

**TERMS AND CONDITIONS OF  
VENDOR/SUBCONTRACTOR AGREEMENT**

**ARTICLE 1**

**PAYMENTS TO THE SUBCONTRACTOR**

- 1.0** These Terms and Conditions apply to each Vendor/Subcontractor contract or order of Standard Marine & Ship Repair, Inc. ("Standard Marine") except by a written agreement signed by Vendor and Standard Marine.
- 1.1** Subcontractor shall render invoices to Standard Marine on a monthly basis and a final invoice within forty-five (45) days after completion of required services per assigned agreement or task. Said invoices shall identify the Services provided under each separate subcontract agreement or purchase order (collectively "work order") and shall include all necessary documentation and backup including a daily time and material description of Services performed by each individual. In no event shall Subcontractor's invoices for Services exceed the amount provided in the applicable work order unless Subcontractor shall have prior approval in writing as provided elsewhere in the Agreement. Standard Marine will not be responsible for reimbursement (nor for seeking reimbursement from the Client) for fees or costs invoiced more than ninety (90) days after the costs were incurred.
- 1.2** Standard Marine agrees to pay Subcontractor for said invoices within thirty (30) business days after Standard Marine has received payment for Subcontractor's Services from Client. Standard Marine will not be obligated to make payment to Subcontractor for invoices received until payment for such invoices is received by Standard Marine from the Client. When any prime agreement specifies that retainage is to be withheld from Standard Marine's fees, the same provisions shall apply to the Subcontractor. Retainage will be remitted upon receipt of payment from the Client. It is agreed that Standard Marine is under no obligation to reimburse Subcontractor for alleged extra work unless such extra work and reimbursement is specifically approved in writing under a work order and paid by the Client. In no event, will Standard Marine be liable for any loss of future profits or consequential damages to the Subcontractor.
- 1.3** Subcontractor acknowledges that the total compensation in each work order and as increased by any written amendments shall be in full and complete satisfaction of all indebtedness and obligation of any nature whatsoever for the Services to be performed by Subcontractor under each respective work order and includes any and all costs for inefficiency, disruption or delay associated with Subcontractor's Services. Subcontractor agrees that acceptance of payment (and any increases in compensation provided by written amendment) shall constitute on its behalf of it and its successors and assigns, a full release and discharge of Standard Marine and Client of and from all manner of debts, demands, claims, actions, causes of actions, suits, accounts, covenants, contracts, agreements and any and all claims and liabilities whatsoever, in law and equity, arising under or by virtue of these Terms & Conditions and any amendments thereto.
- 1.4** Subcontractor agrees to maintain its pertinent books, records, documents and other evidence (hereinafter records) applicable to these Terms & Conditions and shall apply consistent accounting procedures and practices sufficient to properly reflect its transactions under these Terms & Conditions. Subcontractor agrees to maintain all records for a period of three years after final payment under each work order or for longer period if so provided in a Prime Agreement. Subcontractor agrees to make such records available for audit by Standard Marine or Client or any other governmental funding agency and to repay to Standard Marine within fifteen (15) days of notice any overpayments to Subcontractor under these Terms & Conditions disclosed by audit.

**ARTICLE 2**

**APPLICABILITY OF PRIME CONTRACT AND SPECIAL CONDITIONS**

- 2.1** With respect to the services to be provided under each work order, the Subcontractor agrees to comply with and be subject to the same contractual requirements with respect to Standard Marine as the Standard Marine is subject to with respect to Client under a Prime Agreement. All relevant terms of the applicable Prime Agreement apply to these Terms & Conditions unless specifically stated otherwise in these Terms & Conditions. With respect to the Prime Agreement, the designation "Client" shall be read to be the "Standard Marine" and the designation "Contractor" shall be read to be the "Subcontractor". A copy of the applicable Prime Agreement will be provided with each work order.
- 1.** The Subcontractor further agrees to be bound by any modification of a Prime Agreement that may occur from time to time. The Standard Marine agrees to notify the Subcontractor of all such changes on a timely basis.
- 2.2** If the *Prime Agreement is with a nonexempt Federal department or agency, the following specific contract provisions are required of all consultants and Subcontractors with whom they do business, including posting of the required Federal Notice, per Executive Order 13496:*  
During the term of this agreement, the Subcontractor agrees to post a notice, of such size and in such form, and

containing such content as the Secretary of Labor prescribed pursuant to Executive Order 13496 of January 30, 2009, "Notification of Employee Rights under Federal Labor Laws", in conspicuous places in and about its plants and offices where employees covered by the National Labor Relations Act engage in activities relating to the performance of the contract, including all places where notices to employees are customarily posted both physically and electronically. The language of the notice is prescribed at: [http://www.dol.gov/olms/regs/compliance/EmployeeRightsPoster11x17\\_Final.pdf](http://www.dol.gov/olms/regs/compliance/EmployeeRightsPoster11x17_Final.pdf).

2.3 The following additional Special Conditions apply to these Terms & Conditions:

.1 Key Personnel - No substitution of key personnel is allowed without the prior written authorization of Standard Marine. Key Personnel shall be as specified in each work order.

### ARTICLE 3

#### TERMINATION OF AGREEMENT

- .1 This Master Agreement, or any work order issued hereunder, may be terminated by the Standard Marine should the Subcontractor fail substantially to perform in accordance with the terms of these Terms & Conditions. The Standard Marine shall have all rights to recover damages due to said failure to perform by Subcontractor. In the event said termination shall be determined not to be for substantial failure to perform, such termination shall be deemed a termination for convenience under Section 3.2.
- .2 This Master Agreement, or any work order issued hereunder, may be terminated for convenience by the Standard Marine upon at least ten (10) days written notice to the Subcontractor. Standard Marine shall have the right to terminate this Agreement at any time and for any reason and such action shall in no event be deemed a breach of contract by Standard Marine.
- .3 Upon receipt of a termination notice Subcontractor shall immediately discontinue all Services affected and deliver to Standard Marine all original data, drawings, reports, summaries and other information and materials generated in performing Services. In the event of termination not the fault of the Subcontractor, the Subcontractor shall be compensated for all authorized Services performed to date of termination. In the event of termination for any reason, the Subcontractor agrees that it will not file claims against Standard Marine for any losses, including future profit or consequential damages.

### ARTICLE 4

#### INSURANCE AND INDEMNITY

- .1 During the effective period of these Terms & Conditions, Subcontractor shall maintain policies of insurances as described below.
  1. Subcontractor shall carry Commercial General Liability insurance on ISO CG 00 01 or equivalent form acceptable to Standard Marine and owner written on an occurrence basis with limits of liability of a least \$1,000,000 per occurrence and \$2,000,000 general aggregate coverages included shall be:
    - 1.1. Premises and operations;
    - 1.2. Broad Form Contractual Liability;
    - 1.3. Independent contractors;
    - 1.4. Cross liability (separation of insureds) clause providing that the insurance applies separately to each insured except with respect to the limits of liability;
  2. Such policies shall carry the following endorsements, copies of which shall be provided:
    - a. Inclusion of Client and Standard Marine, their directors, officers, agents and employees as additional insured as respects Services or operation under this Agreement.
    - b. Stipulation that the insurance is primary insurance and that no insurance of Standard Marine will be called upon to contribute to a loss.
    - c. Standard Marine and Client together with any other entities required by the Contract Documents to be named as additional insured, shall be added as additional insured, using Endorsement CG 20 37 07 04 or equivalent under Subcontractor's Comprehensive General Liability Policy, including Completed Operations Insurance, to insure them; coverage under such Policy shall be primary with Standard Marine's, the Client's, and the others', as noted above, insurance to be non-contributory and excess over Subcontractor's coverage.
  3. Certificates of Insurance, satisfactory to Client and Standard Marine will be furnished before any services are performed. Subcontractor will provide for thirty (30) days written notice to Standard Marine prior to cancelation, either by insurer or any insured, of the insurance.
  4. Such policies shall carry the following endorsements, copies of which shall be provided:

- 4.1. Inclusion of Client and Standard Marine, their directors, officers, agents and employees as additional insured as respects to services or operation under this Subcontractor Agreement (except Workers Compensation).
  - 4.2. Stipulation that the insurance is primary insurance and that no insurance of Standard Marine will be called upon to contribute to a loss.
  - 4.3. Waiver of Subcontractor's rights of subrogation against Standard Marine and Client, where allowed by law.
2. During the performance of Services hereunder and for a period of five years thereafter to the extent subcontractor is providing professional services, Subcontractor shall maintain Professional Liability Insurance in an amount not less than \$2,000,000 per claim and aggregate.

If the liability insurance specified above shall be provided on a claims-made basis, then in addition to the coverage requirements above the policy shall provide that:

1. The retroactive date shall coincide with the Subcontractor's start of Services (including subsequent purchased as renewals or replacements);
  2. The policy shall allow for the reporting of circumstances or incidents that might arise to future claims;
  3. Standard Marine will maintain similar insurance for at least five (5) years following completion of the Services and;
  4. If insurance is terminated for any reason, Subcontractor agrees to purchase an extended reporting provision sufficient to meet the requirements of (3.) above to report claims arising from Services performed in connection with the Contract, or to provide a retroactive date on new coverage that coincides with or precedes Subcontractor's start of service.
3. Environmental Impairment, Environmental Liability or Contractor's Pollution Liability: The Contractor, when applicable, shall provide coverage to include, but not be limited to, bodily injury, property damage or environmental damage (in or upon land, or into the atmosphere, or in any watercourse or body of water) resulting from any pollution condition (actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of any pollutants, including smoke, vapors, fumes, acids, alkalis, toxic chemicals, liquids, gases, waste materials, medical wastes, irritants, contaminants or pollutants) either in whole or in part caused by or related to the Subcontractor's activities. The required limits shall be not less than \$1,000,000, per occurrence \$2,000,000 in the Aggregate.
4. Prior to beginning work, insurance certificates that comply with the requirements of this Agreement shall be furnished to Standard Marine's Project Manager prior to performance of the services and provide for not less than 30 days prior written notice to Standard Marine of any cancellation, or reduction of limits in the policy.
5. Subcontractor shall require all sub-Subcontractors to carry the insurance required herein unless otherwise authorized in writing by the Standard Marine. The Standard Marine or Client, may, at their option provide coverage for any and all Subcontractors, and, if so, the evidence of insurance submitted shall so stipulate. The fact that insurance is required hereunder and obtained by Standard Marine or Client, shall not be deemed to release, diminish or limit the liability of Subcontractor; including without limitation, liability under the indemnity provisions of the Master Agreement.
6. To the fullest extent permitted by law, Subcontractor shall indemnify, defend and hold harmless Standard Marine and the Client, their officers, agents and employees from and against all claims, losses, actions and expenses, including but not limited to legal fees and expenses, on account of errors and omissions, economic loss, bodily injury to or death of any person (including but not limited to employees, agents or authorized representatives of Subcontractor, Standard Marine or the Client) or for damage to property or the work (including but not limited to the property of Subcontractor, Standard Marine or the Client) arising out of or caused by the negligent acts, errors or omissions of Subcontractor, its employees, agents, or Subcontractors in the performance of services under these Terms & Conditions. This indemnification by Subcontractor shall not be limited as to the amount or type of damages, compensation or benefits payable by or for the Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts. In the event a claim is made against the Standard Marine alleging damages that arose out of or are caused by Subcontractor's services under these Terms & Conditions, the Subcontractor agrees that it shall, at its own expense, defend the claim and the Standard Marine through the resolution of the claim by negotiation, mediation, trial or arbitration if and as applicable.

Further, Subcontractor explicitly waives any right it has to immunity under applicable industrial insurance laws and agrees to indemnify, defend and hold Standard Marine, Client, their employees, officers, directors and agents harmless from any and all liability, losses, costs, expenses, and fees arising out of claims or law suits brought by Subcontractor's employees or any of its lower tier Subcontractors' employees for bodily injuries or death sustained while performing services hereunder, except to the extent caused by the gross negligence or willful misconduct of Standard Marine or Client (as applicable).

To the fullest extent permitted by law, Subcontractor shall indemnify, defend and hold harmless Standard Marine and the Client, their officers, agents, funding agencies and employees in the same manner and to the same

extent that *Standard Marine is required to defend and indemnify the Client, or any other person or entity, under the indemnification provisions contained in the Prime Agreement.* Subcontractor agrees that the Client and the other indemnittees named in the Prime Agreement shall be intended third party beneficiaries of these Terms & Conditions.

To the fullest extent permitted by law, Subcontractor guarantees that any material provided, work performed or services rendered will not infringe any United States or foreign Letters Patent, Registered or Industrial Design, Trademark or Trade Name, Trade Secret, Copyright or other protected right in any country. Subcontractor agrees to defend, protect and save harmless Standard Marine, its officers, employees, and agents from and against all damages, claims and demands, for actual or alleged infringement of any Intellectual Property right by reason of the sale or use of the material provided, work performed or services rendered hereunder.

7. Subcontractor waives claims for, and in no event will Standard Marine be liable to Subcontractor under this Agreement for consequential damages arising out of or relating to this Agreement. This waiver includes, without limitation, damages incurred by Subcontractor or any of its Subcontractors for principal office expenses, including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except for agreed upon profit on services satisfactorily performed. This waiver of consequential damages shall apply to all such damages regardless of cause, including breach of contract, tort (including sole or concurrent negligence) strict liability, or otherwise.
8. The provisions of this Article shall survive the expiration or any termination of these Terms & Conditions or any work order issued hereunder.

## ARTICLE 5

### MISCELLANEOUS PROVISIONS

- .1 This Master Agreement shall be enforced and governed by the laws in keeping with the Prime Agreement. The Subcontractor agrees to comply with all applicable laws and regulations of the United States government, the states and any political subdivision thereof, in the performance of its Services, as applicable.
- .2 Standard Marine shall acquire title to all data, inventions, or developments, including software, prepared in performance of any assignment, whether specified as a deliverable item or not. Subcontractor shall deliver copies, including computer source code, as a condition of receiving final payment for such services.
- .3 The Standard Marine and Subcontractor, respectively, bind themselves, their partners, successors, assigns and legal representatives of each party with respect to all covenants of this Agreement. The Subcontractor shall not assign, sublet or transfer any interest in these Terms & Conditions without the written consent of the Standard Marine.
- .4 This Master Agreement together with the applicable Prime Agreement, and the applicable work orders, and any other documents incorporated therein, represents the entire and integrated agreement between the Standard Marine and the Subcontractor and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the Standard Marine and the Subcontractor.
- .5 In the event any provisions of this Agreement shall be held to be invalid and unenforceable, the remaining provisions shall be valid and binding upon the parties. One or more waivers by either party of any provisions, terms, conditions, or covenant shall not be construed by the other party as a waiver or a subsequent breach of the same by the other party.
- .6 DBE Notification. At the time of executing this Agreement is Subcontractor registered as a certified Disadvantaged Business Enterprise (DBE) company? (Standard Marine to be Notified within 5 business days if DBE status is lost)  
Yes \_\_\_\_\_ If yes: WBE \_\_\_\_\_ SBE \_\_\_\_\_ MBE  
\_\_\_\_\_ No \_\_\_\_\_

- .7 During the term of these Terms & Conditions and for a period of twelve months after the termination of this Agreement, or any extensions or renewals thereof, Subcontractor agrees not to directly or indirectly solicit, employ, hire or retain any of the employees of the Standard Marine or its affiliates without Standard Marine's prior written consent.
- .8 The Subcontractor represents and warrants that it will comply in all material respects with all Federal, State and local laws, ordinances, regulations and codes, relating to, governing or affecting the Services as they are in effect at the time this Agreement is signed. In the event any penalty is levied against Standard Marine solely due to Subcontractor's violation of Subcontractor's responsibilities under this Article or these Terms & Conditions, the Subcontractor shall immediately assert its responsibility and pay any fine or penalty. Subcontractor's

employees must, as required by law, possess the necessary license(s) or certification(s) to perform any agreed upon Services.

- .9** The Subcontractor is and shall remain solely responsible for the safety of its and its subSubcontractor's employees without control or direction by Standard Marine. Subcontractor understands and agrees that Standard Marine has no effective control over and is not responsible for the actions of Subcontractor's employees or any of its subSubcontractor's employees and has no management authority over any of them and that Standard Marine did not and could not have created any workplace safety hazard and is in no position to prevent, correct or remove any such hazard. Nothing in these Terms & Conditions relieves Subcontractor from its obligation to protect its personnel and others under its control in a manner that satisfies all current safety standards and regulations applicable to the Services. If Standard Marine is fined or otherwise penalized solely because of Subcontractor's violation of any OSHA standard or other workplace safety regulation or requirement, the Subcontractor shall immediately correct the deficiency and reimburse Standard Marine. The Subcontractor's failure to correct the deficiency within 24 hours shall be a material breach of these Terms & Conditions.