

GENERAL PROVISIONS FOR COMMERCIAL ORDERS

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

- A. BUYER means Huntington Ingalls Incorporated (“HII”), a subsidiary of Huntington Ingalls Industries, acting through Buyer’s authorized purchasing representative at its Ingalls Shipbuilding division or its Newport News Shipbuilding division.
- B. 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).
- C. PARTIES means Buyer and Seller collectively.
- D. 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.
- E. SELLER means the party with whom Buyer is contracting.
- F. 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 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.

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

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.

6. 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 HII division supplement or other special provisions to these General Provisions (also referred to as terms and conditions) as invoked in this Order.
 - (iii) These General Provisions.
 - (iv) Statement of Work.
 - (v) Specification/Drawing.
 - (vi) 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.

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

Neither this Order nor the benefits or obligations thereof shall be assigned by Seller except with the prior written consent of Buyer, such consent not to be unreasonably withheld.

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

- A. Seller shall be responsible for ensuring the proper packaging and shipping of Product in accordance with Buyer's carrier routing/shipping instructions, which are incorporated herein and available at:
Newport News Shipbuilding – <http://supplier.huntingtoningalls.com/sourcing/index.html>
Ingalls Shipbuilding – <https://spars.huntingtoningalls.com/procurement/index.html>
- B. Damage resulting from improper Product packaging will be charged to Seller.

10. 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 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.
- C. Whenever it appears Seller will not meet the delivery schedule, Seller shall immediately notify Buyer in writing of the reason and estimated length of the delay. This notice shall 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.
- D. If Seller is unable to meet the required delivery schedules for any reason, 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.
- E. 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.

11. 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 the shipment, *CERTIFICATES AND/OR TEST REPORTS ENCLOSED*.

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

All Products furnished under this Order shall be free of all liens, claims, charges, and encumbrances of any kind. Upon request, Seller shall 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.

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

- A. Except as otherwise provided in this Order, Seller shall maintain and use a commercially reasonable inspection and quality control system to inspect Products delivered under this Order. Buyer or its customer or both may inspect work in progress at all times and places including audits of Seller's inspection and quality control system. Buyer or Buyer's customer shall have the right to perform reviews and evaluations as reasonably necessary to ascertain Seller compliance with its inspection or quality control system. The right of review, whether exercised or not, does not relieve the Seller of its obligations under this Order.
- B. 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.
- C. 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.
- D. Seller, at its own expense, shall promptly rectify any defects discovered during any inspection or test.
- E. 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.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. 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.
- F. 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.
- G. 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.

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

Seller shall not collect any sales or use taxes inasmuch as Buyer has direct pay permits held for Louisiana, Mississippi and 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.

15. 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 supplies delivered or services performed. Unless Seller is part of Buyer's Invoiceless Payment System, Seller shall send all invoices, in duplicate, showing the Order number and Order Item Number to the Huntington Ingalls Incorporated address on the first page of this Order, Attention: Accounts Payable. 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. For progress payments, Seller shall note "Final Invoice" on the final billing documents sent to Buyer. These actions are necessary to ensure proper closeout of this Order.

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

- A. Seller warrants that all Products delivered under this Order will:
 - (i) be new and of good quality;
 - (ii) be free from defects in materials, workmanship, and manufacturing processes; and
 - (iii) conform to all requirements of this Order.
- B. The warranty period shall begin upon Buyer's acceptance of the Product and end 12 months after final acceptance by Buyer. 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 paragraph, 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 paragraph. 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 elect to return, replace, re-procure or correct the deficient Product at Seller's cost. 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.
- 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 Buyer's authorized purchasing representative describing the deficiency and Seller's plan to remedy the deficiency. For the purposes of this subparagraph G, a deficiency occurs when Seller's Product fails to meet any of the performance obligations set forth in subparagraph A of this provision. Seller's notice shall in no way affect the rights and remedies of Buyer.
- H. 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.

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

Changes to this Order, to be binding, must be in writing and issued by the authorized representatives of the parties. Except for changes identified as such in writing and issued by the authorized representatives of the parties, Seller shall notify the Buyer in writing within 15 calendar days from the date that the Seller identifies any conduct by Buyer (including actions, inactions, and written or oral communications) that the Seller regards as a change to the Order terms and conditions. Seller's notice shall include a summary of the circumstances of the conduct regarded as a change.

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

- A. Buyer may terminate this Order in whole or in part at any time without liability to Seller 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. 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.
- C. If, after a default termination, it is determined that Seller was not in default, or that the default was excusable, the rights and obligations of the Parties shall be the same as if the termination had been issued for the convenience of Buyer.

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

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

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

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

21. 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.

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

- A. During the period of performance of this Order, Seller and its subcontractors shall, at their sole cost and expense, procure and maintain Workers' Compensation insurance coverage as required by the most current laws of the state or foreign jurisdiction in which the work is performed and such insurance shall provide waiver of subrogation against Buyer.
- B. Seller shall also maintain, at its sole cost and expense, Employer Liability insurance in the amount of \$1,000,000.
- C. Whenever performance requires work on a Buyer's premises or premises under the care, custody or control of Buyer or Buyer's customer, Seller and its subcontractors shall, at their sole cost and expense, procure and maintain the following insurance coverage in the minimum limits indicated:
 - (i) Comprehensive General Liability – Combined Single Limit \$2,000,000 bodily injury and property damage. Coverage shall include but not necessarily be limited to, premises and operations, products and completed operations and contracts.
 - (ii) Automobile Liability – Combined Single Limit \$2,000,000 bodily injury and property damage covering all owned, hired and non-owned vehicles.
- D. Seller shall, in addition to the above requirements, maintain appropriate coverage under the Longshore and Harbor Workers' Compensation Act.
- E. 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 or states in which the work is being performed and shall be in a form reasonably acceptable to Buyer.
- F. General Liability and Automobile Liability insurance coverage shall name Buyer as an additional insured
- G. 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 insurance certificates. Renewal insurance certificates, if applicable, shall be provided to Buyer at least 15 days prior to the expiration date of the insurance under each required coverage.
- H. All 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 coverage hereunder. Seller waives statutory immunity from workers' compensation as respects the additional insured requirement for general liability only.

23. BUYER PROPERTY. [\(back to top\)](#)

- A. If Buyer 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 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.
- B. Seller shall use Buyer 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 furnished property unless this Order specifically identifies the modifications, alterations or improvements as work to be performed.
- C. Buyer shall retain title to all Buyer furnished property. Title to such property shall not be affected by its incorporation into or attachment to any property not owned by Buyer, nor shall Buyer 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, on Buyer furnished property.

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

As of the time of award of this Order, Seller represents and warrants that:

- A. Seller has submitted to Buyer annual representations and certifications that are incorporated herein by reference;
- B. Seller's representations and certifications are current, accurate and complete;
- C. If Seller is representing itself as a small disadvantaged business, that:
 - (i) It has been certified by the Small Business Administration (SBA) as a small disadvantaged business consistent with 13 CFR 124, Subpart B, and no material change in disadvantaged ownership, control or net worth qualification has occurred since its certification, and it is identified as a certified small disadvantaged business concern by the SBA (see 48 CFR 52.219-8); or
 - (ii) It has submitted a completed application to the SBA or a Private Certifier to be certified as a small disadvantaged business in accordance with 13 CFR 124, Subpart B, and a decision on that application is pending, and no material change in disadvantaged ownership or control has occurred since its application was submitted.
- D. If Seller's status under any of the applicable representations and certifications changes during performance of this Order, Seller must complete and submit to Buyer revised representations and certifications.

25. 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.
- 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.
- C. Seller may disclose Proprietary Information to its subcontractors as required for the performance of this Order, provided each such subcontractor first assumes by written agreement the same obligations imposed on Seller under this Order relating to Buyer's Proprietary Information.
- D. If a separate proprietary information or information exchange and non-disclosure agreement relating to the subject matter of this Order exists between the Parties, all data, knowledge and information furnished by one Party to the other Party shall be protected pursuant to such proprietary information or information exchange and non-disclosure 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 not disclose Buyer's Proprietary Information to any other person without first obtaining Buyer's written authorization, except as provided herein. 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. 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.

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

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 harmless Buyer, Buyer's parent and affiliates and their respective 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.

27. INTELLECTUAL PROPERTY RIGHTS. [\(back to top\)](#)

- A. **Rights in Original Works, Inventions, Discoveries, and Improvements.** Any original work Seller produces under this Order is a work for hire and Buyer solely owns all rights therein and Seller assigns all right, title, and interest in such original works to Buyer. All (i) improvements, (ii) discoveries, (iii) works, (iv) inventions, (v) patents (including patent applications and their progeny), (vi) copyrights, (vi) trademarks, and (viii) trade secrets made or created using resources (including, but not limited to, money, credit, or Buyer's obligation to pay Seller under this Order), facilities, material, supplies, information, data, equipment, personnel, direction, or instructions Buyer furnishes Seller during the performance of this Order ("Covered Intellectual Property") are the sole property of Buyer, and Seller (i) assigns all right, title, and interest in all such Covered Intellectual Property to Buyer; (ii) will assist Buyer in preparing and will execute all instruments necessary to perfect all right, title, and interest to Covered Intellectual Property in Buyer, and (ii) grants to Buyer a nonexclusive, paid-up, irrevocable, world-wide, perpetual license to any Seller (i) improvements, (ii) discoveries, (iii) works, (iv) inventions, (v) patents (including patent applications and their progeny), (vi) copyrights, (vi) trademarks, and (viii) trade secrets necessary for Buyer to make, use, or sell any product or service incorporating or using Covered Intellectual Property.
- B. **No Transfer of Intellectual Property Rights from Buyer to Seller.** Unless expressly stated otherwise in this Order, Buyer does not transfer any right, title, and interest in any of Buyer's improvements, (ii) discoveries, (iii) works, (iv) inventions, (v) patents (including patent applications and their progeny), (vi) copyrights, (vi) trademarks, or (viii) trade secrets to Seller or anyone else whatsoever for any purpose whatsoever except that Buyer grants to Seller such license to Buyer's improvements, (ii) discoveries, (iii) works, (iv) inventions, (v) patents (including patent applications and their progeny), (vi) copyrights, (vi) trademarks, and (viii) trade secrets to the minimum extent such license is reasonably necessary for Seller to meet Seller's obligations to Buyer or Buyer's Customer arising under this Order. Buyer and Seller each retain all their respective title to all improvements, (ii) discoveries, (iii) works, (iv) inventions, (v) patents (including patent applications and their progeny), (vi) copyrights, (vi) trademarks, and (viii) trade secrets that Buyer and Seller each respectively held before the last date Buyer and Seller execute this Order and nothing in this Order is intended to affect any transfer, sale, or assignment of such title.

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

- A. Definitions:
- (i) "Computer software" means computer programs, source code, source code listings, object code listings, design details, algorithms, processes, flow charts, formulae, and related material that would enable the software to be reproduced, recreated, or recompiled. Computer software does not include computer databases or computer software documentation.
 - (ii) "Computer database" means a collection of recorded data in a form capable of being processed by a computer. The term does not include computer software.

- B. The Seller shall test all computer software and/or computer databases (including the media it is delivered on) for computer viruses before delivery of such software and/or databases in any medium or in any system. All computer software and/or computer databases delivered by Seller shall contain no known viruses that are detectable with the latest version of commercially available virus detection software. In addition, Seller shall test any computer software and/or computer databases received from Buyer or Buyer's customer for viruses prior to use in performing this Order. Seller shall provide Buyer with immediate written notice of any viruses detected in Buyer-provided computer software and/or computer databases. Unless otherwise agreed in writing, any license agreement covering the use of any computer software and/or computer databases delivered under this Order must be paid-up and perpetual, shall not contain any routine to disable the computer software and/or computer 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 computer software and/or computer databases, and also displayed in human-readable form on a visible surface of the media carrying the digital computer software and/or computer databases.

29. 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 U.S. 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-U.S. employees or affiliates) access to Technical Data, software or Defense Articles, or provide an unauthorized Defense Service as those terms are defined in the applicable Export Laws and Regulations without the prior written consent of Buyer. Any request for such consent must state the intended recipient's citizenship(s), and status under 8 U.S.C. 1101 and 8 U.S.C. 1324 (the “Immigration and Naturalization Act”), and such other information as Buyer may reasonably request. No consent granted by Buyer in response to Seller's request under this subparagraph C shall relieve Seller of its obligations to comply with subparagraph A of this provision or the Export Laws and Regulations, nor shall any such consent constitute a waiver of the requirements of subparagraph A, 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 their respective officers, directors, and employees from and against any and all liabilities, claims losses, and expenses 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 subparagraph A. 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. 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, including this subparagraph E, shall be incorporated into any lower-tier subcontract entered into by Seller for the performance of any part of the work under this Order.

30. EUROPEAN UNION (EU) SAFE HARBOR. [\(back to top\)](#)

With respect to personal information about Seller's employees located in European Union (EU) countries, Buyer adheres to a self-regulatory program that complies with the safe harbor privacy principles set forth in the July 2000 agreement between the EU and the United States Department of Commerce. For details about Buyer's privacy policy with respect to individuals located in EU countries, please refer to the Huntington Ingalls Incorporated privacy policy information at: <http://www.huntingtoningalls.com/about/docs/euprivacypolicy.pdf>. Seller shall provide this notice to each of its EU employees who provide personal information to Buyer.

31. 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.

32. TOXIC SUBSTANCES/HAZARDOUS MATERIAL. [\(back to top\)](#)

Buyer will not accept, store or dispose of any toxic substances or hazardous material except as and to the extent, if at all, expressly provided for in this Order. In particular, paints, primers, or coatings on products required by this Order that contain the following constituents shall not be shipped without prior written approval by Buyer: arsenic, mercury, methylene chloride, methyl ethyl ketone (MEK), lead, and chromium, their compounds, or organo-metallic material. Materials known or suspected of containing or coming in contact with asbestos, polychlorinated biphenyls (PCBs), or mercury or mercury containing compounds shall not be provided without Buyer's prior written permission. If invoked specifications and standards permit other materials in lieu of these materials, they shall be used.

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

Seller shall indemnify and hold harmless Buyer, Buyer's parent and affiliates, and their respective directors, officers, and employees (collectively, for the purposes of this provision, "Buyer"), from and against any and all liabilities, claims, losses, and expenses, arising from the acts and omissions of the Seller, its employees, subcontractors, or agents, in their 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.

34. 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, and employees (collectively, for the purposes of this provision, "Buyer") from and against 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 to comply with any laws, regulations or ordinances. 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.

35. 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.

36. 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 or agent of Buyer for any purpose.

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

Except as required by law, no public release of any information, or confirmation or denial of same, with respect to this Order or the subject matter, will be made by Seller without the prior written approval of Buyer. Additionally, Seller shall not use Buyer's name or in any other way identify Buyer in any advertisement, display, news release, or other public disclosure without Buyer's prior written consent.

38. 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.

39. 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.
- B. United States District Court for the Southern District of Mississippi or the Circuit Court of Jackson County, Mississippi for Orders issued by Huntington Ingalls Incorporated-Ingalls Shipbuilding division.

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

Buyer has implemented a comprehensive Business Conduct Program, which is contained in the "*Business Associates Brochure*" and is available at this website:

<http://www.huntingtoningalls.com/about/docs/codeofethics.pdf>. Seller shall be familiar with this brochure and abide by its terms; in particular, Seller shall not offer any gratuity to Buyer's employees, customers or their representatives in a manner inconsistent with this policy.

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

The “Proprietary Information,” “Intellectual Property Rights,” “Indemnification – Government Requirements,” “Indemnification – Third Party Claims,” “Patent, Trademark, Trade Secret, And Copyright Indemnity,” and “Warranty” provisions and the indemnification provisions in the “Export And Import Compliance,” provision 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.

42. 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.

43. 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.

44. ACCEPTANCE. [\(back to top\)](#)

Buyer will accept Products under this Order, or give Seller notice of rejection, within a reasonable time after completion of all required performance and deliveries, notwithstanding any prior payments made or prior tests or inspections performed. Determination of a reasonable time shall take into consideration the nature and complexity of the services performed or goods delivered, but in no event shall such time be less than thirty (30) days. Notice of rejection may be given in any reasonable form, including but not limited to Quality Notifications, Discrepancy Reports, Inspection Reports, annotations on Shipping Instructions, or communications via telephone, e-mail, facsimile, or other correspondence. No inspection, test, delay, failure to inspect or test, or failure to discover any defect or other nonconformance shall relieve Seller of any of its obligations under this Order or impair any rights or remedies of Buyer or Buyer’s customers.

45. MERGER/DIVESTITURE RIGHTS. [\(back to top\)](#)

- A. If Buyer merges with another or acquires substantially all of the assets of another business, Buyer will be permitted to make purchases under this Order for the combined or acquired business. If the acquired entity or business has a similar arrangement with Seller, Buyer and Seller will negotiate a combined maintenance agreement sufficient to cover the combined companies so as to avoid any disruption in service.
- B. Upon Buyer’s divestiture of any subsidiary, affiliate, division, business unit, or line of business (“Divested Business”), Buyer may assign in whole or in part the products or services that are the subject of this Order to that Divested Business. Upon execution of an assignment, Buyer shall have no further rights or obligations with respect to the assigned products and/or services (with the exception of any unpaid license and/or Maintenance Service fees which remain due on the effective date of such assignment) and the Divested Business shall become the “Customer” or “Buyer” of record for those assigned products and/or services. Any

such assignment or other transfer of products or services to a third party will be subject to the prior written consent of Seller/Licenser which consent will not be unreasonably withheld or delayed.

- C. A Divested Business will have the right, for a period of 12 months post-divestiture, to continue to purchase products and/or services under this Order, or Buyer may purchase such products and/or services under this Order on behalf of the Divested Business. If a Divested Business wishes to order from Seller directly, Seller reserves the right to require such Divested Business to provide financial information sufficient to determine creditworthiness before accepting any orders. In the event of a divestiture, Buyer shall be permitted to use the products and/or services to provide managed services for the Divested Business during a period of transition, provided that Buyer's use in such case is only for the Divested Business.

46. COMPLIANCE/COOPERATION. [\(back to top\)](#)

Seller shall render to Buyer (or such others as Buyer may reasonably direct) such cooperation, assistance, and information Buyer reasonably requests from Seller to enable Buyer to comply with existing or future requirements any federal, state, local, or foreign statute, regulation, ordinance, directive, or other lawful command imposes upon Buyer as a direct or indirect consequence of Buyer's purchase of Products from Seller under this Order.

47. HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA. [\(back to top\)](#)

"*Hazardous material*" means any material defined as hazardous under the latest version of Federal Standard No. 313 (including revisions adopted during the term of this Order). Seller must notify Buyer in writing within 30 days of this order of any hazardous material to be delivered under this Order. The Seller shall identify hazardous material and include any applicable identification number, such as National Stock Number or Special Item Number. Seller shall update this notice whenever Seller determines that any other material to be delivered is hazardous. Seller shall include this information on a Material Safety Data Sheet meeting the requirements of 29 CFR 1910.1200(g), which Seller shall submit at least 30 days prior to any shipment containing hazardous material, and as otherwise required by Federal Standard 313, regardless of whether Seller is the actual manufacturer of the items. Neither the requirements of this paragraph, 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 applicable Federal, State, and local laws, codes, ordinances, and regulations (including the obtaining of licenses and permits) in connection with hazardous material.