

**CUSTOMER CONTRACT REQUIREMENTS**  
**Proprietary**  
**CUSTOMER CONTRACT P233**

**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 2 below.

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

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

**52.203-7 Anti-Kickback Procedures** (MAY 2014). Buyer may withhold from sums owed Seller the amount of any kickback paid by Seller or its subcontractors at any tier if (a) the Contracting Officer so directs, or (b) the Contracting Officer has offset the amount of such kickback against money owed Buyer under the prime contract. This clause, excluding subparagraph (c)(1), applies only if this contract exceeds \$150,000.

**52.203-10 Price or Fee Adjustment for Illegal or Improper Activity** (MAY 2014). This clause applies only if this contract exceeds (i) \$100,000 if included in Buyer's customer RFP or customer contract issued before October 1, 2010 or (ii) \$150,000 if included in Buyer's customer RFP issued on or after October 1, 2010, or if the prime contract was issued prior to October 1, 2010 but was amended after October 1, 2010 to increase the Simplified Acquisition Threshold. If the Government reduces Buyer's price or fee for violations of the Act by Seller or its subcontractors at any tier, Buyer may withhold from sums owed Seller the amount of the reduction.

**52.203-11 Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions** (SEP 2007). This clause applies only if this contract exceeds (i) \$100,000 if included in Buyer's customer RFP or customer contract issued before October 1, 2010 or (ii) \$150,000 if included in Buyer's customer RFP issued on or after October 1, 2010, or if the prime contract was issued prior to October 1, 2010 but was amended after October 1, 2010 to increase the Simplified Acquisition Threshold.

**52.203-12 Limitation on Payments to Influence Certain Federal Transactions** (OCT 2010). This clause applies only if this contract exceeds \$150,000. Paragraph (g)(2) is modified to read as follows: "(g)(2) Seller will promptly submit any disclosure required (with written notice to Boeing) directly to the PCO for the prime contract. Boeing will identify the cognizant Government PCO at Seller's request. Each subcontractor certification will be retained in the subcontract file of the awarding contractor."

**52.203-13 Contractor Code of Business Ethics and Conduct** (OCT 2015). This clause applies only if this contract is in excess of \$5,500,000 and has a period of performance of more than 120 days.

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

**52.204-23 Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities** (JUL 2018). In paragraph (c)(1), the term "Government" means "Government or Buyer" and the term "Contracting Officer" means "Buyer." All reporting required by paragraph (c) shall be reported through Buyer. Seller shall report the information in paragraph (c)(2) to Buyer.

**52.209-6 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.

**52.215-12 Subcontractor Certified Cost or Pricing Data** (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 (b) of the referenced clause shall be modified as follows: delete "to the Contracting Officer or the Contracting Officer's representative" and substitute in lieu thereof "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.

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

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

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

**52.222-35 Equal Opportunity for Veterans** (OCT 2015). This clause applies 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, unless exempted by rules, regulations, or orders of the Secretary of Labor.

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

**52.222-50 Combating Trafficking in Persons** (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.

**52.229-10 State of New Mexico Gross Receipts and Compensating Tax** (APR 2003). This clause applies only if (1) this contract is a cost-reimbursement contract; (2) this contract directs or authorizes Seller to acquire tangible personal property as a direct cost under a contract and title to such property passes directly to and vests in the United States upon delivery of the property by the subcontractor, and (3) this contract is for services to be performed in whole or in part in the State of New Mexico..

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

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

**52.244-6 Subcontracts for Commercial Items** (NOV 2017). Clauses in paragraph (c) (1) apply when Seller is providing commercial items under the Contract.

**52.245-1 Government Property** (JAN 2017). This clause applies if Government property is acquired or furnished for contract performance. "Government" shall mean Government throughout except the first time it appears in paragraph (g)(1) when "Government" shall mean the Government or the Buyer.

**52.248-1 Value Engineering** (OCT 2010). This clause applies only if this contract is for \$150,000 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

#### **52.253-1 Computer Generated Forms (JAN 1991).**

**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 Section 1 above are deleted and the following FAR clauses are inserted in lieu thereof:

**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.

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

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

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

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

**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 the 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).

**52.222-50 Combating Trafficking in Persons Alternate I** (MAR 2015). The term “Contractor” shall mean “Seller”, except the term “prime contractor” shall remain unchanged. The term “Contracting Officer” shall mean “Contracting Officer and the Buyer's Authorized Procurement representative in paragraph (d)(1). Paragraph (d)(2) shall read as follows: “If the allegation may be associated with more than one contract, the Seller shall inform the Buyer's Authorized Procurement Representative for each affected contract.” The term “the Government” shall mean “the Government and Buyer” in paragraph (e). The term “termination” shall mean “cancellation” and “Cancellation for Default”, respectively, in paragraph (e)(6). Insert the following at the end of paragraph (e): “If the Government exercises one of the remedies identified in the paragraph (e) against Buyer as a result, in whole or in part, of the Seller’s violation of its obligations under this clause, Buyer may impose that remedy against the Seller proportionate to the extent to which Seller’s violation caused the Government’s decision to impose a remedy on Buyer.” The term “Contracting Officer” shall mean “Contracting Officer and Buyer” in paragraph (f), except in paragraph (f)(2), where it shall mean “Contracting Officer or Buyer”. Paragraph (h)(2)(ii) shall read as follows: “To the nature and scope of the activities involved in the performance of a Government subcontract, including the number of non-United States citizens expected to be employed and the risk that the contract or subcontract will involve services or supplies susceptible to trafficking in persons.” The term “Contracting Officer” shall mean “Contracting Officer or Buyer” in paragraph (h)(4)(ii). The term “Contracting Officer” shall mean “Buyer” in paragraph (h)(5).

**52.222-54 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.

**52.222-55 Minimum Wages Under Executive Order 13658** (DEC 2015). This clause applies if this contract is subject to the Service Contract Labor Standards statute or the Wage Rate Requirements (Construction) statute, and is to be performed in whole or in part in the United States. "Contracting Officer" shall mean "Buyer" except for paragraphs (e)(2), (4) and (g). If the Government exercises a withhold identified in the paragraph (g) against Buyer as a result of the Seller's violation of its obligations under this clause, Buyer may impose that withhold against the Seller.

**52.222-62 Paid Sick Leave Under Executive Order 13706** (JAN 2017). This clause applies if the Contract is subject to the Service Contract Labor Standards statute or the Wage Rate Requirements (Construction) statute, and are to be performed in whole or in part in the United States.

**52.224-3 Privacy Training Alternate I** (JAN 2017). The term "Contracting Officer" shall mean "Contracting Officer or Buyer".

**52.224-3 Privacy Training** (JAN 2017). The term "Contracting Officer" shall mean "Contracting Officer or Buyer".

**52.225-26 Contractors Performing Private Security Functions Outside the United States** (OCT 2016). This clause applies if the Contract will be performed outside the United States in areas of (1) combat operations, as designated by the Secretary of Defense; or (2) other significant military operations, upon agreement of the Secretaries of Defense and State that the clause applies in that area. In paragraph (d)(1), Contracting Officer shall mean "Contracting Officer or Buyer" and in paragraph (d) (3), Contracting Officer shall mean Buyer.

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

**52.244-6 Subcontracts for Commercial Items** (NOV 2017). 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** (JAN 2017). This clause applies if Government property is acquired or furnished for contract performance. "Government" shall mean Government throughout except the first time it appears in paragraph (g)(1) when "Government" shall mean the Government or the Buyer.

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

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

A. CUSTOMER IMPOSED CLAUSES ("CI.Clause"). Throughout this section, the terms "Contractor" or "Offeror" shall mean "Seller."

**1. ELIMINATION OF 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)

[List each Class I ODS, its application or use, and approved quantities. If “None”, so state.]
- 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.

**2. INSPECTOR GENERAL AND THE HOTLINE (AUG 2004)**

- a. The contractor must report to the Customer Inspector General (IG) any and all possible violations of federal law or illegal intelligence activities related to this contract by individuals charging directly or indirectly to this contract.
- b. The IG shall have access to any individual charging directly or indirectly to this contract whose testimony is needed for the performance of the IG’s duties. In addition, the IG shall have direct access to all records, reports, audits, reviews, recommendations, documents, e-mails, papers, or other material that relate to this contract with respect to which the IG has responsibilities. Failure on the part of any contractor to cooperate with the IG shall be grounds for administrative action by the Director, Office of Contracts, including contractual remedies.
- c. Customer contractors and contractor personnel may report suspected instances of improper conduct through the Customer IG Hotline. Contractors shall make their employees aware of this Hotline.
- d. The contractor agrees to include the substance of this clause in all subcontracts exceeding the simplified acquisition threshold except those for commercial items or components, and those where the Customer association must be protected.

**3. PROHIBITIONS ON PERSON 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 Buyer. 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).

#### 4. 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 (NSM);
  - (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 (INCG);
  - (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 Buyer within 20 days of contract award unless otherwise specified in the contract. The SOP must be prepared in accordance with the NSM, NISPOM, and any other the requirements provided by Buyer.
- 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 counterintelligence 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. Seller 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. Seller 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 Buyer, the contractor shall notify Buyer, 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. Seller 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, provided through Buyer.
- k. The contractor shall report security and compliance status as directed by the Government, through Buyer.
- 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 Buyer in writing. Until the problem is resolved with Buyer's customer, 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 Buyer terminate the contract in whole or in part. Buyer 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 Convenience article of the Contract.
- m. Security requirements are a material condition of this contract. Failure of the contractor to maintain and administer a security program compliant with the security requirements of this contract constitutes grounds for termination for default.

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

- a. The contractor shall implement TEMPEST countermeasures in compliance with Customer Directive, TEMPEST Requirements, if electronically processing classified Customer 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.

## **6. 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 Buyer 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) Buyer and Buyer's Customer 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.

## **7. 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 and

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

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. Seller is responsible for providing IT-IA-IM oversight for all subcontractor relationships that are formed as the result of this contract. Seller 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 Buyer, the contractor shall notify the Buyer 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 Buyer 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.

## **8. 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, and

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

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. Seller 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 Buyer, the contractor shall notify the Buyer, 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 Buyer for resolution.

g. The contractor shall report security and compliance status and reconfigure national security systems as directed by the Government, through Buyer.

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.

## **9. DISCLOSURE OF OWNERSHIP OR CONTROL BY A FOREIGN GOVERNMENT (NOV 2017)**

Seller/Bidder shall comply with the requirements of this clause when submitting a response to Buyer's solicitation. In addition, in the event of any change after contract award which requires disclosure under this clause, Seller shall submit a new or revised SF 328 to Buyer no later than three days after such change. The new or revised SF 328 shall meet the requirements of paragraph c.

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, Customer or a designee has waived application of 10 U.S.C. 2536(a), through Buyer.

c. Disclosure.

(1) 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.

(2) The offeror shall submit a current SF 328, Certificate Pertaining to Foreign Interests, with their proposal. The SF 328 must include the following information:

- Offeror's point of contact for questions about disclosure (name and phone number with country code, city code, and area code, as applicable);
- Name and address of offeror;
- Name and address of entity controlled by a foreign government; and
- 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 and resulting subcontracts that involve potential access to proscribed information under this solicitation and any resulting contract.

## **10. 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 CLAUSES; or (2) the offeror has disclosed all relevant information regarding any actual or potential OCI. Offerors are encouraged to inform Buyer 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 Buyer, Buyer 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 Buyer. 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 Buyer of any contrary actions to be taken. Buyer may terminate this contract for its convenience if it deems such termination to be in the best interest of Buyer.

c. The contractor shall inform Buyer 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 Buyer as to the specifics of the situation immediately

upon its recognition. Based on the severity of the conflict, the Customer, through Buyer, 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 Buyer, 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, OCI Plan Matrix, to each new or revised OCI plan submitted to the Buyer. 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 Customer, through Buyer.

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 Buyer.

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

## **11. 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, through Buyer, 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 or Buyer to review contractor compliance with these provisions or require such self-assessments or additional certifications as the Government deems appropriate.

## **12. 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 the Customer's Support Contractor Corporate Non-Disclosure Agreement, incorporated into their respective contracts, and/or by separate nondisclosure, 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.

Vencore, Inc. SAIC; Trisept, Mantech/Welkin; Engility/Tasc; G&K; Alphacon; MDL Technical Solutions; Henry M. Woodruff Consulting; Torger Totusek – Independent Consultant; Intelligent Acquisition Solutions, Inc.; Airln Technologies, Inc.; New Harbor Consulting, LLC; M2 Professional Services, LLC; Sigma Consulting, Inc.; Edward A. Serine; Aerospace

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 Buyer or Government personnel only, the contractor must submit this request in writing to Buyer.

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. Clause CI.Clause 39, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends, and the Customer's Support Contractor Corporate Non- Disclosure Agreement, 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 the Customer's Support Contractor Corporate Non- Disclosure Agreement, 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 Buyer. The Government and the disclosing contractors, subcontractors, suppliers, and vendors agree to cooperate to ensure that the execution of any nondisclosure 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 the Customer's Support Contractor Corporate Non- Disclosure Agreement, 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, through Buyer, 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 the Customer's Support Contractor Corporate Non-Disclosure Agreement, 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. Buyer, 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.

### **13. 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, provided through Buyer.

b. Conflicting Requirements. The contractor shall provide written notification to Buyer 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 Buyer, Buyer's Customer, or the contractor may have to coordinate with in order to implement the solution. Buyer will coordinate with the Customer, the Contracting Officer will review the notification, and provide written direction. Until the Contracting Officer issues that direction through Buyer, 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.

### **14. 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, through Buyer.

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

## **15. 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) Customer 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>.

**16. SMALL BUSINESS SUBCONTRACTING PLAN (OCT 2015)**

This clause applies only if this contract exceeds \$700,000 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. In accordance with paragraph (d)(10)(v), Seller agrees that it will submit the ISR and/or SSR using eSRS, and, in accordance with paragraph (d)(10)(vii), Seller agrees to provide the prime contract number, its own DUNS number, and the email address of Seller's official responsible for acknowledging or rejecting the ISRs, to its subcontractors with subcontracting plans. As required by (d)(10)(vi), the following information is provided: (1) the prime contract number is Proprietary; (2) Buyer's DUNS number is 928989730; and (3) the email address of Buyer's official responsible for acknowledging receipt of or rejecting the ISRs is (contact Buyer's Authorized Procurement Agent.)

a. This clause does not apply to small business concerns.

b. Definitions. As used in this clause:

“Alaska Native Corporation (ANC)” means any Regional Corporation, Village Corporation, Urban Corporation, or Group Corporation organized under the laws of the State of Alaska in accordance with the Alaska Native Claims Settlement Act, as amended (43 U.S.C. 1601, et seq.) and which is considered a minority and economically disadvantaged concern under the criteria at 43 U.S.C. 1626(e)(1). This definition also includes ANC direct and indirect subsidiary corporations, joint ventures, and partnerships that meet the requirements of 43 U.S.C. 1626(e) (2).

“Commercial Item” means a product or service that satisfies the definition of commercial item in section 2.101 of the Federal Acquisition Regulation.

“Commercial Plan” means a subcontracting plan (including goals) that covers the offeror’s fiscal year and that applies to the entire production of commercial items sold by either the entire company or a portion thereof (e.g., division, plant, or product line).

“Indian Tribe” means any Indian tribe, band, group, pueblo, or community, including native villages and native groups (including corporations organized by Kenai, Juneau, Sitka, and Kodiak) as defined in the Alaska Native Claims Settlement Act (43 U.S.C.A. 1601 et seq.), that is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs in accordance with 25 U.S.C. 1452(c). This definition also includes Indian-owned economic enterprises that meet the requirements of 25 U.S.C. 1452(e).

“Individual Contract Plan” means a subcontracting plan that covers the entire contract period (including option periods), applies to a specific contract, and has goals that are based on the offeror’s planned subcontracting in support of the specific contract, except that indirect costs incurred for common or joint purposes may be allocated on a prorated basis to the contract.

“Master Plan” means a subcontracting plan that contains all the required elements of an individual contract plan, except goals, and may be incorporated into individual contract plans, provided the master plan has been approved.

“Subcontract” means any agreement (other than one involving an employer-employee relationship) entered into by a Federal Government prime contractor or subcontractor calling for supplies or services required for performance of the contract or subcontract.

c. The offeror, upon request by the Contracting Officer, shall submit and negotiate a subcontracting plan, where applicable, that separately addresses subcontracting with small business, service-disabled veteran-owned small business, HUBZone small business concerns, small disadvantaged business, and women-owned small business concerns. If the offeror is submitting an individual contract plan, the plan must separately address subcontracting with small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns, with a separate part for the basic contract and separate parts for each option (if any). The plan shall be included in and made a part of the resultant contract. The subcontracting plan shall be negotiated within the time specified by the Contracting Officer. Failure to submit and negotiate the subcontracting plan shall make the offeror ineligible for award of a contract.

d. The offeror's subcontracting plan shall include the following:

(1) Goals, expressed in terms of percentages of total planned subcontracting dollars, for the use of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns as subcontractors. The offeror shall include all subcontracts that contribute to contract performance, and may include a proportionate share of products and services that are normally allocated as indirect costs. In accordance with 43 U.S.C. 1626:

(i) Subcontracts awarded to an ANC or Indian tribe shall be counted towards the subcontracting goals for small business and small disadvantaged business (SDB) concerns, regardless of the size or Small Business Administration certification status of the ANC or Indian tribe.

(ii) Where one or more subcontractors are in the subcontract tier between the prime contractor and the ANC or Indian tribe, the ANC or Indian tribe shall designate the appropriate contractor(s) to count the subcontract towards its small business and small disadvantaged business subcontracting goals.

(A) In most cases, the appropriate contractor is the contractor that awarded the subcontract to the ANC or Indian tribe.

(B) If the ANC or Indian tribe designates more than one contractor to count the subcontract toward its goals, the ANC or Indian tribe shall designate only a portion of the total subcontract award to each contractor. The sum of the amounts designated to various contractors cannot exceed the total value of the subcontract.

(C) The ANC or Indian tribe shall give a copy of the written designation to the Contracting Officer, the prime contractor, and the subcontractors in between the prime contractor and the ANC or Indian tribe within 30 days of the date of the subcontract award.



(D) If the Contracting Officer does not receive a copy of the ANC's or the Indian tribe's written designation within 30 days of the subcontract award, the contractor that awarded the subcontract to the ANC or Indian tribe will be considered the designated contractor.

(2) A statement of:

- (i) Total dollars planned to be subcontracted for an individual contract plan; or the offeror's total projected sales, expressed in dollars, and the total value of projected subcontracts to support the sales for a commercial plan;
- (ii) Total dollars planned to be subcontracted to small business concerns (including ANC and Indian tribes);
- (iii) Total dollars planned to be subcontracted to veteran-owned small business concerns;
- (iv) Total dollars planned to be subcontracted to service-disabled veteran-owned small business;
- (v) Total dollars planned to be subcontracted to HUBZone small business concerns;
- (vi) Total dollars planned to be subcontracted to small disadvantaged business concerns (including ANCs and Indian tribes); and
- (vii) Total dollars planned to be subcontracted to women-owned small business concerns.

(3) A description of the principal types of supplies and services to be subcontracted, and an identification of the types planned for subcontracting to:

- (i) Small business concerns;
- (ii) Veteran-owned small business concerns;
- (iii) Service-disabled veteran-owned small business concerns;
- (iv) HUBZone small business concerns;
- (v) Small disadvantaged business concerns; and
- (vi) Women-owned small business concerns.

(4) A description of the method used to develop the subcontracting goals in paragraph (d) (1) of this clause.

(5) A description of the method used to identify potential sources for solicitation purposes (e.g., existing company source lists, the Central Contractor Registration database (CCR), veterans service organizations, the National Minority Purchasing Council Vendor Information Service, the Research and Information Division of the Minority Business Development Agency in the Department of Commerce, or small, HUBZone, small disadvantaged, and women-owned small business trade associations). A firm may rely on the information contained in CCR as an accurate representation of a

concern's size and ownership characteristics for the purposes of maintaining a small, veteran-owned small, service-disabled veteran-owned small, HUBZone small, small disadvantaged, and women-owned small business source list. Use of CCR as its source list does not relieve a firm of its responsibilities (e.g., outreach, assistance, counseling, or publicizing subcontracting opportunities) in this clause.

(6) A statement as to whether or not the offeror included indirect costs in establishing subcontracting goals, and a description of the method used to determine the proportionate share of indirect costs to be incurred with:

- (i) Small business concerns (including ANC and Indian tribes);
- (ii) Veteran-owned small business concerns;
- (iii) Service-disabled veteran-owned small business concerns;
- (iv) HUBZone small business concerns;
- (v) Small disadvantaged business concerns (including ANC and Indian tribes);  
and
- (vi) Women-owned small business concerns.

(7) The name of the individual employed by the offeror who will administer the offeror's subcontracting program, and a description of the duties of the individual.

(8) A description of the efforts the offeror will make to assure that small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns have an equitable opportunity to compete for subcontracts.

(9) Assurances that the offeror will include the clause of this contract entitled Utilization of Small Business Concerns in all subcontracts that offer further subcontracting opportunities, and that the offeror will require all subcontractors (except small business concerns) that receive subcontracts in excess of \$700,000 (\$1.5 million for construction of any public facility) with further subcontracting possibilities to adopt a subcontracting plan that complies with the requirements of this clause.

(10) Assurances that the offeror will cooperate in any studies or surveys as may be required by the contracting agency in order to determine the extent of compliance by the offeror with the subcontracting plan.

(11) A description of the types of records that will be maintained concerning procedures that have been adopted to comply with the requirements and goals in the plan, including establishing source lists; and a description of the offeror's efforts to locate small business, veteran-owned small business, service disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns and award subcontracts to them. The records shall include at least the following (on a plant-wide or company-wide basis, unless otherwise indicated):

- (i) Source lists (e.g., CCR), guides, and other data that identify small business, veteran-owned small business, service-disabled veteran-owned small business,

HUBZone small business, small disadvantaged business, and women-owned small business concerns.

(ii) Organizations contacted in an attempt to locate sources that are small business, veteran owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, or women-owned small business concerns.

(iii) Records on each subcontract solicitation resulting in an award of more than \$150,000, indicating:

(A) Whether small business concerns were solicited and, if not, why not;

(B) Whether veteran-owned small business concerns were solicited and, if not, why not;

(C) Whether service-disabled veteran-owned small business concerns were solicited and, if, why not;

(D) Whether HUBZone small business concerns were solicited and, if not, why not;

(E) Whether small disadvantaged business concerns were solicited and, if not, why not;

(F) Whether women-owned small business concerns were solicited and, if not, why not; and

(G) If applicable, the reason award was not made to a small business concern.

(iv) Records of any outreach efforts to contact:

(A) Trade associations;

(B) Business development organizations; and

(C) Conferences and trade fairs to locate small, HUBZone small, small disadvantaged, and women-owned small business sources.

(D) Veterans service organizations.

(v) Records of internal guidance and encouragement provided to buyers through:

(A) Workshops, seminars, training, etc.; and

(B) Monitoring performance to evaluate compliance with the program's requirements.

(vi) On a contract-by-contract basis, records to support award data submitted by the offeror to the Government, including the name, address, and business size of each subcontractor. Contractors having commercial plans need not comply with this requirement.

e. In order to effectively implement this plan to the extent consistent with efficient contract performance, the contractor shall perform the following functions:

- (1) Assist small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation by such concerns. Where the contractor's lists of potential small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business subcontractors are excessively long, reasonable effort shall be made to give all such small business concerns an opportunity to compete over a period of time.
- (2) Provide adequate and timely consideration of the potentialities of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns in all "make-or-buy" decisions.
- (3) Counsel and discuss subcontracting opportunities with representatives of small business, veteran owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business firms.
- (4) Confirm that a subcontractor representing itself as a HUBZone small business concern is identified as a certified HUBZone small business concern by accessing the CCR database.
- (5) Provide notice to subcontractors concerning penalties and remedies for misrepresentations of business status as small, veteran-owned small business, HUBZone small, small disadvantaged, or women-owned small business for the purpose of obtaining a subcontract that is to be included as part or all of a goal contained in the contractor's subcontracting plan.
- (6) For all competitive subcontracts over the simplified acquisition threshold in which a small business concern received a small business preference, upon determination of the successful subcontract offeror, the contractor must inform each unsuccessful small business subcontract offeror in writing of the name and location of the apparent successful offeror prior to award of the contract.

f. A master plan on a plant or division-wide basis that contains all the elements required by paragraph (d) of this clause, except goals, may be incorporated by reference as a part of the subcontracting plan required of the offeror by this clause; provided:

- (1) The master plan has been approved,
- (2) The offeror ensures that the master plan is updated as necessary and provides copies of the approved master plan, including evidence of its approval, to the Contracting Officer; and

(3) Goals and any deviations from the master plan deemed necessary by the Contracting Officer to satisfy the requirements of this contract are set forth in the individual subcontracting plan.

g. A commercial plan is the preferred type of subcontracting plan for contractors furnishing commercial items. The commercial plan shall relate to the offeror's planned subcontracting generally, for both commercial and Government business, rather than solely to the Government contract. Once the contractor's commercial plan has been approved, the Government will not require another subcontracting plan from the same contractor while the plan remains in effect, as long as the product or service being provided by the contractor continues to meet the definition of a commercial item.

h. Prior compliance of the offeror with other such subcontracting plans under previous contracts will be considered by the Contracting Officer in determining the responsibility of the offeror for award of the contract.

i. A contract may have no more than one plan. When a modification meets the criteria in FAR 19.702 for a plan, or an option is exercised, the goals associated with the modification or option shall be added to those in the existing subcontract plan.

j. Subcontracting plans are not required from subcontractors when the prime contract contains FAR Clause 52.212-5, Contract Terms and Conditions Required to Implement Statutes or Executive Orders-Commercial Items, or when the subcontractor provides a commercial item subject to FAR Clause 52.244-6, Subcontracts for Commercial Items, under a prime contract.

k. The failure of the contractor or subcontractor to comply in good faith with:

(1) The clause of this contract entitled Utilization of Small Business Concerns; or

(2) An approved plan required by this clause, shall be a material breach of the contract.

## **17. TECHNICAL DATA AND COMPUTER SOFTWARE: COMMERCIAL ITEMS (JUL 2018)**

a. Definitions. As used in this clause:

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

(2) Commercial item means:

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

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

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

(ii) Any item that evolved from an item described in paragraph (i) of this definition through advances in technology or performance, and that is not yet

available in the commercial marketplace, but will be available in the commercial marketplace in time to satisfy the delivery requirements under a Government solicitation or contract;

(iii) Any item that would satisfy a criterion expressed in paragraphs (i) or (ii) of this definition, but for—

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

(B) Minor modifications of a type not customarily available in the commercial marketplace made to meet Federal Government requirements. “Minor modifications” means modifications that do not significantly alter the non-governmental function or essential physical characteristics of an item or component, or change the purpose of a process or computer software. Factors to be considered in determining whether a modification is minor include the value and size of the modification and the comparative value and size of the final product. Dollar values and percentages may be used as guideposts, but are not conclusive evidence that a modification is minor;

(iv) Any combination of items meeting the requirements of paragraphs (i), (ii), (iii), or (v) of this definition that are of a type customarily combined and sold in combination to the general public;

(v) Installation services, maintenance services, repair services, training services, and other services if—

(A) Such services are procured for support of an item referred to in paragraph (i), (ii), (iii), or (iv) of this definition, regardless of whether such services are provided by the same source or at the same time as the item; and

(B) The source of such services provides similar services contemporaneously to the general public under terms and conditions similar to those offered to the Federal Government;

(vi) Services of a type offered and sold competitively in substantial quantities in the commercial marketplace based on established catalog or market prices for specific tasks performed or specific outcomes to be achieved, and under standard commercial terms and conditions. For purposes of these services—

(A) “Catalog price” means a price included in a catalog, price list, schedule, or other form that is regularly maintained by the manufacturer or vendor, is either published or otherwise available for inspection by customers, and states prices at which sales are currently, or were last, made to a significant number of buyers constituting the general public; and

(B) “Market prices” means current prices that are established in the course of ordinary trade between buyers and sellers free to bargain, and that can

be substantiated through competition or from sources independent of the offerors.

(vii) Any item, combination of items, or service referred to in paragraphs (i) through (vi) of this definition, notwithstanding the fact that the item, combination of items, or service is transferred between or among separate divisions, subsidiaries, or affiliates of a contractor; or

(viii) A non-developmental item, if the procuring agency determines the item was developed exclusively at private expense and sold in substantial quantities, on a competitive basis, to multiple State and local governments.

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

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

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

(6) Computer software documentation means owner's manuals, user's manuals, installation instructions, operating instructions, and other similar items, regardless of storage medium, that explain the capabilities of the computer software or provide instructions for using or maintaining the computer software.

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

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

b. License in Commercial Technical Data.

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

- (i) Have been provided to the Government or others without restrictions on use, modification, reproduction, release, or further disclosure other than a release or disclosure resulting from the sale, transfer, or other assignment of interest in the technical data to another party, or the sale or transfer of some or all of a business entity or its assets to another party;
- (ii) Are form, fit, and function data;
- (iii) Are a correction or change to technical data furnished to the contractor by the Government;
- (iv) Are necessary for operation, maintenance, installation, or training (other than detailed manufacturing or process data); or
- (v) Have been provided to the Government under a prior contract or licensing agreement through which the Government has acquired the rights to use, modify, reproduce, release, perform, display, or disclose technical data without restrictions.

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

(3) The Government shall not use the technical data to manufacture additional quantities or release, perform, display, disclose, or authorize use of the technical data outside the Government without the contractor's written permission unless a release, disclosure, or permitted use is necessary for emergency repair or overhaul of the commercial items furnished under this contract, or for performance of work by Government support contractors.

c. License in Commercial Computer Software. Commercial computer software and commercial computer software documentation shall be acquired under the licenses customarily provided to the public unless such licenses are inconsistent with federal procurement law or do not otherwise satisfy user needs. The Government shall have only the rights specified in the license under which the commercial computer software and commercial computer software documentation was obtained. Such license shall be attached to and made a part of this contract.

d. Additional License Rights. The contractor and its subcontractors are not required to provide the Government additional rights to use, modify, reproduce, release, perform, display, or disclose technical data or computer software. However, if the Government desires to obtain additional rights in technical data or computer software, the contractor agrees to promptly enter into negotiations with the Contracting Officer to determine whether acceptable terms for transferring such rights can be reached. All technical data and computer software in which the contractor grants the Government additional rights shall be listed or described in a special license agreement made part of this contract. The license shall specifically enumerate the additional rights granted the Government.

e. Release From Liability. The contractor agrees that the Government, and other persons to whom the Government may have released or disclosed technical data or computer software delivered or otherwise furnished under this contract, shall have no liability for any release or disclosure of technical data or computer software that are not marked to indicate that such data



are licensed data subject to use, modification, reproduction, release, performance, display, or disclosure restrictions.

## **18. 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.Clause 11, Protection of Information, and CI.Clause.39, 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 the Customer's Support Contractor Corporate Non-Disclosure Agreement, and CI.Clause 39, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends. When the Customer's Support Contractor Corporate Non-Disclosure Agreement is used, additional non-disclosure, confidentiality, proprietary information, or similar agreements may be required by the owner of the technical data or computer software, but only on an exception basis, e.g., when such third party is or may be a direct competitor of the owner of the technical data or computer software. In the event an additional agreement is deemed necessary, the Contracting Officer shall be notified prior to its execution.

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

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

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

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

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

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

(III) Insert clause CI.Clause 11, Protection of Information, and CI.Clause 39, 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 the Customer's Support Contractor Corporate Non-Disclosure Agreement, and CI.Clause 39, 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.Clause 11, Protection of Information, and CI.Clause 39, 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 the Customer's Support Contractor Corporate Non-Disclosure Agreement, and CI.Clause 39, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends. When the Customer's Support Contractor Corporate Non-Disclosure Agreement is used, additional non-disclosure, confidentiality, proprietary information, or similar agreements may be required by the owner of the technical data or computer software, but only on an exception basis, e.g., when such third party is or may be a direct competitor of the owner of the technical data or computer software. In the event an additional agreement is deemed necessary, the Contracting Officer shall be notified prior to its execution.
  - (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.Clause 11, Protection of Information, and CI.Clause 39, 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 the Customer's Support Contractor Corporate Non-Disclosure Agreement, and CI.Clause 39, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends. When the Customer's Support Contractor Corporate Non-Disclosure Agreement is used, additional non-disclosure, confidentiality, proprietary information, or similar agreements may be required by the owner of the technical data or computer software, but only on an exception basis, e.g., when such third party is or may be a direct competitor of the owner of the technical data or computer software. In the event an additional agreement is deemed necessary, the Contracting Officer shall be notified prior to its execution.

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

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

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

(viii) The contractor, its subcontractors, or suppliers are not required to provide the Government additional rights in noncommercial computer software delivered or otherwise provided to the Government with restricted rights. However, if the Government desires to obtain additional rights in such software, the contractor agrees to promptly enter into negotiations with the Contracting Officer to determine whether there are acceptable terms for transferring such rights. All noncommercial computer software in which the contractor has granted the Government additional rights shall be listed or described in a license agreement

made part of the contract (see paragraph (b)(5) of this clause). The license shall enumerate the additional rights granted the Government.

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

(6) Unlimited rights means the rights to use, modify, reproduce, perform, display, release, or disclose technical data and computer software in whole or in part, in any manner and for any purpose whatsoever, and to have or authorize others to do so. The Government shall have unlimited rights in:

- (i) Technical data pertaining to an item, component, or process, or pertaining to software code or a software program that has been or will be developed exclusively with Government funds;
- (ii) Computer software developed exclusively with Government funds;
- (iii) Form, fit, and function data;
- (iv) Technical data that is necessary for installation, operation, maintenance, or training purposes (other than detailed manufacturing or process data);
- (v) Studies, analyses, test data, or similar data when the study, analysis, test, or similar work was specified as an element of performance;
- (vi) Computer software documentation required to be delivered under this contract;
- (vii) Technical data created exclusively with Government funds in the performance of a contract that does not require the development, manufacture, construction, or production of items, components, or processes;
- (viii) Corrections or changes to technical data or computer software furnished by the Government;
- (ix) Technical data or computer software that is otherwise publicly available or has been released or disclosed by the contractor or subcontractor without restriction on the further use, release or disclosure, other than a release or disclosure resulting from the sale, transfer, or other assignment of interest in the technical data or computer software to another party, or the sale or transfer of some or all of a business entity or its assets to another party;
- (x) Technical data or computer software in which the Government has obtained unlimited rights under another Government contract or as a result of negotiations;



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

c. For business data marked as proprietary or with similar legends, the Government may duplicate, use, and disclose such data within the Government solely for evaluation, verification, validation, reporting, and program monitoring and management purposes in connection with this contract. The Government may disclose such business data to its support contractors identified in clause CI.Clause 12, 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.Clause 11, Protection of Information, and CI.Clause 39, 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 the Customer's Support Contractor Corporate Non-Disclosure Agreement, and CI.Clause 39, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends. When the Customer's Support Contractor Corporate Non-Disclosure Agreement is used, additional non-disclosure, confidentiality, proprietary information, or similar agreement may be required by the owner of the business data, but only on an exception basis, e.g., when such third party is or may be a direct competitor of the owner of the technical data or computer software. In the event an additional agreement is deemed necessary, the Contracting Officer shall be notified prior to its execution.

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

d. Other Information That Cannot Easily Be Categorized. For information that cannot easily be categorized as technical data or business data (e.g., program schedules, Earned Value Management System reports, and program management reports), and is of sufficient detail to show a contractor's confidential business practices, shall be identified before or as soon as practicable after contract award. The parties will agree as to the parties' rights and obligations in such data and how it is to be marked, handled, used, and disclosed to third parties. Such agreement shall be in writing, attached to, and made a part of the contract.

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

- f. Rights in Derivative Computer Software or Computer Software Documentation. The Government shall retain its rights in the unchanged portions of any computer software or computer software documentation delivered under this contract that the contractor uses to prepare, or includes in, derivative computer software or computer software documentation.
- g. Contractor Rights in Technical Data and Computer Software. The contractor retains all rights not granted to the Government.
- h. Third Party Copyrights. The contractor shall not, without the written approval of the Contracting Officer, incorporate any copyrighted data in the technical data and computer software to be delivered under this contract unless the contractor is the copyright owner or has obtained for the Government the license rights necessary to perfect a license or licenses of the appropriate scope as defined in paragraphs (b)(1), (2), (4) and (6) of this clause, and has affixed a statement of the license or licenses obtained on behalf of the Government and other persons to the technical data and computer software transmittal document.
- i. Assertions of Other than Unlimited Rights.
- (1) This paragraph does not apply to restrictions based solely on copyright.
  - (2) Except as provided in paragraph (i)(3) of this clause, technical data and/or computer software that the contractor asserts should be furnished to the Government with restrictions on use, release, or disclosure are identified in an attachment to this contract (the "Attachment"). The contractor shall not deliver any technical data or computer software with restrictive markings unless the technical data or computer software is listed in the Attachment.
  - (3) The contractor may make other assertions of other than unlimited rights in technical data and/or computer software after contract award. Such assertions must be based on new information or inadvertent omission unless the inadvertent omission would have materially affected the source selection decision in the reasonable determination of the Contracting Officer (in which case no assertion based on an inadvertent omission may be allowed).
  - (4) The contractor shall submit such post-contract award assertion(s) to the Contracting Officer as soon as practicable but prior to the scheduled date for delivery of the technical data or computer software. All new assertions submitted after award shall be added to the Attachment in a timely fashion after submission of the assertion to the Contracting Officer. An official authorized to contractually obligate the contractor must sign the assertion(s). The contractor assertion(s) shall include the information specified in paragraph (d) of clause CI.Clause 20, 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.Clause 19, 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 CI.Clause 18) is also allowed.

k. General Marking Instructions. The contractor shall conspicuously and legibly mark the appropriate legend on all technical data and computer software that qualify for such markings. The authorized legends shall be placed on the transmittal document or storage container and, for printed material, on the title/cover page of the printed material containing technical data or computer software for which restrictions are asserted. Mark each subsequent sheet of data with an abbreviated marking(s) to indicate the applicable restrictive rights assertion(s), and refer to the title/cover page for additional information. When only portions of a page of printed material are subject to the asserted restrictions, such portions shall be identified by circling, underscoring, annotating, or other appropriate identifier. Technical data and computer software transmitted directly from one computer or computer terminal to another shall contain a notice of asserted restrictions. Reproductions of technical data and computer software, or any portions thereof subject to asserted restrictions, shall also reproduce the asserted restrictions.

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

Government Purpose Rights

Contract No:

Contractor Name:

Contractor Address:

Expiration Date:

The Government's rights to use, modify, reproduce, release, perform, display, or disclose these technical data and computer software are restricted by paragraph (b)(1) of CI.Clause 18, Rights in Technical Data and Computer Software: Noncommercial Items, contained in the contract identified above. No restrictions apply after the expiration date shown above. Any reproduction of technical data or computer software, or portions thereof marked with this legend, must also reproduce the markings.

(End of legend)

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

Limited Rights

Contract No:

Contractor Name:

Contractor Address:

The Government's rights to use, modify, reproduce, release, perform, display, or disclose these technical data are restricted by paragraph (b)(2) of CI.Clause 18, Rights in Technical Data and Computer Software: Noncommercial Items, contained in the contract identified above. Any reproduction of technical data, or portions thereof marked with this legend, must also reproduce the markings. Any person, other than Government officials or others specifically authorized by the Government, who has been provided access to this technical data must promptly notify the above- named contractor.

(End of legend)

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

Restricted Rights

Contract No:

Contractor Name:

Contractor Address:

The Government's rights to use, modify, reproduce, release, perform, display, or disclose this computer software are restricted by paragraph (b)(4) of CI.Clause 18, Rights in Technical Data and Computer Software: Noncommercial Items, contained in the contract identified above. Any reproduction of computer software or portions thereof marked with this legend must also reproduce the markings. Any person, other than the Government, who has been provided access to such computer software must promptly notify the above- named contractor.

(End of legend)

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

Special License Rights

Contract No:

Contractor Name:

Contractor Address:

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

(End of legend)

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

m. Removal of Unjustified Markings. Notwithstanding any other provision of this contract concerning inspection and acceptance, if any technical data or computer software delivered or otherwise provided under this contract are marked with the notices specified at (k)(1)-(4) of this clause, and the use of such is not authorized by this clause, the Government may ignore, or at the contractor's expense, correct or strike the marking if, in accordance with the procedures in clause CI.Clause 19, 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.

## **19. VALIDATION OF RESTRICTIVE MARKINGS ON TECHNICAL DATA AND COMPUTER SOFTWARE (Feb 2011)**

a. The Government shall presume that a contractor's asserted use or release restrictions are justified on the basis that the item (to include computer software), component, or process was developed exclusively at private expense for commercial items as defined in FAR Part 12. The Government will not challenge such assertions unless information the Government demonstrates that the item, component, or process was not developed exclusively at private expense.

b. Justification. The contractor is responsible for maintaining records sufficient to justify the validity of its markings that restrictions on the Government's right to use, modify, reproduce, perform, display, release, or disclose technical data or computer software delivered or required to be delivered under the contract or subcontract. Except for commercial items, the contractors shall be prepared to furnish to the Contracting Officer, through Buyer, a written justification for such restrictive markings in response to a challenge under paragraph (e) of this clause.

c. Pre-challenge Request for Information.

(1) The Contracting Officer may request, through Buyer, the contractor to furnish a written explanation for any restriction asserted by the contractor on the right of the United States to use, or authorize use of, technical data or computer software. If, upon review of the explanation submitted, the Contracting Officer remains unable to ascertain the basis of the restrictive marking, the Contracting Officer may further request, through Buyer, the contractor to furnish additional information in the records of, or otherwise in the possession of or reasonably available to, the contractor to justify the validity of any restrictive marking on technical data or computer software, accompanied with supporting documentation. The contractor shall submit such written data to Buyer, within a reasonable time after it is requested by the Contracting Officer.

(2) If the Contracting Officer, after reviewing the written data furnished pursuant to paragraph (c)(1) of this clause, or any other available information pertaining to the validity of a restrictive marking, determines that reasonable grounds exist to question the current validity of the marking, and that continued adherence to the marking would make impracticable the subsequent competitive acquisition of the item, component, or process to which the technical data or computer software relates, the Contracting Officer shall follow the procedures in paragraph (d) of this clause.

(3) If the contractor fails to respond to the Contracting Officer's request for information under paragraph (c) (1) of this clause, and the Contracting Officer determines that

continued adherence to the marking would make impracticable the subsequent competitive acquisition of the item, component, or process to which the technical data or computer software relates, the Contracting Officer may challenge the validity of the marking as described in paragraph (d) of this clause.

d. Challenge.

(1) Notwithstanding any provision of this contract concerning inspection and acceptance, if the Contracting Officer determines that a challenge to the restrictive marking is warranted, the Contracting Officer shall send a written challenge notice to the contractor or subcontractor asserting the restrictive markings. Such challenge shall:

(i) State the specific grounds for challenging the asserted restriction;

(ii) Require a response within sixty (60) days justifying and providing sufficient evidence as to the current validity of the asserted restriction;

(iii) State that a Contracting Officer's final decision, issued pursuant to paragraph (f) of this clause, sustaining the validity of a restrictive marking identical to the asserted restriction, within the three-year period preceding the challenge, shall serve as justification for the asserted restriction if the validated restriction was asserted by the same contractor or subcontractor (or any licensee of such contractor or subcontractor to which such notice is being provided); and

(iv) State that failure to respond to the challenge notice may result in issuance of a final decision pursuant to paragraph (e) of this clause.

(2) The Contracting Officer shall extend the time for response if the contractor or subcontractor submits a written request showing the need for additional time to prepare a response.

(3) The contractor's or subcontractor's written response shall be considered a claim within the meaning of the Contract Disputes Act of 1978, and shall be certified in the form prescribed at FAR Subpart 33.207, regardless of dollar amount.

(4) A contractor or subcontractor receiving challenges to the same restrictive markings from more than one Contracting Officer shall notify each Contracting Officer of the existence of more than one challenge. The notice shall also state which Contracting Officer initiated the first unanswered challenge. The Contracting Officer initiating the first unanswered challenge after consultation with the contractor and the other Contracting Officers, shall formulate and distribute a schedule for responding to each of the challenge notices to all interested parties. The schedule shall afford the contractor an opportunity to respond to each challenge notice. All parties will be bound by this schedule.

e. Final Decision When Contractor or Subcontractor Fails to Respond. When a contractor or subcontractor fails to respond to a challenge notice, other than a failure to respond to a challenge related to a commercial item, the Contracting Officer will issue a final decision to the contractor or subcontractor in accordance with the Disputes clause of this contract pertaining to the validity of the asserted restriction. This final decision shall be issued as soon as possible after the expiration of the time period of paragraph (d)(1)(ii) or (d)(2) of this clause. Following issuance



of the final decision, the Contracting Officer will comply with the procedures in paragraphs (f) (2) (ii) through (iv) of this clause.

f. Final Decision When the Contractor Responds.

(1) If the Contracting Officer determines that the contractor or subcontractor has justified the validity of the restrictive marking, the Contracting Officer shall issue a final decision to the contractor or subcontractor sustaining the validity of the restrictive marking, and stating that the Government will continue to be bound by the restrictive marking. This final decision shall be issued within sixty (60) days after receipt of the contractor's or subcontractor's response to the challenge notice, or within such longer period that the Contracting Officer has notified the contractor or subcontractor that the Government will require. The notification of a longer period will be made within sixty (60) days after receipt of the response to the challenge notice.

(2)

(i) If the Contracting Officer determines that the validity of the restrictive marking is not justified, the Contracting Officer shall issue a final decision to the contractor or subcontractor in accordance with the Disputes clause of this contract. Notwithstanding paragraph (e) of the Disputes clause, the final decision shall be issued within sixty (60) days after receipt of the contractor's or subcontractor's response to the challenge notice, or within such longer period that the Contracting Officer has notified the contractor or subcontractor that the Government will require. The notification of a longer period will be made within sixty (60) days after receipt of the response to the challenge notice.

(ii) The Government agrees that it will continue to be bound by the restrictive marking for ninety (90) days from the issuance of the Contracting Officer's final decision. The contractor agrees that if it intends to file suit in the United States Claims Court, it will provide a notice of intent to file suit to the Contracting Officer within ninety (90) days from the issuance of the Contracting Officer's final decision under paragraph (f)(2)(i) of this clause. If the contractor fails to appeal, file suit, or provide a notice of intent to file suit to the Contracting Officer within the ninety-day period, the Government may cancel or ignore the restrictive markings, and the failure of the contractor to take the required action constitutes agreement with the Contracting Officer's final decision.

(iii) The Government agrees that it will continue to be bound by the restrictive marking where a notice of intent to file suit in the United States Claims Court is provided to the Contracting Officer within ninety (90) days from the issuance of the final decision under paragraph (f)(2)(i) of this clause. The Government will no longer be bound, and the contractor agrees that the Government may strike or ignore the restrictive markings, if the contractor fails to file its suit within one (1) year after issuance of the Contracting Officer final decision. Notwithstanding the foregoing, where the Government agency's Director, Office of Contracts determines that urgent or compelling circumstances will not permit waiting for the filing of a suit in the United States Claims Court, the contractor agrees that the Government may, following notice to the contractor, authorize release or

disclosure of the technical data or computer software. Such determination may be made at any time after issuance of the Contracting Officer final decision, and will not affect the contractor's right to damages against the United States where its restrictive markings are ultimately upheld, or to pursue other relief, if any, as may be provided by law.

(iv) The Government agrees that it will be bound by the restrictive marking where an appeal or suit is filed pursuant to the Contract Disputes Act until final disposition by an agency Board of Contract Appeals or the United States Claims Court. Notwithstanding the foregoing, where the Government agency's Director, Office of Contracts determines, following notice to the contractor that urgent or compelling circumstances will not permit awaiting the decision by such Board of Contract Appeals or the United States Claims Court, the contractor agrees that the Government may authorize release or disclosure of the technical data or computer software. Such determination may be made at any time after issuance of the final decision and will not affect the contractor's right to damages against the United States where its restrictive markings are ultimately upheld, or to pursue other relief, if any, as may be provided by law.

g. Final Disposition of Appeal or Suit.

(1) If the contractor or subcontractor appeals or files suit, and if, upon final disposition of the appeal or suit, the Contracting Officer's decision is sustained:

(i) The restrictive marking on the technical data or computer software shall be struck, canceled, ignored, or corrected at the contractor's or subcontractor's expense; and

(ii) If the restrictive marking is found not to be substantially justified, the contractor or subcontractor asserting the restriction shall be liable to the Government for payment of the cost to the Government of reviewing the restrictive marking and the fees and other expenses (as defined in 28 U.S.C. 2412(d) (2) (A)) incurred by the Government in challenging the marking, unless special circumstances would make such payment unjust.

(2) If the contractor or subcontractor appeals or files suit, and if, upon final disposition of the appeal or suit, the Contracting Officer's decision is not sustained:

(i) The Government shall continue to be bound by the restrictive marking; and

(ii) The Government shall be liable to the contractor for payment of fees and other expenses (as defined in 28 U.S.C. § 2412(d)(2)(A)) incurred by the contractor or subcontractor in defending the marking if the challenge by the Government is found not to have been made in good faith.

h. Duration of Right to Challenge. The Government, when there are reasonable grounds, may review and challenge the validity of any restriction asserted by the contractor or subcontractor on the Government's rights to use, modify, reproduce, release, perform, display, or disclose technical data or computer software delivered, to be delivered, or otherwise provided by the Contractor or subcontractor in the performance of a contract. During the period within three (3)

years of final payment on a contract, or within three (3) years of delivery of the technical data or computer software to the Government, whichever is later, the Contracting Officer may review and make a written determination to challenge any restriction. The Government may, however, challenge a restriction on the release, disclosure, or use of technical data or computer software at any time if such technical data or computer software:

- (1) Is publicly available;
- (2) Has been furnished to the United States without restriction; or
- (3) Has been otherwise made available without restriction.

i. **Decision Not to Challenge.** The absence of a challenge to an asserted restriction shall not constitute “validation” under this clause. Only the Contracting Officer’s final decision resolving a formal challenge by sustaining the validity of a restrictive marking, or actions of an agency Board of Contract Appeals or a court of competent jurisdiction sustaining the assertion, constitutes validation as addressed in 10 U.S.C. 2321.

j. **Privity of Contract.** The contractor or subcontractor agrees that the Contracting Officer may transact matters under this clause directly with subcontractors at any tier that assert restrictive markings or assert restrictions on the Government’s right to use, modify, release, perform, display, or disclose technical data or computer software. However, neither this clause nor any action taken by the Government under this clause shall create or imply privity of contract between the Government and subcontractors.

k. **Flowdown.** The contractor or subcontractor agrees to insert this clause in contractual instruments with its subcontractors or suppliers at any tier requiring the delivery of technical data or computer software, except contractual instruments for commercial items or commercial components.

## **20. IDENTIFICATION AND ASSERTION OF USE, RELEASE, OR DISCLOSURE RESTRICTIONS (JUL 2018)**

a. The terms used in this clause are defined in the Technical Data and Computer Software: Noncommercial Items clause contained in this contract.

b. The identification and assertion requirements in this clause apply to technical data and computer software to be delivered with other than unlimited rights. Notification and identification is not required for restrictions based solely on copyright.

c. Offers submitted in response to this solicitation shall identify, to the extent known at the time an offer is submitted to the Government, the technical data or computer software that the offeror, its subcontractors or suppliers, or potential subcontractors or suppliers, assert should be furnished to the Government with restrictions on use, release, or disclosure.

d. The contractor’s assertions, including the assertions of its subcontractors or suppliers, shall be submitted as an attachment to its offer/proposal in the following format, dated and signed by an official authorized to contractually obligate the contractor:

Identification and Assertion of Restrictions on the Government's Use, Release, or Disclosure of Technical Data or Computer Software

The contractor asserts for itself, or the person identified below asserts that the Government's rights to use, release, or disclose the following technical data or computer software should be restricted:

Technical Data or Computer Software to Be Furnished With Restrictions (1)	Basis for Assertion (2)	Asserted Rights Category (3)	Name of Person Asserting Restrictions (4)
(LIST) (5)	(LIST)	(LIST)	(LIST)

(1) For technical data (other than computer software documentation) pertaining to items, components, or processes developed at private expense, identify both the deliverable technical data and each such item, component, or process (to include document titles, version numbers, and dates for clarity). For computer software or computer software documentation, identify the software or documentation (to include document and software titles, version numbers, and dates for clarity).

(2) Generally, development at private expense, either exclusively or partially, is the only basis for asserting restrictions. For technical data, other than computer software documentation, development refers to development of the item, component, or process to which the data pertain. The Government's rights in computer software documentation generally may not be restricted. For computer software, development refers to the software. Indicate whether development was accomplished exclusively or partially at private expense. If development was not accomplished at private expense, or for computer software documentation, enter the specific basis for asserting restrictions.

(3) Enter the asserted rights category (e.g., Government purpose license rights from a prior contract, limited, restricted, or Government purpose rights under this or a prior contract, or specially negotiated licenses).

(4) Identify the corporation, individual, or other person, as appropriate.

(5) Enter "None" when all data or software will be submitted without restrictions.

Date: \_\_\_\_\_

Printed Name and Title: \_\_\_\_\_

Signature: \_\_\_\_\_

(End of identification and assertion)

e. A contractor's failure to submit, complete, or sign the notification and identification required by paragraph d. of this provision with its offer will constitute a minor informality. If assertions are required and the contractor does not correct such informality within the time prescribed by the Contracting Officer, the offer may be ineligible for award.

f. If the contractor is awarded a contract, the assertions identified in paragraph (d) of this provision shall be included in an attachment (the Attachment) and incorporated as a separate attachment in the resultant contract. Upon request by the Contracting Officer, the contractor shall

provide sufficient information to enable the Contracting Officer to evaluate any listed assertion. Updates to the assertion list shall be included in an amended Attachment.

## **21. 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 name 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.

## **22. PRE-AWARD AND POST-AWARD IDENTIFICATION AND ASSERTION OF RESTRICTIONS ON TECHNICAL DATA PERTAINING TO A COMMERCIAL ITEM AND COMMERCIAL COMPUTER SOFTWARE (OCT 2015)**

- a. The terms used in this clause are defined in CUSTOMER IMPOSED CLAUSES.
- b. Identification and Assertion of Restrictions. The offeror shall not deliver or otherwise provide to the Government, through Buyer, any commercial technical data or commercial computer software with restrictive markings (or otherwise subject to restrictions on access, use, modification, reproduction, release, performance, display, or disclosure) unless the commercial technical data or commercial computer software are identified in accordance with the following requirements:

(1) Pre-Award. The offeror (including its subcontractors or suppliers, or potential subcontractors or suppliers, at any tier) shall identify all commercial technical data and commercial computer software that it proposes will be delivered or otherwise provided (including all option CLINs, if exercised) with less than Unlimited Rights, to the extent known at the time an offer is submitted to the Government:

- (i) The offeror shall also identify and assert any restrictions for all commercial computer software, including open source software, and commercial technical data (i.e., technical data pertaining to a commercial item) using the format provided in paragraph (e) below.
- (ii) An offeror's failure to submit, adequately complete, or sign the notification and identification required by paragraph (e) of this clause with its offer will constitute a minor informality. If assertions are required and the offeror does not correct such informality within the time prescribed by the Contracting Officer, the offer may be ineligible for award.

(iii) If the offeror is awarded a contract, the assertions identified in this clause shall be listed in an attachment to that contract. Upon request by the Contracting Officer, through Buyer, the offeror shall provide sufficient information to enable the Contracting Officer and Buyer to evaluate any listed assertion. Updates to the Commercial Assertions List shall be included in an amended attachment.

(2) Post-Award. In addition to the pre-award assertions made in the attachment pursuant to paragraph (b)(1)(iii), other assertions on technical data pertaining to a commercial item and commercial computer software may be identified after award when based on new information or inadvertent omissions, unless the inadvertent omissions would have materially affected the source selection decision. Such identifications and assertions shall be submitted to Buyer as soon as practicable prior to the scheduled date for delivery of the technical data/computer software, following the same requirements and using the same table format for pre-award assertions found in paragraph (e), and signed by an official authorized to contractually obligate the contractor.

c. Copies of Commercial Licenses. The offeror shall provide copies of all commercial licenses to commercial technical data or commercial computer software which the offeror proposes to deliver, including third party licenses, and these shall be submitted as an attachment to its offer. Buyer will review the licenses to ensure that the licenses terms are consistent with federal procurement law and meet the Government's end user needs. All such commercial licenses will be made part of an attachment to the contract at award. If the offeror intends to deliver commercial technical data under the terms of clause CI.Clause 17, instead of its own commercial license, the offeror shall list clause CI.Clause 17 in the table at paragraph (e) below.

(1) Typical licensing terms that are inconsistent with federal procurement law can include jurisdiction and venue (must be Federal law and venue), indemnification of vendor and automatic renewals (Anti- Deficiency Act violation), order of precedence (the contract takes precedence over license), dispute resolution (must be in accordance with Disputes clause in the contract), and injunctive relief (no injunctive relief against the Government is available, per 28 USC § 1498 (b)). This list is not all-inclusive, but is intended to convey the most common license terms that are problematic to the Government, and the must be resolved prior to award. See clause CI.Clause 23, Commercial Technical Data and Computer Software Licensing - Order of Precedence, for additional clarification.

(2) With respect to the Government program user needs for technical data and computer software delivered under this contract, the Government will need to distribute the commercial computer software and technical data outside of Government for any purpose where the Government is a party, but only under conditions that prohibit any further distribution by the third party recipient. To accomplish the distribution, the Government intends use non-disclosure agreements discussed in clause CI.Clause 11, Protection of Information, and the Customer's Support Contractor Corporate Non- Disclosure Agreement. Additional non-disclosure agreements deemed necessary by the owner of the licensed technical data or computer software shall be submitted to the Contracting Officer for review prior to execution.

(3) If the offeror intends to use third party commercial technical data or commercial computer software in the performance of the contract, and then deliver the commercial technical data or computer software to Buyer at the conclusion of the contract, the offeror

should list such commercial technical data or computer software in the table at paragraph (e). The offeror shall also ensure that the applicable license is transferable to the Government. The Government criteria for software license review will be the same for third party vendors as for the offeror’s commercial computer software as described in paragraph (c)(1) and (c)(2) of this clause once the Government becomes the end user. The offeror should accomplish the actions in the paragraph prior to award of the contract.

d. Use of Open Source Software (OSS) Without Delivery. The Government treats OSS as a category of commercial computer software. If the contractor proposes to deliver OSS while performing under the contract, the contractor shall follow the same rules as prescribed in this clause as for commercial computer software. Additionally, if the contractor proposes to use, but not deliver, commercial computer software (including OSS), the contractor must ensure that such use does not: (i) create, or purport to create, any Government distribution obligations with respect to the computer software deliverables; or (ii) grant, or purport to grant, to any third party any rights to or immunities under Government intellectual property or Government data rights to the Government computer software deliverables.

e. Table Format for Identification and Assertion of Restrictions. Commercial technical data and commercial computer software restrictions shall be identified as follows:

Identification of Commercial Technical Data/Computer Software (Including Open Source Software) Use and Modifications (Commercial Assertions List)

Commercial Technical Data/Computer Software Title, Version #, and License*	Technical Use/Implementing Approach**	If OSS, Was OSS Modified by Contractor?***	Name of Contractor Delivering Commercial Software****

\* For commercial technical data (other than computer software documentation) pertaining to items, components, or processes developed at private expense, identify both the deliverable technical data and each such item, component, or process. For computer software or computer software documentation, identify the computer software or computer software documentation. The complete title and version number of the computer software should be listed. If OSS, list the license and version number. If a version number is not available, provide some other means of identification (e.g., checksum data). If commercial technical data is being delivered under the terms of clause CI.Clause 17, then clause CI.Clause 17 should be listed. If the OSS was downloaded from a website, the website address should also be provided but an actual copy of the license shall still be provided as set forth in paragraph (d). Enter “None” if all commercial technical data or commercial computer software will be submitted without restrictions.

\*\* The functionality of the commercial computer software should be described, as well as where it is being used within the larger computer software deliverable, if applicable.

\*\*\* If OSS is being used, the offeror should state whether it has modified the OSS or plans to do so.

\*\*\*\* Corporation, individual, or other person as appropriate.

Date:

Printed Name and Title:

Signature:

(End of identification and assertion)

### **23. COMMERCIAL TECHNICAL DATA AND COMPUTER SOFTWARE LICENSING- ORDER OF PRECEDENCE (OCT2014)**

a. The following clause applies if the Contract requires 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. The term "Licensee" means Buyer and "Licensor" means Seller:

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.Clause 17(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.

b. Seller shall include the above clause in any agreement between it and its subcontractors that requires the delivery of commercial item technical data, computer software, or computer software documentation.

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

The Government, through Buyer, may identify technical data or computer software (as defined in CI.Clause 18) for deferred delivery at any time during contract performance by listing such technical data or computer software in an attachment to this contract. The Government, through Buyer, 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.

#### **25. PROHIBITION ON CONTRACTOR ACQUISITION OF PERSONAL PROPERTY FOR USE BY GOVERNMENT EMPLOYEES (JUL 2004)**

a. The contractor shall not purchase personal property directly chargeable under this contract specifically for transfer to and use by a Government employee. This prohibition includes, but is

not limited to, notebook and desktop computers, personal digital assistants, pagers, and cellular telephones.

b. The contractor shall notify Buyer in writing within 20 days whenever any item of personal property acquired by the contractor is transferred to a Government employee and removed from the contractor's property records. This notification must include the following information for each item transferred:

- (1) Item description, including manufacturer, model, and serial number;
- (2) Acquisition cost and date;
- (3) Name and organization of the Government employee receiving the item; and
- (4) Date of transfer

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

a. The contractor shall obtain written authorization from the Contracting Officer, through Buyer, 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 Buyer, 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 that may be used to fulfill this requirement can be obtained from Buyer.

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

## **27. SUBCONTRACT REPORTING, MONITORING, AND CONSENT (FEB 2018)**

Seller shall submit reports to Buyer in support of paragraph (c), annually no later than April 15 each year and no later than 45 days after final close-out. Such reports shall include all lower tier subcontractors. In paragraph (e), Contracting Officer means Buyer. In paragraph (h), "Contracting Officer" means "Contracting Officer or Buyer." This clause does not apply to contracts with US-owned companies that provide only unclassified commercial products and/or services on a fixed price basis.

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, and changes and modifications to purchase orders. For purposes of consent, the definition of subcontract in FAR 52.244-2 applies.

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 by 30 June each year providing the data specified below for all first- and second-tier subcontracts directly chargeable to this contract that were awarded and/or modified within the previous twelve months. 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 submitted electronically, using a special Excel spreadsheet, shall be submitted to the Buyer 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 or Task Order Number
- Subcontractor Tier
- Whether Subcontract Is Classified (Yes or No)
- Relationship Between Prime Contractor and Subcontractor
- Subcontractor Business Name, 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 Name
- 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 on a list provided by the Government Customer.
- (2) Requests for consent to subcontract shall be submitted in writing to the Contracting Officer via NF 44.2701, 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 subcontracts 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.

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

a. Definitions. As used in this clause –

Covered article means any hardware, software, or service that –

- (1) Is developed or provided by a covered entity;
- (2) Includes any hardware, software, or service developed or provided in whole or in part by a covered entity; or

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

Covered entity means –

- (1) Kaspersky Lab;
- (2) Any successor entity to Kaspersky Lab;
- (3) Any entity that controls, is controlled by, or is under common control with Kaspersky Lab; or
- (4) Any entity of which Kaspersky Lab has a majority ownership.

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

- (1) Providing any covered article (including subcontractors at any tier) that the Government will use; and
- (2) Using any covered article, in the development of data or deliverables first produced in the performance of the contract or order.

c. Reporting Requirement.

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

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

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

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

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

**29. DEFENSE PRIORITY AND ALLOCATION REQUIREMENTS (DEC 2006) – In lieu of FAR 52.211-14 and 52.211-15**

This is a 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).

**30. 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 a 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): N/A
- 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.

**31. SUBCONTRACTOR CERTIFIED COST OR PRICING DATA (JUN 2018)**

- a. The requirements of paragraphs (b) and (c) of this clause shall—
  - (1) Become operative only for any modification of a subcontract that was awarded prior to 1 July 2018, involving a pricing adjustment expected to exceed \$750,000, or any modification of a subcontract awarded on or after 1 July 2018, involving a pricing adjustment expected to exceed \$2 million; and
  - (2) Be limited to such modifications.
- b. Unless an exception under FAR 15.403-1 applies, the Contractor shall require the subcontractor to submit certified cost or pricing data (actually or by specific identification in writing), in accordance with FAR 15.408, Table 15-2 (to include any information reasonably required to explain the subcontractor's estimating process such as the judgmental factors applied and the mathematical or other methods used in the estimate, including those used in projecting from known data, and the nature and amount of any contingencies included in the price)—
  - (1) Before modifying any subcontract that was awarded prior to 1 July 2018, involving a pricing adjustment expected to exceed \$750,000, or
  - (2) Before modifying any subcontract that was awarded on or after 1 July 2018, involving a pricing adjustment expected to exceed \$2 million.

c. The Contractor shall require the subcontractor to certify in substantially the form prescribed in FAR 15.406-2 that, to the best of its knowledge and belief, the data submitted under paragraph (b) of this clause were accurate, complete, and current as of the date of agreement on the negotiated price of the subcontract or subcontract modification.

d. The Contractor shall insert the substance of this clause, including this paragraph (d), in each subcontract that exceeds \$2 million.

### **32. HAZARD WARNING LABELS (JAN 2004)**

a. Hazardous material, as used in this clause, is defined in the Hazardous Material Identification and Material Safety Data clause of this contract.

b. The contractor shall label the item package (unit container) of any hazardous material to be delivered under this contract in accordance with the Hazard Communication Standard (29 CFR 1910.1200 et seq.). The Standard requires that the hazard warning label conform to the requirements of the standard unless the material is otherwise subject to the labeling requirements of one of the following statutes:

- (1) Federal Insecticide, Fungicide and Rodenticide Act;
- (2) Federal Food, Drug and Cosmetics Act;
- (3) Consumer Product Safety Act;
- (4) Federal Hazardous Substances Act; or
- (5) Federal Alcohol Administration Act.

c. The offeror shall list which hazardous material listed in the Hazardous Material Identification and Material Safety Data clause of this contract will be labeled in accordance with one of the Acts in paragraphs (b) (1) through (5) of this clause instead of the Hazard Communication Standard. Any hazardous material not listed will be interpreted to mean that a label is required in accordance with the Hazard Communication Standard. Material Act

[If none, insert "None"]

d. The apparently successful offeror agrees to submit, before award, a copy of the hazard warning label for all hazardous materials not listed in paragraph (c) of this clause. The offeror shall submit the label with the Material Safety Data Sheet being furnished under the Hazardous Material Identification and Material Safety Data clause of this contract.

### **33. HAZARDOUS WASTE LIABILITY AND INDEMNIFICATION (DEC 2016)**

Upon receipt by the contractor of hazardous waste for transportation and/or disposal, the contractor agrees to indemnify and hold the Government harmless from any and all financial responsibility arising from pollution liability and/or pollution related damages, costs, claims, demands and expenses, including but not limited to Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) liability, to the extent it is caused by the contractor's negligence and provided that the liability, damages, loss or claim does not result from the negligence of the Government or the misidentification or other failure to properly identify, package, or store the waste by the Government.

**34. PROHIBITION ON STORAGE AND DISPOSAL OF TOXIC AND HAZARDOUS MATERIAL (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)

**35. RIGHTS IN BID OR PROPOSAL INFORMATION (JUL 2018)**

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 prior 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.

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

a. The Government may defer ordering technical data, computer software (as defined in CI.Clause 18), or other information not easily categorized (as defined in CI.Clause 18(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) (CI.Clause 18).

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

### **37. DATA REQUIREMENTS (FEB 2011)**

The contractor is required to deliver the data items listed on the Subcontract Data Requirements List, data items identified in and deliverable under any contract clause of FAR Part 52 and CUSTOMER IMPOSED CLAUSES 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.

### **38. 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 CI.Clause 18, 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 CI.Clause 12, 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 the Customer's Support Contractor Corporate Non- Disclosure Agreement, and JUL 2018

(Full text of clause provided below for reference.)

(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 CI.Clause 18 (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 CI.Clause 18 (k)(1)-(4), the Government may use that technical data or computer software in CI227-002 Rights in Technical Data and Computer Software: Noncommercial Items (FEB 2011) 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: 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.

### **39. 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 name 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.Clause 11, Protection of Information, and CI.Clause 39, 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 the Customer's Support Contractor Corporate Non- Disclosure Agreement, and CI.Clause 39, 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 name 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.

(4) GFI technical data or computer software marked with commercial restrictive legends.

(i) The contractor shall use, modify, reproduce, perform, display technical data and/or computer software that is or pertains to a commercial item and is received from the Government with a commercial restrictive legend (i.e. marked to indicate that such data are subject to use, modification, reproduction, release, performance, display, or disclosure restrictions) only in the performance of this contract. The Contractor shall not, without the express written permission of the party whose name appears in the legend, use the technical data to manufacture additional quantities of the commercial items, release or disclose such data to any unauthorized person. Prior to providing technical data or computer software marked with commercial restrictive legends, the Government shall ensure that:

(a) The receiving development contractor(s) or subcontractor(s) contract arrangements are subject to clauses CI.Clause 11, Protection of Information, and CI.Clause 39, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends; and

(b) The receiving support contractor(s) or subcontractor(s) contract arrangements are subject to the Customer's Support Contractor Corporate Non- Disclosure Agreement and CI.Clause 39, Limitations on the Use or

Disclosure of Government-Furnished Information Marked with Restrictive Legends.

(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 name 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.

#### **40. COST ACCOUNTING STANDARDS (JUN 2018)**

a. Unless the contract is exempt under 48 CFR 9903.201-1 and 9903.201-2, the provisions of 48 CFR Part 9903 are incorporated herein by reference and the Contractor, in connection with this contract, shall—

(1) (CAS-covered Contracts Only) By submission of a Disclosure Statement, disclose in writing the Contractor's cost accounting practices as required by 48 CFR 9903.202-1 through 9903.202-5, including methods of distinguishing direct costs from indirect costs and the basis used for allocating indirect costs. The practices disclosed for this contract shall be the same as the practices currently disclosed and applied on all other contracts and subcontracts being performed by the Contractor and which contain a Cost Accounting Standards (CAS) clause. If the Contractor has notified the Contracting Officer that the Disclosure Statement contains trade secrets and commercial or financial information which is privileged and confidential, the Disclosure Statement shall be protected and shall not be released outside of the Government.

(2) Follow consistently the Contractor's cost accounting practices in accumulating and reporting contract performance cost data concerning this contract. If any change in cost accounting practices is made for the purposes of any contract or subcontract subject to CAS requirements, the change must be applied prospectively to this contract and the Disclosure Statement must be amended accordingly. If the contract price or cost allowance of this contract is affected by such changes, adjustment shall be made in accordance with subparagraph (a) (4) or (a) (5) of this clause, as appropriate.

(3) Comply with all CAS, including any modifications and interpretations indicated thereto contained in 48 CFR Part 9904, in effect on the date of award of this contract or,

if the Contractor has submitted certified cost or pricing data, on the date of final agreement on price as shown on the Contractor's signed certificate of current cost or pricing data. The Contractor shall also comply with any CAS (or modifications to CAS) which hereafter become applicable to a contract or subcontract of the Contractor. Such compliance shall be required prospectively from the date of applicability to such contract or subcontract.

(4)

(i) Agree to an equitable adjustment as provided in the Changes clause of this contract if the contract cost is affected by a change which, pursuant to subparagraph (a)(3) of this clause, the Contractor is required to make to the Contractor's established cost accounting practices.

(ii) Negotiate with the Contracting Officer to determine the terms and conditions under which a change may be made to a cost accounting practice, other than a change made under other provisions of subparagraph (a)(4) of this clause; provided that no agreement may be made under this provision that will increase costs paid by the United States.

(iii) When the parties agree to a change to a cost accounting practice, other than a change under subdivision (a)(4)(i) of this clause, negotiate an equitable adjustment as provided in the Changes clause of this contract.

(5) Agree to an adjustment of the contract price or cost allowance, as appropriate, if the Contractor or a subcontractor fails to comply with an applicable Cost Accounting Standard, or to follow any cost accounting practice consistently and such failure results in any increased costs paid by the United States. Such adjustment shall provide for recovery of the increased costs to the United States, together with interest thereon computed at the annual rate established under section 6621(a) (2) of the Internal Revenue Code of 1986 (26 U.S.C. 6621(a) (2)) for such period, from the time the payment by the United States was made to the time the adjustment is effected. In no case shall the Government recover costs greater than the increased cost to the Government, in the aggregate, on the relevant contracts subject to the price adjustment, unless the Contractor made a change in its cost accounting practices of which it was aware or should have been aware at the time of price negotiations and which it failed to disclose to the Government.

b. If the parties fail to agree whether the Contractor or a subcontractor has complied with an applicable CAS in 48 CFR 9904 or a CAS rule or regulation in 48 CFR 9903 and as to any cost adjustment demanded by the United States, such failure to agree will constitute a dispute under 41 U.S.C. chapter 71, Contract Disputes.

c. The Contractor shall permit any authorized representatives of the Government to examine and make copies of any documents, papers, or records relating to compliance with the requirements of this clause.

d. The Contractor shall include in all negotiated subcontracts which the Contractor enters into, the substance of this clause, except paragraph (b), and shall require such inclusion in all other subcontracts, of any tier, including the obligation to comply with all CAS in effect on the subcontractor's award date or if the subcontractor has submitted certified cost or pricing data, on

the date of final agreement on price as shown on the subcontractor's signed Certificate of Current Cost or Pricing Data. If the subcontract is awarded to a business unit which pursuant to 48 CFR 9903.201-2 is subject to other types of CAS coverage, the substance of the applicable clause set forth in subsection 30.201-4 of the Federal Acquisition Regulation shall be inserted. This requirement shall apply only to negotiated subcontracts in excess of \$2 million, except that the requirement shall not apply to negotiated subcontracts otherwise exempt from the requirement to include a CAS clause as specified in 48 CFR 9903.201-1.

#### **41. DISCLOSURE AND CONSISTENCY OF COST ACCOUNTING PRACTICES (JUN 2018)**

a. The Contractor, in connection with this contract, shall—

- (1) Comply with the requirements of 48 CFR 9904.401, Consistency in Estimating, Accumulating, and Reporting Costs; 48 CFR 9904.402, Consistency in Allocating Costs Incurred for the Same Purpose; 48 CFR 9904.405, Accounting for Unallowable Costs; and 48 CFR 9904.406, Cost Accounting Standard—Cost Accounting Period, in effect on the date of award of this contract as indicated in 48 CFR Part 9904.
- (2) (CAS-covered Contracts Only) If it is a business unit of a company required to submit a Disclosure Statement, disclose in writing its cost accounting practices as required by 48 CFR 9903.202-1 through 9903.202-5. If the Contractor has notified the Contracting Officer that the Disclosure Statement contains trade secrets and commercial or financial information which is privileged and confidential, the Disclosure Statement shall be protected and shall not be released outside of the Government.
- (3)
  - (i) Follow consistently the Contractor's cost accounting practices. A change to such practices may be proposed, however, by either the Government or the Contractor, and the Contractor agrees to negotiate with the Contracting Officer the terms and conditions under which a change may be made. After the terms and conditions under which the change is to be made have been agreed to, the change must be applied prospectively to this contract, and the Disclosure Statement, if affected, must be amended accordingly.
  - (ii) The Contractor shall, when the parties agree to a change to a cost accounting practice and the Contracting Officer has made the finding required in 48 CFR 9903.201-6(c), that the change is desirable and not detrimental to the interests of the Government, negotiate an equitable adjustment as provided in the Changes clause of this contract. In the absence of the required finding, no agreement may be made under this contract clause that will increase costs paid by the United States.
- (4) Agree to an adjustment of the contract price or cost allowance, as appropriate, if the Contractor or a subcontractor fails to comply with the applicable CAS or to follow any cost accounting practice, and such failure results in any increased costs paid by the United States. Such adjustment shall provide for recovery of the increased costs to the United States together with interest thereon computed at the annual rate established under section 6621(a)(2) of the Internal Revenue Code of 1986 (26 U.S.C. 6621(a)(2)), from



the time the payment by the United States was made to the time the adjustment is effected.

b. If the parties fail to agree whether the Contractor has complied with an applicable CAS, rule, or regulation as specified in 48 CFR 9903 and 9904 and as to any cost adjustment demanded by the United States, such failure to agree will constitute a dispute under 41 U.S.C. chapter 71, Contract Disputes.

c. The Contractor shall permit any authorized representatives of the Government to examine and make copies of any documents, papers, and records relating to compliance with the requirements of this clause.

d. The Contractor shall include in all negotiated subcontracts, which the Contractor enters into, the substance of this clause, except paragraph (b), and shall require such inclusion in all other subcontracts of any tier, except that—

(1) If the subcontract is awarded to a business unit which pursuant to 48 CFR 9903.201-2 is subject to other types of CAS coverage, the substance of the applicable clause set forth in subsection 30.201-4 of the Federal Acquisition Regulation shall be inserted.

(2) This requirement shall apply only to negotiated subcontracts in excess of \$2 million.

(3) The requirement shall not apply to negotiated subcontracts otherwise exempt from the requirement to include a CAS clause as specified in 48 CFR 9903.201-1.

#### **42. CONTRACT PAYMENT WITHHOLDING - NO WITHHOLDING (JUL 2018)**

The Government does not intend to withhold payments of cost or fee under this contract.

#### **43. CONTRACT ACCOUNTABLE GOVERNMENT PROPERTY: RESPONSIBILITIES, USE, REPORTING, AND ADMINISTRATION (JUL 2018)**

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 CLAUSES guidance conflict, the CUSTOMER IMPOSED CLAUSES 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. Equipment is not intended for sale and does not ordinarily lose its identity or become a part of another article when put into use (e.g., machine tools, furniture, vehicles, and test equipment,

including their accessory or auxiliary items). Equipment does not include information technology (IT) items as defined below.

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

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

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

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

#### **44. CONTRACTOR COUNTERFEIT ELECTRONIC PART DETECTION AND AVOIDANCE SYSTEMS (JUL 2017)**

(a) Definitions. As used in this clause—

Authorized aftermarket manufacturer means an organization that fabricates a part under a contract with, or with the express written authority of, the original component manufacturer based on the original component manufacturer's designs, formulas, and/or specifications.

Authorized supplier means a supplier, distributor, or an aftermarket manufacturer with a contractual arrangement with, or the express written authority of, the original manufacturer or current design activity to buy, stock, repackage, sell, or distribute the part.

Contract manufacturer means a company that produces goods under contract for another company under the label or brand name of that company.

Contractor-approved supplier means a supplier that does not have a contractual agreement with the original component manufacturer for a transaction, but has been identified as trustworthy by a contractor or subcontractor.

Counterfeit electronic part means an unlawful or unauthorized reproduction, substitution, or alteration that has been knowingly mismarked, misidentified, or otherwise misrepresented to be an authentic, unmodified electronic part from the original manufacturer, or a source with the express written authority of the original manufacturer or current design activity, including an authorized aftermarket manufacturer. Unlawful or unauthorized substitution includes used electronic parts represented as new, or the false identification of grade, serial number, lot number, date code, or performance characteristics.

Electronic part means an integrated circuit, a discrete electronic component (including, but not limited to, a transistor, capacitor, resistor, or diode), or a circuit assembly. Obsolete electronic part means an electronic part that is no longer available from the original manufacturer or an authorized aftermarket manufacturer.

Original component manufacturer means an organization that designs and/or engineers a part and is entitled to any intellectual property rights to that part.

Original equipment manufacturer means a company that manufactures products that it has designed from purchased components and sells those products under the company's brand name.

Original manufacturer means the original component manufacturer, the original equipment manufacturer, or the contract manufacturer.

Suspect counterfeit electronic part means an electronic part for which credible evidence (including, but not limited to, visual inspection or testing) provides reasonable doubt that the electronic part is authentic.

b. Acceptable counterfeit electronic part detection and avoidance system. The contractor shall establish and maintain an acceptable counterfeit electronic part detection and avoidance system. Failure to maintain an acceptable counterfeit electronic part detection and avoidance system, as defined in this clause, may result in disapproval of the contractor's purchasing system and affect the allowability of costs of counterfeit electronic parts or suspect counterfeit electronic parts and the cost of rework or corrective action that may be required to remedy the use or inclusion of such parts.

c. System criteria. A counterfeit electronic part detection and avoidance system shall include risk-based policies and procedures that address, at a minimum, the following areas:

(1) The training of personnel.

(2) The inspection and testing of electronic parts, including criteria for acceptance and rejection. Tests and inspections shall be performed in accordance with accepted Government- and Industry-recognized techniques. Selection of tests and inspections shall be based on minimizing risk to the Government. Determination of risk shall be based on the assessed probability of receiving a counterfeit electronic part; the probability that the

inspection or test selected will detect a counterfeit electronic part; and the potential negative consequences of a counterfeit electronic part being installed (e.g., human safety, mission success) where such consequences are made known to the contractor.

(3) Processes to abolish counterfeit parts proliferation within the contractor's supply chain.

(4) Risk-based processes that enable tracking of electronic parts from the original manufacturer to product acceptance by the Government, whether the electronic parts are supplied as discrete electronic parts or are contained in assemblies, in accordance with paragraph (c) of CI.Clause 45, Sources of Electronic Parts (also see paragraph (c)(2) of this clause).

(5) Use of suppliers in accordance with CI.Clause 45.

(6) Reporting and quarantining of counterfeit electronic parts and suspect counterfeit electronic parts. Reporting is required to the Contracting Officer and to the Government-Industry Data Exchange Program (GIDEP) within 30 days after the contractor becomes aware of, or has reason to suspect that, any electronic part or end item, component, part, or assembly containing electronic parts purchased by the Government, or purchased by a contractor for delivery to, or on behalf of, the Government, contains counterfeit electronic parts or suspect counterfeit electronic parts. Counterfeit electronic parts and suspect counterfeit electronic parts shall be quarantined and protected as evidence along with original documentation, and shall not be returned to the seller or otherwise returned to the supply chain until such time that the parts are determined to be authentic.

(7) Methodologies to identify suspect counterfeit parts and to rapidly determine if a suspect counterfeit part is, in fact, counterfeit.

(8) Design, operation, and maintenance of systems to detect and avoid counterfeit electronic parts and suspect counterfeit electronic parts. The contractor may elect to use current Government- or Industry recognized standards to meet this requirement.

(9) Flow down of counterfeit detection and avoidance requirements, including applicable system criteria provided herein, to subcontractors at all levels in the supply chain that are responsible for buying or selling electronic parts or assemblies containing electronic parts, or for performing authentication testing.

(10) Process for keeping continually informed of current counterfeiting information and trends, including detection and avoidance techniques contained in appropriate industry standards, and using such information and techniques for continuously upgrading internal processes.

(11) Process for screening GIDEP reports and other credible sources of counterfeiting information to avoid the purchase or use of counterfeit electronic parts.

(12) Control of obsolete electronic parts in order to maximize the availability and use of authentic, originally designed, and qualified electronic parts throughout the product's life cycle.

d. The contractor shall submit a comprehensive description of their counterfeit electronic part detection and avoidance system to the Contracting Officer for review and acceptance within 60 days after contract award. This submission shall include the criteria to be used by the contractor and subcontractors to select contractor approved suppliers. In addition, Government review and evaluation of the contractor's policies and procedures will be accomplished as part of the evaluation of the contractor's purchasing system.

e. The contractor shall include the substance of this clause, excluding the introductory text and including only paragraphs (a) through (e), in subcontracts, including subcontracts for commercial items, for electronic parts or assemblies containing electronic parts.

#### **45. SOURCES OF ELECTRONIC PARTS (JUL 2017)**

a. Definitions. As used in this clause—

Authorized aftermarket manufacturer means an organization that fabricates a part under a contract with, or with the express written authority of, the original component manufacturer based on the original component manufacturer's designs, formulas, and/or specifications.

Authorized supplier means a supplier, distributor, or an aftermarket manufacturer with a contractual arrangement with, or the express written authority of, the original manufacturer or current design activity to buy, stock, repackage, sell, or distribute the part.

Contract manufacturer means a company that produces goods under contract for another company under the label or brand name of that company.

Contractor-approved supplier means a supplier that does not have a contractual agreement with the original component manufacturer for a transaction, but has been identified as trustworthy by a contractor or subcontractor.

Electronic part means an integrated circuit, a discrete electronic component (including, but not limited to, a transistor, capacitor, resistor, or diode), or a circuit assembly.

Original component manufacturer means an organization that designs and/or engineers a part and is entitled to any intellectual property rights to that part.

Original equipment manufacturer means a company that manufactures products that it has designed from purchased components and sells those products under the company's brand name.

Original manufacturer means the original component manufacturer, the original equipment manufacturer, or the contract manufacturer.

b. Selecting suppliers. The Contractor shall—

(1) First obtain electronic parts that are in production by the original manufacturer or an authorized aftermarket manufacturer or currently available in stock from—

(i) The original manufacturers of the parts;

(ii) Their authorized suppliers; or

(iii) Suppliers that obtain such parts exclusively from the original manufacturers of the parts or their authorized suppliers;

(2) If electronic parts are not available as provided in paragraph (b) (1) of this clause, obtain electronic parts that are not in production by the original manufacturer or an authorized aftermarket manufacturer, and that are not currently available in stock from a source listed in paragraph (b) (1) of this clause, from suppliers identified by the Contractor as contractor-approved suppliers, provided that—

(i) For identifying and approving such contractor-approved suppliers, the Contractor uses established counterfeit prevention industry standards and processes (including inspection, testing, and authentication), such as the DoD-adopted standards at <https://assist.dla.mil>;

(ii) The Contractor assumes responsibility for the authenticity of parts provided by such contractor-approved suppliers, and for the compliance of such parts with the standards specified in this contract; and

(iii) The Contractor's selection of such contractor-approved suppliers is subject to review and audit by the Contracting Officer; or

(3) (i) Take the actions in paragraph (b) (3) (ii) of this clause if the Contractor—

(A) Obtains an electronic part from—

(1) A source other than any of the sources identified in paragraph (b) (1) or (b) (2) of this clause, due to non-availability from such sources; or

(2) A subcontractor (other than the original manufacturer) that refuses to accept flowdown of this clause; or

(B) Cannot confirm that an electronic part is new or previously unused and that it has not been comingled in supplier new production or stock with used, refurbished, reclaimed, or returned parts.

(ii) If the contractor obtains an electronic part or cannot confirm an electronic part pursuant to paragraph (b) (3) (i) of this clause—

(A) Promptly notify the Contracting Officer in writing. If such notification is required for an electronic part to be used in a designated lot of assemblies to be acquired under a single contract, the Contractor may submit one notification for the lot, providing identification of the assemblies containing the parts (e.g., serial numbers);

(B) Be responsible for inspection, testing, and authentication, in accordance with existing applicable industry standards; and

(C) Make documentation of inspection, testing, and authentication of such electronic parts available to the Government upon request.

c. Traceability. If the Contractor is not the original manufacturer of, or authorized supplier for, an electronic part, the Contractor shall—

(1) Have risk-based processes (taking into consideration the consequences of failure of an electronic part) that enable tracking of electronic parts from the original manufacturer to

product acceptance by the Government, whether the electronic part is supplied as a discrete electronic part or is contained in an assembly;

(2) If the Contractor cannot establish this traceability from the original manufacturer for a specific electronic part, be responsible for inspection, testing, and authentication, in accordance with existing applicable industry standards; and

(3) (i) Maintain documentation of traceability (paragraph (c)(1) of this clause) or the inspection, testing, and authentication required when traceability cannot be established (paragraph (c)(2) of this clause) in accordance with FAR Subpart 4.7; and

(ii) Make such documentation available to the Government upon request.

d. Government sources. Contractors and subcontractors are still required to comply with the requirements of paragraphs (b) and (c) of this clause, as applicable, if—

(1) Authorized to purchase electronic parts from the Federal Supply Schedule;

(2) Purchasing electronic parts from suppliers accredited by the Defense Microelectronics Activity; or

(3) Requisitioning electronic parts from Government inventory/stock under the authority of FAR Clause 52.251-1, Government Supply Sources.

(i) The cost of any required inspection, testing, and authentication of such parts may be charged as a direct cost.

(ii) The Government is responsible for the authenticity of the requisitioned parts. If any such part is subsequently found to be counterfeit or suspect counterfeit, the Government will—

(A) Promptly replace such part at no charge; and

(B) Consider an adjustment in the contract schedule to the extent that replacement of the counterfeit or suspect counterfeit electronic parts caused a delay in performance.

e. Subcontracts. The Contractor shall include the substance of this clause, including this paragraph (e), in subcontracts, including subcontracts for commercial items that are for electronic parts or assemblies containing electronic parts, unless the subcontractor is the original manufacturer.

#### **46. PROHIBITION ON CONTRACTING FOR CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT (AUG 2019)**

a. Definitions. As used in this clause—

“Covered foreign country” means The People’s Republic of China.

“Covered telecommunications equipment or services” means—

(1) Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities);

- (2) For the purpose of public safety, security of Government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities);
- (3) Telecommunications or video surveillance services provided by such entities or using such equipment; or
- (4) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

“Critical technology” means—

- (1) Defense articles or defense services included on the United States Munitions List set forth in the International Traffic in Arms Regulations under subchapter M of chapter I of title 22, Code of Federal Regulations;
- (2) Items included on the Commerce Control List set forth in Supplement No. 1 to part 774 of the Export Administration Regulations under subchapter C of chapter VII of title 15, Code of Federal Regulations, and controlled-
  - (i) Pursuant to multilateral regimens, including for reasons relating to national security, chemical and biological weapons proliferation, nuclear proliferation, or missile technology; or
  - (ii) For reasons relating to regional stability or surreptitious listening;
- (3) Specially designed and prepared nuclear equipment, parts and components, materials, software, and technology covered by part 810 of title 10, Code of Federal Regulations (relating to assistance to foreign atomic energy activities);
- (4) Nuclear facilities, equipment, and material covered by part 110 of title 10, Code of Federal Regulations (relating to export and import of nuclear equipment and material);
- (5) Select agents and toxins covered by part 331 of title 7, Code of Federal Regulations, part 121 of title 9 of such Code, or part 73 of title 42 of such Code; or
- (6) Emerging and foundational technologies controlled pursuant to section 1758 of the Export Control Reform Act of 2018 (50 U.S.C. 4817).

“Substantial or essential component” means any component necessary for the proper function or performance of a piece of equipment, system, or service.

b. Prohibition. Section 889(a)(1)(A) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits the head of an executive agency on or after August 13, 2019, from procuring or obtaining, or extending or renewing a contract or procure or obtain, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. The Contractor is prohibited from providing to the Government any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, unless an exception at paragraph (c) of this clause applies or the covered telecommunication equipment or services are covered by a waiver described in Federal Acquisition Regulation 4.2104.



c. Exceptions. This clause does not prohibit contractors from providing—

- (1) A services that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or
- (2) Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.

d. Reporting requirement

- (1) In the event the Contractor identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or the Contractor is notified of such by a subcontractor at any tier or by any other source, the Contractor shall report the information in paragraph (d)(2) of this clause to the Contracting Officer. For indefinite delivery contracts, the Contractor shall report to the Contracting Officer for the indefinite delivery contract and the Contracting Officer(s) for any affected order.
- (2) The Contractor shall report the following information pursuant to paragraph (d)(1) of this clause

- (i) Within one business day from the date of such identification or notification: the contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.

- (ii) Within 10 business days of submitting the information in paragraph (d)(2)(i) of this clause: any further available information about mitigation actions undertaken or recommended. In addition, the Contractor shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.

e. Subcontracts. The Contractor shall insert the substance of this clause, including this paragraph (e), in all subcontracts and other contractual instruments, including subcontracts for the acquisition of commercial items.