

ELECTRIC BOAT CORPORATION
TERMS AND CONDITIONS
No. EB-2NC Non-Commercial Rev 5 (Nov 2019)
To be used in conjunction with contract specific Terms and Conditions

This purchase order is a subcontract under BUYER's prime contract with the U.S. Government. Unless specifically stated otherwise in writing in this Purchase Order, it neither establishes nor intends to establish any privity of contract between SELLER (or any other entity) and the U.S. Government nor does it bind or purport to bind the United States Government, its officers, representatives, employees, or agents.

Access to technical data and equipment (e.g., "defense articles", "defense services", etc.) is subject to U.S. export controls and must be strictly controlled to preclude unauthorized disclosure.

ALL TECHNICAL DATA, DRAWINGS, ETC. ARE TO BE PROVIDED WITH UNLIMITED RIGHTS, UNLESS OTHERWISE APPROVED IN WRITING BY EB.

EB-2NC Non-Commercial REVISIONS			
REVISION	DATE	Clause No(s).	
EB-2NC Non-Commercial Rev 0 (Feb 2016)	2//16		Basic Issue
EB-2NC Non-Commercial Rev 1 (Jan 2017)	1/3/2017		Revision
EB-2NC Non-Commercial Rev 2 (Feb 2017)	2/8/2017		Revision
EB-2NC Non-Commercial Rev 3 (July 2018)	7/2/18	33	Revised to add new clause 33 (b) Compliance with Laws
EB-2NC Non-Commercial Rev 4 (AUG 2019)	8/28/19	84	Added EU Personal Information Privacy Notice Clause (84)
EB-2NC Non-Commercial	11/1/19	39, 96(f)	Revision, revised contact information

GENERAL PROVISIONS

1. **AMENDMENTS REQUIRED BY PRIME OR HIGHER-TIER CONTRACT AND/OR CHANGES OF LAW, RULES, AND/OR REGULATIONS**
 - a. The SELLER agrees that, it will negotiate in good faith with the BUYER relative to amendments or supplements to this letter contract/subcontract/purchase order to incorporate additional provisions herein or to change provisions hereof, as the BUYER may reasonably deem necessary in order to comply with the provisions/clauses/requirements of BUYER's prime contract.

2. **SECTION, PART, CLAUSE, PARAGRAPH, AND OTHER HEADINGS**
 - a. The section, part, clause, paragraph and other headings herein are for convenience only and shall not limit in any way the scope or interpretation of any provision or clause of this Purchase Order.

3. **ACCEPTANCE OF ORDER & TERMS AND CONDITIONS**
 - a. SELLER's acknowledgement, acceptance of payment, commencement of performance, or the delivering of services shall constitute acceptance of this purchase order as written.
 - b. All other contractual requirements and terms and conditions to which SELLER has not taken exception in writing are accepted "as-is" without alteration.

4. **SELLER RESTRICTIONS**
 - a. **SELLER Eligibility:**
 - i. SELLER shall not be debarred, suspended, proposed for debarment, or otherwise ineligible to receive a U.S. Government contract or subcontract. SELLER also shall not subcontract with parties that are debarred, suspended, proposed for debarment, or otherwise declared ineligible by any Federal Agency for the award without the prior written approval of the BUYER.
 - ii. SELLER must satisfy and maintain the following criteria in order to remain eligible to conduct business with BUYER. SELLER shall use, as a minimum, similar criteria when evaluating its prospective recipients of technical data/hardware or subcontracts.
 1. Active certification under the United States/Canada Joint Certification Program ("JCP Certified") (Applies to United States. & Canadian Suppliers only.);
 2. Registration with the United States. State Department, when required (Applies to United States. Suppliers only.);
 3. A written Access Control Plan/Technology Control Plan (ACP/TCP) to prevent unauthorized disclosures of export-controlled hardware and technical data. (Applies to all intended recipients at every tier.);
 - a. If access to Naval Nuclear Propulsion Information (NNPI) is required the ACP/TCP must address preventing unauthorized disclosures of NNPI
 4. Ensure that EB approval is requested and obtained prior to disclosing export-controlled technical data, hardware, software, and information to foreign nationals, whether within the U.S. or abroad;
 5. Ensure that appropriate U.S. State Department approvals and/or licenses are obtained for all prospective foreign suppliers and subcontractors before allowing them access to export-controlled hardware, technical data, software, and information;
 6. Inclusion in lower-tier solicitations and subcontracts all required flow-downs of this purchase order, and all other documents applicable thereto;
 7. A current, complete and accurate submission of EB form 84-01-0751 Certification and Representations ;

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8. Submission of a Small Business Subcontracting Plan (with large businesses only) for approval within thirty (30) days of award (when required). See FAR 52.219-9.
 - b. **Notice of Lower-Tier Subcontract Solicitation and Award:**
 - i. SELLER shall provide the BUYER with written notice prior to the prospective award of all subcontracts placed by SELLER under this Purchase Order that are expected to equal to or exceed \$500,000 or 50 percent (50%) of the value of this Purchase Order, whichever is lesser.
 - ii. SELLER shall request written approval to proceed if the total of all subcontracts awarded under this purchase order exceeds, or is expected to exceed, 70 percent (70%) of the total expected value of this purchase order.
 - iii. SELLER shall provide the BUYER with written notice, if it or any subcontractor changes the amount of lower-tier effort after award such that it exceeds 70 percent (70%) of the total cost of work to be performed under its subcontract.
 - c. **No CPPC Type Subcontracts; Fee Limitations** - No subcontract or modification thereof, at any tier, placed under this Purchase Order shall provide for payment on a cost-plus-a-percentage-of-cost basis, and any fee payable under cost-reimbursement type subcontracts shall not exceed the fee limitations in paragraph 15.404-4(c)(4)(i) of the Federal Acquisition Regulation (FAR).
 - d. **Restriction on Acquisition of Facilities** - Except as may be specifically provided in this purchase order, SELLER shall not acquire facilities hereunder and SELLER shall not direct charge to this Purchase Order the cost of any item related to facilities or the alteration to a facility.
 - e. **Notice of Suits or Other Actions** -The SELLER shall give the BUYER immediate written notice of any action or suit filed and prompt notice of any claim made against the SELLER by any lower-tier subcontractor or vendor that, , may result in litigation in any way related to this purchase order.
 - f. **Rights in Technical Data and Computer Software Licensing** - When required under this purchase order, SELLER shall negotiate and execute a license agreement that identifies and enumerates all rights in technical data and/or computer software licensing that the SELLER and/or its lower-tier subcontractors has/have granted to the U.S. Government (and others, if any) under the provisions of this purchase order. Any such license agreement is hereby made part of this purchase order.
5. **ENGLISH LANGUAGE AND STANDARDS**
- a. All communications and submittals shall be in the English language. In cases of conflict or inconsistency with any translation into another language, the American Standard English language meaning shall take precedence. Unless otherwise specified in writing, all documentation, work, and services provided in performance of this order shall employ the units of United States standard weights and measures as published by the United States National Institute of Standards and Technology.
6. **DEFINITIONS**
- a. When a purchase order clause uses a word or term that is defined in the Federal Acquisition Regulation (FAR), the word or term has the same meaning as the definition in FAR 2.101 in effect on date of award of the purchase order unless –
 - i. The purchase order provides a different definition;
 - ii. The contracting parties agree in writing to a different definition;
 - iii. The part, subpart, or section of the FAR where the provision or clause is prescribed provides a different meaning; or
 - iv. The word or term is defined in FAR Part 31, for use in the cost principles and procedures.
 - b. The FAR index is a guide to words and terms the FAR defines and shows where each definition is located. The FAR Index is available via the Internet at <http://www.acquisition.gov/far> at the end of the FAR, after the FAR appendix.
 - c. Unless the context or a specific clause or provision of these terms and conditions or of the purchase order specifies or indicates a different meaning, as used in these terms and conditions the following terms shall have the following meanings:
 - d. "BUYER", "EB", "Purchaser", or "Owner" means Electric Boat Corporation, A General Dynamics Company, having its principal place of business at 75 Eastern Point Road, Groton, CT 06340.
 - e. "Purchase Order", "Contract", or "Order" have the same meaning throughout these terms and conditions, excluding references to BUYER's Prime Contract. As used herein, they mean this contract between BUYER and SELLER and include letter contracts or other contractual arrangements, as well as written supplements or amendments to them.
 - f. "Contract Administrator" means BUYER's cognizant Materials Management representative identified within the Purchase Order.
 - g. "Contracting Officer" means the person executing BUYER's Prime Contract on behalf of the Government, and includes his or her successor or any duly authorized representative acting within the limits of his or her authority.
 - h. "Department of Navy" means the U.S. Department of the Navy, Naval Sea Systems Command or any duly authorized representative thereof including the Contracting Officer for BUYER's Prime Contract.
 - i. "Government" or "Federal" means the "United States of America" unless stated otherwise.
 - j. "Lower-tier subcontract" means any agreement entered into by the SELLER or SELLER's sub-tier supplier(s) in furtherance of the performance of this Purchase Order.
 - k. "SELLER", "Supplier", or "Contractor" means the SELLER, person, firm, corporation or other entity identified on the first page of this Purchase Order or Letter Contract to whom this award is made.
 - l. "Work" means all required articles, materials, supplies, goods, and services constituting the subject matter of this Purchase Order.
7. **PUBLIC RELEASE OF INFORMATION**
- a. Information, technical data, photographs, sketches, advertisements, displays, or other materials related to Work under this Purchase Order, (referred herein after within this article as "information") in which SELLER would like to publish, display, or release internally to employees who do not have a need-to-know, to other contractors, to Government agencies, or to the general public, requires **prior BUYER approval**. A request for public release shall be transmitted to the BUYER at least eight weeks prior to the anticipated printing or release date. SELLER shall identify the specific method of release, as well as other pertinent details of the proposed release in the request.

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- b. Reference to Electric Boat Corporation, its parent, General Dynamics Corporation, or any of their officers, agents, and employees, in any public release is prohibited without prior written consent from BUYER. This includes, without limitation, reference to supplying any particular item or service to BUYER.
- c. Information and technical data described above may NOT be transmitted over the internet (except in certain cases when suitably encrypted and prior written approvals have been obtained)
- d. Should any information described above be requested, subpoenaed, or otherwise sought by a court of competent jurisdiction or other judicial or administrative authority, SELLER shall provide sufficient notice to BUYER to enable BUYER a reasonable opportunity to obtain a protective order to govern such disclosure, and, if requested by BUYER, SELLER shall reasonably cooperate with BUYER to obtain such a protective order. SELLER's obligations under this article shall survive this Purchase Order and continue in effect for a period of twenty years after issuance of this Purchase Order.
- e. **Flow-down Requirement-** SELLER shall include all provisions of this article in all lower-tier subcontracts issued under this Purchase Order.

8. BUSINESS CONDUCT AND ETHICS

- a. The BUYER maintains a robust Business Ethics and Conduct Program which is memorialized in the General Dynamics Handbook entitled "General Dynamics Standards of Business Ethics and Conduct." The Handbook is available for viewing on EB's website: http://gdeb.com/suppliers/3_doing_business_with_eb/. The SELLER shall be familiar with this handbook and abide by its principles; in particular, SELLER shall not offer any gift or gratuity to BUYER's employees, their families, customers or their representatives in a manner inconsistent with the guidance provided in this handbook.
- b. SELLER agrees that it will adhere to similar standards of ethical behavior including developing a suitable system for identifying and reporting possible violations and agrees that it will invoke similar requirements on its lower-tier subcontractors.

9. REDUCTION OR SUSPENSION OF CONTRACT PAYMENTS UPON FINDING OF FRAUD OR FALSIFICATION

- a. The BUYER may reduce or suspend advance, partial or progress payments to the SELLER under this Purchase Order upon a written determination by BUYER that substantial evidence exists that the SELLER's request for advance, partial, progress, or milestone (performance based payments) payments is based on fraud, misrepresentation, or falsification. This clause is in addition to any rights or remedies available to the BUYER by law or in equity.
- b. Actions taken by the BUYER under this clause shall not constitute an excusable delay under the force majeure clause of this Purchase Order or otherwise relieve the SELLER of its obligations to perform under this Purchase Order.

10. ENTIRE AGREEMENT

- a. This purchase order, including all references, attachments, exhibits, and supplements thereto, constitutes the entire agreement between the parties, superseding all prior or contemporaneous communications, representations, agreements, and understandings, oral or written, between the parties with respect to the subject matter hereof. The parties shall not be bound by any other statements or understandings not set forth in this purchase order, including all references, attachments, exhibits, and supplements thereto, unless they are: in writing and approved by a duly authorized representative of the both parties.

11. ORDER OF PRECEDENCE

- a. Any inconsistencies in this Purchase Order shall be resolved in the following order:
 - i. Dispositioned and properly authorized VIRs (Vendor Information Requests),
 - ii. Supplements to the Purchase Order,
 - iii. Provisions contained in this Purchase Order exclusive of appendices, exhibits, attachments, drawings, specifications and other plans or documents,
 - iv. These Terms and Conditions,
 - 1. P.O. Appendices/exhibits/attachments,
 - 2. Drawings and specifications,
 - 3. Other plans or documents referenced in the Purchase Order.
- b. SELLER shall immediately bring any inconsistencies to the attention of the BUYER in writing.

12. CONTINUING TERMS AND SEVERABILITY

- a. Clauses regarding proprietary information, indemnity, NNPI, export control; and any other clause or provision contained herein or in the Purchase Order that specifically identifies that it shall continue, shall survive termination of this Purchase Order.
- b. If any part, term, clause, or provision of this Purchase Order contravenes any law of a federal, state or local government having jurisdiction over this Purchase Order, that part, term, or provision shall be inoperative in that jurisdiction, and the validity of the remaining portions or provisions shall not be affected thereby.

13. WAIVER

- a. Failure or delay of the BUYER to enforce any of the provisions of this Purchase Order, or to exercise any right, privilege or remedy available to it by law, shall not constitute a waiver of the requirement of such provisions or law, or as a waiver of the right of the BUYER thereafter to enforce such provision or law.
- b. BUYER's failure to insist on strict performance at any time shall not constitute a waiver by BUYER of the requirement for strict performance by the SELLER at all subsequent times.
- c. The rights and remedies provided in this Purchase Order are cumulative and in addition to other rights provided by law.

14. BANKRUPTCY

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- a. In the event the SELLER enters into proceedings relating to bankruptcy or insolvency, whether voluntary or involuntary, the 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 or under which deliverable items have not been delivered. This obligation remains in effect until final payment under this Purchase Order.
- 15. VENDOR INFORMATION REQUEST (VIR)**
- a. SELLER may submit requests for changes to, or interpretation of, purchase order requirements, specifications, or plans on BUYER's VIR Form, No. 84-01-2205. Changes that affect the price or delivery schedule or both shall only be made through written modification of this Purchase Order and not by use of a VIR.
- b. If the SELLER has been registered and approved to participate in the BUYER's SPARS (Shipyard Partners and Suppliers) program, VIRS may be submitted to BUYER electronically through the SPARS approved, secure website. SELLERS who are not eligible to receive NNPI or other export controlled technical data will need to submit written VIRs to the BUYER for processing.
- c. Nothing in the SPARS program shall be construed as relieving the SELLER of any legal and contractual obligations to control and protect export controlled technical data and sensitive information as well as the more stringently controlled Naval Nuclear Propulsion Information (NNPI) from unauthorized disclosure.
- d. VIRS shall also be used for requests by SELLER for acceptance of nonconforming conditions. However, BUYER may elect, at its sole discretion, not to accept requests for acceptance of nonconforming conditions or material. BUYER may reconsider its position if SELLER provides adequate cost or schedule considerations warranting it.
- e. A dispositioned VIR applies only to the item for which it is submitted; the resolution may not be extended to any other item under the same or another Purchase Order without BUYER'S explicit consent.
- f. SELLER's Certification of Conformance shall include a list of any VIRs submitted against the item(s) being certified. For each VIR, the listing shall include, as a minimum, the VIR number, the date closed, and the VIR disposition. If a Certification of Conformance is not required to be provided with the shipment, SELLER shall include the listing of VIRs, if any, on its packing list for the shipment.
- 16. INDEPENDENT CONTRACTOR/NO AGENCY**
- a. SELLER is an independent contractor in all its operations and activities hereunder. The employees used by SELLER to perform Work under this Contract shall be SELLER's employees exclusively, without any relation whatsoever to BUYER.
- b. Except as otherwise expressly set forth elsewhere herein, nothing in these terms and conditions nor the subcontract/letter contract/purchase order to which they form a part, shall create or imply an agency relationship between the Parties hereto, nor shall they be deemed to constitute a joint venture, teaming agreement or teaming arrangement, or a partnership between the Parties.
- c. Neither party shall have the implied or express right or authority to assume or to create any obligation on behalf of, or in the name of, the other party through its acts, omissions, or representations.
- 17. COST ACCOUNTING STANDARDS**
- a. SELLER shall comply with any cost principles or Cost Accounting Standards applicable to this Purchase Order or to follow SELLER's disclosed accounting practices or both.
- b. SELLER agrees to furnish complete, accurate or current cost or pricing data when such data is required by law or regulation; or in support of any Truth in Negotiations Act (TINA) certification made by BUYER to the Government; or in the negotiation of this Purchase Order or any modifications thereto.

IMPORT/EXPORT CONTROL

- 18. EXPORTS, RE-EXPORTS, RE-TRANSFERS, AND SUBLICENSING**
- a. No export, re-export, re-transfer, or sublicensing in performance of this order or any subcontract hereunder, at any tier and regardless of location, may be made prior to receiving (1) written Electric Boat approval and (2) any required Government export authorization.
- b. In addition to 20(a) above, when EB and/or Government approval is required, the SELLER agrees to provide Electric Boat with the following: name of subcontractor, full address of subcontractor including their country, role of subcontractor, a list of defense articles and/or technical data to be transferred.
- c. **Notification.** SELLER will notify BUYER if any deliverable under this Contract is subject to the export control laws or regulations of any non-U.S. country.
- 19. DFARS 252.225-7048, EXPORT CONTROLLED ITEMS (JUN 2013)** (Modified to read as shown below.)
- a. *Definition.* "Export-controlled items," as used in this clause, means items subject to the Export Administration Regulations (EAR) (15 CFR Parts 730-774) or the International Traffic in Arms Regulations (ITAR) (22 CFR Parts 120-130). The term includes:
- i. "Defense items," defined in the Arms Export Control Act, 22 U.S.C. 2778(j)(4)(A), as defense articles, defense services, and related technical data, and further defined in the ITAR, 22 CFR Part 120.
- ii. "Items," defined in the EAR as "commodities", "software", and "technology," terms that are also defined in the EAR, 15 CFR 772.1.
- b. The Contractor shall comply with all applicable laws and regulations regarding export-controlled items, including, but not limited to, the requirement for contractors to register with the Department of State in accordance with the ITAR. The Contractor shall consult with the Department of State regarding any questions relating to compliance with the ITAR and shall consult with the Department of Commerce regarding any questions relating to compliance with the EAR.
- c. The Contractor's responsibility to comply with all applicable laws and regulations regarding export-controlled items exists independent of, and is not established or limited by, the information provided by this clause.
- d. Nothing in the terms of this contract adds, changes, supersedes, or waives any of the requirements of applicable Federal laws, Executive orders, and regulations, including but not limited to—

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- i. The Export Administration Act of 1979, as amended (50 U.S.C. App. 2401, et seq.);
 - ii. The Arms Export Control Act (22 U.S.C. 2751, et seq.);
 - iii. The International Emergency Economic Powers Act (50 U.S.C. 1701, et seq.);
 - iv. The Export Administration Regulations (15 CFR Parts 730-774);
 - v. The International Traffic in Arms Regulations (22 CFR Parts 120-130); and
 - vi. Executive Order 13222, as extended.
- e. **Flow-down Requirement** - The Contractor shall include the substance of this clause, including this paragraph (e), in all subcontracts.

20. CITIZENSHIP REQUIREMENTS

- a. SELLER represents that it is either:
 - i. a U.S. Person as that term is defined in the U.S. Export Laws and Regulations (ITAR 22 CFR 120.15 or the EAR at Title 15, Part 772), or that
 - ii. it has disclosed to BUYER 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 further represents that it has disclosed to BUYER in writing, all pertinent details relating to foreign ownership, control or influence as defined in 22 CFR 120.37 and DFARS 252.209-7002 (JUN 2010).
- c. **Non-U.S. Personnel.** SELLER shall not give any individual or entity who is not a "U.S. Person" (as defined in ITAR 22 CFR 120.15 or the EAR at Title 15, Part 772) access to export-controlled commodities, technical data, technology, software, or any other export-controlled items or provide an unauthorized Defense Service, without the prior written consent of BUYER and obtaining all required licenses and approvals. 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. Consent granted by BUYER in response to SELLER's request hereunder shall not relieve SELLER of its obligations to comply with the provisions of U.S. Export Laws and Regulations, constitute a waiver of the requirements of U.S. Export Laws and Regulations, or constitute consent for SELLER to violate any provision of the U.S. Export Laws and Regulations. Disclosure of NNPI has additional restrictions (See NNPI section below).
- d. **Flow-down Requirement.** SELLER shall impose the same restriction on its lower-tier subcontractors under this Order (when lower-tier subcontractors are eligible and/or approved by Electric Boat and the U.S. Government to receive U.S. technical data).

21. DISCLOSURE OF EXPORT COMPLIANCE PROGRAM MANAGER

- a. SELLER agrees that, upon request by BUYER, it will provide the name, address, and contact information of the person or persons responsible for the SELLER's export compliance program governing the work under this Order in writing to the BUYER.

22. DISCLOSURE OF SOURCE(S) AND MANUFACTURER(S) OF COMMODITIES OR ITEMS TO BE DELIVERED OR PROVIDED, CERTIFICATION OF SUBCONTRACTOR ELIGIBILITY TO EXPORT AND NOTIFICATION OF EXPORT RESTRICTIONS

- a. SELLER agrees that, upon written request by the BUYER, SELLER will provide the source and manufacturer of commodities or items to be delivered or otherwise provided in performance of this purchase order. This information may be required to facilitate Export licensing.
- b. SELLER further agrees that, upon written request of the BUYER, SELLER will provide a written certification regarding its subcontractors' eligibility to export to the BUYER. This will include:
 - i. A statement that SELLER screened the subcontractor and verified it is not debarred, suspended, proposed for debarment, or is otherwise ineligible to engage in export related activities; and
 - ii. If applicable, a statement that SELLER verified the source and/or manufacturer's U.S. State Department registration as a manufacturer or exporter of "defense articles".
- c. **Notification** – SELLER agrees to notify BUYER in writing in a timely manner if it considers that it will not be able to comply with BUYER's written request and provide reasons for its assertion in writing.

23. DISCLOSURE OF COMMODITY CLASSIFICATION

- a. SELLER agrees to provide the following classification information for each product and service that is a deliverable under this Purchase Order:
 - i. Export classification (USML Category according to the ITAR); or,
 - ii. Export Control Classification Number (ECCN) according to the U.S. Commerce Control List if the product is subject to U.S. Export Administration Regulations (EAR); or,
 - iii. For non-U.S. origin products or services, the applicable "Export Control List Number" according to the country of origin's export control regime (i.e. Canada, EU Control List); and
 - iv. The date of such determination; and
 - v. Whether such determination was made by the controlling agency (Department of State or Department of Commerce) or whether it was a self-determination; and
 - vi. The statistical commodity code according to the current commodity classification for foreign trade statistics and the HS (Harmonized System) coding; and
 - vii. The country of origin (non-preferential origin).
- b. This information will be provided to BUYER on a line item basis in the SELLER's bid, quote or proposal, final invoice, and the packing list accompanying delivered commodities.

24. SELLER IS A SIGNATORY ON AN EXPORT LICENSE OR EXPORT AGREEMENT WITH OR FOR ELECTRIC BOAT CORPORATION (e.g. Technical Assistance Agreement (TAA), Manufacturing License Agreement (MLA))

- b. Where SELLER is a signatory for an export license or export agreement with or for BUYER (e.g., TAA, MLA, etc.), SELLER shall:
 - i. provide prompt notification to BUYER in the event of SELLER's changed circumstances including, but not limited to, name change, merger or acquisition, change in DDTC Registration status, debarment, a violation or potential violation of the U.S. Export Control laws, and the initiation or existence of a U.S. Government investigation that could affect SELLER's performance under this Contract;

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- ii. provide prompt notification to BUYER in the event of SELLER's company change of name or merger or acquisition; and
- iii. comply with all provisions and requirements of any such export license or agreement (e.g. TAA, MLA, etc.).

25. **IMPORTER OF RECORD; ANTI-DUMPING WARRANTY; DUTY-FREE ENTRY** (This clause applies if this Purchase Order involves in any manner an import into the customs territory of the United States.)

- a. **Importer of Record** - All imports for which BUYER has identified that it will be the importer of record must be coordinated with the BUYER and with BUYER's Customs Broker prior to shipment. Failure to comply may result in the shipment being rejected or refused and returned to SELLER at SELLER's expense.
 - i. SELLER is required to provide a Pro forma invoice to BUYER.
 - ii. BUYER approval of the Pro forma invoice is required prior to shipment.
- b. **Anti-Dumping Warranty** - If elsewhere in this purchase order, EB is indicated as the "importer of record", SELLER agrees and warrants that all sales hereunder are or will be made at not less than fair value under the United States Anti-Dumping Laws (19 U.S.C. 1673 et seq.).
- c. **Duty-Free Entry (DFE)** – SELLER is to coordinate all shipments under this order with the EB BUYER. If a prospective import into the United States is eligible for duty-free entry (DFE) due to its classification in the Harmonized Tariff Schedule of the U.S. (HTSUS) or due to a Trade Agreement, SELLER is to take necessary actions to allow BUYER to obtain DFE. If not, SELLER is to refer DFARS 252.225-7013, Duty-Free Entry, and is to determine with the BUYER whether the prospective import into the U.S. is eligible for DFE under the DFARS clause(s) and take necessary actions to allow BUYER to obtain DFE. **Special marking, labeling, and packaging requirements apply.**

26. **WORK IN THE UNITED STATES**

- a. Unless advance BUYER written approval has been obtained, SELLER shall perform all work in the United States and shall have all items to be delivered to BUYER manufactured in the United States. Components and subcomponents of such deliverables shall also be manufactured in the United States only, unless the components or subcomponents are (1) commercially available off-the-shelf (COTS) items as defined in FAR 2.101, and (2) are not restricted under U.S. Export Laws and Regulations, and (3) are not designed or modified for the BUYER or the Government of the United States. For purposes of this clause, "work" and "manufacture" are defined as: the process of converting or assembling raw materials, components, or parts into finished or partially finished goods that meet SELLER's or BUYER's stated specifications or requirements.
- b. SELLER may submit to the BUYER a written request for BUYER approval to perform work outside the United States or to supply items manufactured outside the United States. The request must name all countries where work would be performed or items manufactured. If granted, each approval shall be limited to a specific original purchase order or purchase order supplement and shall not constitute an approval for other purchase orders or purchase order supplements.
- c. SELLER shall exclude from its sources of supply any items manufactured in International Traffic in Arms Regulations (ITAR) 126.1 proscribed or embargoed countries, including but not limited to Belarus, Burma, China (PR), Cuba, Eritrea, Iran, North Korea, the Republic of the Sudan, Syria, and Venezuela. A current list of proscribed countries is available on the U.S. State Department Directorate of Defense Trade Controls website: http://www.pmdtct.state.gov/embargoed_countries/.
- d. The requirements of this clause are in addition to any other requirements in the terms and conditions of this order for BUYER approval to transmit technical data or equipment outside the United States.

27. **EXPORT CONTROL MARKING**

- a. SELLER shall place the following statement on documents containing defense technical data that is controlled by the Arms Export Control Act:
 - i. **"WARNING - This document contains technical data whose export is restricted by the Arms Export Control Act (Title 22, U.S.C. Sec. 2751, et seq.) or the Export Administration Act of 1979, as amended, Title 50, U.S.C., App 2401, et seq. Violations of these export laws can result in severe criminal penalties. Disseminate in accordance with provisions of OPNAVINST 5510.161."**
- b. **Flow-down Requirement.** SELLER agrees to insert a contract provision substantially the same as this paragraph including this sentence in all subcontracts issued under this Purchase Order.

28. **SAFEGUARDING INFORMATION AND TECHNICAL DATA; ACCESS CONTROL PLAN/TECHNOLOGY CONTROL PLAN; AND CERTIFICATION UNDER THE U.S./CANADA JOINT CERTIFICATION PROGRAM**

- a. **Safeguarding Information and Technical Data.**
 - i. Equipment and documentation (including, but not limited to, drawings, sketches, specifications, diagrams, models, equipment) associated with the BUYER's end product, submersibles, and other business endeavors, including discussions, telecons, or any other transfer of information and technical data, whether verbal or written, and regardless of medium or whether occurring within or outside of the U.S., shall be considered to be technical data for export control purposes as outlined in the International Traffic in Arms Regulations (ITAR) (22 CFR 120 et seq.).
 - ii. SELLER is solely and expressly responsible to ensure that it safeguards equipment and technical data subject to export control from unauthorized disclosure and that any dissemination of such equipment and technical data is accomplished in accordance with Purchase Order requirements and applicable Government regulations. In addition, SELLER should ensure that all required licenses, agreements and other approvals (including Governmental as well as written EB consent to disclose) are obtained prior to any export or disclosure to unauthorized persons or entities or prior to any public release.
 - iii. **Severe civil and criminal penalties may result from failure to comply with these requirements. In addition to any other penalties that may be imposed, failure to comply shall also be a breach of this contract and grounds for termination of this Purchase Order for Default.**
- b. **Access Control Plan/Technology Control Plan (ACP/TCP).**
 - i. Electric Boat requires that suppliers have an Access Control Plan or Technology Control Plan (ACP/TCP) suitable to their organization if they will require access to export controlled equipment, technical data or information.

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- ii. An ACP/TCP is a written documented plan developed to prevent the unauthorized export or disclosure of export controlled equipment or technical data, regardless of whether in the U.S. or abroad, to unauthorized U.S. citizens, and to any foreign concern, foreign interest, foreign national, or their representatives (U.S. citizens or otherwise).
 - iii. For additional information, SELLER may also refer to the document entitled "Resources for Assistance in Developing an Access Control Plan/Technology Control Plan" which can be accessed on BUYER's website http://gdeb.com/suppliers/4_future_suppliers/attachments/ACP-TCP_Resources_12-9-13.pdf.
- c. **Certification Under the U.S./Canada Joint Certification Program (JCP)**
- i. Performance of work for BUYER may require SELLER to be certified by the US/Canada Joint Certification Program (JCP), which establishes SELLER's eligibility to receive technical data governed, in the U.S., by DoD Directive 5230.25 and, in Canada, by the Technical Data Control Regulations (TDCR). This certification is mandatory for U.S. or Canadian contractors requiring access to unclassified technical data disclosing militarily critical technology with military or space application that is under the control of, or in the possession of the U.S. Department of Defense (DoD) or the Canadian Department of National Defense (DND).
 - ii. To obtain certification, SELLER must submit a [DD Form 2345](#) to the U.S./Canada Joint Certification Office, along with a copy of the company's State/Provincial License, Incorporation Certificate, Sales Tax Identification Form or other documentation which verifies the legitimacy of the company.
 - iii. The form, with instructions, is available at (<http://www.dlis.dla.mil/jcp/forms/DD2345Form.pdf>).

29. FAILURE TO OBTAIN EXPORT AND/OR IMPORT LICENSES

- a. Failure of the U.S. Government or any other government to issue any required export or import license, or withdrawal/termination of a required export or import license or other authorization, shall relieve BUYER of its obligations under this subcontract. Provided that SELLER has diligently pursued obtaining such license or authorization and, through no fault of SELLER, such license has been denied, withdrawn, or terminated, SELLER shall also be relieved of its obligation(s) under this subcontract. In either event, the BUYER may terminate this subcontract without additional cost or other liability.

COUNTERFEIT PARTS

30. COUNTERFEIT PARTS/COUNTERFEIT WORK PROHIBITION

Additional Requirements to DFARS 252.246-7007, Counterfeit Electronic Part Detection and Avoidance System (May 2014)

- a. For purposes of this clause, Work consists of those parts delivered under this Contract that are the lowest level of separately identifiable items (e.g., articles, components, goods, and assemblies).
- b. SELLER agrees and shall ensure that Counterfeit Electronic Parts and/or Suspect Counterfeit Electronic Parts (defined in DFARS 252.246-7007) are strictly prohibited and will not be tendered for acceptance, shipped-in-place, delivered to, or be incorporated into deliverables to Electric Boat or its designee under this Purchase Order. **COUNTERFEIT ELECTRONIC PARTS AND SUSPECT COUNTERFEIT ELECTRONIC PARTS ARE NONCONFORMING TO PURCHASE ORDER REQUIREMENTS AND ARE UNACCEPTABLE REGARDLESS OF THEIR OTHERWISE ACCEPTABLE CONDITION, QUALITY, PERFORMANCE, FUNCTIONALITY, AND/OR SUITABILITY FOR PURPOSE.** The term Suspect Counterfeit Electronic Parts also includes electronic parts that the U.S. Government designates as suspect including, without limitation, electronic parts listed in Governmental alerts such as those under the Government Industry Data Exchange Program (GIDEP).
- c. SELLER shall only purchase products to be delivered or to be incorporated into deliverables to BUYER directly from the Original Component Manufacturer (OCM)/Original Equipment Manufacturer (OEM), or through an OCM/OEM authorized distributor chain. Work shall not be acquired from independent distributors or brokers unless approved in advance in writing by BUYER.
- d. SELLER shall maintain and make available to BUYER and/or the Government documentation that authenticates traceability of the affected electronic parts throughout the supply chain to the applicable OEM/OCM, which SELLER shall provide to BUYER upon request. Documentation shall be maintained for a minimum of ten years after the later of final delivery of all items on the purchase order or final payment of all items on the purchase order.
- e. SELLER shall notify BUYER in writing immediately, but in no event later than 10 days, if SELLER becomes aware or suspects that it has delivered Counterfeit Electronic Parts or Suspect Counterfeit Electronic Parts.
- f. BUYER reserves the right to quarantine/impound any and all Counterfeit Electronic Parts or Suspect Counterfeit Electronic Parts it receives, and to notify the BUYER's Customer, GIDEP, and other relevant Government agencies. BUYER has the right to turn over the impounded Counterfeit Electronic Parts and Suspect Counterfeit Electronic Parts to the appropriate authorities and to withhold payment for the parts pending the results of the investigation.
Impounded electronic parts may not be returned to the SELLER or SELLER's source.
- g. In the event that Work delivered under this Contract constitutes or includes Counterfeit Electronic Parts and/or Suspect Counterfeit Electronic Parts, SELLER shall, at its sole expense, promptly replace such Counterfeit Electronic Parts and Suspect Counterfeit Electronic Parts with genuine Electronic Parts conforming to the requirements of this Purchase Order.
- h. Notwithstanding any other provision in this Purchase Order, SELLER shall be liable for all costs relating to the tendering or delivery of the Counterfeit Electronic Parts and Suspect Counterfeit Electronic Parts including, without limitation, those associated with the removal, inspection, testing, investigation, retention, impoundment, and replacement of Counterfeit Electronic Parts and Suspect Counterfeit Electronic Parts, as well as any testing necessitated by the reinstallation of Work after Counterfeit/Suspect Counterfeit Electronic Parts have been exchanged.
- i. Also, notwithstanding any other provision in this Purchase Order, the BUYER shall be under no obligation to pay for any such items determined to be counterfeit or unacceptable. All such costs shall be deemed to be direct costs and direct damages. The remedies contained in this clause are in addition to any other remedies BUYER may have at law, equity or under other provisions of this Purchase Order.
- j. This clause shall survive the completion, expiration or termination of this order.
- k. **Flow down Requirement** - SELLER shall include paragraphs (a) through (i) and this paragraph (k) of this clause or equivalent provisions in all lower tier subcontracts for the delivery of items that are electronic parts as well as those which require the delivery of components or subcomponents containing electronic parts that will be included in deliverables or otherwise furnished to BUYER or its designee in performance of this order.

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31. **DFARS 252.246-7007, Counterfeit Electronic Part Detection and Avoidance System (May 2014)** modified as follows:
(Applies to this purchase order and to all lower-tier awards under this purchase order at any level and of any value.)
- a. In paragraph (c)(2), 3rd sentence, change "Government" to "BUYER and the Government" and in the last sentence change "Contractor" to "BUYER and the SELLER"; and
 - b. In paragraph (c)(6), 2nd sentence, change "Contracting Officer" to "BUYER, the BUYER's Contracting Officer via BUYER," and change "purchased by a Contractor" to "purchased by the BUYER or a subcontractor (e.g., SELLER, lower-tier subcontractor, etc.); and
 - c. In paragraph (c)(8), 2nd sentence, change "Contractor" to "SELLER"; and
 - d. In paragraph (e), change the sentence to read, "Flow Down: The SELLER shall include the substance of this clause, including paragraphs (a) through (e), in lower-tier subcontracts, including lower-tier subcontracts for commercial items, for electronic parts or assemblies containing electronic parts."

CHOICE OF LAW/COMPLIANCE WITH LAWS/DISPUTES

32. **APPLICABLE LAW/VENUE AND CHOICE OF LAW (OVERSEAS)**
- a. This provision shall apply to this Purchase Order regardless of whether SELLER is a United States Supplier, or a foreign entity, or if this Purchase Order will be performed, in whole or in part, outside the United States.
 - b. This purchase order and all matters arising from or related to it shall be construed in accordance with and shall be governed by the United States Federal laws of Government contracts (as found in appropriate Federal statutes, regulations, and decisions by the United States Federal Courts and Federal Boards of Contract Appeals) except to the extent such Government contract law does not cover an issue in dispute hereunder. In such event, the issue shall be governed by and construed in accordance with and resolved under the laws of the State of Connecticut, USA, without regard of the principles of conflicts of law and the venue shall be the applicable state or federal court in the State of Connecticut, USA.
 - c. The Contracts Disputes Act shall have no application to this purchase order.
 - d. Any reference to a Disputes clause shall mean the disputes clause of this purchase order.
 - e. The provisions of the "United Nations Convention on Contracts for the International Sales of Goods" shall not apply to this purchase order.
 - f. United States law will apply to resolve any claim of breach of this contract.
33. **COMPLIANCE WITH LAWS**
- a. In performing work under this Purchase Order, SELLER shall comply with all applicable foreign or domestic laws, orders, rules, ordinances and regulations.
 - b. **To the extent not exempt, this contractor and subcontractor shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a). 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. In addition, this contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. To the extent not exempt, this contractor and subcontractor shall also abide by the requirements of 29 CFR Part 471, Appendix A.**
34. **APPROVALS/PERMITS/LICENSES**
- a. SELLER agrees that it shall obtain and maintain in good standing, and shall require its lower-tier subcontractors to obtain and to maintain in good standing, all necessary and applicable approvals, permits and licenses (including export and/or import licenses) required for performance of the work under this Purchase Order and pay all fees and other charges required. They shall be obtained and maintained for as long as necessary for the satisfactory completion of the SELLER's responsibilities under this Purchase Order.
 - b. The cost of such permits, licenses, and compliance is deemed to be included in the cost or price stated in this Purchase Order. This includes, but is not limited to, those costs in connection with import and export control as well as those costs in connection with any movement over the public highways of overweight/over-dimensional loads and hazardous materials.
 - c. SELLER shall immediately notify BUYER in writing if any permits, licenses, and/or approvals that SELLER is required to obtain in performance of this Order are denied, withheld, suspended, revoked, or expired prior to completion of all work required by this Order and its terms.
 - d. **Flow down Requirement** - SELLER shall ensure that the substance of this clause is included in all lower-tier subcontracts at any tier.
35. **CONFLICT MINERALS CERTIFICATION**
- a. SELLER agrees to provide BUYER with a current, accurate and complete certification as to SELLER'S procurement practices with respect to Conflict Minerals, as defined in Securities and Exchange Commission's final rule on Conflict Minerals, 17 CFR Parts 240 and 249(b), promulgated pursuant to Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protections Act (the "Rule.")
 - b. SELLER agrees that it shall notify BUYER of any changes to the SELLER's Conflict Minerals Certification that is on file with the BUYER.
 - c. SELLER agrees that, it has made, and will continue to make, good faith inquiries reasonably designed to determine whether any Conflict Mineral that is included in any product delivered to BUYER pursuant to this Purchase order originated in the DRC or an Adjoining Country, or is from Recycled or Scrap Sources, as defined in the Rule. SELLER further agrees that, if required, it has performed, and will continue to perform, due diligence on the source and chain of custody of any Conflict Mineral that is included in any product delivered to Electric Boat pursuant to this purchase order, and that such due diligence conforms to a nationally or internationally recognized due diligence framework, if such framework is available for the Conflict Mineral. SELLER agrees that all inquiries and diligence performed shall be consistent with the requirements of the Rule.
 - d. SELLER agrees that it shall require its own subcontractors and suppliers (at any tier in the supply chain for a product delivered to BUYER under this Purchase order) to furnish information to SELLER necessary to support SELLER's obligations under this clause.

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- e. SELLER will maintain records reviewable by BUYER to support its certifications above.
- f. SELLER acknowledges that BUYER may utilize and disclose Conflict Minerals information provided by SELLER in purchase order to satisfy its disclosure obligations under the Rule.
- g. If BUYER determines that any certification made by SELLER under this clause is inaccurate or incomplete in any respect, then BUYER may terminate this Purchase order pursuant to the "Default" provision of this Purchase order.

36. STOP WORK

- a. BUYER may, by written notice, stop work under this Purchase Order at any time. Upon receipt of such notice, SELLER shall immediately comply with its terms and, during the stop work, take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the suspension notice. If the stop work ordered under this paragraph results in an increase in the time required for, or in increase in the SELLER's cost of, the performance of any part of this Purchase Order, the SELLER may request an equitable adjustment in accordance with the provisions herein. SELLER shall assert its right to an adjustment no later than 20 calendar days after the work suspension is lifted.

37. DISPUTES

- a. The parties will attempt to settle in good faith all disputes related to this Purchase Order at the lowest practicable level. If the parties cannot then resolve the dispute, each party reserves all its rights and remedies available at law and in equity and such remedies shall not be exclusive. Disputes upon which the parties cannot reach an amicable settlement will be construed and resolved under the laws in accordance with the clause herein entitled "Applicable Law/Venue". SELLER shall bring any dispute arising under or related to this Purchase Order within two (2) years after the cause of action for such dispute accrues.
- b. Notwithstanding any provisions herein to the contrary, if a decision under the prime contract is made by the Contracting Officer and such decision is also related to this Purchase Order, said decision, if binding upon BUYER under the prime contract, shall in turn be binding upon BUYER and SELLER insofar as it relates to this Purchase Order. If BUYER elects to appeal such a decision pursuant to the "Disputes" clause in BUYER's prime contract, any decision from such an appeal, if binding upon BUYER under the prime contract, shall in turn be binding upon BUYER and SELLER insofar as it relates to this Purchase Order.
- c. Pending final resolution of any decision, appeal, or judgment of any proceedings relating to this Purchase Order, or the settlement of any dispute arising under this Purchase Order, SELLER shall proceed diligently with the performance of this Purchase Order in accordance with all the terms and conditions contained herein.

VISITING ELECTRIC BOAT

38. REQUIREMENTS FOR SELLERS PERFORMING SERVICES AT EB

- a. All SELLERS shall refer to the Supplier website (http://gdeb.com/suppliers/8_visiting_eb_contractors/) for information and requirements of visiting and/or working on a BUYER owned or controlled premises.

MATERIALS

39. MERCURY EXCLUSION (NAVSEA) (Mar 2019) (Modified)

- a. Unless otherwise expressly agreed all goods, components, hardware, and/or supplies delivered under this Purchase Order shall not be, contain, or have come in direct contact with mercury, mercury compounds or with any mercury containing device employing a single boundary of containment. Mercury contamination will be cause for rejection of the goods and correction or replacement shall be at SELLER's expense.

40. POLYCHLORINATED BIPHENYLS PROHIBITION

- a. Unless otherwise expressly agreed, SELLER shall not employ equipment, use or deliver material that is known or suspected of containing polychlorinated biphenyls (PCBs). BUYER will not accept, store or dispose of any PCBs, items containing known or suspected PCBs.
- b. EB assumes no responsibility for PCB waste management that would subject it to the requirements of a Commercial Storer of PCB Waste (as defined in 40 CFR 761).

41. RADIOACTIVE PCB WASTE

- a. Radioactive PCB waste is any waste which is radioactive, as defined in NAVSEA 389-0288, "Radiological Controls for Shipyards" and which contains polychlorinated Biphenyls (PCBs) subject to the disposal regulations of 40 CFR 761, promulgated under the Toxic Substances Control Act (TSCA).
- b. The SELLER shall not employ equipment or material which are known or suspected of containing PCBs in the performance of radiological work under this contract, without prior written approval from BUYER.
- c. To the extent practicable, radioactive materials shall not be mixed or adulterated with products which could cause the resulting waste to be subject to the requirements of TSCA.

42. TOXIC SUBSTANCES/HAZARDOUS MATERIAL RESTRICTIONS & PROHIBITIONS

- a. BUYER will not accept, store or dispose of any toxic substances or hazardous material except if and to the extent, otherwise expressly agreed.
- b. In particular, paints or primers on products required by this Purchase Order which contain the following components shall not be shipped without prior written approval by the BUYER: arsenic, mercury, lead, chromates, or organo-metallic material.
- c. Materials containing asbestos shall not be provided without BUYER's prior written approval. In addition, materials which contain any of the toxic or hazardous substances as specified by OSHA 29 CFR 1910.1001 – 1910.1052 are specifically prohibited from being delivered in performance of this Purchase order unless prior written approval is granted by the BUYER, or unless the Purchase Order, by its terms, specifies the delivery of materials listed as toxic or hazardous.
- d. For all material or items containing toxic or hazardous substances, SELLER shall provide all relevant information pursuant to the OSHA regulations 29 CFR 1910.1200 including a completed Material Safety Data Sheet (MSDS) and the mandated labeling information.

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43. BRASS AND COPPER BLACK OXIDE COATED THREADED FASTENERERS

- a. 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 Purchase Order.

44. BUYER FURNISHED PROPERTY

- a. Property furnished as-is. If BUYER property (herein after referred to in this clause as "Furnished Property") is furnished under this Purchase Order, it shall be furnished "as is."
- b. Title. Title to all Furnished Property shall remain with BUYER or its customer.
- c. Risk of loss or damage. Unless otherwise expressly agreed to in writing, SELLER shall assume the risk of, and be responsible for, any loss, destruction of or damage to Furnished Property provided to SELLER while such property is in SELLER's care, custody, or control. SELLER shall also bear risks of loss, damage or destruction of Furnished Property provided to the SELLER's lower-tier subcontractor at any tier.
- d. Excluding Furnished Property authorized to be consumed in the performance of this Purchase 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 condition as required by the terms of this Purchase Order.
- e. Other. SELLER shall control and maintain Furnished Property, (as well as SELLER acquired property to which the BUYER or Government shall have title) in accordance with a system that meets the requirements of FAR Part 45, Government Property; DFARS Part 245. The requirements related to accounting for BUYER property shall also apply to scrap, provided, however, that BUYER may authorize or direct SELLER to omit from inventory schedules any scrap consisting of faulty castings or forgings or of cutting and processing waste, such as chips, cuttings, borings, turnings, short ends, circles, trimmings, clippings, and remnants, and to dispose of such scrap in accordance with SELLER's normal practice, and account for it as a part of general overhead or other reimbursable costs in accordance with SELLER's established accounting procedures.

45. BUYER FURNISHED TOOLING AND MATERIAL

- a. If BUYER furnishes or pays for tooling or material, SELLER agrees:
 - i. that all dies, tools, jigs, fixtures, designs, drawings, patterns, and any other property or special items, which the BUYER specifically pays for, or which are furnished by BUYER without charge, shall be and remain the property of BUYER or the Government; that they shall be subject to removal upon BUYER's instructions; that SELLER shall be responsible for all loss or damage thereto, reasonable wear accepted, until they are delivered to BUYER; and that same shall be:
 - i. appropriately segregated, marked as the property of BUYER and in the absence of specific instructions from BUYER to the contrary, numbered with the part made, in order to accurately identify same at all times;
 - ii. kept in good working condition; and
 - iii. used exclusively for the production of goods for BUYER and subjected to no other use except with the written permission of BUYER.
- b. Upon completion, or termination of this Purchase Order, all such material, tools, etc., shall be held free of charge for six months by SELLER pending instructions from BUYER. In the absence of such instructions after six (6) months, SELLER shall be entitled, after ten (10) days written notice to BUYER, to store such material at BUYER's expense.
- c. Unless expressly agreed to in writing, SELLER shall be entitled to retain all cutting and processing waste such as chips, cuttings, borings, turnings, short ends, circles, trimmings, clippings and remnants. SELLER shall make proper credit allowances to the BUYER for the scrap value of such waste in determining the price of this Purchase Order.
- d. All spoiled, partially manufactured materials, parts, and assemblies, including those damaged in handling, shall remain as BUYER-furnished material and shall be held by SELLER for disposition by BUYER.
- e. The cost of transportation of BUYER-furnished material to the location of the SELLER shall be paid by BUYER.
- f. Title to BUYER-owned or BUYER-furnished property shall not be affected by its incorporation into or attachment to any property not owned by them respectively, nor shall such property become a fixture or lose its identity as personal property by being attached to any real property.

DELIVERY

46. DELIVERY SCHEDULE

- a. In all delivery schedules established under this Purchase Order, TIME IS OF THE ESSENCE. SELLER shall strictly adhere to all Purchase Order schedules. All delivery dates set forth on the Purchase Order are firm, unless otherwise stated herein. SELLER shall not anticipate BUYER's requirements and, unless otherwise expressly agreed to in writing, SELLER shall not make material commitments or production arrangements in excess of the amount or in advance of the time necessary to meet the delivery schedule. BUYER shall have the right to return to SELLER at SELLER's expense, goods shipped to BUYER in advance of the schedule, unless early shipment is authorized in writing by the BUYER.
- b. Unless otherwise specified in this Purchase Order or approved by BUYER in writing, SELLER shall not:
 - i. Make partial shipments of individual line items; or
 - ii. Make shipments more than 90 days in advance.

47. EXCESS QUANTITIES/EXTRAS

- a. Unless otherwise expressly agreed to in writing, SELLER shall not ship quantities in excess of those specified in this Purchase Order.
- b. BUYER shall have no obligation to return or pay for any excess quantities of those specified in this Purchase Order.
- c. For all other shipments not meeting the requirements of this clause, BUYER may return the shipment or store early deliveries at SELLER's cost.
- d. Except as otherwise provided in this Purchase Order, no payment for extras shall be made unless such extras and the price therefore have been authorized in writing by the BUYER.

48. DELIVERY OF REQUIRED DRAWINGS, TEST REPORTS, SOFTWARE AND OTHER DATA

- a. When furnished with the shipment, SELLER shall enclose all required documents and data in the first box of the shipment and mark, **CERTIFICATES AND/OR TEST REPORTS ENCLOSED.**

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DRAWINGS

49. USE OF DRAWINGS AND OTHER DATA

- a. All the drawings, technical manuals, and other design data, including revisions thereof, required for performance of this purchase order shall be followed and used without change or deviation, unless a change or deviation is expressly authorized in writing by the BUYER by incorporation into this purchase order or disposition of a VIR.
- b. In the event that any drawing, technical manual, item of design data, or any revision thereof, is identified by the SELLER or its lower-tier subcontractor(s) as being in conflict or inconsistent with any other drawing, technical manual, item of design data, or any revision thereof, or with any requirements of this purchase order, the SELLER shall not proceed with the work affected, and shall refer any such conflict or inconsistency to the BUYER for resolution.

50. DISPOSITION OF DRAWINGS AND SPECIFICATIONS

- a. Unless otherwise specified, upon completion or termination of this Purchase Order, SELLER shall promptly return to BUYER all drawings, specifications, and other data furnished by BUYER in connection with this Purchase Order, together with all copies in SELLER's possession or control. SELLER shall make no further use of any information derived from such drawings, specifications, data, without BUYER's prior written consent.
- b. This restriction does not apply in the event:
 - i. The SELLER obtains such drawings, specifications, data, , or any information derived from them legally from another source; or
 - ii. Such drawings, specification, data, or papers are Government property and the Government authorizes such further use by SELLER.
- c. Nothing in this clause shall be deemed to reduce or contravene any valid rights in technical data or computer software that the SELLER or a lower-tier subcontractor at any tier can assert.

SHIPPING

51. SHIPPING AND LABELING INSTRUCTIONS AND DELIVERIES

- a. **General:** Detailed information about EB requirements pertaining to: Preparing to Ship, Receiving, Labeling, Traffic and Routing Instructions, Packing, Packaging, Mercury Contamination Notice to Vendor, and Restricted or Prohibited materials may be found at http://gdeb.com/suppliers/6_purchase_order_info/shipping/. Using V-PAC is mandatory. Failure to use V-PAC and follow the shipping information on the listed website may cause delays in receipt of material and delays in payment of SELLER's invoice and such delays shall not constitute default by the Buyer, nor shall such payment delays result in Buyer responsibility for any interest or other fee for late payment.
- b. **Packing and Crating:** SELLER shall, when practicable, ship in packages or loose pieces for unloading by a standard 4000-pound forklift truck. Unless otherwise expressly agreed to in writing, SELLER's price includes all charges for packing and crating.
 - i. Except as noted herein, the SELLER's normal commercial preservation, packaging, and packing shall be sufficient if it:
 1. Ensures acceptance by common carrier at lowest rate; and
 2. Affords protection against damage during shipment.
 - ii. The minimum packaging and packing requirements of the referenced military or federal specifications or standards apply unless otherwise specified in this Purchase Order.
 - iii. Identical parts may be packaged separately and the package identified unless otherwise specified in the procurement specification.
 - iv. The packing list must include identification for each item, group of items, or subassembly contained in each package, box, or crate including loose or disassembled parts not identified as line items on this Purchase Order.
 - v. If the SELLER's identification number for an item is different from the number by which it was ordered, SELLER's packing list must cross-reference the numbers.
- c. **Restrictions on Packing and Packaging Materials:** Failure to abide by the following restrictions shall result in rejection and return of material at SELLER's expense and/or delays in processing through BUYER's Receiving/Inspection Departments and in payment of SELLER's invoice:
 - i. **THE USE OF STYROFOAM PACKING AND YELLOW PLASTIC WRAPPING MATERIAL IS PROHIBITED**
 - ii. The use of masonite as a protective, sealing or packaging material is prohibited.
 - iii. The use of plywood, cardboard or other materials that will splinter, flake, or crumble is prohibited as protective covering for openings on fittings, valves and components.
 - iv. The use of plywood, cardboard or other materials that will splinter, flake, or crumble is prohibited as protective covering for openings on fittings, valves and components
- d. CRES or aluminum sheet, .050 thickness or greater, or suitable plastic, is the only acceptable material for capping, sealing, or protecting opening and machined surfaces unless otherwise approved in writing by Electric Boat on a case basis.
- e. **Return of Containers:** All containers, drums, carboys, etc. to be returned to SELLER shall be shipped to BUYER on a no-charge or consignment basis unless otherwise expressly agreed to in writing. SELLER shall provide BUYER with clear direction for their return.
- f. **Toxic Substances and Hazardous Material Marking:** SELLER shall mark packages and paperwork with all markings and labeling that may be required to comply with any law and regulation, including those OSHA mandated markings for shipments of material or items containing toxic or hazardous substances.
- g. **Additional Export and Import Marking Requirements:** If material is being exported from or imported into the U.S., additional packing and paperwork labeling may be required to comply with export/import control requirements (refer to the U.S. International Traffic in Arms Regulations and/or Export Administration Regulations, as applicable) as well as duty-free entry requirements, if applicable.

52. HEAVY MATERIAL

- a. Notwithstanding other instructions, material on this order is to be packaged to facilitate forklift handling if less than 4,000 pounds per piece.

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- b. SELLER shall mark *DELIVER ON FLAT BED TRAILER* when shipping single articles that exceed 4000 pounds or that do not adapt to safe unloading with a standard forklift truck (e.g., greater than seven (7) feet in length).
- c. Deliveries of such material made in open or closed top box trailers may be refused. Exemption from the foregoing instructions may be requested on a case basis by contacting BUYER's Traffic Administrator at 860-433-5935 or BUYER's Receiving Department at 860-433-5240 (Groton, CT) or 401-268-2500 (Quonset Point, RI) at least 24 hours prior to the anticipated delivery.

53. DOMESTIC BARGE SHIPMENTS

- a. All barge shipments to be made in performance of this Order are to be coordinated with the BUYER. SELLER shall notify the BUYER and BUYER's Traffic Administrator at 860-433-5935 at least 30 calendar days prior to shipment by domestic barge.

54. VALUE DECLARATION

- a. SELLER shall not insure for excess value via any mode of transportation. For shipments at BUYER's risk in which freight rates are based on *released value*, SELLER shall declare the lowest value on the bill of lading. For shipments at BUYER's risk via domestic air freight, air freight forwarder, and Parcel Post, SELLER shall insert the notation *NVD* (no value declared).

55. FREIGHT CHARGES/CARRIERS/INSURANCE

- a. Unless otherwise expressly agreed to in writing, if transportation is chargeable to the BUYER, the BUYER will pay freight charges and insurance.
- b. SELLER shall ship material freight collect in accordance with BUYER's "Traffic Routing Guide" using a BUYER's preferred carrier identified therein. The guide may be found on EB's Web Site at http://www.gdeb.com/suppliers/6_purchase_order_info/shipping/eb_traffic_routing_guide.pdf.
- c. To request deviations to the above, and for all shipments over 10,000 pounds, contact the BUYER's Traffic Department, area code (860) 433-5935, for specific routing.
- d. BUYER will not accept C.O.D. shipments unless expressly agreed to in writing.

56. LOSS OF OR DAMAGE TO GOODS

- a. Unless otherwise expressly agreed to in writing, risk of loss or damage to the goods furnished by SELLER under this Purchase Order shall remain with the SELLER until delivery to the BUYER at the address specified in this Purchase Order or to such other destination specified by the BUYER in writing.

57. LIENS

- a. All material, supplies, delivered goods, equipment, hardware, and software under this Purchase Order shall be free of all liens, claims, charges and encumbrances of any kind, legal or equitable.
- b. Upon request, SELLER shall furnish BUYER with formal written releases from SELLER's subcontractors.
- c. If SELLER fails to discharge, or cause to be discharged, any lien, claim, charge or encumbrance, after BUYER has requested SELLER to do so, BUYER may discharge, or cause to be discharged, any such lien, claim, charge or encumbrance and SELLER shall be responsible for the reasonable costs thereof, including attorney's fees.
- d. If BUYER has provided the SELLER with advance funding milestone payments, progress payments, or other funding prior to completion of the work required by this order and delivery, as appropriate, EB shall have a lien against SELLER for any supplier, material, , equipment, or goods in which such funding was used

INSURANCE

58. INSURANCE (S.C. 17-44, Rev. 14)

Prior to the commencement of work under this purchase order, the contractor shall secure and maintain, at no expense to Electric Boat Corporation (EB), policy or policies of insurance as detailed below. Evidence of such Insurance shall be delivered to the BUYER of record on the Purchase Order at:

Attn: (BUYER's name)
Electric Boat Corporation
75 Eastern Point Road
Groton, Connecticut 06340-4989

- a. A policy of commercial general liability insurance, written on an insurance industry standard occurrence form, including all the usual coverages known as: premises/operations liability; products/completed operations; personal injury; contractual liability; independent contractors liability; and, fire damage legal liability. Such policy(ies) must provide the following minimum limit:
 - i. Bodily injury and property damage: \$2,000,000 each occurrence; and
 - ii. Products or completed operations: \$2,000,000 each occurrence.Any deductible or self-insured retention must be disclosed and is subject to approval by the Electric Boat Corporation's risk manager. The cost of any claim payments falling within the deductible shall be the responsibility of the contractor.
- b. A policy of business automobile liability, including coverage for owned, non-owned, leased or hired vehicles (if used on Electric Boat Corporation property) written on an insurance industry standard form. Such policy(ies) must provide the following minimum limit:
 - i. Bodily Injury and Property Damage: \$1,000,000 each accident.
- c. A policy of Workers' Compensation. This policy must meet the statutory obligations imposed by Workers' Compensation law in the state in which the work under this agreement is to be performed. If any work under this agreement involves work to directly support the construction or repairs of any vessels, or involves work on or adjacent to navigable water, the policy must be endorsed to include federal longshore coverage. If the contractor is qualified as a self-insurer in accordance with the state of Connecticut requirements, the contractor shall so certify by letter signed by a corporate officer indicating that it is a qualified self-insured, and setting forth the limits of any policy of excess insurance covering its employees.

Note: When any work to be done wholly or in part by a contractor or subcontractor which may be a part of the process of EB Corporation's business (same type of task performed by an EB Corporation employee) and performed in, on, or about premises under EB

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Corporation's control, in the State of Connecticut, the contractor or subcontractor will include an endorsement to its Workers' Compensation policy including Electric Boat Corporation as an alternate for claims where primary liability is determined under the State of Connecticut Workers' Compensation Statute Section 31-291.

- d. A policy of employer's liability insurance: minimum limits of \$1,000,000 per occurrence.
- e. Policy of professional liability insurance: appropriate to the contractor's operations. Coverage should be for a professional error, act or omission arising out of the scope of services required by this agreement. Such policy(ies) must provide the following limits: \$5,000,000 per claim.
- f. In the event watercraft is to be used in the performance of this agreement, the commercial general liability policy shall be endorsed or a policy of protection and indemnity shall be provided with the same minimum limits of liability as required under paragraph (a) above. In addition, the contractor shall secure and maintain Jones Act coverage for masters and crews of the subject watercraft.
- g. The contractor shall require its subcontractors to secure and maintain the same forms and minimum limits of insurance required of the contractor in paragraphs (a) through (f) above. All insurance must be evidenced to the risk manager of Electric Boat Corporation prior to the subcontractor coming onto the job site.

If any such insurance policy is written on a claims made form, the retroactive date shall be prior to or coincident with the effective date of this agreement. The policy shall state that coverage is claims made, and state the retroactive date. Claims made form coverage shall be maintained by the contractor for a minimum of three years, except for professional liability which shall be for seven years, following the expiration or earlier termination of this agreement. The contractor shall provide EB with annual proof of renewals of such coverage. If renewal of the claims made form of coverage becomes unavailable, or economically prohibitive, the contractor shall purchase an extended reporting period ("tail") or execute another form of guarantee acceptable to the risk manager of Electric Boat Corporation assuring financial responsibility for liability for services performed.

All insurance, as provided under paragraphs (a) (b) (d) (e) and (f) above, shall be endorsed to include the EB, its officers and employees as additional insured, and shall not be reduced or canceled without thirty (30) days prior written notice to the risk manager at Electric Boat. In addition, the contractor's insurance shall be primary as respects Electric Boat, and any other insurance maintained by the Electric Boat Corporation shall be excess and not contributing insurance with the contractor's insurance.

Insurance provided under paragraph (c) must include a written approval by the insurer to waive its right of subrogation and this approval must be shown on the certificate of insurance that will be provided to Electric Boat Corporation prior to beginning any work on Electric Boat premises.

Evidence of Insurance: Contractor shall furnish to the BUYER of record on the purchase order evidence of such insurance coverages as required above, ten (10) days prior to the start of any work. Notification shall be in the form of a Certificate of Insurance signed by an Authorized representative of the insurance company. The Certificate of Insurance must state that the Electric Boat Corporation is named as the certificate holder and an additional insured and the Contractor's insurance will provide primary coverage. The certificate must also show that a waiver of subrogation has been endorsed by the Contractor's workers' compensation insurance policy. Electric Boat Corporation must be provided thirty (30) days written notice prior to any change, substitution, or cancellation, prior to the normal expiration date of subject insurance.

- h. **Self-insurance:** Should the contractor be self-insured, for any or all of the above insurance requirements, a letter from the corporate risk manager, or appropriate finance office is acceptable-stipulating if actuarially funded and fund limits; plus any excess declaration pages to meet the contract requirements. This letter should also advise how the contractor would protect and defend Electric Boat Corporation as an additional insured in its self-insured layer, and include claims handling directions in the event of a claim.
- i. **Subcontractors:** Contractor shall include all subcontractors as Insureds under its policies or shall furnish separate certificate of Insurance, as stated above, for each subcontractor. All coverages for subcontractors shall be subject to all the requirements stated herein and applicable to their profession.
- j. **Questions may be directed to the EB Risk Manager at 860-433-7853.**

INDEMNIFICATION

59. INDEMNIFICATION

- a. SELLER shall indemnify, hold harmless, and at BUYER's request, defend BUYER, BUYER's parent company, its officers, directors, customers, agents, and employees against all claims, causes of action, liabilities, damages, losses, and expenses arising from any act or omission of SELLER, SELLER'S parent company, its officers, directors, agents, employees, suppliers, or subcontractors at any tier, in the performance of any of its obligations under this Purchase Order.
- b. SELLER agrees to pay or reimburse all costs that may be incurred by BUYER in enforcing this indemnity, including attorney's fees, court costs, settlement costs, or any amount withheld from BUYER's higher-tier Government contract.
- c. SELLER shall not settle any suit or claim which arises under this clause without BUYER's prior written approval.

NOTIFICATION

60. NOTICE OF PRIOR WAIVERS AND DEVIATIONS

- a. In the event the SELLER is providing to the BUYER an item: (i) that has previously been provided to the United States Navy for inclusion as Government Furnished Material (GFM) on a previous ship or Class of Ships, or (ii) that the SELLER is developing for the United States Navy under this or another Government program, the SELLER shall immediately notify BUYER in writing indicating any specification differences, waivers and/or deviations that were or are in effect for the item(s).

61. NOTIFICATION OF FOREIGN OWNERSHIP OR FOREIGN PLACE OF PERFORMANCE

- a. SELLER shall notify BUYER in writing within ten (10) business days of the effective date of the change, or of becoming aware of the prospective change, whichever is earlier when:

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- i. a foreign interest directly or indirectly acquires the authority, whether or not exercised, and whether or not exercisable through the ownership of SELLER's securities, to direct or decide matters affecting the management or operations of SELLER; or
- ii. SELLER relocates the place of performance, in whole or in part, outside the United States.
- b. SELLER shall provide BUYER with written notice as described above in the event that SELLER becomes aware that it is to be merged with or acquired by a foreign entity or interest, regardless of whether or not it is to be a company organized to do business under the laws of the United States.
- c. Notification shall be required if the SELLER is a foreign entity or interest that is to be merged with or acquired by another foreign entity.
- d. **The SELLER shall comply with any and all requirements, and obtain any and all necessary approvals which may be imposed or required by Committee on Foreign Investment in the United States (CFIUS).**

62. NOTIFICATION OF LATE DELIVERY, LABOR DISPUTES, AND OTHER DELAYS

- a. Except as otherwise provided in this Purchase Order, SELLER shall, at all times, proceed diligently to properly perform this Purchase Order.
- b. Late Delivery - SELLER shall provide BUYER prompt written notice of any events that will or could cause a delay in delivery or performance under the Purchase Order; and
- c. Labor Disputes - If the SELLER has knowledge that any actual or potential labor dispute is delaying, or threatens to delay, the timely performance of this Purchase Order, the SELLER shall immediately, but in no case more than twenty-four (24) hours, give written notice, including all relevant information, to the BUYER; and
- d. Other Delays - SELLER shall provide BUYER prompt written notice, including relevant information, when it has knowledge that any permits, licenses, or other approvals required for the performance of this purchase order and that are to be obtained by SELLER are unable to be obtained or have expired, been cancelled, suspended, revoked, or otherwise rendered invalid.
- e. This notice shall be informational only, and shall in no way affect the rights or remedies available to BUYER.

63. NOTIFICATION OF OWNERSHIP OR LEGAL STRUCTURE CHANGES

- d. If the SELLER experiences a change in its ownership or legal structure, or becomes aware that such is likely to occur, SELLER shall notify BUYER in writing within ten (10) working days of the effective date of the change or of becoming aware of the prospective change, whichever is earlier.

CHANGES

64. NOTIFICATION OF CHANGES

- a. General. Changes are not binding on BUYER, unless they are in writing and authorized by a Materials Management Representative of the BUYER, who are also the only persons who may authorize changes affecting price or schedule.
- b. Notice. The SELLER shall notify the BUYER of any conduct which the SELLER considers would constitute or would require a change to this contract. Such notice shall be provided promptly in writing within five (5) calendar days from the date that the SELLER identifies any such conduct (including actions, inactions, and written or oral communications).
- c. On the basis of the most accurate information available to the SELLER, the notice shall state:
 - i. The date, nature, and circumstances of the conduct regarded as a change;
 - ii. The name, function, and activity of the individuals directly involved in or knowledgeable about such conduct;
 - iii. The identification of any documents and the substance of any oral communication involved in such conduct; and
 - iv. In the instance of alleged acceleration of scheduled performance or delivery, the basis upon which it arose;
- d. The particular elements of contract performance for which the SELLER may seek an equitable adjustment under this clause, including:
 - v. What contract line items have been or may be affected by the alleged change;
 - vi. To the extent practicable, labor or materials or both which have been or may be added, deleted, or wasted by the alleged actual or potential change;
 - vii. To the extent practicable, what delay and disruption in the manner and sequence of performance and effect on continued performance have been or may be caused by the alleged change;
 - viii. What adjustments to contract price, delivery schedule, and other provisions affected by the alleged change are estimated; and
 - ix. The SELLER's estimate of the time by which the BUYER must respond to the SELLER's notice to minimize cost, delay or disruption of performance.
- e. Continued performance. SELLER shall not proceed with the work under the alleged change, or affected by the alleged change, until it receives formal written authorization from the BUYER. However, SELLER shall diligently continue performance of the unaffected portions of this Purchase Order to the maximum extent possible in accordance with its terms and conditions, and in a manner intended to minimize cost or price impact, schedule impact, and actual or potential delay or disruption of performance.
- f. Equitable Adjustments. If SELLER considers that an equitable adjustment is warranted, it shall proceed in accordance with the Changes clause herein. Requests for equitable adjustment shall, when appropriate, be made in accordance with the Documentation of Requests for Equitable Adjustment and other clauses, including certification requirements, contained herein.

65. CHANGES

- a. The BUYER may at any time, by written order, and without notice to the sureties or assignees, make changes within the general scope of this purchase order in any one or more of the following: (1) drawings, designs, or specifications, (2) method of shipment or packing, (3) place of delivery, acceptance or inspection, (4) inspection Standards, (5) delivery schedule, (6) place, time and description of services (if applicable).
- b. If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of the work under this contract, whether or not changed by the order, the BUYER shall make an equitable adjustment in the purchase order price, the delivery schedule, or both, and shall modify the purchase order accordingly.
- c. The SELLER must assert its right to an adjustment within this clause within twenty (20) days from the date of receipt of the written order.
- d. If the SELLER'S proposal includes the cost of property made obsolete or excess by the change, the BUYER shall have the right to prescribe the manner of the disposition of the property.

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- e. Failure to agree to any adjustment shall be a dispute under the Disputes clause of this purchase order. However, nothing in this clause shall excuse the SELLER from proceeding with the contract as changed.

66. DOCUMENTATION OF REQUESTS FOR EQUITABLE ADJUSTMENT

- a. Whenever the SELLER requests an equitable adjustment of \$100,000 or more, the proposal supporting such request shall include the following information for each individual item or element of the request:
- i. A description (i) of the work required by the purchase order before the change, which has been deleted by the change, and (ii) of the work deleted by the change which already has been completed. The description is to include a list of identifiable components, equipment, and other identifiable property involved as well as the status of manufacture, procurement or installation of such property. A Separate description shall be furnished for design and production work. Items of identifiable raw material, purchased parts, components and other identifiable hardware, which are made excess by the change and which are not to be retained by the SELLER, shall be listed for later disposition;
 - ii. A description of work necessary to undo work already completed which has been deleted by the change;
 - iii. A description of work which is substituted or added by the change. This shall include a list of identifiable components and equipment (not bulk materials or items) involved. Separate descriptions shall be furnished for design work and production work;
 - iv. A description of interference and inefficiencies in performing the change;
 - v. A description of disruption attributable solely to the change. Such description shall include the following information:
 1. Description of each identifiable element of disruption and how work has been, or may be, disrupted;
 2. The calendar period of time during which disruption occurred, or may occur;
 3. Area(s) of the SELLER's operations where disruption occurred, or may occur;
 4. Trade(s) or functions disrupted, with a breakdown of man hours and material for each trade or function;
 5. Scheduling of trades before, during, and after the period of disruption insofar as such scheduling may relate to or be affected by the estimated disruption;
 6. Description of any measures taken to lessen the disruptive effect of the change;
 7. Delay in delivery attributable solely to the change;
 8. Other work or increased costs attributable to the change;
 9. Supplementing the foregoing, a narrative statement of the nature of any alleged BUYER or Government act or omission, when the alleged BUYER or Government act or omission occurred, and the relationship between the alleged BUYER or Government act or omission and the claimed consequences thereof, cross-referenced to the detailed information provided as required above.
 - vi. Each proposal submitted in accordance with this requirement shall include a copy of the SELLER's labor budget at the cost level in effect as of the date the change began, the cost incurred at the cost level as of the same date, and the proposed effect of the change at the cost class level.
- b. The SELLER is only required to set forth in its request for equitable adjustment information with respect to factors delineated in paragraph (a) above which are relevant to the individual request for equitable adjustment, or in the level of detail which is reasonably available to the SELLER. However, the SELLER shall provide BUYER sufficient detail to reasonably support SELLER's proposal for a request for equitable adjustment or which BUYER's customer should require in evaluating such request.
- c. In addition to any information required under paragraph (a) above, each proposal submitted in support of a claim for equitable adjustment in an amount which requires certified cost or pricing data, shall contain such cost or pricing data with respect to each individual claim item, and shall be in sufficient detail to permit the BUYER to cross-reference the claimed increased costs, or delay in delivery, or both, as appropriate, with the information submitted pursuant to paragraph (a).

67. EQUITABLE ADJUSTMENTS-WAIVER AND RELEASE OF CLAIMS

- a. Whenever the SELLER submits a claim for equitable adjustment, such claim shall include all required adjustments in the total amounts to which the SELLER believes it is entitled to. The SELLER agrees that, if required by the BUYER, it will execute a release, in form and substance satisfactory to the BUYER, as part of the supplemental agreement providing an equitable adjustment, and, other than a specific exception agreed to by the parties and notated as part of the release, that such release shall discharge, the BUYER, its officers, agents, employees and customer, from any further claims, including, but not limited to further claims arising out of delays or disruptions or both, caused by the aforesaid change.

SELLER BUSINESS CHANGES

68. ASSIGNMENT/NOVATION

- a. Neither this Purchase Order, nor the benefits or obligations thereof, shall be assigned or novated by SELLER except with the prior written express consent of the BUYER. If the BUYER consents to SELLER's request, the SELLER shall execute, and when required, shall also require its prospective transferee, etc. to execute, any assignment agreement, novation agreement, and/or other appropriate documentation that is specified by, and acceptable to, the BUYER. SELLER remains responsible for ensuring that no unauthorized exports and/or disclosures of export-controlled equipment, hardware, and information occur.
- b. SELLER shall ensure that there are no unauthorized disclosures of equipment, technical data, or other information subject to export control or to other limitations on distribution and that all Government and BUYER prior written approvals required are obtained.
- c. In the event that SELLER intends to request approval to assign or novate the work hereunder, in whole or in part, SELLER shall ensure that its intended assignee or transferee:
- i. is not debarred, suspended, or otherwise ineligible to receive a Federal contract or subcontract; and
 - ii. agrees to, and is able to, fully comply with all contract terms and conditions, including those dealing with export control and control of NNPI; and

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- iii. is not a foreign entity or any foreign organization (including foreign subsidiaries and affiliates of the Contractor) unless prior written approval by BUYER has been granted; and
 - iv. has developed and implemented an Access Control Plan/Technology Control Plan to prevent the unauthorized disclosure of equipment or technical data, including the more stringent control requirements for NNPI; and
 - v. will not increase the cost or price of this purchase order.
- d. In addition, SELLER agrees that:
- i. it shall remain liable for satisfactory performance or lack of satisfactory performance by its assignee; and
 - ii. SELLER agrees to execute any paperwork regarding the assignment that BUYER deems necessary to protect BUYER's interests; and
 - iii. if payment by BUYER is to be made directly to the assignee, SELLER shall authorize BUYER in writing to do so, and state that such payment(s) made by BUYER satisfies BUYER's obligations to SELLER for payment for the goods and/or services being invoiced; and
 - iv. The SELLER shall not furnish or disclose to any assignee under this subcontract, any classified document, (including this subcontract) or information related to work under this subcontract, until the BUYER expressly authorizes such action in writing.
- e. SELLER may assign its rights to be paid for amounts due or to become due from BUYER, to a bank, trust company, or other financing institution (including any Federal lending agency) without prior BUYER written consent if BUYER is promptly furnished written authorization by SELLER to do so in lieu of to the SELLER in satisfaction of BUYER's obligation to SELLER; and shall provide the BUYER with a signed copy of such assignment of payment. Any such assignments shall be for the convenience of the SELLER. SELLER agrees that BUYER shall not be held liable if delays in payment result from BUYER complying with or attempting to comply with SELLER's assignment of its right to payment.
- f. BUYER may, at any time, assign its rights, (including the right of exercise of any option(s),) and its obligations under this Purchase Order in whole or in part, to the United States Government, or to any other shipyard or entity designated by the BUYER or the United States Government. In such event, SELLER agrees to look solely to the Government or other assignee for payment. BUYER shall provide SELLER with reasonable written notice of such assignment.

69. CHANGE OF NAME

- a. In the event that the SELLER undergoes a change of name after the issuance of this Purchase Order, SELLER shall notify the BUYER and provide appropriate documentation within 15 days after change of name to record the new name with BUYER.

70. MERGERS AND ACQUISITIONS

- a. If SELLER has been, or expects to be, merged with or acquired by another entity (foreign or domestic), SELLER's resulting organization and ownership must:
 - i. still be able to perform the required work; and
 - ii. be eligible to have access to the equipment and technical data necessary to perform, hereunder; and
 - iii. be eligible to obtain, maintain, and retain all required licenses and approvals.

PAYMENTS

71. SELLER TRAVEL AND PER DIEM COSTS

- a. Unless otherwise expressly agreed to in writing by the BUYER, SELLER agrees that:
 - i. Any travel and per diem costs shall not exceed the amounts determined to be allowable by Federal Acquisition Regulation (FAR) Subpart 31.2.
- b. Lodging and M&IE: Under the Federal Travel Regulations (FTR), the per diem allowance for each day is established on the basis of the actual amount the traveler pays for lodgings plus an allowance for meals, lodging and incidental expenses (M&IE), with the total not to exceed the applicable maximum per diem rate for the location concerned. Note: Lodging taxes are not included in the CONUS per diem rate.
 - i. In accordance with the FTR section 301-11.101, the allowance for M&IE is adjusted for the first and last days of travel.
 - ii. As stated in the FTR section 301-11.27 (www.gsa.gov/ftr), in CONUS "lodging taxes paid by you are reimbursable as a miscellaneous travel expense limited to the taxes on reimbursable lodging costs."
 - iii. When this Order provides for the reimbursement of lodging costs for travel to Electric Boat in the lower 48 contiguous United States, EB will not be obligated to reimburse any such costs in excess of the allowable FTR amount.
 - iv. Costs incurred for M&IE shall be considered to be reasonable and allowable only to the extent that they do not exceed on a daily basis the maximum per diem rates in effect at the time of travel as set forth in the:
 - i. FTR for travel in the lower 48 contiguous United States (CONUS) (Note: The FTR may currently be accessed on the GSA Web Site <http://www.gsa.gov/portal/content/104877>; or
 - ii. Joint Travel Regulations (JTR), Volume 2, Appendix A for travel in Alaska, Hawaii, Puerto Rico, and territories and "outlying areas" of the United States (as defined in FAR part 2.101); or
 - iii. Standardized Regulations (Government Civilians, Foreign Areas), Section 925, "Maximum Travel Per Diem Allowances for Foreign Areas" or elsewhere.
- c. Airfare: When air travel is necessary, SELLER agrees that, except for special circumstances identified in FAR 31.205-46, airfare costs in excess of the lowest priced airfare available to the SELLER during normal business hours are unallowable (except as noted in FAR 31.205-46(b)) and SELLER agrees that EB is not obligated to reimburse any airfare costs in excess of these allowable amounts.
- d. Receipts: SELLER shall obtain and maintain receipts for audit purposes to substantiate invoiced amounts for airfare, car rental, fuel, tolls, lodging, and other allowable miscellaneous expenses being separately billed.

72. TAXES

- a. SELLER shall pay all applicable foreign or domestic taxes, assessments or duties assessed against SELLER for the goods covered by this Agreement prior to delivery to Purchaser. SELLER shall pay all gross receipt type taxes applicable to such sale (e.g. B&O tax, BPOL tax, Hawaii GET, etc.). Purchaser shall pay all applicable sales or use-taxes imposed on the sale of goods under this Agreement ("Taxes"). If SELLER is required to collect

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Taxes on behalf of the taxing jurisdiction in which the goods are delivered to Purchaser, SELLER shall separately state such Taxes on its invoices, collect such Taxes from Purchaser, and remit such Taxes to the appropriate taxing jurisdiction; provided, however, if Purchaser provides SELLER with a valid resale certificate, exemption certificate or direct pay permit, SELLER shall not collect from Purchaser any Taxes to which such certificate or permit applies.

73. INVOICES

- a. SELLER shall follow the invoice instructions included in the Purchase Order. Contact the BUYER with questions or for assistance regarding invoicing.

74. TITLE AND RISK OF LOSS (RESPONSIBILITY FOR SUPPLIES)

- a. Title. Title to supplies, equipment, other items, acquired under this purchase order, shall pass to the BUYER upon formal acceptance, regardless of when or where the BUYER takes physical possession.
- b. Risk of Loss. Unless the purchase order specifically provides otherwise, risk of loss of or damage to supplies shall remain with the SELLER until, and shall pass to the BUYER upon:
 - i. Delivery of the supplies to a carrier if transportation is f.o.b. origin; or acceptance by the BUYER or delivery of the supplies to the BUYER at the destination specified in the contract, whichever is later, if transportation is f.o.b. destination.
- c. Paragraph (b) of this section shall not apply to supplies that so fail to conform to purchase order requirements as to give a right of rejection. The risk of loss of or damage to such nonconforming supplies remains with the SELLER until cure or acceptance. After cure or acceptance, paragraph (b) of this section shall apply.

75. ADMINISTRATION

- a. Payments under this Purchase Order will be made by BUYER from funds advanced by the United States Government and not from BUYER's own assets.

76. REIMBURSEMENT LIMITATIONS FOR CERTAIN COSTS

- a. SELLER shall only be entitled to reimbursement of costs which are allowable under the subparts of FAR 31.2 or 31.3. Prior written approval must be granted for any costs not allowed under such subparts.

77. RESTRICTION ON OVERTIME COMPENSATION & OTHER CERTAIN PAYMENTS (ORDERS TO WHICH THE COST PRINCIPLES AT FAR PART 31.2 or 31.3 APPLY).

- a. Payment for Overtime Premiums. SELLER shall obtain BUYER's written permission prior to requiring employees to perform work under this Purchase Order for which the employees will be eligible to receive overtime premium pay as defined in FAR 2.1. Failure to obtain prior written consent shall result in the cost of any overtime premium pay deemed as unallowable. Notwithstanding the foregoing, prior approval shall not be required if the overtime premium is paid for work:
 - i. necessary to cope with emergencies such as those resulting from accidents, natural disasters, breakdowns of production equipment, or occasional production bottlenecks of a sporadic nature;
 - ii. by indirect-labor employees such as those performing duties in connection with administration, protection, transportation, maintenance, standby plant protection, operation of utilities, or accounting;
 - iii. to perform tests, industrial processes, laboratory procedures, loading or unloading of transportation conveyances, and operations in flight or afloat that are continuous in nature and cannot reasonably be interrupted or completed otherwise; or
 - iv. that will result in lower overall costs to the BUYER and/or Government.
- b. Any request for estimated overtime premiums shall include all estimated overtime for Purchase Order completion and shall:
 - i. identify the work on which the requested overtime will be used, together with present workload, staffing, and other data of the affected work sufficient to permit the BUYER to evaluate the necessity for the overtime;
 - ii. demonstrate the effect that denial of the request will have on the contract delivery or performance schedule;
 - iii. identify the extent to which approval of overtime would affect the performance or payments in connection with other BUYER's purchase orders, together with identification of each affected purchase order; and
 - iv. provide reasons why the required work cannot be performed by using multi-shift operations or by employing additional personnel.
- c. Other Restrictions. Man-hour costs (whether straight-time or overtime) and transportation costs for personnel traveling to or from worksites, including worksites other than the SELLER's facility, shall not be an allowable cost under this Purchase Order. The restriction on transportation costs contained in the previous sentence shall apply only to payments for transportation at time before or after the workers' regular shifts, and does not apply to legitimate travel costs incurred in performance of this Purchase Order during normal working hours, provided that those costs are otherwise reasonable, allocable, and allowable as determined in accordance with the Clause titled "Restriction on Overtime Compensation & Other Certain Payments" herein.
- d. The restrictions on the allowability of transportation costs do not apply to manufacturer's representatives when specifically required by the Purchase Order specifications.

78. OFFSET CREDITS, INTERNATIONAL

- a. All offset benefit credits or countertrade credits resulting from this purchase order and from any lower-tier subcontracts hereunder, shall accrue solely to the benefit of, and shall be the property of, BUYER to be applied the offset program of BUYER's choice.
- b. SELLER agrees to cooperate with BUYER and to assist BUYER in securing the applicable offset credits from the respective country government authorities.

PROPRIETARY INFORMATION, INTELLECTUAL PROPERTY AND DATA RIGHTS

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79. PROPRIETARY INFORMATION AND INTELLECTUAL PROPERTY

- a. **BUYER's Information:** Except to the extent that information is clearly in the public domain, all information provided by BUYER to SELLER during the performance of this Purchase Order and all improvements, modifications and derivations thereto shall be deemed to be the proprietary information of BUYER.
- b. SELLER agrees:
 - i. to hold BUYER's proprietary information in confidence and to protect it from release to third parties;
 - ii. to disclose BUYER's proprietary information only to SELLER's employees who have a need-to-know and only after they have been made aware of the proprietary nature of the information; and
 - iii. to use such proprietary information solely for the purposes of performing this Purchase Order.
- c. The restriction on release to third parties contained in this paragraph will not apply to release by the SELLER to subcontractors that SELLER uses in performing this Purchase Order provided the SELLER includes in such subcontracts a provision substantially the same as this paragraph.
- d. **Non-Incorporation of SELLER's Information:** Proprietary information of the SELLER must be specified for delivery under this purchase order. SELLER shall not deliver, disclose or incorporate any proprietary information to BUYER without first providing BUYER with advance notice, and receiving written concurrence. All proprietary information of the SELLER must be properly marked in accordance with the DFARS clauses invoked herein.
- e. If SELLER fails to obtain prior written concurrence, or fails to properly mark the information, such information shall be deemed to be acquired free from any restrictions and shall be deemed to have been disclosed as part of the consideration for this Purchase Order. SELLER thereby agrees not to assert any claim against BUYER by reason of BUYER's use or alleged use thereof.
- f. **Rights in Data and Inventions:** In addition to the Government's rights in data and inventions, SELLER agrees that the BUYER, in performance of its prime contract and higher-tier contract obligation(s), shall have an unlimited, irrevocable, world-wide, paid-up, royalty-free right to make, have made, sell, offer for sale, use, execute, reproduce, display, perform, distribute (internally or externally) copies of, and prepare derivative, and authorize others to do any of the foregoing, to any and all inventions, discoveries, improvements, mask works and patents as well as any and all data, copyrights, reports, and works or authorship, conceived, developed, generated or delivered in performance of this purchase order.
 - i. In the event that any subcontractor, at any tier, under this purchase order, asserts that it is entitled to furnish such data with less than unlimited rights or that is otherwise proprietary, the SELLER shall promptly notify the BUYER thereof together with the factual basis for each assertion.
 - ii. The term "technical data" used here has the meaning set forth in paragraph (a) of the clause hereof entitled "rights in Technical Data – Noncommercial Items (DFARS 252.227-7013)."
- g. **Ownership:** All reports, memoranda or other materials in written form, prepared by SELLER pursuant to this Purchase Order and furnished to BUYER by, or on behalf of, SELLER hereunder shall become the sole property of the BUYER.

80. Access to Proprietary Data or Computer Software

- a. The SELLER agrees:
 - i. to utilize the proprietary information only in connection with the performance of this contract;
 - ii. to use at least the same degree of care in safeguarding the BUYER'S Proprietary Information as it uses to safeguard its own similar, proprietary information that it does not wish to disclose, provided such degree of care is reasonably calculated to prevent inadvertent disclosure and unauthorized use thereof;
 - iii. indoctrinate its personnel who will have access to the data or software as to the restrictions under which access is granted;
 - iv. not disclose the data or software to third party, including but not limited to, any joint venturer, affiliate, successor, assign of the SELLER, or other SELLER personnel, except as authorized by the BUYER;
 - v. not to use any portion of this proprietary information for personal gain or to advance or support SELLER's or others' business other than for this purchase order reproduce the restrictive stamp, marking, or legend on each use of the data or software whether in whole or in part; and
 - vi. to notify BUYER immediately upon discovery of any inadvertent disclosure or unauthorized use of Proprietary Information and to promptly use reasonable efforts to prevent any further inadvertent disclosure or unauthorized use.
- b. The restrictions on use and disclosure of the data and software described above also apply to such information received from the BUYER through any means to which the SELLER has access in the performance of this Purchase Order that contains proprietary or other restrictive markings.
- c. The SELLER agrees that it will promptly notify the BUYER of any attempt by an individual, company, or BUYER representative not directly involved in the effort to be performed under this Purchase Order to gain access to such proprietary information. Such notification shall include the name and organization of the individual, company, or BUYER representative seeking access to such information.
- d. The SELLER shall include this requirement in subcontracts of any tier which involve access to information covered by paragraph (a).

81. SAFEGUARDING OF THIRD PARTY PROPRIETARY DATA

- a. Performance under this Purchase Order may require that the SELLER have access to technical data, computer software, or proprietary information of third party.
- b. The SELLER will enter into agreements with the originators of such proprietary data, which shall, at a minimum, include the requirements of Clause 79(a) above.
- c. A copy of each such agreement shall be furnished to the BUYER and the SELLER shall make such arrangements as may be necessary to permit the BUYER to furnish it to the Government.
- d. In the performance of this purchase order, the SELLER shall neither utilize during any state of design or production, nor incorporate into any deliverable any intellectual property of a third party unless written consent and/or proper licensing is obtained from the originator.

82. INTELLECTUAL PROPERTY INFRINGEMENT

- a. SELLER agrees that it shall not provide, or offer to provide any item to BUYER in which SELLER has knowledge of alleged or actual infringement of a patent, license, registered trademark, or copyright. In addition, if BUYER requests SELLER to perform work that SELLER thinks could cause SELLER or

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BUYER to infringe on a patent, license, registered trademark, or copyright, SELLER shall notify BUYER of the pertinent details in a timely manner, and shall not proceed with the work until the matter is resolved and SELLER has received written authorization from the BUYER to proceed with the work.

83. COMPUTER SOFTWARE AND DATABASES

- a. The SELLER shall test all computer software and/or databases, as defined in the clause entitled *Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation* (DFARS 252.227-7014), for computer viruses before delivery of such software and/or databases in any medium or in any system. All software and/or databases delivered by SELLER shall contain no known viruses that are detectable with the latest version of commercially available virus detection software.
- b. Any virus problems that are discovered during the check (or later found by the BUYER) shall be fixed by the SELLER, at SELLER'S expense.
- c. **A statement verifying that the check has been made shall be included with the deliverable when it is delivered to the BUYER.**
- d. SELLER shall test any software and/or databases received from BUYER or BUYER'S customer for viruses prior to use in performing this Purchase Order. SELLER shall provide BUYER with immediate written notice of any viruses detected in BUYER-provided software and/or databases. Unless otherwise expressly agreed to in writing, any license agreement covering the use of any computer software and/or databases delivered under this Purchase Order must be paid-up and perpetual, shall not contain any routine to disable the computer software and/or databases in the future, and shall permit transfer to BUYER'S customer. No copy-protection devices, codes, or systems shall be used that would prevent BUYER or its customer from copying delivered software and/or data; however, a license agreement or other Purchase Order terms may specify a maximum number of copies that may be made. Any limited rights or other legend(s) permissibly applied under this Purchase Order shall be digitally included on the same media as the delivered software and/or databases, and also displayed in human-readable form on a visible surface of the media carrying the digital software and/or databases.

EU PERSONAL INFORMATION PRIVACY POLICY

84. EU Personal Information Privacy Notice

- a. To the extent that Seller or persons acting on its behalf provide Buyer with personal data (as defined in Article 4(1) of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), OJ 2016 L 119/1) of any EU residents, Seller shall ensure that all such EU residents are provided with a copy of Buyer's "EU Personal Information Privacy Notice." This privacy notice is located at: http://www.gdeb.com/suppliers/7_terms_and_conditions/index2.html

INSPECTION AND ACCEPTANCE

85. INSPECTION AND ACCEPTANCE

- a. BUYER or its customer may inspect all work in progress at reasonable times and places. SELLER, at its own expense, shall promptly rectify any defects discovered during any inspection or test. SELLER shall provide reasonable facilities and assistance for the safety and convenience of the inspectors in performing their duties at no additional charge. No such inspection shall constitute final acceptance nor relieve SELLER of its obligations to furnish and warrant all Work in accordance with the requirements of this Purchase Order.
- b. No inspection, test, delay, failure to inspect or test, or failure to discover any defect or other nonconformance shall relieve SELLER of any of its obligations under this purchase order or impair any rights or remedies of BUYER or BUYER'S customers.
- c. Payment made hereunder shall not constitute acceptance of any defective or unsatisfactory material or workmanship, or a waiver of BUYER'S right to later reject the same.

86. REJECTION

- a. If SELLER delivers non-conforming supplies or services, BUYER may, at its option and SELLER'S expense:
 - i. return the supplies for refund or credit;
 - ii. require SELLER to promptly correct or replace the supplies or services;
 - iii. retain non-conforming supplies and reduce the purchase order price by an amount equitable under the circumstances;
 - iv. correct the nonconformance; or
 - v. obtain conforming supplies or services from another source.
- b. SELLER shall be liable for any increase in costs, including shipping costs and any procurement costs attributable to BUYER'S rejection of non-conforming supplies or services.
- c. SELLER shall not re-tender rejected supplies without disclosing the corrective action taken. .

WARRANTY

87. WARRANTY OF SUPPLIES

- a. SELLER warrants that all supplies furnished under this purchase order shall be:
 - i. new;
 - ii. free from defects in material, workmanship and design; and
 - iii. strictly conform with all to applicable specifications, drawings, samples, descriptions, and other requirements of this purchase order.

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- b. SELLER further warrants, to the extent reasonably possible, that any hardware, software, and firmware supplies delivered under this Purchase Order:
 - i. do not contain any viruses, malicious code, Trojan horse, worm, time bomb, self-help code, back door, or other software code or routine designed to (i) damage, destroy, or alter any software or hardware; (ii) reveal, damage, destroy any data; (iii) disable any computer program automatically; or (iv) permit unauthorized access to any software or hardware, and
 - ii. do not contain any third party software (including software that may be considered free or open source software) that (i) may require any software to be published, accessed or otherwise made available without the consent of the BUYER; or (ii) may require distribution, copying or modification of any software free of charge.
- c. The foregoing warranties shall survive inspection, final acceptance and payment of supplies and services.
- d. This warranty entitlement shall run to the benefit of both BUYER and BUYER's customer and shall cover a period twelve (12) months follow final acceptance by the BUYER's Customer.
- e. Remedy for breach of warranty shall be at the BUYER's election, including those specified in the provision of the "Rejection" Clause above.
- f. Supplies or parts thereof, corrected or furnished in replacement shall also be subject to the terms of this clause to the same extent as supplies initially delivered. The warranty, with respect to replacement supplies or parts thereof, shall be equal in duration to that in paragraph (d) of this clause and shall run from the date of delivery of the corrected or replaced supplies.

88. WARRANTY OF SERVICES

- a. SELLER warrants that all services furnished under this Purchase Order shall be:
 - iii. free from defects workmanship,
 - iv. conform with all the requirements of this Purchase Order, and
 - v. performed to high professional standards reasonably expected of similar service providers in BUYER's geographic area.
- b. The foregoing warranties shall survive inspection, final acceptance and payment of supplies and services.
- c. This warranty entitlement shall insure to the benefit of both BUYER and BUYER's customer and shall cover a period twelve (12) months following final acceptance.
- d. SELLER shall be liable for any loss, damage, or expense BUYER may suffer from breach to any of the foregoing warranties. Remedies shall be at the BUYER's election, including those specified in the provision of the "Rejection" Clause above.

89. WARRANTY NOTIFICATION REQUIREMENTS

- a. SELLER shall immediately notify BUYER's Manager of Supplier Quality by telephone of deficiencies of which SELLER becomes aware during the performance of this Purchase Order and during the warranty period. SELLER shall promptly follow up its telephonic notice with a letter to the BUYER's Procurement Representative identified on the face of this Purchase Order describing the deficiency and its plan for remedying it. For the purposes of this paragraph, a deficiency occurs when SELLER's goods or services fail to meet any of the performance obligations set forth in the Warranty articles above. SELLER's notice shall in no way affect the rights and remedies of BUYER.

TERMINATION

90. FORCE MAJEURE

- a. Neither Party shall be deemed to have defaulted or failed to perform their obligations hereunder if that Party's inability to perform or default was caused by an event or events beyond its reasonable control and without its fault or negligence.
- b. The following events, and only the following events, shall constitute force majeure under this Purchase Order: (i) acts of the Government in either its sovereign or contractual capacity, (ii) unusually severe weather, (iii) epidemics, (iv) quarantine restrictions, (v) embargoes, (vi) acts of God or a public enemy, (vii) strikes, (viii) labor disputes, and (ix) civil riots. The affected Party shall immediately notify the other Party in writing of any event the affected Party claims is a Force Majeure condition that would prevent the party from performing its obligations hereunder, and of the cessation of the condition.

91. TERMINATION FOR CONVENIENCE

- a. BUYER may, with written notice to the SELLER, terminate this Purchase Order, in whole or in part, at any time, and such termination shall not constitute default. In such event, BUYER shall have all rights and obligations accruing to, including BUYER's rights to title and possession of the supplies and material paid for. BUYER may take immediate possession of all work performed upon notice of termination.
- b. SELLER, upon notice of termination, shall immediately stop work and limit costs incurred on the terminated work. SELLER shall diligently continue with all work not terminated.
BUYER, after deducting any amount(s) previously paid, shall reimburse SELLER for the actual, reasonable, substantiated, and allowable costs with the total amount to be paid by the BUYER being determined by negotiation. SELLER shall not be paid for any work performed or costs incurred which reasonably could have been avoided. In no event shall BUYER be liable for lost or anticipated profits, or unabsorbed indirect costs or overhead, or for any sum in excess of the total purchase order price. SELLER's termination claim shall be submitted within ninety (90) days from the effective date of the termination.

92. DEFAULT

- a. If SELLER fails to: (i) comply with any requirements specified in this purchase order, (ii) deliver the supplies or to perform the services within the time specified (ii) make progress, so as to endanger performance of this purchase order; or (iii) becomes insolvent or suffers a material adverse change in financial condition, the SELLER shall be in default of this purchase order
- b. At BUYER'S election, if the SELLER is in default of this purchase order, upon written notice to the SELLER, the BUYER may: (i) terminate this purchase order, in whole or in part, or (ii) withhold payment until the BUYER has determined that there are no remaining deficiencies.
- c. The BUYER'S exercise of b(ii) of this clause shall at no time prevent its ability to exercise b(i).

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- d. SELLER must cure any default within (10) days (unless BUYER authorizes longer in writing) after receipt of notice from BUYER. Default involving delivery schedule delays or adverse change in financial condition shall not be subject to the cure provision.
- e. If BUYER has terminated this Purchase Order in part, SELLER shall continue to diligently perform the work not terminated.
- f. Upon termination, BUYER may acquire, under terms and in a manner the BUYER considers appropriate, supplies or services similar to those terminated, and the SELLER shall be liable to the BUYER for any excess costs for those supplies or services.
- g. For the terminated portion of this purchase order, the BUYER may require the SELLER to transfer title and deliver to the BUYER, in the manner and to the extent directed by BUYER, any supplies and materials, manufacturing materials, and manufacturing drawings that SELLER has produced or acquired, including the assignment to BUYER of SELLER's subcontracts. SELLER agrees to protect and preserve property in its possession in which either the BUYER or the Government has an interest.
- h. Payment for completed supplies and services delivered to and accepted by BUYER shall be at purchase order price. Payment for manufacturing materials delivered to and accepted by BUYER and payment for the protection and preservation of property shall be determined by negotiation, shall not exceed the value of the purchase order, and shall not include profit. BUYER may withhold payment otherwise due to SELLER for completed supplies and/or manufacturing materials in such amounts as BUYER determines necessary to protect BUYER and/or its customer against loss due to any outstanding liens or claims against said supplies or manufacturing materials. SELLER shall immediately refund to BUYER the total amount paid to SELLER, except for deliveries previously received by BUYER in full compliance with all requirements of this purchase order. SELLER shall also, at no cost to BUYER, immediately return all the materials supplied by BUYER.
- i. After termination, if it is determined that the SELLER was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as provided in the Termination for Convenience provision hereof.
- j. Upon the occurrence and during the continuation of a default, BUYER may exercise any and all rights and remedies available to it under applicable law and equity, including without limitation, cancellation of this Purchase Order, in whole or in part.

SPECIAL PROVISIONS

93. NOTIFICATION OF PARTS AND ELECTRONICS OBSOLESCENCE AND/OR DISCONTINUATION OF PRODUCTION

- a. Obsolescence, as used in this clause, shall refer to any item, or part or component thereof, including electronics, to be delivered under this purchase order, that are, or are expected to go out of production, or that will otherwise be no longer commercially available. This shall include any items supplied but SELLER's lower-tier subcontractors.
- a. The SELLER shall notify the BUYER in writing of any obsolescence, and to the extent practicable, SELLER shall provide BUYER with a "last time buy" notice for such "end-of-life" items at least twelve (12) months prior to their anticipated date of discontinuance or unavailability.
- b. In their notice, SELLER shall specifically identify those items by name or title, part number(s), function and location in the item delivered or the ship system (if known), and the name and address of the vendor.
- c. Nothing stated in the preceding paragraphs shall be construed as a commitment to purchase or acquire additional items other than those specified under this purchase order.

94. IDENTIFICATION MARKING OF PARTS

- a. Unless otherwise expressly agreed to in writing, identification marking of individual parts within the systems, equipments, assemblies, subassemblies, components, groups, sets or kits, and of spare and repair parts shall be done in accordance with the applicable specifications and drawings.
- b. To the extent identification marking of such parts is not specified in this Purchase Order or in applicable specifications or drawings, such marking shall be accomplished in accordance with the following:
 - x. Parts shall be marked in accordance with generally accepted commercial practice;
 - xi. In cases where parts are so small as to not permit identification marking as provided above, such parts shall be appropriately coded so as to permit ready identification.

NNPI

The following clauses only apply if the Purchase Order is for a part or service which involves NNPI. If SELLER has any questions as to whether these clauses apply, contact EB Buyer for clarification.

95. NAVAL NUCLEAR PROPULSION INFORMATION SECURITY CONTROLS & ADDITIONAL SECURITY REQUIREMENTS

- a. The provisions of the OPNAVINST N9210.3 are applicable to all NNPI work done under this Purchase Order.
- b. Disclosure of Restricted Data as defined in the Atomic Energy Act of 1954 as amended, relating to the Naval Nuclear Propulsion Program to employees of contractors granted Limited Clearance under the provisions of the DOD 5220.22M, National Industrial Security Program Operating Manual (NISPOM) is denied.
- c. The SELLER shall invoke the foregoing provisions, as appropriate, in all subcontracts hereunder which involve access to NNPI.

96. PROTECTION OF NAVAL NUCLEAR PROPULSION INFORMATION (Definitions applicable to this clause are provided in OPNAVINST N9210.3.)

- a. Naval Nuclear Propulsion Information is defined as that information and/or hardware concerning the design, arrangement, development, manufacturing, testing, operation, administration, training, maintenance, and repair of the propulsion plants of Naval Nuclear Powered Ships including the associated shipboard and shore-based nuclear support facilities.
- b. SELLER shall develop and implement written policies and procedures and other safeguards for the safeguarding from actual, potential or inadvertent release by the SELLER, or any subcontractor, of any Naval Nuclear Propulsion Information in any form, classified or unclassified. Such safeguards shall ensure that only Governmental, BUYER and SELLER parties, including subcontractors, that have an established need-to-know, have access in order to perform work under this contract, and then only under conditions which assure that the information is properly protected. Access by foreign nationals or immigrant aliens is not permitted. A foreign national or immigrant alien is defined as a person not a United States citizen or a

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United States National, United States citizens representing a foreign government, foreign private interest or other foreign nationals, are considered to be foreign nationals for industrial security purposes and the purpose of this restriction. In addition, any and all issue or release of such information beyond such necessary parties, whether or not ordered through an administrative or judicial tribunal, shall be brought to the attention of the BUYER's Contracting Officer for Security via BUYER.

- c. The BUYER's Contracting Officer for Security shall be immediately notified by SELLER via BUYER of any litigation, subpoenas, or requests which either seek or may result in the release of Naval Nuclear Propulsion Information.
- d. In the event that a court or administrative order makes immediate review by the Contracting Officer for Security impractical, the SELLER agrees to take all necessary steps to notify the court or administrative body of the Navy's interest in controlling the release of such information through review and concurrence in any release.
- e. The Contracting Officer reserves the right to audit SELLER's facilities for compliance with the above restrictions.
- f. Exceptions to these requirements may only be obtained with prior approval from the Commander, Naval Sea Systems Command (Contact SEA 00P3). SELLER shall make its request for any exceptions via BUYER.

97. CONTROL OF NAVAL NUCLEAR PROPULSION INFORMATION & SECURITY AGREEMENT

- a. This purchase order may contain Naval Nuclear Propulsion Information (NNPI) which is subject to special export and other controls of the International Traffic in Arms Regulations (ITAR) as well as the more stringent export and other control requirements for Naval Nuclear Propulsion Information.
- b. Other contractual and/or legal requirements regarding disclosure also apply.
- c. For purposes of this purchase order, the designation NOFORN indicates that the document contains unclassified NNPI.
- d. Classified NNPI is identified by other markings designated in OPNAVINST N9210.3.
- e. NNPI may not be disclosed to foreign nationals or immigrant aliens.
- f. The SELLER is required to comply with all NNPI special marking, handling, disclosure, and disposal requirements of OPNAVINST N9210.3.
- g. **Disclosure of NNPI to Persons with Dual Citizenship** - Special controls identified in OPNAVINST N9210.3 apply prior to providing NNPI to U.S. citizens with dual citizenship.
- h. **Disposal** - SELLER is required to dispose of documents containing NNPI and components and equipment that reveal NNPI in accordance with OPNAVINST N9210.3. In addition, for components with NNPI markings, SELLER must remove all NNPI markings from material produced under this Purchase Order but not delivered.
- i. **Security Agreement for Protection of NNPI for Purchase Orders** - SELLER agrees that when documents provided (e.g., RFQ/RFP bid solicitations, purchase orders, specifications, drawings, etc.) are marked as containing NOFORN, sensitive or controlled information that must be controlled pursuant to Federal law or contractual requirements such that:
 - i. The information contained therein and generated as part of the purchase order shall be used only for the purpose of performance of this Purchase Order; and
 - ii. The information shall in no case be transmitted outside the SELLER's company (except to prospective lower-tier bidders who have a specific need to know and to whom the SELLER has invoked similar controls which comply with the detailed guidance of the Purchase Order); and
 - iii. The information shall not be transmitted or disclosed to any foreign national or foreign interest, whether within or outside the SELLER's company; and
 - iv. While in use, the documents shall be protected from unauthorized observation; and
 - v. The information shall not be copied:
 - 1. unless done in accordance with the provisions of the detailed guidance of the solicitation and/or subcontract award requirements, and
 - 2. Following performance of any resultant purchase order awarded, all the documents and copies shall be promptly returned in their entirety to BUYER unless authorized by BUYER for retention or proper disposal, following completion of the purchase order.
- j. **Specific requirements for Protecting U-NNPI** -
 - i. Only people who are a U.S. citizen and have a "Need to Know" required to execute the contract shall be allowed access to U-NNPI.
 - ii. When not in direct control of an authorized individual, U-NNPI must be secured in a locked container (e.g., file cabinet, desk, safe, etc.). Access to the container must be such that only authorized persons can access it and compromise of the container can be visually detected. Containers should have no labels that indicate the contents. If removed from the site, U-NNPI must remain in the personal possession of the individual. At no time should U-NNPI be left unsecured in a home or automobile, unattended in a hotel room or sent with baggage, etc.
 - iii. Documents will have the word NOFORN at the top and bottom of each page. The cover sheet will have the warning statement shown below. Documents originated in the course of work that reproduce, expand or modify marked information shall be marked and controlled in the same way as the original. Media such as video tapes, disks, etc., must be marked and controlled similar to the markings on the original information.
 - iv. U-NNPI may not be processed on networked computers with outside access unless approved by the Naval Sea Systems Command. If desired, the company may submit a proposal for processing NNPI on company computer systems. Personally owned computing systems, including, but not limited to, personal computers (PC), laptops, and Portable Electronic Devices (PED) such as Personal Digital Assistants (PDA), are not authorized for processing NNPI. Exceptions require the specific approval of the cognizant Designated Approving Authority (DAA) and Naval Reactors (NR)/NAVSEA O8Y.
- k. U-NNPI may be faxed within the continental U.S. and Hawaii provided there is an authorized individual waiting to receive the document and properly control it. U-NNPI may not be faxed to facilities outside the continental U.S., including military installations, unless encrypted by Naval Sea System Command approved means.
- l. U-NNPI may be sent within the continental U.S. and Hawaii via first class mail in a single opaque envelope that has no markings indicating the nature of the contents.

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- m. Disposal of documents containing U-NNPI shall ensure that the information is not easily retrievable. Disposing of documents in the same manner as classified documents is preferred.
- n. Report any attempts to elicit U-NNPI by unauthorized persons to the appropriate security personnel.
- o. Report any compromises of U-NNPI by unauthorized persons to the appropriate security personnel. This includes intentional or unintentional public release via such methods as theft, improper disposal (e.g., material not shredded, disks lost), placement on website, transmission via e-mail, or violation of the information system containing U-NNPI.
- p. Definitions applicable to this clause are provided in the base instruction OPNAVINST N9210.3.

98. CONTROL OF VISITORS AND PROCEDURES TO PROTECT NNPI

- a. "Visitor" as used herein refers to any person who visits the SELLER's plant, office or facility and who does not represent the SELLER, BUYER, or the U.S. Government in the performance of this Purchase Order. This includes Foreign Nationals, whose visits require additional controls above and beyond those necessary for visits by U.S. Citizens.
- b. Unless prior written consent of the BUYER is received, SELLER will not permit any Visitors to its plants, offices, or facilities to view or to examine documents, components, assemblies, or major subassemblies provided for or to be delivered under this purchase order, or to obtain information or data concerning such documents, components, assemblies, or major subassemblies.
- c. SELLER must have procedures that will prevent the release of Classified and Unclassified Naval Nuclear Propulsion Information (NNPI) to Visitors or; to any other person or entity, including its own employees, that are otherwise ineligible to receive NNPI; or who do not have an established need to know for performance of this purchase order. SELLER must notify the BUYER in advance of any visitor to SELLER's plant, office, or facility, who may be required to view or examine documents, components, assemblies, or major subassemblies provided for or delivered under this order.
- d. SELLER must ensure similar controls are in effect at all lower-tier suppliers.
This restriction does not apply to items, components, assemblies, or major subassemblies that (1) meet the definition of "Commercial Item" as defined in the Federal Acquisition Regulations; (2) that are not defense articles (refer to the ITAR) specifically designed, developed, modified, or altered in performance of this purchase order; (3) that are otherwise in the public domain.
- e. All documents containing NNPI are subject to special marking, handling and disclosure requirements contained in this order and OPNAVINST N9210.3.
- f. Documents containing UNCLASSIFIED NAVAL NUCLEAR PROPULSION INFORMATION shall be marked in accordance with OPNAVINST N9210.3 and with the following NOFORN Warning Notice: "**NOFORN: This document is subject to special export controls and each transmittal to foreign governments or foreign nationals may be made only with prior approval of the NAVAL SEA SYSTEMS COMMAND.**"
- g. Classified NNPI documents have additional special handling and marking requirements. Refer to OPNAVINST N9210.3.

99. TRANSMISSION ABROAD OF EQUIPMENT OR TECHNICAL DATA RELATING TO THE NUCLEAR PROPULSION OF NAVAL SHIPS

- a. The supplies specified to be delivered under this contract may relate to the nuclear propulsion of naval ships.
- b. Equipment and technical data defined as NNPI under OPNAVINST N9210.3 shall not be disclosed to foreign nationals.
- c. For other than equipment or technical defined as NNPI in paragraph (b) above, except with the prior written consent of the BUYER and the Contracting Officer (or his designated representative), the SELLER shall not, at any time during or after the performance of this contract, transmit or authorize the transmittal of, any technical data or equipment as defined in paragraph (d) below:
 - i. Outside the United States; or
 - ii. Irrespective of location,
 - 1. To any foreign national, not working on this contract or any subcontract hereunder; or
 - 2. To any foreign organization (including foreign subsidiaries and affiliates of the SELLER); or
 - 3. To any foreign government; or
 - 4. To any international organization.
- d. As used in this requirement, the following terms shall have the following definitions:
 - i. "United States" means the States, the District of Columbia, Puerto Rico, American Samoa, the Virgin Islands, Guam, and any areas subject to the complete sovereignty of the United States;
 - ii. "Equipment" means all supplies of the kind specified to be delivered under this contract, all component parts thereof, and all models of such supplies and component parts; but "equipment" does not include standard commercial supplies and component parts, and models thereof;
 - iii. "Technical Data" means all professional, scientific, or technical information and data produced or prepared for the performance of this contract, or on or for the operation, maintenance, evaluation, or testing of any contract item, whether or not the information and data were specified to be delivered under this contract including, without limitation, all writings, sound recordings, pictorial reproductions, and drawings or other graphical representations; but "technical data" does not include such information and data on standard commercial supplies and component parts to the extent that the information and data do not relate to the use, operation, maintenance, evaluation and testing of such supplies and component parts in or in connection with any item, or component parts thereof, specified to be delivered under this contract.
- e. **Flow Down Requirement:**
 - i. The SELLER agrees to insert in all subcontracts under this contract provisions which shall conform substantially to the language of this requirement, including this paragraph (e).
 - ii. Notwithstanding any other provisions of this requirement, this requirement shall not apply:
 - i. Where the transmittal or authorization for the transmittal of equipment or technical data is to be made pursuant to a contract or agreement to which the United States is a party; and
 - ii. Where the transmittal is to be of equipment or technical data which the BUYER's Contracting Officer, or his designated representative, has declared in writing to be thereafter exempt from this requirement.