

# **Section IV-C**

## **General Provisions - Charter**

---

## Table of Contents

<b>52.252-2 CLAUSES INCORPORATED BY REFERENCE(Jun 88)</b> .....	<b>1</b>
<b>CLAUSES INCORPORATED IN FULL TEXT</b> .....	<b>6</b>
Clause 1 – Changes.....	6
Clause 2 - Notification of Changes .....	6
Clause 3 - Publicity Releases .....	8
Clause 4 – Government-Furnished Property .....	8
Clause 5 - Disputes/Arbitration .....	9
Clause 6 – Owners as Independent Contractor.....	11
Clause 7 - Assignment and Subcontract.....	11
Clause 8 - Inspection .....	11
Clause 9 - Allowable Costs and Payment to Owners on Cost Reimbursable Items.....	12
Clause 10 - Termination for Convenience of the Government .....	12
Clause 11 - Guarantee .....	15
Clause 12 - Termination for Default .....	16
Clause 13 - Consequential Damage .....	17
Clause 14 – Notice.....	17

---

## 52.252-2 CLAUSES INCORPORATED BY REFERENCE(Jun 88)

This Time Charter incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the CPO will make their full text available. Whenever in such clauses the words "Contracting officer" appear, they shall mean the "CPO"; "Contractor" shall mean "the Owners"; "Subcontractor" shall mean Owners' subcontractor(s); and "Prime Contract" shall mean the contract between Charterers and the National Science Foundation.

### FEDERAL ACQUISITION REGULATION (48 CFR CHAPTER 1) CLAUSES

Citation	Title
52.202-1	Definitions (Jul 04)
52.203-3	Gratuities (Apr 84)
52.203-5	Covenant Against Contingent Fees (Apr 84)
52.203-6	Restrictions on Subcontractor Sales to the Government (Sep 06)
52.203-7	Anti-Kickback Procedures (Jul 95)
52.203-8	Cancellation, Rescission, and Recover of Funds for Illegal or Improper Activity (Jan 97)
52.203-10	Price or Fee Adjustment for Illegal or Improper Activity (Jan 97)
52.203-12	Limitation on Payments to Influence Certain Federal Transactions (Sep 05)
52.204-2	Security Requirements (Aug 96)
52.204-4	Printing/Copying Double-Sided on Recycled Paper (Aug 00)
52.208-8	Helium Requirement Forecast and Required Sources for Helium (Apr 02)
52.209-6	Protecting the Government's Interest when Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment (Sep 06)

---

FEDERAL ACQUISITION REGULATION (48 CFR CHAPTER 1) CLAUSES

Citation	Title
52.211-5	Material Requirement (Aug 00)
52.215-2	Audit and Records - Negotiation (Jun 99)
52.215-8	Order of Precedence – Uniform Contract Format (Oct 97)
52.215-11	Price Reduction for Defective Cost or Pricing Data (Oct 97)
52.215-12	Subcontractor Cost or Pricing Data (Oct 97)
52.215-13	Subcontractor Cost or Pricing Data - Modifications (Oct 97)
52.215-14	Integrity of Unit Prices (Oct 97) Alt 1 (Oct 97)
52.215-15	Termination of Defined Benefit Pension Plans (Oct 04)
52.215-18	Reversion or Adjustment of Plans for Postretirement Benefits Other than Pensions (Jul 05)
52.215-19	Notification of Ownership Changes (Oct 97)
52.216-7	Allowable Cost and Payment (Dec 02)
52.219-8	Utilization of Small Business Concerns (May 04)
52.219-9	Small Business Subcontracting Plan (Sep 06) Alt II (Oct 01)
52.222-1	Notice to the Government of Labor Disputes (Feb 97)
52.222-2	Payment for Overtime Premiums (Jul 90) (Insert “0”)
52.222-3	Convict Labor (Jun 03)
52.222-20	Walsh-Healy Public Contracts Act (Dec 96)
52.222-26	Equal Opportunity (Apr 02)
52.222-29	Notification of VISA Denial (Jun 03)
52.222-35	Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era and Eligible Veterans (Sep 06)

---

FEDERAL ACQUISITION REGULATION (48 CFR CHAPTER 1) CLAUSES

Citation	Title
52.222-36	Affirmative Action for Workers with Disabilities (Jun 98)
52.222-37	Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era and Other Eligible Veterans (Sep 06)
52.222-6	Drug-Free Workplace (May 01)
52.222-14	Toxic Chemical Release Reporting (Aug 03)
52.224-1	Privacy Notification (Apr 84)
52.224-2	Privacy Act (Apr 84)
52.225-11	Buy American – Construction Materials Under Trade Agreements (Nov 06)
52.225-8	Duty-Free Entry (Feb 00)
52.227-1	Authorization and Consent (Jul 95)
52.227-3	Patent Indemnity (Apr 84)
52.229-8	Taxes – Foreign Cost-Reimbursement Contracts (Mar 90)
52.230-2	Cost Accounting Standards (Apr 98)
52.230-6	Administration of Cost Accounting Standards (Apr 05)
52.232-9	Limitation on Withholding of Payments (Apr 84)
52.232-17	Interest (Jun 96)
52.232.22	Limitation of Funds (Apr 84)
52.232-23	Assignment of Claims (Jan 86)
52.232-25	Prompt Payment (Oct 03)
52.232-33	Payment by Electronic Funds Transfer – Central Contractor Registration (Oct 03)
52.233-1	Disputes (Jul 01) Alt 1 (Dec 91)

---

FEDERAL ACQUISITION REGULATION (48 CFR CHAPTER 1) CLAUSES

Citation	Title
52.233-3	Protest After Award (Aug 96) Alt 1 (Jun 85)
52.236-5	Material and Workmanship (Apr 84)
52.236-7	Permits and Responsibilities (Nov 91)
52.236-25	Requirement for Registration of Designers (Jun 03)
52.237-2	Protection of Government Buildings, Equipment, and Vegetation (Apr 84)
52.237-3	Continuity of Services (Jan 91)
52.237-7	Indemnification and Medical Liability Insurance (Jan 97)
52.239-1	Privacy or Security Safeguards (Aug 96)
52.242-1	Notice of Intent to Disallow Costs (Apr 84)
52.242-3	Penalties for Unallowable Costs (Mar 01)
52.242-4	Certification of Final Indirect Costs (Jan 97)
52.242-13	Bankruptcy (Jul 95)
52.243-2	Changes – Cost Reimbursement (Aug 87) Alt II (Apr 84)
52.244-2	Subcontracts (Aug 98) Alt I (Jan 06)
52.244-5	Competition in Subcontracting (Dec 96)
52.244-6	Subcontract for Commercial Items (Sep 06)
52.245-5	Government Property (Cost-Reimbursement, Time and Material, or Labor-Hour Contracts (May 04)
52.245-19	Government Property Furnished “As Is” (Apr 84)
52.246-25	Limitation of Liability – Services (Feb 97)
52.247-63	Preference for U.S. Flag Air Carriers (Jan 03)

FEDERAL ACQUISITION REGULATION (48 CFR CHAPTER 1) CLAUSES

Citation	Title
52.247-64	Preference for privately Owned U.S. - Flag Commercial Vessels (Feb 06)
52-247-67	Submission of Commercial Transportation Documents for Audit (Feb 06)
52.248-1	Value Engineering (Feb 00)
52.249-6	Termination (Cost-Reimbursement) (May 04)
52.249-14	Excusable Delays (Apr 84)
52.251-1	Government Supply Sources (Apr 84)
52.251-2	Interagency Fleet Management System Vehicles and Related Services (Jan 91)
52.253-1	Computer Generated Forms (Jan 91)

---

## CLAUSES INCORPORATED IN FULL TEXT

### Clause 1 – Changes

(a) The CPO may at any time, by a written order, and without notice to the sureties, if any, make changes within the general scope of this Time Charter in any one or more of the following:

(1) Specifications, drawings, designs (including final designs), and technical requirements, including installation of scientific equipment of the Vessel.

(2) Place or time of delivery of the Vessel.

(b) If any such change causes an increase or decrease in the cost of preparing the Vessel for acceptance tests and trials, or the time required for the performance of any part of the work under this Time Charter, whether changed or not changed by any such order, or otherwise affects any other provision of this Time Charter, an equitable adjustment shall be made:

(1) in the applicable Fixed Charter Rate or under separate reimbursement to Owners/Charterers, or delivery schedule, or both; and

(2) in such provisions of the Time Charter as may be affected, and the Time Charter shall be modified in writing accordingly. Any claim by the Owners for adjustment under this Clause must be asserted within 30 days from the date of receipt by Owners of the notification of change; provided, however, that the CPO, if they decide the facts justify such action, may receive and act upon any such claim asserted at any time prior to final payment under this Time Charter. Failure to agree to any adjustment shall be a dispute concerning a question of fact within the meaning of the Clause 5 ("Disputes/Arbitration") of these General Provisions. However, nothing in this Clause shall excuse Owners from proceeding with the Time Charter as changed.

(c) Notwithstanding the provisions of paragraphs (a) and (b) above, the Fixed Charter Rate shall not be increased or deemed to be increased except by specific written modification of the Time Charter issued by the CPO indicating the new Time Charter Fixed Charter Rate.

### Clause 2 - Notification of Changes

(a) Notice. The primary purpose of this Clause is to obtain prompt reporting of any conduct or circumstances which Owners consider would constitute or would require a change to this Time Charter. The parties acknowledge that proper administration of this Time Charter requires that potential changes be identified and resolved as they arise. Therefore, except for changes identified as such in writing and signed by the CPO, Owners shall notify the CPO of any conduct or circumstances which Owners consider would constitute or would require a change to the Time Charter. Such notice shall be provided promptly and in any event within 10 calendar days from the date Owners



identify any such conduct or circumstance. Such notice shall be written and dated and shall state, on the basis of the most accurate information available to Owners:

- (1) The date, nature, and circumstances of the conduct regarded as a change;
- (2) The name, function, and activity of the individuals directly involved in or knowledgeable about such conduct;
- (3) The identification of any documents and the substance of any oral communication involved in such conduct;
- (4) The particular elements of Time Charter performance for which Owners might seek an equitable adjustment under this Clause, including:
  - (i) To the extent practicable, labor or materials or both which have been or might be added, deleted, or wasted by the potential change;
  - (ii) To the extent practicable, Owners' preliminary order of magnitude estimate of cost and schedule effect of the potential change; and
  - (iii) What and in what manner are the particular technical requirements, Specifications, or other Time Charter requirements regarded as changed.

(b) Continued Performance. Following submission of the Notice, Owners shall take no action to implement a potential change until advised by the CPO in writing as provided in (c) below, unless the potential change was previously directed by the CPO, in which case Owners shall conform therewith. Nothing in this paragraph (b) shall excuse Owners from proceeding with Time Charter work other than implementation of the potential change or from proceeding in accordance with directions issued by the CPO.

(c) Charterers' Response. The CPO shall promptly, and in any event within 15 calendar days after receipt of notice, respond thereto in writing. In such response, the CPO shall either:

- (1) Confirm that the conduct of which Owners gave notice would constitute a change, and when necessary, direct the mode of further performance, or
- (2) Countermand any conduct regarded by Owners as a change, or
- (3) Deny that the conduct of which Owners gave notice would constitute a change and, when necessary, direct the mode of further performance.

In the event Owners' notice information is inadequate to make a decision under (a) (4) (i), (ii), or (iii) above, Charterers will advise Owners what additional information is required.

Failure of the Charterers to respond within the time required above shall be deemed a countermand under subparagraph (c)(2) above.

(d) Equitable Adjustments. Equitable Adjustments for changes confirmed or countermanded by the CPO shall be made in accordance with Clause 1 ("Changes") of these General Provisions.

(e) When Owners identify any conduct which may result in delay to delivery of the Vessel, Owners shall promptly so inform the CPO thereof prior to providing the notice required by paragraph (a) above.

### **Clause 3 - Publicity Releases**

Prior to the public release of any information relating to this Time Charter or the USAP or the Foundation, Owners will secure the written approval of such release from the CPO.

### **Clause 4 – Government-Furnished Property**

(a) Government-Furnished Property ("GFP")- The delivery or performance dates for the Vessel are based upon the expectation that GFP suitable for use will be delivered to Owners at the times stated in the Time Charter or, if not so stated, in sufficient time to enable Owners to meet such delivery or performance dates. In the event that GFP is not delivered to Owners by such time or times, the CPO shall, upon timely written request made by Owners, make a determination of the delay occasioned Owners and shall equitably adjust the applicable Fixed Charter Rate or delivery or performance dates, or all of them, and any other contractual provisions affected by such delay, in accordance with the procedures provided for in Clause 1 ("Changes") of these General Provisions. In the event that GFP is received by the Owners in a condition not suitable for the intended use, the Owners shall, upon receipt thereof, notify the CPO of such fact and, as directed by the CPO either (i) return the property at the Charterers' expense or otherwise dispose of the property, or (ii) effect repairs or modifications. Upon completion of (i) or (ii) above, the CPO upon written request of the Owners, shall equitably adjust the applicable Fixed Charter Rate or delivery or performance dates, or all of them, and any other contractual provisions affected by the return or disposition, or the repair or modification, in accordance with the procedure provided for in Clause 1 ("Changes") of this Rider of Additional Provisions. The foregoing provisions for adjustment are exclusive and Owners shall not be entitled to claim for breach of Time Charter by reasonable delay in delivery of GFP or delivery of such property in a condition not suitable for its intended use.

(b) Title -- Title to all GFP shall remain in the Government. Title to GFP shall not be affected by the incorporation or attachment thereof to the Vessel or any property not owned by the Government, nor shall such GFP, or any part thereof, be or become a fixture or an appurtenance of the Vessel or lose its identity as personal property by being attached to any real property or the Vessel, and Owners shall not exercise any lien on said property or cause or permit any lien to be exercised by any third party on said property as a result of any conduct or obligation of Owners. Should any such lien be placed, Owners shall discharge at once or bond or otherwise secure against all liens and attachments which are filed and shall defend, indemnify and save Charterers, the Foundation and the Government harmless from and against any and all loss, damage, injury, liability and claims thereof resulting directly or indirectly from such liens or attachments.

(c) Use of GFP - The GFP shall be used only for the performance of this Time Charter.

(d) Maintenance and Repair of GFP -- Owners shall maintain and administer, in accordance with sound business practice, a program for the maintenance, repair, protection and preservation of GFP so as to assure its full availability and usefulness for the performance of the work under this Time Charter. Owners shall take all reasonable steps to comply with all appropriate directions or instructions which the CPO may prescribe as reasonably necessary for the protection of such GFP. Owners shall not dispose any GFP, whether sound or damaged, without the written consent of the CPO.

(e) Capital Equipment

(1) All Capital Equipment (defined for purposes of this Clause as any item of equipment having a value in excess of \$25,000 and a useful service life in excess of two years, or which is normally capitalized under generally accepted accounting principles), Accountable Property (defined as property with an acquisition cost of \$5,000 to \$24,999 and an expected service life of two years or more) shall be identified as "U.S. Government Property" by a suitable marking immediately upon receipt by Owners.

(2) Property records and receipts are required for any usable components which are permanently attached to or removed from items of GFP as a result of modification to the same extent as would be the case if such components had been provided separately by the Government.

(f) Access - Owners agree to make available to authorized representatives of the Charterers at all reasonable times on board the Vessel and at the office of the Owners all of its GFP records under this Time Charter, and to provide access to any location where any of the GFP is located, for the purpose of inspecting such GFP.

(g) Risk of Loss - Owners shall assume the risk of, and shall be responsible for, any loss, or destruction of, or damage to GFP (including expenses incidental thereto) resulting from Owners' negligence. Owners are not responsible for reasonable wear and tear to such GFP or for GFP properly consumed in performing this Time Charter.

#### **Clause 5 - Disputes/Arbitration**

(a) Any dispute arising under, in connection with or incident to this Time Charter shall be heard and decided at New York, New York, by three persons, one to be appointed by each of the parties hereto, and the third by the two so chosen; their decision or that of any two of them shall be final and, for the purpose of enforcing any award, this Time Charter may be made a rule of the court. Should a party fail to appoint an arbitrator within ten days of notice of demand for arbitration, the demanding party may appoint the second arbitrator with the same force and effect as if appointed by the second party. Should the two arbitrators be unable to agree on the appointment of a third arbitrator within 14 days after appointment of the second arbitrator, the President of the Society of Maritime Arbitrators, Inc. shall make the appointment upon the request of either party without further notice. The proceedings shall be conducted in accordance with the Rules of the Society of Maritime Arbitrators, Inc., including Section 2 "Consolidation". The

arbitrators shall be commercial men and not practicing attorneys. This Time Charter shall be deemed to have been executed and fully performed within in the State of New York, and shall be interpreted and construed in accordance with and subject to the federal maritime law of the United States or, should no such law exist on any particular issue, the laws of the State of New York (excluding otherwise applicable conflict of laws principles), to the exclusion of the laws of any other state or country. The arbitrators shall consider this Agreement an honorable engagement rather than merely a legal obligation; they are relieved from all judicial formalities and may abstain from following the strict rules of law. The arbitrators shall award reasonable attorneys fees and costs to the prevailing party. The parties irrevocably stipulate to the jurisdiction of the United States District Court for the Southern District of New York for purposes of compelling arbitration or confirming an arbitration award, and the prevailing party in any such legal action shall be awarded reasonable attorneys fees and costs. With regard to petitions to compel arbitration or to confirm an arbitration award, the parties consent to service of process by certified mail, certified international mail, Federal Express or DHL courier service to the address provided in Clause 14 ("Notice") of these General Provisions, and irrevocably waive their right to personal service of these documents. A party which brings enforcement proceedings to enforce any arbitration award or judgment obtained under this Clause likewise shall be awarded reasonable attorneys fees and costs incurred in enforcing such award or judgment.

(b) Owners shall diligently proceed with performance of the Time Charter during arbitration proceedings unless Charterers shall order the suspension thereof. Such a suspension shall be a suspension of work according to Clause 1 ("Changes") of these General Provisions. No payments due or payable by the Charterers and that are not the subject of arbitration shall be withheld on account of a pending demand for arbitration.

(c) No arbitration arising out of or relating to the Time Charter shall include, by consolidation, joinder, or in any other manner, the Foundation, its employees or consultants. Owners shall defend, indemnify and hold harmless the Charterers and/or the Foundation if any of Owners' employees or any of their subcontractors or their employees make any claim and/or file any suit against the Charterers and/or the Foundation (including reimbursement of all legal expenses).

(d) Notice of the demand for arbitration shall be made in writing to the other party to this Time Charter. The demand for arbitration shall be made within a reasonable time after the claim, dispute, or other matter in question has arisen, but in any event any claim by any party against the other shall be time-barred unless notice in writing has been given by the claimant to the other party by overnight courier within two (2) years after the time the event giving rise to such claim has arisen. Owners and Charterers agree to waive any other prescriptive or limitations period which may be applicable. The written notice to be given under this Clause is to be sent to the address provided in Clause 14 ("Notice") of these General Provisions. This provision is not to be read to foreclose one party from tendering the defense of a third party claim to the other party to this Time Charter, or vouching in the other party to this Time Charter.

### **Clause 6 – Owners as Independent Contractor**

All of Owners' operations hereunder are those of an independent Contractor and neither it, its agents, nor its employees shall be considered employees or borrowed employees of the Charterers. As an independent Contractor, Owners assume all legal and contractual obligations arising out of its performance of the work hereunder, including the obligations of its subcontractors.

### **Clause 7 - Assignment and Subcontract**

(a) This Time Charter shall not be assigned by Owners without the written consent of the Charterers, nor may any subcontracts in excess of \$100,000 be entered into by Owners without the prior written consent of the Charterers.

(b) Charterers may assign this Time Charter at any time to any subsidiary or affiliate of Raytheon Technical Services, LLC, to the Foundation, or to any party selected by said Foundation. Charterers shall provide Owners with at least thirty (30) days written notice prior to such assignment.

(c) The consent by Charterers to any subcontract shall not impose any liability whatsoever on the Charterers, or limit or alter in any way the liability of Owners or its subcontractors in any manner under this Time Charter.

### **Clause 8 - Inspection**

(a) The Government and the Charterers, through their authorized representatives, have the right at all reasonable times to inspect or otherwise evaluate the work performed or being performed hereunder and the premises on which it is being performed. If any inspection, or evaluation, is made by the Government or the Charterers on the premises of Owners or a subcontractor, Owners shall provide and shall require his subcontractors to provide all reasonable facilities and assistance for the safety and convenience of the Government's and Charterers' representatives in the performance of their duties. All inspections and evaluations shall be performed in such a manner as will not unduly delay the work. Any inspection or evaluation by the Charterers or the Government shall not relieve Owners from any responsibility regarding its obligations or performance under this Time Charter and shall in no way mitigate or lessen the absolute warranty of seaworthiness herein expressed; and shall in no way create or give rise to any liability or responsibility to the Charterers, the Foundation or the Government for seaworthiness of the Vessel, which liability or responsibility shall at all times remain upon the Owners.

(b) Charterers shall have the right to place a full time Charterers' representative at the shipyard where the Vessel is being outfitted, repaired or otherwise undergoing shipyard work. Charterers shall have the right to place personnel at the shipyard during these yard periods for the purpose of installing or monitoring installation of specialized equipment for Charterers' research mission. Owners shall provide without charge reasonable office space and office furniture to facilitate the monitoring of such activities by Charterers' representative. Records of all inspection work by the Owners or their subcontractors shall

be kept complete and available to the Charterers during the performance of this Time Charter and for such longer period as may be specified elsewhere in this Time Charter.

**Clause 9 - Allowable Costs and Payment to Owners on Cost Reimbursable Items**

(a) For performance of the designated cost reimbursable work under this Time Charter, the Charterers shall pay to Owners:

The costs thereof (hereinafter referred to as "costs") determined by the Charterers to be allowable in accordance with:

(1) The applicable Part 31 of the Federal Acquisition Regulation in effect on the effective date of this Time Charter; and

(2) The terms of this Time Charter.

(b) Once each month (or at more frequent intervals, if approved by the Charterers), Owners shall submit to an authorized representative of the Charterers, in such form and reasonable detail as such representative may require, an invoice or public voucher, together with supporting documentation, itemizing costs incurred by the Owners in performance of the above referred to cost reimbursable items and claimed to constitute allowable costs.

(c) After receipt and verification of each invoice or voucher, the Charterers shall, subject to the provisions of Paragraph (d) below, make payment thereon.

(d) At any time or times prior to final payment under this Time Charter, the Charterers may have invoices or vouchers audited. Each payment theretofore made shall be subject to reduction or reimbursement for amounts included in the related invoice or voucher which are found by the Charterers not to constitute allowable or allocable costs. In the event that an audit under this Clause results in a finding that a reduction or reimbursement is due to Charterers, Charterers are entitled to deduct that reduction or reimbursement from hire payments owed to Owners.

**Clause 10 - Termination for Convenience of the Government**

(Applicable to any termination for convenience prior to commencement of the Time Charter period, and only if any such termination has been directed by the Foundation.)

(a) The Charterers may terminate performance of work under this Time Charter in whole or, from time to time, in part if the Foundation determines that a termination is in its best interest. The CPO shall effectuate such termination by delivering to Owners a Notice of Termination specifying the extent of termination and the effective date.

(b) After receipt of a Notice of Termination, and except as directed by the CPO, Owners shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this Clause:

(1) Stop any work as specified in the notice, including work of subcontractors.

- 
- (2) Place no further subcontracts or orders (referred to as subcontracts in this Clause) for materials, services, or facilities, except as necessary to complete the continued portion of the Time Charter.
  - (3) Terminate all subcontracts to the extent they relate to the work terminated.
  - (4) Assign to the Charterers, as directed by the CPO, all right, title, and interest of Owners under the subcontracts terminated, in which case the Charterers shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.
  - (5) With approval or ratification to the extent required by the CPO, settle all outstanding liabilities and termination settlement proposals arising from the termination settlement proposals arising from the termination of subcontracts; the approval or ratification will be final for purposes of this clause.
  - (6) As directed by the CPO, transfer title and deliver to the Charterers (i) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated, and (ii) the completed or partially completed plans, drawings, information, and other property that, if the Time Charter had been completed, would be required to be furnished to the Charterers.
  - (7) Complete performance of the work not terminated.
  - (8) Take any action that may be necessary, or that the CPO may direct, for the protection and preservation of the property related to this Time Charter that is in the possession of Owners or its subcontractors and in which the Charterers have or may acquire an interest.
  - (9) Use its best efforts to sell, as directed or authorized by the CPO, any property of the types referred to in subparagraph (6) above; provided, however, that Owners (i) are not required to extend credit to any purchaser and (ii) may acquire the property under the conditions prescribed by, and at prices approved by, the CPO. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the Charterers under this Time Charter, credited to the price or cost of the work, or paid in any other manner directed by the CPO.
- (c) After termination, Owners shall submit a final Termination Settlement Proposal to the CPO in the form and with the certification prescribed by the CPO. Owners shall submit the Proposal within thirty (30) days of receiving written notice of the termination. If Owners fails to submit the Proposal within thirty (30) days, the CPO may determine, on the basis of information available, the amount, if any, due Owners because of the termination and shall pay the amount determined.
  - (d) Subject to paragraph (c) above, Owners and the CPO may agree upon the whole or any part of the amount to be paid because of the termination. The amount may include a reasonable allowance for profit on work done. However, the agreed amount, whether under this paragraph (d) or paragraph (e) (iii) below, may not exceed the total Fixed Charter Rates for the Basic Term of the Time Charter. The Time Charter shall be

amended, and Owners paid the agreed amount. Paragraph (f) below shall not limit, restrict, or affect the amount that may be agreed upon to be paid under this paragraph.

(e) If Owners and the CPO fail to agree on the whole amount to be paid because of the termination of work, the CPO shall pay Owners the amounts determined by the CPO as follows, but without duplication of any amounts agreed on under paragraph (d) above:

(1) The total of:

- (i) The costs incurred in the modifications to the Vessel before the work was terminated.
- (ii) The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the Time Charter if not included in subdivision (i) above; and
- (iii) A sum, as profit on subdivision (i) above; as determined by the CPO to be fair and reasonable; however, if it appears that Owners would have sustained a loss on the entire Time Charter had it been completed, the CPO shall allow no profit under this subdivision (iii) and shall reduce the settlement to reflect the indicated rate of loss.

(2) The reasonable costs of settlement of the work terminated, including:

- (i) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of the termination settlement, proposals and supporting data;
- (ii) The termination and settlement of subcontracts (excluding the amounts of such settlements); and
- (iii) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory.

(f) Except for normal spoilage, the CPO shall exclude from the amounts payable to Owners under paragraph (e) above, the fair value, as determined by the CPO, of property that is destroyed, lost, stolen, or damaged so as to become undeliverable to the Charterers.

(g) Owners shall have the right to arbitrate, under Clause 5 ("Disputes/Arbitration") of these General Provisions, any determination made by the CPO under paragraph (c), (e), or (i). If the CPO has made a determination of amount due under paragraph (c), (e), or (i), the Charterers shall pay Owners (1) the amount determined by the CPO, or (2) if submitted to arbitration, the CPO will pay the amount finally determined by arbitration.

(h) In arriving at the amount due Owners under this clause, there shall be deducted:

- (1) All unliquidated advance or other payments to Owners under the terminated portion of this Time Charter;
- (2) Any claim which the Charterers have against Owners under this Time Charter; and
- (3) The agreed price for, or the proceeds of sale of, materials, supplies, or other things acquired by Owners or sold under the provisions of this Clause and not recovered by or credited to the Charterers.



(i) If the termination is partial, Owners may file a proposal with the CPO for an equitable adjustment of the applicable Fixed Charter Rates. The CPO shall make any equitable adjustment agreed upon. Any proposal by Owners for an equitable adjustment under this Clause shall be reinstated within ninety (90) days from the effective date of termination unless extended in writing by the CPO.

(j) Payments

(1) The Charterers may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by Owners for the terminated portion of the Time Charter, if the CPO believes the total of these payments will not exceed the amount to which Owners will be entitled.

(2) If the total payments exceed the amount finally determined to be due, Owners shall repay the excess to the Charterers upon demand, together with interest computed at the Prime Interest Rate as charged by the Chase Manhattan Bank, N.Y. Interest shall be computed for the period from the date the excess payment is received by Owners to the date the excess is repaid.

(k) Unless otherwise provided in this Time Charter or by statute, Owners shall maintain all records and documents relating to the terminated portion of this Time Charter for six (6) years after final settlement. This includes all records and other evidence bearing on Owners' costs and expenses under this Time Charter. Owners shall make these records and documents available to the Charterers and the Government, at Owners' office, at all reasonable times, without charge.

**Clause 11 - Guarantee**

(a) Definitions

(1) Supplies: the word "supplies" as used in this Clause includes without limitation, components, intermediate assemblies, end products, and technical data.

(2) Defects: the word "defects" as used in this Clause, means any and all defects, deficiencies, deteriorations and failures, except deficiencies, deteriorations or failures caused by Government misuse or mishandling.

(b) Owners warrant and guarantees that at any time during performance of this Time Charter, and during the period of the Time Charter, the Vessel, appurtenances, equipment and supplies furnished under this Time Charter shall be seaworthy and free from defects in material and workmanship and will conform with the technical requirements, Specifications and all other requirements of this Time Charter, as well as Government regulations and Vessel's Class Society rules, provided, however that with respect to GFP, Owners' guarantee shall extend only to its proper installation, unless Owners perform some modification or other work on such property, in which case Owners' guarantee shall extend to such modification or other work.

(c) Remedies

(1) Right to corrective or replacement action -- In the event of a defect within the scope of Owners' guarantee in Paragraph (b) above, the Charterers may: (i) require Owners to repair or replace, at Owners' election, defective or nonconforming supplies, or (ii) require Owners to furnish such materials or parts and installation instructions as may be required to successfully accomplish the required correction or replacement. Owners shall also prepare and furnish to the Charterers data and reports applicable to any correction or replacement required under this Clause (including revision and updating of all affected data called for under this Time Charter).

(2) Rights if Owners fails to proceed -- If Owners fail to proceed with reasonable promptness to replace or correct such defects, the Charterers (i) may contract or otherwise replace or correct such supplies and charge to Owners any increased cost occasioned the Charterers thereby, or may reduce the Fixed Charter Rate by such amount as may be equitable under the circumstances, or (ii) may terminate this Time Charter for default as provided in Clause 12 ("Termination for Default") of these General Provisions. Failure to agree to the amount of any such increased cost to be charged to Owners or such reduction in the Fixed Charter Rate, shall be a dispute concerning a question of fact within the meaning of Clause 5 ("Disputes/ Arbitration") of these General Provisions. Failure of the Charterers to exercise their rights under this Clause shall not relieve the Owners of their guarantee obligations under this Clause.

(d) Corrected or Replaced Supplies -- Any supplies or parts thereof corrected or furnished in replacement pursuant to this Clause shall also be subject to all the provisions of this Clause to the same extent as supplies initially delivered.

(e) Additional Provisions -- The rights and remedies of the Charterers provided in this Clause are in addition to and do not limit any rights afforded to the Charterers by any other clause of the Time Charter.

## **Clause 12 - Termination for Default**

If material delays in carrying out The Program or other material unsatisfactory performance under this Time Charter are caused by faulty performance on the part of the Vessel, her Master, or Owners, Charterers may give the Owners written notice specifying the occurrences of which Charterers are complaining, and allow the Owners a period of ten (10) days (or such longer period as authorized by Charterers) to cure such faulty or delayed performance. If the Owners fail to commence correction of the faulty or delayed performance on the part of the Vessel, her Master, or her Owners, within the period of time rotated by the Charterers, the Charterers shall have the right to terminate the Time Charter for default by giving seven (7) days notice of termination, in writing, to the Owners. In that event, the last day of the Time Charter shall be the day that the seven (7) day notice period ends. The Owners shall have the right to dispute such termination under Clause 5 ("Disputes/Arbitration") of these General Provisions.

The rights and remedies of the Charterers provided in this Clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Time Charter.

**Clause 13 - Consequential Damage**

Notwithstanding any other provision herein contained, neither Charterers nor Foundation nor Owners shall be liable to the other or to any of their respective employees or agents assigns or insurers hereunder for any indirect, consequential, incidental, special (including multiple or punitive) damages or loss of any kind whatsoever arising out of or relating to any act or omission in or during the performance of this Time Charter.

**Clause 14 – Notice**

Where notice is required by this Time Charter to be given to the Owners or Charterers, it shall be addressed as follows:

To the Charterers:

Raytheon Technical Services, LLC, d/b/a Raytheon Polar Services

7400 South Tucson Way

Centennial, CO, 80112

Attention: Jim Weber

Charterers' Procurement Officer

The Charterer's Procurement Officer (CPO) who is designated by Charterers to effect changes and issue amendments and other contractual actions under this Time Charter is Jim Weber.

To the Owners:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_