

CUSTOMER CONTRACT REQUIREMENTS
SEAPORT Enhanced
CUSTOMER CONTRACT N00178-04-D-4043-BOEING

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 (JUL 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 if included in Buyer's customer RFP issued on or after October 1, 2010, or if the prime contract was issued prior to October 1, 2010 but was amended after October 1, 2010 to increase the Simplified Acquisition Threshold

52.203-7 Anti-Kickback Procedures (JUL 1995). 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 \$100,000.

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

52.203-10 Price or Fee Adjustment for Illegal or Improper Activity (JAN 1997). This clause applies only if this contract exceeds (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 2005). 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 (JUN 2003). This clause applies only if this Contract exceeds \$100,000. Paragraph (c)(4) is modified to read as follows: "(c)(4) Seller will promptly submit any disclosure required (with written notice to Boeing) directly to the PCO for the prime contract. Boeing will identify the cognizant Government PCO at Seller's request. Each subcontractor certification will be retained in the subcontract file of the awarding contractor.

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

52.204-7 Central Contractor Registration (OCT 2003).

52.209-6 Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for

Debarment (JUL 1995). 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.

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

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

52.215-14 Integrity of Unit Prices (OCT 1997). 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. This clause does not apply to 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 (DEC 1998). 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 Postretirement Benefits Other Than Pensions (PRB) (OCT 1997). This clause applies to this contract if it meets the requirements of FAR 15.408(j).

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

52.215-21 Requirement for Cost or Pricing Data or Information Other Than Cost and Pricing Data - Modifications (OCT 1997). This clause applies only if this contract exceeds the threshold set forth in FAR 15.403-4. The term "Contracting Officer" shall mean Buyer. Insert the following in lieu of paragraph (a)(2): "Buyer's audit rights to determine price reasonableness shall also apply to verify any request for an exception under this clause. For items priced using catalog or market prices, or law or regulation, access does not extend to cost or profit information or other data relevant solely to the Contractor's determination of the prices to be offered in the catalog or marketplace."

52.219-8 Utilization of Small Business Concerns (JAN 1999).

52.219-9 Small Business Subcontracting Plan (JAN 2002). This clause applies only if this contract exceeds \$500,000 and Seller is not a small business concern. Seller shall adopt a subcontracting plan that complies with the requirements of this clause. In addition, Seller shall submit to Buyer Form X31162, Small Business Subcontracting Plan Certificate of Compliance.

52.219-9 Small-Business Subcontracting Plan Alternate II (OCT 2001). This clause applies only if this contract exceeds \$500,000 and Seller is not a small business concern. Seller shall adopt a subcontracting plan that complies with the requirements of this clause. In addition, Seller shall submit to Buyer Form X31162, Small Business Subcontracting Plan Certificate of Compliance.

52.219-14 Limitations on Subcontracting (DEC 1996).

52.219-16 Liquidated Damages-Subcontracting Plan (JAN 1999).

52.219-27 Notice of Total Service-Disabled Veteran-Owned Small Business Set-Aside (MAY 2004).

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

52.222-3 Convict Labor (JUN 2003).

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

52.222-22 Previous Contracts and Compliance Reports (FEB 1999).

52.222-25 Affirmative Action Compliance (APR 1984).

52.222-26 Equal Opportunity (APR 2002).

52.222-35 Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (SEP 2006). This clause applies only if this contract exceeds \$100,000.

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

52.222-37 Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (SEP 2006). This clause applies only if this contract exceeds \$100,000.

52.222-38 Compliance with Veterans' Employment Reporting Requirements (DEC 2001).

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

52.222-43 Fair Labor Standards Act and Service Contract Act-Price Adjustment (Multiple Year and Option Contracts) (MAY 1989).

52.223-6 Drug-Free Workplace (MAY 2001).

52.223-13 Certification of Toxic Chemical Release Reporting (AUG 2003). Except for commercial items as defined in FAR Part 2, this clause applies to competitive procurements expected to exceed \$100,000 (including all options). If Seller is not subject to the Form R filing and reporting requirements, Seller shall inform Buyer which exemption or exemptions in subparagraph (b)(2) of this clause apply.

52.223-14 Toxic Chemical Release Reporting (AUG 2003). This clause applies only if this contract is not for commercial items as defined in FAR Part 2, was competitively awarded, and exceeds \$100,000 (including all options).

52.225-8 Duty-Free Entry (FEB 2000). This clause applies only if this contract identifies supplies to be afforded duty-free entry or if foreign supplies in excess of \$10,000 may be imported into the customs territory of the United States. For the purposes of this clause, the blanks in paragraph (g)(3) are completed as follows: UNITED STATES GOVERNMENT, DEPARTMENT OF DEFENSE, Duty-free entry is claimed pursuant Section XXII, Chapter 98, Subchapter VIII, Item No. 9808.00.30 of the Harmonized Tariff Schedule of the United States. Upon arrival of shipment at port of entry, the importer or authorized agent will notify Commander, Defense Contract Management Area Operations (DCMAO, New York, 201 Varick Street, New York, New York, 10014-4811, Attention DCRN-NCT) for execution of Customs Forms 7501, 7501-A, or 7506 and required duty free entry certificates.

52.225-13 Restrictions on Certain Foreign Purchases (MAR 2005).

52.227-1 Authorization and Consent (JUL 1995).

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

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

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

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

52.227-13 Patent Rights-Acquisition by the Government (JAN 1997).

52.230-6 Administration of Cost Accounting Standards (NOV 1999). Add "Buyer and the" before "Contracting Officer" in paragraph (f). This clause applies if clause H001, H002, or H004 is included in this contract.

52.244-6 Subcontracts for Commercial Items (MAR 2009).

52.248-1 Value Engineering (FEB 2000). This clause applies only if this contract is for \$100,000 or more. The term "Contractor" means Seller. The term "Contracting Officer" means Buyer. The term "contracting office" means US Government contracting office. The term "Government" means Buyer except in subparagraph (c)(5). The term "Government" does not mean Buyer as it is used in the phrase "Government costs". Paragraph (d) shall read as follows: The Seller shall submit VECP's to the Buyer. Subparagraph (e)(1) shall read as follows: The Buyer will notify the Seller of the status of the VECP after receipt. The Buyer will process VECP's expeditiously; however, it will not be liable for any delay in acting upon a VECP.

Paragraph (m) shall read as follows: (m) Data. The Seller may restrict the Government's right to use any part of a VECP or the supporting data by marking the following legend on the affected parts:

These data, furnished under the Value Engineering clause of contract, shall not be disclosed outside the Buyer and Government or duplicated, used, or disclosed, in whole or in part, for any purpose other than to evaluate a value engineering change proposal submitted under the clause. This restriction does not limit the Buyer's and Government's right to use information contained in these data if it has been obtained or is otherwise available from the Seller or from another source without limitations.

If a VECP is accepted, the Seller hereby grants the Government unlimited rights in the VECP and supporting data, except that, with respect to data qualifying and submitted as limited rights or Government purpose rights technical data, the Government shall have the rights specified in the contract modification implementing the VECP and Seller shall appropriately mark the data. (The terms "unlimited rights" a "limited rights" and "Government purpose rights" are defined in Part 27 of the Federal Acquisition Regulation ("FAR") or Part 227 of the Defense FAR Supplement, as applicable.)

Seller's share of the net acquisition savings and collateral savings shall not reduce the Government's share of concurrent or future savings or collateral savings. Buyer's payments to Seller under this clause are conditioned upon Buyer's receipt of authorization for such payments from the Government

52.251-1 Government Supply Sources (APR 1984). This clause applies only if Seller is notified by Buyer in writing that Seller is authorized to purchase from Government supply sources in the performance of this contract.

52.253-1 Computer Generated Forms (JAN 1991).

2. DoD FAR Supplement Clauses DoD Contracts. The following contract clauses are incorporated by reference from the Department of Defense Federal Acquisition Regulation Supplement and apply to the extent indicated. In all of the following clauses, "Contractor" and "Offeror" mean Seller except as otherwise noted.

252.203-7001 Prohibition on Persons Convicted of Fraud or Other Defense-Contract Related Felonies (excluding paragraph (g)) (MAR 1999). This clause applies only if this contract exceeds \$100,000 and does not apply to the purchase of commercial items or commercial components. "Contractor" and "contract" are not changed in paragraphs (a) and (b). In paragraph (e), the remedies described in subparagraphs (2) and (3) are available to Buyer, not the Government. In paragraph (f), "through the Buyer" is inserted after "Contracting Officer". Paragraph (g) is deleted and "Contracting Officer" shall mean Contracting Officer.

252.203-7002 Display of DoD Hotline Poster (DEC 1991).

252.204-7000 Disclosure of Information (DEC 1991). Seller will submit requests for authorization to release through Buyer. Seller shall submit written requests to Buyer a minimum of 60 days prior to proposed date of release.

252.204-7003 Control of Government Personnel Work Product (APR 1992).

252.205-7000 Provision of Information to Cooperative Agreement Holders (DEC 1991).

252.209-7004 Subcontracting with Firms That Are Owned or Controlled by the Government of a Terrorist Country (MAR 1998).

252.211-7003 Item Identification and Valuation (JAN 2004). Seller shall comply with the unique item identification requirements of this clause for those subassemblies, components, and parts specified elsewhere in this contract. Such identification and marking shall be a high-capacity 2D machine readable code to comply with the version of MIL-STD-130, Identification Marking of U.S. Military Property, set forth elsewhere in this contract; or if not so stated, then the Seller shall comply with MIL-STD-130 L. The code may include, as space is available, linear bar code and human readable characters. Unless otherwise specified in Boeing product drawings or specifications, the seller may use either Construct #1 or Construct #2. The Seller shall not be required to furnish item valuations as set forth in this clause.

252.215-7000 Pricing Adjustments (DEC 1991). This clause applies only if this contract exceeds the threshold set forth in FAR 15.403-4.

252.219-7003 Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan (DoD Contracts) (APR 1996). Except paragraph (g) which is hereby deleted.

252.223-7004 Drug-Free Work Force (SEP 1988).

252.225-7003 Report of Intended Performance Outside the United States and Canada, Submission with Offer (JUN 2005).

252.225-7004 Reporting Of Contract Performance Outside The United States And Canada, Submission After Award (JUN 2005). The term "Contracting Officer" means "Buyer." Subparagraph (c) (5) is deleted. In subparagraph (d) (2), "from the Contracting Officer or" is deleted.

252.225-7012 Preference for Certain Domestic Commodities (FEB 2003).

252.225-7013 Duty Free Entry (OCT 2006). This clause applies if Seller is located in a qualifying country (as defined in DFARS Part 225.8) or if Seller is located in any other country and the estimated U.S. duty for the deliverable items will exceed \$200 per unit. Seller shall include the prime contract number on all shipping documents submitted to Customs for supplies for which duty-free entry is claimed pursuant to this clause. The information required by paragraph (j)(3) of this clause is available upon request.

252.225-7028 Exclusionary Policies and Practices of Foreign Governments (APR 2003).

252.226-7001 Utilization of Indian Organizations and Indian-Owned Economic Enterprises - DoD Contracts (OCT 2003). This clause applies if this contract exceeds \$100,000 and does not apply to the acquisition of commercial items/services as defined in FAR 2.101.

252.227-7013 Rights In Technical Data -- Noncommercial Items (NOV 1995). This clause applies only if the delivery of data is required for noncommercial items under this contract.

252.227-7014 Rights In Noncommercial Computer Software And Noncommercial Computer Software Documentation (JUN 1995). This clause applies only if the delivery of noncommercial computer software or noncommercial computer documentation may be originated, developed or delivered under this contract.

252.227-7015 Technical Data -- Commercial Items (NOV 1995). This clause applies only if the delivery of data is required for commercial items under this contract.

252.227-7016 Rights in Bid or Proposal Information (JUN 1995).

252.227-7017 Identification and Assertion of Use, Release, or Disclosure Restrictions (JUN 1995).

252.227-7019 Validation of Asserted Restrictions - Computer Software (JUN 1995). This clause applies only if computer software may be originated, developed, or delivered under this contract.

252.227-7025 Limitations on the Use or Disclosure of Government-Furnished Information Marked With Restrictive Legends (JUN 1995). In paragraph (c)(1), the term "Government" shall mean "Government and Buyer".

252.227-7027 Deferred Ordering of Technical Data or Computer Software (APR 1988). This clause applies only if technical data or computer software may be generated as part of the performance of this contract.

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

252.227-7030 Technical Data -- Withholding of Payment (MAR 2000). In this clause, "Government" and "Contracting Officer" shall mean Buyer. This clause applies only if the delivery of technical data is required under this contract.

252.227-7034 Patents -- Subcontracts (APR 1984).

252.227-7037 Validation of Restrictive Markings on Technical Data (SEP 1999). This clause applies only if the delivery of data is required by this contract.

252.227-7039 Patents--Reporting of Subject Inventions (APR 1990).

252.243-7001 Pricing of Contract Modifications (DEC 1991).

252.244-7000 Subcontracts for Commercial Items and Commercial Components (DoD Contracts) (MAR 2000).

252.245-7001 Reports of Government Property (MAY 1994). Seller will provide information that the Buyer may require to complete Buyer's annual report.

252.246-7001 Warranty of Data (DEC 1991). The warranty period in paragraph (b) is three years from the Government's acceptance of the final items of data under this contract. "Government" and "Contracting Officer" shall mean Buyer.

252.247-7023 Transportation of Supplies by Sea (MAY 2002). This clause applies if this contract is for supplies that are of a type described in paragraph (b)(2) of this clause. In paragraph (d), "45 days" is changed to "60 days."

If this contract exceeds the simplified acquisition threshold, paragraphs (a)-(h) apply. In paragraph (g) "Government" means Buyer. If this contract is at or below the simplified acquisition threshold, paragraphs (f) and (g) are excluded. The simplified acquisition threshold is (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.

252.247-7024 Notification of Transportation of Supplies by Sea (MAR 2000). Contracting Officer and, in the first sentence of paragraph (a), Contractor mean Buyer. This clause applies only if the supplies being transported are noncommercial items or commercial items that (i) Seller is reselling or distributing to the Government without adding value (generally, Seller does not add value to items that it contracts for f.o.b. destination shipment); (ii) are shipped in direct support of U.S. military contingency operations, exercises, or forces deployed in humanitarian or peacekeeping operations; or (iii) are commissary or exchange cargoes transported

outside the Defense Transportation System in accordance with 10 U.S.C. 2643.

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

52.209-6 Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment (JUL 1995). 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.

52.222-26 Equal Opportunity (APR 2002).

52.222-35 Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (SEP 2006). This clause applies only if this contract exceeds \$100,000.

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

52.244-6 Subcontracts for Commercial Items (MAR 2009).

252.211-7003 Item Identification and Valuation (JAN 2004). Seller shall comply with the unique item identification requirements of this clause for those subassemblies, components, and parts specified elsewhere in this contract. Such identification and marking shall be a high-capacity 2D machine readable code to comply with the version of MIL-STD-130, Identification Marking of U.S. Military Property, set forth elsewhere in this contract; or if not so stated, then the Seller shall comply with MIL-STD-130 L. The code may include, as space is available, linear bar code and human readable characters. Unless otherwise specified in Boeing product drawings or specifications, the seller may use either Construct #1 or Construct #2. The Seller shall not be required to furnish item valuations as set forth in this clause.

252.225-7004 Reporting Of Contract Performance Outside The United States And Canada, Submission After Award (JUN 2005). The term "Contracting Officer" means "Buyer." Subparagraph (c) (5) is deleted. In subparagraph (d) (2), "from the Contracting Officer or" is deleted.

252.225-7012 Preference for Certain Domestic Commodities (FEB 2003).

252.227-7013 Rights In Technical Data -- Noncommercial Items (NOV 1995). This clause applies only if the delivery of data is required for noncommercial items under this contract.

252.227-7014 Rights In Noncommercial Computer Software And Noncommercial Computer Software Documentation (JUN 1995). This clause applies only if the delivery of noncommercial computer software or noncommercial computer documentation may be originated, developed or delivered under this contract.

252.227-7015 Technical Data -- Commercial Items (NOV 1995). This clause applies only if the delivery of data is required for commercial items under this contract.

252.227-7016 Rights in Bid or Proposal Information (JUN 1995).

252.227-7019 Validation of Asserted Restrictions - Computer Software (JUN 1995). This clause applies only if computer software may be originated, developed, or delivered under this contract.

252.227-7027 Deferred Ordering of Technical Data or Computer Software (APR 1988). This clause applies only if technical data or computer software may be generated as part of the performance of this contract.

252.227-7030 Technical Data -- Withholding of Payment (MAR 2000). In this clause, "Government" and "Contracting Officer" shall mean Buyer. This clause applies only if the delivery of technical data is required under this contract.

252.227-7037 Validation of Restrictive Markings on Technical Data (SEP 1999). This clause applies only if the delivery of data is required by this contract.

252.243-7001 Pricing of Contract Modifications (DEC 1991).

252.244-7000 Subcontracts for Commercial Items and Commercial Components (DoD Contracts) (MAR 2000).

252.246-7001 Warranty of Data-Basic (DEC 1991). The warranty period in paragraph (b) is three years from the Government's acceptance of the final items of data under this contract. "Government" and "Contracting Officer" shall mean Buyer.

252.247-7023 Transportation of Supplies by Sea (MAY 2002). This clause applies if this contract is for supplies that are of a type described in paragraph (b)(2) of this clause. In paragraph (d), "45 days" is changed to "60 days."

If this contract exceeds the simplified acquisition threshold, paragraphs (a)-(h) apply. In paragraph (g) "Government" means Buyer. If this contract is at or below the simplified acquisition threshold, paragraphs (f) and (g) are excluded. The simplified acquisition threshold is (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.

252.247-7024 Notification of Transportation of Supplies by Sea (MAR 2000). Contracting Officer and, in the first sentence of paragraph (a), Contractor mean Buyer. This clause applies only if the supplies being transported are noncommercial items or commercial items that (i) Seller is reselling or distributing to the Government without adding value (generally, Seller does not add value to items that it contracts for f.o.b. destination shipment); (ii) are shipped in direct support of U.S. military contingency operations, exercises, or forces deployed in humanitarian or peacekeeping operations; or (iii) are commissary or exchange cargoes transported outside the Defense Transportation System in accordance with 10 U.S.C. 2643.

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

19.0 Assignment and Subcontracting

Seller shall not assign this Subcontract or any of the monies due or to become due hereunder without prior written consent of the Buyer.

The Seller shall not enter into any lower-tier Subcontract for any portion of this Subcontract without first obtaining Buyer's written approval thereof; provided, however, that this limitation shall not apply to Seller's purchase of standard commercial supplies. The Seller shall select any lower-tier Seller on a competitive basis to the maximum practical extent.

22.0 Patents, Technical Data and Copyright

As this is a Subcontract to a Government Contract, any and all inventions, discoveries, improvements or creations which Seller has conceived or made or may conceive or make in its performance of the Subcontract shall be the sole and exclusive property of the Government.

23.0 License

Neither the execution and delivery of this Subcontract, nor the furnishing of any proprietary information by either party shall be construed as granting to the other party either expressly, by implication, estoppel, or otherwise, any license under any invention or patent, hereafter owned or controlled by the party furnishing same. None of the information which may be submitted or exchanged by the parties shall constitute any

representation, warranty, assurance, guarantee, or inducement by either party to the other with respect to the infringement of trademarks, patents, copyrights, or any right of privacy, or other rights of third persons. However, it is recognized and agreed that the parties grant licenses or other rights to the Government to inventions, data, and information as required by the Prime Contract.

24.0 Software

As this is a Subcontract to a Government Contract, the rights to any software developed pursuant to the work performed as a result of this Subcontract shall be the sole property of the Government.

25.0 Access to Proprietary Information or Computer Software

25.1 Performance under this subcontract may require that the Seller have access to technical data, computer software, or other sensitive data of another party who asserts that such data or software is proprietary. If access to such data or software is required or to be provided, the Seller shall enter into a written agreement with such party prior to gaining access to such data or software and will inform the Buyer.

25.2 The Seller agrees to: (1) indoctrinate its personnel who will have access to the data or software as to the restrictions under which access is granted; (2) not disclose the data or software to another party or other Seller personnel except as authorized by the Buyer; (3) not engage in any other action, venture, or employment wherein this information will be used, other than under this subcontract, in any manner inconsistent with the spirit and intent of this requirement; (4) not disclose the data or software to any other party, including, but not limited to, joint venturer, affiliate, successor, or assign of the Seller; and (5) reproduce the restrictive stamp, marking, or legend on each use of the data or software whether in whole or in part

25.3 The restrictions on use and disclosure of the data and software described above also apply to such information received from the Government through any means to which the Seller has access in the performance of this subcontract that contains proprietary or other restrictive markings.

25.4 The Seller agrees that it will promptly notify the Buyer of any attempt by an individual, company, or Government representative not directly involved in the effort to be performed under this subcontract to gain access to such proprietary information. Such notification shall include the name and organization of the individual, company, or Government representative seeking access to such information.

25.5 The Seller shall include this requirement in subcontracts of any tier which involve access to information covered by paragraph 27.1.

25.6 Compliance with this requirement is a material requirement of this subcontract

26.0 Data Rights

26.1 Technical Instruction Intellectual Property Deliverable Restrictions

For each Technical Instruction to be issued under the subcontract, the Seller shall identify, prior to award of the affected Technical Instruction(s) to the best of its ability, noncommercial and commercial technical data and computer software that it intends to deliver with restrictions on the Government's right to use, release or disclose such identified technical data and/or computer software. The Government further desires that the Seller identify, prior to award of affected Technical Instruction(s), background inventions that will be embodied in items, components, processes, technical data, computer software or computer software documentation developed or delivered under the Technical Instruction. To identify such technical data, computer software and background inventions, the Seller shall submit the following three lists:

1. Noncommercial Computer Software and Technical Data. The Government desires appropriate rights in all noncommercial technical data and noncommercial computer software developed or delivered under each Technical Instruction. The Seller shall identify all asserted restrictions on the Government's license rights in such data and software, pursuant to paragraph (e) of the clauses at DFARS 252.227-7013 ('7013) and DFARS 252.227-7014 ('7014). The '7013 and the '7014 clauses shall govern the format and

content of the Seller's assertions of software and data restrictions for each Technical Instruction. The Seller may combine the '7013(e) and the '7014(e) post-award lists into a single list, as long as the technical data items can be clearly distinguished from the computer software items. The Seller shall update the assertions as necessary during performance of the Technical Instruction to ensure that the list is accurate before making final delivery of data or software under the Technical Instruction.

2. Commercial Computer Software and Technical Data. For each Technical Instruction, the Seller shall identify all asserted restrictions on the Government's license rights in commercial computer software and commercial technical data. To identify such restrictions, the Seller shall submit a Commercial Restrictions List, dated and signed by an official contractually authorized to obligate the Seller, as an attachment to the affected Technical Instruction. The format of the Commercial Restrictions List shall be substantially the same as the format set forth in DFARS 252.227-7017(d). The Commercial Restrictions List shall include the assertions of the Seller's Sellers or suppliers or potential Sellers or suppliers. For each entry in the Commercial Restrictions List which indicates that the asserted rights category is a special license or the license customarily provided to the public, the Seller shall attach to the Commercial Restrictions List a copy of such license, except that if any particular license is identified as applying to more than one such entry, only one copy of that license need be provided. The Seller shall update the Commercial Restrictions List as necessary during performance of the Technical Instruction to ensure that the list is accurate before making final delivery of data or software under the Technical Instruction.

3. Background Inventions. For each Technical Instruction, the Seller shall provide an identification and licensing list to the Government that identifies all inventions (background inventions), other than subject inventions, disclosed in any patents or pending patent applications in which the Seller has:

- (a) Any title, right or interest; and
- (b) Intends to include in any Items, Components or Processes developed or delivered under the affected Technical Instruction, or that are described or disclosed in any Technical Data, Computer Software or Computer Software Documentation developed or delivered under the affected Technical Instruction.

For each background invention, the list shall identify:

- (a) Patent or pending patent application number;
- (b) Title of the patent or pending patent application;
- (c) Issue date of the patent, or filing date of the pending patent application;
- (d) The Item, Component, Process, Technical Data, Computer Software or Computer Software Documentation that will include or disclose the background invention;
- (e) The nature of the Seller's right, title or interest in the background invention;
- (f) If the Government or any third part has any right, title or interest in the background invention; and
- (g) If the Seller is willing to sell the Government a license to practice the background invention.

The list shall be an attachment to the affected Technical Instruction, and the Seller shall update the list, as necessary, during performance of the Technical Instruction to promptly identify all background inventions.

26.2 Delivery of Noncommercial Computer Software and Technical Data

Unless expressly otherwise stated in the Technical Instruction, the Seller's deliveries of noncommercial technical data shall include physical delivery of the digital version of that technical data. The Seller's deliveries of noncommercial computer software shall include physical delivery of a digital version of both the executable code and the annotated source code. This includes noncommercial data/software that was developed exclusively at private expense. As used in this paragraph, "physical delivery" means submission to the Government of the data/software in a predetermined format on appropriate digital storage media

(e.g., CD-ROM), and, if specified in the delivery requirement, may also include submission of paper copies of that data/software. However, due to the variety and number of Technical Instructions contemplated under this subcontract, it may be mutually beneficial to modify the physical delivery requirement. Accordingly, the Seller may, before delivery of the affected computer software or technical data, notify the Buyer in writing that it intends to modify the physical delivery requirement. If the Buyer accepts the modified physical delivery, the modified physical delivery shall be incorporated into the affected Technical Instruction by modification.

27.0 Computer Software and/or Computer Database(s) Delivered to and/or Received from the Government

27.1 The Seller agrees to test for viruses all computer software and/or computer databases, as defined in the clause entitled "RIGHTS IN NONCOMMERCIAL COMPUTER SOFTWARE AND NONCOMMERCIAL COMPUTER SOFTWARE DOCUMENTATION" (DFARS 252.227-7014), before delivery of that computer software or computer database in whatever media and on whatever system the software is delivered. The Seller warrants that any such computer software and/or computer database will be free of viruses when delivered.

27.2 The Seller agrees to test any computer software and/or computer database(s) received from the Government for viruses prior to use under this subcontract.

27.3 Unless otherwise agreed in writing, any license agreement governing the use of any computer software to be delivered as a result of this subcontract must be paid-up and perpetual, or so nearly perpetual as to allow the use of the computer software or computer data base with the equipment for which it is obtained, or any replacement equipment, for so long as such equipment is used. Otherwise the computer software or computer database does not meet the minimum functional requirements of this subcontract. In the event there is any routine to disable the computer software or computer database in the future, that date certain shall not be less than 25 years after the delivery date of the computer software or computer database.

27.4 No copy protection devices or systems shall be used in any computer software or computer database delivered under this subcontract to restrict or limit the Government from making copies. This does not prohibit license agreements from specifying the maximum amount of copies that can be made.

27.5 Delivery by the Seller to the Government of certain technical data and other data is now frequently required in digital form rather than as hard copy. Such delivery may cause confusion between data rights and computer software rights. It is agreed that, to the extent that any such data is computer software by virtue of its delivery in digital form, the Government will be licensed to use that digital-form data with exactly the same rights and limitations as if the data had been delivered as hard copy.

27.6 Any limited rights legends or other allowed legends placed by a Seller on technical data or other data delivered in digital form shall be digitally included on the same media as the digital-form data and must be associated with the corresponding digital-form technical data to which the legends apply to the extent possible. Such legends shall also be placed in human-readable form on a visible surface of the media carrying the digital-form data as delivered, to the extent possible.

28.0 Conflicting Business Activities

During the term of this Subcontract, the Seller shall not engage in any business, conduct or professional activities which are in conflict with efforts being performed under Technical Instructions issued under this Subcontract. Said conflicting activities shall include without limitation marketing or soliciting the Department of the Navy for the same services awarded under this contract for a period of performance overlapping with that on this contract, whether for Seller's own benefit or the benefit of any person or organization other than Buyer. Seller is free however to pursue follow-on competitive or sole-source awards on services previously performed under this contract if the Department of the Navy solicits these services outside this contract after this Seller period of performance has completed. Furthermore, nothing shall preclude the Seller from pursuing new business as stated herein with another Prime and/or Seller after performance is completed as stated herein.

30.0 Organizational Conflict of Interest

Note: This clause will be invoked at the Technical Instruction level.

30.1 (a) "Organizational Conflict of Interest" means that because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to the Government, or the person's objectivity in performing the subcontract work is or might be otherwise impaired, or a person has an unfair competitive advantage. "Person" as used herein includes Corporations, Partnerships, Joint Ventures, and other business enterprises.

(b) Seller" as used in this clause includes any affiliate, Seller, consultant or employee of the Seller, as well as any joint venture involving the Seller, any entity into or with which it may subsequently merge or affiliate, or any other successor or assignee of the Seller. All references to the "Seller" as contained in this clause shall apply with equal force to all of these included.

(c) " Subcontract" and "technical instruction" shall be used as applicable.

30.2 The Seller warrants that to the best of its knowledge and belief, and except as otherwise set forth in the subcontract, the Seller does not have any organizational conflict of interest(s) as defined herein.

30.3 It is recognized that the effort to be performed by the Seller under this subcontract may create a potential organizational conflict of interest on the instant subcontract or on a present or on a future acquisition. In order to avoid this potential conflict of interest, and at the same time to avoid prejudicing the best interest of the Government, the right of the Seller to participate in future procurement of equipment and/or services that are the subject of any work under this subcontract shall be limited as described below in accordance with the requirements of FAR 9.5.

30.4 (a) The Seller agrees that it shall not release, disclose, or use in any way that would permit or result in disclosure to any party outside the Government any information provided to the Seller by the Government during or as a result of performance of this subcontract. Such information includes, but is not limited to, information submitted to the Government on a confidential basis by other persons. Further, the prohibition against release of Government provided information extends to cover such information whether or not in its original form, e.g., where the information has been included in Seller generated work or where it is discernible from materials incorporating or based upon such information. This prohibition shall not expire after a given period of time.

(b) Seller agrees that it shall not release, disclose, or use in any way that would permit or result in disclosure to any party outside the Government any information generated or derived during or as a result of performance of this subcontract. This prohibition shall expire after a period of three years after completion of performance of this subcontract.

(c) The prohibitions contained in subparagraphs (32.4)(a) and (32.4)(b) shall apply with equal force to any affiliate of the Seller, any Seller, consultant, or employee of the Seller, any joint venture involving the Seller, any entity into or with which it may merge or affiliate, or any successor or assign of the Seller. The terms of paragraph 32.6 below relating to notification shall apply to any release of information in contravention of this paragraph 32.4 .

30.5 Seller further agrees that, during the performance of this subcontract and for a period of three years after completion of performance of this contract, the Seller, any affiliate of the Seller, any Seller, consultant, or employee of the Seller, any joint venture involving the Seller, any entity into or with which it may subsequently merge or affiliate, or any other successor or assign of the Seller, shall not furnish to the United States Government, either as a Buyer or as a Seller, or as a consultant to a Buyer or Seller, any system, component or services which is the subject of the work to be performed under this subcontract. This exclusion does not apply to any re-competition for those systems, components or services furnished pursuant to this subcontract. As provided in FAR 9.505-2, if the Government procures the system, component, or services on the basis of work statements growing out of the effort performed under this subcontract, from a source other than the Seller, a Seller, affiliate, or assign of either, during the course of performance of this subcontract or before the three year period following completion of this subcontract has lapsed, the Seller may, with the authorization of the cognizant Government Contracting Officer, participate in a subsequent procurement for the same system, component, or service. In other words, the Seller may be authorized to compete for procurement(s) for systems, components or services subsequent to an intervening procurement.

30.6 Seller agrees that if, after award, it discovers an actual or potential organizational conflict of interest, it shall make immediate and full disclosure in writing to the Buyer and Government. The notification shall include a description of the actual or potential organizational conflict of interest, a description of the action which the Seller has taken or proposes to take to avoid, mitigate, or neutralize the conflict, and any other relevant information that would assist the Government in making a determination on this matter. Notwithstanding this notification, the Government may terminate the subcontract for the convenience of the

Government if determined to be in the best interest of the Government.

30.7 Notwithstanding this clause, if Seller was aware, or should have been aware, of an organizational conflict of interest prior to the award of this subcontract or becomes, or should become, aware of an organizational conflict of interest after award of this subcontract and does not make an immediate and full disclosure in writing to the Buyer and Government, the Government may terminate this subcontract for default.

30.8 If Seller takes any action prohibited by this requirement or fails to take action required by this requirement, Buyer may terminate this subcontract for default.

30.9 The Government's decision as to the existence or nonexistence of an actual or potential organizational conflict of interest shall be final.

30.10 Nothing in this requirement is intended to prohibit or preclude the Seller from marketing or selling to the United States Government its product lines in existence on the effective date of this subcontract; nor, shall this requirement preclude the Seller from participating in any research and development or delivering any design development model or prototype of any such equipment. Additionally, sale of catalog or standard commercial items are exempt from this requirement.

30.11 Seller shall promptly notify the Buyer and Government, in writing, if it has been tasked to evaluate or advise the Government concerning its own products or activities or those of a competitor in order to ensure proper safeguards exist to guarantee objectivity and to protect the Government's interest.

30.12 Seller shall include this requirement in subcontracts of any tier which involve access to information or situations/conditions covered by the preceding paragraphs.

30.13 The rights and remedies described herein shall not be exclusive and are in addition to other rights and remedies provided by law including those set forth at FAR Part 9.5, or elsewhere included in this subcontract.

30.14 Compliance with this requirement is a material requirement of this subcontract.