

# General Conditions NORTHROP GRUMMAN SHIPBUILDING, INC.

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(December 2009)

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### 1. DEFINITIONS

(a) The term "Buyer", "Owner" or "Purchaser" shall mean Northrop Grumman Shipbuilding, Inc., a subsidiary of Northrop Grumman Corporation, or any affiliate, and its authorized representative designated in the Invitation for Bids or Request for Proposal.

(b) The term "Contractor" or "Seller" means the person, firm or corporation named as such in Owner's Purchase Order or Agreement.

(c) The term "Subcontractor" includes those parties having a direct lower-tier contract with the Contractor and it includes anyone who furnishes material worked to a special design but does not include one who merely furnishes material not so worked.

(d) The term "Architect" or "Engineer", unless otherwise specified in this agreement, shall mean the Architect or the Engineer, as the case may be, named in the agreement as the party who prepared the specifications and plans for the Work to be performed.

(e) The "Project Engineer", "Project Manager", or "Field Engineer" assigned by Owner's Plant Engineering, shall mean one or more individuals employed or designated by the Owner to make inspections, approve the Work, and generally act on the Owner's behalf during the construction of the project. The Owner shall notify the Contractor in writing of the appointment of such Project Engineer/Project Manager/Field Engineer.

(f) The terms "Contract Administrator" and/or "Sourcing Representative" refer to those individuals authorized by the Owner to interpret and administer the terms and conditions of the contract.

(g) The term "Work" of the Contractor or Subcontractor means labor or materials or both.

(h) The term "Notice" as used herein shall include all written notices, demands, instructions, claims, approvals and disapprovals required to obtain compliance with the contract requirements. Any written notice by either party to the Contract shall be sufficiently given if delivered to or at the last known business address of the person, firm or corporation constituting the party to the Contract or to his, their, or its authorized agent, representative or officer, or when enclosed in a postage prepaid envelope addressed to such last known business address and deposited in a United States mail box.

(i) The term "days" shall mean calendar days unless expressly indicated otherwise herein.

### 2. CONTRACT DOCUMENTS

(a) The Contract Documents consist of the Purchase Order and/or Agreement, Special Conditions (if any), these General Conditions (Appendix A-Construction), the Specifications and Drawings including all modifications incorporated in the documents before their execution. These form the Contract. Anything called for by one of the Contract Documents and not called for by the others shall be of like effect as if required or called for by all.

(b) All time limits stated in the Contract Documents are of the essence.

(c) The Contract Documents shall be signed by the Owner and Contractor in as many original counterparts as may be mutually agreed upon and shall be construed in accordance with the laws of the Commonwealth of Virginia. Signed copies shall be returned within ten (10) days of a Purchase Order covering this project.

(d) In case of conflicts the Contract Documents shall take precedence in the following order: the Purchase Order and/or Agreement; the Special Conditions (if any); the General Conditions (this appendix A-Construction); other appendices, if any; the Specifications; and the Drawings.

(e) The Special Conditions, including any Design-Build Special Conditions that may be invoked, shall be deemed appendices to this order with precedence over other appendices.

(f) The term "specifications" as used herein shall not be deemed to include the term "Agreement" or "Special Conditions" or "General Conditions" as used herein.

(g) These Contract Documents constitute written confirmation of the entire agreement between the parties. The parties shall not be bound by any other statements or understandings not set forth in these Contract

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Documents. Award of this Contract is expressly conditional upon Contractor's agreement to all terms and conditions of these Contract Documents.

3. REGULATIONS GOVERNING CONTRACTORS – All Contractors and Subcontractors must comply with the Virginia Contractor's Registration Law, Title 54.1, Chapter 11, Code of Virginia 1950 (as amended). All nonresident Contractors and Subcontractors bidding on the Work described herein shall register with the Department of Labor and Industry if required under the provisions of Section 40.1-30 of the Code of Virginia.

### 4. LAWS, PERMITS AND REGULATIONS

(a) The Contractor shall obtain and pay all fees and charges for: (i) connection to outside services, and (ii) the use of property other than space provided by the Owner at the site of the Work for storage of materials and other purposes.

(b) The Contractor shall comply with all laws, ordinances, regulations and building code requirements applicable to the Work unless in conflict with the provisions of the Contract Documents. If the Contractor ascertains at any time that any provisions of this Contract are at variance with applicable laws, regulations or building code requirements, it shall promptly provide written notice to the Project Manager/Project Engineer/Field Engineer, and any adjustment of the Contract, where deemed appropriate by Owner, shall be made as specified under the "Changes in the Work" Paragraph of these general conditions.

(c) This Contract and all other related contracts or subcontracts are subject to the Labor and Employment provisions of Title 40.1 Code of Virginia of 1950 (as amended) and all Contractors or Subcontractors whether residents or nonresidents of the State who perform any Work related to the project shall comply with all of said provisions, if applicable.

(d) Upon request the Contractor shall furnish the Owner copies of affidavits giving the original dates, renewal dates and expiration dates of all labor contracts related to any phase of the Work to be performed on the project site under this Contract.

(e) Unless otherwise specified in the Purchase Order or Agreement, the Contractor shall obtain all required permits at its own expense within fifteen (15) days of the award of this contract, and no work shall begin until all required permits are issued. The Contractor shall deliver to the Project Manager/Project Engineer/Field Engineer copies of all permits issued to the Contractor or any subcontractor that relate to this project within seven (7) days of issuance. The copies shall be annotated with the Owner's purchase order number, building number (if applicable) and project title. Upon completion of the Work, the Contractor shall furnish the Project Manager/Project Engineer/Field Engineer with written certification that the project was inspected and accepted by the applicable city codes inspector.

### 5. CONDITIONS AT SITE OR STRUCTURE

(a) Bidders are required to visit the site and shall be responsible for having ascertained pertinent local conditions such as location, accessibility and general character of the site or building, and the character and extent of existing work within or adjacent to the site.

(b) If in the performance of the Contract, the Contractor discovers (i) subsurface or latent conditions at the site are found to be materially different from those indicated by the drawings and specifications or (ii) unknown conditions of unusual nature are disclosed differing materially from the conditions usually inherent in work of the character shown and specified or apparent from a site inspection, the Contractor shall immediately notify the Project Engineer/Project Manager/Field Engineer of such conditions before they are disturbed. Upon such notice or upon his own observation of such conditions, the Project Engineer/Project Manager/Field Engineer will coordinate with Owner for such changes in drawings and specifications as are reasonably necessary to conform to the different conditions, and any increase or decrease in the cost of the Work resulting from such changes may, where appropriate, be adjusted as provided under the "Changes in the Work" paragraph. No claim by the Contractor will be considered if not timely asserted under the "Changes in the Work" Paragraph, and in no event after final payment under this Contract.

6. EXPLANATION TO BIDDERS – Bidders shall communicate discrepancies, omissions or doubts as to the meaning of drawings and specifications in writing to the Owner for interpretation. Bidders shall act promptly and allow sufficient time for a reply to reach them before the submission of their bids. All interpretations will be made by the

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Owner and will be made in the form of an addendum to the specifications which will be forwarded to all bidders and its receipt by the bidder shall be acknowledged on bid forms.

### 7. PREPARATION AND SUBMISSION OF BIDS

(a) Bids shall be submitted on the forms furnished, or copies thereof, and shall be signed in ink. Erasures or other changes in a bid must be explained or noted over the signature of the bidder. Bids containing any conditions, omissions, unexplained erasures or alterations or items not called for in the proposal, or irregularities of any kind, may be rejected by the Owner.

(b) Each bid must give the full business address of the bidder and be signed by it. Bids by partnerships must furnish the full name of all partners and must be signed in the partnership name by one of the members of the partnership or an authorized representative, followed by signature and designation of the person signing. A bid by a corporation must be signed with the legal name of the corporation followed by the name of the State in which it is incorporated and by the signature and designation of the president, secretary, or other person authorized to bind it in the matter. The name of each person signing shall also be typed or printed below the signature. A bid by a person, who affixes to his signature the word "President", "Secretary", "Agent", or other designation without disclosing his principal, may be held to be the bid of the individual signing. When requested by the Owner, the Bidder shall furnish satisfactory evidence of the authority of the officer signing on behalf of the corporation.

(c) Bids with the bid guarantee shall be enclosed in a sealed envelope that shall be marked and addressed as indicated by the advertisement. Bidders are required under Title 54.1, Chapter 11, Code of Virginia of 1950 (as amended), to show evidence of proper license(s) before bid will be received and considered. When a license is required, the bidder should place on the outside of the envelope containing its bid and shall place in its bid over its signature the following notation: "Virginia Contractor License No. \_\_\_\_\_".

(d) Unless submission is specifically not required by Owner, contemporaneously with its bid or proposal submission, Contractor shall furnish Owner (1) financial statements, including a balance sheet, income statement, and a statement of cash flow for the most recent calendar year or current fiscal year to date, prepared and signed by a Certified Public Accountant or by the president, vice-president, or principal financial officer of Contractor; (2) a list of other jobs similar to that covered by this Contract, showing Contractor's work experience and its ability to perform; and (3) a list of contracts for which Contractor, or the division of Contractor which will perform the Work, is now obligated to perform, and a percentage estimate showing the physical work yet to be performed on each such contract.

(e) Bids must set forth full, accurate and complete information as required by the invitation and these conditions.

### 8. BID GUARANTEE

(a) Bids shall be accompanied by a bid guarantee of not less than five percent (5%) of the amount of the bid, which may be in the form of a certified check or cashier's check, or a Bid Bond made payable to the Owner. Such Bid Bond or check shall be submitted with the understanding that it shall guarantee that the bidder will not withdraw its bid during the period of forty-five (45) days following the opening of bids; that if its bid is accepted, it will enter into a formal contract with the Owner in accordance with the Form of Agreement included as a part of the Contract Documents, and that the Standard Performance and Payments Bond will be given; and that in the event of the withdrawal of said bid within said period, or failure to enter into said contract and give said bonds within ten (10) days after it has received notice of acceptance of its bid, the bidder shall be liable to the Owner for the full amount of the bid guarantee as representing partial compensation for damage to the Owner on account of the default of the bidder; the bidder shall remain liable for any other damages to Owner in accordance with applicable law.

(b) The Bid Bonds and checks shall be returned to all except the three lowest bidders after the formal opening of bids. The remaining Bid Bonds and checks will be returned to the other bidders after the Owner and the accepted bidder have executed the Contract, and Performance and Payment Bonds have been approved by the Owner.

(c) If the required contract and bonds have not been executed within forty-five (45) days after the date after the opening of the bids, then the bond or check of any bidder will be returned upon its request, provided it has not been notified of the acceptance of its bid prior to the date of such request.

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9. WITHDRAWAL OR MODIFICATION OF BIDS – Bids may be withdrawn or modified by written or facsimile notice received from bidders prior to the time fixed for bid receipt. Negligence on the part of the bidder in preparing the bid confers no right for the withdrawal or modification of the bid after the time fixed for the bid receipt has passed.

10. RECEIPT AND OPENING OF BIDS – Bids will be received at the time and place stated in the invitation. The officer or agent of the Owner, whose duty it is to receive them, will decide when the specified time has arrived. No bids received thereafter will be considered unless the Owner in its sole discretion chooses to waive the untimeliness. Bids may be opened anytime after the specified time for receipt has passed. No responsibility will be attached to any such officer or agent for the premature opening of a bid not properly addressed and identified. It is the responsibility of the bidder to ensure that its bid is delivered to the designated place for receipt prior to the time set for receipt of bids. The right is reserved by Owner to revise or amend the specifications or drawings or both prior to the date set for receipt of bids. Such revision or amendment will be announced by addendum to the Invitation for Bids (or Request for Proposal) and may include a new date for opening bids. The Owner reserves the right to conduct and set the rules for successive rounds of bidding to include reverse auctions and requests for best and final offers (BAFO).

### 11. AWARD OF CONTRACT

(a) The Contract will be awarded as soon as practicable to the responsible bidder whose technical proposal, qualifications, and price provide the best overall value to the Owner, provided its bid or proposal is reasonable and it is in the interest of the Owner to accept it. The Owner reserves the right to reject any and all Bids or Proposals if the Owner deems that one or all of them are unsatisfactory.

(b) The Owner reserves the right to waive any informality in bids received when such waiver is in the interest of the Owner and to accept or reject any item in the bid.

(c) Each bidder shall, unless this requirement is waived by Owner, present the qualifications of supervisory personnel to be assigned to the Work and furnish a list of equipment available to perform the Work.

(d) Promptly after award, Contractor shall submit to Owner a copy of Contractor's safety program, project safety plan, and such other submittals as are required herein to be submitted prior to the start of the Work. Upon Owner's approval of these submittals, Owner will issue a Notice to Proceed with the Work. Contractor is not authorized to begin the Work until issuance of the Notice to Proceed.

12. CONTRACT SECURITY – The successful bidder shall deliver to the Owner an executed Standard Performance and Payment Bond with approved surety payment in a form acceptable to the Owner in the amount equal to one hundred percent (100%) of the contract price as guarantee for the faithful performance of the Contract and the payment of all persons who have and fulfill contracts which are directly with the successful bidder. The surety(ies) of all bonds shall be a security company or companies authorized to transact business in the Commonwealth of Virginia. Owner reserves the right to approve the Insurance agent or Broker through whom such bond or bonds shall be secured.

### 13. SUBCONTRACTS

(a) Prospective contractors shall submit to the Owner in writing with the proposal the names of Subcontractors proposed for the principal parts of the Work and for such others as the Owner may direct. Prospective contractors shall also identify significant sub-tier Subcontractors. If significant Subcontractors at the first or a lower tier are not known at the time of contract award, Contractor shall identify such Subcontractors to the Owner not less than ninety (90) days before the Subcontractors perform work on Owner's site. Contractor shall not employ any Subcontractor that the Owner may within a reasonable time object to as unacceptable, incompetent, or unfit.

(b) The Contractor agrees that it is as fully responsible to the Owner for the acts and omissions of its Subcontractors and of persons either directly or indirectly employed by them, as it is for the acts and omissions of persons directly employed by it.

14. SEPARATE CONTRACTS – The Owner reserves the right to let other contracts in connection with the project, the work under which will proceed simultaneously with the execution of this contract. The Contractor shall

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afford other separate contractors reasonable opportunity for the introduction and storage of their materials and the execution of their work and the Contractor shall take all reasonable action to coordinate its Work with theirs. If the work performed by the separate contractor is defective or so performed as to prevent the Contractor from carrying out its Work according to the plans and specifications, the Contractor shall immediately notify the Project Engineer/Project Manager/Field Engineer in writing upon discovering such conditions.

### 15. INSURANCE, LEGAL RESPONSIBILITY

(a) Insurance: The Contractor shall not commence any Work until it obtains, at its own expense, all required insurance. Such insurance must have the approval of the Owner as to limit, form, and amount. The Contractor will not permit any Subcontractor to commence Work on this project until the same insurance requirements have been complied with by such Subcontractor. All coverages required by this Contract shall be primary and not contributory to any other insurance available to Owner, and Contractor's insurers shall provide a waiver of subrogation in favor of Owner for each required coverage hereunder.

(1) Types: The types of insurance the Contractor is required to obtain and maintain for the full period of the Contract will be Worker's Compensation Insurance, Comprehensive General Liability Insurance, Builder's Risks, "All-Risk" Insurance, Automobile Liability Insurance, and Marine Insurance as detailed in the following portions of this "Insurance, Legal Responsibility" Paragraph.

(2) Evidence: As evidence of specified insurance coverage, the Owner may, in lieu of actual policies, accept certificates issued by the insurance carrier showing such policies in force for the specified period. **IMPORTANT NOTICE**: The Contractor must furnish Owner with a Certificate of Insurance prior to commencement of Work under this Contract. The certificate will reference the applicable Owner's Purchase Order number and should be forwarded to the following address:

Northrop Grumman Shipbuilding, Inc.  
Insurance and Loss Control/Vendor Certificates - Department 074  
4101 Washington Avenue  
Newport News, Virginia 23607

The certificate shall provide for thirty (30) days prior written notice should any of the specified coverages be cancelled or materially changed. Should any policy be cancelled before final payment by the Owner to the Contractor and the Contractor fail immediately to procure other insurance as specified, the Owner reserves the right to procure such insurance and to deduct the cost thereof from any sum due the Contractor under this Contract.

(3) Adequacy of Performance: Any insurance bearing on adequacy of performance shall be maintained after completion of the project for the full guarantee period. Should such insurance be cancelled before the end of the guarantee period and the Contractor fail immediately to procure other insurance as specified, the Owner reserves the right to procure such insurance and to charge the cost thereof to the Contractor.

(4) Payment of Damages: Nothing contained in these insurance requirements is to be construed as limiting the extent of the Contractor's responsibility for payment of damages resulting from its operations under this Contract.

(b) Worker's Compensation Insurance: Before the Agreement between the Owner and the Contractor is entered into, the Contractor shall submit written evidence that it and all Subcontractors have obtained, for the period of the Contract, full Worker's Compensation Insurance coverage including United States Longshoremen's and Harborworker's Act endorsement for all persons whom they employ in carrying out the Work under this Contract. This insurance shall be in strict accordance with the requirements of the most current and applicable state Worker's Compensation Insurance Laws. The Contractor must also provide written evidence of Employers' Liability Insurance coverage in the amount of at least \$1,000,000. Contractor is an independent contractor, and shall have exclusive control and direction over its employees' performance of the Work. Contractor shall be responsible for all payroll functions for its employees. No persons employed by Contractor or Contractor's subcontractors shall be deemed employees of Owner for any purpose.

(c) Comprehensive General Liability Insurance: Before commencement of the Work, the Contractor shall submit written evidence that it and all its Subcontractors have obtained for the period of the Contract, full Comprehensive General Liability Insurance coverage. This coverage shall provide for both bodily injury and property damage. The Comprehensive General Liability Insurance will include as an Additional Insured with respect to third

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party liability: the Owner; the Architect or Engineer and its consultants; and each of their directors, officers, agents, and employees.

(1) Bodily Injury portion shall include coverage for injury, sickness or disease, and death, arising directly or indirectly out of, or in connection with, the performance of Work under this Contract, and shall provide for a limit of not less than \$2,000,000 for damages arising out of bodily injury, sickness or disease and death in any one occurrence.

(2) Property Damage portion will provide for a limit of not less than \$2,000,000 for all damages arising out of injury to or destruction of property of others arising directly or indirectly out of or in connection with the performance of Work under this Contract and in any one occurrence including explosion, collapse and underground exposure.

(3) Indemnity: Included in such insurance will be contractual coverage sufficiently broad to insure the provisions of the "Indemnity and Hold Harmless Agreement" Paragraph.

(4) Included in such insurance will be products/completed operations coverage with limits of not less than \$2,000,000 for both bodily injury and property damage. Products and completed operations coverage shall be maintained for a minimum of five years from the date of acceptance of Contractor's work by the Owner. Contractor is required to provide evidence of maintenance of continued coverage by providing annual certificate(s) of insurance.

(d) Builder's Risks "All-Risk" Insurance:

(1) Before commencement of the Work, the Contractor shall submit written evidence that it has obtained, for the period of the Contract, Builder's Risks "All-Risk" Insurance coverage (on a replacement cost value basis) upon the entire project which is the subject of this Contract, including completed Work and Work in progress. Such insurance shall include as additional insured: the Owner; the Architect or Engineer and its consultants; and each of their directors, officers, employees and agents; and any other persons with an insurable interest designated by the Owner as an additional insured.

(2) The loss, if any, is to be made adjustable with and payable to the Owner as Trustee for whom it may concern. Written evidence of the insurance required herein shall be filed with the Owner not later than thirty (30) days following the date of the award of the contract. A copy of evidence of insurance shall be filed with the Owner and the Engineer. Certain projects may be excluded from the requirements of this paragraph, upon the direction of the Owner.

(e) Automobile Liability Insurance: The Contractor agrees to maintain during the performance of the Work under this Contract, Automobile Liability Insurance on owned, non-owned, hired, and rented equipment (anything that travels on public roads) for bodily injury and property damage with combined single limits not less than \$1,000,000. Such insurance shall include as additional insured: the Owner; the Architect or Engineer and its consultants; and each of their directors, officers, employees and agents; and any other persons with an insurable interest designated by the Owner as an Additional Insured.

(f) Marine Insurance:

(1) Contractor shall insure all marine equipment to be utilized in the completion of this Contract, subject to the following policy terms and conditions:

(A) Hull insurance subject to the American Institute Hull Clauses, 1970, subject to a deductible not exceeding \$10,000 with the amount insured and value of each vessel being the market value thereof.

(B) Protection and Indemnity Insurance subject to P & I SP23 with a limit the same as applicable for hull for each vessel and subject to a deductible not exceeding \$5,000.

(C) Excess Collision Liability and P & I Insurance with limits necessary to achieve a total of \$ 1,000,000 each vessel, each loss, accident, or occurrence.

(2) It is understood that the following special arrangements are to apply with respect to the above coverages:

(A) Northrop Grumman Shipbuilding, Inc., and/or all consolidated, affiliated and subsidiary companies and their authorized representatives are to be included as additional insured thereunder.



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(B) The so-called Charterer's Limitation Clauses thereunder are to be deleted with respect to Northrop Grumman Shipbuilding, Inc. and/or all consolidated, affiliated and subsidiary companies and their authorized representatives.

(3) Worker's Compensation and Employers Liability Insurance will be supplemented by United States Longshoremen's and Harbor Workers Act endorsement and Maritime endorsements, where appropriate, for operations under the Jones Act.

16. OPTIONAL PROJECT INSURANCE PROGRAM (Replaces "Insurance, Legal Responsibility" Paragraph when so indicated by Owner)

(a) Subject to the detailed provisions of this "Optional Project Insurance Program Paragraph, the parties agree that as a general principle, an insurance program for the construction of the project described on the invitation to Bid or request for proposal will be administered by the Owner or its agent in order to provide usual coverage for claims arising during performance of the construction.

(b) Definitions. In addition to the definitions contained in the "Definitions" Paragraph of these General Conditions, the following shall be applicable to this "Optional Project Insurance Program" Paragraph:

(1) "Contractors" means all legal entities contracting with the Owner to provide services in connection with construction of (excluding legal entities with less than \$10,000 Project Site payroll and vendors, suppliers, material dealers and others who merely transport materials, parts or equipment to or from the Project Site).

(2) "Subcontractors" means all legal entities contracting directly or indirectly with Contractors at all tiers to provide services in connection with construction of the Facility and performing labor at the Project Site (excluding legal entities with less than \$10,000 Project Site payroll and vendors, suppliers, material dealers and others who merely transport materials, parts or equipment to or from the Project Site).

(3) "Suppliers" means all legal entities contracting directly or indirectly with Owner, Contractors or Subcontractors to provide goods or material in connection with construction of the Facility and performing labor at the Project Site.

(4) "Consulting Engineers" means all legal entities including the Architect or Engineer hired by Owner to provide engineering services in connection with the Project and performing labor at the Project Site.

(5) "Program Participant" means the Contractors, Subcontractors, Suppliers, and Consulting Engineers as defined above.

(6) "Facility" means the total manufacturing or other complex on which or for which the Work herein described shall be performed.

(7) "Project Site" means any area owned or used by the Owner in connection with construction of the Facility.

(8) "Project" means all the Work to be performed or services provided in connection with construction of the total Facility at the Project Site.

(c) Insurance provided by the Owner.

(1) General.

(A) As detailed herein, insurance shall be secured, maintained, and paid for by the Owner protecting the interest of the Owner and Program Participants.

(B) The insurance provided by the Owner will apply only to occurrences at the Project Site in connection with the Project, except as provided elsewhere herein. The insurance shall terminate upon completion of the Work by each Program Participant and final acceptance of the Work by the Owner.

(C) The Program Participants shall not purchase or maintain insurance, which will duplicate insurance provided by the Owner. The Program Participants shall not include in their bids or proposals for work to be performed or supplies to be furnished in connection with the Project any factor representing the cost of insurance, which duplicates insurance, furnished by the Owner. Each party shall indicate in its bid the amount deducted for such insurance costs.

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(D) The coverages enumerated in "Optional Project Insurance Program" subparagraph (c) are subject to any limitations, exclusions or other provisions contained in the policies.

(2) Worker's Compensation and Employer's Liability. The insurer will issue to each Program Participant a separate Standard Worker's Compensation and Employer's Liability policy. Each such policy will attach on or before the date the program participant starts operations at the Project Site, and will provide insurance as follows:

(A) Worker's Compensation and Worker's Occupational Disease insurance in accordance with statutory requirements and including:

- (i) United States Longshoremen's and Harbor Worker's Act endorsement.
- (ii) Maritime endorsements for operations under the Jones Act.
- (iii) Thirty-day Cancellation Clause.
- (iv) Divided Risk Endorsement limiting coverage to the Project and Project Site.
- (v) Endorsement making Owner responsible for payment of premiums and receiver of any return premium or dividend.
- (vi) All-states endorsement.

(B) Employer's Liability insurance with a limit of liability of \$1,000,000 per accident.

(3) Comprehensive General Liability (except Automobile Liability).

(A) The insurer will issue one master policy providing each Program Participant Comprehensive General Liability insurance (except Automobile Liability) with limits of \$5,000,000 Combined Single Limit for Bodily Injury and Property Damage Liability, per occurrence, subject to an aggregate of \$10,000,000 for each policy year.

(B) The Comprehensive General Liability policy shall include:

- (i) Personal Injury Liability, Hazard Groups A, B, and C, with Employee Exclusion removed.
- (ii) Owner's and Contractor's Protective coverage.
- (iii) Contractual Liability to the extent covered by the policy against liability assumed under contracts entered into with respect to construction of the Facility.
- (iv) Products and completed operations to provide coverage for occurrences within five years of the date of acceptance of the Project by the Owner.
- (v) Medical malpractice of Project Site medical personnel, if any.
- (vi) Removal of "XCU" Exclusion.
- (vii) Broad-Form Property Damage.
- (viii) Endorsement limiting coverage to the Project and Project Site.
- (ix) Thirty-day cancellation clause.
- (x) Endorsement making Owner responsible for payment of premiums and receiver of any return premiums or dividends.
- (xi) Excess coverage with limits adequate to bring Employees Liability insurance described in "Optional Project Insurance Program" subparagraph (c)(2)(B) to \$5,000,000.
- (xii) Removal of WaterCraft exclusion with respect to incidental small craft not normally utilized in the business of the Program Participant.

(C) The parties shall reevaluate the dollar limits from time to time and shall, as mutually agreed, increase such limits in accordance with the increased value of the Project, it being the intent of the parties that the limits ultimately be not less than \$10,000,000.

(4) Builder's Risks Insurance. During construction of the Facility, Owner shall for its benefit and the benefit of Program Participants, as their respective interests may appear, provide All-Risk Builder's Risks

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Insurance against direct physical loss or damage to the Facility and machinery or equipment to be installed therein (subject to normal exclusions). Coverage does not apply to real or personal property owned by the Program Participants and used in connection with construction which is not to be incorporated as a permanent part of the Facility: the Owner assumes no liability for loss or damage from any cause to such property. Program participants shall be responsible for any loss under \$10,000 each occurrence or accident.

(5) Payment of Premiums by Owner and Assignment of Premiums by Program Participants.

If any additional Work is required under this agreement or any contract or subcontract at the time such additional Work is authorized, the parties shall agree on the amount by which the Program Participant's payroll shall be increased on account thereof. If the Work hereunder is decreased, the parties shall agree on the amount by which such Program Participant's payroll shall be decreased on account thereof. In consideration of the Owner's providing the insurance described herein, the Program Participants agree to execute an assignment for the benefit of the Owner of all return premiums, premium refunds, premium discounts or dividends due, or to become due, to such persons in connection with said insurance, or otherwise to credit Owner for such amounts.

(d) Excess Limits or Additional Coverage. If any Program Participant desires or is required to have limits of liability in excess of those required or furnished by the Owner, or desires or is required to carry additional coverage for its own protection, the arrangements therefore and the cost thereof shall be the sole responsibility of such Program Participant.

(e) Insurance Not provided by the Owner.

(1) Automobile Liability. The Program Participants shall furnish and maintain, at their own expense, Comprehensive Automobile Liability insurance covering the use of all owned, non-owned, or hired automobiles, for limits of not less than \$1,000,000 combined bodily injury and property damage liability single limit.

(2) Aircraft Liability. Where any Program Participant has occasion to operate or contract for the operation of aircraft in the course of project performance, it shall maintain at its own expense owned and non-owned Aircraft Liability insurance with limits of not less than \$100,000,000 combined bodily injury and property damage single limit.

(3) Watercraft Liability. Where any Program Participant has occasion to operate or contract for the operation of watercraft (except incidental use as set forth in "Optional Project Insurance Program" subparagraph (c)(3)(B) hereof) during the course of performance of the Work required by this Contract, it shall procure and maintain the following insurance at its own expense:

(A) Hull and Machinery Insurance. Full Form Hull and Machinery Insurance, including collision liability, with the sistership clause unamended, with limits of liability at least equal to the full value of the vessel and with navigational limitations adequate for Contractor to perform the contracted Work. Where the vessels engage in towing operations, said insurance should include full Tower's Liability with the sistership clause unamended.

(B) Protection and Indemnity Insurance. Coverage in an amount at least equal to the full value of each vessel employed under the Contract. Protection and Indemnity Insurance must include full coverage for all crew liabilities, if coverage for maritime employees is not provided under coverage B, Employer's Liability for Admiralty Jurisdiction.

(C) Excess Protection and Indemnity Insurance. Excess Protection and Indemnity, including Collision and Tower's (where applicable) Liability in an amount at least equal to the value of all vessels covered or the difference between the full value of each vessel and \$1,000,000 whichever is the greater.

(4) Small Contractors. Any legal entity with a contract to undertake construction or other services in connection with the Project which does not require a payroll of more than \$10,000 for labor at the Project Site shall maintain during progress of its Work:

(A) Worker's Compensation and Employer's Liability insurance (\$100,000 Limit) in accordance with statutory requirements, supplemented by United States Longshoremen's and Harbor Workers' Act endorsement and maritime endorsements, where appropriate, for operations under the Jones Act.

(B) Comprehensive General Liability, including Products, Completed Operations, and Contractual Liability insurance, with limits of not less than Bodily Injury Liability of \$300,000 each occurrence, and

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\$300,000 aggregate; and Property Damage Liability of \$100,000 each occurrence and \$100,000 aggregate. Northrop Grumman Shipbuilding, Inc. and/or all consolidated, affiliated and subsidiary companies and their authorized representatives are to be included as additional insured thereunder.

(C) Owned and non-owned Aircraft Liability insurance with limits of not less than \$100,000,000 combined bodily injury and property damage single limit where an aircraft is operated or contracted in the course of project performance. Northrop Grumman Shipbuilding, Inc. and/or all consolidated, affiliated and subsidiary companies and their authorized representatives are to be included as additional insured thereunder.

(D) Comprehensive Automobile Liability insurance covering all owned, non-owned and hired automobiles with limits of not less than Bodily Injury Liability of \$100,000 each person and \$300,000 each occurrence; and Property Damage Liability of \$100,000 each occurrence. Northrop Grumman Shipbuilding, Inc. and/or all consolidated, affiliated and subsidiary companies and their authorized representatives are to be included as additional insured thereunder.

(5) Special Requirements. An original and three copies of a certificate of insurance certifying the coverages as required above, where applicable, shall be forwarded to the Owner prior to commencement of any Work under contract at the Project Site. Such certificate of insurance must stipulate that the policies will not be cancelled or changed without thirty days prior written notice by registered mail to the Owner.

(f) Waiver of Subrogation. All insurance policies insuring property of the Program Participants against loss by physical damage shall include an endorsement providing that the underwriters waive the right of subrogation against the Owner and each Program Participant. Owner shall waive its right of recovery as to any claims or demands against the Program Participants for any loss or damage occurring during the period of construction to the extent that such loss or damage is compensated by insurance being maintained by Owner.

(g) Insurance Provisions for Subletting of Work. In the event any Program Participant sublets or subcontracts any part of the Work herein described, the Subcontractor of the Program Participant shall be bound by the same terms and conditions concerning insurance as outlined herein and this "Optional Project Insurance Program" Paragraph will be made a part of any such subcontract agreement.

(h) Indemnification. All contracts providing directly or indirectly for services, materials, or goods in connection with the Project shall contain an indemnification clause providing indemnification of Owner by the Participant and conforming in language to the provisions of the "Indemnity and Hold Harmless Agreement" Paragraph.

(i) Project Safety Program.

(1) A Safety Program shall be established for the Project. The Program Participants are required to cooperate fully with the Owner, with each other, and with the insurers so that construction will be completed with the greatest degree of safety. Such cooperation includes, but is not limited to:

(A) Properly protecting the property of Owner and adjacent property.

(B) Complying with the safety protective measures and precautions as required by law, ordinance, or regulation whether local, state or federal.

(C) Complying promptly with any recommendations of the Owner or insurance company safety engineers for the prevention of accidents or elimination of fire hazards.

(D) Properly scheduling and prosecuting the construction of the Work authorized under this contract in a manner so as to prevent the maintenance of a nuisance or any substantial or adverse impact upon the environment or upon the adjacent residential areas.

(2) The Project Manager/Project Engineer/Field Engineer will be responsible for supervision and enforcement of the Project Safety Program. In cases of dispute over the adequacy of acts taken to comply with the provisions of the Project Safety Program, the decision of the Owner will be binding on all parties. No Subcontractor shall be admitted to the Project Site without prior written clearance of the Project Manager/Project Engineer/Field Engineer.

(j) Insurance Underwriters. The Program Participants will be required to furnish to the Owner or its agent, or the appropriate insurance company, any information necessary for the issuance of insurance coverage's described herein. The Owner will be responsible for obtaining from the Program Participant information needed to

## General Conditions NORTHROP GRUMMAN SHIPBUILDING, INC.

arrange insurance as described herein. Prior to admitting any Program Participant on the Project Site, the Owner will certify the placement of appropriate coverage to the Owner.

(k) Insurance Audit and Premium Adjustments.

(1) The Program Participants will cooperate with the Owner and the insurance company with respect to interim and final audits of payroll. They shall be required to maintain and make available, for insurance audits only, payroll records and such other records related to the Work as may be necessary for the proper computation of insurance premiums, which Owner, pursuant to the terms hereof, shall pay. The Program Participants shall keep their records relating to the construction of the Facility in such a manner that said records can readily be separated from other Work they may be performing.

(2) At the conclusion of the Work under this agreement, the insurance company will make a final audit of the payroll for the job, and final payment for Work under this agreement shall not be due and payable until completion of such a final audit.

(3) The Owner shall be responsible for making available properly maintained records for insurance premium computations for all Work relating to construction of the Facility and insured under the provisions of this "Optional Project Insurance Program" Paragraph.

(l) Claims Reporting and Adjustment. The Program Participants agree to provide whatever assistance is required in the reporting and adjustment of claims arising out of Work performed under this Contract, comply with the terms of the policy(ies) and cooperate with the insurance company in all litigated claims and demands arising out of Work performed under this Contract which the insurance company is called upon to adjust or defend. Each Program Participant shall be responsible for promptly reporting any and all claims arising out of its operations under this Contract in accordance with claims reporting procedures established for the construction of the Facility by the Owner.

(m) Bidding. The insurance information requested by the Insurance Information Application Form attached to the specification shall be submitted with the bid.

17. TAXES – The Contractor shall without additional expense to the Owner, pay all applicable Federal, State, local and other taxes, fees, filing costs, and the like, except taxes and assessments on the real property comprising the site of the project and except Owners income taxes.

18. PATENTS AND COPYRIGHTS - Contractor shall indemnify and hold harmless and, if requested, defend Owner, its officers, directors, and employees against any claims, losses or expenses (to include reasonable attorney's fees) for alleged infringement of patents, licenses, registered trademarks or copyright, arising out of Contractor's performance, brought against Owner or its officers, directors, or employees as a result of such alleged infringement.

19. STATUS OF PROJECT MANAGER/PROJECT ENGINEER/FIELD ENGINEER AND OWNER'S CONTRACT ADMINISTRATOR AND/OR SOURCING REPRESENTATIVE – INTERPRETATION AND DECISIONS

(a) Each part or detail of the Work called for herein shall be done under the cognizance of the Project Engineer/Project Manager/Field Engineer. He shall determine the amount, quality, acceptability and fitness of all parts of the Work. He shall verify that the Work is in accordance with specifications, plans and drawings and shall approve all progress and payments therefore. He shall interpret the technical aspects of the Contract Documents and extra Work Orders and he shall decide all other questions in connection with the Work. He shall have authority to stop the Work whenever such stoppage may be necessary to ensure the proper execution of the Contract. He may also authorize on-the-spot changes without which, in his opinion, there would be a negative effect on the projects cost or schedule. The decisions of the Project Manager/Project Engineer/Field Engineer as to acceptability or adequacy of the Work shall be final and binding upon the Contractor. The Contractor agrees to abide by the Project Manager's/Project Engineer's/Field Engineer's decision relative to the performance of the Work. Upon written request by the Contractor, the Owner shall confirm in writing any oral order, direction, requirement or determination made by the Project Manager/Project Engineer/Field Engineer.

(b) The Contract Administrator and/or Sourcing Representative will interpret and administer the terms and conditions of the Contract. All written communication related to Contract matters shall be transmitted to him.

20. INSPECTION AND ACCESS TO THE WORK

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(a) All material and workmanship, if not otherwise designated by the specifications, shall be subject to inspection, examination and test by the Project Engineer/Project Manager/Field Engineer, other designated representatives of the Owner, and Architect or Engineer at any and all times during manufacture and/or construction. The Project Manager/Project Engineer/Field Engineer shall have the right to reject defective material and workmanship or require its correction. Rejected workmanship shall be satisfactorily corrected and rejected material shall be satisfactorily replaced with proper material without charge therefore, and the Contractor shall promptly segregate and remove the rejected material from the premises. If the Contractor fails to proceed at once with replacement of rejected material and/or the correction of defective workmanship, the Owner may, by contract or otherwise, replace such material and/or correct such workmanship and charge the cost to the Contractor, or may terminate the right of the Contractor to proceed as provided in the "Owner's Right to Terminate for Cause" Paragraph, the Contractor and surety being liable for any damage to the same extent, as provided in the "Owner's Right to Terminate for Cause" Paragraph for termination thereunder.

(b) The Contractor shall furnish promptly without additional charge all reasonable facilities, labor, and materials necessary and convenient for making reasonable and customary tests and such additional tests as may be designated in the specifications.

(c) Should it be considered necessary or advisable by the Project Manager/Project Engineer/Field Engineer at any time before final acceptance of the entire Work to make an examination of Work already completed, by removing or tearing out same, the Contractor shall on request promptly furnish all necessary facilities, labor, and material. If such Work is found to be defective in any respect due to the fault of the Contractor or its Subcontractors, the Contractor shall pay all the expenses of such examination and of satisfactory reconstruction. If, however, such Work is found to meet the requirements of the Contract, the actual cost of labor and material necessarily involved in the examination and replacement shall be allowed the Contractor and it shall, in addition, if completion of the Work has been delayed thereby, be granted a suitable extension of time on account of the additional Work involved.

(d) The Project Engineer/Project Manager/Field Engineer may suspend Work, by written notification, when in his judgment the intent of the plans and specifications is not being followed. Any such suspension shall be continued only until the matter in question is settled to the satisfaction of the Owner. The cost of any such Work stoppage shall be borne by the Contractor unless the Owner later determines that no fault existed in the Contractor's Work.

(e) The Contractor shall, at all times, be responsible for the conduct and discipline of its employees and/or any Subcontractor or persons employed by Subcontractors. All workmen must have sufficient knowledge, skill, and experience to perform properly the Work assigned to them. Any foreman or workman employed by the Contractor or Subcontractor who does not perform his work in a skillful manner or appears to be incompetent or to act in a disorderly or intemperate manner shall, at the written request of the Owner, be removed from the site immediately and shall not be employed again in any portion of the Work without the approval of the Owner.

### 21. DRAWINGS AND SPECIFICATIONS

(a) The general character and scope of the Work are illustrated by the drawings and specifications. Any additional detail and other information deemed necessary by the Project Manager/Project Engineer/Field Engineer will be furnished to the Contractor when and as required by the Work.

(b) In case of difference between small and large-scale drawings, the large-scale drawings shall govern.

(c) If a portion of the Work on any of the drawings is drawn out and the remainder is indicated in outline, the parts drawn out shall apply also to all other like portions of the Work.

(d) Where the word "similar" or "equal" appears on the drawings, it shall be interpreted in its general sense and not as meaning identical and all details shall be worked out in relation to their location and their connection with other parts of the Work.

(e) The specifications are divided into several parts for convenience only, since the entire specifications must be considered as a whole. The divisions of the specifications are not intended to control the Contractor in dividing the Work among Subcontractors or to limit the Work performed by any trade. The Contractor shall be responsible for the coordination of the trades, Subcontractors, and vendors engaged in this Work.

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(f) Measurements or dimensions shown on the drawings shall be verified at the site by the Contractor. Where there are discrepancies, the Project Manager/Project Engineer/Field Engineer shall be consulted.

(g) The Contractor shall keep on the Work site a copy of the drawings and specifications including all authorized change orders, and shall at all times give the Owner, Architect or Engineer, and their authorized representatives access thereto. Except for the signed Contract, which the Contractor may retain, all drawings and specifications shall be returned to the Owner upon completion of the Work.

(h) Whenever national standards (ASTM, AASHTO, ANSI, ACI, etc.) are referenced, they shall be considered to be the current issue, or the latest revision thereof and all amendments and supplements thereto in effect on the date of opening bids, except where a particular issue is indicated. These standards shall be considered as part of the specifications, and as such will be used to ensure quality and compliance with the drawings.

### 22. DETAIL DRAWINGS AND INSTRUCTIONS

(a) If so provided in the special conditions or specifications, the Owner will furnish the Contractor additional instructions and detail drawings as may be necessary to carry out the Work included in the Contract. The Contractor shall carry out the Work in accordance with such additional detail drawings and instructions.

(b) If the Owner is required to provide additional detail drawings or instructions, the Contractor shall prepare for Owner's approval:

(1) A schedule fixing the dates at which special detail drawings will be required; and

(2) A schedule fixing the respective dates for the submission of shop or setting drawings, the beginning of manufacture, testing and installation of materials, supplies and equipment and the completion of the various parts of the Work. Each such schedule may be subject to change from time to time in accordance with the progress of the Work. Proposed changes shall be promptly transmitted in writing to the Project Manager/Project Engineer/Field Engineer.

### 23. SURVEYS AND LAYOUTS

(a) The Owner shall furnish necessary drawings showing property lines and the location of the Project. The Contractor shall provide competent engineering service to execute the Work in accordance with the Contract requirements and shall be responsible for the accuracy of its Work.

(b) The Owner has established or will establish such general reference points and benchmarks on the project site as will enable the Contractor to proceed with the Work. If the Contractor finds that any previously established reference points have been destroyed or misplaced, it shall promptly notify the Owner.

(c) The Contractor shall protect and preserve the established benchmarks and monuments and shall make no changes in locations without the written approval of the Owner. Any of these, which may be lost or destroyed or which require shifting because of necessary changes in grades or locations shall, subject to prior approval of the Owner, be replaced and accurately located by the Contractor.

(d) The Contractor is responsible for all detailed surveys necessary for the performance of the Work.

### 24. SUPERINTENDENCE BY CONTRACTOR

(a) The Contractor shall provide superintendence of the Work and have a Superintendent satisfactory to the Owner on the work site at all times during progress of the Work. The Superintendent shall efficiently supervise the Work until its completion. The Superintendent shall have full authority to act on behalf of the Contractor, and all instruction given by the Owner to the Superintendent shall be considered as given to the Contractor. It shall be the responsibility of this Contractor's Superintendent to coordinate the Work of its Subcontractors. Within ten (10) days following contract award, the Contractor will submit the name of its proposed Superintendent for the Owners approval.

(b) The Contractor shall, at all times, enforce strict discipline and good order among the workers on the project, and shall not employ on the Work any unfit person or anyone not skilled in the work assigned to him.

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25. MATERIALS, SERVICES AND FACILITIES - Unless otherwise stated in the Contract Documents, the Contractor shall provide all necessary construction supervision, inspection material, labor, tools, equipment, water, light, power and other services, and facilities to complete the Work within the specified time.
26. CONTRACTOR'S TITLE TO MATERIALS - All materials, supplies and services purchased by Contractor or Subcontractor for use in performing this Contract shall be free of all liens, claims, charges and encumbrances of any kind. Upon request, Contractor shall furnish Owner with formal releases in a form satisfactory to the Owner. Owner may discharge any lien, claim, charge, or encumbrance if Contractor, at Owner's request, fails to do so and Contractor shall reimburse Owner for the reasonable costs thereof.
27. MATERIALS APPROVAL - The Contractor shall obtain the Project Manager's/Project Engineer's/Field Engineer's approval of the materials, machinery and mechanical and other equipment to be incorporated into the Work. When requesting approval, the Contractor shall furnish to the Project Manager/Project Engineer/Field Engineer the name of the manufacturer, the model number, and other information covering the performance capacity, nature, and rating of the machinery and mechanical and other equipment. Machinery, equipment, material and articles that do not have the required approval shall be installed or used at the risk of subsequent rejection.
28. SAMPLES - The Contractor shall furnish for approval all samples as directed. The Work shall be in accordance with approved samples.
29. EQUALS - References in the specifications, plans or Contract Documents to equipment, material, articles, or patented processes by trade name, make, or catalog number, shall be regarded as establishing a standard of quality and shall not be construed as limiting competition. Unless otherwise specifically provided in this Contract, the Contractor may, at its option, use any equipment, material, article or process that, in the sole discretion of the Project Manager/Project Engineer/Field Engineer is equal to that named for the purpose intended considering quality, workmanship and economy of operation.
30. SUSPECT/COUNTERFEIT PARTS - Seller represents and warrants that it has policies and procedures in place to ensure that none of the supplies furnished to Buyer under any Order issued under this Award are "suspect/counterfeit parts" and certifies, to the best of its knowledge and belief that no such parts have been or are being furnished to Buyer by Seller. "Suspect/counterfeit parts" are parts that may be of new manufacture, but are misleadingly labeled to provide the impression they are of a different class or quality or from a different source than is actually the case. They also include refurbished parts, complete with false labeling, that are represented as new parts or any parts that are designated as suspect by the U. S. Government, such as parts listed in alerts published by the Defense Contract Management Agency under the Government-Industry Data Exchange Program (GIDEP). Buyer reasonably determines that Seller has supplied suspect/counterfeit parts to Buyer, Buyer shall promptly notify Seller and Seller shall immediately replace the suspect/counterfeit parts with parts acceptable to Buyer. Notwithstanding any other provision of this Award or any Order issued hereunder, Seller shall be liable for all costs incurred by Buyer to remove and replace the suspect/counterfeit parts, including without limitation Buyer's external and internal costs of removing such counterfeit parts, of reinserting replacement parts and of any testing necessitated by the reinstallation of Seller's goods after counterfeit parts have been exchanged. Seller's warranty against suspect/counterfeit parts shall survive any termination or expiration of this Award.
31. UNIT PRICE WORK - The following provisions of this "Unit Price Work" Paragraph apply only to Work for which a Unit Price applies as set forth in the Contract Documents:
- (a) Measurement of Quantities - The determination of quantities of Work acceptable under the terms of the Contract, will be made by the Project Manager/Project Engineer/Field Engineer, based on measurements made by the Project Manager/Project Engineer/Field Engineer and agreed upon by the Contractor. These measurements will be taken according to the U.S. Standard measurements used in common practice and will be the actual length, area, solid contents, numbers, and weights.
  - (b) Unit Price - Where in the Contract Documents a Unit Price is set forth, the Unit Price includes the furnishing by the Contractor of all supervision, labor, tools, materials, machinery, appliances, plant and equipment appurtenant to and necessary for the construction in every detail and the completion of all the Work to be done under the Contract Documents. The Unit Price also includes all permanent protection of overhead, surface and underground structures, clean up and finish; overhead expense, bond, insurance, patent fees, royalties, risk due to the elements,



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delay, profit, injuries, damages, claims, and all other items not specifically mentioned that may be required to construct fully each item of the Work, complete in place.

(c) Over-run and Under-run Payments – The Contractor and the Owner recognize that, in the performance of the Contract, there may be either over-runs or under-runs in the estimated quantities of Work and materials. The Owner agrees to make payment to the Contractor for the actual quantities of Work performed and the material furnished at the unit prices set forth herein. The unit prices quoted by the Contractor in its bid, shall apply to over-runs and/or under-runs of up to twenty-five percent (25%) of the estimated quantities. In the event the over-runs and/or under-runs exceed twenty-five percent (25%), the new unit prices shall be mutually agreed upon by the Owner and Contractor.

### 32. PAYMENTS TO CONTRACTOR

(a) Detailed Breakdown of Contract Price: Except in cases where unit prices form the basis of payment under the Contract, the Contractor shall, prior to any payment becoming due under this Contract, develop and submit for Owner's approval, a complete breakdown of the Contract price. That breakdown shall be used as the basis for all requests for payment. The values in the schedule will be used only for progress payments as hereinafter provided.

(b) Requests for Payment: The Contractor may submit to the Project Manager/Project Engineer/Field Engineer periodically, but not more than once each month, a request for payment in the form approved by Owner for work done and materials delivered to and stored on the site. The Contractor shall furnish all reasonable information required for obtaining the necessary data determining the progress and execution of the work. Payment for materials stored on the site will be conditioned upon evidence submitted to establish the Owner's title to such materials and Contractor's payment therefore. Each request for payment shall be computed on the basis of work completed on all items listed in the detailed breakdown of contract (or on unit prices, as the case may be), less amounts to be retained and less previous payments. Request for payment shall be submitted on the first of the month.

(c) Retentions: In making such progress payments there shall be retained ten percent (10%) of the amount requested until fifty percent (50%) of the work has been completed and, if in the opinion of the Owner satisfactory progress is being maintained on the work, thereafter no retention shall be made so that upon final completion and acceptance of the work the retainage shall be reduced to not less than five percent (5%) for the period remaining until final payment.

(d) Project Manager's/Project Engineer's/Field Engineer's Action On A Contractor's Request for Payment: All of Contractor's requests for payment shall be referred to the Project Manager/Project Engineer/Field Engineer for his review and, within a reasonable period, the Project Manager/Project Engineer/Field Engineer shall forward the invoice to the Owner with a recommendation regarding whether it should be paid in full or in part.

(e) Owner's Action on Request for Payment: Within forty-five (45) days after receipt of a request for payment by the Project Manager/Project Engineer/Field Engineer from the Contractor, the Owner shall:

(1) Pay the request for payment as recommended by the Project Manager/ Project Engineer/Field Engineer; or

(2) Pay such other amount, in accordance with "Payments to Contractor" subparagraph (f) as the Owner shall decide is due the Contractor, informing the Contractor in writing of Owner's reasons for paying the amended amount; or

(3) Withhold payment in accordance with subparagraph (f) of this "Payments to Contractor" Paragraph, informing the Contractor of the reasons for withholding payment.

(f) Owner's Right to Withhold Payment of a Request for Payment: The Owner may withhold payment, in whole or in part, of a Request for Payment to the extent necessary to protect it from loss on account of any reason including, but not limited to, any of the following:

(1) Defective work.

(2) Evidence indicating the probable filing of claims by other parties against the Contractor which may adversely affect the Owner.

(3) Failure of the Contractor to make payments due to Subcontractors, material suppliers or employees.

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(4) Damage to another Contractor.

(g) Payment for Uncorrected Work: Should the Owner direct the Contractor not to correct work that has been damaged or that was not performed in accordance with the Contract Documents, an equitable deduction from the Contract Amount shall be made to compensate the Owner for the uncorrected work.

(h) Payment for Removal of Rejected Work and Materials and Correction of Work: The removal work and materials rejected in accordance with the "Inspection" Paragraph and the re-execution of acceptable work by the Contractor shall be at the expense of the Contractor, and it shall pay the cost of replacing the work of other Contractors destroyed or damaged by the removal of the rejected work or materials and the subsequent replacement of acceptable work, including Owner's cost of re-inspection. Removal of rejected work or materials and storage of these materials by the Owner, in accordance with the "Inspection" Paragraph, shall be paid for by the Contractor within thirty (30) days after written notice to pay is given by the Owner. If the Contractor does not pay the expenses of such removal and after ten (10) days written notice being given by the Owner of its intent to sell the materials, the Owner may sell the materials at auction or at private sale and will pay to the Contractor the net proceeds therefrom after deducting all the costs and expenses that should have been borne by the Contractor.

(i) Payment for Extra Work: Payment for extra work shall be authorized in accordance with the "Changes in the Work" paragraph. No claim for payment for extra work shall be valid unless the Contractor's entitlement such payment is established in accordance with the "Changes in the Work" paragraph. Payments for extra work shall be subject to the conditions, approvals, and other terms set forth in this "Payments to the Contractor" paragraph.

(j) Payment for Work Suspended By the Owner: If the work or any part thereof shall be suspended by the Owner and abandoned by the Contractor in accordance with the terms of this agreement, the Contractor will then be entitled to payment for all work done on the portions so abandoned, plus fifteen percent (15%) of the value of the abandoned work to compensate the Contractor in full for overhead, plant expense, and anticipated profit.

(k) Payment for Work Terminated By the Owner for Cause: The cost of the Work performed by the Owner, in removing construction equipment, tools and supplies of the Contractor or its Subcontractors and in correcting deficiencies in accordance with the "Owner's Right to Terminate for Cause " Paragraph, shall be paid by the Contractor.

(l) Payment for Work by the Owner Following its Termination of the Contract: Upon termination of the Contract by the Owner in accordance with the "Owner's Right to Terminate for Cause" Paragraph, no further payments shall be due the Contractor until the work is completed. If the unpaid balance of the Contract amount shall exceed the cost of completing the work including all overheads, delay and disruption costs, the excess shall be paid to the Contractor. If the cost of completing the Work shall exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The cost incurred by the Owner as herein provided and the damage incurred through the Contractor's default, shall be verified by the Owner.

(m) Payment for Samples and Testing of Materials. Any samples furnished in accordance with specifications shall be furnished by the Contractor at its expense and may be used in the Work, after acceptance.

(n) Title Upon Partial Payment: All material and work covered by partial payments made shall thereupon become the sole property of the Owner, but this provision shall not be construed as relieving the Contractor from the risk of loss of and responsibility for all materials and work upon which payments have been made or the restoration of any damaged work or as a waiver of the right the Owner to require the fulfillment of all of the terms of the Contract.

(o) Acceptance and Final Payment: When the Contractor has completed the work in accordance with the terms of the Contract Documents, it shall certify completion of the work to the Owner and submit a final Request for Payment, which shall be the Contract amount plus retentions and all approved additions, less all approved deductions and less previous payments made.

(1) Affidavit of Payment of Claims: Neither the final payment nor any part of the retained percentage shall become due until the Contractor shall deliver to the Owner an Affidavit of Payment of Claims that all Subcontractors and suppliers of either labor or materials have been paid all sums due them for work performed or materials furnished in connection with this Contract or that satisfactory arrangements have been made by the

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Contractor with such Subcontractors and suppliers with respect to the payment of such sums as may be due them by the Contractor.

(2) Release of Liens: The Contractor shall deliver to the Owner a complete release of all liens arising out of this Contract before the final Request for Payment is paid. If any lien remains unsatisfied after all payments are made, the Contractor shall refund to the Owner such amounts as the Owner may have been compelled to pay in discharging such liens including all costs and a reasonable attorney's fee.

(3) Final Payment: Within sixty (60) days after the filing of final Request for Payment, the Owner shall pay to the Contractor the amount therein stated, less all prior payments and advances whatsoever to or for the account of the Contractor, all prior estimates and payments including those relating to extra work shall be subject to correction by this payment, which is throughout this Contract called final payment.

(4) Acceptance of Final Payment: The acceptance by the Contractor of the final payment shall be and operate as a release to the Owner of all claims and of all liability to the Contractor for all things done or furnished in connection with this work. No payment, final or otherwise, or partial or entire use or occupancy of the work by the Owner, shall be an acceptance of any work or materials not in accordance with the Contract, nor shall the same relieve the Contractor of responsibility for faulty materials or workmanship or operate to release the Contractor, or its surety from any obligation under the Contract or the Standard Performance and Payment Bond. Upon receipt of final payment, Contractor shall execute, in a form acceptable to Owner, an appropriate release of claims.

33. ASSIGNMENT - Neither this Contract nor the benefits or obligations thereof shall be assigned by Contractor except with the prior written consent of the Owner.

34. AUDIT RIGHTS - In addition to any other audit rights provided for in this Contract, Owner or its duly authorized representative shall have access at all reasonable times to such personnel of Contractor and its Subcontractors as Owner may designate, and to books, records, correspondence, instructions, plans, drawings, receipts, vouchers, and memoranda of every description pertaining to the Work under the construction agreement for the purpose of auditing and verifying the costs of the Work.

35. ACCESS TO SITE - The Contractor's access to the project site shall be through the Owner's designated gates and over designated roads within the Owner's property. Workmen and other personnel shall enter only through designated gates as directed by the Owner's Project Manager/Project Engineer/Field Engineer. All Contractor personnel and all subcontractor personnel shall wear the Owner-issued access badge at all times within the Owner's property in a visible and safe manner. All personnel shall drive, when authorized by Owner, and walk to the designated gates in the most direct path, and all personnel shall not be in unauthorized areas.

36. USE OF PREMISES AND REMOVAL OF DEBRIS - The Contractor expressly undertakes either directly or through its Subcontractor:

(a) To take precautions against injuries to persons or damage to property.

(b) To comply with the regulations governing the operation of premises and to perform its contract in such a manner as not to interrupt or interfere with the operation of any existing activity on the premises or at the location of its Work. Any need for the Contractor to interfere with the Owner's traffic shall be prescheduled with the Owner's Project Manager/Project Engineer/Field Engineer.

(c) To store its apparatus, materials, supplies and equipment in such orderly fashion at the site of the work as will not unduly interfere with the progress of its Work, the Work of any other Contractor, or the other operations of the Owner.

(d) To place upon the Work or any part thereof only such loads as are consistent with the safety of that portion of the Work.

(e) To clean up frequently all refuse, rubbish, scrap materials and debris caused by its operations, to the end that at all times the site of the Work shall present a neat, orderly and workman-like appearance. If the Contractor fails, or is slow to act, the Owner reserves the right to stop work and have the area cleaned by a third party at the Contractor's expense.

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(f) To effect all cutting, filling or patching of its Work required to make the same conform to the plans and specifications, and except with the consent of the Project Engineer/ Project Manager/Field Engineer not to cut or otherwise alter the Work of any other Contractor.

(g) Before final payment, to remove all surplus material, false work, temporary structures, including foundations thereof, plant of any description and debris of every nature resulting from its operations and to put the site in a neat, orderly condition; to thoroughly clean and leave reasonably dust free all finished surfaces including all equipment, piping, etc., on the interior of all buildings included in the Contract; and to wash and polish all glass installed under the Contract including the removal of all paint splatters and other defacements.

(h) The Project Engineer, Project Manager or Field Engineer acting on the Owners behalf during the construction of the project shall assign a Owner's owned or contracted trash dumpster for the use by the Contractor or Subcontractor during the duration of the contract. Under certain conditions, determined and approved by the Owner, the Contractor or Subcontractor will be directed to supply their own waste unit. All waste material resulting from the project will be deposited in the trash dumpster assigned to the Contractor or Subcontractor and the project. For a Contractor or Subcontractor supplied dumpster, the Contractor or Subcontractor shall notify the Owner in order for arrangements to be made for inspection of the waste. Subsequent to inspection, the Owner or agent acting on its behalf will direct the Contractor or Subcontractor in the manner of waste disposal.

37. GROUNDWATER - The Contractor is responsible for pumping of groundwater regardless of source from any excavations or low areas made as a result of construction. Water is to be conveyed by hose to an approved outlet as designated by the Owner's Project Manager/Project Engineer/Field Engineer. The Contractor shall filter any sediment-bearing groundwater or runoff through a sediment barrier prior to discharge into any manhole, storm drain, or similar outlet.

38. SANITARY PROVISIONS - The Contractor shall provide and maintain such sanitary accommodations for the use of its employees and those of its subcontractors as may be necessary to comply with the requirements and regulations of local and state departments of health and with applicable OSHA regulations.

39. OWNER SUPPLIED SERVICES

(a) The Owner may supply electricity, drinking water, compressed air, oxygen and propane at designated locations, in the vicinity of the project site, when reasonably available at the Owner's sole discretion, at no charge to the Contractor.

(b) The Contractor shall be responsible and pay for piping and service lines from designated hookup locations to the point where the service provided by the Owner is consummated, and shall remove all connections when the Work is completed.

(c) The Owner reserves the right to withdraw the privileges mentioned herein, if this becomes necessary in the Owner's sole discretion. Contractor shall receive no additional compensation in the event of such withdrawal.

(d) The owner may supply dumpsters for waste disposal to be used by the Contractor or Subcontractor.

40. TEMPORARY ROADS - Temporary roads, if required, shall be established and maintained by Contractor until permanent roads are accepted, then removed and the area restored to the conditions as required by the drawings and specifications. The location of any such temporary roads is subject to prior written approval of Owner.

41. SIGNS - With approval of Owner the Contractor may, at its option and without cost to the Owner, erect signs on the site of the Contract for the purpose of identifying and giving directions to the job. No such signs shall be erected without prior approval of the Owner as to design, size, and location.

42. SAFETY, HEALTH, ENVIRONMENTAL AND RADIOLOGICAL REQUIREMENTS - While performing work under this Contract, the Contractor, its Subcontractors, and their suppliers at all tiers that are performing at the Owner's

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site, must submit a company safety program and project safety plan that meet's Owner's safety requirements, and while performing the Work, the Contractor, Subcontractors, and their suppliers must comply with the Safety, Health, Environmental and Radiological requirements of Northrop Grumman Shipbuilding, Inc. (NGSB), and all other applicable State and Federal Regulations. The Owner will make available the latest requirements that affect construction through a "Contractor Resource Manual" which is available at this web site: [http://sourcing.nn.northropgrumman.com/sourcing/howtodobusiness/Contractor\\_Resource\\_Manual\\_Internet/index.stm](http://sourcing.nn.northropgrumman.com/sourcing/howtodobusiness/Contractor_Resource_Manual_Internet/index.stm). The Contractor shall maintain an accurate record of, and shall report to the Owner in the manner and in the form prescribed by the Project Manager/Project Engineer/Field Engineer, exposure data and all accidents resulting in death, traumatic injury, occupational disease, and damage to property, materials, supplies and equipment incident to Work performed under the Contract.

### 43. PROTECTION OF WORK AND PROPERTY

(a) The Contractor shall continuously maintain adequate protection of all its work from damage and shall protect the Owner's property from injury or loss arising in connection with this Contract. It shall repair any such damage injury or loss, without charge, except damage, injury or loss caused solely by negligence of the Owner. It shall adequately protect adjacent property as provided by law and the Contract Documents. It shall provide and maintain all passageways, guard fences, lights and other facilities for protection required by public authority, local conditions, or any of the Contract Documents.

(b) In an emergency affecting the safety of life, or of the work, or of adjoining property, the Contractor, without special instruction or authorization from the Project Manager/Project Engineer/Field Engineer or Owner, is hereby permitted to act, at its discretion, to prevent such threatened loss or injury, and it shall so act, without appeal, if so instructed or authorized. Any compensation claimed by the Contractor on account of emergency work shall be determined by agreement.

(c) When necessary for the proper protection of the work, temporary heating of a type approved by the Project Manager/Project Engineer/Field Engineer must be provided unless otherwise specified.

44. SHOP DRAWINGS - Catalog cuts, pamphlets and manufacturer's literature where required to demonstrate compliance with the specifications shall be treated as shop drawings.

(a) The Contractor shall submit for the approval of the Project Engineer/Project Manager/Field Engineer, shop and setting drawings and schedules required by the specifications or that may be requested by the Project Manager/Project Engineer/Field Engineer and no Work shall be fabricated by the Contractor, save at its own risk, until such approval has been given.

(b) Index: Each shop drawing in the submission shall be indexed according to Contract drawing and/or specification section and paragraph for easy reference.

(c) Drawings and schedules shall be submitted as directed by Project Manager/Project Engineer/Field Engineer accompanied by letter of transmittal which shall give a list of the numbers and dates of the drawings submitted. Drawings shall be complete in every respect and bound in sets.

(d) The Contractor shall submit all drawings and schedules sufficiently in advance of construction requirements to allow ample time for checking, correcting, resubmitting and checking.

(e) If a drawing, as submitted, indicates a deviation from the Contract requirements which the Project Manager/ Project Engineer/Field Engineer finds to be in the interest of the Owner and to be so minor as not to involve a change in the Contract price or time for performance, he may approve the drawing.

(f) The approval of shop and setting drawings will be general and except as otherwise provided in "Shop Drawings" subparagraph (e), shall not be construed:

(1) As permitting any departure from the Contract requirements;

(2) As relieving the Contractor of the responsibility for any error in details, dimensions or otherwise that may exist; and

(3) As approving departures from additional details or instructions previously furnished by the Project Manager/Project Engineer/Field Engineer.

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45. AS-BUILT DRAWINGS - As Built Records will be required as follows:

(a) As Work Progresses - The Contractor shall keep a complete and accurate record of all changes or deviations from the Contract Documents including the plans, specifications and shop drawings, indicating the Work as actually installed. All such changes shall be neatly and correctly shown on blackline prints of the Contract drawings affected or in the Specifications with appropriate supplemental notes. This record set of prints of the plans, shop drawings, and specifications shall be kept at the job site.

(b) On Completion of the Work – The Contractor shall furnish one (1) complete set of reproducible sepia transparencies of all drawings as finally approved, bearing the Contractor's certification and signature, corrected to show all changes and deviations so as to correctly reflect "as built" conditions.

(c) Certification of "As Builts" - The above drawings shall be arranged in order, in accordance with the various sections of the Specifications and properly indexed. At the completion of the Work the Contractor shall certify, by endorsement thereof, that each of the revised transparencies of plans and shop drawings is complete and accurate. Prior to the Contractor's application for final payment, and as a condition to its approval by the Owner, the Contractor shall deliver the certified record plans, including transparencies of shop drawings, as specified above, to the Owner, indexed and marked for each division of the Work.

46. EQUIPMENT DATA, MANUALS, PARTS LISTS, AND MANUFACTURER'S INSTRUCTIONS - The Contractor shall submit for the Project Manager's/Project Engineer's/Field Engineer's review complete catalog data for every manufactured item of equipment and all components to be used in the Work, including specific performance data, material description, rating, capacity, working pressure, material gage or thickness, brand name, catalog number and general type. This submission shall be compiled by the Contractor, submitted in both hard-copy and electronic format (Microsoft Office compatible format preferred), and reviewed by the Project Manager/Project Engineer/Field Engineer before any of the equipment is ordered. If the Contractor intends to submit electronic formats that are not compatible with Microsoft Office applications, Contractor must make prior arrangements with the Project Manager's/Project Engineer's/Field Engineer to ensure that the Owner can read the Contractor's format. Documents delivered in electronic formats that Owner cannot read shall be unacceptable.

(a) Each data sheet or catalog in the submission shall be indexed according to specification section and paragraph for easy reference.

(b) Catalog data for equipment reviewed by the Project Manager/Project Engineer/Field Engineer shall not supersede these Contract Documents. The review of the data shall not relieve the Contractor from responsibility for deviations from Drawings or Specifications, unless it has in writing called the Owner's attention to such deviations at the time of submission, nor shall it relieve it from responsibility for errors of any sort in the items submitted. The Contractor shall check the work described by the catalog data with the Owner's Contract Documents for deviations and errors.

(c) Equipment data shall be submitted by the Contractor with a covering letter indicating that it has reviewed, checked and approved the data submitted, that they are in harmony with the requirements of the Project and with the provisions of the Contract Documents and that it has verified all field measurements and construction criteria, materials, catalog numbers and similar data. Contractor shall also certify that the work represented by the shop drawings is recommended by the Contractor and that its Guarantee will fully apply.

(d) At the conclusion of the work Contractor shall provide to Owner all pertinent manuals, parts lists and manufacturers instructions as they pertain to the Work.

(e) Catalogs shall be submitted as directed by Project Manager/Project Engineer/Field Engineer accompanied by letter of transmittal, which shall give a list of the numbers and dates of the catalogs submitted. Catalogs shall be complete in every respect and bound in sets.

(f) The Contractor shall submit all catalogs sufficiently in advance of construction requirements to allow ample time for checking, correcting, resubmitting and checking.

(g) If a catalog as submitted, indicates a deviation from the contract requirements which the Project Manager/Project Engineer/Field Engineer finds to be in the interest of the Owner and to be so minor as not to involve a change in the contract price or time for performance, he may approve the catalog.

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(h) The approval of catalogs will be general and except as otherwise provided in "Equipment Data, Manuals, Parts Lists and Manufacturer's Instructions" subparagraph (g), shall not be construed:

- (1) As permitting any departure from the Contract requirements;
- (2) As relieving the Contractor of the responsibility for any error in details, dimensions or otherwise that may exist; and
- (3) As approving departures from additional details or instructions previously furnished by the Project Manager/Project Engineer/Field Engineer. Payments made shall thereupon become the sole property of the Owner, but this provision shall not be construed as relieving the Contractor from the risk of loss of and responsibility for all materials and work upon which payments have been made or the restoration of any damaged work or as a waiver of the right of the Owner to require the fulfillment of all of the terms of the Contract.

### 47. SPECIAL REQUIREMENTS

- (1) MERCURY EXCLUSION - Mercury or mercury containing compounds shall not be intentionally added or come in direct contact with hardware or supplies furnished under this Purchase Order.
- (2) POLYCHLORINATED BIPHENYLS PROHIBITION - Contractor shall not employ equipment or use material, which is known or suspected of containing polychlorinated biphenyls.

48. TOXIC SUBSTANCES/HAZARDOUS MATERIAL - Owner 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 Contract. In particular, paints or primers on products required by Contract which contain the following components shall not be shipped without prior written approval by the Owner: arsenic, mercury, lead, chromates, or organo-metallic material. Materials containing asbestos shall not be provided without Owner's prior written permission. If invoked specifications and standards permit other materials, they shall be used in lieu of asbestos.

49. CRANE SAFETY - The Contractor shall exercise extreme caution and care when working in the vicinity of all Owner cranes and crane services. Many of the cranes are served with open third rail, and the Contractor shall lock out and tag out all crane operations and services when working in close proximity to the cranes. See the "Safety Sense Handbook" for additional clarifications, or notify the Owner's Project Manager/Project Engineer/Field Engineer if uncertain about working around the Owner's cranes. Safety concerns applicable to contractor cranes are detailed in the "NNS Crane Program Manual" and in the attached Contractor crane section of the Contract. Contact the Owner's Project Manager/Project Engineer/Field Engineer for the required manuals and the Certificate of Compliance that must be in all Contractor cranes before they can enter the Owner's facility. All Contractor cranes are subject to inspection by the Owner's qualified crane inspection personnel, and all discrepancies shall be repaired prior to operation. All Contractor cranes shall be inspected and certified as required by the Commonwealth of Virginia, and all records shall be kept with the crane.

### 50. CHANGES IN THE WORK

(a) The Owner may at any time, by written order utilizing an appropriate change order form, and without notice to the sureties, make changes in the drawings, specifications and other requirements of the Contract and within the general scope thereof.

(b) The Contractor will perform no Changed Work unless authorized and identified as such in writing by the Owner and until there is mutual agreement on the price adjustment or the method of determining the price adjustment is established in writing except:

(1) If in the Owner's sole judgment, agreement cannot be reached in a timely manner, or for any other reason at its sole option, the Project Manager/Project Engineer/Field Engineer may issue a written directive to the Contractor to proceed with a change and the Contractor agrees to perform same without regard to whether a mutual agreement has been reached as to an equitable price or time adjustment for the change.

(2) In certain instances it may be necessary that the Project Manager/Project Engineer/Field Engineer authorize, in writing (only), emergency field changes. In such instances, and only when the Project Manager/Project Engineer/Field Engineer designates in writing the change as "emergency", the Contractor shall

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immediately comply therewith. The Contractor shall give the Owner's Contract Administrator or Sourcing Representative written notice of emergency field changes within five (5) days of receipt.

(c) **Contract Provisions Applicable to Changes** - The provisions of the Contract relating generally to the Work and its performance shall apply without exception to any extra or additional Work required and to the performance thereof, except as may be otherwise provided by written agreement between the Contractor and the Owner.

(d) **Methods to Determine the Price Adjustment for Changed Work** - For the purposes of this subparagraph (d) the term "Changed Work" shall mean work that is either directly and indirectly affected, delayed, added, deducted or disrupted by a change order. Except as provided elsewhere in this "Changes In The Work" Paragraph, the change order will stipulate the mutually agreed price adjustment for the Changed Work that will be added or deducted from the Contract price. The method(s) of determining the price adjustment for Changed Work shall be established before the Changed Work starts by one of or a combination of the following methods as selected by the Owner.

(1) **Unit Price.** The number of unit quantities of each part of the Work that is changed shall be estimated and multiplied by the applicable unit price (if any) set forth in the Contract or by another mutually-agreed to unit price.

(A) If changes in the Work are ordered by the Owner and such change order calls for the deletion or addition of item(s) of Work or material of the same type as those for which unit prices have been quoted in the proposal, the compensation to be paid therefore will be computed on the basis of the unit prices. Where in the sole opinion of the Owner, the application of unit prices in the Proposal would not be appropriate, the price change shall be determined by negotiation.

(B) Where the scope and extent of the change can be determined before the changed Work is performed, and compensation is not computed on the basis of the unit prices quoted in the proposal, the Owner will negotiate a price, which may consist of both unit prices and lump sum items, with the Contractor as compensation for such Work.

(C) If during negotiation specific unit prices in the proposal are accepted as being applicable, they will form the basis for compensating the corresponding items of Work. For those items for which the Contractor proposes a different unit price than the unit price in the proposal, the Contractor shall furnish a detailed, itemized breakdown of each differing unit price used in computing the value of any change and shall also submit its unit price work up and in addition, the proposal unit price breakdown.

(2) **Cost-Basis.** If this method is selected, the Owner shall order the Contractor to proceed with the Changed Work and to keep and present in such form as the Owner may direct a correct account of the cost of the Changed Work together with all related vouchers. The cost shall include an allowance for overhead and profit, to be mutually agreed upon by the Owner and the Contractor but subject to the limitations contained in "Changes in the Work" subparagraph (e). Owner shall have the right to verify such cost by audit of Contractor's books and records as provided in "Changes in the Work" subparagraph (e).

(3) **Time-and-Material Basis.**

(A) Compensation for Changed Work on a time and material basis will be used only when the scope and extent of the Changed Work cannot be readily determined or negotiated before the changed Work is performed, or as provided for under "Changes in the Work" subparagraph (b)(2). Final compensation due the Contractor for the Changed Work will be determined by the Owner following a post-performance audit. A provisional payment of an amount not to exceed ninety percent (90%) of the amount invoiced and approved by the Project Manager/Project Engineer/Field Engineer may be made pending completion of the audit.

(B) In the event the Owner determines to compensate the Contractor for changes on a time and material basis, the Contractor shall, at the end of each day or at such other intervals as the Owner may direct in writing, furnish to the Project Manager/Project Engineer/Field Engineer: (1) daily time slips showing the name of each employee on such Work, the number of hours which he was employed thereon, and the character of his duties; (2) a memorandum – and supporting data (e.g., purchase orders, rental invoices, invoices on dump charges, payment records) showing the amount and character of the materials furnished in the performance of changed Work, apparatus rented in connection therewith, from whom they were purchased or rented, and the amount paid therefore; and (3) a



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memorandum detailing payments made to approved Subcontractors (with copies of Subcontractor invoices attached supported by back-up detailed in "Changes in the Work" subparagraphs (a) through (d)). The failure of the Contractor to furnish time slips and memoranda with respect to any particular labor, equipment, materials, apparatus or subcontract in a timely manner as specified shall constitute a conclusive and binding determination on its part that such labor, equipment, materials, apparatus or subcontract work has not been affected by the change order and shall constitute a waiver by the Contractor of this claim for payment based thereon.

(e) Cost Methodology. The following methodology shall apply to price adjustment proposals submitted by the Contractor or its Subcontractors' for Changed Work when the "cost" and "time-and-materials" methods specified in "Changes in the Work" subparagraphs (d)(2) and (d)(3) are used in determining the price adjustment.

(1) Labor

(A) Actual Wages - by craft, but excluding premium pay, paid to all employees directly engaged in the Work below general foreman level.

(B) Labor Burden - to be established as a percent of actual wages paid pursuant to contractual obligation and paid for each craft and shall include: Vacation allowance, Health and Welfare, Pension, Apprenticeship Programs and other programs as required for each craft, Social Security, Unemployment Insurance and Worker's Compensation insurance.

(2) Subsistence and/or Mileage - if required in union agreements.

(3) Materials - All materials incorporated in the Work at Contractor's net cost.

(4) Overhead - Percent of labor and provides for: All delay and disruption, supervision and administration above and including the General Foreman, Engineers, Accountants, Clerks, Timekeepers, Office Managers, and all others on staff; office supplies; drinking water; temporary heat, light and power, field toilets; costs of services; material and/or equipment not incorporated in the Work or directly associated with the Work; premiums for all insurance, (including fire, personal, general and public liability), bonds, and all home office costs. The overhead percentage will be negotiated between the Owner and the Contractor.

(5) Profit - Maximum of ten percent (10%) of the sum of labor, excluding any material, unless lower percentages have been stated in the Form of Bid.

(6) Premium Time - Actual premium costs paid, plus paid Social Security taxes, unemployment insurance, Worker's Compensation insurance and union fringe benefits if required by union agreements.

(7) Freight - Actual freight of materials used (Cost may be calculated by weight and rate if the actuals are not available.)

(8) Equipment Rental - Total compensation for equipment shall be as follows:

(A) Contractor owned equipment - per latest edition of Rental Rate Blue Book published by Equipment Guide-Book Company calculated as follows:

(i) Hourly Rate - Eighty-five percent (85%) of monthly rate divided by one hundred seventy-six (176) hours plus operating costs indicated.

(ii) Daily Rate - Eighty-five percent (85%) of monthly rate divided by twenty-two (22) days plus eight (8) times the hourly operating cost indicated.

(iii) Where the equipment is used on double or triple shifts, rates will be calculated at fifty percent (50%) of the foregoing base rate for each additional eight-hour shift period.

(B) Equipment leased specifically for the Work involved, at Contractor's net invoice cost.

(C) Transportation cost for equipment will be paid if it is allocable solely to a specific change.

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(9) Subcontractor Cost - Shall be quoted in the same manner prescribed for the Contractor.

(10) Contractor's Overhead and Profit on Subcontractor's Work – Five percent (5%) of the net amount of the aggregate of all acceptable Subcontractors' cost for the change; unless a lower percentage has been stated in the Form of Bid.

(f) Other Requirements

(1) In all cases, the costs and percentages detailed in "Changes in the Work" subparagraph (e) shall cover any and all costs and profit. The sum of these costs with the applicable percentages will be the only cost used to determine the Contract price adjustment (increase or decrease). After the Contractor and Owner negotiate a price adjustment, the Contractor will have no further or future right to demand or claim any additional compensation based on that change or on any alleged contribution to any delay or disruption that change may have on other Work being performed by the Contractor.

(2) Payment for Changed Work shall be subject to all of the conditions, approvals, and other terms set forth in the "Payments to Contractor" Paragraph.

(g) Deletions - Owner reserves the right to delete any item of Work in whole or in part. Should an item of Work be partially or totally deleted, the Contract price shall be decreased. The price adjustment for the deleted Work will be determined pursuant to "Changes in the Work" subparagraphs (d) and the "Audit Rights" Paragraph.

(h) Disputes - If the Contractor does not agree with any decision of the Owner, it shall nonetheless, when so directed by the Owner, not allow the dispute to delay the Work. In such an instance, it may notify the Owner promptly that it is proceeding with the Work under protest.

(i) All change orders will indicate that the completion date of the project is either not extended or is extended by a specific number of days. The old and new date (if applicable) will be stated.

(j) The Owner reserves the right to ask for bids on any and all changes in the Work involving additions or alterations thereto and/or to award said Work to others.

(k) The Contractor shall assert its right to a price or schedule adjustment under this "Changes in the Work" Paragraph within thirty (30) days after: (1) receipt of a written change order from the Owner; or, (2) the furnishing of a written notice under the "Notification of Changes" Paragraph, by submitting to the Owner's Sourcing Representative a written statement describing the general nature and amount of the Contractor's proposal, unless this period is specifically extended in writing by the Owner. The Contractor shall not be entitled to an adjustment under this "Changes in the Work" Paragraph for a change if the Contractor fails to assert its right to an adjustment within the time period specified above.

51. NOTIFICATION OF CHANGES - If the Contractor claims that any instructions, by drawings or otherwise, involve changes to the Work required by the Contract, the Contractor shall give the Owner written notice thereof ten (10) days after the receipt of such instructions and before proceeding to execute the Work, except in emergencies endangering life or property. If it is later determined that the Work involved in such instructions constituted Changed Work, the amount of compensation to be paid therefore shall be determined by one of the three methods provided in "Changes in the Work" subparagraph (d) as may be selected by the Owner in its sole and absolute discretion. Except as otherwise specifically provided, no claims for Changed Work shall be allowed unless the notice specified by this "Notification of Changes" Paragraph is given by the Contractor or unless such Work is performed pursuant to the written order of the Owner as provided in the "Changes in the Work" Paragraph of this Contract.

52. OWNER'S RIGHT TO TERMINATE CONTRACT FOR CAUSE - If the Contractor should be adjudged a bankrupt, or if it should make a general assignment for the benefit of its creditors, or if a receiver should be appointed on account of its insolvency, or if it should persistently or repeatedly refuse or should fail, except in cases for which extension of time is provided, to supply enough properly skilled workmen or proper materials, or fail to provide a qualified Superintendent, or if it should fail to make prompt payment to Subcontractors or for material or labor, or persistently disregard laws, ordinances or the instructions of the Project Manager/Project Engineer/Field Engineer, or otherwise violate any other provisions of the Contract, then the Owner, may without prejudice to any other right or remedy, and after giving the Contractor and its surety fourteen (14) days written notice, terminate the Contract and take possession of the premises and of all materials, tools and appliances thereon and finish the Work by whatever

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method the Owner deems expedient. In such case the Contractor shall not be entitled to receive any further payment. In addition to any other remedies that the Owner may have either under this Contract or at law, if the expense of finishing the Work, including compensation for additional managerial and administrative service shall exceed the unpaid balance of the Contract price, the Contractor shall pay the difference to the Owner.

### 53. OWNER'S RIGHT TO SUSPEND WORK

(a) The Owner may, by written notice to the Contractor, suspend the Work, wholly or in part, for such periods as the Owner may deem necessary due to unsuitable weather or such other conditions as are considered by the Owner to be unfavorable to carry out the provisions of the Contract.

(b) The Contractor shall resume the Work within ten (10) days after receipt of notice from the Owner to resume Work.

(c) The Contractor's sole remedy for a suspension of Work ordered by Owner under this "Owner's Right To Suspend Work" Paragraph shall be an extension of the delivery schedule.

### 54. EXTENSION OF TIME, DAMAGES FOR DELAYS

(a) If the Contractor fails to complete the Work within the time fixed by the Contract for the completion of the same, the Contractor shall be liable to the Owner in the amount of \$\_\_\_\_\_ as fixed, agreed and liquidated damages for each day of delay until the Work is completed. If liquidated damages are not so fixed, the Contractor shall be liable for any actual damages occasioned by such delay, unless otherwise specifically provided for in the specifications. Notwithstanding the foregoing, if the Contractor is delayed at any time in the progress of the Work: (1) by any act or neglect of the Owner or by any separate Contractor employed by the Owner; or (2) by changes ordered in the Work; or (3) by strikes, fire, unusual delay in transportation, unavoidable casualties or any other cause beyond the Contractor's control; or (4) by delay authorized by the Owner; or (5) a suspension of the Work ordered by Owner pursuant to the "Owner's Right to Suspend Work" Paragraph, then the time for completion shall be extended for such reasonable time as the Owner may decide, and the Contractor shall not be charged with liquidated or actual damage during the period of such extension.

(b) No such extension or relief from liquidated or actual damages shall be made for delay occurring more than thirty (30) days before written notice of the delay is provided to the Owner. In the case of a continuing cause of delay, only one notice of delay is necessary.

(c) This "Extension of Time; Damages for Delay" Paragraph does not exclude the recovery of damages for delay by either party under other provisions in the Contract Documents.

(d) Any change in the completion date shall be accomplished only by issuance of a change order.

55. FINAL INSPECTION - When the Work is substantially complete, the Contractor shall notify the Owner in writing that the Work will be ready for final inspection and test on a definite date which shall be stated in such notice. The notice shall be given at least fourteen (14) days in advance of said date and shall be forwarded through the Project Manager/Project Engineer/Field Engineer who will attach his endorsement as to whether or not he concurs in the Contractor's statement that the Work will be ready for final inspection or test on the date given, but such endorsement shall not relieve the Contractor of its responsibility in the matter. The Contractor is required to furnish access for final inspection as provided in the "Access to Work" Paragraph of this Contract.

### 56. GUARANTEE OF WORK

(a) The Contractor guarantees that all materials, supplies, equipment, and workmanship furnished under this Contract shall be new unless otherwise specified, of good quality, in conformance with the Contract Documents and free from defects. The Contractor's guarantee shall commence on the date of final acceptance of the entire project by the Owner in writing, provided that if prior to the acceptance of the entire project the Owner occupies or uses any separate unit of the Work, the guarantee period shall, as to the unit so occupied or used, commence on the date of such occupancy or use, with the further provision that the Owner shall have first agreed in writing that the separate unit is complete to such a degree as to permit its use for occupancy. No such separate unit shall be occupied or used by the Owner until such certificate has been given. The guarantee for equipment that has seasonal limitations on its operation will commence on the date of test and written acceptance by the Owner.

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(b) Promptly upon receipt of notice from the Owner and without expense to the Owner, the Contractor shall correct all materials, supplies, equipment and workmanship provided under this Contract which proves to be defective within a period of one year from the commencement date of the guarantee as specified in "Guarantee of Work" subparagraph (a). In correcting defective Work, Contractor further agrees at no expense to Owner to:

(1) Repair all damage to the structure or site or equipment or contents thereof, which, in the opinion of the Owner was caused by the defect; and

(2) Repair any Work or materials or the equipment and contents of structures or site disturbed in correcting the defect.

(c) In fulfilling the requirements of the Contract or of any guarantee required thereby, if the Contractor disturbs any Work guaranteed under another contract, the Contractor shall, at no expense to Owner, restore such disturbed Work to a condition satisfactory to the Owner and guarantee such restored Work to the same extent as it was guaranteed under such other contract.

(d) If the Contractor, after notice, fails to proceed promptly to comply with any of the terms of this "Guarantee of the Work" Paragraph, the Owner may, by contract or otherwise, perform Contractor's obligations and the Contractor and its surety shall be liable for all reasonable expenses incurred by the Owner.

(e) All special guarantees applicable to definite parts of the Work that may be stipulated in the specifications or other papers forming a part of the Contract shall be subject to the terms of this "Guarantee of the Work" Paragraph during the first year of the life of special guarantee.

(f) With respect to materials or equipment furnished but not manufactured by the Contractor, the Contractor shall assign and deliver to the Owner whatever warranty the Contractor receives from the manufacturer. These warranties shall be in addition to the guarantee provided by the Contractor under this "Guarantee of Work" paragraph.

57. INDEMNITY AND HOLD HARMLESS AGREEMENT - Contractor agrees to indemnify, and hold Owner and its directors, officers, employees, and agents, harmless from and against any and all losses, claims, liens, demands and causes of action including reasonable legal fees incurred by Owner in defense of same, arising in favor of any party, including governmental agencies or bodies, on account of taxes, claims, liens, debts, personal injuries including employees of Owner, death or damages to property (including property of Owner) in any way incident to or in connection with the Work to be performed by Contractor hereunder, except only claims arising out of the sole negligence of the Owner. Contractor further agrees respond to, provide defense for, and defend any such claim, demand, or suit at its sole expense and agrees to bear all other costs and expenses related thereto, even if such claim, demand or cause of action is groundless, false, or fraudulent.

### 58. SECURITY, CONFIDENTIALITY, AND PROPRIETARY RIGHTS

(a) Only citizens of the United States will be permitted to work on the Owner's property. If requested by Owner, Contractor shall provide proof of citizenship of its employees, agents, and Subcontractors.

(b) Contractor shall release no information or make any public announcement or confirmation or denial of same on any phase of this Contract without the prior written approval of Owner. This includes but is not limited to advertisements, brochures, and the like.

(c) Contractor and its employees, agents, and Subcontractors shall follow and comply with all of Owner's rules and security requirements when upon Owner's property.

#### (d) Background Investigation and Access to Owner's Property.

(1) Contractor shall cause to have performed background investigations on all of its employees, and the employees of its agents and Subcontractors, requiring or having access to Owners' property for thirty (30) or more days in twelve (12) consecutive months, which period includes access while employed by Contractor or others. Background investigation requirements are as follows:

(A) Verify with previous employers over the last seven (7) years the following:

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- (i) Employment
  - (ii) Position
  - (iii) Salary or wage
  - (iv) Reason for termination
  - (v) Highest grade or latest claimed diploma or degree
  - (vi) Professional licenses or certifications
- (B) Information that should be requested and reported only if received:
- (i) Eligibility for rehire
  - (ii) Reputation for honesty, integrity, stability, and competence
- (C) Review public records in each jurisdiction where employee has lived and/or worked for last seven (7) years, to determine criminal convictions history, including appropriate state divisions of motor vehicles to determine violation convictions history
- (D) In the event that a background investigation reveals adverse conduct as defined below, the Contractor shall promptly notify Owner of that fact and shall promptly remove that individual from Owner's property and not refer or submit that individual for badging in the future. "Adverse conduct" may include any of the following events:
- (i) The individual has been convicted of an offense involving violent behavior (or a threat thereof) or fraudulent or dishonest conduct, including, but not limited to, fraud, theft, embezzlement, misappropriate, larceny, burglary, assault, battery, rape, sexual assault, murder, manslaughter, involuntary homicide, or stalking at any time within the last seven (7) years.
  - (ii) Information regarding the individual's previous employment could not be substantiated after contacting previous employer.
  - (iii) The individual does not hold the degree(s), professional certifications, and licenses that Contractor has represented to Owner.
  - (iv) For positions involving financial matters or other positions of trust, the individual has a record of default on any debt or a debt exceeding ninety (90) days past due on more than three (3) occasions within the three (3) years immediately preceding the date of this background investigation.
- (E) Results of these investigations are to be maintained by the Contractor, subject to audit by Owner, for a period of four (4) years following the expiration of the Contract.
- (F) Owner requires that each new Contractor employee and new employee of Contractor's agents and Subcontractors submitted for access to Owner's property, that the Contractor certify on the Contractor's letterhead and signed by the Contractor's president, another officer designated by the Contractor, or the Contractor's security officer, that it has conducted a background investigation for the listed personnel and that the investigation covered the required areas. This same certification will be required for second and subsequent tier Subcontractors and agents. The Contractor is required to keep on file the results of any and all background investigations. The certification letter shall be sent to Owner's Sourcing Representative.
- (G) Contractor may inquire with Owner's Sourcing Representative about the availability of background investigation services to Contractor from Owner's vendor at Owner's rate. The preceding is only provided as a potential source

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for accomplishment of the background investigation and is not a directive to use Owner's vendor.

- (2) For all Contractor's employees and employees of its agents and Subcontractors requiring access to Owner's property, the Contractor shall submit an access request letter signed by an officer of the Contractor on the Contractor's letterhead to the Owner's designated security representative at least one (1) working day in advance of the requested access. **Persons without the proper documentation will not be allowed access to Owner's property.** The letter shall contain the following:

- (A) Name, Social Security Number, and Place of Birth
- (B) Statement certifying requested personnel are United States Citizens
- (C) Statement of the means used to verify the person's nationality
- (D) Statement certifying a background investigation was conducted in accordance with the above requirements for those personnel requiring a background investigation

(e) All information provided by Owner to Contractor during the performance of this Contract and all improvements, modifications and derivations thereto shall be deemed to be the proprietary information of Owner. Contractor agrees: (1) to hold Owner's proprietary information in confidence and to protect it from release to third parties; (2) to disclose Owner's proprietary information only to Contractor's employees who have a need-to-know and only after they have been made aware of the proprietary nature of the information; and (3) to use such proprietary information solely for the purposes of performing this Contract. The restriction on release to third parties contained in this paragraph will not apply to release by the Contractor to subcontractors that Contractor uses in performing this Contract provided the Contractor includes in such subcontracts a provision substantially the same as this "Security and Confidentiality Paragraph. In the absence of an appropriate written agreement to the contrary, and notwithstanding any markings, no information furnished to Owner (whether documentary, oral, visual or otherwise) shall be considered confidential or proprietary or require any particular handling or precaution or have any restriction on use. All rights in and to information, knowledge, and data which arise out of or result from work performed under this Contract or which relate to the Owner's proprietary information shall be the sole property of the Owner. Any original work produced by Contractor as a direct result of efforts under this Contract shall be considered to be a work for hire and all rights therein shall be solely owned by the Owner. All (i) improvements, (ii) discoveries, and (iii) patentable inventions conceived or first reduced to practice during the performance of this Contract shall be the sole property of the Owner, and Seller shall (i) assign to and execute all instruments necessary to perfect title to same in Owner, and (ii) grant to Owner a nonexclusive, paid-up, irrevocable, world-wide, perpetual license under any patent, trade secret, or copyright of Contractor that is necessary for Owner to use the same.

### 59. PROSECUTION, SCHEDULING, PROGRESS

(a) Time of Commencement and Completion - The Contractor shall commence the Work within the time specified, and the rate of progress shall be such that the whole Work will be performed and the premises cleaned up in accordance with the Contract Documents and within the time limit specified in the Contract, unless an extension of time is made in the manner herein specified.

(b) Prosecution of the Work - The Contractor shall begin the Work to be performed under this Contract within ten (10) working days following the Notice to Proceed, and shall conduct the Work in such a manner and with such sufficient equipment, material and labor as is necessary to ensure its completion within the time limit. It is the intent of this requirement to obtain a continuous construction operation without delay, except as occasioned by unforeseeable causes beyond the control and without the fault or negligence of the Contractor, and it will be the Contractor's responsibility to prosecute the Work in the most expeditious manner. Should the Contractor discontinue work for any reason, it shall immediately notify the Project Manager/ Project Engineer/Field Engineer in writing of the reason for the discontinuance and shall also notify the Project Manager/Project Engineer/Field Engineer at least twenty-four (24) hours in advance of resuming operations.

(c) Methods, Techniques and Sequencing Operations - The Contractor shall furnish all labor and materials necessary to complete the Work and shall be responsible for and shall provide all methods, techniques, sequencing operations, and all analyses and reports. In order to avoid conflict of operations or delay in completion of the Work or the Project, the Project Manager/ Project Engineer/Field Engineer may furnish the Contractor with written

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direction with respect to the methods, sequencing, and priority of effort of the operations or Work; whereupon the Contractor shall take immediate steps to comply with such direction.

(d) Interfaces With Other Contracts - During the progress of the Work there may be several Contractors performing work simultaneously. Contractors shall cooperate and coordinate their work in order that a minimum of interference will occur during construction operations. Should any interference occur between Contractors which hampers the overall performance of the Project, the Project Manager/Project Engineer/Field Engineer may furnish the Contractor with written instructions designating priority of effort or change in methods; whereupon the Contractor shall take immediate steps to comply with such direction.

(e) Scheduling and Progress

(1) Construction Schedule - The Contractor shall, within ten (10) working days following the date of Notice to Proceed, submit for the Project Manager's/Project Engineer's/Field Engineer's approval a Microsoft Project or other Owner-approved format schedule outlining construction events, which shall thereafter be updated monthly by Contractor and submitted with the Contractor's payment requests. After each submission, the Contractor shall add additional items as may be requested by the Project Manager/Project Engineer/Field Engineer. This schedule will become a part of the Contract. If the Contractor fails to submit the required schedule within the prescribed time, the Owner may withhold progress payments until such time as the Contractor submits said schedule.

(2) Submittal Schedule - Within twenty (20) working days after receiving a Notice to Proceed, the Contractor shall submit to the Owner a schedule showing dates when shop drawings, certificates of compliance, physical and performance data for equipment and other engineering data related to selection of equipment or fabrication of structures will be submitted for approval. The schedule shall show actual as well as scheduled dates. The Contractor shall update and resubmit the schedule monthly. The schedule will provide adequate time for review and approval of submitted material and shall be coordinated with the construction schedule.

### 60. TERMINATION FOR CONVENIENCE OF OWNER

(a) The Owner may terminate the Work under this Contract in accordance with this "Termination for Convenience of Owner" Paragraph in whole, or from time to time in part, whenever the Owner shall determine that such termination is in the best interest of the Owner. Any such termination shall be effected by delivery to the Contractor of a Notice of Termination specifying the extent to which performance of Work under the Contract is terminated, and the date upon which such termination becomes effective.

(b) After receipt of a Notice of Termination, and except as otherwise directed by the Owner, the Contractor shall:

(1) Stop Work under the Contract on the date and to the extent specified in the Notice of Termination.

(2) Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the Work under the Contract as is not terminated.

(3) Terminate all orders and subcontracts to the extent that they relate to the performance of Work terminated by the Notice of Termination.

(4) Assign to the Owner, in the manner, at the times, and to the extent directed by the Owner, all of the right, title, and interest of the Contractor under the orders and subcontracts so terminated, in which case the Owner shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.

(5) Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval of the Owner to the extent it may require, which approval shall be final for all purposes of this "Termination for Convenience of Owner" Paragraph.

(6) Transfer title to the Owner and deliver in the manner, at the times, and to the extent, if any, directed by the Owner of:

(A) The fabricated or unfabricated parts, Work in progress, completed Work, supplies, and other material produced as a part of, or acquired in connection with the performance of, the Work terminated by the Notice of Termination; and

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(B) The completed or partially completed plans, drawings, information, and other property which, if the Contract had been completed, would have been required to be furnished to the Owner.

(7) Use its best efforts to sell, in the manner, at the times, to the extent, and at the price or prices directed or authorized by the Owner, any property of the types referred to in "Termination for Convenience of Owner" subparagraph (6); provided, however, that the Contractor:

(A) Shall not be required to extend credit to any purchaser; and

(B) May acquire any such property under the conditions prescribed and at a price or prices approved by the Owner. And provided further, that the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the Owner to the Contractor under this Contract shall otherwise be credited to the price or cost of the Work covered by this Contract or paid in such other manner as the Owner may direct.

(8) Complete performance of such part of the Work as shall not have been terminated by the Notice of Termination; and

(9) Take such action as may be necessary, or as the Owner may direct, for the protection and preservation of the property related to its Contract which is in the possession of the Contractor and in which the Owner has or may acquire an interest.

(c) At any time within thirty (30) days after the termination date specified in the Notice of Termination, the Contractor shall submit to the Owner a list, certified as to quantity and quality, of any or all items of termination inventory not previously disposed of, exclusive of items the disposition of which has been directed or authorized by the Owner.

(d) After receipt of a Notice of Termination the Contractor shall submit to the Owner its termination claim, in the form and with the certification prescribed by the Owner. Such claim shall be submitted promptly but in no event later than one year from the effective date of termination, unless one or more extensions in writing are granted by the Owner upon request of the Contractor made in writing within such one-year period or authorized extension thereof. Upon failure of the Contractor to submit its termination claim within the time allowed, the Owner may determine, on the basis of information available to it, the amount, if any, due to the Contractor by reason of the termination and shall thereupon pay to the Contractor the amount so determined.

(e) Subject to the provisions of "Termination for Convenience of Owner" subparagraph (b), the Contractor and Owner may agree upon the whole or any part of the amount or amounts to be paid to the Contractor by reason of the total or partial termination of Work pursuant to this "Termination for Convenience of Owner" Paragraph, which amount or amounts may include a reasonable allowance for profit on Work done; provided that such agreed amount or amounts, exclusive of settlement costs, shall not exceed the total contract price as reduced by the amount of payments otherwise made and as further reduced by the Contract price of Work not terminated. The contract shall be amended accordingly and the Contractor shall be paid the agreed amount.

(f) In the event of the failure of the Contractor and the Owner to agree, as provided in "Termination for Convenience of Owner" subparagraph (c), upon the whole amount to be paid to the Contractor by reason of the termination of Work pursuant to this "Termination for Convenience of Owner" Paragraph, the Owner shall determine, on the basis of information available to it, the amount, if any, due to the Contractor by reason of the termination and shall pay to the Contractor the amounts determined as follows:

(1) With respect to all Contract Work performed prior to the effective date of the Notice of Termination, the total (without duplication of any items) of

(A) The cost of such Work;

(B) The cost of settling and paying claims arising out of the termination of Work under subcontracts or orders as provided in "Termination for Convenience of Owner" subparagraph (b)(5), exclusive of the amounts paid or payable on account of supplies or materials delivered or services furnished by the Subcontractor prior to the effective date of the Notice of Termination of Work under this Contract, which amounts shall be included in the cost on account of which payment is made under "Termination for Convenience of Owner" subparagraph (a); and

(C) A sum, as a profit, equal to two percent (2%) of the part of the amount determined under (a) above, which represents the cost of articles or materials delivered to the site but not incorporated



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in the Work in place on the effective date of the Notice of Termination, plus a sum equal to eight percent (8%) of the remainder of such amount, but the aggregate of such sums shall not exceed six percent (6%) of the whole of the amount determined under "Termination for Convenience of Owner" subparagraph (a); provided, however, that if it appears that the Contractor would have sustained a loss on the entire Contract had it been completed, no profit shall be included or allowed under this "Termination for Convenience of Owner" subparagraph (c) and an appropriate adjustment shall be made reducing the amount of the settlement to reflect the indicated loss.

(2) The reasonable cost of the preservation and protection of property incurred pursuant to "Termination for Convenience of Owner" subparagraph (b)(9) and any other reasonable cost incidental to termination of Work under this Contract including expense incidental to the determination of the amount due to the Contractor as the result of the termination of Work under this Contract.

(g) The total sum to be paid to the Contractor under "Termination for Convenience of Owner" subparagraph (f)(1) shall not exceed the total Contract price as reduced by the amount of payments otherwise made and as further reduced by the Contract price of the Work not terminated. Except for normal spoilage, and except to the extent that the Owner shall have otherwise expressly assumed the risk of loss, there shall be excluded from the amounts payable to the Contractor under "Termination for Convenience of Owner" subparagraph (f)(1), the fair value, as determined by the Owner, of property which is destroyed, lost, stolen, or damaged so as to become undeliverable to the Owner, or to a buyer pursuant to "Termination for Convenience of Owner" subparagraph (b)(7).

(h) In arriving at the amount due the Contractor under this "Termination for Convenience of Owner" Paragraph there shall be deducted (1) all unliquidated advance or other payments on account therefore made to the Contractor, applicable to the terminated portion of this Contract; (2) any claim which the Owner may have against the Contractor in connection with this Contract; and (3) the agreed price for or the proceeds of sale of any materials, supplies, or other things kept by the Contractor or sold, pursuant to the provisions of this "Termination for Convenience of Owner" Paragraph, and not otherwise recovered by or credited to the Owner.

(i) If the termination hereunder is partial, the Contractor may file with the Owner a request in writing for a price adjustment to the Contract for the unterminated Work. Such price adjustment must be requested prior to the settlement of the terminated portion of this Contract. The price adjustment will be determined in accordance with the "Changes in Work" Paragraph of this Contract.

(j) The Owner may, from time to time, under such terms and conditions as it may prescribe, make partial payments and payments on account against costs incurred by the Contractor in connection with terminated portion of this Contract whenever the Owner, in its sole and absolute discretion, determines that the aggregate of such payments shall be within the amount to which the Contractor will be entitled hereunder. If the total of such payments is in excess of the amount finally agreed or determined to be due under this "Termination for Convenience of Owner" Paragraph, such excess shall be payable by the Contractor to the Owner upon demand, together with interest computed at the prime rate as listed by Chase Manhattan Bank, plus two (2) points for the period from the date such excess payments are received by the Contractor to the date on which such excess is repaid to the Owner; provided, however, that no interest shall be charged with respect to any such excess payment attributable to a reduction in the Contractor's claim by reason or retention or other disposition of termination inventory until ten (10) days after the date of such retention or disposition, or such later date as determined by the Owner by reason of the circumstances.

(k) Unless otherwise provided for in this Contract or by applicable statute, the Contractor, from the effective date of termination and for a period of three (3) years after final payment under this Contract, shall preserve and make available to the Owner at all reasonable times at the office of the Contractor, but without direct charge to the Owner, all its books, records, documents, and other evidence bearing on the costs and expenses of the Contractor under this Contract and relating to the Work terminated hereunder, or, to the extent approved by the Owner, photographs, microphotographs, or other authentic reproductions thereof.

(l) Nothing contained in this "Termination for Convenience of Owner" Paragraph shall limit or alter the rights which the Owner may have for termination of this Contract under the "Owner's Right to Terminate Contract for Cause" Paragraph or any other right which Owner may have for default or breach of contract by Contractor.

61. YEAR 2000 COMPLIANCE - In addition to any other warranties provided by Contractor under this Contract, Contractor guarantees that each hardware, software, and firmware product manufactured, developed, integrated, or otherwise furnished by the Contractor or maintained under this Contract shall be able to process date data from, into, between, and within the years 1999 and 2000 and the twentieth and twenty-first centuries. The term "process date

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data" includes but is not limited to calculating, comparing, and sequencing the date data and leap year calculations when used in accordance with the Contractor's product documentation. If the Contract requires that hardware, software and firmware perform as a system, then the warranty provided by this "Year 2000 Compliance" Paragraph shall apply to the system as well as to the individual hardware, software and firmware. Owner's rights and remedies in the event of non-compliance with the requirements of this "Year 2000 Compliance" Paragraph shall be the same as those provided in the paragraph entitled "Guarantee of Work."

62. BUSINESS CONDUCT - The Owner has implemented a comprehensive Business Conduct Program, which is summarized in the pamphlet "Values, Ethics, and Business Conduct For Northrop Grumman Associates" available at [http://sourcing.nn.northropgrumman.com/sourcing/docs/Values\\_Ethics\\_and\\_Business\\_Conduct.pdf](http://sourcing.nn.northropgrumman.com/sourcing/docs/Values_Ethics_and_Business_Conduct.pdf). The Contractor shall be familiar with this pamphlet and abide by its provisions; in particular, Contractor shall not offer any gratuity to Owner's employees in a manner inconsistent with the guidance provided in this pamphlet. Furthermore, any falsification, concealment, or alteration of any material fact, or any false, fraudulent or fictitious statement or representation in connection with the work under a Contract within the jurisdiction of the Government is not only prohibited by the Owner's policy, but may also be punishable under Federal Law.

63. BANKRUPTCY - In the event the Contractor enters into proceedings relating to bankruptcy or insolvency, whether voluntary or involuntary, the Contractor agrees to furnish to Owner, by certified mail, written notification of the bankruptcy or insolvency proceeding. This notification shall be furnished within five (5) 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 Owner's orders against which final payment has not been made. This obligation remains in effect until final payment under this Contract.

64. SECTION AND PARAGRAPH HEADINGS - The section and paragraph headings herein are for convenience only and shall not limit in any way the scope of any provision of this Contract.

65. CONTINUING TERMS AND SEVERABILITY - The Proprietary Information and indemnity paragraphs contained herein shall survive termination or cancellation of this Contract. If any part, term or provision of this Contract contravenes any law of a federal, state or local government having jurisdiction over this Contract, that part, term, or provision shall be inoperative in that jurisdiction and the validity of the remaining portions or provisions shall not be affected thereby.

66. NON-WAIVER - No waiver by Owner of any breach by Contractor of any of its obligations shall constitute a waiver of any subsequent breach of the same or other obligations. No payment made hereunder shall be deemed an acceptance or approval of any defective or unsatisfactory material or workmanship, or a waiver of Owner's right to later reject the same. Owner's failure to insist on strict performance at any time shall not constitute a waiver by Owner of the requirement for strict performance by the Contractor at all subsequent times. The rights and remedies provided in this Agreement are in addition to others provided by law; any failure to state a right or remedy herein does not constitute a waiver of such other rights or remedies.

67. ACCESS TO UNCLASSIFIED NAVAL NUCLEAR PROPULSION INFORMATION

(a) Appropriate safeguards must be used by the Contractor for the safeguarding from actual potential or inadvertent release by the Contractor, or any subcontractor of any Naval Nuclear Propulsion Information in any form.

(b) Access by non-U. S. citizens to Owner's facility is prohibited unless approved in writing by Owner. If such access is provided, these personnel will have special badges and hard hats that make them stand out, and their access to areas of the Owner's facility will be limited to just the project site. They shall also remain within certain access areas while entering and leaving the Owner's facility. There may be times that these personnel will need to leave the Owner's facility for special procedures, and there may also be times when a project reaches a stage where it becomes an area of increased security. These personnel will then be escorted out of the Owner's facility, and their badges removed.

68. EXPORT RELATED REQUIREMENTS

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(a) Export Compliance. Contractor is advised that its performance of this Contract 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"). Contractor represents and warrants that it is either 1) a U.S. Person as that term is defined in the Export Laws and Regulations, or 2) that it has disclosed to Owner'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. Contractor shall comply with any and all Export Laws and Regulations, and any license(s) issued thereunder.

(b) Foreign Personnel. Contractor shall not give any Foreign Person 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 Owner. 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 Owner may reasonably request. No consent granted by Owner in response to Contractor's request hereunder shall relieve Contractor of its obligations to comply with the provisions of (a) above or the Export Laws and Regulations, nor shall any such consent constitute a waiver of the requirements of (a) above, nor constitute consent for Contractor to violate any provision of the Export Laws and Regulations.

(c) Indemnification. Contractor shall indemnify and save harmless Owner from and against any and all damages, liabilities, penalties, fines, costs, and expenses, including attorneys fees, arising out of claims, suit, allegations or charges of Contractor's failure to comply with the provisions of this paragraph and breach of the warranty set forth in (a) above. Any failure of Contractor to comply with the requirements or any breach of the warranty contained in this paragraph shall be a material breach of this Contract.

(d) Subcontracts. The substance of this paragraph shall be incorporated into any subcontract entered into by the Contractor for the performance of any part of the work under this Contract.

69. EUROPEAN UNION (EU) SAFE HARBOR - With respect to personal information about Seller's employees located in European Union (EU) countries, Purchaser 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 Northrop Grumman's privacy policy with respect to individuals located in EU countries, please refer to Northrop Grumman's privacy policy information at <http://www.northropgrumman.com/privacy/index.html>. Seller shall provide this notice to each of its EU employees who provide personal information to Purchaser.