



FAST RESPONSE CUTTER (FRC) PROGRAM

Terms and Conditions

Bollinger Shipyards Lockport, LLC

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FAST RESPONSE CUTTER (FRC) PROGRAM SUPPLEMENT TO THE PURCHASE ORDER TERMS & CONDITIONS

These terms modify and are in addition to the Standard Government Purchase Terms available at [PO Terms & Conditions - Bollinger Shipyards](#)

DEFINITIONS

- a) "BOLLINGER" and "BUYER" means the Bollinger company shown on the face of the particular Purchase Order.
- b) "VENDOR" or "SELLER" means the company supplying the equipment and/or services detailed in a Purchase Order.
- c) The "Government," "Owner," or "USCG" shall mean the United States of America and includes the U.S. Coast Guard and any duly authorized representative thereof.
- d) "The Prime Contract" means the USCG contract for Phase II of the Fast Response Cutter Program, entered into, or to be awarded to, Bollinger and USCG, under Contract No. HSCG23-16-C-AFR625.
- e) "Contract" or "Agreement" shall mean the contract or agreement between Bollinger and VENDOR.
- f) "Purchase Order" means any order issued from time to time by a Bollinger company for services, labor, materials or products, and hereinafter sometimes abbreviated as "P/O". A P/O is adequate notice to proceed with contract performance.
- g) "Days" means calendar days, unless otherwise specified, and will include Saturdays, Sundays, and legal holidays. However, if the last day falls on a Saturday, Sunday, or legal holiday, then the period shall include the next working day. When used, "working day" excludes weekends and U.S. Federal holidays.
- h) "Delivery Date" means the date specified by Bollinger in a PO by which goods shall be delivered or services shall be completed by VENDOR.
- i) The term "FAR" as used herein means the Federal Acquisition Regulation as printed in Chapter 1 of Title 48 of the Code of Federal Regulations.
The term "lower-tier" subcontractor, vendors, or suppliers as used herein means any contractual agreement entered into by VENDOR, the purpose of which is to provide goods or services that are required to fulfill the obligations under the Agreement or Purchase Order.

EXECUTION OF CONTRACT

- a) VENDOR shall return a signed copy of this Contract to the BOLLINGER Purchasing Agent, within seven (7) days of the issuance of any contract. Failure to return a signed copy may result in a unilateral cancellation of any contract by BOLLINGER.

NONCONFORMING ITEMS

- a) The VENDOR must deliver to BOLLINGER items that conform to the contract. Items do not conform to the contract when they are different from those selected by BOLLINGER or are a kind, quality, or quantity different from the one agreed. BOLLINGER has a right to have a reasonable opportunity to inspect the items, even after delivery, for the purpose of ascertaining whether they conform to the contract. BOLLINGER may reject nonconforming items within a reasonable time. Any nonconforming items will be returned to the VENDOR or modified at the discretion of

BOLLINGER. Cost of returning items will be to the account of the VENDOR. When possible and not to interfere with the normal production schedule of BOLLINGER, BOLLINGER will allow the VENDOR a reasonable amount of time to correct nonconforming materials.

- b) However, should it become necessary for BOLLINGER to modify or correct identified discrepancies, costs incurred by BOLLINGER for correcting nonconforming items shall be to the VENDOR'S account and be computed at a rate of \$125.00 per hour (subject to EPA clause in Appendix H of the USCG Contract) plus other associated costs. Modifications or corrections required by BOLLINGER pursuant to this clause shall in no way reduce the warranty provisions of these T&C that are required of the VENDOR.
- c) If for any reason VENDOR is unable or unwilling to deliver conforming items, the non-conformance may be deemed to be a default pursuant to those provisions of this T&C. In such instance, the provisions of the Disputes section of this T&C may be applied.
- d) After acceptance of the items by BOLLINGER, defects in the design, materials, and workmanship or failure of the item to conform to the applicable requirements of the contract, will be addressed by the WARRANTY provisions of these terms and conditions. BOLLINGER's inspection, or lack of inspection, shall not affect and express or implied warranties.

STANDARDIZATION

- a) The U.S. Government has expressed a desire to procure up to twenty-six (26) cutters under the FRC PHASE II program. It is extremely important to the U.S. Government to maintain standardization within the FRC PHASE II fleet to minimize logistical cost for spare parts and training. Any changes to the equipment supplied under the FRC PHASE II program that differ from the first cutter must be approved in writing by BOLLINGER. Any cost incurred by BOLLINGER for changes proposed by VENDOR shall be to VENDOR's account. Changes shall include, but not be limited to, changes to the model number, components, parts, part numbers, technical data packages, software, firmware, hardware, VFI, or similar items.
- b) Standardization of all cutters under this Contract shall be in accordance with the requirements of this Contract unless otherwise approved by BOLLINGER. All cutters constructed under this Contract shall have machinery and equipment which is identical in every respect except as authorized in writing by BOLLINGER. If the VENDOR considers that strict compliance with this requirement is impracticable as to any individual item of machinery or equipment or any component thereof, the VENDOR shall notify BOLLINGER immediately and shall propose alternatives to the requirement. Where the VENDOR is permitted to deviate from contract requirements, BOLLINGER will determine the effect, if any, of such approved deviation on the contract price and the contract shall be modified accordingly.
- c) The contractor shall be responsible for addressing Diminishing Manufacturing Sources/Material Shortages (DMSMS) and obsolescence throughout the life of the contract. A description of the approach to DMSMS/obsolescence shall be included in the VENDOR's proposal. If DMSMS/obsolescence concerns appear to affect the equipment the VENDOR is providing under this contract, the VENDOR shall be responsible notifying BOLLINGER as soon as practicable upon VENDOR's discovery of the impending obsolescence and to recommend solutions which may include, but not be limited to, alternate vendors, substitute parts, or new sources of supply. Configuration management will also be considered as recommended solutions are developed and provided.
- d) The VENDOR shall use sound procurement practices in furtherance of this standardization objective and shall include the substance of this clause and the specifications in subcontracts and purchase orders.
- e) While engaged in the efforts described above, the VENDOR shall:

- i. Inform BOLLINGER if unable to arrange pricing agreements and indicate why; and
- ii. Use best efforts to extend pricing agreements for other types of equipment to enhance standardization and supportability.

WARRANTY AND WARRANTY CORRECTIONS

- a) VENDOR shall be responsible for all costs associated with the correction of valid warranty claims by the U.S. Government. VENDOR shall correct these valid warranty claims at the site of the equipment or cutter. Neither BOLLINGER nor the U.S. Government shall be responsible for shipping or transporting said equipment or cutter to VENDOR for correction of a valid warranty claim. These costs shall include but not be limited to, repair cost, replacement cost, freight and BOLLINGER production, administrative and engineering costs. If BOLLINGER elects to correct the defect, BOLLINGER will charge VENDOR at a rate of \$125.00 per hour (subject to EPA clause in Appendix H). The VENDOR will be charged for all corrections to be performed in a timely manner and the new parts or services shall be warranted by VENDOR for a period of one (1) year from the date of correction. This extension shall only apply to the items or parts of an item that are corrected under this warranty.
- b) A Valid Warranty Claim is defined as: the correction of any defect in workmanship or material identified during the warranty period. The warranty period begins at Bollinger acceptance of equipment and ends fifteen months after preliminary acceptance of vessel by the U.S. Government. A Valid Warranty Claim also mandates correction of defects in workmanship and material after warranty period expires that are latent, caused by fraud, or caused by gross mistake such as amounting to fraud.
- c) "Bollinger acceptance" refers to the acceptance by Bollinger of an item following its delivery and inspection. "Preliminary acceptance" is defined by USCG contract section E.3 as follows: "Upon satisfactory completion of the applicable tests, trials, and delivery requirements identified in the Statement of Work, the Government will preliminarily accept the Fast Response Cutter (FRC). The Contractor [Bollinger] shall prepare and execute, with the Government representative accepting the FRC, a DD Form 250 Material Inspection and Receiving Report (MIRR) to document preliminary acceptance."
- d) VENDOR agrees that any commercial warranties for supplies, commercial components of supplies, or services granted by the original equipment manufacturer (OEM) shall be transferred to the U.S. Government. The VENDOR 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 herein are in addition to and do not limit any rights and remedies provided to BOLLINGER by law or by any other clause of this Contract.
- e) The fifteen month warranty period for each cutter, prescribed in Section III clause FAR 52.246-19 entitled "Warranty of Systems and Equipment under Performance Specifications or Design Criteria", shall be extended by the time during which the U.S. Government determines that such cutter is not available for unrestricted service by reason of any defects for which BOLLINGER shall determine VENDOR to be responsible. If VENDOR is responsible for cutter not being available for unrestricted service, the warranty period will be extended for all materials VENDOR provides for said cutter.
 - i. VENDOR shall establish and maintain a warranty item correction program to ensure that all VENDOR responsible warranty defects are corrected in an expedient manner. VENDOR shall appoint a single point of contact for all warranty claims. VENDOR shall correct all valid

warranty claims within 14 days from notification. VENDOR shall be responsible for all damages incurred by BOLLINGER as a result of VENDOR's failure to make such timely repairs in accordance with above paragraph.

- f) Whenever practicable, BOLLINGER will, in addition to giving VENDOR notice of any defect or nonconformance, afford VENDOR an opportunity to examine the defective supplies before they are replaced or corrected. Any costs incurred by VENDOR for this examination shall be charged to VENDOR's account.
- g) In the case of a disagreement between VENDOR and BOLLINGER or VENDOR and U.S. Government, concerning any warranty issue, the "Disputes" clause of this Contract shall be the prevailing resolution process.
- h) The rights and remedies of BOLLINGER provided in this clause are in addition to and do not limit any rights otherwise afforded to BOLLINGER under this Contract.

CONSEQUENTIAL DAMAGES

- a) Consequential Damages
 - i. IT IS UNDERSTOOD AND AGREED BY THE PARTIES THAT NEITHER VENDOR NOR BOLLINGER SHALL BE LIABLE OR RESPONSIBLE FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND OR NATURE, INCLUDING BUT NOT LIMITED TO LOSS OF PROFITS AND LOSS OF USE OF THE VESSELS, FROM ANY CAUSE OF ACTION OF ANY KIND OR NATURE, INCLUDING BUT NOT LIMITED TO NEGLIGENCE, CONTRACT, WARRANTY/GUARANTY OR ANY OTHER CAUSES OF ACTION ARISING OUT OF OR IN CONNECTION WITH OR PERTAINING TO THE RESPECTIVE OBLIGATIONS OF THE PARTIES UNDER THIS AGREEMENT.

EXPORT CONTROL

- a) VENDOR agrees to comply with all applicable U.S. export control laws and regulations, specifically including, but not limited to, the requirements of the Arms Export Control Act, 22 U.S.C.2751-2794, including the International Traffic in Arms Regulation (ITAR), 22 C.F.R. 120 et seq.; and the Export Administration Act, 50 U.S.C. app. 2401-2420, including the Export Administration Regulations, 15 C.F.R. 730-774; including the requirement for obtaining any export license or agreement, if applicable. Without limiting the foregoing, VENDOR agrees that it will not transfer any export controlled item, data, or services, to include transfer to foreign persons employed by or associated with, or under contract to VENDOR or VENDOR'S lower-tier suppliers, without the authority of an export license, agreement, or applicable exemption or exception. Further, technical documents shall be marked with the appropriate ITAR control statements.
 - i. Definitions. "Export-controlled items," as used in these Terms and Conditions, means items subject to the Export Administration Regulations (EAR) (15 C.F.R. Parts 730-774) or the International Traffic in Arms Regulations (ITAR) (22 C.F.R. Parts 120-130). The term includes:
 - ii. "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 C.F.R. Part 120.
 - iii. "Items," defined in the EAR as "commodities", "software", and "technology", are terms that are defined in the EAR, 15 C.F.R. 772.1.

- b) VENDOR agrees to notify BOLLINGER if any deliverable under this Contract is restricted by export control laws or regulations.
- c) VENDOR shall immediately notify BOLLINGER if VENDOR is, or becomes, listed in any Denied Parties List or if VENDOR'S export privileges are otherwise denied, suspended or revoked in whole or in part by any U.S. Government entity or agency.
- d) If VENDOR is engaged in the business of either exporting or manufacturing (whether exporting or not) defense articles or furnishing defense services, VENDOR represents that it is registered with the Office of Defense Trade Controls, as required by the ITAR, and it maintains an effective export/import compliance program in accordance with the ITAR.
- e) Where VENDOR is a signatory under a BOLLINGER export license or export agreement (e.g., TAA, MLA), VENDOR shall provide prompt notification to BOLLINGER in the event of changed circumstances including, but not limited to, ineligibility, a violation or potential violation of the ITAR, and the initiation or existence of a U.S. Government investigation, that could affect VENDOR'S performance under this Contract.
- f) VENDOR shall be responsible for all losses, costs, claims, causes of action, damages, liabilities and expense, including attorneys' fees, all expense of litigation and/or settlement, and court costs, arising from any act or omission of VENDOR, its officers, employees, agents, suppliers, or subcontractors at any tier, in the performance of any of its obligations under this clause that have been finally determined to have been incurred as a direct result of actions or omissions of the VENDOR, its officers, employees, agents, suppliers, or subcontractors at any tier.
- g) Nothing in these Terms and Conditions add, change, supersede, or waive any of the requirements of applicable Federal laws, Executive Orders, and regulations, including but not limited to –
 - i. the Export Administration Act of 1979, as amended (50 U.S.C. App. 24 01, et seq.);
 - ii. the Arms Export Control Act of 1976 (22 U.S.C. 2751, et seq.);
 - iii. the International Emergency Economic Powers Act (50 U.S.C. 1701, et seq.);
 - iv. the Export Administration Regulations (15 C.F.R. Parts 730-774);
 - v. the International Traffic in Arms Regulations (22 C.F.R. Parts 120-130); and
 - vi. Executive Order 13222, as extended.
- h) For the purposes of this Contract, VENDOR agrees that this clause shall be inserted in all contractual instruments with subcontractors or suppliers at any tier, and that it will require that its subcontractors and suppliers at any tier to insert it in their contractual instruments, as well.

RELEASE OF INFORMATION

- a) Except as required by law, no public release of any information, or confirmation or denial of same, with respect to this Contract or the subject matter hereof, will be made by VENDOR without the prior written approval of BOLLINGER.

TIMELY PERFORMANCE

- a) VENDOR's timely performance is a critical element of this Contract.
- b) If VENDOR becomes aware of difficulty in performing the Work or delivering the goods by the Delivery Date, VENDOR shall timely notify BOLLINGER, in writing, as soon as VENDOR is aware that such difficulty exists. This notification shall include (i) a description of the difficulty, (ii) its occurrence date, (iii) its expected duration and (iv) its expected effect on the Delivery Date, but such notification shall not change any delivery schedule.
- c) Excusable Delays
 - i. VENDOR shall not be in default because of any failure to perform this Contract under its terms

if the failure arises from causes beyond the control and without the fault or negligence of the VENDOR. Examples of these causes are

(1) acts of God or of the public enemy, (2) acts of the Government in either its sovereign or contractual capacity, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions, (7) strikes, (8) freight embargoes, and (9) unusually severe weather. In each instance, the failure to perform must be beyond the control and without the fault or negligence of VENDOR.

"Default" includes failure to make progress in the work so as to endanger performance.

- ii. If the failure to perform is caused by the failure of a subcontractor of the VENDOR at any tier to perform or make progress, and if the cause of the failure was beyond the control of both the VENDOR and its subcontractor, and without the fault or negligence of either, the VENDOR shall not be deemed to be in default, unless—
 - A. The subcontracted supplies or services were obtainable from other sources;
 - B. BOLLINGER ordered the VENDOR in writing to purchase these supplies or services from the other source; and
 - C. The VENDOR failed to comply reasonably with this order.
- iii. Within seven (7) days of first knowledge of the VENDOR that any Delivery Date will be affected by any event of Excusable Delay, VENDOR shall notify Bollinger in writing, and shall furnish an estimate of the extent of the delay. VENDOR shall include with that notice (i) a description of the event, (ii) its occurrence date, (iii) its expected duration and (iv) its expected effect on the Delivery Date. VENDOR shall inform Bollinger in writing of the end of an event of Excusable Delay within ten (10) days of its cessation and include an estimate of the delay in the Delivery Date, if any, caused by that event. Upon receipt of VENDOR'S notice of an event of Excusable Delay, Bollinger shall, within seven (7) days, either acknowledge the same in writing and indicate agreement if such development is to be treated as an event of Excusable Delay, or state any objections, and the reasons therefore, to acceptance of this development as an event of Excusable Delay. If the parties cannot come to an agreement on whether an event of Excusable Delay occurred, the matter shall be resolved pursuant to the Disputes section of these T&C. If and when a Delivery Date is delayed by an event of Excusable Delay, the Delivery Date shall be adjusted by a period equal to the period specifically and exclusively resulting from the Excusable Delay, subject to the rights of BOLLINGER under the "Termination" clause of these T&C.
- iv. Additionally, in accordance with Homeland Security Acquisition Regulation (HSAR) 3052.222-70, (DEC 2003), notwithstanding any other provision hereof, the VENDOR is responsible for delays arising out of labor disputes, including but not limited to strikes, if such strikes are reasonably avoidable. A delay caused by a strike or by picketing which constitutes an unfair labor practice is not excusable unless the VENDOR takes all reasonable and appropriate action to end such a strike or picketing, such as the filing of a charge with the National Labor Relations Board, the use of other available Government procedures, and the use of private boards or organizations for the settlement of disputes.
- d) Should VENDOR fail to deliver goods or complete services by the Delivery Date, liquidated damages shall be assessed against VENDOR and due by VENDOR to Bollinger in accordance with the Liquidated Damages article of this T&C.
- e) Due to limited warehouse space, BOLLINGER shall not be required to accept items more than thirty (30) days earlier than the Delivery Date unless the date is modified in writing by BOLLINGER. Items arriving more than thirty (30) days ahead of schedule may be returned to the VENDOR with all freight charges to the VENDOR'S account.
- f) If VENDOR is required to provide loose parts or components as part of a system under a PO, and those items are not listed as deliverables on the purchase order, the VENDOR is required to

provide a complete listing of items. This required listing of loose parts or components must contain adequate information to correlate the items to a specific system or PO and shall include all part information, such as but not limited to, part numbers, descriptions and quantities. Listing shall be provided to BOLLINGER no less than two weeks in advance of planned shipment to enable BOLLINGER to appropriate verification. Once verified by BOLLINGER, VENDOR will be given approval to deliver the material. VENDOR must include a packing list detailing all loose parts or components with quantities in shipments.

LIQUIDATED DAMAGES

- a) Weight
 - i. In the event that the weight of the equipment/material furnished under the Contract exceeds the weight agreed upon, liquidated damages shall be assessed upon the VENDOR at the rate of \$50.00 per kilogram by which the actual total weight of the order exceeds the agreed upon total weight of the order. The equipment/material weight shall be verified by a load cell calibrated to the requirements of the National Institute of Standards and Technology (NIST). In addition, BOLLINGER retains the right to reject equipment/material that is more than the vendor provided weight in his proposal.
- b) Timely Delivery
 - i. Failure to make delivery on the date specified will cause BOLLINGER to incur significant additional cost the amounts of which are difficult to quantify. VENDOR is required to submit request for delivery extensions to BOLLINGER in writing. BOLLINGER shall grant extensions to the delivery date only to the extent that the extensions do not effect the efficient construction of the cutters. Late Delivery Charges will be assessed at a rate of 0.1% of the purchase order price per calendar day beyond the stated delivery date. Due to limited warehouse space, BOLLINGER shall not be required to accept items more than thirty (30) days earlier than the date specified on the Purchase Order unless the date is modified in writing by BOLLINGER. Items arriving more than thirty (30) days ahead of schedule may be returned to the VENDOR with all freight charges to the VENDOR's account.
- c) Late or Incorrect Technical Data
 - i. BOLLINGER may withhold up to twenty (20) percent of the total purchase order price from VENDOR until all of the Technical Data is accepted by BOLLINGER.
 - ii. Cost incurred by BOLLINGER for corrections due to nonconforming Technical Data shall be to the vendors account and be computed at a rate of \$125.00 per hour (subject to EPA clause in Appendix H) plus other associated cost.

DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA

- a) In the event this order exceeds \$10,000, VENDOR agrees to comply with all provisions of the Vietnam Era Veterans Readjustment Assistance Act of 1974 (38 USC 2012) and all rules, regulations and relevant orders related to employment of Vietnam veterans as in effect on the date of any contract.

HANDICAPPED

- a) In the event this order exceeds \$2,500, VENDOR agrees to comply with all provisions of the Rehabilitation Act of 1973 as amended and all rules, regulations and relevant orders related to employment of handicapped individuals as in effect on the date of any contract.

EXERCISE OF OPTIONS (EXTENSION OF TERM OF THE CONTRACT)

- a) The Prime Contract provides for a base year of either four (4) or six (6) cutters, plus seven (7) similar option periods. During the base period, if the USCG exercises an order for four (4) cutters, it may later in the ordering period exercise an additional one (1) or two (2) options each to procure one additional cutter in the same base period. The base period and option year periods may also include orders for insurance spare items as required in the Purchase Technical Specification.
- b) The exercise of any option is the unilateral right of BOLLINGER, and shall be via contract modification executed by BOLLINGER. During the below option year periods, the CG has reserved the right to exercise an order for four (4) or six (6) cutters, plus the ability to order an additional one(1) or two (2) options each to procure one additional cutter in the same option period.
 - i. **Option Period One**
 - A. Option Period One, consisting of four (4) or six (6) cutters, plus the ability to order an additional one(1) or two (2) options each to procure one additional cutter. It begins 366 days after Prime Contract award and expires 730 days after Prime Contract award.
 - ii. **Option Period Two**
 - A. Option Period Two, consisting of four (4) or six (6) cutters, plus the ability to order an additional one(1) or two (2) options each to procure one additional cutter. It begins 731 days after Prime Contract award and expires 1095 days after Prime Contract award.
 - iii. **Option Period Three**
 - A. Option Period Three, consisting of four (4) or six (6) cutters, plus the ability to order an additional one(1) or two (2) options each to procure one additional cutter. It begins 1096 days after Prime Contract award and expires 1460 days after Prime Contract award.
 - iv. **Option Period Four**
 - A. Option Period Four, consisting of four (4) or six (6) cutters, plus the ability to order an additional one(1) or two (2) options each to procure one additional cutter. It begins 1461 days after Contract award and expires 1825 days after contract award.
 - v. **Option Period Five**
 - A. Option Period Five, consisting of four (4) or six (6) cutters, plus the ability to order an additional one(1) or two (2) options each to procure one additional cutter. It begins 1826 days after Prime Contract award and expires 2190 days after Prime Contract award.
 - vi. **Option Period Six**
 - A. Option Period Six, consisting of four (4) or six (6) cutters, plus the ability to order an additional one(1) or two (2) options each to procure one additional cutter. It begins 2191 days after Prime Contract award and expires 2555 days after Prime Contract award.
 - vii. **Option Period Seven**
 - A. Option Period Seven, consisting of four (4) or six (6) cutters, plus the ability to order an additional one(1) or two (2) options each to procure one additional cutter. It begins 2556 days after Prime Contract award and expires 2920 days after Prime Contract award.

FLOWDOWN PROVISIONS

INCORPORATION OF CONTRACT AND FAR CLAUSES

- a) VENDOR shall be bound to BOLLINGER to the same extent that BOLLINGER is bound to USCG

under the Prime Contract. VENDOR shall similarly incorporate the Contract in any further subcontract, purchase order, or agreement entered into by VENDOR with its lower-tier subcontractors, vendors, or suppliers.

- b) VENDOR shall make available to its lower-tier subcontractors, vendors, or suppliers the Contract that is binding on VENDOR'S lower-tier subcontractors, vendors, or suppliers. By signing this Agreement, VENDOR represents and warrants that it has received and reviewed a copy of the Contract and is familiar, or will familiarize itself, with it. To the extent that any provision contained in this Agreement conflicts with any provision of the Contract, the document or provision that is the more stringent condition and requirement on VENDOR shall apply. Once executed, any changes to this Agreement, and all other Contract documents applicable thereto, must be made by an amendment to this Agreement which is signed by both parties. Nothing in this Agreement shall be construed to create a third party beneficiary or contractual relationship between persons or entities other than BOLLINGER and VENDOR.

The Federal Acquisition Regulation (FAR) clauses referenced below are incorporated herein by reference, with the same force and effect as if they were given in full text, and are applicable, including any notes following the clause citation, to this Contract. If the date or substance of any of the clauses listed below is different from the date or substance of the clause actually incorporated in the Prime Contract referenced by number herein, the date or substance of the clause incorporated by said Prime Contract shall apply instead. The Contracts Disputes Act shall have no application to this Contract. Any reference to a "Disputes" clause shall mean the "Disputes" clause of this Contract. The Prime Contract between the U.S. Government and BOLLINGER is a government contract. As such, any FAR clause that is included in the government's Prime Contract with BOLLINGER which may have been omitted from this contract is automatically added with the same force and effect as if it was specifically included.

- i. All FAR clauses referred to in this Contract are also included in the Prime Contract between BOLLINGER and the U. S. Government. In order for BOLLINGER to meet all agreed to obligations with the U. S. Government, VENDOR is required to comply with these FAR clauses also.
- ii. Some FAR clauses referenced in this Contract set forth a period of time in which the U. S. Government requires a notification/response from BOLLINGER. For purposes of this Contract, VENDOR shall be given two-thirds (2/3) of the period of time specified by FAR clause to provide said information to BOLLINGER. This will insure BOLLINGER's timely submittal to the U. S. Government, in accordance with the applicable FAR clauses referenced in Section II: FLOWDOWN PROVISIONS.
- c) The appearance of a USCG or other federal agency prime contract number on the face of this Agreement or Purchase Order shall conclusively establish the applicability, as well as the incorporation into this Agreement or Purchase Order, of any of the agency's clauses referenced herein, including but not limited to those clauses listed in the General Condition entitled "FAR AND HSAR FLOWDOWN CLAUSES."
- d) The obligations of BOLLINGER to the Government as provided shall be deemed to be the obligations of VENDOR to BOLLINGER. Whenever necessary to make the context of the General Conditions set forth below applicable to this Subcontract, the term "VENDOR" shall mean VENDOR, the term "VENDOR" shall mean sub-tier vendor, the term "Contract" shall mean this Subcontract, the term "Subcontract" shall mean "lower-tier subcontract," and where noted or where necessary to derive proper meaning in a subcontract situation, the terms "BOLLINGER," "Government," "Contracting Officer," and equivalent phrases shall mean BOLLINGER, except the

terms "Government" and "Contracting Officer" do not change:

- i. in the phrases "Government Property," "Government-Furnished Property," "Government-Owned Property," "Government Equipment," "Government-Owned Equipment," or where otherwise intended that title ownership or rights remain with the Government for Government-furnished property;
- ii. when a right, act, authorization, or obligation can be granted or performed only by a duly authorized representative of the Government;
- iii. when access to proprietary financial information or other proprietary data is required; and
- iv. when title to property is to be transferred directly to the Government.

AMENDMENTS REQUIRED BY PRIME CONTRACT

- a) VENDOR agrees that upon the request of BOLLINGER it will negotiate in good faith with BOLLINGER relative to amendments to this contract to incorporate additional provisions herein or to change provisions hereof, as BOLLINGER may reasonably deem necessary in order to comply with the provisions of the applicable Prime Contract or with the provisions of amendments to such Prime Contract. If any such amendment to this Contract causes an increase or decrease in the estimated cost of, or the time required for, performance of any part of the work under this Contract, an equitable adjustment shall be made.

PRESERVATION OF THE GOVERNMENT'S RIGHTS

- a) If BOLLINGER furnishes designs, drawings, special tooling, equipment, engineering data, or other technical or proprietary information (Furnished Items) to which the U. S. Government owns or has the right to authorize the use of, nothing herein shall be construed to mean that BOLLINGER, acting on its own behalf, may modify or limit any rights the Government may have to authorize VENDOR's use of such Furnished Items in support of other U.S. Government prime contracts.

For technical data not first developed in the performance of this contract for which a copyright is claimed in accordance with 17 U.S.C. 401 or 402, specifically including COTS manuals, VENDOR shall provide on the Government's behalf a paid-up, nonexclusive, irrevocable worldwide license in such copyrighted data for the use of the Government to reproduce, prepare derivative works, by or on behalf of the Government. (See FAR52.227-14(c)(2)). When this is performed VENDOR shall include a data rights release letter on OEM letterhead placed directly before the table of contents of the manual. This letter shall be a separate document that does not form the back page of any other page of the manual, nor will any other page of the manual be the back page of this letter.

- b) In accordance with Section H.27 of the USCG Contract, entitled "DEFERRED ORDERING OF TECHNICAL DATA OR COMPUTER SOFTWARE", this provision applies to first and second tier subcontractors and vendors:
 - i. 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 compensate the contractor only for reasonable costs incurred for converting and delivering the data in the required form, upon a determination that:
 - A. the technical data is needed for the purpose or 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
 - I. the technical data –

1. pertains to an item or process developed in whole or in part with Federal funds; or
 2. 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 process, and,
 3. 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.
- ii. The Government's rights to use said data or computer software shall be pursuant to the "Rights in Technical Data – Noncommercial Items" and "Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation" clauses of this contract.
- c) In accordance with Section H.28 of the USCG Contract, entitled "LIMITATIONS ON THE USE OR DISCLOSURE OF GOVERNMENT-FURNISHED INFORMATION MARKED WITH RESTRICTIVE LEGENDS) (Derived from DFARS 252.227- 7025)" this provision applies to FRC PHASE II Program first and second tier subcontractors and vendors:
- i. 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."
 - ii. 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."
 - iii. 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.
 - iv. 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.
 - A. *GFI marked with limited or restricted rights legends.* 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 any unauthorized person.
 - I. If the Contractor is a covered Government support contractor, the Contractor further agrees and acknowledges that —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;
 - II. The Contractor will take all reasonable steps to protect the technical data or computer software against any unauthorized release or disclosure;
 - III. 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;

- IV. 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;
- V. The Contractor shall provide a copy of any such non-disclosure agreement or waiver to the Contracting Officer, upon request; and
 1. That a breach of these obligations or restrictions may subject the Contractor to —
 - Criminal, civil, administrative, and contractual actions in law and equity for penalties, damages, and other appropriate remedies by the United States; and
 - Civil actions for damages and other appropriate remedies by the party whose name appears in the legend.
- B. *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 the non-disclosure agreement provided as the Section J attachment entitled "Use and Non-Disclosure Agreement".
- C. *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.
- D. *GFI marked with commercial restrictive legends* 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.
- v. 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;

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;

- D. The Contractor shall provide a copy of any such non-disclosure agreement or waiver to the Contracting Officer, upon request; and
 - E. That a breach of these obligations or restrictions may subject the Contractor to —
 - I. Criminal, civil, administrative, and contractual actions in law and equity for penalties, damages, and other appropriate remedies by the United States; and
 - II. Civil actions for damages and other appropriate remedies by the contractor or subcontractor whose technical data is affected by the breach.
- vi. Indemnification and creation of third party beneficiary rights. The Contractor agrees —
- A. To indemnify and hold harmless the Government, its agents, and employees from every claim or liability, including attorney's 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
 - B. 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.
- d) In accordance with Section H.29 of the USCG Contract, entitled "RIGHTS IN TECHNICAL DATA – NONCOMMERCIAL ITEMS", this provision applies 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 the FRC PHASE II Phase II Program:
- i. Definitions. As used in this clause —
 - A. "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.
 - B. "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.
 - C. "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.
 - D. "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.
 - I. "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 —

- II. 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
 - III. 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.
- E. "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.
- F. "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.

- G. "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.
- H. "Developed exclusively with government funds" means development was not accomplished exclusively or partially at private expense.
- I. "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.
- J. "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.
- K. "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.
- L. "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.
- M. "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 —
 - II. Necessary for emergency repair and overhaul;
 - III. 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
 - IV. 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
 - V. 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; The recipient of the technical data is subject to a prohibition on the further reproduction, release, disclosure, or use of the technical data; and
 - VI. The contractor or subcontractor asserting the restriction is notified of such reproduction, release, disclosure, or use.
- N. "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.
- O. "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.
- P. "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.*
- ii. 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):
 - A. 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 transfer of some or all of a business entity or its assets to another party;
- VIII. Data in which the Government has obtained unlimited rights under another Government contract or as a result of negotiations; or
- IX. Data furnished to the Government, under this or any other Government contract or subcontract thereunder, with —
 - 1. Government purpose license rights or limited rights and the restrictive condition(s) has/have expired; or
 - 2. Government purpose rights and the Contractor's exclusive right to use such data for commercial purposes has expired.
- B. 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—
 - 1. 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 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—
 - 1. 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
 - 2. 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.
- C. 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—
 1. 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
 2. 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—
 1. Limited rights data is authorized to be released or disclosed to covered Government support contractors;
 2. The Contractor will be notified of such release or disclosure;
 3. 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;
 4. 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 at 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
 5. The Contractor shall provide a copy of any such non-disclosure agreement or waiver to the Contracting Officer, upon request.
- D. 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.
- E. 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.
- F. Release from liability. The Contractor agrees to release the Government from liability for any release or disclosure of technical data made in accordance with 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.
- G. 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.
- iii. Contractor rights in technical data. All rights not granted to the Government are retained by the Contractor.
- iv. 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.
- A. Identification and delivery of data to be furnished with restrictions on use, release, or disclosure. This paragraph does not apply to restrictions based solely on copyright.
 - B. Except as provided in paragraph (e)(3) of this clause, technical data that the Contractor asserts should be furnished to the Government 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.
 - C. 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 to be Furnished with Restrictions *	Basis for Assertion**	Asserted Rights Category***	Name of Person Asserting 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)			

- D. 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.
- E. 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. 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.

- F. 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)	

- G. 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)

H. 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).
- I. 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.
- v. 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—
- A. Have, maintain, and follow written procedures sufficient to assure that restrictive markings are used only when authorized by the terms of this clause; and
- B. Maintain records sufficient to justify the validity of any restrictive markings on technical data delivered under this contract.
- vi. Removal of unjustified and nonconforming markings.
- A. 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.
- B. 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 fails 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.

- vii. 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.
- viii. Limitation on charges for rights in technical data.
 - A. 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.
 - B. 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.
- ix. Applicability to subcontractors or suppliers.
 - A. 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.
 - B. 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.
 - C. 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.
 - D. 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.

- E. 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 the Government.
- e) In accordance with Section H.30 of the USCG Contract, entitled "RIGHTS IN NONCOMMERCIAL COMPUTER SOFTWARE AND NONCOMMERCIAL COMPUTER SOFTWARE DOCUMENTATION", this provision applies whenever any noncommercial computer software or computer software documentation is to be obtained from a subcontractor or supplier for delivery to the Government under the FRC PHASE II Program:
 - i. Definitions. As used in this clause ---
 - A. "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.
 - B. "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.
 - C. "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.
 - D. "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 compiled. Computer software does not include computer databases or computer software documentation.
 - E. "Computer software documentation" means owner's manuals, user's manuals, installation instructions, operation instructions, and other similar items, regardless of storage medium, that explain the capabilities of the computer software or provide instructions for using the software.
 - F. "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."
 - G. "Developed" means that---
 - I. A computer program has been successfully operated in a computer and tested to the

- extend 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.
- H. “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.
- I. “Developed exclusively with government funds” means development was not accomplished exclusively or partially at private expense.
- J. “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.
- K. “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.
- L. “Government purpose rights” means the rights to-----
 - III. Use, modify, reproduce, release, perform, display, or disclose computer software or computer software documentation within the Government without restriction; and
 - IV. 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.
- M. “Minor modification” means a modification that does not significantly alter the nongovernmental function or purpose of the software or is the type customarily provided in the commercial marketplace.
- N. “Noncommercial computer software” means software that does not qualify as commercial computer software under paragraph (a) (1) of this clause.
- O. “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----
 1. Use the modified software only as provided in paragraphs (a)(15)(i) and (iii) of this clause; and
 2. 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-----
 1. The Government notifies the party which has granted restricted rights that a release or disclosure to particular contractors or subcontractors was made;
 2. 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;
 3. 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
 4. Such use is subject to the limitation in paragraph (a)(15)(i) of this clause;

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-----

5. 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 of Disclosure of Government-Furnished Information Marked with Restrictive Legends; and
 6. 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
- VI. 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.
- P. "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.

- ii. 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.
 - A. 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----
 - 1. Restricted rights in computer software, limited rights in technical data, or government purpose license rights and the restrictive conditions have expired; or
 - 2. Government purpose rights and the Contractor's exclusive right to use such software or documentation for commercial purposes has expired.
 - VII. Government purpose rights. Except as provided in paragraph (b)(1) of this clause, the Government shall have government purpose rights in computer software developed with mixed funding.
 - VIII. 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.
 - IX. The Government shall not release or disclose computer software in which it has government purpose rights to any other person unless---
 - 1. 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
 - 2. 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.
 - B. 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 –
 1. Restricted rights computer software is authorized to be released or disclosed to covered Government support contractors;
 2. The Contractor will be notified of such release or disclosure;
 3. 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;

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

4. The Contractor shall provide a copy of any such non-disclosure agreement or waiver to the Contracting Officer, upon request.
- C. 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.
- D. 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.

- E. Release from liability. The Contractor agrees to release 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.
- iii. 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.
- iv. 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 –
 - A. Computer software, has provided a statement of the license rights obtained in a form acceptable to the Contracting Officer; or
 - B. Computer software documentation, has affixed to the transmittal document a statement of the license rights obtained.
- v. Identification and delivery of computer software and computer software documentation to be furnished with restrictions on use, release, or disclosure.
 - A. This paragraph does not apply to restrictions based solely on copyright.
 - B. 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.
 - C. 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 to be Furnished with Restrictions*	Basis for Assertion**	Asserted Rights Category***	Name of Person Asserting 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).			
****Corporation, individual, or other person, as appropriate. Date Printed Name and Title _____ _____ Signature _____ _____ (End of identification and assertion)			

- D. 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.
- vi. 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.
- A. 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, 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.

- B. 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)	

- C. 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)

D. 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).
- E. 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 available, 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.
- vii. 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 –
- A. Have, maintain, and follow written procedures sufficient to assure that restrictive markings and used only when authorized by the terms of this clause; and
- B. Maintain records sufficient to justify the validity of any restrictive markings on computer software or computer software documentation delivered under this contract.
- viii. Removal of unjustified and nonconforming markings.
- A. 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.

- B. 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 of 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.
- ix. 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.
- x. Limitation on charges for rights in computer software or computer software documentation.
- A. 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.
- B. 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.
- xi. Applicability to subcontractors or suppliers.
- A. 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.
- B. 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.
- C. 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.
- D. 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 the Government.
- f) In accordance with Section H.31 of the USCG Contract, entitled "TECHNICAL DATA – COMMERCIAL ITEMS", this provision applies 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 the FRC-Phase II Program:

i. Definitions. As used in this clause –

- A. “Commercial item” does not include commercial computer software.
 - I. “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 –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.
- B. “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.
- C. The term “item” includes components or processes.
- D. “Technical data” means recorded information, regardless of the form or method of recording, of a scientific or technical natures (including computer software documentation). The term does not include computer software or data incidental to contract administration, such as financial and/or management information.
- E. “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.

ii. License.

- A. 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.
- B. 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.
- C. 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.
- D. 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 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 vessel design.
- iii. 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.
 - iv. Release from liability. The Contractor agrees that Bollinger 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 Bollinger from the above specified liability if the release or disclosure is first made by Bollinger to the Government, and the Government in turn releases or discloses it to a third party
 - v. Applicability to subcontractors or suppliers.

- vi. 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.
 - A. 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.
- g) In accordance with Section H.32 of the USCG Contract, entitled “TECHNICAL DATA OR COMPUTER SOFTWARE PREVIOUSLY DELIVERED TO THE GOVERNMENT” this provision applies to FRC Phase II Program teaming agreements, subcontracts and purchase orders:
 - i. 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) In accordance with Section H.33 of the USCG Contract, entitled “TECHNICAL DATA--WITHHOLDING OF PAYMENT” this provision applies to FRC Phase II Program teaming agreements, subcontracts and purchase orders:
 - i. If technical data specified to be delivered under this contract, is not delivered within the time specified by this contract or is deficient upon delivery (including having restrictive markings not identified in the list described in the clause at Rights In Technical Data--Noncommercial Items (e)(2) or Rights In Noncommercial Computer Software And Noncommercial Computer Software Documentation (e)(2) of this contract), the Contracting Officer may until such data is accepted by the Government, withhold payment to the Contractor of ten percent (10%) of the total contract price or amount unless a lesser withholding is specified in the contract. Payments shall not be withheld nor any other action taken pursuant to this paragraph when the Contractor's failure to make timely delivery or to deliver such data without deficiencies arises out of causes beyond the control and without the fault or negligence of the Contractor.
 - ii. The withholding of any amount or subsequent payment to the Contractor shall not be construed as a waiver of any rights accruing to the Government under this contract.
- i) In accordance with Section H.34 of the USCG Contract, entitled “VALIDATION OF ASSERTED RESTRICTIONS – COMPUTER SOFTWARE”, this provision applies to FRC Phase II Program teaming agreements, subcontracts and purchase orders:
 - i. Definitions.
 - A. As used in this clause, unless otherwise specifically indicated, the term “Contractor” means the Contractor and its subcontractors or suppliers.
 - B. Other terms used in this clause are defined in the Rights to Noncommercial

Computer Software and Noncommercial Computer Software Documentation clause of this contract.

- ii. Justification. The Contractor shall maintain records sufficient to justify the validity of any markings that assert restrictions on the Government's right 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.
- iii. 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's subcontractors or suppliers.
- iv. Request for information.
 - A. 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.
 - B. Based on the information provided, if the ---
- v. 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.

- I. Contracting Officer concludes that the asserted restriction is appropriate for this contract, the Contracting Officer shall so notify the Contractor in writing.
- C. 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.
- vi. Government right to challenge and validate asserted restrictions.
 - A. 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, 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.
 - B. 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.

- vii. 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.
- viii. Challenge procedures.
 - A. 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.
 - B. 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.
 - C. 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.
 - D. 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.
 - E. 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.
 - F. 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.
 - G. 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 restrictions and the Contractor, shall formulate and distribute a schedule that provides the Contractor a reasonable opportunity for responding to each challenge.

- ix. Contractor appeal – Government obligation
 - A. 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. (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:
 - 1. appealed to the Board of Contract Appeals or filed suit in an appropriate court within ninety (90) days; or
 - 2. submitted, within ninety (90) days, a notice of intent to file suit in an appropriate court and filed suit within one year.
 - B. 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.

The agency head, on a nondelegable 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 at J-17 of this contract 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.

- x. 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:
 - A. 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 payment unjust.
 - B. 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) In accordance with Section H.35 of the USCG Contract, entitled "VALIDATION OF RESTRICTIVE MARKINGS ON TECHNICAL DATA", this provision applies to FRC Phase II Program teaming agreements, subcontracts and purchase orders:
 - i. Definitions. The terms used in this clause are defined in the Rights in Technical Data – Noncommercial Items clause of this contract.
 - ii. Presumption regarding development exclusively at private expense.
 - A. 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.
 - B. 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.
 - iii. 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.
 - iv. Pre-challenge request for information.
 - A. 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 markings 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.

- B. 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.
 - C. 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.
- v. Challenge.
- A. 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 restricting 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.
 - B. 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.
 - C. 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.
 - D. 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.

- vi. 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.

- vii. Final decision when Contractor or subcontractor responds.
 - A. 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 restricting 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.
 - B. 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.
 - I. The Government agrees that it will continue to be bound by the restrictive markings 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.
 - II. 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 the Government may strike or ignore the restrictive markings, if 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 nondelegable 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.

- III. 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 nondelegable 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.

viii. Final disposition of appeal or suit.

- A. 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 markings 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 markings 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.
- B. 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.

ix. Duration of right to challenge.

- A. 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 –

- I. reasonable grounds exist to question the current validity of the asserted restriction; and
 - II. 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.
- B. The Government may, however, challenge a restriction on the release, disclosure or use of technical data at any time if such technical data –
- I. Is publicly available;
 - II. Has been furnished to the United States without restriction;
 - III. 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
 - IV. Has been the subject of a fraudulently asserted use or release restriction.
- x. 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."
- xi. 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 subcontractors.
- xii. Flowdown. 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.

SUSPENSION OF WORK

- a) BOLLINGER may at any time by written notice require VENDOR to suspend, delay, or interrupt all or any portion of the work under this Agreement or Purchase Order for a period of up to 90 days after the notice to suspend work is delivered to VENDOR, or for any other period to which the parties may agree. Upon receipt of the notice, VENDOR shall immediately comply with its provisions and take all reasonable steps, as directed by BOLLINGER's representative, to minimize the incurrence of cost associated with the suspension. Prior to the expiration of the suspension notice, BOLLINGER shall either: (1) cancel or extend the notice or (2) terminate for convenience the work covered by the notice as provided in the general condition entitled "TERMINATION." If the suspension notice is cancelled or allowed to expire, VENDOR shall resume work. Any requested adjustment by VENDOR resulting from a suspension of work notice shall be governed by the "CHANGES" provision.

HOLD HARMLESS

- a) If BOLLINGER is subjected to any liability as the result of VENDOR's or its sub-tier VENDORS' failure when required to:

- i. submit and certify accurate, complete, and current cost or pricing data;
 - ii. furnish certification of data of any description that is accurate, complete, and current;
 - iii. comply with the requirements of the FAR clauses relating to cost accounting standards and practices; or
 - iv. provide such information, substantiation, and assurance as reasonably required by BOLLINGER in the event BOLLINGER is required to certify any claim to the Government that includes as a component thereof any VENDOR claim; then VENDOR agrees to indemnify and hold harmless BOLLINGER from any expense, liability, responsibility, or penalty that may be imposed upon BOLLINGER by the Government as the result of false or improper certification by VENDOR or as the result of BOLLINGER's reasonable reliance upon the information, substantiation, or assurance provided by VENDOR in support of its claim and BOLLINGER's certification thereof.
- b) As to matters relating to Cost Accounting Standards, VENDOR shall:
- i. Communicate and otherwise deal directly with a) the Government when BOLLINGER so authorizes, and b) cognizant Government audit agencies to the extent practicable and permissible.
 - ii. Provide BOLLINGER with copies of all communications, excluding sensitive business information, between VENDOR and the Government.
- c) VENDOR agrees to indemnify BOLLINGER if any of its actions, acting alone or in concert with anyone but

BOLLINGER, causes the Government to exercise its rights under the General Conditions entitled "Gratuities" or "Covenant Against Contingent Fees" of the Prime Contract between BOLLINGER and the Government or this Agreement or Purchase Order.

- d) This hold harmless agreement shall be in addition to any other remedies provided under this Agreement or Purchase Order or by law.

FAR AND HSAR FLOWDOWN CLAUSES

- a) This Agreement and Purchase Orders incorporate certain provisions by reference with the same force and effect as if they appeared in full text. The FAR may be obtained from Government Web sites <http://www.arnet.gov/far/> for FAR. The following FAR Clauses apply to the Agreement and all Purchase Orders:

NUMBER	TITLE	DATE
52.225-8	DUTY FREE ENTRY	OCT 2010
52.202-1	DEFINITIONS	NOV2013
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	SEP 2006
52.203-7	ANTI-KICKBACK PROCEDURES	OCT 2010
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
52.203-13	CONTRACTOR CODE OF BUSINESS ETHICS AND CONDUCT	APR 2010
52.203-17	CONTRACTOR EMPLOYEE WHISTLEBLOWER RIGHTS AND REQUIREMENT TO INFORM EMPLOYEES OF WHISTLEBLOWER RIGHTS	APR 2014
52.204-2	SECURITY REQUIREMENTS	AUG 1996
52.204-4	PRINTED OR COPIED DOUBLE-SIDED ON RECYCLED PAPER	MAY 2011
52.204-7	SYSTEM FOR AWARD MANAGEMENT	JUL 2013
52.204-13	SYSTEM FOR AWARD MANAGEMENT MAINTENANCE	JUL 2013
52.209-6	PROTECTING THE GOVERNMENT'S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT	AUG 2013
52.209-9	UPDATES OF PUBLICLY AVAILABLE INFORMATION REGARDING RESPONSIBILITY MATTERS	JUL 2013
52.209-10	PROHIBITION ON CONTRACTING WITH INVERTED DOMESTIC CORPORATIONS	MAY 2012
52.210-1	MARKET RESEARCH	APR 2011
52.211-1	AVAILABILITY OF SPECIFICATIONS LISTED IN THE GSA INDEX OF FEDERAL SPECIFICATIONS, STANDARDS, AND COMMERCIAL ITEM DESCRIPTIONS, FPMR PART 101-29	AUG 1998
52.211-2	AVAILABILITY OF SPECIFICATIONS, STANDARDS, AND DATA ITEM DESCRIPTIONS LISTED IN THE ACQUISITION STREAMLINING	APR 2014
52.211-3	AND STANDARDIZATION INFORMATION SYSTEM (ASSIST) AVAILABILITY OF SPECIFICATIONS NOT LISTED IN THE GSA INDEX OF FEDERAL SPECIFICATIONS, STANDARDS AND COMMERCIAL ITEM DESCRIPTIONS	JUN 1988
52.211-5	MATERIAL REQUIREMENTS	AUG 2000
52.211-6	BRAND NAME OR EQUAL	AUG 1999
52.215-1	INSTRUCTIONS TO OFFERORS – COMPETITIVE	JAN 2004
52.215-2	AUDIT AND RECORDS—NEGOTIATION	OCT 2010
52.215-8	ORDER OF PRECEDENCE -- UNIFORM CONTRACT FORMAT	OCT 1997
52.215-10	PRICE REDUCTION FOR DEFECTIVE CERTIFIED COST OR PRICING DATA	AUG 2011
52.215-12	SUBCONTRACTOR CERTIFIED COST OR PRICING DATA	OCT 2010
52.215-14	INTEGRITY OF UNIT PRICES	OCT 2010
52.215-15	PENSION ADJUSTMENTS AND ASSET REVERSIONS	OCT 2010
52.215-18	REVERSION OR ADJUSTMENT OF PLANS FOR	JUL 2005
52.215-19	NOTIFICATIONS OF OWNERSHIP CHANGES POSTRETIREMENT BENEFITS (PRB) OTHER THAN PENSIONS	OCT 1997
52.215-20	REQUIREMENTS FOR CERTIFIED COST OR PRICING DATA AND DATA OTHER THAN CERTIFIED COST OR PRICING DATA ALT III	OCT 2010 OCT 1997
	(c) Submit the cost portion of the proposal via the following electronic	

52.215-21	Media: Microsoft Excel, readable in Version 2007 REQUIREMENTS FOR CERTIFIED COST OR PRICING DATA AND DATA OTHER THAN CERTIFIED COST OR PRICING DATA—MODIFICATIONS ALT III	OCT 2010 OCT 1997
	Fill-in: Microsoft Office	
52.216-1	TYPE OF CONTRACT	APR 1984
52.216-7	ALLOWABLE COST AND PAYMENT	JUN 2013
52.216-8	FIXED FEE	JUN 2011
52.217-5	EVALUATION OF OPTIONS	JUL 1990
52.217-7	OPTION FOR INCREASED QUANTITY--SEPARATELY PRICED LINE ITEM Fill-in: The Contracting Officer may exercise the option by written notice	MAR 1989 to the Contractor
within	any time before contract expiration.	
52.217-9	OPTION TO EXTEND THE TERM OF THE CONTRACT	MAR 2000
52.219-8	UTILIZATION OF SMALL BUSINESS CONCERNS	JUL 2013
52.219-9	SMALL BUSINESS SUBCONTRACTING PLAN	JUL 2013
52.219-16	LIQUIDATED DAMAGES—SUBCONTRACTING PLAN	JAN 1999
52.219-28	POST-AWARD SMALL BUSINESS PROGRAM REPRESENTATION	JUL 2013
52.222-2	PAYMENT FOR OVERTIME PREMIUMS	JUL 1990
52.222-4	CONTRACT WORK HOURS AND SAFETY STANDARDS ACT—OVERTIME COMPENSATION	JUL 2005
52.222-19	CHILD LABOR—COOPERATION WITH AUTHORITIES AND REMEDIES	JAN 2014
52.222-20	WALSH-HEALEY PUBLIC CONTRACTS ACT	OCT 2010
52.222-21	PROHIBITION OF SEGREGATED FACILITIES	FEB 1999
52.222-24	PREAWARD ON-SITE EQUAL OPPORTUNITY COMPLIANCE REVIEW	FEB 1999
52.222-26	EQUAL OPPORTUNITY	MAR 2007
52.222-35	EQUAL OPPORTUNITY FOR VETERANS	SEP 2010
52.222-36	AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES	OCT 2010
52.222-37	EMPLOYMENT REPORTS ON VETERANS	SEP 2010
52.222-38	COMPLIANCE WITH VETERANS' EMPLOYMENT REPORTING REQUIREMENTS	SEP 2010
52.222-40	NOTIFICATION OF EMPLOYEE RIGHTS UNDER THE NATIONAL LABOR RELATIONS ACT	DEC 2010
52.222-50	COMBATING TRAFFICKING IN PERSONS	FEB 2009
52.222-54	EMPLOYMENT ELIGIBILITY VERIFICATION JUL 1995	AUG 2013
52.223-6	DRUG-FREE WORKPLACE	MAY 2001
52.223-18	ENCOURAGING CONTRACTOR POLICIES TO BAN TEXT MESSAGING WHILE DRIVING	AUG 2011
52.225-13	RESTRICTIONS ON CERTAIN FOREIGN PURCHASES	JUN 2008
52.227-1	AUTHORIZATION AND CONSENT	DEC 2007

52.227-2	NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT	DEC 2007
52.228-2	ADDITIONAL BOND SECURITY	OCT 1997
52.228-11	PLEDGES OF ASSETS	JAN 2012
52.228-14	IRREVOCABLE LETTER OF CREDIT	DEC 1999
52.229-3	FEDERAL, STATE, AND LOCAL TAXES	FEB 2013
52.229-4	FEDERAL, STATE, AND LOCAL TAXES (STATE AND LOCAL ADJUSTMENTS)	FEB 2013
52.230-2	COST ACCOUNTING STANDARDS	MAY 2012
52.230-6	ADMINISTRATION OF COST ACCOUNTING STANDARDS	JUN 2010
52.232-1	PAYMENTS	APR 1984
52.232-8	DISCOUNTS FOR PROMPT PAYMENT	FEB 2002
52.232-9	LIMITATION ON WITHHOLDING OF PAYMENTS	APR 1994
52.232-11	EXTRAS	APR 1984
52.232-13	NOTICE OF PROGRESS PAYMENTS	APR 1984
52.232-16	PROGRESS PAYMENTS	APR 2012
52.232-17	INTEREST	OCT 2010
52.232-20	LIMITATION OF COST	APR 1984
52.232-23	ASSIGNMENT OF CLAIMS	JAN 1986
52.232-25	PROMPT PAYMENT	JUL 2013
52.232-28	INVITATION TO PROPOSE PERFORMANCE-BASED PAYMENTS	MAR 2000
52.232-31	INVITATION TO PROPOSE FINANCING TERMS	OCT 1995
52.232-32	PERFORMANCE-BASED PAYMENTS	APR 2012
52.232-33	PAYMENT BY ELECTRONIC FUNDS TRANSFER -- SYSTEM FOR AWARD MANAGEMENT	JUL 2013
52.232-39	UNENFORCEABILITY OF UNAUTHORIZED OBLIGATIONS	JUN 2013
52.233-1	DISPUTES ALT I	JUL 2002 DEC 1991
52.233-3	PROTEST AFTER AWARD	AUG 1996
52.233-4	APPLICABLE LAW FOR BREACH OF CONTRACT CLAIM	OCT 2004
52.242-1	NOTICE OF INTENT TO DISALLOW COSTS	APR 1984
52.242-2	PRODUCTION PROGRESS REPORTS	APR 1991
52.242-3	PENALTIES FOR UNALLOWABLE COSTS	MAY 2001
52.242-4	CERTIFICATION OF FINAL INDIRECT COSTS	JAN 1997
52.242-13	BANKRUPTCY	JUL 1995
52.243-1	CHANGES—FIXED PRICE	AUG 1987
52.243-2	CHANGES – COST REIMBURSEMENT *Applies to Cost Reimbursement CLINS only	AUG 1987
52.243-7	NOTIFICATION OF CHANGES	APR 1984
52.244-5	COMPETITION IN SUBCONTRACTING	DEC 1996
52.244-6	SUBCONTRACTS FOR COMMERCIAL ITEMS	DEC 2013
52.245-1	GOVERNMENT PROPERTY ALT I	APR 2012 APR 2012
52.245-9	USE AND CHARGES	APR 2012
52.246-2	INSPECTION OF SUPPLIES – FIXED PRICE ALT. 1	AUG 1996 JUL 1985
52.246-3	INSPECTION OF SUPPLIES – COST-REIMBURSEMENT	MAY 2001
52.246-11	HIGHER-LEVEL CONTRACT QUALITY REQUIREMENT First Fill in:	FEB 1999



52.246-16	RESPONSIBILITY OF SUPPLIES	APR 1984
52.246-17	WARRANT OF SUPPLIES OF A NONCOMPLEX NATURE ALT III, ALT V	JUN 2003 APR 1984
52.246-19	WARRANTY OF SYSTEMS AND EQUIPMENT UNDER PERFORMANCE SPECIFICATIONS OR DESIGN CRITERIA ALT III	MAY 2001 APR 1984
52.246-23	LIMITATION OF LIABILITY	FEB 1997
52.246-24	LIMITATION OF LIABILITY – HIGH VALUE ITEMS	FEB 1997

This clause is incorporated by reference, but the following preamble is inserted before paragraph (a) of the subject clause:

This clause shall apply only to those Contract Line Items (CLINs) with the following titles as identified in the table below as High-Value Items:

HIGH VALUE ITEMS – CLIN TITLES
Construct FRC
Propulsion Engines
Reduction Gears
S/S Generator Sets

52.247-17	CHARGES	APR 1984
52.247-18	MULTIPLE SHIPMENTS	APR 1984
52.247-21	CONTRACTOR LIABILITY FOR PERSONAL INJURY AND/OR PROPERTY DAMAGE	APR 1984
52.247-22	CONTRACTOR LIABILITY FOR LOSS OF AND/OR DAMAGE TO FREIGHT OTHER THAN HOUSEHOLD GOODS	APR 1984
52.247-27	CONTRACT NOT AFFECTED BY ORAL AGREEMENT	APR 1984
52.249-2	TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (FIXED-PRICE)	APR 2012
52.249-8	DEFAULT (FIXED-PRICE SUPPLY AND SERVICE)	APR 1984
52.249-14	EXCUSABLE DELAYS	APR 1984
52.251-1	GOVERNMENT SUPPLY SOURCES	APR 2012
52.253-1	COMPUTER GENERATED FORMS	JAN 1991

b) The following HSAR and CGAP Clauses apply to the Contract:

NUMBER	TITLE	DATE
3052.203-70	INSTRUCTIONS FOR CONTRACTOR DISCLOSURE OF VIOLATIONS	SEP 2012
3052.204-71	CONTRACTOR EMPLOYEE ACCESS ALT I	SEP 2012 SEP 2012
3052.205-70	ADVERTISEMENTS, PUBLICIZING AWARDS, AND RELEASES ALT I	SEP 2012 SEP 2012
3052.209-72	ORGANIZATIONAL CONFLICT OF INTEREST	JUN 2006
3052.209-70	PROHIBITION ON CONTRACTS WITH CORPORATE EXPATRIATES	JUN 2006
3052.211-70	INDEX FOR SPECIFICATIONS	DEC 2003
3052.217-100	GUARANTEE (USCG)	JUN 2006



**FRC Program
Rev(-)**

3052.219-70	SMALL BUSINESS SUBCONTRACTING PLAN REPORTING	JUN 2006
3052.219-71	DHS-MENTOR-PROTÉGÉ PROGRAM	JUN 2006
3052.222-70	STRIKES OR PICKETING AFFECTING TIMELY COMPLETION OF THE CONTRACT WORK	DEC 2003
3052.222.71	STRIKES OR PICKETING AFFECTING ACCES TO A DHS FACILITY	DEC 2003
3052.228-70	INSURANCE	DEC 2003
3052.228-90	NOTIFICATION OF MILLAR ACT PAYMENT BOND PROTECTION (USCG)	DEC 2003
3052.242-72	CONTRACTING OFFICER'S TECHNICAL REPRESENTATIVE	DEC 2003
3042.302-90	VALUATION REQUIREMENTS FOR THE ACQUISITION OF SPARE PARTS PURCHASED FOR INVENTORY CONTROL POINTS FROM HEADQUARTERS CONTRACTS	