CUSTOMER CONTRACT REQUIREMENTS
SPECTROLAB
CUSTOMER CONTRACT 7931

CUSTOMER CONTRACT REQUIREMENTS

If Form GP1 is applicable to this procurement, this Attachment constitutes the Government clauses contemplated by Article 29. If Form GP2 is applicable to this procurement, this Attachment constitutes the Government clauses contemplated by Article 28. If Form GP3 is applicable to this procurement, this Attachment constitutes the Government clauses contemplated by Article 41. If Form GP4 is applicable to this procurement, this Attachment constitutes the Government clauses contemplated by Article 31. If this contract is for the procurement of commercial items, as defined in FAR Part 2.101, see Section 3 below.

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

52.203-6 Restrictions on Subcontractor Sales to the Government (JUL 1995). This clause applies only if this contract exceeds $100,000.

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

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

52.203-10 Price or Fee Adjustment for Illegal or Improper Activity (JAN 1997). This clause applies only if this contract exceeds $100,000. If the Government reduces Buyer's price or fee for violations of the Act by Seller or its subcontractors at any tier, Buyer may withhold from sums owed Seller the amount of the reduction.

52.203-12 Limitation on Payments to Influence Certain Federal Transactions (JUN 2003). This clause applies only if this Contract exceeds $100,000. Paragraph (c)(4) is modified to read as follows: "(c)(4) Seller will promptly submit any disclosure required (with written notice to Boeing) directly to the PCO for the prime contract. Boeing will identify the cognizant Government PCO at Seller's request. Each subcontractor certification will be retained in the subcontract file of the awarding contractor.

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

52.209-6 Protecting the Government's Interest when subcontracting with Contractors Debarred, Suspended, or proposed for debarment. (Jul 1995)

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

52.215-10 Price Reduction For Defective Cost or Pricing Data (OCT 1997).   This clause applies only if this contract exceeds $550,000 and is not otherwise exempt. In subparagraph (3) of paragraph (a), insert "of this contract" after "price or cost." In Paragraph (c), "Contracting Officer" shall mean "Contracting Officer or

Buyer." In Paragraphs (c)(1), (c)(1)(ii), and (c)(2)(i), "Contracting Officer" shall mean "Contracting Officer or Buyer." In Subparagraph (c)(2)(i)(A), delete "to the Contracting Officer." In Subparagraph (c)(2)(ii)(B), "Government" shall mean "Government or Buyer." In Paragraph (d), "United States" shall mean "United States or Buyer."

52.215-12 Subcontractor Cost or Pricing Data (OCT 1997). This clause applies only if this contract exceeds $550,000 and is not otherwise exempt. The certificate required by paragraph (b) of the referenced clause shall be modified as follows: delete "to the Contracting Officer or the Contracting Officer's representative" and substitute in lieu thereof "The Boeing Company or any of its wholly owned subsidiaries."

52.215-18 Reversion or Adjustment of Plans for Postretirement Benefits Other Than Pensions (PRB) (OCT 1997). This Clause applies to this contract if it meets the requirements of FAR 15.408(j).

52.219-8 Utilization of Small Business Concerns (OCT 2000).

52.219-9 Small Business Subcontracting Plan (JAN 2002). In paragraph (c), "Contracting Officer" shall mean Buyer. This clause applies only if this contract exceeds $500,000. and Seller is not a small business concern.

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

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

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

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

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

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

52.223-14 Toxic Chemical Release Reporting (excluding subparagraph (e)) (OCT 2000). This clause applies only if this contract exceeds $100,000 (including all options).

52.225-1 Buy American Act — Balance of Payments - Supplies (FEB 2000). This clause does not apply if this contract is placed under a Department of Defense contract.

52.225-13 Restrictions on Certain Foreign Purchases (JUN 2003).

52.227-1 Authorization and Consent (JUL 1995).

52.227-1 Alternate I (APR 1984).

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

52.227-11 Patent Rights - Retention by the Contractor (Short Form) (JUN 1997). This clause only applies if this Contract is for experimental, developmental, or research work and Seller is a small business firm or nonprofit organization.

52.227-12 Patent Rights - Retention by the Contractor (Long Form) (JUN 1997). This clause only applies if this Contract is for experimental, developmental, or research work and Seller is other than a small business firm or nonprofit organization.

52.227-14 Rights in Data — General (JUN 1997). This clause applies only if data will be produced, furnished or acquired under this contract.

52.227-23 Rights to Proposal Data (JUN 1987)

52.230-6 Administration of Cost Accounting Standards (NOV 1999). Add "Buyer and the" before "Contracting Officer in paragraph (f). This provision applies if Clause H002 is included in Buyer's contract.

52.244-5 Competition in Subcontracting (DEC 1996)

52.244-6 Subcontracts for Commercial Items (APR 2003)

52.245-2 Government Property (Fixed Price Contracts) (JUN 2003). This clause is not applicable if this contract incorporates Form GP4. "Government" shall mean Government throughout except the first time it appears in paragraph (f) when "Government" shall mean the Government or the Buyer.

52.247-63 Preference for U.S.-Flag Air Carriers (JAN 1997). This clause only applies if this contract involves international air transportation.

2.   The following contract clauses are incorporated by reference and apply to the extent indicated. In all of the following clauses, "Contractor" and "Offeror" shall mean Seller.

52.204-2 Security Requirements (AUG 1996), 52.204 Alt I Security Requirements (APR 1984) and 52.204 Alt II Security Requirements (APR 1984)

DFARS 252.215-7002 Cost Estimating System Requirements (OCT 1998)

52.219-8 Utilization of Small Business Concerns (OCT 2000)

52.219-9 Small Business Subcontracting Plan (JAN 2002). This clause applies only if this contract exceeds $500,000 and Seller is not a small business concern. In paragraph (c), "Contracting Officer" shall mean Buyer.

DFARS 252.227-7037 Validation of Restrictive markings on Technical Data (SEPT 1999)

DFARS 252.227-7017 Identification and assertion of use, release or disclosure restrictions (JUN 1995)

DFARS 252.227-7025 Limitations on the Use or Disclosure of Government-Furnished Information marked with Restrictive Legends (JUN 1995)

DFARS 252.227-7028 Technical Data or Computer Software Previously Delivered to the Government (JUN 1995)

DFARS 252.227-7016 Rights in Bid and Proposal Information (JUN 1995)

DFARS 252.227-7026 Deferred Delivery of Technical Data or Computer Software (APR 1988)

DFARS 252.227-7030 Technical Data - Withholding of Payment (MAR 2000)

DFARS 252.227-7013 Rights in Technical Data – Noncommercial Items (NOV 1995) This clause applies only if the delivery of technical data is required or where computer software may be originated, developed or delivered under this contract.

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

DFARS 252.231-7000 Supplemental Cost Principles (DEC 1991)

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

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

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

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

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

52.247-64 Preference for Privately Owned U.S.-Flag Commercial Vessels (APR 2003). This clause only applies if this contract is (i) a contract or agreement for ocean transportation services; or a construction contract; or (ii) the supplies being transported are (a) Items the Contractor is reselling or distributing to the Government without adding value (generally, the Contractor does not add value to the items when it subcontracts items for f.o.b. destination shipment); or (b) shipped in direct support of U.S. military (1) contingency operations; (2) exercises; or (3) forces deployed in connection with United Nations or North Atlantic Treaty Organization humanitarian or peacekeeping operations.

4. Cost Accounting Standards

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

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

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

A. NOTIFICATION OF DEBARMENT/SUSPENSION STATUS
Seller shall provide immediate notice to Buyer in the event of being suspended, debarred or declared ineligible by any Department or other Federal Agency, or upon receipt of a notice of proposed debarment from any DoD Agency, during the performance of this Contract.

B. EXPORT CONTROLLED DATA RESTRICTIONS
(1) For the purpose of this clause,

(A) Foreign person is any person who is not a citizen of the U.S. or lawfully admitted to the U.S. for permanent residence under the Immigration and Nationality Act, and includes foreign corporations, foreign organizations, and foreign governments;

(B) Foreign representative is anyone, regardless of nationality or citizenship, acting as an agent, representative, official, or employee of a foreign government, a foreign-owned or influenced firm, corporation, or person; and

(C) Foreign sources are those sources (vendors, subcontractors, and suppliers) owned and controlled by a foreign person.

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

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

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

C. NOTIFICATION OF LITIGATION
   Seller shall give Buyer immediate written notice of any action or suit filed and prompt notice of any claim made against Seller by any of Seller's subcontractors or vendors that, in the opinion of Seller, may result in litigation related in any way to this order.

H. Special Provisions

In all of the following clauses, "Contractor" and "Offeror" shall mean Seller.

H-1 Telecommunications Security Equipment, Devices, Techniques, and services

(a) Definitions. As used in this clause:

(1) "Securing" means the application of Government-approved telecommunications security equipment, devices, techniques, or services to contractor telecommunications systems.

(2) "Sensitive information" means any information the loss, misuse, or modification of which, or unauthorized access to, could adversely affect the national interest, the conduct of federal programs, or the privacy to which individuals are entitled under 5 U.S.C. 552a (the Privacy Act), but which has not been specifically authorized under criteria established by an Executive Order or Act of Congress to be kept secret in the interest of national defense or foreign policy.

(3) "Telecommunications systems" means voice, record, and data communications, including management information systems and local data networks that connect to external transmission media, when employed by Government agencies, contractors, and subcontractors to transmit:

(i) Classified or sensitive information;

(ii) Matters involving intelligence activities, cryptologic activities related to national security, the command and control of military forces, or equipment that is an integral part of a weapon or weapons system; or

(iii) Matters critical to the direct fulfillment of military or intelligence missions.

(b) This solicitation/contract identifies classified or sensitive information that requires securing during telecommunications and requires the contractor to secure telecommunications systems. The contractor agrees to secure all such information and systems.

(c) To provide secure connectivity, the contractor shall work with the regional Customer Information Assurance (IA) Office to identify requirements and equipment, and to coordinate installation of Government-furnished equipment and contractor-acquired equipment. A Communications Security (COMSEC) account shall be acquired through the Regional Information Assurance Technician. The contractor shall meet all requirements for briefing, re-indoctrination, handling, and inspection as outlined in the current version of the *Network Communications Security Manual* (Network Instruction 95.1). The Contractor Program Security Officer will submit names of individuals to the Regional IA Office requesting approval for access to COMSEC-controlled information or material.

(d) The contractor agrees to include this clause, including this paragraph, in all subcontracts that require COMSEC and/or securing telecommunications.

(End of clause)

H-2 Enabling Clause for Prime and Support Contractor Relationships

(a) The Government has or may enter into contracts with one or more of the following companies to provide Contracted Advisory and Assistance Services (CAAS) and/or Systems Engineering and Technical Assistance (SETA): TASC, Advent, EDS, ITT, RDR, Titan, Veridian, Lockheed Martin, Hanson, IAI, Raytheon, Mitre, Aerospace.

 (b) In the performance of this contract, the contractor agrees to cooperate with the companies listed above (hereafter referred to as CAAS/SETAs). Cooperation includes allowing observation of technical activities by appropriate CAAS/SETA technical personnel; discussing technical matters related to this program; responding to invitations from authorized CAAS/SETA personnel to attend meetings; and providing access to technical information and research and development planning data. The contractor shall provide CAAS/SETA personnel access to data such as, but not limited to, design and development analyses; test data and results; equipment and process specifications; test and test equipment specifications; procedures, parts, and quality control procedures; records and data; manufacturing and assembly procedures; and schedule and milestone data. CAAS/SETA personnel engaged in general systems engineering and integration effort are normally authorized access to any technical information pertaining to this contract. However, exceptions, such as the case where the contractor seeks to preclude CAAS/SETA personnel from having access to contractor trade secrets, will be handled on a case-by-case basis prior to its occurrence. If the contractor seeks to limit distribution of data to Government personnel only, the contractor must submit this request in writing to the Contracting Officer.

(c) The contractor further agrees to include in each subcontract a clause requiring compliance by the subcontractor and succeeding levels of subcontractors with the response and access provisions of paragraph (b) above, subject to coordination with the contractor. This agreement does not relieve the contractor of responsibility to manage the subcontracts effectively and efficiently, nor is it intended to establish privity of contract between the Government or CAAS/SETAs and such subcontractors.

(d) CAAS/SETA personnel are not authorized to direct the contractor in any manner.

(e) CAAS/SETA contracts will contain an organizational conflict of interest clause that requires the CAAS/SETA contractor to protect contract data and prohibits the CAAS/SETA contractors from using such data for any purpose other than that for which the data was presented.

(End of clause)

H-3 Use of Metric System of Measurement

(a) This contract requires, unless authorized in paragraph (d) below, all supplies, components, reports, documentation, or services designed, fabricated, assembled, delivered or performed under this contract to utilize the Metric System of Measurement.

(b) The International System of Units as established by the General Conference of Weights and Measures in 1960 is also known as the System International (SI) or the Metric System. It is interpreted for US usage by the Department of Commerce's Interpretation of the International System of Units for the United States as printed in Federal Register Volume 55, Page 52242, 20 December 1990, and supplemented for the Federal Government's usage by the General Services Administration's Federal Standard 376, Preferred Metric Units of General Use by the Federal Government.

(c) In the event there is a conflict between the International System of Units, 55 FR 52242, Federal Standard 376, or the contract schedule, the order of precedence in resolving the conflict shall be contract schedule first, followed by Federal Standard 376, 55 FR 52242, and International System of Units in descending importance.

(d) The following supplies, components, reports, documentation, or services to be designed, fabricated, assembled, delivered, or performed under this contract are exempt from the requirements of this clause:

(VARIABLE) *[List each item not subject to the Metric System of Measurement]*

(e) The contractor should submit a request for exemption to the Contracting Officer whenever compliance is either not possible, impracticable, or otherwise not in the Government's best interest. The scope of the request shall be limited to only those items negatively impacted by the requirement.

(End of clause)

H-4 Contractor Compliance With Environmental Occupational Safety and Health and System Safety Requirements

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

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

(3) Any contract specific requirements; and

(4) Any Contracting Officer direction.

(b) 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) Federal, state, and local laws, regulations, policies and procedures;

(2) Government facility regulations, policies and procedures; and

(3) Contract specific direction.

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

(End of clause)

H-5 Insurance

The following kinds and minimum amounts of insurance are applicable in the performance of the work under this contract:

(a) Workmen's Compensation and Employer's Liability Insurance. The contractor shall comply with applicable Federal and State workers' compensation and occupational disease statutes. If occupational diseases are not compensable under those statutes, they shall be covered under the employer's liability section of the insurance policy, except when contract operations are so commingled with contractor commercial operations that it would not be practical to require this coverage. Employer liability coverage of at least $100,000 is required, except in States with exclusive or monopolistic funds that do not permit workers compensation to be written by private carriers.

(b) General Liability Insurance. Bodily injury liability insurance coverage written on the comprehensive form of policy of at least $500,000 per occurrence is required.

(c) Automobile Liability Insurance. Automobile liability insurance written on the comprehensive form of policy is required. The policy shall provide for bodily injury and property damage liability covering the operation of all automobiles used in connection with performing the contract. Policies covering automobiles operated in the United States shall provide coverage of at least $200,000 per person and $500,000 per occurrence for bodily injury and $20,000 per occurrence for property damage. The amount of liability coverage on other policies shall be commensurate with any legal requirements of the locality and sufficient to meet normal and customary claims.

(d) Aircraft Public and Passenger Liability Insurance. When aircraft are used in connection with performing the contract, aircraft public and passenger liability insurance coverage shall be at least $200,000 per person and $500,000 per occurrence for bodily injury, other than passenger liability, and $200,000 per occurrence for property damage. Coverage for passenger liability bodily injury shall be at least $200,000 multiplied by the number of seats or passengers, whichever is greater.

(End of clause)

H-6 Technical Data and Computer Software: Commercial

(a) Definitions. As used in this clause:

(1) *Commercial item* means:

(i) Any item, other than real property, that customarily is used by the public for non-governmental purposes and that has been offered, sold, leased, or licensed to the public;

(ii) Any item that evolved from an item described in paragraph (a)(1)(i) of this clause and will be available in the commercial marketplace in time to satisfy the delivery requirements specified in this contract;

(iii) Any item that would satisfy a criterion expressed in paragraph (a)(1)(i) or (ii) of this clause, but for:

(A) Modifications of a type customarily available in the commercial marketplace; or

(B) Minor modifications made to meet Federal Government requirements;

(iv) Services, offered and sold competitively, in substantial quantities, in the commercial marketplace based on established catalog prices for specific tasks performed under standard commercial terms and conditions;

(v) Any item, combination of items, or service referred to in paragraphs (a)(1)(i) through (iv) of this clause 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) Other non-developmental items, if the Contracting Officer determines that the item was developed exclusively at private expense and has been sold in substantial quantities, on a competitive basis, to multiple state and local governments.

(2) *Component* means any item supplied to the Government as part of an end item or of another component.

(3) *Contractor* includes the contractor's subcontractors and suppliers at any tier.

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

(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. Computer software does not include computer databases or computer software documentation. For the purpose of this clause, the term "computer software" shall also refer to "computer software documentation" as defined in paragraph (a)(6) of this clause.

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

(7) *Minor modification* means a modification that does not significantly alter the non-governmental function or essential physical characteristics of an item or component, or change the purpose of a process.

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

(b) License.

(1) The Government shall have the unrestricted right to use, modify, reproduce, release, perform, display, or disclose technical data and computer software, and to permit others to do so, that:

(i) Are form, fit, and function data;

(ii) Are a correction or change to technical data or computer software furnished to the contractor by the Government;

(iii) Are necessary for operation, maintenance, installation, or training (other than detailed manufacturing or process data); or

(iv) 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 and computer software without restrictions.

(2) Except as provided in paragraph (b)(1), the Government may use, modify, reproduce, release, perform, display, or disclose technical data and computer software within the Government only.

(3) The Government shall not use the technical data or computer software to manufacture additional quantities or release, perform, display, disclose, or authorize use of the technical data or computer software outside the Government without the contractor's written permission unless a release, disclosure, or permitted use is necessary for emergency repair or overhaul.

(c) Additional License Rights. The contractor, its subcontractors, and suppliers 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, the contractor agrees to negotiation 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.

(d) 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.

(End of clause)

H-7 Rights in Technical Data and Computer Software: Noncommercial Items
 (a) Definitions. As used in this clause:

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

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

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

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

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

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

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

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

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

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

(11) *Government purpose* means any activity in which the United States Government is a party, including cooperative agreements with international or multi-national defense organizations, or sales or transfers by the United States Government to foreign Governments or international organizations. Government purposes include providing technical data and computer software for use in a competitive procurement, but do not include the rights to use, modify, reproduce, release, perform, display, or disclose technical data and computer software for commercial purposes or authorize others to do so.

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

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

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

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

(13) *Limited rights* means the rights to use, modify, reproduce, release, perform, display, technical data and computer software, in whole or in part, within the Government. The Government may not, without the written permission of the party asserting limited rights, release or disclose the technical data and computer software outside the Government, use the technical data and computer software for manufacture, or authorize the technical data and computer software to be used by another party, except that the Government may reproduce, release, or disclose such data, or authorize the use or reproduction of the data by persons outside the Government if such reproduction, release, disclosure, or use is necessary for emergency repair and overhaul; or a release or disclosure of technical data and computer software (other than detailed manufacturing or process data) to, or use of such data by, a foreign Government that is in the interest of the Government and is required for evaluation or information purposes; or the contractor asserting the restriction is notified of such release, disclosure, or use. The Government may release the technical data or computer software to any third party if clause DFARS 252.227-025 is inserted into the contractual arrangement with the third party. The contractor is not required to provide the Government additional rights to use, modify, reproduce, release, perform, display, or disclose technical data and computer software furnished to the Government with limited rights. However, if the Government desires to obtain additional rights in technical data and computer software in which it has limited rights, the contractor agrees to promptly enter into negotiations with the Contracting Officer to determine whether there are acceptable terms for transferring such rights. Limited rights pertain to items, components, software code, software programs, or processes developed exclusively at private expense and marked with the limited rights legends prescribed by this clause or items, components, software code, software programs, or processes created exclusively at private expense in the performance of a contract that does not require the development, manufacture, construction, or production of items, components, or processes. The Government shall require the contractor to provide technical data or computer software necessary for emergency repair or overhaul, and shall destroy what is in its possession promptly following completion of the emergency repair/overhaul, and notify the contractor that it has been destroyed.

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

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

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

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

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

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

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

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

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

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

(1) Furnished With Unlimited Rights:

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

(2) Furnished With Government Purpose Rights:

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

(A) Prior to release or disclosure, the intended recipient is subject to the non-disclosure agreement; or

(3) Furnished With Limited Rights:

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

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

(VARIABLE) *[List the title and the Section J Attachment Number, or "Not Applicable."]*

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

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

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

(f) Later Assertions of Non-Unlimited Rights.

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

assertions would materially affect the source selection decision in the determination of the Contracting Officer (in which case no assertion may be allowed).

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

(iii) The Contracting Officer may request the contractor to provide sufficient information to enable the Government to evaluate the contractor's assertion(s). While adjudicating the assertion(s), the Contracting Officer shall follow the procedures outlined in clause DFARS 252.227-7037, *Validation Of Restrictive Markings On Technical Data*.

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

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

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

<div align="center">

Government Purpose Rights

</div>

Contract No: _____

Contractor Name: _____

Contractor Address: _____

_____

Expiration Date: _____

The Government's rights to use, modify, reproduce, release, perform, display, or disclose these technical data and computer software are restricted by paragraph (b)(2) of Clause DFARS 252.227-7014, *Rights in Non-Commercial Computer Software and Non-commercial Computer Software Documentation*, contained in the contract identified above. No restrictions apply after the expiration date shown above. Any reproduction of technical data or computer software, or portions thereof marked with this legend, must also reproduce the markings.

(End of legend)

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

<div align="center">

Limited Rights

</div>

Contract No: _____

Contractor Name: _____

Contractor Address: _____

_____

The Government's rights to use, modify, reproduce, release, perform, display, or disclose these technical data and computer software are restricted by paragraph (b)(3) of Clause DFARS 252.227-7014, *Rights in Non-Commercial Computer Software and Non-commercial Computer Software Documentation*, contained in the contract identified above. Any reproduction of technical data or computer software, or portions thereof marked with this legend, must also reproduce the markings. Any person, other than Government officials or others specifically authorized by the Government, who has been provided access to this technical data or computer software must promptly notify the above named contractor.

(End of legend)

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

(v) Removal of Unjustified and Nonconforming Markings. The rights and obligations of the parties regarding the validation of restrictive markings on technical data and computer software furnished or to be furnished under this contract are contained in the *Validation of Restrictive Markings on Technical Data and Computer Software* clause of this contract. Notwithstanding any provision of this contract concerning inspection and acceptance, the Government may ignore, or, at the contractor's expense, correct or strike a marking if, in accordance with the procedures in the *Validation of Restrictive Markings on Technical Data and Computer Software* clause of this contract, a restrictive marking is determined to be unjustified.

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

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

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

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

(End of clause)

H-8 Certification of Technical Data and Computer Software Conformity

(a) All technical data and computer software, as defined in clause DFARS 252.227-7014, delivered under this contract shall be accompanied by the following written certification:

(Begin certification)

The contractor, _____ *[Name of contractor]*, hereby certifies that, to the best of its knowledge and belief, the technical data and computer software delivered herewith under Contract _____ *[Contract number]* is complete, accurate, and complies with all contract requirements.

Date: _____

Name and Title of Authorized Official: _____

(End certification)

(b) The contractor shall identify, by name and title, each individual (official) authorized by the contractor to certify in writing that the technical data and computer software is complete, accurate, and complies with all requirements of the contract. The contractor authorizes direct contact with the authorized individual responsible for certification of technical data and computer software. The authorized individual shall be familiar with the contractor's technical data and computer software conformity/usability procedures and their application to the technical data and computer software to be certified and delivered.

(c) Technical data and computer software delivered under this contract may be subject to reviews by the Government during preparation and prior to acceptance. Technical data and computer software is also subject to reviews by the Government subsequent to acceptance.

(End of clause)