

CUSTOMER CONTRACT REQUIREMENTS
Proprietary Program
CUSTOMER CONTRACT P261

CUSTOMER CONTRACT REQUIREMENTS

The following customer contract requirements apply to this Contract to the extent indicated below. If this Contract is for the procurement of commercial items under a Government prime contract, as defined in FAR Part 2.101, 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 (SEP 2006). This clause applies only if this contract exceeds (i) \$100,000 if included in Buyer's customer RFP or customer contract issued before October 1, 2010 or (ii) \$150,000 if included in Buyer's customer RFP issued on or after October 1, 2010, or if the prime contract was issued prior to October 1, 2010 but was amended after October 1, 2010 to increase the Simplified Acquisition Threshold.

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

52.203-8 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.

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

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

52.203-13 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.

52.209-6 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.

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

52.215-12 Subcontractor Certified Cost or Pricing Data (JUN 2020). This clause applies if this contract exceeds the threshold for submission of certified cost or pricing data in FAR 15.403-4(a)(1) or if there is a contract modification involving a pricing adjustment expected to exceed the threshold for submission of certified cost or pricing data in FAR 15.403-4(a)(1), and is not otherwise exempt. The certificate required by paragraph (b) of the referenced clause shall be modified as follows: delete "to the Contracting Officer or the Contracting Officer's representative" and substitute in lieu thereof "to The Boeing Company or The Boeing Company's representative (including data submitted, when applicable, to an authorized representative of the U.S. Government)."

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

52.215-18 Reversion or Adjustment of Plans for Postretirement Benefits Other Than Pensions (PRB) (OCT 1997). 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."

52.219-9 Small-Business Subcontracting Plan (JAN 2017). 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 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.

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

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

52.223-3 Hazardous Material Identification and Material Safety Data Basic (JAN 1997), Alternate I (JUL 1995). This clause applies only if Seller delivers hazardous material under this contract.

52.227-1 Authorization and Consent (DEC 2007).

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

52.227-10 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.

52.227-14 Rights in Data--General (MAY 2014). This clause applies only if data, as defined in paragraph (a) of the clause, will be produced, furnished, or acquired under this contract.

52.227-14 Rights in Data--General Alternate I (DEC 2007). This clause applies only if data, as defined in paragraph (a) of the clause, will be produced, furnished, or acquired under this contract.

52.227-14 Rights in Data--General Alternate II (DEC 2007). This clause applies only if data, as defined in paragraph (a) of the clause, will be produced, furnished, or acquired under this contract.

52.227-14 Rights in Data--General Alternate III (DEC 2007). This clause applies only if data, as defined in paragraph (a) of the clause, will be produced, furnished, or acquired under this contract.

52.227-14 Rights in Data--General Alternate IV (DEC 2007). This clause applies only if data, as defined in paragraph (a) of the clause, will be produced, furnished, or acquired under this contract.

52.227-14 Rights in Data--General Alternate V (DEC 2007). This clause applies only if data, as defined in paragraph (a) of the clause, will be produced, furnished, or acquired under this contract.

52.227-21 Technical Data Declaration, Revision, and Withholding of Payments-Major Systems (MAY 2014). The term "Contracting Officer" shall mean "Buyer." In paragraph (b) (2), the term "Government" shall mean "Buyer."

52.227-22 Major System-Minimum Rights (JUN 1987).

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.

52.234-1 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.

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

52.253-1 Computer Generated Forms (JAN 1991).

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

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

52.222-26 Equal Opportunity (SEP 2016).

52.222-35 Equal Opportunity for Veterans. (OCT 2015). This clause applies if this contract is \$150,000 or more unless exempted by rules, regulations, or orders of the Secretary of Labor.

52.222-36 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.

52.222-54 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.

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

52.244-6 Subcontracts for Commercial Items (NOV 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.

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

P1297 Special Provisions .

(A) Foreign Nationals - Foreign Sources

- (1) For the purposes of this clause,
 - (i) Foreign nationals are those persons not citizens of, not nationals of, or resident/immigrant aliens to, the United States;
 - (ii) Foreign representative is anyone, regardless of nationality or citizenship, acting as an agent, representative, official, or employee of a foreign government, a foreign-owned or influenced firm, corporation, or person; and
- (2) Foreign sources are those sources (vendors, subcontractors, and suppliers) not owned and controlled by citizens or immigrant aliens of the United States.
- (3) Nothing in this clause is intended to waive any requirement imposed by any other U.S. Government agency with respect to employment of foreign nationals or export-controlled data and information.
- (4) Seller acknowledges that equipment and technical data generated or delivered in the performance of this contract is controlled by the International Traffic in Arms Regulation (ITAR), 22 CFR Sections 121 through 128, and require an export license before assigning any foreign national to perform work under this contract or before granting access to foreign nationals to any equipment and technical data generated or delivered in performance of this contract (see 22 CFR Section 125). Seller agrees to notify and obtain the written approval of Buyer prior to assigning or granting access to any work, equipment, or technical data generated or delivered in the performance of this contract to foreign nationals or their representatives. This notification will include the name and country of origin of the foreign national or representative, the specific work, equipment, or data to which the person will have access, and whether the foreign national is cleared to have access to technical data (DoD 5220.22-M, National Industrial Security Program Operating Manual (NISPOM)).

(B) Export-Controlled Data Restrictions

- (1) For the purpose of this clause,
 - (i) Foreign person is any person who is not a citizen of the U.S. or lawfully admitted to the U.S. for permanent residence under the Immigration and Nationality Act, and includes foreign corporations, foreign organizations, and foreign governments;
 - (ii) Foreign representative is anyone, regardless of nationality or citizenship, acting as an agent, representative, official, or employee of a foreign government, a foreign-owned or influenced firm, corporation, or person; and
 - (iii) Foreign sources are those sources (vendors, subcontractors, and suppliers) owned and

controlled by a foreign person.

(2) Seller shall place a clause in subcontracts containing appropriate export control restrictions, set forth in this clause.

(3) Nothing in this clause waives any requirement imposed by any other U.S. Government agency with respect to employment of foreign nationals or export-controlled data and information.

(4) Equipment and technical data generated or delivered in the performance of this contract are controlled by the International Traffic in Arms Regulation (ITAR), 22 CFR Sections 121 through 128. An export license is required before assigning any foreign source to perform work under this contract or before granting access to foreign persons to any equipment and technical data generated or delivered during performance (see 22 CFR Section 125). Seller shall notify Buyer and obtain the written approval of Buyer prior to assigning or granting access to any work, equipment, or technical data generated or delivered in the performance of this contract to foreign persons or their representatives. This notification shall include the name and country of origin of the foreign person or representative, the specific work, equipment, or data to which the person will have access, and whether the foreign person is cleared to have access to technical data (DoD 5220.22-M, National Industrial Security Program Operating Manual (NISPOM)).

(C) Unusually Hazardous Risk Coverage

The parties agree to continue a dialogue regarding unusually hazardous risk coverage and to seek to define and clarify coverage appropriate under this contract through test and mission operations.

(D) Property Administration and Control

The Seller shall maintain adequate property control procedures, records, and a system of identification for all Government property accountable to this contract in accordance with FAR Part 45.

(E) Late Delivery

When the Seller encounters difficulty in meeting performance requirements, or anticipates difficulty in complying with the contract delivery schedule or date, it shall immediately notify the Boeing Subcontracts Administrator in writing giving pertinent details to be transmitted after review to the customer.

(F) Foreign Ownership, Control or Influence

The Government intends to secure services or equipment from firms which are not under foreign ownership, control or influence (FOCI). Offerors are required to request, collect and forward to the Government the Standard Form (SF) 328, certificate Pertaining to Foreign Interests from all Subcontractors undertaking classified work under the Offeror's direction and control.

(G) Commercial Off the Shelf (COTS) Software Rights

Notwithstanding any other provisions of this contract, in the event the terms of this contract require the delivery of software under this contract that is a "commercial item, as that term is defined in 48 C.F.R. 227.702-1 (Oct 1995), consisting of "commercial computer software" and "commercial computer software documentation" as such terms are used in 48 C.F.R. 12.212 (Sep 1995). Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4 (June 1995), all U.S. Government End Users acquire such commercial software licenses with only those rights set forth therein. The licensed commercial software (including related documentation is provided to the U.S. Government End Users (i) only as a commercial end item; and (ii) only pursuant to this Agreement.

(H) Intention to Use Consultants – Aug 1996

The Government intends to utilize the services of nongovernmental engineering organizations in technical, advisory and consulting roles for overall technical review of the activities covered by this contract. Although the consultants shall not have the right of technical direction, they shall from time to time and on a frequent basis attend technical reviews, participate in technical interchange meetings, observe national processing, witness fabrication and assembly, and monitor testing within the Contractor and Subcontractor facilities. The consultants will this require access to program-related Contractor facilities and documentation. Contractor proprietary data shall not be made available to consultants unless and until a protection agreement has been generated between the consultant and the Contractor and evidence of such agreement made available to the Government.

(I) Technical Data or Computer Software Previously Delivered to the Government

The Offeror shall attach to its offer an identification of all documents or other media incorporating technical data or computer software it intends to deliver under this contract with other than unlimited rights that are identical or

substantially similar to documents or other media that the Offeror has produced for, delivered to, or is obligated to deliver to the Government under any contract or subcontract.

(J) Organizational Conflicts of Interest; General

- (a) Seller warrants that, to the best of its knowledge and belief, there are no relevant facts that could give rise to Organizational Conflicts of Interest, as defined in FAR 9.501. Or, alternatively, the contract warrants that it had disclosed all relevant information regarding any actual or potential organizational conflicts of interest.
- (b) Seller agrees that if an organizational conflict of interest with respect to this contract is discovered during its performance, an immediate and full disclosure in writing shall be made to the Contracting Officer, through Buyer). Such notification shall include a description of the action the Seller has taken or proposes to take to avoid, neutralize or mitigate such conflicts. Seller shall continue performance until notified by Buyer of any contrary actions to be taken. Buyer may however, terminate the contract for its convenience if it deems such termination to be in the best interest of the Buyer.
- (c) If Seller was aware of an organizational conflict of interest before award of this contract and did not fully disclose the conflict to Buyer, the Buyer may terminate the contract for default.
- (d) Seller shall insert a clause containing all the terms and conditions of this clause in all subcontracts for work to be performed similar to the services provided by Seller, and the terms "contract", "Seller" and "contracting officer" modified appropriately to preserve the Government's rights.
- (e) Before a contract modification is made that adds new work or significantly increases the period of performance, the Seller shall agree to submit either an organizational conflict of interest disclosure or representation or an update of a previously submitted disclosure or representation, if requested by Buyer
- (f) Seller further agrees that Government (or Buyer) may periodically review Seller's compliance with these provisions of require such self-assessments or additional certifications as Buyer deems appropriate.

(K) Non Publicity

- (a) Seller shall not use or allow to be used any aspect of this solicitation and/or contract for publicity. "Publicity" means, but is not limited to, advertising (e.g. trade magazines, newspapers, internet, radio, television, etc.), communications with the media, marketing, or a reference for new business. It is further understood that this obligation shall not expire upon completion or termination of this contract, but will continue indefinitely. The contract may request a waiver or release from the foregoing but shall not deviate there from unless authorized to do so in writing by Buyer. Sellers are not required to obtain waivers when informing the offices within this agency of contracts it has performed or in the process of performing provided there are no security restrictions. Sellers may include the requirements for security clearances up to the TS, SCI level in public employment advertisements; however these advertisements may not describe the scope of polygraph requirements in any manner. Violations of this clause constitute a major breach of contract, and the contract may be terminated for default, without the requirement of a 10-day cure notice.
- (b) The Seller shall include the substance of this clause, including this paragraph (b), in each subcontract issued under this contract.

(L) Restrictions Regarding Former Sponsor Employees

- (a) Except as authorized in writing by Buyer, the Seller shall not use any person in the direct performance of this contract who:
 - (1) has resigned from employment with the sponsor within the previous 18 months
 - (2) has been barred from performing Sponsor contracts for a period of time as a result of a recommendation from Sponsor Advocacy Board.
 - (3) was terminated from employment with the Sponsor
- (b) Paragraph (a) includes the use of a person as a Seller employee, subcontractor employee, consultant, independent contractor, or similar arrangement.
- (c) Paragraph (a) (1) does not apply to persons who retired from the Sponsor
- (d) Seller agrees to include in each subcontract a clause requiring compliance with these restrictions by the subcontractor and succeeding levels of subcontracts.

(M) Timely Notice of Litigation

- (a) Seller hereby agrees to immediately give written notice to the Contracting Officer (or Buyer) of any current litigation of any anticipated litigation that may arise during the course of the performance of this contract or hereafter, that involves or in any way relates to or affects: (1) any aspect of this contract, (2)

its terms or costs, (3) pertinent subcontracts, or (4) the Customer's (or Buyer's) relationship with the Seller or subcontractors. This notice requirements is a continuing obligation and survives termination, settlement or close-out of the contract.

(b) The Contracting Officer (or Buyer) shall have access to and the right to examine any pertinent books, documents, papers and records of the Seller or subcontractor (s) involving customer transactions related to any contract litigation.

(c) Notwithstanding the foregoing, nothing in this agreement shall constitute a waiver of either party's rights in litigation. Including but not limited to, the rights of attorney-client privilege, to obtain injunctive relief, and/or any rights of remedies available.

(d) The Seller agrees to insert paragraphs (a) through (d) of this clause in any subcontract under this contract. In the event of litigation, the subcontractor shall immediately notify the next tier subcontractor of Buyer, as the case may be, of all relevant information with respect to such litigation.

(N) Protection of Information

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

(b) Accordingly, the Seller agrees it will not disclose, divulge, discuss or otherwise reveal information to anyone of any organization not authorized access to such information without the express written approval of the Contracting Officer (or Buyer). The Seller shall require that each of its employees assigned to work on subcontracts issued hereunder, execute nondisclosure agreements acknowledging the above restrictions before providing them access to such information. Seller shall also require all future company employees, subcontractors, and subcontractor employees needing similar access to such information to execute nondisclosure agreements prior to providing them access to the above identified information. The requirements for the Seller to secure nondisclosure agreements from their employees may be satisfied by having each employee sign on nondisclosure agreement as a term of their employment, and need not be accomplished separately for each individual contract for which the employee will support, unless a separate agreement is specifically requested by the Contracting Officer, through Buyer. Seller will make copies of these individual agreements available to Buyer upon request. The restrictions do not apply to such information after the Government has released it to the Seller community, either in preparation for or as part of a future procurement, or through such means as dissemination at Contractor Industrial Forums.

(c) Seller further agrees that any source documents furnished by the Government and any Seller documents developed therefrom in the performance of this contract are the sole property of the Government and will be held in the strictest confidence.

(d) If the work to be performed under this contract requires access to the proprietary data of other companies, the contract agrees to enter into an agreement with the company that has developed this proprietary information to:

- 1) protect such proprietary data from unauthorized use or disclosure for as long as the information remains proprietary;
- 2) refrain from using the information for any purpose other than support of this Government contract for which it was furnished. Seller shall provide a properly executed copy of such agreement(s) to Buyer. These restrictions are not intended to protect data furnished voluntarily without limitations on their use. Neither are they intended to protect data, available to the Government or Seller, from other sources without restriction.

(e) The Seller agrees to include in each subcontract a clause requiring compliance by the subcontractor and succeeding levels of subcontractors with the terms and condition herein.

(f) Seller agrees to indemnify and hold harmless the Government and Buyer. Its agents and employees from every claim or liability, including attorney fees, court costs, and expenses arising out of, or in any way related to, the misuse or unauthorized modification, reproduction, release, performance, display, or disclosure of data with restrictive legends received in performance of this contract by the Seller or any person to whom the Seller has released or disclosed the data.

(g) Seller further agrees that the Government may periodically review the Seller's compliance with these provisions or require such assessments or additional certifications as the Government deems appropriate. Seller is on notice that this clause supplements, but does not supersede, the Seller's obligation under paragraph (b) of the provision entitled "Organizational Conflicts of Interest-General."

(O) Workplace Health and Safety

(a) Seller shall comply with the Occupational Safety and Health Act (OSHA) of 1970 (29U.S.C Section 651 et seq.) and regulations promulgated thereunder including, but not limited to, the standards issued by the Secretary of Labor at Part 1926 and Part 1910 of Title 29 of the Code of Federal Regulations. Seller shall also comply with all applicable state occupational safety and health laws and regulations. Noncompliance shall be grounds for termination of this contract in accordance with its default provisions.

(P) Accident Reporting

- (a) Seller shall provide oral notification to Buyer when an accident occurs on Federal property in connection with performance of this contract. Notification must be given not later than twenty-four (24) hours after the accident occurs.
- (b) When requested by Buyer, Seller shall conduct an investigation of the accident and shall prepare a report that identifies all pertinent facts related to the accident. The report shall include, but not be limited to, the underlying cause(s) of the accident and the actions Seller shall take to prevent the recurrence of similar accidents. The Seller shall submit the report to Buyer not later than fourteen (14) calendar days from the date accident occurs.
- (c) The Government may elect to conduct an investigation of the accident with the assistance of the Seller.
- (d) Compliance with the provisions of this clause shall not entitle Seller to an equitable adjustment in contract price or to an extension of performance schedule.
- (e) Seller shall incorporate this clause, including this paragraph (e), in all subcontracts, with appropriate changes in the designation of the parties.

(Q) Ground and Flight Risk

- (a) Definitions. As used in this clause –
- (1) "Aircraft", unless otherwise provided in the contract Schedule, means –
- (i) Aircraft to be delivered to the Government under this contract (either before or after Government acceptance), including complete aircraft and aircraft in the process of being manufactured, disassembled, or reassembled: provided that an engine, portion of a wing or a wing is attached to a fuselage of the aircraft;
 - (ii) Aircraft, whether in a state of disassembly or reassembly, furnished by the Government to the Seller under this contract, including all Government property installed, in the process of installation, or temporarily removed; provided that the aircraft and property are not covered by separate bailment agreement;
 - (iii) Aircraft furnished by the Seller under this contract (either before or after Government acceptance); or (iv) Conventional winged aircraft, as well as helicopters, vertical take-off or landing aircraft, lighter than air ships, unmanned aerial vehicles, or other non-conventional aircraft specified in this contract.
- (2) "Seller's managerial personnel" means the Seller's directors' officers, managers, superintendents or equivalent representatives who have supervision or direction of –
- (i) All, or substantially all, of the Seller's business;
 - (ii) All, or substantially all, of the Seller's operation at any one plant or separate location; or
 - (iii) A separate and complete major industrial operation.
- (3) "Seller's premises" means those premises, including subcontractor's premises, designated in the Schedule or in writing by the Contracting Officer, and any other place the aircraft is moved for safeguarding.
- (4) "Flight" means any flight demonstration, flight test, taxi test, or other flight made in the performance of this contract, of for the purpose of safeguarding the aircraft, or previously approved in writing by the Contracting Officer.
- (i) For land based aircraft, "flight" begins with the taxi roll from a flight line on Seller's premises and continues until the aircraft has completed the taxi roll in returning to a flight line on the Seller's premises;
 - (ii) For seaplanes, "flight" begins with the launching from a ramp on the Seller's premises and continues until the aircraft has completed its landing run and is beached at a ramp on the Seller's premises;
 - (iii) For helicopters, "flight" begins upon engagement of the rotors for the purpose of take-off from the Seller's premises and continues until the aircraft has returned to the

ground on the Seller's premises and the rotors are disengaged.

(iv) For vertical take-off aircraft, "flight" begins upon disengagement from any launching platform or device on the Seller's premises and continues until the aircraft has been engaged to any launching platform or device on the Seller's premises;

(v) All aircraft on the Seller's premises shall be considered to be in flight when on the ground or water for reasonable periods following emergency landings. Landings made in performance of this contract, or landings approved in writing by the Contracting Officer.

(5) "Flight crew member" means the pilot, the co-pilot, and, unless otherwise provided in the Schedule, the flight engineer, and navigator when assigned to their respective crew positions for the purpose of conducting any flight on behalf of the Seller. It also includes any pilot or operator of an unmanned aerial vehicle. If required, a systems operator may also be assigned as a flight crew member.

(6) "In the open" means located wholly outside of buildings on the Seller's premises or other places described in the Schedule as being "in the open". Government furnished aircraft shall be considered to be located "in the open" at all times while in the Seller's possession, care, custody, or control.

(7) "Operation" means operations and tests of the aircraft and its installed equipment, accessories and power plants, while the aircraft is in the open or in motion. The term does not apply to aircraft on any production line or in flight.

(b) Combined regulation/instruction. Seller shall be bound by the operating procedures contained in the contract, including any incorporated DoD procedures, such as the combined regulation/instruction entitled "Contractors Flight and Ground Operations" (Air Force Instruction 10-220, Army Regulation 95-20, NAVAIR Instruction 3710-1 (Series), Coast Guard Instruction M13020.3, and Defense Management Agency Instruction 8210.1) in effect on the date of contract award.

(c) Government as self-insurer. Subject to the conditions in paragraph (d) of this clause, the Government self-insures and assumes the risk of damage to, or loss or destruction of aircraft "in the open," during "operation" and in "flight", except as may be specifically provided in the Schedule as an exception to this clause. Seller shall not be liable to Government for such damage, loss, or destruction beyond the Seller's share of loss amount under the Government's self-insurance.

(d) Conditions for Government's self-insurance. The Government's assumption of risk for aircraft in the open shall continue unless the Contracting Officer finds that the Seller has failed to comply with paragraph (b) of this clause, or that the aircraft is in the open under reasonable conditions and the Seller fails to take prompt corrective action.

(1) The Contracting Officer, when finding that the Seller has failed to comply with paragraph (b) of this clause or that the aircraft is in the open under reasonable conditions, shall notify the Seller in writing, through Buyer, and shall require the Seller to make corrections within a reasonable time.

(2) Upon receipt of such notice, Seller shall promptly correct the cited conditions, regardless of whether there is agreement that the conditions are unreasonable.

(i) If the Contracting Officer later determines that the cited conditions were not unreasonable, and equitable adjustment shall be made in the contract price for any additional costs incurred in correcting the conditions.

(ii) Any dispute as to the unreasonableness of the conditions or the equitable adjustment shall be considered a dispute under the Disputes clause of this contract.

(3) If the Contracting Officer finds that the Seller failed to act promptly to correct the cited conditions or failed to correct the conditions within a reasonable time, the Contracting Officer may terminate the Government's assumption of risk for any aircraft in the open under the cited conditions. The termination will be effective at 12:01 AM on the fifteenth day following the day the written notice is received by the Seller.

(i) If the Contracting Officer later determines that the Seller acted promptly to correct the cited conditions or that the time taken by the Seller was not unreasonable, an equitable adjustment shall be made on the contract price for any additional costs incurred as a result of termination of the Government's assumption of risk.

(ii) Any dispute as to the timeliness of the Seller's action or the equitable adjustment shall be considered a dispute under the Disputes clause of this contract.

(4) If the Government terminates its assumption of risk pursuant to the terms of this clause –

(i) Seller shall thereafter assume the entire risk for damage, loss, or destruction of, the affected aircraft;

- (ii) Any costs incurred by the Seller (including costs of the Seller's self-insurance, insurance premiums paid to insure the Seller's assumption of risk, deductibles associated with such purchased insurance, etc.) to mitigate its assumption of risk are unallowable costs; and
 - (iii) The liability provisions of the Government Property clause of this contract are not applicable to the affected aircraft.
- (5) The Seller shall promptly notify the Contracting Officer, through Buyer, when unreasonable conditions have been corrected;
 - (i) If, upon receipt of the Seller's notice of the correction of the unreasonable conditions, the Government elects to again assume the risk of loss and relieve the Seller of its liability for damage, loss or destruction of the aircraft, the Contracting Officer will notify the Seller, through Buyer, of the Contracting Officers decision to resume the Government risk of loss. The Contactor shall be entitled to an equitable adjustment in the contract price for any insurance costs extending from the end of the third working day after the Government receipt of the Seller notice of correction until the Seller is notified that the government will resume the risk of loss.
 - (ii) If the Government does not again assume the risk of loss and the unreasonable conditions have been corrected, the Seller shall be entitled to an equitable adjustment for insurance costs, in any, extending after the third working day after the Government's receipt of the Seller's notice of correction.
- (6) The Government's termination of its assumption of risk of loss does not relieve the Seller of its obligation to comply with all other provisions of this clause, including any incorporated operating procedures.
- (e) Exclusions from the Government's assumption of risk. The Government's assumption of risk shall not extend to damage, loss, of destruction of aircraft which –
 - (1) Results from the failure of the Seller, due to willful misconduct or lack of good faith of any of the Seller's managerial personnel, to maintain and administer a program for the protection and preservation of the aircraft in the open ad during operation in accordance with sound industrial practice, including oversight of subcontractor's program.
 - (2) Is sustained during flight if either the flight or the flight crew members have not been approved in advance of any flight in writing by the Government Flight Representative designated by the Contracting Officer.
 - (3) Occurs in the course of transportation by rail, or by conveyance on public streets, highways, or waterways, except for Government furnished property;
 - (4) is covered by insurance;
 - (5) Consists of wear and tear; deterioration (including rust and corrosion); freezing; or mechanical, structural, or electrical breakdown or failure, unless these are the result of other loss, damage or destruction covered by this clause. (This exclusion does not apply to Government-furnished property if damage consists of reasonable wear and tear or deterioration, or results from inherent vice, e.g., a known condition of design defect, in the property); or
 - (6) Is sustained while the aircraft is being worked on and is a direct result of the work unless such damage, loss, or destruction would be covered by insurance which would have been maintained by the Seller, but for the Governments assumption of risk.
- (f) Seller's share of loss and Seller's deductible under the Government Self-insurance –
 - (1) Seller assumes the risk of loss and shall be responsible for the Seller's share of loss under the Governments self-insurance. That share is the lesser of –
 - (i) the first \$100,000 of loss or damage to aircraft in the open, during operation of in-flight resulting from each separate event, except for reasonable wear and tear and to the extent the loss or damage is caused by negligence of Government personnel; or
 - (ii) Twenty percent of the price or estimated cost of this contract.
 - (2) If the Government elects to require that the aircraft be replaced or restored by Seller to its condition immediately prior to the damage, the equitable adjustment in the price authorized by paragraph (j) of this clause shall not include the dollar amount of the risk assumed by Seller.
 - (3) In the event the Government does not elect repair or replacement, Seller agrees to credit the contract price or pay the Government, as directed by the Contracting Officer, the lesser of –
 - (i) \$100,000;
 - (ii) Twenty percent of the price or estimated cost of this contract; or
 - (iii) The amount of loss.

- (4) For task order and delivery order contracts, the Seller's share of the loss shall be the lesser of \$100,000 or twenty percent of the combined price or total estimated cost of those orders issued to date to which the clause applies.
- (5) The costs incurred by Seller for its share of the loss and for insuring against that loss are unallowable costs, including but not limited to –
- (i) Seller's share of loss under the Government's self-insurance;
 - (ii) The costs of Seller's self-insurance;
 - (iii) The deductible for any Seller-purchased insurance;
 - (iv) Insurance premiums paid for Seller-purchased insurance, and
 - (v) Cost associated with determining, litigating and defending against Seller's liability.
- (g) Subcontractor possession or control. Seller shall not be relieved from liability for damage, loss, or destruction of aircraft while such aircraft is in its possession or control of its subcontractors, except to the extent that the subcontract, with written approval of the Contracting Officer, provides for relief from each liability. In the absence of approval, the subcontract shall contain provisions requiring the return of aircraft in as good a condition as when received, except for reasonable wear and tear or for the utilization of the property in accordance with the provisions of this contract.
- (h) Seller's exclusion of insurance costs. Seller warrants that the contract price does not and will not include, except as may be authorized in this clause, any charge or contingency reserve for insurance covering damage, loss, or destruction of aircraft while in the open, during operation, or in flight when the risk has been assumed by the Government including Seller's share of loss in this clause, even if assumption may be terminated for aircraft in the open.
- (i) Procedures in the event of loss.
- (1) In the event of damage, loss, or destruction of aircraft in the open, during operation, or in flight, Seller shall take all reasonable steps to protect the aircraft from further damage, to separate damaged and undamaged aircraft and to put all aircraft in the best possible order. Except in cases covered by paragraph (f) (2) of this clause, Seller shall furnish to Buyer, a statement of –
- (i) The damaged, lost, or destroyed aircraft;
 - (ii) The time and origin of the damage, loss or destruction;
 - (iii) All known interests in commingled property of which aircraft are a part; and
 - (iv) The insurance, if any, covering the interest of the commingled property.
- (2) Buyer will make an equitable adjustment for expenditures made by the Seller in performing the obligations under this paragraph.
- (j) Loss prior to delivery
- (1) If prior to delivery and acceptance by the Government, aircraft is damaged, lost, or destroyed and the Government assumed the risk, the Government shall either –
- (i) Require that the aircraft be replaced or restored by the Seller to the condition immediately prior to the damage, in which event the Contracting Officer will make an equitable adjustment in the contract price and the time for contract performance; or
 - (ii) Terminate this contract with respect to the aircraft. Notwithstanding the provisions in any other termination clause under this contract, in the event of termination, Seller shall be paid the contract price for the aircraft (or, if applicable, any work to be performed on the aircraft) less any amount Buyer determines –
 - (A) It would have cost the Seller to complete the aircraft or any work to be performed on the aircraft) together with anticipated profit on uncompleted work; and
 - (B) Would be the value of the damaged aircraft or any salvage retained by the Seller.
- (2) Buyer shall prescribe the manner of disposition of the damaged, lost, or destroyed aircraft, or any parts of the aircraft. If any additional costs of such disposition are incurred by the Seller, a further equitable adjustment will be made in the amount due the Seller. Failure of the parties to agree upon termination costs of an equitable adjustment with respect to any aircraft shall be considered a dispute under the Disputes clause.
- (k) Reimbursement from a third party. In the event the Seller is reimbursed or compensated by a third person for damage, loss, or destruction of aircraft and has also been compensated by the Government, the Seller shall equitably reimburse the Government. The Seller shall do nothing to prejudice the Government's right to recover against third parties for damage, loss, or destruction. Upon the request of the Contracting Officer or authorized representative, the Seller shall at Government expense furnish to the Government all reasonable assistance and cooperation (including prosecution of suit and the execution of instruments of assignment of subrogation) in obtaining recovery.

(l) Government acceptance of liability. To the extent the Government has accepted such liability under other provisions of this contract, the Seller shall not be reimbursed for liability to third persons for loss or damage to property or for death or bodily injury caused by aircraft during flight unless the flight crew members previously have been approved for this flight in writing by the Government Flight Representative designated by the Contracting Officer.

(m) Subcontracts. Seller shall incorporate the requirements of this clause, including this paragraph (m), in all subcontracts.

(R) Accident Reporting and Investigations Involving Aircraft, Missiles and Space launch Vehicles

(a) Seller shall report promptly to Buyer all pertinent facts relating to each accident involving an aircraft, missile or space launch vehicle being manufactured, modified, repaired, or overhauled in connection with this contract.

(b) If the Government (or Buyer) elects to conduct an investigation of the accident, Seller will cooperate and assist the Government's (or Buyer's) personnel until the investigation is complete.

(c) Seller will include a clause in subcontracts under this contract to require subcontractor cooperation and assistance in accident investigations.