

**CUSTOMER CONTRACT REQUIREMENTS****Cygnus****CUSTOMER CONTRACT Cygnus****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 Basic (JUL 1995), Alternate I (OCT 1995)** . 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 is 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.

**52.203-15 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.

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

**52.208-8 Required Sources for Helium and Helium Usage Data (APR 2014)**. This clause applies if Seller will furnish a major helium requirement as defined in the clause. In paragraph (b)(2), "Contracting Officer" shall mean "Buyer" and "10 days" shall be "5 days".

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

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

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

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

**52.215-11 Price Reduction for Defective Certified Cost or Pricing Data -- Modifications** (AUG 2011). This clause applies only if this contract exceeds the threshold set forth in FAR 15.403-4 and is not otherwise exempt. "Contracting Officer" shall mean "Contracting Officer or Buyer." In subparagraph (d)(2)(i)(A), delete "to the Contracting Officer." In subparagraph (d)(2)(ii)(B), "Government" means "Government" or "Buyer." In Paragraph (e), "United States" shall mean "United States or Buyer."

**52.215-13 Subcontractor Certified Cost or Pricing Data -- Modifications** (OCT 2010). 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 (c) of the referenced clause shall be modified as follows: delete "to the Contracting Officer or the Contracting Officer's representative" and substitute in lieu thereof "to The Boeing Company or The Boeing Company's representative (including data submitted, when applicable, to an authorized representative of the U.S. Government)."

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

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

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

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

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

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

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

**52.222-19 Child Labor-Cooperation with Authorities and Remedies** (OCT 2016). In paragraph (d), "Contracting Officer" means Buyer.

**52.222-20 Contracts for Materials,Supplies, Articles, and Equipment Exceeding \$15,000.** (MAY 2014). This clause applies only if this contract exceeds \$15,000.

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

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

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

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

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

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

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

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

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

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

**52.225-1 Buy American - Supplies** (MAY 2014). The term "Contracting Officer" shall mean Buyer the first time it is used in paragraph (c). In paragraph (d), the phrase "in the provision of the solicitation entitled 'Buy American Certificate' is deleted and replaced with "in its offer."

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

**52.227-1 Authorization and Consent** (DEC 2007).

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

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

**52.227-19 Commercial Computer Software License** (DEC 2007).

**52.228-5 Insurance - Work on a Government Installation** (JAN 1997).

This clause applies to contracts that requires work on a Government installation. In paragraph (b) and (b)2, "Contracting Officer" shall mean "Buyer". In paragraph (c), "Contracting Officer" shall mean "Contracting Officer or Buyer". Seller shall provide and maintain insurance as set forth in this contract, which is \_\_\_\_\_.

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

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

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

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

**52.244-6 Subcontracts for Commercial Items** (NOV 2016). Clauses in paragraph (c) (1) are applicable to Seller for commercial items ordered by Buyer from Seller under this contract.

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

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

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

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

**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:

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

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

**Customer Imposed Clause (Cygnus) Customer Imposed Clause (Cygnus)** .

NOTE: The following clauses are not applicable to ALL procurements. Clauses which are not applicable are self deleting.

**CI.203-002 Prohibition on Persons Convicted of Fraud or Other Defense-Contract- Related Felonies (SEP 2013)**

This clause requires the contractor to include the substance of this clause, appropriately modified to reflect the identity and relationship of the parties, in all first-tier subcontracts exceeding the simplified acquisition threshold in Part 2 of the FAR, **except those for commercial items or components.**

**PROHIBITION ON PERSONS CONVICTED OF FRAUD OR OTHER DEFENSE- CONTRACT-RELATED FELONIES (SEP 2013)**

- (a) Definitions. As used in this clause—
- (1) “Arising out of a contract with the DoD” means any act in connection with—
    - (i) Attempting to obtain;
    - (ii) Obtaining; or
    - (iii) Performing a contract or first-tier subcontract of any agency, department, or component of the Department of Defense (DoD).
  - (2) “Conviction of fraud or any other felony” means any conviction for fraud or a felony in violation of state or Federal criminal statutes, whether entered on a verdict or plea, including a plea of *nolo contendere*, for which sentence has been imposed.
  - (3) “Date of conviction” means the date judgment was entered against the individual.
- (b) Any individual who is convicted after September 29, 1988, of fraud or any other felony arising out of a contract with the DoD is prohibited from serving—
- (1) In a management or supervisory capacity on this contract;
  - (2) On the board of directors of the Contractor;
  - (3) As a consultant, agent, or representative for the Contractor; or
  - (4) In any other capacity with the authority to influence, advise, or control the decisions of the Contractor with regard to this contract.
- (c) Unless waived, the prohibition in paragraph (b) of this clause applies for not less than 5 years from the date of conviction.
- (d) 10 U.S.C. 2408 provides that the Contractor shall be subject to a criminal penalty of not more than \$500,000 if convicted of knowingly—
- (1) Employing a person under a prohibition specified in paragraph (b) of this clause; or
  - (2) Allowing such a person to serve on the board of directors of the contractor or first-tier subcontractor.
- (e) In addition to the criminal penalties contained in 10 U.S.C. 2408, the Government may consider other available remedies, such as—
- (1) Suspension or debarment;
  - (2) Cancellation of the contract at no cost to the Government; or
  - (3) Termination of the contract for default.
- (f) The contractor may submit written requests for waiver of the prohibition in paragraph (b) of this clause to the Contracting Officer. Requests shall clearly identify—
- (1) The person involved;
  - (2) The nature of the conviction and resultant sentence or punishment imposed;
  - (3) The reasons for the requested waiver; and
  - (4) An explanation of why a waiver is in the interest of national security.
- (g) The contractor agrees to include the substance of this clause, appropriately modified to reflect the identity and

relationship of the parties, in all first-tier subcontracts exceeding the simplified acquisition threshold in Part 2 of the Federal Acquisition Regulation, except those for commercial items or components.

(h) Pursuant to 10 U.S.C. 2408(c), defense contractors and subcontractors may obtain information as to whether a particular person has been convicted of fraud or any other felony arising out of a contract with the DoD by contacting the Office of Justice Programs, The Denial of Benefits Office, U.S. Department of Justice, telephone 301-937-1542; [www.ojp.usdoj.gov/BJA/grant/DPFC.html](http://www.ojp.usdoj.gov/BJA/grant/DPFC.html).

(End of clause)

### **CI.204-001 Security Requirements (JAN 2013)**

The following clause applies when the contractor will require access to national security information, up to and including sensitive compartmented information:

#### **SECURITY REQUIREMENTS (JAN 2013)**

(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) *CUSTOMER Security Manual*;

(2) *National Industrial Security Program Operating Manual (NISPOM)*;

(3) *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 CUSTOMER Classification Guide*;

(7) **Additional Intelligence Community and 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 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 NSM, NISPOM, and the requirements specified in the DD Form 254 and the List of Applicable IT-IA- IM Documents attached in Section J 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 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 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 terms of the *Termination for the Convenience of the Government* clause.

(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.

(End of clause)

#### **CI.204-005 Protection Against Compromising Emanations (APR 2014)**

The following clause applies when performance of the contract will require processing national security information:

##### **PROTECTION AGAINST COMPROMISING EMANATIONS (APR 2014)**

(a) The contractor shall implement countermeasures in compliance with Customer Requirements, if electronically processing classified CUSTOMER information. *Contact contracts or supplier management for additional information.*

(b) Contract deliverables that process, store, or transmit national security information shall be designed to minimize the possibility of compromising emanations.

(c) The Government may, as part of its inspection and acceptance, conduct tests to ensure that equipment or systems delivered under this contract satisfy the security standards specified. Notwithstanding the existence of valid accreditations of equipment prior to the award of this contract, the Government may conduct additional tests at the installation site or contractor's facility.

(End of clause)

#### **CI.204-008 Notice of Litigation (AUG 2010)**

##### **NOTICE OF LITIGATION (AUG 2010)**

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

(1) 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) 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) The contractor agrees to insert this clause in any subcontract under this contract. (End of clause)

#### **CI.204-010 Information System Access (JAN 2013)**

Insert the following clause in all solicitations and contracts when the contractor will be required to access, operate, and/or maintain an information system processing national security information:

##### **INFORMATION SYSTEM ACCESS (JAN 2013)**

(a) Definitions. The terms used in this clause are defined in Committee for National Security Systems (CNSS) Instruction 4009, *National Information Assurance (IA) Glossary*.

(b) 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) The contractor shall comply with the requirements of:

(1) The Intelligence Community, Department of Defense, and CUSTOMER directives, instructions, policy guidance, standards, and special access program classification and program security guides specified in the List of Applicable Information Technology-Information Assurance-

Information Management (IT-IA-IM) Documents attached in Section J of this contract; and

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

(d) 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) 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 prime contractor shall include provisions in all subcontracts that substantially conform to the requirements of this clause.

(f) 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) 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.

(End of clause)

#### **CI.204-011 Information Technology-Information Assurance-Information Management Requirements (JAN 2013)**

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:

##### **INFORMATION TECHNOLOGY-INFORMATION ASSURANCE-INFORMATION MANAGEMENT REQUIREMENTS (JAN 2013)**

(a) Definitions. The terms used in this clause are defined in Committee for National Security Systems (CNSS) Instruction 4009, *National Information Assurance (IA) Glossary*.

- (b) 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) The contractor shall comply with the requirements of:
- (1) ICD 503, *Intelligence Community Information Technology Systems Security Risk Management, Certification and Accreditation*, and CUSTOMER implementing guidance; Intelligence Community Standard (ICS) 503-2, *Categorizing and Selecting Information Technology Systems Security Controls*; and CNSS Instruction 1253, *Security Categorization and Control Selection for National Security Systems*;
  - (2) Other Intelligence Community, Department of Defense, and CUSTOMER directives, instructions, policy guidance, standards, and special access program classification and program security guides specified in the List of Applicable Information Technology-Information Assurance-Information Management (IT-IA-IM) Documents attached in Section J of this contract; and
  - (3) The latest revision to each document listed above, notice of which has been furnished to the contractor by the Government.
  - (d) 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) 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) 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) The contractor shall report security and compliance status and reconfigure national security systems as directed by the Government.
  - (h) 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.
- (End of clause)

### **CI.209-002 Disclosure of Ownership or Control by a Foreign Government (SEP 2013)**

#### **DISCLOSURE OF OWNERSHIP OR CONTROL BY A FOREIGN GOVERNMENT (SEP 2013)**

(a) Definitions. AS used in this clause:

- (1) *Effectively owned or controlled* means that a foreign government or any entity controlled by a foreign government has the power, either directly or indirectly, whether exercised or exercisable, to control the election, appointment, or tenure of the offeror's officers or a majority of the offeror's board of directors by any means, e.g., ownership, contract, or operation of law (or equivalent power for unincorporated organizations).
- (2) *Entity controlled by a foreign government* means any domestic or foreign organization or corporation that is effectively owned or controlled by a foreign government, or any individual acting on behalf of a foreign government. It does not include an organization or corporation that is owned, but is not controlled, either directly or indirectly, by a foreign government if the ownership of that organization or corporation by that foreign government was effective before 23 October 1992.
- (3) *Foreign government* includes the state and the government of any country (other than the United States and its outlying areas) as well as any political subdivision, agency, or instrumentality thereof.

(4) *Proscribed information* means:

- § Top Secret information;
- § Communications Security (COMSEC) material, excluding controlled cryptographic items when unkeyed or utilized with unclassified keys;
- § Restricted Data as defined in the U.S. Atomic Energy Act of 1954, as amended;
- § Special Access Program (SAP) information; or
- § Sensitive Compartmented Information (SCI).

(b) **Prohibition on Award.** No contract under a national security program may be awarded to an entity controlled by a foreign government if that entity requires access to proscribed information to perform the contract, unless the Director, National Reconnaissance Office or a designee has waived application of 10 U.S.C. §2536(a).

(c) **Disclosure.** The offeror shall disclose any interest a foreign government has in the offeror when that interest constitutes control by a foreign government as defined in this provision. If the offeror is a subsidiary, it shall also disclose any reportable interest a foreign government has in any entity that owns or controls the subsidiary, including reportable interest concerning the offeror's immediate parent, intermediate parents, and the ultimate parent. The offeror shall submit a current SF 328, *Certificate Pertaining to Foreign Interests*, with their proposal. The SF 328 must include the following information:

- (1) Offeror's point of contact for questions about disclosure (Customer Imposed Clausee and phone number with country code, city code, and area code, as applicable);
  - (2) Customer Imposed Clausee and address of offeror;
  - (3) Customer Imposed Clausee and address of entity controlled by a foreign government; and
  - (4) Description of interest, ownership percentage, and identification of foreign government.
- (d) If during contract performance the foreign government ownership or control status of the contractor changes, the contractor shall submit an updated SF 328 to the Contracting Officer within one week of the change.
- (e) **Flow-down.** The offeror agrees to include the requirements of this clause in all subcontract solicitations that involve potential access to proscribed information under this solicitation and any resulting contract.

(End of clause)

### **CI.209-003 Organizational Conflict of Interest (JUL 2016)**

Insert the following clause in all CUSTOMER solicitations and contracts:

#### **ORGANIZATIONAL CONFLICT OF INTEREST (JUL 2016)**

(a) 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 CUSTOMER IMPOSED CLAUSE 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) 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) 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 CUSTOMER which may result in a perceived or actual OCI with any known CUSTOMER 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 CUSTOMER contracts as may be necessary to appropriately neutralize, mitigate, or avoid the OCI.

(d) 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 CUSTOMER Form N4-55, *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) 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) 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) 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.

(End of Clause)

#### **CI.209-005 Protection of Information (DEC 2011)**

Insert the following clause in solicitations and contracts for development work that will require development contractors to interact with and/or furnish information to other development contractors that require access to sensitive or proprietary information:

#### **PROTECTION OF INFORMATION (DEC 2011)**

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

(b) Accordingly, the contractor agrees that it shall not disclose, divulge, discuss, or otherwise reveal information to anyone or any organization not authorized access to such information. The contractor shall require each individual requiring access to sensitive or proprietary information, including each of its current and future employees assigned to work under this contract, and each subcontractor and its current and future employees assigned to work on subcontracts issued hereunder, to execute an implementing nondisclosure agreement (NDA) before granting access

to such information. The contractor shall make these individual agreements (or a listing of the employees executing such an agreement) available to the Contracting Officer upon request.

These restrictions do not apply to such information after the CUSTOMER has released it to the contractor community, either in preparation for or as part of a future procurement, or through such means as dissemination at Contractor Industrial Forums.

(c) The contractor shall include in each subcontract a clause requiring compliance by the subcontractor and succeeding levels of subcontractors with the terms and conditions herein.

(d) The contractor shall indemnify and hold harmless the Government, its agents, and employees from every claim or liability, including attorney's fees, court costs, and expenses arising out of, or in any way related to, the misuse or unauthorized modification, reproduction, release, performance, display, or disclosure of data with restrictive legends received in performance of this contract by the contractor or any person to whom the contractor has released or disclosed

the data.

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

(End of clause)

### **CI.209-006 Enabling Clause for Prime and Support Contractor Relationships (OCT 2011)**

Insert the following clause in all contracts and solicitations for development work that requires the contractor to interact with and/or furnish information to the Government's support contractors:

#### **ENABLING CLAUSE FOR PRIME AND SUPPORT CONTRACTOR RELATIONSHIPS (OCT 2011)**

(a) The Government currently has, or may enter into, contracts with one or more of the following companies, the primary purpose of which is to furnish independent and impartial advice or technical assistance directly to the Government in support of the Government's management and oversight of a program or effort. These companies (hereafter referred to as support contractors), are obligated by the terms of clause CI.209-008, *Support Contractor Corporate Non-Disclosure Agreement*, incorporated into their respective contracts, and/or by separate non-disclosure, confidentiality, proprietary information, or similar agreements to safeguard the sensitive and proprietary information of other contractors, subcontractors, suppliers, and vendors to which they have access.

(VARIABLE) *List each company Customer Imposed Clausee*

(b) In the performance of this contract, the contractor agrees to cooperate with the companies listed above. Cooperation includes, but is not limited to, allowing the listed support contractors to attend meetings; observe technical activities; discuss with the contractor technical matters related to this program at meetings or otherwise; and access contractor integrated data environments and facilities used in the performance of the contract.

(c) The contractor must provide the support contractors access to data such as, but not limited to, design and development analyses; test data, procedures, and results; research, development, and planning data; parts, equipment, and process specifications; testing and test equipment specifications; quality control procedures; manufacturing and assembly procedures; schedule and milestone data; and other contract data. To fulfill contractual requirements to the Government, support contractors engaged in general systems engineering and integration efforts and technical support are normally authorized access to information pertaining to this contract. Exceptions, such as when the contractor seeks to restrict access to contractor trade secrets, will be handled on a case-by-case basis. 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.

(d) The contractor further agrees to include in all subcontracts, except for those to provide only commercial and/or non-developmental items, a clause requiring the subcontractor and succeeding levels of subcontractors to comply with the response and access provisions of paragraph (b) above, subject to coordination with the contractor. This clause does not relieve the contractor of the responsibility to manage the subcontracts effectively and efficiently, nor is it intended to establish privity of contract between the Government or support contractors and such subcontractors.

(e) The contractor and its subcontractors are not required to take contractual direction from support contractors.

(f) ) Clauses CI.227-005, *Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends*, and CI.209-008, which will be incorporated into all CUSTOMER support contracts, require the support contractors to protect data and software related to this contract, and prohibit them from using such data for any purpose other than performance of the support contract.

(g) Support contractors shall protect the proprietary information of disclosing contractors, subcontractors, suppliers, and vendors in accordance with clause CI.209-008. Because this clause provides that such disclosing contractors, subcontractors, suppliers, and vendors are intended to be third-party beneficiaries, all such disclosing parties agree that these terms satisfy the non-disclosure agreement requirements set forth in 10 U.S.C. §2320(f)(2)(B). Accordingly, the contractor may only enter into a separate non-disclosure, confidentiality, proprietary information, or similar agreement with a disclosing party on an exception basis, and only after notifying the Contracting Officer. The Government and the disclosing contractors, subcontractors, suppliers, and vendors agree to cooperate to ensure that the execution of any non-disclosure agreement does not delay or inhibit performance of this contract, and the Government shall require

support contractors to do the same. Such agreements shall not otherwise restrict any rights due the Government under this contract. Separate non-disclosure agreements may be executed only in the following exceptional circumstances:

- (1) The support contractor is a direct competitor of the disclosing party in furnishing end items or services of the type developed or produced for the program or effort;
  - (2) The support contractor will require access to extremely sensitive business data; or
  - (3) Other unique business situations exist in which the disclosing party can clearly demonstrate that clause CI.209-008 does not adequately protect their competitive interests.
- (h) Any proprietary information furnished to support contractors shall be:
- (1) Disclosed in writing and clearly marked "proprietary" or with other words of similar meaning; or

- (2) Disclosed orally or visually (for instance, during a plant tour, briefing, or demonstration) and identified as proprietary information at the time of the oral or visual disclosure by the Government or a disclosing party. The support contractors shall treat all such information as proprietary unless within fifteen (15) days the support contractor coordinates with the Government or disclosing party to obtain a written version of the proprietary information and determine the extent of the proprietary claims; or
- (3) Disclosed by electronic transmission (e.g., facsimile, electronic mail, etc.) in either human readable form or machine readable form, and the contractor marks it electronically as proprietary within the electronic transmissions, such marking to be displayed in human readable form along with any display of the proprietary information; or
- (4) Disclosed by delivery of an electronic storage medium or memory device, and the contractor marks the storage medium or memory device itself as containing proprietary information and electronically marks the stored information as proprietary, such marking to be displayed in human readable form along with any display of the proprietary information.
- (i) The contractor agrees not to hold the support contractor liable for unauthorized disclosure of proprietary information if it can be demonstrated in written documentation or other competent evidence that the information was:
- (1) Already known to the support contractor without restriction on its use or disclosure at the time of its disclosure by the disclosing party;
  - (2) In the public domain or becomes publicly known through no wrongful act of the support contractor;
  - (3) Proprietary information disclosed by the support contractor with the contractor's prior written permission;
  - (4) Independently developed by the support contractor, subsequent to its receipt, without the use of any proprietary information;
  - (5) Disclosed to the support contractor by a third party who was legally entitled to disclose the same and who did not acquire the proprietary information from the disclosing party;
  - (6) Specifically provided in writing by the U.S. Government to the support contractor with an unlimited rights license; or
  - (7) Disclosed by the support contractor as required by law, regulatory or legislative authority, including subpoenas, criminal or civil investigative demands, or similar processes, provided the support contractor provides the disclosing party that originated the proprietary information with prompt written notice so that the disclosing party may seek a protective order or other appropriate remedy, and provided that, in the absence of a timely protective order, the support contractor furnishes only that minimum portion of the proprietary information that is legally required.
- (j) Any notice to the support contractor(s) required or contemplated under the provisions of this clause or clause CI.209-008 shall be in writing and shall be deemed to have been given on:
- (1) The date received if delivered personally or by overnight courier;
  - (2) The third day after being deposited in the U.S. mail, postage prepaid; or

(3) The date sent if sent by facsimile transmission or e-mail with a digital copy.

(k) The Government and contractor agree to cooperate in resolving any unauthorized disclosure or misuse of proprietary information by a support contractor. This shall not be construed as requiring the contractor to conduct an inquiry into an unauthorized disclosure or misuse, or as authorizing the allocation of costs for such an inquiry directly to this contract. Any costs incurred by the contractor in said fact-finding efforts may be allowable and allocable upon determination of the Contracting Officer after adjudicating the circumstances related to any unauthorized disclosures or misuse.

(End of clause)

**CI.211-006 Contract Period of Performance (SEP 2003)**

**CONTRACT PERIOD OF PERFORMANCE (SEP 2003)**

(a) The period of performance for this contract shall be: CLIN Start  
Date Completion Date (VARIABLE) (VARIABLE)  
 (VARIABLE)

(b) The principal place of performance for this contract shall be the (VARIABLE) [Government or Contractor] facility located at (VARIABLE) [City and State].

(c) The contractor shall immediately notify the Contracting Officer in writing when they encounter difficulty meeting performance requirements or anticipate difficulty in complying with the contract delivery schedule. This notification shall be informational in character; this provision shall not be construed as a waiver by the Government of any delivery schedule for any rights or remedies provided by law or under this contract.

(End of clause)

**CI.211-009 Defense Priority and Allocation Requirements (DEC 2006)**

Use the following clause in solicitations and contracts when the contract being awarded will be a rated order:

**DEFENSE PRIORITY AND ALLOCATION REQUIREMENTS (DEC 2006)**

This is a (VARIABLE) *DX-A2 or DX-A7* rated order certified for national defense use, and the contractor shall follow all the requirements of the Defense Priorities and Allocations System regulation (15 CFR 700).

(End of clause)

**CI.215-003 Intention To Use Consultants (JAN 2005)**

**INTENTION TO USE CONSULTANTS (JAN 2005)**

(a) The Government intends to utilize the services of non-Government consultants in technical, advisory, and consulting roles for overall technical review of the activities covered by this contract. Although the consultants shall not have the right of technical direction, they will attend technical reviews, participate in technical interchange meetings, observe processing and production efforts, witness fabrication and assembly, and monitor testing within contractor and subcontractor facilities. Such consultants will provide advice to the Government concerning viability of technical approaches, utilization of acceptable procedures, value and results of tests, and the like. The consultants will therefore require access to program-related contractor and subcontractor facilities and documentation. Contractor proprietary data shall not be made available to consultants unless and until a protection agreement has been generated between the consultant and the contractor, and evidence of such agreement has been made available to the Contracting Officer.

(b) It is expressly understood that the operations of this clause will not be the basis for an equitable adjustment.

(End of clause)

**CI.215-010 Exclusive Teaming Prohibition (JAN 2005)**

The following clause is applicable in all solicitations and contracts exceeding the simplified acquisition threshold:



**EXCLUSIVE TEAMING PROHIBITION (JAN 2005)**

(a) ) Definition. An exclusive teaming arrangement is created when two or more companies agree—in writing, through understandings, or by any other means—to team together to pursue an CUSTOMER procurement program, and further agree not to team with any competitors for that program.

(b) Prohibition. Offerors are prohibited from entering into any exclusive teaming arrangements. The CUSTOMER has determined that such arrangements unduly limit competition. Corporate or company capabilities below the prime-level essential to contract performance must be made available on fair and equitable terms to all competitors. The Government will direct the dissolution of any exclusive teaming arrangement which the Contracting Officer discovers, or prohibit the offer from further award consideration. If, after contract award, the Government becomes aware that the awardee entered into an exclusive teaming arrangement, the contract shall be voidable at the Government's option. This prohibition does not apply to the following exclusive teaming arrangement(s) approved in accordance with paragraph (c):

(VARIABLE)

(c) ) Waiver. Parties to an exclusive teaming arrangement may request a waiver from the CUSTOMER Director of Contracts to maintain the arrangement. Such written requests must explain the purpose for the arrangement and why it is not anti-competitive.

(End of clause)

**CI.215-014 Cost Estimating System Requirements (JAN 2005)****COST ESTIMATING SYSTEM REQUIREMENTS (JAN 2005)**

(a) ) Definition.

*Estimating system* means the contractor's policies, procedures, and practices for generating estimates of costs and other data included in proposals submitted to customers in the expectation of receiving contract awards. The estimating system includes the contractor's organizational structure; established lines of authority, duties, and responsibilities; internal controls and managerial reviews; workflow, coordination, and communication; and estimating methods, techniques, accumulation of historical costs, and other analyses used to generate cost estimates.

(b) General.

(1) The contractor shall establish, maintain, and comply with an estimating system that is consistently applied and produces reliable, verifiable, supportable, and documented cost estimates that are an acceptable basis for negotiation of fair and reasonable prices.

(2) The system should be consistent and integrated with the contractor's related management systems, and subject to applicable financial control systems.

(c) **Applicability.** Paragraphs (d) and (e) of this clause apply if the contractor is a large business or received, in its fiscal year preceding award of this contract, Government prime contracts or subcontracts totaling \$50 million or more for which certified cost or pricing data were required.

(d) **System Requirements.**

(1) The contractor shall disclose its estimating system to the Government in writing. If the contractor wants the Government to protect this information as privileged or confidential, the contractor must mark the documents with the appropriate legends before submission.

(2) An estimating system disclosure is adequate when the contractor documentation accurately describes those policies, procedures, and practices that the contractor currently uses to prepare cost proposals, and provides sufficient detail for the Government to reasonably make an informed judgment regarding the adequacy of the contractor's estimating practices.

(3) The contractor shall comply with its disclosed estimating system, and disclose significant changes to the cost estimating system to the Government on a timely basis.

(e) **Estimating System Deficiencies.**

(1) The contractor shall respond to a written report from the Government which identifies deficiencies in the contractor's estimating system as follows:

(i) If the contractor agrees with the report findings and recommendations, the contractor shall, within 30 days, state its agreement in writing, and, within 60 days, correct the deficiencies or submit a corrective action plan proposing milestones and actions leading to elimination of the deficiencies.

(ii) If the contractor disagrees with the report, the contractor shall, within 30 days, state its rationale for disagreeing.

(2) The Government will evaluate the contractor's response and notify the contractor of the determination concerning remaining deficiencies and/or the adequacy of any proposed or completed corrective action.

(End of clause)

## **CI.216-005 Provisional Fee Payment (JUL 2011)**

### **PROVISIONAL FEE PAYMENT (JUL 2011)**

(a) ) **Contracts with Award Fee Provisions.** The Government shall make provisional award fee payments to the contractor (VARIABLE) *every two weeks, twice-per-month, monthly, or quarterly*. These fee payments shall not exceed (VARIABLE) percent of the award fee amount available for each award fee evaluation period as specified in the Award Fee Table, prorated over the number of payments during the period. The determination and the methodology for determining the amount of award fee billable are unilateral decisions made solely at the discretion of the Government.

(b) **Contracts with Award Fee Milestone Provisions.** If the Contracting Officer determines that fee payment prior to completion of an award fee milestone is in the best interests of the Government, payment on a provisional basis or on an interim basis upon completion of discrete, incremental milestones shall be made. For provisional award fee milestone payments, the Government shall make payments to the contractor in accordance with paragraph (a) above for each award fee milestone pool. For interim award fee milestone payments, the Government shall allocate fee and make payments to the contractor based on successful completion of the interim milestones identified in Attachment (VARIABLE) *Attachment number and date*. Payment of 100 percent of the milestone award fee prior to successful completion of the final milestone is prohibited. If award fee milestone payments are prohibited, the earned award fee shall be paid

following the FDO's determination for the milestone.

(c) Retention of interim or provisional award fee payments shall be subject to the final determination for the milestone or period. Provisional award fee payments may be discontinued, or reduced in such amounts deemed appropriate by the Contracting Officer, when the Contracting Officer determines that the contractor will not achieve a level of performance commensurate with the provisional payment. The Contracting Officer will notify the contractor of any discontinuance or reduction in provisional award fee payments. Fee that has been redistributed shall not be provisionally billed.

(d) Adjustment of Fee Payments.

(1) Underpayment of Fee. If the cumulative amount of fee payments made during the applicable evaluation or milestone period is determined to be less than the fee earned for that same period pursuant to the Contracting Officer's fee validation, the contractor shall submit a separate invoice for the balance of fee to be paid under the terms of the contract.

(2) Overpayment of Fee. If the cumulative amount of fee payments made during the applicable evaluation or milestone period is in excess of the fee earned for the same period pursuant to the Contracting Officer's fee validation, the Government shall deduct/offset the overpayment from

subsequent fee and, if necessary, costs incurred until repaid. To assist the Government in this regard, the contractor shall reflect such adjustments on subsequent invoices with interest properly factored. For purposes of FAR Clause 52.232-17, *Interest*, the due date for any refund to be made by the contractor pursuant to this clause shall be the date of the first written demand for payment.

(End of clause)

#### **CI.216-007 Incorporation of Award, Schedule, Performance, and Cost Incentives (JUL 2011)**

##### **INCORPORATION OF AWARD, SCHEDULE, PERFORMANCE, AND COST INCENTIVES (JUL 2011)**

(a) The parties hereto agree that the fee payable under this contract shall be established by applying award, performance, schedule and cost incentives (both positive and negative) in accordance with the Fee Plan attached hereto.

(b) In addition to the target and/or base fee, if applicable, the contractor may earn an award fee on the basis of performance during the periods of performance, and in the amounts specified in the Fee Plan. The contractor may submit a voucher requesting payment of award fee earned immediately upon receipt of a modification to the contract executed by the Contracting Officer specifying the amount of fee awarded by the Fee Determining Official for the completed award fee evaluation or milestone period. The Fee Plan will outline in detail the schedules and criteria for implementing this provision of the contract.

(c) The determination and methodology for determining award fee are unilateral decisions made solely at the discretion of the Government. The contractor may earn award fee from a minimum of zero dollars to the maximum amount stated in the Fee Plan. Payment of any award fee to the contractor, as determined by the Fee Determining Official, will not be subject to the provisions of FAR Clause 52.216-7, *Allowable Cost and Payment*, or 52.249-6, *Termination*.

(End of clause)

#### **CI.216-013 Contract Payment Withholding—Incentive Fee (OCT 2003)**

##### **CONTRACT PAYMENT WITHHOLDING—INCENTIVE FEE (OCT 2003)**

After payment of 85 percent of the total incentive fee payable under this contract, the Government shall withhold all subsequent payments of incentive fee until a reserve is established

in an amount not to exceed 15 percent of total incentive fee payable under the contract or \$(VARIABLE) \$100,000 maximum, whichever is less. (End of clause)

**CI.219-001 Utilization of Small Business Concerns (DEC 2011)****UTILIZATION OF SMALL BUSINESS CONCERNS (DEC 2011)**

(a) It is the policy of the United States that small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns shall have the maximum practicable opportunity to participate in performing contracts let by any Federal Agency, including contracts and subcontracts for subsystems, assemblies, components and related services for major systems. It is further the policy of the United States that its prime contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts with small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns.

(b) The contractor hereby agrees to carry out this policy in the awarding of subcontracts to the fullest extent consistent with efficient contract performance. The contractor further agrees to cooperate in any studies or surveys as may be conducted by the Contracting Officer or his representative as may be necessary to determine the extent of the contractor's compliance with this clause.

(c) ) Definitions. As used in this contract—

“HubZone Small Business Concern” means a small business concern that appears on the List of Qualified HubZone Small Business Concerns maintained by the Small Business Administration.

“Service-disabled Veteran-owned Small Business Concern” —

(1) Means a small business concern—

(i) Not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans; and

(ii) the management and daily business operations of which are controlled by one or more service-disabled veterans or, in the case of a veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran.

(2) “Service-disabled Veteran” means a veteran, as defined in 38 U.S.C. 101(2), with a disability that is service-connected, as defined in 38 U.S.C.101(16).

“Small Business Concern” means a small business as defined pursuant to Section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto.

“Small Disadvantaged Business Concern” means a small business concern that represents, as part of its offer that—

(1)(i) It has received certification as a small disadvantaged business concern consistent with 13 CFR part 124, subpart B;

(ii) No material change in disadvantaged ownership and control has occurred since its certification;

(iii) Where the concern is owned by one or more individuals, the net worth of each individual upon whom the certification is based does not exceed \$750,000 after taking into account the applicable exclusions set forth at 13 CFR 124.104(c)(2); and

(iv) It is identified, on the date of its representation, as a certified small disadvantaged business in the Central Contractor Registration (CCR) DyCustomer Imposed Clauseic Small Business Search database maintained by the Small Business Administration, or

(2) It represents in writing that it qualifies as a small disadvantaged business (SDB) for any Federal subcontracting program, and believes in good faith that it is owned and controlled by one or more socially and economically disadvantaged individuals and meet the SDB eligibility criteria of 13 CFR 124.1002.

“Veteran-owned Small Business Concern” means a small business concern—

(1) Not less than 51 percent of which is owned by one or more veterans (as defined at 38 U.S.C.101(2)) or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more

veterans; and

(2) The management and daily business operations of which are controlled by one or more veterans.

“Women-owned Small Business Concern” means a small business concern—

(1) That is at least 51 percent owned by one or more women, or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and

(2) Whose management and daily business operations are controlled by one or more women.

(d)(1) Contractors acting in good faith may rely on written representations by their subcontractors regarding their status as a small business concern, a veteran-owned small business concern, a service-disabled veteran-owned small business concern, a HUBZone small business concern, a small disadvantaged business concern, or a women-owned small business concern.

(2) The contractor shall confirm that a subcontractor representing itself as a HUBZone small business concern is certified by SBA as a HUBZone small business concern by accessing the CCR database at <http://www.sba.gov/hubzone>.

(End of clause)

**CI.223-005 Prohibition on Storage and Disposal of Toxic and Hazardous Materials (JAN 2004)**

**PROHIBITION ON STORAGE AND DISPOSAL OF TOXIC AND HAZARDOUS MATERIALS (JAN 2004)**

(a ) Definitions. AS used in this clause:

(1) *Storage* means a non-transitory, semi-permanent or permanent holding, placement, or leaving of material. It does not include a temporary accumulation of a limited quantity of a material used in or a waste generated OR resulting from authorized activities, such as servicing, maintenance, or repair of Government items, equipment, or facilities.

(2) *Toxic or hazardous materials* means those materials identified in the EPA Title III List of Lists.

(b) The contractor is prohibited from transporting, storing, disposing, or using toxic or hazardous materials in performing this contract except for those materials listed in (c) below or when authorized in writing by the Contracting Officer.

(c) The following toxic and hazardous materials are authorized for use in the performance of this contract:

TOXIC MATERIAL	USE	LIMITATIONS (VARIABLE)
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(End of clause)

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

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

(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)

**CI.223-007 Elimination of Use of Class I Ozone Depleting Substances (ODS) (APR 2004)**

**ELIMINATION OF USE OF CLASS I OZONE DEPLETING SUBSTANCES (ODS) (APR 2004)**

(a) Unless authorized under paragraph (b) below, use of a Class I ODS (as defined in 40 CFR 82) is prohibited under this contract.

(b) Where considered essential, specific approval has been obtained to require use of the following substances:

Substance	Application/Use	Quantity (VARIABLE)
<i>[List each Class I ODS, its application or use, and approved quantities. If "None", so state.]</i>		

(c) The offeror/contractor shall notify the Contracting Officer if any Class I ODS not specifically listed above is required in the performance of this contract.

(End of clause)

**CI.223-008 Contractor Identification of Ozone Depleting Substances (ODS) (JAN 2004)**

Include the following provision in Section L of solicitations where use of ODS may be an issue:

**CONTRACTOR IDENTIFICATION OF OZONE DEPLETING SUBSTANCES (ODS) (JAN 2004)**

(a) ODS are defined in 40 CFR 82.

(b) As part of the contractor's proposal, the contractor shall identify all standards and specifications applicable to the proposed contract which may be met only through the use of an ODS. The contractor shall specifically call out the specification or standard and the ODS proposed for use. Unless otherwise identified in the contractor's proposal, and subsequent approval for use granted by the Government, the contractor will be expected to perform all specifications and standards without the use of ODS.

(c) Identification required by paragraph (b) above shall be in a separate volume of the contractor's proposal. Page limitations do not apply to this separate volume.

(End of provision)

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

**RIGHTS IN TECHNICAL DATA AND COMPUTER SOFTWARE: NONCOMMERCIAL ITEMS  
(FEB 2011)**

(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 CI.209-005, *Protection of Information*, and CI.227-005, *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 CI.209-008, *Support Contractor Corporate Non-Disclosure Agreement*, and CI.227- 005, *Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends*. When clause CI.209-008 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.

(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 CI.209-005, *Protection of Information*, and CI.227-005, *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 CI.209-008, *Support Contractor Corporate Non-Disclosure Agreement*, and CI.227-005, *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 CI.209-005, *Protection of Information*, and CI.227-005, *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 CI.209-008, *Support Contractor Corporate Non-Disclosure Agreement*, and CI.227-005, *Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends*. When clause CI.209-008 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 CI.209-005, *Protection of Information*, and CI.227-005, *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 CI.209-008, *Support Contractor Corporate Non-Disclosure Agreement*, and CI.227-005, *Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends*. When clause CI.209-008 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.

(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 CI.209-006, *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 CI.209-005, *Protection of Information*, and CI.227-005, *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 CI.209-008, *Support Contractor Corporate Non-Disclosure Agreement*, and CI.227-005, *Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends*. When clause CI.209-008 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 CI.227-004, *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 CI.227-003, *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 as specified in clause CI.227-002) 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 \_\_\_\_\_ Customer Imposed  
Clause: \_\_\_\_\_ 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 CI.227-002, *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 \_\_\_\_\_ Customer Imposed  
Clause: \_\_\_\_\_ 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 CI.227-002, *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-Customer Imposed Clause 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 \_\_\_\_\_ Customer Imposed  
Clause: \_\_\_\_\_ 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 CI.227-002, *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-Customer Imposed Clauseed 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 \_\_\_\_\_ Customer Imposed

Clause: \_\_\_\_\_ 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 CI.227-003, *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.

(End of clause)

**CI.227-005 Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends (FEB 2011)**

**LIMITATIONS ON THE USE OR DISCLOSURE OF GOVERNMENT-FURNISHED INFORMATION MARKED WITH RESTRICTIVE LEGENDS (FEB 2011)**

(a) The terms "limited rights," "restricted rights," "special license rights," and "Government purpose rights" are defined in the *Rights in Technical Data and Computer Software: Noncommercial Items* clause of this contract.

(b) Technical data or computer software provided to the contractor as Government-furnished information (GFI) under this contract may be subject to restrictions on use, modification, reproduction, release, performance, display, or further disclosure.

(1) GFI Marked with Limited or Restricted Rights Legends. The contractor shall use, modify, reproduce, perform, or display technical data received from the Government with limited rights legends, or computer software received with restricted rights legends only in the performance of this contract. The contractor shall not, without the express written permission of the party whose Customer Imposed Clause appears in the legend, release or disclose such data or software to any unauthorized person. Prior to providing limited rights technical data or restricted rights computer software as GFI, the Government shall ensure that:

(i) The receiving development contractor(s) or subcontractor(s) contract arrangements are subject to clauses CI.209-005, *Protection of Information*, and CI.227-005, *Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends*; and

(ii) The receiving support contractor(s) or subcontractor(s) contract arrangements are subject to clauses CI.209-008, *Support Contractor Corporate Non-Disclosure Agreement*, and CI.227-005, *Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends*.

(2) GFI Marked with Government Purpose Rights Legends. The contractor shall use technical data or computer software received from the Government with Government purpose rights legends for Government purposes only. The contractor shall not, without the express written permission of the party whose Customer Imposed Clause appears in the restrictive legend, use, modify, reproduce, release, perform, or display such technical data or computer software for any commercial purpose, or disclose such data or software to a person other than its subcontractors, suppliers, or prospective subcontractors or suppliers who require the data or software to submit offers for, or perform, contracts under this contract. Prior to disclosing the data or software, the contractor shall coordinate with the Contracting Officer before requiring the persons to whom disclosure will be made to complete and sign non-disclosure agreements including the same limitations included in this paragraph.

(3) **GFI Marked with Special License Rights Legends.** The contractor shall use, modify, reproduce, release, perform, or display technical data or computer software received from the Government with specially negotiated license legends only as permitted in the license. Such data or software may not be released or disclosed to other persons unless permitted by the license.

(c) **Indemnification and Creation of Third Party Beneficiary Rights.** The contractor agrees:

(1) To indemnify and hold harmless the Government, its agents, and employees from every claim or liability, including attorneys fees, court costs, and expenses, arising out of, or in any way related to, the misuse or unauthorized modification, reproduction, release, performance, display, or disclosure of technical data or computer software received from the Government with restrictive legends by the contractor or any person to whom the contractor has released or disclosed such data or software; and

(2) That the party whose Customer Imposed Clausee appears on the restrictive legend, in addition to any other rights it may have, is a third party beneficiary who has the right of direct action against the contractor, or any person to whom the contractor has released or disclosed such data or software, for the unauthorized duplication, release, or disclosure of technical data or computer software subject to restrictive legends.

(End of clause)

#### **CI.227-006 Technical Data or Computer Software Previously Delivered to the Government (OCT 2015)**

##### **TECHNICAL DATA OR COMPUTER SOFTWARE PREVIOUSLY DELIVERED TO THE GOVERNMENT (OCT 2015)**

The contractor shall attach to its offer an identification of all documents or other media incorporating technical data or computer software it intends to deliver under this contract with other than unlimited rights that are identical or substantially similar to documents or other media that the contractor has produced for, delivered to, or is obligated to deliver to the Government under any contract or subcontract. This requirement shall be flowed down to all subcontractors at all levels. The attachment shall identify:

- (a) The contract number under which the technical data or computer software was produced;
- (b) The contract number under which, and the Customer Imposed Clausee and address of the organization to whom, the technical data or computer software was most recently delivered or will be delivered; and
- (c) Any limitations on the Government's right to use or disclose the technical data or computer software, including, when applicable, identification of the earliest date the limitations expire.

(End of provision)

#### **CI.227-007 Rights in Bid or Proposal Information (JAN 2004)**

##### **RIGHTS IN BID OR PROPOSAL INFORMATION (JAN 2004)**

(a) ) Definitions. The terms "technical data" and "computer software" are defined in the *Rights in Technical Data and Computer Software: Noncommercial Items* clause of this contract.

(b) Government Rights to Contract Award. By submission of its offer, the offeror agrees that the Government:

(1) May reproduce the bid or proposal, or any portions thereof, to the extent necessary to evaluate the offer.

(2) Except as provided in paragraph (d) of this clause, shall use information contained in the bid or proposal only for evaluational purposes and shall not disclose, directly or indirectly, such

information to any person, including potential evaluators, unless that person has been authorized by the Contracting Officer to receive such information.

(c) **Government Rights Subsequent to Contract Award.** The contractor agrees:

(1) Except as provided in paragraphs (c)(2), (d), and (e) of this clause, the Government shall have the rights to use, modify, reproduce, release, perform, display, or disclose information contained in the contractor's bid or proposal within the Government.

(2) The Government's right to use, modify, reproduce, release perform, display, or disclose information that is technical data or computer software required to be delivered under this contract are determined by the *Rights in Technical Data and Computer Software: Noncommercial Items* clause of this contract.

(d) **Government-Furnished Information.** The Government's rights with respect to technical data or computer software contained in the contractor's bid or proposal provided to the contractor by the Government are subject only to restrictions on use, modification, reproduction, release, performance, display, or disclosure, if any, imposed by the developer or licensor of such data or software.

(e) **Information Available Without Restrictions.** The Government's rights to use, modify, reproduce, release, perform, display, or, disclose information contained in a bid or proposal, including technical data or computer software, and to permit others to do so, shall not be restricted in any manner if such information has been released or disclosed to the Government or to other persons without restrictions other than a release or disclosure resulting from the sale, transfer, or other assignment of interest in the information to another party, or the sale or transfer of some or all of a business entity or its assets to another party.

(f) **Flowdown.** The contractor shall include this clause in all subcontracts or similar contractual instruments, and require its subcontractors or suppliers to do so without alteration, except to identify the parties.

(End of clause)

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

**COMMERCIAL TECHNICAL DATA AND COMPUTER SOFTWARE LICENSING— ORDER OF PRECEDENCE (OCT 2014)**

(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 CI.209-006 in Section I.

(3) The Licensor agrees that the Government shall have the right to unilaterally add or delete contractors from those supporting the (VARIABLE) *Customer Imposed Clausee 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 CI.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 Customer Imposed Clausee* 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 return such items to the Licensee, and the Licensor's 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 CI.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.

(End of clause)

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

##### **DEFERRED DELIVERY OF TECHNICAL DATA OR COMPUTER SOFTWARE (MAY 2005)**

The Government may identify technical data or computer software (as defined in clause CI.227-001 or CI.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.

(End of clause)

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

##### **DEFERRED ORDERING OF TECHNICAL DATA OR COMPUTER SOFTWARE (SEP 2013)**

(a) The Government may defer ordering technical data, computer software (as defined in clause CI.227-001 or CI.227-002), or other information not easily categorized (as defined in clause CI.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 (CI.227-001 and CI.227-002).

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

**CI.227-011 Technical Data and Computer Software: Withholding of Payment (NOV 2007)**

**TECHNICAL DATA AND COMPUTER SOFTWARE: WITHHOLDING OF PAYMENT (NOV 2007)**

(a) If technical data and computer software (as defined in clause CI.227-002) specified to be delivered under this contract are not delivered within the time specified by this contract, or are deficient upon delivery (including having unauthorized restrictive markings), the Contracting Officer shall, until such data and computer software are accepted by the Government, withhold all subsequent payments to the contractor until a reserve is established totaling (VARIABLE) [Insert "X percent of the total contract price" where "X" is a whole number between 3 and 10; or, to establish the lowest allowable withhold amount, insert: "3 percent of the total contract price or \$5 million, whichever is less"]. Payments shall not be withheld nor any other action taken pursuant to this paragraph when the Contracting Officer determines that the contractor's failure to make timely delivery or to deliver the technical data or computer software without deficiencies arises out of causes beyond the control and without the fault or negligence of the contractor.

(b) The withholding of any amount or subsequent payment to the contractor shall not be construed as a waiver of any rights accruing to the Government under this contract. Use of this clause constitutes a determination by the Contracting Officer that the limitation established by

FAR Clause 52.232-9, *Limitation on Withholding of Payments*, shall not apply to the amount withheld under this clause.

(End of clause)

**CI.227-015 Data Requirements (FEB 2011)**

**DATA REQUIREMENTS (FEB 2011)**

The contractor is required to deliver the data items listed on the Contract Data Requirements List, data items identified in and deliverable under any contract clause of FAR Part 52 and CUSTOMER IMPOSED CLAUSE Part N52 made a part of this contract, and other data as may be specified in the Statement of Work, Statement of Objectives, Specification(s), or elsewhere in this contract.

(End of clause)

**CI.227-018, CUSTOMER Access to Interim Data License (FEB 2011)**

**CUSTOMER ACCESS TO INTERIM DATA LICENSE (FEB 2011)**

(a) Definition. As used in this clause, *Integrated Data Environment (IDE)* means a mutually agreed to data storage and information management environment that facilitates Government and Industry information sharing and exchange, whether electronically or via hardcopy, to enable timely access and submission of information of all types and form.

(b) If the contractor provides the Government access (whether electronically, via hard copy, person-to-person exchanges, IDE, or other means) to technical data or computer software prior to the contractually scheduled delivery date, or to technical data or computer software that is not otherwise subject to delivery, the Government's access shall not constitute delivery of such technical data or computer software under this contract. Unless otherwise expressly set forth in an attachment to this contract as described in paragraph (d) of clause CI.227-002, *Rights in Technical Data and Computer Software: Noncommercial Items*, this clause will also apply to

data that cannot easily be categorized as technical data or business data to which the Government is given access prior to delivery, or which is not otherwise subject to delivery.

(c) Subject to the restrictions set forth below, the Government may use, duplicate, and disclose such technical data or computer software within the Government in connection with the performance of this contract for such purposes as administration, evaluation, problem resolution, and technical collaboration with the contractor. The Government may disclose such technical data or computer software to its support contractors identified in clause CI.209-006, *Enabling Clause for Prime and Support Contractor Relationships*, for these same purposes if and when the receiving support contractor(s) or subcontractor(s) contract arrangements

are subject to clauses CI.209-008, *Support Contractor Corporate Non-Disclosure Agreement*, and CI.227-005, *Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends*.

(1) An additional non-disclosure, confidentiality, proprietary information, or similar agreement 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. 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. All rights not granted to the Government are retained by the contractor.

(d) The Government shall not use, nor allow others to use, such technical data or computer software for the purposes of manufacturing, re-procurement, or other competitive purposes against the contractor's interest, or any other purpose not directly related to this contract. The restrictions on use and further disclosure shall not apply to technical data or computer software:

(1) Independently developed by or for the Government by persons not having access to the contractor's technical data or computer software, as evidenced in written documentation;

(2) In which the Government has otherwise acquired lawful rights in the use and further disclosure of the technical data or computer software; or

(3) Are otherwise publically available.

(e) The Government shall comply with reasonable access terms. Nothing in this clause diminishes the Government's rights under any other provision of this contract in delivered technical data or computer software.

(f) All technical data or computer software to which the Government is provided access under this clause that is not intended to be responsive to the formal contract data requirements is provided "as is," and does not give rise to any express or implied warranty. The contractor shall not be liable to the Government for any Government use or reliance on such technical data or computer software outside of the rights granted in this section.

(g) Government access under this clause shall not modify the rights and obligations of the parties with respect to technical data or computer software under the contract's termination provisions. In addition, Government access to such technical data or computer software resident on a contractor system does not create a "Government record" for purposes of the Freedom of Information Act, 5 U.S.C. §552(b)(4).

(h) The Government's rights to access, use, duplicate, and disclose technical data or computer software granted within this provision shall terminate upon earliest occurrence of any of the following events:

(1) Contractual delivery of the technical data or computer software;

(2) Termination of the contract; or

(3) The end of the period of performance of the contract.

(i) Within six months of the termination of rights hereunder, the Government shall take reasonable efforts to destroy copies of the technical data and computer software disclosed under the provisions of this clause.

(j) General Interim Access Marking Instructions.

(1) The contractor may choose how to mark (or otherwise identify) technical data or computer software that has not or will not be delivered, from the following options:

(i) With a conforming restrictive legend pursuant to clause CI.227-002(k)(1)-(4);

(ii) With the interim access license legend specified in this clause;

(iii) With a proprietary marking; or

(iv) With a proprietary marking and interim access license legend

(2) If technical data or computer software is marked with a conforming restrictive legend pursuant to clause

CI.227-002(k)(1)-(4), the Government may use that technical data or computer software in accordance with the rights specified in such legend.

(3) If the interim access license legend is used, the rights and restrictions that apply to the Government are as set forth in the interim access license provided by this clause.

(4) If technical data or computer software is marked with only proprietary markings, the Government is not bound by those proprietary markings for this contract, but must comply with the rights and restrictions of the interim access license provided by this clause.

(5) In the event a proprietary marking and interim access license legend is used, the Government is not bound by those proprietary markings for this contract, but must comply with the rights and restrictions of the interim access license provided by this clause.

(k) The foregoing marking options do not prohibit the Government and contractor from establishing alternative specifically negotiated licenses and marking protocols when appropriate.

(l) CUSTOMER Interim Access License Rights Markings. Technical data or computer software in which the Government is granted an interim access license provided by this clause shall be marked with the following legend:

CUSTOMER Interim Access License Rights

Contract No. \_\_\_\_\_ Contractor

Customer Imposed Clause: \_\_\_\_\_ Contractor

Address: \_\_\_\_\_

The Government may use, duplicate, and disclose this technical data or computer software within the Government in connection with the performance of this contract for such purposes as administration, evaluation, problem resolution, and technical collaboration with the contractor. The Government may disclose such technical data or computer software to its support contractors for these same purposes if and when such support contractors have executed a non-disclosure agreement with the contractor, or as otherwise expressly permitted by the contractor. Any reproduction of technical data or portions thereof marked with this legend must also reproduce the markings.

(m) The contractor shall include this interim access license clause in all subcontracts or similar contractual instruments for non-commercial items, and require its subcontractors or suppliers to do so without alteration, except to identify the parties.

(End of clause)

**CI.228-003 Accident Reporting and Investigation Involving Aircraft, Missiles, and Space Launch Vehicles (JAN 2004)**

**ACCIDENT REPORTING AND INVESTIGATION INVOLVING AIRCRAFT, MISSILES, AND SPACE LAUNCH VEHICLES (JAN 2004)**

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

(b) If the Government conducts an investigation of the accident, the contractor will cooperate and assist the Government's personnel until the investigation is complete.

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

(End of clause)

**CI.231-001 SUPPLEMENTAL COST PRINCIPLES (SEP 2013)**

The determination, negotiation, and allowability of costs under this contract shall be in accordance with Part 31 of the Federal Acquisition Regulation and of the CUSTOMER IMPOSED REQUIREMENTS in effect on the date of this contract.

(End of clause)

**CI.231-002 Allowability of Special Security Costs (JAN 2004)**

**ALLOWABILITY OF SPECIAL SECURITY COSTS (JAN 2004)**

The costs of the special security requirements required by this contract are allowable as a direct charge against this contract. However, this determination of allowability shall not constitute a determination of the adequacy or approval of the contractor's disclosure statement(s), and such costs are only allowable as a direct charge to this contract so long as they continue to be set forth as direct charges to contracts in the contractor's approved disclosure statement(s).

(End of clause)

**CI.231-003 Contractor Training and Education (SEP 2013)**

**CONTRACTOR TRAINING AND EDUCATION (SEP 2013)**

(a) As used in this clause, "CUSTOMER-unique training" is any specialized classroom course, on-the-job program of instruction, or computer-based training designed to develop employee skills directly applicable to the support of CUSTOMER systems or missions. Commercially available training and education are NOT considered CUSTOMER-unique.

(b) Contractor employees are expected to have all training necessary to perform the functions specified in the contract, and will not be authorized to attend CUSTOMER-sponsored training or to directly charge the contract for other training unless the Contracting Officer determines that the training is CUSTOMER-unique and required to effectively perform the contract.

(c) For contracts with cost-reimbursable contract line item numbers, the costs of contractor employee training and education are allowable as a direct charge against this contract only if approved in advance by the Contracting Officer. However, this determination of allowability shall not constitute a determination of the adequacy or approval of the contractor's disclosure statement, and such costs are only allowable as a direct charge to this contract so long as they continue to be set forth as direct charges to contracts in the contractor's approved disclosure statement.

(End of clause)

**CI.232-002 Limitation of Government's Obligation (JAN 2004)**

**LIMITATION OF GOVERNMENT'S OBLIGATION (JAN 2004)**

(a) The contract line items listed below (hereinafter referred to as the designated CLIN(s)) are incrementally funded. The value listed for each CLIN represents the funding currently available for payment and allotted to this contract. An allotment schedule is set forth in paragraph (i) of this clause.

<u>CLIN</u>	<u>Dollars Obligated</u>
(VARIABLE)	(VARIABLE)

*[Amount(s) to be inserted after negotiation.]*

(b) For the designated CLIN(s), the contractor agrees to perform up to the point at which the total amount payable by the Government, including reimbursement in the event of termination of those items for the Government's convenience, approximates the total amount currently allotted to the contract. The contractor will not be obligated to continue work on those items beyond that point. The Government will not be obligated in any event to reimburse the contractor in excess of the amount allotted to the contract for those items regardless of anything to the contrary in the *Termination for Convenience of the Government* clause. As used in this clause, the total amount payable by the Government in the event of termination of applicable contract line items for convenience includes costs, profit, and estimated termination

settlement COSTS for those items.

(c) Notwithstanding the dates specified in the allotment schedule in paragraph (i) of this clause, the contractor will notify the Contracting Officer in writing at least (VARIABLE) [90 (default), 60, or 30] days prior to the date when, in the contractor's best judgment, the work will reach the point at which the total amount payable by the Government, including any cost for termination for convenience, will approximate 85 percent of the total amount then allotted to the contract for performance of the applicable items. The notification will state (1) the estimated date when that point will be reached and (2) an estimate of additional funding, if any, needed to continue performance of applicable line items up to the next scheduled date for allotment of funds identified in paragraph (i) of this clause, or to a mutually agreed upon substitute date. The notification will also advise the Contracting Officer of the estimated amount of additional funding that will be required for the timely performance of the items funded pursuant to this clause for a subsequent period as may be specified in the allotment schedule in paragraph (i) of this clause, or otherwise agreed to by the parties.

If after such notification additional funds are not allotted by the date identified in the contractor's notification, or by an agreed substitute date, the Contracting Officer will terminate any items for which additional funds have not been allotted, pursuant to the *Termination for Convenience of the Government* clause of this contract.

(d) When additional funds are allotted for continued performance of the designated CLIN(s), the parties will agree as to the period of contract performance which will be covered by the funds. The provisions of paragraph (b) through (d) of this clause will apply in like manner to the additional allotted funds and agreed substitute date(s), and the contract will be modified accordingly.

(e) If, solely by reason of failure of the Government to allot additional funds by the dates indicated below in amounts sufficient for timely performance of the designated CLIN(s), the contractor incurs additional costs or is delayed in the performance of the work under this contract, and if additional funds are allotted, an equitable adjustment will be made in the price or prices (including appropriate target, billing, and ceiling prices where applicable) of the items or in the time of delivery, or both. Failure to agree to any such equitable adjustment hereunder will be a dispute concerning a question of fact within the meaning of the *Disputes* clause.

(f) The Government may at any time prior to termination allot additional funds for the performance of the designated CLIN(s).

(g) The termination provisions of this clause do not limit the rights of the Government under the *Default* clause. The provisions of this clause are limited to the work and allotment of funds for the contract line items set forth in paragraph (a) of this clause. This clause no longer applies once the contract is fully funded except with regard to the rights or obligations of the parties concerning equitable adjustments negotiated under paragraphs (d) or (e) of this clause.

(h) Nothing in this clause affects the right of the Government to terminate this contract pursuant to the *Termination for Convenience of the Government* clause of this contract.

(i) The parties contemplate that the Government will allot funds to this contract in accordance with the following schedule:

<u>Date</u>	<u>Amount</u>
(VARIABLE)	(VARIABLE)

(End of clause)

**CI.232-002 Limitation of Government's Obligation (JAN 2004)**

Use the following clause in all fixed-price solicitations and contracts:

**LIMITATION OF GOVERNMENT'S OBLIGATION (JAN 2004)**

(j) The contract line items listed below (hereinafter referred to as the designated CLIN(s)) are incrementally funded. The value listed for each CLIN represents the funding currently available for payment and allotted to this contract. An allotment schedule is set forth in paragraph (i) of this clause.

<u>CLIN</u>	<u>Dollars Obligated</u>
(VARIABLE)	(VARIABLE)

[Amount(s) to be inserted after negotiation.]

(k) For the designated CLIN(s), the contractor agrees to perform up to the point at which the total amount payable by the Government, including reimbursement in the event of termination of those items for the Government's convenience, approximates the total amount currently allotted to the contract. The contractor will not be obligated to continue work on those items beyond that point. The Government will not be obligated in any event to reimburse the contractor in excess of the amount allotted to the contract for those items regardless of anything to the contrary in the *Termination for Convenience of the Government* clause. As used in this clause, the total amount payable by the Government in the event of termination of applicable contract line items for convenience includes costs, profit, and estimated termination settlement costs for those items.

(l) Notwithstanding the dates specified in the allotment schedule in paragraph (i) of this clause, the contractor will notify the Contracting Officer in writing at least (VARIABLE) [90 (default), 60, or 30] days prior to the date when, in the contractor's best judgment, the work will reach the point at which the total amount payable by the Government, including any cost for termination for convenience, will approximate 85 percent of the total amount then allotted to the contract for performance of the applicable items. The notification will state (1) the estimated date when that point will be reached and (2) an estimate of additional funding, if any, needed to continue performance of applicable line items up to the next scheduled date for allotment of funds identified in paragraph (i) of this clause, or to a mutually agreed upon substitute date. The notification will also advise the Contracting Officer of the estimated amount of additional funding that will be required for the timely performance of the items funded pursuant to this clause for a subsequent period as may be specified in the allotment schedule in paragraph (i) of this clause, or otherwise agreed to by the parties.

If after such notification additional funds are not allotted by the date identified in the contractor's notification, or by an agreed substitute date, the Contracting Officer will terminate any items for which additional funds have not been allotted, pursuant to the *Termination for Convenience of the Government* clause of this contract.

(m) When additional funds are allotted for continued performance of the designated CLIN(s), the parties will agree as to the period of contract performance which will be covered by the funds. The provisions of paragraph (b) through (d) of this clause will apply in like manner to the additional allotted funds and agreed substitute date(s), and the contract will be modified accordingly.

(n) If, solely by reason of failure of the Government to allot additional funds by the dates indicated below in amounts sufficient for timely performance of the designated CLIN(s), the contractor incurs additional costs or is delayed in the performance of the work under this contract, and if additional funds are allotted, an equitable adjustment will be made in the price or prices (including appropriate target, billing, and ceiling prices where applicable) of the items or in the time of delivery, or both. Failure to agree to any such equitable adjustment hereunder will be a dispute concerning a question of fact within the meaning of the *Disputes* clause.

(o) The Government may at any time prior to termination allot additional funds for the performance of the designated CLIN(s).

(p) The termination provisions of this clause do not limit the rights of the Government under the *Default* clause. The provisions of this clause are limited to the work and allotment of funds for the contract line items set forth in paragraph (a) of this clause. This clause no longer applies once the contract is fully funded except with regard to the rights or obligations of the parties concerning equitable adjustments negotiated under paragraphs (d) or (e) of this clause.

(q) Nothing in this clause affects the right of the Government to terminate this contract pursuant to the *Termination for Convenience of the Government* clause of this contract.

(r) The parties contemplate that the Government will allot funds to this contract in accordance with the following schedule:

<u>Date</u>	<u>Amount</u>
(VARIABLE)	(VARIABLE)
(End of clause)	

Use the following clause in all solicitations and contracts which include the FAR *Changes* clause:

**CONTRACT CHANGE PROPOSALS (APR 2004)**

(a) The Contracting Officer may ask the contractor to prepare change proposals for technical, engineering, or other contract changes within the scope of this contract. Upon receipt of a written request from the Contracting Officer, and in accordance with the Contracting Officer's instructions, the contractor shall prepare and submit a proposal for contract changes. The contractor may initiate change proposals for Government consideration when appropriate. Contractor-initiated change proposals shall follow the guidelines set forth below for Government requested change proposals. A change proposal accepted in accordance with the *Changes* clause of this contract shall not be considered an authorization to the contractor to exceed the estimated cost in the contract Schedule unless the estimated cost is increased by the change order or other contract modification. For fixed price contracts or CLINs, and when costs are a factor in a price adjustment under this contract, the contract cost principles and procedures in FAR Part 31 and CUSTOMER IMPOSED CLAUSE Part 31 in effect on the date of this contract apply.

(b) Contract change orders to be initiated by the Contracting Officer will, to the maximum extent practicable, be coordinated with the contractor prior to submission of a firm cost proposal. The firm cost proposal will be prepared in such form and substance as to represent a request for contract adjustment pursuant to the *Changes* clause of this contract and, unless authorized by the Contracting Officer, will normally be received prior to the issuance of authorization for the contractor to proceed with the work incorporated by the change. The firm cost proposal shall be referenced in the change order, and is the maximum adjustment to be made in the total contract price (i.e., target cost, estimated cost, target fee or fixed fee, as appropriate for the type of contract), or in the delivery schedule (or time of performance) by reason of the change. The contract change must also change specific technical parameters of the contract (i.e., statement of work, specification, statement of objectives, concept of operations) to reflect the totality of the change, including cost and schedule, as appropriate. In no event shall the definitive equitable

adjustment exceed the limitations established with the exception of adjustments affected by rate changes which have been approved by the Government subsequent to the submittal date of the firm cost proposal. This exception applies provided that the original firm cost proposal submittal utilized Government approved rates.

(c) Firm cost proposals submitted by the contractor which require modification because of redirection by the Contracting Officer so that the original firm cost proposal submitted is no longer applicable (i.e., 10 percent or more change in value) may require the timely resubmission of a revised firm cost proposal. Otherwise, the parties will negotiate changes affecting the cost proposal during negotiations or as changes to the original proposal.

(d) If time will not permit the submission of a firm cost proposal for the contemplated change, the Contracting Officer may authorize the contractor to submit a written ceiling rough order of magnitude (CROM) amount for the change. The contractor agrees that the CROM is the maximum adjustment to be made in the total contract price (i.e. target cost, estimated cost, target fee or fixed fee, as appropriate for the type of contract), or in the delivery schedule (or time of performance) by reason of the change. The Contracting Officer may also solicit such agreement on CROM limitations for adjustments to any other provisions of the contract which may be subject to equitable adjustment by reason of the change. Any such written agreement shall be cited in the change order and, upon its issuance, shall be a binding part of the contract. In no event shall the definitive equitable adjustment exceed the limitations so established.

(e) The contractor agrees that firm cost proposals submitted pursuant to this clause shall remain valid for a period of 90 days after submission and that CROMs submitted pursuant to this clause shall remain valid for a period of 30 days after submission. A change proposal accepted in accordance with the *Changes* clause of this contract shall not be considered an authorization to the contractor to exceed the estimated cost in the contract Schedule, unless the estimated cost is increased by the change order or other contract modification.

(End of clause)

**CI.234-002 Earned Value Management System (FEB 2016)**

Use the following clause in solicitations and contracts when contractor compliance with EVM is required:

**EARNED VALUE MANAGEMENT SYSTEM (FEB 2016)**

(a) In the performance of this contract, the contractor shall use an earned value management system (EVMS) that

complies with the guidelines presented in EIA Standard 748, *Earned Value Management Systems* (herein referred to as the *Guidelines*).

(b) For contracts that have a total value greater than \$100 million, the contractor shall use an EVMS that has been reviewed and accepted by the CUSTOMER EVM Focal Point. If at the time of contract award the contractor's EVMS has not been recognized as compliant by the CUSTOMER EVM Focal Point, the contractor shall implement an EVMS in accordance with its comprehensive plan for compliance with the *Guidelines*. If the contractor's EVMS has been accepted by another Federal agency, evidence of that acceptance shall be provided to the Contracting Officer and the CUSTOMER EVM Focal Point for independent verification.



- (c) For contracts that have a total value less than \$100 million that require EVM, the CUSTOMER EVM Focal Point will not make a formal determination that the contractor's EVMS complies with the *Guidelines*. Use of EVMS on these contracts does not imply CUSTOMER determination of compliance with the *Guidelines*.
- (d) Contractor-proposed changes to an accepted EVMS must be reviewed by the Contracting Officer and approved by the CUSTOMER EVM Focal Point prior to implementation. The contractor shall submit a summary of all such changes and the impacts of those changes to the Contracting Officer and the CUSTOMER EVM Focal Point. The CUSTOMER EVM Focal Point will advise the contractor within 30 days of receipt of the proposed changes as to the acceptability of the changes.
- (e) The contractor shall provide access to all pertinent records, data, and personnel as necessary to permit Government surveillance to ensure compliance with the *Guidelines*. The Government will conduct initial surveillance within one year after contract award and annually thereafter. The Government will conduct surveillance on subcontractors as agreed to by the parties. The prime contractor may participate in a limited capacity during review of subcontractor proprietary information. If the CUSTOMER EVM Focal Point identifies an EVMS deficiency at the subcontract level, the CUSTOMER EVM Focal Point will notify the Contracting Officer and CUSTOMER Program Manager before issuing a corrective action request (CAR) directly to the subcontractor. The CUSTOMER EVM Focal Point will notify the prime contractor via the Contracting Officer when issuing a CAR (redacted as needed to prevent disclosure of proprietary information). The CUSTOMER EVM Focal Point may conduct a review for cause and/or disapprove the contractor's EVMS if significant deficiencies are not corrected in a timely manner.
- (f) The contractor shall conduct Integrated Baseline Reviews jointly with the CUSTOMER Program Manager, Contracting Officer, and CUSTOMER EVM Focal Point representative no later than 180 days after contract award or authorization to proceed; whenever a significant change to the baseline occurs; as agreed to by the parties; or at the discretion of the Contracting Officer.
- (g) The contractor shall notify the Contracting Officer of any significant changes to the Performance Measurement Baseline prior to implementing the change. The notification shall include, but is not limited to, scope, purpose, timing, impacts of the change to the overall program, and any reductions or modifications to cumulative and/or current period cost or schedule variances. A significant change must be by mutual agreement of all parties.
- (h) The contractor shall submit requests to initiate an over-target baseline or over-target schedule to the Contracting Officer. The request shall include a projection of cost and/or schedule growth, a determination whether performance variances will be retained, and an implementation schedule. The Government will acknowledge receipt of the request within 30 days.
- (i) The contractor shall require the following subcontractors to comply with the requirements of this clause:
- (VARIABLE) *List each subcontractor.*
- (j) The Contracting Officer is the only representative of the Government authorized to negotiate, execute, or modify this contract. Should any action by the CUSTOMER EVM Focal Point or other Government personnel imply a commitment on the part of the Government which would affect the terms of this contract, the contractor must notify the Contracting Officer and obtain approval prior to proceeding.

(End of clause)

#### **CI.237-001 Early Dismissal and Closure of Government Facilities (APR 2004)**

##### **EARLY DISMISSAL AND CLOSURE OF GOVERNMENT FACILITIES (APR 2004)**

- (a) In the event of early dismissal or facility closure due to severe weather or other hazardous conditions, contractor employees regularly assigned to work at a government facility (on-site contractors) should follow parent company policy.
- (b) When Government personnel are dismissed early incident to a holiday or special event unrelated to severe weather or hazardous conditions, on-site contractors will normally continue working established hours. Contractors

who choose to depart early are not permitted to direct-charge the non-working hours to an CUSTOMER contract.

(c) ) Contractors are responsible for predetermining and disclosing their charging practices for early dismissal, delayed openings, or closings in accordance with the FAR, applicable cost accounting standards, and company policy. Contractors shall follow their disclosed charging practices during the contract period of performance, and shall not follow any verbal directions to the contrary.

(End of clause)

**CI.242-001 Authority and Designation of a Contracting Officer's Technical Representative (COTR) (FEB 2011)**

**AUTHORITY AND DESIGNATION OF A CONTRACTING OFFICER'S TECHNICAL REPRESENTATIVE (COTR) (FEB 2011)**

(a) Authority. Performance of this contract is subject to the technical guidance, supervision, and approval of the Contracting Officer or a designated representative. Technical guidance is restricted to scientific, engineering, and other technical field-of-discipline matters directly related to the work to be performed. Such guidance may be provided to clarify, interpret, or otherwise serve to accomplish the technical objectives and requirements of the contract.

(b) Designation. The Contracting Officer shall designate the COTR in writing, and may also designate one or more Contract Line Item Number (CLIN) Managers to perform technical and

administrative functions for the work performed under specific CLINs. The contractor will receive a copy of the appointment letter for the COTR and for any CLIN Managers designated.

(c) Notification. The Contracting Officer is the only representative of the Government authorized to negotiate, execute, or modify this contract. No other employee or other representative of the Government has the authority to initiate a course of action which may alter this contract. All revisions to specifications, requirements, or informal commitments which may involve a change in either the total cost/price, scope, delivery schedule, or other terms and conditions of this contract must be accomplished by change order or supplemental agreement, to be negotiated and signed by the Contracting Officer. Should any action by Government personnel (other than the Contracting Officer) imply a commitment on the part of the Government which would affect the terms of this contract, the contractor must notify the Contracting Officer and obtain approval prior to proceeding. Otherwise, the contractor proceeds at its own risk.

(End of clause)

**CI.243-001 Contract Change Proposals (APR 2004)**

Use the following clause in all solicitations and contracts which include the FAR *Changes* clause:

**CONTRACT CHANGE PROPOSALS (APR 2004)**

(f) The Contracting Officer may ask the contractor to prepare change proposals for technical, engineering, or other contract changes within the scope of this contract. Upon receipt of a written request from the Contracting Officer, and in accordance with the Contracting Officer's instructions, the contractor shall prepare and submit a proposal for contract changes. The contractor may initiate change proposals for Government consideration when appropriate. Contractor-initiated change proposals shall follow the guidelines set forth below for Government requested change proposals. A change proposal accepted in accordance with the *Changes* clause of this contract shall not be considered an authorization to the contractor to exceed the estimated cost in the contract Schedule unless the estimated cost is increased by the change order or other contract modification. For fixed price contracts or CLINs, and when costs are a factor in a price adjustment under this contract, the contract cost principles and procedures in FAR Part 31 and CUSTOMER IMPOSED CLAUSE Part 31 in effect on the date of this contract apply.

(g) Contract change orders to be initiated by the Contracting Officer will, to the maximum extent practicable, be coordinated with the contractor prior to submission of a firm cost proposal. The firm cost proposal will be prepared in such form and substance as to represent a request for contract adjustment pursuant to the *Changes* clause of this contract and, unless authorized by the Contracting Officer, will normally be received prior to the issuance of

authorization for the contractor to proceed with the work incorporated by the change. The firm cost proposal shall be referenced in the change order, and is the maximum adjustment to be made in the total contract price (i.e., target cost, estimated cost, target fee or fixed fee, as appropriate for the type of contract), or in the delivery schedule (or time of performance) by reason of the change. The contract change must also change specific technical parameters of the contract (i.e., statement of work, specification, statement of objectives, concept of operations) to reflect the totality of the change, including cost and schedule, as appropriate. In no event shall the definitive equitable adjustment exceed the limitations established with the exception of adjustments affected by rate changes which have been approved by the Government subsequent to the submittal date of the firm cost proposal. This exception applies provided that the original firm cost proposal submittal utilized Government approved rates.

(h) Firm cost proposals submitted by the contractor which require modification because of redirection by the Contracting Officer so that the original firm cost proposal submitted is no longer applicable (i.e., 10 percent or more change in value) may require the timely resubmission of a revised firm cost proposal. Otherwise, the parties will negotiate changes affecting the cost proposal during negotiations or as changes to the original proposal.

(i) If time will not permit the submission of a firm cost proposal for the contemplated change, the Contracting Officer may authorize the contractor to submit a written ceiling rough order of magnitude (CROM) amount for the change. The contractor agrees that the CROM is the maximum adjustment to be made in the total contract price (i.e. target cost, estimated cost, target fee or fixed fee, as appropriate for the type of contract), or in the delivery schedule (or time of performance) by reason of the change. The Contracting Officer may also solicit such agreement on CROM limitations for adjustments to any other provisions of the contract which may be subject to equitable adjustment by reason of the change. Any such written agreement shall be cited in the change order and, upon its issuance, shall be a binding part of the contract. In no event shall the definitive equitable adjustment exceed the limitations so established.

(j) The contractor agrees that firm cost proposals submitted pursuant to this clause shall remain valid for a period of 90 days after submission and that CROMs submitted pursuant to this clause shall remain valid for a period of 30 days after submission. A change proposal accepted in accordance with the *Changes* clause of this contract shall not be considered an authorization to the contractor to exceed the estimated cost in the contract Schedule, unless the estimated cost is increased by the change order or other contract modification.

**(End of clause)**

#### **CI.244-001 Subcontracts (Educational Institutions)(MAR 2015)**

##### **SUBCONTRACTS (EDUCATIONAL INSTITUTIONS) (MAR 2015)**

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

(b) 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 N4.7501(e)(2) may be used to fulfill this requirement.

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

#### **CI.244-002, Subcontract Reporting, Monitoring, Consent, and Notification (JUL 2016)**

The following clause is applicable in solicitations and contracts above the simplified acquisition threshold:

##### **SUBCONTRACT REPORTING, MONITORING, CONSENT, AND NOTIFICATION (JUL 2016)**

(a) ) Definition. AS used in this clause:

*Subcontract* means any contract or contractual action entered into by the prime contractor or a subcontractor for the purpose of obtaining supplies, materials, equipment, or services of any kind under this contract. It includes, but is not limited to purchase orders, transfers of commercial items between divisions, subsidiaries, or affiliates of a contractor or

subcontractor, and work performed within a company but outside the main location, division, or facility under an Intra- Work Transfer Agreement (IWTA), Intra-Divisional Work Agreement (IDWA), Assist Work Authorization (AWA), or other similar arrangement.

*Subcontractor* means any supplier, distributor, vendor, or firm that furnishes supplies, materials, equipment, or services of any kind under this contract or a subcontract entered into in connection with this contract, regardless of dollar value.

(b) Flow-Down. The requirements of this clause must be included in all first-tier subcontracts directly chargeable to this contract, except for those subcontracts with US-owned companies to provide only unclassified commercial products and/or services on a fixed-price basis.

(c) Reporting. The prime contractor shall submit an annual report of all first- and second-tier subcontracts directly chargeable to this contract by 30 June each year, and a final close-out report within 90 days after contract completion.

Individual fixed-price subcontracts under \$5,000 with US-owned companies to provide unclassified commercial products and/or services that will not be incorporated into a contract deliverable (e.g., office supplies, travel, postage) need not be reported. Reports will be electronically uploaded into the Subcontractor Reporting Application on the Contractor Wide-Area Network (CWAN). Prime contractors without CWAN access will prepare their reports using a special Excel spreadsheet, and submit via email. Each subcontract report must include the following information in the format specified in the Subcontract Reporting Application and in the Excel spreadsheet:

§ Prime Contract Number

§ Subcontractor Tier

§ Whether Subcontract Is Classified (Yes or No)

§ Relationship Between Prime Contractor and Subcontractor

§ Subcontractor Business Customer Imposed Clausee, Street Address, City, State, Zip, and Country

§ Subcontractor Data Universal Numbering System (DUNS) Number

§ Subcontractor Contractor and Government Entity (CAGE) Code

§ Subcontractor Business Type and Whether Woman-owned, Veteran-owned, Service- disabled Veteran-owned, and/or a HUBZone Small Business

§ Subcontractor Country of Ownership

§ DUNS Number of Company Awarding Subcontract

§ Subcontractor's Parent Company Business Customer Imposed Clausee

§ Subcontract or Order Number

§ Subcontract Value (Cumulative to Date)

§ Subcontract Period of Performance (Start and End Dates)

§ Subcontract Place of Performance (City, State, Country)

§ Brief Description of Subcontract Effort

§ Primary Subcontract Type

§ Method Used to Select Subcontractor (Competitive or Sole-Source)

(d) Monitoring. The parties agree that the Government shall have the right to:

(1) Review all documentation pertaining to source selections or other competitive sourcing activities, fact-finding, and negotiation sessions with or for subcontractors or potential subcontractors;

(2) Observe any subcontractor test, verification, validation, shipment, or similar event;

(3) Attend any subcontractor design review, milestone review, program review, or similar event. Unless expressly

agreed to by the prime contractor and the Contracting Officer, the Government will not require a subcontractor event to be rescheduled due to the Government's inability to attend; and

(4) Review and agree to the contractor's make-or-buy program when necessary to ensure negotiation of reasonable contract prices or satisfactory performance.

(e) ) Consent.

(1) All consent to subcontract requirements in FAR Clause 52.244-2 apply to this contract. In addition, the contractor shall obtain the Contracting Officer's written consent before awarding any subcontract with a value over \$50 million, or that exceeds \$3 million or five percent of prime contract value, whichever is less, to a company listed on the CUSTOMER Subcontract Consent Registry. The Registry is posted on the classified CUSTOMER Acquisition Research Center (ARC) website (<https://acq.Customer.ic.gov>) under CUSTOMER IMPOSED CLAUSE/Consent. Contractors without access to this website can contact the Contracting Officer to confirm which companies are listed.

(2) Requests for consent to subcontract shall be submitted in writing to the Contracting Officer, and provide the information specified in CUSTOMER Form N4-66, *Request to Subcontract Checklist*.

(f) Notification. The prime contractor shall provide written notification to the Contracting Officer and COTR when a subcontract is expected to exceed the negotiated cost baseline by 15 percent.

(g) Privity. Government collection of subcontract information, surveillance of subcontractor performance, and consent to subcontract do not relieve the contractor of any responsibility for the effective management of all subcontracts and for the overall success of this contract. Actions taken under the authority of this clause do not establish privity of contract between the Government and subcontractors under this contract. The Government will not provide direction to or request action by any subcontractor except through the prime. However, all subcontractors must respond to direct requests for information from the Government, either directly or through the prime.

(h) Security. The Government reserves the right to direct the removal of any subcontractor under this contract on the basis of Government security concerns. The contractor shall be responsible for any lack of due diligence or negligence in the selection of a subcontractor, and will not be entitled to an equitable adjustment if the Contracting Officer determines that the Government's need to remove the contractor for security reasons is the fault of the contractor or subcontractor.

(End of clause)

### **Alternate I (JUL 2016)**

If the solicitation and contract is for a Designated Acquisition Activity, insert the following paragraphs (d) and (e) in place of the corresponding paragraphs in the basic clause, and re-number the succeeding paragraphs:

(d) Monitoring. The prime contractor shall prepare a Subcontractor Monitoring Strategy (SMS) specific to this contract and submit a draft to the Contracting Officer for review and approval within 90 days after contract award, or as stipulated in writing by the Contracting Officer. This document must include a process for notifying the Contracting Officer and Contracting Officer's Technical Representative in advance of each significant test, meeting, review, and event at the prime and subcontractor level. It must also address the requirements listed in CUSTOMER Form N4-68, *Subcontract Monitoring Strategy Matrix*, a completed copy of which must be submitted to the Contracting Officer with each new or revised SMS. The parties also agree that the Government shall have the right to:

(1) Review all documentation pertaining to source selections or other competitive sourcing activities, fact-finding, and negotiation sessions with or for subcontractors or potential subcontractors;

(2) Observe any subcontractor test, verification, validation, shipment, or similar event;

(3) Attend any subcontractor design review, milestone review, program review, or similar event. Unless expressly agreed to by the prime contractor and the Contracting Officer, the Government will not require a subcontractor event to be rescheduled due to the Government's inability to attend; and

(4) Review and agree on the contractor's make-or-buy program when necessary to ensure negotiation of

reasonable contract prices or satisfactory performance.

(e) ) Consent. The Government asserts its right for consent to subcontract on this contract.

(1) Contracting Officer consent in accordance with FAR Subpart 44.2 is required before awarding any subcontract exceeding \$50 million.

(2) The Contracting Officer's written consent is required before awarding any subcontract that will exceed \$3 million or five percent of prime contract value, whichever is less, to a company listed on the CUSTOMER Subcontract Consent Registry. The Registry is posted on the classified CUSTOMER classified site. See your contracts administrator for additional information.

**CI.245-001 Contract-Accountable Government Property: Responsibilities, Use, Reporting, and Administration (OCT 2015)**

**CONTRACT-ACCOUNTABLE GOVERNMENT PROPERTY: RESPONSIBILITIES, USE, REPORTING, AND ADMINISTRATION (OCT 2015)**

(a) ) 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 CUSTOMER IMPOSED CLAUSE guidance conflict, the CUSTOMER IMPOSED CLAUSE 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) Definitions. As used in this clause:

(1) *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) *Equipment (EQ)* means a tangible asset that is functionally complete for its intended purpose, durable, nonexpendable, needed for the performance of a contract, not intended for sale, and not to 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). Does not include information technology items as defined below.

(3) *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. 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. 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 an item of special test equipment.

(4) *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. 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. 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) *Information Technology Equipment (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. 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. Excludes any 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) *Land (L)* means land, land rights, and improvements to land.

(7) *Other Real Property (RP)* means buildings, improvements to buildings, utility distribution systems, 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. Also included are CUSTOMER-funded costs of improvements to leased buildings, structures, and facilities, as well as easements and right-of-way, where CUSTOMER is the lessee or the cost is charged to a CUSTOMER contract. Contractors shall report leasehold improvements with a unit acquisition cost of \$100,000 or more and a useful life of two years or more.

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

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

(10) *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. It 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. 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) *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. Does not include material, special test equipment, real property, equipment, machine tools, or similar capital items.

(12) *Summary Record* means a single document or data record used to account for a quantity of the same type of special tooling or equipment with a unit cost less than \$1,000. Summary records cannot be used for items requiring calibration or for classified or sensitive property.

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

(d) **Contractor Property Representatives.** The contractor shall provide the Customer Imposed Clausee, 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 CUSTOMER Property Analyst within 30 days after receipt of this contract and upon assignment of a replacement official.

(e) **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. The Contracting Officer will update the list as changes occur so that it always identifies all the Government property authorized for transfer to the contractor under this contract, whether or not the items have actually been transferred. The Government Property List is not intended to include all Government property accountable to this contract; 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.

(f) **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 CI.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 *Consolidated Contractor Database Web Server (CCDWS) User's Guide* must be attached to the transfer document. The contractor must obtain approval of the Contracting Officer or designee 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).

(g) Government Property Accountable to Other Contracts.

(1) The contractor may use Government property in their possession and accountable to another CUSTOMER 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-CUSTOMER 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) The property will be used on a strictly rent-free, non-interference basis;

(ii) Use will not impact other programs;

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

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

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

(2) 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 and tooling are not eligible for RFNIU.

(h) 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 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 CUSTOMER Property Analyst within 60 calendar days after completion or termination of the contract.

(i) 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. 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 will disposition the items as directed by the Contracting Officer.

(j) Audits and Analyses.

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

(2) Support Property Administration for subcontractors and alternate locations will be performed in accordance with FAR 45.502 and 45.503, and applicable CUSTOMER IMPOSED CLAUSE provisions. When an CUSTOMER prime contractor is also performing as a subcontractor on another CUSTOMER contract, the CUSTOMER 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 financial reporting.

(k) Reporting.

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

(i) 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) Each report must be submitted electronically by uploading full line-item detail for all contract-accountable property, regardless of value, into the Consolidated Contractor Database (CCD). The CCD is hosted on the CUSTOMER Contractor Wide-Area Network (CWAN), and 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 CUSTOMER Property Analyst.

(iii) Prime contractors shall include all contract-accountable property in the possession of their subcontractors in each property report. Subcontractors will not submit property reports to the CUSTOMER for their subcontracts.

(iv) Each tagged item of contract-accountable property must be assigned a Program Code to identify the CUSTOMER program under which the item was originally acquired, or to designate the item as “non-program.” These codes are listed in the *CCDWS 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 AS&T 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) 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 \$100,000 or more (capital asset) acquired during the reporting period, the contractor must upload an electronic copy of the invoice or other valuation documentation specified below.

(vi) 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) If no supporting documentation is available for a non-program capital asset, the valuation should be estimated in accordance with instructions provided by the CUSTOMER 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) For each non-program item with a value of \$100,000 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) 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) Subcontractor Property Reports.

(i) The contractor shall submit an Excel spreadsheet with each quarterly property report providing the following information for all CUSTOMER contract-accountable property in the possession of subcontractors:

- § Subcontractor company Customer Imposed Clausee;
- § Prime contract number;
- § Subcontract number;
- § Location of contract-accountable property;
- § Total number of line items of contract-accountable property at each subcontractor location; and
- § Total value of contract-accountable property at each subcontractor location.

(ii) The subcontractor property report can either be uploaded as an attachment to the quarterly property report through the CCD or submitted via email to the CUSTOMER Property Analyst.

(3) Inventory Reports. The contractor shall periodically conduct a physical inventory of contract-accountable property in accordance with leading Industry practices, standards and procedures. The CUSTOMER 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 CUSTOMER Property Analyst not later than 60 days after inventory completion. The contractor shall also post the inventory results to their property records.

(4) Final Property Report. Upon completion of all work and disposition of all contract-accountable property under an CUSTOMER contract, the contractor shall submit a final zero property report through the CCD. Contractors without CCD access shall submit the report directly to the CUSTOMER 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) Reutilization and Disposal.

(1) **Reutilization.** Government property that has had no activity should be reviewed annually by contractor and Government personnel to determine whether reutilization is possible. The CUSTOMER 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) **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 CUSTOMER 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 CUSTOMER 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 CUSTOMER Property Analyst provides notification that all PCC actions have been completed and closed.

(m) **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) **Property Classification and Records.**

(1) **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 CUSTOMER contract-accountable property.

(2) **Records.** The official CUSTOMER 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:

(i) **Tagged Assets**

§ Classification of the property (same as type of property)

§ Serial Number

§ Parent/Child Relationship (applies to STE and higher assemblies with components)

§ Last physical inventory date

(ii) **Material Items**

§ Part Number

§ Actual, Average, Moving, or Estimated Cost

§ Acquisition/in-service date

(3) **System Records.** When items of property are part of a system, such as components of STE, each individual item/component shall have its own individual record with an actual or estimated cost and with the parent-child relationship clearly established.

(4) **Deletions from Contractor Property Records.** Contractors shall decrement their contract property records as appropriate to reflect the following property actions:

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

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

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

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

(l) **Flowdown.** The contractor shall include this clause in all subcontracts. 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.

(End of clause)

#### **CI.245-003 Use of Government-Owned Property (DEC 2011)**

##### **USE OF GOVERNMENT-OWNED PROPERTY (DEC 2011)**

(a) 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) Identification, acquisition cost, and quantity of each item.

(2) Identification of the Government contract under which the property is accountable and written permission for its use from the appropriate Contracting Officer (not required for CUSTOMER contracts).

(b) 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 Customer Imposed Clause and telephone number of the contractor's property administrator.

(c) 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 CUSTOMER IMPOSED CLAUSE Part N45.

(d) 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.

(End of Provision)

**CI.246-001 Material Inspection and Receiving Report (DD Form 250) (JUL 2004)****MATERIAL INSPECTION AND RECEIVING REPORT (DD FORM 250) (JUL 2004)**

At the time of each delivery of supplies or services under this contract, the contractor shall prepare and furnish to the Government a DD Form 250.

(End of clause)

**CI.249-001 Special Termination Costs (JAN 2006)**

Insert the following clause in solicitations and contracts when use of the clause is approved by the D/OC:

**SPECIAL TERMINATION COSTS (JAN 2006)**

(a) *Special termination costs*, as used in this clause, means only costs in the following categories as defined in FAR Part 31:

- (1) Severance pay, as provided in FAR 31.205-6(g);
- (2) Reasonable costs continuing after termination, as provided in FAR 31.205-42(b);
- (3) Settlement of expenses, as provided in FAR 31.205-42(g);
- (4) Costs of return of field service personnel from sites, as provided in FAR 31.205-35 and FAR 31.205-46(c);
- (5) Loss of useful value of special tooling, and special equipment and machinery, as provided in FAR 31.205-42 (d).
- (6) Costs incurred for rental under unexpired leases as provided in FAR 31.205-42(e); and
- (7) Costs in paragraphs (a)(1), (2), (3), (4), (5), and (6) of this clause to which subcontractors may be entitled in the event of termination.

(b) Notwithstanding the *Limitation of Cost, Limitation of Funds, or Limitation of Government Obligation* clause of this contract, the contractor shall not include in its estimate of costs incurred or to be incurred, any amount for special termination costs to which the contractor may be entitled in the event this contract is terminated for the convenience of the Government.

(c) The contractor agrees to perform this contract in such a manner that the contractor's claim for special termination costs will not exceed \$(VARIABLE) or the amount reported on the most recent Contract Funds Status Report, whichever is lower. The Government shall have no obligation to pay the contractor any amount for the special termination costs in excess of this amount. This amount is subject to re-negotiation and adjustment at the discretion of the Contracting Officer.

(d) In the event of termination for the convenience of the Government, this clause shall not be construed as affecting the allowability of special termination costs in any manner other than limiting the maximum amount of the costs payable by the Government.

(e) This clause shall remain in full force and effect until this contract is fully funded. (End of clause)