

**Annex to Philly Shipyard, Inc.  
Terms and Conditions for Purchase, Rev. 08, May 27, 2020  
For the National Security Multi-Mission Vessel (NSMV) Program**

The Philly Shipyard, Inc. Terms and Conditions for Purchase, Rev. 08, May 27, 2020 (“Terms and Conditions”) are hereby supplemented by the following clauses, all of which are incorporated in the Terms and Conditions by reference and made a part thereof. Except as expressly provided herein, all provisions of the Terms and Conditions shall remain unchanged and in full force and effect. Capitalized terms used but not defined herein shall have the meanings given to such terms in the Terms and Conditions.

The following clauses are flowed down pursuant to the requirements of the Subcontract For Construction of National Security Multi-Mission Vessels For Tote Services, LLC (“TOTE”) RFP # 19-G-9091-134 by Philly Shipyard, Inc. (the “Subcontractor”).

## **1. Definitions**

The following terms shall have the following meanings:

“Construction Contract” means the Subcontract between PSI and Customer to construct a minimum of two (2) Vessels and a maximum of up to five (5) Vessels.

“Customer” means TOTE Services, LLC (“TOTE”), as Vessel Construction Manager (“VCM”), and/or the United States Department of Transportation, Maritime Administration (“MARAD”), as the context may require.

“Customer Indemnified Parties” shall mean TOTE, its affiliates, their respective successors and assigns, and their respective members, managers, shareholders, officers, directors, agents, and employees, and the U.S. Government.

“Lien” shall mean any lien, stop notice, bond right, security interest, encumbrance or other right *in personam* or *in rem* against any Vessel, or any equipment and material or design services and drawings with respect to any Vessel, enforceable in a court of competent jurisdiction, including but not limited to mechanic’s liens.

“Vessel” or “Vessels” means up to five (5) National Security Multi-Mission Vessels to be fully outfitted and equipped and qualified for service in United States coastwise trade in compliance with the Jones Act and to be constructed by Buyer at the Site.

## **2. Quality Assurance Plan**

The following clauses in this Article 2 are applicable to all Major Subcontractors and Major Suppliers (i.e., subcontractors or suppliers providing more than \$3 million in services or supplies):

- 2.1 Seller shall have a verified quality management system (“QMS”) that is compliant to the ANSI/ISO/ASQ Q9001 standard.
- 2.2 Seller shall submit its Quality Assurance (“QA”) Plan to Buyer within thirty (30) days after execution of the Purchase Order. The QA Plan shall define Seller’s specific implementations for assuring the quality of its products and services to Buyer. The

QA Plan will be used in coordination with Seller's internal Quality Manual (or other designated quality documentation) to define the oversight activities of its QMS.

- 2.3 Seller shall manage its QA activities in accordance with its QMS.
- 2.4 Buyer may conduct oversight audits of Seller on a regular basis to ensure that Seller manages its QA activities in accordance with its QMS.
- 2.5 Seller may designate a QA point of contact ("POC") to coordinate QA activities, represent Seller on the Customer's Quality Council as needed, and coordinate with Buyer and Customer and the appropriate subcontractor and supplier QA organization for the NSMV Program. The Customer and Buyer shall have access to Seller's QMS.
- 2.6 The clauses in this Article 2 shall be flowed down by Seller to each of its Major Subcontractors or Major Suppliers (i.e., subcontractors or suppliers providing more than USD 3 million in services or supplies), if any.

### **3. Customer Furnished Data**

Customer may furnish design or engineering data relating to the Vessels to Buyer ("Customer Furnished Data"), and such design or engineering data shall be the sole intellectual property of Customer to the extent owned by Customer and shall otherwise retain its licensing and other rights with respect thereto. Buyer may re-disclose Customer Furnished Data to Seller to support the Vessel designs and otherwise support the work contemplated under the Construction Contract. Seller shall use Customer Furnished Data solely for the purpose of performing this Purchase Order. Unless otherwise directed by Buyer, Seller shall take all reasonable precautions to maintain, in confidence, all such Customer Furnished Data provided hereunder other than data which is known to Seller at the time provided to be of a non-proprietary nature, or data which is, or becomes, available to Seller from sources other than Buyer or Customer, or data that is independently developed by Seller, or its affiliates, agents and representatives without reference to Customer Furnished Data. Seller shall not be precluded from disclosing to third persons Customer Furnished Data which may be necessary for the prosecution of work under this Purchase Order, provided only that, in making such disclosures, Seller shall impose upon such third parties restrictions relating to the safeguarding to the same extent as have been imposed on Seller.

### **4. Liens with Right to Offset**

- 4.1 Seller waives any and all rights to any Lien, and Seller shall not permit or cause any Lien by Seller or by any of Seller's subcontractors or suppliers to lien or attach against any Vessel or any equipment and material or design services and drawings with respect to any Vessel. However, to the extent that this Purchase Order is subject to a payment schedule, Buyer may from time to time issue Seller progress payments and receive simultaneously with the same a waiver and/or release of any Lien rights and/or applications for certification of progress payments and/or funds received to a particular date-certain. At the conclusion of the Purchase Order, Buyer will not release final payment without a fully executed "Unconditional Waiver and Release upon Final Payment" from Seller and a release of all Liens from any of Seller's subcontractors. Seller's waiver and release will be in a form acceptable by Buyer.

- 4.2 Buyer shall have the right to withhold any payment until Seller furnishes written releases and waivers of all rights to claim or file Liens, properly executed by Seller and its subcontractors and suppliers. Such releases and waivers shall be in the form of Exhibit 2 (based on Attachment J-12 to the Construction Contract). Seller's acceptance of the final payment shall constitute satisfaction in full and release of all claims or demands by Seller against Buyer arising out of or in any way connected with this Purchase Order. If Seller fails or neglects to pay any admitted claims for labor or material, Buyer may pay same and deduct from funds due hereunder, or, if such claims are disputed, Buyer may withhold sufficient funds to pay same until such claims are adjusted. Seller shall immediately discharge or cause to be discharged any Lien which at any time is filed against property of Buyer or Customer with respect to or arising hereunder. If any such Lien is not immediately discharged, Buyer may discharge or cause to be discharged same at the expense of Seller by offset or otherwise.
- 4.3 All payments made by Buyer to Seller for or on account of work performed or materials provided by a lower-tier subcontractor or supplier shall be deemed paid in trust to Seller for the benefit of, and distribution to, such subcontractors and suppliers. Seller shall promptly pay each lower-tier subcontractor or supplier, upon receipt of payment from Buyer, out of the amount paid to Seller on account of the subcontractor's or supplier's portion of the work performed or materials provided, the amount to which such subcontractor or supplier is entitled (it being understood that Seller shall not be required to make any payment to any subcontractor or supplier sooner than the due date for such payment in accordance with its agreement with such subcontractor or supplier). Seller shall, by appropriate agreement with each lower-tier subcontractor or supplier require each such subcontractor or supplier to make payments to its lower tier subcontractors or suppliers in a similar manner.
- 4.4 Seller shall be responsible for making certain that similar restrictions in the enforcement of lien and in rem rights are included in all of its subcontracts with its subcontractors and suppliers.

## **5. Government Regulation**

- 5.1 Buyer has provided to Seller in Exhibit 1 the regulatory Flow Downs imposed on Buyer by the VCM under the Construction Contract. Seller shall adhere to and comply with all such regulatory Flow Downs (to the extent the same are applicable to Seller in accordance with their terms and conditions) and shall pass on such regulatory Flow Downs to its subcontractors and suppliers as required by the regulations, and such regulatory Flow Downs shall take precedence over any conflicting term or condition in this Purchase Order.
- 5.2 Seller represents and warrants that neither it nor its subcontractors or suppliers have been debarred or suspended by the U.S. Government in accordance with FAR 52.209-6. This representation and warranty applies to each subcontract or supply contract that (1) exceeds \$35,000 in value, and (2) is not a subcontract for commercially available off-the-shelf items.
- 5.3 Payment for any work performed in the United States, by Seller or any of its Sub Subcontractors, shall be withheld until certification of intent to pay workers in

compliance with, and otherwise comply with all other requirements of, FAR 52.222-55 Minimum Wages Under Executive Order 13658 (DEC 2015), and federal labor law and regulations flowed down to Seller in Exhibit 1, are submitted to and accepted by Buyer. Such certification shall be in the form of Exhibit 3 (based on Attachment J-9 to the Construction Contract).

## **6. Books and Records**

- 6.1 Seller will assure that all financial settlements, reports and billings rendered to Buyer under this Purchase Order shall properly reflect the facts of all activities and transactions handled for Buyer's account and may be relied upon as being complete and accurate in any further recording or reporting made by Buyer for any purpose.
- 6.2 **Record Retention.** Seller shall keep, and shall use commercially reasonable efforts to cause its Sub-Subcontractors and lower tier Sub Subcontractors to keep, in accordance with International Financial Reporting Standards (IFRS) or generally accepted accounting practices, books, records and accounts pertaining to the performance of the Work, including Seller's and its Sub-Subcontractors' and lower tier Sub Subcontractors' personnel records, employment and qualification records (including wage, payroll cost, and all administrative and entitlement records), correspondence, instructions, plans, drawings, receipts, vouchers, memoranda, data stored in computer libraries and such other documentation and related systems and controls developed or used for this Purchase Order, all as is reasonably necessary for an accurate audit and verification to be performed pursuant to Article 7. For the avoidance of doubt, Seller shall keep, and shall use commercially reasonable efforts to cause its Sub-Subcontractors and lower tier Sub Subcontractors to keep, any and all documents that would tend to support, or refute, Seller's entitlement to an adjustment to the Purchase Order time and/or Purchase Order price as provided in this Purchase Order or any claim of reimbursement from Buyer. Seller shall preserve, and shall cause its Sub Subcontractors and lower tier Sub Subcontractors to preserve, said documents during the performance of the work and for a period of not less than three (3) years after the date of final acceptance of all work under the Construction Contract (the "Stipulated Period").

## **7. Audit Rights**

- 7.1 Seller shall permit, and shall use commercially reasonable efforts to cause its Sub-Subcontractors and lower tier Sub Subcontractors to permit, at all reasonable times during the Stipulated Period, and upon reasonable prior written notice (but, in any event, not less than three (3) Business Days), authorized representatives of Buyer or Customer to interview Seller's and each Sub Subcontractor's personnel, review Seller's and each Sub Subcontractor's and lower tier Sub Subcontractors' accounting and cost control systems and inspect books, records, accounts, and other documents set forth in Article 6.2 above, and make copies thereof, as necessary for Buyer or Customer to audit and verify:
  - (a) Any equitable adjustment in the price or delivery schedule under Article 6 (CHANGES) of the Terms and Conditions;

(b) Claims resolution under Article 26 (ASSIGNMENT/DELEGATION) of the Terms and Conditions;

(c) Extensions of delivery dates claimed under Article 12 (FORCE MAJEURE) of the Terms and Conditions;

(d) Payment requests for Termination for Convenience under Article 25 (TERMINATION FOR CONVENIENCE) of the Terms and Conditions;

(e) Any adjustment in the price or delivery schedule for suspension of work under Article 13 (SUSPENSION OF PERFORMANCE) of the Terms and Conditions; or

(f) The completeness and accuracy of any reimbursable costs claimed under this Purchase Order or any change in the price or delivery schedule to the extent not covered by the foregoing.

7.2 The inspection, review, or audit may be performed by Buyer or Customer employees or by auditors and/or consultants under subcontract with Buyer or Customer. Seller, its Sub Subcontractors, or lower tier Sub Subcontractors shall provide adequate facilities, acceptable to Buyer or Customer, for the audit during normal business hours. Seller, its Sub Subcontractors, or lower tier Sub Subcontractors shall cooperate in every way with the auditors.

7.3 If an audit is to be commenced more than sixty (60) days after the date of final acceptance of all work under the Construction Contract, Seller will be given not less than twenty (20) days' notice of the time when the audit is to begin. If any litigation, claim, or audit arising out of, in connection with, or related to this Purchase Order is initiated, all applicable records shall be retained until such litigation, claim, or audit involving the records is completed

7.4 If errors or deficiencies are identified by an audit or otherwise, Seller shall take prompt corrective action and advise Buyer and Customer thereof.

7.5 Buyer and Customer shall hold all documentation and data accessed by Buyer and Customer under this Article 7 in confidence and not disclose any such documentation or data to any third party (other than Customer) to the extent permitted by applicable law or use any such documentation or data for any purpose except those listed in Article 7.2 above.

7.6 This Article 7 is without prejudice to any other provisions of this Purchase Order which requires Seller to furnish documents to Buyer or its representatives.

## **8. Notice of Labor Disputes**

8.1 If Seller has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this Purchase Order, Seller shall immediately give verbal notice, followed by written notice, including all relevant information, to Buyer.

- 8.2 Seller agrees to exercise its best efforts to insert the substance of this Article 8, including this paragraph, in any subcontract to which a labor dispute may delay the timely performance of this Purchase Order. Each subcontract shall provide that in the event its timely performance is delayed or threatened to be delayed by an actual or potential labor dispute, the subcontractor shall immediately notify the next higher tier subcontractor or Seller, as the case may be, of all relevant information concerning the dispute.

## **9. Organizational Conflict of Interest**

- 9.1 Organizational Conflict of Interest (“OCI”) means that because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to the VCM or the U.S Government, or the person’s objectivity in performing the Purchase Order work is or might be otherwise impaired, or a person has an unfair competitive advantage. “Person” as used herein includes corporations, partnerships, joint ventures, and other business enterprises.
- 9.2 Seller warrants that to the best of its knowledge and belief, and except as otherwise set forth in the Purchase Order, Seller does not have any organizational conflict of interest(s) as defined in Article 9.1.
- 9.3 It is recognized that the effort to be performed by Seller under this Purchase Order may create a potential organizational conflict of interest on the instant Purchase Order or on a future acquisition. In order to avoid this potential conflict of interest, and at the same time to avoid prejudicing the best interest of the U.S Government, the right of Seller to participate in future procurement of equipment and/or services that are the subject of any work under this Purchase Order shall be limited as described below in accordance with the requirements of FAR 9.5.
- 9.3.1 Except as necessary to perform its obligations under this Purchase Order, Seller agrees that it shall not release, disclose, or use in any way that would permit or result in disclosure to any party outside of the VCM or the U.S. Government any information provided to Seller by the VCM or the U.S. Government during or as a result of performance of this Purchase Order. Such information includes, but is not limited to, information submitted to VCM or the U.S. Government on a confidential basis by other persons. Further, the prohibition against release of the VCM or the U.S. Government provided information extends to cover such information whether or not in its original form, e.g., where the information has been included in Seller generated work or where it is discernible from materials incorporating or based upon such information. This prohibition shall not expire after a given period of time.
- 9.3.2 Except as necessary to perform its obligations under this Purchase Order, Seller agrees that it shall not release, disclose, or use in any way that would permit or result in disclosure to any party outside of the VCM or the U.S. Government any information generated or derived during or as a result of performance of this Purchase Order. This prohibition shall expire after a period of three years after completion of performance of this Purchase Order.

9.3.3 The prohibitions contained in subparagraphs 9.3.1 and 9.3.2 shall apply with equal force to any Affiliate of Seller, any consultant, or employee of Seller, any joint venture involving Seller, any entity into or with which Seller may merge or affiliate, or any successor or assign of Seller. The terms of Article 9.5 relating to notification shall apply to any release of information in contravention of this Article 9.3.

- 9.4 Seller further agrees that, during the performance of this Purchase Order and for a period of three years after completion of performance of this Purchase Order, Seller, any Affiliate of Seller, any consultant, or employee of Seller, any joint venture involving Seller, any entity into or with which Seller may subsequently merge or affiliate, or any other successor or assign of Seller, shall not furnish to the U.S. Government, either as a prime contractor or as a subcontractor, or as a consultant to a prime contractor or subcontractor, any vessel, system, component, or service which is the subject of the work to be performed under this Purchase Order. This exclusion does not apply to any recompetition for those vessels, systems, components, or services furnished pursuant to this Purchase Order or the VCM Prime Contract. As provided in FAR 9.505-2, if the VCM or the U.S. Government procures the vessel, system, component, or services on the basis of work statements growing out of the effort performed under this Purchase Order, from a source other than Seller, Sub Subcontractor, Affiliate, or assign of such, during the course of performance of this Purchase Order or before the three-year period following completion of this Purchase Order has lapsed, Seller may, with the authorization of the cognizant U.S. Government Contracting Officer, participate in a subsequent procurement for the same vessel, system, component, or service. In other words, Seller may be authorized to compete for procurement(s) for vessels, systems, components, or services subsequent to an intervening procurement.
- 9.5 Seller agrees that, if after award, it discovers an actual or potential organizational conflict of interest, it shall make immediate and full disclosure in writing to Buyer. The notification shall include a description of the actual or potential organizational conflict of interest, a description of the action which Seller has taken or proposes to take to avoid, mitigate, or neutralize the conflict, and any other relevant information that would assist the VCM and the U.S Government Contracting Officer in making a determination on this matter. Notwithstanding this notification, Buyer may terminate this Purchase Order for convenience if the U.S. Government determines a termination to be in the best interest of the U.S. Government.
- 9.6 Notwithstanding Article 9.5 above, if Seller was aware, or should have been aware, of an organizational conflict of interest prior to the award of this Purchase Order or becomes, or should become, aware of an organizational conflict of interest after award of this Purchase Order and does not make an immediate and full disclosure in writing to Buyer, Buyer may terminate this Purchase Order for cause.
- 9.7 If Seller takes any action prohibited by this requirement or fails to take action required by this requirement, Buyer may terminate this Purchase Order for cause.
- 9.8 The U.S. Government Contracting Officer's decision as to the existence of an actual or potential organizational conflict of interest shall be final.

- 9.9 Nothing in this requirement is intended to prohibit or preclude Seller from marketing or selling to the U.S. Government its product lines in existence on the effective date of this Purchase Order; nor shall this requirement preclude Seller from participating in any research and development or delivering any design development model or prototype of any such equipment. Additionally, sale of catalog or standard commercial items are exempt from this requirement.
- 9.10 Seller shall include this requirement in subcontracts of any tier which involve access to information or situations/conditions covered by the preceding paragraphs.

## **10. John McCain National Defense Authorization Act**

Seller shall comply with Section 889 of the John McCain National Defense Authorization Act for Fiscal Year 2019 (P.L. 115-232). Accordingly, Seller is prohibited from procuring or subcontracting telecommunications or video surveillance services or equipment from any of the covered entities enumerated within Section 889 for the construction of the Vessels. To mitigate the risk of counterfeit parts from entering the Vessel supply chain, Seller should follow best practices and, to the maximum extent practical, procure supplies, equipment, and components only from original manufacturers and authorized suppliers.

## **11. Communications with Customer**

All communications with Customer regarding any aspect of Seller's performance under this Purchase Order shall be conducted by Buyer. Seller shall support those communications as requested by Buyer.

## **12. Sunshine Clause**

- 12.1. Seller shall send to Buyer copies (not summaries) of every written correspondence that is related to this Purchase Order, which Seller or its vendors and sub contractor(s) at any tier, sends to or receives from authoritative agencies, regulatory agencies and non-regulatory agencies; the said agencies include (but are not limited to): the United States Coast Guard, ABS, and International Maritime Organization; Seller shall send a copy of the written correspondence to Buyer simultaneous with its dissemination to the said agencies or within two (2) business days of its receipt from the said agencies. Buyer (on behalf of Customer) will provide a specific email address to be copied on all email conversations to ease the collection burden of this requirement.
- 12.2. Seller shall send to Buyer a detailed summary of verbal communications between Seller or its vendors/ sub contractor(s) and authoritative agencies, regulatory agencies and non-regulatory agencies that is related to this Purchase Order. The summary shall include the times, dates, purpose, parties, and the outcome of the verbal communication. The said authoritative agencies, regulatory agencies and non-regulatory agencies include (but are not limited to): the United States Coast Guard, ABS, and the International Maritime Organization. These verbal communication summaries are not required to include routine matters such as scheduling, but shall include discussions pertaining to changes in regulatory oversight or inspection criteria and any other matters that may be considered non-routine. Notwithstanding other deadlines stated in this Article 12.2, if these verbal



communications result in guidance or changes to inspection or regulatory oversight, impacts to program schedule, or risk, Seller shall inform Buyer within 24 hours, or if on a weekend as soon as possible on the first business day thereafter.

- 12.3. Seller shall use (and shall also require its sub subcontractors and vendors to use) the ABS website (Eagle Construct 02E and 02K, or its successor) for the submittal of all drawings and plans that are related to this Purchase Order, which require ABS review and approval. Seller shall designate and shall also require any sub subcontractors and vendors to designate Buyer, Customer and the Government as the ship owner in the ABS website and grant Buyer, Customer and the Government the highest level of oversight access to the ABS' Eagle Construct for this project. This includes access to all submittals and transmissions to ABS, ABS responses, and other outstanding technical comments. The said highest level of oversight access is the level, which corresponds to the most visibility of data, including email notification for transmittals and approvals as well as drawing download capability. Should a new ABS' website be setup during this Purchase Order, Seller shall promptly notify Buyer and grant all parties the same level of access.
- 12.4. Seller shall prepare and deliver a report titled Regulatory/Non-regulatory Agency Report, which shall contain a copy of all correspondence in paragraph (a) and a summary of correspondence in (b) of this Article 12; the said report shall be sent to Buyer on bi-monthly basis.
- 12.5. Upon written request, Seller shall provide to Buyer any written information, records, data, drawings, or communications between any sub subcontractor (at any tier) to Seller, any classification society (including ABS), or any other authoritative agencies, regulatory agencies or non-regulatory agencies that has jurisdiction over the construction of the Vessels and Seller that is related to this Purchase Order, and Buyer may share such information with Customer upon request of Customer. Upon written request, Seller shall provide Buyer with copies of all written information, records, data, drawings or communications that is related to this Purchase Order in Seller's possession, or upon request from Buyer, Seller shall instruct its sub subcontractors (at any tier), any classification society, or any authoritative agencies, regulatory agencies and non-regulatory agencies to provide Buyer with copies of such information.

### **13. U.S.-Flag Preference**

All foreign acquired components, manufactured equipment, and supplies shall be transported on privately owned, U.S.-flag commercial vessels to the extent such vessels are available at fair and reasonable rates. If a vessel is not available, a waiver can be requested to the MARAD Office of Cargo and Commercial Sealift ("OCCS") on a case-by-case basis. OCCS is available to assist in helping to identify U.S.-flag vessels to carry the cargo. If the OCCS determines that no U.S.-flag carriers are available a Determination of Non-Availability ("DNA") will be issued for selected cargoes.

### **14. Insurance**

The following Terms and Conditions in this Article 14 supplement Article 19 (INSURANCE) of

the Terms and Conditions:

- 14.1 Seller shall, and Seller shall cause each of its Sub Subcontractors to, include each of the Customer Indemnified Parties as additional insureds under its and such Sub Subcontractor's general liability and motorized vehicle liability insurance policies as well as excess policies required by Article 19 (INSURANCE) of the Terms and Conditions. Seller shall, and Seller shall require each of its Sub Subcontractors, to require that its insurer agree to waive any subrogation rights the insurers may have against the Customer Indemnified Parties. If requested by the VCM, the Seller shall promptly provide certificates of insurance evidencing coverage for Seller and each of its Sub Subcontractors. Customer shall have the right to contact Seller and each of its Sub Subcontractors directly in order to verify the above coverage.
- 14.2 Buyer and Seller waive all rights against each other, against each of their agents and employees, against the Customer, and against Sub Subcontractors and their respective members, directors, officers, employees, agents, and consultants for any claims to the extent covered by insurance obtained pursuant to Article 19 (INSURANCE) of the Terms and Conditions, except such rights as they may have to the proceeds of such insurance, except for any deductible payable as specified herein. Seller shall require each and every of its Sub Subcontractors to provide a similar waiver in writing, each in favor of all other parties enumerated above. Each policy, including workers' compensation, shall include a waiver of any right of subrogation against the Customer Indemnified Parties.

## **15. Data Rights**

All drawings and documents provided by Seller to Buyer in respect of any equipment and material shall become the property of Buyer. However, Buyer shall not use or disclose any such drawings or documents in respect of the equipment and material other than for the express execution of this Purchase Order. Notwithstanding the foregoing, (a) Buyer may make available all drawings or documents, including, without limitation, all finished drawings and plans, together with instruction books and operations manuals pertaining to the equipment and material, to Customer to the extent required under the Construction Contract; and (b) Buyer may, and may permit Customer, to possess, use and disclose all of the foregoing documentation and data, including without limitation, the specifications, drawings, technical descriptions, calculations, test results and other data, information and documents concerning the design and construction of the equipment and material, in accordance with the license rights granted by Buyer to the Customer in the design rights clause in the Construction Contract.

**Exhibit 1**  
**NSMV PROGRAM**  
**U.S. GOVERNMENT SUBCONTRACT FLOWDOWN**

In addition to its obligations set forth elsewhere under the Subcontract, the Subcontractor also agrees to accept as its obligation those provisions of the Federal Acquisition Regulation (FAR) and the Transportation Acquisition Regulation (TAR) listed below in these flow downs to the Subcontractor.

- a. Any conflict or inconsistency between the provisions listed in the FAR clauses incorporated by reference herein and the clauses set forth elsewhere in the Subcontract shall be resolved in favor of the former.
- b. Where necessary to derive proper meaning in a subcontract situation from these clauses, "Contractor" means "Subcontractor," "Contracting Officer" means "Philly Shipyard," "Contract" means this Subcontract and "Government" means "Philly Shipyard or the Government." However, the words "Government" and "Contracting Officer" do not change:
  - (i) when a right, act, authorization, or obligation can be granted or performed only by the Government or the Prime Contract Contracting Officer or duly authorized representative,
  - (ii) when title to property is to be transferred directly to the Government; or
  - (iii) when rights to intellectual property is provided to the Government.

Pursuant to FAR 52.252-2, Clauses Incorporated by Reference, this Subcontract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, Philly Shipyard, Inc. ("PSI") will make their full text available. Also, the full text of a clause may be accessed electronically at this/these address(es):

<https://www.acquisition.gov/browsefar>.

**Mandatory Flow Downs for Commercial Item Contracts (52.212-5(e)(1))**

The Contractor is required to flow down the following FAR clauses in a subcontract for commercial items. Unless otherwise indicated below, the extent of the flow down shall be as required by the clause:

- 52.203-13, Contractor Code of Business Ethics and Conduct (Oct 2015) (41 U.S.C. 3509).
- 52.203-19, Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements (Jan 2017) (section 743 of Division E, Title VII, of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113-235) and its successor provisions in subsequent appropriations acts (and as extended in continuing resolutions)).
- 52.204-23, Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities (JUL 2018) (Section 1634 of Pub. L. 115-91).
- 52.219-8, Utilization of Small Business Concerns (Nov 2016) (15 U.S.C. 637(d)(2) and (3)), in all subcontracts that offer further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds \$700,000 (\$1.5 million for construction of any public facility), the subcontractor must include 52.219-8 in lower tier

subcontracts that offer subcontracting opportunities.

- 52.222-17, Nondisplacement of Qualified Workers (May 2014) (E.O. 13495). Flow down required in accordance with paragraph (l) of FAR clause 52.222-17.72 (applies to the extent this Contract is subject to the Service Contract Act).
- 52.222-21, Prohibition of Segregated Facilities (Apr 2015) (vii) 52.222-26, Equal Opportunity (Sept 2016) (E.O. 11246).
- 52.222-26, Equal Opportunity (Sept 2016) (E.O. 11246).
- 52.222-35, Equal Opportunity for Veterans (Oct 2015) (38 U.S.C. 4212).
- 52.222-36, Equal Opportunity for Workers with Disabilities (Jul 2014) (29 U.S.C. 793).
- 52.222-37, Employment Reports on Veterans (Feb 2016) (38 U.S.C. 4212)
- 52.222-40, Notification of Employee Rights Under the National Labor Relations Act (Dec 2010) (E.O. 13496). Flow down required in accordance with paragraph (f) of FAR clause 52.222-40.
- 52.222-41, Service Contract Labor Standards (Aug 2018) (41 U.S.C. chapter 67) (applies to the extent this Contract is subject to the Service Contract Act).
- 52.222-50, Combating Trafficking in Persons (Mar 2015) (22 U.S.C. chapter 78 and E.O. 13627). Alternate I (Mar 2015) of 52.222-50 (22 U.S.C. chapter 78 and E.O. 13627).
- 52.222-51, Exemption from Application of the Service Contract Labor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment-Requirements (May 2014) (41 U.S.C. chapter 67).
- 52.222-53, Exemption from Application of the Service Contract Labor Standards to Contracts for Certain Services-Requirements (May 2014) (41 U.S.C. chapter 67).
- 52.222-54, Employment Eligibility Verification (OCT 2015) (E.O. 12989).
- 52.222-55, Minimum Wages Under Executive Order 13658 (Dec 2015) (applies to the extent this Contract is subject to the Service Contract Act).
- 52.222-62, Paid Sick Leave Under Executive Order 13706 (JAN 2017) (E.O. 13706).
- 52.224-3, Privacy Training (JAN 2017) (5 U.S.C. 552a). (B) Alternate I (JAN 2017) of 52.224-3.
- 52.225-26, Contractors Performing Private Security Functions Outside the United States (Oct 2016) (Section 862, as amended, of the National Defense Authorization Act for Fiscal Year 2008; 10 U.S.C. 2302 Note).
- 52.226-6, Promoting Excess Food Donation to Nonprofit Organizations (May 2014) (42 U.S.C. 1792). Flow down required in accordance with paragraph (e) of FAR clause 52.226-6.
- 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (Feb 2006) (46 U.S.C. Appx. 1241(b) and 10 U.S.C. 2631). Flow down required in accordance with paragraph (d) of FAR clause 52.247-64.

#### Additional Flow-Downs from Prime Contract

- 52.204-25 Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment (AUG 2019)
- 52.225-5, Trade Agreements (AUG 2018) (19 U.S.C. 2501, et seq., 19 U.S.C. 3301 note)
- 52.225-13, Restrictions on Certain Foreign Purchases (June 2008) (E.O.'s, proclamations,

and statutes administered by the Office of Foreign Assets Control of the Department of the Treasury).

- 52.227-14 Rights in Data – General (May 2014)
- 52.203-3 Gratuities (Apr 1984)
- 52.203-17 Contractor Employee Whistleblower Rights and Requirement To Inform Employees of Whistleblower Rights (Apr 2014)
- TAR 1252.223-71 Accident and Fire Reporting May 2005
- TAR 1252.245-70 Government Property Reports October 1994

**Exhibit 2**  
**NSMV PROGRAM**  
**WAIVER AND RELEASE**  
**(BASED ON ATTACHMENT J-12 TO THE CONSTRUCTION CONTRACT)**

## **SUB SUBCONTRACTOR WAIVER AND RELEASE**

Project: National Security Multi-Mission Vessel (NSMV) Program

Job No.: NSMV #\_\_

The undersigned has been paid in full for all labor, services, equipment, or materials furnished to the above referenced job for the project known as National Security Multi-Mission Vessel (NSMV) Program located at Philly Shipyard, Inc. (PSI) and does hereby release any Mechanic's Lien, any state or federal statutory bond right, any private bond right, any claim or right against the retained percentage for the project, any claim for payment, and any rights under any similar ordinance, rule, or statute related to claim or payment rights for persons in the undersigned's position, the undersigned has on the above referenced job and project to the following extent.

This release does not cover any retention retained before or after the release date.

**THIS RELEASE AND THE PROVISIONS HEREOF SHALL BE CONSTRUED TO INCLUDE ANY AND ALL CLAIMS OF WHATSOEVER NATURE RELATING TO OR ARISING OUT OF UNDERSIGNED'S CONTRACT EXISTING, OR DEEMED TO BE EXISTING AS OF THE DATE HEREOF, INCLUDING ANY AND ALL AGREED AND SIGNED CHANGES, EXCEPT AND ONLY AS SPECIFICALLY LISTED AND ENUMERATED HEREAFTER.**

- 1.
- 2.
- 3.

The undersigned warrants that it has paid (or will promptly pay within the due dates of invoices therefor) in full all of its laborers, subcontractors, materialmen, and suppliers for all work, materials, equipment and/or services furnished or provided to the above referenced job for the project known as National Security Multi-Mission Vessel (NSMV) Program.

\_\_\_\_\_  
SUB SUBCONTRACTOR

DATE: \_\_\_\_\_

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

Title: \_\_\_\_\_

**Exhibit 3**  
**NSMV PROGRAM**  
**MINIMUM WAGE CERTIFICATION**  
**(BASED ON ATTACHMENT J-9 TO THE CONSTRUCTION CONTRACT)**



**Certification for FAR 52.222-55 Minimum Wages and federal labor law and regulations flowed down to the Sub Subcontractor.**

Reference is made to the Subcontract for Construction of National Security Multi-Mission Vessels for Tote Services, LLC (“TOTE”) RFP # 19-G-9091-134 by Philly Shipyard, Inc. (the “Subcontractor”).

Pursuant to the above-referenced Subcontract, payment for any work performed in the United States, by the Subcontractor or any Sub Subcontractor, shall be withheld until certification of intent to pay workers in compliance with, and otherwise comply with all other requirements of, FAR 52.222-55 Minimum Wages Under Executive Order 13658 (DEC 2015), and federal labor law and regulations flowed down to the Subcontractor and such Sub Subcontractor from the above-referenced Subcontract, are submitted to and accepted by TOTE.

Accordingly, the undersigned Sub Subcontractor certifies its intent to pay workers in compliance with, and otherwise comply with all other requirements of, FAR 52.222-55 Minimum Wages Under Executive Order 13658 (DEC 2015), and federal labor law and regulations flowed down to the undersigned Sub Subcontractor from the above-referenced Subcontract.

\_\_\_\_\_  
Sub Subcontractor Representative  
Title \_\_\_\_\_  
Submission Date \_\_\_\_\_

\_\_\_\_\_  
Keith Bauer  
TOTE Project Manager  
Date Accepted by TOTE \_\_\_\_\_