

**NATIONAL STEEL AND SHIPBUILDING COMPANY
SPECIAL TERMS AND CONDITIONS
FOR CONSTRUCTION OF MARITIME SECURITY CUTTER MEDIUM (“WMSM”)
OFFSHORE PATROL CUTTER (“OPC”) VESSELS
FOR THE US COAST GUARD
OPC PROGRAM
HSCG23-12-R-OPC001**

Rev 0 December 12, 2012

PRIME CONTRACT CLAUSES – HSCG23-12-R-OPC001

The following clauses are flowed down from Buyer to Seller pursuant to the requirements of Buyer's (National Steel and Shipbuilding Company, aka General Dynamics NASSCO or NASSCO) Prime Contract with the Government. In interpreting the requirements of these clauses, "Contracting Officer" should be considered to be Buyer's Purchasing Representative and "Government" should be considered to be NASSCO, unless the context indicates otherwise. "Contractor" shall mean Seller. The terms "Government" or "Contracting Officer" do not change: (i) when a right, act authorization or obligation can be granted or performed only by the Government, (ii) when access to proprietary financial information or other proprietary data is required, (iii) when title to property or rights in technical data and/or computer software are to be transferred directly to Government, (iv) with regards to a disputes or changes clause, or (v) with regards to a clause permitting audit(s) of Subcontractor. Some clauses are included in full text, and others of the FAR and DFARS are hereby incorporated into this Contract by reference as if given in full text, subject to the following definitions, and subject to the particular limitations and modifications indicated. The full text of FAR and DFARS clauses may be accessed electronically at the following internet websites:

<https://www.acquisition.gov/far/>
<http://FARSITE.HILL.AF.MIL/Vfdfar1.htm>

1. DEFINITIONS

The following terms will have the meanings indicated in each of the following clauses as modified. Note that some of the terms may not be consistently capitalized within this Contract. *While every effort was made to keep the capitalization consistent for the terms, the inconsistent capitalization should not affect the meaning intended for the terms, whether the terms are capitalized or appears in lower case form.*

Section A – Solicitation/Contract Form –The DO rating will be flowed down at the time of Contract award.

Section B – Supplies or Services and Prices - There are no flow-downs at this time.

Section C – Descriptions and Specifications

C.14 WARRANTY [MODIFIED BY NASSCO] (Applicable to Phase II only)

The Contractor agrees that any commercial warranties for supplies, commercial components of supplies, or services granted by the original equipment manufacturer ("OEM") shall be transferred to NASSCO. NASSCO will transfer the warranties to the USCG. The Contractor agrees that the supplies, commercial components of supplies and services furnished under this Contract shall be covered by the most favorable warranties the OEM gives to any customer for such supplies and services and that the rights and remedies provided under Section I titled "Warranty of Services of a Complex Nature" are in addition to and do not limit any rights and remedies provided to NASSCO or the Government under this Contract.

Section D - Packaging and Marking - There are no flow-downs.

Section E - Inspection and Acceptance

E.1 52.252-2 CLAUSES INCORPORATED BY REFERENCE (FEB 1998)

This Contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically at this/these address(es): <http://farsite.hill.af.mil/vffara.htm>.

FEDERAL ACQUISITION REGULATION (48 CFR CHAPTER 1) CLAUSES

52.246-2	INSPECTION OF SUPPLIES - FIXED PRICE (AUG1996) ALT. 1(JUL 1985)
52.246-3	INSPECTION OF SUPPLIES - COST-REIMBURSEMENT (MAY 2001)
52.246-4	INSPECTION OF SERVICES - FIXED PRICE (AUG 1996)
52.246-15	CERTIFICATE OF CONFORMANCE (APR 1984)
52.246-16	RESPONSIBILITY OF SUPPLIES (APR 1984)

Section F - Deliveries or Performance

F.1 52.252-2 CLAUSES INCORPORATED BY REFERENCE (FEB 1998)

This Contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically at this address: <http://farsite.hill.af.mil/vffara.htm>.

a. FEDERAL ACQUISITION REGULATION (48 CFR CHAPTER 1) CLAUSES

52.242-15	STOP-WORK ORDER (AUG 1989) (Applicable only if Stop Work order initiated by the Government)
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52.242-17	GOVERNMENT DELAY OF WORK (APR 1984)
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b. HOMELAND SECURITY ACQUISITION REGULATION (HSAR)

3052.222-70	STRIKES OR PICKETING AFFECTING TIMELY COMPLETION OF THE CONTRACT WORK (DEC 2003)
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Section G - Contract Administration Data – There are no flow-downs.

Section H - Special Contract Requirements

H.6 DISSEMINATION OF CONTRACT INFORMATION *MODIFIED BY NASSCO*

Under no circumstances shall the Contractor, or anyone acting on behalf of the Contractor, refer to the supplies, services, or equipment furnished pursuant to the provisions of this contract in any news release or commercial advertising without first obtaining explicit written consent to do so from NASSCO, who must secure approval from the Contracting Officer. The Contractor agrees not to refer to awards in commercial advertising in such a manner as to state or imply that the product or service provided is endorsed or preferred by NASSCO or the Federal Government or is considered by NASSCO or the Government to be superior to other products or services.

H.17 ORDERS (COST-PLUS-FIXED-FEE) *MODIFIED BY NASSCO*

(a) General. Orders for supplies or services as specified in this Agreement and its attachments may be issued at any time during the effective period of this contract. Except as otherwise provided in paragraph (e) below, the Contractor agrees to accept and perform orders issued within the scope of this Contract. It is understood and agreed that NASSCO has no obligation under the terms of this Contract to issue any orders. Except as otherwise provided in any order, the Contractor shall furnish all materials and services necessary to accomplish the work specified in each order issued hereunder; provided, however, that this contract shall not be used for the furnishing of supplies or services which are covered by any "guaranty" or "warranty" clause(s) of the contract(s) under which the supplies were manufactured. In the event of any inconsistency between any order and this Contract, this contract shall control. All requirements of this Contract shall be applicable to all orders issued hereunder. Wherever the word "Contract" appears in this clause or any order pursuant to this clause, it shall be deemed to include within its meaning the word "order", and each order shall be considered a separate binding contract as of its effective date. The Contractor shall segregate the costs incurred in the performance of any order issued hereunder from the costs of all other orders issued under this Contract.

(b) Ordering. Orders and revisions thereto shall be made in writing and be signed by any authorized Contracting Officer cited in this Agreement.

(c) Priced Orders. Except as otherwise provided in paragraph (d) below, the Contractor shall not begin any work on an order until the estimated cost and fixed fee for the order has been agreed upon by NASSCO and Contractor and an order is issued. Upon receipt of a proposed order, the Contractor shall promptly submit to NASSCO a cost proposal for the work specified in the order. The Contractor shall submit such cost or pricing data as NASSCO's end United States government customer may require of NASSCO. NASSCO shall request an assist audit from the Government to evaluate any cost and pricing data deemed proprietary by the Contractor. Promptly after receipt of the Contractor's proposal and supporting cost or pricing data, if required, as well as any audit recommendations provided by the Government in any assist audit the Contractor and NASSCO'S Purchasing Representative shall negotiate and agree upon a price and delivery schedule for the work being ordered. The estimated cost, fixed fee, and delivery schedule, as agreed upon, shall be set forth in the priced order and the order shall be signed by both the Contractor and NASSCO. Upon receipt of the priced order, the Contractor shall promptly commence work and shall diligently complete it.

(d) Unpriced Orders. Whenever NASSCO determines that urgent demands or requirements prevent the issuance of a firm priced order, NASSCO may issue an unpriced order. Such order may be unilateral or bilateral and shall establish a limitation on liability, a maximum ceiling amount and a schedule for definitization, as described in subparagraph (f)(2) below. Upon request, the Contractor shall submit a maximum ceiling amount proposal before the undefinitized order is issued. The maximum ceiling amount is the maximum amount (including fee) at which the order may be definitized. Except as provided in paragraph (e) below, the Contractor shall commence performance of the order upon receipt. The clause entitled "Contract Definitization" (FAR 52.216-25) shall be included in any undefinitized order.

(e) Rejection of Unilateral Orders. The Contractor may reject any unilateral order if the Contractor determines it cannot feasibly perform the order, or if it does not concur with the maximum ceiling amount. The Contractor shall, however, be obligated to provide a counter proposal for time to perform and/or maximum ceiling amount with any such rejection. However, each unilateral order shall be deemed to have been accepted by the Contractor unless within 14 calendar days of issuance of the order the Contractor notifies the Contracting Officer in writing of its rejection of the order.

(f) Definitization of Unpriced Orders. (1) The Contractor agrees that following the issuance of an undefinitized order, it will promptly begin negotiating with NASSCO'S Purchasing Representative the CPFF and terms of a definitive order that will include: (A) all clauses required by regulation on the date of the order; (B) all clauses required by law on the date of execution of the definitive order; and, (C) other mutually agreeable clauses, terms and/or conditions. No later than 60 days after the undefinitized order is issued, the Contractor shall submit a cost proposal with sufficient data to support the accuracy and derivation of its CPFF proposal; and, when required by FAR or NASSCO'S United States government end customer, cost or pricing data. If additional cost information is available prior to the conclusion of negotiations, the Contractor shall provide that information to NASSCO. The CPFF agreed upon shall be set forth in a bilateral modification to the order. In no event shall the CPFF exceed the maximum ceiling amount specified in the undefinitized order.

(2) Each undefinitized order shall contain a schedule for definitization which shall include a target date for definitization and dates for submission of a qualifying proposal, beginning of negotiations and, if appropriate, submission of make-or-buy and subcontracting plans and cost or pricing data. Submission of a qualifying proposal in accordance with the definitization schedule is a material element of the order. The schedule shall provide for definitization of the order by the earlier of:

(i) specified target date which is not more than 180 days after the issuance of the undefinitized order. However, that target date may be extended by NASSCO for up to 180 days after the Contractor submits a qualifying proposal; or

(ii) the date on which the amount of funds obligated by NASSCO under the undefinitized order exceeds 50% of the order's maximum ceiling amount.

(3) If Contract on a definitive order is not reached within the time provided pursuant to subparagraph (f)(2) above, NASSCO's United States Government end customer may, with the approval of the its Head of the Contracting Activity, determine a reasonable price in accordance with Subpart 15.4 and Part 31 of the FAR, and NASSCO shall issue a unilateral order in accordance with the Government's determination subject to Contractor appeal as provided in the "Disputes" clause. In any event, the Contractor shall proceed with completion of the order, subject to the "Limitation of Government Liability" clause.

(g) Limitation of Liability. (1) Each undefinitized order shall set forth the limitation of liability, which shall be the maximum amount that NASSCO will be obligated to pay the Contractor for performance of the order until the order is definitized. The Contractor is not authorized to make expenditures or incur obligations exceeding the limitation of liability set forth in the order. If such expenditures are made, or if such obligations are incurred, those expenditures and obligations will be at the Contractor's sole risk and expense. Further, the limitation of liability shall be the maximum liability if the order is terminated. The clause at FAR 52.216-24 shall be included in any undefinitized order.

(2) Except for undefinitized orders for Foreign Military Sales; purchases of less than \$25,000; special access programs; and Congressionally-mandated long lead procurements; and except as otherwise provided in subparagraph (g)(3) below, the limitation of liability shall not exceed fifty percent (50%) of the maximum ceiling amount of an undefinitized order. In the case of orders within these excepted categories, however, the procedures set forth herein shall be followed to the maximum extent practical.

(3) If the Contractor submits a qualifying proposal to definitize an order before the obligated fifty percent (50%) of the maximum ceiling amount, NASSCO may increase the limitation of liability up to no more than seventy-five percent (75%) of the maximum ceiling amount or up to seventy-five percent (75%) of the total CPFF proposed by the Contractor, whichever is less.

(4) If at any time the Contractor believes that its expenditures under an order will exceed the limitation of liability, the Contractor shall so notify NASSCO, in writing, and propose an appropriate increase in the limitation of liability of such order. Within thirty (30) days of such notice, the Contracting Officer will either (i) notify the Contractor in writing of such appropriate increase, or (ii) instruct the Contractor how and to what extent the work shall be continued; provided, however, that in no event shall the Contractor be obligated to proceed with work on an undefinitized order beyond the point where its costs incurred plus a reasonable profit exceed the limitation of liability, and provided also that in no event shall NASSCO be obligated to pay the Contractor any amount in excess of the limitation of liability specified in any such order prior to definitization.

(h) Initial Spares. The limitations set forth in paragraph (d) and subparagraphs (f)(2), (g)(2) and (g)(3), do not apply to undefinitized orders for the purchase of initial spares.

(i) Reserved.

H.18 ORDERS (FIXED-PRICE) MODIFIED BY NASSCO

(a) General. Orders for supplies or services as specified in this Agreement and its attachments may be issued by NASSCO at any time during the effective period of this Contract. Except as otherwise provided in paragraph (e) below, the Contractor agrees to accept and perform orders issued by the Contracting Officer within the scope of this Contract. It is understood and agreed that the Government has no obligation under the terms of this Contract to issue any orders. Except as otherwise provided in any order, the Contractor shall furnish all materials and services necessary to accomplish the work specified in each order issued hereunder; provided, however, that this Contract shall not be used for the furnishing of supplies or services which are covered by any "guaranty" or "warranty" clause(s) of the contract(s) under which the supplies were manufactured. In the event of any inconsistency between any order and this Contract, this Contract shall control. All requirements of this Contract shall be applicable to all orders issued hereunder. Wherever the word "Contract" appears in this clause or any order pursuant to this clause, it shall be deemed to include within its meaning the word "order", and each order shall be considered a separate binding contract as of its effective date. The Contractor shall segregate the costs incurred in the performance of any order issued hereunder from the costs of all other orders issued under this Contract.

(b) Ordering. Orders and revisions thereto shall be made in writing and be signed by any authorized Procurement Representative cited in this Agreement.

(c) Firm Priced Orders. Except as otherwise provided in paragraph (d) below, the Contractor shall not begin any work on an order until a firm priced order is issued by NASSCO. Upon receipt of a proposed order, the Contractor shall promptly submit to NASSCO a price proposal for the work specified in the order. The Contractor agrees that it will submit such cost or pricing data as NASSCO's end government Customer may require of

NASSCO. NASSCO shall request an assist audit from the Government to evaluate any cost and pricing data deemed proprietary by the Contractor. Promptly after receipt of the Contractor's proposal and supporting cost or pricing data, if required, the Contractor and NASSCO shall negotiate and agree upon a price and delivery schedule for the work being ordered. The price and delivery schedule, as agreed upon, shall be set forth in the priced order and the order shall be signed by both NASSCO and the Contractor. Upon receipt of the priced order, the Contractor shall promptly commence work and shall diligently complete it.

(d) Unfinalized Orders. Whenever NASSCO determines that urgent demands or requirements prevent the issuance of a firm priced order, NASSCO's Purchasing Representative may issue an unpriced order. Such order may be unilateral or bilateral and shall establish a limitation on liability, a maximum ceiling amount and a schedule for finalization, as described in subparagraph (f)(2) below. Upon request, the Contractor shall submit a maximum ceiling amount proposal before the unfinalized order is issued. The maximum ceiling amount is the maximum price at which the order may be finalized. Except as provided in paragraph (e) below, the Contractor shall commence performance of the order upon receipt. The clause entitled "Contract Finalization" (FARS 52.216-25) shall be included in any unfinalized order.

(e) Rejection of Unilateral Orders. The Contractor may reject any unilateral order if the Contractor determines it cannot feasibly perform the order, or if it does not concur with the maximum ceiling amount. The Contractor shall, however, be obligated to provide a counter proposal for time to perform and/or maximum ceiling amount with any such rejection. However, each unilateral order shall be deemed to have been accepted by the Contractor unless within 15 days of issuance of the order the Contractor notifies the Contracting Officer in writing of its rejection of the order.

(f) Finalization of Unfinalized Orders. (1) The Contractor agrees that following the issuance of an unfinalized order, it will promptly begin negotiating with NASSCO the price and terms of a definitive order that will include: (A) all clauses required by regulation on the date of the order; (B) all clauses required by law on the date of execution of the definitive order; and, (C) other mutually agreeable clauses, terms and/or conditions. No later than 60 days after the unfinalized order is issued, the Contractor shall submit a cost proposal with sufficient data to support the accuracy and derivation of its price; and, when required by FAR or NASSCO's United States government end customer, cost or pricing data. If additional cost information is available prior to the conclusion of negotiations, the Contractor shall provide that information to NASSCO. The price agreed upon shall be set forth in a bilateral modification to the order. In no event shall the price exceed the maximum ceiling amount specified in the unfinalized order.

(2) Each unfinalized order shall contain a schedule for finalization which shall include a target date for finalization and dates for submission of a qualifying proposal, beginning of negotiations and, if appropriate, submission of make-or-buy and subcontracting plans and cost or pricing data. Submission of a qualifying proposal in accordance with the finalization schedule is a material element of the order. The schedule shall provide for finalization of the order by the earlier of:

(i) specified target date which is not more than 180 days after the issuance of the unfinalized order. However, that target date may be extended by NASSCO for up to 180 days after the Contractor submits a qualifying proposal; or

(ii) the date on which the amount of funds obligated by NASSCO under the unfinalized order exceeds fifty percent (50%) of the order's maximum ceiling amount.

(3) If contract on a definitive order is not reached within the time provided pursuant to subparagraph (f)(2) above, NASSCO's United States Government end customer may, with the approval of its Head of the Contracting Activity, determine a reasonable price in accordance with Subpart 15.4 and Part 31 of the FAR, and NASSCO shall issue a unilateral order in accordance with the Government's determination subject to Contractor appeal as provided in the "Disputes" clause. In any event, the Contractor shall proceed with completion of the order, subject to the "Limitation of Liability" clause.

(g) Limitation of Liability. (1) Each unfinalized order shall set forth the limitation of liability, which shall be the maximum amount that NASSCO will be obligated to pay the Contractor for performance of the order until the order is finalized. The Contractor is not authorized to make expenditures or incur obligations exceeding the limitation of liability set forth in the order. If such expenditures are made, or if such obligations are incurred, those expenditures and obligations will be at the Contractor's sole risk and expense. Further, the limitation of liability shall be the maximum liability if the order is terminated. The clause at FAR 52.216-24 shall be included in any unfinalized order.

(2) Except for unfinalized orders for Foreign Military Sales; purchases of less than \$25,000; special access programs; and Congressionally-mandated long lead procurements; and except as otherwise provided in subparagraph (g)(3) below, the limitation of liability shall not exceed fifty percent (50%) of the maximum ceiling amount of an unfinalized order. In the case of orders within these excepted categories, however, the procedures set forth herein shall be followed to the maximum extent practical.

(3) If the Contractor submits a qualifying proposal to finalize an order before NASSCO obligated fifty percent (50%) of the maximum ceiling amount, NASSCO may increase the limitation of liability up to no more than seventy-five percent (75%) of the maximum ceiling amount or up to seventy-five percent (75%) of the price proposed by the Contractor, whichever is less.

(4) If at any time the Contractor believes that its expenditures under an order will exceed the limitation of liability, the Contractor shall so notify NASSCO, in writing, and propose an appropriate increase in the limitation of liability of such order. Within thirty (30) days of such notice, NASSCO will either (i) notify the Contractor in writing of such appropriate increase, or (ii) instruct the Contractor how and to what extent the work shall be continued; provided, however, that in no event shall the Contractor be obligated to proceed with work on an unfinalized order beyond the point where its costs incurred plus a reasonable profit exceed the limitation of liability, and provided also that in no event shall NASSCO be obligated to pay the Contractor any amount in excess of the limitation of liability specified in any such order prior to finalization.

(h) Initial Spares. The limitations set forth in paragraph (d) and subparagraphs (f)(2), (g)(2) and (g)(3), do not apply to undefinitized orders for the purchase of initial spares.

(i) Reserved.

H.23 REQUIREMENTS FOR CONTRACTS INVOLVING EXPORT-CONTROLLED ITEMS

a. *Definition*. “Export-controlled items” as used in this clause, means items subject to the Export Administration Regulations (EAR) (15 CFR Parts 730-774) or the International Traffic in Arms Regulations (ITAR)(22 CFR Parts 120-130). The term includes:

1. “Defense items” defined in the Arms Export Control Act, 22 U.S.C. 2778(j)(4)(A), as defense articles, defense services, and related technical data, and further defined in the ITAR, 22 CFR Part 120.

2. “Items” defined in the EAR as “commodities”, “software”, and “technology”, terms that are also defined in the EAR, 15 CFR 772.1.

b. The Contractor shall comply with all applicable laws and regulations regarding export-controlled items, including, but not limited to, the requirement for contractors to register with the Department of State in accordance with the ITAR. The Contractor shall consult with the Department of State regarding any questions relating to compliance with the ITAR and shall consult with the Department of Commerce regarding any questions relating to compliance with the EAR.

c. The Contractor’s responsibility to comply with all applicable laws and regulations regarding export-controlled items exists independent of, and is not established or limited by, the information provided by this clause.

d. Nothing in the terms of this Contract additions, changes, supersedes, or waives any of the requirements of applicable Federal laws, Executive orders, and regulations, including but not limited to—

1. The Export Administration Act of 1979, as amended (50 U.S.C. App. 2401, et seq.);

2. The Arms Export Control Act of 1976 (22 U.S.C. 2751, et seq.); et seq.;

3. The International Emergency Economic Powers Act (50 U.S.C. 1701, et seq.);

4. The Export Administration Regulations (15 CFR Parts 730-774);

5. The International Traffic in Arms Regulations (22 CFR Parts 120-130); and

6. Executive Order 13222, as extended;

e. Data delivered under this Contract that contain technical data are subject to the restrictions of the Arms Export Control Act (Title 22, U. S. C, Section 2751). Technical documents shall be marked with the appropriate ITAR Control Statements

f. The Contractor shall include the substance of this clause, including this paragraph (f), in all subcontracts.

H.26 SPECIFICATIONS AND STANDARDS [MODIFIED BY NASSCO]

a. In the event there are conflicts, inconsistencies or gaps among these standards and specifications, the Contractor shall promptly notify NASSCO upon discovery of such issues for clarification or resolution. The Contractor shall diligently continue performance of this Contract to the maximum extent possible in accordance with its terms and conditions as construed by the Contractor until the clarification/decision is received from NASSCO’s Buyer.

Definition: A “first-tier reference” is either: (1) a specification, standard, or drawing that is cited in the Contract (including attachments), or (2) the drawings or standards listed in this clause. A “second-tier reference” is either: (1) a specification, standard, or drawing cited in a first-tier reference, or (2) a specification cited in a first-tier drawing.

b. All first-tier references are mandatory for use.

c. All second tier references regarding product items (that procure physical items are mandatory for use.

d. All second tier references regarding non-product items and lower tier references in the specifications and standards may be used for guidance only.

e. First, second, third and fourth tier references are mandatory for welding process, welding inspection process and welding material documents.

f. All tiers of reference in non-Government standards are mandatory for use. This applies to military specifications and standards that are lower-tier references in the cited non-Government standards.

g. Unless otherwise specified above, all lower tier references in the specifications and standards shall be used for guidance only.

h. If, during the performance of this Contract, the Contractor believes any outdated or different versions of any specifications or standards exists, the Contractor may request that the Contract be updated to include the current version of the applicable specification or standard. Updating shall not affect the form, fit, or function of any deliverable item or increase the cost/price of the item. The Contractor may elect to submit update requests to NASSCO for approval. The Contractor shall perform in accordance with the existing specifications and standards until notified of approval/disapproval by NASSCO’s Buyer. Any approved alternate specifications or standards will be incorporated into the Contract.

H.29 WARRANTY OF DATA [NOTE: CLAUSE HAS BEEN MODIFIED BY NASSCO. "GOVERNMENT" MEANS ONLY THE US GOVERNMENT AND NOT NASSCO.] (Applicable to Phase II only)

a. Notwithstanding inspection and acceptance by the Government of technical data furnished under this Contract, and notwithstanding any provision of this Contract concerning the conclusiveness of acceptance, the Contractor warrants that all technical data delivered under this Contract will at the time of delivery conform to the specifications and all other requirements of this Contract. The warranty period shall extend for three years after completion of the delivery of the line item of data (as identified in NASSCO's DD Form 1423, Contract Data Requirements List) of which the data forms a part; or any longer period specified in the Contract.

b. The Contractor agrees to notify NASSCO, who then is responsible for notifying the Contracting Officer in writing immediately of any breach of the above warranty which the Contractor discovers within the warranty period.

c. The following remedies shall apply to all breaches of the warranty, whether the Contractor notifies NASSCO or the Contracting Officer or if NASSCO or the Government notifies the Contractor of the breach in writing within the warranty period: 1. By written notice NASSCO or the Contracting Officer may direct the Contractor to correct or replace at the Contractor's expense the nonconforming technical data promptly; or if the Contracting Officer determines that the Government no longer has a requirement for correction or replacement of the data, or that the data can be more reasonably corrected by the Government, inform the Contractor by written notice that the Government elects a price or fee adjustment instead of correction or replacement.

d. If the Contractor refuses or fails to comply with a direction under this clause, the Contracting Officer may direct by contract or otherwise, correct or replace the nonconforming technical data and charge the cost to NASSCO, who will pass on the charge to the Contractor; or elect a price or fee adjustment instead of correction or replacement.

H.30 CONTRACTOR BUSINESS SYSTEMS) (Applicable only if NASSCO's end U.S. Government Customer requires NASSCO to flow this clause down to Contractor, as is evidenced in writing) ["GOVERNMENT" MEANS ONLY THE US GOVERNMENT AND NOT NASSCO. "CONTRACTING OFFICER MEANS ONLY THE US GOVERNMENT'S CONTRACTING OFFICER, AND NOT NASSCO'S CONTRACTING OFFICER.]

(a) This clause only applies to covered contracts that are subject to the Cost Accounting Standards under 41 U.S.C. chapter 15, as implemented in regulations found at 48 CFR 9903.201-1 (see the FAR Appendix),

(b) Definitions. As used in this clause—

"Acceptable contractor business systems" means contractor business systems that comply with the terms and conditions of the applicable business system clauses listed in the definition of "contractor business systems" in this clause.

"Contractor business systems" means—

- (1) Accounting system,
- (2) Earned value management system, and
- (3) Purchasing system.

"Significant deficiency," in the case of a contractor business system, means a shortcoming in the system that materially affects the ability of officials of the Department of Defense to rely upon information produced by the system that is needed for management purposes.

(c) *General.* The Contractor shall establish and maintain acceptable business systems in accordance with the terms and conditions of this contract.

(d) *Significant deficiencies.*

(1) The Contractor shall respond, in writing, within 30 days to an initial determination that there are one or more significant deficiencies in one or more of the Contractor's business systems.

(2) The Contracting Officer will evaluate the Contractor's response and notify the Contractor, in writing, of the final determination as to whether the Contractor's business system contains significant deficiencies. If the Contracting Officer determines that the Contractor's business system contains significant deficiencies, the final determination will include a notice to withhold payments.

(e) Withholding payments.

(1) If the Contracting Officer issues the final determination with a notice to withhold payments for significant deficiencies in a contractor business system required under this contract, the Contracting Officer will withhold five percent of amounts due NASSCO for Contractor effort from progress payments and performance-based payments, and NASSCO shall direct the Contractor, in writing, to withhold five percent from its billings on interim cost vouchers on cost-reimbursement, labor-hour, and time-and-materials contracts until the Contracting Officer has determined that the Contractor has corrected all significant deficiencies as directed by the Contracting Officer's final determination. The Contractor shall, within 45 days of receipt of the notice, either correct the deficiencies or submit an acceptable corrective action plan showing milestones and actions to eliminate the deficiencies. Any withholdings levied on NASSCO for Contractor's deficiencies will be similarly withheld from Contractor by NASSCO.

(2) If the Contractor submits an acceptable corrective action plan within 45 days of receipt of a notice of the Contracting Officer's intent to withhold payments, and the Contracting Officer, in consultation with the auditor or functional specialist, determines that the Contractor is effectively implementing such plan, the Contracting Officer will reduce withholding from payments to NASSCO for Contractor effort directly related to the significant deficiencies covered under the corrective action plan, to two percent from progress payments and performance-based payments, and NASSCO shall direct the Contractor, in writing, to reduce the percentage withheld on interim cost vouchers to two percent until the Contracting Officer determines the Contractor has corrected all significant deficiencies as directed by the Contracting Officer's final determination. However, if at any time, the Contracting Officer determines that the Contractor has failed to follow the accepted corrective action plan, the Contracting Officer will increase withholding from amounts due to NASSCO for Contractor effort for progress payments and performance-based payments, and NASSCO shall direct the Contractor, in writing, to increase the percentage withheld on interim cost vouchers to the percentage initially withheld, until the Contracting Officer determines that the Contractor has corrected all significant deficiencies as directed by the Contracting Officer's final determination.

(3) Payment withhold percentage limits.

(i) The total percentage of payments withheld on amounts due under each progress payment, performance-based payment, or interim cost voucher, on this contract shall not exceed--

(A) Five percent for one or more significant deficiencies in any single contractor business system; and

(B) Ten percent for significant deficiencies in multiple contractor business systems.

(ii) If this contract contains pre-existing withholds, and the application of any subsequent payment withholds will cause withholding under this clause to exceed the payment withhold percentage limits in paragraph (e)(3)(i) of this clause, the Contracting Officer will reduce the payment withhold percentage in the final determination to an amount that will not exceed the payment withhold percentage limits.

(4) For the purpose of this clause, payment means any of the following payments authorized under this contract:

(i) Interim payments under—

(A) Cost-reimbursement contracts;

(B) Incentive type contracts;

(C) Time-and-materials contracts;

(D) Labor-hour contracts.

(ii) Progress payments.

(iii) Performance-based payments.

(5) Payment withholding shall not apply to payments on fixed-price line items where performance is complete and the items were accepted by NASSCO.

(6) The withholding of any amount or subsequent payment to the Contractor shall not be construed as a waiver of any rights or remedies NASSCO has under this contract.

(7) Notwithstanding the provisions of any clause in this contract providing for interim, partial, or other payment withholding on any basis, the Contracting Officer may withhold payment from NASSCO in accordance with the provisions of this clause.

(8) The payment withholding authorized in this clause is not subject to the interest-penalty provisions of the Prompt Payment Act.

(f) *Correction of deficiencies.*

(1) The Contractor shall notify the Contracting Officer, in writing, when the Contractor has corrected the business system's deficiencies.

(2) Once the Contractor has notified the Contracting Officer that all deficiencies have been corrected, the Contracting Officer will take one of the following actions:

(i) If the Contracting Officer determines that the Contractor has corrected all significant deficiencies as directed by the Contracting Officer's final determination, the Contracting Officer will, as appropriate, discontinue the withholding of progress payments and performance-based payments from NASSCO, and NASSCO shall direct the Contractor, in writing, to discontinue the payment withholding from billings on interim cost vouchers under this contract associated with the Contracting Officer's final determination, and NASSCO shall authorize the Contractor to bill for any monies previously withheld that are not also being withheld due to other significant deficiencies. Any payment withholding under this contract due to other significant deficiencies, will remain in effect until the Contracting Officer determines that those significant deficiencies are corrected.

(ii) If the Contracting Officer determines that the Contractor still has significant deficiencies, the Contracting Officer will continue the withholding of progress payments and performance-based payments to NASSCO, and the Contractor shall continue withholding amounts from its billings on interim cost vouchers in accordance with paragraph (e) of this clause, and not bill for any monies previously withheld.

(iii) If the Contracting Officer determines, based on the evidence submitted by the Contractor, that there is a reasonable expectation that the corrective actions have been implemented and are expected to correct the significant deficiencies, the Contracting Officer will discontinue withholding payments from NASSCO, and release any payments previously withheld directly related to the significant deficiencies identified in the Contractor notification, and NASSCO shall direct the Contractor, in writing, to discontinue the payment withholding from billings on interim cost vouchers associated with the Contracting Officer's final determination, and NASSCO shall authorize the Contractor to bill for any monies previously withheld.

(iv) If, within 90 days of receipt of the Contractor notification that the Contractor has corrected the significant deficiencies, the Contracting Officer has not made a determination in accordance with paragraphs (f)(2)(i), (ii), or (iii) of this clause, the Contracting Officer will reduce withholding to NASSCO for Contractor effort directly related to the significant deficiencies identified in the Contractor notification by at least 50 percent of the amount being withheld from progress payments and performance-based payments, and NASSCO shall direct the Contractor, in writing, to reduce the payment withholding from billings on interim cost vouchers directly related to the significant deficiencies identified in the Contractor notification by a specified percentage that is at least 50 percent, but not authorize the Contractor to bill for any monies previously withheld until the Contracting Officer makes a determination in accordance with paragraphs (f)(2)(i), (ii), or (iii) of this clause.

(v) At any time after the Contracting Officer reduces or discontinues the withholding of progress payments and performance-based payments, or directs NASSCO to reduce or discontinue the payment withholding for Contractor effort from billings on interim cost vouchers under this contract, if the Contracting Officer determines that the Contractor has failed to correct the significant deficiencies identified in the Contractor's notification, the Contracting Officer will reinstate or increase withholding for Contractor effort from progress payments and performance-based payments, and NASSCO shall direct the Contractor, in writing, to reinstate or increase the percentage withheld on interim cost vouchers to the percentage initially withheld, until the Contracting Officer determines that the Contractor has corrected all significant deficiencies as directed by the Contracting Officer's final determination.

H.31 ACCOUNTING SYSTEM ADMINISTRATION) *(Applicable only if NASSCO's end U.S. Government Customer requires NASSCO to flow this clause down to Seller, as is evidenced in writing) [“GOVERNMENT” MEANS ONLY THE US GOVERNMENT AND NOT NASSCO. “CONTRACTING OFFICER MEANS ONLY THE US GOVERNMENT’S CONTRACTING OFFICER, AND NOT NASSCO’S CONTRACTING OFFICER.]*

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

(1) “Acceptable accounting system” means a system that complies with the system criteria in paragraph (c) of this clause to provide reasonable assurance that—

(i) Applicable laws and regulations are complied with;

(ii) The accounting system and cost data are reliable;

(iii) Risk of misallocations and mischarges are minimized; and

(iv) Contract allocations and charges are consistent with billing procedures.

(2) "Accounting system" means the Contractor's system or systems for accounting methods, procedures, and controls established to gather, record, classify, analyze, summarize, interpret, and present accurate and timely financial data for reporting in compliance with applicable laws, regulations, and management decisions, and may include subsystems for specific areas such as indirect and other direct costs, compensation, billing, labor, and general information technology.

(3) "Significant deficiency" means a shortcoming in the system that materially affects the ability of Government officials to rely upon information produced by the system that is needed for management purposes.

(b) *General.* The Contractor shall establish and maintain an acceptable accounting system. Failure to maintain an acceptable accounting system, as defined in this clause, shall result in the withholding of payments in accordance with the the clause entitled "Contractor Business Systems", and also may result in disapproval of the system.

(c) *System criteria.* The Contractor's accounting system shall provide for—

- (1) A sound internal control environment, accounting framework, and organizational structure;
- (2) Proper segregation of direct costs from indirect costs;
- (3) Identification and accumulation of direct costs by contract;
- (4) A logical and consistent method for the accumulation and allocation of indirect costs to intermediate and final cost objectives;
- (5) Accumulation of costs under general ledger control;
- (6) Reconciliation of subsidiary cost ledgers and cost objectives to general ledger;
- (7) Approval and documentation of adjusting entries;
- (8) Management reviews or internal audits of the system to ensure compliance with the Contractor's established policies, procedures, and accounting practices;
- (9) A timekeeping system that identifies employees' labor by intermediate or final cost objectives;
- (10) A labor distribution system that charges direct and indirect labor to the appropriate cost objectives;
- (11) Interim (at least monthly) determination of costs charged to a contract through routine posting of books of account;
- (12) Exclusion from costs charged to Government contracts of amounts which are not allowable in terms of Federal Acquisition Regulation (FAR) part 31, Contract Cost Principles and Procedures, and other contract provisions;
- (13) Identification of costs by contract line item and by units (as if each unit or line item were a separate contract), if required by the contract;
- (14) Segregation of preproduction costs from production costs, as applicable;
- (15) Cost accounting information, as required—

(i) By contract clauses concerning limitation of cost (FAR 52.232-20), limitation of funds (FAR 52.232-22), or allowable cost and payment (FAR 52.216-7), and

(ii) To readily calculate indirect cost rates from the books of accounts;

(16) Billings that can be reconciled to the cost accounts for both current and cumulative amounts claimed and comply with contract terms;

(17) Adequate, reliable data for use in pricing follow-on acquisitions; and

(18) Accounting practices in accordance with standards promulgated by the Cost Accounting Standards Board, if applicable, otherwise, Generally Accepted Accounting Principles.

(d) *Significant deficiencies.*

(1) The Contracting Officer will provide an initial determination to the Contractor, in writing, of any significant deficiencies. The initial determination will describe the deficiency in sufficient detail to allow the Contractor to understand the deficiency.

(2) The Contractor shall respond within 30 days to a written initial determination from the Contracting Officer that identifies significant deficiencies in the Contractor's accounting system. If the Contractor disagrees with the initial determination, the Contractor shall state, in writing, its rationale for disagreeing.

(3) The Contracting Officer will evaluate the Contractor's response and notify the Contractor, in writing, of the Contracting Officer's final determination concerning—

(i) Remaining significant deficiencies;

(ii) The adequacy of any proposed or completed corrective action; and

(iii) System disapproval, if the Contracting Officer determines that one or more significant deficiencies remain.

(e) If the Contractor receives the Contracting Officer's final determination of significant deficiencies, the Contractor shall, within 45 days of receipt of the final determination, either correct the significant deficiencies or submit an acceptable corrective action plan showing milestones and actions to eliminate the significant deficiencies.

(f) *Withholding payments.* If the Contracting Officer makes a final determination to disapprove the Contractor's accounting system, the Contracting Officer will withhold payments to NASSCO for Contractor effort in accordance with the clause entitled "Contractor Business Systems". Any withholdings levied on NASSCO for Contractor's deficiencies will be similarly withheld from Contractor by NASSCO.

H.32 CONTRACTOR PURCHASING SYSTEM ADMINISTRATION (*Applicable only if NASSCO's end U.S. Government Customer requires NASSCO to flow this clause down to Seller, as is evidenced in writing*) [*"GOVERNMENT" MEANS ONLY THE US GOVERNMENT AND NOT NASSCO. "CONTRACTING OFFICER MEANS ONLY THE US GOVERNMENT'S CONTRACTING OFFICER, AND NOT NASSCO'S CONTRACTING OFFICER."*]

(a) Definitions. As used in this clause—

"Acceptable purchasing system" means a purchasing system that complies with the system criteria in paragraph (c) of this clause.

"Purchasing system" means the Contractor's system or systems for purchasing and subcontracting, including make-or-buy decisions, the selection of vendors, analysis of quoted prices, negotiation of prices with vendors, placing and administering of orders, and expediting delivery of materials.

"Significant deficiency" means a shortcoming in the system that materially affects the ability of Government officials to rely upon information produced by the system that is needed for management purposes.

(b) General. The Contractor shall establish and maintain an acceptable purchasing system. Failure to maintain an acceptable purchasing system, as defined in this clause, may result in disapproval of the system by the Contracting Officer and/or withholding of payments.

(c) System criteria. The Contractor's purchasing system shall—

(1) Have an adequate system description including policies, procedures, and purchasing practices that comply with the Federal Acquisition Regulation;

- (2) Ensure that all applicable purchase orders and subcontracts contain all flow-down clauses, including terms and conditions and any other clauses needed to carry out the requirements of the prime contract;
- (3) Maintain an organization plan that establishes clear lines of authority and responsibility;
- (4) Ensure all purchase orders are based on authorized requisitions and include a complete and accurate history of purchase transactions to support vendor selected, price paid, and document the subcontract/purchase order files which are subject to Government review;
- (5) Establish and maintain adequate documentation to provide a complete and accurate history of purchase transactions to support vendors selected and prices paid;
- (6) Apply a consistent make-or-buy policy that is in the best interest of the Government;
- (7) Use competitive sourcing to the maximum extent practicable, and ensure debarred or suspended contractors are properly excluded from contract award;
- (8) Evaluate price, quality, delivery, technical capabilities, and financial capabilities of competing vendors to ensure fair and reasonable prices;
- (9) Require management level justification and adequate cost or price analysis, as applicable, for any sole or single source award;
- (10) Perform timely and adequate cost or price analysis and technical evaluation for each subcontractor and supplier proposal or quote to ensure fair and reasonable subcontract prices;
- (11) Document negotiations in accordance with FAR 15.406-3;
- (12) Seek, take, and document economically feasible purchase discounts, including cash discounts, trade discounts, quantity discounts, rebates, freight allowances, and company-wide volume discounts;
- (13) Ensure proper type of contract selection and prohibit issuance of cost-plus-a-percentage-of-cost subcontracts;
- (14) Maintain subcontract surveillance to ensure timely delivery of an acceptable product and procedures to notify the Government of potential subcontract problems that may impact delivery, quantity, or price;
- (15) Document and justify reasons for subcontract changes that affect cost or price;
- (16) Notify the Government of the award of all subcontracts that contain the FAR and DFARS flow-down clauses that allow for Government audit of those subcontracts, and ensure the performance of audits of those subcontracts;
- (17) Enforce adequate policies on conflict of interest, gifts, and gratuities, including the requirements of 41 U.S.C. chapter 87, Kickbacks;
- (18) Perform internal audits or management reviews, training, and maintain policies and procedures for the purchasing department to ensure the integrity of the purchasing system;
- (19) Establish and maintain policies and procedures to ensure purchase orders and subcontracts contain mandatory and applicable flow-down clauses, as required by the FAR and DFARS, including terms and conditions required by the prime contract and any clauses required to carry out the requirements of the prime contract;
- (20) Provide for an organizational and administrative structure that ensures effective and efficient procurement of required quality materials and parts at the best value from responsible and reliable sources;
- (21) Establish and maintain selection processes to ensure the most responsive and responsible sources for furnishing required quality parts and materials and to promote competitive sourcing among dependable suppliers so that purchases are reasonably priced and from sources that meet contractor quality requirements;

- (22) Establish and maintain procedures to ensure performance of adequate price or cost analysis on purchasing actions;
- (23) Establish and maintain procedures to ensure that proper types of subcontracts are selected, and that there are controls over subcontracting, including oversight and surveillance of subcontracted effort; and
- (24) Establish and maintain procedures to timely notify the Contracting Officer, in writing, if—
 - (i) The Contractor changes the amount of subcontract effort after award such that it exceeds 70 percent of the total cost of the work to be performed under the contract, task order, or delivery order. The notification shall identify the revised cost of the subcontract effort and shall include verification that the Contractor will provide added value; or
 - (ii) Any subcontractor changes the amount of lower-tier subcontractor effort after award such that it exceeds 70 percent of the total cost of the work to be performed under its subcontract. The notification shall identify the revised cost of the subcontract effort and shall include verification that the subcontractor will provide added value as related to the work to be performed by the lower-tier subcontractor(s).
- (d) *Significant deficiencies.* (1) The Contracting Officer will provide notification of initial determination to the Contractor, in writing, of any significant deficiencies. The initial determination will describe the deficiency in sufficient detail to allow the Contractor to understand the deficiency.
 - (2) The Contractor shall respond within 30 days to a written initial determination from the Contracting Officer that identifies significant deficiencies in the Contractor's purchasing system. If the Contractor disagrees with the initial determination, the Contractor shall state, in writing, its rationale for disagreeing.
 - (3) The Contracting Officer will evaluate the Contractor's response and notify the Contractor, in writing, of the Contracting Officer's final determination concerning—
 - (i) Remaining significant deficiencies;
 - (ii) The adequacy of any proposed or completed corrective action; and
 - (iii) System disapproval, if the Contracting Officer determines that one or more significant deficiencies remain.
- (e) If the Contractor receives the Contracting Officer's final determination of significant deficiencies, the Contractor shall, within 45 days of receipt of the final determination, either correct the significant deficiencies or submit an acceptable corrective action plan showing milestones and actions to eliminate the deficiencies.
- (f) *Withholding payments.* If the Contracting Officer makes a final determination to disapprove the Contractor's purchasing system, the Contracting Officer will withhold payments to NASSCO for Contractor effort in accordance with the clause entitled "Contractor Business Systems". Any withholdings levied on NASSCO for Contractor's deficiencies will be similarly withheld from Contractor by NASSCO.

H.33 EARNED VALUE MANAGEMENT SYSTEM [Applicable to Phase II only] (*Applicable only if NASSCO's end U.S. Government Customer requires NASSCO to flow this clause down to Seller, as is evidenced in writing*) [*"GOVERNMENT" MEANS ONLY THE US GOVERNMENT AND NOT NASSCO. "CONTRACTING OFFICER MEANS ONLY THE US GOVERNMENT'S CONTRACTING OFFICER, AND NOT NASSCO'S CONTRACTING OFFICER."*]

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

"Acceptable earned value management system" means an earned value management system that generally complies with system criteria in paragraph (b) of this clause.

"Earned value management system" means an earned value management system that complies with the earned value management system guidelines in the ANSI/EIA-748.

"Significant deficiency" means a shortcoming in the system that materially affects the ability of Government officials to rely upon information produced by the system that is needed for management purposes.

- (b) *System criteria.* In the performance of this contract, the Contractor shall use—

(1) An Earned Value Management System (EVMS) that complies with the EVMS guidelines in the American National Standards Institute/Electronic Industries Alliance Standard 748, Earned Value Management Systems (ANSI/EIA-748); and

(2) Management procedures that provide for generation of timely, reliable, and verifiable information for the Contract Performance Report (CPR) and the Integrated Master Schedule (IMS) required by the CPR and IMS data items of this contract.

(c) If this contract has a value of \$50 million or more, the Contractor shall use an EVMS that has been determined to be acceptable by the Cognizant Federal Agency (CFA). If, at the time of award, the Contractor's EVMS has not been determined by the CFA to be in compliance with the EVMS guidelines as stated in paragraph (b)(1) of this clause, the Contractor shall apply its current system to the contract and shall take necessary actions to meet the milestones in the Contractor's EVMS plan.

(d) If this contract has a value of less than \$50 million, the Government will not make a formal determination that the Contractor's EVMS complies with the EVMS guidelines in ANSI/EIA-748 with respect to the contract. The use of the Contractor's EVMS for this contract does not imply a Government determination of the Contractor's compliance with the EVMS guidelines in ANSI/EIA-748 for application to future contracts. The Government will allow the use of a Contractor's EVMS that has been formally reviewed and determined by the CFA to be in compliance with the EVMS guidelines in ANSI/EIA-748.

(e) The Contractor shall submit notification of any proposed substantive changes to the EVMS procedures and the impact of those changes to the CFA. If this contract has a value of \$50 million or more, unless a waiver is granted by the CFA, any EVMS changes proposed by the Contractor require approval of the CFA prior to implementation. The CFA will advise the Contractor of the acceptability of such changes as soon as practicable (generally within 30 calendar days) after receipt of the Contractor's notice of proposed changes. If the CFA waives the advance approval requirements, the Contractor shall disclose EVMS changes to the CFA at least 14 calendar days prior to the effective date of implementation.

(f) The Government will schedule integrated baseline reviews as early as practicable, and the review process will be conducted not later than 180 calendar days after—

- (1) Contract award;
- (2) The exercise of significant contract options; and
- (3) The incorporation of major modifications.

During such reviews, the Government and the Contractor will jointly assess the Contractor's baseline to be used for performance measurement to ensure complete coverage of the statement of work, logical scheduling of the work activities, adequate resourcing, and identification of inherent risks.

(g) The Contractor shall provide access to all pertinent records and data requested by the Contracting Officer or duly authorized representative as necessary to permit Government surveillance to ensure that the EVMS complies, and continues to comply, with the performance criteria referenced in paragraph (b) of this clause.

(h) When indicated by contract performance, the Contractor shall submit a request for approval to initiate an over-target baseline or over-target schedule to the Contracting Officer. The request shall include a top-level projection of cost and/or schedule growth, a determination of whether or not performance variances will be retained, and a schedule of implementation for the rebaselining. The Government will acknowledge receipt of the request in a timely manner (generally within 30 calendar days).

(i) Significant deficiencies. (1) The Contracting Officer will provide an initial determination to the Contractor, in writing, of any significant deficiencies. The initial determination will describe the deficiency in sufficient detail to allow the Contractor to understand the deficiency.

(2) The Contractor shall respond within 30 days to a written initial determination from the Contracting Officer that identifies significant deficiencies in the Contractor's EVMS. If the Contractor disagrees with the initial determination, the Contractor shall state, in writing, its rationale for disagreeing.

(3) The Contracting Officer will evaluate the Contractor's response and notify the Contractor, in writing, of the Contracting Officer's final determination concerning—

- (i) Remaining significant deficiencies;

(ii) The adequacy of any proposed or completed corrective action;

(iii) System noncompliance, when the Contractor's existing EVMS fails to comply with the earned value management system guidelines in the ANSI/EIA-748; and

(iv) System disapproval, if initial EVMS validation is not successfully completed within the timeframe approved by the Contracting Officer, or if the Contracting Officer determines that the Contractor's earned value management system contains one or more significant deficiencies in high-risk guidelines in ANSI/EIA-748 standards (guidelines 1, 3, 6, 7, 8, 9, 10, 12, 16, 21, 23, 26, 27, 28, 30, or 32). When the Contracting Officer determines that the existing earned value management system contains one or more significant deficiencies in one or more of the remaining 16 guidelines in ANSI/EIA-748 standards, the Contracting Officer will use discretion to disapprove the system based on input received from functional specialists and the auditor.

(4) If the Contractor receives the Contracting Officer's final determination of significant deficiencies, the Contractor shall, within 45 days of receipt of the final determination, either correct the significant deficiencies or submit an acceptable corrective action plan showing milestones and actions to eliminate the significant deficiencies.

(j) *Withholding payments.* If the Contracting Officer makes a final determination to disapprove the Contractor's EVMS, the Contracting Officer will withhold payments to NASSCO for Contractor effort in accordance with the clause entitled "Contractor Business Systems". Any withholdings levied on NASSCO for Contractor's deficiencies will be similarly withheld from Contractor by NASSCO.

(k) With the exception of paragraphs (i) and (j) of this clause, the Contractor shall require its subcontractors to comply with EVMS requirements as follows:

(l) For subcontracts valued at \$50 million or more, the following subcontractors shall comply with the requirements of this clause:

(m) The Contractor shall require the subcontractors specified below to comply with the requirements of this clause: **[list of applicable subcontractors will be identified prior to Phase II proposal submission]**.

H-34 DEFERRED ORDERING OF TECHNICAL DATA OR COMPUTER SOFTWARE [NOTE: "GOVERNMENT" DOES NOT MEAN NASSCO]

In addition to technical data or computer software that is already subject to a Contract delivery requirement, the United States may require at any time the delivery of technical data and non-commercial computer software that has been generated or utilized in the performance of a Contract, and NASSCO shall compensate the Contractor only for reasonable costs incurred for converting and delivering the data in the required form, upon a determination that—

- 1 the technical data is needed for the purpose of re-procurement, sustainment, modification, or upgrade (including through competitive means) of a major system or subsystem thereof, a weapon system or subsystem thereof, or any noncommercial item or process; and
- 2 the technical data—
 - (i) pertains to an item or process developed in whole or in part with Federal funds; or
 - (ii) is necessary for the segregation of an item or process from, or the reintegration of that item or process (or a physically or functionally equivalent item or process) with, other items or processes.

Provided that the United States is not foreclosed from requiring the delivery of the technical data by a failure to challenge, in accordance with the requirements of paragraph (e) of the Section H clause entitled "Validation Of Restrictive Markings On Technical Data" and paragraph (e) of the Section H clause entitled "Validation Of Asserted Restrictions—Computer Software" of this Contract, the Contractor's assertion of a use or release restriction on the technical data. The Government's rights to use said data or computer software shall be pursuant to the "Rights In Technical Data" and "Non-Commercial Computer Software Documentation" clauses of this Contract. This clause shall be flowed down to first and second tier subcontractors

H.35 LIMITATIONS ON THE USE OR DISCLOSURE OF GOVERNMENT-FURNISHED INFORMATION MARKED WITH RESTRICTIVE LEGENDS) [NOTE: "GOVERNMENT" DOES NOT MEAN NASSCO]

(a)(1). For contracts in which the Government will furnish the Contractor with technical data, the terms "covered Government support contractor," "limited rights," and "Government purpose rights" are defined in the Section H clause entitled "Rights in Technical Data-Noncommercial Items."

(2). For contracts in which the Government will furnish the Contractor with computer software or computer software documentation, the terms "covered Government support contractor," "government purpose rights," and "restricted rights" are defined in the Section H clause entitled "Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation."

(3). For Small Business Innovation Research program contracts, the terms "covered Government support contractor," "limited rights," and "restricted rights" are defined in the Rights in Noncommercial Technical Data and Computer Software—Small Business Innovation Research (SBIR) Program.

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

1. *GFI marked with limited or restricted rights legends.*

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

(ii) If the Contractor is a covered Government support contractor, the Contractor further agrees and acknowledges that—

(A) The data or software will be accessed and used only for the purposes stated in this Contract and shall not be used to compete for any Government or non-Government contract;

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

(C) The Contractor will ensure that the party whose name appears in the legend is notified of the Contractor's access or use of such data or software;

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

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

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

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

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

(3) *GFI marked with government purpose rights legends.* The Contractor shall use technical data or computer software received from the Government with government purpose rights legends for government purposes only. The Contractor shall not, without the express written permission of the party whose name appears in the restrictive legend, use, modify, reproduce, release, perform, or display such data or software for any commercial purpose or disclose such data

or software to a person other than its subcontractors, suppliers, or prospective subcontractors or suppliers, who require the data or software to submit offers for, or perform, contracts under this Contract. Prior to disclosing the data or software, the Contractor shall require the persons to whom disclosure will be made to complete and sign a non-disclosure agreement provided in Section J entitled "Use and Non-Disclosure Agreement".

(4) *GFI marked with specially negotiated license rights legends.* The Contractor shall use, modify, reproduce, release, perform, or display technical data or computer software received from the Government with specially negotiated license legends only as permitted in the license. Such data or software may not be released or disclosed to other persons unless permitted by the license and, prior to release or disclosure, the intended recipient has completed the Section J attachment entitled "Use and non-disclosure agreement." The Contractor shall modify paragraph (1)(c) of the non-disclosure agreement to reflect the recipient's obligations regarding use, modification, reproduction, release, performance, display, and disclosure of the data or software.

(5) *GFI marked with commercial restrictive legends.*

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

(ii) If the Contractor is a covered Government support contractor, the Contractor further agrees and acknowledges that—

(A) The data or software will be accessed and used only for the purposes stated in this Contract and shall not be used to compete for any Government or non-Government contract;

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

(C) The Contractor will ensure that the party whose name appears in the legend is or has been notified of the Contractor's access or use of such data;

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

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

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

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

(2) Civil actions for damages and other appropriate remedies by the Contractor or subcontractor whose technical data is affected by the breach.

(c) *Indemnification and creation of third party beneficiary rights.* The Contractor agrees—

(1) [MODIFIED BY NASSCO] To indemnify and hold harmless NASSCO, and the Government, its agents, and employees from every claim or liability, including attorneys fees, court costs, and expenses, arising out of, or in any way related to, the misuse or unauthorized modification, reproduction, release, performance, display, or disclosure of technical data or computer software received from the Government with restrictive legends by the Contractor or any person to whom the Contractor has released or disclosed such data or software; and

(2) That the party whose name appears on the restrictive legend, in addition to any other rights it may have, is a third party beneficiary who has the right of direct action against the Contractor, or any person to whom the Contractor has released or disclosed such data or software, for the unauthorized duplication, release, or disclosure of technical data or computer software subject to restrictive legends.

H.36 RIGHTS IN TECHNICAL DATA - NONCOMMERCIAL ITEMS [NOTE: "GOVERNMENT" DOES NOT MEAN NASSCO]

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

(1) "Computer data base" means a collection of data recorded in a form capable of being processed by a computer. The term does not include computer software.

(2) "Computer program" means a set of instructions, rules, or routines recorded in a form that is capable of causing a computer to perform a specific operation or series of operations.

(3) "Computer software" means computer programs, source code, source code listings, object code listings, design details, algorithms, processes, flow charts, formulae and related material that would enable the software to be reproduced, recreated, or recompiled. Computer software does not include computer data bases or computer software documentation.

(4) "Computer software documentation" means owner's manuals, user's manuals, installation instructions, operating instructions, and other similar items, regardless of storage medium, that explain the capabilities of the computer software or provide instructions for using the software.

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

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

- (ii) Receives access to technical data or computer software for performance of a Government contract that contains the clause substantially similar to DFARS clause [252.227-7025](#), Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends.
- (6) “Detailed manufacturing or process data” means technical data that describe the steps, sequences, and conditions of manufacturing, processing or assembly used by the manufacturer to produce an item or component or to perform a process.
- (7) “Developed” means that an item, component, or process exists and is workable. Thus, the item or component must have been constructed or the process practiced. Workability is generally established when the item, component, or process has been analyzed or tested sufficiently to demonstrate to reasonable people skilled in the applicable art that there is a high probability that it will operate as intended. Whether, how much, and what type of analysis or testing is required to establish workability depends on the nature of the item, component, or process, and the state of the art. To be considered “developed,” the item, component, or process need not be at the stage where it could be offered for sale or sold on the commercial market, nor must the item, component, or process be actually reduced to practice within the meaning of Title 35 of the United States Code.
- (8) “Developed exclusively at private expense” means development was accomplished entirely with costs charged to indirect cost pools, costs not allocated to a government contract, or any combination thereof.
- (i) Private expense determinations should be made at the lowest practicable level.
- (ii) Under fixed-price contracts, when total costs are greater than the firm fixed-price or ceiling price of the Contract, the additional development costs necessary to complete development shall not be considered when determining whether development was at government, private, or mixed expense.
- (9) “Developed exclusively with government funds” means development was not accomplished exclusively or partially at private expense.
- (10) “Developed with mixed funding” means development was accomplished partially with costs charged to indirect cost pools and/or costs not allocated to a government contract, and partially with costs charged directly to a government contract.
- (11) “Form, fit, and function data” means technical data that describes the required overall physical, functional, and performance characteristics (along with the qualification requirements, if applicable) of an item, component, or process to the extent necessary to permit identification of physically and functionally interchangeable items.
- (12) “Government purpose” means any activity in which the United States Government is a party, including cooperative agreements with international or multi-national defense organizations, or sales or transfers by the United States Government to foreign governments or international organizations. Government purposes include competitive procurement, but do not include the rights to use, modify, reproduce, release, perform, display, or disclose technical data for commercial purposes or authorize others to do so.
- (13) “Government purpose rights” means the rights to—
- (i) Use, modify, reproduce, release, perform, display, or disclose technical data within the Government without restriction; and
- (ii) Release or disclose technical data outside the Government and authorize persons to whom release or disclosure has been made to use, modify, reproduce, release, perform, display, or disclose that data for United States government purposes.
- (14) “Limited rights” means the rights to use, modify, reproduce, release, perform, display, or disclose technical data, in whole or in part, within the Government. The Government may not, without the written permission of the party asserting limited rights, release or disclose the technical data outside the Government, use the technical data for manufacture, or authorize the technical data to be used by another party, except that the Government may reproduce, release, or disclose such data or authorize the use or reproduction of the data by persons outside the Government if—
- (i) The reproduction, release, disclosure, or use is—
- (A) Necessary for emergency repair and overhaul;
- (B) Necessary for the segregation of an item or process from, or the reintegration of that item or process (or a physically or functionally equivalent item or process) with, other items or processes; or
- (C) A release or disclosure to—
- (1) A covered Government support contractor, for use, modification, reproduction, performance, display, or release or disclosure to authorized person(s) in performance of a Government contract; or
- (2) A foreign government, of technical data, (other than detailed manufacturing or process data) to, or use of such data by the foreign government is in the interest of the Government and is required for evaluation or informational purposes;
- (ii) The recipient of the technical data is subject to a prohibition on the further reproduction, release, disclosure, or use of the technical data; and
- (iii) The Contractor or subcontractor asserting the restriction is notified of such reproduction, release, disclosure, or use.
- (15) “Technical data” means recorded information, regardless of the form or method of the recording, of a scientific or technical nature (including computer software documentation). The term does not include computer software or data incidental to Contract administration, such as financial and/or management information.
- (16) “Unlimited rights” means rights to use, modify, reproduce, perform, display, release, or disclose technical data in whole or in part, in any manner, and for any purpose whatsoever, and to have or authorize others to do so.
- (17) “Vessel design” means the design of a vessel, boat, or craft, and its components, including the hull, decks, superstructure, and the exterior

surface shape of all external shipboard equipment and systems. The term includes designs described in 10 U.S.C. 7317, and designs protectable under 17 U.S.C. 1301, et seq.

(b) *Rights in technical data.* The Contractor grants or shall obtain for the Government the following royalty free, world-wide, nonexclusive, irrevocable license rights in technical data other than computer software documentation (see the Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation clause of this Contract for rights in computer software documentation):

- (1) *Unlimited rights.* The Government shall have unlimited rights in technical data that are—
 - (i) Data pertaining to an item, component, or process which has been or will be developed exclusively with Government funds;
 - (ii) Studies, analyses, test data, or similar data produced for this Contract, when the study, analysis, test, or similar work was specified as an element of performance;
 - (iii) Created exclusively with Government funds in the performance of a contract that does not require the development, manufacture, construction, or production of items, components, or processes;
 - (iv) Form, fit, and function data;
 - (v) Necessary for installation, operation, maintenance, or training purposes (other than detailed manufacturing or process data);
 - (vi) Corrections or changes to technical data furnished to the Contractor by the Government;
 - (vii) Otherwise publicly available or have been released or disclosed by the Contractor or subcontractor without restrictions on further use, release or disclosure, other than a release or disclosure resulting from the sale, transfer, or other assignment of interest in the technical data to another party or the sale or Government has obtained unlimited rights under another Government contract or as a result of transfer of some or all of a business entity or its assets to another party;
 - (viii) Data in which the negotiations; or
 - (ix) Data furnished to the Government, under this or any other Government contract or subcontract thereunder, with—
 - (A) Government purpose license rights or limited rights and the restrictive condition(s) has/have expired; or
 - (B) Government purpose rights and the Contractor's exclusive right to use such data for commercial purposes has expired.
- (2) *Government purpose rights.*
 - (i) The Government shall have government purpose rights for a five-year period, or such other period as may be negotiated, in technical data—
 - (A) That pertain to items, components, or processes developed with mixed funding except when the Government is entitled to unlimited rights in such data as provided in paragraphs (b)(1)(ii) and (b)(1)(iv) through (b)(1)(ix) of this clause; or
 - (B) Created with mixed funding in the performance of a contract that does not require the development, manufacture, construction, or production of items, components, or processes.
 - (ii) The five-year period, or such other period as may have been negotiated, shall commence upon execution of the Contract, subcontract, letter contract (or similar contractual instrument), Contract modification, or option exercise that required development of the items, components, or processes or creation of the data described in paragraph (b)(2)(i)(B) of this clause. Upon expiration of the five-year or other negotiated period, the Government shall have unlimited rights in the technical data.
 - (iii) The Government shall not release or disclose technical data in which it has government purpose rights unless—
 - (A) Prior to release or disclosure, the intended recipient is subject to the non-disclosure agreement in the Section attachment entitled "Use and Non-Disclosure Agreement" or
 - (B) The recipient is a Government contractor receiving access to the data for performance of a Government contract that contains the clause substantially similar to the DFARS clause [252.227-7025](#), Information Marked with Restrictive Legends.
 - (iv) The Contractor has the exclusive right, including the right to license others, to use technical data in which the Government has obtained government purpose rights under this Contract for any commercial purpose during the time period specified in the government purpose rights legend prescribed in paragraph (f)(2) of this clause.
- (3) *Limited rights.*
 - (i) Except as provided in paragraphs (b)(1)(ii) and (b)(1)(iv) through (b)(1)(ix) of this clause, the Government shall have limited rights in technical data—
 - (A) Pertaining to items, components, or processes developed exclusively at private expense and marked with the limited rights legend prescribed in paragraph (f) of this clause; or
 - (B) Created exclusively at private expense in the performance of a contract that does not require the development, manufacture, construction, or production of items, components, or processes.
 - (ii) The Government shall require a recipient of limited rights data for emergency repair or overhaul to destroy the data and all copies in its possession promptly following completion of the emergency repair/overhaul and to notify the Contractor that the data have been destroyed.
 - (iii) The Contractor, its subcontractors, and suppliers are not required to provide the Government additional rights to use, modify, reproduce,

release, perform, display, or disclose technical data furnished to the Government with limited rights. However, if the Government desires to obtain additional rights in technical data in which it has limited rights, the Contractor agrees to promptly enter into negotiations with the Contracting Officer to determine whether there are acceptable terms for transferring such rights. All technical data in which the Contractor has granted the Government additional rights shall be listed or described in a license agreement made part of the Contract. The license shall enumerate the additional rights granted the Government in such data.

- (iv) The Contractor acknowledges that—
 - (A) Limited rights data is authorized to be released or disclosed to covered Government support contractors;
 - (B) The Contractor will be notified of such release or disclosure;
 - (C) The Contractor (or the party asserting restrictions as identified in the limited rights legend) may require each such covered Government support contractor to enter into a non-disclosure agreement directly with the Contractor (or the party asserting restrictions) regarding the covered Government support contractor's use of such data, or alternatively, that the Contractor (or party asserting restrictions) may waive in writing the requirement for a non-disclosure agreement;
 - (D) Any such non-disclosure agreement shall address the restrictions on the covered Government support contractor's use of the limited rights data as set forth in the clause of this Contract and shall not include any additional terms and conditions unless mutually agreed to by the parties to the non-disclosure agreement; and
 - (E) The Contractor shall provide a copy of any such non-disclosure agreement or waiver to the Contracting Officer, upon request.
- (4) *Specifically negotiated license rights.* The standard license rights granted to the Government under paragraphs (b)(1) through (b)(3) of this clause, including the period during which the Government shall have government purpose rights in technical data, may be modified by mutual agreement to provide such rights as the parties consider appropriate but shall not provide the Government lesser rights than are enumerated in paragraph (a)(14) of this clause. Any rights so negotiated shall be identified in a license agreement made part of this Contract.
- (5) *Prior government rights.* Technical data that will be delivered, furnished, or otherwise provided to the Government under this Contract, in which the Government has previously obtained rights shall be delivered, furnished, or provided with the pre-existing rights, unless—
 - (i) The parties have agreed otherwise; or
 - (ii) Any restrictions on the Government's rights to use, modify, reproduce, release, perform, display, or disclose the data have expired or no longer apply.
- (6) *[MODIFIED BY NASSCO] Release from liability.* The Contractor agrees to release the Government from liability for any release or disclosure of technical data made in accordance with (b)(7) Vessel designs. The Contractor shall only release NASSCO from the above specified liability if the release or disclosure is first made by NASSCO to the Government, and the Government in turn releases or discloses it to a third party. For a vessel design (including a vessel design embodied in a useful article) that is developed or delivered under this Contract, the Government shall have the right to make and have made any useful article that embodies the vessel design, to import the article, to sell the article, and to distribute the article for sale or to use the article in trade, to the same extent that the Government is granted rights in the technical data pertaining to the vessel design paragraph (a)(14) or (b)(2)(iii) of this clause, in accordance with the terms of a license negotiated under paragraph (b)(4) of this clause, or by others to whom the recipient has released or disclosed the data and to seek relief solely from the party who has improperly used, modified, reproduced, released, performed, displayed, or disclosed Contractor data marked with restrictive legends.
- (c) *Contractor rights in technical data.* All rights not granted to the Government are retained by the Contractor.
- (d) *Third party copyrighted data.* The Contractor shall not, without the written approval of the Contracting Officer, incorporate any copyrighted data in the technical data to be delivered under this Contract unless the Contractor is the copyright owner or has obtained for the Government the license rights necessary to perfect a license or licenses in the deliverable data of the appropriate scope set forth in paragraph (b) of this clause, and has affixed a statement of the license or licenses obtained on behalf of the Government and other persons to the data transmittal document.
- (e) *Identification and delivery of data to be furnished with restrictions on use, release, or disclosure.*
 - (1) This paragraph does not apply to restrictions based solely on copyright.
 - (2) Except as provided in paragraph (e)(3) of this clause, technical data that the Contractor asserts should be furnished to the Government through NASSCO with restrictions on use, release, or disclosure are identified in an attachment to this Contract (the Attachment). The Contractor shall not deliver any data with restrictive markings unless the data are listed on the Attachment.
 - (3) In addition to the assertions made in the Attachment, other assertions may be identified after award when based on new information or inadvertent omissions unless the inadvertent omissions would have materially affected the source selection decision. Such identification and assertion shall be submitted to the Contracting Officer as soon as practicable prior to the scheduled date for delivery of the data, in the following format, and signed by an official authorized to contractually obligate the Contractor:

Identification and Assertion of Restrictions on the Government's Use, Release, or Disclosure of Technical Data.

The Contractor asserts for itself, or the persons identified below, that the

Government's rights to use, release, or disclose the following technical data should be restricted—

Technical Data			Name of Person
to be Furnished	Basis for	Asserted Rights	Asserting

With Restrictions*	Assertion**	Category***	Restrictions****
(LIST)	(LIST)	(LIST)	(LIST)

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

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

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

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

Date _____
 Printed Name and Title _____

 Signature _____

(End of identification and assertion)

(4) When requested by the Contracting Officer, the Contractor shall provide sufficient information to enable the Contracting Officer to evaluate the Contractor's assertions. The Contracting Officer reserves the right to add the Contractor's assertions to the Attachment and validate any listed assertion, at a later date, in accordance with the procedures of the Validation of Restrictive Markings on Technical Data clause of this Contract.

(f) *Marking requirements.* The Contractor, and its subcontractors or suppliers, may only assert restrictions on the Government's rights to use, modify, reproduce, release, perform, display, or disclose technical data to be delivered under this Contract by marking the deliverable data subject to restriction. Except as provided in paragraph (f)(5) of this clause, only the following legends are authorized under this Contract: the government purpose rights legend at paragraph (f)(2) of this clause; the limited rights legend at paragraph (f)(3) of this clause; or the special license rights legend at paragraph (f)(4) of this clause; and/or a notice of copyright as prescribed under 17 U.S.C. 401 or 402.

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

(2) *Government purpose rights markings.* Data delivered or otherwise furnished to the Government with government purpose rights shall be marked as follows:

GOVERNMENT PURPOSE RIGHTS

Contract No.

Contractor Name

Contractor Address

Expiration Date

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

(End of legend)

(3) *Limited rights markings.* Data delivered or otherwise furnished to the Government with limited rights shall be marked with the following

legend:

LIMITED RIGHTS

Contract No.
Contractor Name
Contractor Address

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

(End of legend)

(4) Special license rights markings.

(i) Data in which the Government's rights stem from a specifically negotiated license shall be marked with the following legend:

SPECIAL LICENSE RIGHTS

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

(End of legend)

(ii) For purposes of this clause, special licenses do not include government purpose license rights acquired under a prior contract (see paragraph (b)(5) of this clause).

(5) *Pre-existing data markings.* If the terms of a prior contract or license permitted the Contractor to restrict the Government's rights to use, modify, reproduce, release, perform, display, or disclose technical data deliverable under this Contract, and those restrictions are still applicable, the Contractor may mark such data with the appropriate restrictive legend for which the data qualified under the prior contract or license. The marking procedures in paragraph (f)(1) of this clause shall be followed.

(g) *Contractor procedures and records.* Throughout performance of this Contract, the Contractor and its subcontractors or suppliers that will deliver technical data with other than unlimited rights, shall—

(1) Have, maintain, and follow written procedures sufficient to assure that restrictive markings are used only when authorized by the terms of this clause; and

(2) Maintain records sufficient to justify the validity of any restrictive markings on technical data delivered under this Contract.

(h) *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 Section H clause entitled "Validation of Restrictive Markings on Technical Data" of this Contract. Notwithstanding any provision of this Contract concerning inspection and acceptance, the Government may ignore or, at the Contractor's expense, correct or strike a marking if, in accordance with the procedures in the Validation of Restrictive Markings on Technical Data clause of this 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 the Government 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 the Contracting Officer notifies the Contractor of a nonconforming marking and the Contractor to remove or correct such marking within sixty (60) days, the Government may ignore or, at the Contractor's expense, remove or correct any nonconforming marking.

(i) *Relation to patents.* Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government under any patent.

(j) *Limitation on charges for rights in technical data.*

(1) The Contractor shall not charge to this Contract any cost, including, but not limited to, license fees, royalties, or similar charges, for rights in technical data to be delivered under this Contract when—

(i) The Government has acquired, by any means, the same or greater rights in the data; or

(ii) The data are available to the public without restrictions.

(2) The limitation in paragraph (j)(1) of this clause—

(i) Includes costs charged by a subcontractor or supplier, at any tier, or costs incurred by the Contractor to acquire rights in subcontractor or supplier technical data, if the subcontractor or supplier has been paid for such rights under any other Government contract or under a license conveying

the rights to the Government; and

(ii) Does not include the reasonable costs of reproducing, handling, or mailing the documents or other media in which the technical data will be delivered.

(k) *Applicability to subcontractors or suppliers.*

(1) The Contractor shall ensure that the rights afforded its subcontractors and suppliers similar to that under 10 U.S.C. 2320, 10 U.S.C. 2321, and the identification, assertion, and delivery processes of paragraph (e) of this clause are recognized and protected.

(2) Whenever any technical data for noncommercial items, or for commercial items developed in any part at Government expense, is to be obtained from a subcontractor or supplier for delivery to the Government under this Contract, the Contractor shall use this same clause in the subcontract or other contractual instrument, and require its subcontractors or suppliers to do so, without alteration, except to identify the parties. This clause will govern the technical data pertaining to noncommercial items or to any portion of a commercial item that was developed in any part at Government expense and the Section H clause entitled "Technical Data-Commercial Items" will govern the technical data pertaining to any portion of a commercial item that was developed exclusively at private expense. No other clause shall be used to enlarge or diminish the Government's, the Contractor's, or a higher-tier subcontractor's or supplier's rights in a subcontractor's or supplier's technical data.

(3) Technical data required to be delivered by a subcontractor or supplier shall normally be delivered to the next higher-tier contractor, subcontractor, or supplier. However, when there is a requirement in the prime contract for data which may be submitted with other than unlimited rights by a subcontractor or supplier, then said subcontractor or supplier may fulfill its requirement by submitting such data directly to the Government, rather than through a higher-tier contractor, subcontractor, or supplier.

(4) The Contractor and higher-tier subcontractors or suppliers shall not use their power to award contracts as economic leverage to obtain rights in technical data from their subcontractors or suppliers.

(5) In no event shall the Contractor use its obligation to recognize and protect subcontractor or supplier rights in technical data as an excuse for failing to satisfy its contractual obligation to NASSCO.

H.37 RIGHTS IN NONCOMMERCIAL COMPUTER SOFTWARE AND NONCOMMERCIAL COMPUTER SOFTWARE DOCUMENTATION [NOTE: "GOVERNMENT" DOES NOT MEAN NASSCO]

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

(1) "Commercial computer software" means software developed or regularly used for non-governmental purposes which—

(i) Has been sold, leased, or licensed to the public;

(ii) Has been offered for sale, lease, or license to the public;

(iii) Has not been offered, sold, leased, or licensed to the public but will be available for commercial sale, lease, or license in time to satisfy the delivery requirements of this Contract; or

(iv) Satisfies a criterion expressed in paragraph (a)(1)(i), (ii), or (iii) of this clause and would require only minor modification to meet the requirements of this Contract.

(2) "Computer database" means a collection of recorded data in a form capable of being processed by a computer. The term does not include computer software.

(3) "Computer program" means a set of instructions, rules, or routines, recorded in a form that is capable of causing a computer to perform a specific operation or series of operations.

(4) "Computer software" means computer programs, source code, source code listings, object code listings, design details, algorithms, processes, flow charts, formulae, and related material that would enable the software to be reproduced, recreated, or recompiled. Computer software does not include computer databases or computer software documentation.

(5) "Computer software documentation" means owner's manuals, user's manuals, installation instructions, operating instructions, and other similar items, regardless of storage medium, that explain the capabilities of the computer software or provide instructions for using the software.

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

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

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

(7) "Developed" means that—

(i) A computer program has been successfully operated in a computer and tested to the extent sufficient to demonstrate to reasonable persons skilled in the art that the program can reasonably be expected to perform its intended purpose;

(ii) Computer software, other than computer programs, has been tested or analyzed to the extent sufficient to demonstrate to reasonable persons skilled in the art that the software can reasonably be expected to perform its intended purpose; or

- (iii) Computer software documentation required to be delivered under a contract has been written, in any medium, in sufficient detail to comply with requirements under that contract.
- (8) “Developed exclusively at private expense” means development was accomplished entirely with costs charged to indirect cost pools, costs not allocated to a government contract, or any combination thereof.
- (i) Private expense determinations should be made at the lowest practicable level.
- (ii) Under fixed-price contracts, when total costs are greater than the firm-fixed-price or ceiling price of the contract, the additional development costs necessary to complete development shall not be considered when determining whether development was at government, private, or mixed expense.
- (9) “Developed exclusively with government funds” means development was not accomplished exclusively or partially at private expense.
- (10) “Developed with mixed funding” means development was accomplished partially with costs charged to indirect cost pools and/or costs not allocated to a government contract, and partially with costs charged directly to a government contract.
- (11) “Government purpose” means any activity in which the United States Government is a party, including cooperative agreements with international or multi-national defense organizations or sales or transfers by the United States Government to foreign governments or international organizations. Government purposes include competitive procurement, but do not include the rights to use, modify, reproduce, release, perform, display, or disclose computer software or computer software documentation for commercial purposes or authorize others to do so.
- (12) “Government purpose rights” means the rights to—
- (i) Use, modify, reproduce, release, perform, display, or disclose computer software or computer software documentation within the Government without restriction; and
- (ii) Release or disclose computer software or computer software documentation outside the Government and authorize persons to whom release or disclosure has been made to use, modify, reproduce, release, perform, display, or disclose the software or documentation for United States government purposes.
- (13) “Minor modification” means a modification that does not significantly alter the nongovernmental function or purpose of the software or is of the type customarily provided in the commercial marketplace.
- (14) “Noncommercial computer software” means software that does not qualify as commercial computer software under paragraph (a)(1) of this clause.
- (15) “Restricted rights” apply only to noncommercial computer software and mean the Government's rights to—
- (i) Use a computer program with one computer at one time. The program may not be accessed by more than one terminal or central processing unit or time shared unless otherwise permitted by this Contract;
- (ii) Transfer a computer program to another Government agency without the further permission of the Contractor if the transferor destroys all copies of the program and related computer software documentation in its possession and notifies the licensor of the transfer. Transferred programs remain subject to the provisions of this clause;
- (iii) Make the minimum number of copies of the computer software required for safekeeping (archive), backup, or modification purposes;
- (iv) Modify computer software provided that the Government may—
- (A) Use the modified software only as provided in paragraphs (a)(15)(i) and (iii) of this clause; and
- (B) Not release or disclose the modified software except as provided in paragraphs (a)(15)(ii), (v), (vi) and (vii) of this clause;
- (v) Permit contractors or subcontractors performing service contracts (see 37.101 of the Federal Acquisition Regulation) in support of this or a related contract to use computer software to diagnose and correct deficiencies in a computer program, to modify computer software to enable a computer program to be combined with, adapted to, or merged with other computer programs or when necessary to respond to urgent tactical situations, provided that—
- (A) The Government notifies the party which has granted restricted rights that a release or disclosure to particular contractors or subcontractors was made;
- (B) Such contractors or subcontractors are subject to the section J attachment entitled “Use and non-disclosure Agreement” or are Government contractors receiving access to the software for performance of a Government contract that contains the clause entitled Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends;
- (C) The Government shall not permit the recipient to decompile, disassemble, or reverse engineer the software, or use software decompiled, disassembled, or reverse engineered by the Government pursuant to paragraph (a)(15)(iv) of this clause, for any other purpose; and
- (D) Such use is subject to the limitation in paragraph (a)(15)(i) of this clause;
- (vi) Permit contractors or subcontractors performing emergency repairs or overhaul of items or components of items procured under this or a related contract to use the computer software when necessary to perform the repairs or overhaul, or to modify the computer software to reflect the repairs or overhaul made, provided that—
- (A) The intended recipient is subject to the Section J attachment entitled “Use and non-disclosure agreement” of this Contract, or is a Government contractor receiving access to the software for performance of a Government contract that contains the clause substantially similar to DFARS [252.227-7025](#), Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends; and

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

(vii) Permit covered Government support contractors to use, modify, reproduce, perform, display, or release or disclose the computer software to authorized person(s) in the performance of Government contracts that contain the clause substantially similar to DFARS [252.227-7025](#), Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends.

(16) “Unlimited rights” means rights to use, modify, reproduce, release, perform, display, or disclose computer software or computer software documentation in whole or in part, in any manner and for any purpose whatsoever, and to have or authorize others to do so.

(b) *Rights in computer software or computer software documentation.* The Contractor grants or shall obtain for the Government the following royalty free, world-wide, nonexclusive, irrevocable license rights in noncommercial computer software or computer software documentation. All rights not granted to the Government are retained by the Contractor.

(1) *Unlimited rights.* The Government shall have unlimited rights in—

(i) Computer software developed exclusively with Government funds;

(ii) Computer software documentation required to be delivered under this Contract;

(iii) Corrections or changes to computer software or computer software documentation furnished to the Contractor by the Government;

(iv) Computer software or computer software documentation that is otherwise publicly available or has been released or disclosed by the Contractor or subcontractor without restriction on further use, release or disclosure, other than a release or disclosure resulting from the sale, transfer, or other assignment of interest in the software to another party or the sale or transfer of some or all of a business entity or its assets to another party;

(v) Computer software or computer software documentation obtained with unlimited rights under another Government contract or as a result of negotiations; or

(vi) Computer software or computer software documentation furnished to the Government, under this or any other Government contract or subcontract thereunder with—

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

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

(2) *Government purpose rights.*

(i) Except as provided in paragraph (b)(1) of this clause, the Government shall have government purpose rights in computer software developed with mixed funding.

(ii) Government purpose rights shall remain in effect for a period of five years unless a different period has been negotiated. Upon expiration of the five-year or other negotiated period, the Government shall have unlimited rights in the computer software or computer software documentation. The government purpose rights period shall commence upon execution of the Contract, subcontract, letter contract (or similar contractual instrument), Contract modification, or option exercise that required development of the computer software.

(iii) The Government shall not release or disclose computer software in which it has government purpose rights to any other person unless—

(A) Prior to release or disclosure, the intended recipient is subject to the use and non-disclosure agreement Section J attachment entitled “Use and Non Disclosure Agreement” of this Contract; or

(B) The recipient is a Government contractor receiving

access to the software or documentation for performance of a Government contract that contains the clause substantially similar to DFARS [252.227-7025](#), Limitations on the Use or Disclosure of Government Furnished Information Marked with Restrictive Legends.

(3) *Restricted rights.*

(i) The Government shall have restricted rights in noncommercial computer software required to be delivered or otherwise provided to the Government under this Contract that were developed exclusively at private expense.

(ii) The Contractor, its subcontractors, or suppliers are not required to provide the Government additional rights in noncommercial computer software delivered or otherwise provided to the Government with restricted rights. However, if the Government desires to obtain additional rights in such software, the Contractor agrees to promptly enter into negotiations with the Contracting Officer to determine whether there are acceptable terms for transferring such rights. All noncommercial computer software in which the Contractor has granted the Government additional rights shall be listed or described in a license agreement made part of the contract (see paragraph (b)(4) of this clause). The license shall enumerate the additional rights granted the Government.

(iii) The Contractor acknowledges that—

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

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

(C) The Contractor (or the party asserting restrictions, as identified in the restricted rights legend) may require each such covered Government support contractor to enter into a non-disclosure agreement directly with the Contractor (or the party asserting restrictions) regarding the covered

Government support contractor's use of such software, or alternatively, that the Contractor (or party asserting restrictions) may waive in writing the requirement for a non-disclosure agreement;

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

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

(4) *Specifically negotiated license rights.*

(i) The standard license rights granted to the Government under paragraphs (b)(1) through (b)(3) of this clause, including the period during which the Government shall have government purpose rights in computer software, may be modified by mutual agreement to provide such rights as the parties consider appropriate but shall not provide the Government lesser rights in computer software than are enumerated in paragraph (a)(15) of this clause or lesser rights in computer software documentation than are enumerated in paragraph (a)(14) of the Rights in Technical Data--Noncommercial Items clause of this Contract.

(ii) Any rights so negotiated shall be identified in a license agreement made part of this Contract.

(5) *Prior government rights.* Computer software or computer software documentation that will be delivered, furnished, or otherwise provided to the Government under this Contract, in which the Government has previously obtained rights shall be delivered, furnished, or provided with the pre-existing rights, unless—

(i) The parties have agreed otherwise; or

(ii) Any restrictions on the Government's rights to use, modify, reproduce, release, perform, display, or disclose the data have expired or no longer apply.

(6) *[MODIFIED BY NASSCO] Release from liability.* The Contractor agrees to release NASSCO and the Government from liability for any release or disclosure of computer software made in accordance with paragraph (a)(15) or (b)(2)(iii) of this clause, in accordance with the terms of a license negotiated under paragraph (b)(4) of this clause, or by others to whom the recipient has released or disclosed the software, and to seek relief solely from the party who has improperly used, modified, reproduced, released, performed, displayed, or disclosed Contractor software marked with restrictive legends. The Contractor shall only release NASSCO from the above specified liability if the release or disclosure is first made by NASSCO to the Government, and the Government in turn releases or discloses it to a third party.

(c) *Rights in derivative computer software or computer software documentation.* The Government shall retain its rights in the unchanged portions of any computer software or computer software documentation delivered under this Contract that the Contractor uses to prepare, or includes in, derivative computer software or computer software documentation.

(d) *Third party copyrighted computer software or computer software documentation.* The Contractor shall not, without the written approval of the Contracting Officer, incorporate any copyrighted computer software or computer software documentation in the software or documentation to be delivered under this Contract unless the Contractor is the copyright owner or has obtained for the Government the license rights necessary to perfect a license or licenses in the deliverable software or documentation of the appropriate scope set forth in paragraph (b) of this clause, and prior to delivery of such—

(1) Computer software, has provided a statement of the license rights obtained in a form acceptable to the Contracting Officer; or

(2) Computer software documentation, has affixed to the transmittal document a statement of the license rights obtained.

(e) *Identification and delivery of computer software and computer software documentation to be furnished with restrictions on use, release, or disclosure.*

(1) This paragraph does not apply to restrictions based solely on copyright.

(2) Except as provided in paragraph (e)(3) of this clause, computer software that the Contractor asserts should be furnished to the Government with restrictions on use, release, or disclosure is identified in an attachment to this Contract (the Attachment). The Contractor shall not deliver any software with restrictive markings unless the software is listed on the Attachment.

(3) In addition to the assertions made in the Attachment, other assertions may be identified after award when based on new information or inadvertent omissions unless the inadvertent omissions would have materially affected the source selection decision. Such identification and assertion shall be submitted to the Contracting Officer as soon as practicable prior to the scheduled date for delivery of the software, in the following format, and signed by an official authorized to contractually obligate the Contractor:

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

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

Computer Software			Name of Person
to be Furnished	Basis for	Asserted Rights	Asserting
With Restrictions*	Assertion**	Category***	Restrictions****
(LIST)	(LIST)	(LIST)	(LIST)

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

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

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

Date _____
Printed Name and Title _____
Signature _____

(End of identification and assertion)

(4) When requested by the Contracting Officer, the Contractor shall provide sufficient information to enable the Contracting Officer to evaluate the Contractor's assertions. The Contracting Officer reserves the right to add the Contractor's assertions to the Attachment and validate any listed assertion, at a later date, in accordance with the procedures of the Validation of Asserted Restrictions—Computer Software clause of this Contract.

(f) *Marking requirements.* The Contractor, and its subcontractors or suppliers, may only assert restrictions on the Government's rights to use, modify, reproduce, release, perform, display, or disclose computer software by marking the deliverable software or documentation subject to restriction. Except as provided in paragraph (f)(5) of this clause, only the following legends are authorized under this Contract: the government purpose rights legend at paragraph (f)(2) of this clause; the restricted rights legend at paragraph (f)(3) of this clause; or the special license rights legend at paragraph (f)(4) of this clause; and/or a notice of copyright as prescribed under 17 U.S.C. 401 or 402.

(1) *General marking instructions.* The Contractor, or its subcontractors or suppliers, shall conspicuously and legibly mark the appropriate legend on all computer software that qualify for such markings. The authorized legends shall be placed on the transmittal document or software storage container and each page, or portions thereof, of printed material containing computer software for which restrictions are asserted. Computer software transmitted directly from one computer or computer terminal to another shall contain a notice of asserted restrictions. However, instructions that interfere with or delay the operation of computer software in order to display a restrictive rights legend or other license statement at any time prior to or during use of the computer software, or otherwise cause such interference or delay, shall not be inserted in software that will or might be used in combat or situations that simulate combat conditions, unless the Contracting Officer's written permission to deliver such software has been obtained prior to delivery. Reproductions of computer software or any portions thereof subject to asserted restrictions, shall also reproduce the asserted restrictions.

(2) *Government purpose rights markings.* Computer software delivered or otherwise furnished to the Government with government purpose rights shall be marked as follows:

GOVERNMENT PURPOSE RIGHTS

Contract No.

Contractor Name
Contractor Address

Expiration Date

The Government's rights to use, modify, reproduce, release, perform, display, or disclose this software are restricted by paragraph (b)(2) of the Rights in Noncommercial Computer

Software and Noncommercial Computer Software Documentation clause contained in the above identified contract. No restrictions apply after the expiration date shown above. Any reproduction of the software or portions thereof marked with this legend must also reproduce the markings.

(End of legend)

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

RESTRICTED RIGHTS

Contract No.

Contractor Name
Contractor Address

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

(End of legend)

(4) *Special license rights markings.*

(i) Computer software or computer software documentation in which the Government's rights stem from a specifically negotiated license shall be marked with the following legend:

SPECIAL LICENSE RIGHTS

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

(End of legend)

(ii) For purposes of this clause, special licenses do not include government purpose license rights acquired under a prior contract (see paragraph (b)(5) of this clause).

(5) *Pre-existing markings.* If the terms of a prior contract or license permitted the Contractor to restrict the Government's rights to use, modify, release, perform, display, or disclose computer software or computer software documentation and those restrictions are still applicable, the Contractor may mark such software or documentation with the appropriate restrictive legend for which the software qualified under the prior contract or license. The marking procedures in paragraph (f)(1) of this clause shall be followed.

(g) *Contractor procedures and records.* Throughout performance of this Contract, the Contractor and its subcontractors or suppliers that will deliver computer software or computer software documentation with other than unlimited rights, shall—

(1) Have, maintain, and follow written procedures sufficient to assure that restrictive markings are used only when authorized by the terms of this clause; and

(2) Maintain records sufficient to justify the validity of any restrictive markings on computer software or computer software documentation delivered under this Contract.

(h) *Removal of unjustified and nonconforming markings.*

(1) *Unjustified computer software or computer software documentation markings.* The rights and obligations of the parties regarding the validation of restrictive markings on computer software or computer software documentation furnished or to be furnished under this Contract are contained in the Validation of Asserted Restrictions--Computer Software and the Validation of Restrictive Markings on Technical Data clauses of this Contract, respectively. Notwithstanding any provision of this Contract concerning inspection and acceptance, the Government may ignore or, at the Contractor's expense, correct or strike a marking if, in accordance with the procedures of those clauses, a restrictive marking is determined to be unjustified.

(2) *Nonconforming computer software or computer software documentation markings.* A nonconforming marking is a marking placed on computer software or computer software documentation delivered or otherwise furnished to the Government under this Contract that is not in the format authorized by this Contract. Correction of nonconforming markings is not subject to the Validation of Asserted Restrictions--Computer Software or the Validation of Restrictive Markings on Technical Data clause of this Contract. If the Contracting Officer notifies the Contractor of a nonconforming marking or markings and the Contractor fails to remove or correct such markings within sixty (60) days, the Government may ignore or, at the Contractor's expense, remove or correct any nonconforming markings.

(i) *Relation to patents.* Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government under any patent.

(j) *Limitation on charges for rights in computer software or computer software documentation.*

(1) The Contractor shall not charge to this Contract any cost, including but not limited to license fees, royalties, or similar charges, for rights in computer software or computer software documentation to be delivered under this Contract when—

(i) The Government has acquired, by any means, the same or greater rights in the software or documentation; or

(ii) The software or documentation are available to the public without restrictions.

(2) The limitation in paragraph (j)(1) of this clause—

(i) Includes costs charged by a subcontractor or supplier, at any tier, or costs incurred by the Contractor to acquire rights in subcontractor or supplier computer software or computer software documentation, if the subcontractor or supplier has been paid for such rights under any other Government contract or under a license conveying the rights to the Government; and

(ii) Does not include the reasonable costs of reproducing, handling, or mailing the documents or other media in which the software or documentation will be delivered.

(k) *Applicability to subcontractors or suppliers.*

(1) Whenever any noncommercial computer software or computer software documentation is to be obtained from a subcontractor or supplier for delivery to the Government under this Contract, the Contractor shall use this same clause in its subcontracts or other contractual instruments, and require its subcontractors or suppliers to do so, without alteration, except to identify the parties. No other clause shall be used to enlarge or diminish the Government's, the Contractor's, or a higher tier subcontractor's or supplier's rights in a subcontractor's or supplier's computer software or computer software documentation.

(2) The Contractor and higher tier subcontractors or suppliers shall not use their power to award contracts as economic leverage to obtain rights in computer software or computer software documentation from their subcontractors or suppliers.

(3) The Contractor shall ensure that subcontractor or supplier rights are recognized and protected in the identification, assertion, and delivery processes required by paragraph (e) of this clause.

(4) In no event shall the Contractor use its obligation to recognize and protect subcontractor or supplier rights in computer software or computer software documentation as an excuse for failing to satisfy its contractual obligation to NASSCO.

H.38 TECHNICAL DATA—COMMERCIAL ITEMS [NOTE: “GOVERNMENT” DOES NOT MEAN NASSCO]

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

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

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

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

(ii) Receives access to technical data or computer software for performance of a Government contract that contains the clause substantially similar to DFARS [252.227-7025](#) Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends.

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

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

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

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

(b) *License.*

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

(i) Have been provided to the Government or others without

restrictions on use, modification, reproduction, release, or further disclosure other than a release or disclosure resulting from the sale, transfer, or other assignment of interest in the technical data to another party or the sale or transfer of some or all of a business entity or its assets to another party;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) *[MODIFIED BY NASSCO] Release from liability.* The Contractor agrees that NASSCO and the Government, and other persons to whom the Government may have released or disclosed technical data delivered or otherwise furnished under this Contract, shall have no liability for any release or disclosure of technical data that are not marked to indicate that such data are licensed data subject to use, modification, reproduction, release, performance, display, or disclosure restrictions. The Contractor shall only release NASSCO from the above specified liability if the release or disclosure is first made by NASSCO to the Government, and the Government in turn releases or discloses it to a third party

(e) *Applicability to subcontractors or suppliers.*

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

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

H-39 TECHNICAL DATA OR COMPUTER SOFTWARE PREVIOUSLY DELIVERED TO THE GOVERNMENT [NOTE: "GOVERNMENT" DOES NOT MEAN NASSCO]

The Offeror shall attach to its offer an identification of all documents or other media incorporating technical data or computer software it intends to deliver under this Contract with other than unlimited rights that are identical or substantially similar to documents or other media that the Offeror has produced for, delivered to, or is obligated to deliver to the Government under any contract or subcontract. The attachment shall identify—

(a) The contract number under which the data or software were produced;

(b) The contract number under which, and the name and address of the organization to whom, the data or software were most recently delivered or will be delivered; and

(c) Any limitations on the Government's rights to use or disclose the data or software, including, when applicable, identification of the earliest date the limitations expire.

H-41 VALIDATION OF ASSERTED RESTRICTIONS—COMPUTER SOFTWARE [NOTE: "GOVERNMENT" DOES NOT MEAN NASSCO]

(a) *Definitions.*

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

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

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

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

(d) *Requests for information.*

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

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

- (i) Contractor agrees that an asserted restriction is not valid, the Contracting Officer may—
- (A) Strike or correct the unjustified marking at the Contractor's expense; or
- (B) Return the computer software to the Contractor for correction at the Contractor's expense. If the Contractor fails to correct or strike the unjustified restriction and return the corrected software to the Contracting Officer within sixty (60) days following receipt of the software, the Contracting Officer may correct or strike the markings at that Contractor's expense.
- (ii) Contracting Officer concludes that the asserted restriction is appropriate for this Contract, the Contracting Officer shall so notify the Contractor in writing.
- (3) The Contractor's failure to provide a timely response to a Contracting Officer's request for information or failure to provide sufficient information to enable the Contracting Officer to evaluate an asserted restriction shall constitute reasonable grounds for questioning the validity of an asserted restriction.
- (e) *Government right to challenge and validate asserted restrictions.*
 - (1) The Government, when there are reasonable grounds to do so, has the right to review and challenge the validity of any restrictions asserted by the Contractor on the Government's rights to use, modify, reproduce, release, perform, display, or disclose computer software delivered, to be delivered under this Contract, or otherwise provided to the Government in the performance of this Contract. Except for software that is publicly available, has been furnished to the Government without restrictions, or has been otherwise made available without restrictions, the Government may exercise this right only within six (6) years after the date(s) the software is delivered or otherwise furnished to the Government, or six (6) years following final payment under this Contract, whichever is later.
 - (2) The absence of a challenge to an asserted restriction shall not constitute validation under this clause. Only a Contracting Officer's final decision or actions of an agency Board of Contract Appeals or a court of competent jurisdiction that sustain the validity of an asserted restriction constitute validation of the restriction.
 - (f) *Major systems.* When the Contracting Officer challenges an asserted restriction regarding noncommercial computer software for a major system or a subsystem or component thereof on the basis that the computer software was not developed exclusively at private expense, the Contracting Officer will sustain the challenge unless information provided by the Contractor or subcontractor demonstrates that the computer software was developed exclusively at private expense.
 - (g) *Challenge procedures.*
 - (1) A challenge must be in writing and shall—
 - (i) State the specific grounds for challenging the asserted restriction;
 - (ii) Require the Contractor to respond within sixty (60) days;
 - (iii) Require the Contractor to provide justification for the assertion based upon records kept in accordance with paragraph (b) of this clause and such other documentation that are reasonably available to the Contractor, in sufficient detail to enable the Contracting Officer to determine the validity of the asserted restrictions; and
 - (iv) State that a Contracting Officer's final decision, during the six -year period preceding this challenge, or action of a court of competent jurisdiction or Board of Contract Appeals that sustained the validity of an identical assertion made by the Contractor (or a licensee) shall serve as justification for the asserted restriction.
 - (2) The Contracting Officer shall extend the time for response if the Contractor submits a written request showing the need for additional time to prepare a response.
 - (3) The Contracting Officer may request additional supporting documentation if, in the Contracting Officer's opinion, the Contractor's explanation does not provide sufficient evidence to justify the validity of the asserted restrictions. The Contractor agrees to promptly respond to the Contracting Officer's request for additional supporting documentation.
 - (4) Notwithstanding challenge by the Contracting Officer, the parties may agree on the disposition of an asserted restriction at any time prior to a Contracting Officer's final decision or, if the Contractor has appealed that decision, filed suit, or provided notice of an intent to file suit, at any time prior to a decision by a court of competent jurisdiction or Board of Contract Appeals.
 - (5) If the Contractor fails to respond to the Contracting Officer's request for information or additional information under paragraph (g)(1) of this clause, the Contracting Officer shall issue a final decision, in accordance with paragraph (f) of this clause and the Disputes clause of this contract, pertaining to the validity of the asserted restriction.
 - (6) If the Contracting Officer, after reviewing the written explanation furnished pursuant to paragraph (f)(1) of this clause, or any other available information pertaining to the validity of an asserted restriction, determines that the asserted restriction has—
 - (i) Not been justified, the Contracting Officer shall issue promptly a final decision, in accordance with the Disputes clause of this Contract, denying the validity of the asserted restriction; or
 - (ii) Been justified, the Contracting Officer shall issue promptly a final decision, in accordance with the Disputes clause of this Contract, validating the asserted restriction.
 - (7) A Contractor receiving challenges to the same asserted restriction(s) from more than one Contracting Officer shall notify each Contracting

Officer of the other challenges. The notice shall also state which Contracting Officer initiated the first in time unanswered challenge. The Contracting Officer who initiated the first in time unanswered challenge, after consultation with the other Contracting Officers who have challenged the restrictions and the Contractor, shall formulate and distribute a schedule that provides the Contractor a reasonable opportunity for responding to each challenge.

(h) *Contractor Appeal; Government Obligation.*

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

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

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

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

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

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

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

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

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

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

(3) The agency head, on a non-delegable basis, may determine that urgent or compelling circumstances do not permit awaiting the filing of suit in an appropriate court, or the rendering of a decision by a court of competent jurisdiction or Board of Contract Appeals. In that event, the agency head shall notify the Contractor of the urgent or compelling circumstances. Notwithstanding paragraph (h)(1) of this clause, the Contractor agrees that the agency may use, modify, reproduce, release, perform, display, or disclose computer software marked with (i) government purpose legends for any purpose, and authorize others to do so; or (ii) restricted or special license rights for government purposes only. The Government agrees not to release or disclose such software unless, prior to release or disclosure, the intended recipient is subject to the use and non-disclosure agreement or is a Government contractor receiving access to the software for performance of a Government contract that contains the clause that is substantially similar to DFARS [252.227-7025](#), Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends. The agency head's determination may be made at any time after the date of the Contracting Officer's final decision and shall not affect the Contractor's right to damages against the United States, or other relief provided by law, if its asserted restrictions are ultimately upheld.

(i) *Final disposition of appeal or suit.* If the Contractor appeals or files suit and if, upon final disposition of the appeal or suit, the Contracting Officer's decision is:

(1) Sustained—

(i) Any restrictive marking on such computer software shall be struck or corrected at the Contractor's expense or ignored; and

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

(2) Not sustained—

(i) The Government shall be bound by the asserted restriction; and

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

(j) *Flow-down.* The Contractor shall insert this clause in all contracts, purchase orders, and other similar instruments with its subcontractors or suppliers, at any tier, who will be furnishing computer software to the Government in the performance of this Contract. The clause may not be altered other than to identify the appropriate parties.

H-42 VALIDATION OF RESTRICTIVE MARKINGS ON TECHNICAL DATA [NOTE: "GOVERNMENT" DOES NOT MEAN NASSCO]

(a) *Definitions.* The terms used in this clause are defined in the Rights in Technical Data—Noncommercial Items clause of this Contract.

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

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

(2) *Major systems.* The presumption of development exclusively at private expense does not apply to major systems or subsystems or

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

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

(d) *Pre-challenge request for information.*

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

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

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

(e) *Challenge.*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(B) the continued adherence by the United States to the asserted restriction would make it impracticable to procure the item to which the technical data pertain competitively at a later time. The Government may, however, challenge a restriction on the release, disclosure or use of technical data at any time if such technical data—

(1) Is publicly available;

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

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

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

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

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

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

Section I - Contract Clauses

I.1 CLAUSES INCORPORATED BY REFERENCE (FEB 1998) (FAR 52.252-2)

This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically at this/these address(es):

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

Notes – The following notes apply to the clauses incorporated by reference below.

NOTE 1 – Substitute "NASSCO" for "the Government" or "the United States" throughout this clause.

NOTE 2 – Substitute "NASSCO Procurement Representative" for "Contracting Officer", "Administrative Contracting Officer", and "ACO" throughout this clause.

NOTE 3 – Insert "and NASSCO" after "Government" throughout the clause.

NOTE 4 – Insert "or NASSCO") after "Government throughout this clause.

NOTE 5 – Communication/notification required under this clause from/to the Contractor and to/from the Contracting Officer shall be through NASSCO.

NOTE 6 – Insert "and NASSCO" after "Contracting Officer", throughout the clause.

NOTE 7 – Insert "or NASSCO Procurement Representative" after "Contracting officer", throughout the clause.

FEDERAL ACQUISITION REGULATION (48 CFR CHAPTER 1) CLAUSES

NUMBER TITLE

DATE & NOTE

52.202-1 DEFINITIONS

JUL 2012

52.203-3 GRATUITIES

APR 1984

52.203-5 CONVENANT AGAINST CONTINGENT FEES

APR 1984

52.203-6 RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT

SEPT 2006

[APPLIES IF THE CONTRACT VALUE EXCEEDS \\$150,000.](#)

52.203-7 ANTI-KICKBACK PROCEDURES

OCT 2010

[APPLIES IF THE CONTRACT VALUE EXCEEDS \\$150,000.](#)

52.203-8 CANCELLATION, RECISSION, AND RECOVERY OF FUNDS FOR ILLEGAL OR IMPROPER ACTIVITY

JAN 1997

52.203-10 PRICE OR FEE ADJUSTMENT FOR ILLEGAL OR IMPROPER ACTIVITY

JAN 1997

52.203-12 LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS

OCT 2010

[APPLIES IF THE CONTRACT VALUE EXCEEDS \\$150,000.](#)

52.203-13 CONTRACTOR CODE OF BUSINESS ETHICS AND CONDUCT

APR 2010

[APPLIES IF THIS CONTRACT EXCEEDS \\$5,000,000 and the period of performance is more than 120 days.](#)

[Disclosures made under this clause shall be made directly to the Government entities identified in the clause.](#)

52.204-2 SECURITY REQUIREMENTS	AUG 1996
APPLIES IF THE WORK REQUIRES ACCESS TO CLASSIFIED INFORMATION.	
52.204-4 PRINTED OR COPIED DOUBLE-SIDED ON RECYCLED PAPER	MAY 2011
52.204-7 CENTRAL CONTRACTOR REGISTRATION	AUG 2012
52.204-9 PERSONAL IDENTITY VERIFICATION OF CONTRACTOR PERSONNEL	JAN 2011
Applies where Seller will have physical access to a federally-controlled facility or access to a federal information system.	
52.204-10 EXECUTIVE COMPENSATION AND FIRST-TIER SUBCONTRACTOR AWARDS	JUL 2010
Applies where if Seller is a first-tier subcontractor.	
52.209-6 PROTECTING THE GOVERNMENT'S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT	DEC 2010
APPLIES IF THIS CONTRACT EXCEEDS \$30,000 AND IS NOT A SUBCONTRACT FOR COMMERCIALY AVAILABLE OFF THE SHELF ITEMS. Copies of notices provided by Seller to the Contracting Officer shall be provided to NASSCO.	
52.211-5 MATERIAL REQUIREMENTS	AUG 2000
NOTE 2 APPLIES.	
52.215-2 AUDIT AND RECORDS—NEGOTIATION	OCT 2010
APPLIES IF THE CONTRACT VALUE EXCEEDS \$150,000; APPLICABLE IF: (1) Contractor is required to furnish cost or pricing data, or (2) the Contract requires Contractor to furnish cost, funding or performance reports, or (3) this is an incentive or re-determinable type contract.	
52.215-8 ORDER OF PRECEDENCE—UNIFORM CONTRACT FORMAT	OCT 1997
52.215-11 PRICE REDUCTION FOR DEFECTIVE CERTIFIED COST OR PRICING DATA—MODIFICATIONS	AUG 2011
APPLIES IF SUBMISSION OF CERTIFIED COST OR PRICING DATA IS REQUIRED FOR MODIFICATIONS. NOTES 2 AND 4 apply except the first time "Contracting Officer" appears in paragraph (d)(1). "Government" means "NASSCO" in paragraph (e)(1). Rights and obligations under this clause shall survive completion of the work and final payment under this Contract.	
52.215-13 SUBCONTRACTOR CERTIFIED COST OR PRICING DATA—MODIFICATIONS	OCT 2010
APPLIES IF THIS CONTRACT EXCEEDS \$700,000 and is not otherwise exempt under FAR 15.403.	
52.215-14 INTEGRITY OF UNIT PRICES	OCT 2010
APPLIES IF THE CONTRACT VALUE EXCEEDS \$150,000; (Delete paragraph (b) of the clause)	
52.215-15 PENSION ADJUSTMENTS AND ASSET REVERSIONS	OCT 2010
APPLIES IF THIS CONTRACT MEETS THE APPLICABILITY REQUIREMENTS OF FAR 15.408(g). NOTE 5 APPLIES.	
52.215-18 REVERSION OR ADJUSTMENT OF PLANS FOR POSTRETIREMENT BENEFITS (PRB) OTHER THAN PENSIONS	JUL 2005

APPLICABLE IF THIS CONTRACT MEETS THE APPLICABILITY REQUIREMENTS OF FAR 15.408(j). NOTE 5 APPLIES.

52.215-19 NOTIFICATIONS OF OWNERSHIP CHANGES OCT 1997
APPLIES IF THIS CONTRACT MEETS THE APPLICABILITY REQUIREMENTS OF FAR 15.408(K). NOTE 5 APPLIES.

52.215-21 REQUIREMENTS FOR CERTIFIED COST OR PRICING DATA AND DATA OTHER THAN CERTIFIED COST OR
PRICING DATA—MODIFICATIONS OCT 2010
ALT III (OCT 1997)
NOTE 2 APPLIES in paragraphs (a)(1) and (b).

52.216-7 ALLOWABLE COST AND PAYMENT JUN 2011
NOTE 1 applies except in paragraphs (a)(3) and (b)(2)(F) where NOTE 3 applies. NOTE 2 applies except in paragraph (g)
where NOTE 7 applies. The blank in paragraph (a)(3) is completed with the “the 30th” unless otherwise specified in this Contract.
Paragraphs (a)(2), (b)(4), and (d)(4) are deleted. In paragraph (h) “six years” is changed to “5 years”. The references to government
Entities in paragraph (d) are unchanged.

52.217-7 OPTION FOR INCREASED QUANTITY—SEPARATELY PRICED LINE ITEM MAR 1989
52.219-4 NOTICE OF PRICE EVALUATION PREFERENCE FOR HUBZONE SMALL BUSINESS CONCERNS JAN 2011
52.219-8 UTILIZATION OF SMALL BUSINESS CONCERNS JAN 2011
52.219-9 SMALL BUSINESS SUBCONTRACTING PLAN JAN 2011
ALT II OCT 2001
APPLIES IF VALUE OF THE CONTRACT EQUALS OR EXCEEDS \$650,000 except the clause does not apply if Seller is a
small business concern. NOTE 2 IS APPLICABLE to paragraph (c) only. Seller’s subcontracting plan is incorporated herein
by reference.

52.222-4 CONTRACT WORK HOURS AND SAFETY STANDARDS ACT—OVERTIME COMPENSATION JUL 2005
APPLIES IF THE CONTRACT MAY REQUIRE OR INVOLVE THE EMPLOYMENT OF LABORERS AND MECHANICS.

52.222-19 CHILD LABOR—COOPERATION WITH AUTHORITIES AND REMEDIES MAR 2012
52.222-20 WALSH-HEALEY PUBLIC CONTRACTS ACT OCT 2010
52.222-21 PROHIBITION OF SEGREGATED FACILITIES FEB 1999
52.222-26 EQUAL OPPORTUNITY MAR 2007
52.222-35 EQUAL OPPORTUNITY FOR VETERANS SEP 2010
APPLIES IF THE CONTRACT VALUE EXCEEDS \$100,000.

52.222-36 AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES OCT 2010
APPLIES IF THE VALUE OF THIS CONTRACT EQUALS OR EXCEEDS \$15,000.

52.222-37 EMPLOYMENT REPORTS ON VETERANS SEP 2010
APPLIES IF THE CONTRACT VALUE EXCEEDS \$100,000.

52.222-40	NOTIFICATION OF EMPLOYEE RIGHTS UNDER THE NATIONAL LABOR RELATIONS ACT APPLIES IF CONTRACT VALUE EXCEEDS \$10,000.	DEC 2010
52.222-50	COMBATING TRAFFICKING IN PERSONS NOTE 2 APPLIES. In paragraph (e) NOTE 3 applies.	FEB 2009
52.222-54	EMPLOYMENT ELIGIBILITY VERIFICATION	JUL 2012
52.223-3	HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA ALT I (JUL 1995) APPLIES IF THIS CONTRACT INVOLVES HAZARDOUS MATERIAL. NOTES 2 AND 3 apply, except for paragraph (f) WHERE NOTE 4 APPLIES.	JAN 1997
52.223-5	POLLUTION PREVENTATION AND RIGHT-TO-KNOW INFORMATION	MAY 2011
52.223-6	DRUG-FREE WORKPLACE	MAY 2001
52.223-15	ENERGY EFFICIENCY IN ENERGY CONSUMING PRODUCTS	DEC 2007
52.223-18	ENCOURAGING CONTRACTOR POLICIES TO BAN TEXT MESSAGING WHILE DRIVING APPLIES IF THIS CONTRACT EXCEEDS \$3,000.	AUG 2011
52.225-1	BUY-AMERICAN ACT—SUPPLIES APPLIES IF THE WORK CONTAINS OTHER THAN DOMESTIC COMPONENTS. NOTE 2 APPLIES TO THE FIRST TIME “CONTRACTING OFFICER” IS MENTIONED IN PARAGRAPH (C).	FEB 2009
52.225-13	RESTRICTIONS ON CERTAIN FOREIGN PURCHASES	JUN 2008
52.227-1	AUTHORIZATION AND CONSENT APPLIES ONLY IF THE PRIME CONTRACT CONTAINS THIS CLAUSE.	DEC 2007
52.227-2	NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT APPLIES IF THE CONTRACT VALUE EXCEEDS \$150,000; NOTE 2 AND NOTE 4 APPLY.	DEC 2007
52.227-3	PATENT INDEMNITY ALT II (APR 1984) (FILL IN COMMERCIAL ITEMS)	APR 1984
52.227-9	REFUND OF ROYALTIES APPLIES WHEN REPORTED ROYALTY EXCEEDS \$250. NOTE 1 APPLIES EXCEPT FOR THE FIRST TWO TIMES “GOVERNMENT” APPEARS IN PARAGRAPH (D). NOTE 2 APPLIES.	APR 1984
52.227-10	FILING OF PATENT APPLICATIONS—CLASSIFIED SUBJECT MATTER APPLIES IF THE WORK OR ANY PATENT APPLICATION MAY COVER CLASSIFIED SUBJECT MATTER.	DEC 2007

52.229-3	FEDERAL, STATE, AND LOCAL TAXES	APR 2003
52.230-2	COST ACCOUNTING STANDARDS	MAY 2012
	APPLIES ONLY WHEN REFERENCED IN THIS CONTRACT THAT FULL CAS COVERAGE APPLIES. "UNITED STATES" MEANS "UNITED STATES OR NASSCO". DELETE PARAGRAPH (B) OF THIS CLAUSE.	
52.230-3	DISCLOSURE AND CONSISTENCY IN COST ACCOUNTING PRACTICES	OCT 2008
	APPLIES ONLY WHEN REFERENCED IN THIS CONTRACT THAT MODIFIED CAS COVERAGE APPLIES. "UNITED STATES" MEANS "UNITED STATES OR NASSCO." DELETE PARAGRAPH (B) OF THIS CLAUSE.	
52.230-6	ADMINISTRATION OF COST ACCOUNTING STANDARDS	JUN 2010
	APPLIES IF FAR 52.230-2 OR FAR 52.230-3 APPLIES.	
52.232-17	INTEREST	OCT 2010
52.232-18	AVAILABILITY OF FUNDS	APR 1984
52.232-20	LIMITATION OF COST	APR 1984
	(Applicable when this Contract becomes fully funded. NOTE 1 and NOTE 2 apply.)	
52.232-23	ASSIGNMENT OF CLAIMS	JAN 1986
	ALT I	APR 1984
52.233-3	PROTEST AFTER AWARD	AUG 1996
	In the event NASSCO's customer has directed NASSCO to stop performance of the work under the Prime Contract under which this Contract is issued pursuant to FAR 33.1, NASSCO may, by written order to Seller, direct Seller to stop performance of the work called for by this Contract. "30 days" means "20 days" in paragraph (b)(2). NOTE 1 APPLIES except the first time "Government" appears in paragraph (f). In paragraph (f) add after "33.104(h)(1)" the following: "and recovers those costs from NASSCO".	
52.233-4	APPLICABLE LAW FOR BREACH OF CONTRACT CLAIM	OCT 2004
52.242-1	NOTICE OF INTENT TO DISALLOW COSTS	APR 1984
52.242-15	STOP WORK ORDER (applicable only if stop work order is initiated by the Government)	AUG 1989
	NOTES 1 AND 2 APPLY.	
52.243-1	CHANGES—FIXED PRICE	AUG 1987
	ALT II	APR 1984
	NOTES 1 AND 2 APPLY.	
52.243-2	CHANGES – COST REIMBURSEMENT	AUG 1987
	ALT II (APR 1984)	
52.243-6	CHANGE ORDER ACCOUNTING	APR 1984
	APPLIES IF THE PRIME CONTRACT REQUIRES CHANGE ORDER ACCOUNTING. NOTE 2 APPLIES.	
52.243-7	NOTIFICATION OF CHANGES	APR 1984
52.244-2	SUBCONTRACTS	OCT 2010

52.244-5	COMPETITION IN SUBCONTRACTING	DEC 2006
52.244-6	SUBCONTRACTS FOR COMMERCIAL ITEMS	DEC 2010
	ALT I	JUNE 2010
52.245-1	GOVERNMENT PROPERTY	APR 2012
	ALT I (APR 1984)	
	<p>“Contracting Officer” means “NASSCO” except in the definition of Property Administrator and in paragraphs (h)(1)(iii) where it is unchanged, and in paragraphs (c) and (h)(4) where it includes NASSCO. “Government” is unchanged in the phrases “Government Property” and “Government furnished property” and where elsewhere used except in paragraph (d)(1) where it means “NASSCO”, and except in paragraphs (d)(2) and (g) where the term includes NASSCO. The following is added as paragraph (n) “Seller shall provide to NASSCO immediate notice if the Government or other contractor, or (ii) makes a determination that Seller’s property management practices are inadequate, and/or present an undue risk, or that Seller has failed to take corrective action when required.”)</p>	
52.245-9	USE AND CHARGES	APR 2012
52.247-1	COMMERCIAL BILL OF LADING NOTATIONS	FEB 2006
52.247-63	PREFERENCE FOR U.S.-FLAG AIR CARRIERS	JUN 2003
	APPLIES IF THIS CONTRACT INVOLVES INTERNATIONAL AIR TRANSPORTATION.	
52.247-64	PREFERENCE FOR PRIVATELY OWNED U.S.-FLAG COMMERCIAL VESSELS	FEB 2006
52.247-68	REPORT OF SHIPMENT (REPSHIP)	FEB 2006
52.248-1	VALUE ENGINEERING	OCT 2010
	<p>APPLIES IF THE CONTRACT VALUE EXCEEDS \$150,000; NOTE 1 applies, except in paragraphs (c)(5) where NOTE 3 applies, and except in (b)(3) where NOTE 4 applies, and where “Government” precedes “cost” throughout. NOTE 2 applies. In paragraph (m) “Government” is unchanged. Also, “Government” does not mean “NASSCO” in the phrase “Government costs.”</p>	
52.249-2	TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (FIXED-PRICE)	APR 2012
	<p>NOTES 1 AND 2 APPLY. NOTE 4 APPLIES to the first time “Government” appears in paragraphs (b)(4) and (b)(6), it applies to all of paragraph (b)(8) and it applies to the second time “Government” appears in paragraph (d). In paragraph (n) “Government” means “NASSCO and the Government”. In paragraph (c) “120 days” is changed to “60 days”. In paragraph (d) “15 days” is changed to “30 days”, and “45 days” is changed to “60 days”. In paragraph (e) “1 year” is changed to “6 months”. In paragraph (l) “90 days” is changed “45 days”. Settlements and payments under this clause may be subject to the approval of the Contracting Officer.</p>	
52.249-6	TERMINATION (COST-REIMBURSEMENT)	MAY 2004
52.249-8	DEFAULT (FIXED-PRICE SUPPLY AND SERVICE)	APR 1984
	<p>NOTES 1 AND 2 APPLY, EXCEPT NOTE 1 IS NOT APPLICABLE TO PARAGRAPH (C). NOTE 4 APPLIES to the second and third time “Government” appears in paragraph (e). Timely performance is a material element of this Contract.</p>	
52.249-14	EXCUSABLE DELAYS	APR 1984

NOTE 2 APPLIES; NOTE 1 applies to (c). In (a)(2) delete "or contractual".

52.251-1 GOVERNMENT SUPPLY SOURCES APR 2012
52.253-1 COMPUTER GENERATED FORMS JAN 1991

HOMELAND SECURITY ACQUISITION REGULATION (HSAR) CLAUSES

3052.211-70 INDEX FOR SPECIFICATIONS DEC 2003
3052.222-70 STRIKES OR PICKETING AFFECTING TIMELY
COMPLETION OF THE CONTRACT WORK DEC 2003
3052.242-71 DISSEMINATION OF CONTRACT INFORMATION DEC 2003
3052.242-72 CONTRACTING OFFICER'S TECHNICAL
REPRESENTATIVE DEC 2003

I.3 OZONE-DEPLETING SUBSTANCES (FAR 52.223-11) (MAY 2001)

a. Definition. "Ozone-depleting substance," as used in this clause, means any substance the Environmental Protection Agency designates in 40 CFR Part 82 as—

- (1) Class I, including, but not limited to, chlorofluorocarbons, halons, carbon tetrachloride, and methyl chloroform; or
- (2) Class II, including, but not limited to, hydrochlorofluorocarbons.

b. The Contractor shall label products which contain or are manufactured with ozone-depleting substances in the manner and to the extent required by 42 U.S.C. 7671j (b), (c), and (d) and 40 CFR Part 82, Subpart E, as follows:

Warning

Contains (or manufactured with, if applicable) * _____, a substance(s) which harm(s) public health and environment by destroying ozone in the upper atmosphere.

* The Contractor shall insert the name of the substance(s).

I-7 INDUSTRIAL RESOURCES DEVELOPED UNDER DEFENSE PRODUCTION ACT TITLE III (FAR 52.234-1) (DEC 1994)

(a) Definitions. "Title III industrial resource" means materials, services, processes, or manufacturing equipment (including the processes, technologies, and ancillary services for the use of such equipment) established or maintained under the authority of Title III, Defense Production Act (50 U.S.C. App. 2091-2093).

"Title III project contractor" means a contractor that has received assistance for the development or manufacture of an industrial resource under [50 U.S.C. App. 2091-2093](#), Defense Production Act.

(b) The Contractor shall refer any request from a Title III project contractor for testing and qualification of a Title III industrial resource to the Contracting Officer.

(c) Upon the direction of the Contracting Officer, the Contractor shall test Title III industrial resources for qualification. The Contractor shall provide the test results to the Defense Production Act Office, Title III Program, located at Wright Patterson Air Force Base, Ohio 45433-7739.

(d) When the Contracting Officer modifies the contract to direct testing pursuant to this clause, the Government will provide the Title III industrial resource to be tested and will make an equitable adjustment in the contract for the costs of testing and qualification of the Title III industrial resource.

(e) The Contractor agrees to insert the substance of this clause, including paragraph (e), in every subcontract issued in performance of this contract.

I.8 WARRANTY OF SUPPLIES OF A COMPLEX NATURE (FAR 52.246-18) (MAY 2011) ALT III MODIFIED BY NASSCO (Applicable to Phase II Only)

The Contractor warrants that for two years on lead hull and one year on follow hulls, from the date of acceptance, all supplies furnished under this contract, will be free from defects in design, materials and workmanship and will conform to the applicable requirements of the contract; provided, however, that with respect to Government Furnished Property, the Contractor's warranty shall extend only to its proper installation, unless the Contractor performs some modification or other work on the property, in which case the Contractor's warranty shall extend to the modification or other work.

I.10 CONTRACTOR EMPLOYEE ACCESS (HSAR 3052.204-71) (JUN 2006)

a. Sensitive Information, as used in this Chapter, means any information, the loss, misuse, disclosure, or unauthorized access to or modification of which could adversely affect the national or homeland security interest, or the conduct of Federal programs, or the privacy to which individuals are entitled under section 552a of title 5, United States Code (the Privacy Act), but which has not been specifically authorized under criteria established by an Executive Order or an Act of Congress to be kept classified in the interest of national defense, homeland security or foreign policy. This definition includes the following categories of information:

- (1) Protected Critical Infrastructure Information (PCII) as set out in the Critical Infrastructure Information Act of 2002 (Title II, Subtitle B, of the Homeland Security Act, Public Law 107-296, 196 Stat. 2135), as amended, the implementing regulations thereto (Title 6, Code of Federal Regulations, Part 29) as amended, the applicable PCII Procedures Manual, as amended, and any supplementary guidance officially communicated by an authorized official of the Department of Homeland Security (including the PCII Program Manager or his/her designee);
- (2) Sensitive Security Information (SSI), as defined in Title 49, Code of Federal Regulations, Part 1520, as amended, "Policies and Procedures of Safeguarding and Control of SSI," as amended and any supplementary guidance officially communicated 06-01-2006 HSAR 52-5 by an authorized official of the Department of Homeland Security (including the Assistant Secretary for the Transportation Security Administration or his/her designee);
- (3) Information designated as "For Official Use Only," which is unclassified information of a sensitive nature and the unauthorized disclosure of which could adversely impact a person's privacy or welfare, the conduct of Federal programs, or other programs or operations essential to the national or homeland security interest; and
 - (4) Any information that is designated "sensitive" or subject to other controls, safeguards or protections in accordance with subsequently adopted homeland security information handling procedures.
- b. "Information Technology Resources" include, but are not limited to, computer equipment, networking equipment, telecommunications equipment, cabling, network drives, computer drives, network software, computer software, software programs, intranet sites, and internet sites.
- c. Contractor employees working on this contract must complete such forms as may be necessary for security or other reasons, including the conduct of background investigations to determine suitability. Completed forms shall be submitted as directed by the Contracting Officer. Upon the Contracting Officer's request, the Contractor's employees shall be fingerprinted, or subject to other investigations as required. All contractor employees requiring recurring access to Government facilities or access to sensitive information or IT resources are required to have a favorably adjudicated background investigation prior to commencing work on this contract unless this requirement is waived under Departmental procedures.
- d. The Contracting Officer may require the contractor to prohibit individuals from working on the contract if the government deems their initial or continued employment contrary to the public interest for any reason, including, but not limited to, carelessness, insubordination, incompetence, or security concerns.
- e. Work under this contract may involve access to sensitive information. Therefore, the Contractor shall not disclose, orally or in writing, any sensitive information to any person unless authorized in writing by the Contracting Officer. For those contractor employees authorized access to sensitive information, the contractor shall ensure that these persons receive training concerning the protection and disclosure of sensitive information both during and after contract performance.
- f. The Contractor shall include the substance of this clause in all subcontracts at any tier where the subcontractor may have access to Government facilities, sensitive information, or resources.

Section J – Attachments

Non-Disclosure Agreement

**USCG OFFSHORE PATROL CUTTER (OPC)
USE AND NON-DISCLOSURE AGREEMENTS
ATTACHMENT J-17**



Prepared by:
Commandant (CG-9125)
United States Coast Guard
2100 Second ST SW Stop 7701
Washington, DC. 20593-7701

25 SEPTEMBER 2012

Solicitation Number: HSCG23-12-R-OPC001

Distribution Statement A: Approved for public release; distribution is unlimited



**Homeland
Security**

(a) Except as provided in paragraph (b) of this subsection, technical data or computer software delivered to the Government with restrictions on use, modification, reproduction, release, performance, display, or disclosure may not be provided to third parties unless the intended recipient completes and signs the use and non-disclosure agreement at paragraph (c) of this subsection prior to release, or disclosure of the data.

(1) The specific conditions under which an intended recipient will be authorized to use, modify, reproduce, release, perform, display, or disclose technical data subject to limited rights or computer software subject to restricted rights must be stipulated in an attachment to the use and non-disclosure agreement.

(2) For an intended release, disclosure, or authorized use of technical data or computer software subject to special license rights, modify paragraph (1)(d) of the use and non-disclosure agreement to enter the conditions, consistent with the license requirements, governing the recipient's obligations regarding use, modification, reproduction, release, performance, display or disclosure of the data or software.

(b) The requirement for use and non-disclosure agreements does not apply to Government contractors which require access to a third party's data or software for the performance of a Government contract that contains the Section H clause entitled "Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends".

(c) The prescribed use and non-disclosure agreement is:

Use and Non-Disclosure Agreement

The undersigned, _____(Insert Name)_____, an authorized representative of the _____(Insert Company Name)_____, (which is hereinafter referred to as the "Recipient") requests the Government to provide the Recipient with technical data or computer software (hereinafter referred to as "Data") in which the Government's use, modification, reproduction, release, performance, display or disclosure rights are restricted. Those Data are identified in an attachment to this Agreement. In consideration for receiving such Data, the Recipient agrees to use the Data strictly in accordance with this Agreement:

(1) The Recipient shall—

(a) Use, modify, reproduce, release, perform, display, or disclose Data marked with government purpose rights or SBIR data rights legends only for government purposes and shall not do so for any commercial purpose. The Recipient shall not release, perform, display, or disclose these Data, without the express written permission of the contractor whose name appears in the restrictive legend (the "Contractor"), to any person other than its subcontractors or suppliers, or prospective subcontractors or suppliers, who require these Data to submit offers for, or perform, contracts with the Recipient. The Recipient shall require its subcontractors or suppliers, or prospective subcontractors or suppliers, to sign a use and non-disclosure agreement prior to disclosing or releasing these Data to such persons. Such agreement must be consistent with the terms of this agreement.

(b) Use, modify, reproduce, release, perform, display, or disclose technical data marked with limited rights legends only as specified in the attachment to this Agreement. Release, performance, display, or disclosure to other persons is not authorized unless specified in the attachment to this Agreement or expressly permitted in writing by the Contractor. The Recipient shall promptly notify the Contractor of the execution of this Agreement and identify the Contractor's Data that has been or will be provided to the Recipient, the date and place the Data were or will be received, and the name and address of the Government office that has provided or will provide the Data.

(c) Use computer software marked with restricted rights legends only in performance of Contract Number _____(insert contract number(s))_____. The recipient shall not, for example, enhance, decompile, disassemble, or reverse engineer the software; time share, or use a computer program with more than one computer at a time. The recipient may not release, perform, display, or disclose such software to others unless expressly permitted in writing by the licensor whose name appears in the restrictive legend. The Recipient shall promptly notify the software licensor of the execution of this Agreement and identify the software that has been or will be provided to the Recipient, the date and place the software were or will be received, and the name and address of the Government office that has provided or will provide the software.

(d) Use, modify, reproduce, release, perform, display, or disclose Data marked with special license rights legends (To be completed by the contracting officer. See Use and Non Disclosure Agreement paragraph (a)(2) of this contract . Omit if none of the Data requested is marked with special license rights legends).

(2) The Recipient agrees to adopt or establish operating procedures and physical security measures designed to protect these Data from inadvertent release or disclosure to unauthorized third parties.

(3) The Recipient agrees to accept these Data "as is" without any Government representation as to suitability for intended use or warranty whatsoever. This disclaimer does not affect any obligation the Government may have regarding Data specified in a contract for the performance of that contract.

(4) The Recipient may enter into any agreement directly with the Contractor with respect to the use, modification, reproduction, release, performance, display, or disclosure of these Data.

(5) The Recipient agrees to indemnify and hold harmless the Government, its agents, and employees from every claim or liability, including attorneys fees, court costs, and expenses arising out of, or in any way related to, the misuse or unauthorized modification, reproduction, release, performance, display, or disclosure of Data received from the Government with restrictive legends by the Recipient or any person to whom the Recipient has released or disclosed the Data.

(6) The Recipient is executing this Agreement for the benefit of the Contractor. The Contractor is a third party beneficiary of this Agreement who, in addition to any other rights it may have, is intended to have the rights of direct action against the Recipient or any other person to whom the Recipient has released or disclosed the Data, to seek damages from any breach of this Agreement or to otherwise enforce this Agreement.

(7) The Recipient agrees to destroy these Data, and all copies of the Data in its possession, no later than 30 days after the date shown in paragraph (8) of this Agreement, to have all persons to whom it released the Data do so by that date, and to notify the Contractor that the Data have been destroyed.

(8) This Agreement shall be effective for the period commencing with the Recipient's execution of this Agreement and ending upon _____ (Insert Date)_____. The obligations imposed by this Agreement shall survive the expiration or termination of the Agreement.

Recipient's Business Name _____

By _____
Authorized Representative

Date _____

Representative's Typed Name _____

And Title _____