weld pipe fittings, and submarine forging products are obtained only from Buyer approved sources as listed by commodity. All material procured from supplier sources shall be compliant with the material control and traceability requirements of the Order. Approval is provided for the supplier source, supplier number, and location identified as listed by commodity. If a location is not listed, that location is not approved.
 - i. *Level I (MC-I or CM-I) Source Suppliers.* The Seller shall perform on-site audits of supplier sources of Level I material unless one of the following applies:
 - a. The supplier source is a Buyer-approved Level I source supplier (i.e. EB or HII-NNS);
 - b. The starting material is sample tested (one sample per heat/lot) after receipt for both chemistry and mechanical properties by a test lab, other than the supplier source or mill, and compared to the applicable specification for acceptance;
 - c. The process requires the finished product to be subsequently tested for chemistry and mechanical properties, by a test lab other than the supplier source or mill and compared to the applicable specification for acceptance;
 - d. Material or product in inventory purchased prior to 3/29/10 is sample tested (one sample per heat/lot) for chemistry by a test lab other than the supplier source or mill and compared to the applicable specification for acceptance.

Note: Test reports showing the quantitative results of tests noted in b, c, and d above as applicable are required to be submitted with the certification package.

- ii. *Level I Fastener Source Suppliers and Distributors.* Supplier sources for Level I Fasteners (MC-I or CM-I) shall meet the requirements identified and can be accessed at: http://supplier.huntingtoningalls.com/sourcing/res_technical.html
- iii. *Foundries Approved to Produce 70/30 Copper Nickel (CuNi).* In addition to testing required elsewhere in this Order, Seller shall invoke the following requirements on orders for CuNi 70/30 castings from a foundry approved by Buyer:
 - a. For each heat, the foundry shall analyze and provide a chemical composition test report from an "A" (beginning of pour) and "B" (end of furnace charge pour) chemistry test coupon. Test reports and chemistry coupons shall be identified as "A" and "B" in addition to the heat number traceability;
 - b. Mechanical test bars shall be poured no sooner than 50% through the furnace charge pour;
 - c. The foundry or sub-tier subcontractor shall maintain, for a period of at least seven years, the "A" and "B" chemistry coupons and the mechanical test specimens, and their respective test results as OQE, subject to audit and further analysis by the Buyer. Buyer shall be notified prior to disposition of any records and specimens;

- d. Buyer's products may be poured in the same heat; however, the heat shall be unique to Buyer. No other customer's product shall be included in the heat; and
 - e. Chemistry and mechanical test report submittal shall be in accordance with the requirements contained elsewhere in this Order. Unless specified elsewhere in the Order, the "B" coupon chemistry test results shall be submitted.
- iv. *Butt Weld and Socket Weld Fitting Suppliers.* Supplier Sources for Butt Weld and Socket Weld pipe fittings shall meet the requirements identified and can be accessed at:
http://supplier.huntingtoningalls.com/sourcing/res_technical.html.
 - v. *Submarine Forgings (EB2678).* Supplier sources for forgings or forgings used in an assembly shall meet the requirements identified and can be accessed at:
http://supplier.huntingtoningalls.com/sourcing/res_technical.html.

64. VENDOR INFORMATION REQUEST. ([back to top](#))

- A. Seller shall make no changes to the requirements of the Order without the prior written consent of the Buyer. Seller may submit requests for changes to the specifications or plans only on Buyer's Vendor Information Request (VIR) Form, No. NN3409. Changes that affect the price or delivery schedule or both shall only be made through written modification of this Order. A dispositioned VIR applies only to the item for which it is submitted; the resolution may not be extended to any other item under the same or another Order without Buyer's explicit written consent. Notwithstanding the foregoing, if complete details for the manufacture of a component are not provided by the Buyer or its customer, Seller shall have internal corrective action authority for updating or changing piece part drawings or for resolving departures from Seller's piece part drawings or internal procedures without VIR submittal to the Buyer ONLY if the corrective action does not depart from or affect in any manner the following:
 - i. Order, Appendices, Terms and Conditions, requirements, including listed specification effectivity dates;
 - ii. Material specification requirements;
 - iii. Drawings or procedures issued by or subject to approval by the Buyer or its customer;
 - iv. Safety, reliability, interchangeability, form, fit, or function of the component or component parts; or
 - v. Shock or vibration integrity of qualified designs.
- B. Any corrective action taken as a result of Seller's internal review and disposition shall meet sound engineering principles, and records of all corrective actions must be maintained and made available to Buyer or its customer upon request. Copies of approved VIR's shall be sent with the material.

65. SHIPPING AND LABELING INSTRUCTIONS. ([back to top](#))

Unless otherwise provided in the Order, Seller shall ship material to: Huntington Ingalls Incorporated, Newport News Shipbuilding Division, 350 Atomic Project Road, Ballston Spa, New York 12020, Warehouse 73. Seller shall clearly mark each shipping package, container label and all shipping documents with the Order number (P. O. #XXXXXXXXXX), the item number, the Newport News Part number, Seller's invoice number, and the release number, if applicable. For container labels, Seller shall provide the following additional information: Shipper's name and address; Consignee Name; number of packages; gross and net weight and number of pieces per carton. Sellers shall go to the routing guide at: <http://supplier.huntingtoningalls.com> for complete shipping instructions. Use the carrier in the guide for the shipping location. The Buyer's routing requirements shall flow down to the Seller's suppliers. In those instances when the Seller's supplier must ship to the Seller, the sub-supplier must contact the NNS traffic office at "NNSTrafficOffice@hii-nns.com" or (800) 426-1910 for assistance.

66. FREIGHT CHARGES. ([back to top](#))

Unless otherwise specified in this Order, the Buyer will pay freight charges and insurance, and Seller shall ship to Buyer on a freight collect basis using Buyer's preferred carrier. Buyer will not accept C.O.D. shipments unless expressly provided for in the Order. If the buyer does accept C.O.D. shipments and the freight cost is \$200 or more, the seller shall ensure a copy of the freight bill from the freight carrier is provided as back up documentation when the invoice is submitted to Accounts Payable. If the freight bill is not submitted with the invoice, the entire invoice will be rejected and the Seller will need to resubmit the invoice with the proper documentation.

67. DOMESTIC BARGE SHIPMENTS. [\(back to top\)](#)

Seller shall notify the Traffic Section of Buyer at 1-800-426-1910 at least 30 calendar days prior to shipment by domestic barge.

68. HEAVY MATERIAL. [\(back to top\)](#)

Seller shall mark *DELIVER ON FLAT BED TRAILER* when shipping single articles that exceed 4000 pounds or that do not adapt to safe unloading with a standard forklift truck.

69. PACKING AND CRATING. [\(back to top\)](#)

Seller shall, when practicable, ship in packages or loose pieces for unloading by a standard 4000-pound forklift truck. Unless otherwise provided in the Order, Seller's price includes all charges for packing and crating.

70. VALUE DECLARATION. [\(back to top\)](#)

Seller shall not insure for excess value via any mode of transportation. For shipments at Buyer's risk in which freight rates are based on *released value* Seller shall declare the lowest value on the bill of lading. For shipments at Buyer's risk via domestic air freight, air freight forwarder, and Parcel Post, Seller shall insert the notation *NVD* (no value declared).

71. RESTRICTION ON CERTAIN PAYMENTS. [\(back to top\)](#) (ORDERS TO WHICH THE COST PRINCIPLES AT FAR PART 31 APPLY)

- A. Seller shall obtain Buyer's written permission prior to requiring employees to perform work under this Order for which the employees will be eligible to receive overtime premium pay as defined in FAR 22.103-1. Any overtime premium pay that is paid to Seller's employees for work performed under this Order for which Seller has failed to obtain Buyer's prior written approval shall be an unallowable cost under this Order. Employees and Subcontractors' employees performing work under this Order will complete a full shift at the worksite. Man-hour costs (whether straight-time or overtime) and transportation costs for Seller personnel or Seller's subcontractor personnel traveling to or from worksites, including travel to worksites other than the Seller's facility for performance of the work shall not be an allowable cost under this Order. The restriction on travel costs contained in the previous sentence shall apply only to payments for travel time before or after the workers' regular shifts and does not apply to legitimate travel costs incurred during normal working hours, provided that those costs meet the following conditions:
- B. Unless the travel is directed by Buyer, Seller will obtain Buyer's prior written approval before engaging in travel related to this Order. In requesting approval, Seller will fully disclose all facts regarding the proposed trip, including, but not limited to: the employee(s) involved, the purpose of the trip and destination, the dates, and the proposed mode(s) of transportation.
Costs incurred by Seller personnel on travel ("Travel Costs") must comply with the Federal Acquisition Regulations ("FAR") and in particular FAR 31.205-46. Unless otherwise provided, the amounts that the Seller can invoice for lodging, meals, and incidental expenses is limited to the maximum per diem rate for the locality of travel specified in the Federal Travel Regulations, prescribed by the General Services Administration ("GSA"), for travel in the contiguous United States. Except as provided in this paragraph

B, Buyer will not be liable to Seller for invoiced Travel Costs that exceed the prevailing GSA per diem rates. At the Buyer's absolute discretion, Buyer may reimburse Seller lodging and meal expenses in excess of the prevailing GSA per diem rate when: (i) costs have escalated because of special events (e.g., missile launching periods, sporting events, World's Fair, conventions, natural or manmade disasters); (ii) lodging and meal expenses within prescribed allowances cannot be obtained nearby; and (iii) costs to commute to/from the nearby location consume most or all of the savings achieved from occupying less expensive lodging. Buyer will not be liable to Seller for any Travel Costs incurred in connection with travel not pre-approved or directed by Buyer in accordance with paragraph A of this provision.

- C. Except as provided in this paragraph C, Buyer will not be liable to Seller for airfare costs in excess of the lowest priced airfare available to Seller during normal business hours ("Lowest Fare"). Buyer may at its absolute discretion reimburse Seller for airfare in excess of the Lowest Fare when use of the Lowest Fare would: (i) require circuitous routing, (ii) require travel during unreasonable hours, (iii) excessively prolong travel, (iv) result in increased cost that would offset transportation savings, (v) not reasonably accommodate the physical or medical needs of the traveler, or (vi) not reasonably meet Order requirements. If requested by Buyer, Seller will provide documentation supporting Seller's selection of the Lowest Fare.
- D. For vehicle transportation by Seller's personnel using their personally owned vehicles, Buyer will reimburse Seller at the prevailing Internal Revenue Service standard mileage rates for taxpayers to use in computing the deductible costs of operating an automobile for business, charitable, medical, or moving expense purposes. Seller shall provide the MapQuest showing the start and stop location and the number of miles for the trip. If the start location cannot be provided due to employee confidentiality, the Seller shall provide the start city, zip code and state.
- E. Tips for meals will be included in the meal cost and subject to the prevailing GSA per diem meal rate. Tips for baggage handling (e.g. skycaps, bellhops, etc.) and maids will be included in the lodging cost and subject to the prevailing GSA lodging per diem rate. Tips for transportation and taxis required for business purposes are not included in and subject to the per diem caps. Buyer will reimburse Seller for reasonable amounts for such tips provided they are adequately explained in Seller's expense report.
- F. Rental car costs will be reimbursed for a standard size vehicle only. Use of luxury cars and sports utility vehicles are not authorized. The gas tank will be full before returning vehicle.
- G. All fines for traffic or parking violations are the sole responsibility of Seller and are not reimbursable as travel costs or otherwise. Costs for alcoholic beverages consumed during meals or otherwise are not reimbursable.
- H. Seller will itemize all travel expenses utilizing the NNS Travel Expense Form located at https://supplier.huntingtoningalls.com/sourcing/accounts_payable.html for which it will be claiming reimbursement and include a copy of receipts for any single expense in excess of \$75.00. Notwithstanding the immediately preceding sentence, Seller will provide receipts, regardless of value, for air or rail transportation, lodging, car rentals, and gasoline purchased for rental vehicles. Failure to provide the required receipts will result in non-payment of invoice until all documentation is received. If the Seller does not itemize all travel expenses on the invoice and/or provide the required receipts, the entire invoice will be rejected and the Seller will need to resubmit with the necessary documentation.
- I. Paragraphs A through H apply only to costs incident to travel for temporary job assignments, i.e. assignments to a work location for a period of less than 12 months. Buyer will not reimburse Seller for costs incident to travel for assignments more than 12 months unless specifically identified by Seller and agreed to in writing by Buyer prior to the travel's occurring.
- J. Seller's obligation to perform this order is in no way conditioned upon the providing by the Buyer or its customer of any facilities, except as may be otherwise expressly provided herein. Accordingly, no such facilities shall be either acquired by the Seller for the account of the Buyer or its customer or furnished to the Seller by the Buyer or its customer hereunder. For the purpose of this requirement, facilities

means industrial property (other than material, special tooling, military property, and special test equipment) for production, maintenance, research, development or test, including real property and rights therein, buildings, structures, improvements, and plant equipment as defined in FAR 2.101, and FAR 45.101.

72. WARRANTIES (COST-REIMBURSEMENT ORDERS). [\(back to top\)](#)

Paragraph D. of the "Warranty (fixed-price orders)" clause is changed to read as follows: For all deficiencies that arise during the warranty period, Seller shall promptly remedy the deficiency for no additional fee. If Seller fails to remedy the deficiency within a reasonable time after having been notified of the deficiency, Buyer may, at its option, remedy the deficiency by contract or otherwise and charge to the Seller any increased costs or make an equitable reduction in any fixed fee paid or payable under the Order.

73. GOVERNMENT TITLE (COST REIMBURSEMENT AND TIME & MATERIALS ORDERS). [\(back to top\)](#)

- A. Title to all property purchased by Seller from a vendor for which the Seller is entitled to be reimbursed as a direct item of cost under this Order shall pass to and vest in the Government upon the vendor's delivery of such property to Seller. Title to all other property, the cost of which is reimbursable to Seller, shall pass to and vest in the Government upon:
- i. Issuance of the property for use in Order performance;
 - ii. Commencement of processing of the property for use in Order performance; or
 - iii. Reimbursement of the cost of the property pursuant to the terms of this Order, whichever occurs first.
- B. Upon the Government's acquiring title to property under this paragraph, the provisions of the BUYER OR GOVERNMENT PROPERTY paragraph contained in the "*General Provisions for Orders under US Government contracts*" shall apply to such property.

74. PAYMENTS FOR TIME-AND-MATERIALS/LABOR HOUR ORDERS. [\(back to top\)](#)

Buyer will pay Seller as follows upon the submission of proper invoices:

- A. Hourly rate.
- i. The amounts shall be computed by multiplying the appropriate hourly rates prescribed in this Order by the number of direct labor hours performed. The rates shall include wages, indirect costs, general and administrative expense, and profit. Fractional parts of an hour shall be payable on a prorated basis. Unless otherwise specified, invoices may be submitted once each month to Buyer. Seller shall substantiate invoices by evidence of actual payment and by individual daily job timecards, or other substantiation approved by Buyer.
 - ii. Buyer may unilaterally issue a modification requiring the Seller to withhold amounts from its billings until a reserve is set aside in an amount that the Buyer considers necessary to protect the Buyer's interests. Buyer may require a withhold of 5 percent of the amounts due under this paragraph, but the total amount withheld for this Order shall not exceed \$50,000. The amounts withheld shall be retained until final payment under this Order.
 - iii. Unless otherwise specified, the hourly rates in the Order shall not be varied by virtue of Seller having performed work on an overtime basis. If no overtime rates are provided in this Order and overtime work is approved in advance by the Buyer, overtime rates shall be negotiated. Failure to agree upon these overtime rates shall be treated as a dispute under the Disputes paragraph. If this Order provides rates for overtime, the premium portion of those rates will be reimbursable only to the extent the overtime is approved by the Buyer.
- B. Materials and subcontracts (if specified in this Order).
- i. Buyer will determine allowable costs of direct materials in accordance with Subpart 31.2 of the Federal Acquisition Regulation (FAR) in effect on the date of this Order. Direct materials, as used in this paragraph, are those materials that enter directly into the end product, or that are used or

- consumed directly in connection with the furnishing of the end product or service.
- ii. Seller may include reasonable and allocable material handling costs in the charge for material to the extent they are clearly excluded from the hourly rate. Material handling costs are comprised of indirect costs, including, when appropriate, general and administrative expense allocated to direct materials in accordance with the Seller's usual accounting practices consistent with Subpart 31.2 of the FAR.
 - iii. Buyer will reimburse Seller for supplies and services purchased directly for this Order when Seller has made payments of cash, checks, or other forms of payment for these purchased supplies or services; or will make these payments determined due in accordance with the terms and conditions of a subcontract or invoice.

- iv. Buyer will not reimburse Seller for any costs arising from the letting, administration, or supervision of performance of the subcontract, if the costs are included in the hourly rates payable under this paragraph.
- v. Seller shall give credit to Buyer for cash and trade discounts, rebates, scrap, commissions, and other amounts that have accrued to the benefit of Seller, or would have accrued except for the fault or neglect of Seller.
- vi. If the nature of the work to be performed requires Seller to furnish material that Seller regularly sells to the general public in the normal course of business, the price to be paid for such material, notwithstanding the other requirements of this paragraph, shall be on the basis of an established catalog or list price, in effect when the material is furnished, less all applicable discounts to the Buyer, provided that in no event shall such price be in excess of the Seller's sales price to its most favored customer for the same item in like quantity, or the current market price, whichever is lower.

C. Total Cost.

- i. It is estimated that the total cost to Buyer for the performance of this Order shall not exceed the ceiling price set forth in the Order and the Seller agrees to use its best efforts to perform the work specified in this Order and all obligations under this Order within such ceiling price. If at any time Seller has reason to believe that the hourly rate payments and material costs that will accrue in performing this Order in the next succeeding 30 days, if added to all other payments and costs previously accrued, will exceed 75 percent of the ceiling price in this Order, Seller shall notify Buyer giving a revised estimate of the total price to the Buyer for performing this Order with supporting reasons and documentation.

D. Ceiling price.

- i. Buyer shall not be obligated to pay Seller any amount in excess of the ceiling price in this Order, and Seller shall not be obligated to continue performance if to do so would exceed the ceiling price set forth in this Order, unless and until Buyer shall have notified Seller in writing that the ceiling price has been increased and shall have specified in the notice a revised ceiling that shall constitute the ceiling price for performance under this Order. When and to the extent that the ceiling price set forth in this Order has been increased, any hours expended and material costs incurred by Seller in excess of the ceiling price before the increase shall be allowable to the same extent as if the hours expended and material costs had been incurred after the increase in the ceiling price.

75. RESTRICTIVE MARKINGS FOR IDENTIFICATION OF NON-TECHNICAL TRADE SECRETS. ([back to top](#))

- A. GENERAL. This clause specifies the required format for restrictive markings on non-technical data items delivered under this Order. This clause is applicable only to data which are not covered by DFARS provisions and which include information asserted by the Seller to be non-technical trade secrets. The standard markings specified in this clause shall be used to notify the Buyer of the Seller's assertions regarding the presence of non-technical trade secrets in data items and to identify exactly the information to which the restrictive markings refer. This clause does not modify the rights and obligations of any party to this Order or the Government with respect to the technical data, computer software, and computer software documentation which are within the scope of the clauses at Defense Acquisition Regulation Supplement (DFARS) 252.227-7013 "Rights in Technical Data – Noncommercial Items (FEB 2014)," DFARS 252.227-7014 "Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation (FEB 2014)," DFARS 252.227-7015 "Technical Data – Commercial Items (FEB 2014)," DFARS 252.227-7019 "Validation of Asserted Restrictions – Computer Software (DEC 2011)," and DFARS 252.227-7037 "Validation of Restrictive Markings on Technical Data (JUN 2013)."
- B. DEFINITIONS. Terms which are defined in this clause are indicated with a bold font. As used in this

clause:

- (i) Non-technical data means information, in any format and recorded on any media, which is not technical data, computer software or computer software documentation as defined in DFARS 252.227-7013 and DFARS 252.227-7014.
- (ii) Non-technical trade secret means any item of non-technical data, including but not limited to, a formula, pattern, compilation, program, device, method, technique, or process, that:
 - (a) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and
 - (b) is the subject of efforts by the Seller, that are reasonable under the circumstances, to maintain its secrecy; and
 - (c) is not "technical data," "computer software," or "computer software documentation," as those terms are defined in DFARS 252.227-7013 and DFARS 252.227-7014; and
 - (d) is not bid or proposal information or source selection information subject to the requirements of FAR 3.104-4; and
 - (e) is not Buyer furnished information or information previously provided by the Seller to the Buyer without restriction; and
 - (f) is not information available to the Buyer without restriction from other sources.
- (iii) Nonconforming trade secret marking means any restrictive legend or marking that is placed on a document or within an electronic file that does not comply with the requirements of this clause but appears to assert restrictions on the Buyer's or Government's rights to use, modify, reproduce, release, perform, display, or disclose non-technical data.

C. PERMISSIBLE RESTRICTIVE MARKINGS ON NON-TECHNICAL DATA. The following types of notices or markings are permitted by law on non-technical data delivered under this Order: copyright notices pursuant to 17 U.S.C. §§ 401 – 404; patent markings pursuant to 35 U.S.C. § 287(a); trademark registration notices pursuant to 15 U.S.C. § 1111; common law trademark notices ("TM"); and the distribution statements required by DOD Directive 5230.24. Only the following markings are authorized for the purpose of asserting restrictions on the Buyer's or Government's rights to use, modify, reproduce, release, perform, display, or distribute non-technical trade secrets disclosed in non-technical data delivered under this Order.

- (i) The following legend shall be placed on the cover page and title page of any document, near the title block of any drawing, and on the label of any computer disc, digital tape or other storage device:

[Insert Seller Name] Trade Secret

This [document, drawing or file] contains non-technical information that is a trade secret of [insert Seller name]. This trade secret information is specifically identified as such within the body of this [document, drawing or file]. This [document, drawing or file] is not to be disclosed to persons who are not employed by [insert Seller name], Huntington Ingalls Incorporated, or the United States Government without the prior written permission of [insert Seller name], unless the identified trade secret is completely deleted and otherwise removed from this [document, drawing or file] before disclosure.

In addition, for electronic files that contain non-technical trade secrets, the above legend shall appear on the computer screen or other user display upon initial access to the file.

- (ii) In addition to the legend prescribed by paragraph (c)(1) above, each individual page of a document (other than the cover or title page), or separable portions of an electronic file, that contains a non-technical trade secret shall have the following legend as a footer:

[Insert Seller Name] Trade Secret -- refer to cover page for restrictions

This footer is permitted only on those pages that actually include non-technical trade secrets

- (iii) Where individual pages of a document, or separable portions of an electronic file, contains both

nontechnical trade secret(s) and other information not subject to restrictions, the non-technical trade secret(s) shall be clearly identified by notes or markings indicating specifically which paragraphs, figures, tables, etc. the restrictive markings refer to.

- (iv) Reproductions of any portion of an original document, drawing, electronic file or database that contains non-technical trade secret(s) shall include reproductions of the legend(s) specified in this clause only if the reproduced portions include non-technical trade secret(s).

D. CORRECTION AND JUSTIFICATION OF RESTRICTIVE MARKINGS ON NON-TECHNICAL DATA.

- (i) The restrictive markings authorized by this clause are the sole means by which the Seller may give notice to the Buyer and Government of its assertions about non-technical trade secret(s). Nothing in this Order limits the Buyer's or Government's rights to challenge the validity or accuracy of those assertions at any time after delivery of the data item with restrictive markings.

- (ii) If an item of non-technical data is delivered with nonconforming trade secret marking(s), the Buyer or Government may require the Seller to resubmit that data at its own expense with markings that conform to the requirements of this clause. If the Buyer or Government notifies the Seller of a nonconforming trade secret marking and the Seller fails to remove or correct such marking and resubmit the data within sixty (60) days, the Buyer and Government may ignore or, at the Seller's expense, remove or correct the nonconforming trade secret marking.

- (iii) The Buyer or Government may request information needed to evaluate the validity of assertions made by the Seller with the markings authorized by this clause. For this purpose the Seller will provide a detailed listing which identifies the specific non-technical trade secret(s) which are the basis for the restrictive markings.

E. APPLICABILITY TO SUBCONTRACTORS. This clause shall be included in all subcontracts at any tier which will require delivery of non-technical data to the Buyer or Government.

F. The requirements of this clause apply both to non-technical data delivered in hard copy and to non-technical data delivered on the IDE or any other electronic media.

76. FAR/DEAR PROVISIONS. [\(back to top\)](#)

- A. The below listed FAR and DEAR clauses are incorporated by reference and made part of this Order with the same force and effect as though set forth in full text.
- B. Unless the text in these clauses clearly reserves rights in the Government only or as otherwise noted, the terms "Contractor" or "Subcontractor" means "Seller," "Contracting Officer" means "Buyer," "Contract" means this Order and "Government" means "Buyer", "FMP," 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. Applicable thresholds include Truthful Cost and Pricing Data (referred to as "TCPD," and formerly known as TINA) threshold at \$2,000,000; Simplified Acquisition Threshold (SAT) at \$250,000; and Micro Purchase Threshold at \$10,000.
- D. Whenever said clauses include a requirement for the resolution of disputes between the Parties in accordance with the "Disputes clause," the dispute shall be disposed of in accordance with the provision entitled "Disputes" above.
- E. The full text of a clause may be accessed electronically at this internet address: <https://www.acquisition.gov/>.
- F. This contract incorporates the following articles by reference, with the same force and effect as if they were printed in full text. The revision of each article will be the one in effect on the date of submission of your proposal. To purchase a copy of the Department of Energy Acquisition Regulations (DEAR-CFR Title 48, Chapter 9), contact the U.S. Government Printing Office, Superintendent of Documents, Mail Stop: SSOP, Washington, D.C. 20402-9328.

- G. Based on the stated provisions, Seller is to determine what articles must be inserted in its subcontracts and purchase orders to implement its obligations to Buyer (as stated in the order) and the Government, and must implement them in its lower-tier subcontracts and purchase orders.

Clause Number	Clause Name	Clause Date
DEAR 970.5232-3	Accounts, Records, and Inspections	(Dec 2010)
FAR 52.227-16	Additional Data Requirements (Research and Development Orders)	(Jun 1987)
FAR 52.216-7	Allowable Cost and Payment	(Jun 2013)
FAR 52.225-1	Buy American Act-Supplies	(May 2014)
FAR 52.222-50	Combat Trafficking In Persons	(Mar 2015)
FAR 52.223-15	Energy Efficiency in Energy-Consuming Products	(Dec 2007)
FAR 52.243-2	CHANGES-COST-REIMBURSEMENT (Delete Paragraph (D); Use Alt. V for R&D Orders)	(Apr 1984)
DEAR 952.204-70	Classification/Declassification	(Sep 1997)
FAR 52.202-1	Definitions	(Nov 2013)
FAR 52.222-26	Equal Opportunity	(Sep 2016)
FAR 52.249-14	Excusable Delays	(Apr 1984)
FAR 52.215-16	Facilities Capital Cost of Money	(Jun 2003)
FAR 52.216-8	Fixed Fee	(Jun 2011)
DEAR 952.247-70	Foreign Travel	(Jun 2010)
FAR 52.246-8	Inspection of Research And Development—Cost Reimbursement	(May 2001)
FAR 52.246-5	Inspection of Services--Cost Reimbursement	(Apr 1984)
FAR 52.246-3	Inspection of Supplies--Cost Reimbursement	(May 2001)
DEAR 970.5223-1	Integration of Environment, Safety, and Health into Work Planning and Execution (applicable to Orders for complex or hazardous on-site work)	(Dec 2000)
FAR 52.232-20	Limitation of Cost	(Apr 1984)
FAR 52.232-22	Limitation of Funds	(Apr 1984)
FAR 52.223-12	Maintenance, Service, Repair or Disposal of Refrigeration Equipment and Air Conditioners	(Jun 2016)
FAR 52.211-5	Material Requirements	(Aug 2000)
FAR 52.223-11	Ozone-Depleting Substances and High Global Warming Potential Hydrofluorocarbons	(Jun 2016)

Clause Number	Clause Name	Clause Date
DEAR 952.227-13	Patent Rights – Acquisition by the Government (Delete Paragraphs (B) (2) and (D) (4)) (R&D Orders Only)	(Sep 1997)
DEAR 952.227-11	Patent Rights - Retention by the Contractor (Short Form) (Small Business And Non-Profit) (Research and Development Orders Only)	(Feb 1995)
FAR 52.236-7	Permits and Responsibilities	(Nov 1991)
FAR 52.204-9	Personal Identity Verification of Contractor Personnel	(Jan 2011)
FAR 52.247-64	Preference for Privately Owned U.S.-Flag Commercial Vessels	(Feb 2006)
FAR 52.222-21	Prohibition of Segregated Facilities	(Apr 2015)
DEAR 970.5245-1	Government Property	(Aug 2016)
DEAR 970.5227-8	Refund of Royalties	(Feb 1995)
DEAR 925.235-71	Research Misconduct (applicable to Orders involving research)	(Jul 2005)
FAR 52.225-13	Restrictions on Certain Foreign Purchases	(Jun 2008)
FAR 52.227-14	Rights In Data – General (With Alt V.) (Substitute Paragraphs (A) and (D) (3) from DEAR Reference)	(May 2014)
DEAR 952.204-2	Security	(Aug 2016)
FAR 52.222-41	Service Contract Act (SCA) of 1965, As Amended	(May 2014)
FAR 52.222.43	Fair Labor Standards Act and Service Contract Act - Price Adjustment (Multiple Year and Option Contracts) (>\$150k)	(Aug 2018)
FAR 52.222.44	Fair Labor Standards Act and Service Contract Act - Price Adjustment (>\$150k)	(May 2014)
FAR 52.242-15	Stop-Work Order (With Alt. I)	(Aug 1989)
FAR 52.244-2	Subcontracts (Ref. Paragraph (E) The Subcontracts Requiring Buyer Approval Are Discussed in the Purchase Order.)	(Oct 2010)
FAR 52.244-6	Subcontracts for Commercial Items	(Nov 2017)
FAR 52.249-6	Termination (Cost-Reimbursement) (Delete Reference In Paragraph J to the Disputes Article)	(May 2004)
DEAR 952.203-70	Whistleblower Protection for Contractor Employees (DOE-On-Site Work Only)	(Dec 2000)
DEAR 970.5223-4	Workplace Substance Abuse Programs at DOE Sites	(Dec 2010)

The following article applies if this purchase order exceeds \$3,500 (except as noted):

Clause Number	Clause Name	Clause Date
FAR 52.223-18	Encouraging Contractor Policies to Ban Text Messaging While Driving	(Aug 2011)

The following article applies if this purchase order exceeds \$10,000 (except as noted):

Clause Number	Clause Name	Clause Date
FAR 52.222-40	Notification of Employee Rights Under the National Labor Relations Act	(Dec 2010)

The following article applies if this purchase order exceeds \$15,000 (except as noted):

Clause Number	Clause Name	Clause Date
FAR 52.222-36	Affirmative Action for Workers With Disabilities	(July 2014)

The following article applies if this purchase order exceeds \$100,000 (except as noted):

Clause Number	Clause Name	Clause Date
DEAR 970.5227-5	Notice and Assistance Regarding Patent and Copyright Infringement	(Dec 2000)

The following articles apply if this purchase order exceeds \$150,000 (except as noted):

Clause Number	Clause Name	Clause Date
FAR 52.203-7	Anti-Kickback Procedures	(May 2014)
FAR 52.204-25	Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment	(Aug 2020)
FAR 52.215-2	Audit And Records-Negotiation	(Oct 2010)
FAR 52.227-1	Authorization And Consent	(Dec 2007)
FAR 52.222-4	Contract Work Hours and Safety Standards Act Overtime Compensation	(May 2018)
FAR 52.203-17	Contractor Employee Whistleblower Rights and Requirements to Inform Employees of Whistleblower	(Apr 2014)
FAR 52.225-8	Duty-Free Entry	(Oct 2010)
FAR 52.222-37	Employment Reports on Special Disabled Veterans, Veterans of The Vietnam Era, and Other Eligible Veterans	(Feb 2016)
FAR 52.222-35	Equal Opportunity for Special Disabled Veterans, Veterans of The Vietnam Era, And Other Eligible Veterans	(Oct 2015)
FAR 52.203-3	Gratuities	(Apr 1984)
FAR 52.232-17	Interest	(Oct 2010)
FAR 52.203-12	Limitation on Payments To Influence Certain Federal Transactions	(Oct 2010)
FAR 52.215-23	Limitations on Pass-Through Charges	(Oct 2009)
DEAR 952.209-72	ORGANIZATIONAL CONFLICTS OF INTEREST (With Alt. I) (Orders Involving Advisory And Assistance Services)	(Aug 2009)
FAR 52.227-3	Patent Indemnity	(Apr 1984)
FAR 52.203-6	Restrictions On Subcontractor Sales To The Government	(Sep 2006)
FAR 52.219-8	Utilization Of Small Business Concerns	(Nov 2016)

The following articles apply if this purchase order exceeds \$500,000 (except as noted):

Clause Number	Clause Name	Clause Date
DEAR 952.226-74	Displaced Employee Hiring Preference	(Jun 1997)

The following articles apply if this purchase order exceeds \$700,000 (except as noted):

Clause Number	Clause Name	Clause Date
FAR 52.219-9	Small Business Subcontracting Plan	(Jan 2017)

The following articles apply if this purchase order exceeds \$750,000 (except as noted):

Clause Number	Clause Name	Clause Date
FAR 52.230-6	Administration of Cost Accounting Standards	(Jun 2010)
FAR 52.215-10	Price Reduction For Defective Cost or Pricing Data	(Aug 2011)
FAR 52.215-19	Notification of Ownership Changes	(Oct 1997)
FAR 52.215-18	Reversion or Adjustment of Plans for Post-Retirement	(Jul 2005)
FAR 52.215-15	Pension Adjustments and Asset Reversions	(Oct 2010)
FAR 52.215-12	Subcontractor Cost or Pricing Data (Deviation 2018-O0015)	(May 2018)
FAR 52.215-13	Subcontractor Certified Cost or Pricing Data – Modifications (Deviation 2018-O0015)	(May 2018)
FAR 52.230-2	Cost Accounting Standards (DEVIATION 2018-O0015) (delete paragraph (b))	(May 2018)

The following article applies if this purchase order exceeds \$2,000,000 (except as noted):

Clause Number	Clause Name	Clause Date
DEAR 970.5204-3	Access To And Ownership Of Records	(Oct 2005)

The following article applies if this purchase order exceeds \$5,500,000 (except as noted):

Clause Number	Clause Name	Clause Date
FAR 52.203-14	Display of Hotline Poster(s)	(Oct 2015)
FAR 52.203-13	Contractor Code of Business Ethics and Conduct	(Oct 2015)