

## General Provisions for Procuring IT Products and Services

NNS: Appendix A – IT Products and Services  
Ingalls: FORM SBF P9364

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

- A. BUYER, LICENSEE, or LESSEE means Huntington Ingalls Incorporated, acting through its authorized purchasing representative.

- B. SELLER, LICENSOR, or LESSOR means the party with whom Huntington Ingalls Incorporated is contracting.
- C. PARTIES means Buyer and Seller collectively.
- D. ORDER means the instrument of contracting, including the order form and all documents it references or incorporates (including but not limited to these general provisions, statements of work, plans, specifications, and regulations).
- E. When the term “product” or “products” is used, it shall refer to any hardware, software or services furnished by Seller to Buyer under this Order.

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

The descriptive headings contained in this Order are for convenience or reference only and in no way define, limit or describe the scope or intent of this Order.

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

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

**4. BUYER AUTHORIZATION. [\(back to top\)](#)**

- A. Buyer’s authorized purchasing representative has sole authority to make contractual commitments on behalf of Buyer, to provide contractual direction, and to change contractual requirements defined in this Order.
- B. Buyer’s engineering, information technology, technical personnel and other representatives may from time to time render assistance or give technical advice or discuss or affect an exchange of information with Seller’s personnel concerning the products hereunder. No such action shall be deemed to be a change under the “Changes” provision of this Order.

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

- A. The issuance of an Order, and if applicable Buyer’s execution of Seller’s Software License and/or Lease Agreement as may be amended by Buyer, constitute Buyer’s offer. Acceptance is expressly limited to the terms and conditions of the Order, and if applicable, as stated in Seller’s Software License/Lease Agreement to the extent that such terms and conditions are consistent with and do not in any way conflict with the terms and conditions as stated herein. Buyer hereby objects to any and all additional or different terms and conditions in Seller’s acceptance.
- B. Seller’s acknowledgement, acceptance of payment, or commencement of performance, shall be conclusive evidence of acceptance of this offer as written.
- C. Buyer’s use of the software, hardware, or firmware delivered under this Order shall not constitute Buyer’s acceptance of any of Seller’s license, lease, or sale terms inconsistent with this Order without Buyer’s prior, express written consent.
- D. Modifications hereto, to be binding, must be in writing and issued by Buyer’s authorized purchasing representative.

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

- A. In the event of any inconsistency between any parts of this Order, the inconsistency shall be resolved by giving precedence in the following order:
  - (i) The Order and any modifications or changes thereto exclusive of items (ii) through (vii).
  - (ii) Any HII division supplement and any regulations referenced therein or other special provisions to these General Provisions (also referred to as terms and conditions) as invoked in this Order.
  - (iii) These General Provisions and any regulations referenced therein.
  - (iv) Statement of Work (“SOW”).
  - (v) Specification/Drawing.

- (vi) Other documents referenced in this Order
- (vii) Seller's software, hardware or firmware license, lease, or sales agreement (if applicable).

B. Seller shall immediately bring any inconsistencies to the attention of Buyer in writing, and any inconsistencies in or among any of the foregoing shall not be the basis for any defense of a breach of contract claim brought by Buyer against Seller for Seller's failure to perform under this Order, nor shall any such inconsistencies be the basis for any claim of any kind by Seller against Buyer unless Seller has first timely brought such inconsistencies to Buyer's attention and Buyer has failed to resolve such inconsistencies.

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

Neither this Order nor the benefits or obligations thereof shall be assigned by Seller except with the prior written consent of Buyer, such consent not to be unreasonably withheld. Prior to any sale or merger of Seller with a third party that results in the transfer of any rights or obligations arising under this Order, Seller shall notify Buyer and execute any documents requested by Buyer in connection with such transfer.

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

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

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

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

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

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

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

Seller shall not collect any sales or use taxes inasmuch as Buyer has direct pay permits held for Louisiana, Mississippi and Virginia. Seller shall pay all other State, Federal and Local taxes, assessments and duties that may be applicable to software, hardware or services delivered under this Order or Seller's performance hereunder.

**12. PAYMENT AND INVOICES. [\(back to top\)](#)**

Payment shall be made within the later of the following two events: (A) The 30th day (or such other time as specified herein) after the designated billing office receives a proper invoice from Seller; or (B) The 30th day (or such other time as specified in the Order) after Buyer's receipt of: (i) supplies delivered at Buyer's facility or such other facility as designated by Buyer; or (ii) services performed. Unless Seller is part of Buyer's Invoiceless Payment System, Seller shall send all invoices, in duplicate, showing the Order number and Order Item Number to the Huntington Ingalls Incorporated address on the first page of this Order, Attention: Accounts Payable. Buyer may set-off any amount(s) due from Seller to Buyer, liquidated or unliquidated, against payments due to Seller under this or any other Order. At any time, Buyer or its customer may audit

Seller's invoices to verify their accuracy, completeness and compliance with the terms of this Order. Payment of Seller's invoices shall be subject to adjustment for any amounts found upon audit or otherwise to have been improperly invoiced. For progress payments, Seller shall note "Final Invoice" on the final billing documents sent to Buyer. These actions are necessary to ensure proper closeout of this Order.

- (i) Payments under the Order are subject to Buyer's acceptance of any software, hardware, or services Seller has provided under the Order in accordance with the Order's terms.
- (ii) Payment of invoices shall not constitute approval or acceptance by Buyer of equipment or services rendered.

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

Changes to this Order, to be binding, must be in writing and issued by the authorized representatives of the Parties. Except for changes identified as such in writing and issued by the authorized representatives of the Parties, Seller shall notify Buyer in writing within 15 calendar days from the date that Seller identifies any conduct by Buyer (including actions, inactions, and written or oral communications) that Seller regards as a change to the Order terms and conditions. Seller's notice shall include a summary of the circumstances of the conduct regarded as a change. Unless otherwise authorized by Buyer in writing, Seller shall not commence work in connection with any change or increase in expenses until the Parties in writing agree upon the fee and/or schedule impact of the change.

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

- A. Buyer may terminate this Order in whole or in part at any time without liability to Seller if Seller:
  - (i) Fails to make delivery of the products within the time specified in this Order, or
  - (ii) Fails to perform any of the other provisions of this Order, or so fails to make progress as to endanger performance of this Order in accordance with its terms, including the completion of those items within the time set forth elsewhere in this Order, and in either of these two circumstances does not cure such failure within a period of ten days (or such longer period as Buyer may authorize in writing) after receipt of notice from Buyer specifying such failure, or
  - (iii) Becomes insolvent or fails to provide additional assurances of financial solvency when it reasonably appears that Seller is or will not be financially solvent and additional assurances are requested by Buyer. If Buyer terminates part of the work under this Order, Seller shall continue performance of this Order to the extent not terminated.
- B. The rights and remedies of Buyer provided in this provision shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Order.
- C. If, after a default termination, it is determined that Seller was not in default, or that the default was excusable, the rights and obligations of the Parties shall be the same as if the termination had been issued for the convenience of Buyer.
- D. Seller shall also be deemed in default if any product continues to exhibit defects causing disruption of use and/or repeated periods of downtime, notwithstanding Seller's remedial or maintenance efforts, over a continuous period of three months or more.
- E. Refund of Payments. Seller shall, upon termination by Buyer due to default by Seller, and in addition to any other remedies at law or in equity available to Buyer, return payments it received under this Order for the terminated work. The refund of monies paid hereunder shall not be deemed the exclusive remedy of Buyer in the event of a default or breach of this Order by Seller.

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

- A. Buyer may terminate this Order in whole or in part at any time for its sole convenience. Buyer will terminate by delivering to Seller a Notice of Termination specifying the extent of termination and the effective date. After receipt of a Notice of Termination, Seller shall immediately proceed with the following obligations:

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

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

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

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

- A. In addition to the other remedies provided for hereunder and except as expressly limited herein, both Parties to this Order shall have the full benefit of all applicable remedies generally available to a Licensor/Licensee of goods under the Uniform Commercial Code.
- B. Any dispute arising under or related to this Order shall be submitted in writing for resolution to equivalent ascending levels of management of the respective Parties up to the Senior Executive of the Supply Chain Management organization placing this Order, and Seller's equivalent executive level.
- C. If a dispute cannot be resolved to both Parties' mutual satisfaction, after good faith negotiations, within 90 days from the date the written dispute is received by the other party in accordance with the notice provisions set forth herein, or such additional time as the Parties agree upon, in writing, either party may only bring suit in the appropriate court in the state listed as Buyer's address in the Order; said forum selection to be made without regard to said state's conflict of laws principles.
- D. Pending any informal resolution, law suit, appeal, or final decision referred to in this provision, or the settlement of any dispute, Seller shall proceed diligently, as directed by Buyer, with performance of this Order.
- E. Seller shall commence an action for breach or any other dispute arising under or related to this Order within two years after the cause of action accrues, or by the otherwise applicable statute of limitations, whichever period is shorter.
- F. The Parties agree that this Order is the result of negotiations between the Parties and that no term or provision shall be construed against a Party merely because the term or provision is contained in a document drafted, prepared, written or pre-printed by that Party.

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

- A. During the period of performance and any associated warranty periods of this Order, Seller and its subcontractors (collectively, "Seller" for purposes of this provision) shall, at their sole cost and expense, procure and maintain all required insurance policies as set forth below.
- B. For all Orders, Seller shall maintain (i) Employer Liability insurance in the amount of at least \$1,000,000, (ii) Workers' Compensation insurance with coverage as required by the most current laws of the state or foreign

jurisdiction in which the work is performed, and (iii) Commercial General Liability insurance with coverage having a minimum combined single limit of \$2,000,000 per occurrence and \$5,000,000 in the aggregate for bodily injury and property damage.

- C. Insurance coverage described herein must be in place and effective prior to commencement of any activity that is the subject of this Order and Seller shall provide evidence that the required insurance is in place in the form of a certificate of insurance (COI). COIs are required to be submitted for the following:
- (i) Commercial General Liability Insurance: Whenever performance requires work on a Government installation, Buyer's premises or premises under the care, custody or control of Buyer or Buyer's customer, Seller and its subcontractors shall, at their sole cost and expense, procure and maintain Commercial General Liability Insurance with coverage having a minimum combined single limit of \$2,000,000 per occurrence and \$5,000,000 in the aggregate for bodily injury and property damage. Coverage shall include but not necessarily be limited to, premises and operations, products and completed operations and contracts.
  - (ii) Automobile Liability Insurance: When Seller's performance requires driving onto a U.S. Government installation, Buyer's premises or premises under the care, custody or control of Buyer or Buyer's customer, Seller shall procure and maintain Automobile Liability Insurance with coverage having at least a Combined Single Limit \$2,000,000 for bodily injury and property damage covering all owned, hired and non-owned vehicles.
  - (iii) United States Longshore & Harbor Workers' Compensation Act Insurance: Seller shall procure and maintain appropriate coverage under the Longshore and Harbor Workers' Compensation Act if any Seller employee will be within the production environment on the premises of Buyer.
  - (iv) Defense Base Act Workers' Compensation Insurance: Seller shall maintain Defense Base Act Workers' Compensation if work hereunder is being performed in connection with public work contracts, or with any United States Government Agency where physical work occurs on United States military bases or on any lands used by the United States for military purposes outside of the United States
  - (v) Professional Liability Insurance: Whenever Seller provides design and/or engineering services, Seller shall, in addition to the other applicable insurance noted herein, procure and maintain professional liability (errors and omissions) insurance with coverage having minimum limits of \$1,000,000 per claim and \$2,000,000 in the aggregate.
  - (vi) [Reserved].
  - (vii) Cargo and Builder's All Risk Property Insurance: If this Order includes ship-in-place terms, milestone payments, and/or Buyer provides material to Seller, Seller shall procure and maintain Cargo and Builder's All Risk Property Insurance, or All Risk Property Insurance (for ship-in-place items only), with coverage having minimum limits equivalent to the value of the Product(s) or shipment, as applicable.
  - (viii) [Reserved].
  - (ix) Pollution Liability Insurance: If this Order is for transportation, handling and/or disposal of asbestos, radiological or any other hazardous waste, material or substances, Seller shall procure and maintain Pollution Liability Insurance with coverage having a minimum limit of \$5,000,000.
  - (x) Tug-Related Insurance: If this Order is for tugs, ship towing services, ship pilots or crews, Seller shall procure and maintain Vessel Pollution Liability Insurance with coverage having a minimum limit of \$5,000,000, Marine General Liability Insurance with coverage having a minimum limit of \$5,000,000, Protection and Indemnity Insurance with coverage having a minimum limit of \$5,000,000, and Marine Hull and Machinery Insurance with coverage having a minimum limit of the agreed value of the vessel.
  - (xi) Construction-Related Insurance: If this Order is for facility construction, renovation or excavation services, Seller shall procure and maintain Builder's All Risk Property Insurance with coverage having a limit equal to the construction value of the project.
- D. If a COI is required to be submitted for any insurance coverage required in paragraph C above, a COI shall also be submitted for the insurance coverages required in paragraph B above.

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

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

- A. If Buyer property is furnished in conjunction with this Order, it shall be furnished "as is." Unless otherwise noted in this Order, Seller shall assume the risk of, maintain adequate insurance, and be responsible for, any loss, destruction of or damage to property provided to Seller by Buyer while such property is in Seller's possession or control. Excluding property authorized to be consumed in the performance of this Order, Seller shall return such property in as good a condition as when received except for reasonable wear and tear, or in the case of property to be overhauled or repaired, in such better condition as may be required by the terms of this Order.
- B. Seller shall use Buyer furnished property only for performing this Order, unless otherwise provided for in this Order or approved by Buyer. Seller shall not modify, cannibalize, or make alterations to Buyer furnished property unless this Order specifically identifies the modifications, alterations or improvements as work to be performed.
- C. Buyer shall retain title to all Buyer furnished property. Title to such property shall not be affected by its incorporation into or attachment to any property not owned by Buyer, nor shall Buyer furnished property become a fixture or lose its identity as personal property by being attached to any real property.
- D. Seller shall immediately discharge any lien, other than a lien held by Buyer, on Buyer furnished property.

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

- A. As of the time of award of this Order, Seller represents and warrants that:
  - (i) Seller has submitted to Buyer Form SBF P9152, Huntington Ingalls Incorporated Supplier Data & Certifications, which is incorporated herein by reference;
  - (ii) Seller's information disclosed on SBF P9152 is current, accurate and complete;
  - (iii) Neither Seller nor any of its principals is debarred, suspended, or proposed for debarment by the Government.
- B. If Seller's information as disclosed in the SBF P9152 has changed, Seller shall complete and submit to Buyer a revised SBF P9152 prior to acceptance of this Order.
- C. If Seller's information as disclosed on the SBF P9152 changes during performance of this Order, Seller shall complete and submit to Buyer a revised SBF P9152.

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

- A. “Proprietary Information” for purposes of this Order, means all knowledge no matter how communicated or stored Buyer furnishes to Seller, including, but not limited to, any item identified in writing at the time of disclosure as proprietary and marked with an appropriate legend, marking, or stamp identifying the data as Buyer’s Proprietary Information.
- B. Seller will treat all Proprietary Information received by Seller in connection with this Order; all copies of Proprietary Information; and all improvements, modifications, and derivations of Proprietary Information as Buyer’s property regardless of the medium on which such Proprietary Information is stored or communicated. In making copies of Proprietary Information, Seller will preserve any legend, marking, or stamp contained on the Proprietary Information that identifies the data as Buyer’s Proprietary Information. Unless otherwise provided in this Order, Seller further agrees to affix the following legend “Huntington Ingalls Industries Proprietary” on:
  - (i) all improvements, modifications, and derivations of Proprietary Information; and
  - (ii) any Proprietary Information extracted from Buyer’s computer systems or otherwise provided by Buyer to Seller if not already marked.
- C. Seller may disclose Proprietary Information to its subcontractors as required for the performance of this Order, provided each such subcontractor first assumes by written agreement the same obligations imposed on Seller under this Order relating to Buyer’s Proprietary Information.
- D. If a separate proprietary information or information exchange and non-disclosure agreement relating to the subject matter of this Order exists between the Parties, all data, knowledge and information furnished by one Party to the other Party shall be protected pursuant to such proprietary information or information exchange and non-disclosure agreement.
- E. If no separate proprietary information or information exchange and non-disclosure agreement exists between the Parties, Seller will keep Buyer’s Proprietary Information confidential and, except as provided herein, (i) not disclose such Proprietary Information to any other person except to its officers, agents and employees who are under an obligation to keep such Proprietary Information confidential and have a need to know such Proprietary Information to fulfill Seller’s obligation under this Order, and (ii) treat such Proprietary Information with the same degree of care as Seller uses in handling its own proprietary or confidential information and – in all events – with not less than reasonable care. Seller will use Buyer’s Proprietary Information only for purposes necessary for performing this Order and will return Proprietary Information to Buyer upon completion of the work to be performed under this Order unless Buyer expressly agrees to the contrary in writing.
- F. If no separate proprietary information or information exchange and non-disclosure agreement exists between the Parties, no information furnished to Buyer (whether documentary, oral, visual or otherwise) shall be considered confidential or proprietary or require any particular handling or precaution or have any restriction on Buyer’s right to use, modify, reproduce, perform, display, release, or disclose such information in whole or in part, in any manner, and for any purpose whatsoever, and to have or authorize others to do so.
- G. Upon discovery by Seller of any inadvertent or accidental disclosure of Buyer’s Proprietary Information, Seller shall notify Buyer promptly and take all commercially reasonable steps to retrieve such disclosed Proprietary Information and to cease and prevent any further disclosure of the Proprietary Information.

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

- A. Seller warrants that the software, hardware or services delivered to Buyer do not infringe upon or violate any patent, trademark, trade secret, copyright, invention or proprietary data of any third party.
- B. Seller will indemnify and hold harmless Buyer, Buyer’s parent and affiliates and their respective officers, directors, employees, and customers (“Indemnified Parties”) from, and, against any and all liabilities, claims, losses and expenses arising out of any allegation of patent, copyright, or trademark infringement or allegation of trade secret misappropriation (collectively or individually, “Claim”) resulting from



Indemnified Parties' use, manufacture, or sale (including any re-sale) of any product or service Seller provides to Buyer that Seller authorizes expressly or impliedly under this Order. Seller shall, at its own cost, defend Buyer against such Claims, and, it shall pay Buyer's reasonable attorney fees and expenses, related to carrying out and enforcing the terms of this provision, as those costs are incurred. Buyer has the right to conduct such defenses if it so chooses.

- C. Should the software, hardware or services become, or if in Seller's opinion is likely to become, the subject of any claim of infringement, Seller may procure for Buyer the right to continue using the software, hardware or services, or replace or modify the software, hardware or services to make it non-infringing at no additional cost to Buyer. If neither of the aforementioned alternatives can be reasonably and/or timely accomplished, Seller and Buyer shall enter into good faith negotiations to derive the equitable adjustment to be provided to Buyer.

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

- A. **Rights in Original Works, Inventions, Discoveries, and Improvements.** Any original work Seller creates at Buyer's direction under this Order is a work for hire and Buyer solely owns all rights therein and Seller assigns all right, title, and interest in such original works to Buyer. All (i) improvements, (ii) discoveries, (iii) works, (iv) inventions, (v) patents (including patent applications and their progeny), (vi) copyrights, (vii) trademarks, and (viii) trade secrets made or created using resources (including, but not limited to, money, credit, or Buyer's obligation to pay Seller under this Order), facilities, material, supplies, information, data, equipment, personnel, direction, or instructions Buyer furnishes Seller during the performance of this Order ("Covered Intellectual Property") are the sole property of Buyer, and Seller (i) assigns all right, title, and interest in all such Covered Intellectual Property to Buyer; (ii) will assist Buyer in preparing and will execute all instruments necessary to perfect all right, title, and interest to Covered Intellectual Property in Buyer, and (iii) grants to Buyer a nonexclusive, paid-up, irrevocable, world-wide, perpetual license to any Seller (1) improvements, (2) discoveries, (3) works, (4) inventions, (5) patents (including patent applications and their progeny), (6) copyrights, (7) trademarks, and (8) trade secrets necessary for Buyer to make, use, or sell any product or service incorporating or using Covered Intellectual Property.
- B. **No Transfer of Intellectual Property Rights from Buyer to Seller.** Unless expressly stated otherwise in this Order, Buyer does not transfer any right, title, and interest in any of Buyer's (i) improvements, (ii) discoveries, (iii) works, (iv) inventions, (v) patents (including patent applications and their progeny), (vi) copyrights, (vii) trademarks, or (viii) trade secrets to Seller or anyone else whatsoever for any purpose whatsoever except that Buyer grants to Seller such license to Buyer's (i) improvements, (ii) discoveries, (iii) works, (iv) inventions, (v) patents (including patent applications and their progeny), (vi) copyrights, (vii) trademarks, and (viii) trade secrets to the minimum extent such license is reasonably necessary for Seller to meet Seller's obligations to Buyer arising under this Order. Buyer and Seller each retain all their respective title to all (i) improvements, (ii) discoveries, (iii) works, (iv) inventions, (v) patents (including patent applications and their progeny), (vi) copyrights, (vii) trademarks, and (viii) trade secrets that Buyer and Seller each respectively held before the last date Buyer and Seller execute this Order and nothing in this Order is intended to affect any transfer, sale, or assignment of such title.

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

- A. **Export Compliance.** Seller is advised that its performance of this Order may involve the use of or access to articles, technical data or software that is subject to export controls under 22 United States Code 2751 – 2796 (Arms Export Control Act) and 22 Code of Federal Regulations 120-130 (International Traffic in Arms Regulations) or 50 United States Code 2401 – 2420 (Export Administration Act) and 15 Code of Federal Regulations 768 – 799 (Export Administration Regulations) and their successor and supplemental laws and regulations (collectively hereinafter referred to as the "Export Laws and Regulations"). Seller represents and warrants that it is either:

- (i) A U.S. Person as that term is defined in the Export Laws and Regulations; or
  - (ii) That it has disclosed to Buyer's Representative in writing the country in which it is incorporated or otherwise organized to do business, or if a natural person, all citizenships and U.S. immigration status.
- B. Seller shall comply with any and all Export Laws and Regulations, and any license(s) issued thereunder.
- C. **Foreign Personnel/Persons.** Seller shall not give any Foreign Person (including Seller's own non-U.S. employees or affiliates) access to Technical Data, software or Defense Articles, or provide an unauthorized Defense Service as those terms are defined in the applicable Export Laws and Regulations without the prior written consent of Buyer. Any request for such consent must state the intended recipient's citizenship(s), and status under 8 U.S.C. 1101 and 8 U.S.C. 1324 (the "Immigration and Naturalization Act"), and such other information as Buyer may reasonably request. No consent granted by Buyer in response to Seller's request under this paragraph C shall relieve Seller of its obligations to comply with paragraph B of this provision or the Export Laws and Regulations, nor shall any such consent constitute a waiver of the requirements of paragraph B, nor constitute consent for Seller to violate any requirement of the Export Laws and Regulations.
- D. **Indemnification.** Seller shall indemnify and hold harmless Buyer, Buyer's parent and affiliates and their respective officers, directors, and employees from and against any and all liabilities, claims, losses and expenses arising out of the failure of Seller, its employees, subcontractors, or agents to comply with the requirements of this provision and breach of the warranty set forth in paragraph A. Seller shall, at its own cost, defend Buyer against such claims, losses, and liabilities, and, it shall pay Buyer's reasonable attorney fees and expenses, related to carrying out and enforcing the terms of this provision, as those costs are incurred. Buyer has the right to conduct such defenses if it so chooses. Any failure of Seller to comply with the requirements or any breach of the warranty contained in this provision shall be a material breach of this Order.
- E. **Subcontracts.** The substance of this provision shall be incorporated into any lower-tier subcontract entered into by Seller for the performance of any part of the work under this Order.

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

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

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

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

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

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

"*Hazardous material*" means any material defined as hazardous under the latest version of Federal Standard No. 313 as maintained by the General Services Administration (GSA) <https://www.gsa.gov/portal/content/101201>.

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

Seller shall not provide any hazardous materials or products containing hazardous materials unless Buyer has approved the Safety Data Sheet (SDS) for the product. SDS provided by Seller shall meet requirements of the United States Occupational Safety and Health Administration (OSHA) Hazard Communication Standard and be in the 16 section format of the United Nations Globally Harmonized System of Classification and Labeling of Chemicals (GHS) format as required by 29 CFR 1910.1200(g). **Placement of this Order does not constitute approval. If no SDS was approved prior to Order placement, then no hazardous material may be delivered to the Buyer unless and until the Buyer approves the SDS.**

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

Shipments of hazardous materials or products containing hazardous materials shall have a copy of most recent SDS securely attached to external packaging. If Seller later determines that the SDS secured to the external packaging does not match the products delivered, Seller must immediately notify Buyer.

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

Delay to Buyer's receipt of shipment and any transportation costs due to return of product for reasons of an unapproved, inconsistent or incomplete SDS/MSDS are at Seller's expense. Repeated non-compliance will result in the Seller being removed from the list of approved suppliers.

### B. Prohibited Hazardous Materials:

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

under this order. The products furnished under this Order include all ingredients in such products (e.g., newly formulated coatings) and all materials of construction in such product, including sub-component materials (e.g., batteries, circuit boards), applied coatings, applied primers, lubricants, adhesives, and any other consumables that remain on the delivered product. A hazardous material constituent that is an impurity, i.e., a trace amount that is not an ingredient and does not contribute to the function or usefulness of the product, is excluded from these requirements.

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

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

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

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

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

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

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

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

D. Services on Site:

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

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

E. Additional Prohibitions:

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

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

In addition to any other remedies provided for in this Order, Seller shall indemnify and hold harmless Buyer, Buyer's parent and affiliates, and their respective officers, directors, and employees (collectively, for the purposes of this provision, "Buyer") from and against any and all liabilities, claims, losses and expenses arising out of the failure of Seller, its employees, subcontractors or agents, in conjunction with this Order to comply with any laws, regulations or ordinances. Seller shall, at its own cost, defend Buyer against such claims, losses, and liabilities, and, it shall pay Buyer's reasonable attorney fees and expenses, related to carrying out and enforcing the terms of this provision, as those costs are incurred. Buyer has the right to conduct such defenses if it so chooses.

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

Neither party shall be liable to the other for delays resulting from causes beyond its control and without its fault or negligence, including but not restricted to acts of God or of the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, or unusually severe weather. Seller shall not be liable for delays of subcontractors or suppliers of Seller only when arising from causes beyond the control and without the fault or negligence of both Seller and such subcontractors or suppliers and only when Seller could not have obtained the supplies or services from other sources in sufficient time to permit Seller to meet the required delivery schedule. Upon the happening of any circumstances or causes aforesaid, the affected party shall notify the other party as soon as possible in writing. Any relief shall be limited to an extension of delivery dates or times of performance to the extent caused thereby.

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

Seller is an independent contractor. Seller shall:

- A. Have exclusive control and direction over its employees' performance of the work; and

- B. Be responsible for all payroll functions for its employees. No persons employed by Seller or Seller's subcontractors shall be deemed an employee or agent of Buyer for any purpose.

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

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

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

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

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

- A. Both Parties agree that, irrespective of the place of performance of this Order, unless otherwise specifically provided herein, this Order will be construed and interpreted according to the law of the state of the Huntington Ingalls Incorporated facility issuing this Order, as identified in the Order, excepting that state's laws on conflicts of law. Exclusive venue for suits at law or equity arising under or related to this Order shall be:
- (i) United States District Court for the Eastern District of Virginia or Newport News Circuit Court for orders issued by Huntington Ingalls Incorporated-Newport News Shipbuilding division.
  - (ii) United States District Court for the Southern District of Mississippi or the Circuit Court of Jackson County, Mississippi for orders issued by Huntington Ingalls Incorporated-Ingalls Shipbuilding division.
- B. The Parties further agree that the Uniform Computer Information Transactions Act ("UCITA") or any version thereof, adopted in the Commonwealth of Virginia or in any other state, in any form shall not apply to this Order, and to the extent that UCITA may be applicable, the Parties hereby agree to opt out of its applicability pursuant to the opt-out provisions contained therein.

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

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

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

The "Proprietary Information," "Intellectual Property Rights," "Insurance," "Indemnification – Government Requirements," "Indemnification – Third Party Claims," "Patent, Trademark, Trade Secret And Copyright Indemnity," "Information and Advertising" and "Warranty" provisions and the indemnification provisions in the "Export And Import Compliance" provision shall survive termination or cancellation of this Order. If any provision in this Order is or becomes void or unenforceable by force or operation of law, all other provisions shall remain valid and enforceable.

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

Buyer's failure at any time to enforce any provision of this Order shall not constitute a waiver of the provision or prejudice Buyer's right to enforce that provision at any subsequent time against Seller. No payment made

shall be deemed an acceptance or approval of any defective or unsatisfactory material or workmanship, or a waiver of Buyer's right to later reject the same. Any and all of the rights and remedies conferred upon Buyer under this Order shall be cumulative and in addition to, and not in lieu of, the rights and remedies granted by law for Seller's breach of contract.

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

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

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

Seller may subcontract any part of the services to be provided under this Order; provided that, Seller shall be responsible to Buyer for the performance of such subcontractors and Seller shall immediately remove any subcontractor upon Buyer's reasonable request.

**39. TRAINING MATERIALS. [\(back to top\)](#)**

Buyer has the right to have any person(s) designated by Buyer use any training materials provided by Seller pursuant to this Order, irrespective of whether such person(s) are employed at the site where such software or equipment is, or is to be, located.

**40. PERFORMANCE DELAY. [\(back to top\)](#)**

Time is of the essence in Seller's performance of this Order. If at any time it appears to Seller that it may not meet any of the performance schedules or the scheduled completion date of the services to be performed for any reason, including labor disputes, Seller shall immediately by oral means (to be confirmed in writing) notify Buyer of the reasons for and the estimated duration of such delay. If requested by Buyer, Seller shall make every effort to avoid or minimize the delay to the maximum extent possible including the expenditure of premium time. Any additional cost to Buyer or to Seller caused by these requirements shall be borne by Seller, unless the delay in performance arises out of causes beyond the control and without the fault or negligence of Seller or its subcontractors within the meaning of the Termination provisions herein. The foregoing requirements are in addition to any of Buyer's other rights and remedies as may be provided by law or this Order.

**41. CHAIN OF CUSTODY. [\(back to top\)](#)**

Seller represents and warrants that it has policies and procedures in place to ensure that software code used to develop product(s) furnished to Buyer under this Order has been within Seller's configuration management and control during the entire development process ("Chain of Custody"). If Buyer determines that Seller has supplied product(s) that have failed or do not properly function (e.g., harmful/malicious code embedded into software) due to lapses in the Chain of Custody, Buyer shall promptly notify Seller and Seller shall, at its own

expense, immediately replace the defective product(s) with product(s) that conform to the software documentation specifications.

**42. LICENSE AND TITLE GRANT, RIGHT OF ASSIGNMENT, TRANSFER, AND MOVEMENT OF EQUIPMENT. ([back to top](#))**

- A. Unless expressly stated otherwise in this Order:
- (i) **Perpetual Software License.** Any software license Seller grants to Buyer under this Order is a perpetual, fully paid-up, royalty-free, irrevocable, non-exclusive, worldwide license to use, support, maintain, update, display, distribute, run, perform, access and benefit from the software specified in this Order. Seller may not alter, amend, suspend, convert, or otherwise limit Buyer's license rights set forth above without Buyer's express written consent (which may be withheld for any or no reason) or unless otherwise expressly set forth in this Order. Buyer's license rights described above and acquired under this Order shall not be affected in any way by Seller's change in business models, business, licensing practices, ownership, or any other action without Buyer's express written consent (which may be withheld for any or no reason) or unless otherwise expressly set forth in this Order.
  - (ii) **Annual Software License.** If a software license Seller grants to Buyer under this Order is an Annual License and such Annual License is set forth expressly in this Order in accordance with the terms of this Order, including subparagraph (i) above, such Annual License is a non-exclusive, irrevocable, worldwide license to use, support, maintain, update, display, distribute, run, perform, access and benefit from the software.
  - (iii) **Ownership in Fee Simple.** Subject to any security interest, mortgage, lien, or other encumbrance expressly set forth herein to secure Buyer's performance of Buyer's payment obligations under this Order, Buyer's ownership of any hardware acquired from Seller under this Order shall be in fee simple unless otherwise expressly set forth in this Order.
- B. **Transfer of Licenses.** Buyer shall have the unrestricted right to transfer such software license to its parent, affiliates, or any divested entity at no additional cost or fees, provided such transfer does not increase the total number of software seats being used and Buyer gives Seller written notification of such transfer.
- C. **Purchase of Additional Licenses.** Buyer may purchase additional licenses at any time in accordance with the pricing table included in this Order, or if no table is included, Buyer and Seller will negotiate in good faith for the purchase of additional seats or licenses on substantially the same terms and condition as govern the software license Seller grants Buyer under this Order.
- D. **Disaster Recovery, Testing and Archival Copies.** Buyer shall have the right to reproduce the software and documentation described in the Order as reasonably required for disaster recovery, testing or archival purposes. Buyer shall not remove any of Seller's proprietary notices during such reproduction.
- E. **Movement of Hardware (applicable when Seller is required to install the hardware as part of this Order).** Buyer may move hardware to a location outside the facility at which the hardware was installed. Buyer shall give Seller prior written notice of its intent to move the hardware from the site of installation to a location outside the facility at which the hardware was installed. Hardware moved outside the continental United States shall be eligible for continued service under Seller's local terms and conditions then in effect for like hardware in the territory or country of reinstallation. Seller's personnel shall supervise the dismantling and packing/unpacking of the hardware and shall inspect and reinstall the hardware at the new location, and charge Buyer for all such labor and materials provided at its then current rates and terms. Said charges shall be authorized by separate order. The monthly charges shall be suspended when the system is dismantled and reinstated on the day following hardware reinstallation and acceptance by Buyer at the new location.
- F. **Divestiture of Assets.** In the event Buyer divests some or all of its business into separate entities ("Divested Business"), Buyer shall have the unilateral right to assign any portion of the software license(s) Seller grants Buyer under this Order (including any financing arrangements) to the Divested Business under the same terms, conditions, and pricing as set forth in this Order subject to the following:



- (i) Buyer may assign in whole or in part the products that are the subject of this Order to that Divested Business. Upon execution of an assignment, Buyer shall have no further rights or obligations with respect to the assigned products (with the exception of any unpaid license and/or Maintenance Service fees which remain due on the effective date of such assignment) and the Divested Business shall become the “Customer” or “Buyer” of record for those assigned products. Any such assignment or other transfer of products to a third party will be subject to the prior written consent of Seller/Licenser which consent will not be unreasonably withheld or delayed.
- (ii) A Divested Business will have the right, for a period of twelve (12) months post-divestiture, to continue to purchase products under this Order, or Buyer may purchase such products under this Order on behalf of the Divested Business. If a Divested Business wishes to order from Seller directly, Seller reserves the right to require such Divested Business to provide financial information sufficient to determine creditworthiness before accepting any orders. In the event of a divestiture, Buyer shall be permitted to use the products to provide managed services for the Divested Business during a period of transition, provided that Buyer’s use in such case is only for the Divested Business.
- (iii) To the extent the terms, conditions, and pricing of any software license Seller grants to Buyer under this Order depend upon Buyer’s number of employees, number of licensed copies or seats, or total annual sales, revenues, or any other business size-dependent metric, Seller will grant both Buyer and the Divested Business the same terms, conditions, and pricing as though Buyer and the divested entity remained a single entity with the same number of employees, number of licensed copies or seats, or total annual sales, revenues, or any other business size-dependent metric as before the divestiture for the remaining term of the software license provided (A) the total combined number of licensed copies of the software used by Buyer and the Divested Business does not increase above the number Buyer held before the divestiture and (B) Buyer and the Divested Business agree to pay Seller their pro rata share of such costs as would otherwise have been due from Buyer had there been no divestiture.
- (iv) Buyer shall provide Seller written notice of such divestiture and Buyer agrees to cooperate with Seller and to encourage the Divested Business to cooperate with Seller to execute such documents and assignments as are necessary.

G. **Acquisitions or Business Combinations.** In the event of a merger, acquisition or other business combination involving Buyer, Buyer will be permitted to make purchases under this Order for the combined or acquired business. If the acquired entity or business has a similar arrangement with Seller, Buyer and Seller will negotiate a combined maintenance agreement sufficient to cover the combined companies so as to avoid any disruption in service.

**43. NO TRANSMISSION OR RECORDING OF BUYER’S SOFTWARE USE. [\(back to top\)](#)**

Seller shall not, will not cause others to, and represents and warrants that Seller has not and has not caused others to install in any software or hardware Seller supplies to Buyer under this Order any functionality or equipment that will cause any item Seller supplies to Buyer under this Order to record or transmit to others any information regarding Buyer’s use of the software or hardware unless Buyer has expressly consented to such recordation or transmission.

**44. NO OBLIGATION TO OBTAIN SOFTWARE MAINTENANCE. [\(back to top\)](#)**

Buyer does not, by acquiring a software license of any kind from Seller under this Order, obligate itself to acquire software maintenance from Seller except as expressly set forth in this Order. Any separate agreement between Buyer and Seller for the acquisition of software maintenance shall not modify, alter, rescind, or in any other way impair any term or condition of this Order unless such software maintenance agreement expressly states so.

**45. MOST CURRENT VERSION AND PRESERVATION OF PERPETUAL LICENSE RIGHTS. [\(back to top\)](#)**

- A. Seller shall ensure that, unless otherwise specified in this Order, the software is the latest production version of the licensed software, which shall include, as applicable, the most recent documentation, user manuals, attachments, definitions, improvements, enhancements, additions, or modifications to the software. Seller shall also ensure that, unless otherwise specified in this Order, any and all supporting libraries or third party components used within or by the software are maintained at all times at a software currency of the N-1 version level where N is the latest service pack, patch, major update, maintenance release, driver, or firmware version. Additionally, within 30 days of the award, renewal, extension, or modification of this Order, Seller shall provide Buyer with a release schedule and roadmap for maintaining software currency and compatibility including, but not limited to the following components as applicable: Microsoft patch levels, Apache, Oracle Java releases, Oracle patch levels, Adobe Flash releases.
- B. If Seller changes its licensing model for future versions of the software Seller licenses to Buyer under this Order (including closely related derivative software) from a perpetual license model to annual license model, Seller will not impede Buyer's use of Seller's software acquired under this Order, including through the use of passwords, dongles, tokens, or other security measures that would disable, lock-out, or otherwise impair Buyer's use of software acquired under a perpetual license through this Order.

**46. RIGHT TO USE OUTSOURCED IT SUPPORT. [\(back to top\)](#)**

Notwithstanding any other provision of this Order or any term or condition of any document made a part of this Order, Buyer shall have the unlimited right to use a third party to provide information technology support and information technology management assistance and services (a "Third Party IT Support Provider"). Such a Third Party IT Support Provider shall have the same rights to use the licensed software and hardware under this Order to the same extent as Buyer, provided that such use is solely for the purpose of assisting Buyer to use such hardware or software for the purposes and in the manner set forth in this Order.

**47. DELIVERY, INSTALLATION AND ACCEPTANCE. [\(back to top\)](#)**

- A. **Software Delivery and Installation.** Seller shall ensure that any software Seller licenses to Buyer shall be made available by means or delivered by media that shall enable Buyer to install and operate the licensed software acquired under this Order. If, after reasonable efforts, Buyer is unable to install, load, launch, or otherwise operate the software Seller has licensed to Buyer under this Order, Seller shall make such remote and on-site assistance available to Buyer as is reasonably necessary to successfully load, launch, or operate such licensed software.
- B. **Hardware Delivery and Installation.** Unless otherwise provided in this Order, Seller, at Seller's expense, shall ship, unpack, and install the equipment including making all cable connections and all connections with electrical power and communication, and upon completion of installation shall certify to Buyer that the equipment is ready for use. In the event that Buyer is authorized by Seller to install said equipment, Buyer may elect to have Seller certify the installation. Risk of loss shall remain with Seller until such certification. Seller shall comply with all shipping, worksite safety, and security requirements set forth in this Order.
- C. **Acceptance by Buyer.** Buyer shall have a trial period of 30 days following the date on which the software or hardware has been certified for use, to determine whether the software or hardware meets the standards and specifications set forth in the Order. The acceptability of the software or hardware shall be based upon its ability to complete successfully such acceptance tests as are set forth in the Order. In the event that the software or hardware does not perform in accordance with such standards and specifications, Seller shall at its own expense take all reasonable actions (including modification, adjustment, repair or replacement of the software or hardware) necessary to make the software or hardware perform in accordance with the specifications. After completion of any such adjustments the acceptance tests will be conducted again; if the software or hardware still fails to pass the acceptance tests, Buyer shall have the right to cancel this Order immediately and return the software or hardware at

Seller's expense. The date upon which Buyer certifies to Seller in writing its acceptance of the software or hardware shall be called the "Acceptance Date" for purposes of the Order.

**48. NOTICE OF WARRANTY OBLIGATIONS OR SERVICE REQUIREMENTS. [\(back to top\)](#)**

Buyer shall timely notify Seller upon Buyer's discovery of any defect, flaw, or other problem for which Buyer will seek Seller's support pursuant to any software or hardware warranty or pursuant to any service or maintenance agreement. Buyer will use reasonable efforts to provide Seller such timely notice. Except for operating supplies or accessories; painting or refinishing the equipment or furnishing materials for this purpose; or electrical work external to the machines; or maintenance of accessories, alterations, attachments or other devices not furnished by Seller unless expressly set forth in the Order, this provision applies to all causes of software or hardware malfunction that results in software or hardware functional unavailability unless the malfunction was caused by the reckless or intentionally harmful acts of persons other than Seller or Seller's subcontractors.

**49. WARRANTY – HARDWARE. [\(back to top\)](#)**

- A. Seller warrants that all hardware delivered under this Order will:
  - (i) be new and of good quality;
  - (ii) be free from defects in materials, workmanship, and manufacturing processes;
  - (iii) conform to all requirements of this Order; and
  - (iv) be free of all liens and encumbrances.
- B. The warranty period shall begin upon Buyer's acceptance of the hardware and end 12 months after final acceptance by Buyer. In computing the warranty period, there shall be excluded any time that a hardware delivered under this Order is prevented from entering service or is taken out of service on account of any hardware deficiency.
- C. For the purposes of this provision, a deficiency occurs when Seller's goods fail to meet any of the performance obligations set forth in subparagraphs A(i) through A(iv) of this paragraph or any other provision of the Order. Seller's notice shall in no way affect the rights and remedies of Buyer.
- D. For all deficiencies that arise during the warranty period, Seller shall promptly remedy the deficiency at no cost to Buyer. If Seller fails to remedy the deficiency within a reasonable time after having been notified of the deficiency, Buyer may elect to return, replace, re-procure or correct the deficient hardware at Seller's cost. If Buyer elects to correct the deficiencies in the hardware, then the parties agree that Seller will pay Buyer's actual costs and Buyer's labor at Buyer's fully-burdened hourly rates.
- E. Buyer's approval of any documentation prepared by Seller or Buyer's participation in design reviews or first article approval process or similar reviews shall not relieve Seller of any obligation under this warranty.
- F. Buyer's rights under this provision shall, at Buyer's option, be assignable to and enforceable by Buyer's successors and customers.
- G. Seller shall immediately notify Buyer of any deficiencies during the performance of this Order and the warranty period. Seller shall promptly provide a written notice to Buyer's authorized purchasing representative describing the deficiency and Seller's plan to remedy the deficiency. For the purposes of this paragraph G, a deficiency occurs when Seller's hardware fails to meet any of the performance obligations set forth in paragraph A of this provision. Seller's notice shall in no way affect the rights and remedies of Buyer.
- H. The rights of Buyer set forth in this provision shall be in addition to, and not in lieu of, any other right Buyer may have under this Order, or in law or equity.

**50. WARRANTY – SERVICES. [\(back to top\)](#)**

Seller shall render services using personnel that have the necessary knowledge, training, skills, experience, qualifications, and resources to provide and perform such services in accordance with this Order, and shall

render such services in a prompt, professional, diligent, workmanlike manner consistent with industry standards applicable to the performance of such services.

**51. WARRANTY – SOFTWARE. [\(back to top\)](#)**

- A. Seller warrants any software Seller provides to Buyer under the Order, including any Seller-provided updates, are free of viruses or any other programmed device that could impair Buyer's use of the software or the equipment on which the software resides. Seller covenants that with respect to any disabling code that may be part of the software, Seller will not invoke such disabling code at any time for any reason.
- B. Unless expressly agreed to in writing between the Parties and incorporated into this Order, Seller warrants that all software developed or otherwise provided by Seller to Buyer shall (1) contain no hidden files, (2) not replicate, transmit, or activate itself without Buyer's manual intervention, (3) not alter, damage, or erase any data or computer programs without control of a person operating the computing equipment on which it resides, and (4) contains no key, node lock, time-out, or other function, whether implemented by electronic, mechanical or other means, which restricts or may restrict use or access to any program(s) or data developed and/or otherwise provided by Seller to Buyer under this Order. Notwithstanding anything in this Order to the contrary, if Seller provides any Licensed product(s) to Buyer that contains any of the above-mentioned condition(s) and such condition(s) were not disclosed and agreed to in writing by the Parties, Seller shall be deemed in default of this Order and no cure period shall apply. In addition to any other remedies available to it under this Order, Buyer reserves the right to pursue any civil and/or criminal penalties available to it against Seller without limitation.
- C. The media on which the software is provided shall be free of defects in material and workmanship.
- D. The software shall possess all material functions and features contemplated by the supporting documentation.
- E. Seller warrants that the software will substantially conform to the applicable documentation.
- F. The software shall be compatible with the operating system, application programs, computing equipment and networks contemplated by the applicable documentation.
- G. Buyer's approval of any documentation prepared by Seller or Buyer's participation in design reviews or first article approval process or similar reviews shall not relieve Seller of any obligation under this warranty.
- H. Seller hereby assigns to Buyer any third party warranty that Seller received in connection with the software.
- I. Seller warrants there are no actions, suits or proceedings pending or threatened that will have a material adverse effect on Seller's ability to fulfill its obligations under this Order. Seller further warrants it will immediately notify Buyer if Seller becomes aware of any action, suit, or proceeding pending or threatened that will have a material adverse effect of Seller's ability to fulfill its obligations under this Order or the licenses granted herein.
- J. Seller warrants it owns all right, title, and interest in and to the software or has legal right to use, sell, copy, and license the software.
- K. Seller shall immediately notify Buyer of any deficiencies during the performance of this Order and the warranty period. The warranty period shall commence upon Buyer's acceptance of the software and end 90 days after the acceptance date. Seller shall promptly provide a written notice to Buyer's authorized purchasing representative describing the deficiency and Seller's plan to remedy the deficiency. For the purposes of this provision, a deficiency occurs when Seller's product fails to meet any of the performance obligations set forth in this provision. Seller's notice shall in no way affect the rights and remedies of Buyer.
- L. For all deficiencies that arise during the warranty period, Seller shall promptly remedy the deficiency at no cost to Buyer. If Seller fails to remedy the deficiency within a reasonable time after having been notified of the deficiency, Buyer may elect to return, replace, re-procure or correct the deficient software at Seller's expense.

M. These warranties and remedies are in addition to, and not in lieu of, any other warranties or remedies Buyer may have under this Order, or in law or equity.

**52. HARDWARE AND SOFTWARE TECHNICAL AND MAINTENANCE SUPPORT. [\(back to top\)](#)**

Buyer shall timely notify Seller upon Buyer's discovery of any defect, flaw, or other problem for which Buyer will seek Seller's support pursuant to any software or hardware warranty or pursuant to any service or maintenance agreement. Buyer will use reasonable efforts to provide Seller such timely notice. Except for operating supplies or accessories; painting or refinishing the equipment or furnishing materials for this purpose; or electrical work external to the machines; or maintenance of accessories, alterations, attachments or other devices not furnished by Seller unless expressly set forth in the Order, this provision applies to all causes of software or hardware malfunction that results in software or hardware functional unavailability unless the malfunction was caused by the reckless or intentionally harmful acts of persons other than Seller or Seller's subcontractors.

- A. **Remote Technical Support.** Unless otherwise specified in the Order, Seller shall provide Buyer hardware and software technical support through remote means such as, but without limitation, telephone or computer interface in addition to any on-site technical support required by the Order. Absent Buyer's express agreement to the contrary, such support shall include the ability to timely communicate via voice or other interactive electronic means with individuals qualified to provide technical support. Unless otherwise specified in the Order, such support shall be available 24 hours per day, 7 days per week, 365 days per year.
- B. **Software Maintenance.** Seller shall perform the software maintenance and other services described in the SOW (including all tasks ancillary and incidental to such scope of work) (the "Services") according to the terms of this Order. Seller shall provide Buyer all software patches, fixes, de-bugging, or other upgrades (except those constituting a separate release not covered by this Order), or other repairs for the software Seller licenses to Buyer under this Order. Seller shall furnish Buyer all such patches, fixes, de-bugging, or other repairs via electronic storage media or other means as Buyer and Seller shall mutually agree. Seller shall maintain the software (including all improved or modified versions of the software which Buyer has been licensed to use), so that it operates in conformity with Seller's descriptions and specifications and the Order. Seller shall correct all errors discovered by Buyer or Seller.
- C. **Software Support.** In the event Buyer communicates any error, defect or non-conformity in the software to Seller, Seller shall furnish complete off-site telephone support within eight hours of Buyer's request therefor. If Seller does not correct the problem within 24 hours, Buyer may submit to Seller a listing of output and all such other data conditions similar to those present when the error, defect or nonconformity was discovered. In the event that such problem is not corrected within five working days after Seller receives from Buyer a listing of output and other data, Seller shall provide on-site Services within 24 hours. Seller shall implement temporary work around procedures and shall demonstrate to Buyer the good faith and diligent initiation and prosecution of corrective measures for all such problems involving the Software within 72 hours of the commencement of such on-site Services. In the event it is determined that the problem was due to Buyer error in the use of the Software, as opposed to an error, defect or nonconformity in the Software itself, Buyer shall pay Seller Seller's standard commercial time and materials rates or such rate as may be mutually agreed upon by Buyer and Seller for the reasonable value of the on-site Services provided in addition to Seller's reasonable travel and per diem expenses if said costs and expenses are authorized in writing by Buyer.
- D. **Hardware Maintenance Support.** To the extent required by Seller's warranty or to the extent Buyer has purchased maintenance support from Seller (whether for hardware purchased under this Order or as a separately purchased item) Seller shall furnish on-call maintenance service during the Call Window hours specified in the Order. The "Call Window" is the period of time within which Buyer may notify Seller that maintenance services to be performed under this Order is required. The Call Window for basic coverage begins at 7:30 a.m. daily Monday through Friday and, unless separately specified in this Order, continues

for consecutive hours until 4:30 p.m. All time zones are to be those of the location in which the Huntington Ingalls facility placing this Order is located. During the Call Window or such other times as set forth in this Order, or such times as are mutually agreed upon by Buyer and Seller, Seller shall:

- (i) Provide scheduled preventive maintenance, based on the specific needs of the equipment in the minimum number of hours and at the frequency set forth in the Order. Preventive maintenance shall include adjustments, lubrication, cleaning, replacement of defective parts, and retrofitting for engineering changes;
- (ii) Provide unscheduled on-call remedial maintenance as required in response to calls placed during the Call Window; and
- (iii) At all times Seller shall have in its possession or readily available to Seller such maintenance materials, tools, documentation, site management guide, diagnostic and test equipment necessary for the maintenance services to be provided under the Order; such items at all times to remain the exclusive property of Seller.

**E. Response Time.**

- (i) **Within Call Window.** Seller will respond to remedial maintenance requests received by telephone or other electronic means during the Call Window within fifteen minutes by return telephone call. This response will consist of telephone-initiated diagnostic assistance and advice for all service requests in which this service will aid in problem resolution. If the equipment cannot be promptly restored to good working order without maintenance assistance on site, Seller will supply repair personnel on site within the response time (from the time of the return telephone call by Buyer so notifying him) provided in the Order. Such Seller personnel will then commence and diligently prosecute efforts to correct the noticed problems and to restore the equipment to good working order, and will continue such efforts until the equipment is satisfactorily repaired.
- (ii) **Outside of Call Window.** Seller will also respond to telephone remedial maintenance requests received at times other than the Call Window in fifteen minutes and perform on-site maintenance support for problems not resolved telephonically within the time period and for the additional charges set forth in the Order.
- (iii) **Seller Reimbursement.** In the event that the problems leading to Seller's on-site assistance, whether inside or outside the Call Window, are caused by Buyer's gross misuse of the equipment, Buyer shall reimburse Seller for Seller's time actually spent and materials actually consumed at Seller's then-prevailing time and materials charges.
- (iv) **Parts and Labor.** Seller will provide and bear the cost of parts and labor required to maintain the equipment in accordance with the warranty and services provisions of the Order, provided that such labor and parts are needed because of normal wear-and-tear. Maintenance will include replacement of parts as necessary in order to conform to the warranty provisions of the Order. All parts will be furnished on an exchange basis and will be new standard parts; exchanged parts removed from the system become the property of Buyer.

F. Seller shall use its best efforts to accommodate Buyer's request to reschedule any maintenance, engineering changes, or software changes. If Buyer decides that equipment performance warrants an increase or reduction in the preventive maintenance hours, Seller shall so increase or decrease such maintenance, provided such requested increase or decrease is reasonable.

G. **Change Orders.** Seller will install all change orders on Seller-supplied equipment covered by this Order subject to Buyer's right of refusal. The installation shall be at no charge if done concurrently with preventive maintenance, at another time in response to a call placed within the Call Window, or as mutually agreed upon.

H. **Reconditioning.** At the end of 12 months of maintenance service or any time thereafter, if individual item(s) cannot, in Seller's opinion, be properly or economically repaired on site due to excessive wear or deterioration, Seller shall supply Buyer with a quote for reconditioning at Seller's product repair center or

other factory repair location. However, failure to accept Seller's offer to recondition shall not relieve Seller of its maintenance obligations under and during the term of this Order.

- I. **Maintenance Log.** Seller shall maintain, at Buyer's site (with a copy thereof furnished to Buyer at Buyer's request) a written maintenance and repair log and record therein each incident of equipment defect or malfunction, the date, time, and duration of all maintenance work performed on the equipment, and a description of the cause for the work, either by description of the defect or malfunction or as regular maintenance and diagnostic reports of correction, adjustments, or updates. The information in the log shall be aggregated into a management report which shall be provided on a monthly basis or as otherwise indicated to Buyer.
- J. **Set-Off for Failure to Timely Respond to Assistance Requests.** If Seller fails to meet its response time obligations under the Order, either for telephone diagnostic assistance or on-site assistance on three successive occasions or two or more times in any month or is more than six hours late in arriving at Seller's site to effect repairs Buyer may, at Buyer's option, either (i) receive a percentage credit against subsequent monthly maintenance charges, as provided in this Order, (ii) retain a third party to maintain or to conduct such repair work on-site at Seller's expense, or (iii) terminate this Order and have all remedies at law and equity available to Buyer. If Seller fails to meet its obligations to satisfactorily complete its repair work within the time period provided in the Order, Buyer may, at Buyer's option, (i) receive a percentage credit against subsequent monthly maintenance charges, as provided in the Order or (ii) retain a third party to maintain or to conduct such repair work on-site at Seller's expense, or (iii) terminate this Order.

**53. SPARE PARTS AVAILABILITY. [\(back to top\)](#)**

Seller shall maintain on hand at a location convenient to facilitating prompt resolution of Buyer's repair or maintenance requests a supply of spare parts to make emergency repairs. Seller shall maintain all spare parts necessary to repair the equipment (so as to restore it to its proper operating condition).

**54. RIGHT TO PURCHASE SPARES. [\(back to top\)](#)**

Seller agrees, for as long as the equipment shall remain in use by Buyer and spare parts for such equipment shall be available, to supply all necessary spare parts for the equipment to Buyer, at then-prevailing delivery and payment terms. Seller guarantees it will make all necessary spare parts available for sale to Buyer for no less than five years following the date Seller sold the equipment to Buyer. Seller shall not increase the price Seller charges Buyer for any spare part Seller manufactures by more than 50% over the five year period. Upon Buyer's reasonable request, Seller shall demonstrate (by presentation of supplier's invoice) prices for spare parts required by Buyer the amount Seller's suppliers charged Seller for such spare parts.

**55. RIGHTS AND OBLIGATIONS OF THE PARTIES ON TERMINATION. [\(back to top\)](#)**

In the event that this Order is terminated or cancelled pursuant to the terms of this Order, each party shall forthwith return to the other all papers, materials, and other properties of the other party then in its possession or certify to the destruction of same.

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

Buyer, Seller and Seller's subcontractors shall abide by the requirements of the following laws, which are incorporated herein by reference: the EEO Clause of Executive Order 11246, at 41 CFR § 60-1.4(a) (including the pay transparency nondiscrimination clause), the EEO Clause for protected veterans at 41 CFR § 60-300.5(a), the EEO Clause for individuals with disabilities at 41 CFR §60-741.5(a), and the Notice Clause of Executive Order 13496 regarding Employee Rights under the National Labor Relations Act (NLRA). Among other things, these regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity, or national origin. Moreover, these regulations require that

covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, protected veteran status or disability. For additional obligations that may apply to purchases of \$50,000 or more, including the annual affirmative action plan (AAP) requirement, the annual EEO-1 Report, and the annual VETS-4212 Report, please see 41 CFR §§ 60-1.7, 60-1.12, 60-2.1, 60-300.10, and 29 CFR §2602.7. Also, note that you may be covered by the minimum wage obligations of Executive Order 13658 and/or Executive Order 13706, establishing Paid Sick Leave for federal contractors. As required by federal regulation, the parties reiterate that:

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

**57. RESPONSE TO LEGAL ORDERS, DEMANDS, OR REQUESTS FOR BUYER INFORMATION. ([back to top](#))**

- A. Except as expressly prohibited by law, Seller shall notify Buyer in writing immediately upon receiving notice from a court of competent jurisdiction or administrative body of a request for Buyer Information prior to disclosing such information. Seller shall consult with Buyer regarding its response, and provide Buyer with the opportunity to intervene and request to quash or modify the legal order, demand, or request. Seller shall provide a copy of any response to Buyer.
- B. In response to an oral or written request from Buyer indicating that records containing Buyer Information may be relevant to litigation reasonably anticipated by Buyer, Seller will immediately place a “hold” on destruction or disposal of Buyer Information under its usual records retention policies. Seller shall continue to preserve the records until further notice by Buyer.

**58. BUYER INFORMATION COMPROMISE RESPONSE. ([back to top](#))**

- A. For any Incident reported to Buyer under the Information Security paragraph of these terms, upon request, Seller shall provide Buyer with a report detailing such Incident. Seller’s report shall identify: (i) the nature of the unauthorized use or disclosure, (ii) the Buyer Information used or disclosed, (iii) who made the unauthorized use or received the unauthorized disclosure (if known), (iv) what Seller has done or shall do to mitigate any deleterious effect of the unauthorized use or disclosure, and (v) what corrective action Seller has taken or will take to prevent future unauthorized uses or disclosures.
- B. Within five (5) calendar days of the date Seller becomes aware of an Incident, Seller shall have completed implementation of corrective actions to remedy the Incident, restore Buyer access to any affected Services as directed by Buyer, and prevent further similar unauthorized use or disclosure.
- C. Except as otherwise required by law, Seller will not provide notice of the incident directly to any regulatory agencies, or other entities, without prior written permission from Buyer.

**59. CLOUD DATA RETENTION, DISPOSAL, AND TRANSFER REQUIREMENTS. ([back to top](#))**

- A. **Buyer Information Retention and Disposal.**
  - (i) Seller will retain Buyer Information, including attachments, until Buyer deletes the Information, or for a time period mutually agreed to by the parties under this Order.
  - (ii) Seller will regularly backup Buyer Information and retain such backup copies for a minimum of twelve (12) months on appropriate and reliable storage media.
  - (iii) At Buyer’s election, Seller will either securely destroy or transmit to Buyer any backup copies of Buyer Information. Seller will provide a certificate to Buyer listing records that have been disposed of, the date of disposal, and the method of destruction.



(iv) Seller will retain logs associated with activity involving Buyer Information for a minimum of twelve (12) months.

**B. Buyer Information Transfer upon Termination or Expiration .**

- (i) Upon thirty (30) calendar days of termination or expiration of this Order, Seller will securely transfer all Buyer Information to Buyer, or a third party designated by Buyer, as detailed in the technical specifications. Seller will use facilities and methods for the transfer that are compatible with Buyer's affected systems, and Buyer will have access to Buyer Information during the transition. In the event that Buyer Information is only accessible through proprietary software, Seller shall provide Buyer with an unlimited use, perpetual license to any proprietary software necessary for Buyer to gain access to Buyer Information.
- (ii) In accordance with the Assignment provision herein, if, during the course of performing this Order, Seller intends to sell or terminate its business, Seller will provide Buyer with no less than ninety (90) calendar days' notice of impending termination or transfer. Seller shall also provide notice to Buyer of the intended transfer or cessation or any of its subcontractors' businesses to the extent that such subcontractors' systems contain Buyer Information. Buyer and Seller shall agree on disposition and transfer of any Buyer Information in accordance with Section A of this provision. In addition, Seller will provide a fully documented service description and perform and document a gap analysis by examining any differences between its Services and those to be provided by its successor.