

**NORTHEAST SHIP REPAIR, INC.**  
**STANDARD TERMS AND CONDITIONS**

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These Standard Terms and Conditions form a part of, and are fully incorporated (as though fully set forth therein) into the Purchase Order(s) from time to time executed and delivered on behalf of Northeast Ship Repair, Inc. or its affiliates, Boston Ship Repair, LLC and Philadelphia Ship Repair, LLC (the party issuing each Purchase Order being referred to herein as the "Prime Contractor" with respect to that Purchase Order) to the vendor identified below (the "Vendor") relating to the services of Vendor (the "Vendor Services") set forth in one or more such Purchase Orders or Statements of Work (each a "PO") that are simultaneously herewith or may later be executed by the parties, each identifying the terms applicable to the performance of Vendor's obligations listed therein. Each PO and addenda, if any, is included and incorporated as part of this Agreement and this Agreement and any exhibits attached hereto contain the entire agreement of the parties and supersede all prior negotiations, agreements, and understandings with respect thereto. **This agreement shall remain in full force and effect unless and until later revised.**

**VENDOR & CONTACT INFORMATION**

Vendor and Vendor's Contact Information are:

Vendor Name: \_\_\_\_\_ :

Vendor Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Authorized Contact: \_\_\_\_\_

Phone: \_\_\_\_\_

Fax: \_\_\_\_\_

Email: \_\_\_\_\_

**1. DEFINITIONS.**

1.1. In this Agreement, the following expressions shall have the respective meanings set forth below, unless the context otherwise requires:

"Affiliate" means any individual, corporation, partnership, limited liability company, association or business that directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with a party or its successors or assigns.

"Agreement" means, with respect to any Project, a Purchase Order issued to Vendor by Prime Contractor or its Affiliates, these Standard Terms and Conditions, and any

related Purchase Order Addenda and/or Supplemental Terms and Conditions (defined below).

“Confidential Information”

all information regarding Prime Contractor or Vendor not generally known to persons not associated with that party, including (i) all business and other information concerning the party, the party’s customers and prospective customers, (ii) all Personal Data; (iii) the terms of this Agreement and each PO; and (iv) any other materials, information or documentation that a party appropriately marks or identifies as confidential.

“Deliverables”

means all goods, services, materials, equipment and any other tangible items specified in this Agreement (including the PO), and all other materials to be provided by Vendor to Prime Contractor in the course of performing and fulfilling this Agreement.

“Disclosing Party”

has the meaning set out in Section 12.2 of this Agreement.

“Event of Insolvency”

means: (i) any case or proceeding under the bankruptcy, insolvency or equivalent laws of any country; (ii) suffering the appointment of a court-appointed receiver, liquidator, assignee, trustee, custodian, or similar official for all or any part of a party’s property; (iii) making an assignment for the benefit of creditors; or (iv) taking corporate action in furtherance of any of the foregoing.

“Personal Data”

has the meaning given that term in the Data Protection Act and any other personally identifiable information or data concerning or relating to Prime Contractor’s employees, Prime Contractor, or prospective Prime Contractors, or any information or data that Vendor collects or derives from interactions with Prime Contractor or its employees, Prime Contractors or prospective Prime Contractors, including, but not limited to, non-public, personally identifiable financial information of Prime Contractor and its Prime Contractors or Prime Contractors.

“Project”

means the work, products and/or services that Prime Contractor has agreed to provide to its customer with respect to the maritime vessel(s) identified in the Purchase Order submitted to Vendor, or for work, products, or services that are non-vessel related provided to Prime Contractor by Vendor.

“Point of Contact”

means the primary individual identified to Vendor by Prime Contractor on each PO as being responsible for, and authority to assure, full compliance by Prime Contractor with each PO.

“Purchase Order” or “PO”

means any document or other communication designated as a Purchase Order, PO or Statement of work as prepared by Prime Contractor that (i) references these Terms and Conditions, including reference to any Supplemental Terms and Conditions as defined below; and (ii) identifies the Products or Services that Vendor is to provide and the fees for such Vendor Services. Each Purchase Order shall be governed by and construed in accordance with these Terms and Conditions. Vendor’s proceeding with the work item(s) or services or providing of products to the Prime Contractor in the absence of a Vendor signature

accepting these Terms and Conditions shall be considered as acceptance of the Purchase Order, including Terms and Conditions.

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| “Quote”                             | means a document so designated as prepared by Vendor with respect to the acquisition by Prime Contractor of certain enumerated Products or Services.  |
| “Receiving Party”                   | has the meaning set out on in Section 12.2 of this Agreement.   |
| “Specifications”                    | means the design drawings, specifications and contract requirements identified to each Project.   |
| “Supplemental Terms and Conditions” | means the Supplemental Terms and Conditions on Prime Contractor’s website that are applicable whenever this Agreement is issued in connection with a United States Government contract, or subcontract of any lower tier received by Prime Contractor.  |
| “Supplier”                          | means each and every subcontractor of any tier, manufacturer, distributor, licensor, assignor, materialmen and/or other provider of any products sold, re-sold or delivered or services rendered to Prime Contractor by Vendor or utilized or delivered by Vendor in the performance of Vendor Services.  |
| “Term”                              | has the meaning set out in Article 17 of this Agreement.  |
| “Vendor”                            | means the party to whom Prime Contractor issued its Purchase Order and its Suppliers and their respective employees, agents and subordinates, including subcontractors of any tier. Vendor may also be a subcontractor of the Prime Contractor.   |
| “Work Product”                      | means all Deliverables including, but not limited to, all written or computer coded materials manifested in documentation, systems design, disks, tapes, drawings, reports, specifications, notebooks, recommendations, data, procedures and memoranda, blueprints, work papers, ideas, inventions, processes or other items of any nature whatsoever produced, created developed, presented, provided and/or distributed by Vendor in connection with the Vendor Services and/or Deliverables provided to Prime Contractor, whether developed individually by Vendor or jointly with Prime Contractor and whether or not patentable or copyrightable or protectable by any other interests and whether or not reduced to writing or other physical form. |

**2. VENDOR’S OBLIGATIONS:**

2.1. Vendor will provide to Prime Contractor the Deliverables and the Vendor Services strictly in accordance with the provisions of the applicable PO, this Agreement, and the Specifications, service levels and performance standards identified in each PO.

2.2. Vendor represents and warrants that Vendor and its personnel are sufficiently trained, staffed and equipped to fulfill Vendor’s obligations under this Agreement and that Vendor will provide the Vendor Services in a professional and workmanlike manner consistent with industry standards. Vendor warrants that all workmanship for all the Deliverables shall be of professional and highest quality performed by skilled workers qualified by experience and ability.

Vendor Initial: \_\_\_\_\_

2.3. Vendor further represents and warrants to Prime Contractor that: (i) it will complete all Vendor Services, and each phase of Vendor Services no later than the date indicated in this Agreement; (ii) all Deliverables will conform to the applicable requirements therefor and that nonconformities will be remedied or replaced in accordance with the support obligations set forth in this Agreement.

### 3. DELIVERY AND SCHEDULE:

3.1. Vendor acknowledges that Prime Contractor's production schedules are based upon the Vendor's representation that all of Vendor's goods or services will be delivered to Prime Contractor no later than, or otherwise performed by, the date(s) specified in the Purchase Order(s). **Time is of the essence in the performance of this Agreement.**

3.2. Without relieving Vendor of its obligation and/or liabilities hereunder, Vendor shall immediately report in writing to Prime Contractor any projected or actual delay whatsoever in deliveries and/or completion of the Vendor's obligations whatsoever and its cause and proposed remedy. If Prime Contractor accepts the proposed remedy, Vendor shall continue to keep Prime Contractor informed and shall take all reasonable action to remedy, mitigate, and/or eliminate the cause of delay. Failure to inform the Prime Contractor of any such delays shall constitute a separate default by the Vendor.

3.3. Vendor shall suitably pack, mark and ship all Deliverables in accordance with its normal procedure, the requirements of common carrier, and any written instructions from Prime Contractor. Prime Contractor's Purchase Order Number and part numbers and Vendor's packing list number must be shown on all invoices, packing lists, bills of lading, and other necessary shipping documents.

3.4. Vendor shall secure the lowest cost transportation available consistent with the service required.

### 4. INSPECTION AND ACCEPTANCE:

4.1. Delivery of goods or services shall not be deemed to be complete until the goods and/or services are actually received and accepted by Prime Contractor. Notwithstanding any agreement to pay freight, transportation charges, payment or advances on account, title and risk of loss or damage shall be on Vendor until acceptance of goods by Prime Contractor. Prime Contractor shall have the right in its sole discretion to accept or reject as non-conforming any good or services delivered by the Vendor. Prime Contractor's count will be accepted as final and conclusive on all shipments. At Prime Contractor's option, items delivered in error may be returned to Vendor at Vendor's expense.

4.2. Any Deliverables or Services rejected by Prime Contractor shall be promptly repaired or replaced at Vendor's expense. Vendor shall be fully and solely responsible for any and all costs incurred by Prime Contractor or Vendor in connection with the return of Deliverables or Services rejected by Prime Contractor as defective.

4.3. Vendor shall be responsible in all events for all goods delivered short or damaged to the contract specified delivery point. Vendor will be responsible beyond such point if the Purchase Order specified delivery point has been designated by the Vendor.

4.4. All goods are subject to inspection by Prime Contractor or its designee at all reasonable times, including inspection during manufacture. If such inspection or any testing shall be performed on Vendor's premises, Vendor shall provide, without charge, reasonable facilities and assistance for such inspection. Inspection and approval by Prime Contractor at Vendor's plant does not preclude rejection for defects upon discovery by subsequent inspection. If this Agreement is placed by Prime Contractor under a Government contract, the Government shall have the same rights of inspection as Prime Contractor.

**5. VENDOR'S PERFORMANCE; COMMERCIAL WARRANTY:**

5.1. Vendor warrants that all materials and equipment furnished by it hereunder shall: (a) be free of all defects in workmanship and materials; and (b) conform strictly to the description of such goods in the PO, this Agreement, the Specifications and the samples. Vendor warrants that that it has and will have good and merchantable title to the goods sold hereunder and that said goods shall conform to this Agreement, including all specifications. Such goods shall be of good merchantable quality and fit for the known purpose for which they are sold. This is in addition to any warranty or service guarantee given by Vendor to Prime Contractor or provided by law, including all warranties, strict and implied, available under the Uniform Commercial Code. Prime Contractor shall have the right to assign any and/or all of the warranties and remedies herein provided to any third party.

5.2. Vendor shall not subcontract the performance of any of the Deliverables or Vendor Services without the prior written consent of Prime Contractor which consent may be granted, withheld, delayed or conditioned in Prime Contractor's sole discretion. In the event that Prime Contractor consents to the use of a subcontractor Vendor shall be responsible for managing each such subcontractor's performance under this Agreement and bear all responsibility and liability for the performance of such Subcontractor. Vendor, for the benefit of Prime Contractor, shall obtain from its Suppliers such guarantees against defects in workmanship and materials as are reasonably obtainable on workmanship, equipment and materials furnished hereunder. Vendor agrees to assist Prime Contractor to the extent requested by Prime Contractor in the enforcement of all guarantees obtained from Suppliers.

5.3. Notwithstanding the exercise of any of the Prime Contractor's rights hereunder, any other rights upon any breach of warranty. Vendor shall promptly perform such alterations, removals, reinstallation, repair or replacement as may be necessary to honor and remedy such breach of the warranties to the satisfaction of the Prime Contractor, Prime Contractor's customer, and regulatory bodies at Vendor's sole cost and expense. Such obligation shall extend to any and all goods or workmanship which may be found to be defective within twelve (12) months after delivery or six (6) months after the physical delivery of the vessel or other item to the Prime Contractor's customer to which this Agreement pertains, whichever occurs last. All costs and damages incurred by Prime Contractor, Prime Contractor's customer or Vendor in connection with a breach of any warranty shall be borne by Vendor. Any inspection, test, acceptance, or use of the goods furnished thereunder shall not diminish Vendor's warranty obligations.

5.4. Prime Contractor's failure to make an inspection or test or to discover defective workmanship, materials, or equipment shall not relieve Vendor from any responsibility hereunder and payment of any funds by Prime Contractor shall not constitute a waiver or acceptance of such defects.

**6. PERMITS, FEES AND TAXES:**

6.1. Except as otherwise specified herein, Vendor shall obtain and pay the fees for all permits, permissions, consents, licenses and other similar governmental, regulatory or agency charges, including but not limited to regulatory body and classification society fees. Such permits and/or certificates shall be made available to the Prime Contractor prior to the test, delivery, and/or completion (including final payment) of the Agreement, and at any time from time to time at Prime Contractor's request.

6.2. Except as otherwise provided in this Agreement, the price quoted and set forth in the Purchase Order includes all applicable federal, state and local taxes.

**7. PRICE AND PAYMENT:**

7.1. Vendor warrants that the prices for goods covered by this Agreement shall not be greater than those quoted to Prime Contractor unless so specified in the Purchase Order.

7.2. The amounts due to Vendor under the Purchase Order or any Addenda to the PO, shall be as set forth in that document and this Agreement, and shall be payable within thirty (30) days following the later of Prime Contractor's receipt of the related invoice and its acceptance of the Deliverables and Services described on such invoice. No charges or additional fees or taxes or any kind other than those indicated in the PO or his Agreement will be payable by Prime Contractor at any time, except with Prime Contractor's prior written approval.

7.3. Without any additional action by Vendor, Vendor hereby fully, completely and absolutely waives and releases of liens, encumbrances and other rights in rem (perfected or unperfected) in respect of the Deliverables, goods and services covered by this Agreement as at the execution of this Agreement, any Addenda hereto and at the time each invoice is rendered. Vendor further hereby represents and warrants that such waiver and release by Vendor hereunder includes the following additional warranties by Vendor:

- (i) that all Vendors' subcontractors, vendors, material-men, suppliers, journeymen, mechanics, laborers, and all other legal entities who have furnished labor, material, or services towards the performance of Vendor's obligations under this purchase order have been paid and satisfied in full;
- (ii) that there are no unsatisfied claims nor any other indebtedness outstanding concerning the goods and Vendor's performance of this Agreement;
- (iii) that Vendor has made no hypothecation of sums owing to Vendor which would require that another person or legal entity receive payment;
- (iv) that Vendor has not committed default of any bond or other third party guarantee or security device in respect of the goods and this Agreement;
- (v) that the goods furnished pursuant to the contract are not subject to fine, seizure, or forfeiture, in whole or in part; and
- (vi) that no penalty of any nature whatsoever can be assessed against any of the goods nor any property to which the goods become a fixture, accession, or component part.

All of the foregoing warranties are continuing actions and undertakings of the Vendor throughout the performance of this Agreement.

7.4. Notwithstanding the provisions of Section 7.3, Prime Contractor, at its sole option and from time to time, may request from Vendor, and Vendor will provide, a full and complete Waiver of Liens and Indemnification against Liens in a form satisfactory to Prime Contractor from Vendor and from all of Vendor's factors, other financiers, and Suppliers (herein "Subordinates") having performed or supplied any portion of the goods or services, hereunder, at any time. Prime Contractor, at its sole option, may also request from Vendor, and Vendor will provide Prime Contractor with proof including affidavits and waiver of liens showing payments and release of all duties, taxes, liens, claims, charges and obligations arising by operation of law and otherwise out of Vendor's and its subordinates performance of the work hereunder, and Prime Contractor may withhold funds due to Vendor hereunder to assure itself of the discharge of all such obligations, or to satisfy any requirements of law relating to such claims against Vendor and its subordinates.

7.5. Vendor warrants that the prices set forth in the PO are no higher than the lowest prices charged by Vendor to purchasers of a class similar to Prime Contractor under conditions similar to those specified under this Agreement and do not exceed the prices allowed by law. Vendor warrants that all discounts and allowances are as favorable as those then offered by Vendor to purchasers of a class similar to Prime Contractor. Vendor further warrants that any price reduction made by Vendor or any of its Suppliers with respect to goods or services covered by this Agreement subsequent to the placement of this Agreement will be applicable to this Agreement. Vendor shall notify Prime Contractor promptly of the existence of such more favorable prices, benefits and terms and Prime Contractor shall have the right to receive the more favorable pricing benefits and terms immediately, and this Agreement shall be immediately and automatically amended to contain the more favorable pricing terms and conditions, without further action of the parties.

7.6. Upon receipt of five (5) days' notice from the Prime Contractor (or without prior notice, in the case of reasonably suspected breach of this Agreement, fraud or other non-compliance with law, or if required by a regulatory authority or governmental body with jurisdiction over the Prime Contractor), the Prime Contractor and/or its designee and any regulatory authority or governmental body and any statutory or regulatory auditors of the Prime Contractor may have access to Vendor's premises, personnel, data, records and any information relating to the provision of the Vendor Services, during Normal Business Hours, to verify Vendor's compliance with its obligations under this Agreement and to fulfill any request by a regulatory authority or governmental body in the course of carrying out its regulatory functions. If it is determined that Prime Contractor has been overcharged, Vendor shall promptly pay to Prime Contractor the amount of such overpayment, plus interest at the rate set forth in the PO as the default rate for payments by Prime Contractor, and shall reimburse Prime Contractor for the expenses of the audit, if any. Each party shall provide to the other reasonable information and assistance in connection with any investigation by the persons referred to in this Section concerning the parties this Agreement.

7.7. Payment is contingent upon receipt and acceptance by Prime Contractor of goods or services at final destination, or as agreed to on the progress sheet for percent of completion work. Prime Contractor's Purchase Order Number and part numbers and Vendor's packing list number must be shown on all invoices, packing lists, bills of lading, and other necessary shipping documents. Amounts identified as "progress payments" for any Vendor Services that are to be delivered over time shall be payable no later than thirty (30) days after the Prime Contractor's receipt of Vendor's reasonably detailed invoice therefor, which shall include supporting documentation.

7.8. Discounts, if applicable, and payment periods shall be calculated either from the date of receipt of acceptable invoices or from the date of receipt and acceptance of goods or services, whichever is later. Errors, omissions or delays in receiving invoices shall be considered just cause for withholding payment without loss of cash discount privilege. Material and/or services supplied per the Purchase Order will not be accepted without receipt of proper time sheets or packing slip at the time services are rendered or materials are delivered. Orders will be considered incomplete until receipt of same and payment will not be authorized until such time as proper documentation is received.

## **8. CONDUCT ON AND USE OF PRIME CONTRACTOR'S PREMISES:**

8.1. All work shall be performed in such a manner as to cause a minimum of interference with Prime Contractor's operations or ship owner's activities and the operations of other Vendors on the premises. Vendor shall take all necessary and proper precautions to protect the premises and all persons and property thereon from damage or injury. At all times during the performance of this Agreement, Vendor shall keep the premises clean and free from accumulations of waste material and rubbish. Failure to maintain the premises clean and free from accumulations of waste material and rubbish may result in an assessment to Vendor for cleanup costs incurred by Prime Contractor. Upon completion of the work, Vendor shall remove all tools, equipment, materials and rubbish for which he is responsible and he shall restore existing facilities, which he has disrupted, to their original condition.

8.2. If Vendor is performing work on Prime Contractor's premises or on vessels within Prime Contractor's custody, Vendor shall be represented during all working hours at the site or on vessel by competent supervision acceptable to Prime Contractor, who shall be authorized to act for Vendor in all matters of the work. Vendor agrees that the work area in which it is conducting the work under this Agreement is the responsibility of Vendor in respect to compliance with all rules, regulations, laws, and ordinances of competent governmental authority. Vendor agrees that it will notify Prime Contractor adequately in advance as to the work contemplated each day, the machinery, equipment, and other items contemplated to be used in the accomplishment of the work on that day, the anticipated boundary of the work area, the anticipated duration of the work, and all other information which is necessary for Vendor to appropriately conduct its work without injury or harm to Prime Contractor or its employees or anyone else.

8.3. Safety Data Sheet Requirements. Vendor shall contact Prime Contractor's Safety Department or other Prime

Contractor authorized representative to request access to Safety Data Sheets for chemicals in the area where work is to be performed prior to the commencement of any work. Vendor shall review these sheets and ensure that its employees are advised of the location and accessibility of this hazard information. Vendor shall furnish to Prime Contractor copies of Safety Data Sheets for all chemicals to be used while performing work at Prime Contractor's facility or vessels in its custody or control with its proposal at the time of bidding. In addition, Vendor shall maintain duplicate copies in its possession at the work site. In the event that during the performance of the work or during the term of this Agreement, Vendor intends or is required to use additional chemicals other than those previously defined, Vendor shall provide copies of such Safety Data Sheets to Prime Contractor, and obtain Prime Contractor's permission prior to bringing such additional chemicals onto Prime Contractor's property and/or vessels in Prime Contractor's custody or control.

8.4. Vendor and its subcontractors shall employ the necessary safety and security practices as are normal or as required by law, including any and all applicable OSHA regulations for the type of work authorized hereunder. At its sole option Prime Contractor may require Vendor to remove from its property any personnel of Vendor or its subcontractors violating such practices and requirements. Vendor shall not contract out nor subcontract any obligations hereunder without prior written approval of Prime Contractor.

8.5. Vendor further represents and warrants that (i) the Vendor shall comply with all security procedures established by Prime Contractor during the Term, in accordance with Prime Contractor's requirements; (ii) Vendor will not de-install, disable or repossess any Deliverable by means of any disabling device or self-help (electronic or otherwise) even if Prime Contractor fails to perform any of its obligations under this Agreement; and (iii) the Deliverables do not and shall not include any disabling device that can disable or adversely affect the Deliverables.

## **9. GIFTS AND ENTERTAINMENT:**

9.1. Prime Contractor's employees, and members of his/her immediate household are prohibited from soliciting or accepting gifts, favors, and loans or similar indulgences or any other kind of benefit from outside parties who do or might do business with the Prime Contractor. Advertising novelties, promotional items of \$25.00 or less in value, occasional meals, refreshments or entertainment having a value of \$25.00 or less per occasion, provided such items in aggregate do not exceed \$150.00 in a calendar year, may be received. Cash gifts and gift checks and gifts having an investment value such as stock, bonds, etc., are strictly prohibited. Specifically, these restrictions include employees who are involved in:

- (i) Placing purchase orders with suppliers or subcontractors;
- (ii) Selecting, recommending or approving suppliers;
- (iii) Receiving, testing inspection or quality functions; or
- (iv) Evaluating supplier proposals, paying invoices or collecting money from customers.

9.2. Neither Vendor, nor any agent, representative or employee of Vendor, nor any other party shall, under any circumstances, tolerate the offer, solicitation, or giving of any payment by any of Prime Contractor's employees, in the nature of an undisclosed commission, kickback, or bribe, in connection with obtaining or retaining business, a contract, or an award or otherwise bestowing a special favor or advantage. Any act or attempt by Vendor or any agent, representative or employee of Vendor to violate or entice or assist any party to violate the foregoing provisions is grounds for immediate cancellation of the Agreement.

## **10. INDEMNITY:**

10.1. Vendor agrees to completely indemnify and hold harmless Prime Contractor, its subsidiaries and affiliates, employees and agents (the "PC Indemnitees") against any and all claims, liabilities, suits, damages, costs, expenses, losses, demands, fines and causes of action of any kind whatsoever (including reasonable attorney and other professional fees) caused by or arising out of Vendor's (i) breach of any representation, warranty or obligation under this Agreement; (ii) actual or alleged acts or omissions or the actual or alleged acts or omissions of Vendor's agents, servants or employees; or



(iii) damage to, destruction of, or loss of property or the injury to or death of any employee or contractor of Prime Contractor, Vendor or any third party arising out of or in connection with Vendor's performance of its obligations hereunder; provided however, that Vendor shall not be responsible to Prime Contractor, its subsidiaries and affiliates from damages arising out of bodily injury and/or death or property damage which is the result of the sole negligence of any of the PC Indemnitees.

10.2. Vendor warrants that the use or sale of any goods purchased hereunder will not infringe on any U.S. or foreign patent, trademark, copyright, trade secret or any other property right (except infringement necessarily resulting from adherence to the Specifications other than those of Vendor's design or selection, originally submitted to Vendor by Prime Contractor). Vendor undertakes and agrees to defend at Vendor's own expense, all suits, actions, or proceedings in which any of the PC Indemnitees, is made a defendant for actual or alleged infringement of any such U.S. or foreign patent, trademark, copyright or other property right resulting from the use or sale of the Deliverables or Vendor Services and further agrees to pay and discharge any and all judgments or decrees which may be rendered in any such suit, action or proceeding against Prime Contractor.

10.3. The Vendor's defense and indemnity requirements, as set forth above, shall also extend to any third party or governmental agency acquiring an interest hereunder in connection with this Agreement.

10.4. The foregoing indemnities will not be limited in any manner whatsoever by any required or other insurance coverage maintained by Prime Contractor.

**11. COMPLIANCE WITH LAWS:**

11.1. Vendor represents to and covenants and agrees with Prime Contractor that all work performed by Vendor incident to this Agreement and that all goods and Deliverables furnished under this Agreement shall conform with all applicable federal, state and local laws, rules, regulations, ordinances, proclamations, demands, requisitions and executive orders, and all amendments thereto which may now or hereafter govern Vendor's performance hereunder, all of which are incorporated herein by reference as additional representations to Prime Contractor.

11.2. Vendor warrants and agrees that during the performance of this Agreement no officer, employee, agent or other representative of Vendor has made or will make any payment in violation of any applicable federal, state or local law or regulation, and all amendments thereto. Without in any way limiting the foregoing, Vendor agrees to comply with all federal, state, and local laws, regulations, rules, directives, and attorney general opinions and their equivalents which require recordation and maintenance of records regarding the employment of individuals. Specifically, Vendor agrees to keep all records required by the U.S. Department of Labor set out in 29 C.F.R. Part 1904.

11.3. Vendor hereby certifies that it will comply with the Fair Labor Standards Act and will deduct and pay over to the proper governmental authority, any withholding taxes or similar assessments which an employer is required to deduct and pay over, and Vendor accepts exclusive liability for all payroll taxes, unemployment benefits, state and federal workers' compensation benefits, and contributions imposed by any federal, state or other governmental authority, covering its agents or employees. Vendor shall supply evidence of compliance as Prime Contractor may require and agrees to indemnify and hold Prime Contractor harmless and defend Prime Contractor with respect to any claims, actions or the like arising due to the Vendor's failure to so comply. To the extent that state and/or federal law limits the terms and conditions of this Agreement, then this Agreement shall be deemed so limited to comply with such state and/or federal law. This clause shall survive termination of this Agreement.

**12. CONFIDENTIALITY; NON-DISCLOSURE AND OWNERSHIP:**

Vendor Initial: \_\_\_\_\_

12.1. Vendor and its agents and/or employees may, in the course of work hereunder, be exposed to and have access to information and data which is considered the Confidential Information of Prime Contractor and/or Prime Contractor's customer(s). Vendor agrees that Vendor, its agents and/or employees shall hold in confidence for the sole benefit of Prime Contractor, and will not directly or indirectly reveal, report, publish, disclose, use or transfer to any person or entity other than Prime Contractor, its employees, or Vendor's employees, representatives, and Suppliers, in all cases only to the extent required in the course of performing Vendor's Services hereunder, any of Prime Contractor's Confidential Information, and shall not, during the term of this Agreement or subsequent to the expiration thereof, disclose to any third party any information which Vendor may acquire from or about Prime Contractor or its customer or any information related to the business of Prime Contractor or its customer. This restriction is not intended to extend to any information that is public knowledge (provided that such information is not in the public domain as a consequence of disclosure by the Vendor) or is made public by Prime Contractor.

12.2. In the event that a subpoena or other legal process in any way concerning the Confidential Information is served upon a party in possession of the other's Confidential Information (a "Receiving Party"), the Receiving Party shall notify the owner (the "Disclosing Party") immediately and shall cooperate with the Disclosing Party in any lawful effort by the Disclosing Party to contest the legal validity of such subpoena or other legal process at the Disclosing Party's sole expense, in obtaining a protective or similar order with respect thereto. All time, costs and expenses incurred by the Receiving Party in providing such cooperation (including its reasonable attorneys' fees) and in responding to such service shall be charged to and payable by Disclosing Party on demand.

12.3. Ownership of, and all rights with respect to any goods, the cost of which has been paid to Vendor under this Agreement, including all creative ideas incorporated therein, all preliminary materials, machinery, equipment, supplies, studies, designs, test results, inventions, patent rights, sketches, layouts, tooling, molds, dies, negatives, photographs, designs, blueprints or specifications relating thereto, including other data in any form and in whatever state of completion prepared by Vendor shall be vested exclusively in Prime Contractor's company. Prime Contractor may copy or reproduce any and all goods purchased hereunder for any and all purposes and may use the same in any and all media as often as it may so desire.

12.4. All plans, drawings, designs and specifications supplied by Prime Contractor to Vendor shall remain the property of Prime Contractor, or Prime Contractor's customer, and any information derived there from or otherwise communicated to the Vendor shall be regarded by Vendor as Confidential Information and shall not, without the prior written consent of Prime Contractor, be disclosed to any third party.

12.5. Vendor shall, upon Prime Contractor's request, promptly return all property, drawings, specifications, or like material to Prime Contractor. Each of Prime Contractor and Vendor further agrees that upon termination of this Agreement, all notes, documents, records and any other written, printed or recorded materials which are then in its possession or control and which contain any Confidential Information of the other, shall be, destroyed or delivered to the other. Notwithstanding the return or destruction of the Confidential Information, the parties shall continue to be bound by their obligations hereunder with respect to Confidential Information.

12.6. All Work Product shall belong solely and exclusively to Prime Contractor, and Vendor shall not acquire or retain any rights therein. Prime Contractor's rights in the Work Product shall arise or be transferred immediately upon creation. All copyrightable work performed or created hereunder shall be considered "work made for hire." To the extent that title to any Work Product may not vest in Prime Contractor by operation of law, or such Work Product is held not to be a work made for hire, Vendor hereby irrevocably assigns and agrees to assign to Prime Contractor all right, title and interest in such Work Product. Vendor agrees, when reasonably requested by Prime Contractor, to take such actions as Prime Contractor may request, to execute all rightful oaths, assignments, instruments of transfer, powers of attorney and other papers and to communicate to Prime Contractor all facts known to Vendor, in each case, relating to the Work Product or to perfect or protect Prime Contractor's interest in the Work Product. Vendor hereby waives in favor of Prime Contractor any and all

artist's or moral rights (including without limitation, all rights of integrity and attribution) it may have pursuant to any state or federal laws of the United States in respect of any Work Product created by Vendor and/or an authorized subcontractor and all similar rights under the laws of all other applicable jurisdictions.

12.7. In the event of a breach or threatened breach by Vendor of the provisions of this Article 12, Prime Contractor shall have the right to bring an action for equitable relief, including but not limited to an immediate injunction (without posting bond), to enjoin or otherwise prevent the Vendor from breaching this Agreement. Vendor shall pay the reasonable attorneys' fees and costs of Prime Contractor in any successful pursuit of such equitable relief. Nothing in this clause shall waive any other rights or remedies that the Prime Contractor may have against any person or entity. The parties agree that monetary damages will not be an adequate remedy if this Article 12 is breached and therefore, a Disclosing Party shall, in addition to any other legal or equitable remedies, be entitled to seek injunctive relief against any breach or threatened breach of this Article 12 in relation to such Disclosing Party's Confidential Information.

**13. EMPLOYEES, SUBCONTRACTORS, AGENTS AND LABOR DISPUTES,**

13.1. Vendor shall employ an adequate number of skilled workmen to perform the work under this Agreement. The Prime Contractor may require Vendor to submit proof of such experience and qualifications. Vendor and its subcontractors shall replace any of their employees, whose work, in the discretion of Prime Contractor is unsatisfactory. Prime Contractor may, at its sole discretion, remove or require Vendor to remove any employee of Vendor from Prime Contractor's or Customer's premises. Prime Contractor may further require that such employee not be reassigned to any other of Prime Contractor's premises under this Agreement. Any costs arising from or related to such a removal shall be solely the responsibility of Vendor and not charged to Prime Contractor in any way.

13.2. In consideration of being granted a contract by Prime Contractor, the Vendor agrees that during the term of its performance of this Agreement and for a period of 180 days following completion of the performance of this Agreement, Vendor will not employ or solicit to employ any employee of Prime Contractor directly, indirectly or by independent contract for any purpose whatsoever.

13.3. Whenever the Vendor has knowledge that any actual or potential labor dispute or labor negotiation is delaying or threatens to delay the timely performance of this Agreement, the Vendor shall immediately give notice thereof, including all relevant information with respect thereto, to the Prime Contractor. Nothing contained herein shall be construed to relieve Vendor of its' obligation to timely procure labor, and the failure to do so shall not constitute an event of force majeure.

**14. LIMITATION OF LIABILITY: UNDER NO CIRCUMSTANCES SHALL PRIME CONTRACTOR BE LIABLE TO, OR HAVE ANY OBLIGATION TO, VENDOR OR ANY THIRD PARTY, FOR ANY DAMAGES WHATSOEVER RESULTING FROM OR IN CONNECTION WITH ANY LOSS (WHETHER DIRECT OR INDIRECT) OF INCOME, PROFITS, OR OTHER SIMILAR FINANCIAL LOSS; ANY LOSS OF GOODWILL; OR OTHER INTANGIBLE LOSSES; OR ANY TYPE OF SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, INDIRECT, EXPECTATION, PROSPECTIVE, RELIANCE, AND/OR PUNITIVE DAMAGES OF ANY KIND WHATSOEVER THAT MAY ARISE OUT OF OR RELATE TO THE PROJECT THE PERFORMANCE OR NON PERFORMANCE OF PRIME CONTRACTOR HEREUNDER, EVEN IF VENDOR HAS BEEN ADVISED OF THE POSSIBILITY THEREOF OR IF SUCH LOSS WAS REASONABLY FORESEEABLE.**

**15. INSURANCE:**

15.1. Vendor and its subcontractors of every tier shall, during the term of this Agreement, purchase and maintain at its own expense commercial general liability, statutorily required workers' compensation insurance and other coverages with limits as set forth below. Prime Contractor shall be named as an additional insured on the general and auto liability policies for claims, loss or damage, whether in contract or tort, including claims involving bodily injury to or death of persons, or damage to property for which Vendor owes an indemnity under this Agreement. Vendor shall furnish certificates, and insurance shall be with carriers that may lawfully issue such insurance policies, have an AM Best rating of at least A-VII or a Standard and Poor's rating of at least AA. Certificates of insurance must contain a stipulation that the insurer shall furnish to Prime Contractor 30 days prior written notice of any cancellation of insurance coverage and name Prime Contractor as an additional insured.

**Statutory Workers' Compensation Insurance and Employer's Liability Insurance**

- A. Coverage: Such insurance shall cover liability arising out of Vendor's employment of workers and anyone for whom Vendor may be liable for workers' compensation claims. Workers' compensation insurance is required, and no "alternative" forms of insurance shall be permitted. USL&H must be provided. Maritime Employer's Liability (Jones Act) coverage must be provided if Vendor is working from watercraft subject to the Jones Act.
- B. Amount of Insurance: Coverage shall be provided with limits of not less than:
  - Workers' Compensation: Statutory Limits.
  - Employer's Liability: \$1,000,000 each accident/each disease.
- C. Required Endorsements:
  - Waiver of Subrogation in favor of Northeast Ship Repair, Inc., its subsidiaries, affiliated and interrelated companies and their officers, directors and employees;
  - If Vendor is a Professional Employer Organization (PEO) or temporary staffing agency, Alternate Employer Endorsement in favor of the above parties; and,
  - 30-day notice of cancellation, non-renewal or material reduction in coverage, each to Prime Contractor.

**Commercial General Liability Insurance**

- A. Coverage: Such insurance shall cover liability arising out of the operations of Vendor including, but not necessarily limited to, liability assumed under this Agreement. Defense shall be as an additional benefit and not included within the limits of liability.
- B. Form: Commercial General Liability Occurrence form (at least as broad as an unmodified ISO Form CG 00 01 12 07 or its equivalent);
- C. Amount of Insurance: Coverage shall be provided with limits of not less than:

|   |             |
|---|-------------|
| • Each Occurrence Limit                                 | \$1,000,000 |
| • General Aggregate Limit                               | \$2,000,000 |
| • Products-Completed Operations Aggregate Limit         | \$2,000,000 |
| • Personal and Advertising Injury Limit each occurrence | \$1,000,000 |
- D. Required Endorsements:
  - Naming as Additional Insured Northeast Ship Repair, Inc., its subsidiaries, affiliated and interrelated companies and their officers, directors and employees;
  - Additional Insured status shall be provided on ISO Form CG 20 10 (11 85) or its equivalent, or under a blanket additional insured endorsement to the policy;
  - Waiver of Subrogation in favor of the above parties;
  - Contractual Liability, including Personal Injury;

- Primary Liability: Coverage as respects the Additional Insured shall be endorsed to be primary and non-contributory with respect to other insurance (CG 20 01); and,
- 30-Day notice of cancellation, non-renewal or material reduction in coverage.

E. Continuing Commercial General Liability Insurance: Vendor shall maintain such insurance in identical coverage, form and amount, including required endorsements, for at least two (2) years following Date of Substantial completion of the work to be performed under the contract.

**Automobile Liability Insurance**

- A. Coverage: Such insurance shall cover liability arising out of any auto (including owned, hired, and non-owned).
- B. Form: Business Auto form (at least as broad as an unmodified ISO Form CA 00 01 03 06 or its equivalent).
- C. Amount of Insurance: Coverage shall be provided with a limit of not less than \$1,000,000 per accident.
- D. Required Endorsements:
  - Naming as Additional Insured Northeast Ship Repair, Inc., its subsidiaries, affiliated and interrelated companies and their officers, directors and employees;
  - Waiver of Subrogation in favor of these parties; and,
  - 30-Day notice of cancellation, non-renewal or material reduction in coverage.

**Umbrella Liability Insurance**

- A. Coverage: Such insurance shall be excess over and be no less broad than all coverage described above and shall include a drop-down provision.
- B. Form: This policy shall have the same inception and expiration dates as the Commercial General Liability insurance and Automobile Liability insurance required above, or in the absence of concurrent policy dates, shall have a non-concurrency endorsement attached.
- C. Amount of Insurance: Coverage shall be provided excess of primary limits for Commercial General Liability insurance and Automobile Liability insurance with a limit of not less than \$1,000,000 each occurrence, \$1,000,000 aggregate, or such higher amounts as required by the contract documents.
- D. Continuing Umbrella Liability Insurance: Vendor shall maintain such insurance in identical coverage, form and amount, including required endorsements, for at least two (2) years following Date of Substantial completion of the work to be performed under the contract.

**Additional Insurance Provisions**

- A. All premiums, retentions and/or deductibles shall be at the sole cost and expense of the Vendor.
- B. Prior to performing the work, Vendor shall furnish Prime Contractor with a certificate or certificates on the standard ACORD 25 Form evidencing the insurance coverage above required and, upon request, shall furnish Northeast Ship Repair, Inc. certified copies of all such policies.
- C. Certificate Holder shall be as follows: Northeast Ship Repair, Inc., and its subsidiary companies, 32A Drydock Ave., Boston, MA 02210

**16. ORDER OF PRECEDENCE:** In cases of conflict between documents associated with this Agreement the order of precedence for such disputed matters is as follows:

- (i) Purchase Order and Purchase Order Addenda, if any;
- (ii) these Standard Terms and Conditions, including Supplemental Terms and Conditions, if applicable;

Vendor Initial: \_\_\_\_\_

- (iii) Material specifications;
- (iv) Exhibits, attachments and specifications provided to the Vendor for goods and services defined as the scope of work for this Purchase Order;
- (v) Any other exhibits, attachments and specifications referenced in the Purchase Order.

Any Terms and Conditions in the Purchase Order which specifically conflict with a Term or Condition contained herein shall be controlling.

**17. TERM AND TERMINATION; SUSPENSION**

17.1. Each Purchase Order forms part of and is deemed to be incorporated in this Agreement as a separate and separable contract. This Agreement will continue and be in effect with respect to each Purchase Order until that Purchase Order has expired or terminated in accordance with its terms or the provisions of this Article 17 (the "Term"). The termination of any one Agreement shall not terminate this Agreement in effect with respect to any other Purchase Order.

17.2. This Agreement and the related PO be terminated prior to the end of the Term as follows:

17.2.1. By Prime Contractor if Vendor shall fail to make any delivery or to timely render any performance hereunder;

17.2.2. By Prime Contractor if Vendor should persistently or repeatedly refuse or should fail, except in cases for which extension of time is provided, to supply enough properly skilled workmen or proper materials;

17.2.3. By Prime Contractor if Vendor should fail to make prompt payment to sub-suppliers for material or labor;

17.2.4. By Prime Contractor, upon thirty (30) days prior written notice, at any time, whether or not Vendor is in default of any of its obligations;

17.2.5. By Vendor, if Prime Contractor is in default of any provision of this Agreement or a PO and such default is not cured within {thirty} (30) days after notice of default is given to Prime Contractor; or

17.2.6. By either party in accordance with Section 20.6.

17.3. Upon fifteen (15) days prior written notice, Prime Contractor at its sole option may suspend performance by Vendor, for a reasonable time, of all or any portion of this Agreement at any time and for any reason.

17.4. This Agreement and all Purchase Orders shall immediately terminate if either party commences or becomes the subject of any Event of Insolvency, in which event the party experiencing such an Event of Insolvency shall immediately give notice of such event to the other party. Whether or not such notice is given, the other party shall have the right, at any time following the occurrence of any Event of Insolvency and without prejudice to any other rights it may have, to terminate this Agreement, to the fullest extent permitted under applicable law, effective immediately upon giving notice to the party experiencing such an Event of Insolvency.

**18. RIGHTS AND DUTIES ON TERMINATION.**

18.1. In all events of termination, Prime Contractor shall have the right thereafter to take possession of all materials, equipment and the like, the cost of which has been reimbursed by Prime Contractor to Vendor.

Vendor Initial: \_\_\_\_\_

18.2. Upon any termination pursuant to Subsections 17.2.1, 17.2.2 or 17.2.3, Prime Contractor shall have the right to hold Vendor accountable for any such additional costs or damages incurred by Prime Contractor as the result of Vendor's default.

18.3. Upon any termination pursuant to Subsection 17.2.4, or Section 17.4 Prime Contractor's sole liability to Vendor shall be limited to an amount which, when added to all amounts previously paid, will equal the sum of all costs properly incurred by Prime Contractor prior to the date of cancellation, plus earned profit on such incurred costs, but in no event shall such amount be greater than the amounts otherwise due under the Purchase Order. Such earned profit shall bear the same relationship to such incurred costs as the profit increment of the purchase price bears to the cost increment of such purchase price. In all events of the termination of this Agreement any prepayments by Prime Contractor to Vendor shall be credited to the amounts due to Vendor under this Agreement, with the excess (if any) refunded to Prime Contractor.

18.4. Upon any suspension pursuant to Section 17.3, Vendor's shall deliver to Prime Contractor the suspension notice and a detailed invoice for unpaid goods and/or services rendered and its exclusive remedy shall be to obtain reimbursement from Prime Contractor for Vendor's reasonable and necessary costs actually incurred up to the point of such suspension which are directly incident to the items so suspended. Prime Contractor shall in no event be liable for any loss of anticipated profits on items under suspension or for any incidental loss or consequential damages, nor for any other associated charges of any nature. Prime Contractor reserves the right to verify the amounts of any cost and profit increments claimed by Vendor through an audit of Vendor's records.

18.5. Any termination of a PO or this Agreement will take effect without prejudice to any rights of Prime Contractor or Vendor which may have accrued up to or as at the date of termination except as otherwise set forth herein.

18.6. Upon any termination, any contract between Vendor and a Supplier applicable to the Vendor Services and/or Deliverables being provided to Prime Contractor, shall be transferred or assigned to Prime Contractor or its designee upon Prime Contractor's request, Vendor on terms and conditions acceptable to both Prime Contractor and Supplier.

18.7. At any termination of a PO pursuant to Section 17.2, 17.3 or 17.4, If requested by Prime Contractor, Vendor shall provide termination assistance to Prime Contractor so as to allow Prime Contractor to continue to receive services similar to the Vendor Services without interruption or adverse effect and to facilitate the orderly transfer of the Vendor Services to Prime Contractor or its designee ("Termination Assistance"). If requested by Prime Contractor, the Parties shall jointly develop a plan to effect the orderly transition and migration to Prime Contractor or its designee of all Vendor Services then being performed or managed by Vendor under this Agreement, and Vendor shall provide the Termination Assistance in accordance with such plan. Vendor shall provide Termination Assistance for a period beginning when a notice of termination is delivered by one Party to the other pursuant to this Agreement and continuing until Termination Assistance is no longer reasonably required by Prime Contractor under the transition plan. Without limiting the generality of the foregoing, Vendor shall provide all information regarding the Vendor Services and Deliverables or as otherwise needed for transition, and shall provide for the prompt or orderly conclusion of all work, as Prime Contractor may direct, including completion or partial completion of projects, documentation of work in process and other measures to assure an orderly transition to Prime Contractor or its designee. All Termination Assistance shall be deemed to be part of the Services required by this Agreement and shall be performed by Vendor at no additional cost to Prime Contractor.

18.8. All remedies of a party set forth herein shall be without prejudice to any of the other rights or remedies expressly provided herein or by law, Neither the exercise of nor the failure to exercise any right set forth herein or to give a notice of a claim will constitute an election of remedies or limit Prime Contractor in any manner in the enforcement of any other remedies that may be available to it.

**19. GOVERNMENT CONTRACTS:** In addition to these Standard Terms and Conditions, whenever this Agreement is issued in connection with a United States Government contract, or subcontract of any lower tier received by Prime Contractor

Prime Contractor Supplemental Terms and Conditions will apply, and such terms as are posted and password protected on the Prime Contractor's ftp website and identified to the Project are incorporated herein by reference.

**20. MISCELLANEOUS:**

20.1. Governing Law. This Agreement shall be governed by, and interpreted and construed in accordance with General Maritime law, as applicable, and thereafter, the laws of the Commonwealth of: (a) Massachusetts if the Prime Contractor is Boston Ship Repair LLC, and (b) Pennsylvania if the Prime Contractor is Philadelphia Ship Repair LLC; in each case without regard to the principles of conflict of laws of the selected jurisdiction. Any suit, action or claim arising out of, related to, or brought in connection with this Agreement or the negotiation, execution or performance of this Agreement (including any claim or cause of action based upon, arising out of or related to any representation or warranty made in or in connection with this Agreement or as an inducement to enter into this Agreement) or the services to be provided hereunder shall be brought and maintained in, and the parties consent to, the exclusive jurisdiction of: (a),the United States District Court for the District of Massachusetts, or the State or commonwealth courts of Suffolk County, Massachusetts if Prime Contractor is Boston Ship Repair LLC; and (b) the United States District Court, Eastern District of Pennsylvania, or the State or commonwealth courts of Philadelphia County, Pennsylvania if the Prime Contractor is Philadelphia Ship Repair LLC

20.2. Assignment. Neither this Agreement nor any interest under it shall be assignable by Vendor without the prior written consent of Prime Contractor, which consent may be granted, refused or conditioned in Prime Contractor's sole discretion. In all events, payment to an assignee of any amounts otherwise due hereunder shall be subject to a set off or recoupment for any present or future claim or claims which Prime Contractor may have against Vendor, except to the extent that any such claim may be expressly waived in writing by Prime Contractor. Prime Contractor shall have at all times the right to make direct settlement and/or adjustments in price with Vendor under the terms of this Agreement notwithstanding any assignments of claims for monies due or to become due hereunder and without notice to assignee.

20.3. Captions. Captions used in this Agreement are not part of this Agreement and are for convenience of reference only, and shall not affect the meaning or construction of any of its provisions.

20.4. Independent Contractor. The parties are, and have contracted with each other as, independent contractors. Neither party undertakes by this Agreement, or otherwise, to perform any obligation of the other. In no way is one party to be construed as an agent or acting as an agent of the other in any respect.

20.5. Publicity. Each party agrees that it will not, without the prior written consent of the other in each instance, refer to the existence of this Agreement, or use the name, trade name, trademark or service mark of the other party or represent directly or indirectly that any Third Party Product or any service provided by such party has been approved or endorsed by the other party in any press release, advertising, or materials distributed to prospective customers.

20.6. Force Majeure. Neither party shall be liable for any failure to perform or delay in the performance of, any of its obligations under this Agreement during any period in which such failure to perform arises directly or indirectly out of an event of Force Majeure, provided that the party experiencing the Force Majeure shall notify the other party of such delay as soon as commercially practicable and use commercially reasonable efforts to minimize the adverse effect of such events. If such failure exceeds or is reasonably likely to exceed a cumulative period of thirty (30) days, the party capable of performing may terminate the affected PO immediately without further liability.

20.7. Waiver. No waiver of any agreement, term, condition or provision of this Agreement shall be effective or binding unless made in writing and delivered to the party hereto whose non-performance has been waived. The waiver of any act or failure to act on any one occasion shall not constitute a waiver of that act or failure to act on any other occasion. The failure or delay of either party hereto to enforce any of its respective rights under this Agreement shall not be deemed a waiver or modification of this Agreement and the parties hereto may at any time seek, at their own expense, legal or equitable relief to



enforce any or all of their respective rights hereunder. Any prior failure to enforce, or delay in the enforcement of, such rights shall not constitute a defense in any such legal or equitable proceeding. All of a party's rights and remedies, whether evidenced hereby or by any other agreement, instrument or paper, shall be cumulative and may be exercised separately or concurrently.

20.8. Survivability. Any provision hereof that requires or reasonably contemplates the performance or existence of obligations by either party after termination or expiration of this Agreement shall survive such termination or expiration, including Sections 11.3 and 12.7, among others, of this Agreement.

20.9. Entire Agreement. This Agreement and any PO referencing this Agreement constitute the entire and complete understanding between the parties and supersedes all prior and contemporaneous verbal and written agreements, communications and representations relating to the subject matter hereof. Its terms can be modified only by an instrument in writing signed by both parties. All additional and conflicting terms and conditions presented with or in any communication other than a PO (including but not limited to Prime Contractor's Purchase Orders), are hereby rejected and shall be deemed null and void to the extent that they recite any terms other than price and quantity specified. In the event of a conflict between the terms of any PO and a provision herein, the terms of this Agreement shall control.

20.10. Waiver of Jury Trial. The parties hereby agree to waive their respective rights to a jury trial of any claim or cause of action related to or arising out of this Agreement. The scope of the waiver is intended to be all encompassing of any and all disputes that may be filed in any court and that relate to the subject matter herein, including but not limited to, the scope of this Section 20.10 and all contract claims, tort claims, breach of duty claims and all other common law and statutory claims. The parties each acknowledge that each party has already relied on the waiver in entering into this Agreement and that each will continue to rely on the waiver in their related future dealings. In the event of litigation, a redacted copy of this Agreement may be filed as written consent to a trial by court.

20.11. Severability. If any provision of this Agreement or any PO is adjudged by any court or arbitration board of competent jurisdiction to be invalid or unenforceable, then such provision shall be modified to the extent possible and necessary to preserve the original intentions of the parties, and the validity or enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

20.12. Interpretive Matters and Definitions. Unless the context otherwise requires, (a) all references to Section or Article numbers or any PO without further designation shall be construed as a reference to the Section or Article of this Agreement or the PO so numbered as the same may be amended from time to time; (b) "or" is disjunctive but not necessarily exclusive; (c) words in the singular include the plural and vice versa; (d) any phrase introduced by the terms "including", "include", "includes", "in particular" or any similar expression shall be construed as illustrative and shall not limit the sense o

the words preceding or following those terms; and (e) no provision of this Agreement will be interpreted in favor of, or against, either of the parties hereto by reason of the extent to which either such party or its counsel participated in the drafting thereof or by reason of the extent to which any such provision is inconsistent with any prior draft hereof or thereof.

20.13. Mutual Representation of Authorization. Vendor and Prime Contractor represents and warrants to the other that: (a) the execution and delivery by it of this Agreement and each PO, and the performance by it of its obligations hereunder and thereunder, have been duly authorized by all requisite action; (b) this Agreement constitutes its legal, valid and binding obligation, enforceable in accordance with its terms, except insofar as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, or similar laws of general application affecting enforcement of creditors' rights; and (c) the execution, delivery and performance of this Agreement and the transactions contemplated hereby do not violate or conflict with any material agreement or other instrument or restriction to which it is a party or by which it or its property is bound or encumbered.

20.14. Notices. Any notice, request, demand or consent required or permitted to be given hereunder shall be in writing, on Prime Contractor or Vendor letterhead, signed and delivered: by hand, by a reputable next day courier, by first class mail, postage prepaid, or by electronic mail, to: If to Prime Contractor: President; and if to Vendor: as provided on Page 1 of this Agreement. All notices shall be deemed to have been given upon actual receipt or first refusal. Either party may change its address or facsimile number for notice by giving like notice in accordance with this Section 20.14.

20.15. Third Party Beneficiaries. Except with respect to Prime Contractor's Customer(s) and the Government, this Agreement does not create any right or benefit enforceable by any person not a party to it.

ACCEPTANCE OF TERMS AND CONDITIONS BY AUTHORIZED REPRESENTATIVE OF VENDOR.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Print Name and title: \_\_\_\_\_

END