

## General Provisions for Commercial Orders

NNS: Appendix A – COMMERCIAL SUPPLIES  
INGALLS: FORM SBF P9413

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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, other regulations referenced therein, or other special provisions to these General Provisions (also referred to as terms and conditions) as invoked in this Order.
  - (iii) These General Provisions including any regulations referenced therein.
  - (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. Prior to any sale or merger of Seller with a third party that results in the transfer of any rights or obligations arising under this Order, Seller shall notify Buyer and execute any documents requested by Buyer in connection with such transfer.

**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 Free 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 paragraph D shall not limit Buyer's rights under the "Termination for Default" provision of this Order.
- E. All Parties expressly agree that time is and shall remain of the essence in performing this Order 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 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: (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 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 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 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 Buyer in writing within 15 calendar days from the date that Seller identifies any conduct by Buyer (including actions, inactions, and written or oral communications) that 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. Unless otherwise authorized by Buyer in writing, Seller shall not commence work in connection with any change or increase in expenses until the Parties in writing agree upon the fee and/or schedule impact of the 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.
- D. Refund of Payments. Seller shall, upon termination by Buyer due to default by Seller, and in addition to any other remedies at law or in equity available to Buyer, return payments Seller received under this Order for the terminated work. The refund of monies paid hereunder shall not be deemed the exclusive remedy of Buyer in the event of a default or breach of this Order by Seller.

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

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

#### **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 provision results in an increase in the time required for, or in Seller's cost properly allocable to the performance of any part of this Order, Buyer shall make an adjustment in the delivery schedule or Order price or both. Seller shall assert its right to an adjustment no later than 20 days after the work suspension is lifted.

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

- A. In addition to the other remedies provided for hereunder and except as expressly limited herein, both Parties to this Order shall have the full benefit of all applicable remedies generally available to a Buyer/Seller of goods under the Uniform Commercial Code.
- B. 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 this Order, and Seller's equivalent executive level.



- C. 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 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.
- D. 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.
- E. 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.
- F. The Parties agree that this Order is the result of negotiations between the Parties and that no term or provision shall be construed against a Party merely because the term or provision is contained in a document drafted, prepared, written or pre-printed by that Party.

## **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.
- B. Seller shall also maintain, at its sole cost and expense, Employer Liability insurance in the amount of \$1,000,000.
- 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 only required to be submitted for the following:
  - (i) Whenever performance requires work on a U.S. Government installation, ship, 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 Comprehensive General Liability Insurance and Workers' Compensation insurance.
  - (ii) Whenever 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 and its subcontractors shall, at their sole cost and expense, procure and maintain the automobile insurance coverage with a Combined Single Limit \$2,000,000 bodily injury and property damage covering all owned, hired and non-owned vehicles.
  - (iii) Seller shall maintain appropriate coverage under the Longshore and Harbor Workers' Compensation Act if any Seller employee will be within the production environment on the premises of Buyer.
  - (iv) [Reserved].
  - (v) Whenever Seller provides design and/or engineering services, Seller shall, in addition to the other applicable insurance noted herein and at its sole cost and expense, procure and maintain professional liability (errors and omissions) insurance coverage in the minimum limits of \$1,000,000.
  - (vi) When the Order invokes milestone payments Seller shall, at its sole cost and expense, procure and maintain Comprehensive General Liability Insurance and Workers' Compensation insurance.
  - (vii) When the Order includes ship-in-place terms, Seller shall, at its sole cost and expense, procure and maintain Comprehensive General Liability Insurance and Workers' Compensation insurance.
  - (viii) When, as part of the Order, Buyer provides Seller material, Seller shall, at its sole cost and expense, procure and maintain Comprehensive General Liability Insurance and Workers' Compensation insurance.
  - (ix) When the Order is for transportation, handling and/or disposal of asbestos, radiological or any other hazardous waste, material or substances, Seller shall, at its sole cost and expense, procure and maintain Comprehensive General Liability Insurance and Workers' Compensation insurance.

- (x) When the Order is for tugs and ship towing services, ship pilots or crews, Seller shall, at its sole cost and expense, procure and maintain Marine Liability Insurance, Workers' Compensation insurance, and appropriate coverage under the Longshore and Harbor Workers' Compensation Act.
- (xi) When the Order is for facility construction/renovation projects or excavation services, Seller shall, at its sole cost and expense, procure and maintain Comprehensive General Liability Insurance and Workers' Compensation insurance. Builders Risk Insurance is also required.
- D. When Comprehensive General Liability is required it shall have at a minimum Combined Single Limit of \$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.
- E. For Orders stated in subparagraph (C) where a COI is required for Comprehensive General Liability and/or Automotive Liability, insurance coverage shall name Buyer as an additional insured.
- 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 or states in which the work is being performed and shall be in a form reasonably acceptable to Buyer.
- G. 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 requirements for Comprehensive General Liability only.
- H. For Orders issued by the Newport News Shipbuilding division, when evidence of a COI is required, the Parties mutually agree that Buyer's third party insurance compliance provider, Avetta, LLC, is hereby authorized on behalf of Buyer to request, acquire and audit Certificates of Insurance in accordance with this provision's insurance requirements. In connection therewith, Seller shall take all steps necessary to register and maintain an active account with Avetta at the following website: <http://pages.avetta.com/Newport-News-Shipbuilding.html>.
- I. For Orders issued by the Newport News Shipbuilding division, renewal insurance certificates, if applicable, shall be provided to Avetta at least 15 days prior to the expiration date of the insurance under each required coverage.

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

- A. As of the time of award of this Order, Seller represents and warrants that:
  - (i) Seller has submitted to Buyer Form 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 on the SBF P9152 changes during performance of this Order, Seller shall complete and submit to Buyer a revised SBF P9152.

#### **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 received by Seller 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 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, except as provided herein, (i) not disclose such Proprietary Information to any other person except to its officers, agents and employees who are under an obligation to keep such Proprietary Information confidential and have a need to know such Proprietary Information to fulfill Seller's obligation under this Order, and (ii) treat such Proprietary Information with the same degree of care as Seller uses in handling its own proprietary or confidential information and – in all events – with not less than reasonable care. Seller will use 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.

- 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.

**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 creates at Buyer's direction 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, (vii) 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 (iii) grants to Buyer a nonexclusive, paid-up, irrevocable, world-wide, perpetual license to any Seller (1) improvements, (2) discoveries, (3) works, (4) inventions, (5) patents (including patent applications and their progeny), (6) copyrights, (7) trademarks, and (8) 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 (i) improvements, (ii) discoveries, (iii) works, (iv) inventions, (v) patents (including patent applications and their progeny), (vi) copyrights, (vii) 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 (i) improvements, (ii) discoveries, (iii) works, (iv) inventions, (v) patents (including patent applications and their progeny), (vi) copyrights, (vii) trademarks, and (viii) trade secrets to the minimum extent such license is reasonably necessary for Seller to meet Seller's obligations to Buyer arising under this Order. Buyer and Seller each retain all their respective title to all (i) improvements, (ii) discoveries, (iii) works, (iv) inventions, (v) patents (including patent applications and their progeny), (vi) copyrights, (vii) 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 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. No copy-protection devices, codes, or systems shall be used that would prevent Buyer 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 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 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 paragraph 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 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. INFORMATION SECURITY. [\(back to top\)](#)**

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

### **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. 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 the 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 NNS suppliers.

B. Prohibited Hazardous Materials:

Except as agreed to in writing by the 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:

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

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

C. Additional Notifications Required by Seller Relating to Materials Identified in the Prohibited Hazardous Materials Table:

The 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:

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

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



- (ii) **BRASS AND COPPER BLACK OXIDE COATED THREADED FASTENER PROHIBITION.** Seller shall not use brass or copper black oxide coated threaded fasteners when installing or replacing threaded fasteners in the accomplishment of any work required by this Order.

**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 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 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 of 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.

**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," "Information and Advertising" 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.

**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. 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.**