

CUSTOMER CONTRACT REQUIREMENTS**Fulcrum****CUSTOMER CONTRACT 20-C-0198****CUSTOMER CONTRACT REQUIREMENTS**

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

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

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

52.203-7 Anti-Kickback Procedures (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.

52.203-10 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.

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

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.

52.215-2 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.

52.215-10 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 (2018-O0015) Deviation (MAY 2018). This clause applies only if this contract exceeds the threshold set forth in FAR 15.403-4 and is not otherwise exempt. The certificate required by paragraph (b) of thereferenced 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.

52.222-21 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 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 this contract is \$150,000 or more, unless exempted by rules, regulations, or orders of the Secretary of Labor.

52.222-50 Combating Trafficking in Persons (OCT 2020). 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).

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

52.225-13 Restriction on Certain Foreign Purchases (FEB 2021).

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).

52.230-6 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.

52.232-40 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.

52.237-2 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 (NOV 2020). The clauses in paragraph (c) (1) apply when Seller is providing commercial items under the 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.

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

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:

52.203-13 Contractor Code of Business Ethics and Conduct (JUN 2020). This clause applies if this contract exceeds the threshold specified in FAR 3.1004 (a) on the date of subcontract award and has a performance period 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 (JUL 2018). 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 (AUG 2020). Paragraph (b) is deleted and replaced with the following: "Seller is prohibited from providing Buyer with covered telecommunications equipment or services, or with any equipment, systems, or services that use covered equipment or services regardless of whether that use is in performance of work under a U.S. Government contract." Paragraph (c) is deleted in its entirety. Paragraph (d)(1) is deleted and replaced with the following: "In the event Seller identifies covered telecommunications equipment or services provided to Buyer 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."

52.209-6 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 (OCT 2018).

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

52.222-26 Equal Opportunity (SEP 2016).

52.222-35 Equal Opportunity for Veterans (JUN 2020). This clause applies if this contract is valued at or above the threshold specified in FAR 22.1303(a) on the date of subcontract award, unless exempted by rules, regulations or orders of the Secretary of Labor.

52.222-36 Equal Opportunity for Workers with Disabilities (JUN 2020). This clause applies if this contract is in excess of the threshold specified in Federal Acquisition Regulation (FAR) 22.1408(a) on the date of contract award, unless exempted by rules, regulations, or orders of the Secretary.

52.222-37 Employment Reports on Veterans (JUN 2020). This clause applies if this contract is valued at or above the threshold specified in FAR 22.1303(a) on the date of subcontract award, 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 (OCT 2020) 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).

52.222-50 Combating Trafficking in Persons Alternate I (MAR 2015). The term “Contractor” shall mean “Seller”, except the term “prime contractor” shall remain unchanged. The term “Contracting Officer” shall mean “Contracting Officer and the 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). Insert the following at the end of paragraph (e): “If the Government exercises one of the remedies identified in the paragraph (e) against Buyer as a result, in whole or in part, of the Seller’s violation of its obligations under this clause, Buyer may impose that remedy against the Seller proportionate to the extent to which Seller’s violation caused the Government’s decision to impose a remedy on Buyer.” 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).

52.222-55 Minimum Wages Under Executive Order 13658 (NOV 2020). 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 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 (NOV 2020). The clauses in paragraph (c) (1) apply when Seller is providing commercial items under the 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.

52.247-64 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.

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

X52.204-001 (U//FOUO) Security Requirements (DEC 2020)

This clause applies only when Seller will require access to national security information, up to and including sensitive compartmented information. The term "contractor" shall mean "Seller". The term "the Government" shall mean "the Government or Buyer". The term "Contracting Officer" shall mean "Buyer".

- (a) This clause shall apply to any aspect of this contract involving access to national security information, up to and including sensitive compartmented information (SCI).
- (b) The contractor shall maintain a comprehensive security program in accordance with the requirements of:
 - (1) Buyer's customer Security Manual;
 - (2) National Industrial Security Program Operating Manual (NISPOM);
 - (3) Buyer's customer Personnel Security Instruction (PSI);
 - (4) Intelligence Community Directive (ICD) 704, *Personnel Security*;
 - (5) Committee for National Security Systems (CNSS) Directive 504, Directive on Protection of National Security Systems from Insider Threat;
 - (6) For contracts requiring SCI access, NISPOM Supplement 1 (NISPOMSUP); ICD 705, Sensitive Compartmented Information Facilities; ICD 710, Classification and Control Markings System; and the Integrated Buyer's customer Classification Guide;
 - (7) Additional Intelligence Community and Buyer's customer directives, instructions, policy guidance, standards, and special access program classification and program security guides as specified in the attached DD Form 254; and
 - (8) The latest revision to each document listed above, notice of which has been furnished to the contractor by the Government.
- (c) If, subsequent to the date of this contract, the security classification or security requirements of this contract are changed by the Government, and if the changes cause an increase or decrease in security costs or otherwise affect any other term or condition of this contract, the contract may be subject to an equitable adjustment under the Changes clause of this contract.
- (d) The contractor shall submit a Standard Operating Procedures (SOP) document to the cognizant Buyer's customer Program Security Officer (PSO) within 30 days of contract award unless otherwise specified in the contract. The SOP must be prepared in accordance with the Buyer's customer Security Manual, NISPOM, and the requirements specified in the DD Form 254 and the List of Applicable IT-IA-IM Documents attached referenced/attached to the DD254 of this contract.
- (e) Classification levels of the association, work, hardware, and reports under this contract and associated security requirements are set forth in the attached DD Form 254. The contractor shall maintain all modified and/or fabricated hardware at the proper classification level(s) and physical security environment(s).
- (f) The contractor agrees to permit the necessary polygraph interview of contractor and subcontractor personnel requiring access to SCI information. It is understood that the polygraph interview will be limited to counter-intelligence issues.
- (g) The Government shall be afforded full, free, and uninhibited access to all facilities, installations, technical

capabilities, operations, documentation, records, and data bases for the purpose of assessing the efficacy and efficiency of the contractor's safeguards against threats and hazards to the availability, integrity, and confidentiality of Buyer's customer information.

(h) The prime contractor is responsible for providing security oversight and ensuring an effective security program for all subcontractor relationships that are formed as the result of this contract. The prime contractor shall include provisions in all subcontracts that substantially conform to the requirements of this clause.

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

(j) The contractor shall not disseminate in any manner technology or other program information prior to PSO evaluation and determination of appropriate security classification and control. Dissemination of classified program information to other Government agencies or to contractor personnel other than those specifically assigned to this contract is prohibited unless approved in writing in advance of the release by the PSO and the Contracting Officer.

(k) The contractor shall report security and compliance status as directed by the Government.

(l) If a change in security requirements, as provided in paragraph (c), results in a change in the security classification of this contract or any of its elements from an unclassified status or a lower classification to a higher classification, or in more restrictive area controls than previously required, the contractor shall exert every reasonable effort compatible with the contractor's established policies to continue the performance of work under the contract in compliance with the change in security classification or requirements. If, despite reasonable efforts, the contractor determines that the continuation of work under this contract is not practicable because of the change in security classification or requirements, the contractor shall notify the Contracting Officer in writing. Until the Contracting Officer resolves the problem, the contractor shall continue safeguarding all classified material as required by this contract. After receiving the written notification, the Contracting Officer shall analyze the circumstances surrounding the proposed change in security classification or requirements, and shall endeavor to work out a mutually satisfactory method whereby the contractor can continue performance of the work under this contract. If, 15 days after receipt by the Contracting Officer of the notification of the contractor's stated inability to proceed, (1) the application to this contract of the change in security classification or requirements has not been withdrawn, or (2) a mutually satisfactory method for continuing performance of work under this contract has not been agreed upon, the contractor may request the Contracting Officer to terminate the contract in whole or in part. The Contracting Officer shall terminate the contract in whole or in part, as may be appropriate, and the termination shall be deemed a termination under the termination term of this contract.

(m) Security requirements are a material condition of this contract. Failure of the contractor to maintain and administer a security program compliant with the security requirements of this contract constitutes grounds for termination for default.

X52.204-008 (U) Notice of Litigation (AUG 2010)

(U) As prescribed by X4.404(c), insert the following clause:

(U) NOTICE OF LITIGATION (AUG 2010)

(a) (U) With respect to litigation to which the contractor is a party relating to this contract:

(1) (U) The contractor shall, within five business days, notify the Contracting Officer of any litigation filed by a third party (including individuals, organizations, and federal, state, or local governmental entities) or subpoena involving or in any way relating to this contract and/or related subcontracts. Said notice shall include a copy of all documents filed with the court in connection with the litigation or subpoena to the extent such documents are not covered by a court-ordered seal or protective order.

(2) (U) The Contracting Officer shall have the right to examine any pertinent documents filed with the court during the conduct of the litigation, and any documents and records provided to the third party in response to the subpoena.

(b) (U) The contractor agrees to insert this clause in any subcontract under this contract.

(U) (End of clause)

X52.204-011 (U) Information Technology-Information Assurance-Information Management Requirements (MAR 2020)

(U) As prescribed by X4.404(e), insert the following clause in all solicitations and contracts when the contractor will be required to access, operate, maintain, design, build, and/or acquire an information system processing

national security information:

(U) INFORMATION TECHNOLOGY-INFORMATION ASSURANCE-INFORMATION MANAGEMENT REQUIREMENTS (MAR 2020)

(a) (U) Definitions. The terms used in this clause are defined in Committee on National Security Systems Instruction (CNSSI) 4009, Committee on National Security Systems *Glossary*.

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

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

(1) (U) *X Information Technology-Information Assurance-Information Management Contract Requirements Document (IT-IA-IM CRD)*;

(2) (U) For contracts involving IT system development and production, and/or requiring access to classified X networks, ICD 503, *Intelligence Community Information Technology Systems Security Risk Management*, and CNSSI 1253, *Security Categorization and Control Selection for National Security Systems*;

(3) (U) Other IT-IA-IM policies, standards, and special access program classification and program security guidance specified in the contract; and

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

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

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

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

(g) (U) The contractor shall report security and compliance status and reconfigure national security systems as directed by the Government.

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

(U) (End of clause)

X52.204-012 Industry Partner Access (OCT 2020)

(a) Definitions. As used in this clause:

“Industry Partner” is any company, Federally Funded Research and Development Center, University Affiliated Research Center, or other entity that has a contractual relationship with the Customer. The terms “Subscriber” and “Contractor” and “Subcontractor,” when used in the context of the IPA program and this clause, also mean “Industry Partner.”

(b) For additional information, contact Buyer Contracts or Supply Chain.

(c) The contractor shall include this clause in all subcontracts.

X52.204-015 (U) Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities (AUG 2018)

(U) As prescribed by X4.2004(a), use the following clause in lieu of FAR clause 52.204-23, in all solicitations and contracts:

(U) PROHIBITION ON CONTRACTING FOR HARDWARE, SOFTWARE, AND SERVICES DEVELOPED OR PROVIDED BY KASPERSKY LAB AND OTHER COVERED ENTITIES (AUG 2018)

(a) (U) Definitions. As used in this clause –

(U) *Covered article* means any hardware, software, or service that –

(1) (U) Is developed or provided by a covered entity;

(2) (U) Includes any hardware, software, or service developed or provided in whole or in part by a covered

entity; or

(3) (U) Contains components using any hardware or software developed in whole or in part by a covered entity.

(U) *Covered entity* means –

(1) (U) Kaspersky Lab;

(2) (U) Any successor entity to Kaspersky Lab;

(3) (U) Any entity that controls, is controlled by, or is under common control with Kaspersky Lab; or

(4) (U) Any entity of which Kaspersky Lab has a majority ownership.

(b) (U) Prohibition. Section 1634 of Division A of the National Defense Authorization Act for Fiscal Year 2018 (Pub. L. 115-91) prohibits Government use of any covered article. The Contractor is prohibited from –

(1) (U) Providing any covered article (including subcontractors at any tier) that the Government will use; and

(2) (U) Using any covered article, in the development of data or deliverables first produced in the performance of the contract or order.

(c) (U) Reporting requirement.

(1) (U) In the event the Contractor identifies a covered article provided, or to be provided, to the Government during contract performance, or if the Contractor is notified of such by a subcontractor at any tier or any other source, the Contractor shall report, in writing, to the Contracting Officer. For indefinite delivery contracts or simplified acquisitions, the Contractor shall report to the Contracting Officer for both the indefinite delivery contract and for any affected orders.

(2) (U) The Contractor shall report the following information pursuant to paragraph (c)(1) of this clause:

(i) (U) Within one business day from the date of such identification: The contract number; the order number(s), if applicable; supplier name; brand; model number (Original Equipment Manufacturer (OEM) number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.

(ii) (U) Within ten business days of submitting the report pursuant to paragraph (c)(1) of this clause: Any further available information about mitigation actions undertaken or recommended. In addition, the Contractor shall describe the efforts it undertook to prevent use or submission of a covered article, any reasons that led to the use or submission of the covered article, and any additional efforts that will be incorporated to prevent future use or submission of covered articles.

(d) (U) Subcontracts. The Contractor shall insert the substance of this clause, including this paragraph (d), in all subcontracts, including subcontracts for the acquisition of commercial items.

(U) (End of clause)

X52.204-16 (U) Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment (DEC 2019)

(U) As prescribed by X4.2105-70(a), use the following provision in lieu of FAR provision 52.204-24, in all solicitations and contracts, and, under indefinite delivery contracts, in all notices of intent to place an order, or solicitations for an order:

(U) REPRESENTATION REGARDING CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT (DEC 2019)

(U) The Offeror shall not complete the representation in this provision if the Offeror has represented that it "does not provide covered telecommunications equipment or services as a part of its offered products or services to the Government in the performance of any contract, subcontract, or other contractual instrument" in the provision at FAR 52.204-26, *Covered Telecommunications Equipment or Services- Representation*, or in paragraph (v) of the provision at FAR 52.212-3, *Offeror Representations and Certifications-Commercial Items*.

(a) (U) *Definitions*. As used in this provision –

"(U) Covered telecommunications equipment or services", "critical technology", and "substantial or essential component" have the meanings provided in clause X52.204-17, *Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment*.

(b) (U) *Prohibition*. Section 889(a)(1)(A) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits the head of an executive agency on or after August 13, 2019, from procuring or obtaining, or extending or renewing a contract to procure or obtain, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. Contractors are not prohibited from providing –

- (1) (U) A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or
- (2) (U) Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.
- (c) (U) *Procedures*. The Offeror shall review the list of excluded parties in the System for Award Management (SAM) (<https://www.sam.gov>) for entities excluded from receiving federal awards for "covered telecommunications equipment or services".
- (d) (U) *Representation*. The Offeror represents that -
 - (U) It _ will, _ will not provide covered telecommunications equipment or services to the Government in the performance of any contract, subcontract or other contractual instrument resulting from this solicitation.
- (e) (U) *Disclosures*. If the Offeror has represented in paragraph (d) of this provision, that it "will" provide covered telecommunications equipment or services, the Offeror shall provide the following information as part of the offer:
 - (1) (U) A description of all covered telecommunications equipment and services offered (include brand; model number, such as original equipment manufacturer (OEM) number, manufacturer part number, or wholesaler number; and item description, as applicable);
 - (2) (U) Explanation of the proposed use of covered telecommunications equipment and services and any factors relevant to determining if such use would be permissible under the prohibition in paragraph (b) of this provision;
 - (3) (U) For services, the entity providing the covered telecommunications services (include entity name, unique entity identifier, and Commercial and Government Entity (CAGE) code, if known); and
 - (4) (U) For equipment, the entity that produced the covered telecommunications equipment (include entity name, unique entity identifier, CAGE code, and whether the entity was the OEM or a distributor, if known).
- (U) (End of provision)

X52.204-017 (U) Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment (AUG 2019)

(U) As prescribed by X4.2105-70(b), use the following clause in lieu of FAR clause 52.204-25, in all solicitations and contracts:

(U) PROHIBITION ON CONTRACTING FOR CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT (AUG 2019)

- (a) (U) *Definitions*. As used in this clause -
 - (U) "Covered foreign country" means The People's Republic of China.
 - (U) "Covered telecommunications equipment or services" means -
 - (1) (U) Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities);
 - (2) (U) For the purpose of public safety, security of Government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunication equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities);
 - (3) (U) Telecommunications or video surveillance services provided by such entities or using such equipment; or
 - (4) (U) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.
- "(U) Critical technology" means -
 - (1) (U) Defense articles or defense services included on the United States Munitions List set forth in the International Traffic in Arms Regulations under subchapter M of chapter I of title 22, Code of Federal Regulations;
 - (2) (U) Items included on the Commerce Control List set forth in Supplement No. 1 to part 774 of the Export Administration Regulations under subchapter C of chapter VII of title 15, Code of Federal Regulations, and controlled-
 - (i) (U) Pursuant to multilateral regimes, including for reasons relating to national security, chemical and biological weapons proliferation, nuclear nonproliferation, or missile technology; or

- (ii) (U) For reasons relating to regional stability or surreptitious listening;
 - (3) (U) Specially designed and prepared nuclear equipment, parts and components, materials, software, and technology covered by part 810 of title 10, Code of Federal Regulations (relating to assistance to foreign atomic energy activities);
 - (4) (U) Nuclear facilities, equipment, and material covered by part 110 of title 10, Code of Federal Regulations (relating to export and import of nuclear equipment and material);
 - (5) (U) Select agents and toxins covered by part 331 of title 7, Code of Federal Regulations, part 121 of title 9 of such Code, or part 73 of title 42 of such Code; or
 - (6) (U) Emerging and foundational technologies controlled pursuant to section 1758 of the Export Control Reform Act of 2018 (50 U.S.C. 4817).
- "(U) Substantial or essential component" means any component necessary for the proper function or performance of a piece of equipment, system, or service.
- (b) (U) *Prohibition.* Section 889(a)(1)(A) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits the head of an executive agency on or after August 13, 2019, from procuring or obtaining, or extending or renewing a contract to procure or obtain, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. The Contractor is prohibited from providing to the Government any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, unless an exception at paragraph (c) of this clause applies or the covered telecommunication equipment or services are covered by a waiver described in Federal Acquisition Regulation 4.2104.
 - (c) (U) *Exceptions.* This clause does not prohibit contractors from providing -
 - (1) (U) A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or
 - (2) (U) Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.
 - (d) (U) Reporting requirement.
 - (1) (U) In the event the Contractor 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 the Contractor is notified of such by a subcontractor at any tier or by any other source, the Contractor shall report the information in paragraph (d)(2) of this clause to the Contracting Officer. For indefinite delivery contracts, the Contractor shall report to the Contracting Officer for the indefinite delivery contract and the Contracting Officer(s) for any affected order.
 - (2) (U) The Contractor shall report the following information pursuant to paragraph (d)(1) of this clause
 - (i) (U) Within one business day from the date of such identification or notification: the contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.
 - (ii) (U) Within 10 business days of submitting the information in paragraph (d)(2)(i) of this clause: any further available information about mitigation actions undertaken or recommended. In addition, the Contractor shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.
 - (e) (U) *Subcontracts.* The Contractor shall insert the substance of this clause, including this paragraph (e), in all subcontracts and other contractual instruments, including subcontracts for the acquisition of commercial items.
- (U) (End of clause)

X52.209-003 (U) Organizational Conflict of Interest (JUL 2016)

(U) As prescribed in N9.507-2(a), insert the following clause in all X solicitations and contracts:

(U) ORGANIZATIONAL CONFLICT OF INTEREST (JUL 2016)

(a) (U) The offeror warrants, to the best of its knowledge and belief, that (1) there are no relevant facts that could give rise to organizational conflicts of interest (OCI), as defined in X 9.501; or (2) the offeror has disclosed all relevant information regarding any actual or potential OCI. Offerors are encouraged to inform the Contracting Officer of any potential conflicts of interest, including those involving contracts with other foreign or

domestic government organizations, before preparing their proposals to determine whether the Government will require mitigation of those conflicts. If the successful offeror was aware, or should have been aware, of an OCI before award of this contract and did not fully disclose that conflict to the Contracting Officer, the Government may terminate the contract for default.

(b) (U) If during contract performance the contractor discovers an OCI involving this contract, the contractor agrees to make an immediate and full disclosure in writing to the Contracting Officer. Such notification will include a description of the action the contractor and/or subcontractor has taken or proposes to take to avoid, neutralize, or mitigate the conflict. The contractor will continue contract performance until notified by the Contracting Officer of any contrary actions to be taken. The Government may terminate this contract for its convenience if it deems such termination to be in the best interest of the Government.

(c) (U) The contractor shall inform the Contracting Officer of any activities, efforts, or actions planned, entered into, or on-going by the contractor or any other corporate entity of the contractor, at the prime or sub-contract level, involving the review of information or providing any advice, assistance, or support to foreign or domestic government agencies, entities, or units outside of the X which may result in a perceived or actual OCI with any known X activity. The contractor shall provide detailed information to the Contracting Officer as to the specifics of the situation immediately upon its recognition. Based on the severity of the conflict, the Contracting Officer may direct the contractor to take certain actions, revise current work effort, or restrict the contractor's future participation in X contracts as may be necessary to appropriately neutralize, mitigate, or avoid the OCI.

(d) (U) If necessary to mitigate OCI concerns, or when directed to do so by the Contracting Officer, the contractor shall submit an OCI plan for approval. The plan must describe how the contractor will mitigate, neutralize, or avoid potential and/or actual conflicts of interest or unfair competitive advantages. The contractor shall attach a completed X Form X4-55, *OCI Plan Matrix*, to each new or revised OCI plan submitted to the Contracting Officer. After approval of the OCI plan, the contractor must conduct a yearly self-assessment and submit an annual certification of compliance with the terms of the plan signed by a corporate official at the level of Vice President or above. The contractor shall submit a revised OCI plan for approval whenever corporate, contractual, or personnel changes create or appear to create new OCI concerns, or when directed to do so by the Contracting Officer.

(e) (U) The contractor shall insert a clause containing all the requirements of this clause in all subcontracts for work similar to the services provided by the prime contractor.

(f) (U) Before this contract is modified to add new work or to significantly increase the period of performance, the contractor agrees to submit an OCI disclosure or representation if requested by the Government.

(g) (U) The contractor shall allow the Government to review the contractor's compliance with these provisions or require such self-assessments or additional certifications as the Government deems appropriate.

(U) (End of Clause)

X52.223-006 (U) Contractor Compliance With Environmental, Occupational Safety and Health, and System Safety Requirements (OCT 1997)

(U) As prescribed in X23.7102(b), use the following clause:

(U) CONTRACTOR COMPLIANCE WITH ENVIRONMENTAL, OCCUPATIONAL SAFETY AND HEALTH, AND SYSTEM SAFETY REQUIREMENTS (OCT 1997)

(a) (U) In performing work under this contract, the contractor shall comply with-

(1) (U) All applicable Federal, State, and local environmental, occupational safety and health, and system safety laws, regulations, policies and procedures in effect as of the date the contract is executed;

(2) (U) Any regulations, policies and procedures in effect at any Government facility where work will be performed;

(3) (U) Any contract specific requirements; and

(4) (U) Any Contracting Officer direction.

(b) (U) Conflicting Requirements. The contractor shall provide written notification to the Contracting Officer of any conflicts in requirements. The notification will describe the conflicting requirements and their source; provide an estimate of any impact to the contract's cost, schedule, and any other terms and conditions; and provide a recommended solution. The notification will also identify any external organizations that the Contracting Officer or the contractor may have to coordinate with in order to implement the solution. The Contracting Officer will review the notification and provide written direction. Until the Contracting Officer

issues that direction, the contractor will continue performance of the contract, to the extent practicable, giving precedence in the following order to requirements that originate from:

- (1) (U) Federal, state, and local laws, regulations, policies and procedures;
 - (2) (U) Government facility regulations, policies and procedures; and
 - (3) (U) Contract specific direction.
- (c) (U) Material Condition of Contract. Environmental, occupational safety and health, and system safety requirements are a material condition of this contract. Failure of the contractor to maintain and administer an environmental and safety program that is compliant with the requirements of this contract shall constitute grounds for termination for default.
- (d) (U) The Contractor shall include this clause in all subcontracts.
- (U) (End of clause)

X52.225-003 (U) Export Controlled Items (NOV 2018)

(U) As prescribed in X25.7103(a), use the following clause:

(U) EXPORT-CONTROLLED ITEMS (NOV 2018)

(a) (U) *Definition*. "Export-controlled items," as used in this clause, means items subject to the Export Administration Regulations (EAR) (15 CFR Parts 730-774) or the International Traffic in Arms Regulations (ITAR) (22 CFR Parts 120-130). The term includes:

- (1) (U) "Defense items," defined in the Arms Export Control Act, 22 U.S.C. 2778(j)(4)(A), as defense articles, defense services, and related technical data, and further defined in the ITAR, 22 CFR Part 120.
- (2) (U) "Items," defined in the EAR as "commodities", "software", and "technology," terms that are also defined in the EAR, 15 CFR 772.1.

(b) (U) The Contractor shall comply with all applicable laws and regulations regarding export-controlled items, including, but not limited to, the requirement for contractors to register with the Department of State in accordance with the ITAR. The Contractor shall consult with the Department of State regarding any questions relating to compliance with the ITAR and shall consult with the Department of Commerce regarding any questions relating to compliance with the EAR.

(c) (U) The Contractor's responsibility to comply with all applicable laws and regulations regarding export-controlled items exists independent of, and is not established or limited by, the information provided by this clause.

(d) (U) Nothing in the terms of this contract adds, changes, supersedes, or waives any of the requirements of applicable Federal laws, Executive orders, and regulations, including but not limited to—

- (1) (U) The Export Administration Act of 1979, as amended (50 U.S.C. App. 2401, et seq.);
- (2) (U) The Arms Export Control Act (22 U.S.C. 2751, et seq.);
- (3) (U) The International Emergency Economic Powers Act (50 U.S.C. 1701, et seq.);
- (4) (U) The Export Administration Regulations (15 CFR Parts 730-774);
- (5) (U) The International Traffic in Arms Regulations (22 CFR Parts 120-130); and
- (6) (U) Executive Order 13222, as extended.

(e) (U) The Contractor shall include the substance of this clause, including this paragraph (e), in all subcontracts.

(U) (End of clause)

X52.227-001 Technical Data and Computer Software: Commercial Items (JUL 2018)

(a) *Definitions*. As used in this clause:

(1) *Business data* means recorded information, regardless of the form or method of the recording, including specific business data contained in a computer database, of a financial, administrative, cost or pricing, or management nature, or other information incidental to contract administration or protected from disclosure under the Freedom of Information Act, 5 U.S.C. §552(b)(4).

(2) *Commercial item* means:

(i) Any item, other than real property, but inclusive of computer software, that is of a type customarily used by the general public or by non-governmental entities for purposes other than governmental purposes, and—

(A) Has been sold, leased, or licensed to the general public; or

(B) Has been offered for sale, lease, or license to the general public;

(ii) Any item that evolved from an item described in paragraph (i) of this definition through advances in technology

- or performance, and that is not yet available in the commercial marketplace, but will be available in the commercial marketplace in time to satisfy the delivery requirements under a Government solicitation or contract;
- (iii) Any item that would satisfy a criterion expressed in paragraphs (i) or (ii) of this definition, but for—
- (A) Modifications of a type customarily available in the commercial marketplace; or
- (B) Minor modifications of a type not customarily available in the commercial marketplace made to meet Federal Government requirements. “Minor modifications” means modifications that do not significantly alter the non-governmental function or essential physical characteristics of an item or component, or change the purpose of a process or computer software. Factors to be considered in determining whether a modification is minor include the value and size of the modification and the comparative value and size of the final product. Dollar values and percentages may be used as guideposts, but are not conclusive evidence that a modification is minor;
- (iv) Any combination of items meeting the requirements of paragraphs (i), (ii), (iii), or (v) of this definition that are of a type customarily combined and sold in combination to the general public;
- (v) Installation services, maintenance services, repair services, training services, and other services if—
- (A) Such services are procured for support of an item referred to in paragraph (i), (ii), (iii), or
- (iv) of this definition, regardless of whether such services are provided by the same source or at the same time as the item; and
- (B) The source of such services provides similar services contemporaneously to the general public under terms and conditions similar to those offered to the Federal Government;
- (vi) Services of a type offered and sold competitively in substantial quantities in the commercial marketplace based on established catalog or market prices for specific tasks performed or specific outcomes to be achieved, and under standard commercial terms and conditions. For purposes of these services—
- (A) “Catalog price” means a price included in a catalog, price list, schedule, or other form that is regularly maintained by the manufacturer or vendor, is either published or otherwise available for inspection by customers, and states prices at which sales are currently, or were last, made to a significant number of buyers constituting the general public; and
- (B) “Market prices” means current prices that are established in the course of ordinary trade between buyers and sellers free to bargain, and that can be substantiated through competition or from sources independent of the offerors.
- (vii) Any item, combination of items, or service referred to in paragraphs (i) through (vi) of this definition, notwithstanding the fact that the item, combination of items, or service is transferred between or among separate divisions, subsidiaries, or affiliates of a contractor; or
- (viii) A non-developmental item, if the procuring agency determines the item was developed exclusively at private expense and sold in substantial quantities, on a competitive basis, to multiple State and local governments.
- (3) *Computer database* 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.
- (4) *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.
- (5) *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. The term does not include computer databases or computer software documentation.
- (6) *Computer software documentation* means owner’s manuals, user’s manuals, installation instructions, operating instructions, and other similar items, regardless of storage medium, that explain the capabilities of the computer software or provide instructions for using or maintaining the computer software.
- (7) *Form, fit, and function data* means technical data that describes the required overall physical, functional, and performance characteristics (along with the qualification requirements, if applicable) of an item, component, or process to the extent necessary to permit identification of physically and functionally interchangeable items. For computer software it means data identifying source, functional characteristics, and performance requirements, but specifically excludes the source code, algorithms, processes, formulas, and flow charts of the software.
- (8) *Technical data* means recorded information (regardless of the form or method of the recording, including computer databases) of a scientific or technical nature (including computer software documentation). The term includes recorded information of a scientific or technical nature that is included in computer databases. (See 41 U.S.C. §403(8)). This term does not include computer software or business data.
- (b) License in Commercial Technical Data.
- (1) The Government shall have the unrestricted right to use, modify, reproduce, release, perform, display, or disclose technical data relating to a commercial item, and to permit others to do so, that:

- (i) Have been provided to the Government or others without restrictions on use, modification, reproduction, release, or further disclosure other than a release or disclosure resulting from the sale, transfer, or other assignment of interest in the technical data to another party, or the sale or transfer of some or all of a business entity or its assets to another party;
 - (ii) Are form, fit, and function data;
 - (iii) Are a correction or change to technical data furnished to the contractor by the Government;
 - (iv) Are necessary for operation, maintenance, installation, or training (other than detailed manufacturing or process data); or
 - (v) Have been provided to the Government under a prior contract or licensing agreement through which the Government has acquired the rights to use, modify, reproduce, release, perform, display, or disclose technical data without restrictions.
- (2) Except as provided in paragraph (b)(1), the Government may use, modify, reproduce, release, perform, display, or disclose technical data within the Government only.
- (3) The Government shall not use the technical data to manufacture additional quantities or release, perform, display, disclose, or authorize use of the technical data outside the Government without the contractor's written permission unless a release, disclosure, or permitted use is necessary for emergency repair or overhaul of the commercial items furnished under this contract, or for performance of work by Government support contractors.
- (c) License in Commercial Computer Software. Commercial computer software and commercial computer software documentation shall be acquired under the licenses customarily provided to the public unless such licenses are inconsistent with federal procurement law or do not otherwise satisfy user needs. The Government shall have only the rights specified in the license under which the commercial computer software and commercial computer software documentation was obtained. Such license shall be attached to and made a part of this contract.
- (d) Additional License Rights. The contractor and its subcontractors are not required to provide the Government additional rights to use, modify, reproduce, release, perform, display, or disclose technical data or computer software. However, if the Government desires to obtain additional rights in technical data or computer software, the contractor agrees to promptly enter into negotiations with the Contracting Officer to determine whether acceptable terms for transferring such rights can be reached. All technical data and computer software in which the contractor grants the Government additional rights shall be listed or described in a special license agreement made part of this contract. The license shall specifically enumerate the additional rights granted the Government.
- (e) Release From Liability. The contractor agrees that the Government, and other persons to whom the Government may have released or disclosed technical data or computer software delivered or otherwise furnished under this contract, shall have no liability for any release or disclosure of technical data or computer software that are not marked to indicate that such data are licensed data subject to use, modification, reproduction, release, performance, display, or disclosure restrictions.

X52.227-002 Rights in Technical Data and Computer Software: Noncommercial Items (FEB 2011)

This clause is inapplicable to non-deliverables. It also does not apply to items which are contract data requirements but have not yet been delivered to the Government.

(a) Definitions. As used in this clause:

- (1) *Business data* means recorded information, regardless of the form or method of the recording, including specific business data contained in a computer database, of a financial, administrative, cost or pricing, or management nature, or other information incidental to contract administration or protected from disclosure under the Freedom of Information Act, 5 U.S.C. §552(b)(4).
- (2) *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.
- (3) *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.
- (4) *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.
- (5) *Computer software documentation* means owner's manuals, user's manuals, installation instructions, operating instructions, and other similar items, regardless of storage medium, that explain the capabilities of the computer software or provide instructions for using or maintaining the software.

(6) *Delivery* means the formal act of transferring technical data, computer software, or business data to the Government as expressly delineated in the contract (including, but not limited to the Contract Data Requirements List, the statement of work, or elsewhere in the contract), in accordance with a specified schedule.

(7) *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.

(8) *Developed* means that an item, component, or process, or an element of computer software has been shown through sufficient analysis or test to demonstrate to one of ordinary skill in the applicable art that there is a reasonable probability that the item, component, process, or element of computer software will work or perform its intended application, function, or purpose.

(9) *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. Private expense determinations should be made at the lowest practicable level.

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

(11) *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.

(12) *Form, fit, and function data* means technical data that describes the required overall physical, functional, and performance characteristics (along with the qualification requirements, if applicable) of an item, component, or process to the extent necessary to permit identification of physically and functionally interchangeable items. For computer software it means data identifying source, functional characteristics, and performance requirements, but specifically excludes the source code, algorithms, processes, formulas, and flow charts of the software.

(13) *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.

(14) *Technical data* means recorded information (regardless of the form or method of the recording, including computer databases) of a scientific or technical nature (including computer software documentation). The term includes recorded information of a scientific or technical nature that is included in computer databases (See 41 U.S.C. §403(8)). This term does not include computer software or business data.

(b) Government Rights in Technical Data and Computer Software.

(1) *Government purpose rights* means the rights to use, modify, reproduce, release, perform, display, or disclose technical data or computer software within the Government without restriction, to release or disclose technical data or computer software outside the Government, and to authorize persons to whom release has been made to use, modify, reproduce, perform, or display that technical data or computer software, provided that the recipient exercises such rights for Government purposes only.

(i) The Government shall have Government purpose rights for a five-year period after contract completion or for such other period as may be mutually negotiated. Upon expiration of the five-year or other negotiated period, the Government shall have unlimited rights in the technical data or computer software.

(ii) The contractor has the exclusive right, including the right to license others, to use technical data or computer software in which the Government has obtained Government purpose rights under this contract, for any commercial purpose during the time period specified in paragraph (b)(1)(i) above and/or in the Government purpose rights legend prescribed by this clause.

(iii) The Government shall have Government purpose rights in technical data or computer software delivered under this contract that:

(A) Pertain to items, components, computer software, or processes developed with mixed funding, except when the Government is entitled to unlimited rights;

(B) Were created with mixed funding in the performance of a contract that does not specifically require the development, manufacture, construction, or production of items, components, computer software, or processes;

(C) The contractor has previously or is currently providing with Government purpose rights under another Government contract; or

(D) The parties have agreed shall be delivered with Government purpose rights.

(iv) The Government may release the technical data or computer software to any third party as described in paragraph (b)(1) above if:

(A) The receiving development contractor(s) or subcontractor(s) contract arrangements are subject to clauses *Protection of Information*, and, *Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends*;

(B) The receiving support contractor(s) or subcontractor(s) contract arrangements are subject to clauses *Support Contractor Corporate Non-Disclosure Agreement*, and *Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends*. When clause *Support Contractor Corporate Non-Disclosure Agreement* is used, additional non-disclosure, confidentiality, proprietary information, or similar agreements may be required by the owner of the technical data or computer software, but only on an exception basis, e.g., when such third party is or may be a direct competitor of the owner of the technical data or computer software. In the event an additional agreement is deemed necessary, the Contracting Officer shall be notified prior to its execution.

(C) The Government and contractor agree to cooperate to ensure that execution of any additional agreements shall not delay or inhibit performance of this contract. Such agreements shall not otherwise restrict any rights due the Government under this contract;

(2) *Limited rights* means the rights to use, modify, reproduce, release, perform, display, or disclose technical data, in whole or in part, within the Government.

(i) The Government may not, without the written permission of the party asserting limited rights, release or disclose the technical data outside the Government, use the technical data for manufacture, or authorize the technical data to be used by another party, except that the Government may reproduce, release, or disclose such data, or authorize the use or reproduction of the data by persons outside the Government if such reproduction, release, disclosure, or use is:

(A) Necessary for emergency repair and overhaul. In each instance of disclosure outside the Government, the Government shall:

(I) Prohibit the further reproduction, release, or disclosure of such technical data;

(II) Notify the party who has granted limited rights that such reproduction or use by, or release or disclosure to particular contractors or subcontractors is necessary;

(III) Insert clause, *Protection of Information, and Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends*, into the contractual arrangement with the receiving development contractors;

(IV) Insert clause *Support Contractor Corporate Non-Disclosure Agreement*, and *Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends*, into the contractual arrangement with the receiving support contractor(s). An additional non-disclosure, confidentiality, proprietary information, or similar agreement may be required by the owner of the technical data, but only on an exception basis, e.g., when such third party is or may be a direct competitor of the owner of the technical data. In the event an additional agreement is deemed necessary, the Contracting Officer shall be notified prior to its execution; and

(V) Require the recipient of limited rights technical data necessary for emergency repair or overhaul to destroy such technical data and any copies in its possession promptly following completion of the emergency repair/overhaul, and to notify the contractor that it has been destroyed; or

(B) Is in the interest of the Government when a release or disclosure of technical data (other than detailed manufacturing or process data) to, or use of such data by, a foreign government is required for evaluation or information purposes, and is subject to a prohibition on further release, disclosure, or use of the technical data.

(ii) The Government and the contractor agree to cooperate to ensure that execution of necessary NDAs shall not delay or inhibit performance of this contract. Said agreements shall not otherwise restrict any rights due the Government under this contract.

(iii) Except as otherwise provided under paragraphs (b)(6)(i)-(xi), the Government shall have limited rights in technical data delivered under this contract that:

(A) Pertain to items, components, or processes developed exclusively at private expense and marked with the limited rights legends prescribed by this clause;

(B) 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; or

(C) The parties have agreed shall be delivered with limited rights.

(iv) The contractor and its subcontractors are not required to provide the Government additional rights to use, modify, reproduce, release, perform, or display, technical data furnished to the Government with limited rights. However, if the Government desires to obtain additional rights in technical data in which it has limited rights, the contractor agrees to promptly enter into negotiations with the Contracting Officer to determine whether there are acceptable terms for

transferring such rights. All technical data in which the contractor has granted the Government additional rights shall be listed or described in a license agreement made part of the contract. The license shall enumerate the additional rights granted the Government in such items.

(3) *Prior Government rights* means that technical data or computer software that will be delivered, furnished, or otherwise provided to the Government under this contract, in which the Government has previously obtained rights shall be delivered, furnished, or provided with the pre-existing rights, unless—

(i) The parties have agreed otherwise; or

(ii) Any restrictions on the Government's rights to use, modify, reproduce, release, perform, display, or disclose the data have expired or no longer apply.

(4) *Restricted rights* apply only to non-commercial computer software, and means the Government's rights to:

(i) Use a computer program with one computer at one time. The program may not be accessed by more than one terminal or central processing unit or time-shared unless otherwise permitted by this contract;

(ii) Transfer a computer program to another Government agency without the further permission of the contractor if the transferor destroys all copies of the program and related computer software documentation in its possession and notifies the licensor of the transfer. Transferred programs remain subject to the provisions of this clause;

(iii) Make the minimum number of copies of the computer software required for safekeeping (archive), backup, or modification purposes;

(iv) Modify computer software, provided that the Government may—

(A) Use the modified software only as provided in paragraphs (b)(4)(i) and (iii) of this clause; and

(B) Not release or disclose the modified software except as provided in paragraphs (b)(4)(ii), (v) and (vi) of this clause;

(v) Permit contractors or subcontractors performing service contracts in support of this or a related contract to use computer software to diagnose and correct deficiencies in a computer program, to modify computer software to enable a computer program to be combined with, adapted to, or merged with other computer programs, or when necessary to respond to urgent tactical situations, provided that—

(A) The Government notifies the party which has granted restricted rights that a release or disclosure to particular contractors or subcontractors is necessary;

(B) The receiving development contractor(s) or subcontractor(s) contract arrangements are subject to clauses *Protection of Information*, and *Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends*;

(C) The receiving support contractor(s) or subcontractor(s) contract arrangements are subject to clauses *Support Contractor Corporate Non-Disclosure Agreement*, and *Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends*. When clause *Support Contractor Corporate Non-Disclosure Agreement* 008 is used, additional non-disclosure, confidentiality, proprietary information, or similar agreements may be required by the owner of the technical data or computer software, but only on an exception basis, e.g., when such third party is or may be a direct competitor of the owner of the technical data or computer software. In the event an additional agreement is deemed necessary, the Contracting Officer shall be notified prior to its execution.

(D) The Government and contractor agree to cooperate to ensure that execution of any additional agreements shall not delay or inhibit performance of this contract. Such agreements shall not otherwise restrict any rights due the Government under this contract;

(E) The Government shall not permit the recipient to decompile, disassemble, or reverse engineer the software, or use software decompiled, disassembled, or reverse engineered by the Government pursuant to paragraph (b)(4)(iv) of this clause, for any other purpose; and

(F) Such use is subject to the limitation in paragraph (b)(4)(i) of this clause.

(vi) Permit contractors or subcontractors performing emergency repairs or overhaul of items or components of items procured under this or a related contract to use the computer software when necessary to perform the repairs or overhaul, or to modify the computer software to reflect the repairs or overhaul made, provided that—

(A) The receiving development contractor(s) or subcontractor(s) contract arrangements are subject to clauses *Protection of Information*, and *Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends*;

(B) The receiving support contractor(s) or subcontractor(s) contract arrangements are subject to clauses *Support Contractor Corporate Non-Disclosure Agreement*, and *Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends*. When clause *Support Contractor Corporate Non-Disclosure Agreement* is used, additional non-disclosure, confidentiality, proprietary information, or similar agreements may be required by the owner of the technical data or computer software, but only on an exception basis, e.g., when such third party is or may be a direct competitor of the owner of the technical data or computer software.

In the event an additional agreement is deemed necessary, the Contracting Officer shall be notified prior to its execution.

(C) The Government and contractor agree to cooperate to ensure that execution of any additional agreements shall not delay or inhibit performance of this contract. Such agreements shall not otherwise restrict any rights due the Government under this contract.

(D) The Government shall not permit the recipient to decompile, disassemble, or reverse engineer the software, or use software decompiled, disassembled, or reverse engineered by the Government pursuant to paragraph (b)(4)(iv) of this clause, for any other purpose.

(vii) The Government shall have restricted rights in noncommercial computer software required to be delivered or otherwise provided to the Government under this contract that was developed exclusively at private expense.

(viii) The contractor, its subcontractors, or suppliers are not required to provide the Government additional rights in noncommercial computer software delivered or otherwise provided to the Government with restricted rights.

However, if the Government desires to obtain additional rights in such software, the contractor agrees to promptly enter into negotiations with the Contracting Officer to determine whether there are acceptable terms for transferring such rights. All noncommercial computer software in which the contractor has granted the Government additional rights shall be listed or described in a license agreement made part of the contract (see paragraph (b)(5) of this clause). The license shall enumerate the additional rights granted the Government.

(5) *Specifically negotiated license rights* means a license granted by the contractor wherein the standard license rights granted to the Government under paragraphs (b)(1), (2), (3), (4), and (6), including the period during which the Government shall have government purpose rights in technical data or computer software, are modified by mutual agreement to provide such rights as the parties consider appropriate, but does not provide the Government lesser rights than limited rights for technical data or restricted rights for computer software unless mutually agreed by the contracting parties. Any rights so negotiated shall be identified in a license agreement made part of this contract and incorporated into Section J.

(6) *Unlimited rights* means the 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. The Government shall have unlimited rights in:

(i) Technical data pertaining to an item, component, or process, or pertaining to software code or a software program that has been or will be developed exclusively with Government funds;

(ii) Computer software developed exclusively with Government funds;

(iii) Form, fit, and function data;

(iv) Technical data that is necessary for installation, operation, maintenance, or training purposes (other than detailed manufacturing or process data);

(v) Studies, analyses, test data, or similar data when the study, analysis, test, or similar work was specified as an element of performance;

(vi) Computer software documentation required to be delivered under this contract;

(vii) Technical data 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;

(viii) Corrections or changes to technical data or computer software furnished by the Government;

(ix) Technical data or computer software that is otherwise publicly available or has been released or disclosed by the contractor or subcontractor without restriction on the further use, release or disclosure, other than a release or disclosure resulting from the sale, transfer, or other assignment of interest in the technical data or computer software to another party, or the sale or transfer of some or all of a business entity or its assets to another party;

(x) Technical data or computer software in which the Government has obtained unlimited rights under another Government contract or as a result of negotiations;

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

(c) For business data marked as proprietary or with similar legends, the Government may duplicate, use, and disclose such data within the Government solely for evaluation, verification, validation, reporting, and program monitoring and management purposes in connection with this contract. The Government may disclose such business data to its support contractors identified in clause *Enabling Clause for Prime and Support Contractor Relationships*, for these same purposes if and when:

(1) The receiving development contractor(s) or subcontractor(s) contract arrangements are subject to clauses *Protection of Information*, and *Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends*;

- (2) The receiving support contractor(s) or subcontractor(s) contract arrangements are subject to clauses *Support Contractor Corporate Non-Disclosure Agreement*, and *Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends*. When clause entitled *Support Contractor Corporate Non-Disclosure Agreement*, is used, additional non-disclosure, confidentiality, proprietary information, or similar agreement may be required by the owner of the business data, but only on an exception basis, e.g., when such third party is or may be a direct competitor of the owner of the technical data or computer software. In the event an additional agreement is deemed necessary, the Contracting Officer shall be notified prior to its execution.
- (i) The Government and contractor agree to cooperate to ensure that execution of any additional agreements shall not delay or inhibit performance of this contract. Such agreements shall not otherwise restrict any rights due the Government under this contract;
- (d) **Other Information That Cannot Easily Be Categorized.** For information that cannot easily be categorized as technical data or business data (e.g., program schedules, Earned Value Management System reports, and program management reports), and is of sufficient detail to show a contractor's confidential business practices, shall be identified before or as soon as practicable after contract award. The parties will agree as to the parties' rights and obligations in such data and how it is to be marked, handled, used, and disclosed to third parties. Such agreement shall be in writing, attached to, and made a part of the contract.
- (e) **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.
- (f) **Rights in Derivative Computer Software or Computer Software Documentation.** The Government shall retain its rights in the unchanged portions of any computer software or computer software documentation delivered under this contract that the contractor uses to prepare, or includes in, derivative computer software or computer software documentation.
- (g) **Contractor Rights in Technical Data and Computer Software.** The contractor retains all rights not granted to the Government.
- (h) **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 as defined in paragraphs (b)(1), (2), (4) and (6) of this clause, 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.
- (i) **Assertions of Other than Unlimited Rights.**
- (1) This paragraph does not apply to restrictions based solely on copyright.
- (2) Except as provided in paragraph (i)(3) of this clause, technical data and/or computer software that the contractor asserts should be furnished to the Government with restrictions on use, release, or disclosure are identified in an attachment to this contract (the "Attachment"). The contractor shall not deliver any technical data or computer software with restrictive markings unless the technical data or computer software is listed in the Attachment.
- (3) The contractor may make other assertions of other than unlimited rights in technical data and/or computer software after contract award. Such assertions must be based on new information or inadvertent omission unless the inadvertent omission would have materially affected the source selection decision in the reasonable determination of the Contracting Officer (in which case no assertion based on an inadvertent omission may be allowed).
- (4) The contractor shall submit such post-contract award assertion(s) to the Contracting Officer as soon as practicable but prior to the scheduled date for delivery of the technical data or computer software. All new assertions submitted after award shall be added to the Attachment in a timely fashion after submission of the assertion to the Contracting Officer. An official authorized to contractually obligate the contractor must sign the assertion(s). The contractor assertion(s) shall include the information specified in paragraph (d) of clause *Identification and Assertion of Use, Release, or Disclosure Restrictions*.
- (5) The Contracting Officer may request the contractor to provide sufficient information to enable the Government to evaluate the contractor's assertion(s). The Contracting Officer reserves the right to add the contractor's assertions to the Attachment and validate any listed assertion at a later date in accordance with the procedures outlined in clause *Validation of Restrictive Markings on Technical Data and Computer Software*.
- (j) **Marking Requirements for Delivered Technical Data or Computer Software.** 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 delivered to the Government by marking such technical data and computer software. Such markings shall be in the form of legends found in paragraphs (k)(1) through (4), or as otherwise authorized in this

contract, (e.g., pursuant to an agreement for the marking of mixed data pursuant to paragraph (d) of this clause). The notice of copyright prescribed under 17 U.S.C. §401 or §402 (with language, if applicable, noting that the Government contributed funding and therefore has rights in the copyrighted material)is also allowed.

(k) 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, on the title/cover page of the printed material containing technical data or computer software for which restrictions are asserted. Mark each subsequent sheet of data with an abbreviated marking(s) to indicate the applicable restrictive rights assertion(s), and refer to the title/cover page for additional information. 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.

(1) Government Purpose Rights Markings. 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)(1) of clause *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)

(2) Limited Rights Markings. Technical data 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 are restricted by paragraph (b)(2) of clause, *Rights in Technical Data and Computer Software: Noncommercial Items*, contained in the contract identified above. Any reproduction of technical data, 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 must promptly notify the above-named contractor.

(End of legend)

(3) Restricted Rights Markings. Computer software delivered or otherwise furnished to the Government with restricted rights shall be marked with the following legend:

Restricted Rights

Contract No: _____

Contractor Name: _____

Contractor Address: _____

The Government's rights to use, modify, reproduce, release, perform, display, or disclose this computer software are restricted by paragraph (b)(4) of clause, *Rights in Technical Data and Computer Software: Noncommercial Items*, contained in the contract identified above. Any reproduction of computer software or portions thereof marked with this legend must also reproduce the markings. Any person, other than the Government, who has been provided access to such computer software must promptly notify the above-named contractor.

(End of legend)

(4) Special License Rights Markings. Technical data and computer software in which the Government's rights stem from a specifically negotiated license shall be marked with the following legend:

Special License Rights

Contract No: _____

Contractor Name: _____

Contractor Address: _____

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

(End of legend)

(l) 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 a technical data or computer software deliverable under this contract, and those restrictions are still applicable, the contractor may mark such technical data or computer software with the appropriate restrictive conforming legend for which the technical data or computer software qualified under the prior contract or license. The marking procedures in paragraphs (j) and (k) of this clause shall be followed.

(m) Removal of Unjustified Markings. Notwithstanding any other provision of this contract concerning inspection and acceptance, if any technical data or computer software delivered or otherwise provided under this contract are marked with the notices specified at (k)(1)-(4) of this clause, and the use of such is not authorized by this clause, the Government may ignore, or at the contractor's expense, correct or strike the marking if, in accordance with the procedures in clause *Validation of Restrictive Markings on Technical Data and Computer Software*, of this contract, the technical data or computer software is delivered or otherwise provided with a restrictive marking determined to be unjustified.

(n) Removal of Nonconforming Markings. A nonconforming marking is a marking placed on technical data or computer software delivered to the Government under this contract that is not in a format authorized by this contract. Correction of nonconforming markings is not subject to the *Validation of Restrictive Markings on Technical Data and Computer Software* clause of this contract. To the extent practicable, the Government shall return technical data or computer software marked with nonconforming markings to the contractor and provide the contractor an opportunity to correct or strike the nonconforming marking at no cost to the Government. If the contractor fails to correct the nonconforming marking and return the corrected technical data or computer software within 60 days following the contractor's receipt of the data, the Contracting Officer may ignore, or at the contractor's expense, remove, correct, or strike any nonconforming marking.

(o) Unmarked Technical Data or Computer Software. Technical data or computer software delivered to the Government under this contract without restrictive markings as set forth herein shall be presumed to have been delivered with unlimited rights and may be released or disclosed without restriction. However, to the extent the technical data or computer software has not been disclosed without restriction outside the Government, the contractor may request, within six months after delivery of such technical data or computer software (or a longer time approved by the Contracting Officer for good cause shown), permission to have notices placed on qualifying technical data or computer software at the contractor's expense, and the Contracting Officer may agree to do so if the contractor:

- (1) Identifies the technical data or computer software on which the omitted notice is to be placed;
- (2) Demonstrates that the omission of the notice was inadvertent;
- (3) Establishes that the use of the proposed notice is authorized; and
- (4) Acknowledges that the Government has no liability with respect to the disclosure, use, or reproduction of any such technical data or computer software made prior to the addition of the notice or resulting from the omission of the notice.

(p) 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.

(q) Limitation on Charges for Rights in Technical Data or Computer Software.

(1) 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 or computer software to be delivered under this contract when—

(i) The Government has acquired, by any means, the same or greater rights in the technical data or computer software; or

(ii) The technical data or computer software is available to the public without restrictions.

(2) The limitation in paragraph (q)(1) of this clause—

- (i) Includes costs charged by a subcontractor or supplier, at any tier, or costs incurred by the contractor to acquire rights in subcontractor or supplier technical data or computer software if the subcontractor or supplier has been paid for such rights under any other Government contract or under a license conveying the rights to the Government; and
- (ii) Does not include the reasonable costs of reproducing, handling, or mailing the documents or other media in which the technical data or computer software will be delivered.

(r) Applicability to Subcontractors or Suppliers.

- (1) The contractor shall ensure that the rights afforded its subcontractors and suppliers under 10 U.S.C. §2320, 10 U.S.C. §2321, and the identification, assertion, and delivery processes of paragraph (i) of this clause are recognized and protected.
- (2) Whenever any technical data or computer software for noncommercial items is to be obtained from a subcontractor or supplier for delivery to the Government under this contract, the contractor shall flow down this clause to all of its subcontractors, vendors or suppliers (at any tier), and require its subcontractors, vendors, or suppliers to do so, without alteration, except to identify the parties. No other clause shall be used to enlarge or diminish the Government's, the contractor's, or a higher-tier subcontractor's or supplier's rights in a subcontractor's or supplier's technical data or computer software.
- (3) Technical data or computer software required to be delivered by a subcontractor or supplier shall normally be delivered to the next higher-tier contractor, subcontractor, or supplier. However, when there is a requirement in the prime contract for technical data or computer software which may be submitted with other than unlimited rights by a subcontractor or supplier, then said subcontractor or supplier may fulfill its requirement by submitting such technical data or computer software directly to the Government, rather than through a higher-tier contractor, subcontractor, or supplier.
- (4) The contractor and higher-tier subcontractors or suppliers shall not use their power to award contracts as economic leverage to obtain rights in technical data or computer software from their subcontractors or suppliers.
- (5) In no event shall the contractor use its obligation to recognize and protect subcontractor or supplier rights in technical data or computer software as an excuse for failing to satisfy its contractual obligation to the Government.

X52.227-008 Commercial Technical Data and Computer Software Licensing—Order of Precedence (OCT 2014)

This clause applies when the contract requires delivery of commercial item technical data, computer software, or computer software documentation. The term "Licensor" means "Seller" and the term "Licensee" means "Buyer." The Addendum required by paragraph (b) is incorporated into the contract.

(a) Upon delivery of any commercial item technical data, computer software, computer software documentation, or any combination thereof, to the Government contained in any CLIN or CDRL, the following provisions shall take precedence over conflicting provisions in any license associated with those items, notwithstanding any provisions in those licenses to the contrary through renewals or extensions, as needed, to this contract:

- (1) The Government shall have the right to use, perform, display, or disclose that commercial item technical data, in whole or in part, within the Government.
- (2) The Government may not, without the written permission of the Licensor, release or disclose the commercial item technical data and commercial computer software outside the Government, use the commercial item technical data and computer software for manufacture, or authorize the commercial item technical data and computer software to be used by another party, except that the Government may reproduce, release, or disclose such data and software or authorize the use or reproduction of such data and software by persons outside the Government (including their subcontractors) to perform their respective contract(s) as identified in X52.209-006.
- (3) The Licensor agrees that the Government shall have the right to unilaterally add or delete contractors from those supporting the (VARIABLE) [*Name of contract*] contract at any time, and its exercise of that right shall not entitle the Licensor to an equitable adjustment or a modification of any other terms and conditions of this contract.
- (4) The duration of this license shall be, at a minimum, for the period of performance of this contract (including options, if exercised) unless the license specifies a longer period.
- (5) License rights related to technical data described in, and granted to the U.S. Government under clause X52.227-001 shall apply to all such technical data associated with delivered computer software including, but not limited to, user's manuals, installation instructions, and operating instructions.
- (6) Disputes arising between the Licensee and the U.S. Government pertaining to the provisions of the License shall be subject to the Contract Disputes Act. Furthermore, the jurisdiction and forum for disputes hereunder upon delivery to the U.S. Government shall be the Armed Services Board of Contract Appeals (ASBCA) or the U.S. Court of Federal Claims (COFC), as appropriate.
- (7) By law, the U.S. Government cannot enter into any indemnification agreement where the Government's liability is indefinite, indeterminate, unlimited, and in violation of the Anti-Deficiency Act; therefore, any such indemnification provision in this License shall be void.
- (8) In the event the Licensee files a claim with the U.S. Government on behalf of the Licensor and prevails in a dispute with the Government relating to that claim, the Licensor agrees that damages and remedies awarded shall exclude attorney's fees.
- (9) Subject to the security requirements set forth in this contract, and upon receiving written consent by the U.S. Government, the Licensor may be permitted to enter Government installations for purposes such as software usage audits or other forms of inspection.

(10) The items provided hereunder may be installed and used at any U.S. Government installation worldwide at which (VARIABLE) [*Program/contract name*] equipment and/or software is located consistent with the provisions of the contract between the U.S. Government and the Licensee.

(11) Under no circumstances shall terms of the License or any modifications thereto renew automatically so as to obligate funds in advance of funds being appropriated in contravention of the Anti-Deficiency Act.

(12) The Licensor shall comply with, and all delivered items shall conform to, all applicable Government security/classification rules and regulations applicable to this agreement, in particular those set forth in the applicable DD Form 254 (Department of Defense Contract Security Classification Specification).

(13) The Licensor understands that the ultimate purpose of the Licensee entering into this License with the Licensor is for the Licensor to supply to the U.S. Government a critical component of a weapons system whose continued sustainment is mandated by Federal law (10 U.S.C. § 2281, 42 U.S.C. § 14712). Accordingly, should the U.S. Government use, release or disclose the items described in this License in a manner inconsistent with the terms of this License, the U.S. Government shall not be required to de-install and stop using those items or remedy will be limited to monetary damages.

(14) In the event of inconsistencies between the License and Federal law, Federal law shall apply.

(15) The Government shall not be required to comply with the terms and conditions of any License that is inconsistent with any applicable laws, regulations, or policies pursuant to export controlled items.

(16) Any claim the Licensee files with the U.S. Government on behalf of the Licensor, and any claim the U.S. Government files with the Licensor, shall be submitted within the period specified in FAR §52.233-01 (“Disputes”).

(b) Subcontractor Flow-down. The contractor (“Licensee”) shall include the following clause in any agreement between it and its subcontractors (“Licensors”) that require the delivery of commercial item technical data, computer software, or computer software documentation, and this clause shall be in effect during the period of performance of this contract or into perpetuity for perpetual licenses:

This Addendum is entered into between _____ (“Licensee”) and _____ (“Licensor”) and relates to the commercial item technical data, computer software, or computer software documentation (“Items”) licensed to the Licensee by the Licensor through the Licensee’s License Agreement (“Agreement”), and this Addendum is incorporated by reference into the Agreement. The Addendum terms will come into effect if and when the Agreement is transferred to the Government. All references to such Items shall include all software updates (e.g., software maintenance patches, version changes, new releases) and future substitutions made by the Licensor. Upon delivery of that/those Items, Licensor and Licensee agree that the following provisions in this Addendum shall take precedence over conflicting provisions, if any, in the Agreement notwithstanding any provisions in the Agreement to the contrary:

(1) License rights related to technical data granted to the U.S. Government under clause X52.227-001(b)(1) shall apply to all technical data associated with delivered computer software including, but not limited to, user’s manuals, installation instructions, and operating instructions.

(2) Disputes arising between the Licensee and the U.S. Government pertaining to the provisions of the Agreement shall be subject to the Contract Disputes Act. Furthermore, the jurisdiction and forum for disputes hereunder upon delivery to the U.S. Government shall be the Armed Services Board of Contract Appeals (ASBCA) or the U.S. Court of Federal Claims (COFC), as appropriate.

(3) By law, the U.S. Government cannot enter into any indemnification agreement where the Government’s liability is indefinite, indeterminate, unlimited, and in violation of the Anti-Deficiency Act; therefore, any such indemnification provision in this Agreement shall be void.

(4) In the event the Licensee files a claim with the U.S. Government on behalf of the Licensor and prevails in a dispute with the Government relating to that claim, the Licensor agrees that damages and remedies awarded shall exclude attorney’s fees.

(5) Upon receiving written consent by the U.S. Government, the Licensor may be permitted to enter Government installations for purposes such as software usage audits or other forms of inspection.

(6) The Items provided hereunder may be installed and used at any U.S. Government installation worldwide consistent with the provisions of the contract between the U.S. Government and the Licensee (e.g., limitations on number of executing instances of software, number of users, other processing volume limitations).

(7) Under no circumstances shall terms of the Agreement or any modifications thereto renew automatically so as to obligate funds in advance of funds being appropriated in contravention of the Anti-Deficiency Act.

(8) Licensor shall comply with, and all delivered Items shall conform to, all applicable Government security/classification rules and regulations applicable to this Agreement, in particular those set forth in the applicable DD Form 254 (Department of Defense, Contract Security Classification Specification).

(9) Licensor understands that the ultimate purpose of the Licensee entering into this Agreement with the Licensor is for the Licensor to supply to the U.S. Government a critical component of a weapons system whose continued

sustainment is mandated by Federal law (10 U.S.C. § 2281, 42 U.S.C. § 14712). Accordingly, should the U.S. Government use, release, or disclose the Items described in this Agreement in a manner inconsistent with the terms of this Agreement, the U.S. Government shall not be required to uninstall and stop using those Items or return such Items to the Licensee.

(10) In the event of inconsistencies between the Agreement and Federal law, Federal law shall apply.

X52.227-009 Deferred Delivery of Technical Data or Computer Software (MAY 2005)

The Government may identify technical data or computer software (as defined in clause X52.227-001 or X52.227-002) for deferred delivery at any time during contract performance by listing such technical data or computer software in an attachment to Section J of this contract titled —Deferred Delivery. The Government may require delivery of the items identified for deferred delivery up to three (3) years after either acceptance of all deliverables or contract termination, whichever is later. This clause will be flowed down to all subcontractors.

X52.227-010 Deferred Ordering of Technical Data or Computer Software (SEP 2013)

(a) The Government may defer ordering technical data, computer software (as defined in clause X52.227-001 or X52.227-002), or other information not easily categorized (as defined in clause X52.227-002(d) and mutually agreed to by the contractual parties) that is generated during the performance of this contract for a period of up to three (3) years after either acceptance of all deliverables or contract termination, whichever is later.

(b) The categories of technical data, computer software, and other information not easily categorized that is subject to deferred ordering under this clause may be:

(1) Incorporated into the contract in the Contract Data Requirements List item that describes the Data Accession List attached to the contract; or

(2) Identified by the Government via a process agreed to by the parties and incorporated as an attachment to the contract in Section J prior to contract award.

(c) When the technical data, computer software, or other information not easily categorized is ordered, the contractor shall be reasonably compensated for converting the data or computer software into the prescribed form, for reproduction, and for delivery.

(d) The Government's rights to use said technical data and computer software shall be pursuant to the *Rights in Technical Data and Computer Software* clause(s) of this contract (X52.227-001 and X52.227-002).

(e) This clause shall be flowed down to all subcontractors.

X52.227-017 (U) Patent Rights - Ownership by the Contractor (Large Business)(APR 2009)

(U) As prescribed in X27.303(b), use the following clause

(U) PATENT RIGHTS - OWNERSHIP BY THE CONTRACTOR (LARGE BUSINESS) (APR 2009)

(a) (U) Definitions. As used in this clause -

(U) "Invention" means -

(1) (U) Any invention or discovery that is or may be patentable or otherwise protectable under Title 35 of the United States Code; or

(2) (U) Any variety of plant that is or may be protectable under the Plant Variety Protection Act (7 U.S.C. §2321, et seq.).

(U) "Made" means -

(1) (U) When used in relation to any invention other than a plant variety, means the conception or first actual reduction to practice of the invention; or

(2) (U) When used in relation to a plant variety, means that the contractor has at least tentatively determined that the variety has been reproduced with recognized characteristics.

(U) "Nonprofit organization" means -

(1) (U) A university or other institution of higher education;

(2) (U) An organization of the type described in the Internal Revenue Code at 26 U.S.C. §501(c)(3) and exempt from taxation under 26 U.S.C. 501(a); or

(3) (U) Any nonprofit scientific or educational organization qualified under a State nonprofit organization statute.

(U) "Practical application" means -

(1)(i) (U) To manufacture, in the case of a composition or product;

(ii) (U) To practice, in the case of a process or method; or

(iii) (U) To operate, in the case of a machine or system; and

(2) (U) In each case, under such conditions as to establish that -

- (i) (U) The invention is being utilized; and
 - (ii) (U) The benefits of the invention are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.
- (U) "Subject invention" means any invention of the contractor made in the performance of work under this contract.
- (b) (U) Contractor's rights.
 - (1) (U) Ownership. The contractor may elect to retain ownership of each subject invention throughout the world in accordance with the provisions of this clause.
 - (2) (U) License.
 - (i) (U) The contractor shall retain a nonexclusive royalty-free license throughout the world in each subject invention to which the Government obtains title, unless the contractor fails to disclose the invention within the times specified in paragraph (c) of this clause. The contractor's license -
 - (A) (U) Extends to any domestic subsidiaries and affiliates within the corporate structure of which the contractor is a part;
 - (B) (U) Includes the right to grant sublicenses to the extent the contractor was legally obligated to do so at the time of contract award; and
 - (C) (U) Is transferable only with the approval of the agency, except when transferred to the successor of that part of the contractor's business to which the invention pertains.
 - (ii) (U) The agency -
 - (A) (U) May revoke or modify the contractor's domestic license to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusivelicense submitted in accordance with 37 CFR Part 404 and agency licensing regulations;
 - (B) (U) Will not revoke the license in that field of use or the geographical areas in which the contractor has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public; and
 - (C) (U) May revoke or modify the license in any foreign country to the extent the contractor, its licensees, or the domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.
 - (iii) (U) Before revoking or modifying the license, the agency -
 - (A) (U) Will furnish the contractor a written notice of its intention to revoke or modify the license; and
 - (B) (U) Will allow the contractor 30 days (or such other time as the funding agency may authorize for good cause shown by the contractor) after the notice to show cause why the license should not be revoked or modified.
 - (iv) (U) The contractor has the right to appeal, in accordance with 37 CFR Part 404 and agency regulations, concerning the licensing of Government-owned inventions, any decision concerning the revocation or modification of the license.
 - (c) (U) Contractor's obligations.
 - (1) (U) The contractor shall -
 - (i) (U) Disclose, in writing, each subject invention to the Contracting Officer within two months after the inventor discloses it in writing to contractor personnel responsible for patent matters, or within 6 months after the contractor first becomes aware that a subject invention has been made, whichever is earlier;
 - (ii) (U) Include in the disclosure -
 - (A) (U) The inventor(s) and the contract under which the invention was made;
 - (B) (U) Sufficient technical detail to convey a clear understanding of the invention; and
 - (C) (U) Any publication, on sale (i.e., sale or offer for sale), or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication; and
 - (iii) (U) After submission of the disclosure, promptly notify the Contracting Officer of the acceptance of any manuscript describing the invention for publication and of any on sale or public use.
 - (2) (U) The contractor shall elect in writing whether or not to retain ownership of any subject invention by notifying the Contracting Officer at the time of disclosure or within 8 months of disclosure, as to those countries (including the United States) in which the contractor will retain ownership. However, in any case where publication, on sale, or public use has initiated the one-year statutory period during which valid patent protection can be obtained in the United States, the agency may shorten the period of election of title to a date that is no more than 60 days prior to the end of the statutory period.
 - (3) (U) The contractor shall -
 - (i) (U) File either a provisional or a nonprovisional patent application on an elected subject invention within one year after election, provided that in all cases the application is filed prior to the end of any statutory period

wherein valid patent protection can be obtained in the United States after a publication, on sale, or public use;

- (ii) (U) File a nonprovisional application within 10 months of the filing of any provisional application; and
- (iii) (U) File patent applications in additional countries or international patent offices within either 10 months of the first filed patent application (whether provisional or nonprovisional) or 6 months from the date the Commissioner of Patents grants permission to file foreign patent applications where such filing has been prohibited by a Secrecy Order.

(4) (U) The contractor may request extensions of time for disclosure, election, or filing under paragraphs (c)(1), (2), and (3) of this clause. The Contracting Officer will normally grant the extension unless there is reason to believe the extension would prejudice the Government's interests.

(d) (U) Government's rights.

(1) (U) Ownership. The contractor shall assign to the agency, upon written request, title to any subject invention -

(i) (U) If the contractor elects not to retain title to a subject invention;

(ii) (U) If the contractor fails to disclose or elect the subject invention within the times specified in paragraph (c) of this clause and the agency requests title within 60 days after learning of the contractor's failure to report or elect within the specified times;

(iii) (U) In those countries in which the contractor fails to file patent applications within the times specified in paragraph (c) of this clause, provided that, if the contractor has filed a patent application in a country after the times specified in paragraph (c) of this clause, but prior to its receipt of the written request of the agency, the contractor shall continue to retain ownership in that country; and

(iv) (U) In any country in which the contractor decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in reexamination or opposition proceeding on, a patent on a subject invention.

(2) (U) License. If the contractor retains ownership of any subject invention, the Government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice, or have practiced for or on behalf of the United States, the subject invention throughout the world.

(e) (U) Contractor action to protect the Government's interest.

(1) (U) The contractor shall execute or have executed and promptly deliver to the agency all instruments necessary to -

(i) (U) Establish or confirm the rights the Government has throughout the world in those subject inventions in which the contractor elects to retain ownership; and

(ii) (U) Assign title to the agency when requested under paragraph (d)(1) of this clause and enable the Government to obtain patent protection for that subject invention in any country.

(2) (U) The contractor shall -

(i) (U) Require, by written agreement, its employees, other than clerical and non-technical employees, to -

(A) (U) Disclose each subject invention promptly in writing to personnel identified as responsible for the administration of patent matters, so that the contractor can comply with the disclosure provisions in paragraph (c) of this clause; and

(B) (U) Provide the disclosure in the contractor's format, which should require, as a minimum, the information required by paragraph (c)(1) of this clause;

(ii) (U) Instruct its employees, through employee agreements or other suitable educational programs, as to the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or statutory foreign bars; and

(iii) (U) Execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions.

(3) (U) The contractor shall notify the Contracting Officer of any decisions not to file a nonprovisional patent application, continue the prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceeding on a patent, in any country, not less than 30 days before the expiration of the response or filing period required by the relevant patent office.

(4) (U) The contractor shall include, within the specification of any United States nonprovisional patent application and any patent issuing thereon covering a subject invention, the following statement: "This invention was made with Government support under (identify the contract) awarded by (identify the agency). The Government has certain rights in this invention."

(5) (U) The contractor shall -

(i) (U) Establish and maintain active and effective procedures to ensure that subject inventions are

promptly identified and disclosed to contractor personnel responsible for patent matters;

(ii) (U) Include in these procedures the maintenance of -

(A) (U) Laboratory notebooks or equivalent records and other records as are reasonably necessary to document the conception and/or the first actual reduction to practice of subject inventions; and

(B) (U) Records that show that the procedures for identifying and disclosing the inventions are followed; and

(iii) (U) Upon request, furnish the Contracting Officer a description of these procedures for evaluation and for determination as to their effectiveness.

(U) Avoid royalty charges on acquisitions involving Government funds, including funds derived through the Government's Military Assistance Program or otherwise derived through the Government;

(ii) (U) Refund any amounts received as royalty charges on the subject inventions in acquisitions for, or on behalf of, the Government; and

(iii) (U) Provide for the refund in any instrument transferring rights in the invention to any party.

(7) (U) The contractor shall furnish to the Contracting Officer the following:

(i) (U) Interim reports every 12 months (or any longer period as may be specified by the Contracting Officer) from the date of the contract, listing subject inventions during that period and stating that all subject inventions have been disclosed or that there are no subject inventions.

(ii) (U) A final report, within three months after completion of the contracted work, listing all subject inventions or stating that there were no subject inventions, and listing all subcontracts at any tier containing a patent rights clause or stating that there were no subcontracts.

(8)(i) (U) The contractor shall promptly notify the Contracting Officer in writing upon the award of any subcontract at any tier containing a patent rights clause by identifying -

(A) (U) The subcontractor;

(B) (U) The applicable patent rights clause;

(C) (U) The work to be performed under the subcontract; and

(D) (U) The dates of award and estimated completion.

(ii) (U) The contractor shall furnish, upon request, a copy of the subcontract, and no more frequently than annually, a listing of the subcontracts that have been awarded.

(9) (U) In the event of a refusal by a prospective subcontractor to accept one of the clauses specified in paragraph (l)(1) of this clause, the contractor -

(i) (U) Shall promptly submit a written notice to the Contracting Officer setting forth the subcontractor's reasons for the refusal and other pertinent information that may expedite disposition of the matter; and

(ii) (U) Shall not proceed with that subcontract without the written authorization of the Contracting Officer.

(10) (U) The contractor shall provide to the Contracting Officer, upon request, the following information for any subject invention for which the contractor has retained ownership:

(i) (U) Filing date.

(ii) (U) Serial number and title.

(iii) (U) A copy of any patent application (including an English-language version if filed in a language other than English).

(iv) (U) Patent number and issue date.

(11) (U) The contractor shall furnish to the Government, upon request, an irrevocable power to inspect and make copies of any patent application file.

(f) (U) Reporting on utilization of subject inventions.

(1) (U) The contractor shall -

(i) (U) Submit upon request periodic reports no more frequently than annually on the utilization of a subject invention or on efforts in obtaining utilization of the subject invention that are being made by the contractor or its licensees or assignees;

(ii) (U) Include in the reports information regarding the status of development, date of first commercial sale or use, gross royalties received by the contractor, and other information as the agency may reasonably specify; and

(iii) (U) Provide additional reports that the agency may request in connection with any march-in proceedings undertaken by the agency in accordance with paragraph (h) of this clause.

(2) (U) To the extent permitted by law, the agency shall not disclose the information provided under paragraph (f)(1) of this clause to persons outside the Government without the contractor's permission, if the data or information is considered by the contractor or its licensee or assignee to be "privileged and confidential" (see 5 U.S.C. 552(b)(4)) and is so marked.

(g) (U) Preference for United States industry. Notwithstanding any other provision of this clause, the contractor agrees that neither the contractor nor any assignee shall grant to any person the exclusive right to use or sell any subject invention in the United States unless the person agrees that any products embodying the subject invention or produced through the use of the subject invention will be manufactured substantially in the United States. However, in individual cases, the agency may waive the requirement for an exclusive license agreement upon a showing by the contractor or its assignee that -

(1) (U) Reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States; or

(2) (U) Under the circumstances, domestic manufacture is not commercially feasible.

(h) (U) March-in rights. The contractor acknowledges that, with respect to any subject invention in which it has retained ownership, the agency has the right to require licensing pursuant to 35 U.S.C. 203 and 210(c), 37 CFR 401.6, and any supplemental regulations of the agency in effect on the date of contract award.

(i) (U) Other inventions. Nothing contained in this clause shall be deemed to grant to the Government any rights with respect to any invention other than a subject invention.

(j) (U) Examination of records relating to inventions.

(1) (U) The Contracting Officer or any authorized representative shall, until 3 years after final payment under this contract, have the right to examine any books (including laboratory notebooks), records, and documents of the contractor relating to the conception or first reduction to practice of inventions in the same field of technology as the work under this contract to determine whether -

(i) (U) Any inventions are subject inventions;

(ii) (U) The contractor has established procedures required by paragraph (e)(5) of this clause; and

(iii) (U) The contractor and its inventors have complied with the procedures.

(2) (U) If the Contracting Officer learns of an unreported contractor invention that the Contracting Officer believes may be a subject invention, the contractor shall be required to disclose the invention to the agency for a determination of ownership rights.

(3) (U) Any examination of records under this paragraph (j) shall be subject to appropriate conditions to protect the confidentiality of the information involved.

(k) (U) Withholding of payment (this paragraph does not apply to subcontracts).

(1) (U) Any time before final payment under this contract, the Contracting Officer may, in the Government's interest, withhold payment until a reserve not exceeding \$50,000 or 5 percent of the amount of the contract, whichever is less, is set aside if, in the Contracting Officer's opinion, the contractor fails to -

(i) (U) Establish, maintain, and follow effective procedures for identifying and disclosing subject inventions pursuant to paragraph (e)(5) of this clause;

(ii) (U) Disclose any subject invention pursuant to paragraph (c)(1) of this clause;

(iii) (U) Deliver acceptable interim reports pursuant to paragraph (e)(7)(i) of this clause; or

(iv) (U) Provide the information regarding subcontracts pursuant to paragraph (e)(8) of this clause.

(2) (U) The reserve or balance shall be withheld until the Contracting Officer has determined that the contractor has rectified whatever deficiencies exist and has delivered all reports, disclosures, and other information required by this clause.

(3) (U) The Government will not make final payment under this contract before the contractor delivers to the Contracting Officer -

(i) (U) All disclosures of subject inventions required by paragraph (c)(1) of this clause;

(ii) (U) An acceptable final report pursuant to paragraph (e)(7)(ii) of this clause; and

(iii) (U) All past due confirmatory instruments.

(4) (U) The Contracting Officer may decrease or increase the sums withheld up to the maximum authorized in paragraph (k)(1) of this clause. No amount shall be withheld under this paragraph while the amount specified by this paragraph is being withheld under other provisions of the contract. The withholding of any amount or the subsequent payment thereof shall not be construed as a waiver of any Government right.

(l) (U) Subcontracts.

(1) (U) The contractor -

(i) (U) Shall include the substance of the Patent Rights - Ownership by the Contractor clause set forth at 52.227-11 of the Federal Acquisition Regulation (FAR), in all subcontracts for experimental, developmental, or research work to be performed by a small business concern or nonprofit organization; and

(ii) (U) Shall include the substance of this clause, including this paragraph (l), in all other subcontracts for experimental, developmental, or research work, unless a different patent rights clause is required by FAR 27.303.

(2) (U) For subcontracts at any tier -

(i) (U) The patents rights clause included in the subcontract shall retain all references to the Government and shall provide to the subcontractor all the rights and obligations provided to the contractor in the clause. The contractor shall not, as consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions; and

(ii) (U) The Government, the contractor, and the subcontractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and the Government with respect to those matters covered by this clause. However, nothing in this paragraph is intended to confer any jurisdiction under the Contract Disputes Act in connection with proceedings under paragraph (h) of this clause.

(U) (End of clause)

X52.231-004 (U) Prohibition on Contractor Acquisition of Personal Property for Use by Government Employees (JUL 2004)

(U) As prescribed by X31.205-70(b), insert the following clause in all solicitations and contracts:

(U) PROHIBITION ON CONTRACTOR ACQUISITION OF PERSONAL PROPERTY FOR USE BY GOVERNMENTEMPLOYEES (JUL 2004)

(a) (U) The contractor shall not purchase personal property directly chargeable under this contract specifically for transfer to and use by a Government employee. This prohibition includes, but is not limited to, notebook and desktop computers, personal digital assistants, pagers, and cellular telephones.

(b) (U) The contractor shall notify the Contracting Officer in writing within 30 days whenever any item of personal property acquired by the contractor is transferred to a Government employee and removed from the contractor's property records. This notification must include the following information for each item transferred:

(1) (U) Item description, including manufacturer, model, and serial number;

(2) (U) Acquisition cost and date;

(3) (U) Name and organization of the Government employee receiving the item; and

(4) (U) Date of transfer.

(U) (End of clause)

X52.244-001 (U) Subcontracts (Educational Institutions)(MAR 2015)

(U) In accordance with X44.271(b), insert the following in solicitations and contracts:

(U) SUBCONTRACTS (EDUCATIONAL INSTITUTIONS) (MAR 2015)

(a) (U) The contractor shall obtain written authorization from the Contracting Officer prior to award, extension, or renewal of a subcontract with an educational institution.

(b) (U) The contractor shall obtain a letter from an official with authority to approve contracts on behalf of the subcontractor that acknowledges the subcontractor's involvement with the Intelligence Community and approves the proposed contractual relationship. The contractor shall submit a copy of this letter to the Contracting Officer along with a description of the work to be subcontracted and a technical justification documenting the necessity in relation to the project as a condition for obtaining the required written authorization. The sample letter at X4.7501(e)(2) may be used to fulfill this requirement.

(c) (U) The requirements of this clause must be included in all subcontracts.

(U) (End of clause)

X52.245-001 (U) Contract-Accountable Government Property: Responsibilities, Use, Reporting, and Administration (JUL 2018)

(U) As prescribed in X45.107-70(a), insert the following clause in solicitations and contracts:

(U) CONTRACT-ACCOUNTABLE GOVERNMENT PROPERTY: RESPONSIBILITIES, USE, REPORTING, AND ADMINISTRATION (JUL 2018)

(a) (U) General Requirements. The contractor shall maintain adequate property control procedures, records, and a system of identification for all Government property accountable to this contract in accordance with FAR 52.245-1 and this clause. If FAR and X guidance conflict, the X will have precedence. The terms "Government property," "contract accountable property," "Government equipment," and "contractor-acquired property/material" are used interchangeably and equally within this clause. All items provided to the contractor, including equipment, material, and facilities are equally considered to be Government property.

(b) (U) Definitions. As used in this clause:

(1) (U) *Agency-Peculiar Property (AP)* means Government property, consisting of end items and integral components of military weapons systems, along with the related peculiar support equipment which is not

readily available as a commercial item.

(2) (U) *Equipment (EQ)* means a tangible asset that is functionally complete for its intended purpose, durable, nonexpendable, needed for the performance of a contract. Equipment is not intended for sale and does not ordinarily lose its identity or become a part of another article when put into use (e.g., machine tools, furniture, vehicles, and test equipment, including their accessory or auxiliary items). Equipment does not include information technology (IT) items as defined below.

(3) (U) *Government Furnished Material (GFM)* means property provided to a contractor by the Government that may be incorporated into or attached to a deliverable end item or that may be consumed or expended in performing a contract. GFM includes assemblies, expendable components, parts, raw and processed materials, and small tools and supplies that may be consumed in normal use in performing a contract. GFM does not include equipment, special tooling, special test equipment, real property, or information technology that has been incorporated into a higher assembly or an item incorporated into an item of special test equipment.

(4) (U) *Government-Owned, Contractor-Acquired Material (CAM)* means property acquired or otherwise provided by the contractor to which the Government has title, and that may be incorporated into or attached to a deliverable end item or that may be consumed or expended in performing a contract. CAM includes assemblies, expendable components, parts, raw and processed materials, and small tools and supplies that may be consumed in normal use in performing a contract. CAM does not include equipment, special tooling, special test equipment, real property, or information technology equipment that has been incorporated into a higher assembly or an item incorporated into a higher assembly or an item incorporated into an item of special test equipment.

(5) (U) *Information Technology (IT)* means equipment or interconnected systems or subsystems of equipment that is used in the automated acquisition, storage, analysis, evaluation, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information. IT includes computers, ancillary equipment (including imaging peripherals, input, output, and storage devices necessary for security and surveillance), peripheral equipment designed to be controlled by the central processing unit of a computer, software, firmware, and similar procedures, services (including support services), and related resources. IT does not include equipment that contains imbedded information technology that is used as an integral part of the product, but the principal function of which is not the acquisition, storage, analysis, evaluation, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information.

(6) (U) *Land (L)* means land, land rights, and improvements to land.

(7) (U) *Real Property (RP)* means buildings, improvements to buildings, utility distribution systems, prefabricated structures, and fixed equipment required for the operation of a building which is permanently attached to and a part of the building and cannot be removed without cutting into the walls, ceilings, or floors. Examples of fixed equipment required for functioning of a building include plumbing, heating and lighting equipment, elevators, central air conditioning systems, and built-in safes and vaults. Foundations and work necessary for installing special tooling, special test equipment, or plant equipment are not included. This category includes acquisitions and improvements of structures and facilities other than buildings, such as power production facilities and distribution systems, reclamation and irrigation facilities, flood control and navigation aids, utility systems (heating, sewage, water and electrical) when they serve several buildings or structures, communication systems, traffic aids, roads and bridges, and nonstructural improvements such as sidewalks, parking areas, and fences. RP also includes X-funded costs of improvements to leased buildings, structures, and facilities, as well as easements and right-of-way, where X is the lessee or the cost is charged to a X contract. Contractors shall report leasehold improvements with a unit acquisition cost of \$1,000,000 or more and a useful life of two years or more.

(8) (U) *Property management system* means the contractor's system or systems for managing and controlling Government property.

(9) (U) *Significant deficiency* means a system shortcoming that materially affects the reliability of required management information produced by the system.

(10) (U) *Special Test Equipment (STE)* means a single or multipurpose integrated test unit engineered, designed, fabricated, or modified to accomplish special purpose testing in performing a contract. STE consists of items or assemblies of equipment including foundations and similar improvements necessary for installing special test equipment, and standard or general purpose items or components that are interconnected and interdependent so as to become a new functional entity for special testing purposes. STE does not include material, special tooling, real property, and equipment items used for general testing purposes or property that with relatively minor expense can be made suitable for general purpose use.

(11) (U) *Special Tooling (ST)* means jigs, dies, fixtures, molds, patterns, taps, gauges, and all components of these items including foundations and similar improvements necessary for installing special tooling, and which are of such a specialized nature that without substantial modification or alteration their use is limited to the development

or production of particular supplies or parts thereof or to the performance of particular services. ST does not include assets.

(12) (U) *Summary Record* means a single document or data record used to account for components and details of special (small) tooling and/or equipment that do not require tagging (e.g., furniture and body armor) with a unit cost less than \$1,000. Summary records cannot be used for items requiring calibration, property requiring tagging (barcodes), or for classified or sensitive property.

(c) (U) Property Analyst. The Contracting Officer has delegated property administration authority to an X Property Analyst.

(d) (U) Contractor Property Representatives. The contractor shall provide the name, address, and telephone number of the company official responsible for establishing and maintaining control of Government property under this contract to the Contracting Officer and the assigned X Property Analyst within 30 days after receipt of this contract and upon assignment of a replacement official. Subcontractors in possession of Government property accountable to this contract shall provide contact information for their property managers to the prime contractor.

(e) (U) Government Property List. The Government Property List in Section J of the solicitation and the resulting contract identifies all Government property offered to the contractor on a no-charge-for-use basis to perform this contract and the dates of availability for each item. Post-award, the inventory of Government property accountable to this contract is maintained in the Electronic Procurement Exchange/ Property Management Module (Epx/PMM) based on the contractor's quarterly property reports. After receipt of the contractor's initial quarterly property report, the Contracting Officer may delete the Government Property List from the contract.

(f) (U) Property Transfers. The Government can direct the transfer of contract-accountable property between contracts. All transfers must be coordinated between the losing and gaining Contracting Officers and Property Analysts, and by the COTRs, Associate Property Management Officers, and other Program Office personnel as appropriate. The Property Analyst will evaluate each transfer to ensure that the gaining contract includes the appropriate Government property clauses (52.245-1, 52.245-9 and X52.245-001), assist in validating the gaining contract requirement, and verify that the transfer will not adversely impact the losing contract. Transfers between contracts must be documented using a DD Form 1149, a Contracting Officer letter, or a contract modification. This documentation shall serve as the only record necessary to document transfers. When multiple items are transferred, a listing of items with all data elements prescribed in the *X User's Guide* must be attached to the transfer document. The contractor must obtain approval of both the gaining and losing Contracting Officers or designees before property transfers occur, except for contractor-acquired material with a unit cost less than \$10,000 transferred within an approved Material Management and Accounting System (MMAS). If requested by the X Property Analyst, the contractor shall notify the X Property Analyst when such MMAS transfers are executed.

(g) (U) Government Property Accountable to Other Contracts.

(1) (U) The contractor may use Government property in their possession and accountable to another X contract for the performance of this contract on a rent-free, non-interference use (RFNIU) basis if approved in writing by the Contracting Officers for both contracts.

The contractor may also be authorized to use Government property in their possession accountable to a non-X contract if approved in writing by the Contracting Officers for both contracts. Requests for RFNIU must contain a liability provision from the requesting contract, and stipulate that:

(i) (U) The property will be used on a strictly rent-free, non-interference basis;

(ii) (U) Use will not impact the owning program;

(iii) (U) The property will be returned upon request from the owning contract to meet its urgent needs;

(iv) (U) The form, fit, and function of the property will not be altered without written approval from the owning Contracting Officer; and

(v) (U) The property will be controlled and accounted for at all times.

(2) (U) RFNIU transactions must comply with the terms and conditions of both contracts as well as with any provisions in the Contracting Officer's approval letter. Material is not eligible for RFNIU.

(h) (U) Title. Title to all Government-furnished property and all contractor acquired property which has been reimbursed under the contract remains vested with the Government. Upon completion or termination of this contract, the Contractor shall submit to the Contracting Officer and Property Analyst a list of all property acquired under the contract during the contract period. The list shall describe each item, including the manufacturer, model number, part number, serial number, date acquired, cost, location, and condition, and shall be submitted to the X Property Analyst within 60 calendar days after completion or termination of the contract.

(i) (U) Promotional Items. Stand-alone promotional items received from a vendor in conjunction with a Government purchase, whether as Government-furnished property or contractor-acquired property, must be accounted for as Government property in the contractor's Property Management System (PMS). If the contractor

has a valid need to use the promotional items to fulfill contractual requirements, the items shall be managed as contract-accountable property. If there is no valid need for the items under the contract, the contractor shall disposition the items as directed by the Contracting Officer.

(j) (U) Audits and Analyses.

(1) (U) The X Property Analysts will audit/analyze the contractor's processes, controls, policies, accountability, and administration of Government property in accordance with FAR and X requirements. Failure of the contractor to maintain an adequate property management system may result in revocation of the Government's assumption of risk by the Contracting Officer.

(2) (U) Support Property Administration for subcontractors and alternate locations will be performed in accordance with FAR 45.502 and 45.503, and applicable X provisions. When an X prime contractor is also performing as a subcontractor on another X contract, the X Property Analysts will, when appropriate, include any property accountable to that subcontract in their analysis of the prime contractor. This support property administration applies to the property analysis and represents no change to the prime contractor to subcontractor relationship with respect to plant clearance, Loss, Damage, Destruction, or Theft (LDDT), and property reporting.

(k) (U) Reporting.

(1) (U) Quarterly Reports. The contractor shall submit quarterly reports of all property accountable to this contract and in the possession of the contractor or subcontractors. Reports shall be prepared in accordance with the *X User's Guide*, and the following guidance:

(i) (U) Submit reports not later than the 15th day after each of the following reporting periods:

- > First Quarter: 1 September -30 November
- > Second Quarter: 1 December - 28/29 February
- > Third Quarter: 1 March - 31 May
- > Annual Report: 1 June - 31 August

(ii) (U) Each report must be submitted electronically by uploading full line-item detail for all contract-accountable property, regardless of value, through the X web portal on X Contractor Wide-Area Network (CWAN). X serves as the primary portal for the submission of contract information, including property data, into Epx/PMM. Reports may be submitted via other means if approved by the X Property Analyst.

(iii) (U) Prime contractors shall include all contract-accountable property in the possession of their subcontractors in each property report. Subcontractors will not submit property reports directly to the X for their subcontracts. Contractors without access to X shall forward the subcontractor information to the X Property Analyst via email.

(iv) (U) Each tagged item of contract-accountable property must be assigned a Program Code to identify the X program under which the item was originally acquired, or to designate the item as "non-program." These codes are listed in the *X User's Guide*. Non-program property is contract-accountable property acquired for general, administrative, or support activities. Program property comprises contract-accountable property purchased to support the acquisition of a satellite, command and control system, data-processing system, or space launch. It includes sensitive assets known as "specials," and property funded by X to conduct research and development activities. Such equipment is typically purchased for a specific research and development project and has no future use beyond that project.

(v) (U) The contractor shall retain documents which support the data in their property reports for the periods specified in FAR Subpart 4.7 or for the life of the asset, whichever is longer. For each non-program tagged item (excluding material) with a value of \$1,000,000 or more (capital asset) acquired during thereporting period, the contractor must upload an electronic copy of the invoice or other valuation documentation specified below.

(vi) (U) The contractor shall retain acceptable supporting documentation for each contract-accountable non-program capital asset. Acceptable supporting documentation includes the original invoice or purchase order with the corresponding receiving report. For fabricated items, a document certified by the contractor showing the total labor cost of the item (total labor hours multiplied by the applicable labor rates) and the itemized cost of materials is acceptable. The contractor is not required to support the cost of bench stock inventory items such as nuts and bolts.

(vii) (U) If no supporting documentation is available for a non-program capital asset, the valuation should be estimated based on catalogs, like items, industrial or government engineering estimates, or instructions provided by the X Property Analyst. This estimate will be certified by the contractor property manager and include the following information:

- > Contract Number;
- > Property Identification Number;
- > Description of property;
- > Acquisition date or date placed in service or receive date;

- > Acquisition value; and
 - > Detailed basis of estimate.
- (viii) (U) For each non-program item with a value of \$1,000,000 or more acquired or manufactured during the reporting period, the contractor must upload an electronic copy of the invoice or other valuation documentation with the next quarterly property report.
- (ix) (U) Changes to these reporting requirements, including changes in frequency, style, substance, and level of detail, may be made at any time during the performance of this contract at no change in contract value. When changes in Federal Accounting Standards and OMB reporting requirements occur, contractors may also be required to submit supplemental information with this report. Failure to provide required reporting may result in termination of this contract, suspension of payment by the Government until required reporting is received, or other action as deemed appropriate by the Contracting Officer.
- (2) (U) Subcontractor Property Reports.
- (i) (U) The prime contractor shall ensure that the following information is included in the quarterly property reports for all X contract-accountable property in the possession of subcontractors:
- > Subcontractor company name;
 - > Prime contract number;
 - > Subcontract number;
 - > Complete listing of all tagged property;
 - > Location of contract-accountable property, to include building, room, city, and state; and
 - > Total quantity and dollar value for all CAM and GFM.
- (ii) (U) The subcontractor property report details shall be included in the quarterly property report through the X web portal or submitted via email to the X Property Analyst.
- (iii) (U) In addition to the quarterly reporting requirements described above, each prime contractor shall submit a detailed spreadsheet containing the information in section (i) with their third quarter property report.
- (3) (U) Inventory Reports. The contractor shall periodically conduct a physical inventory of contract-accountable property in accordance with leading Industry practices, standards and procedures. The X Property Analyst will approve the frequency and method to be used by the contractor for the physical inventory process. Under a manual inventory system, the property inventoried shall be tagged or marked in a manner that indicates that the item has been inventoried. The tags used are normally color-coded or identify the current year, and should be designed to last through the inventory cycle. The contractor shall submit the results of each physical inventory (to include all inventories performed by the prime contractor and each subcontractor) to the X Property Analyst not later than 60 days after inventory completion. The contractor shall also post the inventory results to their property records.
- (4) (U) Final (Zero) Property Report. After completion of the contract period of performance and within 30 days after disposition of all contract-accountable property under an X contract, the prime contractor shall submit a final zero property report through the X web portal. Each subcontractor that had possession of Government property accountable to this contract shall report a final zero property report to the prime contractor. Prime contractors without access to X shall submit the report directly to the X Property Analyst certifying the disposition of all contract-accountable property and providing along with documentation supporting the transfer or disposal of all contractor inventory (e.g., SF1428, DD 1149).
- (l) (U) Reutilization and Disposal.
- (1) (U) Reutilization. Government property that has had no activity should be reviewed annually by contractor and Government personnel to determine whether reutilization is possible. The X Property Analyst should work in concert with the contractors to ensure that the Program Offices have sufficient time to determine use inside or outside the organization. Government property is not to be stored, retained, or held by the contractor without proper authority from the Government or as specified by contract.
- (2) (U) Disposal. Once inactive Government property has been determined to be excess to contract requirements, the contractor shall screen it against all in-house Government contracts prior to screening by the X Property Analyst. In addition to the requirements in FAR 52.245-1, the contractor shall be held to a 120-day standard for plant clearance cases (PCC) unless circumstances dictate otherwise. The X Property Analyst will process and track all PCC using Epx/PMM. The contractor shall not close any PCC or retire any property record until the X Property Analyst provides notification that all PCC actions have been completed and closed.
- (m) (U) Special Test Equipment (STE) Notice of Intent (NOI). The contractor must obtain Contracting Officer approval before acquiring or fabricating special test equipment at Government expense unless the equipment is itemized in this contract and/or specified in the contractor's proposal as STE. The NOI shall include details such as description, quantity, and dollar value of all components that make up the item of STE. The NOI shall also include a full and complete justification validating why the item is being requested and classified as STE.

(n) (U) Property Classification and Records.

(1) (U) Property Classification. The contractor shall include the appropriate Property Classification Code defined in paragraph (b) of this clause when establishing property records and preparing property reports for X contract-accountable property.

(2) (U) Records. The official X Government property records shall be maintained by the contractor. All records shall contain the basic information as required in FAR 52.245-1 (f) (iii). In addition, all property records must include the following information (exceptions may be approved by the X Property Analyst):

(i) (U) Tagged Assets

- > Classification of the property (same as type of property)
- > Serial Number (if applicable)
- > Model Number (if applicable)
- > Parent/Child Relationship (applies to STE and higher assemblies with components)
- > Location of the property (include building, room, city, and state)
- > Last physical inventory date

(ii) (U) Material Items Part Number

- > Part Number
- > Actual, Average, Moving, or Estimated Cost (as applicable)
- > Acquisition/in-service date
- > Summary of quantity, line items, and dollar value

(3) (U) System Records. When items of property are part of a system, such as components of STE or a higher assembly, each individual item/component shall have its own individual record showing the actual or estimated cost with the parent-child relationship clearly established. For example, the cost of STE components can be captured either in the total unit cost of the STE or as individually- priced components. The components of a parent-child relationship that are tracked and costed individually must also be disposed of individually. However, if the costs are tracked as a total unit cost, each component will be disposed of separately by decrementing the total unit cost of the STE. The contractor shall document how it tracks the cost of STE and higher assembly components.

(4) (U) Records of Pricing Information. The unit price of Government-Furnished Property (GFP) will be provided on the documentation covering shipment of the property to the contractor. In the event the unit price is not provided on the document, the contractor will take action to obtain the information. If the information is unavailable, the contractor may use estimated costs.

(5) (U) Contractors shall decrement their contract property records as appropriate to reflect the following property actions:

(i) (U) Lost, Damaged, Destroyed, and Theft. Deletion amounts that result from relief from responsibility under FAR 45.503 granted during the reporting period.

(ii) (U) Transferred in Place. Deletion amounts that result from transfer of property to a follow-on contract with the same contractor.

(iii) (U) Transferred to Another Government Agency. Deletion amounts that result from transfer of property to another Government agency.

(iv) (U) Purchased at Cost/Returned for Credit. Deletion amounts that result from contractor purchase or retention of contractor acquired property, or from contractor returns to suppliers.

(v) (U) Disposed of Through Plant Clearance Process. Deletions other than transfers within the Federal Government (e.g., donations to eligible recipients, sold at less than cost, or abandoned/ directed destruction).

(vi) (U) Other. Types of deletion other than those reported in (i) through (v) of this section.

(o) (U) Flowdown. The contractor shall include this clause in all subcontracts that will have any Government-furnished or contractor-acquired property accountable to the subcontract. When security issues preclude verbatim use of this clause, the contractor shall use a revised version which includes all the requirements of the original clause.

(U) (End of clause)

X52.245-003 (U) Use of Government-Owned Property (NOV 2017)

(U) As prescribed in X45.107-70(d), insert the following provision in all solicitations:

(U) USE OF GOVERNMENT-OWNED PROPERTY (NOV 2017)

(a) (U) The Government Property List in Section J identifies all Government property available to the offeror on a no-charge-for-use basis for performance of any contract resulting from this solicitation. The offeror shall indicate in their proposal which, if any, of the items in the Government Property List they intend to use in the performance of the contract. If the offeror intends to use Government- owned facilities, material, special test equipment, special tooling, or other items of Government property not offered in the Government Property List, or in quantities greater

than offered in the List, the offeror shall include the following information in their proposal:

- (1) (U) Identification, acquisition cost, and quantity of each item.
 - (2) (U) Identification of the Government contract under which the property is accountable and written permission for its use from the appropriate Contracting Officer.
 - (b) (U) If the offeror intends to use any Government property, the offeror shall furnish the date of the last Government review of the offeror's property control and accounting system, number of deficiencies found, actions taken to correct deficiencies, and the name and telephone number of the contractor's property administrator.
 - (c) (U) The offeror represents by submitting an offer/bid that the offeror has reviewed, understands, and will comply with all property management requirements and accounting procedures specified in the solicitation/contract, in FAR Part 45, and in X Part X45.
 - (d) (U) The offeror represents by providing an offer/bid that the offer/bid includes all costs associated with plant clearance and/or plant conversion costs, and that, with regard to plant clearance and/or plant conversion costs, the offer/bid is made in accordance with the requirements of this solicitation and in compliance with the offeror's disclosure statement.
- (U) (End of Provision)

X52.252-002 (U) Clauses Incorporated by Reference (OCT 2015)

(U) As prescribed in X52.107(b), insert the following clause in all contracts where clauses have been incorporated by reference.

(U) CLAUSES INCORPORATED BY REFERENCE (OCT 2015)

(U) This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. The full text of each clause may also be accessed electronically at <https://www.acquisition.gov> and XXXXXXXX.

(U) (End of clause)