

**CUSTOMER CONTRACT REQUIREMENTS  
CUBESAT  
CUSTOMER CONTRACT FA8814-11-C-0002**

**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 (OCT 2010).** 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 \$150,000.

**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 (OCT 2010).** This clause applies only if this contract exceeds \$150,000. 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 (APR 2010).** This clause applies only if this contract is in excess of \$5,000,000 and has a period of performance of more than 120 days.

**52.203-14 Display of Hotline Poster(s) (DEC 2007).** This clause applies only if this contract is in excess of \$5,000,000 and is not for a commercial item or performed entirely outside the United States. For the purposes of this clause, the United States is defined as the

50 states, the District of Columbia, and outlying areas.

**52.204-10 Reporting Executive Compensation And First-Tier Subcontract Awards** (JUL 2010). If this contract is in excess of \$25,000, and in the previous tax year, Seller had gross income of \$300,000 or more, Seller shall promptly upon receipt of the contract, provide Buyer's Authorized Procurement Representative the information described in paragraph (c) (1) subparagraphs (i), (vii), and (viii), and the information described in paragraph (c) (3). Buyer advises Seller that the information will be made available to the public as required by paragraph (b).

**52.209-6 Protecting the Government's Interests When Subcontracting With Contractors Debarred, Suspended or Proposed for Debarment** (DEC 2010). This clause applies to contracts that exceed \$30,000 and is not a contract or subcontract for commercially available off-the-shelf items. "Contracting Officer" means "Buyer." Seller shall disclose to Buyer, in writing, whether as of the time of Buyer's offered contract herein, Seller or its principals, is or is not debarred, suspended or proposed for debarment by the Federal Government.

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

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

**52.215-2 Audit and Records - Negotiation** (OCT 2010). 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 Certified Cost or Pricing Data** (OCT 2010). 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."

**52.215-12 Subcontractor Certified Cost or Pricing Data** (OCT 2010). 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)."

**52.215-14 Integrity of Unit Prices** (OCT 2010). This clause applies except for contracts at or below \$150,000; construction or architect-engineer services under FAR Part 36; utility services under FAR Part 41; services where supplies are not required; commercial items; and petroleum products.

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

**52.215-15 Pension Adjustments and Asset Reversions** (OCT 2010). This Clause applies to this contract if it meets the requirements of FAR 15.408(g).

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

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

**52.215-21 Requirement for Certified Cost or Pricing Data or Information Other Than Certified Cost and Pricing Data - Modifications** (OCT 2010). This clause applies only if this contract exceeds the threshold set forth in FAR 15.403-4. The term "Contracting Officer" shall mean Buyer.

**52.215-23 Limitations on Pass-Through Charges.** (OCT 2009).

This clause applies to all cost-reimbursement subcontracts that 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 contract is with DoD, then this clause applies to all cost-reimbursement subcontracts and fixed-price subcontracts, except those identified in 15.408(n)(2)(i)(B)(2), that exceed the threshold for obtaining cost or pricing data in accordance with FAR 15.403-4. In paragraph (c), "Contracting Officer" shall mean Buyer.

**52.219-8 Utilization of Small Business Concerns** (JAN 2011).

**52.219-9 Small-Business Subcontracting Plan** (JAN 2011).

This clause applies only if this contract exceeds \$650,000 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. In accordance with paragraph (d)(10)(iv), Seller agrees that it will submit the ISR and/or SSR using eSRS, and, in accordance with paragraph (d)(10)(vi), Seller agrees to provide the prime contract number, its own DUNS number, and the email address of the Government or Contractor official responsible for acknowledging or rejecting the reports, to its subcontractors with subcontracting plans.

As required by subparagraph (d)(10)(v), the following information is provided: (1) the prime contract number is FA8814-11-C-00, (2) Buyer's DUNS number is TBD, and (3) the email address of the Government or Buyer official responsible for acknowledging or rejecting the reports is TBD.

**52.219-9 Small Business Subcontracting Plan (JUL 2010) Alternate II** (OCT 2001). This clause applies only if this contract exceeds \$550,000 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. In accordance with paragraph (d)(10)(iv), Seller agrees that it will submit the ISR and/or SSR using eSRS, and, in accordance with paragraph (d)(10)(vi), Seller agrees to provide the prime contract number, its own DUNS number, and the email address of the Government or Contractor official responsible for acknowledging or rejecting the reports, to its subcontractors with subcontracting plans. When responding to a solicitation, Seller/Bidder shall comply with the requirements of this clause.

**52.222-20 Walsh-Healey Public Contracts Act** (OCT 2010). This clause applies only if this contract exceeds \$15,000.

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

**52.222-26 Equal Opportunity** (MAR 2007).

**52.222-35 Equal Opportunity for Veterans.** (SEP 2010). This clause applies only if this contract is \$100,000 or more.

**52.222-36 Affirmative Action For Workers With Disabilities** (OCT 2010). This clause applies only if this contract exceeds \$15,000.

**52.222-37 Employment Reports on Veterans** (SEP 2010). This clause applies if this contract is \$100,000 or more.

**52.222-50 Combating Trafficking in Persons** (FEB 2009). In paragraph (d), the term "Contracting Officer" means Buyer, and in

paragraph (e), the term "the Government" means Buyer.

**52.222-54 Employment Eligibility Verification** (JAN 2009).

This clause applies to all subcontracts that (1) are for (i) commercial or noncommercial services (except for commercial services that are part of the purchase of a COTS item, or an item that would be a COTS item, but for minor modifications performed by the COTS provider and are normally provided for that COTS item), or (ii) construction; (2) has a value of more than \$3,000; and (3) includes work performed in the United States.

**52.223-11 Ozone Depleting Substances** (MAY 2001).

**52.223-13 Certification of Toxic Chemical Release Reporting** (AUG 2003). 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** (AUG 2003). 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).

**52.223-18 Contractor Policy To Ban Text Messaging While Driving** (SEP 2010).

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

**52.225-1 Buy American Act-Balance of Payments Program- Supplies** (FEB 2000). Applicable clause date revised to (FEB 2009)

**52.225-13 Restriction on Certain Foreign Purchases** (JUN 2008).

**52.227-1 Authorization and Consent** (DEC 2007).

**52.227-1 Authorization and Consent Alternate I** (APR 1984).

**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.

**52.230-6 Administration of Cost Accounting Standards** (JUN 2010). Add "Buyer and the" before "CFAO" in paragraph (m). This provision applies if clause H001, H002, H004 or H007 is included in this contract.

**52.242-15 Stop-Work Order Basic (AUG 1989), Alternate I (APR 1984)** . Change "90 days" and "30 days" to "100 days" and "20 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** (DEC 2010). 52.244-6 Alternate I (JUN 2010)

**52.245-1 Government Property** (AUG 2010).

This clause applies only if Government property is acquired or furnished for contract performance. "Government" shall mean Government throughout except the first time it appears in paragraph (g)(1) when "Government" shall mean the Government or the Buyer. Paragraph (h)(1) is deleted and replaced by the

following: "Seller assumes the risk of, and shall be responsible for, any loss, damage, destruction, or theft of Government property upon its delivery to Seller as Government-furnished property. However, Seller is not responsible for reasonable wear and tear to Government Property or for Government property properly consumed in performing this contract." If the contract incorporates Boeing General Provision GP4, the Government-Owned Property article in GP4 is hereby deleted.

**52.247-67 Submission of Transportation documents for Audit** (FEB 2006).

FAR 52.222-40 Notification of Employee Rights Under the National Labor Relations Act (DEC 2010) is incorporated in the Commercial Items section of this CCR.

**2. DoD FAR Supplement Clauses** DoD Contracts. 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" mean Seller except as otherwise noted.

**252.203-7001 Prohibition on Persons Convicted of Fraud or Other Defense-Contract-Related Felonies** (DEC 2008).

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 and is not for the purchase of commercial items or commercial components. Except in paragraph (a), "this contract" and "the contract" mean the contract between Buyer and Seller. In subparagraph (d)(2), delete the words "or first-tier subcontractor." In paragraph (e), the remedies described in subparagraphs (2) and (3) are available to Buyer, not the Government. In paragraph (f), "through the Buyer" is inserted after "Contracting Officer." Paragraph (g) is deleted.

**252.204-7000 Disclosure of Information** (DEC 1991). Seller will submit requests for authorization to release through Buyer. Seller shall submit written requests to Buyer a minimum of 60 days prior to proposed date of release.

**252.204-7008 Requirements for Contracts Involving Export-Controlled Items.** (APR 2010).

**252.211-7003 Item Identification and Valuation** (AUG 2008). Seller shall comply with the unique item identification requirements of this clause for those subassemblies, components, and parts specified elsewhere in this contract. Such identification and marking shall be a high-capacity 2D machine readable code to comply with the version of MIL-STD-130, Identification Marking of U.S. Military Property, set forth elsewhere in this contract; or if not so stated, then the Seller shall comply with MIL-STD-130 N. The code may include, as space is available, linear bar code and human readable characters. Unless otherwise specified in Boeing product drawings or specifications, the seller may use either Construct #1 or Construct #2. The Seller shall not be required to furnish item valuations as set forth in this clause.

**252.215-7000 Pricing Adjustments** (DEC 1991). This clause applies only if this contract exceeds the threshold set forth in FAR 15.403-4.

**252.219-7003 Small Business Subcontracting Plan (DoD Contracts)** (OCT 2010). Except paragraph (g) which is hereby deleted.

**252.223-7006 Prohibition on Storage and Disposal of Toxic and Hazardous Materials** (APR 1993).

**252.225-7001 Buy American Act and Balance of Payments Program** (JAN 2009).

**252.225-7002 Qualifying Country Sources as Subcontractors** (APR 2003).

**252.225-7006 QUARTERLY REPORTING OF ACTUAL CONTRACT PERFORMANCE OUTSIDE THE UNITED STATES** (OCT 2010). In subparagraph (b), "within 10 days after" is replaced by "10 days prior to." In subparagraph (d), "Deputy Directo of

Defense Procurement and Acquisition Policy" means "Buyer." In (e)(2), "from the Contracting Officer" is deleted.

**252.225-7008 Restriction on Acquisition of Specialty Metals** (JUL 2009). This clause applies if the contract exceeds \$150,000.

**252.225-7009 Restriction on Acquisition of Certain Articles Containing Specialty Metals** (JAN 2011).

**252.225-7012 Preference for Certain Domestic Commodities** (JUN 2010).

**252.225-7016 Restriction on Acquisition of Ball and Roller Bearings** (DEC 2010). This clause does not apply to the purchase of commercial items other than ball or roller bearings or to items which contain no ball or roller bearings.

**252.226-7001 Utilization of Indian Organizations and Indian-Owned Economic Enterprises--DoD Contracts and Native Hawaiian Small Business Concerns** (SEP 2004). This clause applies only if this contract exceeds \$500,000.

**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** (JAN 2011).

**252.227-7026 Deferred Delivery of Technical Data or Computer Software** (APR 1988). This clause applies only if the delivery of data is required or if computer software may be originated, developed or delivered under this contract.

**252.227-7027 Deferred Ordering of Technical Data or Computer Software** (APR 1988). This clause applies only if technical data or computer software may be generated as part of the performance of this contract.

**252.227-7030 Technical Data -- Withholding of Payment** (MAR 2000). 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.

**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.

**252.231-7000 Supplemental Cost Principles** (DEC 1991).

**252.235-7003 Frequency Authorization** (DEC 1991). This clause applies only if this contract requires the development, production, construction, testing, or operation of a device for which a radio frequency authorization is required.

**252.246-7003 Notification of Potential Safety Issues** (JAN 2007).

This clause applies only if this subcontract is for (i) parts identified as critical safety items; (ii) systems and subsystems, assemblies and subassemblies integral to a system; or (iii) repair, maintenance, logistics support, or overhaul services for systems and subsystems, assemblies, subassemblies and parts integral to a system. The notification required by paragraph (c) of this clause will be provided to Buyer and to the administrative contracting officer (ACO) and the procuring contracting officer (PCO) if Seller is aware of the ACO and PCO for the prime contract.

**252.247-7023 Transportation of Supplies by Sea (MAY 2002).** This clause applies only if the supplies are of a type described in paragraph (b)(2) of this clause. In paragraph (d), "45 days" is changed to "60 days." In paragraph (g) "Government" means Buyer. 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. Paragraphs (f) and (g) are excluded.

**252.244-7000 SUBCONTRACTS FOR COMMERCIAL ITEMS AND COMMERCIAL COMPONENTS (NOV 2010).**

SUBCONTRACTS FOR COMMERCIAL ITEMS AND COMMERCIAL COMPONENTS

(DOD CONTRACTS)

**3. 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:

**252.225-7001 Buy American Act and Balance of Payments Program (JAN 2009).**

**252.225-7009 Restriction on Acquisition of Certain Articles Containing Specialty Metals (JAN 2011).**

**252.225-7012 Preference for Certain Domestic Commodities (JUN 2010).**

**252.246-7003 Notification of Potential Safety Issues (JAN 2007).**

This clause applies only if this subcontract is for (i) parts identified as critical safety items; (ii) systems and subsystems, assemblies and subassemblies integral to a system; or (iii) repair, maintenance, logistics support, or overhaul services for systems and subsystems, assemblies, subassemblies and parts integral to a system. The notification required by paragraph (c) of this clause will be provided to Buyer and to the administrative contracting officer (ACO) and the procuring contracting officer (PCO) if Seller is aware of the ACO and PCO for the prime contract.

**252.247-7023 Transportation of Supplies by Sea (MAY 2002).** This clause applies only if the supplies are of a type described in paragraph (b)(2) of this clause. In paragraph (d), "45 days" is changed to "60 days." In paragraph (g) "Government" means Buyer. 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. Paragraphs (f) and (g) are excluded.

**252.244-7000 SUBCONTRACTS FOR COMMERCIAL ITEMS AND COMMERCIAL COMPONENTS (NOV 2010).** The first sentence of this clause is deleted and replaced by the following in lieu thereof:

In addition to the clauses listed in paragraph (c) of the Subcontracts for Commercial Items clause of this contract (Federal Acquisition Regulation 52.244-6), the terms of the following clauses apply to Contractor and Contractor shall include the terms of the following clauses, if applicable, in subcontracts for commercial items or commercial components, awarded at any tier under this contract:

**4. Cost Accounting Standards**

**52.230-2 Cost Accounting Standards (OCT 2010).** (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 October 2010.

(2) (Applicable if this contract incorporates clause H002) The version of FAR 52.230-3, Disclosure and Consistency of Cost

Accounting Practices, incorporated by H002 is the version dated October 2008.

(3) (Applicable if this contract incorporates clause H004) The version of FAR 52.230-5, Cost Accounting Standards - Educational Institution, is the version dated October 2010.

(4) (Applicable if this contract incorporates clause H007) The version of FAR 52.230-4, Disclosure and Consistency of Cost Accounting Practices-Foreign Concerns, is the version dated June 2010.

**5. Prime Contract Special Provisions** The following prime contract special provisions apply to this purchase order

**001 ENABLING CLAUSE**. (Applicable to all subcontracts at any tier over \$523,280)

In the performance of this contract, the Seller agrees to cooperate with Aerospace Corporation by; responding to invitations from authorized personnel to attend meetings; providing access to technical information and research, development and planning data, test data and results, schedule and milestone data, financial data including the Seller cost/schedule and accounting system, all in original form or reproduced; discussing technical matters related to the program; providing access to Seller facilities utilized in the performance of this contract; and allowing observation of technical activities by appropriate support technical personnel, all subject to coordination with Buyer.

**352.209-9004 ORGANIZATIONAL CONFLICT OF INTEREST: NONDISCLOSURE OF INFORMATION AND ISOLATION OF EMPLOYEES (AUG 2003)**

(a) Definition of "Protected Information": For purposes of this clause, "protected information" shall include information obtained in the course of contract performance as follows: (1) source selection information (as defined in FAR 3-104); (2) written or oral information or summaries thereof derived from Government Information Systems or Government personnel relating to internal Government operations and programs including, but not limited to, financial information, program budget information, and procurement information; and (3) third-party proprietary or business confidential information regardless of the method obtained. Protected information shall also include without limitation all copies of protected information and all data, test results, simulations, and emulations or other information derived there from. Protected information shall not include information that: (1) was independently developed by the Contractor as evidenced by a writing in possession of the Contractor prior to disclosure by the Government; (2) is lawfully received by the Contractor from another source; (3) is or becomes publicly available through no fault of the Contractor; or (4) the Government agrees in writing is free of such restrictions.

(b) Use and Disclosure Restrictions: Contractor shall use protected information obtained in the course of contract performance only for purposes necessary for proper performance of the contract. Contractor may disclose protected information to employees who fall under a Conflict of Interest (COI) mitigation plan and have signed nondisclosure agreements described below and who have a need to know the information for the purpose of performing this contract. Contractor may also disclose protected information to Government officials identified by the Contracting Officer (CO) or the Contracting Officer's Representative (COR). All information obtained by contractor employees during meetings and on-site assignment shall be presumed to be protected information. Contractor agrees that it will not embody protected information in any of its products or services without the written consent of the Government. Nothing in this clause shall prevent the Government from making use of or disseminating protected information or from entering into any agreement with any other entity in connection with the protected information, without any obligation to the Contractor.

(c) Employee Nondisclosure Agreements: Contractor shall require all employees assigned to this contract who are likely to require access to protected information to review this clause and sign the nondisclosure agreement included below in paragraph n. The Contractor will use its best efforts to ensure that its employees abide by the terms of the nondisclosure agreement and will do nothing to interfere with the employees' obligations. Contractor agrees to report actual and suspected violations of the nondisclosure agreement to the Contracting Officer (CO) and Contracting Officer's Representative (COR). The Contractor shall provide a copy of the signed agreement to the Contracting Officer.

(d) Identification of Corporate Affiliation: Contractor employees shall clearly identify themselves and



corporate affiliation prior to engaging in any communications through which protected information may be obtained from Government personnel or third parties (e.g., meetings, telephones, and other situations where contractor status is not obvious).

(e) Firewall: Contractor agrees to establish an information firewall around such employees. The information firewall provisions are in addition to the requirements for the protection of classified government information. Protected information may not be removed from government facilities unless authorized by the CO or COR. Such information authorized to be stored at a contractor facility shall be segregated from other information in such a way that it may be accessed only by contractor employees subject to the firewall provisions. The Contractor shall not solicit protected information from employees subject to the firewall. Contractor employees shall be instructed to report any such solicitations from company representatives or anyone else to the contracting officer or the CO or COR. Contractor also agrees that to the extent that the protected information relates to a pending procurement that it will not permit employees subject to the nondisclosure agreement to participate in any manner in any competitive procurement relating to that information, including, but not limited to, the preparation or submission of a competitive proposal on behalf of any prospective contractor or subcontractor.

(f) Protected Information from Third Parties: The Government agrees that protected information (e.g., proprietary and business confidential information) belonging to third parties will be in written form and will be clearly identified and properly marked. If protected information is provided to contractor employees that is not clearly identified and properly marked, but contractor employees have reason to believe it is protected information, contractor employees shall notify the CO or COR and shall treat the information as protected information until direction from the CO/COR regarding treatment of the information is received. If the Government determines that previously provided information was not properly identified and marked, the Government shall give written notice to contractor employees who shall thereafter treat the information as protected information. Pursuant to FAR 9.505-4(b), the Contractor shall protect all such information received from third parties from unauthorized use or disclosure and agrees to refrain from using the information for any purpose other than that for which it was furnished. Prior to obtaining such information, the Contractor shall obtain written agreement from the third parties authorizing use of the information as specified above. Copies of these agreements shall be furnished to the Contracting Officer.

(g) Length of Obligation: Obligations in regard to protected information shall continue \_\_\_\_\_(TBD by the CO).

(h) Waiver: Neither failure to require strict performance, nor waiver of a breach of any provision of this clause constitutes any waiver of the Government's right to subsequently require full adherence to this Agreement.

(i) No Grant of Rights: Protected information, unless otherwise specified in writing, shall remain the property of the Government (or third party with regard to proprietary and business confidential information), and shall be returned to the Government, or destroyed after Contractor's need for it has expired or upon request of the Government, and in any event, upon termination of this contract. No grant, ownership, license, or rights, including those to trademarks, inventions, copyrights, mask works, patents, or any other intellectual property, are either granted or implied under this contract (except as otherwise provided in this contract) or by the disclosure of protected information. The Government does not warrant the accuracy or completeness of protected information. The Contractor agrees to hold Government harmless from any claims by Contractor, its customers, or any third party for any loss or damage caused or alleged to be caused by reliance on, use, or knowledge of protected information. The Government may without notification make revisions to protected information.

(j) Violations of Obligation: Violations of the requirements of this clause by the Contractor's officers, employees, or agents may constitute grounds for default termination of this contract. In addition to contractual or other remedies available for violations of the obligations under this clause, the Government may exclude the Contractor from participation in Government acquisitions or impose strict Organizational Conflict of Interest terms if the CO determines that access to protected information by the Contractor gives it an unfair competitive advantage in particular acquisitions.

(k) Export Restrictions: The Contractor acknowledges that protected information which it receives hereunder may include technical data developed in the United States, and therefore shall treat such protected information

in accordance with export control laws and regulations of the United States and shall not, without appropriate authorization, export or re-export such protected information or any product derived there from.

(l) Severability: If any court or board of competent jurisdiction determines that any provision of this clause is invalid, the remainder of the Agreement will continue in full force and effect, and the offending provision shall be restated to most nearly give effect to its stated intent.

(m) Interpretation: This clause is to be read in conjunction with DFARS 252.227-7025 Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends and is not intended to reduce or alter the obligations and responsibilities set out in that clause.

(n) Employee Nondisclosure Agreement:

#### CONTRACTOR EMPLOYEE NONDISCLOSURE AGREEMENT

1 I, \_\_\_\_\_ hereinafter EMPLOYEE, understand that, in the course of my employment under Contract H98230-10-C-XXXX, Project \_\_\_\_\_, Task Order \_\_\_\_\_, through my employer, \_\_\_\_\_, hereinafter COMPANY, I may be given access to Protected Information of the National Security Agency (NSA) and other Government contractors. For purposes of this agreement, "protected information" shall include information obtained in the course of contract performance as follows: (1) source selection information (as defined in FAR 3-104); (2) written or oral information or summaries thereof derived from Government Information systems or Government personnel relating to internal Government operations and programs including, but not limited to, financial information, program budget information, and procurement information; and (3) third-party proprietary or business confidential information regardless of the method obtained. Protected information shall also include without limitation all copies of protected information and all data, test results, simulations, and emulations or other information derived there from. Protected information shall not include information that: (1) was independently developed by the Contractor as evidenced by a writing in possession of the Contractor prior to disclosure by the Government; (2) is lawfully received by the Contractor from another source; (3) is or becomes publicly available through no fault of the Contractor; or (4) the Government agrees in writing is free of such restrictions.

2 This agreement is necessary to prevent my employer from gaining an unfair competitive advantage through the acquisition and potential misuse of Protected Information, to allow me to perform under the subject contract free from conflict of interest which might bias my judgment, and to protect the interests of NSA and third parties.

3 I agree not to disclose or otherwise disseminate Protected Information to other than NSA personnel working on the Contract identified by the Contracting Officer (CO) or Contracting Officer's Representative (COR) as having a need for access to the Information or other contractor employees assigned to the project and identified by the CO or COR as having a need for access to the Information. I acknowledge awareness of the procurement sensitivity of certain protected information and certify that I will protect the confidentiality of all such material in my possession I understand that disclosure of Protected Information to anyone not properly entitled to access could result in a violation of the Procurement Integrity Act (41 U.S.C. 423) or a personal or organizational conflict of interest.

4 I agree to use Protected Information only in the performance of work requirements necessary to carry out my duties under the above referenced contract and task order. I will report to the CO or COR any actual or attempted violations of this agreement. I agree to return any and all Protected Information made available to me pursuant to performance of this contract, to the CO or COR upon the termination of my relationship with the contract or with COMPANY.

5 I understand and agree that access to Protected Information precludes me from participating, on my own behalf; on behalf of COMPANY or subsequent employers; or on behalf of others, in the preparation of cost or technical proposals or taking part in contract negotiations involving or related to future requirements or projects, if such participation involves utilization of Protected Information. The CO may recognize exceptions to this preclusion on a case by case basis.

6 I agree that I will clearly identify myself as a representative of COMPANY prior to engaging in any

communications through which protected information may be obtained from Government personnel or third parties (e.g., meetings, telephones, and other situations where contractor status is not obvious).

7 I verify that I have read and fully understand this Agreement, and the conditions of the 352.209-9004, ORGANIZATIONAL CONFLICT OF INTEREST: NONDISCLOSURE OF INFORMATION AND ISOLATION OF EMPLOYEES clause of the above referenced contract, and agree to abide by all requirements and restrictions contained in both documents. I understand that my strict compliance with the terms of these agreements is essential to be fulfillment of COMPANY'S contractual obligations and any violation of these agreements may result in breach of COMPANY's contract with the Government or preclusion of COMPANY's or subsequent employer's participation, or my personal participation in future Government projects.

\_\_\_\_\_  
EMPLOYEE  
\_\_\_\_\_  
DATE

FAR 52.222-40 Notification of Employee Rights Under the National Labor Relations Act (DEC 2010) is incorporated in the Commercial Items section of this CCR.