

**CUSTOMER CONTRACT REQUIREMENTS**  
**Proprietary Programs**  
**CUSTOMER CONTRACT Griffon**

**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.

**52.203-11 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.

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

**52.204-9 Personal Identity Verification of Contractor Personnel.** (JAN 2011). This clause applies only if performance under this contract requires Seller to have routine physical access to a Federally-controlled facility and/or routine access to a Federally-controlled information system.

**52.204-10 Reporting Executive Compensation And First-Tier Subcontract Awards** (AUG 2012). Delete all paragraphs and replace with the following: "If Seller meets the executive compensation reporting requirements of 52.204-10, Seller shall provide the required executive compensation information by maintaining an active registration in the U.S. government CCR database in accordance with 52.204-7. The required information of 52.204-10 will be made public."

**52.209-6 Protecting the Government's Interests When Subcontracting With Contractors Debarred, Suspended or Proposed for Debarment** (DEC 2010). Seller agrees it is not debarred, suspended, or proposed for debarment by the Federal Government. Seller shall disclose to Buyer, in writing, whether as of the time of award of this contract, Seller or its principals is or is not debarred, suspended, or proposed for debarment by the Federal Government. This clause does not apply to contracts where Seller is providing commercially available off-the shelf items.

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

**52.215-2 Audit and Records - Negotiation** (OCT 2010). This clause applies only if this contract exceeds \$150,000 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** (AUG 2011). 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.

**52.215-15 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. Insert the following in lieu of paragraph (a)(2): "Buyer's audit rights to determine price reasonableness shall also apply to verify any request for an exception under this clause. For items priced using catalog or market prices, or law or regulation, access does not extend to cost or profit information or other data relevant solely to the Contractor's determination of the prices to be offered in the catalog or marketplace."

**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.

**52.222-4 Contract Work Hours and Safety Standards Act-Overtime Compensation** (JUL 2005). Buyer may withhold or recover from Seller the amount of any sums the Contracting Officer withholds or recovers from Buyer because of liabilities of Seller or its subcontractors under this clause.

**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.

**52.222-40 Notification of Employee Rights Under the National Labor Relations Act.** (DEC 2010).

**52.222-41 Service Contract Act of 1965** (NOV 2007). This clause applies only if this contract is subject to the Act.

**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** (JUL 2012).

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.

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

**52.223-7 Notice of Radioactive Materials** (JAN 1997). This clause applies only if this contract involves (i) radioactive material requiring specific licensing under the regulations issued pursuant to the Atomic Energy Act of 1954, as amended, as set forth in Title 10 of the Code of Federal Regulations, in effect on the date of this contract, or (ii) other radioactive material not requiring specific licensing in which the specific activity is greater than 0.002 microcuries per gram or the activity per item equals or exceeds 0.01 microcuries. "Contracting Officer" shall mean Buyer. In the blank in paragraph (a), insert "60 days."

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

- 52.223-18 Encouraging Contractor Policies To Ban Text Messaging While Driving** (AUG 2011).
- 52.225-1 Buy American Act- Supplies** (FEB 2009). This clause applies if the Work contains other than domestic components. The term "Contracting Officer" shall mean Buyer the first time it is used in paragraph (c).
- 52.225-5 Trade Agreements** (NOV 2012). In paragraph (b), the phrase "in the provision entitled 'Trade Agreement Certificate' " is deleted.
- 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.
- 52.227-10 Filing of Patent Applications - Classified Subject Matter** (DEC 2007).
- 52.227-13 Patent Rights-Acquisition by the Government** (DEC 2007).
- 52.227-19 Commercial Computer Software License** (DEC 2007).
- 52.228-5 Insurance - Work on a Government Installation** (JAN 1997).  
This clause applies to contracts that requires work on a Government installation. In paragraph (b) and (b)2, "Contracting Officer" shall mean "Buyer". In paragraph (c), "Contracting Officer" shall mean "Contracting Officer or Buyer". Seller shall provide and maintain insurance as set forth in this contract, which is TBP.
- 52.230-6 Administration of Cost Accounting Standards** (JUN 2010). Add "Buyer and the" before "CFAO" in paragraph (m). This clause applies if clause H001, H002, H004 or H007 is included in this contract.
- 52.237-2 Protection of Government Buildings, Equipment, and Vegetation** (APR 1984). This clause applies only if work will be performed on a Government installation. "Contracting Officer" shall mean Buyer.
- 52.244-6 Subcontracts for Commercial Items** (DEC 2010). Clauses in paragraph (c) (1) are applicable to Seller for commercial items ordered by Buyer from Seller under this contract.
- 52.245-1 Property Records** (APR 2012). This clause applies only if Government property is acquired or furnished for contract performance. The Government-Owned Property article in GP4 is hereby deleted.
- 52.247-63 Preference for U.S.-Flag Air Carriers** (JUN 2003). This clause only applies if this contract involves international air transportation.
- 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.

**52.247-67 Submission of Transportation documents for Audit** (FEB 2006). This clause applies if the contract is a cost-reimbursement contract. Paragraph (a) (2) is deleted. Documents shall be submitted to Buyer as specified elsewhere in this contract.

**52.248-1 Value Engineering** (FEB 2000). This clause applies only if this contract is for \$100,000 or more. The term "Contractor" means Seller. The term "Contracting Officer" means Buyer. The term "contracting office" means US Government contracting office. The term "Government" means Buyer except in subparagraph (c)(5). The term "Government" does not mean Buyer as it is used in the phrase "Government costs". Paragraph (d) shall read as follows: The Seller shall submit VECP's to the Buyer. Subparagraph (e)(1) shall read as follows: The Buyer will notify the Seller of the status of the VECP after receipt. The Buyer will process VECP's expeditiously; however, it will not be liable for any delay in acting upon a VECP.

Paragraph (m) shall read as follows: (m) Data. The Seller may restrict the Government's right to use any part of a VECP or the supporting data by marking the following legend on the affected parts:

These data, furnished under the Value Engineering clause of contract, shall not be disclosed outside the Buyer and Government or duplicated, used, or disclosed, in whole or in part, for any purpose other than to evaluate a value engineering change proposal submitted under the clause. This restriction does not limit the Buyer's and Government's right to use information contained in these data if it has been obtained or is otherwise available from the Seller or from another source without limitations.

If a VECP is accepted, the Seller hereby grants the Government unlimited rights in the VECP and supporting data, except that, with respect to data qualifying and submitted as limited rights or Government purpose rights technical data, the Government shall have the rights specified in the contract modification implementing the VECP and Seller shall appropriately mark the data. (The terms "unlimited rights" a "limited rights" and "Government purpose rights" are defined in Part 27 of the Federal Acquisition Regulation ("FAR") or Part 227 of the Defense FAR Supplement, as applicable.)

Seller's 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. Prime Contract Provisions.** The following prime contract provisions apply to this purchase order:

**Cl.203-002 Prohibition on Persons Convicted of Fraud or Other Defense-Contract-Related Felonies (MAY 2003):**

- (a) The provisions of 10 U.S.C. 2408 apply to this contract.
- (b) In addition to the criminal penalties contained in 10 U.S.C. 2408, the Government may consider other available remedies, such as:
  - (1) Suspension or debarment;
  - (2) Cancellation of the contract at no cost to the Government; or
  - (3) Termination of the contract for default.
- (c) The contractor may submit written requests to the Contracting Officer for waiver of 10 U.S.C. 2408 prohibitions. Requests shall clearly identify--
  - (1) The person involved;
  - (2) The nature of the conviction and resultant sentence or punishment imposed;
  - (3) The reasons for the requested waiver; and
  - (4) An explanation of why a waiver is in the interest of national security.

(d) The contractor agrees to include the substance of this clause, appropriately modified to reflect the identity and relationship of the parties, 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.

#### **Cl.204-008 Notice of Litigation (AUG 2010)**

(a) With respect to litigation to which the contractor is a party relating to this contract:

(1) The contractor shall, within five business days, notify the Contracting Officer of any litigation filed by a third party (including individuals, organizations, and federal, state, or local governmental entities) or subpoena involving or in any way relating to this contract and/or related subcontracts. Said notice shall include a copy of all documents filed with the court in connection with the litigation or subpoena to the extent such documents are not covered by a court-ordered seal or protective order.

(2) The Contracting Officer shall have the right to examine any pertinent documents filed with the court during the conduct of the litigation, and any documents and records provided to the third party in response to the subpoena.

(b) The contractor agrees to insert this clause in any subcontract under this contract.

#### **Cl.204-009 Release of Contract Information (JAN 2010)**

(a) The contractor shall not use or allow to be used any aspect of this contract for publicity, advertisement, or any other public relations purpose. Public announcement of the award or modification of this contract is expressly prohibited. This obligation will not expire upon completion or termination of this contract, but shall continue until rescinded by the U.S. Government.

(b) The contractor must obtain the written approval of the Contracting Officer before releasing any information related to this contract. This requirement extends to papers, articles, and presentations based on or referencing the work performed under this contract.

(c) The contractor may provide past performance information regarding this contract to the U. S. Government, the Office of the Director of National Intelligence, the Central Intelligence Agency, the National Geo-Spatial Intelligence Agency, and the National Security Agency to support source selections at those agencies without Contracting Officer approval. The contractor is responsible for the proper classification and handling of such information, and shall provide a copy of the information provided to the U. S. Government Contracting Officer. No past performance information or other information regarding any U. S. Government contract shall be provided to any other Government, commercial, or private organization or individual without the express written approval of the Contracting Officer.

(d) The contractor agrees to insert this clause in any subcontract under this contract.

#### **Cl.209-006 (U) Enabling Clause for Prime and Support Contractor Relationships (OCT 2011)**

(a) The Government currently has, or may enter into, contracts with one or more of the following companies, the primary purpose of which is to furnish independent and impartial advice or technical assistance directly to the Government in support of the Governments management and oversight of a program or effort. These companies (hereafter referred to as support contractors), are obligated by the terms of clause Cl.209-008, Support Contractor Corporate Non-Disclosure Agreement, incorporated into their respective contracts, and/or by separate non-disclosure, confidentiality, proprietary information, or

similar agreements to safeguard the sensitive and proprietary information of other contractors, subcontractors, suppliers, and vendors to which they have access.

TBP

(b) In the performance of this contract, the contractor agrees to cooperate with the companies listed above. Cooperation includes, but is not limited to, allowing the listed support contractors to attend meetings; observe technical activities; discuss with the contractor technical matters related to this program at meetings or otherwise; and access contractor integrated data environments and facilities used in the performance of the contract.

(c) The contractor must provide the support contractors access to data such as, but not limited to, design and development analyses; test data, procedures, and results; research, development, and planning data; parts, equipment, and process specifications; testing and test equipment specifications; quality control procedures; manufacturing and assembly procedures; schedule and milestone data; and other contract data. To fulfill contractual requirements to the Government, support contractors engaged in general systems engineering and integration efforts and technical support are normally authorized access to information pertaining to this contract. Exceptions, such as when the contractor seeks to restrict access to contractor trade secrets, will be handled on a case-by-case basis. If the contractor seeks to limit distribution of data to Government personnel only, the contractor must submit this request in writing to the Contracting Officer.

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

(e) The contractor and its subcontractors are not required to take contractual direction from support contractors.

(f) Clauses Cl.227-005, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends, and Cl.209-008, which will be incorporated into all U. S. Government support contracts, require the support contractors to protect data and software related to this contract, and prohibit them from using such data for any purpose other than performance of the support contract.

(g) Support contractors shall protect the proprietary information of disclosing contractors, subcontractors, suppliers, and vendors in accordance with clause Cl.209-008. Because this clause provides that such disclosing contractors, subcontractors, suppliers, and vendors are intended to be third-party beneficiaries, all such disclosing parties agree that these terms satisfy the non-disclosure agreement requirements set forth in 10 U.S.C. 2320(f)(2)(B). Accordingly, the contractor may only enter into a separate non-disclosure, confidentiality, proprietary information, or similar agreement with a disclosing party on an exception basis, and only after notifying the Contracting Officer. The Government and the disclosing contractors, subcontractors, suppliers, and vendors agree to cooperate to ensure that the execution of any non-disclosure agreement does not delay or inhibit performance of this contract, and the Government shall require support contractors to do the same. Such agreements shall not otherwise restrict any rights due the Government under this contract. Separate non-disclosure agreements may be executed only in the following exceptional circumstances:

- (1) The support contractor is a direct competitor of the disclosing party in furnishing end items or services of the type developed or produced for the program or effort;
- (2) The support contractor will require access to extremely sensitive business data; or
- (3) Other unique business situations exist in which the disclosing party can clearly demonstrate that clause Cl.209-008 does not adequately protect their competitive interests.

(h) Any proprietary information furnished to support contractors shall be:

- (1) Disclosed in writing and clearly marked "proprietary" or with other words of similar meaning; or
- (2) Disclosed orally or visually (for instance, during a plant tour, briefing, or demonstration) and identified as proprietary information at the time of the oral or visual disclosure by the Government or a disclosing party. The support contractors shall treat all such information as proprietary unless within fifteen (15) days the support contractor coordinates with the Government or disclosing party to obtain a written version of the proprietary information and determine the extent of the proprietary claims; or
- (3) Disclosed by electronic transmission (e.g., facsimile, electronic mail, etc.) in either human readable form or machine readable form, and the contractor marks it electronically as proprietary within the electronic transmissions, such marking to be displayed in human readable form along with any display of the proprietary information; or
- (4) Disclosed by delivery of an electronic storage medium or memory device, and the contractor marks the storage medium or memory device itself as containing proprietary information and electronically marks the stored information as proprietary, such marking to be displayed in human readable form along with any display of the proprietary information.

#### **CI.219-001 Utilization of Small Business Concerns (DEC 2011)**

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

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

(c) Definitions. As used in this contract:

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

Service-disabled Veteran-owned Small Business Concern:

(1) Means a small business concern:

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

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

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

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

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

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



- (ii) No material change in disadvantaged ownership and control has occurred since its certification;
  - (iii) Where the concern is owned by one or more individuals, the net worth of each individual upon whom the certification is based does not exceed \$750,000 after taking into account the applicable exclusions set forth at 13 CFR 124.104(c)(2); and
  - (iv) It is identified, on the date of its representation, as a certified small disadvantaged business in the Central Contractor Registration (CCR) Dynamic Small Business Search database maintained by the Small Business Administration, or
- (2) It represents in writing that it qualifies as a small disadvantaged business (SDB) for any Federal subcontracting program, and believes in good faith that it is owned and controlled by one or more socially and economically disadvantaged individuals and meet the SDB eligibility criteria of 13 CFR 124.1002.
- Veteran-owned Small Business Concern;— means a small business concern:
- (1) Not less than 51 percent of which is owned by one or more veterans (as defined at 38 U.S.C.101(2)) or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans; and
  - (2) The management and daily business operations of which are controlled by one or more veterans.
- Women-owned Small Business Concern;— means a small business concern:
- (1) That is at least 51 percent owned by one or more women, or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and
  - (2) Whose management and daily business operations are controlled by one or more women.
- (d)(1) Contractors acting in good faith may rely on written representations by their subcontractors regarding their status as a small business concern, a veteran-owned small business concern, a service-disabled veteran-owned small business concern, a HUBZone small business concern, a small disadvantaged business concern, or a women-owned small business concern.
- (2) The contractor shall confirm that a subcontractor representing itself as a HUBZone small business concern is certified by SBA as a HUBZone small business concern by accessing the CCR database at <http://www.sba.gov/hubzone>.

### **CI.219-002 Small Business Subcontracting Plan (DEC 2011)**

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

(b) Definitions. As used in this clause:

Alaska Native Corporation (ANC): means any Regional Corporation, Village Corporation, Urban Corporation, or Group Corporation organized under the laws of the State of Alaska in accordance with the Alaska Native Claims Settlement Act, as amended (43 U.S.C. 1601, *et seq.*) and which is considered a minority and economically disadvantaged concern under the criteria at 43 U.S.C. 1626(e)(1). This definition also includes ANC direct and indirect subsidiary corporations, joint ventures, and partnerships that meet the requirements of 43 U.S.C. 1626(e)(2).

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

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

Indian Tribe means any Indian tribe, band, group, pueblo, or community, including native villages and native groups (including corporations organized by Kenai, Juneau, Sitka, and Kodiak) as defined in the Alaska Native Claims Settlement Act (43 U.S.C.A. 1601 *et seq.*), that is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs in accordance with 25 U.S.C. 1452(c). This definition also includes Indian-owned economic enterprises that meet the requirements of 25 U.S.C. 1452(e).

Individual Contract Plan means a subcontracting plan that covers the entire contract period (including option periods), applies to a specific contract, and has goals that are based on the offeror's planned

subcontracting in support of the specific contract, except that indirect costs incurred for common or joint purposes may be allocated on a prorated basis to the contract.

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

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

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

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

(1) Goals, expressed in terms of percentages of total planned subcontracting dollars, for the use of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns as subcontractors. The offeror shall include all subcontracts that contribute to contract performance, and may include a proportionate share of products and services that are normally allocated as indirect costs. In accordance with 43 U.S.C. 1626:

(i) Subcontracts awarded to an ANC or Indian tribe shall be counted towards the subcontracting goals for small business and small disadvantaged business (SDB) concerns, regardless of the size or Small Business Administration certification status of the ANC or Indian tribe.

(ii) Where one or more subcontractors are in the subcontract tier between the prime contractor and the ANC or Indian tribe, the ANC or Indian tribe shall designate the appropriate contractor(s) to count the subcontract towards its small business and small disadvantaged business subcontracting goals.

(A) In most cases, the appropriate contractor is the contractor that awarded the subcontract to the ANC or Indian tribe.

(B) If the ANC or Indian tribe designates more than one contractor to count the subcontract toward its goals, the ANC or Indian tribe shall designate only a portion of the total subcontract award to each contractor. The sum of the amounts designated to various contractors cannot exceed the total value of the subcontract.

(C) The ANC or Indian tribe shall give a copy of the written designation to the Contracting Officer, the prime contractor, and the subcontractors in between the prime contractor and the ANC or Indian tribe within 30 days of the date of the subcontract award.

(D) If the Contracting Officer does not receive a copy of the ANCs or the Indian tribes written designation within 30 days of the subcontract award, the contractor that awarded the subcontract to the ANC or Indian tribe will be considered the designated contractor.

(2) A statement of:

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

(ii) Total dollars planned to be subcontracted to small business concerns (including ANC and Indian tribes);

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

(iv) Total dollars planned to be subcontracted to service-disabled veteran-owned small business;

- (v) Total dollars planned to be subcontracted to HUBZone small business concerns;
  - (vi) Total dollars planned to be subcontracted to small disadvantaged business concerns (including ANCs and Indian tribes); and
  - (vii) Total dollars planned to be subcontracted to women-owned small business concerns.
- (3) A description of the principal types of supplies and services to be subcontracted, and an identification of the types planned for subcontracting to:
- (i) Small business concerns;
  - (ii) Veteran-owned small business concerns;
  - (iii) Service-disabled veteran-owned small business concerns;
  - (iv) HUBZone small business concerns;
  - (v) Small disadvantaged business concerns; and
  - (vi) Women-owned small business concerns.
- (4) A description of the method used to develop the subcontracting goals in paragraph (d)(1) of this clause.
- (5) A description of the method used to identify potential sources for solicitation purposes (e.g., existing company source lists, the Central Contractor Registration database (CCR), veterans service organizations, the National Minority Purchasing Council Vendor Information Service, the Research and Information Division of the Minority Business Development Agency in the Department of Commerce, or small, HUBZone, small disadvantaged, and women-owned small business trade associations). A firm may rely on the information contained in CCR as an accurate representation of a concern's size and ownership characteristics for the purposes of maintaining a small, veteran-owned small, service-disabled veteran-owned small, HUBZone small, small disadvantaged, and women-owned small business source list. Use of CCR as its source list does not relieve a firm of its responsibilities (e.g., outreach, assistance, counseling, or publicizing subcontracting opportunities) in this clause.
- (6) A statement as to whether or not the offeror included indirect costs in establishing subcontracting goals, and a description of the method used to determine the proportionate share of indirect costs to be incurred with:
- (i) Small business concerns (including ANC and Indian tribes);
  - (ii) Veteran-owned small business concerns;
  - (iii) Service-disabled veteran-owned small business concerns;
  - (iv) HUBZone small business concerns;
  - (v) Small disadvantaged business concerns (including ANC and Indian tribes); and
  - (vi) Women-owned small business concerns.
- (7) The name of the individual employed by the offeror who will administer the offeror's subcontracting program, and a description of the duties of the individual.
- (8) A description of the efforts the offeror will make to assure that small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns have an equitable opportunity to compete for subcontracts.
- (9) Assurances that the offeror will include the clause of this contract entitled *Utilization of Small Business Concerns* in all subcontracts that offer further subcontracting opportunities, and that the offeror will require all subcontractors (except small business concerns) that receive subcontracts in excess of \$650,000 (\$1.5 million for construction of any public facility) with further subcontracting possibilities to adopt a subcontracting plan that complies with the requirements of this clause.
- (10) Assurances that the offeror will cooperate in any studies or surveys as may be required by the contracting agency in order to determine the extent of compliance by the offeror with the subcontracting plan.
- (11) A description of the types of records that will be maintained concerning procedures that have been adopted to comply with the requirements and goals in the plan, including establishing source lists; and a description of the offeror's efforts to locate small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and

women-owned small business concerns and award subcontracts to them. The records shall include at least the following (on a plant-wide or company-wide basis, unless otherwise indicated):

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

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

(iii) Records on each subcontract solicitation resulting in an award of more than \$150,000, indicating

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

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

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

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

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

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

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

(iv) Records of any outreach efforts to contact:

(A) Trade associations;

(B) Business development organizations; and

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

(D) Veterans service organizations.

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

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

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

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

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

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

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

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

(4) Confirm that a subcontractor representing itself as a HUBZone small business concern is identified as a certified HUBZone small business concern by accessing the CCR database.

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

(6) For all competitive subcontracts over the simplified acquisition threshold in which a small business concern received a small business preference, upon determination of the successful subcontract offeror, the contractor must inform each unsuccessful small business subcontract offeror in writing of the name and location of the apparent successful offeror prior to award of the contract.

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

(1) The master plan has been approved,

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

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

(g) A commercial plan is the preferred type of subcontracting plan for contractors furnishing commercial items. The commercial plan shall relate to the offeror's planned subcontracting generally, for both commercial and Government business, rather than solely to the Government contract. Once the contractor's commercial plan has been approved, the Government will not require another subcontracting plan from the same contractor while the plan remains in effect, as long as the product or service being provided by the contractor continues to meet the definition of a commercial item.

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

(i) A contract may have no more than one plan. When a modification meets the criteria in FAR 19.702 for a plan, or an option is exercised, the goals associated with the modification or option shall be added to those in the existing subcontract plan.

(j) Subcontracting plans are not required from subcontractors when the prime contract contains FAR Clause 52.212-5, Contract Terms and Conditions Required to Implement Statutes or Executive Order Commercial Items, or when the subcontractor provides a commercial item subject to FAR Clause 52.244-6, Subcontracts for Commercial Items, under a prime contract.

(k) The failure of the contractor or subcontractor to comply in good faith with:

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

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

**CI 52.223-002 Safety Precautions For Ammunition And Explosives (JAN 2004)**(a) Definition. Ammunition and explosives, as used in this clause:

(1) Includes, but is not limited to, liquid and solid propellants and explosives, pyrotechnics, incendiaries and smokes in the following forms:

(i) Bulk;

(ii) Ammunition;

(iii) Rockets;

(iv) Missiles;

(v) Warheads;

(vi) Devices; and

(vii) Components of (i) through (vi), except for wholly inert items.

(2) This definition does not include the following, unless the contractor is using or incorporating these materials for initiation, propulsion, or detonation as an integral or component part of an explosive, an ammunition or explosive end item, or of a weapon system:

(i) Inert components containing no explosives, propellants, or pyrotechnics;

(ii) Flammable liquids;

- (iii) Acids;
- (iv) Powdered metals; or
- (v) Other materials having fire or explosive characteristics.

(b) Safety Requirements.

(1) The contractor shall comply with the requirements of the *DoD Contractors' Safety Manual for Ammunition and Explosives*, DoD 4145.26-M hereafter referred to as the Manual, in effect on the date of this contract. The contractor shall also comply with the following additional requirements:

(VARIABLE)

(2) The contractor shall allow the Government access to the contractor's facilities, personnel, and safety program documentation. The contractor shall allow authorized Government representatives to evaluate safety programs, implementation, and facilities.

(c) Non-compliance with the Manual.

(1) If the Contracting Officer notifies the contractor of any non-compliance with the Manual or schedule provisions, the contractor shall take immediate steps to correct the non-compliance. The contractor is not entitled to reimbursement of costs incurred to correct non-compliances unless such reimbursement is specified elsewhere in the contract.

(2) The contractor has 30 days from the date of notification by the Contracting Officer to correct the non-compliance and inform the Contracting Officer of the actions taken. The Contracting Officer may direct a different time period for the correction of non-compliances.

(3) If the contractor refuses or fails to correct non-compliances within the time period specified by the Contracting Officer, the Government has the right to direct the contractor to cease performance on all or part of this contract. The contractor shall not resume performance until the Contracting Officer is satisfied that the corrective action was effective and the Contracting Officer so informs the contractor.

(4) The Contracting Officer may remove Government personnel at any time the contractor is in non-compliance with any safety requirement of this clause.

(5) If the direction to cease work or the removal of Government personnel results in increased costs to the contractor, the contractor shall not be entitled to an adjustment in the contract price or a change in the delivery or performance schedule unless the Contracting Officer later determines that the contractor had in fact complied with the Manual or schedule provisions. If the contractor is entitled to an equitable adjustment, it shall be made in accordance with the *Changes* clause of this contract.

(d) Mishaps. If a mishap involving ammunition or explosives occurs, the contractor shall:

(1) Notify the Contracting Officer immediately;

(2) Conduct an investigation in accordance with other provisions of this contract or as required by the Contracting Officer; and

(3) Submit a written report to the Contracting Officer.

(e) Contractor Responsibility for Safety.

(1) Nothing in this clause, nor any Government action or failure to act in surveillance of this contract, shall relieve the contractor of its responsibility for the safety of:

(i) The contractor's personnel and property;

(ii) The Government's personnel and property; or

(iii) The general public.

(2) Nothing in this clause shall relieve the contractor of its responsibility for complying with applicable Federal, State, and local laws, ordinances, codes, and regulations (including those requiring the obtaining of licenses and permits) in connection with the performance of this contract.

(f) Contractor Responsibility for Contract Performance.

(1) Neither the number or frequency of inspections performed by the Government, nor the degree of surveillance exercised by the Government, relieve the contractor of its responsibility for contract performance.

(2) If the Government acts or fails to act in surveillance or enforcement of the safety requirements of this contract, this does not impose or add to any liability of the Government.

(g) Subcontractors.

(1) The contractor shall insert this clause, including this paragraph (g), in every subcontract that involves ammunition or explosives.

(i) The clause shall include a provision allowing authorized Government safety representatives to evaluate subcontractor safety programs, implementation, and facilities as the Government determines necessary.

(ii) The Contracting Officer shall notify the prime contractor of all findings concerning subcontractor safety and compliance with the Manual. The Contracting Officer may furnish copies to the subcontractor. The contractor in turn shall communicate directly with the subcontractor, substituting its name for references to the Government. The contractor and higher tier subcontractors shall also include provisions to allow direction to cease performance of the subcontract if a serious uncorrected or recurring safety deficiency potentially causes an imminent hazard to Government personnel, property, or contract performance.

(2) The contractor agrees to ensure that the subcontractor complies with all contract safety requirements. The contractor will determine the best method for verifying the adequacy of the subcontractor's compliance.

(3) The contractor shall ensure that the subcontractor understands and agrees to the Government's right to access to the subcontractor's facilities, personnel, and safety program documentation to perform safety surveys. The Government performs these safety surveys of subcontractor facilities solely to prevent the occurrence of any mishap which would endanger the safety of Government personnel or otherwise adversely impact upon the Government's contractual interests.

(4) The contractor shall notify the Contracting Officer before issuing any subcontract when it involves ammunition or explosives. If the proposed subcontract represents a change in the place of performance, the contractor shall request approval for such change in accordance with the clause of this contract entitled *Change in Place of Performance - Ammunition and Explosives*.

(End of clause)

#### **Cl.223-006 Contractor Compliance With Environmental, Occupational Safety and Health, and System Safety Requirements (OCT 1997)**

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

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

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

(3) Any contract specific requirements; and

(4) Any Contracting Officer direction.

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

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

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

(3) Contract specific direction:

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

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

(i) The contractor agrees not to hold the support contractor liable for unauthorized disclosure of proprietary information if it can be demonstrated in written documentation or other competent evidence that the information was:

(1) Already known to the support contractor without restriction on its use or disclosure at the time of its disclosure by the disclosing party;

(2) In the public domain or becomes publicly known through no wrongful act of the support contractor;

(3) Proprietary information disclosed by the support contractor with the contractors prior written permission;

(4) Independently developed by the support contractor, subsequent to its receipt, without the use of any proprietary information;

(5) Disclosed to the support contractor by a third party who was legally entitled to disclose the same and who did not acquire the proprietary information from the disclosing party;

(6) Specifically provided in writing by the U.S. Government to the support contractor with an unlimited rights license; or

(7) Disclosed by the support contractor as required by law, regulatory or legislative authority, including subpoenas, criminal or civil investigative demands, or similar processes, provided the support contractor provides the disclosing party that originated the proprietary information with prompt written notice so that the disclosing party may seek a protective order or other appropriate remedy, and provided that, in the absence of a timely protective order, the support contractor furnishes only that minimum portion of the proprietary information that is legally required.

### **CI.227-001 Technical Data and Computer Software: Commercial Items (SEP 2013)**

(a) Definitions. As used in this clause:

(1) *Business data* means recorded information, regardless of the form or method of the recording, including specific business data contained in a computer database, of a financial, administrative, cost or pricing, or management nature, or other information incidental to contract administration or protected from disclosure under the Freedom of Information Act, 5 U.S.C. 552(b)(4).

(2) *Commercial item* means:

(i) Any item, other than real property, but inclusive of computer software, that is of a type customarily used by the general public or by non-governmental entities for purposes other than governmental purposes, and

(A) Has been sold, leased, or licensed to the general public; or

(B) Has been offered for sale, lease, or license to the general public;

(ii) Any item that evolved from an item described in paragraph (i) of this definition through advances in technology or performance, and that is not yet available in the commercial marketplace, but will be available in the commercial marketplace in time to satisfy the delivery requirements under a Government solicitation or contract;

(iii) Any item that would satisfy a criterion expressed in paragraphs (i) or (ii) of this definition, but for

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

(B) Minor modifications of a type not customarily available in the commercial marketplace made to meet Federal Government requirements. Minor modifications means modifications that do not significantly alter the non-governmental function or essential physical characteristics of an item or component, or change the purpose of a process or computer software. Factors to be considered in determining whether a



modification is minor include the value and size of the modification and the comparative value and size of the final product. Dollar values and percentages may be used as guideposts, but are not conclusive evidence that a modification is minor;

(iv) Any combination of items meeting the requirements of paragraphs (i), (ii), (iii), or (v) of this definition that are of a type customarily combined and sold in combination to the general public;

(v) Installation services, maintenance services, repair services, training services, and other services if (A) Such services are procured for support of an item referred to in paragraph (i), (ii), (iii), or (iv) of this definition, regardless of whether such services are provided by the same source or at the same time as the item; and

(B) The source of such services provides similar services contemporaneously to the general public under terms and conditions similar to those offered to the Federal Government;

(vi) Services of a type offered and sold competitively in substantial quantities in the commercial marketplace based on established catalog or market prices for specific tasks performed or specific outcomes to be achieved, and under standard commercial terms and conditions. For purposes of these services:

(A) Catalog price means a price included in a catalog, price list, schedule, or other form that is regularly maintained by the manufacturer or vendor, is either published or otherwise available for inspection by customers, and states prices at which sales are currently, or were last, made to a significant number of buyers constituting the general public; and

(B) Market prices means current prices that are established in the course of ordinary trade between buyers and sellers free to bargain, and that can be substantiated through competition or from sources independent of the offerors.

(vii) Any item, combination of items, or service referred to in paragraphs (i) through (vi) of this definition, 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) A non-developmental item, if the procuring agency determines the item was developed exclusively at private expense and sold in substantial quantities, on a competitive basis, to multiple State and local governments.

(3) *Computer database* 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.

(4) *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.

(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. The term does not include computer databases or computer software documentation.

(6) *Computer software documentation* means owner's manuals, users manuals, installation instructions, operating instructions, and other similar items, regardless of storage medium, that explain the capabilities of the computer software or provide instructions for using or maintaining the computer software.

(7) *Form, fit, and function data* means technical data that describes the required overall physical, functional, and performance characteristics (along with the qualification requirements, if applicable) of an item, component, or process to the extent necessary to permit identification of physically and functionally interchangeable items. For computer software it means data identifying source, functional characteristics, and performance requirements, but specifically excludes the source code, algorithms, processes, formulas, and flow charts of the software.

(8) *Technical data* means recorded information (regardless of the form or method of the recording, including computer databases) of a scientific or technical nature (including computer software documentation). The term includes recorded information of a scientific or technical nature that is included in computer databases. (See 41 U.S.C. 403(8)). This term does not include computer software or business data.

(b) License in Commercial Technical Data.

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

(i) Have been provided to the Government or others without restrictions on use, modification, reproduction, release, or further disclosure other than a release or disclosure resulting from the sale, transfer, or other assignment of interest in the technical data to another party, or the sale or transfer of some or all of a business entity or its assets to another party;

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

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

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

(v) 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 without restrictions.

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

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

(c) License in Commercial Computer Software. Commercial computer software and commercial computer software documentation shall be acquired under the licenses customarily provided to the public unless such licenses are inconsistent with federal procurement law or do not otherwise satisfy user needs. The Government shall have only the rights specified in the license under which the commercial computer software and commercial computer software documentation was obtained. Such license shall be attached to and made a part of this contract.

(d) Additional License Rights. The contractor and its subcontractors 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 in technical data or computer software, the contractor agrees to promptly enter into negotiations 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.

(e) 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.

#### **CI.227-002 Rights in Technical Data and Computer Software: Noncommercial Items (FEB 2011)**

(a) Definitions. As used in this clause:

(1) *Business data* means recorded information, regardless of the form or method of the recording, including specific business data contained in a computer database, of a financial, administrative, cost or pricing, or management nature, or other information incidental to contract administration or protected from disclosure under the Freedom of Information Act, 5 U.S.C. 552(b)(4).

(2) *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.

(3) *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.

(4) *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.

(5) *Computer software documentation* means owner's manuals, users manuals, installation instructions, operating instructions, and other similar items, regardless of storage medium, that explain the capabilities of the computer software or provide instructions for using or maintaining the software.

(6) *Delivery* means the formal act of transferring technical data, computer software, or business data to the Government as expressly delineated in the contract (including, but not limited to the Contract Data Requirements List, the statement of work, or elsewhere in the contract), in accordance with a specified schedule.

(7) *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.

(8) *Developed* means that an item, component, or process, or an element of computer software has been shown through sufficient analysis or test to demonstrate to one of ordinary skill in the applicable art that there is a reasonable probability that the item, component, process, or element of computer software will work or perform its intended application, function, or purpose.

(9) *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. Private expense determinations should be made at the lowest practicable level.

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

(11) *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.

(12) *Form, fit, and function data* means technical data that describes the required overall physical, functional, and performance characteristics (along with the qualification requirements, if applicable) of an item, component, or process to the extent necessary to permit identification of physically and functionally interchangeable items. For computer software it means data identifying source, functional characteristics, and performance requirements, but specifically excludes the source code, algorithms, processes, formulas, and flow charts of the software.

(13) *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.

(14) *Technical data* means recorded information (regardless of the form or method of the recording, including computer databases) of a scientific or technical nature (including computer software documentation). The term includes recorded information of a scientific or technical nature that is included in computer databases (See 41 U.S.C. 403(8)). This term does not include computer software or business data.

(b) Government Rights in Technical Data and Computer Software.

(1) *Government purpose rights* means the rights to use, modify, reproduce, release, perform, display, or disclose technical data or computer software within the Government without restriction, to release or

disclose technical data or computer software outside the Government, and to authorize persons to whom release has been made to use, modify, reproduce, perform, or display that technical data or computer software, provided that the recipient exercises such rights for Government purposes only.

(i) The Government shall have Government purpose rights for a five-year period after contract completion or for such other period as may be mutually negotiated. Upon expiration of the five-year or other negotiated period, the Government shall have unlimited rights in the technical data or computer software.

(ii) The contractor has the exclusive right, including the right to license others, to use technical data or computer software in which the Government has obtained Government purpose rights under this contract, for any commercial purpose during the time period specified in paragraph (b)(1)(i) above and/or in the Government purpose rights legend prescribed by this clause.

(iii) The Government shall have Government purpose rights in technical data or computer software delivered under this contract that:

(A) Pertain to items, components, computer software, or processes developed with mixed funding, except when the Government is entitled to unlimited rights;

(B) Were created with mixed funding in the performance of a contract that does not specifically require the development, manufacture, construction, or production of items, components, computer software, or processes;

(C) The contractor has previously or is currently providing with Government purpose rights under another Government contract; or

(D) The parties have agreed shall be delivered with Government purpose rights.

(iv) The Government may release the technical data or computer software to any third party as described in paragraph (b)(1) above if:

(A) The receiving development contractor(s) or subcontractor(s) contract arrangements are subject to clauses *Protection of Information*, and, *Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends*;

(B) The receiving support contractor(s) or subcontractor(s) contract arrangements are subject to clauses *Support Contractor Corporate Non-Disclosure Agreement*, and *Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends*. When clause *Support Contractor Corporate Non-Disclosure Agreement* is used, additional non-disclosure, confidentiality, proprietary information, or similar agreements may be required by the owner of the technical data or computer software, but only on an exception basis, e.g., when such third party is or may be a direct competitor of the owner of the technical data or computer software. In the event an additional agreement is deemed necessary, the Contracting Officer shall be notified prior to its execution.

(C) The Government and contractor agree to cooperate to ensure that execution of any additional agreements shall not delay or inhibit performance of this contract. Such agreements shall not otherwise restrict any rights due the Government under this contract;

(2) *Limited rights* means the rights to use, modify, reproduce, release, perform, display, or disclose technical data, in whole or in part, within the Government.

(i) The Government may not, without the written permission of the party asserting limited rights, release or disclose the technical data outside the Government, use the technical data for manufacture, or authorize the technical data 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:

(A) Necessary for emergency repair and overhaul. In each instance of disclosure outside the Government, the Government shall:

(I) Prohibit the further reproduction, release, or disclosure of such technical data;

(II) Notify the party who has granted limited rights that such reproduction or use by, or release or disclosure to particular contractors or subcontractors is necessary;

(III) Insert clause , *Protection of Information, and Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends*, into the contractual arrangement with the receiving development contractors;

(IV) Insert clause *Support Contractor Corporate Non-Disclosure Agreement, and Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends*, into the contractual arrangement with the receiving support contractor(s). An additional non-disclosure, confidentiality, proprietary information, or similar agreement may be required by the owner of the technical data, but only on an exception basis, e.g., when such third party is or may be a direct competitor of the owner of the technical data. In the event an additional agreement is deemed necessary, the Contracting Officer shall be notified prior to its execution; and

(V) Require the recipient of limited rights technical data necessary for emergency repair or overhaul to destroy such technical data and any copies in its possession promptly following completion of the emergency repair/overhaul, and to notify the contractor that it has been destroyed; or

(B) Is in the interest of the Government when a release or disclosure of technical data (other than detailed manufacturing or process data) to, or use of such data by, a foreign government is required for evaluation or information purposes, and is subject to a prohibition on further release, disclosure, or use of the technical data.

(ii) The Government and the contractor agree to cooperate to ensure that execution of necessary NDAs shall not delay or inhibit performance of this contract. Said agreements shall not otherwise restrict any rights due the Government under this contract.

(iii) Except as otherwise provided under paragraphs (b)(6)(i)-(xi), the Government shall have limited rights in technical data delivered under this contract that:

(A) Pertain to items, components, or processes developed exclusively at private expense and marked with the limited rights legends prescribed by this clause;

(B) 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; or

(C) The parties have agreed shall be delivered with limited rights.

(iv) The contractor and its subcontractors are not required to provide the Government additional rights to use, modify, reproduce, release, perform, or display, technical data furnished to the Government with limited rights. However, if the Government desires to obtain additional rights in technical data 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. All technical data in which the contractor has granted the Government additional rights shall be listed or described in a license agreement made part of the contract. The license shall enumerate the additional rights granted the Government in such items.

(3) *Prior Government rights* means that technical data or computer software that will be delivered, furnished, or otherwise provided to the Government under this contract, in which the Government has previously obtained rights shall be delivered, furnished, or provided with the pre-existing rights, unless

(i) The parties have agreed otherwise; or

(ii) Any restrictions on the Government's rights to use, modify, reproduce, release, perform, display, or disclose the data have expired or no longer apply.

(4) *Restricted rights* apply only to non-commercial computer software, and means the Government's rights to:

(i) Use a computer program with one computer at one time. The program may not be accessed by more than one terminal or central processing unit or time-shared unless otherwise permitted by this contract;

(ii) Transfer a computer program to another Government agency without the further permission of the contractor if the transferor destroys all copies of the program and related computer software documentation in its possession and notifies the licensor of the transfer. Transferred programs remain subject to the provisions of this clause;

(iii) Make the minimum number of copies of the computer software required for safekeeping (archive), backup, or modification purposes;

(iv) Modify computer software, provided that the Government may;<sup>a</sup>

(A) Use the modified software only as provided in paragraphs (b)(4)(i) and (iii) of this clause; and

- (B) Not release or disclose the modified software except as provided in paragraphs (b)(4)(ii), (v) and (vi) of this clause;
- (v) Permit contractors or subcontractors performing service contracts in support of this or a related contract to use computer software to diagnose and correct deficiencies in a computer program, to modify computer software to enable a computer program to be combined with, adapted to, or merged with other computer programs, or when necessary to respond to urgent tactical situations, provided that
- (A) The Government notifies the party which has granted restricted rights that a release or disclosure to particular contractors or subcontractors is necessary;
- (B) The receiving development contractor(s) or subcontractor(s) contract arrangements are subject to clauses *Protection of Information*, and *Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends*;
- (C) The receiving support contractor(s) or subcontractor(s) contract arrangements are subject to clauses *Support Contractor Corporate Non-Disclosure Agreement*, and *Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends*. When clause *Support Contractor Corporate Non-Disclosure Agreement* 008 is used, additional non-disclosure, confidentiality, proprietary information, or similar agreements may be required by the owner of the technical data or computer software, but only on an exception basis, e.g., when such third party is or may be a direct competitor of the owner of the technical data or computer software. In the event an additional agreement is deemed necessary, the Contracting Officer shall be notified prior to its execution.
- (D) The Government and contractor agree to cooperate to ensure that execution of any additional agreements shall not delay or inhibit performance of this contract. Such agreements shall not otherwise restrict any rights due the Government under this contract;
- (E) The Government shall not permit the recipient to decompile, disassemble, or reverse engineer the software, or use software decompiled, disassembled, or reverse engineered by the Government pursuant to paragraph (b)(4)(iv) of this clause, for any other purpose; and
- (F) Such use is subject to the limitation in paragraph (b)(4)(i) of this clause.
- (vi) Permit contractors or subcontractors performing emergency repairs or overhaul of items or components of items procured under this or a related contract to use the computer software when necessary to perform the repairs or overhaul, or to modify the computer software to reflect the repairs or overhaul made, provided that;<sup>a</sup>
- (A) The receiving development contractor(s) or subcontractor(s) contract arrangements are subject to clauses *Protection of Information*, and *Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends*;
- (B) The receiving support contractor(s) or subcontractor(s) contract arrangements are subject to clauses *Support Contractor Corporate Non-Disclosure Agreement*, and *Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends*. When clause *Support Contractor Corporate Non-Disclosure Agreement* is used, additional non-disclosure, confidentiality, proprietary information, or similar agreements may be required by the owner of the technical data or computer software, but only on an exception basis, e.g., when such third party is or may be a direct competitor of the owner of the technical data or computer software. In the event an additional agreement is deemed necessary, the Contracting Officer shall be notified prior to its execution.
- (C) The Government and contractor agree to cooperate to ensure that execution of any additional agreements shall not delay or inhibit performance of this contract. Such agreements shall not otherwise restrict any rights due the Government under this contract.
- (D) The Government shall not permit the recipient to decompile, disassemble, or reverse engineer the software, or use software decompiled, disassembled, or reverse engineered by the Government pursuant to paragraph (b)(4)(iv) of this clause, for any other purpose.
- (vii) The Government shall have restricted rights in noncommercial computer software required to be delivered or otherwise provided to the Government under this contract that was developed exclusively at private expense.

(viii) The contractor, its subcontractors, or suppliers are not required to provide the Government additional rights in noncommercial computer software delivered or otherwise provided to the Government with restricted rights. However, if the Government desires to obtain additional rights in such software, the contractor agrees to promptly enter into negotiations with the Contracting Officer to determine whether there are acceptable terms for transferring such rights. All noncommercial computer software in which the contractor has granted the Government additional rights shall be listed or described in a license agreement made part of the contract (see paragraph (b)(5) of this clause). The license shall enumerate the additional rights granted the Government.

(5) *Specifically negotiated license rights* means a license granted by the contractor wherein the standard license rights granted to the Government under paragraphs (b)(1), (2), (3), (4), and (6), including the period during which the Government shall have government purpose rights in technical data or computer software, are modified by mutual agreement to provide such rights as the parties consider appropriate, but does not provide the Government lesser rights than limited rights for technical data or restricted rights for computer software unless mutually agreed by the contracting parties. Any rights so negotiated shall be identified in a license agreement made part of this contract and incorporated into Section J.

(6) *Unlimited rights* means the 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. The Government shall have unlimited rights in:

- (i) Technical data pertaining to an item, component, or process, or pertaining to software code or a software program that has been or will be developed exclusively with Government funds;
- (ii) Computer software developed exclusively with Government funds;
- (iii) Form, fit, and function data;
- (iv) Technical data that is necessary for installation, operation, maintenance, or training purposes (other than detailed manufacturing or process data);
- (v) Studies, analyses, test data, or similar data when the study, analysis, test, or similar work was specified as an element of performance;
- (vi) Computer software documentation required to be delivered under this contract;
- (vii) Technical data 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;
- (viii) Corrections or changes to technical data or computer software furnished by the Government;
- (ix) Technical data or computer software that is otherwise publicly available or has been released or disclosed by the contractor or subcontractor without restriction on the further use, release or disclosure, other than a release or disclosure resulting from the sale, transfer, or other assignment of interest in the technical data or computer software to another party, or the sale or transfer of some or all of a business entity or its assets to another party;
- (x) Technical data or computer software in which the Government has obtained unlimited rights under another Government contract or as a result of negotiations;
- (xi) Technical data or computer software furnished to the Government under this or any other Government contract or subcontract thereunder, with Government purpose rights, limited rights, or restricted rights, and the restrictive condition(s) has/have expired, or the Government purpose rights and the contractor's exclusive right to use such data for commercial purposes have expired.

(c) For business data marked as proprietary or with similar legends, the Government may duplicate, use, and disclose such data within the Government solely for evaluation, verification, validation, reporting, and program monitoring and management purposes in connection with this contract. The Government may disclose such business data to its support contractors identified in clause *Enabling Clause for Prime and Support Contractor Relationships*, for these same purposes if and when:

(1) The receiving development contractor(s) or subcontractor(s) contract arrangements are subject to clauses *Protection of Information*, and *Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends*;

(2) The receiving support contractor(s) or subcontractor(s) contract arrangements are subject to clauses *Support Contractor Corporate Non-Disclosure Agreement*, and *Limitations on the Use or Disclosure of*

*Government-Furnished Information Marked with Restrictive Legends.* When clause entitled *Support Contractor Corporate Non-Disclosure Agreement*, is used, additional non-disclosure, confidentiality, proprietary information, or similar agreement may be required by the owner of the business data, but only on an exception basis, e.g., when such third party is or may be a direct competitor of the owner of the technical data or computer software. In the event an additional agreement is deemed necessary, the Contracting Officer shall be notified prior to its execution.

(i) The Government and contractor agree to cooperate to ensure that execution of any additional agreements shall not delay or inhibit performance of this contract. Such agreements shall not otherwise restrict any rights due the Government under this contract;

(d) *Other Information That Cannot Easily Be Categorized.* For information that cannot easily be categorized as technical data or business data (e.g., program schedules, Earned Value Management System reports, and program management reports), and is of sufficient detail to show a contractor's confidential business practices, shall be identified before or as soon as practicable after contract award. The parties will agree as to the parties rights and obligations in such data and how it is to be marked, handled, used, and disclosed to third parties. Such agreement shall be in writing, attached to, and made a part of the contract.

(e) *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.

(f) *Rights in Derivative Computer Software or Computer Software Documentation.* The Government shall retain its rights in the unchanged portions of any computer software or computer software documentation delivered under this contract that the contractor uses to prepare, or includes in, derivative computer software or computer software documentation.

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

(h) *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 as defined in paragraphs (b)(1), (2), (4) and (6) of this clause, 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.

(i) *Assertions of Other than Unlimited Rights.*

(1) This paragraph does not apply to restrictions based solely on copyright.

(2) Except as provided in paragraph (i)(3) of this clause, technical data and/or computer software that the contractor asserts should be furnished to the Government with restrictions on use, release, or disclosure are identified in an attachment to this contract (the Attachment). The contractor shall not deliver any technical data or computer software with restrictive markings unless the technical data or computer software is listed in the Attachment.

(3) The contractor may make other assertions of other than unlimited rights in technical data and/or computer software after contract award. Such assertions must be based on new information or inadvertent omission unless the inadvertent omission would have materially affected the source selection decision in the reasonable determination of the Contracting Officer (in which case no assertion based on an inadvertent omission may be allowed).

(4) The contractor shall submit such post-contract award assertion(s) to the Contracting Officer as soon as practicable but prior to the scheduled date for delivery of the technical data or computer software. All



new assertions submitted after award shall be added to the Attachment in a timely fashion after submission of the assertion to the Contracting Officer. An official authorized to contractually obligate the contractor must sign the assertion(s). The contractor assertion(s) shall include the information specified in paragraph (d) of clause *Identification and Assertion of Use, Release, or Disclosure Restrictions*.

(5) The Contracting Officer may request the contractor to provide sufficient information to enable the Government to evaluate the contractor's assertion(s). The Contracting Officer reserves the right to add the contractor's assertions to the Attachment and validate any listed assertion at a later date in accordance with the procedures outlined in clause *Validation of Restrictive Markings on Technical Data and Computer Software*.

(j) Marking Requirements for Delivered Technical Data or Computer Software. 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 delivered to the Government by marking such technical data and computer software. Such markings shall be in the form of legends found in paragraphs (k)(1) through (4), or as otherwise authorized in this contract, (e.g., pursuant to an agreement for the marking of mixed data pursuant to paragraph (d) of this clause). The notice of copyright prescribed under 17 U.S.C. 401 or 402 (with language, if applicable, noting that the Government contributed funding and therefore has rights in the copyrighted material) is also allowed.

(k) 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, on the title/cover page of the printed material containing technical data or computer software for which restrictions are asserted. Mark each subsequent sheet of data with an abbreviated marking(s) to indicate the applicable restrictive rights assertion(s), and refer to the title/cover page for additional information. 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.

(1) Government Purpose Rights Markings. 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)(1) of clause *Rights in Technical Data and Computer Software: Noncommercial Items*, contained in the contract identified above. No restrictions apply after the expiration date shown above. Any reproduction of technical data or computer software, or portions thereof marked with this legend, must also reproduce the markings.

(End of legend)

(2) Limited Rights Markings. Technical data 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 are restricted by paragraph (b)(2) of clause, *Rights in Technical Data and Computer*

*Software: Noncommercial Items*, contained in the contract identified above. Any reproduction of technical data, 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 must promptly notify the above-named contractor.

(End of legend)

- (3) Restricted Rights Markings. Computer software delivered or otherwise furnished to the Government with restricted rights shall be marked with the following legend:

Restricted Rights

Contract No: \_\_\_\_\_

Contractor Name: \_\_\_\_\_

Contractor Address: \_\_\_\_\_

The Government's rights to use, modify, reproduce, release, perform, display, or disclose this computer software are restricted by paragraph (b)(4) of clause, *Rights in Technical Data and Computer Software: Noncommercial Items*, contained in the contract identified above. Any reproduction of computer software or portions thereof marked with this legend must also reproduce the markings. Any person, other than the Government, who has been provided access to such computer software must promptly notify the above-named contractor.

(End of legend)

- (4) Special License Rights Markings. Technical data and computer software in which the Governments rights stem from a specifically negotiated license shall be marked with the following legend:

Special License Rights

Contract No: \_\_\_\_\_

Contractor Name: \_\_\_\_\_

Contractor Address: \_\_\_\_\_

The Government's rights to use, modify, reproduce, release, perform, display, or disclose this data and/or software are restricted by \_\_\_\_\_ [*Insert license identifier*]. Any reproduction of technical data, computer software, or portions thereof marked with this legend must also reproduce the markings.

(End of legend)

- (l) 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 a technical data or computer software deliverable under this contract, and those restrictions are still applicable, the contractor may mark such technical data or computer software with the appropriate restrictive conforming legend for which the technical data or computer software qualified under the prior contract or license. The marking procedures in paragraphs (j) and (k) of this clause shall be followed.

(m) Removal of Unjustified Markings. Notwithstanding any other provision of this contract concerning inspection and acceptance, if any technical data or computer software delivered or otherwise provided under this contract are marked with the notices specified at (k)(1)-(4) of this clause, and the use of such is not authorized by this clause, the Government may ignore, or at the contractor's expense, correct or strike the marking if, in accordance with the procedures in clause Validation of Restrictive Markings on Technical Data and Computer Software, of this contract, the technical data or computer software is delivered or otherwise provided with a restrictive marking determined to be unjustified.

(n) Removal of Nonconforming Markings. A nonconforming marking is a marking placed on technical data or computer software delivered to the Government under this contract that is not in a format authorized by this contract. Correction of nonconforming markings is not subject to the Validation of Restrictive Markings on Technical Data and Computer Software clause of this contract. To the extent practicable, the Government shall return technical data or computer software marked with nonconforming markings to the contractor and provide the contractor an opportunity to correct or strike the nonconforming marking at no cost to the Government. If the contractor fails to correct the nonconforming marking and

return the corrected technical data or computer software within 60 days following the contractor's receipt of the data, the Contracting Officer may ignore, or at the contractor's expense, remove, correct, or strike any nonconforming marking.

(o) Unmarked Technical Data or Computer Software. Technical data or computer software delivered to the Government under this contract without restrictive markings as set forth herein shall be presumed to have been delivered with unlimited rights and may be released or disclosed without restriction. However, to the extent the technical data or computer software has not been disclosed without restriction outside the Government, the contractor may request, within six months after delivery of such technical data or computer software (or a longer time approved by the Contracting Officer for good cause shown), permission to have notices placed on qualifying technical data or computer software at the contractor's expense, and the Contracting Officer may agree to do so if the contractor:

- (1) Identifies the technical data or computer software on which the omitted notice is to be placed;
- (2) Demonstrates that the omission of the notice was inadvertent;
- (3) Establishes that the use of the proposed notice is authorized; and
- (4) Acknowledges that the Government has no liability with respect to the disclosure, use, or reproduction of any such technical data or computer software made prior to the addition of the notice or resulting from the omission of the notice.

(p) 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.

(q) Limitation on Charges for Rights in Technical Data or Computer Software.

(1) 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 or computer software to be delivered under this contract when:

(i) The Government has acquired, by any means, the same or greater rights in the technical data or computer software; or

(ii) The technical data or computer software is available to the public without restrictions.

(2) The limitation in paragraph (q)(1) of this clause:

(i) Includes costs charged by a subcontractor or supplier, at any tier, or costs incurred by the contractor to acquire rights in subcontractor or supplier technical data or computer software if the subcontractor or supplier has been paid for such rights under any other Government contract or under a license conveying the rights to the Government; and

(ii) Does not include the reasonable costs of reproducing, handling, or mailing the documents or other media in which the technical data or computer software will be delivered.

(r) Applicability to Subcontractors or Suppliers.

(1) The contractor shall ensure that the rights afforded its subcontractors and suppliers under 10 U.S.C. 2320, 10 U.S.C. 2321, and the identification, assertion, and delivery processes of paragraph (i) of this clause are recognized and protected.

(2) Whenever any technical data or computer software for noncommercial items is to be obtained from a subcontractor or supplier for delivery to the Government under this contract, the contractor shall flow down this clause to all of its subcontractors, vendors or suppliers (at any tier), and require its subcontractors, vendors, or suppliers to do so, without alteration, except to identify the parties. No other clause shall be used to enlarge or diminish the Government's, the contractor's, or a higher-tier subcontractor's or supplier's rights in a subcontractor's or supplier's technical data or computer software.

(3) Technical data or computer software required to be delivered by a subcontractor or supplier shall normally be delivered to the next higher-tier contractor, subcontractor, or supplier. However, when there is a requirement in the prime contract for technical data or computer software which may be submitted with other than unlimited rights by a subcontractor or supplier, then said subcontractor or supplier may

fulfill its requirement by submitting such technical data or computer software directly to the Government, rather than through a higher-tier contractor, subcontractor, or supplier.

(4) The contractor and higher-tier subcontractors or suppliers shall not use their power to award contracts as economic leverage to obtain rights in technical data or computer software from their subcontractors or suppliers.

(5) In no event shall the contractor use its obligation to recognize and protect subcontractor or supplier rights in technical data or computer software as an excuse for failing to satisfy its contractual obligation to the Government.

### **Cl.227-003 Validation of Restrictive Markings on Technical Data and Computer Software (FEB 2011)**

(a) The Government shall presume that a contractor's asserted use or release restrictions are justified on the basis that the item (to include computer software), 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 demonstrates that the item, component, or process was not developed exclusively at private expense.

(b) Justification. The contractor is responsible for maintaining records sufficient to justify the validity of its markings that restrictions on the Government's right to use, modify, reproduce, perform, display, release, or disclose technical data or computer software delivered or required to be delivered under the contract or subcontract. Except for commercial items, the contractors 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.

(c) Pre-challenge Request for Information.

(1) The Contracting Officer may request the contractor to furnish a written explanation for any restriction asserted by the contractor on the right of the United States to use, or authorize use of, 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 within a reasonable time after it is requested by the Contracting Officer.

(2) If the Contracting Officer, after reviewing the written data furnished pursuant to paragraph (c)(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 (d) of this clause.

(3) If the contractor fails to respond to the Contracting Officer's request for information under paragraph (c)(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 (d) of this clause.

(d) 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 or subcontractor 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 Contracting Officer's final decision, issued pursuant to paragraph (f) 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 subcontractor (or any licensee of such contractor or subcontractor 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 (e) of this clause.

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

(3) The contractor's or subcontractor'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 or subcontractor 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.

(e) Final Decision When Contractor or Subcontractor Fails to Respond. When a contractor or subcontractor fails to respond to a challenge notice, other than a failure to respond to a challenge related to a commercial item, the Contracting Officer will issue a final decision to the contractor or subcontractor 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 (d)(1)(ii) or (d)(2) of this clause. Following issuance of the final decision, the Contracting Officer will comply with the procedures in paragraphs (f)(2)(ii) through (iv) of this clause.

(f) Final Decision When the Contractor Responds.

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

(2)(i) If the Contracting Officer determines that the validity of the restrictive marking is not justified, the Contracting Officer shall issue a final decision to the contractor or subcontractor in accordance with the *Disputes* clause of this contract. Notwithstanding paragraph (e) of the *Disputes* clause, the final decision shall be issued within sixty (60) days after receipt of the contractor's or subcontractor's response to the challenge notice, or within such longer period that the Contracting Officer has notified the contractor or subcontractor that the Government will require. The notification of a longer period will be made within sixty (60) days after receipt of the response to the challenge notice.

(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 (f)(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 (f)(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 Government agency's 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 Government agency's 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.

(g) Final Disposition of Appeal or Suit.

(1) If the contractor or subcontractor 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 struck, canceled, ignored, or corrected at the contractor's or subcontractor's expense; and

(ii) If the restrictive marking is found not to be substantially justified, the contractor or subcontractor asserting the restriction 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 or subcontractor 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 or subcontractor in defending the marking if the challenge by the Government is found not to have been made in good faith.

(h) Duration of Right to Challenge. The Government, when there are reasonable grounds, may review and challenge the validity of any restriction asserted by the contractor or subcontractor on the Government's rights to use, modify, reproduce, release, perform, display, or disclose technical data or computer software delivered, to be delivered, or otherwise provided by the Contractor or subcontractor in the performance of a contract. 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.

(i) Decision Not to Challenge. The absence of a challenge to an asserted restriction shall not constitute validation under this clause. Only the Contracting Officer's final decision resolving a formal challenge by sustaining the validity of a restrictive marking, or actions of an agency Board of Contract Appeals or a court of competent jurisdiction sustaining the assertion, constitutes validation as addressed in 10 U.S.C. 2321.

(j) 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 or assert restrictions on the Government's right to use, modify, release, perform, display, or disclose technical data or computer software. However, neither this clause nor any action taken by the Government under this clause shall create or imply privity of contract between the Government and subcontractors.

(k) Flowdown. The contractor or subcontractor agrees to insert this clause in contractual instruments with its subcontractors or suppliers at any tier requiring the delivery of technical data or computer software, except contractual instruments for commercial items or commercial components.

#### **Cl.227-005 Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends (FEB 2011)**

(a) The terms limited rights, restricted rights, special license 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 unauthorized person. Prior to providing limited rights technical data or restricted rights computer software as GFI, the Government shall ensure that:

(i) The receiving development contractor(s) or subcontractor(s) contract arrangements are subject to clauses Cl.209-005, *Protection of Information*, and Cl.227-005, *Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends*; and

(ii) The receiving support contractor(s) or subcontractor(s) contract arrangements are subject to clauses Cl.209-008, *Support Contractor Corporate Non-Disclosure Agreement*, and Cl.227-005, *Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends*.

(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 technical data or computer 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 coordinate with the Contracting Officer before requiring the persons to whom disclosure will be made to complete and sign non-disclosure agreements including the same limitations included in this paragraph.

(3) GFI Marked with Special License Rights Legends. The contractor shall use, modify, reproduce, release, perform, or display technical data or computer software received from the Government with specially negotiated license legends only as permitted in the license. Such data or software may not be released or disclosed to other persons unless permitted by the license.

(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.

#### **CI.227-007 Rights in Bid or Proposal Information (JAN 2004)**

(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.

#### **CI.227-009 Deferred Delivery of Technical Data or Computer Software (MAY 2005)**

The Government may identify technical data or computer software (as defined in clause CI.227-001 or CI.227-002) for deferred delivery at any time during contract performance by listing such technical data or computer software in an attachment to Section J of this contract titled Deferred Delivery. The



Government may require delivery of the items identified for deferred delivery up to three (3) years after either acceptance of all deliverables or contract termination, whichever is later. This clause will be flowed down to all subcontractors.

(End of clause)

#### **CI.227-010 Deferred Ordering of Technical Data or Computer Software (SEP 2013)**

(a) The Government may defer ordering technical data, computer software (as defined in clause CI.227-001 or CI.227-002), or other information not easily categorized (as defined in clause CI.227-002(d) and mutually agreed to by the contractual parties) that is generated during the performance of this contract for a period of up to three (3) years after either acceptance of all deliverables or contract termination, whichever is later.

(b) The categories of technical data, computer software, and other information not easily categorized that is subject to deferred ordering under this clause may be:

(1) Incorporated into the contract in the Contract Data Requirements List item that describes the Data Accession List attached to the contract; or

(2) Identified by the Government via a process agreed to by the parties and incorporated as an attachment to the contract in Section J prior to contract award.

(c) When the technical data, computer software, or other information not easily categorized is ordered, the contractor shall be reasonably compensated for converting the data or computer software into the prescribed form, for reproduction, and for delivery.

(d) The Government's rights to use said technical data and computer software shall be pursuant to the *Rights in Technical Data and Computer Software* clause(s) of this contract (CI.227-001 and CI.227-002).

(e) This clause shall be flowed down to all subcontractors.

#### **CI.227-015 Data Requirements (FEB 2011)**

The contractor is required to deliver the data items listed on the Contract Data Requirements List, data items identified in and deliverable under any contract clause of FAR Part 52 and USG Part C52 made a part of this contract, and other data as may be specified in the Statement of Work, Statement of Objectives, Specification(s), or elsewhere in this contract.

#### **CI.227-018, U. S. Government Access to Interim Data License (FEB 2011)**

(a) Definition. As used in this clause, *Integrated Data Environment (IDE)* means a mutually agreed to data storage and information management environment that facilitates Government and Industry information sharing and exchange, whether electronically or via hardcopy, to enable timely access and submission of information of all types and form.

(b) If the contractor provides the Government access (whether electronically, via hard copy, person-to-person exchanges, IDE, or other means) to technical data or computer software prior to the contractually scheduled delivery date, or to technical data or computer software that is not otherwise subject to delivery, the Government's access shall not constitute delivery of such technical data or computer software under this contract. Unless otherwise expressly set forth in an attachment to this contract as described in paragraph (d) of clause CI.227-002, *Rights in Technical Data and Computer Software: Noncommercial Items*, this clause will also apply to data that cannot easily be categorized as technical data or business data to which the Government is given access prior to delivery, or which is not otherwise subject to delivery.

(c) Subject to the restrictions set forth below, the Government may use, duplicate, and disclose such technical data or computer software within the Government in connection with the performance of this contract for such purposes as administration, evaluation, problem resolution, and technical collaboration with the contractor. The Government may disclose such technical data or computer software to its support

contractors identified in clause Cl.209-006, *Enabling Clause for Prime and Support Contractor Relationships*, for these same purposes if and when the receiving support contractor(s) or subcontractor(s) contract arrangements are subject to clauses Cl.209-008, *Support Contractor Corporate Non-Disclosure Agreement*, and Cl.227-005, *Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends*.

(1) An additional non-disclosure, confidentiality, proprietary information, or similar agreement may be required by the owner of the technical data or computer software, but only on an exception basis, e.g., when such third party is or may be a direct competitor of the owner of the technical data or computer software. In the event an additional agreement is deemed necessary, the Contracting Officer shall be notified prior to its execution. The Government and contractor agree to cooperate to ensure that execution of any additional agreements shall not delay or inhibit performance of this contract. Such agreements shall not otherwise restrict any rights due the Government under this contract. All rights not granted to the Government are retained by the contractor.

(d) The Government shall not use, nor allow others to use, such technical data or computer software for the purposes of manufacturing, re-procurement, or other competitive purposes against the contractor's interest, or any other purpose not directly related to this contract. The restrictions on use and further disclosure shall not apply to technical data or computer software:

- (1) Independently developed by or for the Government by persons not having access to the contractor's technical data or computer software, as evidenced in written documentation;
- (2) In which the Government has otherwise acquired lawful rights in the use and further disclosure of the technical data or computer software; or
- (3) Are otherwise publically available.

(e) The Government shall comply with reasonable access terms. Nothing in this clause diminishes the Government's rights under any other provision of this contract in delivered technical data or computer software.

(f) All technical data or computer software to which the Government is provided access under this clause that is not intended to be responsive to the formal contract data requirements is provided as is and does not give rise to any express or implied warranty. The contractor shall not be liable to the Government for any Government use or reliance on such technical data or computer software outside of the rights granted in this section.

(g) Government access under this clause shall not modify the rights and obligations of the parties with respect to technical data or computer software under the contract's termination provisions. In addition, Government access to such technical data or computer software resident on a contractor system does not create a Government record for purposes of the Freedom of Information Act, 5 U.S.C. 552(b)(4).

(h) The Government's rights to access, use, duplicate, and disclose technical data or computer software granted within this provision shall terminate upon earliest occurrence of any of the following events:

- (1) Contractual delivery of the technical data or computer software;
- (2) Termination of the contract; or
- (3) The end of the period of performance of the contract.

(i) Within six months of the termination of rights hereunder, the Government shall take reasonable efforts to destroy copies of the technical data and computer software disclosed under the provisions of this clause.

(j) General Interim Access Marking Instructions.

(1) The contractor may choose how to mark (or otherwise identify) technical data or computer software that has not or will not be delivered, from the following options:

- (i) With a conforming restrictive legend pursuant to clause Cl.227-002(k)(1)-(4);
- (ii) With the interim access license legend specified in this clause;
- (iii) With a proprietary marking; or
- (iv) With a proprietary marking and interim access license legend

(2) If technical data or computer software is marked with a conforming restrictive legend pursuant to clause CI.227-002(k)(1)-(4), the Government may use that technical data or computer software in accordance with the rights specified in such legend.

(3) If the interim access license legend is used, the rights and restrictions that apply to the Government are as set forth in the interim access license provided by this clause.

(4) If technical data or computer software is marked with only proprietary markings, the Government is not bound by those proprietary markings for this contract, but must comply with the rights and restrictions of the interim access license provided by this clause.

(5) In the event a proprietary marking and interim access license legend is used, the Government is not bound by those proprietary markings for this contract, but must comply with the rights and restrictions of the interim access license provided by this clause.

(k) The foregoing marking options do not prohibit the Government and contractor from establishing alternative specifically negotiated licenses and marking protocols when appropriate.

(1) U. S. Government Interim Access License Rights Markings. Technical data or computer software in which the Government is granted an interim access license provided by this clause shall be marked with the following legend:

U. S. Government Interim Access License Rights

Contract No. \_\_\_\_\_

Contractor Name: \_\_\_\_\_

Contractor Address: \_\_\_\_\_

The Government may use, duplicate, and disclose this technical data or computer software within the Government in connection with the performance of this contract for such purposes as administration, evaluation, problem resolution, and technical collaboration with the contractor. The Government may disclose such technical data or computer software to its support contractors for these same purposes if and when such support contractors have executed a non-disclosure agreement with the contractor, or as otherwise expressly permitted by the contractor. Any reproduction of technical data or portions thereof marked with this legend must also reproduce the markings.

(m) The contractor shall include this interim access license clause in all subcontracts or similar contractual instruments for non-commercial items, and require its subcontractors or suppliers to do so without alteration, except to identify the parties.

### **CI.234-002 Earned Value Management System (JAN 2006)**

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

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

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

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

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

TBD

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

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

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

TBD

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

## **ACCIDENT REPORTING**

- (a) The Seller shall provide oral notification to the Buyer when an accident occurs on Federal property in connection with performance of this contract. Notification must be given not later than twenty-four (24) hours after the accident occurs.
- (b) When requested by the Buyer (or its authorized representative) the Seller shall conduct an investigation of the accident and shall prepare a report that identifies all pertinent facts related to the accident. The report shall include, but not be limited to, the underlying cause(s) of the accident and the actions the Seller shall take to prevent the recurrence of similar accidents. The Seller shall submit the report to the Buyer (or its authorized representative) not later than fourteen (14) calendar days from the date the accident occurs.
- (c) The Buyer or its customer may elect to conduct an investigation of the accident with the assistance of the Seller.
- (d) Compliance with the provisions of this clause shall not entitle the Seller to an equitable adjustment in contract price or to an extension of performance schedule.
- (e) The Seller shall incorporate this clause, including this subparagraph (e), in all subcontracts, with the appropriate changes in the designation of the parties.

**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 by Buyer.

**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:

**52.203-13 Contractor Code of Business Ethics and Conduct** (APR 2009). 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.

**52.209-6 Protecting the Government's Interests When Subcontracting With Contractors Debarred, Suspended or Proposed for Debarment** (DEC 2010). Seller agrees it is not debarred, suspended, or proposed for debarment by the Federal Government. Seller shall disclose to Buyer, in writing, whether as of the time of award of this contract, Seller or its principals is or is not debarred, suspended, or proposed for debarment by the Federal Government. This clause does not apply to contracts where Seller is providing commercially available off-the shelf items.

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

**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.

**52.222-40 Notification of Employee Rights Under the National Labor Relations Act.** (DEC 2010).

**52.222-41 Service Contract Act of 1965** (NOV 2007). This clause applies only if this contract is subject to the Act.

**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** (JUL 2012).

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.

**52.223-18 Encouraging Contractor Policies To Ban Text Messaging While Driving** (AUG 2011).

**52.244-6 Subcontracts for Commercial Items** (DEC 2010). Clauses in paragraph (c) (1) are applicable to Seller for commercial items ordered by Buyer from Seller under this contract.

**52.245-1 Government Property** (APR 2012). This clause applies 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.

**52.245-1 Property Records Alternate I** (AUG 2010). This clause applies only if Government property is acquired or furnished for contract performance. The Government-Owned Property article in GP4 is hereby deleted.

**52.247-64 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.