

**CUSTOMER CONTRACT REQUIREMENTS
CUSTOMER CONTRACT 40-0192**

CUSTOMER CONTRACT REQUIREMENTS

The following customer contract requirements apply to this contract to the extent indicated below. If this contract is for the procurement of commercial items under a Government prime contract, as defined in FAR Part 2.101, see Section 3 below.

1. The following contract clauses are incorporated by reference from the Federal Acquisition Regulation and apply to the extent indicated. In all of the following clauses, "Contractor" and "Offeror" mean Seller.

52.203-6 Restrictions on Subcontractor Sales to the Government (SEP 2006). This clause applies only if this contract exceeds \$100,000.

52.203-7 Anti-Kickback Procedures (excluding subparagraph (c)(1)) (JUL 1995). Buyer may withhold sums owed Seller the amount of any kickback paid by Seller or its subcontractors at any tier if (a) the Contracting Officer so directs, or (b) the Contracting Officer has offset the amount of such kickback against money owed Buyer under the prime contract. This clause applies only if this contract exceeds \$100,000.

52.203-8 Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity (JAN 1997). This clause applies to this contract if the Seller, its employees, officers, directors or agents participated personally and substantially in any part of the preparation of a proposal for this contract. The Seller shall indemnify Buyer for any and all losses suffered by the Buyer due to violations of the Act (as set forth in this clause) by Seller or its subcontractors at any tier.

52.203-10 Price or Fee Adjustment for Illegal or Improper Activity (JAN 1997). This clause applies only if this contract exceeds \$100,000. If the Government reduces Buyer's price or fee for violations of the Act by Seller or its subcontractors at any tier, Buyer may withhold from sums owed Seller the amount of the reduction. In paragraph (d), the term "Government" shall mean Buyer.

52.203-11 Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions (SEP 2007). By signing and returning its solicitation response, Seller is executing the certification included in this clause. The certification required by this clause applies only if this contract exceeds \$100,000.

52.203-12 Limitation on Payments to Influence Certain Federal Transactions (SEP 2007). This clause applies only if this Contract exceeds \$100,000. Paragraph (c)(4) is modified to read as follows: "(c)(4) Seller will promptly submit any disclosure required (with written notice to Boeing) directly to the PCO for the prime contract. Boeing will identify the cognizant Government PCO at Seller's request. Each subcontractor certification will be retained in the subcontract file of the awarding contractor.

52.203-13 Contractor Code of Business Ethics and Conduct (DEC 2008).
This clause applies only if this contract is in excess of \$5,000,000 and has a period of performance of more than 120 days.

52.211-5 Material Requirements (AUG 2000).
Any notice will be given to Buyer rather than the Contracting Officer.

52.211-15 Defense Priority and Allocation Requirements (APR 2008).
This clause is applicable if a priority rating is noted in this contract

52.215-2 Audit and Records - Negotiation (MAR 2009). This clause applies only if this contract exceeds \$100,000 and (i) is cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeterminable type

or any combination of these types: (ii) Seller was required to provide cost or pricing data, or (iii) Seller is required to furnish reports as discussed in paragraph (e) of the referenced clause.

52.215-10 Price Reduction For Defective Cost or Pricing Data (OCT 1997). This clause applies only if this contract exceeds \$650,000 and is not otherwise exempt. In subparagraph (3) of paragraph (a), insert "of this contract" after "price or cost." In Paragraph (c), "Contracting Officer" shall mean "Contracting Officer or Buyer." In Paragraphs (c)(1), (c)(1)(ii), and (c)(2)(i), "Contracting Officer" shall mean "Contracting Officer or Buyer." In Subparagraph (c)(2)(i)(A), delete "to the Contracting Officer." In Subparagraph (c)(2)(ii)(B), "Government" shall mean "Government or Buyer." In Paragraph (d), "United States" shall mean "United States or Buyer."

52.215-12 Subcontractor Cost or Pricing Data (OCT 1997). This clause applies only if this contract exceeds \$650,000 and is not otherwise exempt. The certificate required by paragraph (b) of the referenced clause shall be modified as follows: delete "to the Contracting Officer or the Contracting Officer's representative" and substitute in lieu thereof "The Boeing Company or any of its wholly owned subsidiaries."

52.215-14 Integrity of Unit Prices (OCT 1997).

This clause applies except for contracts at or below \$100,000; construction or architect-engineer services under FAR Part 36; utility services under FAR Part 41; services where supplies are not required; commercial items; and petroleum products.

52.215-15 Pension Adjustments and Asset Reversions (OCT 2004). This Clause applies to this contract if it meets the requirements of FAR 15.408(g).

52.215-18 Reversion or Adjustment of Plans for Post-Retirement Benefits (PRB) Other Than Pensions (JUL 2005). This Clause applies to this contract if it meets the requirements of FAR 15.408(j).

52.215-19 Notification of Ownership Changes (OCT 1997). This Clause applies to this contract if it meets the requirements of FAR 15.408(k).

52.222-20 Walsh-Healey Public Contracts Act (DEC 1996). This clause applies only if this contract exceeds \$10,000.

52.222-21 Prohibition of Segregated Facilities (FEB 1999).

52.222-26 Equal Opportunity (MAR 2007)

52.222-35 Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (SEP 2006). This clause applies only if this contract exceeds \$100,000.

52.222-36 Affirmative Action for Workers With Disabilities (JUN 1998). This clause applies only if this contract exceeds \$ 10,000.

52.222-37 Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (SEP 2006). This clause applies only if this contract exceeds \$100,000.

52.222-39 Notification of Employee Rights Concerning Payment of Union Dues or Fees (DEC 2004). This clause applies only if this contract exceeds \$100,000.

52.222-50 Combating Trafficking in Persons (FEB 2009). In paragraph (d), the term "Contracting Officer" means Buyer, and in paragraph (e), the term "the Government" means Buyer. This clause applies if the contract includes the acquisition of services.

52.223-3 Hazardous Material Identification and Material Safety Data (JAN 1997). This clause applies only if Seller delivers hazardous material under this contract.

52.225-1 Buy American Act- Supplies (FEB 2009). This clause does not apply if this contract is placed under a Department of Defense contract.

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). A copy of each notice sent to the Government will be sent to Buyer. "Contracting Officer" shall mean "Buyer". This clause applies only if this contract exceeds \$100,000.

52.227-10 Filing of Patent Applications - Classified Subject Matter (DEC 2007). This clause applies only if this contract will involve access to classified information.

52.227-11 Patent Rights -- Ownership by the Contractor (DEC 2007). This clause applies only if this contract is for experimental, developmental, or research work and Seller is a small business firm or nonprofit organization.

52.228-5 Insurance - Work on a Government Installation (JAN 1997). Seller shall provide and maintain insurance as set forth in this contract.

52.230-6 Administration of Cost Accounting Standards (MAR 2008). Add "Buyer and the" before "CFAO" in paragraph (m). This provision applies if Clause H001, H002 or H004 is included in Buyer's contract.

52.244-5 Competition in Subcontracting (DEC 1996)

52.244-6 Subcontracts for Commercial Items (MAR 2009)

52.245-1 Property Records Alternate I (JUN 2007). This clause applies only if Government property is acquired or furnished for contract performance. The Government-Owned Property article in GP4 is hereby deleted.

52.248-1 Value Engineering (excluding subparagraph (f)) (FEB 2000). The term "Contracting Officer" means Buyer. This clause applies only if this contract is for \$100,000 or more. If Value Engineering Change Proposal is accepted by the Government, Seller's share will be 50% of the instant, concurrent and future contract net acquisition savings and collateral savings that Buyer receives from the Government. Seller's negotiated share of the net acquisition savings and collateral savings shall not reduce the Government's share of concurrent or future savings or collateral savings. Buyer's payments to Seller under this clause are conditioned upon Buyer's receipt of authorization for such payments from the Government.

3. If goods or services being procured under this contract are commercial items and Clause H203 is set forth in the purchase order, the foregoing Government clauses in Sections 1 and 2 above are deleted and the following FAR/DFARS clauses are inserted in lieu thereof:

52.203-13 Contractor Code of Business Ethics and Conduct (DEC 2008). This clause applies only if this contract is in excess of \$5,000,000 and has a period of performance of more than 120 days.

52.203-15 Whistleblower Protections under the American Recovery and Reinvestment Act of 2009 (MAR 2009).

52.219-8 Utilization of Small Business Concerns (DEC 2008). Include in all subcontracts that offer further subcontracting opportunities. If a subcontract (except subcontracts to small business concerns) exceeds \$550,000 (\$1,000,000 for construction of any public facility), Seller and any lower tier subcontractor must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities.

52.222-26 Equal Opportunity (JUN 1998)

52.222-35 Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (SEP 2006). This clause applies only if this contract exceeds \$100,000.

52.222-36 Affirmative Action for Handicapped Workers (JUN 1998). This clause applies only if this contract exceeds \$10,000.

52.222-39 Notification of Employee Rights Concerning Payment of Union Dues or Fees (DEC 2004). This clause applies only if this contract exceeds \$100,000.

52.222-50 Combating Trafficking in Persons (FEB 2009). In paragraph (d), the term “Contracting Officer” means Buyer, and in paragraph (e), the term “the Government” means Buyer.

52.247-64 Preference for Privately-Owned U.S. Flag Commercial Vessels (Feb 2006)

4. Cost Accounting Standards

(1) (Applicable if this contract incorporates clause H001). The version of FAR 52.230-2, Cost Accounting Standards, incorporated by clause H001 is the version dated April 1998.

(2) (Applicable if this contract incorporates clause H002). The version of FAR 52.230-3, Disclosure and Consistency of Cost Accounting Practices, incorporated by clause H002 is the version dated April 1998.

(3) (Applicable if this contract incorporates clause H004). The version of FAR 52.230-5, Cost Accounting Standards – Educational Institution, incorporated by clause H004 is the version dated April 1998.

5. The following prime contract special provisions apply to this purchase order:

A. FOREIGN MILITARY SALES

The Seller certifies that the price of this Contract does not include any direct or indirect costs of sales commissions or fees for Seller’s sales representatives involved in Foreign Military Sales.

B. FOREIGN OBJECT DAMAGE/CONTROL

Seller shall establish and maintain systems and procedures necessary to provide a program of foreign object damage/control.

C. NOTIFICATION OF DEBARMENT/SUSPENSION STATUS

Seller shall provide immediate notice to Buyer in the event of being debarred suspended, or proposed for debarment by any Federal Agency during the performance of this Contract.

D. FOREIGN NATIONALS - FOREIGN SOURCES

(1) For the purposes of this clause,

(A) Foreign nationals are those persons not citizens of, not nationals of, or resident/immigrant aliens to, the United States;

(B) Foreign representative is anyone, regardless of nationality or citizenship, acting as an agent, representative, official, or employee of a foreign government, a foreign-owned or influenced firm, corporation, or person; and

(C) Foreign sources are those sources (vendors, subcontractors, and suppliers) not owned and controlled by citizens or immigrant aliens of the United States.

(2) Nothing in this clause is intended to waive any requirement imposed by any other U.S. Government agency with respect to employment of foreign nationals or export-controlled data and information.

(3) Seller acknowledges that equipment and technical data generated or delivered in the performance of this contract is controlled by the International Traffic in Arms Regulation (ITAR), 22 CFR Sections 121 through 128, and require an export license before assigning any foreign national to perform work under this contract or before granting access to foreign nationals to any equipment and technical data generated or delivered in performance of this contract (see 22 CFR Section 125). Seller agrees to notify and obtain the written approval of Buyer prior to assigning or granting access to any work, equipment, or technical data generated or delivered in the performance of this contract to foreign nationals or their representatives. This notification will include the name and country of origin of the foreign national or representative, the specific work, equipment, or data to which the person will have access, and whether the foreign national is cleared to have access to technical data (DoD 5220.22-M, National Industrial Security Program Operating Manual (NISPOM)).

E. EXPORT CONTROLLED DATA RESTRICTIONS

(1) For the purpose of this clause,

(A) Foreign person is any person who is not a citizen of the U.S. or lawfully admitted to the U.S. for permanent residence under the Immigration and Nationality Act, and includes foreign corporations, foreign organizations, and foreign governments;

(B) Foreign representative is anyone, regardless of nationality or citizenship, acting as an agent, representative, official, or employee of a foreign government, a foreign-owned or influenced firm, corporation, or person; and

(C) Foreign sources are those sources (vendors, subcontractors, and suppliers) owned and controlled by a foreign person.

(2) Seller shall place a clause in subcontracts containing appropriate export control restrictions, set forth in this clause.

(3) Nothing in this clause waives any requirement imposed by any other U.S. Government agency with respect to employment of foreign nationals or export-controlled data and information.

(4) Equipment and technical data generated or delivered in the performance of this contract are controlled by the International Traffic in Arms Regulation (ITAR), 22 CFR Sections 121 through 128. An export license is required before assigning any foreign source to perform work under this contract or before granting access to foreign persons to any equipment and technical data generated or delivered during performance (see 22 CFR Section 125). Seller shall notify Buyer and obtain the written approval of Buyer prior to assigning or granting access to any work, equipment, or technical data generated or delivered in the

performance of this contract to foreign persons or their representatives. This notification shall include the name and country of origin of the foreign person or representative, the specific work, equipment, or data to which the person will have access, and whether the foreign person is cleared to have access to technical data (DoD 5220.22-M, National Industrial Security Program Operating Manual (NISPO)).

F. ADDITIONAL CLAUSES:

THROUGHOUT THIS SECTION, THE TERM "GOVERNMENT" OR "CONTRACTING OFFICER" SHALL MEAN BUYER; "CONTRACTOR" OR "OFFEROR" SHALL MEAN "SELLER" OR "SUBCONTRACTOR."

INSPECTOR GENERAL AND THE HOTLINE

(a) The contractor must report to the Inspector General (IG) any and all possible violations of federal law or illegal intelligence activities related to this contract by individuals charging directly or indirectly to this contract.

(b) The IG shall have access to any individual charging directly or indirectly to this contract whose testimony is needed for the performance of the IG's duties. In addition, the IG shall have direct access to all records, reports, audits, reviews, recommendations, documents, e-mails, papers, or other material that relate to this contract with respect to which the IG has responsibilities. Failure on the part of any contractor to cooperate with the IG shall be grounds for administrative action by the Director, Office of Contracts, including contractual remedies.

(c) Contractors and contractor personnel may report suspected instances of improper conduct through the IG Hotline at 703-808-1644. Contractors shall make their employees aware of this Hotline.

(d) The contractor agrees to include the substance of this clause in all subcontracts exceeding the simplified acquisition threshold except those for commercial items or components

PROHIBITIONS ON PERSON CONVICTED OF FRAUD OR OTHER DEFENSE-CONTRACT-RELATED FELONIES

(a) The provisions of 10 U.S.C. 2408 apply to this contract.

(b) In addition to the criminal penalties contained in 10 U.S.C. 2408, the Government may consider other available remedies, such as:

- (1) Suspension or debarment;
- (2) Cancellation of the contract at no cost to the Government; or
- (3) Termination of the contract for default.

(c) The contractor may submit written requests to the Contracting Officer for waiver of 10 U.S.C. 2408 prohibitions. Requests shall clearly identify--

- (1) The person involved;
- (2) The nature of the conviction and resultant sentence or punishment imposed;
- (3) The reasons for the requested waiver; and
- (4) An explanation of why a waiver is in the interest of national security.

(d) The contractor agrees to include the substance of this clause in all first-tier subcontracts exceeding the simplified acquisition threshold in Part 2 of the FAR, except those for commercial items or components.

(e) Pursuant to 10 U.S.C. 2408(c), defense contractors and subcontractors may obtain information as to whether a particular person has been convicted of fraud or any other felony arising out of a contract with

the DoD by contacting the Office of Justice Programs, Denial of Benefits Office, U.S. Department of Justice, telephone (202) 616-3507.

PERSONAL CONDUCT

(a) The Contractor, its employees, and its subcontractors shall comply with the conduct requirements in effect at Buyer's work site. Buyer reserves the right to exclude or remove from the work site any employee of the contractor or of a subcontractor whom the Buyer deems careless, uncooperative, or whose continued employment on the work site is deemed by the Buyer to be contrary to the public interest.

(b) The Contractor shall inform its employees that Buyer has a zero tolerance policy for harassing behavior. Any Contractor or subcontractor employee determined by Buyer to have engaged in harassing behavior shall be immediately escorted from the premises and denied further access to the worksite. The Contractor shall emphasize this requirement to its employees.

(c) Exclusion from the worksite under the circumstances described in this clause shall not relieve the Contractor from full performance of the contract, nor will it provide the basis for an excusable delay or any claims against Buyer.

SPECIAL NOTIFICATION AND APPROVAL REQUIREMENTS

(a) It is a material condition of this contract that the contractor notify and seek approvals as required in the following situations:

(1) Litigation or Requests for Information Relating to This Contract.

(i) The contractor hereby agrees to immediately give notice to Buyer of any anticipated or current litigation or request for information from a third party (including individuals, organizations, and federal, state, or local governmental entities) involving or in any way relating to this contract, pertinent subcontracts, or Buyer's relationship with the contractor or subcontractor(s). Said notice shall include all relevant information with respect thereto.

(ii) Buyer shall have access to and the right to examine any pertinent books, documents, papers, and records of the prime contractor or subcontractor(s) related to any contract litigation.

(2) Utilization of Buyer Relationship for Publicity, Advertising, or Public Relations Purposes.

(i) The contractor agrees not to use or allow to be used any aspect of this contract for publicity, advertisement, or any other public relations purpose. This prohibition extends to announcements of contract award and of modifications adding value or time to the contract. It is further understood that this obligation shall not expire upon completion or termination of this contract, but will continue until rescinded by the Buyer.

(ii) The contractor may request a waiver or release from the Buyer.

(b) The contractor agrees to insert this clause in any subcontract under this contract. In the event of litigation, the subcontractor shall immediately notify the contractor or its next tier subcontractor, as appropriate, of all relevant information with respect to such litigation.

ORGANIZATIONAL CONFLICT OF INTEREST

(a) The offeror warrants, to the best of its knowledge and belief, that (1) there are no relevant facts that could give rise to organizational conflicts of interest, as defined in FAR 9.501; or (2) the offeror has disclosed all relevant information regarding any actual or potential organizational conflicts of interest. Offerors are encouraged to inform the Contracting Officer of any potential conflicts of interest, including those involving contracts with other Government organizations, before preparing their proposal to determine whether the Government will require mitigation of those conflicts. If the successful offeror was aware, or should have been aware, of an organizational conflict of interest before award of this contract

and did not fully disclose that conflict to the Contracting Officer, the Government may terminate the contract for default.

(b) If during contract performance the contractor discovers an organizational conflict of interest involving this contract, the contractor agrees to make an immediate and full disclosure in writing to the Contracting Officer. Such notification will include a description of the action the contractor and/or subcontractor has taken or proposes to take to avoid, neutralize, or mitigate the conflict. The contractor will continue contract performance until notified by the Contracting Officer of any contrary actions to be taken. The Government may terminate this contract for its convenience if it deems such termination to be in the best interest of the Government.

(c) The contractor must inform the Contracting Officer of any activities, efforts, or actions planned, entered into, or on-going by the contractor, or any other corporate entity of the contractor, at the prime or sub-contract level, involving the review of information or providing any advice, assistance, or support to Government agencies, entities which may result in a perceived or actual organizational conflict of interest with any known Governmental activity. The contractor must provide detailed information to the Contracting Officer as to the specifics of the situation immediately upon its recognition. Based on the severity of the conflict, the Contracting Officer may direct the contractor to take certain actions, revise current work effort, or restrict the contractor's future participation in Government contracts as may be necessary to appropriately neutralize, mitigate, or avoid the organizational conflict of interest.

(d) If necessary to mitigate organizational conflict of interest concerns, or when directed to do so by the Contracting Officer, the contractor shall submit an organizational conflict of interest mitigation plan for approval. The plan must describe how the contractor will mitigate, neutralize, or avoid potential and/or actual conflicts of interest or unfair competitive advantages. After approval of the mitigation plan, the contractor must conduct a yearly self-assessment and submit an annual certification of compliance with the terms of the plan signed by a corporate official at the level of Vice President or above. The contractor agrees to submit a revised mitigation plan for approval whenever corporate, contractual, or personnel changes create or appear to create new organizational conflict of interest concerns, or when directed to do so by the Contracting Officer.

(e) The contractor must insert a clause containing all the requirements of this clause in all subcontracts for work similar to the services provided by the prime contractor.

(f) Before this contract is modified to add new work or to significantly increase the period of performance, the contractor agrees to submit an organizational conflict of interest disclosure or representation if requested by the Government.

(g) The contractor further agrees that the Government may periodically review the contractor's compliance with these provisions or require such self-assessments or additional certifications as the Government deems appropriate.

ENABLING CLAUSE FOR PRIME AND SUPPORT CONTRACTOR RELATIONSHIPS

(a) The Government currently has, or may enter into, contracts with one or more of the following companies to provide systems engineering, technical direction and assistance, consultant and professional services, and/or other management services:

TBD

(b) In the performance of this contract, the contractor agrees to cooperate with the companies listed above (hereafter referred to as support contractors). Cooperation includes allowing these support contractors to observe technical activities; discussing technical matters related to this program; and responding to invitations from authorized support contractors to attend meetings. The contractor must provide the support contractors access to data such as, but not limited to, design and development analyses; test data

and results; parts, equipment, and process specifications; testing and test equipment specifications; quality control procedures; manufacturing and assembly procedures; and schedule and milestone data. Support contractors engaged in general systems engineering and integration efforts are normally authorized access to any technical information pertaining to this contract. Exceptions, such as when the contractor seeks to restrict access to contractor trade secrets, will be handled on a case-by-case basis. If the contractor seeks to limit distribution of data to Government personnel only, the contractor must submit this request in writing to the Contracting Officer.

(c) The contractor further agrees to include in all subcontracts, except for those to provide only commercial and/or non-developmental items, a clause requiring the subcontractor and succeeding levels of subcontractors to comply with the response and access provisions of paragraph (b) above, subject to coordination with the contractor. This agreement does not relieve the contractor of responsibility to manage the subcontracts effectively and efficiently, nor is it intended to establish privity of contract between the Government or support contractors and such subcontractors.

(d) Support contractors are not authorized to direct the contractor in any manner.

(e) Support contracts will contain a Protection of Information clause that requires the support contractor to protect contract data, and that prohibits the support contractor from using such data for any purpose other than that for which the data was presented.

CONTRACTOR COMPLIANCE WITH ENVIRONMENTAL, OCCUPATIONAL SAFETY AND HEALTH AND SYSTEM SAFETY REQUIREMENTS

(a) In performing work under this contract, the contractor shall comply with-

(1) All applicable Federal, State, and local environmental, occupational safety and health, and system safety laws, regulations, policies and procedures in effect as of the date the contract is executed;

(2) Any regulations, policies and procedures in effect at any Government facility where work will be performed;

(3) Any contract specific requirements; and

(4) Any Buyer direction.

(b) **Conflicting Requirements.** The contractor shall provide written notification to Buyer of any conflicts in requirements. The notification will describe the conflicting requirements and their source; provide an estimate of any impact to the contract's cost, schedule, and any other terms and conditions; and provide a recommended solution. The notification will also identify any external organizations that Buyer or the contractor may have to coordinate with in order to implement the solution. Buyer will review the notification and provide written direction. Until Buyer issues that direction, the contractor will continue performance of the contract, to the extent practicable, giving precedence in the following order to requirements that originate from:

(1) Federal, state, and local laws, regulations, policies and procedures;

(2) Government facility regulations, policies and procedures; and

(3) Contract specific direction.

(c) **Material Condition of Contract.** Environmental, occupational safety and health, and system safety requirements are a material condition of this contract. Failure of the contractor to maintain and administer an environmental and safety program that is compliant with the requirements of this contract shall constitute grounds for termination for default.

(d) The Contractor shall include this clause in all subcontracts.

TECHNICAL DATA AND COMPUTER SOFTWARE: COMMERCIAL ITEMS

(a) Definitions. As used in this clause:

(1) Commercial item means:

(i) Any item, other than real property, that customarily is used by the public for non-governmental purposes and that has been offered, sold, leased, or licensed to the public;

(ii) Any item that evolved from an item described in paragraph (a)(1)(i) of this clause and will be available in the commercial marketplace in time to satisfy the delivery requirements specified in this contract;

(iii) Any item that would satisfy a criterion expressed in paragraph (a)(1)(i) or (ii) of this clause, but for:

(A) Modifications of a type customarily available in the commercial marketplace; or

(B) Minor modifications made to meet Federal Government requirements;

(iv) Services, offered and sold competitively, in substantial quantities, in the commercial marketplace based on established catalog prices for specific tasks performed under standard commercial terms and conditions;

(v) Any item, combination of items, or service referred to in paragraphs (a)(1)(i) through (iv) of this clause notwithstanding the fact that the item, combination of items, or service is transferred between or among separate divisions, subsidiaries, or affiliates of a contractor; or

(viii) Other non-developmental items, if the Contracting Officer determines that the item was developed exclusively at private expense and has been sold in substantial quantities, on a competitive basis, to multiple state and local governments.

(2) Component means any item supplied to the Government as part of an end item or of another component.

(3) Contractor includes the contractor's subcontractors and suppliers at any tier.

(4) Form, fit, and function data means data relating to items, components, or processes that are sufficient to enable physical and functional interchangeability, and data identifying source, size, configuration, mating, and attachment characteristics, functional characteristics, and performance requirements.

(5) Computer software means computer programs, source code, source code listings, object code listings, design details, algorithms, processes, flow charts, formulae and related material that would enable the software to be reproduced, recreated, or recompiled. Computer software does not include computer databases or computer software documentation. For the purpose of this clause, the term "computer software" shall also refer to "computer software documentation" as defined in paragraph (a)(6) of this clause.

(6) Computer software documentation means owner's manuals, user's manuals, installation instructions, operating instructions, concepts of operations, and other similar items, regardless of storage medium, that explain the capabilities of the computer software or provide instructions for using the software. Computer software documentation shall be considered to be an integral/ necessary part of the computer software with which it is associated unless otherwise delineated in this clause.

(7) Minor modification means a modification that does not significantly alter the non-governmental function or essential physical characteristics of an item or component, or change the purpose of a process.

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

(b) License.

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

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

(ii) Are a correction or change to technical data or computer software furnished to the contractor by the Government;

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

(iv) 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 technical data and computer software without restrictions.

(2) Except as provided in paragraph (b)(1), the Government may use, modify, reproduce, release, perform, display, or disclose technical data and computer software within the Government only.

(3) The Government shall not use the technical data or computer software to manufacture additional quantities or release, perform, display, disclose, or authorize use of the technical data or computer software outside the Government without the contractor's written permission unless a release, disclosure, or permitted use is necessary for emergency repair or overhaul.

(c) Additional License Rights. The contractor, its subcontractors, and suppliers are not required to provide the Government additional rights to use, modify, reproduce, release, perform, display, or disclose technical data or computer software. However, if the Government desires to obtain additional rights, the contractor agrees to negotiation with the Contracting Officer to determine whether acceptable terms for transferring such rights can be reached. All technical data and computer software in which the contractor grants the Government additional rights shall be listed or described in a special license agreement made part of this contract. The license shall specifically enumerate the additional rights granted the Government.

(d) Release From Liability. The contractor agrees that the Government, and other persons to whom the Government may have released or disclosed technical data or computer software delivered or otherwise furnished under this contract, shall have no liability for any release or disclosure of technical data or computer software that are not marked to indicate that such data are licensed data subject to use, modification, reproduction, release, performance, display, or disclosure restrictions.

(e) Buyer License to Commercial Technical Data and Commercial Computer Software.

(1) The Buyer shall have the restricted right to view computer software source code and source code listings for Seller computer software delivered hereunder, and to permit the U.S. Government and U.S. Government support contractors to do so, in order to detect the presence of malicious code constructs. The Seller may impose additional reasonable restrictions on the locations at which the source code and source code listings are made available for review, and on the number of personnel to whom this review right is granted.

(2) The Buyer shall have the unrestricted right to use, distribute, display and disclose computer software object code. Buyer's distribution of Seller's commercial computer software in object code form to Buyer's U.S. Government customer shall be subject to the licenses granted herein to Buyer's U.S. Government customer.

(3) The Buyer shall have the right to reproduce the computer software object code as reasonably required for the performance of the Buyer's prime contract.. Seller may impose additional, reasonable restrictions on the quantity of copies made and the distribution methods of the reproduced object code.

(4) The Buyer shall have the unrestricted right to use, modify, reproduce, release, perform, display, or disclose Seller commercial technical data and computer software documentation, and to permit others to do so, that:

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

- (ii) Are a correction or change to technical data or computer software documentation furnished to the Seller by the Buyer;
- (iii) Are necessary for operation, maintenance, installation, or training (other than detailed manufacturing or process data); or
- (iv) Have been provided to the Buyer under a prior contract or licensing agreement through which the Buyer has acquired the rights to use, modify, reproduce, release, perform, display, or disclose technical data without restrictions.

(f) Escrow. The Seller agrees to negotiation a multi-party escrow agreement with the Buyer and Government and a third party escrow agent covering the computer software source code and software engineering and test environments needed for maintenance of the Seller computer software delivered hereunder in object code form should the Seller fail to perform its software maintenance obligations or conduct its business in the normal course, as further specified and described in the release events set forth in the escrow agreement. The escrow agreement will specify all release events for the escrowed materials, and Seller's license rights to such materials in the event that a release occurs.

(g) Release From Liability. The Seller agrees that the Buyer, and other persons to whom the Buyer may have released or disclosed technical data or computer software delivered or otherwise furnished under this contract, shall have no liability for any release or disclosure of technical data or computer software that are not marked to indicate that such data are licensed data subject to use, modification, reproduction, release, performance, display, or disclosure restrictions.

RIGHTS IN TECHNICAL DATA AND COMPUTER SOFTWARE: NONCOMMERCIAL ITEMS

(a) Definitions. As used in this clause:

- (1) Computer data base means a collection of data recorded in a form capable of being processed and operated by a computer. The term does not include computer software.
- (2) Computer program means a set of instructions, rules, or routines recorded in a form that is capable of causing a computer to perform a specific operation or series of operations.
- (3) Computer software means computer programs, source code, source code listings, object code listings, design details, algorithms, processes, flow charts, formulae, and related material that would enable the software to be reproduced, recreated, or recompiled. Computer software does not include computer databases or computer software documentation.
- (4) Computer software documentation means owner's manuals, user's manuals, installation instructions, operating instructions, concepts of operations, and other similar items, regardless of storage medium, that explain the capabilities of the computer software or provide instructions for using the software. Computer software documentation shall be considered to be an integral/ necessary part of the computer software with which it is associated unless otherwise delineated in this clause.
- (5) Detailed manufacturing or process data means technical data and computer software that describes 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.
- (6) 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.

(7) 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. 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.

(8) Developed exclusively with Government funds means all the costs of development were charged directly to a Government contract.

(9) 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.

(10) Form, fit, and function data means data relating to items, components, or processes sufficient to enable physical and functional interchangeability, and data identifying source, size, configuration, mating, and attachment characteristics, functional characteristics, and performance requirements.

(11) Government purpose means any activity in which the United States Government is a party, including cooperative agreements with international or multi-national defense organizations, or sales or transfers by the United States Government to foreign Governments or international organizations. Government purposes include providing technical data and computer software for use in a competitive procurement, but do not include the rights to use, modify, reproduce, release, perform, display, or disclose technical data and computer software for commercial purposes or authorize others to do so.

(12) Government purpose rights means the rights to use, modify, reproduce, release, perform, display, or disclose technical data and computer software within the Government without restriction, and to release or disclose such data outside the Government so long as the recipient uses the data for Government purposes only. The Government shall have Government purpose rights for a five-year period after contract completion. Upon expiration of the five-year period, the Government shall have unlimited rights in the technical data and computer software. The contractor has the exclusive right, including the right to license others, to use technical data and computer software 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 by this clause. Government purpose rights are always and automatically due to the Government for technical data or computer software on this contract when:

(i) The items, components, programs, code, or processes were developed with mixed funding except when the Government is entitled to unlimited rights.

(ii) They were created with mixed funding in the performance of a contract that does not discretely require the development, manufacture, construction, or production of items, components, programs, code, or processes.

(iii) The contractor has previously or is currently providing them with Government purpose rights under another Government contract.

(13) Limited rights means the rights to use, modify, reproduce, release, perform, display, technical data and computer software, 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 and computer software outside the Government, use the technical data and computer software for manufacture, or authorize the technical data and computer software 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 such reproduction, release, disclosure, or use is necessary for emergency repair and overhaul; or a release or disclosure of technical data and computer software (other than detailed manufacturing or process data) to, or use of such data by, a foreign Government that is in the interest of the Government and is required for evaluation or information purposes; or the contractor asserting the

restriction is notified of such release, disclosure, or use. The Government may release the technical data or computer software to any third party if a clause titled Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends is inserted into the contractual arrangement with the third party. The contractor is not required to provide the Government additional rights to use, modify, reproduce, release, perform, display, or disclose technical data and computer software furnished to the Government with limited rights. However, if the Government desires to obtain additional rights in technical data and computer software 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. Limited rights pertain to items, components, software code, software programs, or processes developed exclusively at private expense and marked with the limited rights legends prescribed by this clause or items, components, software code, software programs, or processes 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. The Government shall require the contractor to provide technical data or computer software necessary for emergency repair or overhaul, and shall destroy what is in its possession promptly following completion of the emergency repair/overhaul, and notify the contractor that it has been destroyed.

(14) Restricted rights means the rights of the Government in restricted computer software as set forth in FAR Clause 52.227-14(g)(3), or as otherwise may be provided in a collateral agreement incorporated in and made part of this contract, including minor modifications of such computer software.

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

(16) Unlimited rights means rights to use, modify, reproduce, perform, display, release, or disclose technical data and computer software in whole or in part, in any manner and for any purpose whatsoever, and to have or authorize others to do so. Unlimited rights are due to the Government for technical data or computer software under this contract when:

(i) An item, component, software code, software program, or process has been or will be developed exclusively with Government funds and is related, directly or indirectly, to form, fit, and function data or is otherwise necessary for installation, operation, maintenance, or training (other than detailed manufacturing or process data).

(ii) Studies, analyses, test data or similar data, and computer software, when the study, analysis, test, similar work, or computer software documentation was specified as an element of performance.

(iii) They are 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) The contractor corrects or changes/modifies technical data or computer software furnished by the Government or they have previously or are currently being provided with unlimited rights under another Government contract.

(v) They are otherwise publicly available or have been released/disclosed by the contractor without restrictions on further use, release/disclosure, other than a release/disclosure resulting from the sale, transfer, or other assignment of interest in them to another party or the sale or transfer of some or all of a business entity or its assets to another party.

(vi) They were furnished to the Government, under this or any other Government contract or subcontract thereunder, with Government purpose license rights or limited rights and the restrictive condition(s) has/have expired or Government purpose rights and the contractor's exclusive right to use such data for commercial purposes has expired.

(17) Contractor means the non-Governmental party to this contract and all of their subcontractors and vendors at any level below the prime contractor.

(b) Rights in Technical Data and Computer Software. The contractor grants or shall obtain for the Government the following royalty-free, world-wide, nonexclusive, irrevocable license rights in technical data and computer software:

(1) Furnished With Unlimited Rights:

(VARIABLE) [List all technical data and computer software furnished with Unlimited Rights.]

(2) Furnished With Government Purpose Rights:

(VARIABLE) [List all technical data and computer software furnished with Government Purpose Rights.]

(3) Furnished With Limited Rights:

(VARIABLE) [List all technical data and computer software furnished with Limited Rights.]

(4) Special Rights, Licenses, or Agreements on Technical Data or Computer Software:

(VARIABLE) [List the title and the Section J Attachment Number, or "Not Applicable."]

(c) Release From Liability. The contractor agrees to release the Government from liability for any release or disclosure of technical data and computer software made in accordance with this clause, in accordance with the terms of a license per 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.

(d) Government Rights in Technical Data and Computer Software. Any technical data, computer software, and/or computer software documentation delivered or otherwise provided to the Government without a restrictive legend shall be considered data and computer software delivered with unlimited rights.

(e) Contractor Rights in Technical Data and Computer Software. The contractor retains all rights not granted to the Government.

(f) Third Party Copyrights. The contractor shall not, without the written approval of the Contracting Officer, incorporate any copyrighted data in the technical data and computer software 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 of the appropriate scope, and has affixed a statement of the license or licenses obtained on behalf of the Government and other persons to the technical data and computer software transmittal document.

(g) Later Assertions of Non-Unlimited Rights.

(i) The contractor may make other assertions of non-unlimited rights in technical data and/or computer software after award. Such assertions must be based on new information or obvious inadvertent omission unless these new assertions would materially affect the source selection decision in the determination of the Contracting Officer (in which case no assertion may be allowed).

(ii) The contractor shall submit such assertion(s) to the Contracting Officer as soon as practicable but prior to the scheduled date for delivery of the technical data, computer software, or computer software documentation. An official authorized to contractually obligate the contractor must sign the assertion(s). The contractor assertion(s) must contain a detailed description of the item, the asserted rights category in paragraph (b) of this clause, and the basis of the assertion including all necessary supporting documentation. Generally, the development of an item, component, software code/program, or process exclusively at private expense is the only basis for asserting restrictions after award. If development was not exclusively at private expense, enter the specific reason for asserting that the Government's rights should be restricted.

(iii) The Contracting Officer may request the contractor to provide sufficient information to enable the Government to evaluate the contractor's assertion(s). While adjudicating the assertion(s), the Contracting Officer shall follow the procedures outlined in clause titled Validation Of Restrictive Markings On Technical Data And Computer Software.

(h) Marking Requirements. The contractor may only assert restrictions on the Government's rights to use, modify, reproduce, release, perform, display, or disclose technical data and computer software to be delivered under this contract by marking such technical data and computer software. The marking shall be in the form of legends on the technical data and computer software. Only the legends found in paragraphs (h)(ii), (h)(iii), and (h)(iv) are authorized under this contract. The notice of copyright prescribed under 17 U.S.C. 401 or 402 is also allowed.

(i) General marking Instructions. The contractor shall conspicuously and legibly mark the appropriate legend on all technical data and computer software 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 or computer software 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, annotating, or other appropriate identifier. Technical data and computer software transmitted directly from one computer or computer terminal to another shall contain a notice of asserted restrictions. Reproductions of technical data and computer software, or any portions thereof subject to asserted restrictions, shall also reproduce the asserted restrictions.

(ii) Government Purpose Rights Legend. Technical data or 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 these technical data and computer software are restricted by paragraph titled Rights in Technical Data and Computer Software: Noncommercial Items, contained in the contract identified above. No restrictions apply after the expiration date shown above. Any reproduction of technical data or computer software, or portions thereof marked with this legend, must also reproduce the markings.

(End of legend)

(iii) Limited Rights Markings. Technical data and computer software delivered or otherwise furnished to the Government with limited rights shall be marked as follows:

Limited Rights

Contract No: _____

Contractor Name: _____

Contractor Address: _____

The Government's rights to use, modify, reproduce, release, perform, display, or disclose these technical data and computer software are restricted by paragraph Rights in Technical Data and Computer Software: Noncommercial Items, contained in the contract identified above. Any reproduction of technical data or computer software, or portions thereof marked with this legend, must also reproduce the markings. Any person, other than Government officials or others specifically authorized by the Government, who has been provided access to this technical data or computer software must promptly notify the above named contractor.

(End of legend)

(iv) Special License Rights Markings. Data, 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 this data and/or software are restricted by _____ [Insert contract number and license identifier]. Any reproduction of technical data, computer software, computer software documentation, or portions thereof marked with this legend must also reproduce the markings.

(End of legend)

(v) 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 and computer software 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 (h)(1) of this clause shall be followed.

(vi) Removal of Unjustified and Nonconforming Markings. The rights and obligations of the parties regarding the validation of restrictive markings on technical data and computer software furnished or to be furnished under this contract are contained in the Validation of Restrictive Markings on Technical Data and Computer Software clause 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 and Computer Software clause of this contract, a restrictive marking is determined to be unjustified.

(vii) Nonconforming Technical Data and Computer Software Markings. A nonconforming marking is a legend or other marking placed on technical data and computer software delivered or otherwise furnished to the Government under this contract that is not in the format authorized by 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.

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

(j) Technical Data/Computer Software Reporting. To ensure timely accounting and delivery of technical data and computer software, every ninety days the contractor shall provide the Contracting Officer a technical data and computer software delivery schedule listing all such deliveries necessary for contract completion or incidental to, or developed with or for, other contract deliverables as a segregable item or part of the contracted level of effort provided under the contract.

(k) Limitation on Charges for Rights in Technical Data and Computer Software. 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 and computer software to be delivered under this contract when the Government has acquired, by any means, the same or greater rights in the data on another contract, or when the technical data or computer software are available to the public without restrictions. This limitation does not include the reasonable costs of reproducing, handling, or mailing the documents or other media in which the technical data and computer software will be delivered.

(l) Applicability to Subcontractors, Vendors, and Suppliers. The contractor shall ensure that the rights afforded its subcontractors, vendors, and suppliers under 10 U.S.C. 2320, 10 U.S.C. 2321, and the identification, assertion, and delivery processes of paragraph (g) of this clause are recognized and protected. Additionally, this clause shall be flowed down to all subcontractors, vendors, and suppliers at all levels. The contractor and their higher-tier subcontractors shall not use their power to award contracts as economic leverage to obtain rights in technical data and computer software from their lower-tiered subcontractors, vendors, and suppliers. In no event shall the contractor use its obligation to recognize and protect subcontractor, vendor, or supplier rights in technical data and computer software as an excuse for failing to satisfy its contractual obligations to the Government.

VALIDATION OF RESTRICTIVE MARKINGS ON TECHNICAL DATA AND COMPUTER SOFTWARE

(a) Definitions. As used in this clause, the term “contractor” also refers to any and all subcontractors.

(b) The Government shall 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 for commercial items as defined in FAR Part 12. The Government will not challenge such assertions unless information the Government provides demonstrates that the item, component, or process was not developed exclusively at private expense.

(c) Justification. The contractor or subcontractor at any tier is responsible for maintaining records sufficient to justify the validity of its markings that impose restrictions on the Government to use, duplicate, or disclose technical data and computer software delivered or required to be delivered under the contract. Except under contracts exclusively for commercial items, the contractor shall be prepared to furnish to the Contracting Officer a written justification for such restrictive markings in response to a challenge under paragraph (e) of this clause.

(d) Pre-challenge Request for Information.

(1) The Contracting Officer may request the contractor to furnish a written explanation for any restriction asserted on the right of the United States to use technical data or computer software. 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 to furnish additional information in the records of, or otherwise in the possession of or reasonably available to, the contractor to justify the validity of any restrictive marking on technical data or computer software, accompanied with supporting documentation. The contractor shall submit such written data as requested by the Contracting Officer within the time required or such longer period as may be mutually agreed.

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

(3) If the contractor 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 or computer software relates, the Contracting Officer may challenge the validity of the marking as described in paragraph (e) of this clause.

(e) Challenge.

(1) Notwithstanding any provision of this contract concerning inspection and acceptance, if the Contracting Officer determines that a challenge to the restrictive marking is warranted, the Contracting Officer shall send a written challenge notice to the contractor 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 Government Contracting Officer's final decision, issued pursuant to paragraph (g) of this clause, sustaining the validity of a restrictive marking identical to the asserted restriction, within the three-year period preceding the challenge, shall serve as justification for the asserted restriction if the validated restriction was asserted by the same contractor (or any licensee of such contractor) to which such notice is being provided; and

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

(2) The Contracting Officer shall extend the time for response if the contractor submits a written request showing the need for additional time to prepare a response.

(3) The contractor's written response shall be considered a claim within the meaning of the Contract Disputes Act of 1978, and shall be certified in the form prescribed at FAR Subpart 33.207, regardless of dollar amount.

(4) A contractor 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 unanswered challenge. The Contracting Officer initiating the first unanswered challenge after consultation with the contractor 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 an opportunity to respond to each challenge notice. All parties will be bound by this schedule.

(f) Final Decision When Contractor Fails to Respond. When a contractor fails to respond to a challenge notice, the Contracting Officer will issue a final decision to the contractor in accordance with the Disputes clause of this contract pertaining to the validity of the asserted restriction. This final decision shall be issued as soon as possible after the expiration of the time period of paragraph (e)(1)(ii) or (e)(2) of this clause. Following issuance of the final decision, the Contracting Officer will comply with the procedures in paragraphs (g)(2)(ii) through (iv) of this clause.

(g) Final Decision When the Contractor Responds.

(i) If the Contracting Officer determines that the contractor has justified the validity of the restrictive marking, the Contracting Officer shall issue a final decision to the contractor sustaining the validity of the restrictive marking. This final decision shall be issued within sixty (60) days after receipt of the contractor's response to the challenge notice, or within such longer period that the Contracting Officer has notified the contractor that the Government will require.

(ii) The Government agrees that it will continue to be bound by the restrictive marking for ninety (90) days from the issuance of the Contracting Officer's final decision. The contractor 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 fails to appeal, file suit, or provide a notice of intent to file suit to the Contracting Officer within the ninety-day period, the Government may cancel or ignore the restrictive markings, and the failure of the contractor to take the required action constitutes agreement with the Contracting Officer's final decision.

(iii) The Government agrees that it will continue to be bound by the restrictive marking where a notice of intent to file suit in the United States Claims Court 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 agrees that the Government may strike or ignore the restrictive markings, if the contractor fails to file its suit within one (1) year after issuance of the Contracting Officer final decision. Notwithstanding the foregoing, where the Director, Office of Contracts determines that urgent or compelling circumstances will not permit waiting for the filing of a suit in the United States Claims Court, the contractor agrees that the Government may, following notice to the contractor, authorize release or disclosure of the technical data or computer software. Such determination may be made at any time after issuance of the Contracting Officer final decision, and will not affect the contractor's right to damages against the United States where its restrictive markings are ultimately upheld, or to pursue other relief, if any, as may be provided by law.

(iv) The Government agrees that it will be bound by the restrictive marking where an appeal or suit is filed pursuant to the Contract Disputes Act until final disposition by an agency Board of Contract Appeals or the United States Claims Court. Notwithstanding the foregoing, where the Director, Office of Contracts

determines 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 agrees that the Government may authorize release or disclosure of the technical data or computer software. Such determination may be made at any time after issuance of the final decision and will not affect the contractor's right to damages against the United States where its restrictive markings are ultimately upheld, or to pursue other relief, if any, as may be provided by law.

(h) Final Disposition of Appeal or Suit.

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

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

(ii) If the restrictive marking 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 restrictive marking and the fees and other expenses (as defined in 28 U.S.C. 2412(d)(2)(A)) incurred by the Government in challenging the marking, unless special circumstances would make such payment unjust.

(2) If the contractor 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 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 marking if the challenge by the Government is found not to have been made in good faith.

(i) Duration of Right to Challenge. The Government may review the validity of any restriction on technical data or computer software, delivered or to be delivered under a contract, asserted by the contractor. During the period within three (3) years of final payment on a contract or within three (3) years of delivery of the technical data or computer software to the Government, whichever is later, the Contracting Officer may review and make a written determination to challenge any restriction. The Government may, however, challenge a restriction on the release, disclosure, or use of technical data or computer software at any time if such technical data or computer software:

(1) Is publicly available;

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

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

(j) Decision Not to Challenge. A decision by the Government, or a determination by the Contracting Officer, to not challenge the restrictive marking or asserted restriction shall not constitute "validation" as addressed in 10 U.S.C. 2321.

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

(l) Flowdown. The contractor or subcontractor agrees to insert this clause in contractual instruments with its subcontracts or suppliers at any tier requiring the delivery of technical data or computer software.

LIMITATIONS ON THE USE OR DISCLOSURE OF GOVERNMENT-FURNISHED INFORMATION MARKED WITH RESTRICTIVE LEGENDS

(a) The terms “limited rights” and “Government purpose rights” are defined in the Rights in Technical Data and Computer Software: Noncommercial Items clause of this contract.

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

(1) GFI Marked with Limited or Restricted Rights Legends. The contractor shall use, modify, reproduce, perform, or display technical data received from the Government with limited rights legends, or computer software received with restricted rights legends only in the performance of this contract. The contractor shall not, without the express written permission of the party whose name appears in the legend, release or disclose such data or software to any inappropriate person.

(2) 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 non-disclosure agreements.

(c) Indemnification and Creation of Third Party Beneficiary Rights. The contractor agrees:

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

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

DEFERRED DELIVERY OF TECHNICAL DATA OR COMPUTER SOFTWARE

The Government may identify technical data or computer software for deferred delivery at any time during contract performance by listing such technical data or computer software in an attachment to Section J of this contract titled “Deferred Delivery.” The Government may require delivery of the items identified for deferred delivery up to three (3) years after either acceptance of all deliverables or contract termination, whichever is later. This clause will be flowed down to all subcontractors.

DEFERRED ORDERING OF TECHNICAL DATA OR COMPUTER SOFTWARE

The Government may defer ordering technical data or computer software generated during the performance of this contract for a period of up to three (3) years after either acceptance of all deliverables or contract termination, whichever is later. This clause shall be flowed down to all subcontractors.

RIGHTS IN BID OR PROPOSAL INFORMATION

(a) Definitions. The terms “technical data” and “computer software” are defined in the Rights in Technical Data and Computer Software: Noncommercial Items clause of this contract.

(b) Government Rights to Contract Award. By submission of its offer, the offeror agrees that the Government:

(1) May reproduce the bid or proposal, or any portions thereof, to the extent necessary to evaluate the offer.

(2) Except as provided in paragraph (d) of this clause, shall use information contained in the bid or proposal only for evaluational purposes and shall not disclose, directly or indirectly, such information to any person, including potential evaluators, unless that person has been authorized by the Contracting Officer to receive such information.

(c) Government Rights Subsequent to Contract Award. The contractor agrees:

(1) Except as provided in paragraphs (c)(2), (d), and (e) of this clause, the Government shall have the rights to use, modify, reproduce, release, perform, display, or disclose information contained in the contractor's bid or proposal within the Government.

(2) The Government's right to use, modify, reproduce, release perform, display, or disclose information that is technical data or computer software required to be delivered under this contract are determined by the Rights in Technical Data and Computer Software: Noncommercial Items clause of this contract.

(d) Government-Furnished Information. The Government's rights with respect to technical data or computer software contained in the contractor's bid or proposal provided to the contractor by the Government are subject only to restrictions on use, modification, reproduction, release, performance, display, or disclosure, if any, imposed by the developer or licensor of such data or software.

(e) Information Available Without Restrictions. The Government's rights to use, modify, reproduce, release, perform, display, or disclose information contained in a bid or proposal, including technical data or computer software, and to permit others to do so, shall not be restricted in any manner if such information has been released or disclosed to the Government or to other persons without restrictions other than a release or disclosure resulting from the sale, transfer, or other assignment of interest in the information to another party, or the sale or transfer of some or all of a business entity or its assets to another party.

(f) Flowdown. The contractor shall include this clause in all subcontracts or similar contractual instruments, and require its subcontractors or suppliers to do so without alteration, except to identify the parties.

TECHNICAL DATA AND COMPUTER SOFTWARE: WITHHOLDING OF PAYMENT

(a) If technical data and computer software (as defined in paragraph titled *Rights in Technical Data and Computer Software: Noncommercial Items*) specified to be delivered under this contract is not delivered within the time specified by this contract or is deficient upon delivery (including having unauthorized restrictive markings), the Contracting Officer may, until such data is accepted by the Government, withhold all subsequent payments to the contractor until a reserve is established totaling (VARIABLE) [Insert "*X percent of the total contract price*" where "*X*" is a whole number between 3 and 10; or, to establish the lowest allowable withhold amount, insert: "*3 percent of the total contract price or \$5 million, whichever is less*"]. Payments shall not be withheld nor any other action taken pursuant to this paragraph when the Contracting Officer determines that the contractor's failure to make timely delivery or to deliver the technical data or computer software without deficiencies arises out of causes beyond the control and without the fault or negligence of the contractor.

(b) 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. Use of this clause constitutes a determination by the Contracting Officer that the limitation established by FAR Clause 52.232-9, *Limitation of Withholding of Payments*, shall not apply to the amount withheld under this clause.

DATA REQUIREMENTS

The contractor is required to deliver the data items listed on the Contract Data Requirements List, data items identified in and deliverable under any contract clause of FAR Part 52 made a part of this contract,

and other data as may be specified in the Statement of Work, Statement of Objectives, or Specification(s), as applicable.

INSURANCE

The following kinds and minimum amounts of insurance are applicable in the performance of the work under this contract:

(a) Workmen's Compensation and Employer's Liability Insurance. The contractor shall comply with applicable Federal and State workers' compensation and occupational disease statutes. If occupational diseases are not compensable under those statutes, they shall be covered under the employer's liability section of the insurance policy, except when contract operations are so commingled with contractor commercial operations that it would not be practical to require this coverage. Employer liability coverage of at least \$100,000 is required, except in States with exclusive or monopolistic funds that do not permit workers compensation to be written by private carriers.

(b) General Liability Insurance. Bodily injury liability insurance coverage written on the comprehensive form of policy of at least \$500,000 per occurrence is required.

(c) Automobile Liability Insurance. Automobile liability insurance written on the comprehensive form of policy is required. The policy shall provide for bodily injury and property damage liability covering the operation of all automobiles used in connection with performing the contract. Policies covering automobiles operated in the United States shall provide coverage of at least \$200,000 per person and \$500,000 per occurrence for bodily injury and \$20,000 per occurrence for property damage. The amount of liability coverage on other policies shall be commensurate with any legal requirements of the locality and sufficient to meet normal and customary claims.

(d) Aircraft Public and Passenger Liability Insurance. When aircraft are used in connection with performing the contract, aircraft public and passenger liability insurance coverage shall be at least \$200,000 per person and \$500,000 per occurrence for bodily injury, other than passenger liability, and \$200,000 per occurrence for property damage. Coverage for passenger liability bodily injury shall be at least \$200,000 multiplied by the number of seats or passengers, whichever is greater

PROHIBITION ON CONTRACTOR ACQUISITION OF PERSONAL PROPERTY FOR USE BY GOVERNMENT EMPLOYEES

(a) The contractor shall not purchase personal property directly chargeable under this contract specifically for transfer to and use by a Government employee. This prohibition includes, but is not limited to, notebook and desktop computers, personal digital assistants, pagers, and cellular telephones.

(b) The contractor shall notify the Contracting Officer in writing within 30 days whenever any item of personal property acquired by the contractor is transferred to a Government employee and removed from the contractor's property records. This notification must include the following information for each item transferred:

- (1) Item description, including manufacturer, model, and serial number;
- (2) Acquisition cost and date;
- (3) Name and organization of the Government employee receiving the item; and
- (4) Date of transfer.

CONTRACT ACCOUNTABLE GOVERNMENT PROPERTY: RESPONSIBILITIES, USE REPORTING, AND ADMINISTRATION

- (a) **General Requirements.** The contractor shall maintain adequate property control procedures, records, and a system of identification for all Government property accountable to this contract in accordance with FAR Part 45. The contractor must include this clause in all subcontracts. The terms “Government property,” “contract accountable property,” “Government equipment,” and “contractor-acquired property/material” are used interchangeably and equally within this clause. All items provided to the contractor, including equipment, and facilities are equally considered to be Government property.
- (b) **Property Analyst.** Buyer has been delegated property administration authority.
- (c) **Contractor Property Representatives.** The contractor shall provide the name, address, and telephone number of the company official responsible for establishing and maintaining control of Government property under this contract to Buyer within thirty (30) days after receipt of this contract.
- (d) **Government Property List.** For performance of work under this contract, the Government will make available the Government property identified in the Government Property List in Section J of the contract. These items and information shall be made available to the contractor on a no-charge-for-use basis on or before the date(s) specified in the attachment, if applicable. At contract award, the Government Property List in Section J is a complete and accurate representation of the contract’s Government property. Once performance begins, the contractor shall update the list of Government property accountable to the contract through the CCD on a quarterly basis in accordance with this clause. The most recent update, as reflected in PMM, shall then take precedence over the Government Property List in Section J. The contractor must obtain approval of Buyer before transfers of property can occur. Transfers between contracts must be documented on a DD Form 250, DD Form 1149, by Buyer letter, by contract modification, or by email. This documentation shall serve as the only record necessary to document transfers.
- (e) **Reserved**
- (f) **Title.** Title to all Government-furnished property remains vested with the Government. Upon completion or termination of this contract, the Contractor shall submit to Buyer a list of all property acquired under the contract during the contract period. The list shall describe each item, including the manufacturer, model number, date acquired, cost, and condition, and shall be submitted to Buyer within 60 calendar days after completion or termination of the contract.
- (g) **Promotional Items.** The contractor shall promptly identify to Buyer any promotional items (stand-alone or otherwise) received in conjunction with their purchases on behalf of the Government. Upon receipt and adjudication by the Government, the contractor shall follow the direction of Buyer with regard to the promotional items.
- (h) **Audits and Analyses.** Buyer shall audit/analyze the contractor’s processes, controls, policies, accountability, and administration of Government property.
- (i) **Reporting.** The contractor shall submit quarterly reports in the method prescribed by Buyer of all property accountable to this contract and in the possession of the contractor or subcontractors/vendors. Reports shall be submitted not later than 15 December, 15 March, 15 June, and 15 September. Each report must be submitted electronically, with full line-item detail uploaded into the Consolidated Contractor Database (CCD). Each item must include a data field containing the appropriate Program Code to identify the program under which the item was originally acquired, or to designate the item as “non-program.” For each non-program item with a value of \$100,000 or more acquired or manufactured during the reporting period, the contractor must also upload an electronic copy of the invoice or other valuation documentation in accordance with Subpart N45.7101. Contractor quarterly reporting shall be considered an update to the Government Property List in Section J of the contract. The contractor shall submit a final report within 30 days after disposition of all contract accountable property. Changes to these reporting requirements, including changes in frequency, style, substance, and level of detail, may be made at any time during the performance of this contract at no change in contract value. Failure to provide required reporting may result in termination of this contract, suspension of payment by Buyer until required reporting is received, or other action as deemed appropriate by Buyer.

UTILIZATION OF SMALL BUSINESS CONCERNS

(a) It is the policy of the United States that small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns shall have the maximum practicable opportunity to participate in performing contracts let by any Federal Agency, including contracts and subcontracts for subsystems, assemblies, components and related services for major systems. It is further the policy of the United States that its prime contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts with small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns.

(b) The contractor hereby agrees to carry out this policy in the awarding of subcontracts to the fullest extent consistent with efficient contract performance. The contractor further agrees to cooperate in any studies or surveys as may be conducted by the Contracting Officer or his representative as may be necessary to determine the extent of the contractor's compliance with this clause.

(c) Definitions. As used in this contract—

HubZone Small Business Concern means a small business concern that appears on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration.

Service-disabled Veteran-owned Small Business Concern--

(1) Means a small business concern—

(i) Not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans; and

(ii) The management and daily business operations of which are controlled by one or more service-disabled veterans or, in the case of a veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran.

(2) *Service-disabled Veteran* means a veteran, as defined in 38 U.S.C.101(2), with a disability that is service-connected, as defined in 38 U.S.C.101(16).

Small Business Concern means a small business as defined pursuant to Section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto.

Small Disadvantaged Business Concern means a small business concern that represents, as part of its offer that—

(1) It has received certification as a small disadvantaged business concern consistent with 13 CFR part 124, subpart B;

(2) No material change in disadvantaged ownership and control has occurred since its certification;

(3) Where the concern is owned by one or more individuals, the net worth of each individual upon whom the certification is based does not exceed \$750,000 after taking into account the applicable exclusions set forth at 13 CFR 124.104(c)(2); and

(4) It is identified, on the date of its representation, as a certified small disadvantaged business in the database maintained by the Small Business Administration (PRO-Net).

Veteran-owned Small Business Concern means a small business concern—

(1) Not less than 51 percent of which is owned by one or more veterans (as defined at 38 U.S.C.101(2)) or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans; and

(2) The management and daily business operations of which are controlled by one or more veterans.

Women-owned Small Business Concern means a small business concern—

(1) That is at least 51 percent owned by one or more women, or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and

(2) Whose management and daily business operations are controlled by one or more women.

(d) Contractors acting in good faith may rely on written representations by their subcontractors regarding their status as a small business concern, a veteran-owned small business concern, a service-disabled veteran-owned small business concern, a HUBZone small business concern, a small disadvantaged business concern, or a women-owned small business concern.

SMALL BUSINESS SUBCONTRACTING PLAN

(a) This clause does not apply to small business concerns.

(b) Definitions. As used in this clause—

Commercial Item means a product or service that satisfies the definition of commercial item in section 2.101 of the Federal Acquisition Regulation.

Commercial Plan means a subcontracting plan (including goals) that covers the offeror's fiscal year and that applies to the entire production of commercial items sold by either the entire company or a portion thereof (e.g., division, plant, or product line).

Individual Contract Plan means a subcontracting plan that covers the entire contract period (including option periods), applies to a specific contract, and has goals that are based on the offeror's planned subcontracting in support of the specific contract, except that indirect costs incurred for common or joint purposes may be allocated on a prorated basis to the contract.

Master Plan means a subcontracting plan that contains all the required elements of an individual contract plan, except goals, and may be incorporated into individual contract plans, provided the master plan has been approved.

Subcontract means any agreement (other than one involving an employer-employee relationship) entered into by a Federal Government prime contractor or subcontractor calling for supplies or services required for performance of the contract or subcontract.

(c) The offeror or apparent low bidder, upon request by the Contracting Officer, shall submit and negotiate a subcontracting plan, where applicable, that separately addresses subcontracting with small business, veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns. If the offeror is submitting an individual contract plan, the plan must separately address subcontracting with small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns, with a separate part for the basic contract and for each option (if any). The subcontracting plan shall be negotiated within the time specified by the Contracting Officer. Failure to submit and negotiate the subcontracting plan shall make the offeror ineligible for award of a contract.

(d) The offeror's subcontracting plan shall include the following:

(1) Goals, expressed in terms of percentages of total planned subcontracting dollars, for the use of small business, veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns as subcontractors. Service-disabled veteran-owned small business concerns meet the definition of veteran-owned small business concerns, and offerors may include them within the subcontracting plan goal for veteran-owned small business concerns. A separate goal for service-disabled veteran-owned small business concerns is not required. The offeror shall include all

subcontracts that contribute to contract performance, and may include a proportionate share of products and services that are normally allocated as indirect costs.

(2) A statement of--

(i) Total dollars planned to be subcontracted for an individual contract plan; or the offeror's total projected sales, expressed in dollars, and the total value of projected subcontracts to support the sales for a commercial plan;

(ii) Total dollars planned to be subcontracted to small business concerns;

(iii) Total dollars planned to be subcontracted to veteran-owned small business concerns;

(iv) Total dollars planned to be subcontracted to HUBZone small business concerns;

(v) Total dollars planned to be subcontracted to small disadvantaged business concerns; and

(vi) Total dollars planned to be subcontracted to women-owned small business concerns.

(3) A description of the principal types of supplies and services to be subcontracted, and an identification of the types planned for subcontracting to—

(i) Small business concerns;

(ii) Veteran-owned small business concerns;

(iii) HUBZone small business concerns;

(iv) Small disadvantaged business concerns; and

(v) Women-owned small business concerns.

(4) A description of the method used to develop the subcontracting goals in paragraph (d)(1) of this clause.

(5) A description of the method used to identify potential sources for solicitation purposes (e.g., existing company source lists, the Procurement Marketing and Access Network (PRO-Net) of the Small Business Administration (SBA), veterans service organizations, the National Minority Purchasing Council Vendor Information Service, the Research and Information Division of the Minority Business Development Agency in the Department of Commerce, or small, HUBZone, small disadvantaged, and women-owned small business trade associations). A firm may rely on the information contained in PRO-Net as an accurate representation of a concern's size and ownership characteristics for the purposes of maintaining a small, veteran-owned small, HUBZone small, small disadvantaged, and women-owned small business source list. Use of PRO-Net as its source list does not relieve a firm of its responsibilities (e.g., outreach, assistance, counseling, or publicizing subcontracting opportunities) in this clause.

(6) A statement as to whether or not the offeror included indirect costs in establishing subcontracting goals, and a description of the method used to determine the proportionate share of indirect costs to be incurred with—

(i) Small business concerns;

(ii) Veteran-owned small business concerns;

(iii) HUBZone small business concerns;

(iv) Small disadvantaged business concerns; and

(v) Women-owned small business concerns.

(7) The name of the individual employed by the offeror who will administer the offeror's subcontracting program, and a description of the duties of the individual.

(8) A description of the efforts the offeror will make to assure that small business, veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns have an equitable opportunity to compete for subcontracts.

(9) Assurances that the offeror will include the clause of this contract entitled *Utilization of Small Business Concerns* in all subcontracts that offer further subcontracting opportunities, and that the offeror will require all subcontractors (except small business concerns) that receive subcontracts in excess of \$500,000 (\$1,000,000 for construction of any public facility) to adopt a subcontracting plan that complies with the requirements of this clause.

(10) Assurances that the offeror will cooperate in any studies or surveys as may be required by the contracting agency in order to determine the extent of compliance by the offeror with the subcontracting plan.

(11) A description of the types of records that will be maintained concerning procedures that have been adopted to comply with the requirements and goals in the plan, including establishing source lists; and a description of the offeror's efforts to locate small business, veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns and award subcontracts to them. The records shall include at least the following (on a plant-wide or company-wide basis, unless otherwise indicated):

(i) Source lists (e.g., PRO-Net), guides, and other data that identify small business, veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns.

(ii) Organizations contacted in an attempt to locate sources that are small business, veteran-owned small business, HUBZone small business, small disadvantaged business, or women-owned small business concerns.

(iii) Records on each subcontract solicitation resulting in an award of more than \$100,000, indicating--

(A) Whether small business concerns were solicited and, if not, why not;

(B) Whether veteran-owned small business concerns were solicited and, if not, why not;

(C) Whether HUBZone small business concerns were solicited and, if not, why not;

(D) Whether small disadvantaged business concerns were solicited and, if not, why not;

(E) Whether women-owned small business concerns were solicited and, if not, why not; and

(F) If applicable, the reason award was not made to a small business concern.

(iv) Records of any outreach efforts to contact--

(A) Trade associations;

(B) Business development organizations; and

(C) Conferences and trade fairs to locate small, HUBZone small, small disadvantaged, and women-owned small business sources.

(D) Veterans service organizations.

(v) Records of internal guidance and encouragement provided to buyers through--

(A) Workshops, seminars, training, etc.; and

(B) Monitoring performance to evaluate compliance with the program's requirements.

(vi) On a contract-by-contract basis, records to support award data submitted by the offeror to the Government, including the name, address, and business size of each subcontractor. Contractors having commercial plans need not comply with this requirement.

(e) In order to effectively implement this plan to the extent consistent with efficient contract performance, the contractor shall perform the following functions:

(1) Assist small business, veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation by such concerns. Where the contractor's lists of potential small business, veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business subcontractors are excessively long, reasonable effort shall be made to give all such small business concerns an opportunity to compete over a period of time.

(2) Provide adequate and timely consideration of the potentialities of small business, veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns in all make-or-buy decisions.

(3) Counsel and discuss subcontracting opportunities with representatives of small business, veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business firms.

(4) Provide notice to subcontractors concerning penalties and remedies for misrepresentations of business status as small, veteran-owned small business, HUBZone small, small disadvantaged, or women-owned small business for the purpose of obtaining a subcontract that is to be included as part or all of a goal contained in the contractor's subcontracting plan.

(f) A master plan on a plant or division-wide basis that contains all the elements required by paragraph (d) of this clause, except goals, may be incorporated by reference as a part of the subcontracting plan required of the offeror by this clause; provided--

(1) The master plan has been approved,

(2) The offeror ensures that the master plan is updated as necessary and provides copies of the approved master plan, including evidence of its approval, to the Contracting Officer; and

(3) Goals and any deviations from the master plan deemed necessary by the Contracting Officer to satisfy the requirements of this contract are set forth in the individual subcontracting plan.

(g) A commercial plan is the preferred type of subcontracting plan for contractors furnishing commercial items. The commercial plan shall relate to the offeror's planned subcontracting generally, for both commercial and Government business, rather than solely to the Government contract. Commercial plans are also preferred for subcontractors that provide commercial items under a prime contract, whether or not the prime contractor is supplying a commercial item.

(h) Prior compliance of the offeror with other such subcontracting plans under previous contracts will be considered by the Contracting Officer in determining the responsibility of the offeror for award of the contract.

(i) The failure of the contractor or subcontractor to comply in good faith with--

(1) The clause of this contract entitled *Utilization of Small Business Concerns*; or

(2) An approved plan required by this clause, shall be a material breach of the contract.

DATA REQUIREMENTS

The contractor is required to deliver the data items listed on the Contract Data Requirements List, data items identified in and deliverable under any contract clause of FAR Part 52 made a part of this contract, and other data as may be specified in the Statement of Work, Statement of Objectives, or Specification(s), as applicable.

PATENT RIGHTS—OWNERSHIP BY THE CONTRACTOR (LARGE BUSINESS)

(a) Definitions. As used in this clause—

“Invention” means—

- (1) Any invention or discovery that is or may be patentable or otherwise protectable under Title 35 of the United States Code; or
- (2) Any variety of plant that is or may be protectable under the Plant Variety Protection Act (7 U.S.C. 2321, et seq.).

“Made” means—

- (1) When used in relation to any invention other than a plant variety, means the conception or first actual reduction to practice of the invention; or
- (2) When used in relation to a plant variety, means that the contractor has at least tentatively determined that the variety has been reproduced with recognized characteristics.

“Nonprofit organization” means—

- (1) A university or other institution of higher education;
- (2) An organization of the type described in the Internal Revenue Code at 26 U.S.C. 501(c)(3) and exempt from taxation under 26 U.S.C. 501(a); or
- (3) Any nonprofit scientific or educational organization qualified under a State nonprofit organization statute.

“Practical application” means—

- (1)(i) To manufacture, in the case of a composition or product;
- (ii) To practice, in the case of a process or method; or
- (iii) To operate, in the case of a machine or system; and
- (2) In each case, under such conditions as to establish that—
 - (i) The invention is being utilized; and
 - (ii) The benefits of the invention are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.

“Subject invention” means any invention of the contractor made in the performance of work under this contract.

(b) Contractor’s rights.

- (1) Ownership. The contractor may elect to retain ownership of each subject invention throughout the world in accordance with the provisions of this clause.
- (2) License.
 - (i) The contractor shall retain a nonexclusive royalty-free license throughout the world in each subject invention to which the Government obtains title, unless the contractor fails to disclose the invention within the times specified in paragraph (c) of this clause. The contractor’s license—
 - (A) Extends to any domestic subsidiaries and affiliates within the corporate structure of which the contractor is a part;
 - (B) Includes the right to grant sublicenses to the extent the contractor was legally obligated to do so at the time of contract award; and
 - (C) Is transferable only with the approval of the agency, except when transferred to the successor of that part of the contractor’s business to which the invention pertains.
 - (ii) The agency—

(A) May revoke or modify the contractor's domestic license to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with 37 CFR Part 404 and agency licensing regulations;

(B) Will not revoke the license in that field of use or the geographical areas in which the contractor has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public; and

(C) May revoke or modify the license in any foreign country to the extent the contractor, its licensees, or the domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.

(iii) Before revoking or modifying the license, the agency—

(A) Will furnish the contractor a written notice of its intention to revoke or modify the license; and

(B) Will allow the contractor 30 days (or such other time as the funding agency may authorize for good cause shown by the contractor) after the notice to show cause why the license should not be revoked or modified.

(iv) The contractor has the right to appeal, in accordance with 37 CFR Part 404 and agency regulations, concerning the licensing of Government-owned inventions, any decision concerning the revocation or modification of the license.

(c) Contractor's obligations.

(1) The contractor shall—

(i) Disclose, in writing, each subject invention to the Contracting Officer within 2 months after the inventor discloses it in writing to contractor personnel responsible for patent matters, or within 6 months after the contractor first becomes aware that a subject invention has been made, whichever is earlier;

(ii) Include in the disclosure—

(A) The inventor(s) and the contract under which the invention was made;

(B) Sufficient technical detail to convey a clear understanding of the invention; and

(C) Any publication, on sale (i.e., sale or offer for sale), or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication; and

(iii) After submission of the disclosure, promptly notify the Contracting Officer of the acceptance of any manuscript describing the invention for publication and of any on sale or public use.

(2) The contractor shall elect in writing whether or not to retain ownership of any subject invention by notifying the Contracting Officer at the time of disclosure or within 8 months of disclosure, as to those countries (including the United States) in which the contractor will retain ownership. However, in any case where publication, on sale, or public use has initiated the one-year statutory period during which valid patent protection can be obtained in the United States, the agency may shorten the period of election of title to a date that is no more than 60 days prior to the end of the statutory period.

(3) The contractor shall—

(i) File either a provisional or a nonprovisional patent application on an elected subject invention within one year after election, provided that in all cases the application is filed prior to the end of any statutory period wherein valid patent protection can be obtained in the United States after a publication, on sale, or public use;

(ii) File a nonprovisional application within 10 months of the filing of any provisional application; and

(iii) File patent applications in additional countries or international patent offices within either 10 months of the first filed patent application (whether provisional or nonprovisional) or 6 months from the date the

Commissioner of Patents grants permission to file foreign patent applications where such filing has been prohibited by a Secrecy Order.

(4) The contractor may request extensions of time for disclosure, election, or filing under paragraphs (c)(1), (2), and (3) of this clause. The Contracting Officer will normally grant the extension unless there is reason to believe the extension would prejudice the Government's interests.

(d) Government's rights.

(1) Ownership. The contractor shall assign to the agency, upon written request, title to any subject invention—

(i) If the contractor elects not to retain title to a subject invention;

(ii) If the contractor fails to disclose or elect the subject invention within the times specified in paragraph (c) of this clause and the agency requests title within 60 days after learning of the contractor's failure to report or elect within the specified times;

(iii) In those countries in which the contractor fails to file patent applications within the times specified in paragraph (c) of this clause, provided that, if the contractor has filed a patent application in a country after the times specified in paragraph (c) of this clause, but prior to its receipt of the written request of the agency, the contractor shall continue to retain ownership in that country; and

(iv) In any country in which the contractor decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in reexamination or opposition proceeding on, a patent on a subject invention.

(2) License. If the contractor retains ownership of any subject invention, the Government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice, or have practiced for or on behalf of the United States, the subject invention throughout the world.

(e) Contractor action to protect the Government's interest.

(1) The contractor shall execute or have executed and promptly deliver to the agency all instruments necessary to—

(i) Establish or confirm the rights the Government has throughout the world in those subject inventions in which the contractor elects to retain ownership; and

(ii) Assign title to the agency when requested under paragraph (d)(1) of this clause and enable the Government to obtain patent protection for that subject invention in any country.

(2) The contractor shall—

(i) Require, by written agreement, its employees, other than clerical and non-technical employees, to—

(A) Disclose each subject invention promptly in writing to personnel identified as responsible for the administration of patent matters, so that the contractor can comply with the disclosure provisions in paragraph (c) of this clause; and

(B) Provide the disclosure in the contractor's format, which should require, as a minimum, the information required by paragraph (c)(1) of this clause;

(ii) Instruct its employees, through employee agreements or other suitable educational programs, as to the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or statutory foreign bars; and

(iii) Execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions.

(3) The contractor shall notify the Contracting Officer of any decisions not to file a nonprovisional patent application, continue the prosecution of a patent application, pay maintenance fees, or defend in a

reexamination or opposition proceeding on a patent, in any country, not less than 30 days before the expiration of the response or filing period required by the relevant patent office.

(4) The contractor shall include, within the specification of any United States nonprovisional patent application and any patent issuing thereon covering a subject invention, the following statement: "This invention was made with Government support under (identify the contract) awarded by (identify the agency). The Government has certain rights in this invention."

(5) The contractor shall—

(i) Establish and maintain active and effective procedures to ensure that subject inventions are promptly identified and disclosed to contractor personnel responsible for patent matters;

(ii) Include in these procedures the maintenance of—

(A) Laboratory notebooks or equivalent records and other records as are reasonably necessary to document the conception and/or the first actual reduction to practice of subject inventions; and

(B) Records that show that the procedures for identifying and disclosing the inventions are followed; and

(iii) Upon request, furnish the Contracting Officer a description of these procedures for evaluation and for determination as to their effectiveness.

(6) The contractor shall, when licensing a subject invention, arrange to—

(i) Avoid royalty charges on acquisitions involving Government funds, including funds derived through the Government's Military Assistance Program or otherwise derived through the Government;

(ii) Refund any amounts received as royalty charges on the subject inventions in acquisitions for, or on behalf of, the Government; and

(iii) Provide for the refund in any instrument transferring rights in the invention to any party.

(7) The contractor shall furnish to the Contracting Officer the following:

(i) Interim reports every 12 months (or any longer period as may be specified by the Contracting Officer) from the date of the contract, listing subject inventions during that period and stating that all subject inventions have been disclosed or that there are no subject inventions.

(ii) A final report, within 3 months after completion of the contracted work, listing all subject inventions or stating that there were no subject inventions, and listing all subcontracts at any tier containing a patent rights clause or stating that there were no subcontracts.

(8)(i) The contractor shall promptly notify the Contracting Officer in writing upon the award of any subcontract at any tier containing a patent rights clause by identifying—

(A) The subcontractor;

(B) The applicable patent rights clause;

(C) The work to be performed under the subcontract; and

(D) The dates of award and estimated completion.

(ii) The contractor shall furnish, upon request, a copy of the subcontract, and no more frequently than annually, a listing of the subcontracts that have been awarded.

(9) In the event of a refusal by a prospective subcontractor to accept one of the clauses specified in paragraph (1)(1) of this clause, the contractor—

(i) Shall promptly submit a written notice to the Contracting Officer setting forth the subcontractor's reasons for the refusal and other pertinent information that may expedite disposition of the matter; and

(ii) Shall not proceed with that subcontract without the written authorization of the Contracting Officer.

(10) The contractor shall provide to the Contracting Officer, upon request, the following information for any subject invention for which the contractor has retained ownership:

(i) Filing date.

(ii) Serial number and title.

(iii) A copy of any patent application (including an English-language version if filed in a language other than English).

(iv) Patent number and issue date.

(11) The contractor shall furnish to the Government, upon request, an irrevocable power to inspect and make copies of any patent application file.

(f) Reporting on utilization of subject inventions.

(1) The contractor shall—

(i) Submit upon request periodic reports no more frequently than annually on the utilization of a subject invention or on efforts in obtaining utilization of the subject invention that are being made by the contractor or its licensees or assignees;

(ii) Include in the reports information regarding the status of development, date of first commercial sale or use, gross royalties received by the contractor, and other information as the agency may reasonably specify; and

(iii) Provide additional reports that the agency may request in connection with any march-in proceedings undertaken by the agency in accordance with paragraph (h) of this clause.

(2) To the extent permitted by law, the agency shall not disclose the information provided under paragraph (f)(1) of this clause to persons outside the Government without the contractor's permission, if the data or information is considered by the contractor or its licensee or assignee to be "privileged and confidential" (see 5 U.S.C. 552(b)(4)) and is so marked.

(g) Preference for United States industry. Notwithstanding any other provision of this clause, the contractor agrees that neither the contractor nor any assignee shall grant to any person the exclusive right to use or sell any subject invention in the United States unless the person agrees that any products embodying the subject invention or produced through the use of the subject invention will be manufactured substantially in the United States. However, in individual cases, the agency may waive the requirement for an exclusive license agreement upon a showing by the contractor or its assignee that—

(1) Reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States; or

(2) Under the circumstances, domestic manufacture is not commercially feasible.

(h) March-in rights. The contractor acknowledges that, with respect to any subject invention in which it has retained ownership, the agency has the right to require licensing pursuant to 35 U.S.C. 203 and 210(c), 37 CFR 401.6, and any supplemental regulations of the agency in effect on the date of contract award.

(i) Other inventions. Nothing contained in this clause shall be deemed to grant to the Government any rights with respect to any invention other than a subject invention.

(j) Examination of records relating to inventions.

(1) The Contracting Officer or any authorized representative shall, until 3 years after final payment under this contract, have the right to examine any books (including laboratory notebooks), records, and documents of the contractor relating to the conception or first reduction to practice of inventions in the same field of technology as the work under this contract to determine whether—

(i) Any inventions are subject inventions;

- (ii) The contractor has established procedures required by paragraph (e)(5) of this clause; and
 - (iii) The contractor and its inventors have complied with the procedures.
- (2) If the Contracting Officer learns of an unreported contractor invention that the Contracting Officer believes may be a subject invention, the contractor shall be required to disclose the invention to the agency for a determination of ownership rights.
- (3) Any examination of records under this paragraph (j) shall be subject to appropriate conditions to protect the confidentiality of the information involved.
- (k) Withholding of payment (this paragraph does not apply to subcontracts).
- (1) Any time before final payment under this contract, the Contracting Officer may, in the Government's interest, withhold payment until a reserve not exceeding \$50,000 or 5 percent of the amount of the contract, whichever is less, is set aside if, in the Contracting Officer's opinion, the contractor fails to—
- (i) Establish, maintain, and follow effective procedures for identifying and disclosing subject inventions pursuant to paragraph (e)(5) of this clause;
 - (ii) Disclose any subject invention pursuant to paragraph (c)(1) of this clause;
 - (iii) Deliver acceptable interim reports pursuant to paragraph (e)(7)(i) of this clause; or
 - (iv) Provide the information regarding subcontracts pursuant to paragraph (e)(8) of this clause.
- (2) The reserve or balance shall be withheld until the Contracting Officer has determined that the contractor has rectified whatever deficiencies exist and has delivered all reports, disclosures, and other information required by this clause.
- (3) The Government will not make final payment under this contract before the contractor delivers to the Contracting Officer—
- (i) All disclosures of subject inventions required by paragraph (c)(1) of this clause;
 - (ii) An acceptable final report pursuant to paragraph (e)(7)(ii) of this clause; and
 - (iii) All past due confirmatory instruments.
- (4) The Contracting Officer may decrease or increase the sums withheld up to the maximum authorized in paragraph (k)(1) of this clause. No amount shall be withheld under this paragraph while the amount specified by this paragraph is being withheld under other provisions of the contract. The withholding of any amount or the subsequent payment thereof shall not be construed as a waiver of any Government right.
- (l) Subcontracts.
- (1) The contractor—
- (i) Shall include the substance of the Patent Rights—Ownership by the Contractor clause set forth at 52.227-11 of the Federal Acquisition Regulation (FAR), in all subcontracts for experimental, developmental, or research work to be performed by a small business concern or nonprofit organization; and
 - (ii) Shall include the substance of this clause, including this paragraph (l), in all other subcontracts for experimental, developmental, or research work, unless a different patent rights clause is required by FAR 27.303.
- (2) For subcontracts at any tier—
- (i) The patents rights clause included in the subcontract shall retain all references to the Government and shall provide to the subcontractor all the rights and obligations provided to the contractor in the clause. The contractor shall not, as consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions; and

(ii) The Government, the contractor, and the subcontractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and the Government with respect to those matters covered by this clause. However, nothing in this paragraph is intended to confer any jurisdiction under the Contract Disputes Act in connection with proceedings under paragraph (h) of this clause.

EARNED VALUE MANAGEMENT SYSTEM

(a) In the performance of this contract, the contractor shall use an earned value management system (EVMS) that complies with the guidelines presented in ANSI/EIA Standard 748-A, *Earned Value Management Systems* (herein referred to as the *Guidelines*).

(1) If at the time of contract award the contractor has an EVMS that has been recognized by the USG CUSTOMER EVM Focal Point as compliant with the *Guidelines*, as documented in an advance agreement executed between the contractor and USG CUSTOMER EVM Focal Point, the contractor shall apply that system to this contract within 30 days after contract award unless otherwise agreed to by the parties.

(2) If at the time of contract award the contractor's EVMS has not been recognized as compliant by the USG CUSTOMER EVM Focal Point, the contractor shall apply that EVMS to this contract within 30 days after contract award unless otherwise agreed to by the parties. The contractor will be required to demonstrate to the USG CUSTOMER EVM Focal Point and Contracting Officer that their EVMS complies with the *Guidelines*, after which the parties will execute an advance agreement to document system acceptance.

(3) The USG CUSTOMER EVM Focal Point may rescind the contractor's advance agreement if he/she determines that the EVMS does not comply with the *Guidelines*, or that the contractor is not following its established processes and procedures. The EVM Focal Point will coordinate the rescission with the Program Manager and the Contracting Officer before notifying the contractor.

(b) Contractor-proposed changes to an accepted EVMS must be reviewed by the Contracting Officer and approved by the USG CUSTOMER EVM Focal Point prior to implementation. The contractor shall submit all such changes to the address below, and will be notified by the EVM Focal Point as to the acceptability of the changes within 30 calendar days. The EVM Focal Point will incorporate the approved system changes into the contractor's advance agreement.

TBD

(c) Within 30 days of contract award, the contractor will be required to execute a Joint Surveillance Agreement (JSA) with the USG CUSTOMER EVM Focal Point unless a current JSA is already in place. The JSA will require the contractor to participate in joint surveillance reviews conducted by the contractor's Corporate EVM Executive along with representatives of the USG CUSTOMER Program Manager and of the USG CUSTOMER EVM Focal Point. The initial review must be conducted within the first year of contract performance, with subsequent reviews conducted on an annual basis.

(d) The contractor must conduct Integrated Baseline Reviews jointly with the USG CUSTOMER Program Manager, Contracting Officer, and USG CUSTOMER EVM Focal Point representative no later than 180 days after contract award or authorization to proceed; whenever a significant change to the baseline occurs; or as agreed to by the parties.

(e) The contractor shall require the following subcontractors to comply with the requirements of this clause:

TBD

(f) The Contracting Officer is the only representative of the Government authorized to negotiate, execute, imply a commitment on the part of the Government which would affect the terms of this contract, the contractor must notify the Contracting Officer and obtain approval prior to proceeding.

