



Military Shipbuilding and Services Terms and Conditions



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ARTICLE 1. GENERAL STATEMENT OF WORK

- (a) Seller agrees to furnish all labor, materials, supplies, equipment and services, and perform all work necessary to provide and deliver to Buyer at the specified place of delivery the Contract Products (including any repair parts, special tools, plans, technical manuals, other data and services, specified in this Contract) in strict accordance with the Specifications referred to herein and to do all things required of Seller by this Contract. Except for those portions of this Contract that are expressly identified as cost reimbursable, Seller is obligated to furnish the Contract Products entirely at its own risk and expense.
- (b) Seller agrees that in the performance of this Contract, it will comply with all applicable statutes, rules, regulations, and orders of the United States including, but not limited to, the FAR and DFAR, and of any state or political subdivision thereof in effect on the date of this agreement, including all regulations pertaining to labor, wages, hours and other conditions of employment; applicable price ceilings, if any; air or water quality standards; and all applicable safety and health provisions. Seller agrees to defend and indemnify Buyer, its officers, directors, employees, agents and customers from any claim or demand of any nature asserted against Buyer in the event of Seller's failure to comply with the requirements of this subparagraph (b). Seller's obligation to defend and indemnify Buyer under this paragraph shall include any claims asserted against Buyer arising from Seller's violation, or alleged violation, of the Federal Civil False Claims Act 31 U.S.C. §§3729-3733, as amended. Seller further agrees that its work shall be performed to the complete satisfaction of the Department.

ARTICLE 2. DEFINITIONS

Except where some other meaning is obviously required by the context:

- (a) The term "Buyer" shall mean Austal USA, LLC.
- (b) The term "Contract" shall mean the aggregate combination of the Purchase Order, Military Shipbuilding and Services ("MILSHIP") Terms and Conditions, Supplemental Terms and Conditions, Specifications, and any other documents incorporated by reference within the Purchase Order or any of the items listed above. If these terms and conditions are incorporated into a master agreement that provides for releases (in the form of a Purchase Order or other such document), the term "Contract" shall also mean the master agreement as well as the release document for the work to be performed.
- (c) The term "Contracting Officer" shall mean Buyer and/or the Government Contracting Officer as the term is defined in FAR 2.101, as appropriate.
- (d) The term "Contract Products" shall mean all items, deliverables, articles, materials, supplies, goods, and services to be furnished by Seller under this Contract.
- (e) The term "day" as used in this Contract shall mean calendar day unless specifically designated otherwise.
- (f) The term "Department" shall mean the U.S. Navy and its representatives and designees.
- (g) The term "DFARS" shall mean the Department of Defense Supplement to the Federal Acquisition Regulation.
- (h) The term "FAR" shall mean the Federal Acquisition Regulation.
- (i) The term "Government" shall mean the United States Government and includes, without limitation, the Department.
- (j) The term "Prime Contract" shall mean the agreement between Buyer and the Government or between Buyer and its higher-tier contractor in support of a contract with the Government.

- (k) "Purchase Order" means any written instrument from Buyer for Contract Products that is designated a "Purchase Order."
- (l) The term "Prime Contract Items" means the items Buyer will be furnishing to the United States Government under the Prime Contract inclusive of both goods and services.
- (m) The term "Seller" shall mean the person, firm, or other entity responsible for providing the goods, services or both required by this Contract.
- (n) The term "Specifications" includes the drawings, technical requirements, specifications, samples, product descriptions, and all other technical data provided by Buyer to Seller describing the Contract Products. In the event of a conflict between the drawings and the specifications, the specifications shall govern.
- (o) The term "Supplemental Terms and Conditions" shall mean the supplemental terms and conditions incorporated by reference within the Purchase Order.

ARTICLE 3. PROCEDURES GOVERNING THIS CONTRACT

- (a) Formal acceptance of this Contract is required by signing the acceptance copy of the Contract and promptly returning same to Buyer. However, in the absence of such formal acceptance, commencement of work, including preparations for the performance of work, by Seller under this Contract shall be conclusive evidence of acceptance.
- (b) If this Contract is construed to be an offer, this offer expressly limits acceptance to the terms of the offer and notification of objection is hereby given to any additional or different terms. If this Contract is construed to be an acceptance, this acceptance is expressly conditioned on Seller's assent to any additional or different terms.
- (c) In accordance with Government policy, release or publication of any information, data, speeches, or technical papers relating to the work covered by this Contract is not permitted unless authorization for release or publication has been obtained in writing from Buyer in advance of any such release.
- (d) Identification marking of individual parts within the systems, equipment, assemblies, subassemblies, components, groups, sets, or kits, and of spare and repair parts shall be done in accordance with applicable Specifications. To the extent identification marking of such parts is not specified in applicable Specifications, such marking shall be accomplished in accordance with the following:
 - 1. Parts shall be marked in accordance with generally accepted commercial practice; and
 - 2. In cases where parts are so small as not to permit identification marking as provided above, such parts shall be appropriately coded so as to permit ready identification.
- (e) The parts of this Contract are intended to explain each other and anything contained in one part shall be deemed to be contained in the entire Contract. Seller shall immediately notify Buyer if any discrepancy, difference, or conflict exists between the provisions or the parts of this Contract. Silence of one part relative to any details shown in another part or failure of one part to depict all details covered by another part shall not be considered an inconsistency. Unless otherwise stated in the applicable Supplemental Terms and Conditions, in resolving any inconsistency between any parts of this Contract, the order of precedence shall be as follows:
 - 1. Typed provisions on the face of the Purchase Order;
 - 2. These MILSHIP Terms and Conditions;
 - 3. Supplemental Terms and Conditions;
 - 4. Option agreements if made a part of this Contract;
 - 5. Statement of work if made a part of this Contract;
 - 6. Specifications that are made a part of this Contract;

7. Other documents/materials incorporated by reference in this Contract; and
 8. Any other agreements between Buyer and Seller pertaining to this Contract whether incorporated by reference or otherwise, if such are listed on the Purchase Order as being applicable to this Contract.
- (f) This Contract contains the entire agreement of the parties and integrates, merges and supersedes all prior offers, discussions, negotiations and agreements concerning the subject matter hereof and shall not be amended, changed, or modified except in a writing signed by both parties. Only an authorized representative of Buyer's Purchasing Department may amend, change, or modify this Contract.
 - (g) If this Contract references any Specification or other document that was not provided to Seller by Buyer for whatever reason, then if said Specification or other document is not available through open source or other commercially available means, it is Seller's responsibility to request same from Buyer in writing and Buyer shall provide either same or the means to obtain same to Seller within ten (10) business days from receipt of such request. Seller's initiation of work without said Specification or other document shall constitute a waiver of any defense Seller may have to assert it was not bound by said Specification or other document.
 - (h) Except as otherwise provided herein, all notices to be furnished by Seller shall be in writing and sent to Buyer's authorized Purchasing Representative.
 - (i) Buyer's failure at any time to enforce any provision of this Contract shall not constitute a waiver of the provision or prejudice Buyer's right to enforce that provision at any subsequent time against Seller. No payment made shall be deemed an acceptance or approval of any defective or unsatisfactory material or workmanship, nor shall it affect the rights of Buyer or the Government later to reject the same or enforce its rights under the Warranty clause. Any and all of the rights and remedies conferred upon Buyer under this Order shall be cumulative and in addition to, and not in lieu of, the rights and remedies granted by law for Seller's breach of contract.
 - (j) Buyer reserves the right to direct the removal for cause of any individual assigned to this Contract who is working on the premises of Buyer or the Government.

ARTICLE 4. STANDARDIZATION

All Contract Products provided by Seller in multiples, on the Purchase Order(s), shall be identical in every way except as may be agreed in writing and in advance by Buyer. Any changes in the configuration of the Contract Products shall be the subject of a change and the Contract shall be modified accordingly. Seller shall not provide Contract Products that are not identical without prior written approval of Buyer. Seller shall use sound procurement practices in furtherance of this standardization objective and shall include the substance of this Article in its lower-tier subcontracts.

ARTICLE 5. INSPECTION BY BUYER OR GOVERNMENT

- (a) All supplies (which term throughout this Article includes without limitation raw material, components, intermediate assemblies, and Contract Products) shall be subject to inspection and test by Buyer and/or the Government to the extent practicable at all times and places including the period of manufacture or construction, and in any event, prior to expiration of the warranty period.
- (b) If any supplies (or lots of supplies) are defective in material or workmanship or otherwise not in conformity with the requirements of this Contract, Buyer and/or the Government shall have the right to reject them (with or without the instructions as to their disposition) or to require their correction. Supplies rejected prior to delivery as not conforming to this Contract and any defects which develop or are discovered after delivery or during the warranty period shall, at the election of Buyer and/or the Government, and at Seller's expense, be replaced or corrected either by Buyer and/or the Government or by Seller at the location where the supplies are at time of failure. Buyer and/or the Government will, whenever practicable, afford Seller an opportunity to examine the defective supplies before they are replaced or corrected.

- (c) Supplies or lots of supplies which have been rejected or required to be corrected shall be removed, if permitted or required by Buyer and/or the Government, or corrected in place by, and at the expense of, Seller promptly after notice and shall not thereafter be tendered for acceptance unless the former rejection or requirement of correction is disclosed. All replacements or corrections made by Seller shall be accomplished at no increase in Contract price. If Seller fails either promptly to remove such supplies or lots of supplies which are required to be removed or promptly to replace or correct such supplies, Buyer may (i) by contract or otherwise replace or correct such supplies and equitably reduce the Contract price; or (ii) terminate this Contract for default as provided in the Article herein entitled "Default." Unless Seller corrects or replaces such supplies within the required delivery schedule, Buyer and/or the Government may require delivery of such supplies and equitably reduce the Contract price.
- (d) If any inspection or test is made by Buyer and/or the Government on the premises of Seller, then Seller, without additional charge, shall provide all reasonable facilities and assistance for the safety and convenience of the inspectors in the performance of their duties. If inspection or test is made at a point other than the premises of Seller or of Seller's subcontractor, Buyer's cost of inspection shall be at Buyer's expense except as otherwise provided in this Contract; provided, that in the case of rejection Buyer shall not be liable for any reduction in the value of samples used in connection with such inspection or test. All inspections and tests by Buyer shall be performed in such a manner as not to unduly delay the work. Buyer reserves the right to charge Seller any reasonable additional cost of Buyer's inspection and test when supplies are not ready at the established time for such inspection or test or when re-inspection or re-test is necessitated by prior rejection. Acceptance or rejection of the supplies shall be made as promptly as practicable after delivery, except as otherwise provided in the Contract; provided, however, that any failure to inspect and accept or reject supplies shall neither relieve Seller from responsibility for such supplies that are not in accordance with the Contract requirements nor impose liability on Buyer therefore.
- (e) The inspection and test by Buyer of any supplies or lots thereof does not relieve Seller from any responsibility regarding defects or other failures to meet any Contract requirements, which may be discovered prior to expiration of the warranty period.
- (f) Seller shall provide an inspection system acceptable to Buyer prior to start of fabrication and maintain such inspection system throughout fabrication. This system shall be in effect at the start of each phase of the fabrication of each shipset of supplies. Records of all inspections and tests by Seller shall be kept complete and available to Buyer during the performance of this Contract and until expiration of the warranty period or for such longer period as may be specified elsewhere in this Contract. Seller shall tender to Buyer for acceptance only supplies that have been inspected and/or tested in accordance with the inspection system and have been found by Seller to be in conformity with Contract requirements. Seller shall provide Buyer copies of inspection and test records within ten (10) business days of receiving Buyer's written request for same. Inspection and test records shall, as a minimum, indicate the nature of the observations, number of observations made, and the number and type of deficiencies found. Data included in inspection and test records shall be complete and accurate, and shall be used for trend analysis and to assess corrective action and effectiveness.
- (g) Acceptance shall not be final with respect to any Contract Products that contain latent defects.

ARTICLE 6. EFFECT OF APPROVAL BY BUYER

Approval of drawings, other technical data, and substitute materials by Buyer shall not relieve Seller of its responsibility to furnish the Contract Products in strict accordance with the requirements of the Contract.

ARTICLE 7. LIABILITY OF SELLER WITH RESPECT TO CONTRACT PRODUCTS

IN CONSIDERATION OF THE AWARD OF THIS CONTRACT AND/OR THE PAYMENT OF THE FIRST ONE HUNDRED DOLLARS (\$100.00) IN COMPENSATION, SELLER AGREES TO THE FULLEST EXTENT PERMITTED BY LAW, TO DEFEND, INDEMNIFY, AND HOLD HARMLESS BUYER, THE DEPARTMENT, AND THEIR AGENTS, DIRECTORS, OFFICERS, SERVANTS, AND EMPLOYEES (INDIVIDUALLY AND COLLECTIVELY REFERRED TO AS AN "INDEMNIFIED PARTY"), AGAINST ALL ALLEGATIONS,

COMPLAINTS, LIABILITY, LAWSUITS, ARBITRATIONS, FINES, ADMINISTRATIVE ACTIONS, CLAIMS, DEMANDS, OR JUDGMENTS (ALL OF WHICH HEREINAFTER ARE REFERRED TO AS "CLAIMS") FOR DAMAGES OF ANY SORT INCLUDING, WITHOUT LIMITATION, CLAIMS FOR PERSONAL INJURY, WRONGFUL DEATH, DEFECTIVE WORK, LOSS OF OR DAMAGE TO PROPERTY, NON-PAYMENT, BREACH OF CONTRACT, COUNTERFEIT GOODS, AND ANY OTHER CLAIMS MADE THAT ARISE OUT OF, RESULT FROM, OR ARE IN CONNECTION WITH THE PERFORMANCE OR NON-PERFORMANCE OF ANY OF THE WORK DONE OR MATERIALS OR EQUIPMENT PROVIDED BY SELLER OR ITS EMPLOYEES OR ITS VENDORS OR SUBCONTRACTORS OR THEIR EMPLOYEES. SELLER SHALL NOT BE OBLIGATED TO DEFEND OR INDEMNIFY THE INDEMNIFIED PARTY WITH RESPECT TO THE SOLE NEGLIGENCE OR WILLFUL MISCONDUCT OF THE INDEMNIFIED PARTY OR ANY CLAIMS THAT DO NOT IN ANY WAY RELATE TO THE PERFORMANCE OR NON-PERFORMANCE OF ANY WORK BY SELLER. THIS DEFENSE AND INDEMNITY OBLIGATION SHALL REQUIRE SELLER TO DEFEND AND INDEMNIFY AN INDEMNIFIED PARTY EVEN IF A CLAIM AGAINST THE INDEMNIFIED PARTY ARISES OUT OF INJURIES OR DAMAGES TO SELLER'S VENDORS OR SUBCONTRACTORS OR TO EMPLOYEES OF SELLER OR SELLER'S VENDORS OR SUBCONTRACTORS.

ARTICLE 8. COST AND PRICING DATA

If Seller is required to furnish a certificate of current cost and pricing data in connection with the award of this Contract or any modification thereto, FAR clauses 52.215-12, Subcontractor Cost or Pricing Data, and 52.215-21, Requirements for Cost or Pricing Data or Information Other than Cost or Pricing Data – Modifications, apply and are incorporated herein by reference. In addition to any other remedies provided by law or under this Contract, if Buyer is subjected to any liability as the result of Seller's or its lower-tier subcontractor's submission of defective cost and pricing data, then Seller shall indemnify and hold Buyer, its officers, directors, agents and customers harmless to the fullest extent permitted by law against any loss, damage, or expense resulting from such failure.

ARTICLE 9. INTELLECTUAL PROPERTY INFRINGEMENT INDEMNITY

Seller expressly warrants that the Contract Products shall not infringe upon any valid United States patent, copyright, or trademark, or knowingly violate any trade secret or other proprietary right of any third party. Seller shall indemnify, defend and hold harmless Buyer, its officers, directors, agents and customers, for any claim, demand, lawsuit or proceeding of any kind brought against Buyer or its customer based on any claim that any item furnished under this Contract or the normal use or sale thereof infringes any patent, copyright, or trademark, or knowingly violates any trade secret or other proprietary right of any third party and shall pay costs and damages incurred by Buyer or its customer, including reasonable attorneys' fees, provided that Seller is notified in writing of the claim. If the use or sale of said item is enjoined, Seller, at no expense to Buyer, shall obtain for Buyer and the Government the right to make, use, and sell said item, or in the case of copyright, to copy and display the work and produce derivative works thereof, or in the alternative shall substitute an equivalent item acceptable to Buyer and extend this indemnity thereto.

ARTICLE 10. ALLOWABLE COST AND PAYMENT

- (a) This Article 10 shall only apply if the Purchase Order indicates this Contract provides for payment on a cost-reimbursement basis.
- (b) Invoicing. Buyer shall make payments to Seller when requested as work progresses, but not more often than once every 2 weeks, in amounts determined to be allowable by Buyer in accordance with the terms of this Contract and Subpart 31.2 of the FAR and agency supplements as appropriate, in effect on the date of this Contract. Seller shall submit to Buyer, in such form and reasonable detail as Buyer may require, an invoice or voucher supported by a statement of the claimed allowable cost for performing this Contract.
- (c) Reimbursing Costs
 - 1. For the purpose of reimbursing allowable costs (except as provided in subparagraph (c)(ii) below, with respect to pension, deferred profit sharing, and employee stock ownership plan contributions), the term "costs" includes only:

- A. Those recorded costs that, at the time of the request for reimbursement, Seller have paid by cash, check, electronic funds transfer, or other form of actual payment for items or services purchased directly for this Contract.
 - B. When Seller is not delinquent in paying costs of contract performance in the ordinary course of business, costs incurred, but not necessarily paid, for:
 - Materials issued from Seller’s inventory and placed in the production process for use on this Contract;
 - Direct labor;
 - Direct travel;
 - Other direct in-house costs; and
 - Properly allocable and allowable indirect costs, as shown in the records maintained by Seller for purposes of obtaining reimbursement under Government contracts.
 - C. The amount of progress payments that have been paid to Seller’s subcontractors under similar cost standards.
2. Seller contributions to any pension, profit sharing, or employee stock ownership plan funds that are paid quarterly or more often may be included in indirect costs for payment purposes; provided, that Seller pays the contribution to the fund within thirty (30) calendar days after the close of the period covered. Payments made thirty (30) days or more after the close of a period shall not be included until Seller actually makes the payment. Accrued costs for such contributions that are paid less often than quarterly shall be excluded from indirect costs for payment purposes until Seller actually makes the payment.
 3. Notwithstanding the audit and adjustment of invoices or vouchers under subparagraph (i) below, allowable indirect costs under this Contract shall be obtained by applying indirect cost rates established in accordance with subparagraph (f) below.
 4. Except as otherwise expressly provided to the contrary in these MILSHIP Terms and Conditions, any statements in specifications or other documents incorporated in this Contract by reference designating performance of services or furnishing of materials at Seller’s expense or at no cost to Buyer shall be disregarded for purposes of cost reimbursement under this provision.
- (d) Small Business Concerns. A small business concern may be paid as often as every 2 weeks and may invoice and be paid for recorded costs for items or services purchased directly for this Contract, even though the concern has not yet paid for those items or service.
 - (e) The costs of Seller procured Counterfeit Electronic Parts, Suspect Counterfeit Electronic Parts and the costs of rework or corrective action that may be required to remedy the use or inclusion of such parts are unallowable.
 - (f) Final Indirect Cost Rates.
 1. Buyer shall reimburse Seller on the basis of final annual indirect cost rates and the appropriate bases established by Seller and Buyer in effect for the period covered by the indirect cost rate proposal. Such rates and bases shall not change any monetary ceiling, contract obligation, or specific cost allowance or disallowance provided for in this Contract. The rates and bases shall be deemed incorporated into this Contract upon execution.
 2. Seller shall certify any proposal to establish or modify final indirect cost rates by providing Buyer the following certification in writing and signed by Seller:

“This is to certify that I have reviewed this proposal to establish final indirect cost rates and to the best of my knowledge and belief:

“1. All costs included in this proposal (identify proposal and date) to establish final indirect cost rates for (identify period covered by rate) are allowable in accordance with the cost principles of the Federal Acquisition Regulation (FAR) and its supplements applicable to the contracts to which the final indirect cost rates will apply; and

“2. This proposal does not include any costs which are expressly unallowable under applicable cost principles of the FAR or its supplements.”

Failure by Seller to submit a signed certificate, as described herein, may result in final indirect costs at rates unilaterally established by Buyer.

- (g) **Billing Rates.** There shall be included as allowable indirect costs such overhead rates as may be established by Seller and the cognizant Government Agency in accordance with the principles of the FAR and applicable FAR Supplement. Pending establishment of final overhead rates for any period, Seller shall be reimbursed at billing rates approved by the cognizant Government Agency, which billing rates may be revised from time to time subject to such approval and subject to appropriate adjustment when the final rates for that period are established.
- (h) **Quick Closeout Procedures.** When Seller and Buyer agree, the quick closeout procedures of Subpart 42.7 of the FAR may be used.
- (i) **Audit.** At any time or times before final payment, Buyer or the Government may audit Seller’s invoices or vouchers and statements of cost. Any payment may be (1) reduced by amounts found by Buyer or the Government not to constitute allowable costs or (2) adjusted for prior overpayments or underpayments.
- (j) **Final Payment**
 - 1. Seller shall submit a completion invoice or voucher, designated as such, promptly upon completion of the Contract Products, but no later than one year (or longer, as Buyer may approve in writing) from the completion date. Upon approval of that invoice or voucher, and upon Seller’s compliance with all terms of this Contract, Buyer shall promptly pay any balance of allowable costs and that part of the fee (if any) not previously paid.
 - 2. Seller shall pay to Buyer any refunds, rebates, credits, or other amounts (including interest, if any) accruing to or received by Seller or any assignee under this Contract, to the extent that those amounts are properly allocable to costs for which Seller has been reimbursed by Buyer. Reasonable expenses incurred by Seller for securing refunds, rebates, credits, or other amounts shall be allowable costs if approved by Buyer. Before final payment under this Contract, Seller and each assignee whose assignment is in effect at the time of final payment shall execute and deliver:
 - A. An assignment to Buyer, in form and substance satisfactory to Buyer, of refunds, rebates, credits, or other amounts (including interest, if any) properly allocable to costs for which Seller has been reimbursed by Buyer under this Contract; and
 - B. A release discharging Buyer, its directors, officers, agents, and employees from all liabilities, obligations, and claims arising from or related to this Contract, except for specified claims stated in exact amounts, or in estimated amounts when the exact amounts are not known.
 - Claims (including reasonable incidental expenses) based upon liabilities of the Seller to third parties arising out of the performance of this Contract; provided, that the claims are not known to the Seller on the date of the execution of the release, and that the Seller gives notice of the claims in writing to the Buyer within 6 years following the release date or notice of final payment date, whichever is earlier; and

- Claims for reimbursement of costs, including reasonable incidental expenses, incurred by Seller under the patent clauses of this contract, excluding, however, any expenses arising from the Seller indemnification of Buyer against patent liability.

C. The Seller shall give Buyer immediate written notice of any action or suit filed and prompt notice of any claim made against the Seller by any subcontractor or vendor that, in the opinion of the Seller, may result in litigation related in any way to this contract, with respect to which the Seller may be entitled to reimbursement from Buyer.

(k) Limitations. Notwithstanding anything to the contrary in this Article 10, FAR 52.232-20 and FAR 52.232-22, as appropriate, shall apply separately and independently to each separately identified estimated cost. The terms “Government” and “Contracting Officer” shall mean buyer and “Contractor” shall mean Seller in these FAR clauses.

ARTICLE 11. FEE

If this Contract includes fee, Buyer shall pay Seller for performing this Contract the fee as specified in this Contract.

ARTICLE 12. PAYMENT

Unless otherwise provided, payment will be due forty-five (45) days after acceptance of work and/or delivery of Contract Products and after receipt of a proper invoice unless otherwise specified in this Contract. Adjustments in Seller’s invoices due to shortages, late delivery, rejections, or other failure to comply with the requirements of this Contract may be made by Buyer before payment. Cash discounts may be taken from date of acceptance of delivered items, or date of receipt of acceptable invoice, whichever is later. Payment shall not constitute final acceptance. If progress payments are agreed upon, Buyer shall have legal title to all materials that have been in whole or in part financed with progress payments from Buyer. However, Seller shall have full responsibility for loss or change to materials until delivery to Buyer. Buyer may offset against any payment hereunder any amount owed to Buyer by Seller under this or any other contract.

At any time before final payment, Buyer or the Government shall have the right to audit Seller’s invoices. Any payment may be reduced by amounts found not to be properly charged or adjusted for overpayments.

ARTICLE 13. TIME OF PERFORMANCE AND BUYER’S REMEDIES FOR SELLER’S FAILURE TO PERFORM TIMELY

(a) Time is of the essence in the performance of this Contract. Seller agrees that it shall, at its expense, exert every possible effort necessary to meet delivery dates for any deliverable items specified under this Contract. Seller agrees to notify Buyer immediately if, at any time, it appears that the delivery schedule set forth herein may not be met. Such notifications shall include the reasons for any possible delays, steps being taken to remedy any such problems, and a proposed revised delivery date. Further, this notification shall be in addition to any reporting requirements specified elsewhere in this Contract. The requirement for notification set forth above is not to be construed as a waiver of the delivery schedule set forth in this Contract and shall not prejudice Buyer’s rights under any other clause of this Contract or at law. Should Seller’s performance be delayed for any reason, Seller may be required to work weekends and nights in order to recover at no additional cost. Buyer owns any float in the performance schedule. It is further understood that the Department, in its sole discretion, may direct the conduct of commissioning or performance tests that may adversely affect Seller’s performance, and that the influence of weather may influence or affect these tests. Seller understands that such events are not reasonably foreseeable and shall not serve as a basis for an impact or delay claim or request for equitable adjustment.

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

- (c) If Seller fails to deliver within the time specified in this Contract, or any agreed extensions thereof, the Contract Products or any part thereof, or if such items are deficient upon delivery, Buyer may, until such items are delivered to Buyer and/or the Government, withhold payment to Seller of twenty five percent (25%) of the Contract value. The withholding of any amount pursuant to this subparagraph (c) or the subsequent payment to Seller shall not be construed as a waiver of any rights accruing to Buyer under this Contract or at law.
- (d) Buyer shall not withhold payments under subparagraph (c) when the delay arises out of causes beyond the control and without the fault or negligence of Seller, which delay is defined as “excusable” in the Article entitled “Default.” In such event, subject to the “Disputes Between Buyer and Seller” Article, Buyer shall ascertain the facts and extent of the excusable delay and shall extend the time for performance of the Contract when, in Buyer’s judgment, the findings of fact justify an extension.
- (e) Buyer’s remedies, as set forth herein, shall be in addition to other remedies provided by this Contract or by law or in equity, and are not exclusive.

ARTICLE 14. CHANGES

- (a) Buyer may, at any time, by a written order, and without notice to the sureties, make changes within the general scope of this Contract in any one or more of the following:
 - 1. description of services to be performed;
 - 2. time of performance (i.e., hours of the day, duration, days of the week, etc.);
 - 3. place of performance of the services;
 - 4. drawings, designs, or specifications where the supplies to be furnished are to be specifically manufactured for Buyer;
 - 5. method of shipment or packing; and
 - 6. place of delivery.
- (b) If any such change causes a contractually allowable increase or decrease in the cost of, or the time required for the performance of any part of the work under this Contract, whether changed or not changed by written order, equitable adjustment shall be made in the Contract price and/or delivery schedule, or both, and the Contract shall be modified in writing accordingly. Changes to the delivery schedule will be subject to a price adjustment only.
- (c) Any claim by Seller for adjustment, including an adjustment under this Article or an equitable adjustment, must be asserted in a signed writing to Buyer within thirty (30) days from the date of receipt by Seller of the notification of change. Seller acknowledges that failure to provide Buyer with such notice within this 30-day period shall in and of itself be deemed to prejudice Buyer and shall constitute a waiver of same. However, Buyer, if it decides in its sole discretion that the facts justify an adjustment, may receive and act upon any such claim asserted at any time prior to final payment under this Contract. Where the cost of property made obsolete or excess of a change is included in Seller’s claim for adjustment, Buyer shall have the right to prescribe the manner of disposition of such property.
- (d) Failure to agree to any adjustment shall be a dispute concerning a question of fact within the meaning of the “Disputes Between Buyer and Seller” Article. However, nothing in this Article shall excuse Seller from proceeding diligently with performance of the Contract as changed.
- (e) In the event that Seller makes a claim for adjustment, Seller must submit all documentation justifying both entitlement and amount of compensation increase within thirty (30) days after submission of any such request by Seller. Seller shall substantiate its claim with payroll documents, paid invoices, receipts, contemporaneous cost reports, original estimate calculations, records of performance and other documents requested by and satisfactory to Buyer and/or the Department and subject to Buyer’s verification.

- (f) Buyer's engineering and technical personnel may from time to time render assistance or give technical advice or discuss or exchange information with Seller's personnel concerning Seller's work. Such actions, however, shall not be deemed to be a change under this Article 14 and shall not be the basis for any equitable adjustment. Only an authorized representative of Buyer's Purchasing Department may change this Contract.
- (g) In addition to issuing changes pursuant to (a) above, Buyer, may, from time to time, request Seller to evaluate the technical and cost effect of proposed changes. Within twenty (20) days from the date of receipt of any such request, Seller shall submit the proposed scope of work, plans, sketches, and a firm proposal, good for at least one hundred twenty (120) days, of (i) the cost, (ii) configuration, weight, mechanical and electrical characteristic changes to the products, (iii) effect on delivery or other Contract terms, (iv) status of work on the products as projected for a one hundred twenty (120) day period, and (v) the cost, including profit, of preparing the estimate. If a separate proposal for preparing the estimate for a change is not provided by Seller concurrently with the change proposal, Seller shall waive all rights to compensation for this effort. Within one hundred twenty (120) days, or such further period as may be mutually agreed, Seller agrees to enter into a supplemental agreement covering the estimate as submitted, or, at Buyer's opinion, enter into good faith negotiations leading to the execution of a supplemental agreement, or reject the proposal. In any case, Seller shall be entitled to equitable adjustment in the Contract price, including profit, for the effort required to prepare the estimate subject to the above limitation. Pending execution of supplemental agreement, or direction pursuant to (a) above, Seller shall proceed diligently with performance without regard to the proposed change. Seller shall not be entitled to delay in delivery or amendment of any terms of this Contract as a consequence of preparing proposals which are subsequently rejected.
- (h) Unless the Contract expressly states that the Contract Products are Commercial Items, any equitable adjustment under this Article, or any other provision of this Contract shall be subject to the cost principles in FAR Part 31 and DFARS Part 231.

ARTICLE 15. STOP WORK ORDER

- (a) Buyer may, at any time, by written order to Seller, require Seller to stop all or any part of the work called for by this Contract for a period of ninety (90) days after the Stop Work Order is delivered to Seller, and for any further period to which the parties may agree. Any such order shall be specifically identified as a Stop Work Order issued pursuant to this Article. Upon receipt of such an order, Seller shall forthwith comply with its terms and take all reasonable steps to minimize the incurrence of cost allocable to the work covered by the order during the period of work stoppage. Within a period of ninety (90) days after a Stop Work Order is delivered to Seller, or within any extension of that period to which the parties shall have agreed, Buyer shall either:
 - 1. Cancel the Stop Work Order, or
 - 2. Terminate the work covered by such order as provided in the "Default" or the "Termination" clause of this Contract.
- (b) If a Stop Work Order issued under this Article is cancelled or the period of the order or any extension thereof expires, Seller shall resume work. If this Contract provides for payment on a fixed price basis, an equitable adjustment shall be made in the delivery schedule or contract price, or both. If this Contract provides for payment on a cost-reimbursement basis, an equitable adjustment shall be made in the delivery schedule, the estimated cost, the fee, or a combination thereof, and in any other terms of the Contract that may be affected. In either case, the Contract shall be modified in writing accordingly, if:
 - 1. The Stop Work Order results in an increase in the time required for, or in Seller's cost properly allocable to, the performance of any part of this Contract; and
 - 2. Seller asserts a claim for such adjustment within thirty (30) days after the end of the period of work stoppage; provided that, if Buyer decides the facts justify such action, it may receive and act upon any such claim asserted at any time prior to final payment under the Contract.

- (c) If a Stop Work Order is not cancelled and the work covered by such order is terminated for the convenience of the Government or Buyer, the reasonable costs resulting from the Stop Work Order shall be allowed in arriving at the termination settlement.
- (d) If a Stop Work Order is not cancelled and the work covered by such order is terminated for default, the reasonable costs resulting from the Stop Work Order shall be allowed by equitable adjustment or otherwise.

ARTICLE 16. DEFAULT

- (a) Buyer may, subject to the provisions of paragraph (c) below, by written notice of default to Seller, terminate the whole or any part of this Contract in any one of the following circumstances:
 - 1. If Seller fails to make delivery of the supplies or to perform the services within the time specified herein or any extension thereof.
 - 2. If Seller fails to perform any of the other provisions of this Contract, or so fails to make progress as to endanger performance of this Contract in accordance with its terms and in either of these two circumstances does not cure such failure within a period of ten (10) days (or such longer period as Buyer may authorize in writing) after receipt of notice from Buyer specifying such failure.
- (b) In the event Buyer terminates this Contract, in whole or in part, as provided in paragraph (a) of this Article, Buyer may procure, upon such terms and in such manner as Buyer may deem appropriate, supplies or services similar to those so terminated and Seller shall be liable to Buyer for any excess costs for such similar supplies or services; provided, that Seller shall continue the performance for this Contract to the extent not terminated under the provisions of this Article. In addition to its other remedies, Buyer may, with respect to work terminated as permitted in this Article, proceed with the completion of the Contract Products at such plant or plants, including that of Seller, as may be designated by Buyer. If the Contract Products are to be completed at Seller's plant, Buyer may use all tools, machinery, facilities, and equipment of Seller determined by Buyer to be necessary for that purpose. In addition, Buyer shall have the right to remove its materials from Seller's facility and use Seller's tools and equipment to do so. If the cost to Buyer of the Contract Products therefore so procured or completed (after adjusting such cost to exclude the effect of changes in Specifications made subsequent to the date of termination) exceeds the price fixed for such price on account of changes in the Specifications made prior to the date of termination), Seller or its surety, if any, shall be liable to Buyer for such excess.
- (c) Except with respect to defaults of subcontractors, Seller shall not be liable to Buyer for any excess costs if the failure to perform the Contract arises out of causes beyond the control and without the fault or negligence of Seller. Such "excusable" causes may include, but are not restricted to: acts of God or of the public enemy; acts of Buyer; acts of the Government in either its sovereign or contractual capacity; fires, floods, epidemics and quarantine restrictions; strikes; freight embargoes; and unusually severe weather; but in every case the failure to perform must be beyond the control and without the fault or negligence of Seller. If the failure to perform is caused by the default of Seller's subcontractor at any tier and if such default arises out of causes beyond the control of both Seller and such subcontractor, and without the fault or negligence of either, Seller shall not be liable to Buyer for any excess costs for failure to perform, unless the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit Seller to meet the required delivery schedule.
- (d) If the Contract is terminated as provided in paragraph (a) of this Article, Buyer, in addition to any other rights provided in this Article, may require Seller to transfer title (insofar as not previously transferred) and deliver to Buyer or the Government in the manner and to the extent directed by Buyer:
 - 1. any completed Contract Products, and
 - 2. such partially completed Contract Products and material, parts, tool, dies, jigs, fixtures, plans, drawings, information and Contract rights (hereinafter called "manufacturing materials") as Seller has specifically produced or specifically acquired for the performance of such part of this Contract

as has been terminated. In the event of any such termination, Seller shall, upon direction of Buyer, protect and preserve property in the possession of Seller in which Buyer has an interest. Payment for completed Contract Products delivered to and accepted by Buyer shall be the Contract price. Payment for manufacturing materials delivered to and accepted by Buyer and for the protection and preservation of property shall be in an amount agreed upon by Seller and Buyer. Failure of the parties to agree to such amount shall be a dispute concerning a question of fact within the meaning of the Article of this Contract entitled "Disputes Between Buyer and Seller". Notwithstanding the foregoing, Buyer may withhold from amounts otherwise due Seller for such completed Contract Products or manufacturing material such sum as Buyer determines to be necessary to protect Buyer against loss because of outstanding liens or claims of former lien holders.

- (e) If, after notice of termination of this Contract under the provisions of this Article, it is determined for any reason that Seller was not in default under the provisions of this Article, or that the default was excusable under the provisions of this Article, the rights and obligations of the parties shall be as follows:

If the Contract contains an Article providing for termination for convenience of the Government or Buyer, such rights and obligations shall be governed by that Article as if the required notice of termination has been given; if the Contract does not contain such an Article, the Contract shall be equitably adjusted to compensate for such termination and the Contract modified accordingly. Failure of the parties to agree to any such adjustment shall be a dispute concerning a question of fact within the meaning of the Article of this Contract entitled "Disputes Between Buyer and Seller".

- (f) The rights and remedies of Buyer provided in this Article shall not be exclusive, and are in addition to any other rights and remedies provided by law or under this Contract.
- (g) In the event of Termination of this Contract for Default, all of Seller's subcontracts may, at the option and in the sole discretion of Buyer, be fully assignable to Buyer. Buyer has the right, but not the obligation, to accept any such assignment.

ARTICLE 17. TERMINATION FOR CONVENIENCE

Buyer, by written notice, may terminate this Contract, in whole or in part, for convenience when it is in Buyer's interest to do so. If this Contract is terminated for convenience, the rights, duties, and obligations of the parties, including compensation to Seller, shall be in accordance with FAR clause 52.249-2, Termination for Convenience of the Government, as well as Part 49 of the FAR in effect on the date of this Contract.

ARTICLE 18. EFFECT OF DISPUTES UNDER THE PRIME CONTRACT

- (a) Any decision adverse to Seller by the Government under the Prime Contract relating to any portion of the Prime Contract that has been incorporated into this Contract and that binds Buyer shall likewise bind Seller, provided:
1. Buyer promptly notifies Seller of the decision; and
 2. if requested by Seller, Buyer appeals the decision in accordance with the disputes provisions of the Prime Contract and takes whatever further action is required under that Article and is requested by Seller.
- (b) Any other decision of the Government under the Prime Contract concerning a provision of the Prime Contract that has been incorporated into this Contract that is binding on Buyer and cannot be appealed under the disputes procedure noted in (a) above shall also bind Seller. A final judgment in any such proceeding shall be conclusive upon Seller.
- (c) In any claim, suit, or appeal prosecuted by Buyer under this Article, Seller shall be permitted to participate fully for the purpose of protecting its interest and, if requested by Buyer, shall assume the burden of carrying forward any claim, suit, or appeal initiated by Buyer at Seller's request. All costs and expenses incurred by

Seller and Buyer in prosecuting any claim, suit, or appeal or proceeding of any kind initiated at Seller's request shall be at Seller's expense and Seller shall promptly reimburse Buyer of any costs it incurs in complying with Seller's requests under this Article.

- (d) Pending any final decision, pursuant to this Article, Seller shall proceed diligently with performance of this Contract.
- (e) To the extent that the Government withholds from payments due Buyer a portion of the Prime Contract price because of delays or deficiencies in Buyer's performance of the Prime Contract that may be attributable to delays or deficiencies in Seller's performance of the Contract, Buyer shall have the right to withhold or deduct from payments due Seller an equivalent portion or amount. Nothing in this subparagraph (e) is intended to preclude or curtail Seller's right to request, in good faith, Buyer to appeal or otherwise seek review of the Government's decision to withhold or deduct a portion of the Prime Contract price due to delays or deficiencies for which Seller may be responsible, and refusal of Buyer to appeal or otherwise seek review will be subject to resolution pursuant to the "Disputes Between Buyer and Seller" Article of this Contract.

ARTICLE 19. DISPUTES BETWEEN BUYER AND SELLER

- (a) The validity, interpretation, performance, and enforcement of this Contract shall be governed by and construed in accordance with the laws of the State of Alabama without regard to its conflict of law provisions. This Contract shall be construed as having been drafted and prepared by both parties. The parties hereby (i) submit to the sole and exclusive jurisdiction of the State Courts of Alabama and the Federal Courts of the United States of America sitting in Mobile County in the State of Alabama for the purpose of any action or proceeding arising out of or relating to this Contract, (ii) agree that all claims in respect of any such action or proceeding shall be heard and determined in such courts. Each party hereby irrevocably waives any objection that it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Contract brought in any such court, and hereby further irrevocably waives any claim that any such suit, action or proceeding brought in such court has been in an inconvenient forum. The parties waive trial by jury with respect to any proceedings involving this Contract.

- (b) Any claim by Seller must be submitted to Buyer in writing no later than ninety (90) days after the events which gives rise to the claim. Claims in excess of \$100,000 shall contain the following certification signed by an officer or principal of Seller:

"I certify that the claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract adjustment for which both I and my employer believe Buyer is liable; and that I am duly authorized to certify the claim on behalf of my employer."

- (a) Failure to submit a claim within such time frame and with such certification if the claim exceeds \$100,000 shall constitute a waiver of such claim and Seller shall be forever barred from asserting said claim against Buyer in any court, provided, however, that Buyer may recognize an otherwise time-barred claim when the circumstances, in Buyer's sole discretion, warrant it doing so.
- (b) Seller shall proceed diligently with performance of this Contract, pending final resolution of any relief, claim, appeal, or action arising under or relating to this Contract, and shall comply with any decision of Buyer regarding such performance.

ARTICLE 20. TAXES

Seller shall pay, as a cost to Seller, all federal, state, county, city, and other taxes, assessments, and duties lawfully assessed or levied on the Contract Products prior to delivery to Buyer.

ARTICLE 21. PACKING AND SHIPPING

- (a) Seller shall pack the Contract Products to prevent damage and deterioration. All Contract Products shall be packaged, marked, preserved, packed, and shipped in accordance with the Austal Domestic Routing Guide or the Austal International Routing Guide, as applicable. The guides are available on the Supplier Information page on Buyer's website or upon written request to Buyer.
- (b) Notwithstanding paragraph (a) above, any classified reports, data, and documentation shall be prepared for shipment in accordance with the National Industrial Security Program Operating Manual (NISPOM), DOD 5220.22-M dated 28 FEB 2006, as updated.

ARTICLE 22. DELIVERY WINDOW/STORAGE

- (a) The Purchase Order shall specify the required delivery dates for Contract Products furnished under this Contract. Buyer may extend this delivery date by notifying Seller in writing. Any such change by Buyer to the delivery date shall be made no less than twenty-five (25) days prior to such date. Contract Products shall be stored by Seller, without additional cost to Buyer, for a period of up to 120 days after the delivery date unless Seller is otherwise directed to ship the Contract Products by Buyer. If Buyer elects to extend the period of storage beyond the expiration of the 120-day period after the delivery date, Seller shall be entitled to an equitable adjustment as indicated in (e) below.
- (b) Contract Products stored shall be placed in a secure location, segregated from Seller's other inventory, clearly identified as Buyer's property and adequately protected. Seller shall provide insurance in an amount to cover the full value of the Contract Products in the event of loss or damage, with Buyer designated to receive all proceeds in case of loss or damage.
- (c) Seller shall issue a notice to Buyer five (5) calendar days prior to placing Contract Products in storage. Such notice shall include all pertinent information needed to identify the Contract Products, including but not limited to the Prime Contract number if it appears on the Purchase Order, Buyer's Purchase Order number, Buyer's part number, description of the Contract Products, maintenance procedures for the Contract Products for the storage period, and Certificate of Insurance covering the stored Contract Products.
- (d) Seller shall perform all necessary maintenance during storage, shall conduct a monthly quality assurance inspection and maintenance check of all stored Contract Products and shall provide copies of inspection reports to Buyer.
- (e) Buyer may require Seller to store Contract Products furnished pursuant to a Contract addendum. Any additional storage, handling, maintenance, and local transportation costs incurred by Seller to store Contract Products at Buyer's written direction via Contract addendum shall be at a onetime non-recurring charge plus a monthly rate as agreed to in writing by Seller and Buyer. Storage charges will start when Contract Products are placed in storage, but not before the delivery date as may have been amended prior to the Contract addendum necessitating the storage. Storage charges will end when the Contract Products are removed from storage.

ARTICLE 23. INVOICES

- (a) All invoices shall be submitted directly to Buyer, marked attention: Accounts Payable.
- (b) Invoices shall be in such form and shall bear such certifications as may be required or approved by Buyer.
- (c) Not more than one Purchase Order shall appear on each invoice.
- (d) Invoices shall show the amount of any federal excise taxes or state or local sales, use occupational, gross receipts or other direct tax included therein.

- (e) All invoices shall contain the Seller's invoice number, Purchase Order number, line item number, release number, and Buyer's name.
- (f) Invoices incorrectly or incompletely executed may be returned for correction or completion.

ARTICLE 24. QUALIFICATION OF NONDESTRUCTIVE TESTING PERSONNEL

- (a) Seller and any Nondestructive Testing (NDT) subcontractor shall utilize for the performance of required NDT, only Level I, II and III personnel currently certified in accordance with NAVSEA Technical Publication T9074-AS-GIB-010/271, Revision 1 of 11 September 2014. Documentation pertaining to the qualification and certification of NDT personnel shall be made available to Buyer and/or the Government for review upon request.
- (b) These requirements do not apply with respect to nuclear propulsion plant systems and other matters under the technical cognizance of the Office of Navy Nuclear Propulsion NAVSEA 08. Because of health and safety considerations, such matters will continue to be handled as directed by NAVSEA 08.

ARTICLE 25. OSHA ACT

Seller's attention is directed to Public Law 91-596 (84 Stat. 1590, 29 U.S.C. 655), known as the "OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970" and to the "OCCUPATIONAL SAFETY AND HEALTH STANDARDS FOR SHIPYARD EMPLOYMENT" promulgated thereunder by the Secretary of Labor (29 C.F.R. Parts 1910 and 1915). These regulations apply to all shipbuilding and related work as defined in the regulation. The supplies and services ordered under this Contract are considered such related work. Nothing contained in this Contract shall be construed as relieving Seller from any obligations which it may have for compliance with the aforesaid regulations.

ARTICLE 26. COST PLUS A PERCENTAGE OF COST CONTRACTS

Seller agrees that no subcontract placed under this Contract shall provide for a payment on a cost plus a percentage of cost basis, and any fee payable under cost-reimbursement type subcontracts shall not exceed the fee limitations in paragraph 15.404-4(c)(4)(i) of the FAR.

ARTICLE 27. WARRANTIES

- (a) Notwithstanding inspection and acceptance by Buyer or any provision concerning the conclusiveness thereof, Seller warrants that all Contract Products will, at the time of acceptance, be free from defects in workmanship and conform to the requirements of this Contract. All warranties of Seller, whether created expressly by law or by the Uniform Commercial Code as adopted in Alabama, including without limitation the warranties of merchantability and fitness for a particular purpose, are incorporated herein by reference and shall include, but are not limited to, the following express warranties:
 - 1. The Contract Products shall comply with any and all Specifications furnished to Seller by Buyer, and or the Government; and
 - 2. The Contract Products shall be merchantable, of good material and workmanship, free from defects, and fit for the intended purpose of Buyer and/or the Government.
- (b) If Seller is required to correct or reperform, it shall be at no cost to Buyer, and any services corrected or reperformed by Seller shall be subject to this clause to the same extent as work initially performed. If Seller fails or refuses to correct or reperform, Buyer may, by contract or otherwise, correct or replace with similar services and charge to Seller the cost occasioned to Buyer thereby, or make an equitable adjustment in the contract price.
- (c) If Buyer does not require correction or reperformance, Buyer shall make an equitable adjustment in the contract price.

- (d) The warranty period for the Contract Products shall begin upon Buyer's acceptance thereof and shall extend for a period of twelve (12) months of unrestricted use by the Government of the Prime Contract Items in which the Contract Products are installed. The warranty period shall be extended for any period in which the Contract Products furnished are unavailable for unrestricted use due to failure or defect.
- (f) If the Contract Products are software or design data the warranty period shall begin upon Buyer's acceptance thereof and shall extend for a period of thirty six (36) months from acceptance by the Government of the Prime Contract Items to which the Contract Products relate. If the Contract Products are spares or services, the warranty period shall be twelve (12) months from acceptance by the Government of the Prime Contract Items to which the Contract Products spares or services relate.
- (g) For rental property, Seller expressly warrants that the rental property shall be in first class condition, in good working order, in conformance with the Contract, and equipped with all required safety devices as to operate properly and render safe, efficient, economical and continuous service. If the rental property fails to operate properly or fails to render safe, efficient, economical and continuous service at any time during the term of the Contract, Buyer shall so notify Seller, and immediately upon such notification Seller shall, at Seller's sole expense, either: (a) retrieve the rental property and replace it with properly operating and satisfactory equivalent rental property; or (b) make or pay for such repairs or maintenance as may be necessary to restore the rental property to properly operating and satisfactory condition. Buyer shall not be responsible for payment of the Contract Price for any period during which the rental property is out of service owing to its failure to operate properly or fails to render safe, efficient, economical and continuous service, unless such failure is directly caused by Buyer's negligence or intentional misconduct in the use or operation of the rental property.
- (h) Seller expressly warrants that it has good title to the rental property and the right to enter into the Contract. Buyer shall not be required under any circumstances to surrender the rental property or pay any portion of the Contract Price to any person or entity other than Seller pursuant to any lien, levy, attachment, writ or execution, court order, judicial sale, or any other legal process.

ARTICLE 28. RETENTION OF RECORDS

Seller shall maintain, until the expiration of six (6) years following the date of final payment under this Contract, records showing the cost of performing this Contract and of any termination of work thereunder. Such records shall be available for inspection by Buyer or the Government at all reasonable times at the office of Seller. All records and documents shall date back to the time this Contract was issued and shall include without limitation, catalogs, price lists, invoices, underlying data and basis for cost estimates, and inventory records.

Seller's method of accounting shall conform to Generally Accepted Accounting Principles ("GAAP"), provided, however that if Seller receives progress payments or this Contract or any portion hereof is cost reimbursable, then Seller's accounting practices shall conform to FAR Part 31 and DFARS Part 231. If this Contract is subject to Cost Accounting Standards then Seller's accounting practices shall conform to all applicable standards.

ARTICLE 29. DATA RIGHTS AND MARKINGS ASSERTED BY SELLER

- (a) Seller acknowledges that it has read clauses DFARS 252.227-7019 and 252.227-7037, incorporated herein by reference, and that it shall be the sole responsibility of Seller to justify, protect, defend and/or enforce any claim to proprietary rights with respect to technical data or computer software, irrespective of whether a challenge is made by Buyer or the Government. Any decision by the Government which is binding on Buyer regarding markings on technical data or computer software furnished under this Contract shall be equally binding on Seller. Seller further acknowledges that it has read clauses DFARS 252.227-7013 and 252.227-7014, incorporated herein by reference, and has identified in its proposal or by separate writing addressed to Buyer prior to the date of this Contract all technical data and/or computer software that Seller shall furnish under this Contract with other than with Unlimited Rights. Where standard time limits are imposed for response, it shall be Seller's burden to ensure that any response requiring Buyer action is made in such timely manner as to allow Buyer to complete any additional requirements necessary to meet such deadlines. Seller shall specifically identify and request any action desired of Buyer.

- (b) Failure of Seller to take all necessary actions to defend its assertions of proprietary rights as may be challenged shall constitute a waiver of those claimed rights. Seller shall be liable for any costs or damages incurred by Buyer that result of supporting Seller's assertions to proprietary rights to technical data or computer software. Failure of Buyer and Seller to agree on the amount of damages shall be considered a Dispute as defined by the "Disputes Between Buyer and Seller" clause of this contract.
- (c) Seller agrees to provide the technical data for the Contract Product(s) as required by any laboratory that Buyer selects to inspect and/or test the Contract Product(s). Seller shall deliver the technical data to the laboratory within ten (10) days of receiving Buyer's written request to make such delivery, subject to the laboratory entering into a nondisclosure agreement with Seller that contains reasonable terms as reflected by industry practice. In the event Seller delivers any technical data to Buyer with other than Unlimited Rights, Seller hereby authorizes Buyer to disclose such technical data as required by the laboratory to inspect and/or test the Contract Product(s), subject to the laboratory and Buyer executing Buyer's standard nondisclosure agreement.

ARTICLE 30. ACCESS TO PROPRIETARY DATA OR COMPUTER SOFTWARE

- (a) Performance under this Contract may require that Seller have access to technical data, computer software, or other sensitive data of another party who asserts that such data or software is proprietary. If access to such data or software is required or to be provided, Seller agrees that it shall enter into a written agreement with such third party prior to gaining access to such data or software, which agreement shall address, at a minimum: (1) Seller's access to, and use of, the proprietary data or software exclusively for the purposes of performance of the work required by this Contract, and (2) safeguards to protect such proprietary data or software from unauthorized use or disclosure for so long as the data or software remains proprietary. In addition, the agreement shall not impose any limitation upon Buyer or the Government or their respective employees with respect to such data or software. Seller shall furnish a copy of the executed agreement to Buyer. Buyer may unilaterally modify the Contract to list those third parties with which Seller has entered into agreement(s).
- (b) Seller agrees to: (1) indoctrinate its personnel who will have access to the data or software as to the restrictions under which access is granted; (2) not disclose the data or software to another party or other Seller personnel except as authorized by Buyer; (3) not engage in any other action, venture, or employment wherein this information will be used, other than under this Contract, in any manner inconsistent with the spirit and intent of this requirement; (4) not disclose the data or software to any other party, including, but not limited to, joint venture, affiliate, successor, or assign of Seller; and (5) reproduce the restrictive stamp, marking, or legend on each use of the data or software whether in whole or in part.
- (c) The restrictions on use and disclosure of the data and software described above also apply to such information that contains proprietary or other restrictive markings that is received from Buyer or the Government through any means to which Seller has access in the performance of this Contract.
- (d) Seller agrees that it will promptly notify Buyer of any attempt by an individual, company, or Government representative not directly involved in the effort to be performed under this Contract to gain access to such proprietary information. Such notification shall include the name and organization of the individual, company, or Government representative seeking access to such information.
- (e) Seller shall include the requirements of this Article, including this paragraph (e) in all subcontracts that may require access to information covered by paragraph (a).
- (f) Compliance with this requirement is a material requirement of this Contract.

ARTICLE 31. GIFTS OR CONSIDERATIONS

Seller warrants that it has not and will not offer to make any gift to any employee of Buyer or any of their agents for doing or forbearing to do any act, or for showing any favor or disfavor to any person, with respect to the award of this

Contract, or any work performed hereunder. Buyer shall have the right to deduct from the Contract price the full amount of any such gift made by Seller in breach of this warranty and may terminate this Contract for default for breach of this warranty by Seller.

ARTICLE 32. MOST FAVORED CUSTOMER ASSURANCE

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

ARTICLE 33. INSURANCE PROPERTY

(a) In the event that Seller, or its employees, agents, or subcontractors, enters the premises of Buyer, worksite, or the vessel, for any reason in connection with this Purchase Order, then Seller, and its subcontractors shall procure and maintain for the duration of this Contract insurance against claims which may arise from or in connection with Contract Products under this Purchase Order. Said coverage shall include, but not be limited to any insurance required by State, Federal, and local laws and:

1. Statutory Workers' Compensation Insurance and Employer's Liability Insurance. Seller shall procure and maintain such insurance with limits of not less than \$1,000,000 each accident for bodily injury by accident and \$1,000,000 each employee for bodily injury by disease. Self-insurance is permitted so long as Seller provides Buyer with a copy of the certificate of authority to self-insure issued by the relevant government agency. This certificate of authority to self-insure must be provided annually until this Contract expires or Contract Products have been provided or completed. If an exposure exists, this insurance shall include coverage for the Longshore and Harbor Workers' Compensation Act, Defense Base Act, and Jones Act. It is permissible to maintain separate Maritime Employers Liability insurance with equal or greater minimum limits in lieu of Jones Act coverage being included in this insurance.
2. Commercial General Liability, or Marine General Liability, Insurance. Seller shall procure and maintain such insurance covering liability arising from premises, operations, products-completed operations, personal and advertising injury, independent contractors, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract) with limits of not less than \$1,000,000 each occurrence, \$2,000,000 aggregate. This insurance shall provide cross-liability coverage via the separation of insureds provision or by endorsement. The Seller shall maintain the products-completed operations insurance in identical or equivalent coverage, form, and amount, including required endorsements, for at least two (2) years following date of substantial completion of the work to be performed under this Contract.
3. Automobile Liability Insurance. Seller shall procure and maintain such insurance with a limit of not less than \$1,000,000 each accident. Such insurance shall cover liability arising out of any auto, including owned, hired and non-owned autos.
4. Professional Liability Insurance. If Seller is providing professional services, Seller shall procure and maintain Professional Liability (Errors and Omissions) Insurance appropriate to the Seller's profession with a limit of not less than \$5,000,000 per claim. Professional services include but are not limited to the following professions: Architects, Medical Professionals, Engineers, Programmers, and Consultants.
5. Contractor Pollution Liability Insurance. If Seller engages in the storing, disposal, treatment, transportation, or remediation of hazardous substance or materials, or engages in work that could create or disturb an existing pollution condition, Seller shall procure and maintain Contractors Pollution Liability insurance applicable to bodily injury; property damage, including loss of use of damaged property or of property that has not been physically injured or destroyed; clean up costs; and defense, including costs and expenses incurred in the investigation, defense or settlement of claims; and claims arising from owned and non-owned disposal sites utilized in the performance of

this contract; for any loss in connection with or arising from Contract Products. This coverage shall apply to sudden and non-sudden pollution conditions resulting from the escape or release of smoke, vapors, fumes, acids, alkalis, toxic chemicals, liquids, or gases, natural gas, waste materials, or other irritants, contaminants, or pollutants. Coverage shall be maintained with limits of not less than \$2,000,000 per loss.

6. Maritime Insurance. If Seller or Seller's subcontractor(s) owns, rents, leases, charters, or utilizes vessels in the performance of the Purchase Order, the following insurance is required:
- A. Hull & Machinery insurance for any vessels, barges, and other marine equipment with minimum limits equal to the full value thereof.
 - B. Protection and Indemnity (P&I) insurance with a limit of not less than \$2,000,000 per occurrence for bodily injury, illness, death, and loss of or damage to the property of another. This insurance shall include voluntary wreck removal and full collision liability. Where vessels engage in towing operations, this insurance shall include full towers' liability.
 - C. Vessel Pollution Liability insurance with limits not less than statutory requirements.

7. Umbrella, Excess, or Bumbershoot Liability Insurance. Seller shall procure and maintain such insurance with limits of not less than:

If Purchase Order exceeds \$1,000,000	\$5,000,000 per occurrence/aggregate
If Purchase Order exceeds \$6,000,000	\$10,000,000 per occurrence/aggregate
If Purchase Order exceeds \$11,000,000	To be determined as needed

Additionally, if this Purchase Order is for the provision of crane, rigging, hot work, scaffolding, and/or diving services, the minimum Umbrella, Excess, or Bumbershoot Liability Insurance shall be \$5,000,000 per occurrence/aggregate.

- (b) All premiums, retentions, and/or deductibles shall be at the sole cost and expense of Seller or Seller's subcontractor(s). All insurance maintained by the Seller shall have a minimum Best's rating of A- VIII or better.
- (c) Austal USA, LLC, its parent, affiliates, officers, directors, agents, and employees shall be included as additional insureds under insurance referenced in sub-paragraphs (a)2, (a)5. For insurance referenced in sub-paragraph (a)2, additional insured status shall apply to both ongoing and completed operations. Austal USA, LLC, its parent, affiliates, officers, directors, agents, and employees shall be an insured or additional insured under insurance referenced in sub-paragraph (a)3 to the extent Buyer is liable for the conduct of any other insured in the policy. Any Umbrella, Bumbershoot, or Excess insurance shall provide Austal USA, LLC, its parent, affiliates, officers, directors, agents, and employees the same insured status as each primary policy required herein.
- (d) All insurance policies required in this Contract shall provide Austal USA, LLC, its parent, affiliates, officers, directors, agents, and employees with a waiver of subrogation.
- (e) The insurance referenced in sub-paragraphs (a)2, (a)3, (a)5, and (a)6.B shall be primary and shall not seek contribution from any other insurance or self-insurance available to Buyer. The foregoing is inclusive of any Umbrella, Bumbershoot, or Excess insurance applicable to the insurance referenced.
- (f) Seller may meet the insurance limits set forth herein with any combination of primary and umbrella, excess, or bumbershoot liability insurance provided such primary and umbrella, excess, or bumbershoot liability insurance results in equivalent or greater insurance coverage as the insurance required herein. In no event shall any umbrella, excess, or bumbershoot liability insurance provide narrower coverage than the insurance requirements herein which are applicable to the primary policy.

- (g) If a “claims-made” insurance policy is maintained, Seller shall maintain such policy for two (2) years after the expiration date of this Contract or completion of all work, whichever is later. The retroactive date must precede the commencement of the work under this Contract.
- (h) Prior to providing Contract Products, and as a prerequisite for Seller and Seller’s subcontractor(s) to enter the worksite where the services are to be performed, Seller shall provide Buyer with both a certificate of insurance showing compliance with the requirements set forth herein and a copy of the additional insured endorsement, or equivalent policy clause providing same effect, required for insurance referenced in subparagraph (a)2. Seller shall furnish equivalent certificate and additional insured evidence for each of its subcontractors, if any. Failure of Buyer to demand a certificate of insurance or endorsement, or failure to identify a certificate of insurance or endorsement deficiency, shall not be construed as a waiver of Seller or Seller’s subcontractor’s obligation to maintain such insurance required herein, nor relieve Seller or Seller’s subcontractor(s) of any of its obligations or liabilities herein. Any such waiver must be approved by Buyer in writing. Upon request, Seller shall furnish Buyer certified copies of all such policies. When allowable as provided herein, if the Seller utilizes self-insurance, the self-insured retention must be disclosed on the certificate of insurance. Certificate holder shall read “Austal USA, LLC, and its parent, affiliates, officers, directors, and employees” and shall be emailed or mailed to:
- Email: Riskmanagement@austalusa.com
- Mail: Austal USA, LLC
ATTN Risk Management
P.O. Box 1049
Mobile, AL 36633
- (i) Seller shall provide to Buyer thirty (30) days advanced written notice prior to the cancellation, material change, or non-renewal of insurance required within this Contract.
- (j) If Buyer is damaged by the failure of Seller to purchase or maintain insurance required in this Contract, then Seller shall bear all reasonable costs (including attorney fees and court and settlement expenses) properly attributable to the failure. Failure by Seller to obtain insurance shall not relieve Seller of any duty of defense or indemnity provided by this Contract
- (k) Seller assumes all risk of loss, and Buyer shall not be responsible, for loss or damage to property, material, or equipment belonging to Seller, its agents, employees, suppliers, or anyone directly or indirectly employed by Seller while said material, property, or equipment is on the premises of Buyer or otherwise in Buyer’s care, custody, or control, or under Buyer’s physical control. Seller is encouraged to obtain appropriate equipment, material, or installation floater insurance against such risk of loss.
- (l) By requiring insurance herein, Buyer does not represent that coverage and limits will necessarily be adequate to protect Seller and such coverage and limits shall not be deemed as a limitation of Seller’s liability to Buyer under this Contract. If the Seller maintains broader coverage and/or higher limits than the minimums required herein, the Buyer requires and shall be entitled to the broader coverage and/or the higher limits maintained by the Seller. The foregoing includes limits and coverage provided by Umbrella, Bumbershoot, and Excess insurance.
- (m) Insurance requirements in this Contract are intended to be a separate and distinct obligations from the other obligations of Seller set forth herein.
- (n) If Seller is providing professional services, Professional Liability Insurance as required in (a)4 shall be maintained and evidenced regardless whether or not Seller enters the premises of Buyer, worksite, or the vessel in connection with the Contract Products.

ARTICLE 34. PRIORITY RATING

This Contract is a “DO-A3 rated order” certified for national defense use, and Seller shall follow all the requirements of the Defense Priorities and Allocation System Regulation (15 CFR Part 700). Seller shall include the substance of this clause in all subcontracts Seller places in support of this Contract.

ARTICLE 35. ASSIGNMENT

This Contract may not be assigned by Seller without the prior written consent of Buyer. Payments to Seller may be assigned to a financial institution provided Buyer is promptly furnished a signed copy of such assignment reasonably in advance of the due date for payment of such amounts.

ARTICLE 36. NONSOLICITATION

During the term of this Agreement, Seller shall not actively recruit, solicit or otherwise attempt to hire the employees of Buyer who are performing work under this Agreement without Buyer’s prior written consent. This restriction shall not apply to Buyer’s employees who voluntarily seek employment with Seller on their own initiative or in response to employment advertisements in the newspapers, trade publications or other public commercial media or as an unsolicited walk-in candidate.

ARTICLE 37. EXPORT CONTROLS

Seller agrees to comply with all applicable U.S. export control laws and regulations including, but not limited to, the Export Administration Act of 1979, as amended, 50 U.S.C. App. 2401, et seq., the Arms Export Control Act, 22 U.S.C. 2751, et seq., the International Traffic in Arms Regulation, 22 CFR Parts 120-130, and the Export Administration Regulations, 15 CFR Parts 730-774. Seller shall notify Buyer if any deliverable under this Contract is restricted by such export control laws or regulations. Seller agrees to indemnify Buyer, its officers, directors, agents, employees, or customers for all costs and expenses associated with Seller’s violation of this Article.

All technical data regarding the Prime Contract Item and its components should be considered Controlled Unclassified Information (CUI) unless marked for public release or is known to be commercial data. Seller shall exercise due diligence in safeguarding CUI making sure that adequate safeguards are in place to prevent foreign persons from accessing the information and/or the release of the information into the public domain. Encrypted and password protected methods shall be used for the transfer of CUI by electronic means.

ARTICLE 38. INDEPENDENT CONTRACTORS

Seller is an independent contractor in all of its activities and operations hereunder. The employees of Seller shall not be deemed employees of Buyer for any purpose and Seller shall not be considered the agent of Buyer for any purpose except as expressly stated herein.

ARTICLE 39. SEVERABILITY

Each Article and provision of this Contract is severable and if one or more Articles or provisions are declared invalid the remaining Articles and provisions in this Contract shall remain in full force and effect.

ARTICLE 40. SURVIVABILITY

If this Contract expires or is terminated, the following Articles shall survive: Definitions, Liability of Seller with Respect to Contract Products, Cost and Pricing Data, Intellectual Property Infringement Indemnity, Termination for Convenience, Effect of Disputes under the Prime Contract, Disputes Between Buyer and Seller, OSHA Act, Cost Plus a Percentage of Cost Contracts, Warranties, Retention of Records, Insurance Property, and Nonsolicitation, Export Controls, Independent Contractors, Technology Enhancement, and those FAR/DFAR clauses which by their nature should survive.

ARTICLE 41. COMMUNICATION WITH AUSTAL CUSTOMER

Buyer shall be solely responsible for all liaison and coordination with its customer, including the Government, as it affects the Prime Contract, this Contract, and any related contract.

Unless otherwise directed in writing by an authorized representative of Buyer, (1) Seller shall not communicate with Buyer's customer, including the Government, as it affects the Prime Contract, this Contract, or any related contract; and (2) all documentation requiring submittal to, or action by, Buyer's customer shall be routed to, or through, Buyer's authorized representative, or as otherwise permitted by this Contract.

ARTICLE 42. SILICON/ALUMINUM/BRONZE (SAB) NUT USE PROHIBITION

The use of SAB union nuts in breathing, high and medium pressure air and hydraulic systems is prohibited. Seller shall ensure that this prohibition is included in all subcontracts, at any tier, for breathing, high and medium pressure air, and hydraulics systems for installation on Prime Contract Items.

ARTICLE 43. DEFEND TRADE SECRETS ACT NOTICE

Seller shall ensure that the following notice is made available to all of its employees providing services to Buyer and shall provide Buyer (upon Buyer's request) with reasonable evidence of Seller's compliance with this obligation:

"In accordance with the Defend Trade Secrets Act of 2016, an employee or subcontractor of Buyer is immune from and shall not be held criminally or civilly liable under any federal or state trade secret law for the disclosure of a Buyer trade secret that: (a) is made (i) in confidence to a federal, state, or local government official, either directly or indirectly, or to an attorney; and (ii) solely for the purpose of reporting or investigating a suspected violation of law; or (b) is made in a complaint or other document that is filed under seal in a lawsuit or other proceeding."

ARTICLE 44. MARKING OF TECHNICAL DATA FOR COMMERCIAL ITEMS

(a) Marking requirements. Seller, and its subcontractors or suppliers, may only assert restrictions on Buyer's rights to use, modify, reproduce, release, perform, display, or disclose technical data to be delivered under this Contract by marking the deliverable data subject to restriction. Except as provided in paragraph (3) of this clause, only the following legends are authorized for commercial items under this Contract: a commercial item data rights legend at paragraph (2) of this clause; a specifically negotiated license rights legend at paragraph (3) of this clause; and/or a notice of copyright as prescribed under 17 U.S.C. § 401 or § 402.

1. General marking instructions. Seller, or its subcontractors or suppliers, shall conspicuously and legibly mark the appropriate legend on all technical data for commercial items when the data qualifies for such markings. The authorized legends shall be placed on the transmittal document or storage container and, for printed material, each page of the printed material containing technical data for which restrictions are asserted. When only portions of a page of printed material are subject to the asserted restrictions, such portions shall be identified by circling, underscoring, with a note, or other appropriate identifier. Technical data transmitted directly from one computer or computer terminal to another shall contain a notice of asserted restrictions. Reproductions of technical data or any portions thereof subject to asserted restrictions shall also reproduce the asserted restrictions.

2. Commercial Item Data Rights markings.

A. Data in which the Government's rights stem from the delivery of data under a contract for a commercial item shall be marked with the following legend:

COMMERCIAL ITEM DATA RIGHTS

The Government's rights to use, modify, reproduce, release, perform, display, or disclose these data are restricted by Contract No. _____ (Insert

contract number) for a Commercial Item. Any reproduction of technical data or portions thereof marked with this legend must also reproduce the markings and comply with DFARS 252.227-7015.

- B. For purposes of this clause, commercial licenses do not include government purpose rights acquired under a prior contract (see paragraph 4 of this clause).

3. Commercial Item License Rights markings.

- A. Data in which the Government's rights stem from a license negotiated regarding a commercial item shall be marked with the following legend:

COMMERCIAL ITEM LICENSE RIGHTS

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

- B. For purposes of this clause, commercial item licenses do not include government purpose rights acquired under a prior contract (see paragraph (4) of this clause).

4. Pre-existing data markings. If the terms of a prior contract or license permitted Seller to restrict Buyer's rights to use, modify, reproduce, release, perform, display, or disclose technical data deliverable under this Contract, and those restrictions are still applicable, Seller may mark such data with the appropriate restrictive legend for which the data qualified under the prior contract or license. The marking procedures in the prior contract or license shall be followed.

- (b) Seller procedures and records. Throughout performance of this contract, Seller and its subcontractors or suppliers that will deliver technical data with other than unlimited rights, shall --

- 1. Have, maintain, and follow written procedures sufficient to assure that restrictive markings are used only when authorized by the terms of this clause; and
- 2. Maintain records sufficient to justify the validity of any restrictive markings on technical data delivered under this Contract.

- (c) Removal of unjustified and nonconforming markings.

- 1. Unjustified technical data markings. The rights and obligations of the parties regarding the validation of restrictive markings on technical data furnished or to be furnished under this Contract are contained in the Validation of Restrictive Markings on Technical Data clause of this Contract. Notwithstanding any provision of this Contract concerning inspection and acceptance, Buyer may ignore or, at Seller's expense, correct or strike a marking if, in accordance with the procedures in the Validation of Restrictive Markings on Technical Data clause of this Contract, a restrictive marking is determined to be unjustified.

- 2. Nonconforming technical data markings. A nonconforming marking is a marking placed on technical data delivered or otherwise furnished to Buyer under this Contract that is not in the format authorized by this Contract. Correction of nonconforming markings is not subject to the Validation of Restrictive Markings on Technical Data clause of this Contract. If Buyer notifies Seller of a nonconforming marking and Seller fails to remove or correct such marking within sixty (60) days,

the Government may ignore or, at Seller's expense, remove or correct any nonconforming marking.

ARTICLE 45. IDENTIFICATION AND ASSERTION OF RESTRICTIONS IN TECHNICAL DATA AND COMPUTER SOFTWARE

(a) Definitions. The terms used in this Article and associated CLINs are defined in the following clauses or sources:

1. DFARS 252.227-7013;
2. DFARS 252.227-7014;
3. DFARS 252.227-7015;
4. DFARS 252.227-7017; and,
5. DFARS 252.227-7018.

(b) Identification and Assertion of Restrictions. Seller shall not deliver or otherwise provide to Buyer any technical data or computer software with restrictive markings (or otherwise subject to restrictions on access, use, modification, reproduction, release, performance, display, or disclosure) unless the technical data or computer software are identified in accordance with the following requirements:

1. Seller (including its subcontractors or suppliers, or potential subcontractors or suppliers, at any tier) shall identify all technical data and computer software that it proposes to be delivered or otherwise provided (including all Option CLINs as if the Option was exercised) with less than Unlimited Rights as follows:
 - A. Noncommercial Technologies. Noncommercial technical data and noncommercial computer software shall be identified in accordance with DFARS 252.227-7017 and DFARS 252.227-7028.
 - B. Commercial Technologies. Seller shall also identify and assert any restrictions for all commercial technical data (i.e., technical data pertaining to a commercial item) by providing the same types of information, using a similar format, and following the same procedures and requirements as specified at DFARS 252.227-7017 (Commercial 7017 Technical Data List). Seller shall also identify and assert any restrictions for all commercial computer software in accordance with the Table at paragraph (e) below.
 - C. Seller's failure to submit, complete, or sign the identification and assertions required by paragraphs (b)1.A or (b)1.B of this Article with its offer may render the offer ineligible for award.
 - D. If Seller is awarded a contract, the assertions identified in paragraphs (b)1.A and (b)1.B shall be listed in an Attachment to that contract. Upon request by Buyer, Seller shall provide sufficient information to enable Buyer to evaluate any listed assertion.
2. Seller (including its subcontractors or suppliers, or potential subcontractors or suppliers, at any tier) shall identify all technical data and computer software that it proposes to be delivered or otherwise provided (including all Option CLINs as if the Option was exercised) with less than Unlimited Rights as follows:
 - A. Noncommercial Technologies. Noncommercial technical data and noncommercial computer software shall be identified in accordance with DFARS 252.227-7017 and DFARS 252.227-7028.
 - B. Commercial Technologies. Seller shall also identify and assert any restrictions for all commercial technical data (i.e., technical data pertaining to a commercial item) by providing the same types of information, using a similar format, and following the same procedures and requirements as specified at DFARS 252.227-7017 (Commercial 7017 Technical Data List). Seller shall also identify and assert any restrictions for all commercial computer software in accordance with the Table at paragraph (e) below

- C. Seller’s failure to submit, complete, or sign the identification and assertions required by paragraphs (b)1.A or (b)1.B of this clause with its offer may render the offer ineligible.
 - D. The assertions identified in paragraphs (b)1.A and (b)1.B shall be listed in an Attachment to that contract. Upon request by Buyer, Seller shall provide sufficient information to enable Buyer to evaluate any listed assertion
3. Except as provided in this paragraph, Seller (including its subcontractors or suppliers at any tier) shall not supplement or revise the pre-award listings or notices required by paragraph (b)1. of this Article after contract award.
- A. Noncommercial Technologies. Post-award identification and assertion of restrictions on noncommercial technical data and noncommercial computer software are governed by paragraph (e) of DFARS 252.227-7013, DFARS 252.227-7014, and DFARS 252.227-7018, respectively.
 - B. Commercial Technologies. Seller may supplement or revise its pre-award identification and assertion of restrictions on commercial computer software and commercial technical data only if such an expansion or revision would be permitted for noncommercial computer software or noncommercial technical data pursuant to paragraph (b)2.A of this Article (i.e., based on new information, or inadvertent omissions that would not have materially affected source selection).
- (c) Specific Identification of Technical Data and Computer Software. When identifying and asserting restrictions on technical data and computer software pursuant to paragraph (b) of this Article, Seller shall:
- 1. Ensure that the technical data and computer software are identified by specific reference to the requirement to deliver or provide that technical data or computer software in this Contract. For example, by referencing the associated CLINs, CDRLs, or paragraphs in the statement of work.
 - 2. Include the relevant information for all technical data and computer software that are or may be required to be delivered or otherwise provided under this Contract -- including all Option CLINs or other optional or contingent delivery requirements (i.e., presuming that Buyer will exercise the option to require delivery), online or remote access to information, and firmware or other computer software to be embedded in hardware deliverables.
- (d) Copies of Negotiated, Commercial, and Other Non-Standard Licenses. Seller shall provide copies of all proposed specially negotiated license(s), commercial license(s), and any other asserted restrictions other than Government purpose rights, limited rights, restricted rights, SBIR data rights for which the protection period has not expired, or Government’s minimum rights as specified in the clause at 252.227-7015.
- (e) Commercial Computer Software (including Open Source Software) assertions shall be identified by completing the following table:

Identification of Commercial Computer Software (including Open Source Software) Use and Modifications

Computer Software Title and Version # *	Computer Software License Name and Version # **	Name of Contractor Delivering Open Source Software ***	If Open Source Software (“OSS”), was OSS modified by Seller or its Subcontractor? ****	If Modified, was Open Source Software modified by incorporation into a third party’s software? *****

*The complete title and version number of the Open Source Software should be listed. If downloaded from a website, the website address should also be provided.

**The Software license and version number should be listed. If a version number is not available, the Seller should state no version number.

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

****Seller should state whether it has modified the OSS.

*****If Seller has modified the Software, the contract should state whether the OSS was modified by combining with another party's non-open source software. The other party's non-open source may be licensed with distribution restrictions which would not allow Buyer or the Government to accept delivery of the software combination.

- (f) Seller Use, But Not Delivery, of, OSS. OSS -- computer software for which the source code is available without charge for use, modification and distribution -- is often licensed under terms that require the user to make the user's modifications to the open source software or any software that the user 'combines' with the open source software freely available in source code form. In cases where Seller proposes to use open source software while performing under a contract, but not to deliver OSS, Seller shall not: (i) create, or purport to create, any Buyer and/or Government distribution obligations with respect to the computer software deliverables; or (ii) grant, or purport to grant, to any third party any rights to or immunities under Buyer and/or Government intellectual property or Buyer and/or Government data rights to Buyer computer software deliverables. For example, Seller may not develop a computer software deliverable using an open source program (including without limitation libraries) and non-commercial computer software program where such use results in a program file(s) that contains code from both the non-commercial computer software and open source software if the open source software is licensed under a license that requires any "modifications" be made freely available. Seller also may not combine the non-commercial computer software deliverable with open source software licensed under the GNU General Public License ("GPL") or the Lesser General Public License ("LGPL") in any manner where such use would cause, or could be interpreted or asserted to cause, the non-commercial computer software deliverable or any modifications thereto to become subject to the terms of the GPL of LGPL.

ARTICLE 46. TECHNOLOGY ENHANCEMENT

Seller shall implement a technology enhancement program to include technology upgrades, technology refreshment, and/or technology insertion to ensure that Seller furnished subsystems, equipment, and software are not technologically obsolete at ship delivery. Prior to the award of initial and option orders, Seller agrees to provide a certificate of identicality and a certificate stating the Contract Products will not be obsolete as defined below. Technology shall be considered to be obsolete with current technology if any one of the following criteria is met:

- Products not in production or expected to be phased out of production by the original equipment manufacturer within two (2) years following ship delivery.
- Products no longer commercially supported or any component without a Seller documented plan to support for seven (7) years following ship delivery.
- Products whose maintenance costs exceed replacement costs with current technology.

When authorized by Buyer, Seller shall provide any software changes, technical upgrades or version updates produced after initial software introduction, and shall ensure those changes are installed in the applicable system/equipment before delivery. These changes shall also be reflected in Seller furnished applicable documentation or manuals.

ARTICLE 47. QUALITY MANAGEMENT SYSTEM REQUIREMENTS

Seller shall provide and maintain a quality management system that adheres to the requirements of ANSI/ISO/ASQ 9001-2015 Quality Management Systems and supplemental requirements imposed by this Contract or as otherwise acceptable to Buyer; such acceptance must be set forth in a writing signed by Buyer. The quality management system procedures, planning, and all other documentation and data that comprise the quality management system shall be made available to Buyer and the Government for review. Buyer and/or the Government may perform any necessary inspections, verifications, and evaluations to ascertain conformance to requirements and the adequacy of the implementing procedures. Seller shall require of its subcontractors a quality management system achieving control of the quality of the services and/or supplies provided. Buyer and the Government together reserve the right to disapprove the quality management system or portions thereof when it fails to meet the contractual requirements.

ARTICLE 48 COUNTERFEIT GOODS

- (a) Seller shall not furnish Counterfeit Goods to Buyer. Counterfeit Goods are defined as Contract Products or separately-identifiable items or components of Contract Products that: (i) are an unauthorized copy or substitute of an Original Equipment Manufacturer or Original Component Manufacturer (collectively, “OEM”) item; (ii) are not traceable to an OEM sufficient to ensure authenticity in OEM design and manufacture; (iii) do not contain proper external or internal materials or components required by the OEM or are not constructed in accordance with OEM design; (iv) have been re-worked, re-marked, relabeled, repaired, refurbished, or otherwise modified from OEM design but not disclosed as such or are represented as OEM authentic or new; or (v) have not passed successfully all OEM required testing, verification, screening, and quality control processes. Notwithstanding the foregoing, items that contain modifications, repairs, rework, or re-marking as a result of Seller’s or its subcontractor’s design authority, material review procedures, quality control processes, or parts management plans, and that have not been misrepresented or mismarked, shall not be deemed Counterfeit Goods. Counterfeit Goods shall be deemed nonconforming to this Contract.
- (b) Seller shall implement an appropriate strategy to ensure that items furnished to Buyer under this Contract are not Counterfeit Goods. Seller’s strategy shall include, but is not limited to, the direct procurement of items from OEMs or authorized suppliers, conducting approved testing or inspection to ensure the authenticity of items, and, when items are to be procured from non-authorized suppliers, obtaining from such non-authorized suppliers appropriate certificates of conformance that provide one or more of the following: (i) the OEM’s original certificate of conformance for the item; (ii) sufficient records providing unbroken supply chain traceability to the OEM; or (iii) test and inspection records demonstrating the item’s authenticity.
- (c) If Seller becomes aware or suspects that it has furnished Counterfeit Goods to Buyer under this Contract, Seller promptly, but in no case later than thirty (30) days from discovery, shall notify Buyer and replace, at Seller’s expense, such Counterfeit Goods with OEM or Buyer-approved items that conform to the requirements of this Contract. For confirmed Counterfeit Goods, Government Industry Data Exchange Program (“GIDEP”) notification shall also be made no later than sixty (60) days after discovery. Seller shall be liable for all costs related to the replacement of Counterfeit Goods and any testing or validation necessitated by the installation of authentic items after Counterfeit Goods have been replaced.
- (d) Seller bears responsibility for procuring authentic items from its subcontractors and shall ensure that all such subcontractors comply with the requirements of this Article.

ARTICLE 49 SELLER FINANCIAL REVIEW

If this Contract in the aggregate, exceeds \$700,000 and extends for more than one year, or if otherwise requested by Buyer, Seller shall provide financial data as specified below, on a quarterly basis, or as requested, to Buyer for credit and financial condition reviews. If Seller itself is publicly traded (not a subsidiary of a publicly-traded company) and is required to file reports with the Securities and Exchange Commission (“SEC”), Buyer shall obtain Seller financial data from information made available to the general public via 10-K and 10-Q reporting requirements. In the event that Seller does not submit financial statements to the SEC or is no longer required to do so during the term of this Contract, Seller shall provide financial data on a quarterly basis to Buyer. Such financial data shall include, but is not limited to, balance sheets, schedule of accounts payable and receivable, major lines of credit, creditors, income statements (profit and loss), cash flow statements, firm backlog, and headcount. Copies of such data are to be made available within seventy-two (72) hours of any written request by Buyer. All such information shall be treated as confidential.

ARTICLE 50 BUSINESS CONDUCT

- (a) Environmental Health and Safety Performance. Seller acknowledges and accepts full and sole responsibility to maintain an environment, health and safety management system (“EMS”) appropriate for its business throughout the performance of this Contract. Buyer expects that Seller’s EMS will promote health and safety,

environmental stewardship, and pollution prevention by appropriate source reduction strategies. Seller shall convey the requirement of this clause to its suppliers. Seller shall not deliver Contract Products that contain any asbestos mineral fibers.

- (b) Seller Facility. Seller shall provide Buyer written notice of any proposed plans for moving Seller's manufacturing location for the Contract Products or moving tooling or other equipment utilized in the manufacture of the Contract Products to another facility. In no event shall Seller proceed with implementing such plans prior to obtaining Buyer's prior written approval.
- (c) Buyer Policies. Seller agrees that Buyer's internal policies, procedures and codes are intended to guide the internal management of the Buyer and are not intended to, and do not, create any right or benefit, substantive or procedural, enforceable at law or in equity, by the Seller against the Buyer.

ARTICLE 51 SPECIAL AGREEMENT REGARDING SWITCHBOARD SUBCONTRACTS (NAVSEA) (APR 2015)

- (a) The Government has an interest in maintaining a competitive market for switchboards to be used on U.S. Naval vessels. The requirements of 10 U.S.C. 2534 result in a major component of certain switchboards (i.e., air circuit breakers) being available from a single domestic source who is also a competitor for such switchboards. Therefore, Seller shall evaluate subcontract proposals for such switchboards exclusive of air circuit breaker content or on some other basis that ensures an equitable switchboard competition.
- (b) Seller shall, in all cases involving subcontracts which contain air circuit breakers for switchboards, give advance notification to Buyer and obtain written consent of Buyer prior to placing any such subcontract. Such advance notification shall include the information listed under paragraph (e)(1) of the clause entitled "SUBCONTRACTS" (FAR 52.244-2).

ARTICLE 52. SPECIFICATIONS AND STANDARDS (NAVSEA) (AUG 1994)

- (a) Definitions.
 - 1. A "zero-tier reference" is a specification, standard, or drawing that is cited in the contract (including its attachments).
 - 2. A "first-tier reference" is either: (1) a specification, standard, or drawing cited in a zero-tier reference, or (2) a specification cited in a first-tier drawing.
- (b) Requirements.
 - 1. All zero-tier and first-tier references, as defined above, are mandatory for use. All lower tier references shall be used for guidance only.

ARTICLE 53. CALIBRATION SYSTEM REQUIREMENTS (NAVSEA) (APR 2015)

The calibration of measuring and testing equipment shall, as a minimum, adhere to the requirements of ANSI/NCSL Z540.3-2006.

ARTICLE 54. LOSS OR DESTRUCTION OF RENTAL PROPERTY

Buyer shall not be liable for the loss of or damage to the rental property unless directly caused by Buyer's negligence or intentional misconduct in the care, operation or use of the rental property during the term of the Contract. Seller shall not have, or be entitled to make, any claim for any such loss or damage unless Seller gives Buyer: (a) written notice of any nature, extent and amount of such loss or damage within 48 hours after Seller retrieves the rental property; and (b) the opportunity to inspect the rental property within seven (7) days after retrieval. In no event shall Buyer be liable for loss of rent or for any other consequential damages.