

**CUSTOMER CONTRACT REQUIREMENTS****P638****CUSTOMER CONTRACT 40-0213****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. FAR Clauses** 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 (i) \$100,000 if included in Buyer's customer RFP or customer contract issued before October 1, 2010 or (ii) \$150,000 if included in Buyer's customer RFP issued on or after October 1, 2010, or if the prime contract was issued prior to October 1, 2010 but was amended after October 1, 2010 to increase the Simplified Acquisition Threshold.

**52.203-7 Anti-Kickback Procedures (JUL 1995).** Buyer may withhold from 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 (i) \$100,000 if included in Buyer's customer RFP or customer contract issued before October 1, 2010 or (ii) \$150,000 if included in Buyer's customer RFP issued on or after October 1, 2010, or if the prime contract was issued prior to October 1, 2010 but was amended after October 1, 2010 to increase the Simplified Acquisition Threshold. 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.

**52.203-11 Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions (SEP 2007).**

This clause applies only if this contract exceeds (i) \$100,000 if included in Buyer's customer RFP or customer contract issued before October 1, 2010 or (ii) \$150,000 if included in Buyer's customer RFP issued on or after October 1, 2010, or if the prime contract was issued prior to October 1, 2010 but was amended after October 1, 2010 to increase the Simplified Acquisition Threshold.

**52.203-12 Limitation on Payments to Influence Certain Federal Transactions (SEP 2007).**

This clause applies only if this contract exceeds (i) \$100,000 if included in Buyer's customer RFP or customer contract issued before October 1, 2010 or (ii) \$150,000 if included in Buyer's customer RFP issued on or after October 1, 2010, or if the prime contract was issued prior to October 1, 2010 but was amended after October 1, 2010 to increase the Simplified Acquisition Threshold. Paragraph (g)(2) is modified to read as follows: "(g)(2) 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.

**52.211-15 Defense Priority and Allocation Requirements** (SEP 1990). This clause is applicable if a priority rating is noted in this contract.

**52.215-2 Audit and Records - Negotiation** (JUN 1999). 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 the threshold set forth in FAR 15.403-4 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."

**52.215-11 Price Reduction for Defective Cost or Pricing Data -- Modifications** (OCT 1997). This clause applies only if this contract exceeds the threshold set forth in FAR 15.403-4 and is not otherwise exempt. "Contracting Officer" shall mean "Contracting Officer or Buyer." In subparagraph (d)(2)(i)(A), delete "to the Contracting Officer." In subparagraph (d)(2)(ii)(B), "Government" means "Government" or "Buyer." In Paragraph (e), "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 the threshold set forth in FAR 15.403-4 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 "to The Boeing Company or The Boeing Company's representative (including data submitted, when applicable, to an authorized representative of the U.S. Government)."

**52.215-13 Subcontractor Cost or Pricing Data -- Modifications** (OCT 1997). This clause applies only if this contract exceeds the threshold set forth in FAR 15.403-4 and is not otherwise exempt. The certificate required by paragraph (c) 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 "to The Boeing Company or The Boeing Company's representative (including data submitted, when applicable, to an authorized representative of the U.S. Government)."

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

This clause applies only if this contract exceeds (i) \$100,000 if included in Buyer's customer RFP or customer contract issued before October 1, 2010 or (ii) \$150,000 if included in Buyer's customer RFP issued on or after October 1, 2010, or if the prime contract was issued prior to October 1, 2010 but was amended after October 1, 2010 to increase the Simplified Acquisition Threshold. This clause does not apply to 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.

**52.219-8 Utilization of Small Business Concerns** (MAY 2004).

**52.219-9 Small-Business Subcontracting Plan** (JUL 2005). This clause applies only if this contract exceeds \$500,000 and Seller is not a small business concern. Seller shall adopt a subcontracting plan that complies with the requirements of this clause. In addition, Seller shall submit to Buyer Form X31162, Small and Small Disadvantaged Business and Women-Owned Small Business Subcontracting Plan Certificate of Compliance.

**52.222-1 Notice to the Government of Labor Disputes** (FEB 1997). Contracting Officer shall mean Buyer.

**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 Removed and reserved** (DEC 2004).

**52.222-50 Combating Trafficking in Persons** (AUG 2007). In paragraph (d), the term "Contracting Officer" means Buyer, and in paragraph (e), the term "the Government" means Buyer.

**52.225-8 Duty-Free Entry** (FEB 2000). This clause applies only if this contract identifies supplies to be afforded duty-free entry or if foreign supplies in excess of \$10,000 may be imported into the customs territory of the United States. For the purposes of this clause, the blanks in paragraph (g)(3) are completed as follows: UNITED STATES GOVERNMENT, DEPARTMENT OF DEFENSE, Duty-free entry is claimed pursuant Section XXII, Chapter 98, Subchapter VIII, Item No. 9808.00.30 of the Harmonized Tariff Schedule of the United States. Upon arrival of shipment at port of entry, the importer or authorized agent will notify Commander, Defense Contract Management Area Operations (DCMAO, New York, 201 Varick Street, New York, New York, 10014-4811, Attention DCRN-NCT) for execution of Customs Forms 7501, 7501-A, or 7506 and required duty free entry certificates.

**52.225-13 Restriction 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.

**52.227-10 Filing of Patent Applications - Classified Subject Matter** (DEC 2007).

**52.227-13 Patent Rights-Acquisition by the Government** (DEC 2007).

**52.227-14 Rights in Data--General** (DEC 2007).

This clause applies only if data, as defined in paragraph (a) of the clause, will be produced, furnished, or acquired under this contract.

Applicable clause date is revised to (MAR 2008)

**52.230-6 Administration of Cost Accounting Standards** (APR 2005). Add "Buyer and the" before "CFAO" in paragraph (m). This provision applies if clause H001, H002, or H004 is included in this contract.

**52.244-5 Competition in Subcontracting** (DEC 1996).

**52.244-6 Subcontracts for Commercial Items** (DEC 2008).

**52.245-1 Government Property (DEVIATION) 2007-O0012** (JUN 2007). This clause applies only if Government property is acquired or furnished for contract performance. Per DEVIATION 2007-O0012, the definition of plant equipment is deleted, and the

second sentence in the definition of real property is modified to read: "It does not include foundations and other work necessary for installing personal property." The Government-Owned Property article in GP4 is hereby deleted.

**52.247-63 Preference for U.S.-Flag Air Carriers** (JAN 1997). This clause applies only if this contract involves international air transportation.

Applicable clause date is revised to (FEB 2006)

**52.247-64 Preference for Privately Owned U.S.-Flag Commercial Vessels** (FEB 2006). This clause does not apply if this contract is for the acquisition of commercial items unless (i) this contract is a contract or agreement for ocean transportation services; or a construction contract; or (ii) the supplies being transported are (a) items the Seller is reselling or distributing to the Government without adding value (generally, the Seller does not add value to the items when it subcontracts items for f.o.b. destination shipment); or (b) shipped in direct support of U.S. military (1) contingency operations; (2) exercises; or (3) forces deployed in connection with United Nations or North Atlantic Treaty Organization humanitarian or peacekeeping operations.

**52.248-1 Value Engineering** (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.

**2. Commercial Items** 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:

**52.219-8 Utilization of Small Business Concerns** (MAY 2004).

**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.

**52.222-39 Removed and reserved** (DEC 2004).

**52.247-64 Preference for Privately Owned U.S.-Flag Commercial Vessels** (FEB 2006). This clause does not apply if this contract is for the acquisition of commercial items unless (i) this contract is a contract or agreement for ocean transportation services; or a construction contract; or (ii) the supplies being transported are (a) items the Seller is reselling or distributing to the Government without adding value (generally, the Seller does not add value to the items when it subcontracts items for f.o.b. destination shipment); or (b) shipped in direct support of U.S. military (1) contingency operations; (2) exercises; or (3) forces deployed in connection with United Nations or North Atlantic Treaty Organization humanitarian or peacekeeping operations.

### 3. Cost Accounting Standards

**52.230-2 Cost Accounting Standards** (APR 1998). (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.

**4. Prime Contract Special Provisions** 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.

**E. 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)).

**F. 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 (NISPOM)).

#### G. PERSONAL CONDUCT

- (a) The Seller, 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 Seller shall inform its employees that Buyer has a zero tolerance policy for harassing behavior. Seller or any 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 Seller shall emphasize this requirement to its employees.
- (c) Exclusion from the worksite under the circumstances described in this clause shall not relieve the Seller from full performance of the contract, nor will it provide the basis for an excusable delay or any claims against Buyer.

#### H. CONTRACTOR COMPLIANCE WITH ENVIRONMENTAL, OCCUPATIONAL SAFETY AND HEALTH AND SYSTEM SAFETY REQUIREMENTS

- (a) In performing work under this contract, the Seller 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 Seller 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 Seller 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 Seller shall include this clause in all subcontracts.

#### I. RIGHTS IN TECHNICAL DATA AND COMPUTER SOFTWARE: NONCOMMERCIAL ITEMS

[Throughout this Paragraph, the term "Government" or "Contracting Officer" shall mean Buyer. "Contractor" shall mean Seller.]

- (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. 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 there under, 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 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).

(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 (b)(2) of this Clause. 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 (b)(3) of this Clause. 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.

#### J. 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 under which Government property is acquired or furnished for subcontract performance. 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 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 the contract is a complete and accurate representation of the contract’s Government property. Once performance begins, the contractor shall provide the buyer’s representative with updates to the list of Government property accountable to the contract on a quarterly basis in accordance with this clause. The buyer shall update the Government Property List in the contract as required. 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 5 December, 5 March, 5 June, and 5 September. Each report must be submitted electronically, with full line-item detail by secure means to the Boeing purchasing agent identified in the contract. 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 substantiation documentation. 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

**K. PROHIBITION ON PERSONS 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 Seller 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.

L. TECHNICAL DATA AND COMPUTER SOFTWARE: COMMERCIAL ITEMS

[Throughout this Paragraph, the term "Government" or "Contracting Officer" shall mean Buyer. "Contractor" shall mean Seller.]

(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.

#### M. VALIDATION OF RESTRICTIVE MARKINGS ON TECHNICAL DATA AND COMPUTER SOFTWARE

[Throughout this Paragraph, the term "Government" or "Contracting Officer" shall mean Buyer. "Contractor" shall mean Seller.]

(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.

## N. LIMITATIONS ON THE USE OR DISCLOSURE OF GOVERNMENT-FURNISHED INFORMATION

### MARKED WITH RESTRICTIVE LEGENDS

[Throughout this Paragraph, the term "Government" or "Contracting Officer" shall mean Buyer. "Contractor" shall mean Seller.]

(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.

#### O. RIGHTS IN BID OR PROPOSAL INFORMATION

[Throughout this Paragraph, the term "Government" or "Contracting Officer" shall mean Buyer. "Contractor" shall mean Seller.]

(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.

#### P. ORGANIZATIONAL CONFLICT OF INTEREST

[Throughout this Paragraph, the term "Government" or "Contracting Officer" shall mean Buyer. "Contractor" or "Offeror" shall mean Seller.]

(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.

#### Q. ASSOCIATE CONTRACTOR RELATIONSHIP

Work under this order may involve access to proprietary or confidential data from an Associate Contractor of the Buyer. To the extent that such data is received by Seller from any Associate Contractor for the performance of this order, Seller hereby agrees that any information received shall remain the property of the Associate Contractor and shall be used solely for the purpose for which it was provided. Only that information which is received in writing from another contractor and which is clearly identified as proprietary or confidential shall be protected in accordance with this provision. The obligation to retain such information in confidence will be satisfied if Seller utilizes the same controls as it employs to avoid disclosure, publication or dissemination of its own proprietary information. Seller agrees to hold such information in confidence as provided herein so long as such information is of a proprietary, confidential or limited rights nature. Seller agrees to cooperate with the Associate Contractors on Buyer's program, which involves at a minimum: maintenance of a close liaison and working relationship; maintenance of a free and open information network with all Buyer-identified Associate Contractors; receipt and transmittal of proprietary information from and to Associate Contractors.

#### R. ENABLING CLAUSE FOR GENERAL SYSTEMS ENGINEERING & TECHNICAL REVIEW

In the performance of this order, Seller agrees to cooperate with Buyer-designated subcontractors by responding to invitations from authorized personnel to meetings, by providing access to technical information and R&D planning data, by delivering data as specified in the order, and by discussing matters related to this order. Buyer personnel engaged in general system engineering efforts pertaining to work under this order are authorized

access to any technical and cost information concerning work under this order. Technical guidance under this order will be given solely by Buyer's contracting officer or designated representative. Seller agrees to include the substance of this clause in all of its subcontracts issued in support of this order. This clause does not relieve Seller of its responsibility to manage its subcontracts effectively and efficiently; nor is it intended to establish privity of contract between Seller on the one hand, and buyer's support contractors and customers on the other hand.

#### S. ENABLING CLAUSE FOR MISSION INTEGRATION & DEVELOPMENT CONTRACTOR

In the performance of this order, Seller agrees to cooperate with the Mission Integration and Development Contractor identified by Buyer. Cooperation is defined as: responding to requests from authorized personnel; providing access to technical, schedule, performance and risk data; providing access to Seller facilities used in support of this order; and allowing observation of necessary technical processes by appropriate Mission Integration and Development Contractor personnel. Mission Integration and Development Contractor personnel are not authorized to issue technical direction or changes in scope to Seller. Seller agrees to include the substance of this clause in its subcontracts issued in support of this order. This clause does not relieve Seller of its responsibility to manage its subcontracts effectively and efficiently, nor is it intended to establish privity of contract between Mission Integration and Development Contractor on the one hand, and Seller and its subcontractors on the other hand.

#### T. 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