**PURCHASE ORDER GENERAL PROVISIONS
FOR NSC 9, 10 and 11 PRODUCTION AND DEPLOYMENT
PRIME CONTRACT NUMBER HSCG23-16-C-ADB016**

1. **DEFINITIONS as used herein:**
	1. “Buyer” means HUNTINGTON INGALLS INCORPORATED, acting through its Ingalls Shipbuilding division and Buyer’s authorized purchasing representative pursuant to the “Buyer Authorization” provision of this Order.
	2. “Government” means the U.S. Government, or its duly authorized representative.
	3. “Seller” means the person, firm or corporation by whom the Products described in this Order are to be furnished.
	4. “Products” means those goods, supplies, reports, computer software, parts list, data, materials, articles, items, parts, components or assemblies, drawings, procedures, manuals, forms, test reports, and any Services described in this Order. For the purposes of the “Inspection” provision, the term “Contract Product” or “Product” also includes but is not limited to raw materials, components, and intermediate assemblies that comprise a Product.
	5. “Order” or “Contract” means the instrument of contracting including the order form and all documents it references (including but not limited to these general provisions, plans, specifications, and regulations).
	6. “Services” means Seller’s time and effort, including any Products, supplies, materials, articles, items, parts, components or assemblies incidental to the performance of the Service.
	7. Except where it clearly appears from a reading of any provision included or incorporated by reference herein that the Government has a particular and direct interest in this Order, Seller agrees to be and is bound thereby in the same manner as if Seller were the named “Contractor” therein and Buyer were named the “Government” or “Contracting Officer.” Similarly, the word “Subcontractor” means “Subcontractor or Seller.”
	8. The term “Prime Contract” means prime contract No. HSCG23-16-C-ADB016 issued by the U.S. Government for the production and deployment of NSCs 9, 10 and 11.
2. **HEADINGS**

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.

1. **LANGUAGE AND CURRENCY**

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.

1. **GENERAL ACCEPTANCE, ENTIRE AGREEMENT AND ORDER OF PRECEDENCE**
	1. This Order is Buyer’s offer to Seller. Acceptance of this offer is strictly limited to the terms and conditions in this offer. Modifications hereto, to be binding, must be in writing and issued by Buyer’s authorized purchasing representative. Seller’s acknowledgement, acceptance of payment, or commencement of performance, shall be conclusive evidence of acceptance of this offer as written. Buyer hereby objects to any additional or different terms contained in Seller’s acceptance.
	2. In the event of any inconsistency between any parts of this Order, the inconsistency shall be resolved by giving precedence in the following order:

(i) The Order and any modifications or changes thereto exclusive of items (ii) through (vi).

(ii) Any special provisions to these General Provisions (also referred to as terms and conditions) as invoked in this Order.

(iii) These General Provisions including referenced FAR and HSAR clauses (and any other regulations referenced therein).

(iv) Statement of Work.

(v) Specification/Drawing.

(vi) Other documents referenced in this Order.

* 1. 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.
	2. 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.
1. **EQUIPMENT STANDARDIZATION**

Seller shall furnish and/or employ Standard Components/Equipment in accordance with the requirements of this Order. If at any time during the performance of this Order, should Seller believe that the use of non-standard components/equipment is necessary or desirable, he shall notify Buyer immediately, in writing, including the reasons therefore and proposing any consideration that will flow to Buyer or the Government if authorization to use such supplies is granted, provided, however non-standard components/equipment shall not be furnished without the prior written approval of Buyer.

1. **PLANS AND SPECIFICATIONS**

In performance of the work under this Order, Seller shall comply with the specifications shown or referred to on this Order and all plans and all specifications referred to on such plans and in such specifications shall be deemed to be and are hereby made a part of this Order. No omission in this Order shall relieve Seller of its obligation to perform fully all work required hereunder, or to deliver the Products complete in all respects. The plans and specifications are intended to explain each other. If any discrepancy, difference, inconsistency or conflict exists between any provision hereof, Seller shall immediately notify Buyer who will resolve such conflict. Seller shall not revise the Subcontract Specifications without prior written approval of Buyer. All revisions to the Subcontract Specifications shall be identified by date and will be incorporated into the applicable specification in accordance with Seller’s Configuration Management Plan, as approved by Buyer in writing.

**5. INSPECTION; QUALITY**

* 1. Seller shall maintain a quality management system (which at a minimum shall adhere to the requirements of ANSI/ISO/ASQC Q9001 - 2008 Quality Systems - Model for Quality Assurance in Design/Development, Production, Installation and Servicing) and inspection system acceptable to Buyer to be performed on Products delivered under this Order. As part of the system, Seller shall prepare records evidencing all inspections made under the system and the outcome. Buyer or Buyer’s customer shall have the right to perform reviews and evaluations as reasonably necessary to ascertain Seller compliance with an inspection or quality control system that is acceptable. The right of review, whether exercised or not, does not relieve the Seller of its obligations under this Order.
	2. Buyer or Buyer’s customer has the right to inspect and test all Products to the extent practicable, at all places and times, including the period of manufacture, and in any event before acceptance. Buyer assumes no contractual obligation to perform any inspection and test for the benefit of Seller. If Buyer or Buyer’s customer performs an inspection or test on the premises of Seller or a subcontractor of Seller, Seller shall furnish, and shall require its subcontractors to furnish, at no increase in Order price, all reasonable facilities and assistance for the safe and convenient performance of such inspection and test. Buyer reserves the right to charge to Seller any additional cost of inspection or test by Buyer or Buyer’s customer when (1) Products are not ready at the time such inspection or test is required by this Order or has been otherwise scheduled by mutual agreement of the parties, or (2) reinspection or retest of the Products is necessitated by prior rejection.
	3. Buyer has the right either to reject or to require correction of nonconforming Products. Products are nonconforming when they are defective in material or workmanship or are otherwise not in conformity with requirements of this Order. Buyer may reject nonconforming supplies with or without disposition instructions.
	4. Seller shall remove Products rejected or required to be corrected; however, Buyer may require or permit correction in place, promptly after notice, by and at the expense of Seller. Seller shall not tender for acceptance corrected or rejected supplies without disclosing the former rejection or requirement for correction, and, when required, shall disclose the corrective action taken.
	5. Seller, at its own expense, shall promptly rectify any defects discovered during any inspection or test.
	6. If Seller fails to promptly remove, replace, or correct rejected Products that are required to be removed or to be replaced or corrected, Buyer may either:

(i) Remove, replace, or correct the Product(s) and charge the cost to Seller; or

(ii) Terminate this Order for default.

If Buyer elects to correct the deficiencies in the Product(s), then the parties agree that Seller will pay Buyer’s actual costs and Buyer’s labor at Buyer’s fully-burdened hourly rates (as appropriate) utilizing the then-current Government-approved rate set authorized for change-order activity. If Seller fails to correct or replace the Contract Product within the delivery schedule, Buyer may require their delivery with an equitable price reduction. Failure to agree to a price reduction shall be a dispute.

* 1. Products that have been reworked or repaired by Seller after having been rejected by Buyer shall be identified as “Resubmitted.” Seller shall annotate the packing slip with the words “Resubmitted Material,” the reason for the previous rejection, and the Buyer Inspection Report, Discrepancy Report or Quality Notification Number if known. If the Products were inspected at source and rejected, such information shall also be annotated on the packing slip.
	2. Seller shall flow down the substance of this provision to all of its suppliers engaged for performance under this Order.
	3. Neither Buyer’s in-process inspection nor Buyer’s approval of any of Seller’s drawings, procedures or other submittals shall: (i) constitute acceptance of any work; or (ii) relieve Seller of complying fully with all of the requirements of this Order.

**6. PAYMENT; BACKCHARGES**

* 1. Payment shall be made within the later of the following two events: (A) The 30th day (or such other time as specified herein) after the designated billing office receives a proper invoice from Seller; or (B) The 30th day (or such other time as specified in the Order) after Buyer’s receipt of supplies delivered or services performed. 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, the Seller will be required to certify that invoiced amounts are commensurate with the value of the work accomplished, and Seller shall note “Final Invoice” on the final billing documents sent to Buyer. These actions are necessary to ensure proper closeout of this Order.
	2. If upon being notified by Buyer of deficient work or materials, and having been directed to correct the deficient work or materials by a specific date consistent with the current project schedule, Seller states or by its actions/inactions indicates its inability or unwillingness to comply, then Buyer shall proceed to accomplish the work by the most expeditious means available to it and to backcharge Seller for the cost of the required work. The parties agree that such cost shall be established at Buyer’s fully-burdened production or engineering hourly rate (as appropriate) utilizing the then-current Government-approved rate set authorized for change-order activity.
	3. All drawings, procedures, manuals, forms, test reports, software (including software documentation) and other data that is required to be delivered under this Order (“Seller Data”) shall comply with the terms of this Order. Seller Data shall be delivered to Buyer on or before the time specified in this Order, or if no time is specified, 45 days after receipt of this Order. Seller shall submit Seller Data to the Buyer address shown on the first page of this Order unless otherwise specified in this Order. If no delivery information is specified or Seller is unsure of where to send the Seller Data, Seller shall contact Buyer’s authorized purchasing representative for further instructions. Buyer may withhold up to 10% of the total price of this Order if Seller fails to deliver any Seller Data in a form and quality that is satisfactory to Buyer. When furnished with the shipment, Seller shall enclose all required Seller Data in the first box of the shipment and mark the shipment, *CERTIFICATES AND/OR TEST REPORTS ENCLOSED.*

**7. TITLE; DELIVERY**

(a) The Free On Board (FOB) point shall be as designated in this Order. Title shall pass to Buyer upon delivery (except as otherwise specified within this Order); however, passing of title shall not relieve Seller of any other obligations under this Order.

(b) All deliveries shall be strictly in accordance with the applicable quantities and schedules set forth in this Order. Unless otherwise specified in this Order, Seller shall not ship quantities in excess of those specified in this Order. Buyer shall have no obligation to return or pay for any quantities in excess of those specified in this Order. For all other shipments not meeting the requirements of this paragraph, Buyer may return the shipment or store early deliveries at Seller’s cost.

(c) Whenever it appears Seller will not meet the delivery schedule, Seller shall immediately notify Buyer in writing of the reason and estimated length of the delay. This notice shall be informational only, and shall in no way affect the rights or remedies available to Buyer. Seller shall make every effort to avoid or minimize the delay to the maximum extent possible. Any additional cost incurred by Buyer or Seller because of late delivery shall be borne by Seller unless specifically authorized in writing by Buyer.

(d) If Seller is unable to meet the required delivery schedules for any reason, other than a change directed by Buyer, Buyer shall have the option to:

(i) Terminate this Order, or

(ii) Fill this Order or any portion thereof, from sources other than Seller and to reduce Seller’s Order quantities accordingly at no increase in unit price, without any penalty to Buyer. The rights accorded Buyer pursuant to this subparagraph (d) shall not limit Buyer’s rights under the “Termination for Default” provision of this Order.

(e) All Parties expressly agree that time is and shall remain of the essence in performing this Order and no acts of Buyer, including without limitation, modifications to this Order or acceptance of late deliveries, shall constitute a waiver of this provision.

(f) Seller shall not, without Buyer’s prior written consent, manufacture or procure materials in advance of Seller’s normal flow time or deliver in advance of schedule. In the event of termination/ cancellation or change, no claim will be allowed for any such manufacture or procurement in advance of such normal flow time unless there has been such prior written consent from Buyer.

**8. CHANGES**

(a) Buyer may at any time by written order make changes within the general scope of this Order, including but not limited to the following items:

(i) drawings, designs, specifications, planning, and/or other technical documents;

(ii) method of shipment, packaging, or packing;

(iii) place of delivery;

(iv) reasonable adjustments in quantities or delivery schedules or both;

(v) place of inspection;

(vi) place of acceptance;

 and, if services are procured with the Products:

(vii) description of services to be performed;

(viii) time of performance (i.e., hours of the day, days of the week, etc.), of the services; and

(ix) place of performance of the services.

(b) If the change causes an increase or decrease in the cost or time required to perform this Order, the Parties shall negotiate an equitable adjustment in the price or schedule, or both, to reflect the increase or decrease. Buyer shall modify this Order in writing accordingly.

(c) Any claim for adjustment shall be unconditionally waived unless asserted in writing and delivered to Buyer within 15 days of the receipt of the written order; if Seller claims the cost of any property made obsolete or excess, Buyer shall have the right to prescribe the manner of disposition of the property to include the right to acquire that property for the cost claimed.

(d) Buyer has the right to examine any of Seller’s pertinent books and records for the purpose of verifying Seller’s claim.

(e) Seller shall immediately proceed with the performance of this Order as changed. Failure to agree to any adjustment shall be a dispute within the meaning of the “Disputes” provision. Seller shall not be entitled to any claim for changes unless authorized in writing by Buyer.

**9. TERMINATION FOR DEFAULT**

(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) Refund of Payments. Seller shall, upon termination by Buyer due to default by Seller, return any payments Seller received under this Order for the terminated work.

(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) 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 in equity or otherwise provided under this Order.

**10. NON-WAIVER**

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.

**11. FORCE MAJEURE**

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, inability of the Government to pay prime contractor timely, 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.

1. **INDEMNIFICATION**

(a) Seller shall indemnify and hold harmless Buyer, Buyer’s parent and affiliates, and their respective directors, officers, and employees (collectively, for the purposes of this provision 12, “Buyer”), from and against any and all liabilities, claims, losses, and expenses, arising from the acts and omissions of the Seller, its employees, subcontractors, or agents, in their performance of this Order, except where Buyer is solely negligent. Seller shall, at its own cost, defend Buyer against such claims, losses, and liabilities, and, it shall pay Buyer’s reasonable attorneys’ fees, and expenses, related to carrying out and enforcing the terms of this provision, as those costs are incurred. Buyer has the right to conduct such defenses if it so chooses.

(b) In addition to any other remedies provided for in this Order, Seller shall indemnify and hold harmless 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:

(1) To comply with any cost principles or Cost Accounting Standards applicable to this Order or to follow Seller’s disclosed accounting practices or both;

(2) To furnish complete, accurate or current cost or pricing data when such data were required by law or regulation:

1. In support of any Truthful Cost or Pricing Data (formerly known as the Truth In Negotiations Act (TINA)) certification made by Buyer to the Government; or
2. In the negotiation of this Order or any modifications thereto; or
3. To comply with any other 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.

**13. ASSIGNMENT**

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.

**14. BUSINESS CONDUCT**

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.

**15. LIENS**

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

1. **WARRANTY**
	1. Seller warrants that all Products delivered under this Order will:

(i) be free from defects in materials, workmanship, and manufacturing processes; and

(ii) conform to all requirements of this Order.

(b) The warranty period shall begin upon Buyer’s acceptance of the Product and end 12 months after final acceptance by Buyer’s customer of the end product incorporating the Product provided by Seller under this Order. In computing the warranty period, there shall be excluded any time that a Product delivered under this Order is prevented from entering service or is taken out of service on account of any Product deficiency.

(c) For the purposes of this provision, a deficiency occurs when Seller’s goods or services fail to meet any of the performance obligations set forth in paragraph (a) of this provision. Seller’s notice shall in no way affect the rights and remedies of Buyer.

(d) For all deficiencies that arise during the warranty period, Seller shall promptly remedy the deficiency at no cost to Buyer. If Seller fails to remedy the deficiency within a reasonable time after having been notified of the deficiency, Buyer may, at its option, remedy the deficiency by contract or otherwise and charge to the Seller any increased costs incurred by Buyer or Buyer’s customer or make an equitable reduction in the price of this Order. If Buyer elects to correct the deficiencies in the Product, then the parties agree that Seller will pay Buyer’s actual costs and Buyer’s labor at Buyer’s fully-burdened hourly rates (as appropriate) utilizing the then-current Government-approved rate set authorized for change-order activity.

(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 the 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 Product 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) Nothing herein shall relieve Seller of its liability for latent defects, fraud or such gross mistakes amounting to fraud, regardless of when such defects or deficiencies are discovered. 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.

(i) Pursuant to the requirements of FAR 46.706(b)(5), Seller shall stamp or mark the Product(s) delivered or otherwise furnish notice with the Product(s) of the existence of a warranty. Markings may be brief but shall include (1) a brief statement that a warranty exists, (2) the substance of the warranty, (3) its duration, and (4) whom to notify if the Product(s) are found to be defective. For commercial items, Seller’s trade practice in warranty marking is acceptable, if sufficient information is presented for users to identify warranted Product(s) and associated warranty procedures.

**17. TAXES**

Seller shall not collect any sales or use taxes inasmuch as Buyer has direct pay permits held for Mississippi and Virginia. Seller shall pay all other State, Federal and Local taxes, assessments and duties that may be applicable to Products or Seller’s performance hereunder.

1. **SUSPECT AND COUNTERFEIT PARTS**
2. “Suspect/counterfeit parts” are parts that may be of new manufacture, but are misleadingly labeled to provide the impression they are of a different class or quality or from a different source than is actually the case. The term “suspect/counterfeit parts” also includes refurbished parts, with or without false labeling, that are represented as new parts or any parts that are designated as suspect by the U.S. Government, including but not limited to parts listed in alerts published by the Defense Contract Management Agency under the Government-Industry Data Exchange Program (GIDEP).
3. Seller will ensure that suspect/counterfeit parts are not incorporated into any Products.  The intentional or unintentional use, incorporation, or delivery of suspect/counterfeit parts is strictly prohibited.  This includes a suspect/counterfeit part being provided either as an end item deliverable or as a component or subcomponent of an end item deliverable under this Order.
4. Seller represents and warrants that it has policies and procedures in place to ensure that none of the Products furnished to Buyer under this Order are or contain “suspect/counterfeit parts.” Seller further certifies, to the best of its knowledge and belief that no “suspect/counterfeit parts” have been or will be furnished to Buyer by Seller under this Order.
5. If Seller becomes aware or suspects that it has furnished suspect/counterfeit parts or if Buyer determines, including as a result of alerts from the U.S. Government, that Seller has supplied suspect/counterfeit parts to Buyer and so notifies Seller, Seller shall immediately replace the suspect/counterfeit parts with parts acceptable to Buyer and conforming to the requirements of this Order. Notwithstanding any other provision of this Order, Seller shall be liable for all costs incurred by Buyer to remove and replace the suspect/counterfeit parts, including without limitation all costs incurred by Buyer relating to the removal of such suspect/counterfeit parts, the reinsertion of replacement parts and any testing necessitated by the reinstallation of Seller’s Products after suspect/counterfeit parts have been exchanged. The parties agree that Seller will pay Buyer’s actual costs and Buyer’s labor at Buyer’s fully-burdened hourly rates (as appropriate) utilizing the then-current Government-approved rate set authorized for change-order activity. All such costs shall be deemed direct damages.
6. Buyer may, at its discretion:
7. Remove and or retain or both all Products supplied by Seller that are suspected of being or containing suspect/counterfeit parts pending reporting to the appropriate law enforcement authorities and final disposition of the Products by them. Seller shall be liable for all costs relating to Buyer’s removal and retention of the suspect/counterfeit parts.
8. Turn over to the appropriate authorities (*e.g.*, without limitation, the Defense Criminal Investigative Service, Naval Criminal Investigative Service, Federal Bureau of Investigation, Offices of the Inspector General, etc.) any Products suspected of being or containing suspect/counterfeit parts and reserves the right to withhold payment for the Products pending the results of any investigation or proceedings related to the matter.
9. Seller’s warranty against suspect/counterfeit parts shall survive any termination or expiration of this Order. Seller shall insert a clause containing all of the terms of this provision in all subcontracts under this Order.
10. **GOVERNMENT PRODUCTION SURVEILLANCE AND CONTRACT QUALITY ASSURANCE OF SUBCONTRACTED SUPPLIES AND SERVICES**

The Government may maintain such production surveillance (consistent with FAR Part 42.11) of Seller’s performance at Seller and at the subcontractor’s facilities; and at such other subcontractor, vendor, and supplier facilities and sites as the Government deems necessary to protect its interests hereunder. The Government may monitor subcontractor progress and identify to Buyer or Seller any factors noted that may impede, degrade, delay, and/or significantly increase the cost of performing all or any part of this Order. To this end, the Government may review and/or analyze Seller and subcontractor performance plans, schedules, controls, and industrial processes, as well as the Seller’s and subcontractor’s actual performance under same Government contract quality assurance, consistent with FAR Part 46.

Government contract quality assurance on the Products and subcontracted supplies and services (consistent with FAR Part 46.405 and including but not limited to inspection at source) may be performed as specified as the Government deems necessary to protect its interest hereunder and to assist in determining whether the supplies and services to be furnished hereunder conform to all applicable order and specification requirements.

Government contract quality assurance (consistent with FAR Subpart 46.402), including inspection of supplies and/or services required to be furnished hereunder, may be performed at source (including at subcontractors’ plants, yards, and facilities). Government contract quality assurance (consistent with FAR Subpart 46.403), including inspection of supplies and/or services required to be furnished hereunder shall be performed at destination.

The Government shall conduct production surveillance and perform Government contract quality assurance actions (including but not limited to inspections and tests) under this Order in a manner that will not unduly delay Seller’s work. Any and all Government actions, Government inaction, or Government conduct in connection with such Government production surveillance and Government contract quality assurance are for the benefit of the Government. The Government assumes no contractual obligation to conduct any production surveillance or perform any order quality assurance action(s) (including but not limited to inspection and/or testing) for the benefit of Seller, nor shall the Government’s conduct of production surveillance and/or performance of contract quality assurance actions be construed as relieving Seller from any duty or obligation imposed by, under, or in connection with, any requirement of this Order.

Neither Government production surveillance nor Government contract quality assurance actions performed at the subcontract level, as provided in this clause, shall be construed as affecting the contractual relationship between Seller and Buyer, or between Seller and any subcontractor, vendor, or supplier of Seller; establishing a contractual relationship between the Government and any subcontractor, supplier, or vendor of Seller; or constituting a waiver of the Government’s right to accept or reject supplies and/or services to be furnished under this Order.

Should Seller consider that any Government action, Government inaction, or Government conduct in connection with such Government production surveillance and/or Government contract quality assurance has or may effect a change in this Order that has not been identified as such in writing and signed by the Contracting Officer, Seller shall promptly notify Buyer who will then notify the Government of same, in writing, as required under the clause of this Order entitled, “Notification of Changes.”

As used in this provision, “Seller’s work,” “Seller’s performance,” and “supplies and/or services to be furnished by Seller hereunder” shall be construed as including any and all subcontracted work, subcontracted performance, and subcontracted supplies and/or services necessary and/or required for Order performance.

Nothing in this provision shall be construed as relieving Seller of any duty or obligation imposed by, under, or in connection with this Order, including but not limited to Seller’s obligation to control the quality of the Products required to be furnished hereunder; tender to Buyer for acceptance only those Products that conform to the requirements of this Order; ensure that vendors and/or suppliers of raw materials, parts, components, subassemblies, etc., have an acceptable quality control system; and maintain substantiating evidence that the Products required to be furnished hereunder conform to applicable quality requirements of this Order, and furnishing information to Buyer, as required hereunder.

1. **REGULATORY BODIES, STANDARDS, CERTIFICATIONS AND DATA REQUIREMENTS**

All Products as delivered shall comply with all the applicable laws of the United States and the requirements of the various regulatory bodies and rules and standards as identified in this Order. Necessary certifications or documents that cover the approval and indicate compliance shall be obtained by Seller as required. Data necessary for the Seller and/or Buyer to obtain the required certifications, classification, or statements of voluntary compliance shall also be provided by the Seller. Additionally, Seller shall accomplish all work necessary to comply with those applicable laws of the United States, the requirements of the various regulatory bodies and imposed rules and standards. Copies of all correspondence (i.e., emails, letters, etc.) between Seller and regulatory bodies shall be provided to Buyer timely upon Buyer’s request.

Before delivery of any Product(s), the original certificates and / or documents demonstrating approval by regulatory bodies or indicating compliance with this Order shall be displayed as required or directed by Buyer or the Government. Seller and/or Buyer in all other cases shall provide data to the Government as required by the Subcontract Data Requirements List, incorporated by reference into this Order.

1. **PERMITS AND RESPONSIBILITIES**

Seller shall be responsible for obtaining any necessary licenses and permits, and for complying with any applicable Federal, state, and municipal laws, codes, and regulations applicable to the performance of work required under this Order, including the movement over the public highways of overweight/over-dimensional materials.

1. **PLANT PROTECTION**

Seller shall provide for its plant and the work in process under this Order such safeguards, including personnel, devices, and equipment, as would constitute reasonable protection under peacetime conditions (in the light of the size of the plant and the scope of its operations) against all hazards, including unauthorized entry, malicious mischief, theft, vandalism, fire, and flooding.

1. **NO INDEMNIFICATION FOR ACCESS TO FACILITIES**

Officers, employees, and associates of the Government, or other contractors with the Government and their subcontractors, shall be allowed admission to Seller’s facilities and access to the Product(s) without any further request for indemnification from any party.

1. **VERIFICATION AND VALIDATION**

The Government shall be allowed access to Seller’s data records to the extent necessary to perform functions under FAR 52.246-2, FAR 52.246-3, FAR 52.246-4, FAR 52.246-5 and FAR 52.246-6. Such access may include an independent validation contractor performing corrections to inadequate or incomplete data deliverables pursuant to FAR 52.246-2(h)(1) or FAR 52.246-3 (g)(1), FAR 52.246-4 (f) (1), FAR 52.246-5 (e) (1) and FAR 52.246-6 (g) (1) (i).

1. **ENVIRONMENTAL CONTROLS**

Notwithstanding that this Order may require the use of paints or coatings that do not meet state or district requirements for reduced volatile organic compounds (VOCs), Seller must comply with all international, federal, state, and local regulatory requirements respecting air quality and emission limitations. Seller shall meet the requirements for reduced VOCs, and shall use engineering controls or other special painting equipment as required.

1. **OPTIONAL TERMINATION AND SUSPENSION**

The performance of work under this Order may be terminated or suspended by Buyer, in whole or from time to time, in part, whenever Buyer shall determine that such termination or suspension is in its best interest. Any such termination or suspension shall be by written notice to Seller, specifying the extent to which performance of work under this Order is terminated or suspended, and the date upon which termination or suspension becomes effective. The rights of Buyer pursuant to this Clause are in addition to any of its other rights under this Order. The Clause set forth in FAR 52.249-2 shall apply in the event of termination of this Order under this Clause and is incorporated herein by reference. In the event of suspension of work or stop work under this Clause, Seller shall be entitled to an equitable adjustment (excluding profit) consistent with FAR 52.242-14 and 52.242-15 caused by such suspension or stop work, respectively.

1. **ASSIGNMENT AND USE OF NATIONAL STOCK NUMBERS**

Seller shall screen parts information for existing NSNs or preliminary NSNs. Seller shall utilize NSN assignments for the identification of parts, pieces, items, subassemblies, or assemblies to be furnished under the Order. Seller shall use NSNs or preliminary NSNs in the preparation of provisioning lists, package labels, packing lists, shipping containers, shipping documents and spare or repair parts. For any parts for which Seller cannot determine an existing NSN, Seller shall request existing NSN information from the Government by sending such request to Buyer.

1. **GOVERNING LAW**

This Order shall be governed by the laws of the State of Mississippi, exclusive of its choice of law provisions, and the parties agree that the United States District Court for the Southern District of Mississippi or the Circuit Court of Jackson County, Mississippi, shall be the exclusive venue for suits at law or in equity arising from this Order.

1. **PROPRIETARY INFORMATION**

(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, and includes any information marked with a restrictive legend as prescribed in FAR 52.227-14.

(b) Seller will treat all Proprietary Information transferred in connection with this Order, all copies of Proprietary Information, and all improvements, modifications, and derivations of Proprietary Information, as Buyer’s property regardless of the medium on which such Proprietary Information is stored or communicated. 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 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 non-disclosure agreement.

(e) If no separate proprietary information or 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) Unless otherwise provided in FAR 52.227-14 or if no separate proprietary information or 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.

1. **PATENT, TRADEMARK, TRADE SECRET AND COPYRIGHT INDEMNITY**
2. In addition to any other warranty by Seller to Buyer against intellectual property infringement, statutory or otherwise, express or implied, Seller will indemnify and hold harmless Buyer, Buyer’s parent and affiliates and their respective officers, directors, employees, and customers (“Indemnified Parties”) from and against any and all liabilities, claims, losses and expenses arising out of any allegation of patent, copyright, or trademark infringement or allegation of trade secret misappropriation (collectively or individually, “Claim”) resulting from Indemnified Parties’ use, manufacture, or sale (including any re-sale) of any product or service Seller provides to Buyer that Seller authorizes expressly or impliedly under this Order. Seller shall, at its own cost, defend Buyer against such Claims, and, it shall pay Buyer’s reasonable attorney fees and expenses, related to carrying out and enforcing the terms of this provision, as those costs are incurred. Buyer has the right to conduct such defenses if it so chooses.
3. Notwithstanding the foregoing, when this Order is performed under the authorization and consent of the U.S. Government to infringe United States Patents, Seller’s liability for Seller’s patent infringement under this Order shall be coextensive with Buyer’s liability.
4. **DISPUTES**

(a) Any dispute arising under or related to this Order shall be submitted in writing for resolution to equivalent ascending levels of management of the respective Parties up to the Senior Executive of the Supply Chain Management organization placing the Order, and Seller’s equivalent executive level.

(b) If a dispute cannot be resolved to both Parties’ mutual satisfaction, after good faith negotiations, within ninety (90) days from the date the written dispute is received by the other Party in accordance with the notice provisions set forth herein, or such additional time as the Parties agree upon, in writing, either Party may only bring suit in the appropriate federal or state court in the state listed as Buyer’s address in the Order; said forum selection to be made without regard to said state’s conflict of laws principles.

(c) Pending any informal resolution, law suit, appeal, or final decision referred to in this provision, or the settlement of any dispute, Seller shall proceed diligently, as directed by Buyer, with performance of this Order.

(d) Seller shall commence an action for breach or any other dispute arising under or related to this Order within two (2) years after the cause of action accrues, or by the otherwise applicable statute of limitations, whichever period is shorter.

(e) If the Government:

(i) makes a decision or determination,

(ii) takes an action, or,

(iii) in the case of a claim filed with the Contracting Officer, fails to take an action within the time limits specified in the “Disputes” clause in Buyer’s Prime Contract (“deemed denial”), on a matter arising under or related to the Buyer’s Prime Contract, and such decision, determination, action or deemed denial relates to or affects the Parties’ rights and interests under this Order (“Government Action”), then any dispute between Buyer and Seller as relates to the Government Action shall be resolved in accordance with paragraph (f), which shall be Seller’s sole remedy for such disputes.

Except as otherwise provided in subparagraph (f), all other disputes between Buyer and Seller will be resolved in accordance with subparagraph (b) of this paragraph.

(f) Notwithstanding any provisions herein to the contrary, Government Actions shall be final and binding on Seller and Seller shall have no recourse against Buyer for such Government Action or Buyer’s implementation thereof, unless and to the extent Buyer or Seller appeals pursuant to the terms of this paragraph.

(i) If Buyer elects to appeal a Government Action pursuant to the “Disputes” clause in Buyer’s Prime Contract, whether at Buyer’s election or at Seller’s request, Seller shall:

(A) assist Buyer in every reasonable manner in; and

(B) be afforded a reasonable opportunity to participate in, the prosecution of the appeal to the extent Seller’s interest may be affected thereby. Buyer will not enter into an agreement to settle an appeal that affects Seller’s interest without Seller’s written consent.

(ii) If Buyer elects not to appeal a Government Action, Buyer shall notify Seller with reasonable promptness. When Buyer elects not to prosecute an appeal pursuant to this provision, the Buyer may, in its sole and absolute discretion, permit Seller to prosecute the appeal of the Government Action for Buyer and in such event, Buyer shall, if requested by Seller, reasonably assist Seller in prosecuting the appeal. Seller shall reasonably keep Buyer informed of the progress of ANY SUCH appeal by, among other things, providing Buyer with copies of all pleadings and other relevant documents. For those pleadings and other documents filed by Seller, Seller shall provide Buyer drafts in advance of the filing date sufficient to afford Buyer with a reasonable time to review.

(iii) Any decision on or settlement of an appeal brought pursuant to subparagraphs (f)(i) or (f)(ii) of this provision shall be binding upon Seller insofar as it relates to or affects the Parties’ rights and interests under this Order and Seller shall have no recourse against Buyer as a result of the decision or settlement or Buyer’s implementation thereof. Further, if as a result of any decision or settlement described in the immediately preceding sentence, Buyer is unable to obtain reimbursement from the Government under the Prime Contract for, or is required to refund or credit to the Government, any amount with respect to any item of cost or fee for which Buyer has reimbursed Seller, Seller shall, on demand, promptly repay such amount to Buyer.

(iv) Each party shall bear its own costs for prosecuting appeals brought pursuant to subparagraph (f)(i) of this provision. Seller shall bear the cost of prosecuting appeals brought pursuant to subparagraph (f)(ii) of this provision to include all reasonable attorneys’ fees and other costs borne by Buyer:

(A) in assuring itself of the validity of Seller’s appeal; and

(B) assisting Seller in the prosecution of the appeal.

(v) Before submitting a claim that Buyer may approve to be appealed hereunder, Seller shall:

(A) certify its claim in the same manner and format as required of Buyer under its Prime Contract with the Government; and

(B) provide Buyer with such other assurances as Buyer may require.

(vi) Seller shall indemnify and hold harmless Buyer, its parent and affiliates and each of their directors, officers, employees, and agents against any and all claims, losses, expenses, judgments or any other liabilities (to include but not limited to reasonable attorney’s fees) incurred by or imputed to Buyer as a result of:

(A) Buyer’s sponsoring a claim on Seller’s behalf as provided for in this provision,

(B) any misrepresentation of fact or fraud on the part of Seller in connection with such claim; or

(C) a defect in Seller’s certification.

(vii) Nothing in this clause nor any authorization or offer that may be made shall be deemed to constitute acceptance or acknowledgment by Buyer of the validity of Seller’s claim or any part thereof, nor be deemed to limit or in any way restrict Buyer from taking any actions, including available remedies, it deems appropriate to protect its own interests.

1. **BUYER OR GOVERNMENT PROPERTY**
	1. If Buyer or Government property is furnished in conjunction with this Order, it shall be furnished “as is.” Accordingly, Buyer disclaims any warranty of suitability and or serviceability. 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 or the Government 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. Seller shall control and maintain Government or Buyer furnished property in accordance with a system that meets the requirements of FAR 52.245-1.
	2. Seller shall use Buyer- or Government-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- or Government-furnished property unless this Order specifically identifies the modifications, alterations or improvements as work to be performed.
	3. Buyer and Government shall retain title to all Buyer- or Government-furnished property. Title to such property shall not be affected by its incorporation into or attachment to any property not owned by Buyer or the Government, nor shall Buyer or Government-furnished property become a fixture or lose its identity as personal property by being attached to any real property.
	4. Seller shall immediately discharge any lien, other than a lien held by Buyer or the Government on Buyer- or Government-furnished property.
	5. The requirements related to accounting for Buyer- or Government-furnished property also shall apply to scrap generated from Seller’s use of such property, provided, however, that Buyer may authorize or direct Seller to omit such scrap from inventory disposal schedules.
2. **PRESERVATION, PACKING AND SHIPPING**

(a) Seller shall preserve, pack, and package all Products in such a way as to ensure complete delivery in accordance with this Order with all required accompanying documentation and without damage or deterioration during shipping, handling, or storage. American Standards of Testing and Materials (ASTM) commercial standards or equivalent for preservation, packaging and packing practices are acceptable.

(b) Seller shall be responsible for ensuring the proper packaging and shipping of Products in accordance with Buyer’s carrier routing/shipping instructions, which are incorporated herein and available at <https://spars.huntingtoningalls.com/procurement/index.html>. 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.

(c) All unclassified data shall be marked and prepared for shipment in accordance with best commercial practice via electronic media, unless specified otherwise on Form DD 1423, when applicable.

1. **FINAL SETTLEMENT**

Seller shall execute and deliver at the time of and as a condition precedent to final payment, an appropriate release discharging Buyer, the Government, and their Officers, agents and employees of and from liabilities, obligations and claims arising under this Order. If this Order shall have been terminated in whole or in part, any such release shall also contain a release of all claims against Buyer and the Government arising out of or by virtue of such termination.

1. **BUYER AUTHORIZATION**

(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 as defined in this Order.

(b) Buyer’s engineering, technical personnel and other representatives may from time to time render assistance or give technical advice or discuss or affect an exchange of information with Seller’s personnel concerning the Products hereunder. No such action shall be deemed to be a change under the “Changes” provision of this Order and shall not be the basis for an equitable adjustment.

1. **IDENTIFICATION MARKING OF PARTS**

Identification marking of individual parts within the systems, equipment, assemblies, subassemblies, components, groups, sets or kits, and of spare and repair parts shall be done in accordance with applicable specifications and drawings.

1. **MOST FAVORED CUSTOMER ASSURANCE**

Seller agrees that the prices for the supplies or services furnished under this order are as low or lower than those charged Seller’s most favored customer for comparable quantities under similar terms and conditions, in addition to any discounts for prompt payment.

1. **INDEPENDENT CONTRACTOR**

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.

1. **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 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.

1. **COMPLIANCE WITH LAWS**

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.

1. **ACCESS TO VESSELS BY NON-U.S. CITIZENS**
	1. No person not known to be a U.S. Citizen shall be eligible for access to naval vessels, work sites and adjacent areas when said vessels are under construction, conversion, overhaul, or repair, except upon a finding by the Government COTR or his designated representative that such access should be permitted in the best interest of the United States. The Seller shall establish procedures to comply with this requirement and NAVSEAINST 5500.3 (series) in effect on the date of the award of the Prime Contract to Buyer.
	2. If the Seller desires to employ non-U.S. citizens in the performance of work under this Order or agreement that requires access as specified in paragraph (a) of this requirement, approval must be obtained prior to access for each contract or agreement where such access is required. To request such approval for non-U.S. citizens of friendly countries, the Seller shall submit to Buyer, an Access Control Plan (ACP) that shall contain as a minimum, the following information:
		1. Badge or Pass oriented identification, access, and movement control system for non-U.S. citizen employees with the badge or pass to be worn or displayed on outer garments at all times while on the Buyer’s facilities and when performing work aboard ship.
2. Badges must be of such design and appearance that permits easy recognition to facilitate quick and positive identification.
3. Access authorization and limitations for the bearer must be clearly established and in accordance with applicable security regulation and instructions.
4. A control system, which provides rigid accountability procedures for handling lost, damaged, forgotten or no longer required badges, must be established.
5. A badge or pass check must be performed at all points of entry to the Buyer’s facilities or by a site supervisor for work performed on vessels outside the Buyer’s plant.
	* 1. Seller’s plan for ascertaining citizenship and for screening employees for security risk.
		2. Data reflecting the number, nationality, and positions held by non-U.S. citizen employees, including procedures to update data as non-U.S. citizen employee data changes, and pass to cognizant Contract Administration Office (CAO).
		3. Seller’s plan for ensuring subcontractor compliance with the provisions of the Seller’s ACP.
		4. These conditions and controls are intended to serve as guidelines representing the minimum requirements of an acceptable ACP. They are not meant to restrict the Seller in any way from imposing additional controls necessary to tailor these requirements to a specific facility.
	1. To request approval for non-U.S. citizens of hostile and/or communist- controlled countries (listed in Department of Defense Industrial Security Manual, DOD 5220.22-M or available from cognizant CAO), Seller shall include in the ACP the following employee data: name, place of birth, citizenship (if different from place of birth), date of entry to U.S., extenuating circumstances (if any) concerning immigration to U.S., number of years employed by Seller, position, and stated intent concerning U.S. citizenship. The Government COTR or his designated representative will make individual determinations for desirability of access for above group. Approval of ACPs for access of non-U.S. citizens of friendly countries will not be delayed for approval of non-U.S. citizens of hostile communist-controlled countries. Until approval is received, Seller must deny access to vessels for employees who are non-U.S. citizens of hostile and/or communist-controlled countries.
	2. The Seller shall fully comply with approved ACPs. Noncompliance by the Seller or subcontractor serves to cancel any authorization previously granted, in which case the Seller shall be precluded from the continued use of non-U.S. citizens on this Order until such time as the compliance with an approved ACP is demonstrated and upon a determination by the CAO that the Government’s interests are protected. Further, the Government and Buyer reserve the right to cancel previously granted authority when such cancellation is determined to be in the Government’s or Buyer’s best interest. Use of non-U.S. citizens, without an approved ACP or when a previous authorization has been canceled, will be considered a violation of security regulations. Upon confirmation by the CAO of such violation, this Order may be terminated for default.
	3. Seller shall have full responsibility for the proper administration of the approved ACP for all work performed under this Order, regardless of the location of the vessel, and must ensure compliance by all of its subcontractors, technical representatives and other persons granted access to U.S. vessels, adjacent areas, and work sites.
	4. In the event Seller does not intend to employ non-U.S. citizens in the performance of the work under this Order, but has non-U.S. citizen employees, such employees must be precluded from access to the vessel and its work site and those shops where work on the vessel’s equipment is being performed. The ACP must spell out how non-U.S. citizens are excluded from access to contract work areas.
	5. The same restriction as in paragraph (f) above applies to other than non-U.S. citizens who have access to the Buyer’s facilities (e.g., for accomplishing facility improvements, from foreign crewed vessels within its facility, etc.).
	6. Nothing in this clause relieves Seller from complying with the International Traffic in Arms Regulations (ITAR), 22 CFR 120-130.
6. **CONTRACTOR EMPLOYEE ACCESS**

(a) *Sensitive Information,* as used in this provision, means any information, which if lost, misused, disclosed, or, without authorization is accessed, or modified, could adversely affect the national or homeland security interest, the conduct of Federal programs, or the privacy to which individuals are entitled under section 552a of Title 5, United States Code (the Privacy Act), but which has not been specifically authorized under criteria established by an Executive Order or an Act of Congress to be kept secret in the interest of national defense, homeland security or foreign policy. This definition includes the following categories of information:

(1) Protected Critical Infrastructure Information (PCII) as set out in the Critical Infrastructure Information Act of 2002 (Title II, Subtitle B, of the Homeland Security Act, Public Law 107-296, 196 Stat. 2135), as amended, the implementing regulations thereto (Title 6, Code of Federal Regulations, Part 29) as amended, the applicable PCII Procedures Manual, as amended, and any supplementary guidance officially communicated by an authorized official of the Department of Homeland Security (including the PCII Program Manager or his/her designee);

(2) Sensitive Security Information (SSI), as defined in Title 49, Code of Federal Regulations, Part 1520, as amended, “Policies and Procedures of Safeguarding and Control of SSI,” as amended, and any supplementary guidance officially communicated by an authorized official of the Department of Homeland Security (including the Assistant Secretary for the Transportation Security Administration or his/her designee);

(3) Information designated as “For Official Use Only,” which is unclassified information of a sensitive nature and the unauthorized disclosure of which could adversely impact a person’s privacy or welfare, the conduct of Federal programs, or other programs or operations essential to the national or homeland security interest; and

(4) Any information that is designated “sensitive” or subject to other controls, safeguards or protections in accordance with subsequently adopted homeland security information handling procedures.

(b) “Information Technology Resources” include, but are not limited to, computer equipment, networking equipment, telecommunications equipment, cabling, network drives, computer drives, network software, computer software, software programs, intranet sites, and internet sites.

(c) Seller’s employees working on this Order must complete such forms as may be necessary for security or other reasons, including the conduct of background investigations to determine suitability. Completed forms shall be submitted as directed by Buyer or the Contracting Officer. Upon the Buyer or Contracting Officer's request, Seller’s employees shall be fingerprinted, or subject to other investigations as required. All Seller employees requiring recurring access to Government facilities or access to sensitive information or IT resources are required to have a favorably adjudicated background investigation prior to commencing work on this Order unless this requirement is waived by the U.S. Government.

(d) Buyer or the Contracting Officer may require the Seller to prohibit individuals from working on this Order if the Government deems their initial or continued employment contrary to the public interest for any reason, including, but not limited to, carelessness, insubordination, incompetence, or security concerns.

(e) Work under this Order may involve access to sensitive information. Therefore, Seller shall not disclose, orally or in writing, any sensitive information to any person unless authorized in writing by the Buyer or Contracting Officer. For those Seller employees with authorized access to sensitive information, Seller shall ensure that these persons receive training concerning the protection and disclosure of sensitive information both during and after performance of this Order.

(f) Seller shall include the substance of this provision in all subcontracts at any tier where the subcontractor may have access to Government facilities, sensitive information, or resources.

(g) Before receiving access to IT resources under this Order the Seller’s employees must receive a security briefing, which the Contracting Officer’s Technical Representative (COTR) will arrange, and complete any nondisclosure agreement furnished by DHS.

(h) Seller shall have access only to those areas of DHS information technology resources explicitly stated in this Order or approved by the COTR in writing as necessary for performance of the work under this Order. Any attempts by Seller’s personnel to gain access to any information technology resources not expressly authorized by the statement of work, other terms and conditions in this Order, or as approved in writing by the COTR, is strictly prohibited. In the event of violation of this provision, Buyer will take appropriate actions with regard to this Order and the individual(s) involved.

(i) Seller’s access to DHS networks from a remote location is a temporary privilege for mutual convenience while Seller performs business for the DHS Component. It is not a right, a guarantee of access, a condition of this Order, Buyer-furnished equipment or Government Furnished Equipment (GFE).

(j) Seller’s access will be terminated for unauthorized use. Seller agrees to hold and save Buyer and DHS harmless from any unauthorized use and agrees not to request additional time or money under this Order for any delays resulting from unauthorized use or access.

(k) Non-U.S. citizens shall not be authorized to access or assist in the development, operation, management or maintenance of Department IT systems under this Order, unless Seller submits a waiver request to Buyer, who in turn will submit such request to DHS, and then a waiver has been granted by the Head of DHS or designee, with the concurrence of both the Department’s Chief Security Officer (CSO) and the Chief Information Officer (CIO) or their designees. Within DHS Headquarters, the waiver may be granted only with the approval of both the CSO and the CIO or their designees. In order for a waiver to be granted:

(1) There must be a compelling reason for using this individual as opposed to a U. S. citizen; and

(2) The waiver must be in the best interest of the Government.

(l) Seller shall identify in its proposal the names and citizenship of all non-U.S. citizens proposed to work under this Order. Any additions or deletions of non-U.S. citizens after award of this Order shall also be reported to Buyer and the Contracting Officer.

1. **VALIDATION OF RESTRICTIVE MARKINGS ON TECHNICAL DATA**

(a) *Definitions*. The terms used in this clause are defined in the Rights in Technical Data—Noncommercial Items clause of this Order. As used in this provision, unless otherwise specifically indicated, the term “Contractor” means Seller and its subcontractors or suppliers

(b) *Presumption regarding development exclusively at private expense*.

(1) *Commercial items*. For commercially available off-the-shelf items (defined at 41 U.S.C. 104) in all cases, and for all other commercial items except as provided in paragraph (b) (2) of this clause, the Contracting Officer will presume that a Contractor’s asserted use or release restrictions are justified on the basis that the item, component, or process was developed exclusively at private expense. The Contracting Officer shall not challenge such assertions unless the Contracting Officer has information that demonstrates that the item, component, or process was not developed exclusively at private expense.

(2) *Major systems*. The presumption of development exclusively at private expense does not apply to major systems or subsystems or components thereof, except for commercially available off-the-shelf items (which are governed by paragraph (b)(1)) of this clause. When the Contracting Officer challenges an asserted restriction regarding technical data for a major system or a subsystem or component thereof on the basis that the item, component, or process was not developed exclusively at private expense, the Contracting Officer will sustain the challenge unless information provided by the Contractor or subcontractor demonstrates that the item, component, or process was developed exclusively at private expense.

(c) *Justification*. The Contractor or subcontractor at any tier is responsible for maintaining records sufficient to justify the validity of its markings that impose restrictions on the Government and others to use, duplicate, or disclose technical data delivered or required to be delivered under this Order. Except as provided in paragraph (b)(1) of this clause, Seller or its subcontractor(s) shall be prepared to furnish to the Contracting Officer a written justification for such restrictive markings in response to a challenge under paragraph (e) of this clause.

(d) *Prechallenge request for information*.

(1) The Contracting Officer may request Seller or subcontractor to furnish a written explanation for any restriction asserted by Seller or subcontractor on the right of the United States or others to use technical data. If, upon review of the explanation submitted, the Contracting Officer remains unable to ascertain the basis of the restrictive marking, the Contracting Officer may further request Seller or subcontractor to furnish additional information in the records of, or otherwise in the possession of or reasonably available to, Seller or subcontractor to justify the validity of any restrictive marking on technical data delivered or to be delivered under this Order (e.g., a statement of facts accompanied with supporting documentation). The Contractor or subcontractor shall submit such written data as requested by the Contracting Officer within the time required or such longer period as may be mutually agreed.

(2) If the Contracting Officer, after reviewing the written data furnished pursuant to paragraph (d)(1) of this clause, or any other available information pertaining to the validity of a restrictive marking, determines that reasonable grounds exist to question the current validity of the marking and that continued adherence to the marking would make impracticable the subsequent competitive acquisition of the item, component, or process to which the technical data relates, the Contracting Officer shall follow the procedures in paragraph (e) of this clause.

(3) If the Contractor or subcontractor fails to respond to the Contracting Officer’s request for information under paragraph (d)(1) of this clause, and the Contracting Officer determines that continued adherence to the marking would make impracticable the subsequent competitive acquisition of the item, component, or process to which the technical data relates, the Contracting Officer may challenge the validity of the marking as described in paragraph (e) of this clause.

(e) *Challenge*.

(1) Notwithstanding any provision of this Order concerning inspection and acceptance, if the Contracting Officer determines that a challenge to the restrictive marking is warranted, the Contracting Officer shall send a written challenge notice to the Contractor or subcontractor asserting the restrictive markings. Such challenge shall—

(i) State the specific grounds for challenging the asserted restriction;

(ii) Require a response within sixty (60) days justifying and providing sufficient evidence as to the current validity of the asserted restriction;

(iii) State that a U.S. Coast Guard Contracting Officer’s final decision, issued pursuant to paragraph (g) of this clause, sustaining the validity of a restrictive marking identical to the asserted restriction, within the three-year period preceding the challenge, shall serve as justification for the asserted restriction if the validated restriction was asserted by the same Contractor or subcontractor (or any licensee of such Contractor or subcontractor) to which such notice is being provided; and

(iv) State that failure to respond to the challenge notice may result in issuance of a final decision pursuant to paragraph (f) of this clause.

(2) The Contracting Officer shall extend the time for response as appropriate if the Contractor or subcontractor submits a written request showing the need for additional time to prepare a response.

(3) The Contractor’s or subcontractor’s written response shall be considered a claim within the meaning of the Contract Disputes Act of 1978 (41 U.S.C. 7101), and shall be certified in the form prescribed at 33.207 of the Federal Acquisition Regulation, regardless of dollar amount.

(4) A Contractor or subcontractor receiving challenges to the same restrictive markings from more than one Contracting Officer shall notify each Contracting Officer of the existence of more than one challenge. The notice shall also state which Contracting Officer initiated the first in time unanswered challenge. The Contracting Officer initiating the first in time unanswered challenge after consultation with Sell or subcontractor and the other Contracting Officers, shall formulate and distribute a schedule for responding to each of the challenge notices to all interested parties. The schedule shall afford the Seller or subcontractor an opportunity to respond to each challenge notice. All parties will be bound by this schedule.

(f) *Final decision when Contractor or subcontractor fails to respond*. Upon a failure of a Contractor or subcontractor to submit any response to the challenge notice the Contracting Officer will issue a final decision to the Contractor or subcontractor in accordance with paragraph (b) of this clause and the Disputes clause of this Order pertaining to the validity of the asserted restriction. This final decision shall be issued as soon as possible after the expiration of the time period of paragraph (e)(1)(ii) or (e)(2) of this clause. Following issuance of the final decision, the Contracting Officer will comply with the procedures in paragraphs (g)(2)(ii) through (iv) of this clause.

(g) *Final decision when Contractor or subcontractor responds*.

(1) If the Contracting Officer determines that the Contractor or subcontractor has justified the validity of the restrictive marking, the Contracting Officer shall issue a final decision to the Contractor or subcontractor sustaining the validity of the restrictive marking, and stating that the Government will continue to be bound by the restrictive marking. This final decision shall be issued within sixty (60) days after receipt of the Contractor’s or subcontractor’s response to the challenge notice, or within such longer period that the Contracting Officer has notified the Contractor or subcontractor that the Government will require. The notification of a longer period for issuance of a final decision will be made within sixty (60) days after receipt of the response to the challenge notice.

(2) (i) If the Contracting Officer determines that the validity of the restrictive marking is not justified, the Contracting Officer shall issue a final decision to the Contractor or subcontractor in accordance with the Disputes clause of this Order. Notwithstanding paragraph (e) of the Disputes clause, the final decision shall be issued within sixty (60) days after receipt of the Contractor’s or subcontractor’s response to the challenge notice, or within such longer period that the Contracting Officer has notified the Contractor or subcontractor of the longer period that the Government will require. The notification of a longer period for issuance of a final decision will be made within sixty (60) days after receipt of the response to the challenge notice.

(ii) The Government agrees that it will continue to be bound by the restrictive marking for a period of ninety (90) days from the issuance of the Contracting Officer’s final decision under paragraph (g)(2)(i) of this clause. The Contractor or subcontractor agrees that, if it intends to file suit in the United States Claims Court it will provide a notice of intent to file suit to the Contracting Officer within ninety (90) days from the issuance of the Contracting Officer’s final decision under paragraph (g)(2)(i) of this clause. If the Contractor or subcontractor fails to appeal, file suit, or provide a notice of intent to file suit to the Contracting Officer within the ninety (90)-day period, the Government may cancel or ignore the restrictive markings, and the failure of the Contractor or subcontractor to take the required action constitutes agreement with such Government action.

(iii) The Government agrees that it will continue to be bound by the restrictive marking where a notice of intent to file suit in the United States Court of Federal Claims is provided to the Contracting Officer within ninety (90) days from the issuance of the final decision under paragraph (g)(2)(i) of this clause. The Government will no longer be bound, and the Contractor or subcontractor agrees that the Government may strike or ignore the restrictive markings, if the Contractor or subcontractor fails to file its suit within one (1) year after issuance of the final decision. Notwithstanding the foregoing, where the head of an agency determines, on a nondelegable basis, that urgent or compelling circumstances will not permit waiting for the filing of a suit in the United States Claims Court, the Contractor or subcontractor agrees that the agency may, following notice to the Contractor or subcontractor, authorize release or disclosure of the technical data. Such agency determination may be made at any time after issuance of the final decision and will not affect the Contractor’s or subcontractor’s right to damages against the United States where its restrictive markings are ultimately upheld or to pursue other relief, if any, as may be provided by law.

(iv) The Government agrees that it will be bound by the restrictive marking where an appeal or suit is filed pursuant to the Contract Disputes Act until final disposition by an agency Board of Contract Appeals or the United States Court of Federal Claims. Notwithstanding the foregoing, where the head of an agency determines, on a nondelegable basis, following notice to the Contractor that urgent or compelling circumstances will not permit awaiting the decision by such Board of Contract Appeals or the United States Claims Court, the Contractor or subcontractor agrees that the agency may authorize release or disclosure of the technical data. Such agency determination may be made at any time after issuance of the final decision and will not affect the Contractor’s or subcontractor’s right to damages against the United States where its restrictive markings are ultimately upheld or to pursue other relief, if any, as may be provided by law.

(h) *Final disposition of appeal or suit*.

(1) If the Contractor or subcontractor appeals or files suit and if, upon final disposition of the appeal or suit, the Contracting Officer’s decision is sustained—

(i) The restrictive marking on the technical data shall be cancelled, corrected or ignored; and

(ii) If the restrictive marking is found not to be substantially justified, the Contractor or subcontractor, as appropriate, shall be liable to the Government for payment of the cost to the Government of reviewing the restrictive marking and the fees and other expenses (as defined in 28 U.S.C. 2412(d)(2)(A)) incurred by the Government in challenging the marking, unless special circumstances would make such payment unjust.

(2) If the Contractor or subcontractor appeals or files suit and if, upon final disposition of the appeal or suit, the Contracting Officer’s decision is not sustained—

(i) The Government shall continue to be bound by the restrictive marking; and

(ii) The Government shall be liable to the Contractor or subcontractor for payment of fees and other expenses (as defined in 28 U.S.C. 2412(d)(2)(A)) incurred by the Contractor or subcontractor in defending the marking, if the challenge by the Government is found not to have been made in good faith.

(i) *Duration of right to challenge*. The Government may review the validity of any restriction on technical data, delivered or to be delivered under a contract, asserted by the Contractor or subcontractor. During the period within six (6) years of final payment on a contract or within six (6) years of delivery of the technical data to the Government, whichever is later, the Contracting Officer may review and make a written determination to challenge the restriction. The Government may challenge a use or release restriction asserted with respect to technical data by a contractor or subcontractor at any tier under a contract subject to this section if (the Contracting Officer finds that)—

 (A) reasonable grounds exist to question the current validity of the asserted restriction; and

 (B) the continued adherence by the United States to the asserted restriction would make it impracticable to procure the item to which the technical data pertain competitively at a later time.

 The Government may, however, challenge a restriction on the release, disclosure or use of technical data at any time if such technical data—

(1) Is publicly available;

(2) Has been furnished to the United States without restriction;

(3) Has been otherwise made available without restriction. Only the Contracting Officer’s final decision resolving a formal challenge by sustaining the validity of a restrictive marking constitutes “validation” as addressed in 10 U.S.C. 2321, or

(4) Has been the subject of a fraudulently asserted use or release restriction.

(j) *Decision not to challenge*. A decision by the Government, or a determination by the Contracting Officer, to not challenge the restrictive marking or asserted restriction shall not constitute “validation.”

(k) *Privity of contract*. The Contractor or subcontractor agrees that the Contracting Officer may transact matters under this clause directly with subcontractors at any tier that assert restrictive markings. However, this clause neither creates nor implies privity of contract between the Government and subcontractors.

(l) *Flowdown*. The Contractor or subcontractor agrees to insert this clause in contractual instruments with its subcontractors or suppliers at any tier requiring the delivery of technical data.

1. **DEFERRED ORDERING OF TECHNICAL DATA OR COMPUTER SOFTWARE**

 In addition to technical data or computer software that is already subject to a contract delivery requirement, the United States may require at any time the delivery of technical data that has been generated or utilized in the performance of this Order, and compensate the contractor only for reasonable costs incurred for converting and delivering the data in the required form, (upon a determination that) — IF –

(A) the technical data is needed for the purpose of reprocurement, sustainment, modification, or upgrade (including through competitive means) of a major system or subsystem thereof, a weapon system or subsystem thereof, or any noncommercial item or process; and

(B) the technical data—

 (i) pertains to an item or process developed in whole or in part with Federal funds; or

 (ii) is necessary for the segregation of an item or process from, or the reintegration of that (upon a determination that) item or process (or a physically or functionally equivalent item or process) with, other items or processes.

(Provided that) The United States is not foreclosed from requiring the delivery of the technical data by a failure to challenge, in accordance with the requirements of paragraph (e) of the clause of this Order titled “Validation of Restrictive Markings on Technical Data” and paragraph (e) of the clause of this Order titled “Validation of Asserted Restrictions—Computer Software”, the contractor’s assertion of a use or release restriction on the technical data. The Government’s rights to use said data or computer software shall be pursuant to the “Rights in Technical Data and Computer Software” clause of this Order. This clause shall be flowed down to first tier subcontractors of Seller.

1. **VALIDATION OF ASSERTED RESTRICTIONS—COMPUTER SOFTWARE**

(a) *Definitions*.

(1) As used in this clause, unless otherwise specifically indicated, the term “Contractor” means the Seller and its subcontractors or suppliers.

(2) Other terms used in this clause are defined in the Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation clause of this Order.

(b) *Justification*. The Contractor shall maintain records sufficient to justify the validity of any markings that assert restrictions on the Government’s rights to use, modify, reproduce, perform, display, release, or disclose computer software delivered or required to be delivered under this Order and shall be prepared to furnish to the Contracting Officer a written justification for such restrictive markings in response to a request for information under paragraph (d) or a challenge under paragraph (f) of this clause.

(c) *Direct contact with subcontractors or suppliers*. The Contractor agrees that the Contracting Officer may transact matters under this clause directly with subcontractors or suppliers at any tier who assert restrictions on the Government’s right to use, modify, reproduce, release, perform, display, or disclose computer software. Neither this clause, nor any action taken by the Government under this clause, creates or implies privity of contract between the Government and the Contractor’s subcontractors or suppliers.

(d) *Requests for information*.

 (1) The Contracting Officer may request the Contractor to provide sufficient information to enable the Contracting Officer to evaluate the Contractor’s asserted restrictions. Such information shall be based upon the records required by this clause or other information reasonably available to the Contractor.

 (2) Based upon the information provided, if the—

 (i) Contractor agrees that an asserted restriction is not valid, the Contracting Officer may—

(A) Strike or correct the unjustified marking at the Contractor’s expense; or

(B) Return the computer software to the Contractor for correction at the Contractor’s expense. If the Contractor fails to correct or strike the unjustified restriction and return the corrected software to the Contracting Officer within sixty (60) days following receipt of the software, the Contracting Officer may correct or strike the markings at that Contractor’s expense.

(ii) Contracting Officer concludes that the asserted restriction is appropriate for this Order, the Contracting Officer shall so notify the Contractor in writing.

(3) The Contractor’s failure to provide a timely response to a Contracting Officer’s request for information or failure to provide sufficient information to enable the Contracting Officer to evaluate an asserted restriction shall constitute reasonable grounds for questioning the validity of an asserted restriction.

(e) *Government right to challenge and validate asserted restrictions*.

(1) The Government, when there are reasonable grounds to do so, has the right to review and challenge the validity of any restrictions asserted by the Contractor on the Government’s rights to use, modify, reproduce, release, perform, display, or disclose computer software delivered, to be delivered under this Order, or otherwise provided to the Government in the performance of this Order. Except for software that is publicly available, has been furnished to the Government without restrictions, or has been otherwise made available without restrictions, the Government may exercise this right only within six (6) years after the date(s) the software is delivered or otherwise furnished to the Government, or six (6) years following final payment under the Prime Contract, whichever is later.

(2) The absence of a challenge to an asserted restriction shall not constitute validation under this clause. Only a Contracting Officer’s final decision or actions of an agency Board of Contract Appeals or a court of competent jurisdiction that sustain the validity of an asserted restriction constitute validation of the restriction.

(f) *Major systems*. When the Contracting Officer challenges an asserted restriction regarding noncommercial computer software for a major system or a subsystem or component thereof on the basis that the computer software was not developed exclusively at private expense, the Contracting Officer will sustain the challenge unless information provided by the Contractor or subcontractor demonstrates that the computer software was developed exclusively at private expense.

(g) *Challenge procedures*.

 (1) A challenge must be in writing and shall—

(i) State the specific grounds for challenging the asserted restriction;

(ii) Require the Contractor to respond within sixty (60) days;

(iii) Require the Contractor to provide justification for the assertion based upon records kept in accordance with paragraph (b) of this clause and such other documentation that are reasonably available to the Contractor, in sufficient detail to enable the Contracting Officer to determine the validity of the asserted restrictions; and

(iv) State that a Contracting Officer’s final decision, during the six-year period preceding this challenge, or action of a court of competent jurisdiction or Board of Contract Appeals that sustained the validity of an identical assertion made by the Contractor (or a licensee) shall serve as justification for the asserted restriction.

(2) The Contracting Officer shall extend the time for response if the Contractor submits a written request showing the need for additional time to prepare a response.

(3) The Contracting Officer may request additional supporting documentation if, in the Contracting Officer’s opinion, the Contractor’s explanation does not provide sufficient evidence to justify the validity of the asserted restrictions. The Contractor agrees to promptly respond to the Contracting Officer’s request for additional supporting documentation.

(4) Notwithstanding challenge by the Contracting Officer, the parties may agree on the disposition of an asserted restriction at any time prior to a Contracting Officer’s final decision or, if the Contractor has appealed that decision, filed suit, or provided notice of an intent to file suit, at any time prior to a decision by a court of competent jurisdiction or Board of Contract Appeals.

(5) If the Contractor fails to respond to the Contracting Officer’s request for information or additional information under paragraph (g)(1) of this clause, the Contracting Officer shall issue a final decision, in accordance with paragraph (f) of this clause and the Disputes clause of this Order, pertaining to the validity of the asserted restriction.

(6) If the Contracting Officer, after reviewing the written explanation furnished pursuant to paragraph (f)(1) of this clause, or any other available information pertaining to the validity of an asserted restriction, determines that the asserted restriction has—

(i) Not been justified, the Contracting Officer shall issue promptly a final decision, in accordance with the Disputes clause of this Order, denying the validity of the asserted restriction; or

(ii) Been justified, the Contracting Officer shall issue promptly a final decision, in accordance with the Disputes clause of this Order, validating the asserted restriction.

(7) A Contractor receiving challenges to the same asserted restriction(s) from more than one Contracting Officer shall notify each Contracting Officer of the other challenges. The notice shall also state which Contracting Officer initiated the first in time unanswered challenge. The Contracting Officer who initiated the first in time unanswered challenge, after consultation with the other Contracting Officers who have challenged the restrictions and the Contractor, shall formulate and distribute a schedule that provides the Contractor a reasonable opportunity for responding to each challenge.

(h) *Contractor appeal; Government obligation*.

(1) The Government agrees that, notwithstanding a Contracting Officer’s final decision denying the validity of an asserted restriction and except as provided in paragraph (h)(3) of this clause, it will honor the asserted restriction—

(i) For a period of ninety (90) days from the date of the Contracting Officer’s final decision to allow the Contractor to appeal to the appropriate Board of Contract Appeals or to file suit in an appropriate court;

(ii) For a period of one year from the date of the Contracting Officer’s final decision if, within the first ninety (90) days following the Contracting Officer’s final decision, the Contractor has provided notice of an intent to file suit in an appropriate court; or

(iii) Until final disposition by the appropriate Board of Contract Appeals or court of competent jurisdiction, if the Contractor has:

(A) appealed to the Board of Contract Appeals or filed suit an appropriate court within ninety (90) days; or

(B) submitted, within ninety (90) days, a notice of intent to file suit in an appropriate court and filed suit within one year.

(2) The Contractor agrees that the Government may strike, correct, or ignore the restrictive markings if the Contractor fails to—

(i) Appeal to a Board of Contract Appeals within ninety (90) days from the date of the Contracting Officer’s final decision;

(ii) File suit in an appropriate court within ninety (90) days from such date; or

(iii) File suit within one year after the date of the Contracting Officer’s final decision if the Contractor had provided notice of intent to file suit within ninety (90) days following the date of the Contracting Officer’s final decision.

(3) The agency head, on a nondelegable basis, may determine that urgent or compelling circumstances do not permit awaiting the filing of suit in an appropriate court, or the rendering of a decision by a court of competent jurisdiction or Board of Contract Appeals. In that event, the agency head shall notify the Contractor of the urgent or compelling circumstances. Notwithstanding paragraph (h)(1) of this clause, the Contractor agrees that the agency may use, modify, reproduce, release, perform, display, or disclose computer software marked with (i) government purpose legends for any purpose, and authorize others to do so; or (ii) restricted or special license rights for government purposes only. The Government agrees not to release or disclose such software unless, prior to release or disclosure, the intended recipient is subject to a use and non-disclosure agreement provided by Buyer.

1. **ACCESS TO PROPRIETARY DATA OR COMPUTER SOFTWARE**
	1. The Government may require Seller to have access to technical data, computer software, or other sensitive data of another party who asserts that such data or software is proprietary. If access to such data or software is required or to be provided, Seller shall enter into a written agreement with such party prior to gaining access to such data or software. The agreement shall address, at a minimum, (1) access to, and use of, the proprietary data or software exclusively for the purposes of performance of the work required by this Order, and (2) safeguards to protect such data or software from unauthorized use or disclosure for so long as the data or software remains proprietary. In addition, the agreement shall not impose any limitation upon the Government or its employees with respect to such data or software. A copy of the executed agreement may be provided to the Contracting Officer.
	2. With regard to any such agreement under (a) above, Seller agrees to: (1) indoctrinate its personnel who will have access to the data or software as to the restrictions under which access is granted; (2) not disclose the data or software to another party or other Seller personnel except as authorized by the Contracting Officer; (3) not engage in any other action, venture, or employment wherein this information will be used, other than under this Order, in any manner inconsistent with the spirit and intent of this requirement; (4) not disclose the data or software to any other party, including, but not limited to, joint venture, affiliate, successor, or assign of Seller; and (5) reproduce the restrictive stamp, marking, or legend on each use of the data or software whether in whole or in part.
	3. The restrictions on use and disclosure of the data and software described above also apply to such information received from the Government through any means to which Seller has access in the performance of an order that contains proprietary or other restrictive markings.
	4. Seller agrees that it will promptly notify Buyer and the Contracting Officer of any attempt by an individual, company, or Government representative not directly involved in the effort to be performed under an order to gain access to such proprietary information. Such notification shall include the name and organization of the individual, company, or Government representative seeking access to such information.
	5. The requirements of this provision is applicable in subcontracts of any tier which involve access to information covered by paragraph (a), substituting “subcontractor” for “Seller” where appropriate.
2. **RIGHTS in TECHNICAL Data – NonCommercial Items**

Data required to be delivered under this order, that would be deemed technical data under this clause, Rights in Technical Data – Noncommercial Items if it were delivered in written form, shall not lose its status as technical data because access by the Buyer or Government, or delivery by the Seller, is by electronic means. The rights of the parties in said technical data shall be as specified in this clause Rights in Technical Data – Noncommercial Items.

* 1. *Definitions*. As used in this clause:
		1. “Computer data base” means a collection of data recorded in a form capable of being processed by a computer. The term does not include computer software.
		2. “Computer program” means a set of instructions, rules, or routines recorded in a form that is capable of causing a computer to perform a specific operation or series of operations.
		3. “Computer software” means computer programs, source code, source code listings, object code listings, design details, algorithms, processes, flow charts, formulae and related material that would enable the software to be reproduced, recreated, or recompiled. Computer software does not include computer data bases or computer software documentation.
		4. “Computer software documentation” means owner’s manuals, user’s manuals, installation instructions, operating instructions, and other similar items, regardless of storage medium, that explain the capabilities of the computer software or provide instructions for using the software.
		5. “Covered Government support contractor” means a contractor under a contract, the primary purpose of which is to furnish independent and impartial advice or technical assistance directly to the Government in support of the Government’s management and oversight of a program or effort (rather than to directly furnish an end item or service to accomplish a program or effort), provided that the contractor—
			1. Is not affiliated with the prime contractor or a first-tier subcontractor on the program or effort, or with any direct competitor of such prime contractor or any such first-tier subcontractor in furnishing end items or services of the type developed or produced on the program or effort; and
			2. Receives access to technical data or computer software for performance of a Government contract that contains a provision substantially similar to the DFARS clause 252.227-7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends. “Detailed manufacturing or process data” means technical data that describe the steps, sequences, and conditions of manufacturing, processing or assembly used by the manufacturer to produce an item or component or to perform a process.
		6. “Detailed manufacturing or process data” means technical data that describe the steps, sequences, and conditions of manufacturing, processing or assembly used by the manufacturer to produce an item or component or to perform a process.
		7. “Developed” means that an item, component, or process exists and is workable. Thus, the item or component must have been constructed or the process practiced. Workability is generally established when the item, component, or process has been analyzed or tested sufficiently to demonstrate to reasonable people skilled in the applicable art that there is a high probability that it will operate as intended. Whether, how much, and what type of analysis or testing is required to establish workability depends on the nature of the item, component, or process, and the state of the art. To be considered “developed,” the item, component, or process need not be at the stage where it could be offered for sale or sold on the commercial market, nor must the item, component, or process be actually reduced to practice within the meaning of Title 35 of the United States Code.
		8. “Developed exclusively at private expense” means development was accomplished entirely with costs charged to indirect cost pools, costs not allocated to a Government contract, or any combination thereof.
			1. Private expense determinations should be made at the lowest practicable level.
			2. Under fixed-price contracts, when total costs are greater than the firm-fixed-price or ceiling price of the contract, the additional development costs necessary to complete development shall not be considered when determining whether development was at Government, private, or mixed expense.
		9. “Developed exclusively with Government funds” means development was not accomplished exclusively or partially at private expense.
		10. “Developed with mixed funding” means development was accomplished partially with costs charged to indirect cost pools and/or costs not allocated to a Government contract, and partially with costs charged directly to a Government contract.
		11. “Form, fit, and function data” means technical data that describes the required overall physical, functional, and performance characteristics (along with the qualification requirements, if applicable) of an item, component, or process to the extent necessary to permit identification of physically and functionally interchangeable items.
		12. “Government purpose” means any activity in which the United States Government is a party, including cooperative agreements with international or multi-national defense organizations, or sales or transfers by the United States Government to foreign governments or international organizations. Government purposes include competitive procurement, but do not include the rights to use, modify, reproduce, release, perform, display, or disclose technical data for commercial purposes or authorize others to do so.
		13. “Government purpose rights” means the rights to—
			1. Use, modify, reproduce, release, perform, display, or disclose technical data within the Government without restriction; and
			2. Release or disclose technical data outside the Government and authorize persons to whom release or disclosure has been made to use, modify, reproduce, release, perform, display, or disclose that data for United States Government purposes.
		14. “Limited rights” means the rights to use, modify, reproduce, release, perform, display, or disclose technical data, in whole or in part, within the Government. The Government may not, without the written permission of the party asserting limited rights, release or disclose the technical data outside the Government, use the technical data for manufacture, or authorize the technical data to be used by another party, except that the Government may reproduce, release or disclose such data or authorize the use or reproduction of the data by persons outside the Government if—
			1. The reproduction, release, disclosure, or use is—

(A) Necessary for emergency repair and overhaul;

(B) Necessary for the segregation of an item or process from, or the reintegration of that item or process (or a physically or functionally equivalent item or process) with, other items or processes; or

(C) A release or disclosure to—

(1) A covered Government support contractor, for use, modification, reproduction, performance, display, or release or disclosure to authorized person(s) in performance of a Government contract; or

(2) A foreign government, of technical data, (other than detailed manufacturing or process data) to, or use of such data by the foreign government is in the interest of the Government and is required for evaluation or informational purposes;

* + - 1. The recipient of the technical data is subject to a prohibition on the further reproduction, release, disclosure, or use of the technical data; and
			2. The contractor or subcontractor asserting the restriction is notified of such reproduction, release, disclosure, or use.
		1. “Technical data” means recorded information, regardless of the form or method of the recording, of a scientific or technical nature (including computer software documentation). The term does not include computer software or data incidental to contract administration, such as financial and/or management information.
		2. “Unlimited rights” means rights to use, modify, reproduce, perform, display, release, or disclose technical data in whole or in part, in any manner, and for any purpose whatsoever, and to have or authorize others to do so.
		3. As used in this clause, unless otherwise specifically indicated, the term “Contractor” means the Seller and its subcontractors or suppliers.
	1. *Rights in technical data*. The Contractor grants or shall obtain for the Government the following royalty free, world-wide, nonexclusive, irrevocable license rights in technical data other than computer software documentation (see the Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation clause of this Order for rights in computer software documentation):
		1. Unlimited rights. The Government shall have unlimited rights in technical data that are—
			1. Data pertaining to an item, component, or process that has been or will be developed exclusively with Government funds;
			2. Studies, analyses, test data, or similar data produced for this Order, when the study, analysis, test, or similar work was specified as an element of performance;
			3. Created exclusively with Government funds in the performance of a contract that does not require the development, manufacture, construction, or production of items, components, or processes;
			4. Form, fit, and function data;
			5. Necessary for installation, operation, maintenance, or training purposes (other than detailed manufacturing or process data);
			6. Corrections or changes to technical data furnished to the Contractor by the Government;
			7. Otherwise publicly available or have been released or disclosed by the Contractor or subcontractor without restrictions on further use, release or disclosure, other than a release or disclosure resulting from the sale, transfer, or other assignment of interest in the technical data to another party or the sale or transfer of some or all of a business entity or its assets to another party;
			8. Data in which the Government has obtained unlimited rights under another Government contract or as a result of negotiations; or
			9. Data furnished to the Government, under this Order or any other Government contract or subcontract thereunder, with—

 (A) Government purpose license rights or limited rights and the restrictive condition(s) has/have expired; or

(B) Government purpose rights and the Contractor’s exclusive right to use such data for commercial purposes has expired.

* + 1. Government purpose rights.
			1. The Government shall have government purpose rights for a five-year period, or such other period as may be negotiated, in technical data—
1. That pertain to items, components, or processes developed with mixed funding except when the Government is entitled to unlimited rights in such data as provided in paragraphs (b)(1)(ii) and (b)(1)(iv) through (b)(1)(ix) of this clause; or

(B) Created with mixed funding in the performance of a contract that does not require the development, manufacture, construction, or production of items, components, or processes.

* + - 1. The five-year period, or such other period as may have been negotiated, shall commence upon execution of the contract, subcontract, letter contract (or similar contractual instrument), contract modification, or option exercise that required development of the items, components, or processes or creation of the data described in paragraph (b)(2)(i)(B) of this clause. Upon expiration of the five-year or other negotiated period, the Government shall have unlimited rights in the technical data.
			2. The Government shall not release or disclose technical data in which it has government purpose rights unless—
1. Prior to release or disclosure, the intended recipient is subject to a non-disclosure agreement; or

(B) The recipient is a Government Contractor receiving access to the data for performance of a Government contract that contains the clause substantially similar to DFARS 252.227-7025, Information Marked with Restrictive Legends.

* + - 1. The Contractor has the exclusive right, including the right to license others, to use technical data in which the Government has obtained government purpose rights under this Order for any commercial purpose during the time period specified in the government purpose rights legend prescribed in paragraph (f)(2) of this clause.
		1. Limited rights.
			1. Except as provided in paragraphs (b)(1)(ii) and (b)(1)(iv) through (b)(1)(ix) of this clause, the Government shall have limited rights in technical data—
1. Pertaining to items, components, or processes developed exclusively at private expense and marked with the limited rights legend prescribed in paragraph (f) of this clause; or

(B) Created exclusively at private expense in the performance of a contract that does not require the development, manufacture, construction, or production of items, components, or processes.

* + - 1. The Government shall require a recipient of limited rights data for emergency repair or overhaul to destroy the data and all copies in its possession promptly following completion of the emergency repair/overhaul and to notify the Contractor that the data have been destroyed.
			2. The Contractor, its subcontractors, and suppliers are not required to provide the Government additional rights to use, modify, reproduce, release, perform, display, or disclose technical data furnished to the Government with limited rights. However, if the Government desires to obtain additional rights in technical data in which it has limited rights, the Contractor agrees to promptly enter into negotiations with the Contracting Officer to determine whether there are acceptable terms for transferring such rights. All technical data in which the Contractor has granted the Government additional rights shall be listed or described in a license agreement made part of the contract. The license shall enumerate the additional rights granted the Government in such data.
			3. The Contractor acknowledges that—

(A) Limited rights data is authorized to be released or disclosed to covered Government support contractors;

(B) The Contractor will be notified of such release or disclosure;

(C) The Contractor (or the party asserting restrictions as identified in the limited rights legend) may require each such covered Government support contractor to enter into a non-disclosure agreement directly with the Contractor (or the party asserting restrictions) regarding the covered Government support contractor’s use of such data, or alternatively, that the Contractor (or party asserting restrictions) may waive in writing the requirement for a non-disclosure agreement;

(D) Any such non-disclosure agreement shall address the restrictions on the covered Government support contractor’s use of the limited rights data as set forth in provision 50, Limitations on the Use or Disclosure of Government-Furnished Information Marked With Restrictive Legends, and shall not include any additional terms and conditions unless mutually agreed to by the parties to the non-disclosure agreement; and

(E) The Contractor shall provide a copy of any such non-disclosure agreement or waiver to the Contracting Officer, upon request.

* + 1. Specifically negotiated license rights. The standard license rights granted to the Government under paragraphs (b)(1) through (b)(3) of this clause, including the period during which the Government shall have government purpose rights in technical data, may be modified by mutual agreement to provide such rights as the parties consider appropriate but shall not provide the Government lesser rights than are enumerated in paragraph (a)(14) of this clause. Any rights so negotiated shall be identified in a license agreement made part of this Order.
		2. Prior government rights. Technical data that will be delivered, furnished, or otherwise provided to the Government under this Order, in which the Government has previously obtained rights shall be delivered, furnished, or provided with the pre-existing rights, unless—
			1. The parties have agreed otherwise; or
			2. Any restrictions on the Government’s rights to use, modify, reproduce, release, perform, display, or disclose the data have expired or no longer apply.
		3. Release from liability. The Contractor agrees to release the Government from liability for any release or disclosure of technical data made in accordance with (b)(7) Vessel designs. For a vessel design (including a vessel design embodied in a useful article) that is developed or delivered under this contract, the Government shall have the right to make and have made any useful article that embodies the vessel design, to import the article, to sell the article, and to distribute the article for sale or to use the article in trade, to the same extent that the Government is granted rights in the technical data pertaining to the vessel design paragraph (a)(14) or (b)(2)(iii) of this clause, in accordance with the terms of a license negotiated under paragraph (b)(4) of this clause, or by others to whom the recipient has released or disclosed the data and to seek relief solely from the party who has improperly used, modified, reproduced, released, performed, displayed, or disclosed Contractor data marked with restrictive legends.
	1. *Contractor rights in technical data*. All rights not granted to the Government are retained by the Contractor.
	2. *Third party copyrighted data.* The Contractor shall not, without the written approval of the Contracting Officer, incorporate any copyrighted data in the technical data to be delivered under this Order unless the Contractor is the copyright owner or has obtained for the Government the license rights necessary to perfect a license or licenses in the deliverable data of the appropriate scope set forth in paragraph (b) of this clause, and has affixed a statement of the license or licenses obtained on behalf of the Government and other persons to the data transmittal document.
	3. *Identification and delivery of data to be furnished with restrictions on use, release, or disclosure*.
		1. This paragraph does not apply to restrictions based solely on copyright.
		2. Except as provided in paragraph (e)(3) of this clause, technical data that the Contractor asserts should be furnished to the Government with restrictions on use, release, or disclosure are identified in an attachment to this Order. The Contractor shall not deliver any data with restrictive markings unless the data are listed on the Attachment.
		3. In addition to the assertions made in the Attachment, other assertions may be identified after award when based on new information or inadvertent omissions unless the inadvertent omissions would have materially affected the source selection decision. Such identification and assertion shall be submitted to the Contracting Officer as soon as practicable prior to the scheduled date for delivery of the data, in the following format, and signed by an official authorized to contractually obligate the Contractor:
			1. Identification and Assertion of Restrictions on the Government’s Use, Release,
			or Disclosure of Technical Data.
			2. The Contractor asserts for itself, or the persons identified below, that the Government’s rights to use, release, or disclose the following technical data should be restricted—

| Technical DataTo be FurnishedWith Restrictions\*(LIST) | Basis for Assertion\*\*(LIST) | Asserted RightsCategory\*\*\*(LIST) | Name of PersonAssertingRestrictions\*\*\*\*(LIST) |
| --- | --- | --- | --- |
|  |  |  |  |
|  |  |  |  |

\* If the assertion is applicable to items, components, or processes developed at private expense, identify both the data and each such item, component, or process.

\*\* Generally, the development of an item, component, or process at private expense, either exclusively or partially, is the only basis for asserting restrictions on the Government’s rights to use, release, or disclose technical data pertaining to such items, components, or processes. Indicate whether development was exclusively or partially at private expense. If development was not at private expense, enter the specific reason for asserting that the Government’s rights should be restricted.

\*\*\* Enter asserted rights category (e.g., government purpose license rights from a prior contract, rights in SBIR data generated under another contract, limited or government purpose rights under this or a prior contract, or specifically negotiated licenses).

\*\*\*\* Corporation, individual, or other person, as appropriate.

|  |  |
| --- | --- |
| Date | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Printed Name and Title | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
|    | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Signature | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |

(End of identification and assertion)

* + 1. When requested by the Contracting Officer, the Contractor shall provide sufficient information to enable the Contracting Officer to evaluate the Contractor’s assertions. The Contracting Officer reserves the right to add the Contractor’s assertions to the Attachment and validate any listed assertion, at a later date, in accordance with the procedures of the Validation of Restrictive Markings on Technical Data clause of this Order.
	1. *Marking requirements*. The Contractor, and its subcontractors or suppliers, may only assert restrictions on the Government’s rights to use, modify, reproduce, release, perform, display, or disclose technical data to be delivered under this Order by marking the deliverable data subject to restriction. Except as provided in paragraph (f)(5) of this clause, only the following legends are authorized under this Order: the government purpose rights legend at paragraph (f)(2) of this clause; the limited rights legend at paragraph (f)(3) of this clause; or the special license rights legend at paragraph (f)(4) of this clause; and/or a notice of copyright as prescribed under 17 U.S.C. 401 or 402.
		1. General marking instructions. The Contractor, or its subcontractors or suppliers, shall conspicuously and legibly mark the appropriate legend on all technical data that qualify for such markings. The authorized legends shall be placed on the transmittal document or storage container and, for printed material, each page of the printed material containing technical data for which restrictions are asserted. When only portions of a page of printed material are subject to the asserted restrictions, such portions shall be identified by circling, underscoring, with a note, or other appropriate identifier. Technical data transmitted directly from one computer or computer terminal to another shall contain a notice of asserted restrictions. Reproductions of technical data or any portions thereof subject to asserted restrictions shall also reproduce the asserted restrictions.
		2. Government purpose rights markings. Data delivered or otherwise furnished to the Government with government purpose rights shall be marked as follows:

GOVERNMENT PURPOSE RIGHTS

|  |  |  |  |
| --- | --- | --- | --- |
|  | Contract No. |  |  |
|  | Contractor Name |  |  |
|  | Contractor Address |  |  |
|  | Expiration Date |  |  |

The Government’s rights to use, modify, reproduce, release, perform, display, or disclose these technical data are restricted by paragraph (b)(2) of the Rights in Technical Data—Noncommercial Items clause contained in the above identified contract. No restrictions apply after the expiration date shown above. Any reproduction of technical data or portions thereof marked with this legend must also reproduce the markings.

(End of legend)

* + 1. Limited rights markings. Data delivered or otherwise furnished to the Government with limited rights shall be marked with the following legend:

LIMITED RIGHTS

|  |  |  |  |
| --- | --- | --- | --- |
|  | Contract No. |  |  |
|  | Contractor Name |  |  |
|  | Contractor Address |  |  |

The Government’s rights to use, modify, reproduce, release, perform, display, or disclose these technical data are restricted by paragraph (b)(3) of the Rights in Technical Data--Noncommercial Items clause contained in the above identified contract. Any reproduction of technical data or portions thereof marked with this legend must also reproduce the markings. Any person, other than the Government, who has been provided access to such data must promptly notify the above named Contractor.

(End of legend)

* + 1. Special license rights markings.
			1. Data in which the Government’s rights stem from a specifically negotiated license shall be marked with the following legend:

SPECIAL LICENSE RIGHTS

 The Government’s rights to use, modify, reproduce, release, perform, display, or disclose these data are restricted by Contract No. \_\_\_\_\_(Insert contract number)\_\_\_\_, License No. \_\_\_\_(Insert license identifier)\_\_\_\_. Any reproduction of technical data or portions thereof marked with this legend must also reproduce the markings.

* + - 1. For purposes of this clause, special licenses do not include government purpose license rights acquired under a prior contract (see paragraph (b)(5) of this clause).
		1. Pre-existing data markings. If the terms of a prior contract or license permitted the Contractor to restrict the Government’s rights to use, modify, reproduce, release, perform, display, or disclose technical data deliverable under this Order, and those restrictions are still applicable, the Contractor may mark such data with the appropriate restrictive legend for which the data qualified under the prior contract or license. The marking procedures in paragraph (f)(1) of this clause shall be followed.
	1. *Contractor procedures and records*. Throughout performance of this Order, the Contractor and its subcontractors or suppliers that will deliver technical data with other than unlimited rights, shall—
		1. Have, maintain, and follow written procedures sufficient to assure that restrictive markings are used only when authorized by the terms of this clause; and
		2. Maintain records sufficient to justify the validity of any restrictive markings on technical data delivered under this Order.
	2. *Removal of unjustified and nonconforming markings*.
		1. Unjustified technical data markings. The rights and obligations of the parties regarding the validation of restrictive markings on technical data furnished or to be furnished under this Order are contained in the Validation of Restrictive Markings on Technical Data clause of this Order. Notwithstanding any provision of this Order concerning inspection and acceptance, the Government may ignore or, at the Contractor’s expense, correct or strike a marking if, in accordance with the procedures in the Validation of Restrictive Markings on Technical Data clause of this Order, a restrictive marking is determined to be unjustified.
		2. Nonconforming technical data markings. A nonconforming marking is a marking placed on technical data delivered or otherwise furnished to the Government under this Order that is not in the format authorized by this Order. Correction of nonconforming markings is not subject to the Validation of Restrictive Markings on Technical Data clause of this Order. If the Contracting Officer notifies the Contractor of a nonconforming marking and the Contractor fails to remove or correct such marking within sixty (60) days, the Government may ignore or, at the Contractor’s expense, remove or correct any nonconforming marking.
	3. *Relation to patents.* Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government under any patent.
	4. *Limitation on charges for rights in technical data*.
		1. The Contractor shall not charge to this Order any cost, including, but not limited to, license fees, royalties, or similar charges, for rights in technical data to be delivered under this Order when—
			1. The Government has acquired, by any means, the same or greater rights in the data; or
			2. The data are available to the public without restrictions.
		2. The limitation in paragraph (j)(1) of this clause—
			1. Includes costs charged by a subcontractor or supplier, at any tier, or costs incurred by the Contractor to acquire rights in subcontractor or supplier technical data, if the subcontractor or supplier has been paid for such rights under any other Government contract or under a license conveying the rights to the Government; and
			2. Does not include the reasonable costs of reproducing, handling, or mailing the documents or other media in which the technical data will be delivered.
	5. *Applicability to subcontractors or suppliers*.
		1. The Contractor shall ensure that the rights afforded its subcontractors and suppliers under 10 U.S.C. 2320, 10 U.S.C. 2321, and the identification, assertion, and delivery processes of paragraph (e) of this clause are recognized and protected.
		2. Whenever any technical data for noncommercial items is to be obtained from a subcontractor or supplier for delivery to the Government under this Order, the Contractor shall use this same clause in the subcontract or other contractual instrument, and require its subcontractors or suppliers to do so, without alteration, except to identify the parties. No other clause shall be used to enlarge or diminish the Government’s, the Contractor’s, or a higher-tier subcontractor’s or supplier’s rights in a subcontractor’s or supplier’s technical data.
		3. Technical data required to be delivered by a subcontractor or supplier shall normally be delivered to the next higher-tier contractor, subcontractor, or supplier. However, when there is a requirement in the prime contract for data that may be submitted with other than unlimited rights by a subcontractor or supplier, then said subcontractor or supplier may fulfill its requirement by submitting such data directly to the Government, rather than through a higher-tier contractor, subcontractor, or supplier.
		4. The Contractor and higher-tier subcontractors or suppliers shall not use their power to award contracts as economic leverage to obtain rights in technical data from their subcontractors or suppliers.
		5. In no event shall the Contractor use its obligation to recognize and protect subcontractor or supplier rights in technical data as an excuse for failing to satisfy its contractual obligation to the Government.
1. **Rights in NONCOMMERCIAL Computer Software and non commercial computer software Documentation**
	1. *Definitions*. As used in this clause:
		1. “Commercial computer software” means software developed or regularly used for non-governmental purposes that—
			1. Has been sold, leased, or licensed to the public;
			2. Has been offered for sale, lease, or license to the public;
			3. Has not been offered, sold, leased, or licensed to the public but will be available for commercial sale, lease, or license in time to satisfy the delivery requirements of this Order; or
			4. Satisfies a criterion expressed in paragraph (a)(1)(i), (ii), or (iii) of this clause and would require only minor modification to meet the requirements of this Order.
		2. “Computer database” means a collection of recorded data in a form capable of being processed by a computer. The term does not include computer software.
		3. “Computer program” means a set of instructions, rules, or routines, recorded in a form that is capable of causing a computer to perform a specific operation or series of operations.
		4. “Computer software” means computer programs, source code, source code listings, object code listings, design details, algorithms, processes, flow charts, formulae, and related material that would enable the software to be reproduced, recreated, or recompiled. Computer software does not include computer databases or computer software documentation.
		5. “Computer software documentation” means owner’s manuals, user’s manuals, installation instructions, operating instructions, and other similar items, regardless of storage medium, that explain the capabilities of the computer software or provide instructions for using the software.
		6. “Covered Government support contractor” means a contractor under a contract, the primary purpose of which is to furnish independent and impartial advice or technical assistance directly to the Government in support of the Government’s management and oversight of a program or effort (rather than to directly furnish an end item or service to accomplish a program or effort), provided that the contractor—

(i) Is not affiliated with the prime contractor or a first-tier subcontractor on the program or effort, or with any direct competitor of such prime contractor or any such first-tier subcontractor in furnishing end items or services of the type developed or produced on the program or effort; and

(ii) Receives access to technical data or computer software for performance of a Government contract that contains a clause substantially similar to provision 50, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends.

* + 1. “Developed” means that—
			1. A computer program has been successfully operated in a computer and tested to the extent sufficient to demonstrate to reasonable persons skilled in the art that the program can reasonably be expected to perform its intended purpose;
			2. Computer software, other than computer programs, has been tested or analyzed to the extent sufficient to demonstrate to reasonable persons skilled in the art that the software can reasonably be expected to perform its intended purpose; or
			3. Computer software documentation required to be delivered under a contract has been written, in any medium, in sufficient detail to comply with requirements under that contract.
		2. “Developed exclusively at private expense” means development was accomplished entirely with costs charged to indirect cost pools, costs not allocated to a government contract, or any combination thereof.
			1. Private expense determinations should be made at the lowest practicable level.
			2. Under fixed-price contracts, when total costs are greater than the firm-fixed-price or ceiling price of the contract, the additional development costs necessary to complete development shall not be considered when determining whether development was at government, private, or mixed expense.
		3. “Developed exclusively with government funds” means development was not accomplished exclusively or partially at private expense.
		4. “Developed with mixed funding” means development was accomplished partially with costs charged to indirect cost pools and/or costs not allocated to a government contract, and partially with costs charged directly to a government contract.
		5. “Government purpose” means any activity in which the United States Government is a party, including cooperative agreements with international or multi-national defense organizations or sales or transfers by the United States Government to foreign governments or international organizations. Government purposes include competitive procurement, but do not include the rights to use, modify, reproduce, release, perform, display, or disclose computer software or computer software documentation for commercial purposes or authorize others to do so.
		6. “Government purpose rights” means the rights to—
			1. Use, modify, reproduce, release, perform, display, or disclose computer software or computer software documentation within the Government without restriction; and
			2. Release or disclose computer software or computer software documentation outside the Government and authorize persons to whom release or disclosure has been made to use, modify, reproduce, release, perform, display, or disclose the software or documentation for United States government purposes.
		7. “Minor modification” means a modification that does not significantly alter the nongovernmental function or purpose of the software or is of the type customarily provided in the commercial marketplace.
		8. “Noncommercial computer software” means software that does not qualify as commercial computer software under paragraph (a)(1) of this clause.
		9. “Restricted rights” apply only to noncommercial computer software and mean the Government’s rights to—
			1. Use a computer program with one computer at one time. The program may not be accessed by more than one terminal or central processing unit or time shared unless otherwise permitted by this Order;
			2. Transfer a computer program to another Government agency without the further permission of the Contractor if the transferor destroys all copies of the program and related computer software documentation in its possession and notifies the licensor of the transfer. Transferred programs remain subject to the provisions of this clause;
			3. Make the minimum number of copies of the computer software required for safekeeping (archive), backup, or modification purposes;
			4. Modify computer software provided that the Government may—

(A) Use the modified software only as provided in paragraphs (a)(15)(i) and (iii) of this clause; and

(B) Not release or disclose the modified software except as provided in paragraphs (a)(15)(ii), (v) and (vi) of this clause;

* + - 1. Permit contractors or subcontractors performing service contracts (see 37.101 of the Federal Acquisition Regulation) in support of this or a related contract to use computer software to diagnose and correct deficiencies in a computer program, to modify computer software to enable a computer program to be combined with, adapted to, or merged with other computer programs or when necessary to respond to urgent tactical situations, provided that—

(A) The Government notifies the party that has granted restricted rights that a release or disclosure to particular contractors or subcontractors was made;

(B) Such contractors or subcontractors are subject to a use and non-disclosure agreement or are Government contractors receiving access to the software for performance of a Government contract that contains a clause Limiting the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends;

(C) The Government shall not permit the recipient to decompile, disassemble, or reverse engineer the software, or use software decompiled, disassembled, or reverse engineered by the Government pursuant to paragraph (a)(15)(iv) of this clause, for any other purpose; and

(D) Such use is subject to the limitation in paragraph (a)(15)(i) of this clause; and

* + - 1. Permit contractors or subcontractors performing emergency repairs or overhaul of items or components of items procured under this or a related contract to use the computer software when necessary to perform the repairs or overhaul, or to modify the computer software to reflect the repairs or overhaul made, provided that—

(A) The intended recipient is subject to a non-disclosure agreement or is a Government contractor receiving access to the software for performance of a Government contract that contains a clause Limiting the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends; and

(B) The Government shall not permit the recipient to decompile, disassemble, or reverse engineer the software, or use software decompiled, disassembled, or reverse engineered by the Government pursuant to paragraph (a)(15)(iv) of this clause, for any other purpose.

(vii) Permit covered Government support contractors to use, modify, reproduce, perform, display, or release or disclose the computer software to authorized person(s) in the performance of Government contracts that contain the clause substantially similar to provision 50 herein or DFARS [252.227-7025](http://www.acq.osd.mil/dpap/dars/dfars/html/current/252227.htm), Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends.

* + 1. “Unlimited rights” means rights to use, modify, reproduce, release, perform, display, or disclose computer software or computer software documentation in whole or in part, in any manner and for any purpose whatsoever, and to have or authorize others to do so.
		2. As used in this clause, unless otherwise specifically indicated, the term “Contractor” means the Seller and its subcontractors or suppliers.
	1. *Rights in computer software or computer software documentation*. The Contractor grants or shall obtain for the Government the following royalty free, world-wide, nonexclusive, irrevocable license rights in noncommercial computer software or computer software documentation. All rights not granted to the Government are retained by the Contractor.
		1. Unlimited rights. The Government shall have unlimited rights in—
			1. Computer software developed exclusively with Government funds;
			2. Computer software documentation required to be delivered under this Order;
			3. Corrections or changes to computer software or computer software documentation furnished to the Contractor by the Government;
			4. Computer software or computer software documentation that is otherwise publicly available or has been released or disclosed by the Contractor or subcontractor without restriction on further use, release or disclosure, other than a release or disclosure resulting from the sale, transfer, or other assignment of interest in the software to another party or the sale or transfer of some or all of a business entity or its assets to another party;
			5. Computer software or computer software documentation obtained with unlimited rights under another Government contract or as a result of negotiations; or
			6. Computer software or computer software documentation furnished to the Government, under this or any other Government subcontract thereunder with—

(A) Restricted rights in computer software, limited rights in technical data, or government purpose license rights and the restrictive conditions have expired; or

(B) Government purpose rights and the Contractor’s exclusive right to use such software or documentation for commercial purposes has expired.

* + 1. Government purpose rights.
			1. Except as provided in paragraph (b)(1) of this clause, the Government shall have government purpose rights in computer software developed with mixed funding.
			2. Government purpose rights shall remain in effect for a period of five years unless a different period has been negotiated. Upon expiration of the five-year or other negotiated period, the Government shall have unlimited rights in the computer software or computer software documentation. The government purpose rights period shall commence upon execution of the contract, subcontract, letter contract (or similar contractual instrument), contract modification, or option exercise that required development of the computer software.
			3. The Government shall not release or disclose computer software in which it has government purpose rights to any other person unless—

(A) Prior to release or disclosure, the intended recipient is subject to a use and non-disclosure agreement; or

(B) The recipient is a Government contractor receiving access to the software or documentation for performance of a Government contract clause substantially similar to provision 50, Limitations on the Use or Disclosure of Government Furnished Information Marked with Restrictive Legends.

* + 1. Restricted rights.
			1. The Government shall have restricted rights in noncommercial computer software required to be delivered or otherwise provided to the Government under this Order that were developed exclusively at private expense.
			2. The Contractor, its subcontractors, or suppliers are not required to provide the Government additional rights in noncommercial computer software delivered or otherwise provided to the Government with restricted rights. However, if the Government desires to obtain additional rights in such software, the Contractor agrees to promptly enter into negotiations with the Contracting Officer to determine whether there are acceptable terms for transferring such rights. All noncommercial computer software in which the Contractor has granted the Government additional rights shall be listed or described in a license agreement made part of the contract (see paragraph (b)(4) of this clause). The license shall enumerate the additional rights granted the Government.
			3. The Contractor acknowledges that—

(A) Restricted rights computer software is authorized to be released or disclosed to covered Government support contractors;

(B) The Contractor will be notified of such release or disclosure;

(C) The Contractor (or the party asserting restrictions, as identified in the restricted rights legend) may require each such covered Government support contractor to enter into a non-disclosure agreement directly with the Contractor (or the party asserting restrictions) regarding the covered Government support contractor’s use of such software, or alternatively, that the Contractor (or party asserting restrictions) may waive in writing the requirement for a non-disclosure agreement;

(D) Any such non-disclosure agreement shall address the restrictions on the covered Government support contractor’s use of the restricted rights software as set forth in provision 50, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends, and shall not include any additional terms and conditions unless mutually agreed to by the parties to the non-disclosure agreement; and

(E) The Contractor shall provide a copy of any such non-disclosure agreement or waiver to the Contracting Officer, upon request.

* + 1. Specifically negotiated license rights.
			1. The standard license rights granted to the Government under paragraphs (b)(1) through (b)(3) of this clause, including the period during which the Government shall have government purpose rights in computer software, may be modified by mutual agreement to provide such rights as the parties consider appropriate but shall not provide the Government lesser rights in computer software than are enumerated in paragraph (a)(15) of this clause or lesser rights in computer software documentation than are enumerated in paragraph (a)(14) of the Rights in Technical Data--Noncommercial Items clause of this Order.
			2. Any rights so negotiated shall be identified in a license agreement made part of this Order.
		2. Prior government rights. Computer software or computer software documentation that will be delivered, furnished, or otherwise provided to the Government under this Order, in which the Government has previously obtained rights shall be delivered, furnished, or provided with the pre-existing rights, unless—
			1. The parties have agreed otherwise; or
			2. Any restrictions on the Government’s rights to use, modify, reproduce, release, perform, display, or disclose the data have expired or no longer apply.
		3. Release from liability. The Contractor agrees to release the Government from liability for any release or disclosure of computer software made in accordance with paragraph (a)(15) or (b)(2)(iii) of this clause, in accordance with the terms of a license negotiated under paragraph (b)(4) of this clause, or by others to whom the recipient has released or disclosed the software, and to seek relief solely from the party who has improperly used, modified, reproduced, released, performed, displayed, or disclosed the Contractor software marked with restrictive legends.
	1. *Rights in derivative computer software or computer software documentation*. The Government shall retain its rights in the unchanged portions of any computer software or computer software documentation delivered under this Order that the Contractor uses to prepare, or includes in, derivative computer software or computer software documentation.
	2. *Third party copyrighted computer software or computer software documentation*. The Contractor shall not, without the written approval of the Contracting Officer, incorporate any copyrighted computer software or computer software documentation in the software or documentation to be delivered under this Order unless the Contractor is the copyright owner or has obtained for the Government the license rights necessary to perfect a license or licenses in the deliverable software or documentation of the appropriate scope set forth in paragraph (b) of this clause, and prior to delivery of such—
		1. Computer software, has provided a statement of the license rights obtained in a form acceptable to the Contracting Officer; or
		2. Computer software documentation, has affixed to the transmittal document a statement of the license rights obtained.
	3. *Identification and delivery of computer software and computer software documentation to be furnished with restrictions on use, release, or disclosure*.
		1. This paragraph does not apply to restrictions based solely on copyright.
		2. Except as provided in paragraph (e)(3) of this clause, computer software that the Contractor asserts should be furnished to the Government with restrictions on use, release, or disclosure is identified in an attachment to this Order. The Contractor shall not deliver any software with restrictive markings unless the software is listed on the Attachment.
		3. In addition to the assertions made in the Attachment, other assertions may be identified after award when based on new information or inadvertent omissions unless the inadvertent omissions would have materially affected the source selection decision. Such identification and assertion shall be submitted to the Contracting Officer as soon as practicable prior to the scheduled date for delivery of the software, in the following format, and signed by an official authorized to contractually obligate the Contractor:

Identification and Assertion of Restrictions on the Government’s Use, Release, or Disclosure of Computer Software.

The Contractor asserts for itself, or the persons identified below, that the Government’s rights to use, release, or disclose the following computer software should be restricted:

| Computer SoftwareTo be FurnishedWith Restrictions\*(LIST) | Basis for Assertion\*\*(LIST) | Asserted Rights Category\*\*\*(LIST) | Name of Person Asserting Restrictions\*\*\*\*(LIST) |
| --- | --- | --- | --- |
|  |  |  |  |
|  |  |  |  |

\* Generally, development at private expense, either exclusively or partially, is the only basis for asserting restrictions on the Government’s rights to use, release, or disclose computer software.

\*\* Indicate whether development was exclusively or partially at private expense. If development was not at private expense, enter the specific reason for asserting that the Government’s rights should be restricted.

\*\*\* Enter asserted rights category (e.g., restricted or government purpose rights in computer software, government purpose license rights from a prior contract, rights in SBIR software generated under another contract, or specifically negotiated licenses).

\*\*\*\* Corporation, individual, or other person, as appropriate.

|  |  |
| --- | --- |
| Date | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Printed Name and Title | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
|    | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Signature | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |

(End of identification and assertion)

* + 1. When requested by the Contracting Officer, the Contractor shall provide sufficient information to enable the Contracting Officer to evaluate the Contractor’s assertions. The Contracting Officer reserves the right to add the Contractor’s assertions to the Attachment and validate any listed assertion, at a later date, in accordance with the procedures of the Validation of Asserted Restrictions—Computer Software clause of this Order.
	1. *Marking requirements*. The Contractor, and its subcontractors or suppliers, may only assert restrictions on the Government’s rights to use, modify, reproduce, release, perform, display, or disclose computer software by marking the deliverable software or documentation subject to restriction. Except as provided in paragraph (f)(5) of this clause, only the following legends are authorized under this Order: the government purpose rights legend at paragraph (f)(2) of this clause; the restricted rights legend at paragraph (f)(3) of this clause; or the special license rights legend at paragraph (f)(4) of this clause; and/or a notice of copyright as prescribed under 17 U.S.C. 401 or 402.
		1. General marking instructions. The Contractor, or its subcontractors or suppliers, shall conspicuously and legibly mark the appropriate legend on all computer software that qualify for such markings. The authorized legends shall be placed on the transmittal document or software storage container and each page, or portions thereof, of printed material containing computer software for which restrictions are asserted. Computer software transmitted directly from one computer or computer terminal to another shall contain a notice of asserted restrictions. However, instructions that interfere with or delay the operation of computer software in order to display a restrictive rights legend or other license statement at any time prior to or during use of the computer software, or otherwise cause such interference or delay, shall not be inserted in software that will or might be used in combat or situations that simulate combat conditions, unless the Contracting Officer’s written permission to deliver such software has been obtained prior to delivery. Reproductions of computer software or any portions thereof subject to asserted restrictions, shall also reproduce the asserted restrictions.
		2. Government purpose rights markings. Computer software delivered or otherwise furnished to the Government with government purpose rights shall be marked as follows:

GOVERNMENT PURPOSE RIGHTS

|  |  |  |  |
| --- | --- | --- | --- |
|  | Contract No. |  |  |
|  | Contractor Name | I |  |
|  | Contractor Address |  |  |
|  | Expiration Date |  |  |

The Government’s rights to use, modify, reproduce, release, perform, display, or disclose this software are restricted by paragraph (b)(2) of the Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation clause contained in the above identified contract. No restrictions apply after the expiration date shown above. Any reproduction of the software or portions thereof marked with this legend must also reproduce the markings.

(End of legend)

* + 1. Restricted rights markings. Software delivered or otherwise furnished to the Government with restricted rights shall be marked with the following legend:

RESTRICTED RIGHTS

|  |  |  |  |
| --- | --- | --- | --- |
|  | Contract No. |  |  |
|  | Contractor Name |   |  |
|  | Contractor Address |  |  |

The Government’s rights to use, modify, reproduce, release, perform, display, or disclose this software are restricted by paragraph (b)(3) of the Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation clause contained in the above identified contract. Any reproduction of computer software or portions thereof marked with this legend must also reproduce the markings. Any person, other than the Government, who has been provided access to such software must promptly notify the above named Contractor.

(End of legend)

* + 1. Special license rights markings.
			1. Computer software or computer software documentation in which the Government’s rights stem from a specifically negotiated license shall be marked with the following legend:

SPECIAL LICENSE RIGHTS

 The Government’s rights to use, modify, reproduce, release, perform, display, or disclose these data are restricted by Contract No. \_\_\_\_\_(Insert contract number)\_\_\_\_, License No. \_\_\_\_(Insert license identifier)\_\_\_\_. Any reproduction of computer software, computer software documentation, or portions thereof marked with this legend must also reproduce the markings.

(End of legend)

* + - 1. For purposes of this clause, special licenses do not include government purpose license rights acquired under a prior contract (see paragraph (b)(5) of this clause).
		1. Pre-existing markings. If the terms of a prior contract or license permitted the Contractor to restrict the Government’s rights to use, modify, release, perform, display, or disclose computer software or computer software documentation and those restrictions are still applicable, the Contractor may mark such software or documentation with the appropriate restrictive legend for which the software qualified under the prior contract or license. The marking procedures in paragraph (f)(1) of this clause shall be followed.
	1. *Contractor procedures and records*. Throughout performance of this Order, the Contractor and its subcontractors or suppliers that will deliver computer software or computer software documentation with other than unlimited rights, shall—
		1. Have, maintain, and follow written procedures sufficient to assure that restrictive markings are used only when authorized by the terms of this clause; and
		2. Maintain records sufficient to justify the validity of any restrictive markings on computer software or computer software documentation delivered under this Order.
	2. *Removal of unjustified and nonconforming markings*.
		1. Unjustified computer software or computer software documentation markings. The rights and obligations of the parties regarding the validation of restrictive markings on computer software or computer software documentation furnished or to be furnished under this Order are contained in the Validation of Asserted Restrictions--Computer Software and the Validation of Restrictive Markings on Technical Data clauses of this Order, respectively. Notwithstanding any provision of this Order concerning inspection and acceptance, the Government may ignore or, at the Contractor’s expense, correct or strike a marking if, in accordance with the procedures of those clauses, a restrictive marking is determined to be unjustified.
		2. Nonconforming computer software or computer software documentation markings. A nonconforming marking is a marking placed on computer software or computer software documentation delivered or otherwise furnished to the Government under this Order that is not in the format authorized by this Order. Correction of nonconforming markings is not subject to the Validation of Asserted Restrictions--Computer Software or the Validation of Restrictive Markings on Technical Data clause of this Order. If the Contracting Officer notifies the Contractor of a nonconforming marking or markings and the Contractor fails to remove or correct such markings within sixty (60) days, the Government may ignore or, at the Contractor’s expense, remove or correct any nonconforming markings.
	3. *Relation to patents*. Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government under any patent.
	4. *Limitation on charges for rights in computer software or computer software documentation*.
		1. The Contractor shall not charge to this Order any cost, including but not limited to license fees, royalties, or similar charges, for rights in computer software or computer software documentation to be delivered under this Order when
			1. The Government has acquired, by any means, the same or greater rights in the software or documentation; or
			2. The software or documentation are available to the public without restrictions.
		2. The limitation in paragraph (j)(1) of this clause—
			1. Includes costs charged by a subcontractor or supplier, at any tier, or costs incurred by the Contractor to acquire rights in subcontractor or supplier computer software or computer software documentation, if the subcontractor or supplier has been paid for such rights under any other Government contract or under a license conveying the rights to the Government; and
			2. Does not include the reasonable costs of reproducing, handling, or mailing the documents or other media in which the software or documentation will be delivered.
	5. *Applicability to subcontractors or suppliers*.
		1. Whenever any noncommercial computer software or computer software documentation is to be obtained from a subcontractor or supplier for delivery to the Government under this Order, the Contractor shall use this same clause in its subcontracts or other contractual instruments, and require its subcontractors or suppliers to do so, without alteration, except to identify the parties. No other clause shall be used to enlarge or diminish the Government’s, the Contractor’s, or a higher tier subcontractor’s or supplier’s rights in a subcontractor’s or supplier’s computer software or computer software documentation.
		2. The Contractor and higher tier subcontractors or suppliers shall not use their power to award contracts as economic leverage to obtain rights in computer software or computer software documentation from their subcontractors or suppliers.
		3. The Contractor shall ensure that subcontractor or supplier rights are recognized and protected in the identification, assertion, and delivery processes required by paragraph (e) of this clause.
		4. In no event shall the Contractor use its obligation to recognize and protect subcontractor or supplier rights in computer software or computer software documentation as an excuse for failing to satisfy its contractual obligation to the Government.
1. **COMPUTER SOFTWARE AND/OR COMPUTER DATABASE(S) DELIVERED TO AND/OR RECEIVED FROM THE GOVERNMENT**
	1. *Definitions*. As used in this clause:
		1. Computer database means a collection of data recorded on a form capable of being processed by a computer. The term does not include computer software.
		2. Computer program means a set of instructions, rules, or routines recorded in a form that is capable of causing a computer to perform a specific operation or series of operations.
		3. Computer software means computer programs, source code, source code listings, object code listings, design details, algorithms, processes, flow charts, formulae and related material that would enable the software to be reproduced, recreated or recompiled. Computer software does not include computer database or computer documentation.
	2. Seller agrees to test for and, if reasonably detectable with existing virus software, remove viruses on all computer software, computer programs, and/or computer databases, including those provided by the Government before delivery of that computer software, computer program or computer database in whatever media and on whatever system the software is delivered. Seller represents that any such computer software, computer program and/or computer database will be free of viruses that are reasonably detectable and removable by the Contractor when delivered. For Government, and Buyer-provided software programs or databases, Seller shall notify Buyer and the Government within 5 business days if no software remediation for detected viruses is available.
	3. Unless otherwise agreed in writing, any license agreement governing the use of any computer software to be delivered as a result of this Order must be paid such that the computer software, computer program or computer data base can continue to be used with the equipment for which is obtained, or any replacement equipment, for so long as such equipment is used. Otherwise the computer software, computer program, or computer database does not meet the minimum functional requirements of this Order. No software shall be equipped with any disabling routines.
	4. Unless otherwise agreed to in writing, no copy protection devices or systems shall be used in any computer software, computer program, or computer database under this Order to restrict or limit the Government from making copies. This does not prohibit license agreements from specifying the maximum amounts of copies that can be made.
	5. Delivery by Seller to Buyer and the Government of certain technical data and other data is now frequently required in digital form rather than as hard copy. Such delivery may cause confusion between data rights and computer software rights. It is agreed that, to the extent that any such data is computer software by virtue of its delivery in digital form, the Government will be licensed to use that digital-form data with exactly the same rights and limitations as if the data had been delivered as hard copy.
	6. Any limited rights legends or other allowed legends placed by Seller or any of its subcontractors on technical data or other data delivered in digital form shall be digitally included on the same media as the digital-form data and must be associated with the corresponding digital-form technical data to which the legends apply to the extent possible. Such legends shall also be placed in human-readable form on a visible surface of the media carrying the digital-form data as delivered, or the media casing to the extent possible.
2. **LIMITATIONS ON THE USE OR DISCLOSURE OF GOVERNMENT-FURNISHED INFORMATION MARKED WITH RESTRICTIVE LEGENDS**

(a) (1) For Orders requiring the delivery of or otherwise furnishing technical data, the terms “covered Government support contractor,” “limited rights,” and “Government purpose rights” are defined in the “Rights in Technical Data-- Noncommercial Items” clause of this Order.

(2) For Orders that do not require the delivery of or otherwise furnishing technical data, the terms “covered Government support contractor,” “government purpose rights,” and “restricted rights” are defined in the “Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation” clause of this Order.

(3) For Small Business Innovative Research program contracts, the terms “covered Government support contractor,” “limited rights,” “restricted rights” and “SBIR data rights” are defined in the “Rights in Noncommercial Technical Data and Computer Software--Small Business Innovative Research (SBIR) Program” clause of this Order.

(b) Technical data or computer software provided to Seller as Buyer or Government furnished information (GFI) may be subject to restrictions on use, modification, reproduction, release, performance, display, or further disclosure.

(1) *GFI marked with limited rights, restricted rights, or SBIR data rights legends*.

(i) Seller shall use, modify, reproduce, perform, or display technical data received from the Government with limited rights legends or computer software received with restricted rights legends only in the performance of this Order. Seller shall not, without the express written permission of the party whose name appears in the legend, release or disclose such data or software to any person.

(ii) If Seller is a covered Government support contractor, Seller is also subject to the additional terms and conditions at paragraph (b)(5) of this clause.

(2) *GFI marked with government purpose rights legends*. Seller shall use technical data or computer software received from the Government with government purpose rights legends for government purposes only. Seller shall not, without the express written permission of the party whose name appears in the restrictive legend, use, modify, reproduce, release, perform, or display such data or software for any commercial purpose or disclose such data or software to a person other than its subcontractors, suppliers, or prospective subcontractors or suppliers, who require the data or software to submit offers for, or perform, contracts under this Order. Prior to disclosing the data or software, Seller shall require the persons to whom disclosure will be made to complete and sign a non-disclosure agreement provided by Buyer.

(3) *GFI marked with specially negotiated license rights legends*.

(i) Seller shall use, modify, reproduce, release, perform, or display technical data or computer software received from the Government with specially negotiated license legends only as permitted in the license. Such data or software may not be released or disclosed to other persons unless permitted by the license and, prior to release or disclosure, the intended recipient has completed the non-disclosure agreement provided by Buyer as modified to reflect the recipient’s obligations regarding use, modification, reproduction, release, performance, display, and disclosure of the data or software.

(ii) If Seller is a covered Government support contractor, Seller may also be subject to some or all of the additional terms and conditions at paragraph (b)(5) of this clause, to the extent such terms and conditions are required by the specially negotiated license.

(4) *GFI technical data marked with commercial restrictive legends*.

(i) The Contractor shall use, modify, reproduce, perform, or display technical data that is or pertains to a commercial item and is received from the Government with a commercial restrictive legend (i.e., marked to indicate that such data are subject to use, modification, reproduction, release, performance, display, or disclosure restrictions) only in the performance of this contract. The Contractor shall not, without the express written permission of the party whose name appears in the legend, use the technical data to manufacture additional quantities of the commercial items, or release or disclose such data to any unauthorized person.

(ii) If the Contractor is a covered Government support contractor, the Contractor is also subject to the additional terms and conditions at paragraph (b)(5) of this clause.

(5) *Covered Government support contractors*. If the Contractor is a covered Government support contractor receiving technical data or computer software marked with restrictive legends pursuant to paragraphs (b)(1)(ii), (b)(3)(ii), or (b)(4)(ii), the Contractor further agrees and acknowledges that—

(i) The technical data or computer software will be accessed and used for the sole purpose of furnishing independent and impartial advice or technical assistance directly to the Government in support of the Government’s management and oversight of the program or effort to which such technical data or computer software relates, as stated in this contract, and shall not be used to compete for any Government or non-Government contract;

(ii) The Contractor will take all reasonable steps to protect the technical data or computer software against any unauthorized release or disclosure;

(iii) The Contractor will ensure that the party whose name appears in the legend is notified of the access or use within thirty (30) days of the Contractor’s access or use of such data or software;

(iv) The Contractor will enter into a non-disclosure agreement with the party whose name appears in the legend, if required to do so by that party, and that any such non-disclosure agreement will implement the restrictions on the Contractor’s use of such data or software as set forth in this clause. The non-disclosure agreement shall not include any additional terms and conditions unless mutually agreed to by the parties to the non-disclosure agreement; and

(v) That a breach of these obligations or restrictions may subject the Contractor to—

(A) Criminal, civil, administrative, and contractual actions in law and equity for penalties, damages, and other appropriate remedies by the United States; and

(B) Civil actions for damages and other appropriate remedies by the party whose name appears in the legend.

(c) Indemnification and creation of third party beneficiary rights. Seller agrees-

* + 1. To indemnify and hold harmless Buyer and the Government, and their respective agents and employees, from every claim or liability, including attorneys fees, court costs, and expenses, arising out of, or in any way related to, the misuse or unauthorized modification, reproduction, release, performance, display, or disclosure of technical data or computer software received from the Government with restrictive legends by Seller or any person to whom Seller has released or disclosed such data or software; and
		2. That the party whose name appears on the restrictive legend, in addition to any other rights it may have, is a third party beneficiary who has the right of direct action against Seller, or any person to whom Seller has released or disclosed such data or software, for the unauthorized duplication, release, or disclosure of technical data or computer software subject to restrictive legends.
1. **EXPORT AND IMPORT COMPLIANCE**
2. *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 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.

1. **NOTIFICATION OF CHANGES**

(a) *Definitions*. As used in this provision, the term “conduct” includes both actions and failures to act, and includes the furnishing of, or the failure to furnish, any item under any provision of this Order.

(b) *Notice*. The primary purpose of this requirement is to obtain prompt reporting of any conduct which the Seller considers would constitute or would require a change to this Order. The parties acknowledge that proper administration of this Order requires that potential changes be identified and resolved as they arise. Therefore, except for changes identified as such in writing and signed by the Buyer, the Seller shall notify the Buyer in writing of any conduct which the Seller considers would constitute or would require a change to this Order. Such notice shall be provided within twenty (20) calendar days from the date the Seller identifies any such conduct. The Notice shall be written and shall state, on the basis of the most accurate information available to the Seller:

(1) The date, nature, and circumstances of the conduct regarded as a change;

(2) The name, function, and activity of the individuals directly involved in or knowledgeable about such conduct;

(3) The identification of any documents and the substance of any oral communication involved in such conduct;

(4) The particular elements of contract performance for which the Seller might seek an equitable adjustment under this requirement, including:

(i) What ship(s) have been or might be affected by the potential change;

(ii) To the extent practicable, labor or materials or both which have been or might be added, deleted, or wasted by the potential change;

(iii) To the extent practicable, the Seller’s preliminary order of magnitude estimate of cost and schedule effect of the potential change; and

 (iv) What and in what manner are the particular technical requirements or contract requirements regarded as changed.

(c) *Continued Performance*. Except as provided in paragraph (f) below, following submission of notice, the Seller shall take no action to implement a potential change until advised by the Buyer in writing as provided in (d) below, unless the potential change was previously directed by the Buyer, in which case the Seller shall conform therewith. Nothing in this paragraph shall excuse the Seller from proceeding with contract work other than implementation of the potential change or from proceeding in accordance with directions issued by the Buyer.

(d) *Buyer Response*. The Buyer will promptly and in any event within thirty-five (35) calendar days after receipt of Notice, respond thereto in writing. In such response, the Buyer will either:

(1) Confirm that the conduct of which the Seller gave notice would constitute a change, and when necessary, direct the mode of further performance, or;

(2) Countermand any conduct regarded by the Seller as a change, or;

(3) Deny that the conduct of which the Seller gave notice would constitute a change and, when necessary, direct the mode of further performance, or;

(4) In the event the Seller’s notice information is inadequate to make a decision under (1), (2) or (3) above, advise the Seller what additional information is required.

Failure of the Buyer to respond within the time required above shall be deemed a countermand under (d)(2).

(e) *Equitable Adjustments*. Equitable adjustments for changes confirmed or countermanded by the Buyer will be made in accordance with the clause of this Order entitled CHANGES Clause, or any other requirement of this Order which provides for an equitable adjustment.

(f) *Special Procedures*. Paragraph (c) provides that the Seller is to take no action to implement a potential change pending the Buyer’s response to the Seller’s notice of the potential change, except where specifically directed by the Buyer. In special situations, however, where:

(1) The circumstances do not allow sufficient time to notify the Buyer of the facts prior to the need to proceed with the work, and;

(2) The work must proceed to avoid hazards to personnel or property or to avoid additional cost to the Buyer; the Seller may proceed with work in accordance with the potential change. In such special situations, the Seller shall advise the Buyer in writing within seven (7) calendar days of the conduct giving rise to the potential change that the Seller has proceeded and shall describe the nature of the special situation which required proceeding prior to notification. Within twenty (20) calendar days of the conduct giving rise to the potential change, the Seller shall provide notice as required in (b) above. The Buyer will respond as set forth in (d) above. If the Buyer determines that the conduct constitutes a change and countermands it, the Seller shall be entitled to an equitable adjustment for performance in accordance with that change prior to the countermand including performance resulting from the countermand.

(g) When the Seller identifies any conduct which may result in delay to delivery of the ship(s), the Seller shall promptly so inform the Buyer thereof prior to providing the notice required by paragraph (b) above.

(h) Despite good faith best efforts, occasions may arise in which the Seller does not provide notice within the time periods specified in paragraphs (b) and (f) above. Accordingly, prior to the end of the first and third quarters of each calendar year through the period of performance of this Order, beginning with the second quarter after award, the Seller shall deliver to the Buyer an executed bilateral contract modification, in the format set forth in Exhibit “A” to this requirement, covering the six (6) month period of time ending with the second and fourth quarters, respectively, of the preceding year, with such specific exceptions, if any, as are identified by the Seller. If the Seller cites specific exceptions to the release, the Seller shall concurrently provide the Buyer with notice, containing the information set forth in paragraph (b) of this requirement, for each item excepted from the release. However, the release required by this requirement shall not make unallowable any costs which are otherwise allowable under any other requirement of this Order.

 Within seventy-five (75) calendar days of receipt of the release, the Buyer will sign and return a copy of the release to the SELLER. If the Buyer fails to execute and return the release within the required time, then the release shall be deemed to be void and of no effect for the period involved.

(i) If the release in accordance with paragraph (h) above is not provided to the Buyer by the Seller in the time required, the Buyer may execute the release as set forth in Exhibit “A” and send it to the Seller. If the Seller fails to execute the release and return it to the Buyer (with any specific exceptions) within forty-five (45) days of receipt thereof, the required release shall then be deemed effective as if signed by the Seller.

**Exhibit A to the Requirement entitled “NOTIFICATION OF CHANGES”**

This modification reflects the agreement of the parties to the mutual full and final releases for the consequences of that conduct (as conduct is defined in the provision entitled “NOTIFICATION OF CHANGES”), described below, except the conduct identified in Attachment A hereto is excluded and not covered by the terms of this release.

(a) Except for the conduct listed in Exhibit A by either party, neither the Seller nor the Buyer shall be entitled to any equitable adjustment or to money damages and/or other relief for any conduct, as specified below.

(b) In consideration of the foregoing the parties hereby agree to the following release:

(1) The Buyer, for itself, its assigns, vendors, suppliers, and contractors, hereby remises, releases, and forever discharges the Seller, its officers, agents and employees from any and all entitlement of the Buyer to equitable adjustment of the contract price and delivery schedule due to conduct under this Order, which occurred on or before .

(2) The Seller, for itself, its successors, assigns, vendors, suppliers, and subcontractors, hereby remises, releases and forever discharges the Buyer and the Government, and their respective officers, agents and employees from (i) any and all entitlement of the Seller to equitable adjustment of the contract price and/or delivery schedule of this Order or of any other contract with Buyer or any contract between the Seller and any third party by reason of any conduct which increases the Seller’s cost or time of performance of work under this Order and meets the following conditions (1) known to the Seller, (2) occurred on or before \_\_\_\_\_\_\_, and (3) the Seller failed to give notice prior to date of this release, and (ii) any and all liabilities to the Seller for money damages and/or other relief for the impact of any such conduct, upon this Order or any other contract between Buyer and Seller or any contract between the Seller and any third party.

**--End of Exhibit A--**

1. **MANAGEMENT AND DISPOSAL OF HAZARDOUS WASTE**

(a) Seller shall comply with the Resource Conservation and Recovery Act (RCRA), the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 10 U.S.C. 7311 and all other applicable Federal, state and local laws, codes, ordinances and regulations for the management and disposal of hazardous waste.

Nothing contained in this provision shall relieve Seller from complying with applicable Federal, state, and local laws, codes, ordinances, and regulations, including obtaining licenses and permits, giving notices and submitting reports, in connection with hazardous waste management and disposal in the performance of this Order. Nothing contained herein shall serve to alter either party’s liability or responsibility under CERCLA. Materials contained in NSC systems are not waste until after removal from the system.

(b) Identification of Hazardous Waste

This Order will identify the types and amounts of hazardous wastes that are required to be removed by Seller, or that are expected to be generated, during the performance of work under this Order.

(c) Generator Identification Numbers

 Documentation related to hazardous waste generated solely by the physical actions of ship’s force or Government employees shall only bear a generator identification number issued to the Government pursuant to applicable law.

 Documentation related to hazardous waste generated solely by the physical actions of Seller personnel shall only bear a generator identification number issued to Seller pursuant to applicable law. Regardless of the presence of other materials in or on systems or structures which may have qualified a waste stream as hazardous, where Seller performs work on a system or structure using materials (whether or not the use of such materials was specified by the Government) which by themselves would cause the waste from such work to be a hazardous waste, documentation related to such waste shall only bear a generator identification number issued to Seller.

 Documentation related to hazardous waste generated by the combined physical actions of Government and Seller personnel shall bear a generator identification number issued to the Contractor pursuant to applicable law and shall also cite in the remarks block a generator identification number issued to the Government pursuant to applicable law.

(d) Notwithstanding subparagraphs (a) through (c) above, hazardous wastes are considered to be co-generated in cases where: (a) Seller merely drains a system and such drainage creates hazardous waste or (b) Seller performs work on a system or structure using materials which by themselves would not cause the waste from such work to be hazardous waste but such work nonetheless creates a hazardous waste. Documentation related to such co-generated waste shall bear a generator identification number in accordance with the provisions of subparagraph (c) above.

 In the event of a failure by the parties to agree to the assignment of a generator identification number to any hazardous waste as set forth in subparagraphs (a) through (d) above, the Contracting Officer under the Prime Contract may direct which party or parties shall provide generator identification numbers for the waste. Such number(s) shall be used on all required documentation. Any disagreement with this direction shall be a dispute within the meaning of the DISPUTES provision of this Order. However, Seller shall not stop any work but shall continue with performance of all work under a modification as specified in the DISPUTES provision.

 Hazardous Waste Manifests ‑ for wastes described in subparagraphs (b) through (d) above, Seller shall sign the generator certification on the Uniform Hazardous Waste Manifest whenever use of the Manifest is required for disposal. Seller shall obtain Buyer’s concurrence with the categorization of wastes under subparagraphs (c) and (d) above before completion of the manifest. Manifests prepared pursuant to subparagraph (a) above shall be presented to Buyer (who in turn will present to the Government) for completion after the hazardous waste has been identified.

(e) For purposes of subparagraphs (b) and (c) herein, if Seller, while performing work at a Government facility, cannot obtain a separate generator identification number from the state in which the activity will be performed, Seller shall notify Buyer within three (3) business days of receipt of written notification by the state. After obtaining Buyer approval, Seller shall use the Government site generator identification number and insert in the remarks block the Seller generator identification number issued for the site where its main facilities are located. For purposes of subparagraph (a) herein, if the work is being performed at a Seller facility and the Government cannot obtain a separate generator identification number for the state, the Government will use the Seller site generator identification number and will cite in the remarks block a Government generator identification number. In both instances described above, Seller shall prepare the Uniform Hazardous Waste Manifest described in subparagraph (e) above and present it to the Buyer (who in turn will present it to the Government) for completion.

1. **CLAUSES INCORPORATED BY REFERENCE**
	1. The below listed Federal Acquisitions Regulations (FAR) and the Homeland Security Acquisition Regulation (HSAR) clauses are incorporated by reference and made part of this Order with the same force and effect as though set forth in full text. Buyer reserves the right to modify this Order at any time to update and add clauses as necessary to comply with the prime contract as awarded and any modifications thereto.
	2. Unless the text in these clauses clearly reserves rights in the Government only or as otherwise noted, the terms “Contractor” means “Seller,” “Contracting Officer” means “Buyer,” “Contract” means this Order and “Government” means “Buyer or the Government.” However, the words “Government” and “Contracting Officer” do not change when a right, act, authorization or obligation can be granted or performed only by the Government or the Prime Contract contracting officer or duly authorized representative.
	3. Applicable thresholds include Truthful Cost or Pricing Data (formerly known as the Truth in Negotiation Act (TINA)) threshold at $2,000,000; Simplified Acquisition Threshold (SAT) at $250,000; and Micro Purchase Order Threshold at $10,000.
	4. Whenever said clauses include a requirement for the resolution of disputes between the Parties in accordance with the “Disputes clause,” the dispute shall be disposed of in accordance with the provision entitled “Disputes” above.

(e) The full text of a clause may be accessed electronically at this/these addresses:

 FAR: <http://farsite.hill.af.mil/>.

 HSAR: <http://farsite.hill.af.mil/vfhsara.htm>

 **FEDERAL ACQUISITION REGULATION (48 CFR CHAPTER 1) CLAUSES**

| **NUMBER** | **TITLE** | **DATE** |
| --- | --- | --- |
| 52.202-1 | DEFINITIONS | NOV-13 |
| 52.203-3 | GRATUITIES *(“Government” means “Buyer” (except “Government” means “Buyer or Government” in the phrase “to any officer or employee of the Government”)).* | APR-84 |
| 52.203-5 | COVENANT AGAINST CONTINGENT FEES | MAY-14 |
| 52.203-6 | RESTRICTIONS ON CONTRACTOR SALES TO THE GOVERNMENT *(applies to Orders over SAT) (Alt 1 applies to commercial items)* | SEP-06 |
| 52.203-7 | ANTI-KICKBACK PROCEDURES *(except subparagraph (c)(1))**(applies to Orders over $150,000)* | MAY-14 |
| 52.203-8  | CANCELLATION, RESCISSION, AND RECOVERY OF FUNDS FOR ILLEGAL OR IMPROPER ACTIVITY | MAY-14 |
| 52.203-10 | PRICE OR FEE ADJUSTMENT FOR ILLEGAL OR IMPROPER ACTIVITY | MAY-14 |
| 52.203-12  | LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS *(applies to Orders over $150,000)* | OCT-10 |
| 52.203-13 | CONTRACTOR CODE OF BUSINESS ETHICS AND CONDUCT*(applies to Orders over $5,500,000 and has a performance period of more than 120 days. Notwithstanding any alterations to this clause to reflect the relationship between Buyer and Seller, all disclosures of violation of the civil False Claims Act or of Federal criminal law shall be directed to the Office of the Inspector General of the agency issuing the prime contract under which this subcontract is being issued, with a copy to the Contracting Officer of the prime contract.)* | OCT-15 |
| 52.203-14 | DISPLAY OF HOTLINE POSTERS *(applies to all Orders over $5.5 million, except Orders for commercial items or performed entirely outside the United States)* | OCT-15 |
| 52.203-17 | CONTRACTOR EMPLOYEE WHISTLEBLOWER RIGHTS AND REQUIREMENTS TO INFORM EMPLOYEES OF WHISTLEBLOWER RIGHTS (DHS-USCG DEVIATION 14-01) (*applies to Orders over the SAT)* | SEP-13 |
| 52.204-2 | SECURITY REQUIREMENTS  | AUG-96 |
| 52.204-4 | PRINTED OR COPIED DOUBLE-SIDED ON POST CONSUMER FIBER CONTENT PAPER | MAY-11 |
| 52.204-9 | PERSONAL IDENTITY VERIFICATION OF CONTRACTOR PERSONNEL | JAN-11 |
| 52.204-10 | REPORTING EXECUTIVE COMPENSATION AND FIRST TIER SUBCONTRACT AWARDS | OCT-15 |
| 52.209-6 | PROTECTING THE GOVERNMENT’S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT *(applies to Orders over $35,000, except COTS items)* | OCT-15 |
| 52.211-5 | MATERIAL REQUIREMENTS *(the clause’s requirement that Contracting Officer approval be obtained before using “surplus property” applies also to residual inventory resulting from terminated Government contracts or purchase orders awarded thereunder.)* | AUG-00 |
| 52.211-15 | DEFENSE PRIORITY AND ALLOCATION REQUIREMENTS | APR-08 |
| 52.215-2 | AUDIT AND RECORDS – NEGOTIATION *(applies to Orders over the SAT threshold)* | OCT-10 |
| 52.215-10 | PRICE REDUCTION FOR DEFECTIVE CERTIFIED COST OR PRICING DATA | AUG-11 |
| 52.215-11 | PRICE REDUCTION FOR DEFECTIVE CERTIFIED COST OR PRICING DATA – MODIFICATIONS *(applies to Orders over the Truth In Negotiations Act (TINA) threshold)* | AUG-11 |
| 52.215-12 | SUBCONTRACTOR CERTIFIED COST OR PRICING DATA *(applies to Orders over the TINA threshold)* | OCT-10 |
| 52.215-13 | SUBCONTRACTOR CERTIFIED COST OR PRICING DATA – MODIFICATIONS *(applies to Orders over the TINA threshold)* | OCT-10 |
| 52.215-14 | INTEGRITY OF UNIT PRICES (ALTERNATE I – OCT-97) | OCT-10 |
| 52.215-15 | PENSION ADJUSTMENTS AND ASSET REVERSIONS *(applies to Orders over the TINA threshold)* | OCT-10 |
| 52.215-18  | REVERSION OR ADJUSTMENT OF PLANS FOR POSTRETIREMENT BENEFITS (PRB) OTHER THAN PENSIONS *(applies to Orders over the TINA threshold)* | JUL-05 |
| 52.215-19 | NOTIFICATION OF OWNERSHIP CHANGES *(applies to Orders over the TINA threshold)* | OCT-97 |
| 52.215-22 | LIMITATIONS ON PASS-THROUGH CHARGES- IDENTIFICATION OF SUBCONTRACT EFFORT | OCT-09 |
| 52.215-23 | LIMITATIONS ON PASS-THROUGH CHARGES | OCT-09 |
| 52.219-8 | UTILIZATION OF SMALL BUSINESS CONCERNS *(applies to orders over the SAT threshold except for personal services or performed entirely outside the United States)* | OCT-14 |
| 52.219-9 | SMALL BUSINESS SUBCONTRACTING PLAN and ALTERNATE II (OCT 01*) (applies to Orders over $700,000 except commercial items and small businesses)* | OCT-15 |
| 52.222-1 | NOTICE TO THE GOVERNMENT OF LABOR DISPUTES | FEB-97 |
| 52.222-4 | CONTRACT WORK HOURS AND SAFETY STANDARDS-OVERTIME COMPENSATION | MAY-14 |
| 52.222-19 | CHILD LABOR – COOPERATION WITH AUTHORITIES AND REMEDIES *(except paragraph (a))* | FEB-16 |
| 52.222-20 | WALSH-HEALY PUBLIC CONTRACTS ACT *(applies to Orders over $15,000)* | MAY-14 |
| 52.222-21 | PROHIBITION OF SEGREGATED FACILITIES | APR-15 |
| 52.222-26 | EQUAL OPPORTUNITY | APR-15 |
| 52.222-35 | EQUAL OPPORTUNITY FOR VETERANS *(applies to Orders of $15,000 or more)* | OCT-15 |
| 52.222-36 | AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES *(applies to Orders over $15,000)* | JUL-14 |
| 52.222-37 | EMPLOYMENT REPORTS ON VETERANS *(applies to Orders of $150,000 or more)* | FEB-16 |
| 52.222-40 | NOTIFICATION OF EMPLOYEE RIGHTS UNDER THE NATIONAL LABOR RELATIONS ACT | DEC-10 |
| 52.222-50 | COMBATING TRAFFICKING IN PERSONS | MAR-15 |
| 52.222-54 | EMPLOYMENT ELIGIBILITY VERIFICATION *(applies to Orders for services over $3,500 for work performed in the United States)* | OCT-15 |
| 52.223-3  | HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA | JAN-97 |
| 52.223-5 | POLLUTION PREVENTION AND RIGHT-TO-KNOW INFORMATION *(Applies only when work will be performed on a Government installation)* | MAY-11 |
| 52.223-6 | DRUG-FREE WORKPLACE | MAY-01 |
| 52.223-11 | OZONE-DEPLETING SUBSTANCES | MAY-01 |
| 52.223-18 | ENCOURAGING CONTRACTOR POLICIES TO BAN TEXT MESSAGING WHILE DRIVING | AUG-11 |
| 52.225-1 | BUY AMERICAN ACT – SUPPLIES | MAY-14 |
| 52.225-13 | RESTRICTIONS ON CERTAIN FOREIGN PURCHASES | JUN-08 |
| 52.226-1 | UTILIZATION OF INDIAN ORGANIZATIONS AND INDIAN-OWNED ECONOMIC ENTERPRISES | JUN-00 |
| 52.227-1 | AUTHORIZATION AND CONSENT *(applies to Orders over SAT; Alt I applies to Research and Development Orders; Alt II applies to communication services)* | DEC-07 |
| 52.227-2 | NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT *(applies to Orders over the SAT threshold)* | DEC-07 |
| 52.227-10 | FILING OF PATENT APPLICATIONS – CLASSIFIED SUBJECT MATTER *(applies to Orders that cover classified subject matters)* | DEC-07 |
| 52.227-21 | TECHNICAL DATA DECLARATION, REVISION, AND WITHHOLDING OF PAYMENT-MAJOR SYSTEMS | MAY-14 |
| 52.228-5 | INSURANCE-WORK ON A GOVERNMENT INSTALLATION | JAN-97 |
| 52.230-2 | COST ACCOUNTING STANDARDS *(applies to negotiated Orders over $750,000 with CAS covered Sellers, except paragraph “(b)”)* | OCT-15 |
| 52.230-6 | ADMINISTRATION OF COST ACCOUNTING STANDARDS *(applies to Orders over $750,000 with CAS covered sellers)* | JUN-10 |
| 52.232-11 | EXTRAS | APR-84 |
| 52.232-17 | INTEREST | MAY-14 |
| 52.234-1 | INDUSTRIAL RESOURCES DEVELOPED UNDER DEFENSE PRODUCTION ACT TITLE III | DEC-94 |
| 52.242-3 | PENALTIES FOR UNALLOWABLE COST | MAY-14 |
| 52.242-13 | BANKRUPTCY | JUL-95 |
| 52.242-17  | GOVERNMENT DELAY OF WORK | APR-84 |
| 52.243-1 | CHANGES-FIXED PRICE  | AUG-87 |
| 52.244-5 | COMPETITION IN SUBCONTRACTING | DEC-96 |
| 52.244-6  | SUBCONTRACTS FOR COMMERCIAL ITEMS  | DEC-15 |
| 52.245-1 | GOVERNMENT PROPERTY *(excluding any warranty of suitability/serviceability contained in para. (d)(2) and (d)(2)(iii))* | APR-12 |
| 52.247-63 | PREFERENCE FOR U.S. FLAG AIR CARRIERS | JUN-03 |
| 52.247-64 | PREFERENCE FOR PRIVATELY OWNED U.S.-FLAG COMMERCIAL VESSELS | FEB-06 |
| 52.248-1 | VALUE ENGINEERING *(applies to Orders of $150,000 or more except as specified in FAR 48.201(a))**(substitute “Buyer” for “Contracting Officer” and “Government” throughout, except where used in the term “Government costs” and in paragraph (m) where “Government” shall mean “Government and/or Buyer.” )* | OCT-10 |

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| The following applicable HSAR regulations are incorporated by reference:**HOMELAND SECURITY ACQUISITION REGULATION (HSAR)** |
| **NUMBER** | **TITLE** | **DATE** |
| 3052.203-70 | INSTRUCTIONS FOR CONTRACTOR DISCLOSURE OF VIOLATIONS | SEP-12 |
| 3052.205-70 | ADVERTISEMENTS, PUBLICIZING AWARDS, AND RELEASES (ALTERNATE I – SEP-12) | SEP-12 |
| 3052.204-71 | CONTRACTOR EMPLOYEE ACCESS & ALTERNATE I (SEP-12) | SEP-12 |
| 3052.211-70 | INDEX FOR SPECIFICATIONS | DEC-03 |
| 3052.219-70 | SMALL BUSINESS SUBCONTRACTING PLAN REPORTING | JUN-06 |
| 3052.222-70 | STRIKES OR PICKETING AFFECTING TIMELY COMPLETION OF THE CONTRACT WORK | DEC-03 |
| 3052.223-70 | REMOVAL OR DISPOSAL OF HAZARDOUS SUBSTANCES –APPLICABLE LICENSES AND PERMITS | JUN-06 |

1. **CONFLICT MINERALS DISCLOSURE**

Pursuant to Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 and its implementing regulations, Buyer is required to identify the presence and source of Conflict Minerals (gold, tantalum, tin or tungsten) contained in Buyer’s manufactured products. Buyer has implemented a comprehensive Conflict Minerals compliance program, which includes posting relevant information for suppliers at this website: <http://www.huntingtoningalls.com/who-we-are/ethics-compliance/conflict-minerals/>. It is a requirement of this Order that Seller shall be familiar with this information and make all reasonable efforts to assist Buyer in identifying the presence and source of Conflict Minerals contained in the products sold by Seller to Buyer, as described further below.

1. As of the time of award of this Order, Seller represents that:

(i) The Product(s) Seller will be supplying under this Order do not contain (a) gold or (b) tantalum, tin, or tungsten (derivatives of columbite-tantalite (coltan), cassiterite, and wolframite); or

(ii) Alternatively, if the Product(s) contain gold, tantalum, tin, or tungsten, Seller agrees to provide the Buyer one of the following completed forms prior to delivery of the Product(s):

A. The Responsible Minerals Initiative Conflict Minerals Reporting Template (“CMRT”) version 6.01 or later, available at http://www.responsiblemineralsinitiative.org/reporting-templates/cmrt/, with “Product” selected under the “Declaration Scope or Class” field;

B. Written documentation about the source of Conflict Minerals in the Product(s) that provides substantively similar information to that requested by the CMRT.

1. Any CMRT provided pursuant to paragraph (a)(ii) above shall be submitted on the web platform of Buyer’s conflict minerals data vendor, Source Intelligence. If Seller has previously registered with Source Intelligence, Seller may use its existing username and password at [www.sourceintelligence.net](http://www.sourceintelligence.net). If Seller is not registered, instructions may be obtained by emailing hii@sourceintelligence.com or by calling toll free in the United States 1-855-207-8015. Any questions regarding this requirement should be addressed to the authorized purchasing representative of Buyer listed on the face of this Order.
2. If the status of any Product(s) changes during performance of this Order so that the representation or information provided pursuant to paragraph A of this provision is no longer accurate, then Seller must within 30 days complete and submit updated, accurate and current information as provided in paragraph B above.
3. If Buyer determines that any representation made by Seller pursuant to this provision is inaccurate or incomplete in any respect, or Seller fails to timely submit the information required by this provision, then Buyer may, at its option, either withhold up to 10% of the Order price until such information is provided or terminate this Order pursuant to the provision of this Order titled “Termination for Default.”
4. **REPRESENTATIONS AND CERTIFICATIONS**

(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.

1. **EQUAL EMPLOYMENT OPPORTUNITIES**

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.**

1. **INSURANCE**
2. 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.
3. 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 $4,000,000 in the aggregate for bodily injury and property damage.
4. 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:
	1. *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 $4,000,000 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.
	2. *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.
	3. *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 performing work over water or within any adjacent jurisdiction of the LHWCA.
	4. *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.
	5. *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.
	6. [Reserved].
	7. *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 Insurance if Seller is responsible for the risk of transportation and/or 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, and naming Buyer as loss payee.
	8. [Reserved].
	9. *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.
	10. *Marine Insurance*: If this Order is for water-based work, such as but not limited to dredging services, 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.
	11. *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.
5. 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.
6. 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, or material change to, any insurance policy required hereunder.
7. 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.
8. All liability 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 liability coverage hereunder. Seller shall add Buyer as 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 liability insurance policies required hereunder except Workers’ Compensation, Employer’s Liability and Professional Liability.
9. 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; in addition, Seller’s Liability Insurance will 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.
10. **INFORMATION SECURITY**

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 ControlsTM, found at <https://www.cisecurity.org/controls/>.

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.

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.

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.

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.

1. **HAZARDOUS MATERIALS**

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>.

* 1. 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 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.

* 1. Prohibited Hazardous Materials:

Except as agreed to in writing by 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.

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| **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:

1. Actual knowledge or process knowledge
2. SDS
3. Technical data sheets
4. 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.

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

Seller shall obtain approval from Buyer’s technical authority in the following circumstances:

1. 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.
2. If 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.”
3. 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.
	1. 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 Buyer. 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 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.

* 1. Additional Prohibitions:
		1. PROHIBITION OF YELLOW WRAPPINGS OR PROTECTION DEVICES. Seller shall not use yellow wrapping material or attached yellow protection devices such as caps or plugs.
		2. 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.
1. **CONTINUING TERMS AND SEVERABILITY**

 The “Proprietary Information,” “Suspect/Counterfeit Parts,” “Insurance,” “Indemnification,” “Patent, Trademark, Trade Secret and Copyright Indemnity,” “Release of Information and Advertising,” and “Warranty” provisions and the indemnification provisions contained in the “Disputes,” and “Export And Import Compliance,” provisions 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.

1. **BANKRUPTCY**

 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.

1. **PROGRAM MANAGEMENT**
	1. When requested by Buyer, Seller will develop and maintain in a form acceptable to Buyer, a comprehensive Program Management Plan (“PMP”). At its election, Buyer may provide at no cost to Seller assistance in the development of the PMP.
	2. The PMP will contain a comprehensive activity-based schedule for all major software/hardware deliverables required by this Order. Seller shall update the PMP at regular intervals but no less than monthly to ensure its currency.
	3. Seller will make its PMP available to Buyer in a format specified by Buyer for review at reasonable times and places.
2. **OBSOLESCENCE**

 Seller represents that it has obtained pricing and/or has within its control all necessary equipment, subassemblies, parts, components or items (collectively referred to as “Parts”) to be incorporated in the Product(s) to be delivered under this Order. If during the performance of this Order Seller becomes aware that any Products or Parts will be going out of production or will no longer be commercially available in the future, Seller shall notify the Buyer of such obsolescence. Seller shall specifically identify those Products or Parts by name or title, part number(s), function, and name and location of manufacturer. Should any Parts that Seller intended to use in performance of this Order become obsolete and unavailable to Seller, Seller shall identify and propose alternative Parts for approval by Buyer and, if necessary, the Government, and Seller shall be responsible for any increase in cost necessary to obtain and qualify such alternative Parts to ensure full compliance with the requirements of this Order.

1. **TECHNICAL DATA – COMMERCIAL ITEMS**

(a) *Definitions*. As used in this clause—

(1) “Commercial item” does not include commercial computer software.

(2) “Covered Government support contractor” means a contractor under a contract, the primary purpose of which is to furnish independent and impartial advice or technical assistance directly to the Government in support of the Government’s management and oversight of a program or effort (rather than to directly furnish an end item or service to accomplish a program or effort), provided that the contractor—

(i) Is not affiliated with the prime contractor or a first-tier subcontractor on the program or effort, or with any direct competitor of such prime contractor or any such first-tier subcontractor in furnishing end items or services of the type developed or produced on the program or effort; and

(ii) Receives access to technical data or computer software for performance of a Government contract that contains the clause substantially similar to provision 50, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends.

(3) “Form, fit, and function data” means technical data that describes the required overall physical, functional, and performance characteristics (along with the qualification requirements, if applicable) of an item, component, or process to the extent necessary to permit identification of physically and functionally interchangeable items.

(4) The term “item” includes components or processes.

(5) “Technical data” means recorded information, regardless of the form or method of recording, of a scientific or technical nature (including computer software documentation). The term does not include computer software or data incidental to contract administration, such as financial and/or management information.

(6) “Vessel design” means the design of a vessel, boat, or craft, and its components, including the hull, decks, superstructure, and the exterior surface shape of all external shipboard equipment and systems. The term includes designs described in 10 U.S.C. 7317, and designs protectable under 17 U.S.C. 1301, *et seq*.

(b) *License.*

(1) The Government shall have the unrestricted right to use, modify, reproduce, release, perform, display, or disclose technical data, and to permit others to do so, that—

(i) Have been provided to the Government or others without restrictions on use, modification, reproduction, release, or further disclosure other than a release or disclosure resulting from the sale, transfer, or other assignment of interest in the technical data to another party or the sale or transfer of some or all of a business entity or its assets to another party;

(ii) Are form, fit, and function data;

(iii) Are a correction or change to technical data furnished to the Contractor by the Government;

(iv) Are necessary for operation, maintenance, installation, or training (other than detailed manufacturing or process data); or

(v) Have been provided to the Government under a prior contract or licensing agreement through which the Government has acquired the rights to use, modify, reproduce, release, perform, display, or disclose the data without restrictions.

(2) Except as provided in paragraph (b)(1) of this clause, the Government may use, modify, reproduce, release, perform, display, or disclose technical data within the Government only. The Government shall not—

(i) Use the technical data to manufacture additional quantities of the commercial items; or

(ii) Release, perform, display, disclose, or authorize use of the technical data outside the Government without Seller’s written permission unless a release, disclosure, or permitted use is necessary for emergency repair or overhaul of the commercial items furnished under this contract, or for performance of work by covered Government support contractors.

(3) Seller acknowledges that—

(i) Technical data covered by paragraph (b)(2) of this clause is authorized to be released or disclosed to covered Government support contractors;

(ii) Seller will be notified of such release or disclosure;

(iii) Seller (or the party asserting restrictions as identified in a restrictive legend) may require each such covered Government support contractor to enter into a non-disclosure agreement directly with Seller (or the party asserting restrictions) regarding the covered Government support contractor’s use of such data, or alternatively, that the Seller (or party asserting restrictions) may waive in writing the requirement for an non-disclosure agreement;

(iv) Any such non-disclosure agreement shall address the restrictions on the covered Government support contractor's use of the data as set forth in provision 50, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends, and shall not include any additional terms and conditions unless mutually agreed to by the parties to the nondisclosure agreement; and

(v) Seller shall provide a copy of any such non-disclosure agreement or waiver to Buyer and the Contracting Officer, upon request.

(4) Vessel designs. For a vessel design (including a vessel design embodied in a useful article) that is developed or delivered under this contract, the Government shall have the right to make and have made any useful article that embodies the vessel design, to import the article, to sell the article, and to distribute the article for sale or to use the article in trade, to the same extent that the Government is granted rights in the technical data pertaining to the vessel design.

(c) *Additional license rights*. Seller, its subcontractors, and suppliers are not required to provide the Government additional rights to use, modify, reproduce, release, perform, display, or disclose technical data. However, if the Government desires to obtain additional rights in technical data, Seller agrees to promptly enter into negotiations with Buyer and the Contracting Officer to determine whether there are acceptable terms for transferring such rights. All technical data in which Seller has granted the Government additional rights shall be listed or described in a special license agreement made part of this Order. The license shall enumerate the additional rights granted the Government in such data.

(d) *Release from liability*. Seller agrees that Buyer and the Government, and other persons to whom Buyer and the Government may have released or disclosed technical data delivered or otherwise furnished under this Order, shall have no liability for any release or disclosure of technical data that are not marked to indicate that such data are licensed data subject to use, modification, reproduction, release, performance, display, or disclosure restrictions.

(e) *Applicability to subcontractors or suppliers*.

(1) Seller shall recognize and protect the rights afforded its subcontractors and suppliers under 10 U.S.C. 2320 and 10 U.S.C. 2321.

 (2) Whenever any technical data related to commercial items developed in any part at private expense will be obtained from a subcontractor or supplier for delivery to the Government under this Order, Seller shall use this same provision in the subcontract or other contractual instrument, and require its subcontractors or suppliers to do so, without alteration, except to identify the parties. This provision will govern the technical data pertaining to any portion of a commercial item that was developed exclusively at private expense, and the provision entitled “Rights in Technical Data--Noncommercial Items” will govern the technical data pertaining to any portion of a commercial item that was developed in any part at Government expense.

1. **AMENDMENTS REQUIRED BY PRIME CONTRACT**

Buyer may modify these general provisions to add or delete any provisions that are not reflected in the applicable Prime Contract or in subsequent amendments to the Prime Contract. Accordingly, Seller agrees that upon the request of Buyer it will negotiate in good faith with Buyer relative to modifications to this Order to incorporate additional provisions herein or to change provisions hereof, as Buyer may reasonably deem necessary in order to comply with the provisions of the applicable Prime Contract or with the provisions of amendments to such Prime Contract. If any such modification to this Order causes a material increase or decrease in the cost of, or the time required for, performance of any part of the work under this Order, an equitable adjustment shall be processed pursuant to the “Changes” clause of this Order.