



## CONSTRUCTION CONTRACT

This AGREEMENT, executed as of the \_\_\_\_\_ day \_\_\_\_\_, 20\_\_\_\_, by and between HUNTINGTON INGALLS INCORPORATED, acting through its Ingalls Shipbuilding division (hereinafter referred to as "Owner"), and \_\_\_\_\_ (hereinafter referred to as "Contractor"). Owner and Contractor, for the considerations herein named, agree as follows:

### ARTICLE I STATEMENT OF WORK

The Contractor agrees to perform all work under the contract, including the furnishing of all labor, materials and equipment necessary to complete the detailed Statement of Work attached hereto as Exhibit A.

### ARTICLE II INSPECTION

All materials and workmanship shall be subject to examination, and test by the inspectors of the Owner at any and all times. The Owner shall have the right to reject defective materials and workmanship or require correction thereof. Rejected materials shall be promptly and satisfactorily replaced with proper materials and rejected workmanship shall be promptly and satisfactorily corrected. If the Contractor fails to proceed at once with the replacement of rejected materials or the correction of rejected workmanship, the Owner may, by contract or otherwise, replace such materials or correct such workmanship and change the cost thereof to the Contractor, or may terminate this contract, as provided in Article VII hereof.

### ARTICLE III PAYMENTS

The Owner agrees to pay the Contractor for the performance of said work, subject to any additions or deductions as herein provided, the sum of

Payments shall be made as follows:

Net thirty (30) days after completion.

Upon submission to the Owner by the Contractor of evidence, satisfactory to the Owner, that the Contractor has paid in full all persons furnishing labor, materials, or supplies in connection with the work hereunder, and, if requested by Owner, the Contractor shall have delivered to Owner releases of lien from all such persons and from the Contractor, final payment on account of this agreement shall be paid within thirty (30) days after the completion by the Contractor of all the work covered by this agreement and the formal acceptance of said work by the Owner.

ARTICLE IV  
COMPLETION SCHEDULE

Contractor agrees to complete the work hereunder as follows:

On or before \_\_\_\_\_, 20 \_\_\_\_.

ARTICLE V  
DELAYS

In the event the Contractor is delayed in the completion of the work by any cause which is beyond the control and without the fault or negligence of the Contractor, including but not restricted to the acts of God or a public enemy, acts of the Owner (including the Owner's failure to promptly furnish the Contractor, when needed, those materials this contract provided that the Owner shall furnish), fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, or in the event the Contractor is delayed by any changes in, additions to, or omissions from the work contracted for, that are authorized by the Owner, then, and in any such event, the Contractor shall not be entitled to any damages by reason thereof, but, subject to the provisions of Article IX hereof, the time of the completion of the work shall be extended by a time equal to the number of full calendar days of such delay; fractional parts of days to be considered as full days; provided that the Contractor shall, as soon as possible, in any event within forty-eight (48) hours from the occurrence of commencement of a cause of delay, give the Owner notice in writing thereof, and provided further that causes for delay will not be cumulative, and if the same delay is occasioned by more than one cause, allowance will be made as if the delay were occasioned by only one cause.

ARTICLE VI  
PAYMENT OF CLAIMS AND LIENS

If at any time during the existence of this contract, the Owner discovers or has reasonable cause to believe, that any just claim for labor or services rendered or material furnished (or any combination of them) in and about the work has not been paid, then, in such event, the Owner hereby expressly reserves the right, as its election, to retain out of any money then due or thereafter to become due to the Contractor an amount sufficient to completely indemnify the Owner against any such claim, and if such claim be so fixed, either by law, by the act of the Contractor, or by act of the Claimant, as to constitute an encumbrance, against the work and the Contractor shall not remove such claim, either by payment, bond or otherwise within two (2) days from receipt of notice in writing from the Owner to do so, then the Owner may, at its election, but in no event shall be required so to do, pay and discharge such claim, and deduct the amount so paid from any moneys which may be due or become due any payable to the Contractor. If such moneys are insufficient to fully pay any such claim and reimburse the Owner for any expense to which it has been put in connection therewith, then the Contractor shall pay such deficiency to the Owner promptly upon demand.

ARTICLE VII  
DEFAULT

(a) If the contractor at any time shall refuse or neglect to supply a sufficiency of properly skilled workmen or a sufficiency of materials or equipment of the properly quality required, in the opinion of the Owner, to prosecute the work properly, the Owner may, at its option, after forty-eight (48) hours written notice to the Contractor, and without prejudice to any other right or remedy it may have, make good any such deficiency and charge the cost and expense thereof to the Contractor.

(b) If the Contractor shall file or have filed against it a petition in bankruptcy, or for reorganization under the Bankruptcy Act, or a receiver of its property be appointed, or make a general assignment for the benefit of its creditors, or fail to make prompt payment for materials or labor, or persistently disregard laws, ordinances or the instructions of the Owner's authorized representatives, or repeatedly refuse or neglect to prosecute the work in the manner herein provided, or otherwise violate any provisions of this contract or of the documents made a part hereof, then, and in any such event, the Owner shall have the right, at its option, upon failure of the Contractor to remedy any such default within five (5) days after receipt of a notice to do so in writing from the Owner, to declare the Contractor in default.

(c) Upon declaration of default hereunder, the Owner shall have the right to take possession of and use of the purpose of completing the work all materials, supplies and equipment thereon and to employ, by contract or otherwise, any other person or persons to complete the work and the Contractor shall not be entitled to receive any further payment until the work has been fully completed. If the cost and expense to the Owner of completing the work shall exceed the balance of the sum payable to the Contractor by the terms hereof, if the Contractor had fully completed the work, which is unpaid at the time the work is so taken over, the Contractor shall pay to the Owner the amount of such excess on demand. If such unpaid balance shall exceed the cost and expense of completing the work such excess shall be paid to the Contractor. If this contract is on a cost plus basis, the Contractor shall be credited at the rate or rates, if any, stipulated in Article III hereof for the use of any supplies or equipment belonging to Contractor and utilized by Owner in completing the work.

ARTICLE VIII  
RESPONSIBILITY AND INSURANCE

(a) The Contractor hereby assumes entire responsibility and liability for any and all injury to any and all persons, including the Contractor's and Owner's employees and for any and all damage to property, caused by or resulting from or arising out of any act or omission on the part of Contractor under or in connection with this contract or the prosecution of the work hereunder, and shall indemnify and save harmless the Owner against and from any and all loss or expense which it may suffer or pay as a result of claims or suits due to, because of, or arising out of any such injury or damage. Contractor, if requested, shall defend Owner, at Contractor's own expense with Owner's choice of counsel, from any such demands, claims, suits or actions. If Contractor fails to defend, hold harmless, and indemnify Owner as provided in this provision, then Contractor shall pay for any damages (including reasonable attorney fees), claims, losses and costs incurred by Owner in the defense of any action related to this Agreement and/or in the prosecution of any action to enforce the terms of this Article VIII.

(b) Contractor agrees to maintain during the period of this Agreement and at its expense policies of insurance in accordance with Ingalls Shipbuilding Form SSF F5139 entitled "Required Insurance Coverages and Minimum Limits." Before starting work, Contractor shall furnish to Owner, in duplicate a certificate of the insurance company of such insurance, such certificate to provide that the insurance company will give Owner thirty days' notice, in writing, of any cancellation or change in the terms of such policy during the periods of coverage. All such insurance shall be subject to approval of the owner for adequacy of coverage and protection.

(c) In the event of loss, expense, damage, or injury, referred to in this Article VIII, or if any claim for damages aforesaid is made against the Owner, The Owner may withhold from any payment due or thereafter to become due to Contractor under the terms of this contract, an amount sufficient, in its judgment, to protect it from any and all such claims, expense, loss or injury.

#### ARTICLE IX CHANGES

The Owner shall have the right, without invalidating or affecting the terms of this contract, to order additions, omissions or other modifications in the extent and character of work hereunder, whether substantial or otherwise. In case any such additions, omissions or other modifications involve an increase or decrease in the value of the work to be performed under this contract, then an equitable adjustment shall be made in the amount payable to the Contractor under this contract, provided, however, that no such additions or omissions or modifications shall be made in the work or material except upon prior written order of the Owner.

#### ARTICLE X TAXES

The Contractor agrees to and does hereby accept full and exclusive liability for the filing of returns and payment of any and all contributions or taxes for unemployment insurance and old age retirement benefits, pensions, or annuities now or hereafter imposed by the government of the United States or any State, which are measured by the wages, salary or other remuneration paid to persons employed by the Contractor on work performed hereunder. The Contractor does further accept full liability for and agrees to pay all federal; state or local sales, use, excise or similar taxes levied upon or in respect to this agreement or the material or work called for herein.

#### ARTICLE XI LABOR LAWS AND REGULATIONS

The Contractor shall comply with all applicable federal, state and local laws and regulations relating to employment or working conditions. To the end that the work may not be interrupted by labor disputes, the Contractor shall employ such labor as, to the satisfaction of the Owner, will work in harmony with the forces of the Owner and other contractors on the job. In the event of a strike of the Contractor's employees engaged on said work, or any violation by the Contractor of these provisions, the Owner, notwithstanding the provisions of Article IV

hereof, shall have the right, at its election, and upon two days' written notice to the Contractor, to terminate the employment of the Contractor and take over all work covered by this contract in the manner provided in Article VII of this contract. Any person employed by the Contractor on or about any of the work called for by this contract, who may be unsatisfactory to Owner shall be promptly removed by the Contractor and not re-employed thereon without written consent of the Owner.

#### ARTICLE XII BUILDER'S RISK INSURANCE

Unless otherwise provided herein, the Owner agrees to maintain the usual fire and extended coverage insurance under its policies on the finished work and on the materials stored on the site of the work and intended therefore, and in case of loss the amount of insurance recovery shall be paid to the Owner for distribution to the Owner and Contractor, as their respective interests may appear. Except as provided herein, all materials furnished by the Contractor and all materials furnished by Owner following their delivery to Contractor and all work done by the Contractor shall at all times be at the sole risk and responsibility of the Contractor until the project shall have been finally accepted by the Owner.

#### ARTICLE XIII GUARANTY

Contractor warrants that all work performed and products delivered under this contract will: be new and of good quality; be free from defects in materials, workmanship, and manufacturing processes; (iii) conform to all requirements of this contract; and (iv) be free of all liens and encumbrances. For the purposes of this Article XIII, a deficiency occurs when Contractor's goods or services fail to meet any of the performance obligations set forth in (i) through (iv) above. The warranty period shall begin upon Owner's acceptance of all work performed and products delivered, and end 12 months thereafter. Neither any partial payment nor the final payment shall constitute an acceptance of faulty material or workmanship. For all deficiencies that arise during the one year warranty period, Contractor shall promptly remedy the deficiency at no cost to Owner and pay for any damages to other work resulting therefrom. If Contractor fails to remedy the deficiency within a reasonable time after having been notified of the deficiency, Owner may elect to return, replace, re-procure or correct the deficient work or product at Contractor's cost. If Owner elects to correct the deficiencies in workmanship or a delivered product, then the parties agree that the Contractor will pay Owner's actual costs and Owner's labor at Owner's fully-burdened hourly rates. The rights of Owner set forth in this Article XIII shall be in addition to, and not in lieu of, any other right Owner may have under this contract, or in law or equity.

ARTICLE XIV  
PATENT INDEMNITY

Contractor will indemnify and hold Owner, Owner's affiliates and each of their officers, directors, employees, and customers ("Indemnified Parties") harmless for, and defend the Indemnified Parties at Contractor's expense, against any allegation of patent, copyright, or trademark infringement or allegation of trade secret misappropriation (collectively or individually, "Claim") arising from Indemnified Parties' use, manufacture, or sale (including any re-sale) of any product or service Contractor provides to Owner that Contractor authorizes expressly or impliedly under this contract. In addition, Contractor will pay all reasonable amounts of any kind Indemnified Parties pay as defense costs, fees, and expenses and all reasonable amounts of any kind Owner becomes obligated to pay pursuant to a court order (including, but not limited to, fines and judgments) or as settlement of any Claim set forth in this Article.

ARTICLE XV  
ASSIGNMENT AND SUBCONTRACTING; INDEPENDENT CONTRACTOR

The Contractor shall not sub-let, assign or transfer this contract, or any part thereof, or any moneys due or to become due hereunder, without prior written consent of the Owner. Except that it is contemplated that the Contractor shall utilize the services of the following subcontractors in the performance of the work:

The Contractor shall not change the above subcontractors to other subcontractors without the prior written consent of the Owner. Contractor is in no way relieved of its responsibility for satisfactory completion of all of the work hereunder by this consent to subcontracting and Contractor is responsible for assuring compliance by its subcontractors with all of the provisions of this contract and the specifications including, but not limited to the Owner's regulations as to security and safety.

Contractor is an independent contractor. Contractor 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 Contractor or Contractor's subcontractors shall be deemed an employee or agent of Owner for any purpose.

ARTICLE XVI  
SITE CONDITIONS

Contractor has inspected the location of any work required to take place at Owner's site and is familiar with its condition as of the execution of this contract. In no event shall either Contractor's failure to inspect the site prior to the execution of this contract, or any circumstance that Contractor should reasonably have discovered through such site inspection, constitute a basis for any claim for increased cost or additional time for performance.

ARTICLE XVII  
TOXIC SUBSTANCES



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

#### ARTICLE XVIII SECURITY AND SAFETY

(a) The Contractor will comply with safety and other regulations of Owner. The Contractor shall refuse to employ, or if already employing, will forthwith discharge from employment and will exclude from any plant, factory or site at which whereunder this contract is being performed any person or persons whom the Secretary of Defense, in the interest of security against sabotage, espionage, or subversive activity, may designate.

(b) Each of the Contractor's and/or his subcontractor's employees shall complete a security form or forms furnished to him by Owner. When the completed security forms have been approved by Owner, a badge will be issued to the employee, and this badge shall be worn on the employee's outer garment at all times and be readily visible to Ingalls Shipbuilding security guards. Failure to have a readily visible badge may be cause for Security Department removal of employees from the premises of Owner; the Contractor and/or subcontractors shall hold Owner harmless for any lost time claims arising out of any failure to comply with this Article XVI.

#### ARTICLE XIX CHOICE OF LAW

Both Parties agree that, unless otherwise specifically provided herein, this contract will be construed and interpreted according to the law of the state of the Huntington Ingalls Incorporated facility where the work by Contractor will be performed, excepting that state's laws on conflicts of law. Exclusive venue for suits at law or equity arising under or related to this contract shall be:

A. FOR WORK PERFORMED IN LOUISIANA: United States District Court for the Eastern District of Louisiana or the 24<sup>th</sup> Judicial Court for the State of Louisiana.

B. FOR WORK PERFORMED IN MISSISSIPPI: United States District Court for the Southern District of Mississippi or the Circuit Court of Jackson County, Mississippi.

#### ARTICLE XX RELEASE OF INFORMATION AND ADVERTISING

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

#### ARTICLE XXI NON-WAIVER

Owner's failure at any time to enforce any provision of this contract shall not constitute a waiver of the provision or prejudice Owner's right to enforce that provision at any subsequent time against Contractor. No payment made shall be



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

ARTICLE XXII  
COMPLIANCE WITH LAWS

In the performance of the work, the Contractor shall comply with all applicable Federal, State and local laws, and shall be responsible for all taxes, licenses and permits applicable to the work.

IN WITNESS WHEREOF, the parties have executed this Construction Contract as of the day and year first above written.

CONTRACTOR

\_\_\_\_\_

By: \_\_\_\_\_

Name:

Title:

HUNTINGTON INGALLS INCORPORATED

By: \_\_\_\_\_

Name:

Title:





EXHIBIT A TO CONSTRUCTION CONTRACT  
STATEMENT OF WORK