

CUSTOMER CONTRACT REQUIREMENTS

CUSTOMER CONTRACT 80891

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If Form GP1 is applicable to this procurement, this Attachment constitutes the Government clauses contemplated by Article 29. If Form GP2 is applicable to this procurement, this Attachment constitutes the Government clauses contemplated by Article 28. If Form GP3 is applicable to this procurement, this Attachment constitutes the Government clauses contemplated by Article 41. If Form GP4 is applicable to this procurement, this Attachment constitutes the Government clauses contemplated by Article 31. If this contract is for the procurement of commercial items, 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 (JUL 1995). 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.

52.203-11 Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions (APR 1991). This clause applies only if this contract exceeds \$100,000.

52.203-12 Limitation on Payments to Influence Certain Federal Transactions (JUN 2003) - 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.

52.204-2 Security Requirements (AUG 1996). "Changes clause" means the changes clause of this contract. This clause applies only if access to classified material is required.

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

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 referenced clause.

52.215-10 Price Reduction for Defective Cost or Pricing Data (OCT 1997) - This clause applies only if this contract exceeds \$550,000 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." This clause also applies to adjustments in the price of this purchase contract required by the Cost Accounting Standards clause or, Disclosure and Consistency of Cost Accounting Practices clause if incorporated elsewhere in this purchase contract.

52.215-11 Price Reduction For Defective Cost or Pricing Data - Modifications (OCT 1997) - This clause applies only if this contract exceeds \$550,000 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 \$500,000 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."

52.215-13 Subcontractor Cost or Pricing Data - Modifications (OCT 1997) - This clause applies only if this contract exceeds \$500,000 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 (excluding subparagraph (b) (OCT 1997)

52.215-15 Pension Adjustments and Asset Reversions (DEC 1998). This Clause applies only if (i) this Purchase Contract requires certified cost or pricing data or (ii) if any pre-award or post-award cost determinations under this Purchase Contract are subject to FAR Subpart 31.2.

52.215-18 Reversion or Adjustment of Plans for Postretirement Benefits Other Than Pensions (PRB) (OCT 1997). This Clause applies only if (i) this Purchase Contract requires certified cost or pricing data or (ii) if any pre-award or post-award cost determinations under this Purchase Contract are subject to FAR Subpart 31.2.

52.215-19 Notification of Ownership Changes (OCT 1997). This Clause applies only if (i) this Purchase Contract required pre-award or requires post-award certified cost or pricing data, or (ii) any pre-award or post-award cost determinations under this Purchase Contract are subject to FAR subpart 31.2.

52.215-20 Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data) (OCT 1997). The term "Contracting Officer" shall mean Buyer.

52.215-21 Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data – Modifications (OCT 1997). This clause applies only if this contract exceeds the threshold set forth in FAR 15.403-4. The term "Contracting Officer" shall mean Buyer.

52.219-8 Utilization of Small Business Concerns (OCT 2000)

52.219-9 Small Business Subcontracting Plan (JAN 2002) - In paragraph (c), "Contracting Officer" shall mean Buyer. This clause applies only if this contract exceeds \$500,000 and Seller is not a small business concern.

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

52.222-4 Contract Work Hours and Safety Standards Act (Overtime Compensation) (SEP 2000). This clause applies only if this contract exceeds \$100,000. Buyer may withhold or recover from Seller the amount of any sums the Contracting Officer or Buyer's customer withholds or recovers from Buyer because of liabilities of Seller or its subcontractors under this clause.

52.222-20 Walsh-Healy 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 [subparagraph (b) (1) through (11)] (APR 2002)

52.222-35 Equal Opportunity for Disabled Veterans and Veterans of the Vietnam Era (DEC 2001) -This clause applies only if this contract exceeds \$10,000.

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 Disabled Veterans and Veterans of the Vietnam Era (DEC 2001).This clause applies only if this contract exceeds \$10,000.

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

52.223-11 Ozone Depleting Substances (MAR 2001)

52.223-13 Certification of Toxic Chemical Release Reporting (OCT 2000) - Except for commercial items as defined in FAR Part 2, this clause applies to competitive procurements expected to exceed \$100,000 (including all options). If Seller is not subject to the Form R filing and reporting requirements, Seller shall inform Buyer which exemption or exemptions in subparagraph (b)(2) of this clause apply.

52.223-14 Toxic Chemical Release Reporting [excluding subparagraph (e)] (OCT 2000) - This clause applies only if this contract is not for commercial items as defined in FAR Part 2, was competitively awarded, and exceeds \$100,000 (including all options).

52.225-1 Buy American Act - Balance of Payments - Supplies (FEB 2000). 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 2003)

52.227-1 Authorization and Consent (JUL 1995)

52.227-2 Notice and Assistance Regarding Patent and Copyright Infringement (AUG 1996) - 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 \$25,000.

52.227-10 Filing of Patent Applications - Classified Subject Matter (APR 1984) - This clause applies only if this contract will involve access to classified information.

52.227-11 Patent Rights - Retention by the Contractor (Short Form) (JUN 1997) - This clause only applies if this Contract is for experimental, developmental, or research work and Seller is a small business firm or nonprofit organization.

52.227-12 Patent Rights - Retention by the Contractor (Long Form) (JUN 1997) - This clause only applies if this Contract is for experimental, developmental, or research work and Seller is other than a small business firm or nonprofit organization.

52.227-13 Patent Rights-Acquisition by the Government (JUN 1997) - This clause applies only if this Contract is for experimental, development or research work and Seller is other than a small business firm or nonprofit organization

52.227-14 Rights in Data-General (JUN 1987), Alternate I, II, III, IV, V - This clause applies only if data will be produced, furnished or acquired under this contract. Clause shall not apply to (i) special works [FAR 27.405 (a)]; existing data works [FAR 27.405 (b)]; (iii) work performed outside U.S., its possessions, or Puerto Rico; (iv) small business innovation research [FAR 27.409 (a)]; and (v) other exempted effort [FAR 27.409 (a)].

52.227-16 Additional Data Requirements (JUN 1987) - This clause applies only if this contract involves experimental, developmental, research, or demonstration work and where this contract includes Rights in Data-General clause at FAR 52.227-14.

52.229-10 State of New Mexico Gross Receipts and Compensation Tax (OCT 1988) - This clause applies only if (1) this contract is a cost-reimbursement contract; (2) this contract directs or authorizes Seller to acquire tangible personal property as a direct cost under a contract and title to such property passes directly to and vests in the United States upon delivery of the property by the subcontractor, and (3) this contract is for services to be performed in whole or in part in the State of New Mexico.

52.230-6 Administration of Cost Accounting Standards (NOV 1999) - Add "Buyer and the" before "Contracting Officer in paragraph (f). This provision applies if Clause HOO 1, HO02 or HO04 is included in Buyer's contract.

52.242-15 Stop Work Order (AUG 1989). Change "90 days" and "30 days" to "100 days" and "10 days" respectively. The terms "Contracting Officer" and "Government" shall mean Buyer.

52.244-5 Competition in Subcontracting (DEC 1996)

52.244-6 Subcontracts for Commercial Items and Commercial Components (APR 2003).

52.245-2 Government Property (Fixed Price Contracts) (JUN 2003) - This clause is not applicable if this contract incorporates Form GP4. "Government" shall mean Government throughout except the first time it appears in paragraph (f) when "Government" shall mean the Government or the Buyer.

52.245-18 Special Test Equipment (FEB 1993)

52.247-63 Preference for U.S.-Flag Air Carriers (JUN 2003)

52.247-64 Preference for Privately-Owned U.S. Flag Commercial Vessels (APR 2003)

2. The following contract clauses are incorporated by reference from the Department of Defense Federal Acquisition Regulation Supplement and apply to the extent indicated. In all of the following clauses, "Contractor" and "Offeror" means Seller except as otherwise noted.

252.203-7001 Prohibition on Persons Convicted of Fraud or Other Defense-Contract Related Felonies (MAR 1999). This clause applies only if this contract exceeds \$100,000.

252.204-7000 Disclosure of Information (DEC 1991) - Seller will submit requests for authorization to release through Buyer.

252.209-7000 Acquisition from Subcontractors Subject to On-site Inspection under the Intermediate-Range Nuclear Forces Treaty (NOV 1995). This clause applies only if this contract exceeds \$100,000 and does not apply to the purchase of commercial items or commercial components.

252.211-7000 Acquisition Streamlining (DEC 1991) - This clause applies only if this contract exceeds \$1 million and stems from a prime contract under a system acquisition program.

252.215-7000 Pricing Adjustments (DEC 1991).

252.223-7001 Hazard Warning Labels (DEC 1991) - This clause applies only if Seller delivers hazardous material under this contract.

252.223-7002 Safety Precautions for Ammunition and Explosives (MAY 1994) - This clause applies only if this contract involves ammunition or explosives. Government safety representatives may evaluate Seller's compliance.

252.223-7003 Change in Place of Performance - Ammunition and Explosives (DEC 1991) - This clause applies only if DFARS 252.223-7002 is applicable to this contract. The term "Contracting Officer" means Buyer.

252.225-7001 Buy American Act and Balance of Payment Program (APR 2003)

252.225-7012 Preference for Certain Domestic Commodities (FEB 2003)

252.225-7014 Preference for Domestic Specialty Metals (APR 2003) Alternate I (APR 2003) - Applies if this Purchase Contract requires delivery Of a product containing special metals under a program for (i) aircraft, (ii) missiles and space systems, (iii) ships, (iv) tank-automotive and (v) weapons or ammunition.

252.225-7015 Preference for Domestic Hand or Measuring Tool (APR 2003)

252.225-7016 Restriction on Acquisition of Ball and Roller Bearings (DEC 2000)

252.225-7022 Restriction on Acquisition of Polyacrylonitrile (PAN) Based Carbon Fiber (JUN 1997). "Contracting Officer" means Buyer. This clause applies only if this Purchase Contract is under a major systems acquisition program [FAR Part 34] not yet in production.

252.225-7025 Restriction on Acquisition of Forgings (JUN 1997)

252.225-7036 Buy American Act - North American Free Trade Agreement Implementation Act - Balance of Payments Program (APR 03)

252.225-7043 Antiterrorism/Force Protection for Defense Contractors Outside the United States (JUN 1998). This clause applies only if this contract requires Seller to perform or travel outside the United States and Seller is not (i) a foreign government, (ii) a representative of a foreign government, or (iii) a foreign corporation wholly owned by a foreign government.

252.226-7001 Utilization of Indian Organizations and Indian-Owned Economic Enterprises - DoD Contracts (SEP 2001) -This clause applies if this contract exceeds \$100,000 and does not apply to the acquisition of commercial items/services as defined in FAR 2.101.

252.227-7013 Rights in Technical Data - Noncommercial Items (NOV 1995) - This clause applies only if the delivery of data is required for noncommercial items under this contract.

252.227-7014 Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation (JUN 1995) - This clause applies only if the delivery of noncommercial computer software or noncommercial computer documentation may be originated, developed or delivered under this contract.

252.227-7016 Rights in Bid or Proposal Information (JUN 1995) - This clause applies only if DFARS 252.227-7013, 252.227-7014, or 252.227-7018 is applicable to this contract.

252.227-7017 Identification and Assertion of Use, Release, or Disclosure Restrictions (JUN 1995). Clause is applicable only if DFARS 252.227-7013, 252.227-7014, or 252.227-7018 is applicable to this contract.

252.227-7018 Rights in Noncommercial Technical Data and Computer Software - Small Business Innovation Research (SBIR) Program (JUN 1995). This clause applies only if the delivery of noncommercial technical data or computer software to the Government is required under Buyer's prime contract.

252.227-7019 Validation of Asserted Restrictions - Computer Software (JUN 1995) - This clause applies only if computer software may be originated, developed, or delivered under this contract and DFARS 252.227-7014 or 252.227-7018 is determined to be applicable to this contract.

252.227-7020 Rights in Special Works (Jun 1995) - Clause applies if DFARS 252.227-7013 is determined to be applicable to this contract or specific restriction or license agreement is involved as set forth elsewhere in this contract.

252.227-7021 Rights in Data-Existing Works (MAR 1979) - Clause is applicable only if existing works, without modification, are to be delivered under this contract.

252.227-7030 Technical Data - Withholding of Payment (OCT 1988) - In this clause, "Government" and "Contracting Officer" shall mean Buyer. This clause applies only if the delivery of technical data is required under this contract and DFARS 252.227-7013 or 252.227-7018 are applicable.

252.227-7034 Patents-Subcontracts (Apr 1984) - Clause is applicable only if Patent Rights-Retention by Contractor (Short Form) clause at FAR 52.227-11 is determined to apply to this order.

252.227-7036 Declaration of Technical Data Conformity (JAN 1997) - This clause applies only if the delivery of data is required by this contract and DFARS 252.227-7013 or 252.227-7018 are applicable to this contract.

252.227-7037 Validation of Restrictive Markings on Technical Data (SEP 1999) - This clause applies only if the delivery of data is required by this contract and DFARS 252.227-7013, 252.227-7014, or 252.227-7018 is determined to be applicable to this contract.

252.227-7039 Patents-Reporting of Subject Inventions (APR 1990) - Clause is applicable only if Patent Rights-Retention by Contractor (Short Form) clause at FAR 52.227-11 is determined to apply to this contract.

252.228-7005 Accident Reporting and Investigation Involving Aircraft, Missiles, and Space Launch Vehicles (DEC 1991)

252.231-7000 Supplemental Cost Principles (DEC 1991)

252.235-7003 Frequency Authorization (DEC 1991). Authorization shall be through or coordinated with Buyer.

252.245-7001 Reports of Government Property (MAY 1994) - Seller will provide information that the Buyer may require to complete Buyer's annual report.

252.246-7001 Warranty of Data (DEC 1991) - The warranty period in paragraph (b) is three years from Government acceptance of the final items of data under this contract. "Government" and "Contracting Officer" shall mean Buyer.

252.247-7023 Transportation of Supplies by Sea (MAY 2002)

252.247-7024 Notification of Transportation of Supplies by Sea (MAR 2000) - "Contracting Officer" and, in the first sentence of paragraph (a), "Contractor" mean Buyer. This clause applies only if the supplies being transported are noncommercial items or commercial items that (i) Seller is reselling or distributing to the Government without adding value (generally, Seller does not add value to items that it contracts for f.o.b. destination shipment); (ii) are shipped in direct support of U.S. military contingency operations, exercises, or forces deployed in humanitarian or peacekeeping operations; or (iii) are commissary or exchange cargoes transported outside the Defense Transportation System in accordance with 10 U.S.C. 2643.

252.249-7002 Notification of Proposed Program Termination or Reduction This clause applies only if this Purchase Contract stems from a prime contract for a major defense program per clause paragraph (a). Seller will, comply with pertinent notices and flow-down requirements.

3. If goods or services being procured under this contract are for 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 (OCT 2000). Include in all subcontracts that offer further subcontracting opportunities. If a subcontract (except subcontracts to small business concerns) exceeds \$500,000 (\$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 [subparagraph (b)(1) through (11)] (APR 2002)

52.222-35 Affirmative Action for Special Disabled and Vietnam Era Veterans (Dec 2001). This clause applies only if this contract exceeds \$25,000.

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

52.247-64 Preference for Privately Owned U.S.-Flag Commercial Vessels (APR 2003). This clause only applies if this contract is (i) a contract or agreement for ocean transportation services; or a construction contract; or (ii) the supplies being transported are (a) Items the Contractor is reselling or distributing to the Government without adding value (generally, the Contractor 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.

252.225- 7014, Preference for Domestic Specialty Metals (MAR 1998), Alternate I (MAR 1998)

252.247- 7023 Transportation of Supplies by Sea (MAR 2000). This clause applies only if this contract exceeds \$100,000 and are for a type of supplies described in paragraph (b)(2) of this clause. In paragraph (c), "45 days is changed to "60 days". In paragraph (g) "Government" means Buyer.

252.247- 7024 Notification of Transportation of Supplies by Sea (MAR 2000). "Contracting Officer" and, in the first sentence of paragraph (a), "Contractor" mean Buyer. This clause applies only if the supplies being transported are noncommercial items or commercial items that (i) Seller is reselling or distributing to the Government without adding value (generally, Seller does not add value to items that it contracts for f.o.b. destination shipment); (ii) are shipped in direct support of U.S. military contingency operations, exercises, or forces deployed in humanitarian or peacekeeping operations; or (iii) are commissary or exchange cargoes transported outside the Defense Transportation System in accordance with 10 U.S.C. 2643.

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 H003). The version of FAR 52.230-4, Consistency in Cost Accounting Practices, incorporated by clause H003 is the version dated August 1992.

(4) (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 provision applies to this contract:

BUYER ITINERANT OR RESIDENT REPRESENTATIVES AND GOVERNMENT VISITS

A. Buyer and its customer shall have the right to assign representatives on an itinerant or resident basis at the Seller's facilities, or those of lower-tier subcontractors or vendors, for the purpose of maintaining surveillance activities, including the right to witness any or all tests performed as part of the requirements of this Subcontract. Seller shall provide Buyer's representatives with reasonable facilities and equipment, and reasonable access to all areas essential to the proper conduct of the aforementioned activity, throughout all phases of any engineering, manufacturing, testing, packaging, and shipping. In addition, Seller shall make available to representatives pertinent planning, status, and forecast information, and such other technical and management reporting information as may be necessary for representatives to carry out their responsibilities.

B. Seller agrees, upon request of Buyer, to allow Buyer's customer and the U.S. Government contracting officer under the prime contract or his/her authorized representatives or supporting contractors to visit Seller's facilities to review progress and witness testing pertaining to the requirements of this contract. Seller shall furnish Buyer's customer and the contracting officer and his/her representatives all reasonable facilities and assistance for the safe and convenient performance of the actions described.

C. Seller shall insert, and require its subcontractors and vendors to insert, the substance of this article, including this paragraph, in each lower-tier subcontract hereunder.

Seller's Obligation With Regard To Prohibited Substances in Products to Be Delivered Hereunder.

Seller shall take all steps necessary to ensure that no products delivered hereunder will contain any of the following prohibited substances: Cadmium, Zinc or pure Tin, unfused or fused, as a finish coat or internal to the device (the "Prohibited Substances"). Seller agrees that this requirement goes to the essence of this contract and any breach of this covenant or the Prohibited Substances Certification is grounds for termination for default. To the extent that any products delivered by Seller hereunder contain any of the Prohibited Substances, notwithstanding any other provision herein (or any attachment hereto) to the contrary, Seller agrees to indemnify and hold harmless Buyer, Buyer's customer and their respective affiliates, employees, officers, directors and agents from any internal and external cost, claim, damage, loss or other expense or liability whatsoever (including without limitation all in-house and outside attorneys' costs, fees and expenses) (collectively, "Costs") resulting from Seller's delivery of products hereunder containing any of the Prohibited Substances. Seller acknowledges that such Costs may include, without limitation, (i) any penalties, loss of fee or additional costs that Buyer suffer as a result of (a) the inclusion of Prohibited Substances in Seller's products or (b) the delay caused by Buyer remediating such Prohibited Substances, (ii) Buyer's internal costs incurred in testing components to determine if Prohibited Substances were included in Seller's products, in disassembling any component that includes Seller's product containing Prohibited Substances and in reassembling and retesting the remediated component and (iii) any excess re-procurement costs to replace Seller's product that includes any Prohibited Substance. To the extent that any of Seller's products delivered hereunder contains a Prohibited Substance, Buyer may deem all of Seller's products to be suspect and all costs incurred in testing, disassembling, reassembling and retesting such products, even if they are ultimately determined not to contain Prohibited Substances, shall be deemed Costs and subject to reimbursement herein. Seller agrees that Seller shall be fully responsible for all such Costs even if Seller is unaware of the existence of any of the Prohibited Substances in its products. To the extent that Buyer incurs any costs or expenses (including without limitation all in-house and outside attorneys' costs, fees and expenses) in obtaining reimbursement of any of the Costs, such costs and expenses shall be considered Costs and shall similarly be reimbursed by Seller.

Seller agrees that, notwithstanding any provision herein (or in any attachment hereto) to the contrary, the Costs for which Seller is responsible shall not be limited by any limitation of liability or cap on damages. Further, Seller agrees that any waiver of consequential, indirect, special, punitive, incidental or similar damages contained elsewhere in this contract or any attachment hereto shall not apply to Costs incurred pursuant to this provision.

ORGANIZATIONAL CONFLICT OF INTEREST

a. Purpose: The primary purpose of this clause is to aid in ensuring that:

(1) Seller's objectivity and judgment are not biased because of its present, or currently planned interests (financial, contractual, organizational, or otherwise) which relate to work under this Purchase Contract,

(2) Seller does not obtain an unfair competitive advantage by virtue of its access to non-public information regarding the Government's program plans and actual or anticipated resources; and

(3) Seller does not obtain any unfair competitive advantage by virtue of its access to proprietary information belonging to others.

b. Scope: The restrictions described herein shall apply to performance or participation by Seller and any of its, affiliates or their successors in interest (hereinafter collectively referred to as "Seller") in the activities covered by this clause as Seller, co-sponsor, joint venture, consultant, or in any similar capacity. The term "proprietary information" for purposes of this clause is any information considered so valuable by its owners that it is held secret by them and their licensees and marked proprietary by its owner(s). Information furnished voluntarily by the owner without limitations on its use, or which is available without restrictions from other sources, is not considered proprietary.

c. Access To and Use of Government Information: If Seller, in the performance of this Purchase Contract, obtains access to Government provided information, which is so marked, such as plans, policies, reports, studies, financial plans, or data which has not been released or otherwise made available to the public, Seller agrees that without prior written approval of Buyer, it shall not: (a) use such information for any private purpose other than in furtherance of this Purchase Contract, unless the information has been provided to another potential Seller or otherwise made available to the public, (b) compete for work based on such information for a period of one year after the completion of this Purchase Contract, or until such information is provided to another potential Government Contractor or otherwise made available to the public, whichever occurs first, (c) submit an unsolicited proposal to the Government which is based on such information until one (1) year after such information is provided to another potential Government Subcontractor or otherwise made available to the public, or (d) release such information unless such information has previously been provided to another potential Government Contractor or otherwise made available to the public by the Government.

d. Access To and Protection of Proprietary Information: Seller agrees that, to the extent it receives or is given access to proprietary data, trade secrets, or other confidential or privileged technical, business, or financial information (hereinafter referred to as "proprietary information") under this Purchase Contract which is so marked, it shall treat such information in accordance with any restrictions imposed on such information. Seller further agrees to enter into a written agreement for the protection of the proprietary data of others and to exercise diligent effort to protect such proprietary data from unauthorized use or disclosure. In addition, Seller shall obtain from each employee who has access to proprietary data under this Purchase Contract, a written agreement which shall in substance provide that such employee shall not, during his/her employment by Seller or thereafter, disclose to others or use for their benefit, proprietary data received in connection with the work under this contract. Seller shall educate its employees regarding the philosophy of Part 9.505-4 of the Federal Acquisition Regulation so that they will not use or disclose proprietary information or data generated or acquired in the performance of this Purchase Contract except as provided herein.

e. Subcontracts: Seller shall include this or substantially the same clause, including this paragraph, in consulting agreements and subcontracts of all tiers. The terms "Contract", "Contractor", and "Government", will be appropriately modified to preserve the Government's rights.

f. Representations and Disclosures:

(1) Seller represents that it has disclosed to Buyer, prior to award, all facts relevant to the existence or potential existence of organizational conflict of interest as that term is used in FAR Subpart 9.5.

(2) Seller represents that if it discovers an organizational conflict of interest or potential conflict of interest after award, a prompt and full disclosure shall be made in writing to Buyer. This disclosure shall include a description of the action Seller has taken or proposes to take in order to avoid or mitigate such conflicts.

g. Remedies and Waiver:

(1) For a material breach of any of the above restrictions or for non-disclosure or misrepresentation of any relevant facts required to be disclosed concerning this Purchase Contract, which Seller does not cure within 30 days of prior written notice, Buyer may terminate this contract for default and pursue such other remedies as may be permitted by law and regulation or this subcontract. If, however, in compliance with this clause, Seller discovers and promptly reports an organizational conflict of interest (or the potential thereof) subsequent to contract award, Buyer may terminate this Purchase Contract for convenience if such termination is deemed to be in the best interest of the Government, Buyer or Buyer's customer.

(2) The parties recognize that this clause has potential effects which will survive the performance of this Purchase Contract and that it is impossible to foresee each circumstance to which it might be applied in the future. Accordingly, Seller may at any time seek a waiver from Buyer by submitting a full written description of the requested waiver and the reasons in support thereof.

h. Modifications: Prior to changes in this Purchase Contract that materially affect the work or the period of performance Seller shall submit either an organizational conflict of interest disclosure or an update of the previously submitted disclosure or representation.

ENABLING CLAUSE FOR GENERAL SYSTEMS ENGINEERING AND INTEGRATION

(a) The Government has entered into a contract for the services of a technical group which will support the program office by performing General Systems Engineering and Integration.(hereinafter Government Contractor)

(b) General Systems Engineering and Integration (GSE&I) deals with overall system definition; integration both within the system and with associated systems; analysis of system segment and subsystem design; design compromises and trade-offs; definition of interfaces; review of hardware and software including manufacturing and quality control; observation, review and evaluation of tests and test data; support of launch, flight test, and orbital operations; appraisal of Seller's technical performance, through meetings with contractors and subcontractors, exchange and analysis of information on progress and problems, review of plans for future work; developing of solutions to problems, technical alternatives for reduced program risk, providing comments and recommendations as an independent technical assessment for consideration for modifying the program or redirecting Seller's efforts to the extent necessary to assure timely and economical accomplishment of program objectives consistent with mission requirements.

(c) In the performance of this Purchase Contract, Seller agrees to cooperate with the Government Contractor by responding to invitations from authorized personnel to attend meetings; by providing access to technical information and research, development planning data such as, but not limited to, design and development analyses; test data and results; equipment and process specifications; test and test equipment specifications and procedures, parts and quality control procedures, records and data; manufacturing and assembly procedures; and schedule and milestone data; all in their original form or reproduced form and excluding financial data; by delivering data as specified in the Data Requirements; by discussing technical matters relating to this program; by providing access to contractor facilities utilized in the performance of this contract; and by allowing observation of technical activities by appropriate Contractor technical personnel.

(d) Seller further agrees to include in each subcontract a clause requiring compliance by its subcontractor and succeeding levels of subcontractors with the response and access provisions of paragraph (c) above, subject to coordination with Seller. 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 the Government, Buyer, Buyer's customer or The Government Contractor and such subcontractors.

(e) The Government Contractor is not authorized to direct Seller in any manner.

DRAWING AND SPECIFICATION REVIEW

If, during the term of this Subcontract, Buyer's representatives review drawings, specifications, or other data developed by Seller in connection with this Subcontract and make suggestions or comments, or approve such documents and data, such action shall not serve to relieve Seller of any responsibility for the reliability, quality, rate of output, cost, delivery, performance, or any other requirements of this Subcontract.

DATA --WITHHOLDING OF PAYMENT

If data or other deliverable information (hereinafter called "data") or any party thereof, is not delivered within the time specified in this Purchase Contract, or is deficient upon delivery (including having restrictive markings not specifically authorized by this Purchase Contract), Buyer may until such data is delivered or deficiencies are corrected, withhold payment to Seller often percent (10%) of the total Purchase Contract price.

EXPORT RELATED REQUIREMENTS

Seller represents and warrants that it is either 1) a U.S. person as that term is defined in the Export Control Laws and Regulations, or 2) that it has disclosed to Buyer in writing the country in which it is incorporated or otherwise organized to do business, or if a natural person, all citizenships and US immigration status. Seller shall indemnify and save Buyer harmless from and against all damages, liabilities, penalties, fines, costs, and expenses, including attorneys' fees, arising out of claims, suits, allegations or charges or Seller's failure to comply with the Export clause contained elsewhere in this Purchase Contract or any breach of the warranty in this clause. Any failure to comply with Export Control Laws and Regulations, the Export clause contained elsewhere in this Purchase Contract, or any breach of the above warranty shall be a material breach of this Purchase Contract.