



1. **General Scope**

These Terms and Conditions apply to goods, services, equipment (including rentals), data, technology and other work to be furnished by Seller under Buyer's Purchase Order or any of the other documents constituting the Contract. If the Contract contemplates that any portion of Seller's performance will occur on the premises of the Buyer at 1901 Hill Street, Jacksonville, Florida 32202, or the premises of Buyer's affiliate, River Port, LLC, at 1201 Terminal Avenue, Newport News, Virginia 23607 (each referred to below as "Buyer's facilities"), then access to Buyer's facilities by Seller, its employees, contractors, agents and guests shall also be governed by any insurance, indemnity, hold harmless and similar obligations imposed in any documents required by the Buyer's lessor for such access to be granted.

2. **Definitions**

- (a) "Buyer" means Jacksonville Machine & Repair, L.L.C., a Florida limited liability company, or its applicable subsidiary or affiliate that issues the Purchase Order.
- (b) "Contract" means the Purchase Order placed by Buyer with Seller, which incorporates these Terms and Conditions, the Specifications, and any other documents incorporated by reference in the Purchase Order (including without limitation the Prime Contract).
- (c) "Contract Price" means the total price to be paid by Buyer to Seller in consideration of Seller's full performance of the Contract, as such Contract Price is set forth in the Contract.
- (d) "Contract Products" means the goods, equipment, materials, data and/or technology to be furnished by Seller under the Contract, as identified in Buyer's Purchase Order and further detailed in the Specifications.
- (e) "Contract Work" means the services and other work to be performed by Seller under the Contract.
- (f) "Customer" means the U.S. Government agency, department or other contracting authority, or the prime contractor, from whom Buyer has received an award of the Prime Contract to furnish goods, materials, services, data, technology or other work.
- (g) "**FAR**" means Federal Acquisition Regulation as contained in Title 48, Code of Federal Regulations, and unless otherwise indicated shall be deemed to include the Department of Defense FAR Supplement ("**DFARS**") as similarly contained in Title 48, Code of Federal Regulations. In the event of a conflict between any FAR and the DFARS clauses included in the Prime Contract, the DFARS clauses shall prevail for purposes of the obligations and conditions flowed down to the Seller under the Contract.
- (h) "OCM" means original component manufacturer.
- (i) "OEM" means original equipment manufacturer.



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- (j) “Prime Contract” means the contract between the Buyer and the Customer under which Buyer awards the Contract to Seller to furnish Contract Products or Contract Work required of Buyer under the Prime Contract.
 - (k) “Purchase Order” means any purchase order, task order or similar document awarded by Buyer to Seller calling for Seller to furnish Contract Products or Contract Work to or on behalf of Buyer.
 - (l) “Seller” means the individual or entity identified on the face of the Purchase Order by whom the Contract Work is to be performed or the Contract Products are to be supplied.
 - (m) “Specifications” means the technical specifications, plans, data, drawings, diagrams, schedules and any other documents referenced in the Purchase Order or otherwise in the Contract that describe the Contract Products or Contract Work.

3. Assignment

Neither the Contract nor the consideration due to Seller under the Contract may be assigned by Seller, in whole or in part, without Buyer’s prior written consent.

4. Changes

- (a) Buyer may at any time, by written change order directive, make changes to the Contract. If any such change order directive causes an increase or decrease in the cost of, or the time required for, performance of the Contract, Buyer shall make an equitable adjustment in the Contract Price, the performance or delivery schedule, or both, and shall so modify the Contract by entering into a mutual written change order with Seller; provided, however, the Contract Price will not be increased nor the time to perform extended unless Seller provides documentation and justification of the increase in cost and/or time to the reasonable satisfaction of Buyer.
- (b) Within three (3) days from the date of receipt of any written change order directive, Seller shall submit to Buyer a detailed written estimate of the impact of the change on the Contract Price, the performance or delivery schedule, and the quality and capability of the Contract Products and/or Contract Work. Upon receipt of this estimate, Buyer shall begin good faith negotiations with Seller to agree upon an equitable adjustment to the Contract, via a mutual written change order.
- (c) The engineering and technical personnel of the Customer or Buyer may from time to time render assistance or give technical advice or discuss or exchange information with Seller’s personnel concerning the Contract Work and/or Contract Products. Such actions, however, shall not be deemed to be a change order directive under this Section 4 and shall not be the basis for any request for equitable adjustment (“REA”) by Seller.
- (d) If the parties reach agreement on an equitable adjustment in the Contract Price or the time to perform, or both, then Buyer will issue a mutual written change order in the form of an additional or amended Purchase Order, updating the Contract Price or the time to complete the Contract Work, or both.



- (e) If the parties do not reach agreement on a change order, then Seller shall submit a written REA to Buyer. All REAs submitted by Seller to Buyer must include, at a minimum, the following information: a written rationale fully stating why Seller is entitled to a price and/or time adjustment, adequate supporting documentation (e.g., specific and clear time records for laborers as to what they were doing, when, for what duration, and at what price, any underlying contracts for additional or different materials, delivery charges, etc.), together with any other documents and information reasonably requested by Buyer.
- (i) Seller must submit its REA to Buyer within thirty (30) days from completion of the changed Contract Work or delivery of the changed Contract Products or such REA shall be time barred and forever waived and released.
- (ii) IN ALL EVENTS, SELLER'S REA SHALL EITHER BE RESOLVED BY THE PARTIES WITHIN SIX (6) MONTHS FROM THE DATE OF ITS SUBMISSION TO BUYER, OR IT SHALL BE SUBMITTED FOR RESOLUTION UNDER SECTION 8 (DISPUTES). IF THE PARTIES HAVE NOT RESOLVED THE REA WITHIN SIX (6) MONTHS FROM SELLER'S SUBMISSION OF THE REA TO BUYER, THE REA SHALL BE TIME BARRED, AND FOREVER RELEASED AND WAIVED UNLESS SUIT IN RESPECT OF SUCH REA HAS BEEN FILED PRIOR TO THE END OF SUCH SIX (6) MONTH PERIOD. THIS IS A CONTRACTUAL STATUTE OF LIMITATIONS BINDING UPON THE PARTIES.
- (iii) SELLER SHALL NOT SUBMIT AN REA NOR FILE SUIT IN RESPECT OF ANY REA AFTER BUYER HAS ISSUED A LETTER INDICATING THAT THE CONTRACT BETWEEN SELLER AND BUYER IS CLOSED, FINISHED, COMPLETED, TERMINATED AND/OR HAS EXPIRED.
- (f) Nothing in this Section 4 shall excuse Seller from proceeding with diligent performance of the Contract, as changed by Buyer's written change order directive, regardless of the status of any claim or REA of Seller.
- (g) If Buyer and Seller fail to resolve an REA under this Section 4, it shall be resolved in accordance with Section 8, "Disputes" of these Terms and Conditions. Seller shall certify that its REA for Contract Work or Contract Products in support of a Prime Contract is being made in accordance with the provisions of the Contract Disputes Act of 1978, 41 U.S.C. § 601 et seq. Further, Seller shall indemnify and hold harmless Buyer against any claims, liability, damages, losses, costs or expenses (including reasonable attorneys' fees) or legal consequences incurred by Buyer as a result of Buyer's submittal of Seller's REA to the Customer.

5. Compliance with Law

Seller shall fully comply with all applicable laws, rules, regulations, codes, orders, conventions, ordinances and standards of the country(ies) of origin and destination or that relate to the manufacture, labeling, transportation, exportation, licensing, approval or certification of the Contract Products or performance of the Contract Work, including but not limited to, those relating to environmental matters; wages, hours and conditions of employment; subcontractor selection; employment discrimination; occupational health and safety; export controls; anti-



corruption; and motor vehicle safety. Seller shall defend, indemnify and hold Buyer harmless from any and all claims and liabilities resulting from any failure to so comply as set forth in Section 11 hereof (Indemnity).

6. Confidentiality of Data and Information

Information furnished by Buyer and identified by Buyer as subject to restricted access or disclosure shall be and remain property of Buyer; shall not be duplicated, used or disclosed to third parties except for the purpose and to the extent necessary for the performance of the Contract; and upon completion of the Contract, shall be delivered to Buyer or destroyed by Seller as Buyer specifies (including all copies). Seller shall take all reasonable precautions to maintain in confidence all such information, including the imposition upon any person, firm, or corporation to whom disclosure of such information is made in the course of performance under the Contract of conditions relating to the confidential treatment thereof to the same effect as those imposed upon Seller herein. The obligations imposed upon Seller herein shall not apply to information that is already in Seller's possession after being lawfully obtained by Seller from another source, or has come into the public domain other than as a result of breach of Seller's obligations of confidentiality under the Contract.

7. Contract Acceptance, Integration and Modification

- (a) Seller shall strictly perform the Contract. Any performance whatsoever by Seller of any portion of the Contract, without regard to its value, shall constitute complete acceptance of the Contract, including without limitation, these Terms and Conditions. A signed acknowledgement of these Terms and Conditions is not a condition precedent to the full enforceability of the Contract, including these Terms and Conditions.
- (b) Except as otherwise agreed by Buyer in writing, any terms or conditions proposed by Seller in connection with Seller's acceptance of the Contract that add to, vary from, or conflict with these Terms and Conditions or any other terms and conditions of the Contract, are hereby objected to and shall be void.
- (c) Except for any Lease and Services Agreement between the parties or with Buyer's affiliate, the Contract constitutes the entire agreement between the parties and supersedes all previous communications, representations or agreements, whether oral or written, between the parties with respect to the Contract Products or Contract Work, and no terms or conditions other than those set forth in the Contract shall apply to the supply of the Contract Products or Contract Work. Seller represents that, in entering the Contract, it does not rely on any previous oral or implied representation, inducement, or understanding of any kind. The Contract shall not be varied, supplemented, qualified or interpreted by any prior course of dealing, usage of trade or course of performance between Seller and Buyer, and shall be interpreted without regard to which party is deemed to have drafted the Contract.
- (d) Subject to Buyer's right to issue change order directives as set forth in Section 4 above, the Contract may be amended or modified only by a written instrument executed by authorized representatives of both Buyer and Seller.
- (e) The Contract shall be governed by and interpreted under the laws of the Commonwealth of Virginia, excluding Virginia's conflict or choice of law rules. The rights and remedies



reserved to Buyer in the Contract are cumulative with, and in addition to, all other or further rights and remedies provided in law or equity.

- (f) If any one or more of the provisions of the Contract is found to be invalid, the remaining provisions shall not be affected, and the Contract shall be interpreted as if not containing such provisions. Paragraph and section headings are for administrative convenience only and shall not be used to interpret the Contract.

8. Disputes

- (a) Any dispute between Buyer and Seller in connection with, relating to or arising out of the Contract, the supply of the Contract Products or Contract Work, or the dealings between the parties with respect to any of the foregoing, shall be resolved by means of the following procedures:
 - (i) The dispute initially shall be referred to each party's senior executive with responsibility for the Contract, who shall negotiate in good faith to reach a resolution of the dispute.
 - (ii) In the absence of a resolution being achieved within thirty (30) days after either Buyer or Seller offers to conduct the negotiations in subparagraph (a)(i), above, either party may take appropriate action pursuant to subparagraph (b) hereof.
- (b) Any dispute not resolved in accordance with subparagraph (a), above, may be resolved by any lawful means, including litigation, which shall be initiated by either party in a federal or state court of competent jurisdiction sitting in Norfolk or Newport News, Virginia, and both parties consent to such exclusive jurisdiction and venue of such courts.
- (c) Notwithstanding any provision of the Contract to the contrary, if a decision on any question arising under, out of, or relating to the Prime Contract is made by the Customer, and such question also arises under, out of, or relating to the Contract, said decision (if binding upon Buyer under the Prime Contract) shall in turn be binding upon Buyer and Seller with respect to such question under the Contract; provided, however, that if Seller disagrees with any such decision made by the Customer, and if Buyer has the right but elects not to contest Customer's decision under the Contract Disputes Act of 1978, Seller shall have the right, at Seller's sole expense, to contest the Customer's decision in the name of Buyer, provided that Buyer has determined in writing that Seller's claim is truthful and provided further, that notice of Seller's intention to contest the Customer's decision is furnished to Buyer in writing within ten (10) days from the date on which Seller receives notice of such Customer decision and Buyer's election not to contest such decision. If Buyer elects not to contest any such decision where it is Buyer's right to do so, Buyer agrees to notify Seller within ten (10) days after receipt of such decision and to provide reasonable assistance to Seller in its prosecution of Seller's claim. If Buyer elects to contest any such decision of the Customer, Buyer agrees to promptly furnish Seller with a copy of the appeal or other initial pleadings. Any decision or judgment rendered pursuant to the Contract Disputes Act of 1978 (as amended), if binding upon Buyer, shall, in turn, be binding upon Seller. All costs of pursuing Seller's claim shall be paid by Seller. In no event shall Seller acquire



any direct claim or direct cause of action against the Customer except as approved by the Buyer pursuant to this clause or as otherwise authorized by law.

- (d) Until final resolution of any dispute hereunder, Seller shall diligently proceed with the performance of the Contract as directed by Buyer.

9. Export Control Compliance and Cooperation

Seller shall comply with the Export Administration Regulations (EAR), the International Traffic in Arms Regulations (ITAR) and the regulations issued by the Office of Foreign Assets Control, together with all other applicable laws, regulations and orders that control the export of dual-use and military-related items and associated technology.

- (a) Seller represents and warrants that, if it manufactures or exports defense articles or furnishes defense services, it is registered with the Office of Defense Trade Controls (DTC), Bureau of Political-Military Affairs, Department of State.
- (b) Seller shall provide to Buyer, upon request, all licenses or other approvals obtained by Seller in compliance with the above requirements, redacted if and to the extent necessary to prevent the disclosure of Seller's proprietary data.

10. Force Majeure

Seller shall provide written notice to Buyer of an event of Force Majeure (defined below) no later than three (3) days after Seller has reason to know of the existence of the event of Force Majeure. This notice shall include the estimated impact on the performance or delivery schedule. No extension of Seller's delivery or performance schedule shall be considered unless Buyer has received this notice. Seller shall likewise immediately provide notice to Buyer when the event of Force Majeure has ended, and such notice shall include a statement of the amount of delay in the performance or delivery schedule caused by such event. An event of "Force Majeure" shall mean any event or occurrence beyond the reasonable control and without the fault or negligence of either party, which by exercise of due diligence, such party would not have been able to avoid or overcome. Such events and occurrences may include, by way of example, natural disasters, floods, fires, explosions, riots, wars, sabotage, power failures, and acts of government. Failures or delays caused by an event of Force Majeure are not compensable under the Contract.

11. Indemnity

Seller shall defend, indemnify, save and hold Buyer, its directors, officers, managers, members, shareholders, agents and employees, free and harmless from and against all claims, demands, causes of action, damages, fines, penalties, and liabilities of any nature, and all reasonable costs and expenses incurred in connection therewith, including, but not limited to, reasonable attorneys' fees, (collectively, "Liabilities") arising out of or relating to the supply of the Contract Products, acts or omissions in connection with the performance of the Contract Work, Seller's breach of the Contract, any negligence or more culpable conduct by Seller or Seller's subcontractors, or any defects, errors, acts or omission in respect of Contract Products or the Contract Work including without limitation Liabilities arising out of, relating to or resulting in (i) death or injury to any person or persons (including, but not limited to, agents and employees of Buyer, Seller or its subcontractors); (ii) damage to or loss of any property, (iii) claims by Seller's employees or Seller's subcontractors or their employees for wages, benefits and other



compensation; and by claims by governmental agencies or others for taxes or contributions; (iv) damage or loss to any vessel on or with respect to which the Contract Products are used or the Control Work is performed; (v) infringement of any third party intellectual property rights; (vi) pollution or contamination of the environment; (viii) Seller's failure to pay its subcontractors or suppliers, (viii) any breach or default of Buyer under the Prime Contract; or (ix) any claim brought by Customer or other third party against Buyer. This Section 11 (Indemnity) survives termination of the Contract. Buyer may assign its right to be indemnified hereunder.

12. Independent Contractor

Seller is an independent contractor. Seller assumes full and sole responsibility for the payment of all compensation, expenses, benefits (including, but not limited to, vacation pay, overtime, training, travel allowances and reimbursements, workers' compensation, pension and/or retirement, medical and/or health benefits), state and federal income tax, unemployment insurance, social security, disability insurance, and other applicable withholdings applicable to Seller's and Seller's subcontractors' employees. Seller shall indemnify Buyer against any and all claims brought against Buyer by any employees or contractors of Seller or any of Seller's subcontractors relating to any such matter.

13. Inspection

The Contract Products and the Contract Work, including any documents, materials, equipment, and facilities relating thereto, shall at all times be available for inspection and testing by Buyer. Buyer's inspection or failure to inspect shall not relieve Seller of any obligations or liability under the Contract, nor shall it constitute acceptance of the Contract Products or the Contract Work. Provided that Buyer gives Seller written notice of any nonconforming Contract Products or Contract Work within thirty (30) days following Buyer's discovery of the nonconformance, Seller shall repair, re-perform or replace any nonconforming Contract Products or Contract Work at Seller's expense within ten (10) days following receipt of Buyer's written notice of nonconformance. If Seller has not repaired, re-performed or replaced such nonconforming Contract Products or Contract Work within the 10-day period, Buyer may repair, re-perform or replace such nonconforming Contract Products or Contract Work at Seller's expense, which costs shall be due and payable by Seller within ten (10) days following receipt of Buyer's invoice (failing which Seller shall pay interest on the unpaid invoice amount at the rate of one percent (1%) per month until paid). Alternatively, Buyer may recover and set off such costs (and interest) from and against any payments coming due to Seller in respect of Seller's invoices for Contract Work or Contract Products.

14. Insurance

See the "Insurance Requirements" published on the Buyer's website at the www.jaxmachine.com/suppliers/, which are incorporated by reference herein. Seller shall comply with the Insurance Requirements.

15. Invoices, Payment and Taxes

(a) Invoices shall include: the Purchase Order number; the invoice number; description of all Contract Products delivered and all Contract Work performed; comprehensive, itemized prices; prior payments received; terms; and discounts. Unless otherwise provided, any cash discount period shall commence on the date of receipt of Seller's invoice. Incorrect



and incomplete invoices shall be returned for correction and shall delay the commencement of Buyer's obligation to pay for the Contract Products and/or Contract Work and any discount period, until a corrected invoice is received by Buyer. Buyer shall pay Seller only for conforming Contract Products and Contract Work, and Buyer shall have the right to withhold payment for any failure of Seller to strictly comply with the Contract.

- (b) Unless otherwise provided in the Contract, payment shall be net thirty (30) days from the latest of the following: (i) Buyer's receipt of a proper invoice or (ii) actual delivery of the Contract Products or performance of the Contract Work. Payment shall be deemed to have been made as of the date of mailing payment or electronic funds transfer.
- (c) Unless otherwise specified, the Contract Price includes all applicable United States, state, and local taxes, duties, tariffs, and similar fees imposed by any governmental authority.
- (d) Payment shall not be construed as acceptance of the Contract Work or Contract Products or waiver of any term or condition of the Contract.
- (e) To be timely, all invoices must be received by Buyer within thirty (30) days after delivery of the Contract Products or completion of the Contract Work. Invoices received later than sixty (60) days after delivery of the Contract Products or completion of the Contract Work are rejected and void and Seller hereby waives the right to payment of these invoices.

16. Liens

Seller, on behalf itself, its subcontractors, suppliers and vendors, at whatever tier, hereby waives and releases any and all rights to file or record a mechanics' lien or any other type of lien, charge or encumbrance against Buyer or any real or personal property, or interest therein, owned or leased by Buyer in connection with of its business. Buyer shall have the right to withhold any payment until Seller shall furnish, as requested, current written releases and waivers of all rights to claim or file liens, properly executed by Seller and its subcontractors, with respect to Contract Products or Contract Work for which payment has been received from Buyer. Seller's acceptance of full payment of the Contract Price shall constitute satisfaction in full and release of all claims or demands of Seller and its subcontractors against Buyer arising out of or connected with the Contract. If Seller fails or neglects to pay any admitted claims for labor or material, Buyer may pay such claims and deduct such payments from funds due Seller hereunder or, if such claims be disputed, withhold sufficient funds to pay such claims until they are resolved. Seller shall immediately discharge or cause to be discharged any lien, charge or encumbrance of any kind, which at any time is filed against the property owned or leased by Buyer with respect to, or arising from, the Contract Products or the Contract Work. If any such lien, charge or encumbrance is not immediately discharged, Buyer may discharge or cause to be discharged such lien, charge or encumbrance at the expense of Seller and recover such expense by invoicing Seller or by setting off and backcharging such expense pursuant to Section 33 (Set-Offs/Backcharges) below.

17. New Materials and Authorized Sources

- (a) Seller represents and warrants to Buyer that the Contract Products, and all parts and components thereof, furnished under the Contract shall be new (not used or reconditioned) unless Seller requests from Buyer in writing permission to furnish used or reconditioned



Contract Products, or parts or components thereof, and obtains advanced written authorization from Buyer to include such used or reconditioned Contract Products, or parts or components thereof.

- (b) Except as otherwise authorized by Buyer in writing, Seller shall purchase Contract Products or components thereof only: (i) directly from the OCM or OEM; or (ii) directly from a distributor that purchases directly from the OCM or OEM and is authorized by the OCM or OEM to distribute such Company Products.
- (c) Upon Buyer's request, Seller shall furnish full information concerning the origin, quality and condition of the components of the Contract Products.

18. Non-waiver

Buyer's waiver of any provision of the Contract shall not constitute waiver of that provision in any later circumstances or waiver of any other Contract provision.

19. Notices

Required notices shall be in writing and shall be deemed effective when served personally; delivered by courier service (with proof of delivery); successfully transmitted by electronic mail (with confirmation of receipt and delivery of a hard copy by other permitted means); or deposited in the U.S. Mail, first class postage prepaid, addressed as follows:

To Seller:

As indicated on face of the Purchase Order

To Buyer:

Jacksonville Machine and Repair, L.L.C.
1901 Hill St.
Jacksonville, FL 32202
Attn: Operations Manager
Email: info@jaxmachine.com

20. Order of Precedence

In the event of any conflict or inconsistency between the provisions of the Contract, wherever appearing, any conflict or inconsistency shall be resolved by giving precedence to the following documents in the order below:

- (a) The provisions on the face of the Purchase Order;
- (b) These Terms and Conditions of Purchase;
- (c) The Specifications;
- (d) The Prime Contract; and
- (e) Other documents incorporated by reference into the Contract.

21. Packing and Shipment

Deliveries of Contract Products shall be made as specified, without additional charge for boxing,



crating, carting or storage, unless otherwise specified and shall meet the following requirements:

- (a) In accordance with the requirements of common carriers, Contract Products shall be suitably packaged to secure the lowest transportation costs and to ensure against damage from transportation or weather.
- (b) Contract Products must be reasonably and adequately preserved and protected for transportation and storage. The Purchase Order number and applicable Purchase Order line item number(s) must be plainly marked on all packages, bills of lading and invoices delivered in connection with the Contract Products.
- (c) Packing lists shall accompany each shipment listing all Contract Products included in the shipment. Buyer's count or weight shall be final and conclusive for shipments not accompanied by packing lists.

22. Pricing

Unless otherwise specified in the Contract, the Contract Price agreed to by the parties shall be a firm fixed price set forth in the Purchase Order, and Seller shall be wholly responsible for providing the Contract Work and/or Contract Products at the agreed upon Contract Price.

23. Property Rights in the Contract Work

All data, designs, drawings, materials, inventions, tooling, specifications, software and other work product prepared or developed by Seller, and paid for by Buyer, in connection with Seller's performance of the Contract Work or Seller's manufacture of the Contract Products under the Contract ("Work Product") shall be Buyer's exclusive property and shall be provided to Buyer prior to completion or termination of the Contract, or upon Buyer's earlier request. Seller hereby irrevocably assigns to Buyer all of Seller's right, title and interest in and to any and all of the Work Product, including without limitation all rights therein arising under copyright, trademark, patent, trade secret or any other state or federal intellectual property law or doctrine.

24. Quality Control

Seller shall provide and maintain a commercially reasonable quality control system that complies with the quality control requirements of the Contract. Records of all quality control inspection work by Seller shall be kept complete and available to Buyer.

25. Remedies

All remedies of Buyer are cumulative, and the exercise of a remedy conferred by the Contract or in law or equity shall not preclude the exercise of any other remedy under the Contract or in law or equity.

26. Conformity of Contract Products

- (a) For Contract Products, if the words "or equal" are used in the Contract or specifications, proposed "equals" must be approved by Buyer in its sole discretion in writing prior to Seller delivering the same to Buyer.
- (b) Seller shall provide all necessary material, equipment and labor to supply the Contract Products and/or Contract Work in strict conformity with the Specifications. Seller shall make no changes in the Specifications without Buyer's prior written consent.



27. Standard of Performance

- (a) Seller shall perform the Contract Work using commercially reasonable diligence, exercising its best judgment, and using the care and skill ordinarily used by reputable similar persons or entities in providing the same or similar services under similar circumstances. Seller is on notice that Buyer is relying on the care, skill, diligence and judgment exercised by Seller in performing the Contract Work.
- (b) Seller shall be responsible to Buyer for acts and omissions of Seller's employees, subcontractors, and their agents and employees, and other persons, including engineers, and other design professionals, performing any portion of Seller's obligations under the Contract.
- (c) If Seller subcontracts any portion of the Contract Work, Seller shall provide Buyer a description the scope of the subcontracted Contract Work and the name and address of such subcontractor prior to executing such subcontract. Buyer may prohibit the utilization of such proposed subcontractor based on Buyer's independent evaluation of the proposed subcontractor's qualifications.
- (d) Design services required as part of the Contract Work shall be performed by qualified engineers and other design professionals, who are properly licensed.

28. Warranty

Seller expressly warrants, for a warranty period beginning upon acceptance by Buyer of any Contract Work or Contract Products and continuing until the later of the Customer's final acceptance of the Contract Work/Contract Products or Buyer's final completion of the Prime Contract, that the Contract Work and the Contract Products shall conform to the Contract, including the applicable standard of performance and Specifications, and shall be free from defects in design, material, workmanship and fabrication. If any nonconformities or defects are discovered in the Contract Work or the Contract Products within the warranty period (and which are not caused solely by Buyer), Buyer may give Seller written notice thereof prior to the end of the warranty period and Seller shall repair, replace or re-perform any nonconforming or defective Contract Work or Contract Products at Seller's sole expense within ten (10) days following receipt of Buyer's written notice. If Seller has not repaired, replaced or re-performed such nonconforming or defective Contract Work or Contract Products within the 10-day period, Buyer may repair, replace or re-perform such nonconforming or defective Contract Work or Contract Products at Seller's expense, which costs shall be due and payable by Seller within ten (10) days following receipt of Buyer's invoice (failing which Seller shall pay interest on the unpaid invoice amount at the rate of one percent (1%) per month until paid). Alternatively, Buyer may recover and set off such costs (and interest) from and against any amounts coming due to Seller in respect of Seller's invoices for Contract Work or Contract Products.

29. Termination

- (a) Buyer may terminate the Contract for default if Seller: fails to make adequate progress in the execution of the Contract Work to ensure adherence to the agreed-upon schedule, fails to deliver conforming Contract Products or Contract Work in a timely manner; ceases performance prior to completion of the Contract; evidences insolvency or financial



inability to perform. Provided, however, except as otherwise provided herein, Buyer shall not proceed with such termination for default if Seller cures the default within ten (10) days following receipt of written notice of such default from Buyer; provided, further, Seller shall not have the right to cure the same type of default more than once in any 12-month period.

- (b) In the event Buyer terminates the Contract in whole or in part for default by Seller, Buyer may procure, upon such terms and in such manner as Buyer may reasonably determine, services similar to the Contract Work and/or products similar to the Contract Products specified herein, and Seller shall be liable to Buyer for reasonable excess costs for such similar services and/or products. If the Contract is terminated only in part, Seller shall continue the performance of the Contract to the extent not terminated.
- (c) If, after Buyer's termination of the Contract for default it is determined that Seller was not in default, or that the default was cured in a timely manner, such termination shall be deemed to be a termination for convenience as set forth in clause (d) below.
- (d) Buyer may terminate all or part of the Contract for its convenience by giving written notice to Seller, in which event Buyer shall compensate Seller for the Contract Work or Contract Products actually furnished to Buyer up to the date of termination. 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 Contract Price for those conforming Contract Products actually delivered or that conforming Contract Work actually performed up to the date of termination. If under the Prime Contract, FAR 52.249-2 (Termination for Convenience by the Government (Fixed Price)) applies under the circumstances, Seller shall submit any final termination settlement proposal to Buyer within thirty (30) days from the effective date of termination.
- (e) Upon termination of the Contract for whatever reason, Seller shall immediately cease performance of the Contract Work and production of the Contract Products; shall immediately return to Buyer all information, materials and documents acquired from Buyer; and shall immediately provide to Buyer all information, materials and documents prepared or developed by Seller in connection with performance of the Contract. Buyer's rights and remedies herein shall survive any termination of the Contract.

30. Third Party Rights

The Contract is intended solely for the benefit of Buyer and Seller and is not intended for the use or benefit of any other party. Except as set forth in Section 11, nothing contained in the Contract is intended to make any person or entity that is not a signatory to the Contract a third party beneficiary of any right created by the Contract.

31. Time of Performance

Seller shall perform the Contract in a diligent manner and in no event later than the time(s) specified on the face of the Purchase Order. Time of performance specified in the Contract is of the essence of the Contract. If at any time Seller is failing to make sufficient progress in order that its performance be completed in accordance with the requirements of the Contract, Seller shall, within ten (10) days of a written request by Buyer, assure timely performance and



represent to Buyer in writing Seller's best completion date. If the represented completion date is not within a reasonable period following the original time for completion of performance of the Contract (and in all events within a time period sufficient for Buyer to perform the Prime Contract in a timely manner), Buyer may terminate the Contract for default in accordance Section 29 (Termination). Buyer shall further have the right, but not the duty, and without waiver of any other rights and remedies that it may have, to further extend the time for completion of performance. The new date for completion of performance shall be final, of the essence of the Contract, and subject to further change only in accordance with the Contract. No extension of the time for completion of performance shall impair or modify any rights of Buyer to liquidated damages for delay set forth in the Contract.

32. Notification by Seller; Corrective Action

- (a) Seller shall notify Buyer of any facts or occurrence that may increase the cost of, or time required for, performance of the Contract or which may cause the Contract Work or Contract Products to fail to conform to the Contract. Seller shall provide such notification within three (3) days following the discovery of such facts or occurrence.
- (b) Buyer may at any time issue to Seller a Corrective Action Request that identifies any actual or potential failure of Seller to perform its obligations under the Contract, requesting from Seller a factual explanation of the actual or potential failure, a reasonably detailed description of Seller's proposed corrective action, and a schedule of Seller's corrective performance. Seller shall provide a response in writing to any Corrective Action Request within ten (10) days of receipt.

33. Set Offs/Backcharges

Buyer may in addition to any other remedies, including other amounts to be retained under the Contract, retain from any sums otherwise owing to Seller amounts sufficient to cover Buyer's full costs of any of the following:

- (a) Seller's failure to comply with any provision of the Contract or Seller's acts or omissions in the performance of any part of the Contract, including, but not limited to, violation of any applicable law, order, rule or regulation, including those regarding safety, hazardous materials or environmental requirements;
- (b) Correction of defective or nonconforming Contract Work or Contract Products by redesign, repair, rework or replacement or other appropriate means when Seller indicates or demonstrates that it is unable or unwilling to proceed with correction action in accordance with the schedule set forth in the Prime Contract; and/or
- (c) Buyer may, in addition to any other amounts to be retained hereunder, retain from any sums otherwise owing to Seller amounts sufficient to cover Buyer's full costs of any of the following backcharge items:
 - (i) Incurred labor costs, including all payroll taxes and fringe benefits;
 - (ii) Incurred net delivered material costs;



- (iii) Incurred lower-tier supplier or subcontractor costs directly related to performing the corrective action;
- (iv) Acceleration costs beyond those costs normally incurred in the course of Contract performance when required to meet the Prime Contract schedule;
- (v) Overhead and G&A expense allocable to the work performed by Buyer; and
- (vi) Buyer's profit (e.g., an appropriate profit (fee) as defined in FAR 15.404-4, if Buyer is working under a U.S. Government Prime Contract referenced in the Contract).

34. Access to Shipyard and/or Ship

Only United States citizens are eligible for access to U.S. Navy vessels. Seller warrants that, unless prior approval is obtained for a non-U.S. citizen to have such access, only U.S. citizens shall have access to U.S. Navy vessels for performance of the Contract Work.

35. Limitation of Liability

Buyer's total aggregate liability to Seller, whether at law, in equity, in admiralty or otherwise, whether in contract, in tort or otherwise in any way arising out of or resulting from or relating to the Contract, the Company Products and/or the Contract Work shall in no event exceed the Contract Price; and Seller unconditionally releases and discharges Buyer from any liability in excess thereof and from any liability not expressly assumed by Buyer under the Contract.

36. Solicitation of Employees

Seller shall neither solicit for employment nor hire any Buyer employee prior to the expiration of one (1) year following the final completion of the Contract.

37. Buyer's Medical Treatment, if Seller operates within Buyer's Facilities

Buyer does not have either medical personnel or medical facilities. In the event Buyer's Safety Department furnishes medical treatment to Seller's employees, subcontractors or suppliers, Seller shall defend, indemnify and hold Buyer harmless as set forth in Section 11 (Indemnity).

38. Use of Buyer's Equipment

Seller shall not use, or permit any third party to use, any of Buyer's equipment, tools, devices, apparatus or property ("Buyer's Equipment") without Buyer's express, written consent. If Buyer so consents, Seller shall ensure that only qualified properly trained persons use Buyer's Equipment and those persons obey all of Buyer's instructions, procedures and requirements with respect to such use and all applicable federal, state and local laws and regulations. If furnished, Buyer's Equipment is provided "as-is," with no warranty, express or implied, as to its merchantability, fitness for any particular purpose, current condition, or prior maintenance history. Seller is responsible for all risk of loss of or damage to Buyer's Equipment used by Seller, or any of its subcontractors.

39. Clean-up of Work Site, if Seller operates within Buyer's Facilities

During the performance of the Contract, Seller shall ensure that its work area is free of debris, garbage or other waste material at the end of every shift. Upon completion of the Contract Work or earlier termination of the Contract Work, Seller shall remove all of Seller's tools and



equipment from Buyer's facilities. Seller shall also dispose of all debris, garbage, or other waste material, including excess materials, scrap and equipment used or generated by Seller, its subcontractors or suppliers in performance of the Contract, in the appropriate receptacles at Buyer's facilities, or as otherwise specified in the Contract. Seller shall be liable for and shall pay to Buyer, upon demand, all costs of removal or disposal of Seller's tools and equipment, debris, garbage, waste materials, excess materials, scrap and equipment used or generated in performance of this Contract not so removed.

40. Control Over Weekend and Holiday Performance, if Seller operates within Buyer's Facilities

Buyer reserves the right to declare by written notice periods of "no weekend work" or "no holiday work" at Buyer's facilities. Seller shall ensure that no Contract Work is performed in Buyer's facilities, and that all of Seller's and Seller's suppliers' and subcontractors' employees are kept out of Buyer's facilities on all affected weekends and holidays during such declared periods of "no weekend work" and "no holiday work".

41. Environmental Incident, if Seller Operates Within Buyer's Facilities

(a) Environmental, Safety and Health (ESH) Policy if Seller Operates Within Buyer's Facilities

- (i) Seller must communicate the Buyer's ESH policy and all applicable environmental requirements to workers who will perform work on behalf of Seller before they perform such work or arrive at any of Buyer's facilities. This communication must be documented by Seller and be available upon request from the Buyer.

(b) Environmental Incident, if Seller Operates Within Buyer's Facilities

- (i) Seller shall comply with Buyer's written environmental policies, procedures and requirements, and with all United States Federal, state and local environmental laws and regulations, including without limitation, those regarding the use of any hazardous substances, and shall be responsible for all hazardous waste (both as defined by United States and Virginia law) generated by Seller's employees and subcontractors during the performance of the Contract. The environmental policies and procedures are available from the Buyer's ESH Director at jkjos@ecrfab.com. Seller shall inform Buyer of all hazardous waste generated at Buyer's facilities and shall cooperate with Buyer in disposing of such waste as directed by Buyer. Seller shall bring to the immediate notice of Buyer any risk to the environment which Seller believes has not been adequately assessed and is not under adequate control, so that Buyer can take appropriate action to prevent potential environmental harm or other losses. Notwithstanding any provision herein to the contrary, any failure to perform these obligations shall be a default under this Contract and shall give rise to Buyer's right to terminate the Contract for default immediately, without further notice or any cure period. Seller shall be solely responsible for the consequences of its failure to perform the foregoing obligations and shall defend, indemnify and hold Buyer harmless as set forth in the Indemnity Section.



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- A. Seller's environmental management system or program shall incorporate measures which reasonably demonstrate that its employees are competent to perform their tasks, with due regard for the need to protect the environment and ensure that hazards to the environment have been eliminated, where possible, or are being controlled through formal planning methods and procedures.
- B. If Seller causes, to any extent, an actual or potential spill or release of fuel, oils or other substances or materials hazardous to the environment ("Environmental Incident"), Buyer's On-Scene Emergency Coordinator may respond to such an Environmental Incident. In any such Environmental Incident, Seller acknowledges that Buyer will incur costs and expenses to respond to such Environmental Incident. The Seller agrees to pay all of the Buyer's costs incurred in responding to such an Environmental Incident, including Buyer's labor costs, out-of-pocket expenses, and any fines or penalties of remediation resulting from the Environmental Incident. Buyer's recovery under this Section 41 and shall not impair or preclude Buyer's indemnification rights as set forth in Section 11 (Indemnity). Buyer shall have the right to offset or reduce any payments owing to Seller to recover these costs and expenses.

42. **Furnished Property**

- (a) Buyer may provide items of property ("Furnished Property") to Seller for Seller's benefit for use under the Contract. Seller shall hold the Furnished Property on a bailment basis. Title to the Furnished Property shall remain with Buyer. Seller shall not sell, lend, rent, encumber, pledge, lease, transfer or otherwise dispose of the Furnished Property.
- (b) Seller bears the risk of loss and damage to the Furnished Property. Seller shall insure the Furnished Property with all-risk coverage, naming Buyer as loss payee. Buyer may enter Seller's premises at all reasonable times on a not-to-interfere basis to inspect the Furnished Property and Seller's records with respect thereto. At Buyer's request, and/or upon expiration, completion or termination of the Contract, Seller shall submit to Buyer, in an acceptable form, inventory lists of the Furnished Property and shall deliver the Furnished Property to Buyer, or Customer, as directed. If Seller does not release and deliver any Furnished Property as directed by Buyer, Buyer may obtain a writ of possession without notice, without posting a bond, and may enter Seller's premises without legal process to take immediate possession of the Furnished Property.
- (c) BUYER HAS NOT MADE AND DOES NOT MAKE ANY WARRANTY OR REPRESENTATION WHATSOEVER, EITHER EXPRESS OR IMPLIED, AS TO THE FITNESS, CONDITION, MERCHANTABILITY, DESIGN OR OPERATION OF THE FURNISHED PROPERTY OR ITS FITNESS FOR ANY PARTICULAR PURPOSE. Buyer shall not be liable to Seller for any loss, damage, injury or expense of any kind or nature, caused directly or indirectly by the Furnished Property, including without limitation, any loss of anticipatory damages, profits, or any other indirect, special or consequential damages; however, Buyer shall be liable to Seller only if the cause of the damage is adjudged by a court of competent jurisdiction to be due solely to Buyer's gross negligence or willful misconduct. For the avoidance of doubt, Buyer shall not be liable or



responsible for any loss, injury, damage or expense arising out of or resulting from defects in material or workmanship attributable to an OEM or OCM in respect of Furnished Property.

- (d) Seller shall not use, or permit any third party to use, the Furnished Property without Buyer's express written consent. Seller shall ensure that only qualified, properly trained persons use the Furnished Property and that such persons obey Buyer's applicable use procedures and requirements and applicable United States, state and local laws and regulations. The Furnished Property is provided "AS-IS," and in conjunction with Section 11 (Indemnity), Seller shall indemnify Buyer against all loss or damage to the Furnished Property used by Seller.
- (e) In the event Buyer provides Furnished Property of the Customer ("GFP") to Seller in support of the Contract, the applicable FAR/DFARS clause shall apply to such GFP. Seller shall be strictly accountable for any GFP that comes into the control of Seller, including, but not limited to, any material removed from any vessel, oils or fuels. Seller shall protect, preserve and maintain records of all such property in conformance with the requirements of FAR Subpart 45.5. Representatives of Seller picking up GFP or other government property are required to have proper identification and proof of employment by the Seller, as well as be on the Seller's list of authorized people to pick up GFP ("Authorized Personnel"). A list of Seller's authorized personnel must be submitted to Buyers' GFM Coordinator prior to material being issued.

43. Gratuities and Kickbacks

No gratuities (in the form of entertainment, gifts or otherwise) or kickbacks shall be offered or given by Seller to any employee of Buyer or its affiliate with a view toward securing favorable treatment as a subcontractor or supplier.

44. Littering, if Seller Operates Within Buyer's Facilities

- (a) As a result of Congress approving an international agreement (ANNEX 5 TO THE MARPOL Convention), effective 30 May 1989, the U.S. Coast Guard will levy a fine of up to \$25,000 against the individual and/or the employer of the individual caught disposing of any refuse into the water.
- (b) Seller shall be fully responsible for the costs or omissions of Seller's employees' while the Seller is working on Buyer's owned or leased property.

45. Rights for Audit, if Seller works under a Government Prime Contract referenced on purchase order

Seller agrees to permit authorized Buyer and Customer representatives to interview Seller's personnel, review Seller's accounting, property and cost control systems, and inspect books, records, accounts, and other documents relating solely to the Contract, and make copies thereof, so as to enable the Buyer and Customer to perform cost analysis as necessary to audit and verify the completeness and accuracy of information provided by Seller to Buyer. Such access shall occur at reasonable times and with reasonable notice, during the performance of the Contract and for a period of not less than three (3) years following final payment under the Prime Contract



or such longer period of time required by statute or by any clause in the Prime Contract.

46. Safety, if Seller Operates Within Buyer's Facilities

- (a) The safety, conduct and health of all persons employed by Seller or its subcontractors and suppliers shall be the sole responsibility of Seller. Seller shall take all reasonable precautions to protect the health and safety of such employees and others and to minimize danger from all hazards to life and property. Seller shall comply with all applicable United States Federal, state, and local laws and regulations, including without limitation health, safety and fire protection laws and regulations in force at the time of award of the Contract and as modified during the life of the Contract. Seller shall also comply with Buyer's health and safety policies and procedures available at Buyer's ESH Department. Seller is solely responsible for informing itself of said laws (Federal, State, and Local), regulations, policies and procedures, and training its employees. Said training shall be documented by the Seller and made available upon request from the Buyer.
- (b) Unless otherwise addressed in the Contract, the Buyer shall have the right, acting reasonably, to require the Seller to reassign and/or remove any of Seller's or Seller's subcontractors' or suppliers' employees immediately upon Buyer's request should such person's conduct increase Buyer's good-faith health and safety concerns. (This requirement includes any on-going operations at Buyer's facilities and in conjunction with Buyer's rights herein).
- (c) Buyer's health and safety policies and procedures shall be made available to the Seller's ESH Department. Any failure by Seller or any of its subcontractors or suppliers to comply with any such health and safety policies, procedures, laws or regulations shall constitute a default. Under no circumstances shall compliance with Buyer's safety policies and procedures, alone, be considered complete satisfaction of the requirements of this Section.
- (d) Seller's occupational health and safety management system shall incorporate measures which demonstrate that its employees are competent to perform their tasks safely and ensure that hazards to health and safety have been eliminated, where possible, or are being controlled through formal planning methods and procedures. Further, Buyer's meetings concerning any aspect of subcontractor health and safety must be attended by at least one of Seller's managerial/health and safety staff members for the purpose of ensuring that proper transmission and direction of new safety rules, or current rules, are being communicated, understood, and followed by all of Seller's employees when they are in Buyer's facilities.
- (e) Seller shall complete the following prior to commencement of the Contract Work: (i) Seller shall provide to Buyer's ESH Department the name, telephone number and title or position of the Seller's Health and Safety Representative, (ii) Seller's Safety Representative, together with equivalent representatives of Seller's subcontractors or suppliers who are expected to perform at Buyer's facilities, shall meet with Buyer's Health and Safety Manager or designee to review applicable safety policies and procedures, (iii) Seller shall review and, when applicable, complete Buyer's Subcontractor Check-In Form, (iv) Seller shall submit for approval by Buyer's ESH Department a copy of all Safety Data Sheets ("SDS") for all chemical compounds that Seller anticipates using in performing Contract



Work at Buyer's facilities, and (v) Seller's designated managerial/safety leadership, who will direct safety compliance in Buyer's facilities shall receive Buyer's subcontractor safety training and complete the documentation acknowledging Seller's responsibilities with regard to safety, health, and fire protection, and (vi) Seller shall demonstrate compliance with the requirements of 29 CFR 1910.1200.

- (f) Seller represents and warrants that all equipment used by Seller to perform any Contract Work at Buyer's facilities shall conform to all federal, state, and local safety, health, and fire protection standards.
- (g) Seller represents and warrants that Seller's employees, subcontractors' and suppliers' employees performing Contract Work at Buyer's facilities are properly trained in all Federal, State, and local health, safety and fire protection laws and regulations and Buyer's health and safety policies and procedures, applicable to the Contract Work.
- (h) Seller shall report all recordable occupational injuries or illnesses occurring at Buyer's facilities during performance of the Contract Work in accordance with the following procedures: (i) Seller shall make an initial report to Buyer's ESH Department as soon as it is known to Seller. This report shall consist of the name of the injured person, place of occurrence, nature of the injury, and a description of the incident. This report can be made by personal visit to Buyer's ESH Department, and (ii) Seller shall submit a written report in the form of a formal accident investigation report, within twenty-four (24) hours of the incident. This report shall be delivered to Buyer's ESH Department.
- (i) Seller shall immediately notify Buyer's ESH Department, in writing, upon receiving notice of any inspection from either United States OSHA or Virginia OSH representatives, of their work area at Buyer's facilities. In the event of such an inspection, Seller shall permit Buyer's personnel to be present at any opening conference, the inspection, and any closing conference, and Seller shall provide Buyer with copies of all correspondence, including citations, received from OSHA or Virginia OSH.
- (j) If, in Buyer's sole discretion, Seller fails to comply with this Section 46 (Safety), Buyer may without prejudice to any other legal or contractual rights of Buyer, issue an order stopping all or part of the Contract Work. Seller shall have no claim for extension of time or for compensation or damages by reason of or in connection with such work stoppage.
- (k) To the extent required of Buyer's own employees, personal protective equipment (PPE) to include but not limited to hard hats, safety shoes, protective eyewear, gloves and hearing protection are required to be provided, at Seller's expense, for any and all of Seller's employees, or Seller's subcontractors' or suppliers' employees, who will be conducting Contract Work in production areas of Buyer's facilities.

47. Security, if Seller Operates Within Buyer's Facilities

Buyer's security policies and procedures regarding all of Seller's employees, and its subcontractors and suppliers who will perform duties within Buyer's facilities are mandatory. Access requirements are provided prior to entry. Willful, negligent or repeated noncompliance by Seller or any of its subcontractors or suppliers with any of Buyer's security policies or



procedures shall constitute a default under the Contract for which Buyer may terminate the Contract immediately, without further notice or any rights to cure.

48. Seller's Personnel and Management, if Seller Operates Within Buyer's Facilities

- (a) Unless otherwise addressed in the Contract, during on-going operations at Buyer's facilities, upon Buyer's demand, Seller shall reassign or remove from Buyer's facilities any of Seller's or Seller's subcontractors' or suppliers' employees immediately, as determined by Buyer at Buyer's sole discretion.
- (b) Unless otherwise addressed in the Contract, Seller shall reassign and remove key project personnel who are employees of Seller or Seller's subcontractors or suppliers, within a reasonable period of time, at Buyer's request, as determined by Buyer at Buyer's sole discretion.

49. Certifications and Representations

Seller hereby adopts the certifications and representations set forth in FAR 4.1202 and in its entity listing on the U.S. General Services Administration System for Award Management website at www.SAM.gov (the "Certifications and Representations"), which Certifications and Representations are deemed to be incorporated by reference herein, and in any written offer, proposal or quote, or company profile submission, which is provided by Seller prior to an award of the Contract to Seller. Seller shall maintain the Certifications and Representations in a current status on the above System for Award Management (SAM.gov) website. By entering into the Contract, Seller repeats and confirms the Certifications and Representations submitted or deemed submitted with its written offer, proposal or quote, including company profile information, and Seller hereby adopts such Certifications and Representations as its own. Seller shall immediately notify Buyer of any change of status regarding any of the Certification or Representations.

50. FAR Flow-Down Provisions

The FAR and DFARS flow down clauses set forth in the Prime Contract, together with any copies thereof published at www.jaxmachine.com/suppliers (the "Flow-Down Clauses"), are hereby incorporated by this reference herein and flowed down under the Contract to be binding upon Seller. Seller shall incorporate the Flow-Down Clauses into each applicable lower-tier subcontract placed to support its performance of the Contract.

(a) Notes.

- (i) As used in the Flow-Down Clauses for purposes of the Contract: "Contract" means the Contract between Buyer and Seller; "Contractor" means the Seller; and "Subcontract" means any contract placed by the Seller with lower-tier subcontractors to assist in Seller's performance under the Contract.
- (ii) Substitute "Buyer" for "Government" or "United States" as applicable throughout the Flow-Down Clauses.
- (iii) Substitute "Buyer procurement official" for "Contracting Officer", "Administrative Contracting Officer", and "ACO" throughout the Flow-Down Clauses.



- (iv) Insert “and Buyer” after “Government” or “Contracting Officer”, when appropriate, throughout the Flow-Down Clauses.
 - (v) Insert “or Buyer” after “Government” or “Contract Officer”, when appropriate, throughout the Flow-Down Clauses.
 - (vi) Communication/notification required under the Flow-Down Clauses from/to the Contractor or to/from the Contracting Officer shall be made through Buyer.
- (b) Amendments Required by Prime Contract. Buyer, by written notice given to Seller, may make amendments to the Contract to incorporate changed or additional provisions, as Buyer may reasonably deem necessary in order to comply with the provisions of the Prime Contract, including the Flow-Down Clauses, or with amendments to such Prime Contract. If any such amendment to the Contract causes an increase or decrease in the cost of, or the time required for, Seller’s supply of the Contract Product or performance of the Contract Work under the Contract, an equitable adjustment shall be made pursuant to the “Changes” clause of the Contract.