

**CUSTOMER CONTRACT REQUIREMENTS**  
**LSI OTA**  
**CUSTOMER CONTRACT Proprietary**

**CUSTOMER CONTRACT REQUIREMENTS**

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

**A. Financial Records and Reports**

1. Seller shall maintain adequate records to account for Federal funds received under this Contract and shall maintain adequate records to account for Seller contract funding provided under this Contract in accordance with Section 10 of the SOW. Seller relevant financial records are subject to examination or audit by or on behalf of the Comptroller General, Contracting Activity, or other Government Official for a period not to exceed three (3) years after expiration of the term of the prime agreement. The Comptroller General, AO or designee shall have direct access to sufficient records and information of any party to this prime agreement or any entity that participates in the performance of this prime agreement to ensure full accountability for all funding under the prime Agreement, unless otherwise stated in supplier agreements. Such audit, examination or access shall be performed during business hours on business days upon prior written notice and shall be subject to the security requirements of the audited party. Any audit required during the course of the program may be conducted by the Comptroller General or other Government Official using Government auditors or, at the request of Seller's external CPA accounting firm at the expense of Seller. This requirement shall not apply with respect to a party or entity, or a subordinate element of a party or entity that has not entered into any other agreement that provides for audit access by a Government entity in the year prior to the date of the agreement.
2. Seller shall include this Article, suitably modified to identify the Parties, in all subcontracts or lower tier agreements entered into solely in connection with this contract.

**B. Confidential Information**

**1. Exchange of Information**

The Government may from time to time disclose Government Confidential Information to Buyer and Seller and its subcontractors or suppliers, in connection with a particular project, and Buyer and Seller and its subcontractors or suppliers, may from time to time disclose information that is Trade Secret or Confidential Information to the Government in connection with the OT or performance thereunder. Neither the Government nor Buyer or Seller or their subcontractors or suppliers shall be obligated to transfer Confidential Information or Trade Secrets independently developed by the Government or Buyer or Seller or their subcontractors or suppliers, absent an express written agreement between the Parties providing the terms and conditions for such disclosure.

**2. Confidentiality and Authorized Disclosure.**

The Receiving Party agrees, to the extent permitted by law, that Confidential Information and Trade Secrets shall remain the property of the Disclosing Party (no one shall disclose unless they have the right to do so), and that, unless otherwise agreed to by the Disclosing Party, Confidential Information and Trade Secrets shall not be disclosed, divulged, or otherwise communicated by it to third parties or used by it for any purposes other than in connection with specified project efforts and the licenses granted in Section D. Patent Rights, and Section F., Data Rights in Technical Data, provided that the duty to protect such "Confidential Information" and "Trade Secrets" shall not extend to materials or information that:

- a. Are received or become available without restriction to the Receiving Party under a proper, separate agreement,
- b. Are not identified with a suitable notice or legend per Article entitled "Confidential Information" or "Boeing Proprietary" herein,
- c. Are lawfully in possession of the Receiving Party without such restriction to the Receiving Party at the time of disclosure thereof as demonstrated by prior written records,
- d. Are or later become part of the public domain through no fault of the Receiving Party,
  - i. Applicability of Exceptions. Detailed Proprietary Information shall not be deemed to lose its status as Proprietary Information merely because the information is embraced by general disclosures in the public domain or in the possession of Recipient. In addition, any combination of features shall not be deemed to be within any of these exceptions merely because the individual features are in the public domain or in the possession of Recipient, unless both the combination and the principle of operation of the combination are generally known to the public.
- e. Are received by the Receiving Party from a third party having no obligation of confidentiality to the Disclosing Party that made the disclosure,

- f. Are developed independently by the Receiving Party without use of Confidential Information or Trade Secrets as evidenced by written records,
- g. Are required by law or regulation to be disclosed; provided, however, that the Receiving Party has provided written notice to the Disclosing Party promptly so as to enable such Disclosing Party to seek a protective order or otherwise prevent disclosure of such information.
- h. Unintended Release. In the event that Seller learns of a release to the Government of its unmarked Data that should have contained a restricted legend, Seller will have the opportunity to cure such omission going forward by providing written notice to the AO within six (6) months of the erroneous release.

### 3. Restrictions

Recipients of Trade Secret or Confidential Information shall safeguard to protect it against theft, loss, unauthorized disclosure, misappropriation or misuse. Recipients will limit access to Trade Secret or Confidential Information it receives to its employees who have a "need to know" the information in connection with this Agreement, and, except as set forth below, shall not disclose Trade Secret or Confidential Information to any third party without written authorization from the other party, except that Government may share such information with its Covered Government Support Contractors, as defined in Article M.21 of this Agreement. Government shall provide Seller a list of the Covered Government Support Contractors it anticipates may have access to such information, and Seller reserves the right to enter into a Non-Disclosure Agreement with such contractors. Recipient may transmit received Trade Secret or Confidential Information only by using an encryption method substantially similar to that under which it was received. Recipient will not use Trade Secret or Confidential Information received under this Agreement for design or manufacture. Recipient agrees not to reverse engineer, decompile or disassemble any Trade Secret or Confidential Information disclosed to Recipient in any form. Notwithstanding the foregoing, nothing in this Agreement shall be interpreted to restrict any Party from lawfully reporting waste, fraud, or abuse to a designated Government representative authorized to receive such information.

### 4. Return of Proprietary Information

Upon the request of Seller, the Government and/or Buyer shall promptly return all copies and other tangible manifestation of the Confidential Information or Trade Secrets disclosed. Upon request by the Government and/or Buyer, Seller shall promptly return all copies and other tangible manifestations of the Confidential Information disclosed by the Government. As used in this section, tangible manifestations include human readable media as well as magnetic and digital storage media.

### 5. Term

Except to the extent covered by and subject to other provisions of this contract or the specific Project Agreement, the obligations of the Receiving Party under this Article shall continue for a period of five (5) years after the expiration or termination of the prime Agreement.

### 6. Subcontracts

The Government, Buyer, and Seller shall flow down the requirements of this Article to their respective personnel, agents, partners, and team members receiving such Confidential Information or Trade Secrets under this contract.

## C. Publication and Academic Rights

### 1. Use of Information

Subject to the provisions of Section B., Confidential Information, and Section C., Publication and Academic Rights, Buyer, Seller, and the Government shall have the right to publish or otherwise disclose information and/or data developed by the Government and/or the respective Buyer or Seller under the prime agreement with the written approval of the other party. Disclosing/Publishing party shall provide a written copy of information to be published or disclosed 30 calendar days prior to release for review and approval. Buyer, Seller, and the Government (and its employees) shall include an appropriate acknowledgement of the sponsorship of the Research Projects by the Government and Buyer and Seller in such publication or disclosure. The Parties shall have only the right to use, disclose, and exploit any such data and Confidential Information or Trade Secrets in accordance with the rights held by them pursuant to the prime agreement and contract. Notwithstanding the above, the Parties shall not be deemed authorized by this paragraph, alone, to disclose any Confidential Information or Trade Secrets of the Government or Buyer or Seller. Nothing contained herein shall contradict or contravene any use of unlimited data rights obtained under Section F., Data Rights in Technical Data, below.

### 2. Classified Research Projects

If a release of Confidential Information or Trade Secrets is for a classified Research Project, the provisions of the DoD Security Agreement (DD Form 441), Certificate Pertaining to Foreign Interests (SF 328), and the DoD Contract Security Classification Specification (DD Form 254) apply. The Government will be responsible for the completion of the DD Form 254. Seller member must complete the DD Form 441 and SF 328 and provide them to the Government through for review by the proper Government representatives, the Industrial Security Representative at the cognizant Defense Security Service (DSS) office for DD Form 441 and SF 328 and the requiring activity's local Security office for the DD Form 254, through Buyer.

### 3. Review or Approval of Technical Information for Public Release

- a. At least forty-five (45) calendar days prior to the scheduled release date, Seller shall submit to Buyer, two

copies of the information to be released along with Clearance of Technical Information for Public Release Form INME-PIC-IM Form 3002, 1 MAR 2011, who will route the information to the AOR and other appropriate parties for review and approval.

b. The AOR is hereby designated as the approval authority for the AO for such releases.

c. Parties to this contract are responsible for assuring that an acknowledgment of government support will appear in any publication of any material based on or developed under this OT, using the following acknowledgement terms:

“Effort sponsored by the U.S. Government under Other Transaction number HQ00342190018 between The Boeing Company and the Government. The U.S. Government is authorized to reproduce and distribute reprints for Governmental purposes notwithstanding any copyright notation thereon.”

d. Parties to this Agreement are also responsible for assuring that every publication of material based on or developed under this project contains the following disclaimer:

“The views and conclusions contained herein are those of the authors and should not be interpreted as necessarily representing the official policies or endorsements, either expressed or implied, of the U.S. Government.”

e. Seller shall flow down these requirements to its partners and team members, at all tiers.

## **D. Patent Rights**

### **1. Allocation of Principal Rights**

a. Unless Seller notifies the Government, in accordance with subparagraph 2 below, that Seller does not intend to retain title, Seller shall retain the entire right, title, and interest throughout the world to each Subject Invention consistent with the provisions of this Article.

b. With respect to any Subject Invention in which Seller retains title, the Government shall receive a nonexclusive nontransferable, irrevocable, paid-up license to practice, or to have practiced (make, have made, use, have used, or import) the Subject Invention throughout the world on behalf of the United States for U.S. Government purposes and on behalf of any foreign government or international organization pursuant to any existing or future treaty or agreement with the United States in accordance with 35 U.S.C. § 209(d)(J) and 37 C.F.R. 404.7(a)(2)(i). Seller shall record a confirmatory instrument of the Government's license to the Subject Invention with the United States Patent and Trademark Office.

### **2. Invention Disclosure, Election of Title, and Filing of Patent Application**

a. Seller shall disclose each Subject Invention to the Government within three (3) months after the inventor discloses it in writing to his company personnel responsible for patent matters. The disclosure to the Government shall be in the form of a written report and shall identify the Agreement and circumstances under which the Invention was made and the identity of the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding, to the extent known at the time of the disclosure, of the nature, purpose, operation, and the physical, chemical, biological, or electrical characteristics of the Invention. The disclosure shall also identify any publication, sale, or public use of the invention and whether a manuscript describing the Invention has been submitted and/or accepted for publication at the time of disclosure.

b. If Seller determines that it does not intend to retain title to any such Invention, Seller shall notify the Government, in writing, within eight (8) months of disclosure to the Government. However, in any case where publication, sale, or public use has initiated the one-year statutory period wherein valid patent protection can still be obtained in the United States, the period for such notice may be shortened by the Government to a date that is no more than sixty (60) calendar days prior to the end of the statutory period.

c. Seller shall file its initial patent application on a Subject Invention to which it elects to retain title within one (1) year after election of title or, if earlier, prior to the end of the statutory period wherein valid patent protection can be obtained in the United States after a publication, or sale, or public use. Seller may elect to file patent applications in additional countries, including the European Patent Office and the Patent Cooperation Treaty, within either ten (10) months of the corresponding initial patent application or six (6) months after the date permission is granted by the Commissioner for Patents to file foreign patent applications, where such filing had previously been prohibited by a Secrecy Order.

d. Seller shall notify the Government of any decisions not to continue the prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceedings on a patent, in any country, not less than thirty (30) calendar days before the expiration of the response period required by the relevant patent office.

e. Requests for extension of the time for disclosure election, and filing under Section C. may be granted at the Government's discretion after considering the circumstances of Seller and the overall effect of the extension.

f. Seller shall submit to the Government annual listings of Subject Inventions. At the completion of the contract, Seller shall submit a comprehensive listing of all subject inventions identified during the course of the contract and the current status of each.

### **3. Conditions When the Government May Obtain Title**

Upon the Government's written request, Seller shall convey title to any Subject Invention to the Government under any of the following conditions:

- a. If Seller fails to disclose or elects not to retain title to the Subject Invention within the times specified in paragraph 2. of this Article; however, the Government may only request title within sixty (60) calendar days after learning of the failure of Seller to disclose or elect within the specified times;
- b. In those countries in which Seller fails to file patent applications within the times specified in paragraph 2 of this Article; however, if Seller has filed a patent application in a country after the times specified in paragraph 2 of this Article, but prior to its receipt of the written request by the Government, Seller shall continue to retain title in that country; or
- c. In any country in which Seller decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in reexamination or opposition proceedings on, a patent on a Subject Invention.

#### 4. Minimum Rights to Seller and Protection of Seller's Right to File

- a. Seller shall retain a nonexclusive, royalty-free license throughout the world in each subject invention to which the Government obtains title, except if Seller fails to disclose the Subject Invention within the times specified in paragraph 2 of this Article. Seller license extends to its domestic subsidiaries and affiliates, including Canada, if any, and includes the right to grant licenses of the same scope to the extent that Seller was legally obligated to do so at the time the Agreement was awarded. The license is transferable only with the approval of the Government, except when transferred to the successor of that part of the business to which the Subject Invention pertains. The Government's approval for license transfer shall not be unreasonably withheld.
- b. Seller's domestic license may be revoked or modified by the Government to the extent necessary to achieve expeditious practical application of the Subject Invention pursuant to an application for an exclusive license submitted consistent with appropriate provisions at 37 C.F.R. Part 404. This license shall not be revoked in that field of use or the geographical areas in which Seller has achieved practical application and continues to make the benefits of the Subject Invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of the Government to the extent Seller, its licensees, or the subsidiaries or affiliates have failed to achieve practical application in that foreign country.
- c. Before revocation or modification of the license, the Government shall furnish Seller a written notice of its intention to revoke or modify the license, and Seller shall be allowed thirty (30) calendar days (or such other time as may be authorized for good cause shown) after the notice to show cause why the license should not be revoked or modified.

#### 5. Action to Protect the Government's Interest

- a. Seller agrees to execute or to have executed and promptly deliver to the Government all instruments necessary to (i) establish or confirm the rights the Government has throughout the world in those Subject Inventions to which Seller elects to retain title, and (ii) convey title to the Government when requested under paragraph 3. of this Article and to enable the Government to obtain patent protection throughout the world in that Subject Invention.
- b. Seller agrees to require by written agreement with its employees, other than clerical and non-technical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by Seller each Subject Invention made under this contract in order that Seller can comply with the disclosure provisions of paragraph 2 of this Article. Seller shall instruct employees, through employee agreements or other suitable educational programs, on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to United States or foreign statutory bars.
- c. Seller shall include, within the specification of any United States patent application and any patent issuing thereon covering a subject invention, the following statement:  
  
"This invention was made with Government support under Agreement No. HQ00342190018, awarded by the Government. The Government has certain rights in the invention."

#### 6. Lower Tier Agreements

Seller shall include this Article, suitably modified, in all subcontracts or lower tier agreements, regardless of tier, for experimental, developmental, or research work.

#### 7. Reporting on Utilization of Subject Inventions

- a. Seller agrees to submit, during the term of the contract, an annual report on the utilization of a Subject Invention or on efforts at obtaining such utilization that are being made by Seller or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by Seller and such other data and information as the Government may reasonably specify. Seller also agrees to provide additional reports as may be requested by the Government in connection with any march-in proceedings undertaken by the Government in accordance with paragraph 9 of this Article. The Government agrees it shall not disclose such information to persons outside the Government without permission of Seller, unless required by law.
- b. All required reporting shall be accomplished, to the extent possible, using the i-Edison reporting website: <https://s-edison.info.nih.gov/iEdison/>. To the extent any such reporting cannot be carried out by use of i-Edison, reports and communications shall be submitted to the AO and Administrative Agreements Officer (AAO), where one is appointed.

#### 8. March-in Rights

Seller agrees that, with respect to any Subject Invention in which it has retained title, the Government has the right to require Seller, an assignee, or exclusive licensee of a Subject Invention to grant a non-exclusive license to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if Seller, assignee, or exclusive licensee refuses such a request, the Government has the right to grant such a license itself if the Government determines that:

- a. Such action is necessary because Seller or assignee has not taken effective steps, consistent with the intent of this contract, to achieve practical application of the Subject Invention;
- b. Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by Seller, assignee, or their licensees;
- c. Such action is necessary to meet requirements for public use and such requirements are not reasonably satisfied by Seller, assignee, or licensees; or
- d. Such action is necessary because the agreement required by paragraph 8 of this Article has not been obtained or waived or because a licensee of the exclusive right to use or sell any Subject Invention in the United States is in breach of such Agreement.

#### **E. Partner Nation Controls**

1. Execution of this Agreement by Seller is subject to receipt of sufficient export, security, release of information, and import approvals from the International Partner Nation and United States Governments for transfers of the data and products required for the performance of this Agreement. If necessary government approvals are not received, this Agreement shall not be deemed in default for non-performance.
2. Seller agrees that all technical data and/or software provided to Seller by the United States Government, on behalf of the Partner Nation pertaining to or in support of Lead System Integrator activities for this Agreement, are subject to specific security and export restrictions and may not be further shared without the explicit written consent of the US Government Agreements Officer. This restriction shall apply to any Seller subcontractor, current or prospective, under this Agreement.
3. Seller shall handle information provided via this avenue in accordance with the applicable document markings for security and export controls.
4. For data where Seller owns the Intellectual Property, i.e. marked Boeing Proprietary, no data rights are granted to the United States Government through the transfer of data. The data will be marked by Seller with the appropriate US IP restrictions as required by Article F, Data Rights for Technical Data, and Article G, Data Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation, and Article H Technical Data – Commercial Items of this Agreement and in accordance with Attachment 2, Data Assertions.

#### **F. Data Rights For Technical Data**

1. Rights in Technical Data - Noncommercial
  - a. Seller grants or shall obtain for the Government the following royalty free, world-wide, nonexclusive, irrevocable license rights in technical data other than computer software documentation (see Article \* for rights in computer software documentation):
    - i. Unlimited rights. The Government shall have unlimited rights in technical data that are:
      - a. Data pertaining to an item, component, or process which has been or will be developed exclusively with Government funds;
      - b. Studies, analyses, test data, or similar data produced for this contract, when the study, analysis, test, or similar work was specified as an element of performance;
      - c. 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;
      - d. Form, fit, and function data;
      - e. Necessary for installation, operation, maintenance, or training purposes (other than detailed manufacturing or process data);
      - f. Corrections or changes to technical data furnished to Seller by the Government
      - g. Otherwise publicly available or have been released or disclosed by Seller or subcontractor without restrictions on 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 to another party or the sale or transfer of some or all of a business entity or its assets to another party;
      - h. Data in which the Government has obtained unlimited rights under another Government contract or as a result of negotiations; or
      - i. Data furnished to the Government, under this or any other Government contract or subcontract thereunder, with—
        - i. Government purpose license rights or limited rights and the restrictive condition(s) has/have expired; or
        - ii. Government purpose rights and Seller's exclusive right to use such data

for commercial purposes has expired.

- ii. Government purpose rights
  - a. The Government shall have government purpose rights for a five-year period, or such other period as may be negotiated, in technical data—
    - i. That pertain to items, components, or processes developed with mixed funding except when the Government is entitled to unlimited rights in such data as provided in paragraphs (a)(ii) and (a)(iv) through (a)(ix) of this clause; or
    - ii. Created with mixed funding in the performance of a contract that does not require the development, manufacture, construction, or production of items, components, or processes.
  - b. The five-year period, or such other period as may have been negotiated, shall commence upon execution of the contract, subcontract, letter contract (or similar contractual instrument), contract modification, or option exercise that required development of the items, components, or processes or creation of the data described in paragraph (b)(i)(B) of this clause. Upon expiration of the five-year or other negotiated period, the Government shall have unlimited rights in the technical data.
  - c. The Government shall not release or disclose technical data in which it has government purpose rights unless—
    - i. Prior to release or disclosure, the intended recipient is subject to the non-disclosure agreement at 227.7103-7 of the Defense Federal Acquisition Regulation Supplement (DFARS); or
    - ii. The recipient is a Government contractor receiving access to the data for performance of a Government contract that contains the clause at DFARS 252.227-7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends.
  - d. The COMPANY has the exclusive right, including the right to license others, to use technical data in which the Government has obtained government purpose rights under this contract for any commercial purpose.
- iii. Limited rights
  - a. Except as provided in paragraphs (a)(ii) and (a)(iv) through (a)(ix) of this clause, the Government shall have limited rights in technical data—
    - i. Pertaining to items, components, or processes developed exclusively at private expense and marked with the limited rights; or
    - ii. 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.
  - b. The Government shall require a recipient of limited rights data for emergency repair or overhaul to destroy the data and all copies in its possession promptly following completion of the emergency repair/overhaul and to notify Seller that the data have been destroyed.
  - c. Seller, its subcontractors, and suppliers are not required to provide the Government additional rights to use, modify, reproduce, release, perform, display, or disclose 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, Seller agrees to promptly enter into negotiations with the AO to determine whether there are acceptable terms for transferring such rights. All technical data in which Seller 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 data.
  - d. Seller acknowledges that—
    - i. Limited rights data are authorized to be released or disclosed to covered Government support contractors;
    - ii. Seller will be notified of such release or disclosure;
    - iii. Seller (or the party asserting restrictions as identified in the limited rights legend) may require each such covered Government support contractor to enter into a non-disclosure agreement directly with Seller (or the party asserting restrictions) regarding the covered Government support contractor's use of such data, or alternatively, that Seller (or party asserting restrictions) may waive in writing the requirement for a non-disclosure

- agreement; and
- iv. Any such non-disclosure agreement shall address the restrictions on the covered Government support contractor's use of the limited rights data as set forth in the clause at 252.227-7025, Limitations on the Use or Disclosure of Government- Furnished Information Marked with Restrictive Legends. The non-disclosure agreement shall not include any additional terms and conditions unless mutually agreed to by the parties to the non-disclosure agreement.
  - iv. Specifically negotiated license rights. The standard license rights granted to the Government under paragraphs (a) through (c) of this clause, including the period during which the Government shall have government purpose rights in technical data, may be modified by mutual agreement to provide such rights as the parties consider appropriate but shall not provide the Government lesser rights than are enumerated Limited Rights as defined in this agreement. Any rights so negotiated shall be identified in a license agreement made part of this contract.
  - v. Prior government rights. Technical data 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 – 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—
    - a. The parties have agreed otherwise; or
    - b. Any restrictions on the Government's rights to use, modify, reproduce, release, perform, display, or disclose the data have expired or no longer apply
  - vi. Release from liability. Seller agrees to release the Government from liability for any release or disclosure of technical data made in accordance with the definition of Limited Rights or (ii)(c) of this clause, in accordance with the terms of a license negotiated under paragraph (iv) of 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 Seller data marked with restrictive legends.
- b. Seller rights in technical data. All rights not granted to the Government are retained by Seller.
- c. Third party copyrighted data. Seller shall not, without the written approval of the AO, incorporate any copyrighted data in the technical data to be delivered under this contract unless Seller is the copyright owner or has obtained for the Government the license rights necessary to perfect a license or licenses in the deliverable data of the appropriate scope set forth in this contract, and has affixed a statement of the license or licenses obtained on behalf of the Government and other persons to the data transmittal document.
- d. Identification and delivery of data to be furnished with restrictions on use, release, or disclosure (Attachment 2).
- i. This paragraph does not apply to restrictions based solely on copyright.
  - ii. Except as provided in paragraph (d)(iii) of this clause, technical data that Seller asserts should be furnished to the Government with restrictions on use, release, or disclosure are identified in an attachment to this contract (Attachment 2). Seller shall not deliver any data with restrictive markings unless the data are listed on the Attachment.
  - iii. In addition to the assertions made in Attachment 2, other assertions 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 identification and assertion shall be submitted to the AO as soon as practicable prior to the scheduled date for delivery of the data, in Seller's format, and signed by an official authorized to contractually obligate Seller.
- e. Marking Requirements. Seller, and its subcontractors or suppliers, may only assert restrictions on the Government's right to use, modify, reproduce, release, perform, display, or disclose technical data to be delivered under this contract by marking the deliverable data subject to restriction.
- i. General marking instructions. Seller, or its subcontractors or suppliers, shall conspicuously and legibly mark the appropriate legend on all technical data that qualify for such markings. The authorized legends shall be placed on the transmittal document or storage container and, for printed material, each page of the printed material containing technical data for which restrictions are asserted. When only portions of a page of printed material are subject to the asserted restrictions, such portions shall be identified by circling, underscoring, with a note, or other appropriate identifier. Technical data transmitted directly from one computer or computer terminal to another shall contain a notice of asserted restrictions. Reproductions of technical data or any portions thereof subject to asserted restrictions shall also reproduce the asserted restrictions.

- ii. Government purpose rights markings. Data delivered or otherwise furnished to the 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 are restricted by paragraph (1)(a)(ii) of the Rights in Technical Data: - Noncommercial Items clause contained in the above identified contract. No restrictions apply after the expiration date shown above. Any reproduction of technical data or portions thereof marked with this legend must also reproduce the markings.

- iii. Limited rights markings. Data delivered or otherwise furnished to the Government with limited rights shall be marked with the following legend:

**Limited Rights**

Contract No.  
Contractor Address  
Expiration Date

The Government's rights to use, modify, reproduce, release, perform, display, or disclose these technical data are restricted by paragraph (1)(a)(iii) of the Rights in Technical Data - Noncommercial Items clause contained in the above identified contract. Any reproduction of technical data 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 data must promptly notify the above named Contractor.

- iv. Special license rights markings. Data in which the Government's rights stem from a specifically negotiated license shall be marked with the following legend:

**Special License Rights**

The Government's rights to use, modify, reproduce, release, perform, display, or disclose these data are restricted by Contract No. \_\_\_\_\_ (Insert contract number)\_\_, License No. \_\_\_\_\_ (Insert license identifier) \_\_\_\_\_. Any reproduction of technical data or portions thereof marked with this legend must also reproduce the markings.

- v. Pre-existing data markings. If the terms of a prior contract or license permitted Seller to restrict the Government's rights to use, modify, reproduce, release, perform, display, or disclose technical data deliverable under this contract, and those restrictions are still applicable, Seller may mark such data with the appropriate restrictive legend for which the data qualified under the prior contract or license. The marking procedures in paragraph (e)(i) of this clause shall be followed.

f. Contractor procedures and records. Throughout performance of this contract, Seller and its subcontractors or suppliers that will deliver technical data with other than unlimited rights, shall:

- i. Have, maintain, and follow written procedures sufficient to assure that restrictive markings are used only when authorized by the terms of this clause; and
- ii. Maintain records sufficient to justify the validity of any restrictive markings on technical data delivered under this Agreement.

g. Removal of unjustified and nonconforming markings.

- i. Unjustified technical data markings. The rights and obligations of the parties regarding the validation of restrictive markings on technical data furnished or to be furnished under this contract are contained in the Validation of Restrictive Markings on Technical Data clause of this contract. Notwithstanding any provision of this contract concerning inspection and acceptance, the Government may ignore or, at Seller's expense, correct or strike a marking if, in accordance with the procedures in the Validation of Restrictive Markings on Technical Data clause of this contract, a restrictive marking is determined to be unjustified.
- ii. Nonconforming technical data markings. A nonconforming marking is a marking placed on technical data delivered or otherwise furnished to the Government under this contract that is not in the format



authorized by this contract. Correction of nonconforming markings is not subject to the Validation of Restrictive Markings on Technical Data clause of this contract. If the Agreements Officer notifies Seller of a nonconforming marking and Seller fails to remove or correct such marking within sixty (60) calendar days, the Government may ignore or, at Seller's expense, remove or correct any nonconforming marking.

- h. 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.
- i. Limitation on charges for rights in technical data.
  - i. The COMPANY shall not charge to this contract any cost, including, but not limited to, license fees, royalties, or similar charges, for rights in technical data to be delivered under this contract when
    - a. The Government has acquired, by any means, the same or greater rights in the data; or
    - b. The data are available to the public without restrictions.
  - ii. The limitation in paragraph (8)(a) of this clause—
    - a. Includes costs charged by a subcontractor or supplier, at any tier, or costs incurred by the COMPANY to acquire rights in subcontractor or supplier technical data, 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
    - b. Does not include the reasonable costs of reproducing, handling, or mailing the documents or other media in which the technical data will be delivered.
- j. Applicability to subcontractors or suppliers.
  - i. Seller 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 (d) of this clause are recognized and protected.
  - ii. Whenever any technical data for noncommercial items, or for commercial items developed in any part at Government expense, is to be obtained from a subcontractor or supplier for delivery to the Government under this contract, Seller shall use this same clause in the subcontract or other contractual instrument, including subcontracts or other contractual instruments for commercial items, and require its subcontractors or suppliers to do so, without alteration, except to identify the parties. This clause will govern the technical data pertaining to noncommercial items or to any portion of a commercial item that was developed in any part at Government expense, and the clause at Article H, Technical Data – Commercial Items, will govern the technical data pertaining to any portion of a commercial item that was developed exclusively at private expense. No other clause shall be used to enlarge or diminish the Government's, Seller's, or a higher-tier subcontractor's or supplier's rights in a subcontractor's or supplier's technical data.
  - iii. Technical data 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 data 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 data directly to the Government, rather than through a higher-tier contractor, subcontractor, or supplier.
  - iv. Seller and higher-tier subcontractors or suppliers shall not use their power to award contracts as economic leverage to obtain rights in technical data from their subcontractors or suppliers.
  - v. In no event shall Seller use its obligation to recognize and protect subcontractor or supplier rights in technical data as an excuse for failing to satisfy its contractual obligations to the Government.

## 2. Prior Technology

In the event it is necessary for Seller to furnish the Government with Data which existed prior to, or was produced outside of this contract, and such Data embodies trade secrets or comprises commercial or financial information which is privilege or confidential, and such Data is so identified with a suitable notice or legend, the Data will be maintained in confidence and disclosed and used by the Government and such Government Contractors or contract employees that the Government may hire on a temporary or periodic basis only for the purpose of carrying out the Government's responsibilities under this Agreement. Data protection will include proprietary markings and handling, and the signing of nondisclosure agreements by such Government Contractors or contract employees. Seller shall not be obligated to provide Data that existed prior to, or was developed outside of this contract to the Government. Upon completion of activities under this contract, such Data will be disposed of as requested by Seller.

## 3. Oral and Visual Information

If information which Seller considers to embody trade secrets or to comprise commercial or financial information which is privileged or confidential is expressly disclosed orally or visually directly to the Government, the exchange of such information may be memorialized in tangible, recorded form and marked with a suitable notice or legend, and furnished to the Government in accordance with deliverables defined in SOW. The Government shall limit or restrict information not formally delivered under the contract in accordance with Article B, Confidential Information. The Government shall

have rights to the presentation deliverables in accordance with Attachment 2. If the Government reasonably determines that the memorialization of the exchange is insufficiently detailed to enable it to identify the privileged or Confidential Information, Seller shall provide additional detail at the Government's request, subject to restrictions on use and disclosure.

#### 4. Disclaimer of Liability

a. Notwithstanding the above, the Government shall not be restricted in, nor incur any liability for, the disclosure and use of data not identified with a suitable notice or legend as set forth in this Article.

b. Notwithstanding paragraph 4.a. of this Article above, if Seller cures the omission of the suitable notice or legend, the restrictions, and related liability for disclosure and use of such information shall apply after cure.

#### 5. Copyright

Seller hereby grants to the U.S. Government a non-exclusive, non-transferable, royalty-free, fully paid-up license to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly any copyrighted materials developed and delivered and not marked by Seller as not approved for public release (excluding Data) under this contract.

#### 6. Lower Tier Agreements

Seller shall include this Article, suitably modified to identify the parties, in all, subcontracts or lower tier agreements, regardless of tier, or experimental, developmental, or research work.

#### 7. Survival Rights

Provisions of this Article shall survive termination of this contract.

#### 8. March-In Rights

a. In the event the Government chooses to exercise rights, as defined in Section D. 9, Seller agrees, upon written request from the Government, to deliver at no additional cost to the Government, all Data necessary to achieve practical application within sixty (60) calendar days from the date of Notice.

b. To facilitate any potential deliveries, Seller agrees to retain and maintain in good condition until five (5) years after completion or termination of this prime Agreement, all Data necessary to achieve practical application of any Subject Invention as defined in Section Q, Definitions.

### **G. Data Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation**

#### 1. Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation

a. Definitions. The use of these definitions are limited to this Article.

i. "Developed" means that:

- a. A computer program has been successfully operated in a computer and tested to the extent sufficient to demonstrate to reasonable persons skilled in the art that the program can reasonably be expected to perform its intended purpose;
- b. Computer software, other than computer programs, has been tested or analyzed to the extent sufficient to demonstrate to reasonable persons skilled in the art that the software can reasonably be expected to perform its intended purpose;
- or
- c. Computer software documentation required to be delivered under a contract has been written, in any medium, in sufficient detail to comply with requirements under that contract.

ii. "Government purpose rights" means the rights to:

- a. Use, modify, reproduce, release, perform, display, or disclose computer software or computer software documentation within the Government without restriction; and
- b. Release or disclose computer software or computer software documentation outside the Government and authorize persons to whom release or disclosure has been made to use, modify, reproduce, release, perform, display, or disclose the software or documentation for United States government purposes.

iii. "Minor modification" means a modification that does not significantly alter the nongovernmental function or purpose of the software or is of the type customarily provided in the commercial marketplace.

iv. "Noncommercial computer software" means software that does not qualify as commercial computer software under paragraph as defined in this contract.

- v. "Restricted rights" apply only to noncommercial computer software and mean the Government's rights to:
- a. 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;
  - b. Transfer a computer program to another Government agency without the further permission of Seller 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;
  - c. Make the minimum number of copies of the computer software required for safekeeping (archive), backup, or modification purposes;
  - d. Modify computer software provided that the Government may:
    - i. Use the modified software only as provided in paragraphs (v)(a) and (c) of this clause;
    - ii. Not release or disclose the modified software except as provided in paragraphs (e)(ii), (v) and (vi) of this clause;
  - e. Permit Seller or subcontractors performing service contracts (see 37.101 of the Federal Acquisition Regulation) 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:
    - i. The Government notifies the party which has granted restricted rights that a release or disclosure to particular contractors or subcontractors was made;
    - ii. Seller or subcontractors are subject to the use and non-disclosure agreement at 227.7103-7 of the Defense Federal Acquisition Regulation Supplement (DFARS) or are Government contractors receiving access to the software for performance of a Government contract that contains the clause at DFARS 252.227-7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends;
    - iii. 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 (v)(d) of this clause, for any other purpose; and
    - iv. Such use is subject to the limitations in paragraphs (v)(a) through (c) of this clause;
  - f. Permit Seller 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:
    - i. The intended recipient is subject to the use and non-disclosure agreement at DFARS 227.7103-7 or is a Government contractor receiving access to the software for performance of a Government contract that contains the clause at DFARS 252.227-7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends;
    - ii. 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 (v)(d) of this clause, for any other purpose; and
    - iii. Such use is subject to the limitations in paragraphs (v)(a) through (c) of this clause; and
  - g. Permit covered Government support contractors in the performance of covered Government support contracts that contain the clause at 252.227-7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends, to use, modify, reproduce, perform, display, or release or disclose the computer software to a person authorized to receive restricted rights computer software, provided that:
    - i. The Government shall not permit the covered Government support contractor to decompile, disassemble, or reverse engineer the software,

- or use software decompiled, disassembled, or reverse engineered by the Government pursuant to paragraph (v)(d) of this clause, for any other purpose;
    - ii. Such use is subject to the limitations in paragraphs (v)(a) through (c) of this clause; and
  - vi. “Unlimited rights” means rights to use, modify, reproduce, release, perform, display, or disclose computer software or computer software documentation in whole or in part, in any manner and for any purpose whatsoever, and to have or authorize others to do so.
- b. Rights in computer software or computer software documentation. Seller grants or shall obtain for the Government the following royalty free, world-wide, nonexclusive, irrevocable license rights in noncommercial computer software or computer software documentation. All rights not granted to the Government are retained by the Seller.
  - i. Unlimited rights. The Government shall have unlimited rights in –
    - a. Computer software developed exclusively with Government funds;
    - b. Computer software documentation required to be delivered under this contract;
    - c. Corrections or changes to computer software or computer software documentation furnished to Seller by the Government;
    - d. Computer software or computer software documentation that is otherwise publicly available or has been released or disclosed by Seller or subcontractor without restriction on further use, release or disclosure, other than a release or disclosure resulting from the sale, transfer, or other assignment of interest in the software to another party or the sale or transfer of some or all of a business entity or its assets to another party;
    - e. Computer software or computer software documentation obtained with unlimited rights under another Government contract or as a result of negotiations; or
    - f. Computer software or computer software documentation furnished to the Government, under this or any other Government contract or subcontract thereunder with:
      - i. Restricted rights in computer software, limited rights in technical data, or government purpose license rights and the restrictive conditions have expired; or
      - ii. Government purpose rights and Seller’s exclusive right to use such software or documentation for commercial purposes has expired.
  - ii. Government purpose rights.
    - a. Except as provided in paragraph (b)(i) of this clause, the Government shall have government purpose rights in computer software developed with mixed funding;
    - b. Government purpose rights shall remain in effect for a period of five years unless a different period has been negotiated. Upon expiration of the five-year or other negotiated period, the Government shall have unlimited rights in the computer software or computer software documentation. The government purpose rights period shall commence upon execution of the contract, subcontract, letter contract (or similar contractual instrument), contract modification, or option exercise that required development of the computer software;
    - c. The Government shall not release or disclose computer software in which it has government purpose rights to any other person unless:
      - i. Prior to release or disclosure, the intended recipient is subject to the use and non-disclosure agreement at DFARS 227.7103-7; or
      - ii. The recipient is a Government contractor receiving access to the software or documentation for performance of a Government contract that contains the clause at DFARS 252.227-7025, Limitations on the Use or Disclosure of Government Furnished Information Marked with Restrictive Legends.
  - iii. Restricted rights.
    - a. The Government shall have restricted rights in noncommercial computer software required to be delivered or otherwise provided to the Government under this contract that were developed exclusively at private expense.
    - b. Seller, 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, Seller agrees to promptly enter into negotiations with the AO to determine whether there are acceptable terms for transferring such rights. All noncommercial computer software in which the Seller has granted the Government additional rights shall be listed or described in a license agreement made part of the contract (see paragraph (b)(iv) of this clause). The license shall enumerate the additional rights granted the Government.

- c. Seller acknowledges that:
    - i. Restricted rights computer software is authorized to be released or disclosed to covered Government support contractors;
    - ii. Seller will be notified of such release or disclosure;
    - iii. Seller (or the party asserting restrictions, as identified in the restricted rights legend) may require each such covered Government support contractor to enter into a non-disclosure agreement directly with Seller (or the party asserting restrictions) regarding the covered Government support contractor's use of such software, or alternatively, that Seller (or party asserting restrictions) may waive in writing the requirement for a non-disclosure agreement; and
    - iv. Any such non-disclosure agreement shall address the restrictions on the covered Government support contractor's use of the restricted rights software as set forth in the clause at 252.227-7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends. The non-disclosure agreement shall not include any additional terms and conditions unless mutually agreed to by the parties to the non-disclosure agreement.
  - iv. Specifically negotiated license rights.
    - i. The standard license rights granted to the Government under paragraphs (b)(i) through (b)(iii) of this clause, including the period during which the Government shall have government purpose rights in computer software, may be modified by mutual agreement to provide such rights as the parties consider appropriate but shall not provide the Government lesser rights in computer software than are enumerated in paragraph (a)(v) of this clause or lesser rights in computer software documentation than are enumerated in paragraph (a)(iv) of the Rights in Technical Data--Noncommercial Items clause of this contract.
    - ii. Any rights so negotiated shall be identified in a license agreement made part of this contract.
  - v. Prior government rights. Computer software or computer software documentation 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.
  - vi. Release from liability. Seller agrees to release the Government from liability for any release or disclosure of computer software made in accordance with paragraph (a)(v) or (b)(ii)(c) of this clause, in accordance with the terms of a license negotiated under paragraph (b)(iv) of this clause, or by others to whom the recipient has released or disclosed the software, and to seek relief solely from the party who has improperly used, modified, reproduced, released, performed, displayed, or disclosed Seller software marked with restrictive legends.
- c. 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 Seller uses to prepare, or includes in, derivative computer software or computer software documentation.
- d. Third party copyrighted computer software or computer software documentation. Seller shall not, without the written approval of the Agreements Officer, incorporate any copyrighted computer software or computer software documentation in the software or documentation to be delivered under this contract unless Seller is the copyright owner or has obtained for the Government the license rights necessary to perfect a license or licenses in the deliverable software or documentation of the appropriate scope set forth in paragraph (b) of this clause, and prior to delivery of such:

- i. Computer software, has provided a statement of the license rights obtained in a form acceptable to the Agreements Officer; or
  - ii. Computer software documentation, has affixed to the transmittal document a statement of the license rights obtained.
- e. Identification and delivery of computer software and computer software documentation to be furnished with restrictions on use, release, or disclosure (Attachment 2).
- i. This paragraph does not apply to restrictions based solely on copyright.
  - ii. Except as provided in paragraph (e)(iii) of this clause, computer software that Seller asserts should be furnished to the Government with restrictions on use, release, or disclosure is identified in an attachment to this contract (Attachment 02). Seller shall not deliver any software with restrictive markings unless the software is listed on the Attachment.
  - iii. In addition to the assertions made in the Attachment, other assertions 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 identification and assertion shall be submitted to the Agreements Officer as soon as practicable prior to the scheduled date for delivery of the software, in Seller's format, and signed by an official authorized to contractually obligate the Seller.
  - iv. When requested by the AO, Seller shall provide sufficient information to enable the AO to evaluate Seller's assertions. The AO reserved the right to add Seller's assertions to the Attachment and validate any listed assertion, at a later date, in accordance with the procedures of the Article H, Technical Data – Commercial Items, of this Agreement (Validation of Asserted Restrictions).
- f. Marking Requirements. Seller, and its subcontractors or suppliers, may only assert restrictions on the Government's rights to use, modify, reproduce, release, perform, display, or disclose computer software by marking the deliverable software or documentation subject to restriction. Except as provided in paragraph (f)(i) of this clause, only the following legends are authorized under this contract; the government purpose rights legend at paragraph (f)(ii) of this clause; the restricted rights legend at paragraph (f)(iii) of this clause; or the special license rights legend at paragraph (f)(iv) of this clause; and/or a notice of copyright as prescribed under 17 U.S.C. 401 or 402.
- i. General marking instructions. Seller or its subcontractors or suppliers, shall conspicuously and legibly mark the appropriate legend on all computer software that qualify for such markings. The authorized legends shall be placed on the transmitted document or software storage container and each page, or portions thereof, of printed material containing computer software for which restrictions are asserted. Computer software transmitted directly from one computer or computer terminal to another shall contain a notice of asserted restrictions. However, instructions that interfere with or delay the operation of computer software in order to display a restrictive rights legend or other license statement at any time prior to or during use of the computer software, or otherwise cause such interference or delay, shall not be inserted in software that will or might be used in combat or situations that simulate combat conditions, unless the AO's written permission to deliver such software has been obtained prior to delivery. Reproductions of computer software or any portions thereof subject to asserted restrictions, shall also reproduce the asserted restrictions.
  - ii. Government purpose rights markings. 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 this software are restricted by paragraph (b)(ii) of the Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation clause contained in the above identified contract. No restrictions apply after the expiration date shown above. Any reproduction of the software or portions thereof marked with this legend must also reproduce the markings.
  - iii. Restricted rights markings. 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 software are restricted by paragraph (b)(iii) of the Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation clause contained in the above identified contract. 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 software must promptly notify the above named Contractor.

- iv. Special license rights markings. Computer software or computer documentation in which the Government's rights stem from a specifically negotiated license shall be marked with the following legend:

**Special License Rights**

The Government's rights to use, modify, reproduce, release, perform, display, or disclose this software are restricted by Contract No. \_\_\_\_\_(Insert contract number)\_\_, License No. \_\_\_\_\_(Insert license identifier)\_\_\_\_\_. Any reproduction of computer software, computer software documentation, or portions thereof marked with this legend must also reproduce the markings. For purposes of this clause, special licenses do not include government purpose license rights acquired under a prior contract (see paragraph (b)(v) of this clause).

- g. Pre-existing markings. If the terms of a prior contract or license permitted Seller to restrict the Government's rights to use, modify, release, perform, display, or disclose computer software or computer software documentation and those restrictions are still applicable, Seller may mark such software or documentation with the appropriate restrictive legend for which the software qualified under the prior contract or license.
- h. Contractor procedures and records. Throughout performance of this contract, the COMPANY and its subcontractors or suppliers that will deliver computer software or computer software documentation with other than unlimited rights, shall:
  - i. Have, maintain, and follow written procedures sufficient to assure that restrictive markings are used only when authorized by the terms of this clause; and
  - ii. Maintain records sufficient to justify the validity of any restrictive markings on computer software or computer software documentation delivered under this contract.
- i. Removal of unjustified and nonconforming markings.
  - i. Unjustified computer software or computer software documentation markings. The rights and obligations of the parties regarding the validation of restrictive markings on computer software or computer software documentation furnished or to be furnished under this contract are contained in the Validation of Asserted Restrictions - Computer Software and the Validation of Restrictive Markings on Technical Data clauses of this contract, respectively. Notwithstanding any provision of this contract concerning inspection and acceptance, the Government may ignore or, at Seller's expense, correct or strike a marking if, in accordance with the procedures of those clauses, a restrictive marking is determined to be unjustified.
  - ii. Nonconforming computer software or computer software documentation markings. A nonconforming marking is a marking placed on computer software or computer software documentation delivered or otherwise furnished to the Government under this contract that is not in the format authorized by this contract. Correction of nonconforming markings is not subject to the Validation of Asserted Restrictions - Computer Software or the Validation of Restrictive Markings on Technical Data clause of this contract. If the Agreements Officer notifies Seller of a nonconforming marking or markings and Seller fails to remove or correct such markings within sixty (60) days, the Government may ignore or, at Seller's expense, remove or correct any nonconforming markings.
- j. 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.
- k. Limitation on charges for rights in computer software or computer software documentation.
  - i. Seller shall not charge to this contract any cost, including but not limited to license fees, royalties,

or similar charges, for rights in computer software or computer software documentation to be delivered under this contract when:

- a. The Government has acquired, by any means, the same or greater rights in the software or documentation; or
  - b. The software or documentation are available to the public without restrictions.
- ii. The limitation in paragraph (k)(i) of this clause:
    - a. Includes costs charged by a subcontractor or supplier, at any tier, or costs incurred by Seller to acquire rights in subcontractor or supplier computer software or computer software documentation, 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
    - b. Does not include the reasonable costs of reproducing, handling, or mailing the documents or other media in which the software or documentation will be delivered.

#### i. Applicability to subcontractors or suppliers.

- i. Whenever any noncommercial computer software or computer software documentation is to be obtained from a subcontractor or supplier for delivery to the Government under this contract, Seller shall use this same clause in its subcontracts or other contractual instruments, and require its subcontractors 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, Seller's, or a higher tier subcontractor's or supplier's rights in a subcontractor's or supplier's computer software or computer software documentation.
- ii. Seller and higher tier subcontractors or suppliers shall not use their power to award contracts as economic leverage to obtain rights in computer software or computer software documentation from their subcontractors or suppliers.
- iii. Seller shall ensure that subcontractor or supplier rights are recognized and protected in the identification, assertion, and delivery processes required by paragraph (e) of this clause.
- iv. In no event shall Seller use its obligation to recognize and protect subcontractor or supplier rights in computer software or computer software documentation as an excuse for failing to satisfy its contractual obligation to the Government.

#### 2. Lower Tier Agreements

Seller shall include this Article, suitably modified to identify the parties, in all, subcontracts or lower tier agreements, regardless of tier, or experimental, developmental, or research work.

#### 3. Survival Rights

Provisions of this Article shall survive termination of this contract.

### H. Technical Data – Commercial Items

#### 1. License

- a. The Government shall have the unrestricted right to use, modify, reproduce, release, perform, display, or disclose technical data, 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 Seller 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 the data without restrictions.
- b. Except as provided in paragraph (a)(i) of this clause, the Government may use, modify, reproduce, release, perform, display, or disclose technical data within the Government only. The Government shall not:
  - i. Use the technical data to manufacture additional quantities of the commercial items; or



- ii. Release, perform, display, disclose, or authorize use of the technical data outside the Government without Seller's written permission unless a release, disclosure, or permitted use is necessary for emergency repair or overhaul of the commercial items furnished under this agreement, or for performance of work by covered Government support contractors.
  - c. Seller acknowledges that:
    - i. Technical data covered by paragraph (b)(ii) of this clause are authorized to be released or disclosed to covered Government support contractors;
    - ii. Seller will notified of such release or disclosure;
    - iii. Seller (or the party asserting restrictions as identified in a restrictive legend) may require each such covered Government support contractor to enter into a non-disclosure agreement directly with Seller (or the party asserting restrictions) regarding the covered Government support contractor's use of such data, or alternatively, that Seller (or party asserting restrictions) may waive in writing the requirement for an non- disclosure agreement; and
    - iv. Any such non-disclosure agreement shall address the restrictions on the covered Government support contractor's use of the data as set forth in the clause at 252.227-7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends. The non-disclosure agreement shall not include any additional terms and conditions unless mutually agreed to by the parties to the non-disclosure agreement.
2. Additional license rights. Seller, its subcontractors, and suppliers are not required to provide the Government additional rights to use, modify, reproduce, release, perform, display, or disclose technical data. However, if the Government desires to obtain additional rights in technical data, Seller agrees to promptly enter into negotiations with the Agreements Officer to determine whether there are acceptable terms for transferring such rights. All technical data in which Seller has granted the Government additional rights shall be listed or described in a special license agreement made part of this agreement. The license shall enumerate the additional rights granted the Government in such data.
  3. Release from liability. Seller agrees that the Government, and other persons to whom the Government may have released or disclosed technical data delivered or otherwise furnished under this agreement, shall have no liability for any release or disclosure of technical data that are not marked to indicate that such data are licensed data subject to use, modification, reproduction, release, performance, display, or disclosure restrictions.
  4. Applicability to subcontractors or suppliers.
    - a. Seller shall recognize and protect the rights afforded its subcontractors and suppliers under 10 U.S.C. 2320 and 10 U.S.C. 2321.
    - b. Whenever any technical data related to commercial items developed in any part at private expense will be obtained from a subcontractor or supplier for delivery to the Government under this agreement, Seller shall use this same clause in the subcontract or other contractual instrument, including subcontracts and other contractual instruments for commercial items, and require its subcontractors or suppliers to do so, without alteration, except to identify the parties. This clause will govern the technical data pertaining to any portion of a commercial item that was developed exclusively at private expense, and the clause at 252.227-7013 will govern the technical data pertaining to any portion of a commercial item that was developed in any part at Government expense.

## **I. Software License**

### **1. Software License**

All Computer Software delivered to the Government under this contract, other than Computer Software developed or generated under this contract, shall be subject to the restrictions and limitations set forth in Seller's End User License Agreement ("EULA") as applicable, and attached to the Contract, provided they are consistent with federal law. To the extent the terms and conditions in Seller's EULA are inconsistent with federal law, they shall be deemed deleted and unenforceable including, but not limited to the following:

- a. Any future changes to this contract or the EULA must be signed by a duly warranted AO, in writing, to be obtained through Buyer. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by a warranted AO.
- b. Clauses in the EULA referencing termination or cancellation are hereby deemed to be deleted. Termination and cancellations will be governed by the Termination for Convenience Article of the contract.
- c. Any disputes relating to the EULA shall be resolved in accordance with Section P. of this Agreement. Any provisions of the EULA that would subject the United States to any law, jurisdiction, or venue other than that of the United States is hereby deemed to be deleted. The validity, interpretation and enforcement of this Agreement and the attached EULA will be governed by and construed in accordance with federal law as opposed to any state or local law.

d. All EULA clauses referencing Licensee Indemnities are hereby deemed to be deleted. All EULA clauses that (1) violate the Department of Justice's right to represent the Government in any case (28 U.S.C. § 516) and/or (2) require that the Government give sole control over the litigation and/or settlement, are hereby deemed to be deleted.

e. All EULA clauses that violate the Anti-Deficiency Act (31 U.S.C. § 1341), which prohibits the Government from paying any fees or penalties beyond the contract amount (including attorney's and expert witness fees), unless specifically authorized by existing statutes, are hereby deemed to be deleted. This includes, but is not limited to, provisions indicating paid services, fees, charges, and/or billing practices will renew automatically until the licensee elects to cancel.

f. Seller's warranty clause shall not impair the U.S. Government's right to recover for fraud or crimes arising out of or related to this Agreement under any federal fraud statute, including, but not limited to, the False Claims Act, 31 U.S.C. §§ 3729-3733.

g. The EULA does not represent the entire agreement, but will be incorporated and made a material part of the contract.

## 2. Marking of Data

Any Computer Software delivered under this contract that is subject to Seller's EULA pursuant to Section I. above, shall be marked with the appropriate data rights markings and the Seller's name and address and include the following legend:

"Use, duplication, or disclosure is subject to the restrictions as stated in this Agreement and in accordance with HQ0034209TBD between the Government and The Boeing Company."

## J. Validation of Restrictive Markings

1. Definitions. The terms used in this clause are defined in Article Q, Definitions.

2. Presumption regarding development exclusively at private expense:

a. Commercial items.

- i. Except as provided in paragraph (a)(ii) of this clause, the Agreements Officer will presume that Sellers or a subcontractor's asserted use or release restrictions with respect to a commercial item is justified on the basis that the item was developed exclusively at private expense.
- ii. The Agreements Officer will not challenge such assertions unless the Agreements Officer has information that demonstrates that the commercial item was not developed exclusively at private expense.

b. Major weapon systems. In the case of a challenge to a use or release restriction that is asserted with respect to data of Seller or a subcontractor for a major weapon system or a subsystem or component thereof on the basis that the major weapon system, subsystem, or component was developed exclusively at private expense:

- i. The presumption in paragraph (a)(i) of this clause applies to:
  - a. A commercial subsystem or component of a major weapon system, if the major weapon system was acquired as a commercial item in accordance with DFARS subpart 234.70 (10 U.S.C. 2379(a));
  - b. A component of a subsystem, if the subsystem was acquired as a commercial item in accordance with DFARS subpart 234.70 (10 U.S.C. 2379(b)); and
  - c. Any other component, if the component is a commercially available off-the-shelf item or a commercially available off-the-shelf item with modifications of a type customarily available in the commercial marketplace or minor modifications made to meet Federal Government requirements; and
- ii. In all other cases, the challenge to the use or release restriction will be sustained unless information provided by Seller or a subcontractor demonstrates that the item or process was developed exclusively at private expense.

3. Justification. Seller or subcontractor at any tier is responsible for maintaining records sufficient to justify the validity of its markings that impose restrictions on the Government and others to use, duplicate, or disclose technical data delivered or required to be delivered under the contract or subcontract. Except as provided in paragraph (b)(i) of this clause, Seller or subcontractor shall be prepared to furnish to the Agreements Officer a written justification for such restrictive markings in response to a challenge under paragraph (5) of this clause.

4. Pre-challenge request for information.

- a. The Agreements Officer may request Seller or subcontractor to furnish a written explanation for any restriction asserted by Seller or subcontractor on the right of the United States or others to use technical data. If, upon

review of the explanation submitted, the Agreements Officer remains unable to ascertain the basis of the restrictive marking, the Agreements Officer may further request Seller or subcontractor to furnish additional information in the records of, or otherwise in the possession of or reasonably available to, Seller or subcontractor to justify the validity of any restrictive marking on technical data delivered or to be delivered under the contract or subcontract (e.g., a statement of facts accompanied with supporting documentation). Seller or subcontractor shall submit such written data as requested by the Agreements Officer within the time required or such longer period as may be mutually agreed.

- b. If the Agreements Officer, after reviewing the written data furnished pursuant to paragraph (4)(a) 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 relates, the Agreements Officer shall follow the procedures in paragraph (5) of this clause.
- c. If Seller or subcontractor fails to respond to the Agreements Officer's request for information under paragraph (4)(a) of this clause, and the Agreements 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 relates, the Agreements Officer may challenge the validity of the marking as described in paragraph (5) of this clause.

#### 5. Challenge.

- a. Notwithstanding any provision of this contract concerning inspection and acceptance, if the Agreements Officer determines that a challenge to the restrictive marking is warranted, the Agreements Officer shall send a written challenge notice to Seller 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 DoD Agreements Officer's final decision, issued pursuant to paragraph (7) 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 (6) of this clause.
- b. The Agreements Officer shall extend the time for response as appropriate if Seller or subcontractor submits a written request showing the need for additional time to prepare a response.
- c. Seller or subcontractor's written response shall be considered a claim within the meaning of the 41 U.S.C. 7101, Contract Disputes and shall be certified in the form prescribed at 33.207 of the Federal Acquisition Regulation, regardless of dollar amount.
- d. A Seller or subcontractor receiving challenges to the same restrictive markings from more than one Agreements Officer shall notify each Agreements Officer of the existence of more than one challenge. The notice shall also state which Agreements Officer initiated the first in time unanswered challenge. The Agreements Officer initiating the first in time unanswered challenge after consultation with Seller or subcontractor and the other Agreements Officers, shall formulate and distribute a schedule for responding to each of the challenge notices to all interested parties. The schedule shall afford Seller or subcontractor an opportunity to respond to each challenge notice. All parties will be bound by this schedule.

6. Final decision when Seller or subcontractor fails to respond. Upon a failure of a Contractor or subcontractor to submit any response to the challenge notice the Agreements Officer will issue a final decision to Seller or subcontractor in accordance with paragraph (2) of this clause and 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 (5)(a)(ii) or (5)(b) of this clause. Following issuance of the final decision, the Agreements Officer will comply with the procedures in paragraphs (7)(b)(ii) through (iv) of this clause.

#### 7. Final decision when Seller or subcontractor responds.

- a. If the Agreements Officer determines that Seller or subcontractor has justified the validity of the restrictive marking, the Agreements Officer shall issue a final decision to Seller 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 Seller's or subcontractor's response to the challenge notice, or within such longer period that the Agreements Officer has notified Seller or subcontractor that the Government will require. The notification of a longer period for issuance of a final

decision will be made within sixty (60) days after receipt of the response to the challenge notice.

- b. If the Agreements Officer determines that the validity of the restrictive marking is not justified, the Agreements Officer shall issue a final decision to Seller or subcontractor in accordance with the Disputes clause of this contract.
- i. Notwithstanding paragraph (e) of the Disputes clause, the final decision shall be issued within sixty (60) days after receipt of Seller's or subcontractor's response to the challenge notice, or within such longer period that the Agreements Officer has notified Seller or subcontractor of the longer period that the Government will require. The notification of a longer period for issuance of a final decision 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 of a period of ninety (90) days from the issuance of the Agreements Officer's final decision under paragraph (7)(b)(i) of this clause. Seller or subcontractor 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 Agreements Officer within ninety (90) days from the issuance of the Agreements Officer's final decision under paragraph (7)(b)(i) of this clause. If Seller or subcontractor fails to appeal, file suit, or provide a notice of intent to file suit to the Agreements Officer within the ninety (90)-day period, the Government may cancel or ignore the restrictive markings, and the failure of Seller or subcontractor to take the required action constitutes agreement with such Government action.
  - 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 Agreements Officer within ninety (90) days from the issuance of the final decision under paragraph (7)(b)(i) of this clause. The Government will no longer be bound, and Seller or subcontractor agrees that the Government may strike or ignore the restrictive markings, if Seller or subcontractor fails to file its suit within one (1) year after issuance of the final decision. Notwithstanding the foregoing, where the head of an agency determines, on a non-delegable basis, that urgent or compelling circumstances will not permit waiting for the filing of a suit in the United States Claims Court, Seller or subcontractor agrees that the agency may, following notice to Seller or subcontractor, authorize release or disclosure of the technical data. Such agency determination may be made at any time after issuance of the final decision and will not affect Seller's or subcontractor'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 statute until final disposition by an agency Board of Contract Appeals or the United States Claims Court. Notwithstanding the foregoing, where the head of an agency determines, on a non-delegable basis, following notice to Seller that urgent or compelling circumstances will not permit awaiting the decision by such Board of Contract Appeals or the United States Claims Court, Seller or subcontractor agrees that the agency may authorize release or disclosure of the technical data. Such agency determination may be made at any time after issuance of the final decision and will not affect Seller's or subcontractor'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.

#### 8. Final disposition of appeal or suit.

- a. If Seller or subcontractor appeals or files suit and if, upon final disposition of the appeal or suit, the Agreements Officer's decision is sustained:
- i. The restrictive marking on the technical data shall be cancelled, corrected or ignored; and
  - ii. If the restrictive marking is found not to be substantially justified, Seller or subcontractor, as appropriate, 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.
- b. If Seller or subcontractor appeals or files suit and if, upon final disposition of the appeal or suit, the Agreement 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 Seller or subcontractor for payment of fees and other expenses (as defined in 28 U.S.C. 2412(d)(2)(A)) incurred by Seller or subcontractor in defending the marking, if the challenge by the Government is found not to have been made in good faith.

9. Duration of right to challenge. The Government may review the validity of any restriction on technical data, delivered or to be delivered under a contract, asserted by Seller or subcontractor. During the period within three (3) years of final payment on a contract or within three (3) years of delivery of the technical data to the Government, whichever is later, the Agreements Officer may review and make a written determination to challenge the restriction. The Government may, however, challenge a restriction on the release, disclosure or use of technical data at any time if such technical data:
- a. Is publicly available;
  - b. Has been furnished to the United States without restriction; or
  - c. Has been otherwise made available without restriction. Only the Agreements Officer's final decision resolving a formal challenge by sustaining the validity of a restrictive marking constitutes "validation" as addressed in 10 U.S.C. 2321.
10. Decision not to challenge. A decision by the Government, or a determination by the Agreements Officer, to not challenge the restrictive marking or asserted restriction shall not constitute "validation."
11. Privity of contract. Seller or subcontractor agrees that the Agreements Officer may transact matters under this clause directly with subcontractors at any tier that assert restrictive markings. However, this clause neither creates nor implies privity of contract between the Government and subcontractors.
12. Flowdown. Seller or subcontractor agrees to insert this clause in contractual instruments, including subcontracts and other contractual instruments for commercial items, with its subcontractors or suppliers at any tier requiring the delivery of technical data.

## **K. Foreign Access to Technology**

This Article shall remain in effect during the term of the prime Agreement and for five (5) years thereafter.

### **1. General**

The Parties agree that research findings and technology developments arising under this contract may constitute a significant enhancement to the national defense, and to the economic vitality of the United States. Accordingly, access to important technology developments under this Agreement by Foreign Firms or Institutions must be carefully controlled. The controls contemplated in this Article are in addition to, and are not intended to change or supersede, the provisions of the International Traffic in Arms Regulations (22 C.F.R. Part 120, et seq.), the National Industrial Security Program Operating Manual (NISPOM) (DoD 5220.22-M), and the Department of Commerce's Export Administration Regulations (15 C.F.R. Part 730, et seq.).

### **2. Restrictions on Sale or Transfer of Technology to Foreign Firms or Institutions**

a. In order to promote the national security interests of the United States and to effectuate the policies that underlie the regulations cited above, the procedures stated in subparagraphs 2.b, 2.c, and 2.d. below shall apply to any transfer of Technology. For purposes of this paragraph, a transfer includes a sale of Seller, and sales or licensing of Technology. Transfers do not include:

- i. Sales of products or components; or
- ii. Licenses of the software or documentation related to sales of products or components; or
- iii. Transfer to foreign subsidiaries of Seller for purposes related to this Agreement; or
- iv. Transfer which provides access to Technology to a Foreign Firm or Institution which is an approved source of supply or source for the conduct of research under this contract provided that such transfer shall be limited to that necessary to allow the firm or institution to perform its approved role under this contract.

b. Seller shall provide timely notice to Buyer of any proposed transfers from Seller of Technology developed under this contract to Foreign Firms or Institutions. If the Government determines that the transfer may have adverse consequences to the national security interests of the United States, Seller, its vendors, and the Government shall jointly endeavor to find alternatives to the proposed transfer which obviate or mitigate potential adverse consequences of the transfer but which provide substantially equivalent benefits to Seller.

c. In any event, Seller shall provide written notice to the Buyer of any proposed transfer to a foreign firm or institution at least fifty-five (55) calendar days prior to the proposed date of transfer. Such notice shall cite this Article and shall state specifically what is to be transferred and the general terms of the transfer. Within thirty (30) calendar days of receipt of the Seller's written notification, the AO shall advise Seller, through Buyer, whether it consents to the proposed transfer. In cases where the Government does not concur or sixty (60) calendar days after receipt and the Government provides no decision, Seller may utilize the procedures under Section P, Disputes. No transfer shall take place until a decision is rendered.

d. In the event a transfer of Technology to Foreign firms or Institutions which is NOT approved by the Government takes place, Seller shall (a) refund to the Government funds paid for the development of the Technology and (b) the Government shall have a non-exclusive, nontransferable, irrevocable, paid-up license to practice, or to have practiced on behalf of the United States the Technology throughout the world for Government and any and all other purposes, particularly to effectuate the intent of this Agreement. Upon request of the Government, Seller shall provide written confirmation of such licenses.

### 3. Export Compliance

Each Party agrees to comply with U.S. Export regulations including, but not limited to, the requirements of the Arms Export Control Act, 22 U.S.C. § § 2751-2794, including the International Traffic in Arms Regulation (ITAR), 22 C.F.R. § 120 et seq.; and the Export Administration Act, 50 U.S.C. app. § 2401- 2420. Each party is responsible for obtaining from the Government export licenses or other authorizations/approvals, if required, for information or materials provided from one party to another under this contract. Accordingly, Seller shall not export, directly, or indirectly, any products and/or technology, Confidential Information, Trade Secrets, or Classified and Unclassified Technical Data in violation of any U.S. Export laws or regulations.

### 4. Lower Tier Agreements

Seller shall include this Article, suitably modified, to identify the Parties, in all subcontracts or lower tier agreements, regardless of tier, for experimental, developmental, or research work.

## L. Operational Security

**Access and General Protection/Security Policy and Procedures.** All Seller employees, including subcontractor employees, shall comply with all installation and facility access and local security policies and procedures (provided by Government representative), and security/emergency management exercises. Seller shall also provide all information required for background checks to meet installation access requirements. Seller workforce shall comply with all personal identity verification and accountability requirements as directed by the Government and/or local policy. Should the Force Protection Condition (FPCON) at any individual facility or installation change, the Government may require changes in Seller security matters or processes. During FPCONs Charlie and Delta, services/installation access may be discontinued/postponed due to higher threat. Services will resume when FPCON level and/or threat is reduced to an acceptable level as determined by the Installation Commander. Seller shall be subject to and comply with vehicle searches, wearing of ID badges, etc.

#### 1. Access and General Protection/Security Policy and Procedures

Seller shall provide personnel with the appropriate personnel security clearance levels for the work to be performed. Access to Classified Information is required in the performance of this contract and shall be in accordance with the DoD 5220.22-M, National Industrial Security Program Operating Manual (NISPOM), applicable DoD personnel security regulations. Seller shall maintain sufficiently cleared personnel to perform the tasks required by this SOW and the agreement. Seller personnel shall possess the requisite security clearance, accesses, and need-to-know commensurate with the requirements of their positions. Overarching contract security requirements, and Seller access to Classified Information, shall be as specified in the DD Form 254 for this Agreement.

#### 2. Security Education, Training and Awareness Briefs

All Seller employees, including subcontractor employees, shall receive new employee training and annual security refreshers. These training programs will be used to inform employees of the types of behavior to watch for and instruct employees to report suspicious activity and violations to their local security officers. This training shall be completed within forty-five (45) calendar days after contract start date or Effective Date of incorporation of this requirement into the contract, whichever applies, and then annually thereafter. Seller's Special Access Program (SAP) Refresher Training Record form will be used to document annual refresher training. This document will be retained by Seller and given to the Government upon request.

#### 3. Access to DoD Facility or Installation

All Seller employees, including subcontractor employees, shall comply with adjudication standards and procedures using the National Crime Information Center Interstate Identification Index (NCIC-III) and Terrorist Screening Database (DoDM5200.08-R 09APR07); applicable installation, facility and area commander installation and facility access and local security policies and procedures (provided by the AOR).

#### 4. Information Technology/Information Assurance

Seller shall be capable of accessing, handling, receiving and storing CLASSIFIED and UNCLASSIFIED documents, equipment, hardware and test items using the applicable standards outlined in the attached DD 254. All Controlled Unclassified Information (documents designated as FOR OFFICIAL USE ONLY and/or LIMITED DISTRIBUTION) shall be submitted by a controlled means using UPS mail and/or Safe Access File Exchange (SAFE) website.

#### 5. For Official Use Only Information (FOUO) and Controlled Unclassified Information (CUI)

Seller personnel shall be capable of accessing, handling, receiving and storing CLASSIFIED and UNCLASSIFIED documents, equipment, hardware and test items using applicable standards outlined in the attached DD 254. For Official Use Only information generated and/or provided under this contract shall be marked and safeguarded as specified in DoDM 5200.01, Information Security Program Manual (Volume 4). Seller shall not store or transmit CUI on personal IT systems or via personal e-mail. Unclassified e-mail containing any DoD CUI shall be encrypted.

#### 6. Operations Security (OPSEC)

a. Seller shall develop, implement, and maintain an OPSEC program to protect controlled unclassified and classified activities, information, equipment, and material used or developed by Seller and any subcontractor during performance of the agreement. Seller shall be responsible for the subcontractor implementation of the OPSEC requirements. The OPSEC program shall be in accordance with National Security Decision Directive (NSDD) 298, and at a minimum shall include:

- i. Assignment of responsibility for OPSEC direction and implementation.
  - ii. Issuance of procedures and planning guidance for the use of OPSEC techniques to identify vulnerabilities and apply applicable countermeasures.
  - iii. Establishment of OPSEC education and awareness training.
  - iv. Provisions for management, annual review, and evaluation of OPSEC programs.
  - v. Flow down of OPSEC requirements to subcontractors when applicable.
- b. Seller shall prepare an Operations Security Plan in accordance with MIL-HDBK-254D for Government review.
- c. Seller shall implement and maintain security procedures and controls to prevent unauthorized disclosure of controlled unclassified and Classified Information and to control distribution of controlled unclassified and Classified Information in accordance with the National Industrial Security Program Operating Manual (NISPOM) and DoDM 5200.01, Information Security Manual. The DoD Contract Security Classification Specification, DD Form 254, defines program specific security requirements. All Seller facilities shall provide an appropriate means of storage for controlled unclassified and classified documents, classified equipment and materials and other equipment and materials.

## 7. Public Release of Information

In accordance with DoDM 5205.02-M, an OPSEC review will be performed by the Government prior to all public release of information. All Government information intended for public release by Seller shall undergo a Government OPSEC review prior to release. The OPSEC review will be performed as part of the Public Review Process described in Section O, Statutory Authority.

## I. Safeguarding Covered Defense Information and Cyber Incident Reporting

### 1. Adequate Security

Seller shall provide Adequate Security on all Covered Seller Information Systems. To provide Adequate Security, Seller shall implement, at a minimum, the following information security protections:

- a. For Covered Seller Information Systems that are part of an Information Technology (IT) service or system operated on behalf of the Government, the following security requirements apply:
  - i. Cloud computing services shall be subject to the security requirements specified:
    - a. Seller shall implement and maintain administrative, technical, and physical safeguards and controls with the security level and services required in accordance with the Cloud Computing Security Requirements Guide (SRG) found at <https://public.cyber.mil/dccs> unless notified by the AOR that this requirement has been waived by the DoD Chief Information Officer.
    - b. Seller shall maintain within the United States or outlying areas all Government data that is not physically located on Government premises, unless Seller receives written notification from the AOR to use another location.
  - ii. Any other such IT service or system (i.e., other than cloud computing) shall be subject to the security requirements specified elsewhere in this agreement.
- b. For 'Covered Seller Information Systems' that are not part of an IT service or system operated on behalf of the Government and therefore are not subject to the security requirement specified at paragraph 1.a. of this Article, the following security requirements apply:
  - i. Except as provided in paragraph b.ii. of this Article, the Covered Seller Information System shall be subject to the security requirements in National Institute of Standards and Technology (NIST) Special Publication (SP) 800-171, "Protecting Controlled Unclassified Information in Nonfederal Information Systems and Organizations" (available via the internet at <http://dx.doi.org/10.6028/NIST.SP.800-171>) in effect at the time the solicitation is issued or as authorized by the AO.
  - ii. The National Institute of Standards and Technology Considerations:
    - a. Seller shall implement NIST SP 800-171, as soon as practical.
    - b. Seller shall submit requests to vary from NIST SP 800-171 in writing to the AO, through Buyer, for consideration by the DoD CIO. Seller need not implement any security requirement adjudicated by an authorized representative of the DoD CIO to be non-applicable or to have an alternative, but equally effective, security measures that may be implemented in its place.
    - c. If the DoD CIO has previously adjudicated Seller's requests indicating that a requirement is not applicable or that an alternative security measure is equally effective, a copy of that approval shall be provided to the AO or AOR, through Buyer, when requesting its recognition under this agreement.
    - d. If Seller intends to use an external cloud service provider to store, process, or transmit any Covered Defense Information in performance of this agreement, Seller shall require and ensure that the cloud service provider meets security requirements equivalent to those established by the Government for the Federal Risk and Authorization Management Program (FedRAMP)

Moderate baseline (<https://www.fedramp.gov/documents/>) and that the cloud service provider complies with requirements in paragraphs 3 through 7 of this Article for cyber incident reporting, malicious software, media preservation and protection, access to additional information and equipment necessary for Forensic Analysis, and cyber incident damage assessment.

c. Apply other information systems security measures when Seller reasonably determines that information systems security measures, in addition to those identified in paragraphs 1.a. and 1.b. of this Article, may be required to provide Adequate Security in a dynamic environment or to accommodate special circumstances (e.g., medical devices) and any individual, isolated, or temporary deficiencies based on an assessed risk or vulnerability. These measures may be addressed in a system security plan.

## 2. Cyber Incident Reporting Requirement

a. When Seller discovers a Cyber Incident that affects a Covered Seller Information System or the Covered Defense Information residing therein, or that affects Seller's ability to perform the requirements of the contract that are designated as Operationally Critical Support and identified in the agreement, Seller shall—

i. Conduct a review for evidence of Compromise of Covered Defense Information, including, but not limited to, identifying compromised computers, servers, specific data, and user accounts. This review shall also include analyzing Covered Seller Information System(s) that were part of the Cyber Incident, as well as other Information Systems on Seller's network(s), that may have been accessed as a result of the incident in order to identify compromised Covered Defense Information, or that affect the Seller's ability to provide Operationally Critical Support; and

ii. Rapidly report Cyber Incidents to DoD at <http://dibnet.dod.mil>.

b. Cyber Incident report. The Cyber Incident report shall be treated as information created by or for DoD and shall include, at a minimum, the required elements at <http://dibnet.dod.mil>.

c. Medium assurance certificate requirement. In order to report Cyber Incidents in accordance with this Article, Seller or subcontractor shall have or acquire a DoD-approved medium assurance certificate to report Cyber Incidents. For information on obtaining a DoD-approved medium assurance certificate, see [https://public.cyber.mil/wp-content/uploads/eca/pdf/unclass-eca\\_cp\\_v4-5\\_final\\_signed.pdf](https://public.cyber.mil/wp-content/uploads/eca/pdf/unclass-eca_cp_v4-5_final_signed.pdf).

## 3. Malicious Software.

When Seller or subcontractors discover and isolate Malicious Software in connection with a reported Cyber Incident, submit the Malicious Software to DoD Cyber Crime Center (DC3) at this website: <https://www.dc3.mil/> or in accordance with additional instructions provided by DC3 or the AO or the AOR. Do not send the Malicious Software to the AO or AOR.

## 4. Media preservation and protection.

When Seller discovers a Cyber Incident has occurred, Seller shall preserve and protect images of all known affected Information Systems identified in paragraph 2.a.i. of this Article and all relevant monitoring/packet capture data for at least ninety (90) calendar days from the submission of the cyber incident report to allow DoD to request the Media or decline interest.

## 5. Access to additional information or equipment necessary for Forensic Analysis.

Upon request by DoD, Seller shall provide DoD with access to additional information or equipment that is necessary to conduct a Forensic Analysis.

## 6. Cyber Incident damage assessment activities.

If DoD elects to conduct a damage assessment, the AO will request that Seller provide all of the damage assessment information gathered in accordance with paragraph 4. of this Article.

## 7. DoD safeguarding and use of Seller attributional/proprietary information.

The Government shall protect against the unauthorized use or release of information obtained from Seller (or derived from information obtained from Seller) under this Article that includes Seller attributional/proprietary information, including such information submitted in accordance with paragraph 2. To the maximum extent practicable, Seller shall identify and mark attributional/proprietary information. In making an authorized release of such information, the Government will implement appropriate procedures to minimize Seller attributional/proprietary information that is included in such authorized release, seeking to include only that information that is necessary for the authorized purpose(s) for which the information is being released.

## 8. Use and release of Seller attributional/proprietary information not created by or for DoD.

Information that is obtained from Seller (or derived from information obtained from the Seller) under this Article that is not created by or for the Government is authorized to be released outside of Government-

- a. To entities with missions that may be affected by such information;
- b. To entities that may be called upon to assist in the diagnosis, detection, or mitigation of Cyber Incidents;
- c. To Government entities that conduct counterintelligence or law enforcement investigations;



d. For national security purposes, including cyber situational awareness and defense purposes (including with Defense Industrial Base (DIB) participants in the program at 32 CFR part 236).

9. Use and release of Seller attributional/proprietary information created by or for DoD.

Information that is obtained from Seller (or derived from information obtained from the Seller) under this Article that is created by or for the Government (including the information submitted pursuant to paragraph 3. of this Article) is authorized to be used and released outside of the Government for purposes and activities authorized by paragraph 1. of this Article, and for any other lawful Government purpose or activity, subject to all applicable statutory, regulatory, and policy based restrictions on the Government's use and release of such information.

10. Other safeguarding or reporting requirements.

The safeguarding and cyber incident reporting required by this Article in no way abrogates the Seller's responsibility for other safeguarding or cyber incident reporting pertaining to its unclassified information systems as required by other applicable Articles of this agreement, or as a result of other applicable U.S. Government statutory or regulatory requirements.

11. Lower Tier Agreements

Seller shall include this Article, suitably modified to identify the Parties, in all subcontracts or lower tier agreements entered into solely in connection with this contract.

## **J. Use Of Certain Telecommunications And Video Surveillance Services Or Equipment**

This Article is to ensure compliance with Section 889 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232). Based on the information provided below, the Government may be unable to enter into an Agreement, exercise an option under an Agreement, or bilaterally modify the Agreement to extend the term of an Agreement.

### **1. Definitions.**

Backhaul means intermediate links between the core network, or backbone network, and the small subnetworks at the edge of the network (e.g., connecting cell phones/towers to the core telephone network). Backhaul can be wireless (e.g., microwave) or wired (e.g., fiber optic, coaxial cable, Ethernet).

Covered foreign country means The People's Republic of China.

Covered telecommunications equipment or services means—

- a. Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities);
- b. For the purpose of public safety, security of Government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities);
- c. Telecommunications or video surveillance services provided by such entities or using such equipment; or
- d. Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

Critical technology means—

- a. Defense articles or defense services included on the United States Munitions List set forth in the International Traffic in Arms Regulations under subchapter M of chapter I of title 22, Code of Federal Regulations;
- b. Items included on the Commerce Control List set forth in Supplement No. 1 to part 774 of the Export Administration Regulations under subchapter C of chapter VII of title 15, Code of Federal Regulations, and controlled-
  - i. Pursuant to multilateral regimes, including for reasons relating to national security, chemical and biological weapons proliferation, nuclear nonproliferation, or missile technology; or
  - ii. For reasons relating to regional stability or surreptitious listening;
- c. Specially designed and prepared nuclear equipment, parts and components, materials, software, and technology covered by part 810 of title 10, Code of Federal Regulations (relating to assistance to foreign atomic energy activities);
- d. Nuclear facilities, equipment, and material covered by part 110 of title 10, Code of Federal Regulations (relating to export and import of nuclear equipment and material);
- e. Select agents and toxins covered by part 331 of title 7, Code of Federal Regulations, part 121 of title 9 of such Code, or part 73 of title 42 of such Code; or
- f. Emerging and foundational technologies controlled pursuant to section 1758 of the Export Control Reform Act of 2018 (50 U.S.C. 4817).

Interconnection arrangements means arrangements governing the physical connection of two or more networks to allow the use of another's network to hand off traffic where it is ultimately delivered (e.g., connection of a customer of telephone provider A to a customer of telephone company B) or sharing data and other information resources.

Reasonable inquiry means an inquiry designed to uncover any information in the entity's possession about the identity of the producer or provider of covered telecommunications equipment or services used by the entity that excludes the need to include an internal or third-party audit.

Roaming means cellular communications services (e.g., voice, video, data) received from a visited network when unable to connect to the facilities of the home network either because signal coverage is too weak or because traffic is too high.

Substantial or essential component means any component necessary for the proper function or performance of a piece of equipment, system, or service.

### **2. Prohibition.**

a. Seller is prohibited from providing to Buyer or Government any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, unless Seller is providing (i) a service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or (ii) telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles or the covered telecommunication equipment or services. A waiver, for a period not exceeding August 13, 2021, may be requested.

### 3. Certification.

Seller shall review the list of excluded parties in the System for Award Management (SAM) (<https://www.sam.gov>) for entities excluded from receiving federal awards for “covered telecommunications equipment or services.”

Based on that review:

- a. Seller certifies that it does  does not  provide covered telecommunications equipment or services as a part of its offered products or services to the Government in the performance of any contract, subcontract, other transaction agreement, or other contractual instrument.
- b. If Seller does provide covered telecommunications equipment or services as a part of its offered products or services to the Government in the performance of any contract, subcontract, other transaction agreement, or other contractual instrument as described in paragraph 3.a., Seller certifies that it will  will not  provide covered telecommunications equipment or services to the Government in the performance of any contract, subcontract, other transaction agreement, or other contractual instrument resulting from this solicitation. If Seller will provide covered telecommunications equipment or services to the Government in the performance of any contract, subcontract, other transaction agreement, or other contractual instrument resulting from this solicitation 3.b., Seller shall provide the additional disclosure information required at paragraph 4.a. of this Article.
- c. Seller certifies, after conducting a reasonable inquiry, for purposes of this certification, that it does  does not  use covered telecommunications equipment or services, or use any equipment, system, or service that uses covered telecommunications equipment or services. If Seller does use covered telecommunications equipment or services, or use any equipment, system, or service that uses covered telecommunications equipment or services as described under this paragraph 3. c, Seller shall provide the additional disclosure information required at paragraph 4.b. of this Article.

### 4. Disclosures.

a. Disclosure for the certification in paragraph 3.b. of this Article. If Seller does provide covered telecommunications equipment or services to the Government in the performance of any contract, subcontract, other transaction agreement, or other contractual instrument in in paragraph 3.b. of this provision, Seller shall provide the following information:

#### i. For covered equipment—

- a. The entity that produced the covered telecommunications equipment (include entity name, unique entity identifier, CAGE code, and whether the entity was the original equipment manufacturer (OEM) or a distributor, if known);
- b. A description of all covered telecommunications equipment offered (include brand; model number, such as OEM number, manufacturer part number, or wholesaler number; and item description, as applicable); and
- c. Explanation of the proposed use of covered telecommunications equipment and any factors relevant to determining if such use would be permissible under the prohibition in paragraph 2. a. of this Article.

#### ii. For covered services—

- a. If the service is related to item maintenance: A description of all covered telecommunications services offered (include on the item being maintained: Brand; model number, such as OEM number, manufacturer part number, or wholesaler number; and item description, as applicable); or
- b. If not associated with maintenance, the Product Service Code (PSC) of the service being provided; and explanation of the proposed use of covered telecommunications services and any factors relevant to determining if such use would be permissible under the prohibition in paragraph (b)(1) of this Article.

b. If Seller does use covered telecommunications equipment or services, or use any equipment, system, or service that uses covered telecommunications equipment or services in in paragraph 3.c. of this Article, Seller shall provide the following information:

#### i. For covered equipment—

- a. The entity that produced the covered telecommunications equipment (include entity name, unique entity identifier, CAGE code, and whether the entity was the OEM or a distributor, if

known);

b. A description of all covered telecommunications equipment offered (include brand; model number, such as OEM number, manufacturer part number, or wholesaler number; and item description, as applicable); and

c. Explanation of the proposed use of covered telecommunications equipment and any factors relevant to determining if such use would be permissible under the prohibition in paragraph 2.b.of this Article.

ii. For covered services—

a. If the service is related to item maintenance: A description of all covered telecommunications services offered (include on the item being maintained: Brand; model number, such as OEM number, manufacturer part number, or wholesaler number; and item description, as applicable); or

b. If not associated with maintenance, the PSC of the service being provided; and explanation of the proposed use of covered telecommunications services and any factors relevant to determining if such use would be permissible under the prohibition in paragraph 2.b. of this Article.

#### 5. Reporting requirement.

a. In the event Seller identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during agreement performance, or Seller is notified of such by a subcontractor at any tier or by any other source, Seller shall report the information in paragraph 5.b. of this Article to Buyer and to the Department of Defense website at <https://dibnet.dod.mil>.

b. Seller shall report the following information pursuant to paragraph 5.a. of this clause

i. Within one business day from the date of such identification or notification: the agreement number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.

ii. Within 10 business days of submitting the information in paragraph 5.b.i. of this clause: any further available information about mitigation actions undertaken or recommended. In addition, Seller shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.

6. Subcontracts. Seller shall insert the substance of this article, including this paragraph, in all subcontracts and other contractual instruments, including subcontracts for the acquisition of commercial items.

#### K. Statutory Authority

The prime Agreement is not a Federal procurement contract, grant or cooperative agreement. Nothing in the prime Agreement or its attachments will be construed as incorporating by reference or implication any provision of Federal acquisition law or regulation not specifically mentioned in this Agreement. Additionally, this Agreement is subject to the Trafficking Victims Protection Act of 2000, as amended (22 U.S.C. chapter 78), Executive Order 13627, Strengthening Protections Against Trafficking in Persons in Federal Contracts, the international Traffic in Arms Regulations (22 C.F.R. Part 120, et seq.), the National Industrial Security Program Operating Manual (NISPOM) (DoD 5220.22-M), the Department of Commerce's Export Administration Regulations (15 C.F.R. Part 730, et seq.), and the Federal Property and Administrative Services Act (40 U.S.C. chapter 5), to the extent applicable to the activities to be conducted under this Agreement. In addition, the Procurement integrity Act (41 U.S.C. §2101-2107) shall apply to this contract.

#### L. Disputes

For the purpose of Sections I.1.c (Software License) and K (Foreign Access to Technology) only, in the event of disputes related to Sections I & KG, between Seller and the U.S. Government (“the Parties” for this Section P), the following applies:

##### 1. General

The Parties shall communicate with one another in good faith and in a timely and cooperative manner when raising issues pertaining to Sections I. and K., with the objective of resolving any misunderstanding, disagreement, claims, or disputes by mutual agreement.

##### 2. Dispute Resolution Procedures

a. Any disagreement, claim or dispute between the Government and Seller concerning questions of fact or law

arising from or in connection with Sections I. and K., and, whether or not involving an alleged breach, may be raised only under this Article.

b. Whenever disputes, disagreements, or misunderstandings arise, the Parties shall attempt to resolve the issue(s) involved by discussion and mutual agreement as soon as practicable, with the goal of settlement within three (3) months of identification of the issue. Every reasonable attempt will be made to resolve all issues at the AO's level. Alternative Dispute Resolution (ADR) procedures to include, but not limited to settlement negotiations, mediation and fact-finding, will be used to the maximum extent practicable. Whenever Seller submits, in writing, a claim or issue to the Government or Buyer, the AO shall consider the claim or issue and, within thirty (30) calendar days of receipt of the claim or issue in dispute, either:

- i. Prepare and transmit a written decision to Seller, which shall include the basis for the decision, and accordingly document the Agreement file or;
- ii. Notify Seller of a specific date when the AO will render a decision if more time is needed for response. The notice will inform Seller of the reason for delaying the decision.

c. In the event Seller decides to appeal the decision, the AO shall make every effort to encourage Seller to enter into ADR procedures with the AO. The ADR procedure applicable to this Agreement expressed in subparagraphs below:

- i. Failing resolution by mutual agreement, the aggrieved Party shall document the dispute, disagreement, or misunderstanding by notifying the other Party through the cognizant AO in writing documenting the relevant facts, identifying unresolved issues, specifying the clarification or remedy sought, and documenting the rationale as to why the clarification/remedy is appropriate. Within ten (10) working days after providing notice to the other Party, the aggrieved Party may, in writing, request a decision by the Head of Contracting Activity (HCA). The other Party shall submit a written position on the matter(s) in dispute within thirty (30) calendar days after being notified that a decision has been requested. The HCA will conduct a review of the matter(s) in dispute and render a decision in writing within thirty (30) calendar days of receipt of such position. Any such decision is final and binding, unless a Party shall, within thirty (30) calendar days request further review as provided by this Article. If requested within thirty (30) calendar days of the decision by the HCA, further review will be conducted by the Senior Executive of Seller and the Director. In the event of a decision, or in absence of a decision within sixty (60) calendar days of referral to the Senior Executive of Seller and the Director (or such other period as agreed to by the parties), either party may pursue any right or remedy provided by law. Alternatively, the parties may agree to explore and establish an Alternate Disputes Resolution procedure to resolve this dispute.
- ii. If Seller chooses not to participate in the foregoing Alternate Dispute Resolution or does not accept the results of the foregoing Dispute Resolution, Seller may bring a formal claim as authorized by 28 U.S.C. 1491, 5 U.S.C. 704 or other applicable statutes, and pursue any right and remedy in a court of competent jurisdiction. The Parties' attempt to resolve issues through settlement negotiations, mediation and fact-finding pursuant to Section P, Disputes, shall be non-binding and without prejudice to either Party.

### 3. Limitation of Damages

Claims for damages of any nature whatsoever pursued under Section P. shall be limited to direct damages only up to the aggregate amount of Government funding disbursed as of the time the dispute arises. In no event shall the Government be liable for claims for consequential, punitive, special and incidental damages, claims for lost profits, or other indirect damages.

### M. Definitions

1. "Adequate Security" means protective measures that are commensurate with the consequences and probability of loss, misuse, or unauthorized access to, or modification of information.
2. "Agreement" or "OT" refers to the Other Transaction agreement, as authorized under 10 U.S.C. 2371b, between the Government and The Boeing Company, Agreement No. HQ00342190018.
3. "Agreements Officer (AO)" is the warranted Contracting Officer authorized to sign the final agreement for the Government.
4. "Agreements Officer's Representative (AOR)" is the individual designated by the Government on a per project basis to monitor all technical aspects; the AOR shall only assist in agreement administration of the specific project to the extent expressly delegated such administration authority in writing in the Project Agreement by the responsible Agreements Officer.
5. "Classified Information" means information (i.e., Top Secret, Secret and Confidential), as defined by Executive Order 13526, Classified National Security Information, and as codified at 32 C.F.R. § 2001, et. seq.

6. “Commercial Computer Software” means software developed or regularly used for non-governmental purposes which -
  - a. Has been sold, leased, or licensed to the public;
  - b. Has been offered for sale, lease, or license to the public;
  - c. Has not been offered, sold, leased, or licensed to the public but will be available for commercial sale, lease, or license in time to satisfy the delivery requirements of this agreement; or
  - d. Satisfies a criterion expressed in paragraphs a, b, or c of this definition and would require only minor modification to meet the requirements of this contract.
7. “Commercial Computer Software License” means the license terms under which Commercial Computer Software is sold or offered for sale, lease or license to the general public.
8. “Commercial Item” does not include Commercial Computer Software.
9. “Seller Attributional/Proprietary Information” means information that identifies the Seller(s), whether directly or indirectly, by the grouping of information that can be traced back to the Seller(s) (e.g., program description, facility locations), personally identifiable information, as well as trade secrets, commercial or financial information, or other commercially sensitive information that is not customarily shared outside of the company.
10. “Compromise” means disclosure of information to unauthorized persons, or a violation of the security policy of a system, in which unauthorized intentional or unintentional disclosure, modification, destruction, or loss of an object, or the copying of information to unauthorized media may have occurred.
11. “Computer Database” means a collection of data recorded in a form capable of being processed by a computer. The term does not include Computer Software.
12. “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.
13. “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.
14. “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 the software.
15. “Confidential” means information such as Trade Secrets and commercial or financial information obtained from a Disclosing Party on a privileged or confidential basis. Information and materials of a Disclosing Party which are designated as confidential or as a Trade Secret in writing by such Disclosing Party whether by letter or by use of an appropriate stamp or legend, prior to or at the same time any such information or materials are disclosed by such Disclosing Party to the Receiving Party. It includes any information and materials considered a Trade Secret by the Party on its own behalf or on behalf of a third party (e.g., their subcontractors or suppliers). Notwithstanding the foregoing, materials and other information which are orally, visually, or electronically disclosed by a Disclosing Party, or are disclosed in writing without an appropriate letter, stamp, or legend, shall constitute Proprietary Information or a Trade Secret if such Disclosing Party, within thirty (30) calendar days after such disclosure, delivers to the Receiving Party a written document or documents describing the material or information and indicating that it is confidential or a Trade Secret.
16. “Contracting Activity” means an element of an agency designated by the agency head and delegated broad authority regarding acquisition functions. It also means elements or another agency designated by the director of a defense agency which has been delegated contracting authority through its agency charter.
17. “Contractor” means any person, business, small business firm, or nonprofit organization that is a party to a funding agreement.

18. “Controlled Technical Information” means Technical Information with military or space application that is subject to controls on the access, use, reproduction, modification, performance, display, release, disclosure, or dissemination. Controlled Technical Information would meet the criteria, if disseminated, for distribution statements B through F using the criteria set forth in DoD Instruction 5230.24, Distribution Statements on Technical Documents. The term does not include information that is lawfully publicly available without restrictions.
19. “Covered Seller Information System” means an unclassified information system that is owned, or operated by or for, Seller and that processes, stores, or transmits Covered Defense Information.
20. “Covered Defense Information” means unclassified Controlled Technical Information or other information, as describe in the Controlled Unclassified Information (CUI) Registry at <http://www.archives.gov/cui/registry/category-list.html>, that requires safeguarding or dissemination controls pursuant to and consistent with law, regulations, and Government wide policies, and is—
- a. Marked or otherwise identified in the agreement, contract, task order, or delivery order and provided to Seller by or on behalf of DoD in support of the performance of the agreement; or
  - b. Collected, developed, received, transmitted, used, or stored by or on behalf of Seller in support of the performance of the agreement.
21. “Covered Government Support Contractor” means a contractor (other than a litigation support contractor) under a contract, 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 (rather than to directly furnish an end item or service to accomplish a program or effort), provided that the support contractor
- a. Is not affiliated with the Seller or a first-tier subcontractor on the program or effort, or with any direct competitor of such Seller or any such first-tier subcontractor in furnishing end items or services of the type developed or produced on the program or effort; and
  - b. Receives access to Technical Data or Computer Software for performance of a Government contract that contains the clause at 252.227-7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends.
22. “Cyber Incident” means actions taken through the use of computer networks that result in a compromise or an actual or potentially adverse effect on an Information System and/or the information residing therein.
23. “Data” means recorded information, regardless of form or the Media on which it may be recorded. The term includes Technical Data and Computer Software. The term does not include information incidental to contract administration, such as financial, administrative, cost or pricing, or management information.
24. “Date of Completion” is the date on which all work is completed or the date on which the period of performance ends.
25. “Detailed manufacturing or process data” means technical data that describe 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.
26. “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. Private expense determinations should be made at the lowest practicable level.
27. “Developed exclusively with government funds” means development was not accomplished exclusively or partially at private expense.
28. “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.
29. “Developed” means that an item, component, or process exists and is workable. Thus, the item or component must have been constructed or the process practiced. Workability is generally established when the item, component, or process has been analyzed or tested sufficiently to demonstrate to reasonable people skilled in the applicable art that there is a high probability that it will operate as intended. Whether, how much, and what type of analysis or testing is required

to establish workability depends on the nature of the item, component, or process, and the state of the art. To be considered “Developed,” the item, component, or process need not be at the stage where it could be offered for sale or sold on the commercial market, nor must the item, component, or process be actually reduced to practice within the meaning of Title 35 of the United States Code.

30. “Development” means the systematic use of scientific and technical knowledge in the design, development, testing, or evaluation of a potential new technology, product or service (or of an improvement in an existing technology, product or service) to meet specific performance requirements or objectives. It includes the functions of design engineering, prototyping, and engineering testing.

31. “Disclosing Party” means Seller, or their subcontractors or suppliers, or the Government who discloses Confidential Information as contemplated by the subsequent Agreement.

32. “Effective Date” means the date when this Agreement is signed and executed by the Agreements Officer for the Government.

33. “Foreign Firm or Institution” means a firm or institution organized or existing under the laws of a country other than the United States, its territories, or possessions. The term includes, for purposes of this Agreement, any agency or instrumentality of a foreign government; and firms, institutions or business organizations which are owned or substantially controlled by foreign governments, firms, institutions, or individuals.

34. “Forensic Analysis” means the practice of gathering, retaining, and analyzing computer-related data for investigative purposes in a manner that maintains the integrity of the Data.

35. “Form, fit and function data” means technical data that describes the required overall physical, functional, and performance requirements. For Computer Software it means Data identifying source, functional characteristics, 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.

36. “Government” means the U.S. Government.

37. “Government Fiscal Year” means the period commencing on October 1 and ending September 30 of the following calendar year.

38. “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 competitive procurement, but do not include the rights to use, modify, reproduce, release, perform, display, or disclose technical data for commercial purposes or authorize others to do so.

39. “Government Purpose Rights” means the rights to use modify, reproduce, release, perform, display, or disclose Data, within the Government without restriction; and to release or disclose Data outside the Government and authorize persons to whom release or disclosure has been made to use, modify, reproduce, release, perform, display, or disclose that data for a government purpose. Government Purpose Rights do not include the rights to use, modify, reproduce, release, perform, display, or disclose Data for commercial purposes or authorize others to do so.

40. “Information System” means a discrete set of information resources organized for the collection, processing, maintenance, use, sharing, dissemination, or disposition of information.

41. “Invention” means any invention or discovery which is or may be patentable or otherwise protectable under this title or any novel variety of plant which is or may be protectable under the Plant Variety Protection Act (7 U.S.C. 2321 et seq.).

42. “Item” includes components or processes.

43. “Know-How” means all information including, but not limited to discoveries, formulas, materials, Inventions, processes, ideas, approaches, concepts, techniques, methods, software, programs, documentation, procedures, firmware, hardware, Technical Data, specifications, devices, apparatus and machines.

44. “Limited Rights” means the right to use, modify, reproduce, release, perform, display, or disclose Data, in whole or in part, within the Government. The Government may not, without the written permission of the party asserting Limited Rights, release or disclose the Data outside the Government, use the Data for manufacture, or authorize the 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—

a. The reproduction, release, disclosure, or use is—

- i. Necessary for emergency repair and overhaul; or
- ii. A release or disclosure to—

1. A Covered Government Support Contractor in performance of its covered Government support contract for use, modification, reproduction, performance, display, or release or disclosure to a person authorized to receive Limited Rights Data; or

2. A foreign government, of Data other than detailed manufacturing or process data, when use of such Data by the foreign government is in the interest of the Government and is required for evaluation or informational purposes;

b. The recipient of the Data is subject to a prohibition on the further reproduction, release, disclosure, or use of the Data; and

c. The Seller or subcontractor asserting the restriction is notified of such reproduction, release, disclosure, or use.

45. “Limited Rights Data” means Data, other than Computer Software, developed at private expense that embody trade secrets or are commercial or financial and confidential or privileged, to the extent that such data pertain to items, components, or processes developed at private expense, including minor modifications.

46. “Malicious Software” means Computer Software or firmware intended to perform an unauthorized process that will have adverse impact on the confidentiality, integrity, or availability of an Information System. This definition includes a virus, worm, Trojan horse, or other code-based entity that infects a host, as well as spyware and some forms of adware.

47. “Media” means physical devices or writing surfaces including, but is not limited to, magnetic tapes, optical disks, magnetic disks, large-scale integration memory chips, and printouts onto which Covered Defense Information is recorded, stored, or printed within a Covered Seller Information System.

48. “Milestone” means a scheduled event signifying the successful completion of a major deliverable or a set of related deliverables as identified in the Statement of Work (SOW).

49. “Operationally Critical Support” means supplies or services designated by the Government as critical for airlift, sealift, intermodal transportation services, or logistical support that is essential to the mobilization, deployment, or sustainment of the Armed Forces in a contingency operation.

50. “Other Transactions (OT) Agreement” is the term commonly used to refer to the 10 USC 2371b authority to enter into transactions other than contracts, grants or cooperative agreements. The Department of Defense (DoD) currently has authority to make awards that are directly relevant to enhancing the mission effectiveness of military personnel and the supporting platforms, systems, components, or materials proposed to be acquired or developed by the Department of Defense, or to improvement of platforms, systems, components, or materials in use by the armed forces. OTs are acquisition instruments that are generally not subject to the Federal laws and regulations governing procurement (FAR based) contracts. As such, they are not required to comply with the Federal Acquisition Regulation (FAR), its supplements (i.e. DFARS) or laws that are limited in applicability to procurement contracts.

51. “Parties” means Buyer and Seller by its authorized agent where collectively identified and “Party” where each entity is individually identified.

52. “Rapidly Report” means within 72 hours of discovery of any Cyber Incident.

53. “Receiving Party” means the party who receives Confidential Information disclosed by a Disclosing Party.

54. “Restricted Computer Software” means Computer Software developed at private expense and that is a trade secret, is commercial or financial and confidential or privileged, or is published copyrighted Computer Software, including minor modifications of any such Computer Software.

55. "Subject Invention" means any invention of the Seller conceived or first actually reduced to practice in the performance of work under this agreement.
56. "Technical Data" means recorded information, regardless of the form or method of recording, of a scientific or technical nature (including Computer Software Documentation). The term does not include Computer Software or data incidental to contract administration, such as financial and/or management information.
57. "Technical Information" means Technical Data or Computer Software, as those terms are defined in 'Data.' Examples of Technical Information include research and engineering data, engineering drawings, and associated lists, specifications, standards, process sheets, manuals, technical reports, technical orders, catalog-item identifications, data sets, studies and analyses and related information, and Computer Software executable code and source code.
58. "Technology" means discoveries, innovations, know-how and Inventions, whether patentable or not, including Computer Software, recognized under U.S. law as intellectual creations to which rights of ownership accrue, including, but not limited to, patents, trade secrets, mask works, and copyrights developed under this Agreement.
59. "Trade Secret" means all forms and types of financial, business, scientific, technical, economic, or engineering or otherwise proprietary information, including, but not limited to, patterns, plans, compilations, program devices, formulas, designs, prototypes, methods, techniques, processes, procedures, programs, or codes, whether tangible or intangible, and whether or how stored, compiled, or memorialized physically, electronically, graphically, photographically, or in writing if:
- a. The owner thereof has taken reasonable measures to keep such information secret; and
  - b. The information derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable through proper means by, the public.
60. "Unlimited Rights" means rights to use, modify, reproduce, perform, display, release, or disclose Technical Data in whole or in part, in any manner, and for any purpose whatsoever, and to have or authorize others to do so.