

**CUSTOMER CONTRACT REQUIREMENTS**  
**TIDE**  
**CUSTOMER CONTRACT K627**

**CUSTOMER CONTRACT REQUIREMENTS**

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

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

**52.203-6 Restrictions on Subcontractor Sales to the Government** (SEP 2006). This clause applies only if this contract exceeds (i) \$100,000 if included in Buyer's customer RFP or customer contract issued before October 1, 2010 or (ii) \$150,000 if included in Buyer's customer RFP issued on or after October 1, 2010, or if the prime contract was issued prior to October 1, 2010 but was amended after October 1, 2010 to increase the Simplified Acquisition Threshold.

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

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

**52.203-10 Price or Fee Adjustment for Illegal or Improper Activity** (JAN 1997). This clause applies only if this contract exceeds (i) \$100,000 if included in Buyer's customer RFP or customer contract issued before October 1, 2010 or (ii) \$150,000 if included in Buyer's customer RFP issued on or after October 1, 2010, or if the prime contract was issued prior to October 1, 2010 but was amended after October 1, 2010 to increase the Simplified Acquisition Threshold. If the Government reduces Buyer's price or fee for violations of the Act by Seller or its subcontractors at any tier, Buyer may withhold from sums owed Seller the amount of the reduction.

**52.203-11 Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions** (SEP 2005). 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."

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

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

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

**52.215-2 Audit and Records - Negotiation** (OCT 2010). This clause applies only if this contract exceeds \$150,000 and (i) is cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeterminable type or any combination of these types; (ii) Seller

was required to provide cost or pricing data, or (iii) Seller is required to furnish reports as discussed in paragraph (e) of the referenced clause.

**52.215-10 Price Reduction for Defective Certified Cost or Pricing Data** (AUG 2011). This clause applies only if this contract exceeds the threshold set forth in FAR 15.403-4 and is not otherwise exempt. In subparagraph (3) of paragraph (a), insert "of this contract" after "price or cost." In Paragraph (c), "Contracting Officer" shall mean "Contracting Officer or Buyer." In Paragraphs (c)(1), (c)(1)(ii), and (c)(2)(i), "Contracting Officer" shall mean "Contracting Officer or Buyer." In Subparagraph (c)(2)(i)(A), delete "to the Contracting Officer." In Subparagraph (c)(2)(ii)(B), "Government" shall mean "Government or Buyer." In Paragraph (d), "United States" shall mean "United States or Buyer."

**52.215-12 Subcontractor Certified Cost or Pricing Data** (OCT 2010). This clause applies only if this contract exceeds the threshold set forth in FAR 15.403-4 and is not otherwise exempt. The certificate required by paragraph (b) of the referenced clause shall be modified as follows: delete "to the Contracting Officer or the Contracting Officer's representative" and substitute in lieu thereof "to The Boeing Company or The Boeing Company's representative (including data submitted, when applicable, to an authorized representative of the U.S. Government)."

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

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

**52.219-9 Small-Business Subcontracting Plan** (JUL 2005). This clause applies only if this contract exceeds \$500,000 and Seller is not a small business concern. Seller shall adopt a subcontracting plan that complies with the requirements of this clause. In addition, Seller shall submit to Buyer Form X31162, Small Business Subcontracting Plan Certificate of Compliance.

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

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

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

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

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

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

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

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

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

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

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

**52.225-19 Contractor Personnel in a Designated Operational Area or Supporting a Diplomatic or Consular Mission Outside the United States.** (MAR 2008). This clause is applicable when Seller personnel perform work outside the United States in: (1) In a designated operational area during (i) Contingency operations; (ii) Humanitarian or peacekeeping operations; or (iii) Other military operations; or military exercises, when designated by the Combatant Commander; or; (2) When supporting a diplomatic or consular mission (i) That has been designated by the Department of State as a danger pay post See [http://aoprals.state.gov/Web920/danger\\_pay\\_all.asp](http://aoprals.state.gov/Web920/danger_pay_all.asp) and (ii) That the Contracting Officer has indicated is subject to this clause.

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

**52.227-1 Authorization and Consent (Dec 2007) Alternate I** (APR 1984).

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

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

**52.227-19 Commercial Computer Software - Restricted Rights** (DEC 2007).

**52.227-19 Commercial Computer Software - Restricted Rights** (JUN 1987).

**52.228-3 Workers' Compensation Insurance (Defense Base Act)** (APR 1984).

This clause applies only if the Defense Base Act applies to this contract.

**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.

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

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

**52.245-1 Government Property** (APR 2012). This clause applies if Government property is acquired or furnished for contract performance. "Government" shall mean Government throughout except the first time it appears in paragraph (g)(1) when "Government" shall mean the Government or the Buyer.

**52.251-1 Government Supply Sources** (APR 2012). This clause applies only if Seller is notified by Buyer in writing that Seller is authorized to purchase from Government supply sources in the performance of this contract.

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

**252.209-7009 Organizational Conflict of Interest – Major Defense Acquisition Program** (DEC 2012). This clause applies if Seller qualifies as a "Major subcontractor," defined in DFARS 252.209-7009 as "a subcontractor that is awarded a subcontract that equals or exceeds- (1) Both the certified cost or pricing data threshold and 10 percent of the value of the contract under which the subcontracts are awarded; or (2) \$50 million." For the purpose of this clause, "Contractor" is replaced with "Seller" and "Government" is replaced with "Buyer."

**252.223-7006 Prohibition on Storage and Disposal of Toxic and Hazardous Materials** (APR 2012).

**252.227-7013 Rights In Technical Data -- Noncommercial Items** (MAY 2013).

**252.227-7014 Rights In Noncommercial Computer Software And Noncommercial Computer Software Documentation** (MAY 2013). This clause applies only if the delivery of noncommercial computer software or noncommercial computer documentation may be originated, developed or delivered under this contract.

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

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

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

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

suspended, or proposed for debarment by the Federal Government.

**52.219-8 Utilization of Small Business Concerns** (DEC 2010). Required in solicitations and contracts exceeding the simplified acquisition threshold.

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

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

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

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

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

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

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

For the purpose of these clauses, "Prime Contractor," "Government," or "Contracting Officer" shall mean Buyer or its Customer, as appropriate. "Contractor" shall mean Seller.

**INFORMATION SYSTEM ACCESS (JAN 2013)**

(a) Definitions. The terms used in this clause are defined in Committee for National Security Systems (CNSS) Instruction 4009, *National Information Assurance (IA) Glossary*.

(b) This clause shall apply to any aspect of this contract involving access to or processing of national security information up to and including sensitive compartmented information (SCI).

(c) The contractor shall comply with the requirements of:

(1) The Intelligence Community, Department of Defense, and US Government directives, instructions, policy guidance, standards, and special access program classification and program security guides specified in the List of Applicable Information Technology-Information Assurance-Information Management (IT-IA-IM) Documents attached in Section J of this contract; and

(2) The latest revision to each document listed above, notice of which has been furnished to the contractor by the Government.

(d) If, subsequent to the date of this contract, the IT-IA-IM requirements of this contract are changed by the Government, and if the changes cause an increase or decrease in costs or otherwise affect any other term or condition of this contract, the contract may be subject to an equitable adjustment under the Changes clause of this contract.

(e) The prime contractor is responsible for providing IT-IA-IM oversight for all subcontractor relationships that are formed as the result of this contract. The prime contractor shall include provisions in all subcontracts that substantially conform to the requirements of this clause.

(f) If any provision of the contract conflicts with instructions issued by the Contracting Officer, the contractor shall notify the Contracting Officer who will resolve the conflict. When IT-IA-IM regulations are in conflict, the contractor shall follow the most restrictive guidance and immediately refer the matter to the Contracting Officer for resolution.

(g) The IT-IA-IM requirements specified in this clause are a material condition of this contract. Failure of the contractor to maintain and administer an information security program compliant with the IT-IA-IM requirements of this contract constitutes grounds for termination for default.

(End of clause)

**INFORMATION TECHNOLOGY-INFORMATION ASSURANCE-INFORMATION MANAGEMENT REQUIREMENTS (JAN 2013)**

- (a) Definitions. The terms used in this clause are defined in Committee for National Security Systems (CNSS) Instruction 4009, *National Information Assurance (IA) Glossary*.
- (b) This clause shall apply to any aspect of this contract involving access to or processing of national security information, up to and including sensitive compartmented information (SCI).
- (c) The contractor shall comply with the requirements of:
- (1) ICD 503, *Intelligence Community Information Technology Systems Security Risk Management, Certification and Accreditation*, and US Government implementing guidance; Intelligence Community Standard (ICS) 503-2, *Categorizing and Selecting Information Technology Systems Security Controls*; and CNSS Instruction 1253, *Security Categorization and Control Selection for National Security Systems*;
  - (2) Other Intelligence Community, Department of Defense, and US Government directives, instructions, policy guidance, standards, and special access program classification and program security guides specified in the List of Applicable Information Technology-Information Assurance-Information Management (IT-IA-IM) Documents attached in Section J of this contract; and
  - (3) The latest revision to each document listed above, notice of which has been furnished to the contractor by the Government.
- (d) If, subsequent to the date of this contract, the IT-IA-IM requirements of this contract are changed by the Government, and if the changes cause an increase or decrease in costs or otherwise affect any other term or condition of this contract, the contract may be subject to an equitable adjustment under the Changes clause of this contract.
- (e) The prime contractor is responsible for providing IT-IA-IM oversight for all subcontractor relationships that are formed as the result of this contract. The contractor shall include provisions in all subcontracts that substantially conform to the requirements of this clause.
- (f) If any provision of the contract conflicts with instructions issued by the Contracting Officer, the contractor shall notify the Contracting Officer who will resolve the conflict. When IT-IA-IM regulations are in conflict, the contractor shall follow the most restrictive guidance and immediately refer the matter to the Contracting Officer for resolution.
- (g) The contractor shall report security and compliance status and reconfigure national security systems as directed by the Government.
- (h) The IT-IA-IM requirements specified in this clause are a material condition of this contract. Failure of the contractor to maintain and administer an information security program compliant with the IT-IA-IM requirements of this contract constitutes grounds for termination for default.
- (End of clause)

### **INDUSTRY PARTNER ACCESS (JAN 2013)**

- (a) Definitions. As used in this clause:
- Industry Partner Access (IPA) is the service model for providing general purpose, administrative SCI communications connectivity between the US Government and approved US Government contractors in accordance.
- (b) To obtain IPA service, the contractor will be required to:
- (1) Acquire and maintain an approved US Government sensitive compartmented information facility (SCIF) approved for processing or a SCIF with an US Government-authorized co-use agreement for all IPA equipment and processing.
  - (2) Provide the infrastructure, commercial connection, and required licenses as specified in the IPA Subscriber Package.
  - (3) Provide approved discretionary equipment and services enabled by the IPA connectivity (e.g., secure phones, workstations, network cabling, and switches).
  - (4) Ensure the contractor-owned and managed network conforms to accepted US Government configuration standards, and is properly accredited and maintained.
  - (5) Comply fully with the Security Requirements and the Information Technology, Information Assurance, and Information Management (IT-IA-IM) Requirements clauses in this contract.
  - (6) Ensure appropriately cleared and qualified IT staff are available to support the equipment, services, and infrastructure enabled by the IPA connectivity.
  - (7) Implement insider threat activities as directed by the US Government Customer.

(8) Ensure that the provided SCI connectivity is not used to conduct activities prohibited under US Government appropriate use policies. The Contracting Officer will adjudicate requests for specific uses.

(c) Access will be provided to contract-specific and to generally available information and services designed to support the Intelligence Community and its members unless specifically restricted in the contract.

(d) The contractor shall grant designated Government personnel physical access to contractor facilities for IPA installation, repair, inventory, and other activities. The Government shall retain the right to access any connected network or device, monitor or capture any information, and scan for threats and vulnerabilities at any time without prior notification or coordination.

(e) The contractor shall submit a statement of assurance (SOA) to the Buyer or its Customer within 90 days after SCI connectivity is established, annually thereafter, and within ten business days after any significant change in the contractor's information assurance posture. The SOA shall assert compliance with all IT-IA-IM requirements, identify any known deviations from IT-IA-IM requirements, conform to the format specified in the IPA Subscriber Package, and be signed by a corporate officer.

(f) Non-compliance with any IPA requirement, policy, procedure, or SOA commitment may result in loss of IPA connectivity and may constitute grounds for termination for default.

(End of clause)

**K627 base Additional Clauses (AUG 2013).**

#### **SUBCONTRACT REPORTING, MONITORING, AND CONSENT**

(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, transfers of commercial items between divisions, subsidiaries, or affiliates of a contractor or subcontractor, and work performed within a company but outside the main location, division, or facility under an Intra-Work Transfer Agreement (IWTA), Intra-Divisional Work Agreement (IDWA), Assist Work Authorization (AWA), or other similar arrangement.

*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 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 of all subcontracts directly chargeable to this contract by 30 June each year, and a final close-out report within 90 days after contract completion. 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 electronically uploaded into the Subcontractor Reporting Application on the Contractor Wide-Area Network (CWAN). Prime contractors without CWAN access will prepare their reports using a special Excel spreadsheet, and submit via email. Each subcontract report must include the following information in the format specified in the Subcontract Reporting Application and in the Excel spreadsheet:

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

(e) Consent. 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 -

- (1) To an educational institution; or
- (2) With a value over \$50 million; or
- (3) That exceeds \$3 million or five percent of prime contract value, whichever is less, to a company that may be required under the USG Subcontract Consent Registry. Contractors without access to this registry can contact the Contracting Officer to confirm which companies are listed.

(f) 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.

(g) 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.

(End of clause)

**CONTRACTOR COMPLIANCE WITH ENVIRONMENTAL, OCCUPATIONAL SAFETY AND HEALTH, AND SYSTEM SAFETY REQUIREMENTS**

(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.

(End of clause)

#### NOTICE OF LITIGATION

(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.

(End of clause)

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#### ENABLING CLAUSE FOR PRIME AND SUPPORT CONTRACTOR RELATIONSHIPS

(a) The Government currently has, or may enter into, contracts with one or more of the following companies (TBP), 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 clause titled *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.

(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 titled *Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends*, and *Support Contractor Corporate Non-Disclosure Agreement*, which will be incorporated into all U. S. Government support contracts, require the support contractors to protect data and software related to this contract, and prohibit them from using such data for any purpose other than performance of the support contract.

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

(1) The support contractor is a direct competitor of the disclosing party in furnishing end items or services of the type developed or produced for the program or effort;



- (2) The support contractor will require access to extremely sensitive business data; or
- (3) Other unique business situations exist in which the disclosing party can clearly demonstrate that clause *Support Contractor Corporate Non-Disclosure Agreement* 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 contractors prior written permission;
  - (4) Independently developed by the support contractor, subsequent to its receipt, without the use of any proprietary information;
  - (5) Disclosed to the support contractor by a third party who was legally entitled to disclose the same and who did not acquire the proprietary information from the disclosing party;
  - (6) Specifically provided in writing by the U.S. Government to the support contractor with an unlimited rights license; or
  - (7) Disclosed by the support contractor as required by law, regulatory or legislative authority, including subpoenas, criminal or civil investigative demands, or similar processes, provided the support contractor provides the disclosing party that originated the proprietary information with prompt written notice so that the disclosing party may seek a protective order or other appropriate remedy, and provided that, in the absence of a timely protective order, the support contractor furnishes only that minimum portion of the proprietary information that is legally required.
- (j) Any notice to the support contractor(s) required or contemplated under the provisions of this clause 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.

#### Data Requirements

The contractor is required to deliver the data items listed on the Contract Data Requirements List, data items identified in and deliverable under any contract clause of FAR Part 52 and USG provisions 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.

#### U. S. Government Access to Interim Data License

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

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

(c) Subject to the restrictions set forth below, the Government may use, duplicate, and disclose such technical data or computer software within the Government in connection with the performance of this contract for such purposes as administration, evaluation, problem resolution, and technical collaboration with the contractor. The Government may disclose such technical data or computer software to its support contractors identified in clause titled *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 titled *Support Contractor Corporate Non-Disclosure Agreement*, and *Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends*.

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

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

(1) Independently developed by or for the Government by persons not having access to the contractor's technical data or computer software, as evidenced in written documentation;

(2) In which the Government has otherwise acquired lawful rights in the use and further disclosure of the technical data or computer software; or

(3) Are otherwise publically available.

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

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

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

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

(1) Contractual delivery of the technical data or computer software;

(2) Termination of the contract; or

(3) The end of the period of performance of the contract.

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

(j) General Interim Access Marking Instructions.

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

(i) With a conforming restrictive legend pursuant to clause Cl.227-002(k)(1)-(4);

(ii) With the interim access license legend specified in this clause;

(iii) With a proprietary marking; or

(iv) With a proprietary marking and interim access license legend

(2) If technical data or computer software is marked with a conforming restrictive legend pursuant US Government requirements and 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) U. S. Government Interim Access License Rights Markings. Technical data or computer software in which the Government is granted an interim access license provided by this clause shall be marked with the following legend:

U. S. Government Interim Access License Rights

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

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

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

The Government may use, duplicate, and disclose this technical data or computer software within the

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

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