

CUSTOMER CONTRACT REQUIREMENTS**Poseidon****CUSTOMER CONTRACT: 06-C-3022****CUSTOMER CONTRACT REQUIREMENTS**

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

1. 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 (JUL 1995). This clause applies only if this contract exceeds \$100,000.

52.203-7 Anti-Kickback Procedures (excluding subparagraph (c)(1)) (JUL 1995). Buyer may withhold sums owed Seller the amount of any kickback paid by Seller or its subcontractors at any tier if (a) the Contracting Officer so directs, or (b) the Contracting Officer has offset the amount of such kickback against money owed Buyer under the prime contract. This clause applies only if this contract exceeds \$100,000.

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

52.203-10 Price or Fee Adjustment for Illegal or Improper Activity (JAN 1997). This clause applies only if this contract exceeds \$100,000. 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. In paragraph (d), the term "Government" shall mean Buyer.

52.203-11 Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions (SEP 2005). This clause applies only if this contract exceeds \$100,000.

52.203-12 Limitation on Payments to Influence Certain Federal Transactions (SEP 2005). This clause applies only if this Contract exceeds \$100,000. Paragraph (c)(4) is modified to read as follows: "(c)(4) 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.

52.211-15 Defense Priority and Allocation Requirements (SEP 1990). This clause is applicable if a priority rating is noted in this contract.

52.215-2 Audit and Records - Negotiation (JUN 1999). This clause applies only if this contract exceeds \$100,000 and (i) is cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeterminable type or any combination of these types: (ii) Seller was required to provide cost or pricing data, or (iii) Seller is required to furnish reports as discussed in paragraph (e) of the referenced clause.

52.215-10 Price Reduction For Defective Cost or Pricing Data (OCT 1997). This clause applies only if this contract exceeds \$550,000 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 Cost or Pricing Data (OCT 1997). This clause applies only if this contract exceeds \$550,000 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 "The Boeing Company or any of its wholly owned subsidiaries."

52.215-14 Integrity of Unit Prices (excluding subparagraph (b)) (OCT 1997). This clause applies except for contracts at or below \$100,000; 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.

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

52.222-20 Walsh-Healy Public Contracts Act (DEC 1996). This clause applies only if this contract exceeds \$10,000.

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

52.222-26 Equal Opportunity (subparagraph (b)(1) through (11)) (APR 2002).

52.222-35 Equal Opportunity for Special Disabled, Veterans of the Vietnam Era, and Other Eligible Veterans (DEC 2001). This clause applies only if this contract exceeds \$25,000.

52.222-36 Affirmative Action for Workers With Disabilities (JUN 1998). This clause applies only if this contract exceeds \$ 10,000.

52.222-37 Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (DEC 2001). This clause applies only if this contract exceeds \$25,000.

52.222-39 Notification of Employee Rights Concerning Payment of Union Dues or Fees (DEC 2004). This clause applies only if this contract exceeds \$100,000.

52.222-41 Service Contract Act of 1965, As Amended (MAY 1989). This clause only applies to contracts which are subject to this act.

52.225-13 Restrictions on Certain Foreign Purchases (FEB 2006).

52.227-1 Authorization and Consent (JUL 1995).

52.227-2 Notice and Assistance Regarding Patent and Copyright Infringement (AUG 1996). A copy of each notice sent to the Government will be sent to Buyer. "Contracting Officer" shall mean "Buyer". This clause applies only if this contract exceeds \$100,000.

52.227-10 Filing of Patent Applications - Classified Subject Matter (APR 1984). This clause applies only if this contract will involve access to classified information.

52.227-14 Rights in Data — General (JUN 1987). This clause applies only if data will be produced, furnished or acquired under this contract.

52.227-16 Additional Data Requirements (JUN 1987). This clause applies only if this contract involves experimental, developmental, research, or demonstration work.

52.230-6 Administration of Cost Accounting Standards (APR 2005). Add "Buyer and the" before "CFAO" in paragraph (m). This provision applies if Clause H001, H002 or H004 is included in Buyer's contract.

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.

52.244-5 Competition in Subcontracting (DEC 1996)

52.247-63 Preference for U.S.-Flag Air Carriers (JUN 2003). This clause only applies if this contract involves international air transportation.

3. 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:

52.219-8 Utilization of Small Business Concerns (OCT 2000). Include in all subcontracts that offer further subcontracting opportunities. If a subcontract (except subcontracts to small business concerns) exceeds \$500,000 (\$1,000,000 for construction of any public facility), Seller and any lower tier subcontractor must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities.

52.222-26 Equal Opportunity (subparagraph (b)(1) through (11)) (APR 2002).

52.222-35 Affirmative Action for Special Disabled and Vietnam Era Veterans (Dec 2001). This clause applies only if this contract exceeds \$25,000.

52.222-36 Affirmative Action for Handicapped Workers (JUN 1998). This clause applies only if this contract exceeds \$10,000.

52.222-39 Notification of Employee Rights Concerning Payment of Union Dues or Fees (DEC 2004). This clause applies only if this contract exceeds \$100,000.

52.247-64 Preference for Privately Owned U.S.-Flag Commercial Vessels (APR 2003). This clause only applies if this contract is (i) a contract or agreement for ocean transportation services; or a construction contract; or (ii) the supplies being transported are (a) Items the Contractor is reselling or distributing to the Government without adding value (generally, the Contractor 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.

252.225-7014, Preference for Domestic Specialty Metals (APR 2003), Alternate I (APR 2003).

252.247-7023 Transportation of Supplies by Sea (MAR 2000). This clause applies only if this contract exceeds \$100,000 and are a type of supplies described in paragraph (b)(2) of this clause. In paragraph (c), "45 days" is changed to "60 days". In paragraph (g) "Government" means Buyer.

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. Cost Accounting Standards

(1) (Applicable if this contract incorporates clause H001). The version of FAR 52.230-2, Cost Accounting Standards, incorporated by clause H001 is the version dated April 1998.

(2) (Applicable if this contract incorporates clause H002). The version of FAR 52.230-3, Disclosure and Consistency of Cost Accounting Practices, incorporated by clause H002 is the version dated April 1998.

(3) (Applicable if this contract incorporates clause H004). The version of FAR 52.230-5, Cost Accounting Standards – Educational Institution, incorporated by clause H004 is the version dated April 1998.

5. The following prime contract special provisions apply to this purchase order:

A. FOREIGN MILITARY SALES – N/A

B. FOREIGN OBJECT DAMAGE/CONTROL – N/A

C. NOTIFICATION OF DEBARMENT/SUSPENSION STATUS

Seller shall provide immediate notice to Buyer in the event of being debarred suspended, or proposed for debarment by any Federal Agency during the performance of this Contract.

D. ELIMINATION OF USE OF CLASS I OZONE DEPLETING SUBSTANCES (ODS) – N/A

E. CLASS II OZONE DEPLETING CHEMICALS – N/A

F. ENVIRONMENTAL CONTROLS. THIS CLAUSE APPLIES ONLY IF THIS CONTRACT WILL BE PERFORMED WITHIN THE JURISDICTION OF THE SAN DIEGO, CALIFORNIA AIR POLLUTION CONTROL DISTRICT – N/A.

G. FOREIGN NATIONALS - FOREIGN SOURCES – N/A

H. EXPORT CONTROLLED DATA RESTRICTIONS – N/A
(NISPOM)).

I. USE OF GOVERNMENT SUPPLY SOURCE FOR ACQUISITION OF JAN CLASS S PARTS – N/A

The following Clause is incorporated into the RFQ # and any subsequent Purchase Contracts issued under this RFQ.

**RIGHTS IN TECHNICAL DATA AND COMPUTER SOFTWARE:
NONCOMMERCIAL ITEMS (JAN 2006)**

(a) Definitions. As used in this clause:

(1) *Computer data base* means a collection of data recorded in a form capable of being processed and operated by a computer. The term does not include computer software.

(2) *Computer program* means a set of instructions, rules, or routines recorded in a form that is capable of causing a computer to perform a specific operation or series of operations.

(3) *Computer software* means computer programs, source code, source code listings, object code listings, design details, algorithms, processes, flow charts, formulae, and related material that would enable the software to be reproduced, recreated, or recompiled. Computer software does not include computer databases or computer software documentation.

(4) *Computer software documentation* means owner's manuals, user's manuals, installation instructions, operating instructions, concepts of operations, and other similar items, regardless of storage medium, that explain the capabilities of the computer software or provide instructions for using the software. Computer software documentation shall be considered to be an integral/necessary part of the computer software with which it is associated unless otherwise delineated in this clause.

(5) *Detailed manufacturing or process data* means technical data and computer software that describes the steps, sequences, and conditions of manufacturing, processing or assembly used by the manufacturer to produce an item or component, or to perform a process.

(6) *Developed* means that an item, component, or process exists and is workable. Thus, the item or component must have been constructed or the process practiced. Workability is generally established when the item, component, or process has been analyzed or tested sufficiently to demonstrate to reasonable people skilled in the applicable art that there is a high probability that it will operate as intended. Whether, how much, and what type of analysis or testing is required to establish workability depends on the nature of the item, component, or process, and the state of the art. To be considered "developed," the item, component, or process need not be at the stage where it could be offered for sale or sold on the commercial market, nor must the item, component, or process be actually reduced to practice within the meaning of Title 35 of the United States Code.

(7) *Developed exclusively at private expense* means development was accomplished entirely with costs charged to indirect cost pools, costs not allocated to a Government contract, or any combination thereof. Under fixed-price contracts, when total costs are greater than the firm-fixed-price or ceiling price of the contract, the additional development costs necessary to complete development shall not be considered when determining whether development was at Government, private, or mixed expense.

(8) *Developed exclusively with Government funds* means all the costs of development were charged directly to a Government contract.

(9) *Developed with mixed funding* means development was accomplished partially with costs charged to indirect cost pools and/or costs not allocated to a Government contract, and partially with costs charged directly to a Government contract.

(10) *Form, fit, and function data* means data relating to items, components, or processes sufficient to enable physical and functional interchangeability, and data identifying source, size, configuration, mating, and attachment characteristics, functional characteristics, and performance requirements.

(11) *Government purpose* means any activity in which the United States Government is a party, including cooperative agreements with international or multi-national defense organizations, or sales or transfers by the United States Government to foreign Governments or international organizations. Government purposes include providing technical data and computer software for

use in a competitive procurement, but do not include the rights to use, modify, reproduce, release, perform, display, or disclose technical data and computer software for commercial purposes or authorize others to do so.

(12) *Government purpose rights* means the rights to use, modify, reproduce, release, perform, display, or disclose technical data and computer software within the Government without restriction, and to release or disclose such data outside the Government so long as the recipient uses the data for Government purposes only. The Government shall have Government purpose rights for a five-year period after contract completion. Upon expiration of the five-year period, the Government shall have unlimited rights in the technical data and computer software. The contractor has the exclusive right, including the right to license others, to use technical data and computer software in which the Government has obtained Government purpose rights under this contract for any commercial purpose during the time period specified in the Government purpose rights legend prescribed by this clause. Government purpose rights are always and automatically due to the Government for technical data or computer software on this contract when:

(i) The items, components, programs, code, or processes were developed with mixed funding except when the Government is entitled to unlimited rights.

(ii) They were created with mixed funding in the performance of a contract that does not discretely require the development, manufacture, construction, or production of items, components, programs, code, or processes.

(iii) The contractor has previously or is currently providing them with Government purpose rights under another Government contract.

(13) *Limited rights* means the rights to use, modify, reproduce, release, perform, display, technical data and computer software, in whole or in part, within the Government. The Government may not, without the written permission of the party asserting limited rights, release or disclose the technical data and computer software outside the Government, use the technical data and computer software for manufacture, or authorize the technical data and computer software to be used by another party, except that the Government may reproduce, release, or disclose such data, or authorize the use or reproduction of the data by persons outside the Government if such reproduction, release, disclosure, or use is necessary for emergency repair and overhaul; or a release or disclosure of technical data and computer software (other than detailed manufacturing or process data) to, or use of such data by, a foreign Government that is in the interest of the Government and is required for evaluation or information purposes; or the contractor asserting the restriction is notified of such release, disclosure, or use. The Government may release the technical data or computer software to any third party if clause XXX is inserted into the contractual arrangement with the third party. The contractor is not required to provide the Government additional rights to use, modify, reproduce, release, perform, display, or disclose technical data and computer software furnished to the Government with limited rights. However, if the Government desires to obtain additional rights in technical data and computer software in which it has limited rights, the contractor agrees to promptly enter into negotiations with the Contracting Officer to determine whether there are acceptable terms for transferring such rights. Limited rights pertain to items, components, software code, software programs, or processes developed exclusively at private expense and marked with the limited rights legends prescribed by this clause or items, components, software code, software programs,

or processes created exclusively at private expense in the performance of a contract that does not require the development, manufacture, construction, or production of items, components, or processes. The Government shall require the contractor to provide technical data or computer software necessary for emergency repair or overhaul, and shall destroy what is in its possession promptly following completion of the emergency repair/overhaul, and notify the contractor that it has been destroyed.

(14) *Restricted rights* means the rights of the Government in restricted computer software as set forth in FAR Clause 52.227-14(g)(3), or as otherwise may be provided in a collateral agreement incorporated in and made part of this contract, including minor modifications of such computer software.

(15) *Technical data* means recorded information, regardless of the form or method of the recording of a scientific or technical nature (including computer software documentation). The term does not include information incidental to contract administration, such as financial and/or management information.

(16) *Unlimited rights* means rights to use, modify, reproduce, perform, display, release, or disclose technical data and computer software in whole or in part, in any manner and for any purpose whatsoever, and to have or authorize others to do so. Unlimited rights are due to the Government for technical data or computer software under this contract when:

(i) An item, component, software code, software program, or process has been or will be developed exclusively with Government funds and is related, directly or indirectly, to form, fit, and function data or is otherwise necessary for installation, operation, maintenance, or training (other than detailed manufacturing or process data).

(ii) Studies, analyses, test data or similar data, and computer software, when the study, analysis, test, similar work, or computer software documentation was specified as an element of performance.

(iii) They are created exclusively with Government funds in the performance of a contract that does not require the development, manufacture, construction, or production of items, components, or processes.

(iv) The contractor corrects or changes/modifies technical data or computer software furnished by the Government or they have previously or are currently being provided with unlimited rights under another Government contract.

(v) They are otherwise publicly available or have been released/disclosed by the contractor without restrictions on further use, release/disclosure, other than a release/disclosure resulting from the sale, transfer, or other assignment of interest in them to another party or the sale or transfer of some or all of a business entity or its assets to another party.

(vi) They were furnished to the Government, under this or any other Government contract or subcontract thereunder, with Government purpose license rights or limited rights and the restrictive condition(s) has/have expired or Government purpose rights and the contractor's exclusive right to use such data for commercial purposes has expired.

(17) *Contractor* means the non-Governmental party to this contract and all of their subcontractors and vendors at any level below the prime contractor.

(b) Rights in Technical Data and Computer Software. The contractor grants or shall obtain for the Government the following royalty-free, world-wide, nonexclusive, irrevocable license rights in technical data and computer software:

(1) Furnished With Unlimited Rights:

(VARIABLE) *[List all technical data and computer software furnished with Unlimited Rights.]*

(2) Furnished With Government Purpose Rights:

(VARIABLE) *[List all technical data and computer software furnished with Government Purpose Rights.]*

(A) Prior to release or disclosure, the intended recipient is subject to the non-disclosure agreement at XXX of the XXX.

(3) Furnished With Limited Rights:

(VARIABLE) *[List all technical data and computer software furnished with Limited Rights.]*

(4) Special Rights, Licenses, or Agreements on Technical Data or Computer Software:

(VARIABLE) *[List the title and the Section J Attachment Number, or "Not Applicable." Any agreement shall be in accordance with XXXX.]*

(c) Release From Liability. The contractor agrees to release the Government from liability for any release or disclosure of technical data and computer software made in accordance with this clause, in accordance with the terms of a license per this clause, or by others to whom the recipient has released or disclosed the data and to seek relief solely from the party who has improperly used, modified, reproduced, released, performed, displayed, or disclosed contractor data marked with restrictive legends.

(d) Government Rights in Technical Data and Computer Software. Any technical data, computer software, and/or computer software documentation delivered or otherwise provided to the Government without a restrictive legend shall be considered data and computer software delivered with unlimited rights.

(e) Contractor Rights in Technical Data and Computer Software. The contractor retains all rights not granted to the Government.

(f) Third Party Copyrights. The contractor shall not, without the written approval of the Contracting Officer, incorporate any copyrighted data in the technical data and computer software to be delivered under this contract unless the contractor is the copyright owner or has obtained for the Government the license rights necessary to perfect a license or licenses of the appropriate scope, and has affixed a statement of the license or licenses obtained on behalf of the Government and other persons to the technical data and computer software transmittal document.

(g) Later Assertions of Non-Unlimited Rights.

(i) The contractor may make other assertions of non-unlimited rights in technical data and/or computer software after award. Such assertions must be based on new information or obvious inadvertent omission unless these new assertions would materially affect the source selection

decision in the determination of the Contracting Officer (in which case no assertion may be allowed).

(ii) The contractor shall submit such assertion(s) to the Contracting Officer as soon as practicable but prior to the scheduled date for delivery of the technical data, computer software, or computer software documentation. An official authorized to contractually obligate the contractor must sign the assertion(s). The contractor assertion(s) must contain a detailed description of the item, the asserted rights category in paragraph (b) of this clause, and the basis of the assertion including all necessary supporting documentation. Generally, the development of an item, component, software code/program, or process exclusively at private expense is the only basis for asserting restrictions after award. If development was not exclusively at private expense, enter the specific reason for asserting that the Government's rights should be restricted.

(iii) The Contracting Officer may request the contractor to provide sufficient information to enable the Government to evaluate the contractor's assertion(s). While adjudicating the assertion(s), the Contracting Officer shall follow the procedures outlined in clause XXX , *Validation Of Restrictive Markings On Technical Data And Computer Software*.

(h) Marking Requirements. The contractor may only assert restrictions on the Government's rights to use, modify, reproduce, release, perform, display, or disclose technical data and computer software to be delivered under this contract by marking such technical data and computer software. The marking shall be in the form of legends on the technical data and computer software. Only the legends found in paragraphs (h)(ii), (h)(iii), and (h)(iv) are authorized under this contract. The notice of copyright prescribed under 17 U.S.C. 401 or 402 is also allowed.

(i) General marking Instructions. The contractor shall conspicuously and legibly mark the appropriate legend on all technical data and computer software that qualify for such markings. The authorized legends shall be placed on the transmittal document or storage container and, for printed material, each page of the printed material containing technical data or computer software for which restrictions are asserted. When only portions of a page of printed material are subject to the asserted restrictions, such portions shall be identified by circling, underscoring, annotating, or other appropriate identifier. Technical data and computer software transmitted directly from one computer or computer terminal to another shall contain a notice of asserted restrictions. Reproductions of technical data and computer software, or any portions thereof subject to asserted restrictions, shall also reproduce the asserted restrictions.

(ii) Government Purpose Rights Legend. Technical data or computer software delivered or otherwise furnished to the Government with Government purpose rights shall be marked as follows:

Government Purpose Rights

Contract No: _____

Contractor Name: _____

Contractor Address: _____

Expiration Date: _____

The Government's rights to use, modify, reproduce, release, perform, display, or disclose these technical data and computer software are restricted by paragraph (b)(2) of Clause XXXX, *Rights in Technical Data and Computer Software: Noncommercial Items*, contained in the contract identified above. No restrictions apply after the expiration date shown above. Any reproduction of technical data or computer software, or portions thereof marked with this legend, must also reproduce the markings.

(End of legend)

(iii) Limited Rights Markings. Technical data and computer software delivered or otherwise furnished to the Government with limited rights shall be marked as follows:

Limited Rights

Contract No: _____

Contractor Name: _____

Contractor Address: _____

The Government's rights to use, modify, reproduce, release, perform, display, or disclose these technical data and computer software are restricted by paragraph (b)(3) of Clause XXXX, *Rights in Technical Data and Computer Software: Noncommercial Items*, contained in the contract identified above. Any reproduction of technical data or computer software, or portions thereof marked with this legend, must also reproduce the markings. Any person, other than Government officials or others specifically authorized by the Government, who has been provided access to this technical data or computer software must promptly notify the above named contractor.

(End of legend)

(iv) Special License Rights Markings. Data, computer software, or computer software documentation in which the Government's rights stem from a specifically negotiated license shall be marked with the following legend:

Special License Rights

The Government's rights to use, modify, reproduce, release, perform, display, or disclose this data and/or software are restricted by _____ [*Insert contract number and license identifier*]. Any reproduction of technical data, computer software, computer software documentation, or portions thereof marked with this legend must also reproduce the markings.

(End of legend)

(v) Pre-Existing Data Markings. If the terms of a prior contract or license permitted the contractor to restrict the Government's rights to use, modify, reproduce, release, perform, display, or disclose technical data and computer software deliverable under this contract, and those restrictions are still applicable, the contractor may mark such data with the appropriate restrictive legend for which the data qualified under the prior contract or license. The marking procedures in paragraph (h)(1) of this clause shall be followed.

(vi) Removal of Unjustified and Nonconforming Markings. The rights and obligations of the parties regarding the validation of restrictive markings on technical data and computer software

furnished or to be furnished under this contract are contained in the *Validation of Restrictive Markings on Technical Data and Computer Software* clause of this contract. Notwithstanding any provision of this contract concerning inspection and acceptance, the Government may ignore, or, at the contractor's expense, correct or strike a marking if, in accordance with the procedures in the *Validation of Restrictive Markings on Technical Data and Computer Software* clause of this contract, a restrictive marking is determined to be unjustified.

(vii) Nonconforming Technical Data and Computer Software Markings. A nonconforming marking is a legend or other marking placed on technical data and computer software delivered or otherwise furnished to the Government under this contract that is not in the format authorized by this contract. If the Contracting Officer notifies the contractor of a nonconforming marking and the contractor fails to remove or correct such marking within sixty (60) days, the Government may ignore or, at the contractor's expense, remove or correct any nonconforming marking.

(i) Relation to Patents. Nothing contained in this clause shall imply a license to the Government under any patent, or be construed as affecting the scope of any license or other right otherwise granted to the Government under any patent.

(j) Technical Data/Computer Software Reporting. To ensure timely accounting and delivery of technical data and computer software, every ninety days the contractor shall provide the Contracting Officer a technical data and computer software delivery schedule listing all such deliveries necessary for contract completion or incidental to, or developed with or for, other contract deliverables as a segregable item or part of the contracted level of effort provided under the contract.

(k) Limitation on Charges for Rights in Technical Data and Computer Software. The contractor shall not charge to this contract any cost, including, but not limited to, license fees, royalties, or similar charges, for rights in technical data and computer software to be delivered under this contract when the Government has acquired, by any means, the same or greater rights in the data on another contract, or when the technical data or computer software are available to the public without restrictions. This limitation does not include the reasonable costs of reproducing, handling, or mailing the documents or other media in which the technical data and computer software will be delivered.

(l) Applicability to Subcontractors, Vendors, and Suppliers. The contractor shall ensure that the rights afforded its subcontractors, vendors, and suppliers under 10. U.S.C. 2320, 10 U.S.C. 2321, and the identification, assertion, and delivery processes of paragraph (g) of this clause are recognized and protected. Additionally, this clause shall be flowed down to all subcontractors, vendors, and suppliers at all levels. The contractor and their higher-tier subcontractors shall not use their power to award contracts as economic leverage to obtain rights in technical data and computer software from their lower-tiered subcontractors, vendors, and suppliers. In no event shall the contractor use its obligation to recognize and protect subcontractor, vendor, or supplier rights in technical data and computer software as an excuse for failing to satisfy its contractual obligations to the Government.

(End of clause)

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CLAUSE 2 for REVIEW –

Technical Data and Computer Software: Withholding of Payment (MAY 2005)

As prescribed at XXX, use the following clause:

**TECHNICAL DATA AND COMPUTER SOFTWARE: WITHHOLDING OF PAYMENT
(MAY 2005)**

(a) If technical data and computer software (as defined in clause XXX) specified to be delivered under this contract is not delivered within the time specified by this contract or is deficient upon delivery (including having unauthorized restrictive markings), the Contracting Officer may, until such data is accepted by the Government, withhold payment to the contractor of ten (10) percent of the total contract price or amount. Payments shall not be withheld nor any other action taken pursuant to this paragraph when the Contracting Officer determines that the contractor's failure to make timely delivery or to deliver the technical data or computer software without deficiencies arises out of causes beyond the control and without the fault or negligence of the contractor.

(b) The withholding of any amount or subsequent payment to the contractor shall not be construed as a waiver of any rights accruing to the Government under this contract.

(End of clause)

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