

**CUSTOMER CONTRACT REQUIREMENTS**  
**SM3 IIB**  
**CUSTOMER CONTRACT HQ0147-11-C-0007**

**CUSTOMER CONTRACT REQUIREMENTS**

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

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

**52.203-6 Restrictions on Subcontractor Sales to the Government (SEP 2006).**

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

**52.203-7 Anti-Kickback Procedures (OCT 2010).** Buyer may withhold from sums owed Seller the amount of any kickback paid by Seller or its subcontractors at any tier if (a) the Contracting Officer so directs, or (b) the Contracting Officer has offset the amount of such kickback against money owed Buyer under the prime contract. This clause applies only if this contract exceeds \$150,000.

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

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

**52.203-12 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.

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

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

**52.215-2 Audit and Records - Negotiation** (OCT 2010). This clause applies only if this contract exceeds \$100,000 and (i) is cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeterminable type or any combination of these types; (ii) Seller was required to provide cost or pricing data, or (iii) Seller is required to furnish reports as discussed in paragraph (e) of the referenced clause.

**52.215-10 Price Reduction for Defective Certified Cost or Pricing Data** (OCT 2010). This clause applies only if this contract exceeds the threshold set forth in FAR 15.403-4 and is not otherwise exempt. In subparagraph (3) of paragraph (a), insert "of this contract" after "price or cost." In Paragraph (c), "Contracting Officer" shall mean "Contracting Officer or Buyer." In Paragraphs (c)(1), (c)(1)(ii), and (c)(2)(i), "Contracting Officer" shall mean "Contracting Officer or Buyer." In Subparagraph (c)(2)(i)(A), delete "to the Contracting Officer." In Subparagraph (c)(2)(ii)(B), "Government" shall mean "Government or Buyer." In Paragraph (d), "United States" shall mean "United States or Buyer."

**52.215-11 Price Reduction for Defective Certified Cost or Pricing Data -- Modifications** (OCT 2010). This clause applies only if this contract exceeds the threshold set forth in FAR 15.403-4 and is not otherwise exempt. "Contracting Officer" shall mean "Contracting Officer or Buyer." In subparagraph (d)(2)(i)(A), delete "to the Contracting Officer." In subparagraph (d)(2)(ii)(B), "Government" means "Government" or "Buyer." In Paragraph (e), "United States" shall mean "United States or Buyer."

**52.215-12 Subcontractor 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)."

**52.215-13 Subcontractor Certified Cost or Pricing Data -- Modifications** (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 (c) of the referenced clause shall be modified as follows: delete "to the Contracting Officer or the Contracting Officer's representative" and substitute in lieu thereof "to The Boeing Company or The Boeing Company's representative (including data submitted, when applicable, to an authorized representative of the U.S. Government)."

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

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

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

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

"Contracting Officer" shall mean Buyer.

**52.215-23 Limitations on Pass-Through Charges.** (OCT 2009). This clause applies to all cost-reimbursement subcontracts that exceed \$100,000. 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 \$650,000. In paragraph (c), "Contracting Officer" shall mean Buyer.

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

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

This clause applies only if this contract exceeds \$650,000 and Seller is not a small business concern. Seller shall adopt a subcontracting plan that complies with the requirements of this clause. In addition, Seller shall submit to Buyer Form X31162, Small and Small Disadvantaged Business and Women-Owned Small Business Subcontracting Plan Certificate of Compliance. In accordance with paragraph (d)(10)(iv), Seller agrees that it will submit the ISR and/or SSR using eSRS, and, in accordance with paragraph (d)(10)(vi), Seller agrees to provide the prime contract number, its own DUNS number, and the email address of the Government or Contractor official responsible for acknowledging or rejecting the reports, to its subcontractors with subcontracting plans.

As required by subparagraph (d)(10)(v), the following information is provided: (1) the prime contract number is HQ0147-11-C-0007; (2) Buyer's DUNS number is 126368257, and (3) the email address of the Government or Buyer official responsible for acknowledging or rejecting reports is Marie.Hickox@mdal.mil.

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

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

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

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

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

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

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

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

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

**52.223-13 Certification of Toxic Chemical Release Reporting** (AUG 2003). Except for commercial items as defined in FAR Part 2, this clause applies to competitive procurements expected to exceed \$100,000 (including all options). If Seller is not subject to the Form R filing and reporting requirements, Seller shall inform Buyer which exemption or exemptions in subparagraph (b)(2) of this clause apply.

**52.223-14 Toxic Chemical Release Reporting** (AUG 2003). This clause applies only if this contract is not for commercial items as

defined in FAR Part 2, was competitively awarded, and exceeds \$100,000 (including all options).

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

**52.225-13 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.

**52.227-9 Refund of Royalties** (APR 1984). This clause applies only if the amount of royalties reported during negotiation of this contract exceeds \$250.

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

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

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

**52.242-15 Stop-Work Order Basic (AUG 1989), Alternate I (APR 1984)** . Change "90 days" and "30 days" to "100 days" and "20 days" respectively. The terms "Contracting Officer" and "Government" shall mean Buyer.

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

**52.244-6 Subcontracts for Commercial Items** (DEC 2010).

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

This clause applies only if Government property is acquired or furnished for contract performance.

"Government" shall mean Government throughout except the first time it appears in paragraph (g)(1) when "Government" shall mean the Government or the Buyer. Paragraph (h)(1) is deleted and replaced by the following: "Seller assumes the risk of, and shall be responsible for, any loss, damage, destruction, or theft of Government property upon its delivery to Seller as Government-furnished property. However, Seller is not responsible for reasonable wear and tear to Government Property or for Government property properly consumed in performing this contract." If the contract incorporates Boeing General Provision GP4, the Government-Owned Property article in GP4 is hereby deleted.

**52.246-11 Higher-Level Contract Quality Requirement** (FEB 1999).

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

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

clause applies only if this contract exceeds \$100,000 and is not for the purchase of commercial items or commercial components.

Except in paragraph (a), "this contract" and "the contract" mean the contract between Buyer and Seller. In subparagraph (d)(1), delete the words "or first-tier subcontractor." In paragraph (e), the remedies described in subparagraphs (2) and (3) are available to Buyer, not the Government. In paragraph (f), "through the Buyer" is inserted after "Contracting Officer." Paragraph (g) is deleted.

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

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

**252.211-7000 Acquisition Streamlining** (OCT 2010). This clause applies only if this contract exceeds \$1.5 million.

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

Applicable clause date is revised to (SEP 2010)

**252.211-7005 Substitutions for Military or Federal Specifications and Standards** (NOV 2005).

**252.211-7007 REPORTING OF THE GOVERNMENT- FURNISHED EQUIPMENT IN THE DoD ITEM UNIQUE IDENTIFICATION (IUID) REGISTRY** (NOV 2008).

**252.215-7000 Pricing Adjustments** (DEC 1991). This clause applies only if this contract exceeds \$650,000.

**252.215-7002 Cost Estimating System Requirements** (DEC 2006).

**252.215-7004 Excessive Pass-Through Charges** (MAY 2008).

This clause applies unless this contract is (1) a firm-fixed-price contract awarded on the basis of adequate price competition; (2) a fixed-price contract with economic price adjustment awarded on the basis of adequate price competition; (3) a firm-fixed-price contract for the acquisition of a commercial item, or (4) a fixed-price contract with economic price adjustment for the acquisition of a commercial item. In paragraph (a), "Contractor" retains its original meaning. In paragraph (b), "Government" and "Contracting Officer" mean Buyer. In paragraph (c) "Contracting Officer" means Buyer. In paragraph (d), "Government" and "Contracting Officer" mean Buyer. In paragraph (e), "Contracting Officer" retains its original meaning.

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

**252.223-7004 Drug-Free Work Force** (SEP 1988).

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

**252.225-7004 Reporting Of Contract Performance Outside The United States And Canada - Submission After Award** (OCT 2010). "Contracting Officer" means "Buyer." In (c)(2) "regarding a first tier subcontractor" is deleted. Subparagraph (c)(5) is deleted. In (d)(2) "from the Contracting Officer or" is deleted.

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

**252.225-7041 Correspondence in English** (JUN 1997).

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

**252.227-7000 Non-Estoppel** (OCT 1966).

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

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

**252.227-7015 Technical Data -- Commercial Items** (NOV 1995). This clause applies only if the delivery of data is required for commercial items under this contract.

**252.227-7016 Rights in Bid or Proposal Information** (JAN 2011).

**252.227-7019 Validation of Asserted Restrictions - Computer Software** (JUN 1995). This clause applies only if computer software may be originated, developed, or delivered under this contract.

**252.227-7020 Rights In Data -- Special Works** (JUN 1995).

**252.227-7025 Limitations on the Use or Disclosure of Government-Furnished Information Marked With Restrictive Legends** (JAN 2011).

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

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

**252.227-7030 Technical Data -- Withholding of Payment** (MAR 2000). In this clause, "Government" and "Contracting Officer" shall mean Buyer. This clause applies only if the delivery of technical data is required under this contract.

**252.227-7037 Validation of Restrictive Markings on Technical Data** (SEP 1999). This clause applies only if the delivery of data is required by this contract.

**252.227-7038 PATENT RIGHTS—OWNERSHIP BY THE CONTRACTOR (LARGE BUSINESS)** (DEC 2007). This clause applies only if this contract is for experimental, developmental, or research work and Seller is not a small business firm or nonprofit organization.

**252.227-7039 Patents--Reporting of Subject Inventions** (APR 1990).

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

**252.232-7010 Levies on Contract Payments** (DEC 2006).

**252.234-7001 Notice of Earned Value Management System** (APR 2008). This clause applies only if 252.234-7002 is applicable.

**252.234-7002 Earned Value Management System** (APR 2008). This clause applies only if it is indicated elsewhere in this contract that Seller must use an earned value management system (EVMS).

**252.235-7010 Acknowledgment of Support and Disclaimer** (MAY 1995).

**252.235-7011 Final Scientific or Technical Report** (NOV 2004).

**252.237-7023 Continuation of Essential Contractor Services.** (OCT 2010). This clause applies if services provided by Seller have been determined to be "essential contractor services in support of mission-essential functions, " and are listed in the attachment referenced in paragraph (b) of the clause. In paragraph (c)(2), "Contracting Officer" shall mean Buyer. In paragraph (c)(3) "Contracting Officer" shall mean the "Contracting Officer or Buyer." In paragraph (c), "Contracting Officer" shall mean Buyer. In paragraph (g), "Contracting Officer" shall mean Buyer and ninety days is replaced with sixty days.

**252.239-7000 Protection Against Compromising Emanations** (JUN 2004). This clause applies only if computer equipment or systems that will be used to process classified information will be delivered under this contract.

**252.243-7001 Pricing of Contract Modifications** (DEC 1991).

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

**252.247-7023 Transportation of Supplies by Sea** (MAY 2002). This clause applies only if the supplies are of a type described in paragraph (b)(2) of this clause. In paragraph (d), "45 days" is changed to "60 days." In paragraph (g) "Government" means Buyer. If this contract is at or below \$100,000, paragraphs (f) and (g) are excluded.

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

**252.249-7002 Notification Of Anticipated Contract Termination Or Reduction** (OCT 2010). This clause applies only if this contract is \$650,000 or more. Seller will comply with the notice and flowdown requirements of paragraph (d)(2) of the referenced clause.

**252.251-7000 Ordering From Government Supply Sources** (NOV 2004).

This clause applies only if Seller is notified by Buyer that Seller is authorized to purchase from Government supply sources in the performance of this contract.

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

SUBCONTRACTS FOR COMMERCIAL ITEMS AND COMMERCIAL COMPONENTS

(DOD CONTRACTS)

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

**52.203-13 Contractor Code of Business Ethics and Conduct** (APR 2010).

**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.

**52.222-50 Combating Trafficking in Persons** (FEB 2009).

**52.222-50 Combating Trafficking in Persons (Feb 2009) Alternate I** (AUG 2007). In paragraph (d), the term "Contracting Officer" means Buyer, and in paragraph (e), the term "the Government" means Buyer.

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

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

#### **4. Cost Accounting Standards**

**52.230-2 Cost Accounting Standards** (OCT 2010). (1) (Applicable if this contract incorporates clause H001) The version of FAR 52.230-2, Cost Accounting Standards, incorporated by clause H001 is the version dated October 2010.

(2) (Applicable if this contract incorporates clause H002) The version of FAR 52.230-3, Disclosure and Consistency of Cost Accounting Practices, incorporated by H002 is the version dated October 2008.

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

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

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

##### **1 Public Release of Information** (APR 2009).

(Seller shall submit requests for public release to Buyer, who will, in turn, forward such requests to the Contracting Officer.)

a. The policies and procedures outlined herein apply to information submitted by the Contractor and his subcontractors for approval for public release. Prior to public release, all information shall be cleared as shown in the "National Industrial Security Program Operations Manual" (DoD 5220.22-M). At a minimum, these materials may be technical papers, presentations, articles for publication and speeches or mass media material, such as press releases, photographs, fact sheets, advertising, posters, compact discs, videos, etc. "Public release" also includes all of the following: filing and causing to be filed applications with the U.S. Patent and Trademark Office; and communicating in any way including but not limited to filing or causing to be filed any application with any non- U.S. Government body, whether a foreign



government or an international body of any sort which processes, grants, or recognizes patents and other intellectual property interest. "Public release" also includes communicating in any way with a person not an employee or officer of the contractor, including outside counsel of any sort.

b. All materials which relate to the work performed by the contractor under this contract shall be submitted to MDA for review and approval prior to release to the public. Subcontractor public information materials shall be submitted for approval through the prime contractor to MDA.

c. The MDA review and approval process for contractors working under an MDA contract starts with the contracting officer's representative (COR).

(1) The contractor shall request a copy of MDA form "Security and Policy Review Worksheet for Public Release Review" (.pdf format) or any superseding form from the MDA.

(2) The contractor shall complete Blocks 1, 2, 3 and 6 of Worksheet (or comply with the instructions of any superseding form) and submit it with materials to be cleared to the COR (see paragraph j. below). If the information was previously cleared, provide the Public Release Case Number if available and a copy of the previous document highlighting the updated information.

(3) The COR may affirm "public releasability" by signing the Statement of Certification in Block 7 of the Worksheet.

(4) The COR will forward the Worksheet with the materials to be cleared to the MDA designated point of contact for Block 8 approval and submission of package to MDA/PA.

(5) The COR will notify the contractor of the agency's final decision regarding the status of the request.

d. The contractor shall submit the following to the COR at least 60 days in advance of the proposed release date:

(1) Security and Policy Review Worksheet and one (1) electronic copy of the material to be reviewed.

(2) Written statement, including:

(a) To whom the material is to be released

(b) Desired date for public release

(c) Statement that the material has been reviewed and approved by officials of the contractor or the subcontractor, for public release, and

(d) The contract number.

(3) In the case of an intended application for a patent, in accordance with 52.227-10, the contractor will also submit a copy of the entire proposed application to the Contracting Officer to be received 30 days in advance of intended filing; or in the case of application or filing with any government or organization not part of the U.S. Government, also to be received 30 days before such application or filing.

e. The items submitted must be complete. Photographs shall have captions.

f. Outlines, rough drafts, marked-up copy (with handwritten notes), incorrect distribution statements, FOUO information, export controlled or ITAR information will not be accepted or cleared.

g. Abstracts or abbreviated materials may be submitted if the intent is to determine the feasibility of going further in preparing a complete paper for clearance. However, clearance of abstracts or abbreviated materials does not satisfy the requirement for clearance of the entire paper.

h. The MDA Director of Public Affairs (MDA/PA) is responsible for coordinating the public release review, other than for review of intended applications for a patent, which will be coordinated through the Contracting Officer.

MDA/PA will work directly with the COR if there are questions or concerns regarding submissions. MDA/PA will not work with contractors who have not gone through their COR.

i. Once information has been cleared for public release, it is in the public domain and shall always be used in its originally cleared context and format. Information previously cleared for public release but containing new, modified or further developed information must be submitted again for public release following the steps outlined in items a. through h. above.

j. Due to time and screening constraints, it is recommended that all "public release" packages submitted to MDA be forwarded by email to: Missile Defense Agency/DVM

Attn: Kari Anderson

Email Address: Kari.Anderson@mda.mil

k. The contractor agrees to cooperate fully with the COR; the Contracting Officer; MDA/PA; any person performing duties authorized by DoDD 5535.02, DoD Patent Security Review Process; and any other Government officials the Contracting Officer determines have a need to take part in the review.

"Cooperate fully" will include allowing access to contractor and subcontractor employees and access to contractor and subcontractor records.

The contractor agrees that any time limits for the U.S. to reply or make a determination or decision of any sort will be extended when the Contractor Officer advises the contractor that it or the subcontractor does not cooperate fully.

l. The contractor may not release information to any natural person not a U.S. citizen or any U.S. citizen whose ordinary place of employment or residence is outside the U.S., or to any professional or business organization not incorporated or

licensed in a state of the U.S. or whose principals include natural persons not U.S. citizens or any U.S. citizen whose ordinary place of employment or resident is outside the U.S., at any time including after performance of this contract is complete.

m. At the same time as the reports required by DFARS 252.227-7039, the Contractor shall furnish the Contracting Officer a report on all filings and all other communications with foreign and international governments and organizations whose usual purpose is to establish or affirm the contractor's rights or asserted rights in an invention. Such report will include the filing date, serial number and title, a copy of the patent application and patent number, and issue data for any subject invention for which the Contractor has retained title, or state that there are no such filings. In the case of any filing with any agency or organization not part of the U.S. Government, include a copy of the foreign filing license. The contractor will cooperate fully in any efforts by the Contracting Officer to determine status or outcome of such filings and other communications.

n. The contractor will include a copy of this clause in all written agreements with subcontractors and others with whom it has any sort of a teaming arrangement.

## **2 Organizational Conflict of Interest (MAR 2010).**

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

- (1) Seller's objectivity and judgment are not biased because of its present or planned interests which relate to work under this contract;
- (2) Seller does not obtain unfair competitive advantage by virtue of its access to non-public information regarding the Government's program plans and actual or anticipated resources; and
- (3) Seller does not obtain unfair competitive advantage by virtue of its access to proprietary information belonging to others.

b. Scope: Organizational Conflict of Interest (OCI) rules, procedures and responsibilities as described in FAR Subpart 9.5 shall be applicable to this contract and any resulting subcontracts.

(1) The general rules in FAR 9.505-1 through 9.505-4 and the restrictions described herein shall apply to performance or participation by Seller and any of its affiliates or their successors-in-interest (hereinafter collectively referred to as "Seller") in the activities covered by this contract as subcontractor, co-sponsor, joint venturer, consultant, or in any similar capacity.

(2) The Missile Defense Agency's OCI policy is available from Buyer upon request.

c. Access to and Use of Government Information: If Seller, in performance of this contract, obtains access to Government information, or other program related information, such as plans, policies, reports, studies, financial plans, or data which has not been released or otherwise made available to the public, Seller agrees that without prior written approval of the Contracting Officer (obtained through Buyer), it shall not:

- (1) use such information for any private purpose;
- (2) compete for work based on such information until one year after such information is released or otherwise made available to the public;
- (3) submit an unsolicited proposal to the Government based on such information;
- (4) release such information.

d. Access to and Protection of Proprietary Information: Seller agrees to treat proprietary data in accordance with the provisions of FAR 9.505-4. Seller shall enter into a written agreement for the protection of the proprietary data of others and exercise diligent effort to protect such proprietary data from unauthorized use or disclosure.

e. Subcontracts: Seller shall include this clause in consulting agreements, teaming agreements, subcontracts, or other arrangements for provision of services or supplies of any tier. The terms "contract," "Seller" and "Contracting Officer" shall be appropriately modified to preserve the Government's rights.

f. Representations and Disclosures:

(1) Seller represents that it has disclosed to the Contracting Officer (via Buyer), prior to award, all facts relevant to the existence or potential existence of organizational conflicts of interest as that term is used in FAR Subpart 9.5. To facilitate disclosure and Contracting Officer approval, Seller shall complete an OCI Analysis/Disclosure Form for each MDA, Ballistic Missile Defense (BMD), and BMD-related contract or subcontract ( form shall be requested from Buyer)

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

g. Remedies and Waiver:

(1) For breach of any of the above restrictions or for non-disclosure or misrepresentation of any relevant facts required to be disclosed concerning this contract, the Government may (i) direct Buyer to terminate this contract for default, (ii) disqualify Seller from subsequent related contractual efforts, and (iii) pursue such other remedies as may be permitted by

law or this contract. If, however, in compliance with this clause, Seller discovers and promptly reports an organizational conflict of interest (or the potential thereof) subsequent to contract award, the Contracting Officer may direct Buyer to terminate this contract for convenience if such termination is deemed to be in the best interest of the Government or take other appropriate actions.

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

h. Government Indemnity: Seller shall hold the Government and Buyer harmless and indemnify the Government and Buyer as to any cost or loss resulting from the unauthorized use or disclosure of third party information data or software by Seller, its employees, subcontractors or agents.

### **3 Enabling Clause fro BMD Interface Support (APR 2009).**

a. It is anticipated that, during the performance of this contract, Buyer will be required to support Technical Interface/Integration Meetings (TIMS) with other Ballistic Missile Defense (BMD) Contractors and other Government agencies.

b. Interface support deals with activities associated with the integration of the requirements of Buyer's contract with BMD into BMD system plans and the support of key Missile Defense Agency (MDA) program reviews.

c. Subject to coordination with Buyer, Seller agrees to cooperate with BMD Contractors by providing access to technical matters, provided, however, Seller will not be required to provide proprietary information to non-Government entities or personnel in the absence of a nondisclosure agreement between Seller and such entities.

d. This agreement does not relieve the Contractor of its responsibility to manage its subcontracts effectively, nor is it intended to establish privity of contract between the Government and Seller.

e. Personnel from BMD Contractors or other Government agencies or Contractors are not authorized to direct Seller in any manner.

f. This clause shall not prejudice Seller from negotiating separate organizational conflict of interest agreements with BMD Contractors; however, these agreements shall not restrict any of the Government's rights established pursuant to this clause or any other contract.

### **4 Foreign Persons (JUN 2010).**

1. "Foreign National" (also known as Foreign Persons) as used in this clause means any person who is NOT:

a. a citizen or national of the United States; or

b. a lawful permanent resident; or

c. a protected individual as defined by 8 U.S.C.1324b(a)(3).

"Lawful permanent resident" is a person having the status of having been lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws and such status not having changed.

"Protected individual" is an alien who is lawfully admitted for permanent residence, is granted the status of an alien lawfully admitted for temporary residence under 8 U.S.C.1160(a) or 8 U.S.C.1255a(a)(1), is admitted as a refugee under 8 U.S.C.1157, or is granted asylum under section 8 U.S.C.1158; but does not include (i) an alien who fails to apply for naturalization within six months of the date the alien first becomes eligible (by virtue of period of lawful permanent residence) to apply for naturalization or, if later, within six months after November 6, 1986, and (ii) an alien who has applied on a timely basis, but has not been naturalized as a citizen within 2 years after the date of the application, unless the alien can establish that the alien is actively pursuing naturalization, except that time consumed in the Service's processing the application shall not be counted toward the 2-year period."

2. Prior to contract award, the contractor shall identify any lawful U.S. permanent residents expected to be involved on this project as a direct employee, subcontractor or consultant. For these individuals, in addition to resumes, please specify their country of origin, the type of visa or work permit under which they are performing and an explanation of their anticipated level of involvement on this project. You may be asked to provide additional information during negotiations in order to verify the employee's eligibility to participate on a contract. Supplemental information provided in response to this clause will be protected in accordance with Privacy Act (5 U.S.C. 552a), if applicable, and the Freedom of Information Act (5 U.S.C. 552(b)(6)). After award of the contract, the Contractor shall promptly notify the Contracting Officer and Contracting Officer's Representative with the information above prior to making any personnel changes involving foreign

persons. No changes involving employees covered by this clause will be allowed without prior approval from the Contracting Officer. This clause does not remove any liability from the contractor to comply with applicable ITAR and EAR export control obligations and restrictions. This clause shall be included in any subcontract."

#### H-28 DISTRIBUTION CONTROL OF TECHNICAL INFORMATION (Oct 2009)

a. The following terms applicable to this clause are defined as follows:

1. Technical Document. Any recorded information (including software) that conveys scientific and technical information or technical data.

2. Scientific and Technical Information. Communicable knowledge or information resulting from or pertaining to the conduct or management of effort under this contract. (Includes programmatic information).

3. Technical Data. Recorded information related to experimental, developmental, or engineering works that can be used to define an engineering or manufacturing process or to design, procure, produce, support, maintain, operate, repair, or overhaul material. The data may be graphic or pictorial delineations in media such as drawings or photographs, text in specifications or related performance or design type documents, or computer printouts. Examples of technical data include research and engineering data, engineering drawings, and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information and computer software documentation.

b. Except as otherwise set forth in the Subcontractor Data Requirements List (SDRL), or paragraph e. below, the distribution of any technical documents prepared under this subcontract, in any stage of development or completion, outside of the SM-3 IIB prime contract and this subcontract is strictly prohibited, unless express written authorization or direction is first received from The Boeing Company.

c. Except as otherwise set forth in the SDRL or otherwise directed by Boeing (e.g., paragraph d. below) all technical documents prepared under this subcontract shall be marked with the following distribution statement, warning, and destruction notice:

1. DISTRIBUTION STATEMENT: Reproduction requires approval of originator or higher authority. Further dissemination only as directed by The Boeing Company, MDA/DMV or higher DoD authority. Request for the document must be referred to The Boeing Company. Disseminate in accordance with provisions of DOD Directive 5230.25

2. WARNING - This document/software contains technical data/software whose export is restricted by the Arms Export Control Act (Title 22, U.S.C., Sec 2751 et seq.) or the Export Administration Act of 1979, as amended, (Title 50, U.S.C., App 2401 et seq). Violations of these export laws are subject to severe criminal penalties.

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3. DESTRUCTION NOTICE - For classified documents, follow the procedures in DOD 5220.22M, National Industrial Security Program Operating Manual, Chapter 5, Section 7, or DOD 5200.1R, Information Security Program Regulation, Chapter 6, Section 7. For unclassified, limited documents, destroy by any method that will prevent disclosure of contents or reconstruction of the document.

4. FOIA DISCLAIMER - The information contained herein is submitted in confidence, is privileged and is exempt from disclosure under the Freedom of Information Act (U.S.C., Sec. 552).

d. As a part of the review of preliminary or working draft technical documents, the Government will determine if a distribution statement less restrictive than the statement above would provide adequate protection. If so, the Government's concurrence/comments will provide specific instructions on the distribution statement to be marked on the final technical documents before primary distribution.

e. The authorization provided by this subcontract clause H-28 is subject to strict compliance with SM-3 IIB security requirements, export control requirements, Subcontractor proprietary restrictions/markings and/or the provisions of any applicable non-disclosure agreements, but only with the prior written approval of The Boeing Company.