

CUSTOMER CONTRACT REQUIREMENTS
Proprietary
CUSTOMER CONTRACT JR

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 2 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 (MAY 2014). 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, excluding subparagraph (c)(1), applies only if this contract exceeds \$150,000.

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, excluding subparagraph (c)(1), applies only if this contract exceeds \$150,000.

52.203-10 Price or Fee Adjustment for Illegal or Improper Activity (MAY 2014). This clause applies only if this contract exceeds \$100,000 if included in Buyer's customer RFP or customer contract issued before October 1, 2010 or (ii) \$150,000 if included in Buyer's customer RFP issued on or after October 1, 2010, or if the prime contract was issued prior to October 1, 2010 but was amended after October 1, 2010 to increase the Simplified Acquisition Threshold. If the Government reduces Buyer's price or fee for violations of the Act by Seller or its subcontractors at any tier, Buyer may withhold from sums owed Seller the amount of the reduction.

52.203-11 Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions (SEP 2007). This clause applies only if this contract exceeds (i) \$100,000 if included in Buyer's customer RFP or customer contract issued before October 1, 2010 or (ii) \$150,000 if included in Buyer's customer RFP issued on or after October 1, 2010, or if the prime contract was issued prior to October 1, 2010 but was amended after October 1, 2010 to increase the Simplified Acquisition Threshold.

52.203-12 Limitation on Payments to Influence Certain Federal Transactions (OCT 2010). This clause applies only if this contract exceeds \$150,000. Paragraph (g)(2) is modified to read as follows: "(g)(2) Seller will promptly submit any disclosure required (with written notice to Boeing) directly to the PCO for the prime contract. Boeing will identify the cognizant Government PCO at Seller's request. Each subcontractor certification will be retained in the subcontract file of the awarding contractor."

52.203-19 Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements (JAN 2017).

52.209-6 Protecting the Government's Interests When Subcontracting With Contractors Debarred, Suspended or Proposed for Debarment (OCT 2015). 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.

52.212-4 Contract Terms and Conditions-Commercial Items (OCT 2018). Only paragraph (u) of this clause applies.

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. Notwithstanding the above, Buyer's rights to audit Seller are governed by the Financial Records and Audit article of the General Provisions incorporated in the Contract.

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.”

52.215-21 Requirement for Cost or Pricing Data or Information Other Than Cost and Pricing Data - Modifications Alternate III (OCT 1997).

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

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

52.222-19 Child Labor - Cooperation with Authorities and Remedies (JAN 2018). In (d), "Contracting Officer" means Buyer.

52.222-21 Prohibition of Segregated Facilities (APR 2015).

52.222-26 Equal Opportunity (SEP 2016).

52.222-50 Combating Trafficking in Persons (JAN 2019). The term “contractor” shall mean “Seller”, except in the paragraph (a) definition of Agent, and except when the term “prime contractor” appears, which shall remain unchanged. The term “Contracting Officer” shall mean “Contracting Officer, Buyer's Authorized Procurement representative” in paragraph (d)(1). Paragraph (d)(2) shall read as follows: “If the allegation may be associated with more than one contract, the Seller shall inform the Buyer's Authorized Procurement Representative for each affected contract.” The term “the Government” shall mean “the Government and Buyer” in paragraph (e). The term “termination” shall mean “Cancellation” and “Cancellation for Default”, respectively, in paragraph (e)(6). The term “Contracting Officer” shall mean “Contracting Officer and Buyer” in paragraph (f), except in paragraph (f)(2), where it shall mean “Contracting Officer or Buyer”. Paragraph (h)(2)(ii) shall read as follows: “To the nature and scope of the activities involved in the performance of a Government subcontract, including the number of non-United States citizens expected to be employed and the risk that the contract or subcontract will involve services or supplies susceptible to trafficking in persons.” The term “Contracting Officer” shall mean “Contracting Officer or Buyer” in paragraph (h)(4)(ii). The term “Contracting Officer” shall mean “Buyer” in paragraph (h)(5).

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

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

52.227-1 Authorization and Consent (DEC 2007).

52.227-2 Notice and Assistance Regarding Patent and Copyright Infringement (DEC 2007). A copy of each notice sent to the Government shall be sent to Buyer.

52.227-11 Patent Rights -- Ownership by the Contractor (MAY 2014). This clause applies only if this contract is for experimental, developmental, or research work and Seller is a small business firm or nonprofit organization. In this clause, "Contractor" means Contractor, references to the Government are not changed and the subcontractor has all rights and obligations of the Contractor in the clause.

52.227-18 Rights in Data-Existing Works (DEC 2007).

52.227-19 Commercial Computer Software License (DEC 2007).

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.

52.232-39 Unenforceability of Unauthorized Obligations (JUN 2013).

52.232-40 Providing Accelerated Payments to Small Business Subcontractors. (DEC 2013). This clause applies to contracts with small business concerns. The term "Contractor" retains its original meaning.

52.244-6 Subcontracts for Commercial Items (JAN 2019). Clauses in paragraph (c) (1) apply when Seller is providing commercial items under the Contract.

52.245-1 Government Property (JAN 2017). 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.

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

52.203-13 Contractor Code of Business Ethics and Conduct (OCT 2015). This clause applies only if this contract is in excess of \$5,500,000 and has a period of performance of more than 120 days.

52.203-15 Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009 (JUN 2010). This clause applies if this contract is funded in whole or in part with Recovery Act funds.

52.203-19 Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements (JAN 2017).

52.204-21 Basic Safeguarding of Covered Information Systems (JUN 2016).

52.204-23 Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities (JUL 2018). In paragraph (c)(1), the term "Government" means "Government or Buyer" and the term "Contracting Officer" means "Buyer." All reporting required by paragraph (c) shall be reported through Buyer. Seller shall report the information in paragraph (c)(2) to Buyer.

52.209-6 Protecting the Government's Interests When Subcontracting With Contractors Debarred, Suspended or Proposed for Debarment (OCT 2015). 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 (OCT 2018).

52.222-21 Prohibition of Segregated Facilities (APR 2015).

52.222-26 Equal Opportunity (SEP 2016).

52.222-35 Equal Opportunity for Veterans. (OCT 2015). This clause applies only if this contract is \$150,000 or more.

52.222-36 Equal Opportunity for Workers with Disabilities (JUL 2014). This clause applies only if this contract exceeds \$15,000.

52.222-37 Employment Reports on Veterans (FEB 2016). This clause applies if the Contract is \$150,000 or more.

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

52.222-50 Combating Trafficking in Persons (JAN 2019). The term “contractor” shall mean “Seller”, except in the paragraph (a) definition of Agent, and except when the term “prime contractor” appears, which shall remain unchanged. The term “Contracting Officer” shall mean “Contracting Officer, Buyer's Authorized Procurement representative” in paragraph (d)(1). Paragraph (d)(2) shall read as follows: “If the allegation may be associated with more than one contract, the Seller shall inform the Buyer's Authorized Procurement Representative for each affected contract.” The term “the Government” shall mean “the Government and Buyer” in paragraph (e). The term “termination” shall mean “Cancellation” and “Cancellation for Default”, respectively, in paragraph (e)(6). The term “Contracting Officer” shall mean “Contracting Officer and Buyer” in paragraph (f), except in paragraph (f)(2), where it shall mean “Contracting Officer or Buyer”. Paragraph (h)(2)(ii) shall read as follows: “To the nature and scope of the activities involved in the performance of a Government subcontract, including the number of non-United States citizens expected to be employed and the risk that the contract or subcontract will involve services or supplies susceptible to trafficking in persons.” The term “Contracting Officer” shall mean “Contracting Officer or Buyer” in paragraph (h)(4)(ii). The term “Contracting Officer” shall mean “Buyer” in paragraph (h)(5).

52.222-50 Combating Trafficking in Persons Alternate I (MAR 2015). The term “Contractor” shall mean “Seller”, except the term “prime contractor” shall remain unchanged. The term “Contracting Officer” shall mean “Contracting Officer and the Buyer's Authorized Procurement representative in paragraph (d)(1). Paragraph (d)(2) shall read as follows: “If the allegation may be associated with more than one contract, the Seller shall inform the Buyer's Authorized Procurement Representative for each affected contract.” The term “the Government” shall mean “the Government and Buyer” in paragraph (e). The term “termination” shall mean “cancellation” and “Cancellation for Default”, respectively, in paragraph (e)(6). Insert the following at the end of paragraph (e): “If the Government exercises one of the remedies identified in the paragraph (e) against Buyer as a result, in whole or in part, of the Seller’s violation of its obligations under this clause, Buyer may impose that remedy against the Seller proportionate to the extent to which Seller’s violation caused the Government’s decision to impose a remedy on Buyer.” The term “Contracting Officer” shall mean “Contracting Officer and Buyer” in paragraph (f), except in paragraph (f)(2), where it shall mean “Contracting Officer or Buyer”.

Paragraph (h)(2)(ii) shall read as follows: “To the nature and scope of the activities involved in the performance of a Government subcontract, including the number of non-United States citizens expected to be employed and the risk that the contract or subcontract will involve services or supplies susceptible to trafficking in persons.” The term “Contracting Officer” shall mean “Contracting Officer or Buyer” in paragraph (h)(4)(ii). The term “Contracting Officer” shall mean “Buyer” in paragraph (h)(5).

52.222-55 Minimum Wages Under Executive Order 13658 (DEC 2015). This clause applies if this contract is subject to the Service Contract Labor Standards statute or the Wage Rate Requirements (Construction) statute, and is to be performed in whole or in part in the United States. "Contracting Officer" shall mean "Buyer" except for paragraphs (e)(2), (4) and (g). If the Government exercises a withhold identified in the paragraph (g) against Buyer as a result of the Seller’s violation of its obligations under this clause, Buyer may impose that withhold against the Seller.

52.222-62 Paid Sick Leave Under Executive Order 13706 (JAN 2017). This clause applies if the Contract is subject to the Service Contract Labor Standards statute or the Wage Rate Requirements (Construction) statute, and are to be performed in whole or in part in the United States.

52.224-3 Privacy Training Alternate I (JAN 2017). The term "Contracting Officer" shall mean "Contracting Officer or Buyer".

52.224-3 Privacy Training (JAN 2017). The term "Contracting Officer" shall mean "Contracting Officer or Buyer".

52.225-26 Contractors Performing Private Security Functions Outside the United States (OCT 2016). This clause applies if the Contract will be performed outside the United States in areas of (1) combat operations, as designated by the Secretary of Defense; or (2) other significant military operations, upon agreement of the Secretaries of Defense and State that the clause applies in that area. In paragraph (d)(1), Contracting Officer shall mean "Contracting Officer or Buyer" and in paragraph (d) (3), Contracting Officer shall mean Buyer.

52.232-40 Providing Accelerated Payments to Small Business Subcontractors. (DEC 2013). This clause applies to contracts with small business concerns. The term "Contractor" retains its original meaning.

52.244-6 Subcontracts for Commercial Items (JAN 2019). Clauses in paragraph (c) (1) apply when Seller is providing commercial items under the Contract.

52.245-1 Government Property (JAN 2017). 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.

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

3. Prime Contract Special Provisions The following prime contract special provisions apply to this purchase order
A. CUSTOMER IMPOSED CLAUSES ("CI.Clauses"). Throughout this section, the terms "Contractor" or "Offeror" shall mean "Seller."

1. 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.

2. RELEASE OF CONTRACT INFORMATION (AUG 2018)

(a) Public announcement of Customer contract awards and contract actions is prohibited. The contractor shall not use or allow to be used any aspect of this contract for publicity, advertisement, or any other public relations purpose. 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 Contracting Officer's written approval before publishing a technical paper, making a presentation, or releasing any information based on, referencing, or related to a Customer contract or subcontract. This approval is not required when engaging with congressional committee members and their staffs; however, the contractor shall submit discussion or presentation material to the Contracting Officer for coordination with program security and

program management to ensure security and information integrity prior to the engagement, or immediately following discussions that were not planned in advance.

(c) The contractor may provide past performance information regarding this contract to the Customer 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 Customer Contracting Officer. No past performance information regarding any Customer 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.

3. PROHIBITION ON CONTRACTING FOR HARDWARE, SOFTWARE, AND SERVICES DEVELOPED OR PROVIDED BY KASPERSKY LAB AND OTHER COVERED ENTITIES (AUG 2018)

(a) Definitions. As used in this clause –

Covered article means any hardware, software, or service that –

- (1) Is developed or provided by a covered entity;
- (2) Includes any hardware, software, or service developed or provided in whole or in part by a covered entity; or
- (3) Contains components using any hardware or software developed in whole or in part by a covered entity.

Covered entity means –

- (1) Kaspersky Lab;
- (2) Any successor entity to Kaspersky Lab;
- (3) Any entity that controls, is controlled by, or is under common control with Kaspersky Lab; or
- (4) Any entity of which Kaspersky Lab has a majority ownership.

(b) Prohibition. Section 1634 of Division A of the National Defense Authorization Act for Fiscal Year 2018 (Pub. L. 115–91) prohibits Government use of any covered article. The Contractor is prohibited from –

- (1) Providing any covered article (including subcontractors at any tier) that the Government will use; and
- (2) Using any covered article, in the development of data or deliverables first produced in the performance of the contract or order.

(c) Reporting requirement.

(1) In the event the Contractor identifies a covered article provided, or to be provided, to the Government during contract performance, or if the Contractor is notified of such by a subcontractor at any tier or any other source, the Contractor shall report, in writing, to the Contracting Officer. For indefinite delivery contracts or simplified acquisitions, the Contractor shall report to the Contracting Officer for both the indefinite delivery contract and for any affected orders.

(2) The Contractor shall report the following information pursuant to paragraph (c)(1) of this clause:

(i) Within one business day from the date of such identification: The contract number; the order number(s), if applicable; supplier name; brand; model number (Original Equipment Manufacturer (OEM) number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.

(ii) Within ten business days of submitting the report pursuant to paragraph (c)(1) of this clause: Any further available information about mitigation actions undertaken or recommended. In addition, the Contractor shall describe the efforts it undertook to prevent use or submission of a covered article, any reasons that led to the use or submission of the covered article, and any additional efforts that will be incorporated to prevent future use or submission of covered articles.

(d) Subcontracts. The Contractor shall insert the substance of this clause, including this paragraph (d), in all subcontracts, including subcontracts for the acquisition of commercial items.

4. DISCLOSURE OF OWNERSHIP OR CONTROL BY A FOREIGN GOVERNMENT (NOV 2017)

(a) Definitions. As used in this clause:

(1) *Effectively owned or controlled* means that a foreign government or any entity controlled by a foreign government has the power, either directly or indirectly, whether exercised or exercisable, to control the election, appointment, or tenure of the offeror's officers or a majority of the offeror's board of directors by any means, e.g., ownership, contract, or operation of law (or equivalent power for unincorporated organizations).

(2) *Entity controlled by a foreign government* means any domestic or foreign organization or corporation that is effectively owned or controlled by a foreign government, or any individual acting on behalf of a foreign government. It does not include an organization or corporation that is owned, but is not controlled, either directly or indirectly, by a foreign government if the ownership of that organization or corporation by that foreign government was effective before

23 October 1992.

(3) Foreign government includes the state and the government of any country (other than the United States and its outlying areas) as well as any political subdivision, agency, or instrumentality thereof.

(4) *Proscribed information* means:

- Top Secret information;
- Communications Security (COMSEC) material, excluding controlled cryptographic items when un-keyed or utilized with unclassified keys;
- Restricted Data as defined in the U.S. Atomic Energy Act of 1954, as amended;
- Special Access Program (SAP) information; or
- Sensitive Compartmented Information (SCI).

(b) Prohibition on Award. No contract under a national security program may be awarded to an entity controlled by a foreign government if that entity requires access to proscribed information to perform the contract, unless the Director, Customer or a designee has waived application of 10 U.S.C. §2536(a).

(c) Disclosure.

(1) The offeror shall disclose any interest a foreign government has in the offeror when that interest constitutes control by a foreign government as defined in this provision. If the offeror is a subsidiary, it shall also disclose any reportable interest a foreign government has in any entity that owns or controls the subsidiary, including reportable interest concerning the offeror's immediate parent, intermediate parents, and the ultimate parent.

(2) The offeror shall submit a current SF 328, Certificate Pertaining to Foreign Interests, with their proposal. The SF 328 must include the following information:

- Offeror's point of contact for questions about disclosure (name and phone number with country code, city code, and area code, as applicable);
- Name and address of offeror;
- Name and address of entity controlled by a foreign government; and
- Description of interest, ownership percentage, and identification of foreign government.

(d) If during contract performance the foreign government ownership or control status of the contractor changes, the contractor shall submit an updated SF 328 to the Contracting Officer within one week of the change.

(e) Flow-down. The offeror agrees to include the requirements of this clause in all subcontract solicitations and resulting subcontracts that involve potential access to proscribed information under this solicitation and any resulting contract.

5. ORGANIZATIONAL CONFLICT OF INTEREST (JUL 2016)

(a) The offeror warrants, to the best of its knowledge and belief, that (1) there are no relevant facts that could give rise to organizational conflicts of interest (OCI), as defined by Customer; or (2) the offeror has disclosed all relevant information regarding any actual or potential OCI. Offerors are encouraged to inform the Contracting Officer of any potential conflicts of interest, including those involving contracts with other foreign or domestic government organizations, before preparing their proposals to determine whether the Government will require mitigation of those conflicts. If the successful offeror was aware, or should have been aware, of an OCI before award of this contract and did not fully disclose that conflict to the Contracting Officer, the Government may terminate the contract for default.

(b) If during contract performance the contractor discovers an OCI involving this contract, the contractor agrees to make an immediate and full disclosure in writing to the Contracting Officer. Such notification will include a description of the action the contractor and/or subcontractor has taken or proposes to take to avoid, neutralize, or mitigate the conflict. The contractor will continue contract performance until notified by the Contracting Officer of any contrary actions to be taken. The Government may terminate this contract for its convenience if it deems such termination to be in the best interest of the Government.

(c) The contractor shall inform the Contracting Officer of any activities, efforts, or actions planned, entered into, or ongoing by the contractor or any other corporate entity of the contractor, at the prime or sub-contract level, involving the review of information or providing any advice, assistance, or support to foreign or domestic government agencies, entities, or units outside of the Customer which may result in a perceived or actual OCI with any known Customer activity. The contractor shall provide detailed information to the Contracting Officer as to the specifics of the situation immediately upon its recognition. Based on the severity of the conflict, the Contracting Officer may direct the contractor to take certain actions, revise current work effort, or restrict the contractor's future participation in Customer contracts as may be necessary to appropriately neutralize, mitigate, or avoid the OCI.

(d) If necessary to mitigate OCI concerns, or when directed to do so by the Contracting Officer, the contractor shall submit an OCI plan for approval. The plan must describe how the contractor will mitigate, neutralize, or avoid potential

and/or actual conflicts of interest or unfair competitive advantages. The contractor shall attach a completed Customer Form, *OCI Plan Matrix*, to each new or revised OCI plan submitted to the Contracting Officer. After approval of the OCI plan, the contractor must conduct a yearly self-assessment and submit an annual certification of compliance with the terms of the plan signed by a corporate official at the level of Vice President or above. The contractor shall submit a revised OCI plan for approval whenever corporate, contractual, or personnel changes create or appear to create new OCI concerns, or when directed to do so by the Contracting Officer.

(e) The contractor shall insert a clause containing all the requirements of this clause in all subcontracts for work similar to the services provided by the prime contractor.

(f) Before this contract is modified to add new work or to significantly increase the period of performance, the contractor agrees to submit an OCI disclosure or representation if requested by the Government.

(g) The contractor shall allow the Government to review the contractor's compliance with these provisions or require such self-assessments or additional certifications as the Government deems appropriate.

6. PROTECTION OF INFORMATION (DEC 2011)

(a) It is the Government's intent to ensure proper handling of sensitive information that will be provided to, or developed by, the contractor during contract performance. It is also the Government's intent to protect the proprietary rights of industrial contractors whose data the contractor may receive in fulfilling its contractual commitments hereunder.

(b) Accordingly, the contractor agrees that it shall not disclose, divulge, discuss, or otherwise reveal information to anyone or any organization not authorized access to such information. The contractor shall require each individual requiring access to sensitive or proprietary information, including each of its current and future employees assigned to work under this contract, and each subcontractor and its current and future employees assigned to work on subcontracts issued hereunder, to execute an implementing nondisclosure agreement (NDA) before granting access to such information. The contractor shall make these individual agreements (or a listing of the employees executing such an agreement) available to the Contracting Officer upon request. These restrictions do not apply to such information after the Customer has released it to the contractor community, either in preparation for or as part of a future procurement, or through such means as dissemination at Contractor Industrial Forums.

(c) The contractor shall include in each subcontract a clause requiring compliance by the subcontractor and succeeding levels of subcontractors with the terms and conditions herein.

(d) The contractor shall indemnify and hold harmless the Government, its agents, and employees from every claim or liability, including attorney's 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 data with restrictive legends received in performance of this contract by the contractor or any person to whom the contractor has released or disclosed the data.

(e) The contractor shall allow the Government to review contractor compliance with these provisions or require such self-assessments or additional certifications as the Government deems appropriate.

7. 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 Government's management and oversight of a program or effort. These companies (hereafter referred to as support contractors), are obligated by the terms of CI Clause 8, *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.

Restricted

(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 CI Clause 17, *Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends*, and CI Clause 8, which will be incorporated into all Customer 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 CI Clause 8. 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 CI Clause 8 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.

(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 contractor's 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.

(j) Any notice to the support contractor(s) required or contemplated under the provisions of this clause or CI Clause 8 shall be in writing and shall be deemed to have been given on:

- (1) The date received if delivered personally or by overnight courier;
- (2) The third day after being deposited in the U.S. mail, postage prepaid; or
- (3) The date sent if sent by facsimile transmission or e-mail with a digital copy.

(k) The Government and contractor agree to cooperate in resolving any unauthorized disclosure or misuse of proprietary information by a support contractor. This shall not be construed as requiring the contractor to conduct an inquiry into an unauthorized disclosure or misuse, or as authorizing the allocation of costs for such an inquiry directly to this contract. Any costs incurred by the contractor in said fact-finding efforts may be allowable and allocable upon determination of the Contracting Officer after adjudicating the circumstances related to any unauthorized disclosures or misuse.

8. SUPPORT CONTRACTOR CORPORATE NON-DISCLOSURE AGREEMENT (FEB 2011)

(a) Definitions. As used in this clause:

- (1) *Proprietary information* means information contained in a bid or proposal, cost or pricing data, or any other information disclosed to the Government, including a contractor's technical data, computer software, or business data (as those terms are defined in CI Clause 14) that is properly designated and/or marked as proprietary by a contractor in accordance with law and regulation, and is held in confidence or disclosed under restriction to prevent uncontrolled distribution.
- (2) *Sensitive information* means the Government's nonpublic planning, budgetary, and acquisition information (to include source selection sensitive, advanced acquisition, and contract information), and any contractor technical data or computer software delivered to the Government with limited or restricted rights (as defined in CI Clause 14), and marked with a conforming marking.
- (3) *Disclosing party* means the owner or developer of proprietary or sensitive information.
- (4) *Support contractor*, for purposes of this agreement, means a contractor under a contract the primary purpose of which is to furnish management support services, consultant and professional services; studies, analysis and evaluations; systems engineering, technical direction and assistance; operations and maintenance activities; and other services that may provide contractor employees access to sensitive or proprietary information.
- (5) *Unauthorized disclosure* means the disclosure of sensitive or proprietary information to any party who does not have a need to know that information or who is not contractually authorized to access the information.

(b) Purpose. This support contract requires the contractor to have access to sensitive information and the proprietary information of other contractors, subcontractors, suppliers, and vendors. Any sensitive or proprietary information disclosed to the contractor by the Government, another authorized contractor, or a disclosing party under the provisions of this clause shall not be used by the receiving contractor for any purpose other than support of the Government contract for which it was furnished. The contractor understands that its unauthorized disclosure of such sensitive or proprietary information would be injurious to the interests of the Government and the owner of the information, and shall therefore protect such information from disclosure by exercising the same degree of care used to protect its own proprietary information, and with no less than a reasonable standard of care for protection.

(c) Corporate Non-Disclosure Agreement. To relieve the contractor from the burden of negotiating separate agreements to access or use disclosed proprietary information originating from other contractors, subcontractors, suppliers, and vendors, as well as U.S. Government program offices, the Government and contractor agree that this clause sets forth the rights and obligations of the contractor in its role as a support contractor and its subcontractors regarding the use, handling, protection, and safeguarding of sensitive or proprietary information on this contract. The contractor agrees to protect any such information for as long as it remains subject to restrictions. This clause is meant to satisfy the non-disclosure agreement (NDA) requirements set forth in 10 U.S.C. §2320(f)(2)(B). As such, the contractor shall only enter into a separate NDA, confidentiality agreement, proprietary information agreement, or similar agreement with a disclosing party whose proprietary information is accessed or used in the performance of this contract on an exception basis, such as when the contractor is or may reasonably be expected to be a competitor of the disclosing party. The contractor shall notify the Contracting Officer if an additional agreement is required by a disclosing party. Any such protections provided by such agreement for contractor proprietary information are in addition to, and take precedence over, the terms of this clause regarding contractor proprietary information.

- (d) **Third-Party Beneficiaries.** In its role as a support contractor, the contractor agrees that each disclosing party (contractor, subcontractor, supplier, or vendor) which, pursuant to its U.S. Government contract or subcontract, discloses proprietary information to the Government or to the support contractor is a third-party beneficiary of this clause.
- (e) **Liability for Unauthorized Disclosure.** The contractor agrees that the unauthorized disclosure of sensitive or proprietary information constitutes a breach of contract that may subject the contractor to appropriate legal remedies. If the Government or the disclosing party seeks legal remedy for breach by the contractor in their role as a support contractor, the contractor agrees:
- (1) It will not require the Government to be added as a necessary party to any enforcement action between the disclosing party and the contractor;
 - (2) It will not seek a court to require either to post bond or to prove damages to seek injunctive relief;
 - (3) To consent to federal jurisdiction for Government actions; and
 - (4) That the disclosing party may bring a direct, civil action in law or equity against the support contractor in any state or federal court of competent jurisdiction.
- (f) **Cooperation.** The contractor agrees in the event of an unauthorized disclosure, whether suspected or actual, to promptly notify the Government and the disclosing party, and cooperate with the Government and the disclosing party, whether acting separately or independently, in support of any reasonable fact-finding efforts and mutually agreed upon resolution actions. Any costs incurred by the contractor in said fact-finding efforts will not be passed on to the Government or disclosing party.
- (g) **Flowdown.** The requirements of this clause shall be flowed down to and included in all subcontracts directly chargeable to this contract. The contractor shall notify the Contracting Officer within seven business days of the award of any support subcontract. The notification shall identify the programs and/or contracts being supported, certify that the subcontractors have executed all appropriate implementing NDAs, and confirm that the terms of this clause have been accepted by the subcontractor.
- (h) **Implementing NDAs.** Except as set forth elsewhere in this clause, the contractor shall make sensitive or proprietary information available only to individuals who have a valid need to access the information. The contractor shall require each individual requiring access to sensitive or proprietary information to execute an implementing NDA before granting access to such information. This individual implementing NDA shall include all the elements specified by Customer. The contractor shall maintain a list of individuals who have signed NDAs and have access to sensitive or proprietary information as an attachment to its approved OCI Plan for this contract, and submit an annual certification of compliance with the terms of the plan.
- (i) **Identification of Proprietary Information.** Proprietary information shall be protected pursuant to this clause if it is disclosed:
- (1) In writing and clearly marked on its face as "proprietary" or with other words of similar meaning;
 - (2) Orally or visually (for instance, during a plant tour, briefing, or demonstration), and is identified as proprietary at the time of the oral or visual disclosure by the Government or a contractor. The contractor shall treat all such information as proprietary unless within fifteen days the 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;
 - (3) By electronic transmission (e.g., facsimile, electronic mail, etc.) in either human readable form or machine readable form, and the disclosing party marks it electronically as proprietary within the electronic transmission, with such marking to be displayed in human readable form along with any display of the proprietary information; or
 - (4) By delivery of an electronic storage medium or memory device, and the disclosing party 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.
- (j) **Permissible Disclosure.** Notwithstanding paragraph (e) above, the contractor is authorized to discuss and disclose sensitive or proprietary information that it receives in support of a particular Government program to employees of that particular Government program office pursuant to this contract pursuant to this contract and the license granted the Government by the disclosing party (including other support contractors supporting that same specific program), and other senior Government executives outside of the program offices provided that any sensitive or proprietary information continues to bear the same legend(s) affixed by the disclosing party, whether provided in its original form or in some other format.
- (k) **Exceptions to Liability for Unauthorized Disclosure.** The support contractor shall not be liable for unauthorized disclosure of sensitive or 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 Government or the disclosing party;
 - (2) In the public domain or became publicly known through no wrongful act of the support contractor;
 - (3) Sensitive information disclosed by the support contractor with the Contracting Officer's prior written approval;
 - (4) Proprietary information disclosed by the contractor with the disclosing party's prior written permission;
 - (5) Independently developed by the support contractor, subsequent to its receipt, without the use of any sensitive or proprietary information;
 - (6) 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;
 - (7) Specifically provided in writing by the Government to the support contractor with an unlimited rights license; or
 - (8) 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 sensitive or proprietary information that is legally required.
- (l) Licenses. Nothing contained in this clause, including the disclosure of any information hereunder, shall be construed as granting to the contractor a license or right to use the sensitive or proprietary information, either express or implied, under any patent, copyright, trade secret, or other intellectual property right now or hereafter owned by or controlled by or controlled by the disclosing party.
- (m) No Warranties. The contractor expressly agrees that each disclosing party who discloses proprietary information to the contractor makes no warranties, assurances, guarantees, or representations as to the accuracy, completeness, or technical or scientific quality of any of their proprietary information. Without restricting the generality of the foregoing, no warranty, assurance, guarantee, or representation is made by any disclosing party as to the merchantability, fitness for a particular purpose, or non-infringement of patents, copyrights, trademarks, trade secrets, or any other rights of third parties of any proprietary information disclosed to the support contractor.
- (n) Compliance with Export Control Laws. The contractor shall not export (to include disclosing or providing access to a foreign person located anywhere as defined in 22 C.F.R §120.16) any technical information furnished by the disclosing party without first complying with all applicable U.S. export control laws and regulations, including the requirements of the International Traffic in Arms Regulations and the Export Administration Regulations. The contractor will first obtain the written consent of the disclosing party who originated the proprietary information before submitting an application to export such proprietary information.
- (o) Notices. For any notice required or contemplated by this clause, the support contractor has the burden of determining from the Contracting Officer the disclosing party's contractual point of contact, and for providing written notice thereto. The Contracting Officer will provide a list of the points of contact for service of notices for all support contractors identified in conjunction with CI Clause 7, *Enabling Clause for Prime and Support Contractor Relationships*. Notice shall be deemed to have been given on:
- (1) The date received if delivered personally or by overnight courier;
 - (2) The third day after being deposited in the U.S. mail, postage prepaid; or
 - (3) The date sent if sent by facsimile transmission or e-mail with a digital copy of the notice.
- (q) Return of Sensitive and Proprietary Information. All proprietary information disclosed to the support contractor by the Government or a disclosing party shall remain the property of the disclosing party. Sensitive or proprietary information shall be destroyed or otherwise returned promptly at the request of the Government or a disclosing party, together with any copies thereof, to include that stored by computer memory or data storage system, and the contractor will certify to the disclosing party that it has done so. Notwithstanding the foregoing, the contractor may retain an archival copy for dispute resolution purposes in its legal counsel's office, as well as copies of any reports prepared for and provided to the Government specific to performance of this contract that contain or refer to the sensitive or proprietary information.
- (p) No Waiver. Failure by the Government or a disclosing party to enforce any requirement in this clause shall not constitute a waiver in any subsequent breach of that requirement. If any requirement of this clause or part of such requirement is or becomes invalid or unenforceable, the remaining requirements shall remain in effect.
- (r) Effective Date. The requirements of this clause shall be in force as of the effective date of this contract, and expire upon the completion or termination of this contract. These requirements may only be terminated or amended by the Contracting Officer and the contractor by supplemental agreement. The confidentiality requirements of this clause shall survive completion or termination of this contract.

9. 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>.

10. SMALL BUSINESS SUBCONTRACTING PLAN (OCT 2015)

(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 ANC's or the Indian tribe's 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 \$700,000 (\$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 Orders—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.

11. PROHIBITION ON STORAGE AND DISPOSAL OF TOXIC AND HAZARDOUS MATERIALS (JAN 2004)

(a) Definitions. As used in this clause:

- (1) *Storage* means a non-transitory, semi-permanent or permanent holding, placement, or leaving of material. It does not include a temporary accumulation of a limited quantity of a material used in or a waste generated or resulting from authorized activities, such as servicing, maintenance, or repair of Government items, equipment, or facilities.
- (2) *Toxic or hazardous materials* means those materials identified in the EPA Title III List of Lists.
- (b) The contractor is prohibited from transporting, storing, disposing, or using toxic or hazardous materials in performing this contract except for those materials listed in (c) below or when authorized in writing by the Contracting Officer.
- (c) The following toxic and hazardous materials are authorized for use in the performance of this contract:

TOXIC MATERIAL USE LIMITATIONS

(VARIABLE)

12. 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 contract's 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.

13. TECHNICAL DATA AND COMPUTER SOFTWARE: COMMERCIAL ITEMS (JUL 2018)

(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, user's 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, or for performance of work by Government support contractors.

(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.

14. 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, user's 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 CI Clause 6, *Protection of Information*, and CI Clause 17, *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 CI Clause 8, *Support Contractor Corporate Non-Disclosure Agreement*, and CI Clause 17, *Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends*. When CI Clause 8 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 CI Clause 6, *Protection of Information*, and CI Clause 17, *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 CI Clause 8, *Support Contractor Corporate Non-Disclosure Agreement*, and CI Clause 17, *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—
- (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 CI Clause 6, *Protection of Information*, and CI Clause 17, *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 CI Clause 8, *Support Contractor Corporate Non-Disclosure Agreement*, and CI Clause 17, *Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends*. When CI Clause 8 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—

(A) The receiving development contractor(s) or subcontractor(s) contract arrangements are subject to clauses CI Clause 6, *Protection of Information*, and CI Clause 17, *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 CI Clause 8, *Support Contractor Corporate Non-Disclosure Agreement*, and CI Clause 17, *Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends*. When CI Clause 8 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 CI Clause 7, *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 CI Clause 6, *Protection of Information*, and CI Clause 17, *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 CI Clause 8, *Support Contractor Corporate Non-Disclosure Agreement*, and CI Clause 17, *Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends*. When CI Clause 8 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 CI Clause 16, *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 CI Clause 15, *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 as specified in CI Clause 14) 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 CI Clause 14, *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 CI Clause 14, *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 CI Clause 14, *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 Government's 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 CI Clause 15, *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.

15. 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.

16. IDENTIFICATION AND ASSERTION OF USE, RELEASE, OR DISCLOSURE RESTRICTIONS (JUL 2018)

- (a) The terms used in this clause are defined in the *Technical Data and Computer Software: Noncommercial Items* clause contained in this contract.
- (b) The identification and assertion requirements in this clause apply to technical data and computer software to be delivered with other than unlimited rights. Notification and identification is not required for restrictions based solely on copyright.
- (c) Offers submitted in response to this solicitation shall identify, to the extent known at the time an offer is submitted to the Government, the technical data or computer software that the offeror, its subcontractors or suppliers, or potential subcontractors or suppliers, assert should be furnished to the Government with restrictions on use, release, or disclosure.
- (d) The contractor’s assertions, including the assertions of its subcontractors or suppliers, shall be submitted as an attachment to its offer/proposal in the following format, dated and signed by an official authorized to contractually obligate the contractor:

Identification and Assertion of Restrictions on the Government's Use, Release, or Disclosure of Technical Data or Computer Software

The contractor asserts for itself, or the person identified below asserts that the Government's rights to use, release, or disclose the following technical data or computer software should be restricted:

Technical Data or Computer Software to Be Furnished With Restrictions (1)	Basis for Assertion (2)	Asserted Rights Category (3)	Name of Person Asserting Restrictions (4)
(LIST) (5)	(LIST)	(LIST)	(LIST)

- (1) For technical data (other than computer software documentation) pertaining to items, components, or processes developed at private expense, identify both the deliverable technical data and each such item, component, or process (to include document titles, version numbers, and dates for clarity). For computer software or computer software documentation, identify the software or documentation (to include document and software titles, version numbers, and dates for clarity).
- (2) Generally, development at private expense, either exclusively or partially, is the only basis for asserting restrictions. For technical data, other than computer software documentation, development refers to development of the item, component, or process to which the data pertain. The Government's rights in computer software documentation generally may not be restricted. For computer software, development refers to the software. Indicate whether development was accomplished exclusively or partially at private expense. If development was

not accomplished at private expense, or for computer software documentation, enter the specific basis for asserting restrictions.

(3) Enter the asserted rights category (e.g., Government purpose license rights from a prior contract, limited, restricted, or Government purpose rights under this or a prior contract, or specially negotiated licenses).

(4) Identify the corporation, individual, or other person, as appropriate.

(5) Enter "None" when all data or software will be submitted without restrictions.

Date: _____

Printed Name and Title: _____

Signature: _____

(End of identification and assertion)

(e) A contractor's failure to submit, complete, or sign the notification and identification required by paragraph (d) of this provision with its offer will constitute a minor informality. If assertions are required and the contractor does not correct such informality within the time prescribed by the Contracting Officer, the offer may be ineligible for award.

(f) If the contractor is awarded a contract, the assertions identified in paragraph (d) of this provision shall be included in an attachment (the Attachment) and incorporated as a separate attachment in the resultant contract. Upon request by the Contracting Officer, the contractor shall provide sufficient information to enable the Contracting Officer to evaluate any listed assertion. Updates to the assertion list shall be included in an amended Attachment.

17. LIMITATIONS ON THE USE OR DISCLOSURE OF GOVERNMENT-FURNISHED INFORMATION MARKED WITH RESTRICTIVE LEGENDS (JUL 2018)

(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 CI Clause 6, *Protection of Information*, and CI Clause 17, *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 CI Clause 8, *Support Contractor Corporate Non-Disclosure Agreement*, and CI Clause 17, *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.

(4) GFI technical data or computer software marked with commercial restrictive legends.

(i) The contractor shall use, modify, reproduce, perform, display technical data and/or computer software that is or pertains to a commercial item and is received from the Government with a commercial restrictive legend (i.e. marked to indicate that such data are subject to use, modification, reproduction, release, performance, display, or disclosure restrictions) 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, use the technical data to manufacture additional quantities of the commercial items, release or disclose such data to any unauthorized person. Prior to providing technical data or computer software marked with commercial restrictive legends, the Government shall ensure that:

(A) The receiving development contractor(s) or subcontractor(s) contract arrangements are subject to clauses CI Clause 6, *Protection of Information*, and CI Clause 17, *Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends*; and

(B) The receiving support contractor(s) or subcontractor(s) contract arrangements are subject to clauses CI Clause 8, *Support Contractor Corporate Non-Disclosure Agreement*, and CI Clause 17, *Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends*.

(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.

18. TECHNICAL DATA OR COMPUTER SOFTWARE PREVIOUSLY DELIVERED TO THE GOVERNMENT (OCT 2015)

The contractor shall attach to its offer an identification of all documents or other media incorporating technical data or computer software it intends to deliver under this contract with other than unlimited rights that are identical or substantially similar to documents or other media that the contractor has produced for, delivered to, or is obligated to deliver to the Government under any contract or subcontract. This requirement shall be flowed down to all subcontractors at all levels. The attachment shall identify:

(a) The contract number under which the technical data or computer software was produced;

(b) The contract number under which, and the name and address of the organization to whom, the technical data or computer software was most recently delivered or will be delivered; and

(c) Any limitations on the Government's right to use or disclose the technical data or computer software, including, when applicable, identification of the earliest date the limitations expire.

19. RIGHTS IN BID OR PROPOSAL INFORMATION (JUL 2018)

(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 prior 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.

20. COMMERCIAL TECHNICAL DATA AND COMPUTER SOFTWARE LICENSING—ORDER OF PRECEDENCE (OCT 2014)

(a) Upon delivery of any commercial item technical data, computer software, computer software documentation, or any combination thereof, to the Government contained in any CLIN or CDRL, the following provisions shall take precedence over conflicting provisions in any license associated with those items, notwithstanding any provisions in those licenses to the contrary through renewals or extensions, as needed, to this contract:

- (1) The Government shall have the right to use, perform, display, or disclose that commercial item technical data, in whole or in part, within the Government.
- (2) The Government may not, without the written permission of the Licensor, release or disclose the commercial item technical data and commercial computer software outside the Government, use the commercial item technical data and computer software for manufacture, or authorize the commercial item technical data and computer software to be used by another party, except that the Government may reproduce, release, or disclose such data and software or authorize the use or reproduction of such data and software by persons outside the Government (including their subcontractors) to perform their respective contract(s) as identified in CI Clause 7 in Section I.
- (3) The Licensor agrees that the Government shall have the right to unilaterally add or delete contractors from those supporting the JR contract at any time, and its exercise of that right shall not entitle the Licensor to an equitable adjustment or a modification of any other terms and conditions of this contract.
- (4) The duration of this license shall be, at a minimum, for the period of performance of this contract (including options, if exercised) unless the license specifies a longer period.
- (5) License rights related to technical data described in, and granted to the U.S. Government under CI Clause 13 shall apply to all such technical data associated with delivered computer software including, but not limited to, user's manuals, installation instructions, and operating instructions.
- (6) Disputes arising between the Licensee and the U.S. Government pertaining to the provisions of the License shall be subject to the Contract Disputes Act. Furthermore, the jurisdiction and forum for disputes hereunder upon delivery to the U.S. Government shall be the Armed Services Board of Contract Appeals (ASBCA) or the U.S. Court of Federal Claims (COFC), as appropriate.
- (7) By law, the U.S. Government cannot enter into any indemnification agreement where the Government's liability is indefinite, indeterminate, unlimited, and in violation of the Anti-Deficiency Act; therefore, any such indemnification provision in this License shall be void.
- (8) In the event the Licensee files a claim with the U.S. Government on behalf of the Licensor and prevails in a dispute with the Government relating to that claim, the Licensor agrees that damages and remedies awarded shall exclude attorney's fees.
- (9) Subject to the security requirements set forth in this contract, and upon receiving written consent by the U.S. Government, the Licensor may be permitted to enter Government installations for purposes such as software usage audits or other forms of inspection.
- (10) The items provided hereunder may be installed and used at any U.S. Government installation worldwide at which JR equipment and/or software is located consistent with the provisions of the contract between the U.S. Government and the Licensee.
- (11) Under no circumstances shall terms of the License or any modifications thereto renew automatically so as to obligate funds in advance of funds being appropriated in contravention of the Anti-Deficiency Act.
- (12) The Licensor shall comply with, and all delivered items shall conform to, all applicable Government security/classification rules and regulations applicable to this agreement, in particular those set forth in the applicable DD Form 254 (Department of Defense Contract Security Classification Specification).
- (13) The Licensor understands that the ultimate purpose of the Licensee entering into this License with the Licensor is for the Licensor to supply to the U.S. Government a critical component of a weapons system whose continued sustainment is mandated by Federal law (10 U.S.C. § 2281, 42 U.S.C. § 14712). Accordingly, should the U.S. Government use, release or disclose the items described in this License in a manner inconsistent with the terms of this License, the U.S.

Government shall not be required to de-install and stop using those items or return such items to the Licensee, and the Licensor's remedy will be limited to monetary damages.

(14) In the event of inconsistencies between the License and Federal law, Federal law shall apply.

(15) The Government shall not be required to comply with the terms and conditions of any License that is inconsistent with any applicable laws, regulations, or policies pursuant to export controlled items.

(16) Any claim the Licensee files with the U.S. Government on behalf of the Licensor, and any claim the U.S. Government files with the Licensor, shall be submitted within the period specified in FAR §52.233-01 ("Disputes").

(b) Subcontractor Flow-down. The contractor ("Licensee") shall include the following clause in any agreement between it and its subcontractors ("Licensors") that require the delivery of commercial item technical data, computer software, or computer software documentation, and this clause shall be in effect during the period of performance of this contract or into perpetuity for perpetual licenses:

This Addendum is entered into between _____ ("Licensee") and _____ ("Licensor") and relates to the commercial item technical data, computer software, or computer software documentation ("Items") licensed to the Licensee by the Licensor through the Licensee's License Agreement ("Agreement"), and this Addendum is incorporated by reference into the Agreement. The Addendum terms will come into effect if and when the Agreement is transferred to the Government. All references to such Items shall include all software updates (e.g., software maintenance patches, version changes, new releases) and future substitutions made by the Licensor. Upon delivery of that/those Items, Licensor and Licensee agree that the following provisions in this Addendum shall take precedence over conflicting provisions, if any, in the Agreement notwithstanding any provisions in the Agreement to the contrary:

(1) License rights related to technical data granted to the U.S. Government under CI Clause 13(b)(1) shall apply to all technical data associated with delivered computer software including, but not limited to, user's manuals, installation instructions, and operating instructions.

(2) Disputes arising between the Licensee and the U.S. Government pertaining to the provisions of the Agreement shall be subject to the Contract Disputes Act. Furthermore, the jurisdiction and forum for disputes hereunder upon delivery to the U.S. Government shall be the Armed Services Board of Contract Appeals (ASBCA) or the U.S. Court of Federal Claims (COFC), as appropriate.

(3) By law, the U.S. Government cannot enter into any indemnification agreement where the Government's liability is indefinite, indeterminate, unlimited, and in violation of the Anti-Deficiency Act; therefore, any such indemnification provision in this Agreement shall be void.

(4) In the event the Licensee files a claim with the U.S. Government on behalf of the Licensor and prevails in a dispute with the Government relating to that claim, the Licensor agrees that damages and remedies awarded shall exclude attorney's fees.

(5) Upon receiving written consent by the U.S. Government, the Licensor may be permitted to enter Government installations for purposes such as software usage audits or other forms of inspection.

(6) The Items provided hereunder may be installed and used at any U.S. Government installation worldwide consistent with the provisions of the contract between the U.S. Government and the Licensee (e.g., limitations on number of executing instances of software, number of users, other processing volume limitations).

(7) Under no circumstances shall terms of the Agreement or any modifications thereto renew automatically so as to obligate funds in advance of funds being appropriated in contravention of the Anti-Deficiency Act.

(8) Licensor shall comply with, and all delivered Items shall conform to, all applicable Government security/classification rules and regulations applicable to this Agreement, in particular those set forth in the applicable DD Form 254 (Department of Defense, Contract Security Classification Specification).

(9) Licensor understands that the ultimate purpose of the Licensee entering into this Agreement with the Licensor is for the Licensor to supply to the U.S. Government a critical component of a weapons system whose continued sustainment is mandated by Federal law (10 U.S.C. § 2281, 42 U.S.C. § 14712). Accordingly, should the U.S. Government use, release, or disclose the Items described in this Agreement in a manner inconsistent with the terms of this Agreement, the U.S. Government shall not be required to uninstall and stop using those Items or return such Items to the Licensee.

(10) In the event of inconsistencies between the Agreement and Federal law, Federal law shall apply.

21. DEFERRED DELIVERY OF TECHNICAL DATA OR COMPUTER SOFTWARE (MAY 2005)

The Government may identify technical data or computer software (as defined in CI Clause 13 or CI Clause 14) 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.

22. DEFERRED ORDERING OF TECHNICAL DATA OR COMPUTER SOFTWARE (SEP 2013)

(a) The Government may defer ordering technical data, computer software (as defined in CI Clause 13 or CI Clause 14), or other information not easily categorized (as defined in CI Clause 14(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 Clause 13 and CI Clause 14).

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

23. 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 Customer Imposed clauses 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.

24. CUSTOMER 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 CI Clause 14, *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 CI Clause 7, *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 CI Clause 8, *Support Contractor Corporate Non-Disclosure Agreement*, and CI Clause 17, *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 CI Clause 14(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 CI Clause 14(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.

(l) Customer 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:

Customer 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.

25. PRE-AWARD AND POST-AWARD IDENTIFICATION AND ASSERTION OF RESTRICTIONS ON TECHNICAL DATA PERTAINING TO A COMMERCIAL ITEM AND COMMERCIAL COMPUTER SOFTWARE (OCT 2015)

(a) The terms used in this clause are defined in Customer Imposed Clauses.

(b) Identification and Assertion of Restrictions. The offeror shall not deliver or otherwise provide to the Government any commercial technical data or commercial computer software with restrictive markings (or otherwise subject to restrictions on access, use, modification, reproduction, release, performance, display, or disclosure) unless the commercial technical data or commercial computer software are identified in accordance with the following requirements:

(1) Pre-Award. The offeror (including its subcontractors or suppliers, or potential subcontractors or suppliers, at any tier) shall identify all commercial technical data and commercial computer software that it proposes will be delivered or otherwise provided (including all option CLINs, if exercised) with less than Unlimited Rights, to the extent known at the time an offer is submitted to the Government:

(i) The offeror shall also identify and assert any restrictions for all commercial computer software, including open source software, and commercial technical data (i.e., technical data pertaining to a commercial item) using the format provided in paragraph (e) below.

(ii) An offeror's failure to submit, adequately complete, or sign the notification and identification required by paragraph (e) of this clause with its offer will constitute a minor informality. If assertions are required and the offeror does not correct such informality within the time prescribed by the Contracting Officer, the offer may be ineligible for award.

(iii) If the offeror is awarded a contract, the assertions identified in this clause shall be listed in an attachment to that contract. Upon request by the Contracting Officer, the offeror shall provide sufficient information to enable the Contracting Officer to evaluate any listed assertion. Updates to the Commercial Assertions List shall be included in an amended attachment.

(2) Post-Award. In addition to the pre-award assertions made in the attachment pursuant to paragraph (b)(1)(iii), other assertions on technical data pertaining to a commercial item and commercial computer software may be identified after award when based on new information or inadvertent omissions, unless the inadvertent omissions would have materially affected the source selection decision. Such identifications and assertions shall be submitted to the Contracting Officer as soon as practicable prior to the scheduled date for delivery of the technical data/computer software, following the same requirements and using the same table format for pre-award assertions found in paragraph (e), and signed by an official authorized to contractually obligate the contractor.

(c) Copies of Commercial Licenses. The offeror shall provide copies of all commercial licenses to commercial technical data or commercial computer software which the offeror proposes to deliver, including third party licenses, and these shall be submitted as an attachment to its offer. The Government will review the licenses to ensure that the licenses terms are consistent with federal procurement law and meet the Government's end user needs. All such commercial licenses will be made part of an attachment to the contract at award. If the offeror intends to deliver commercial technical data under the terms of CI Clause 13, instead of its own commercial license, the offeror shall list CI Clause 13 in the table at paragraph (e) below.

(1) Typical licensing terms that are inconsistent with federal procurement law can include jurisdiction and venue (must be Federal law and venue), indemnification of vendor and automatic renewals (Anti-Deficiency Act violation), order of precedence (the contract takes precedence over license), dispute resolution (must be in accordance with Disputes clause in the contract), and injunctive relief (no injunctive relief against the Government is available, per 28 USC §1498(b)). This list is not all-inclusive, but is intended to convey the most common license terms that are problematic to the Government, and the must be resolved prior to award. See CI Clause 20, *Commercial Technical Data and Computer Software Licensing - Order of Precedence*, for additional clarification.

- (2) With respect to the Government program user needs for technical data and computer software delivered under this contract, the Government will need to distribute the commercial computer software and technical data outside of Government for any purpose where the Government is a party, but only under conditions that prohibit any further distribution by the third party recipient. To accomplish the distribution, the Government intends use non-disclosure agreements discussed in clauses CI Clause 6, *Protection of Information*, and CI Clause 8, *Support Contractor Corporate Non-Disclosure Agreement*. Additional non-disclosure agreements deemed necessary by the owner of the licensed technical data or computer software shall be submitted to the Contracting Officer for review prior to execution.
- (3) If the offeror intends to use third party commercial technical data or commercial computer software in the performance of the contract, and then deliver the commercial technical data or computer software to the Government at the conclusion of the contract, the offeror should list such commercial technical data or computer software in the table at paragraph (e). The offeror shall also ensure that the applicable license is transferable to the Government. The Government criteria for software license review will be the same for third party vendors as for the offeror’s commercial computer software as described in paragraph (c)(1) and (c)(2) of this clause once the Government becomes the end user. The offeror should accomplish the actions in the paragraph prior to award of the contract.
- (d) Use of Open Source Software (OSS) Without Delivery. The Government treats OSS as a category of commercial computer software. If the contractor proposes to deliver OSS while performing under the contract, the contractor shall follow the same rules as prescribed in this clause as for commercial computer software. Additionally, if the contractor proposes to use, but not deliver, commercial computer software (including OSS), the contractor must ensure that such use does not: (i) create, or purport to create, any Government distribution obligations with respect to the computer software deliverables; or (ii) grant, or purport to grant, to any third party any rights to or immunities under Government intellectual property or Government data rights to the Government computer software deliverables.
- (e) Table Format for Identification and Assertion of Restrictions. Commercial technical data and commercial computer software restrictions shall be identified as follows:

Identification of Commercial Technical Data/Computer Software (Including Open Source Software) Use and Modifications (Commercial Assertions List)

Commercial Technical Data/Computer Software Title, Version #, and License*	Technical Use/Implementing Approach**	If OSS, Was OSS Modified by Contractor?***	Name of Contractor Delivering Commercial Software****

* For commercial technical data (other than computer software documentation) pertaining to items, components, or processes developed at private expense, identify both the deliverable technical data and each such item, component, or process. For computer software or computer software documentation, identify the computer software or computer software documentation. The complete title and version number of the computer software should be listed. If OSS, list the license and version number. If a version number is not available, provide some other means of identification (e.g., checksum data). If commercial technical data is being delivered under the terms of CI Clause 13, then CI Clause 13 should be listed. If the OSS was downloaded from a website, the website address should also be provided but an actual copy of the license shall still be provided as set forth in paragraph (d). Enter “None” if all commercial technical data or commercial computer software will be submitted without restrictions.

** The functionality of the commercial computer software should be described, as well as where it is being used within the larger computer software deliverable, if applicable.

*** If OSS is being used, the offeror should state whether it has modified the OSS or plans to do so.

**** Corporation, individual, or other person as appropriate.

Date: _____

Printed Name and Title: _____

Signature: _____

(End of identification and assertion)

26. SUPPLEMENTAL COST PRINCIPLES (SEP 2013)

The determination, negotiation, and allowability of costs under this contract shall be in accordance with Part 31 of the Federal Acquisition Regulation and Customer Imposed Clauses in effect on the date of this contract.

27. SUBCONTRACTS (EDUCATIONAL INSTITUTIONS) (MAR 2015)

- (a) The contractor shall obtain written authorization from the Contracting Officer prior to award, extension, or renewal of a subcontract with an educational institution.
- (b) The contractor shall obtain a letter from an official with authority to approve contracts on behalf of the subcontractor that acknowledges the subcontractor's involvement with the Customer and approves the proposed contractual relationship. The contractor shall submit a copy of this letter to the Contracting Officer along with a description of the work to be subcontracted and a technical justification documenting the necessity in relation to the project as a condition for obtaining the required written authorization. The Customer's sample letter may be used to fulfill this requirement.
- (c) The requirements of this clause must be included in all subcontracts.

28. SUBCONTRACT REPORTING, MONITORING, CONSENT, AND NOTIFICATION (MAY 2019)

- (a) Definition. As used in this clause:

Subcontract means any contract or contractual action entered into by the prime contractor or a subcontractor for the purpose of obtaining supplies, materials, equipment, or services of any kind under this contract. It includes but is not limited to purchase orders, and changes and modifications to purchase orders. For purposes of consent, the definition of *subcontract* in FAR 52.244-2 applies.

Subcontractor means any supplier, distributor, vendor, or firm that furnishes supplies, materials, equipment, or services of any kind under this contract or a subcontract entered into in connection with this contract, regardless of dollar value.

- (b) Flow-Down. The requirements of this clause must be included in all first-tier subcontracts directly chargeable to this contract, except for those subcontracts with US-owned companies to provide only unclassified commercial products and/or services on a fixed-price basis.

- (c) Reporting. The prime contractor shall submit an annual report by 30 June each year providing the data specified below for all first- and second-tier subcontracts directly chargeable to this contract that were awarded and/or modified within the previous twelve months. Individual fixed-price subcontracts under \$5,000 with US-owned companies to provide unclassified commercial products and/or services that will not be incorporated into a contract deliverable (e.g., office supplies, travel, postage) need not be reported. Reports will be submitted electronically through the portal on the Customer network. Prime contractors without Customer network access will prepare their reports using the Excel Add-in Tool available on the Customer website, and submit via email. Each subcontract report must include the following information in the format specified in Customer portal and in the Excel Add-in Tool:

- Prime Contract Number or Task Order Number
- Subcontractor Tier
- Is the Subcontract Classified?
- Relationship Between Prime Contractor and Subcontractor
- Subcontractor Business Name
- Subcontractor Street Address
- Subcontractor City
- Subcontractor State
- Subcontractor Zip Code
- Subcontractor Country
- Subcontractor Data Universal Numbering System (DUNS) Number
- Subcontractor Contractor and Government Entity (CAGE) Code
- Subcontractor Business Type
- Is the Subcontractor a Woman-owned Business?
- Is the Subcontractor a Veteran-owned Business?
- Is the Subcontractor a Service-disabled Veteran-owned Business?
- Is the Subcontractor a HUBZone Small Business?
- Subcontractor Country of Ownership
- DUNS Number of Company Awarding Subcontract
- Subcontractor's Parent Company Business Name
- Subcontract or Purchase Order Number
- Subcontract Value (Cumulative to Date)
- Subcontract Period of Performance – Start Date
- Subcontract Period of Performance – End Date
- Subcontract Place of Performance – City

- Subcontract Place of Performance – State
- Subcontract Place of Performance – Country
- Brief Description of Subcontract Effort
- Primary Subcontract Type
- Method Used to Select Subcontractor (Competitive or Sole-Source)

(d) Monitoring. The parties agree that the Government shall have the right to:

- (1) Review all documentation pertaining to source selections or other competitive sourcing activities, fact-finding, and negotiation sessions with or for subcontractors or potential subcontractors;
- (2) Observe any subcontractor test, verification, validation, shipment, or similar event;
- (3) Attend any subcontractor design review, milestone review, program review, or similar event. Unless expressly agreed to by the prime contractor and the Contracting Officer, the Government will not require a subcontractor event to be rescheduled due to the Government's inability to attend; and
- (4) Review and agree to the contractor's make-or-buy program when necessary to ensure negotiation of reasonable contract prices or satisfactory performance.

(e) Consent.

- (1) All consent to subcontract requirements in FAR Clause 52.244-2 apply to this contract. In addition, the contractor shall obtain the Contracting Officer's written consent before awarding any subcontract with a value over \$1 million.
- (2) Requests for consent to subcontract shall be submitted in writing to the Contracting Officer, and provide, at a minimum, the information specified in FAR 52.244-2(e).

(f) Notification. The prime contractor shall provide written notification to the Contracting Officer and COTR when a subcontract is expected to exceed the negotiated cost baseline by 15 percent.

(g) Privity. Government collection of subcontract information, surveillance of subcontractor performance, and consent to subcontract do not relieve the contractor of any responsibility for the effective management of all subcontracts and for the overall success of this contract. Actions taken under the authority of this clause do not establish privity of contract between the Government and subcontractors under this contract. The Government will not provide direction to or request action by any subcontractor except through the prime. However, all subcontractors must respond to direct requests for information from the Government, either directly or through the prime.

(h) Security. The Government reserves the right to direct the removal of any subcontractor under this contract on the basis of Government security concerns. The contractor shall be responsible for any lack of due diligence or negligence in the selection of a subcontractor, and will not be entitled to an equitable adjustment if the Contracting Officer determines that the Government's need to remove the contractor for security reasons is the fault of the contractor or subcontractor.