

**CUSTOMER CONTRACT REQUIREMENTS**  
**MQ-25**  
**CUSTOMER CONTRACT N00019-18-C-1012**

CUSTOMER CONTRACT REQUIREMENTS

The following customer contract requirements apply to this Contract to the extent indicated below. If this Contract is for the procurement of commercial products and/or commercial services under a Government prime contract, as defined in FAR Part 2.101, Section 3 replaces the requirements of Sections 1 and 2 below. Please note, the requirements below are developed in accordance with Buyer's prime contract and are not modified by Buyer for each individual Seller or statement of work. Seller will remain at all times responsible for providing to any government agency, Buyer, or Buyer's customer, evidence of compliance with the requirements herein or that such requirements are not applicable to the extent satisfactory to the requesting party.

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

**52.203-6 Restrictions on Subcontractor Sales to the Government** (JUN 2020). This clause applies if the contract exceeds the simplified acquisition threshold, as defined in the Federal Acquisition Regulation 2.101 on the date of subcontract award.

**52.203-7 Anti-Kickback Procedures** (MAY 2014). Buyer may withhold from sums owed Seller the amount of any kickback paid by Seller or its subcontractors at any tier if (a) the Contracting Officer so directs, or (b) the Contracting Officer has offset the amount of such kickback against money owed Buyer under the prime contract. This clause, excluding subparagraph (c)(1), applies only if this contract exceeds \$150,000.

**52.203-8 Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity** (MAY 2014). This clause applies to this contract if the Seller, its employees, officers, directors or agents participated personally and substantially in any part of the preparation of a proposal for this contract. The Seller shall indemnify Buyer for any and all losses suffered by the Buyer due to violations of the Act (as set forth in this clause) by Seller or its subcontractors at any tier.

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

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

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

**52.203-14 Display of Hotline Poster(s)** (OCT 2015). This clause applies only if this contract exceeds \$5,500,000 and is not for a commercial item or is performed entirely outside the United States. For the purposes of this clause, the United States is defined as the 50 states, the District of Columbia, and outlying areas.

**52.203-17 Contractor Employee Whistleblower Rights and Requirement to Inform Employees of Whistleblower Rights** (APR 2014). This clause applies only if this contract exceeds \$150,000.

**52.203-19 Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements**

(JAN 2017).

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

**52.204-7 System for Award Management** (OCT 2016).

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

**52.204-10 Reporting Executive Compensation and First-Tier Subcontract Awards** (OCT 2016). Delete all paragraphs and replace with the following: "If Seller meets the executive compensation reporting requirements of 52.204-10, Seller shall provide the required executive compensation information by maintaining an active registration in the U.S. government System for Award Management (**SAM**) in accordance with 52.204-7. The required information of 52.204-10 will be made public."

**52.204-13 System for Award Management Maintenance** (OCT 2016).

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

**52.204-23 Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities** (NOV 2021). In paragraph (c)(1), the term "Government" means "Government or Buyer" and the term "Contracting Officer" means "Buyer." All reporting required by paragraph (c) shall be reported through Buyer. Seller shall report the information in paragraph (c)(2) to Buyer.

**52.204-25 Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment** (NOV 2021).

Paragraph (b)(2) is deleted. Paragraph (d)(1) is deleted and replaced with the following: "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 contract performance, or Seller is notified of such by a subcontractor at any tier or any other source, Seller shall report the information in paragraph (d)(2) of this clause via email to Buyer's Authorized Procurement Representative, with the required information in the body of the email."

**52.204-27 Prohibition on a ByteDance Covered Application** (JUN 2023). In paragraph (b), if an exception has been granted by the Contracting Officer, notice shall be provided to Seller through Buyer.

**52.209-6 Protecting the Government's Interests When Subcontracting With Contractors Debarred, Suspended or Proposed for Debarment** (OCT 2015). Seller agrees it is not debarred, suspended, or proposed for debarment by the Federal Government. Seller shall disclose to Buyer, in writing, whether as of the time of award of this contract, Seller or its principals is or is not debarred, suspended, or proposed for debarment by the Federal Government. This clause does not apply to contracts where Seller is providing commercially available off-the shelf items.

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

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

**52.215-2 Audit and Records - Negotiation** (OCT 2010). This clause applies only if this contract exceeds \$150,000 and (i) is cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeterminable type or any combination of these types; (ii) Seller was required to provide cost or pricing data, or (iii) Seller is required to furnish reports as discussed in paragraph (e) of the referenced clause. Notwithstanding the above, Buyer's rights to audit Seller are governed by the Financial Records and Audit article of the General Provisions incorporated in the Contract.

**52.215-11 Price Reduction for Defective Certified Cost or Pricing Data -- Modifications Deviation** (OCT 2021). This clause applies if there is modification to the contract involving a pricing adjustment expected to exceed \$2 million on the date of execution of the modification, except the clause does not apply to any modification if an exception under FAR 15.403-1(b) applies. "Contracting Officer" shall mean "Contracting Officer or Buyer." In subparagraph (d)(2)(i)(A), delete "to the Contracting Officer."

In subparagraph (d)(2)(ii)(B), "Government" means "Government or Buyer." In Paragraph (e), "United States" shall mean "United States or Buyer."

**52.215-13 Subcontractor Certified Cost or Pricing Data -- Modifications Deviation** (OCT 2021). This clause applies if this contract exceeds the \$2 million on the date of agreement on price or the date of award, whichever is later. The certificate required by paragraph (c) of the referenced clause shall be modified as follows: delete "to the Contracting Officer or the Contracting Officer's representative" and substitute in lieu thereof "to The Boeing Company or The Boeing Company's representative (including data submitted, when applicable, to an authorized representative of the U.S. Government)."

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

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

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

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

**52.215-21 Requirement for Certified Cost or Pricing Data or Information Other Than Certified Cost and Pricing Data - Modifications** (OCT 2010). This clause applies only if this contract exceeds the threshold set forth in FAR 15.403-4. The term "Contracting Officer" shall mean Buyer. Insert the following in lieu of paragraph (a)(2): "Buyer's audit rights to determine price reasonableness shall also apply to verify any request for an exception under this clause. For items priced using catalog or market prices, or law or regulation, access does not extend to cost or profit information or other data relevant solely to the Contractor's determination of the prices to be offered in the catalog or marketplace."

**52.215-23 Limitations on Pass-Through Charges.** (OCT 2009). This clause applies to all cost-reimbursement subcontracts that exceeds (i) \$100,000 if included in Buyer's customer RFP or customer contract issued before October 1, 2010 or (ii) \$150,000 if included in Buyer's customer RFP issued on or after October 1, 2010, or if the prime contract was issued prior to October 1, 2010 but was amended after October 1, 2010 to increase the Simplified Acquisition Threshold. If the contract is with DoD, then this clause applies to all cost-reimbursement subcontracts and fixed-price subcontracts, except those identified in 15.408(n)(2)(i)(B)(2), that exceed the threshold for obtaining cost or pricing data in accordance with FAR 15.403-4. In paragraph (c), "Contracting Officer" shall mean Buyer.

**52.219-8 Utilization of Small Business Concerns** (NOV 2016).

**52.219-9 Small Business Subcontracting Plan (Jan 2017) Alternate II** (NOV 2016). This clause applies only if this contract exceeds \$700,000 and Seller is not a small business concern. Seller shall adopt a subcontracting plan that complies with the requirements of this clause. In addition, Seller shall submit to Buyer Form X31162, Small Business Subcontracting Plan Certificate of Compliance. In accordance with paragraph (d)(10)(v), Seller agrees that it will submit the ISR and/or SSR using eSRS, and, in accordance with paragraph (d)(10)(vii), Seller agrees to provide the prime contract number, its own DUNS number, and the email address of Seller's official responsible for acknowledging or rejecting the ISRs, to its subcontractors with subcontracting plans. As required by (d) (10)(vi), the following information is provided: (1) the prime contract number is N00019-18-C-1012; (2) Buyer's DUNS number is 149879157; and (3) the email address of Buyer's official responsible for acknowledging receipt of or rejecting the ISRs is (contact Buyer's Authorized Procurement Agent.)

**52.219-9 Small Business Subcontracting Plan Deviation** (AUG 2016). This clause applies only if this contract exceeds \$700,000 and Seller is not a small business concern. Seller shall adopt a subcontracting plan that complies with the requirements of this clause. In addition, Seller shall submit to Buyer Form X31162, Small Business Subcontracting Plan Certificate of Compliance. In accordance with paragraph (d)(10)(iv), Seller agrees that it will submit the ISR and/or the SSR using eSRS, and, in accordance with paragraph (d)(10)(vi), Seller agrees to provide the prime contract number, its own DUNS number, and the email address of Seller's official responsible for acknowledging or rejecting the ISRs, to its subcontractors with subcontracting plans.

**52.219-28 Post-Award Small Business Program Representation** (JUL 2013). In paragraph (b),

delete "...or, if applicable paragraph (g) of this clause..." Delete paragraph (c) and insert the following paragraph (c) in lieu thereof: "Seller shall represent its size status in accordance with SBA's size code standards in effect at the time of this representation to Buyer. The size status shall correspond to the North American Industry Classification System (NAICS) code applicable to Seller's contract." Delete paragraphs (d) and (g). Delete paragraph (e) and insert the following paragraph (e) in lieu thereof: "Seller shall make the representation required by paragraph (b) of this clause by submitting an updated Buyer Form F70102 or updating Seller's profile information on line in Buyer's BEST system."

**52.222-4 Contract Work Hours and Safety Standards-Overtime Compensation** (MAY 2014). Buyer may withhold or recover from Seller the amount of any sums the Contracting Officer withholds or recovers from Buyer because of liabilities of Seller or its subcontractors under this clause.

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

**52.222-26 Equal Opportunity** (SEP 2016).

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

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

**52.222-37 Employment Reports on Veterans** (FEB 2016). This clause applies if this contract is \$150,000 or more, unless exempted by rules, regulations, or orders of the Secretary of Labor.

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

**52.222-50 Combating Trafficking in Persons** (MAR 2015). The term "contractor" shall mean "Seller", except in the paragraph (a) definition of Agent, and except when the term "prime contractor" appears, which shall remain unchanged. The term "Contracting Officer" shall mean "Contracting Officer, Buyer's Authorized Procurement representative" in paragraph (d)(1). Paragraph (d)(2) shall read as follows: "If the allegation may be associated with more than one contract, the Seller shall inform the Buyer's Authorized Procurement Representative for each affected contract." The term "the Government" shall mean "the Government and Buyer" in paragraph (e). The term "termination" shall mean "Cancellation" and "Cancellation for Default", respectively, in paragraph (e)(6). The term "Contracting Officer" shall mean "Contracting Officer and Buyer" in paragraph (f), except in paragraph (f)(2), where it shall mean "Contracting Officer or Buyer". Paragraph (h)(2)(ii) shall read as follows: "To the nature and scope of the activities involved in the performance of a Government subcontract, including the number of non-United States citizens expected to be employed and the risk that the contract or subcontract will involve services or supplies susceptible to trafficking in persons." The term "Contracting Officer" shall mean "Contracting Officer or Buyer" in paragraph (h)(4)(ii). The term "Contracting Officer" shall mean "Buyer" in paragraph (h)(5).

**52.222-54 Employment Eligibility Verification** (OCT 2015). This clause applies to all subcontracts that (1) are for (i) commercial or noncommercial services (except for commercial services that are part of the purchase of a COTS item, or an item that would be a COTS item, but for minor modifications performed by the COTS provider and are normally provided for that COTS item), or (ii) construction; (2) has a value of more than \$3,500; and (3) includes work performed in the United States.

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

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

**52.223-11 Ozone-Depleting Substances and High Global Warming Potential Hydrofluorocarbons** (JUN 2016). Seller shall submit the information required by paragraph (c) (1) annually to Buyer by October 15th during each year of contract performance, and at the end of contract performance.

**52.223-15 Energy Efficiency In Energy-Consuming Products** (DEC 2007).

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

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

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

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

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

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

**52.228-5 Insurance - Work on a Government Installation** (JAN 1997). This clause applies to contracts that requires work on a Government installation. In paragraph (b) and (b)2, "Contracting Officer" shall mean "Buyer". In paragraph (c), "Contracting Officer" shall mean "Contracting Officer or Buyer". Seller shall provide and maintain insurance as set forth in this contract.

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

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

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

**52.234-1 Industrial Resources Developed Under Title III Defense Production Act** (SEP 2016).

**52.237-2 Protection of Government Buildings, Equipment, and Vegetation** (APR 1984). This clause applies only if work will be performed on a Government installation. "Contracting Officer" shall mean Buyer.

**52.244-6 Subcontracts for Commercial Items** (JAN 2017). Clauses in paragraph (c) (1) are applicable to Seller for commercial items ordered by Buyer from Seller under this contract.

**52.245-1 Government Property** (JAN 2017). This clause applies if Government property is acquired or furnished for contract performance. "Government" shall mean Government throughout except the first time it appears in paragraph (g)(1) when "Government" shall mean the Government or the Buyer.

**52.245-1 Government Property Alternate I** (APR 2012). This clause applies only if Government property is acquired or furnished for contract performance. The Government-Owned Property article in GP4 is hereby deleted.

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

**52.253-1 Computer Generated Forms** (JAN 1991).

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

**252.203-7001 Prohibition on Persons Convicted of Fraud or Other Defense-Contract-Related Felonies** (DEC 2008). This clause applies only if this contract exceeds (i) \$100,000 if included in Buyer's customer RFP or customer contract issued before October 1, 2010 or (ii) \$150,000 if included in Buyer's customer RFP issued on or after October 1, 2010, or if the prime contract was issued prior to October 1, 2010 but was amended after October 1, 2010 to increase the Simplified Acquisition Threshold and is not for the purchase of commercial items or commercial components. Except in paragraph (a), "this contract" and "the contract" mean the contract between Buyer and Seller. In subparagraph (d)(2), delete the words "or first-tier subcontractor." In paragraph (e), the remedies described in subparagraphs (2) and (3) are available to Buyer, not the Government. In paragraph (f), "through the Buyer" is inserted after "Contracting Officer." Paragraph (g) is deleted.

**252.203-7002 REQUIREMENT TO INFORM EMPLOYEES OF WHISTLEBLOWER RIGHTS** (SEP 2013).

**252.203-7004 DISPLAY OF HOTLINE POSTER** (JAN 2023). The clause applies if the Contract exceeds the threshold specified in Defense Federal Acquisition Regulation Supplement 203.1004 (b)(2)(ii) on the date of Contract award, except if the contract is for the acquisition of a commercial product or commercial service.

**252.204-7000 Disclosure of Information** (OCT 2016). Seller shall submit requests for authorization to release information through Buyer. Seller shall submit written requests to Buyer a minimum of 25 days prior to proposed date of release.

**252.204-7004 Antiterrorism Awareness Training for Contractors** (JAN 2023). This clause applies when Seller performance requires routine physical access to a Federally-controlled facility or military institution.

**252.204-7012 Safeguarding Covered Defense Information and Cyber Incident Reporting** (JAN 2023). This clause applies if the Contract is for operationally critical support or where performance will involve a covered contractor information system. The term "contractor" retains its original meaning wherever the word is not capitalized. In the terms "Contractor attributional/proprietary information," "Contractor information system" and "covered contractor information system," the term "contractor" also retains its original meaning. In paragraphs (d) and (g), "Contracting Officer" shall mean "Contracting Officer or Buyer." In paragraph (m)(2), the term "prime Contractor" retains its original meaning. In accordance with paragraph (m)(2)(i), Seller shall notify Buyer when submitting a request to the Contracting Officer to vary from NIST SP 800-171. Reporting to Buyer in accordance with (m)(2)(ii) shall be accomplished via [abuse@Boeing.com](mailto:abuse@Boeing.com) with a copy to the Buyer's Authorized Procurement Representative. The Boeing 1st tier subcontractor promptly shall report lower tier subcontractor information it receives.

Seller represents and warrants that (i) it is in compliance with the requirements of DFARS Clause 252.204-7012 as modified by the preceding paragraph, or (ii) that, pursuant to paragraph (b)(2)(ii)(B), it has submitted a request applicable to this Contract for a variance from the requirements of NIST SP 800-171, to the US Government Contracting Office and that Seller's request for such variance was approved by an authorized representative of the DoD CIO.

**252.204-7015 NOTICE OF AUTHORIZED DISCLOSURE OF INFORMATION FOR LITIGATION SUPPORT** (JAN 2023).

**252.204-7018 Prohibition on the Acquisition of Covered Defense Telecommunications Equipment or Services** (JAN 2023). In paragraph (d), all required reporting shall be to Buyer.

**252.204-7020 NIST SP 800-171 DoD Assessment Requirements** (JAN 2023). This clause applies unless the contract is for COTS items. Seller is required to have completed, within the last 3 years, at least a Basic NIST SP 800-171 DoD Assessment for Controlled Unclassified Information (CUI) that is processed, stored, or transmitted on covered contractor information systems relevant to its performance that are not part of an information technology service or system operated on behalf of the government.

Seller represents and warrants that it is in compliance with the requirements of DFARS Clause 252.204-7020 as modified by the preceding paragraph.

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

\$1.5 million.

**252.211-7003 Item Unique Identification and Valuation** (MAR 2016).

This clause applies if this contract acquires any item for which unique item identification is required in accordance with paragraph (c) (1) of this clause. Any exceptions under paragraph (c) (1) (i) or specific items requiring a unique item identifier in accordance with paragraph (c) (1) (ii)-(v), if any, shall be identified in an exhibit in this contract.

**252.215-7000 Pricing Adjustments** (DEC 2012). This clause applies only if this contract exceeds the threshold set forth in FAR 15.403-4.

**252.219-7003 Small Business Subcontracting Plan (DoD Contracts)** (MAR 2016). Paragraph (e) shall be deleted.

**252.219-7004 Small Business Subcontracting Plan (Test Program)** (OCT 2014). This clause applies if Seller participates in the test program described in DFARS 219.702.

**252.223-7001 Hazard Warning Labels** (DEC 1991). This clause applies only if Seller delivers hazardous material under this contract.

**252.223-7006 Prohibition on Storage, Treatment, And Disposal of Toxic Or Hazardous Materials** (SEP 2014). This clause applies if the contract requires, may require, or permits Seller access to a DoD installation. Seller shall include this clause in any of their subcontracts.

**252.223-7008 Prohibition of Hexavalent Chromium** (JUN 2013). "Contracting Officer" shall mean Buyer.

**252.225-7001 Buy American and Balance of Payments Program** (DEC 2016). In paragraph (c), the phrase "in the Buy American Balance of Payments Program Certificate provision of the solicitation" is deleted and the word "certified" is deleted and replaced with the word "specified."

**252.225-7002 Qualifying Country Sources as Subcontractors** (DEC 2016).

**252.225-7004 Reporting Of Contract Performance Outside The United States And Canada - Submission After Award** (OCT 2015). "Contracting Officer" means "Buyer." Paragraph (c)(5) is deleted. In (d)(2) "from the Contracting Officer or" is deleted.

**252.225-7008 Restriction on Acquisition of Specialty Metals** (MAR 2013). This clause applies if the contract exceeds \$150,000.

**252.225-7009 Restriction on Acquisition of Certain Articles Containing Specialty Metals** (JAN 2023).

Paragraphs (d) and (e) (1) of this clause are excluded. In paragraph (d) (1) (i), "Contracting Officer" means Buyer. In paragraph (e)(2) "Government" means Buyer. Paragraph (c)(6) is revised as follows:

(c)(6) End items of the prime contract containing a minimal amount of otherwise noncompliant specialty metals (*i.e.*, specialty metals not melted or produced in the United States, an outlying area, or a qualifying country, that are not covered by one of the other exceptions in this paragraph (c)), if the total weight of such noncompliant metals does not exceed 2 percent of the total weight of all specialty metals in that end item. This exception does not apply to high performance magnets containing specialty metals. If the Seller will furnish goods that contain otherwise noncompliant specialty metals (*i.e.*, specialty metals not melted or produced in the United States, an outlying area, or a qualifying country, that are not covered by one of the other exceptions in this paragraph (c)), then the Seller shall disclose to the Buyer (i) the total weight of all specialty metals in each of the goods of this contract, and (ii) the total weight of the noncompliant specialty metals in each of those goods. In the calculation of total weight of noncompliant specialty metals in each of the goods, exclude the weight of specialty metals covered by other exemptions in this paragraph (c).

**252.225-7012 Preference for Certain Domestic Commodities** (DEC 2016).

**252.225-7013 Duty Free Entry** (MAY 2016). Seller shall include the prime contract number on all shipping documents submitted to Customs for supplies for which duty-free entry is claimed pursuant to this clause. The information required by paragraph (j)(3) of this clause is available upon request.

**252.225-7016 Restriction on Acquisition of Ball and Roller Bearings** (JUN 2011). This clause does not apply to contracts for commercial items or items that do not contain ball or roller bearings.

**252.225-7025 Restriction on Acquisition of Forgings** (DEC 2009). This clause applies only if this contract is for goods that contain restricted forging items per paragraphs (a) and (b) of the referenced clause.

**252.225-7033 Waiver of United Kingdom Levies** (APR 2003). This clause applies if the contract is over \$1,000,000 and Seller is a U.K. firm. The term "Contracting Officer" shall mean Buyer.

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

**252.227-7013 Rights In Technical Data -- Noncommercial Items** (FEB 2014). This clause applies when technical data for noncommercial items or for commercial items developed in any part at Government expense, is to be obtained from Seller or Seller's subcontractors for delivery to the Government.

**252.227-7014 Rights In Noncommercial Computer Software And Noncommercial Computer Software Documentation** (FEB 2014). This clause applies when noncommercial computer software or computer software documentation is to be obtained from Seller or Seller's subcontractors for delivery to the Government.

**252.227-7015 Technical Data -- Commercial Items** (FEB 2014). This clause applies whenever any technical data related to commercial items is developed in any part at private expense and will be obtained from Seller or its subcontractors for delivery to the Government.

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

**252.227-7017 Identification and Assertion of Use, Release, or Disclosure Restrictions** (JAN 2011).

**252.227-7019 Validation of Asserted Restrictions - Computer Software** (SEP 2016).

**252.227-7025 Limitations on the Use or Disclosure of Government-Furnished Information Marked With Restrictive Legends** (MAY 2013). In paragraph (c)(1), the term "Government" shall mean "Government and Buyer".

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

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

**252.227-7037 Validation of Restrictive Markings on Technical Data** (SEP 2016).

**252.227-7038 Patent Rights—Ownership By The Contractor (Large Business)** (JUN 2012). This clause applies only if this contract is for experimental, developmental, or research work and Seller is not a small business firm or nonprofit organization.

**252.228-7001 Ground and Flight Risk** (JUN 2010). Seller acknowledges that the Customer Contract includes DFARS 252.228-7001, Ground and Flight Risk (JUN 2010) (the "GFRC"), and that the GFRC incorporates DCMA Instruction 8210.1 (21 August 2013), CONTRACTOR'S FLIGHT AND GROUND OPERATIONS, by reference. Seller shall have procedures in place to implement the requirements of the GFRC and DCMA Instruction 8210.1 (21 August 2013), and to enable Buyer to meet its obligations under the prime contract.

**252.228-7005 Accident Reporting and Investigation Involving Aircraft, Missiles, and Space Launch Vehicles** (DEC 1991).

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



**252.234-7002 Earned Value Management System** (MAY 2011). Delete paragraph (k). With the exception of paragraphs (i) and (j), Seller shall comply with EVMS requirements if Seller is identified to comply elsewhere in this contract. (Not applicable to contracts placed in support of Buyer's prime contract CLINs 0003 and 0004).

**252.234-7004 Cost and Software Data Reporting System.** (NOV 2014). CSDR reporting is required by Seller if this contract exceeds \$50 million. The last sentence in paragraph (b) is deleted.

**252.235-7003 Frequency Authorization-Basic** (MAR 2014). This clause applies only if this contract requires the development, production, construction, testing, or operation of a device that utilizes radio frequency spectrum. Seller shall, without further adjustment to contract price or fee, provide all necessary support and documentation to obtain radio frequency spectrum certification and/or authorization. The term "Contracting Officer" shall mean "Buyer."

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

**252.239-7016 Telecommunications Security Equipment, Devices, Techniques, and Services** (DEC 1991). This clause applies only if this contract requires securing telecommunications.

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

**252.244-7000 Subcontracts for Commercial Items** (JUN 2013).

**252.245-7000 Government-Furnished Mapping, Charting, and Geodesy Property** (APR 2012). "Contracting Officer" and "Government" means Buyer. "Government-furnished" means Government or Buyer furnished MC&G property.

**252.245-7001 Tagging, Labeling, and Marking Of Government-Furnished Property** (APR 2012).

**252.245-7004 Reporting, Reutilization, and Disposal** (SEP 2016). This clause applies if this contract contains FAR 52.245-1, Government Property. The term "Contracting Officer" shall mean "Buyer".

**252.246-7001 Warranty of Data-Basic** (MAR 2014). The warranty period in paragraph (b) is three years from the Government's acceptance of the final items of data under this contract. "Government" and "Contracting Officer" shall mean Buyer.

**252.246-7001 Warranty of Data Alternate I** (MAR 2014). The warranty period in paragraph (b) is three years from the Government's acceptance of the final items of data under this contract. "Government" and "Contracting Officer" shall mean Buyer.

**252.246-7003 Notification of Potential Safety Issues** (JUN 2013). This clause applies only if this subcontract is for: (i) parts identified as critical safety items; (ii) systems and subsystems, assemblies and subassemblies integral to a system; or (iii) repair, maintenance, logistics support, or overhaul services for systems and subsystems, assemblies, subassemblies and parts integral to a system. The notification required by paragraph (c) of this clause will be provided to Buyer and to the administrative contracting officer (ACO) and the procuring contracting officer (PCO) if Seller is aware of the ACO and PCO for the prime contract.

**252.246-7007 Contractor Counterfeit Electronic Part Detection and Avoidance System** (AUG 2016). This clause applies to contracts for electronic parts or assemblies containing electronic parts or for contracts for the performance of authentication testing. The term "Contractor" means "Buyer" in the first sentence. In paragraph (c)(6), "Contracting Officer" means "Buyer." The introductory text at the beginning of the clause is deleted and only paragraphs (a) through (e) apply.

**252.246-7008 Sources of Electronic Parts** (OCT 2016). This clause applies if the Contract is for electronic parts or assemblies containing electronics parts, unless Seller is the original manufacturer of the electronic parts. The term "Contractor" means Seller and the term "subcontractor" means Seller's lower-tier suppliers. In paragraph (b)(3)(ii)(A), the term "Contracting Officer" means "Buyer's Authorized Procurement Representative." Seller's notification shall include, at a minimum, identification of the electronic parts being procured, identification of Seller's lower-tier supplier providing such electronic parts, Seller's rationale on acceptability of procuring such parts (including risk mitigation), and identification of the product using such parts (by lot or serial numbers).

**252.247-7023 Transportation of Supplies by Sea-Basic** (APR 2014). This clause applies if this contract is for supplies that are of a type described in paragraph (b)(2) of this clause. In paragraph (d), "45 days" is changed to "60 days." If this contract exceeds the simplified acquisition threshold, paragraphs (a)-(h) apply. In paragraph (g) "Government" means Buyer. If this contract is at or below the simplified acquisition threshold, paragraphs (f) and (g) are excluded.

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

**252.249-7002 Notification Of Anticipated Contract Termination Or Reduction** (OCT 2015). "Contracting Officer" shall mean "Buyer". Subparagraph (d)(1) shall be deleted. The phrase "Require that each such subcontractor" of subparagraph (d)(2) shall be deleted.

**252.239-7001 Information Assurance Contractor Training and Certification** (JAN 2008).

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

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

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

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

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

**52.204-23 Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities** (NOV 2021). In paragraph (c)(1), the term "Government" means "Government or Buyer" and the term "Contracting Officer" means "Buyer." All reporting required by paragraph (c) shall be reported through Buyer. Seller shall report the information in paragraph (c)(2) to Buyer.

**52.204-25 Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment** (NOV 2021). Paragraph (b)(2) is deleted. Paragraph (d)(1) is deleted and replaced with the following: "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 contract performance, or Seller is notified of such by a subcontractor at any tier or any other source, Seller shall report the information in paragraph (d)(2) of this clause via email to Buyer's Authorized Procurement Representative, with the required information in the body of the email.

**52.204-27 Prohibition on a ByteDance Covered Application** (JUN 2023). In paragraph (b), if an exception has been granted by the Contracting Officer, notice shall be provided to Seller through Buyer.

**52.209-6 Protecting the Government's Interests When Subcontracting With Contractors Debarred, Suspended or Proposed for Debarment** (OCT 2015). Seller agrees it is not debarred, suspended, or proposed for debarment by the Federal Government. Seller shall disclose to Buyer, in writing, whether as of the time of award of this contract, Seller or its principals is or is not debarred, suspended, or proposed for debarment by the Federal Government. This clause does not apply to contracts where Seller is providing commercially available off-the shelf items.

**52.219-8 Utilization of Small Business Concerns** (NOV 2016).

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

**52.222-26 Equal Opportunity** (SEP 2016).

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

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

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

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

**52.222-50 Combating Trafficking in Persons** (MAR 2015). The term "contractor" shall mean "Seller", except in the paragraph (a) definition of Agent, and except when the term "prime contractor" appears, which shall remain unchanged. The term "Contracting Officer" shall mean "Contracting Officer, Buyer's Authorized Procurement representative" in paragraph (d)(1). Paragraph (d)(2) shall read as follows: "If the allegation may be associated with more than one contract, the Seller shall inform the Buyer's Authorized Procurement Representative for each affected contract." The term "the Government" shall mean "the Government and Buyer" in paragraph (e). The term "termination" shall mean "Cancellation" and "Cancellation for Default", respectively, in paragraph (e)(6). The term "Contracting Officer" shall mean "Contracting Officer and Buyer" in paragraph (f), except in paragraph (f)(2), where it shall mean "Contracting Officer or Buyer". Paragraph (h)(2)(ii) shall read as follows: "To the nature and scope of the activities involved in the performance of a Government subcontract, including the number of non-United States citizens expected to be employed and the risk that the contract or subcontract will involve services or supplies susceptible to trafficking in persons." The term "Contracting Officer" shall mean "Contracting Officer or Buyer" in paragraph (h)(4)(ii). The term "Contracting Officer" shall mean "Buyer" in paragraph (h)(5).

**52.222-54 Employment Eligibility Verification** (OCT 2015). This clause applies to all subcontracts that (1) are for (i) commercial or noncommercial services (except for commercial services that are part of the purchase of a COTS item, or an item that would be a COTS item, but for minor modifications performed by the COTS provider and are normally provided for that COTS item), or (ii) construction; (2) has a value of more than \$3,500; and (3) includes work performed in the United States.

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

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

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

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

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

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

**52.244-6 Subcontracts for Commercial Items** (JAN 2017). Clauses in paragraph (c) (1) are applicable to Seller for commercial items ordered by Buyer from Seller under this Contract.

**52.245-1 Government Property** (JAN 2017). ALT I (APR 2012). This clause applies if Government property is acquired or furnished for contract performance. "Government" shall mean Government throughout except the first time it appears in paragraph (g)(1) when "Government" shall mean the Government or the Buyer.

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

**252.203-7002 REQUIREMENT TO INFORM EMPLOYEES OF WHISTLEBLOWER RIGHTS** (SEP 2013).

**252.204-7004 Antiterrorism Awareness Training for Contractors** (JAN 2023). This clause applies when Seller performance requires routine physical access to a Federally-controlled facility or military institution.

**252.204-7012 Safeguarding Covered Defense Information and Cyber Incident Reporting** (JAN 2023). This clause applies if the Contract is for operationally critical support or where performance will involve a covered contractor information system. The term "contractor" retains its original meaning wherever the word is not capitalized. In the terms "Contractor attributional/proprietary information," "Contractor information system" and "covered contractor information system," the term "contractor" also retains its original meaning. In paragraphs (d) and (g), "Contracting Officer" shall mean "Contracting Officer or Buyer." In paragraph (m)(2), the term "prime Contractor" retains its original meaning. In accordance with paragraph (m)(2)(i), Seller shall notify Buyer when submitting a request to the Contracting Officer to vary from NIST SP 800-171. Reporting to Buyer in accordance with (m)(2)(ii) shall be accomplished via [abuse@Boeing.com](mailto:abuse@Boeing.com) with a copy to the Buyer's Authorized Procurement Representative. The Boeing 1st tier subcontractor promptly shall report lower tier subcontractor information it receives.

Seller represents and warrants that (i) it is in compliance with the requirements of DFARS Clause 252.204-7012 as modified by the preceding paragraph, or (ii) that, pursuant to paragraph (b)(2)(ii)(B), it has submitted a request applicable to this Contract for a variance from the requirements of NIST SP 800-171, to the US Government Contracting Office and that Seller's request for such variance was approved by an authorized representative of the DoD CIO.

**252.204-7015 NOTICE OF AUTHORIZED DISCLOSURE OF INFORMATION FOR LITIGATION SUPPORT** (JAN 2023).

**252.204-7018 Prohibition on the Acquisition of Covered Defense Telecommunications Equipment or Services** (JAN 2023). In paragraph (d), all required reporting shall be to Buyer.

**252.204-7020 NIST SP 800-171 DoD Assessment Requirements** (JAN 2023). This clause applies unless the contract is for COTS items. Seller is required to have completed, within the last 3 years, at least a Basic NIST SP 800-171 DoD Assessment for Controlled Unclassified Information (CUI) that is processed, stored, or transmitted on covered contractor information systems relevant to its performance that are not part of an information technology service or system operated on behalf of the government.

Seller represents and warrants that it is in compliance with the requirements of DFARS Clause 252.204-7020 as modified by the preceding paragraph.

**252.211-7003 Item Unique Identification and Valuation** (MAR 2016). This clause applies if this contract acquires any item for which unique item identification is required in accordance with paragraph (c) (1) of this clause. Items subject to the requirements of DFARS 252.211-7003, if any, shall be identified in an exhibit in this contract.

**252.223-7008 Prohibition of Hexavalent Chromium** (JUN 2013). "Contracting Officer" shall mean Buyer.

**252.225-7001 Buy American and Balance of Payments Program** (DEC 2016). In paragraph (c), the phrase "in the Buy American Balance of Payments Program Certificate provision of the solicitation" is deleted and the word "certified" is deleted and replaced with the word "specified."

**252.225-7004 Reporting Of Contract Performance Outside The United States And Canada - Submission After Award** (OCT 2015). "Contracting Officer" means "Buyer." Paragraph (c)(5) is deleted. In (d)(2) "from the Contracting Officer or" is deleted.

**252.225-7009 Restriction on Acquisition of Certain Articles Containing Specialty Metals** (JAN 2023).

Paragraphs (d) and (e) (1) of this clause are excluded. In paragraph (d) (1) (i), "Contracting Officer" means Buyer. In paragraph (e)(2) "Government" means Buyer. Paragraph (c)(6) is revised as follows:

(c)(6) End items of the prime contract containing a minimal amount of otherwise noncompliant specialty metals (*i.e.*, specialty metals not melted or produced in the United States, an outlying area, or a qualifying country, that are not covered by one of the other exceptions in this paragraph (c)), if the total weight of such noncompliant metals does not exceed 2 percent of the total weight of all specialty metals in that end item. This exception does not apply to high performance magnets containing specialty metals. If the Seller will furnish goods that contain otherwise noncompliant specialty metals (*i.e.*, specialty metals not melted or produced in the United States, an outlying area, or a qualifying country, that are not covered by one of the other exceptions in this paragraph (c)), then the Seller shall disclose to the Buyer (i) the total weight of all specialty metals in each of the goods of this contract, and (ii) the total weight of the noncompliant specialty metals in each of those goods. In the calculation of total weight of noncompliant specialty metals in each of the goods, exclude the weight of specialty metals covered by other exemptions in this paragraph (c).

**252.225-7012 Preference for Certain Domestic Commodities** (DEC 2016).

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

**252.227-7015 Technical Data -- Commercial Items** (FEB 2014). This clause applies whenever any technical data related to commercial items is developed in any part at private expense and will be obtained from Seller or its subcontractors for delivery to the Government.

**252.227-7037 Validation of Restrictive Markings on Technical Data** (SEP 2016).

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

**252.244-7000 Subcontracts for Commercial Items** (JUN 2013).

**252.246-7003 Notification of Potential Safety Issues** (JUN 2013). This clause applies only if this subcontract is for: (i) parts identified as critical safety items; (ii) systems and subsystems, assemblies and subassemblies integral to a system; or (iii) repair, maintenance, logistics support, or overhaul services for systems and subsystems, assemblies, subassemblies and parts integral to a system. The notification required by paragraph (c) of this clause will be provided to Buyer and to the administrative contracting officer (ACO) and the procuring contracting officer (PCO) if Seller is aware of the ACO and PCO for the prime contract.

**252.246-7007 Contractor Counterfeit Electronic Part Detection and Avoidance System** (AUG 2016). This clause applies to contracts for electronic parts or assemblies containing electronic parts or for contracts for the performance of authentication testing. The term "Contractor" means "Buyer" in the first sentence. In paragraph (c)(6), "Contracting Officer" means "Buyer."

**252.246-7008 Sources of Electronic Parts** (OCT 2016). This clause applies if the Contract is for electronic parts or assemblies containing electronics parts, unless Seller is the original manufacturer of the electronic parts. The term "Contractor" means Seller and the term "subcontractor" means Seller's lower-tier suppliers. In paragraph (b)(3)(ii)(A), the term "Contracting Officer" means "Buyer's Authorized Procurement Representative." Seller's notification shall include, at a minimum, identification of the electronic parts being procured, identification of Seller's lower-tier supplier providing such electronic parts, Seller's rationale on acceptability of procuring such parts (including risk

mitigation), and identification of the product using such parts (by lot or serial numbers).

**252.247-7023 Transportation of Supplies by Sea-Basic** (APR 2014). This clause applies if this contract is for supplies that are of a type described in paragraph (b)(2) of this clause. In paragraph (d), "45 days" is changed to "60 days." If this contract exceeds the simplified acquisition threshold, paragraphs (a)-(h) apply. In paragraph (g) "Government" means Buyer. If this contract is at or below the simplified acquisition threshold, paragraphs (f) and (g) are excluded.

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

**4. NAVAIR Clauses** The following contract clauses are incorporated by reference from the Naval Air Systems Command Federal Acquisition Regulation Supplement and apply to the extent indicated. In all of the following clauses, "Contractor" means Seller.

**5252.204-9501 National Stock Numbers** (MAR 2007). This clause applies only if Seller is required to direct ship items to the Government. Seller will obtain NSNs from Buyer, not the Government, and mark deliverables accordingly. Seller will direct ship items to the Government without NSNs only if authorized in writing by Buyer.

**5252.204-9505 SYSTEM AUTHORIZATION ACCESS REQUEST NAVY (SAAR-N) REQUIREMENTS FOR INFORMATION TECHNOLOGY (IT) (NAVAIR)** (SEP 2012). This clause, excluding paragraph (c), applies only if the Seller's personnel will require access to government IT Systems. Seller shall ensure that its personnel requiring access to Government IT Systems comply with paragraph (a) and (b) of this clause.

**5252.211-9510 CONTRACTOR EMPLOYEES** (MAY 2011). Seller shall flow this clause to subcontractors at all tiers.

**5252.223-9502 Hazardous Material** (APR 2009).

**5252.228-9500 Additional Definitions with Respect to "Ground and Flight Risk" Clause (NAVAIR)** (DEC 1991).

**5252.228-9501 Liability Insurance (NAVAIR)** (MAR 1999).

**5252.247-9508 Prohibited Packing Materials** (JUN 1998).

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

**H-1 RESIDUAL PROPERTY .**

(a) Definition. For the purposes of this clause, the term "residual property" shall mean all parts, materials, inventories, special tooling, special test equipment, and work in process acquired or produced by Seller (to include that of all subcontractors, vendors, and suppliers) that are no longer useful for this program and that are or should be allocable or properly chargeable to this contract under sound and generally accepted accounting principles, which is not otherwise delivered to, and accepted by, the Government.

(b) List.

- (1) Seller shall maintain an ongoing and comprehensive list of all residual property that has a unit acquisition cost greater than \$5,000.00. Seller shall provide Buyer and the Government with constant access to the list on the Collaborative Site. Seller shall update the list with current information as of 01 April and 01 October of each year and shall provide access to the updated list not later than 30 April and 31 October respectively.

- (2) The list shall provide the following information for each piece of equipment:
  - (i) The name, part number and description, manufacturer, model number, and National Stock Number (if needed for additional item identification tracking and management, and disposition);
  - (ii) Quantity/unit of measure;
  - (iii) Unit acquisition cost;
  - (iv) Unique-item identifier or equivalent (if available and necessary for individual item tracking and management);
  - (v) Instructions for physical inspection and whether a TDP exists, including associated license rights;
  - (vi) Material condition;
  - (vii) Estimated disposition date;
  - (viii) Estimated cost to keep in serviceable condition during gap between test program and production; and
  - (ix) Location.

(c) Procedures and Title Vesting.

- (1) The Government may elect to take acceptance and title of any residual property listed by providing written notice to Seller (through Buyer) within 120 days from receipt of the updated list provided in accordance with paragraph (b)(1) of this clause. Title for those residual property items identified in the written notice shall vest in the Government upon the Seller's receipt of the written notice. At contract close-out, Seller shall retain title in all residual property for which the Government has not requested delivery. The language of this clause is not intended to make residual property be defined as contractor inventory under FAR 52.245-1.
- (2) Upon Seller's receipt of written notices described in (c)(1) of this clause, Seller shall not modify, alter, cannibalize, lease, sell, use, dispose of, destroy, or otherwise hinder the Government's ability to take title to any residual property without first receiving written authorization from the Procuring Contracting Officer, through Buyer.
- (3) The price of this contract includes the price of any residual property for which the Government elects to take title pursuant to this clause, and Seller shall not be entitled to any additional compensation for the transfer of title in such residual property. However, the price of this contract does not include the price for any additional costs required for shipment or packing of residual property in which the Government elects to take title pursuant to this clause.
- (4) If the Government elects to take title to any residual property, Buyer and Seller shall negotiate a modification specifying only the terms and conditions for any required shipment, packing, or place of delivery, as the price of this contract includes the price of any the residual property.

**H-13 Use of Navy Trademarks, Service Marks, or other Intellectual Property .**

(a) The United States Navy (Government) is the owner of all right, title, and interest in or to trademarks, service marks, or other intellectual property (including, but not limited to logos, designs, indicators, identifiers, or art works) associated with "STINGRAY," "PMA-268," and "MQ-25" (herein, "MQ-25 Marks").

(b) The Government hereby grants to Seller a nonexclusive and nontransferable license to make, manufacture, or produce any MQ-25 Marks in connection with, and only in connection with, the activities relating to the manufacture, production, distribution, use, and packaging of the products and services identified under this contract. Seller is not allowed to use any such MQ-25 Marks for any other purpose or activity. The license granted herein shall terminate upon the completion of performance or termination of this contract, whichever occurs sooner.

(c) Unless otherwise directed by the Contracting Officer through Buyer, Seller shall ensure that the designation of "TM," "SM," or "®" (in superscript format) is used in accordance with best commercial practices, together with a notation in reasonably close proximity (such as at the bottom of the page) that the designated MQ-25 Marks are the property of the Government.

(d) Seller shall adhere to the technical specifications, if any, of the MQ-25 Marks as directed by Buyer.

(e) Seller acknowledges that Seller shall not use the MQ-25 Marks in any inappropriate or offensive manner or in any manner that could disparage the Government. Additionally, the MQ-25 Marks may not be placed in an area or on a product that would be construed, in the sole discretion of the Government, as either being offensive or as exhibiting an inappropriate express or implicit appearance of endorsement.

(f) Except as expressly provided above, Seller agrees that it will not use any of the MQ-25 Marks without the express written permission of the Contracting Officer, which shall be obtained through Buyer.

## 6.

### **H-5 LICENSE RIGHTS TO ENHANCE GOVERNMENT LEAD SYSTEMS INTEGRATION ROLE .**

The intent of this clause is to supplement DFARS Part 227. Nothing in this clause limits or otherwise affects the parties' rights or obligations specified in DFARS 252.227-7019 or DFARS 252.227-7037.

(a) Definitions. As used in this clause:

(1) The terms "Organizational level (O-Level) Maintenance," "Intermediate level (I-Level) Maintenance," and "Depot level (D-Level) Maintenance" are defined as the effort required to perform aircraft maintenance in accordance with COMNAVAIRFORINST 4790.2C Chapter-3, 15 Jan 2017, paragraph 3.1.2.1, 3.1.2.2, and 3.1.2.3. Organizational, intermediate, and depot level maintenance does not include the manufacture of new items.

(2) Operations, Maintenance, Installation, and Training data, referred to as "OMIT Data," is defined as all technical data, graphics, and computer software documentation necessary for operation, maintenance, installation, or training purposes pertaining to the Goods associated with its life cycle support sustainment. OMIT Data does not include detailed manufacturing or process data. OMIT Data includes all technical data and computer software documentation required to accomplish all levels of maintenance (i.e., O-Level, I-Level, and D-Level maintenance as defined above), including Navy sustainment of the technical data and computer software documentation itself. All organizational, intermediate, and depot level maintenance data to be delivered under this contract are OMIT Data.

(3) Other terms used in this clause have the same meaning as set forth in DFARS 252.227-7013, DFARS 252.227-7014, and DFARS 252.227-7015.

(b) Delivery Requirements.

(1) OMIT Data to be delivered shall include no less information or detail than industry standards nor less information or detail than the Seller typically requires to perform maintenance. OMIT data to be delivered shall also include additional information or detail necessary for Government purposes related to maintenance, as defined in paragraph (a)(1) of this clause.

(2) Noncommercial computer software to be delivered shall be delivered with no less than restricted rights pursuant to DFARS 252.227-7014.

(3) Commercial computer software to be delivered shall be subject to a commercial license as set forth in H-7 "Commercial Computer Software License Agreement."

(c) OMIT Data License Rights. By regulation, the Government is granted unlimited rights in all OMIT Data; however, for the organizational, intermediate, and depot level maintenance data exclusively, the Government will accept less than unlimited rights to the deliverables, if developed exclusively or partially at private expense. This data shall be disclosed on Attachment (12) as OMIT Data and shall be marked with the legend for Government Purpose Rights at DFARS 252.227-7013(f)(2) or 252.227-7014(f)(2), with a ten-year expiration date commencing upon execution of this contract. Upon expiration of this period, the Government shall have unlimited rights.

(d) OMIT Data of Subcontractors and Suppliers. The Seller shall include this clause in its subcontracts or other contractual or legal instruments with its subcontractors or suppliers at any tier.

(e) Deferred Ordering. The terms and conditions of this clause shall apply to any OMIT data delivered under this contract pursuant to DFARS 252.227-7027.

### **H-6 DFARS 252.227-7013, 252.227-7014, and 252.227-7015 CLARIFICATION OF POST-AWARD IDENTIFICATION AND ASSERTIONS .**

(a) For any new information or inadvertent omissions in the "Contractor Data Rights Assertion List" identified during the performance of this contract, Seller shall identify both noncommercial and



commercial technical data and computer software that it intends to deliver with less than unlimited rights and state the reason for the new information or inadvertent omission. For commercial technical data and commercial computer software specifically, Seller shall provide the same types of information, using a similar format, and following the same procedures and requirements as specified for noncommercial technical data and noncommercial computer software at DFARS 252.227-7013 and 252.227-7014. Commercial technical data and commercial computer software shall be subject to the terms and conditions in Attachment (18).

(b) With respect to each assertion made on the "Contractor Data Rights Assertion List", Seller shall specify in the "Basis for Assertion" column, the SDRL Item, SOW paragraph(s), and Work Breakdown Structure element(s) to which the technical data or computer software assertion pertains. Assertions shall be made at the lowest practical segregable level, i.e., the same level used for Seller's source of funds determinations in establishing the government's license rights, specifying the items or processes, if any, to which the technical data or computer software deliverable pertain.

(c) Commercial and Special License Rights Assertions

(1) Commercial technical data and/or computer software new information or inadvertent omissions shall be asserted on the "Contractor Data Rights Assertion List" by stating in the "Basis for Assertion" column the name of the commercial license and asserting in the "Asserted Rights Category" column "Commercial."

(2) Noncommercial technical data and/or computer software new information or inadvertent omissions subject to the OMIT license set forth in H-5 shall be asserted on the "Contractor Data Rights Assertion List" by stating in the "Basis for Assertion" column whether the noncommercial technical data and/or computer software was developed exclusively or partially at private expense and asserting in the "Asserted Rights Category" column "Government Purpose Rights, 10 year expiration date."

(d) The Seller shall provide copies of all specially negotiated licenses, commercial licenses for commercial computer software and technical data pertaining to commercial items, and other non-standard licenses that will be delivered to the Government. The Seller shall provide the aforementioned licenses within 90 calendar days of license purchase or at least 90 calendar days prior to delivery, whichever occurs first.

(e) The Seller shall include this clause in its subcontracts or other contractual or legal instruments with its subcontractors or suppliers at any tier.

#### **H-7 COMMERCIAL COMPUTER SOFTWARE LICENSE AGREEMENT .**

(a) It is anticipated that Seller will procure and deliver software containing Open Source Software (OSS) and "commercial computer software" (as defined by DFARS 252.227-7014(a)(1)).

(b) Open source software (OSS). OSS is generally regarded as commercial computer software. It is sometimes licensed under terms that require the user to make freely available in source code form: (i) the user's modifications to the OSS or (ii) any software that the user "combines" with the OSS. If Seller uses OSS in the performance of this contract, Seller must ensure that the use of the OSS complies with subsection (c) of this clause.

(c) Commercial Computer Software. Seller shall acquire the commercial computer software under the licenses customarily provided to the public, except to the extent that the licenses are inconsistent with Federal procurement law or do not otherwise satisfy user needs (see DFARS 227.7202-1(a)). A list of common material terms and conditions of commercial computer software license agreements NAVAIR has determined are inconsistent with Federal procurement law or do not otherwise satisfy user needs are incorporated into an addendum that may be executed by Seller when negotiating the license agreements to be delivered to the Government. Seller shall either execute Attachment (18) below as an addendum to the license being delivered or shall ensure that the license being delivered to the Government complies with the list of terms and conditions on Attachment (18) below prior to delivering the licensed software.

(d) Seller shall provide copies of the license agreements within 90 days of license purchase or at least 90 days prior to delivery, whichever occurs first.

#### ATTACHMENT (18)

##### Addendum to End User License Agreement

This Addendum to the End User License Agreement (hereinafter Addendum) is made by and between \_\_\_\_ [insert subcontractor] \_\_\_\_ (hereinafter licensor) and \_\_\_\_ [insert contractor] \_\_\_\_ (hereinafter

licensee), and is made for the purpose of supplementing the End User License Agreement (hereinafter the Agreement) for \_\_\_\_\_ [software].

The licensor and licensee agree that this Addendum will be attached to the Agreement and made a part thereof prior to transfer of the licensed software to the United States Government (hereinafter the Government) as the end product user. This Addendum shall supersede and supplement the Agreement with regard to the license rights transferred to the Government and shall not apply to the licensee.

The parties agree to review and negotiate the provisions of the Agreement in good faith to ensure compliance with Federal procurement law and, in accordance with this Addendum, to the extent provisions are inconsistent with Federal procurement law, those provisions shall be stricken from the Agreement or terminate upon transfer to the Government. Such provisions shall include but are not limited to the following list of common material terms and conditions of commercial computer software license agreements:

1. The license shall not subject the Government to the laws of a particular jurisdiction, venue or choice of law.
2. The license shall not require confession of judgment, arbitration or indemnification.
3. The license shall not comment on the entitlement to attorney fees if a matter goes to trial.
4. The license shall not attempt to have an individual other than a warranted Contracting Officer bind the Government to certain terms and conditions.
5. The license shall not be inconsistent with the Prompt Payment Act.
6. The license shall not attempt to impose a vendor lock-out provision. A vendor lock-out provision is a mechanical or electronic method imbedded in the system that prevents unauthorized use or distribution of the program. This method can result in an impermissible unilateral change to the delivery order initiated by the vendor and involve a vendor having free access to a computer system that must be secure.
7. The license shall not state that it sets forth the entire agreement between the vendor and the Government; applicable Federal laws and regulations always govern Federal contracts.
8. The license shall not impose an automatic renewal provision on the Government or the possibility of unilateral price increases.
9. The license shall not permit the vendor to unilaterally terminate the contract or license.
10. The license shall not require the Government to pay any taxes or duties.
11. The license shall not state the sole remedy available to the Government is the refund of money.
12. The license shall not be inconsistent with FAR 52.233-1, DISPUTES.
13. The license shall not create a contingent liability for the Government.
14. The license shall not restrict the Government from using the product at various sites nor from use of the product by various Government agencies or third parties performing work on behalf of the Government. In performance of the Government’s requirements, Government personnel, as well as Government contractors, will use the software. Additionally, the software will be used at Government sites and Government contractor sites and the sites will change over time. The software license shall be flexible to accommodate this situation.
15. The license shall not include non-substitution language that would preclude or limit the Government from switching to another vendor/reseller and/or another product to fulfill program requirements.
16. If the commercial computer software includes open source software (OSS), the Contractor must ensure that the use of the OSS does not create, or purport to create, any Government distribution obligations with respect to the computer software deliverables unless the Government affirms that it will accept delivery under those terms.

IN WITNESS WHEREOF, the parties have caused this Addendum to be executed by their duly authorized representatives.

LICENSOR: \_\_\_\_\_ LICENSEE:

By: \_\_\_\_\_ By: \_\_\_\_\_

Name: \_\_\_\_\_ Name: \_\_\_\_\_  
Title: \_\_\_\_\_ Title: \_\_\_\_\_  
Date: \_\_\_\_\_ Date: \_\_\_\_\_

**H-12 CORRECTION OF DEFICIENCIES .**

- (a) Seller shall be responsible for the correction of deficiencies in accordance with the priorities described in this clause discovered in all deliverables during the Engineering and Manufacturing Development (EMD) phase from contract award until all deliverables have been accepted or the end of the period of performance for this contract, whichever is later. For the purposes of this contract, a deficiency is defined as a failure to meet one or more of the requirements, including problems and defects associated with both hardware and software.
- (b) Seller shall prioritize deficiencies in accordance with IEEE/EIA 12207.2-1997 modified as follows:
  - (1) Priority 1: Prevents the accomplishment of an operational or mission-essential capability or jeopardizes safety, security, or other requirements designated "critical"
  - (2) Priority 2: Adversely affects the accomplishment of an operational or mission-essential capability and no operationally acceptable work-around solution is known
  - (3) Priority 3: Adversely affects the accomplishment of an operational or mission-essential capability and an operationally acceptable work-around solution is known
  - (4) Priority 4: Results in user/operator inconvenience or annoyance but does not affect a required operational or mission-essential capability
  - (5) Priority 5: Any other effect
- (c) In the event of a conflict between Seller's priority classification of a deficiency and the Government's priority classification of a deficiency, the Government's priority classification of the deficiency shall take precedence.
- (d) The Seller shall correct:
  - (1) All priority 1 and 2 deficiencies
  - (2) All priority 3 and 4 deficiencies where correction of the problem costs less to implement than updating documentation and training materials for the approved work-around
  - (3) Deficiencies at all priorities affecting documentation
  - (4) Lower priority deficiencies that when combined with one or more lower priority deficiencies have a cumulative adverse effect that is of a higher priority and resulting severity which should be addressed in the same manner as a priority 1 or 2 (e.g. combination of high failure rate items identified via FRACAS that impact Operational Availability (AO))
- (e) Seller shall deliver software that is in compliance with paragraph (d) above and with the following deficiency quality limits:
 

Priority	Limit
1 or 2	Zero
3	One per 8K Non-Comment, Non-Blank logical source lines of code or fraction thereof
4 or 5	One per 4K Non-Comment, Non-Blank logical source lines of code or fraction thereof
- (f) Seller shall update all delivered and yet to be delivered deliverables and associated documentation and all Exhibits under the contract to the MQ-25 final product baseline. The Seller shall submit the necessary configuration documentation to correct all delivered and yet to be delivered deliverables. The Seller shall be required to correct, in accordance with the approved configuration documentation, the deficiencies in accordance with the priorities described in this clause discovered during EMD contract execution to align to the MQ-25 final product baseline.
- (g) Seller shall not be entitled to an adjustment to the contract's Target Cost, Target Profit, Ceiling Prices, or Profit Adjustment formulas (share ratio) for correction of deficiencies and/or updates to the MQ-25 final product baseline.
- (h) The three year warranty period specified in paragraph (b) of DFARS 252.246-7001 shall not commence until all deliverables have been accepted or the period of performance has ended, whichever is later.

This time period is consistent with the longer period that may be specified in this contract.

#### **H-14 CLARIFICATION BETWEEN INTEGRATED DATA ENVIRONMENT (IDE) ENTRY, ACCESS, AND DELIVERY .**

(a) Definitions.

"Access" is used in this contract to describe how the Seller publishes, divulges, or discloses "information" on the Collaborative Site. Access shall have this definition when used in this clause. Access shall also have this definition when used throughout this contract (inclusive of all exhibits and attachments) in the phrase, "provide [e.g., providing, provides, etc.] the Government with access."

"Collaborative Site" is used in this contract to describe the location to share digital information between the Buyer, USG and the Seller. Hosting of the Collaborative Site will be maintained and controlled by the Government.

"Deliver," "Delivery," or "Deliverable" is used in this clause to mean the technical data and computer software documentation (pursuant to DFARS 252.227-7013) that is specified to be delivered, regardless of the form or medium in which it is provided, under this contract pursuant to a Contract Data Requirements List (DD Form 1423) or the computer software (pursuant to DFARS 252.227-7014) that is otherwise specified to be delivered under the contract.

"IDE entry" as used in this contract means read and write privileges and any other privileges granted within either the Seller's IDE or the Government's IDE to named users.

"Information" as used in this clause is intended to be an all-encompassing term that includes noncommercial technical data and computer software documentation, commercial technical data, and noncommercial computer software, which have the same definitions as set forth in DFARS clauses 252.227-7013 (FEB 2014), 252.227-7015 (FEB 2014), and 252.227-7014 (FEB 2014), respectively. Information also includes commercial computer software, as defined in DFARS 252.227-7014. Information also includes metadata attributes and data incidental to contract administration, such as management data. Information does not include financial data.

"IDE" is used in this contract to mean a shared, configuration-managed, distributed, dynamic data environment composed of common tools and interfaces. It allows data to be captured at its source and made readily available to be shared with others. The IDE integrates the people, processes, business systems, and information associated with designing, acquiring, and supporting a system and allows users connectivity to system development, sustainment, and program data. It provides immediate access to required information for making decisions. Both the Government and the Seller will control and maintain their own IDEs.

"USG" means, for purposes of this clause only, both federal Government employees and Covered Government Support Contractor personnel (pursuant to DFARS 252.227-7013(a)(5)).

(b) Clarification between IDE Entry, Access, and Delivery.

(1) Access to information and IDE entry, in the absence of delivery, does not require the determination of Government rights in data as set forth in DFARS 227.7103-5 or the assertion of restrictions of the Government's rights to that data as set forth in DFARS 227.7103-3.

(2) The liberal use of deferred ordering will be exercised, where applicable, at any time that delivery of information is determined by the Government to be necessary. Deferred ordering under DFARS 252.227-7027 may be exercised by the PCO unilaterally by any authorized means for ordering technical data or computer software (e.g., a Standard Form 30 may be used to execute a unilateral modification to order technical data or computer software). The deferred order shall be delivered to the Government no later than 20 days after exercise of deferred ordering. The parties agree that fee/profit has already been accounted for regarding the generation of any information during performance of this contract, or any subcontract hereunder, and additional fee/profit for the act of converting the data or computer software into a prescribed form or for reproduction and delivery shall not be an allowable cost per FAR Part 31. Failure to deliver the information in accordance with this clause shall be subject to DFARS 252.227-7030 "Technical Data - Withholding of Payment."

(3) USG individuals identified by the Government shall have IDE entry for MQ-25 program development information to the Seller's IDE. Access by the USG shall be accomplished within the Collaborative Site.

- (4) USG individuals shall not be required to personally sign (including by digital signature) any agreement with the Seller for access via the Collaborative Site or IDE entry to the Seller's IDE.
- (5) Upon being granted access via the Collaborative Site or IDE entry to the Seller's IDE, the USG individuals may use the information as permitted based on the electronic permissions (e.g., inability for information to be saved outside of the Seller's IDE or the Collaborative Site, controlled digital access, and/or inability to reproduce information) set within the Seller's discretion. The electronic permissions the Seller sets shall be consistent with the definitions of access and IDE entry above and the requirements of the contract. The burden is on the Seller to electronically control permissions and otherwise prevent disclosure of the information. The Government shall not be liable for release or disclosure, except in cases where the Seller can show that its access control mechanisms were willfully disregarded.
- (6) No more than two Seller individuals identified by the Seller will have IDE entry for MQ-25 program development information to the Government's IDE. It is at the Government's sole discretion to control IDE entry to the Government's IDE.
- (c) Modification of Accessed Information and Information within the Seller's IDE
- (1) The Seller may allow the USG to modify the information that is accessed or to which the USG has permissions by virtue of IDE entry to the Seller's IDE, but shall not require the USG to modify any information. The Seller shall remain obligated to meet all terms and conditions of the contract. A USG modification shall not be construed as interference with development or be the basis of a request for equitable adjustment. Decisions to permit modification of information are at the discretion of the Seller and the requirements of the contract.
- (2) Access or IDE entry shall not be contingent upon the Government relinquishing any rights pursuant to statute or regulation to which the Government would be entitled if the information were to become a deliverable later in execution. This includes rights to which the Government may have obtained by virtue of its modification to the information accessed.
- (d) USG Access via the Collaborative Site and IDE Entry to the Seller's IDE
- (1) There shall be no additional costs imposed by the Seller for the USG individuals identified by the Government to have access via the Collaborative Site or IDE entry to the Seller's IDE, and costs shall be charged in accordance with the Seller's disclosure statement. FAR 52.232-39 Unenforceability of Unauthorized Obligations shall be applicable to any End User License Agreement (EULA), Terms of Service (TOS), or similar legal instrument or agreement that may be encountered by the USG as a result of access or IDE entry. Only the PCO has the authority to agree to any terms or conditions binding the Government; any such terms shall be set forth in writing and incorporated into this contract.
- (2) It is the Seller's responsibility to ensure it has the appropriate licenses to grant the USG access to information via the Collaborative Site and permissions to any commercial data or commercial computer software within the Seller's IDE. The Seller shall indemnify and hold harmless the Government, its agents, and employees from every claim or liability, including attorney's fees, court costs, and expenses arising out of or in any way related to any access or IDE entry later deemed to have been unauthorized.
- (e) The Seller shall insert this clause or the substance of this clause in each subcontract or other contractual or legal instruments with its subcontractors or suppliers at any tier necessary to accomplish USG access and/or IDE entry.

#### **H-15 RIGHT TO OBTAIN INTELLECTUAL PROPERTY, EQUIPMENT, AND ASSOCIATED LICENSE RIGHTS .**

- (a) With regard to Subject Intellectual Property (IP) and Equipment (as defined below), the Government is granted an irrevocable, non-transferrable right to obtain Government Purpose equivalent or greater license rights from the Seller to any Subject IP and Equipment or any part thereof. This right is exercisable as described in this clause. This right does not expire for the duration of this contract and may be exercised multiple times for the same Subject IP and Equipment or any part thereof. Each combination of Subject IP and any Equipment is considered an individual offer for sale, and changing the combination of Subject IP and any Equipment does not invalidate the Seller's obligations under this clause.
- (b) Definitions. The following terms are defined for the purpose of this clause:
- (1) Subject IP means any technical data and/or computer software developed exclusively at private expense provided or available under any delivery requirement under the contract.
- (2) Equipment means unique manufacturing processes and equipment associated with the Subject

- IP offered for sale or subject to transfer.
- (3) Right of First Offer means a contractual obligation by the owner of the Subject IP and Equipment or any part thereof, in this case the Seller, to negotiate in good faith the sale of the Subject IP and Equipment or any part thereof with the Government before offering it for sale to third parties.
  - (4) Right of First Refusal means a contractual right that gives the Government the option to enter into a business transaction with the owner of the Subject IP and Equipment or any part thereof, in this case the Seller, according to specified terms, before the Seller is entitled to enter into that transaction with a third party.
- (c) The Seller shall provide the Government with the Right of First Offer to the Subject IP and Equipment or any part thereof. The Right of First Offer shall be exercisable by the Government upon the Seller's notice to the Government, see paragraphs (e) and (f) below, of its intention at any time to pursue transfer ownership or control of the Subject IP and Equipment or any part thereof to a third party.
  - (d) The Seller shall provide the Government with the Right of First Refusal to the Subject IP and Equipment or any part thereof. The Right of First Refusal shall be exercisable by the Government upon the Seller's notice to the Government, see paragraphs (e) and (f) below, of the occurrence of any of the following events:
    - (1) Upon the filing of any judicial proceeding not subject to paragraph (d)(2) below that may result in the Seller's transfer or loss of ownership or control of the Subject IP and Equipment or any part thereof.
    - (2) Upon a voluntary or involuntary sale in a bankruptcy, insolvency, or receivership proceeding where the debtor solicits for sale any or all of its assets that would include the Subject IP and Equipment or any part thereof.
    - (3) Upon the receipt of an unsolicited offer to purchase the Subject IP and Equipment or any part thereof that the Seller intends to pursue.
    - (4) Upon a voluntary or involuntary transfer of the Subject IP and Equipment or any part thereof pursuant to a security interest.
  - (e) The Seller shall provide 45 days advance written notice, specifically citing this clause, to the Government of a proposed transfer of ownership or control of the any Subject IP and any Equipment. This Government's Right of First Offer or Right of First Refusal shall be exercisable by the Government for a period of 45 days from the Government's receipt of the Seller's notification.
  - (f) The Seller's notice shall specify all Subject IP and Equipment to be transferred pursuant to paragraph (c) or (d) above. In the event this notice is provided pursuant to paragraph (c) above, the Seller shall include its proposed offer price and material terms and conditions for the transfer of ownership or control of the Subject IP and Equipment it intends to pursue transferring to a third party. In the event this notice is provided pursuant to paragraph (d) above, the Seller shall include the acceptable material terms and conditions (including the acceptable price and form of consideration) of the transfer of ownership or control and the identity of the prospective buyer.
  - (g) With regard to either the Right of First Offer or Right of First Refusal, the price of the Subject IP and Equipment to be transferred shall be negotiated based on the market value or a business case analysis. Common commercial practices for the transfer of the Subject IP and Equipment shall be utilized. Should an agreement be reached, the price negotiated shall be incorporated into this contract as a firm fixed price line item via formal contract modification. Should the parties not reach agreement and the Seller proceeds to solicit quotes in the 12 months following the abandonment of negotiations for the sale or transfer of the Subject IP and Equipment or any part thereof, then the Seller shall not finalize such a sale or transfer and shall offer that non-negotiable price to the Government if the price is within 125 percent of the Government's last offer to the Seller in negotiations.
  - (h) The Government's rights under H-15 shall flow-down to any subcontractor or supplier at any tier, and the Seller shall insert this clause in each subcontract or other contractual or legal instruments with its subcontractors or suppliers at any tier.

#### **H-16 COMPUTER SOFTWARE DELIVERABLES—WITHHOLDING OF PAYMENT .**

- (a) If computer software specified to be delivered under this contract is not delivered within the time specified by this contract, is deficient outside of the quality limits as identified in H-12(e) upon delivery, or is delivered with nonconforming markings and/or restrictive markings not identified in the Data Rights Assertions List, the Buyer may, until such computer software is accepted by the Government, withhold payment to the Seller in the amount of up to ten percent (10%) of the total contract price. Payments shall not be withheld nor any other action taken pursuant to this paragraph when the Seller's failure to make timely delivery or to deliver such computer software without deficiencies that fall outside of the quality limits as identified in H-12(e) arises out of causes beyond the control and without the fault or negligence of the Seller.
- (b) The withholding of any amount or subsequent payment to the Seller shall not be construed as a waiver of any rights accruing to the Government under this contract.

