

**CUSTOMER CONTRACT REQUIREMENTS****Proprietary****CUSTOMER CONTRACT PROP-18-C-0030****CUSTOMER CONTRACT REQUIREMENTS**

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

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

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

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

**52.203-8 Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity** (MAY 2014). This clause applies to this contract if the Seller, its employees, officers, directors or agents participated personally and substantially in any part of the preparation of a proposal for this contract. The Seller shall indemnify Buyer for any and all losses suffered by the Buyer due to violations of the Act (as set forth in this clause) by Seller or its subcontractors at any tier.

**52.203-10 Price or Fee Adjustment for Illegal or Improper Activity** (MAY 2014). This clause applies only if this contract exceeds \$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.

**52.203-14 Display of Hotline Poster(s)** (OCT 2015). This clause applies only if this contract exceeds \$5,500,000 and is not for a commercial item or is performed entirely outside the United States. For the purposes of this clause, the United States is defined as the 50 states, the District of Columbia, and outlying areas.

**52.203-17 Contractor Employee Whistleblower Rights and Requirement to Inform Employees of**

**Whistleblower Rights** (APR 2014). This clause applies only if this contract exceeds \$150,000.

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

**52.204-2 Security Requirements** (AUG 1996). The reference to the Changes clause means the changes clause of this Contract. This clause applies only if the Contract involves access to classified material.

**52.204-7 System for Award Management** (OCT 2016).

**52.204-9 Personal Identity Verification of Contractor Personnel.** (JAN 2011). This clause applies only if performance under this contract requires Seller to have routine physical access to a Federally-controlled facility and/or routine access to a Federally-controlled information system.

**52.204-10 Reporting Executive Compensation And First-Tier Subcontract Awards** (OCT 2016). Delete all paragraphs and replace with the following: "If Seller meets the executive compensation reporting requirements of 52.204-10, Seller shall provide the required executive compensation information by maintaining an active registration in the U.S. government System for Award Management (*SAM*) in accordance with 52.204-7. The required information of 52.204-10 will be made public."

**52.204-13 System for Award Management Maintenance** (OCT 2016).

**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.

**52.211-5 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.

**52.215-10 Price Reduction for Defective Certified Cost or Pricing Data** (AUG 2011). This clause applies only if this contract exceeds the threshold set forth in FAR 15.403-4 and is not otherwise exempt. In subparagraph (3) of paragraph (a), insert "of this contract" after "price or cost." In Paragraph (c), "Contracting Officer" shall mean "Contracting Officer or Buyer." In Paragraphs (c)(1), (c)(1)(ii), and (c)(2)(i), "Contracting Officer" shall mean "Contracting Officer or Buyer." In Subparagraph (c)(2)(i)(A), delete "to the Contracting Officer." In Subparagraph (c)(2)(ii)(B), "Government" shall mean "Government or Buyer." In Paragraph (d), "United States" shall mean "United States or Buyer."

**52.215-12 Subcontractor Certified Cost or Pricing Data Deviation (2018-O0015)** (MAY 2018). This clause applies only if this contract exceeds the threshold set forth in FAR 15.403-4 and is not otherwise exempt. The certificate required by paragraph (b) of 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).

**52.215-21 Requirements for Certified Cost or Pricing Data and Data other than Certified Cost or Pricing Data-Modifications (Oct 2010) Alternate I (OCT 2010).** This clause applies only if this contract exceeds the threshold set forth in FAR 15.403-4. The term "Contracting Officer" shall mean Buyer. Insert the following in lieu of paragraph (a)(2): "Buyer's audit rights to determine price reasonableness shall also apply to verify any request for an exception under this clause. For items priced using catalog or market prices, or law or regulation, access does not extend to cost or profit information or other data relevant solely to the Contractor's determination of the prices to be offered in the catalog or marketplace."

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

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

**52.219-9 Small Business Subcontracting Plan (JAN 2017).** 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 126368257; 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.)

**52.219-28 Post-Award Small Business Program Representation (JUL 2013).** In paragraph (b), delete "...or, if applicable paragraph (g) of this clause..." Delete paragraph (c) and insert the following paragraph (c) in lieu thereof: "Seller shall represent its size status in accordance with SBA's size code standards in effect at the time of this representation to Buyer. The size status shall correspond to the North American Industry Classification System (NAICS) code applicable to Seller's contract." Delete paragraphs (d) and (g). Delete paragraph (e) and insert the following paragraph (e) in lieu thereof: "Seller shall make the representation required by paragraph (b) of this clause by submitting an updated Buyer Form F70102 or updating Seller's profile information on line in Buyer's BEST system."

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

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

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

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

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

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

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

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

**52.223-11 Ozone-Depleting Substances and High Global Warming Potential Hydrofluorocarbons** (JUN 2016). Seller shall submit the information required by paragraph (c) (1) annually to Buyer by October 15th during each year of contract performance, and at the end of contract performance.

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

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

**52.227-1 Authorization and Consent (Dec 2007) Alternate I** (APR 1984).

**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).

**52.227-11 Patent Rights -- Ownership by the Contractor** (MAY 2014). This clause applies only if this contract is for experimental, developmental, or research work and Seller is a small business firm or nonprofit organization. In this clause, "Contractor" means Contractor, references to the Government are not changed and the subcontractor has all rights and obligations of the Contractor in the clause.

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

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

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

**52.244-6 Subcontracts for Commercial Items** (JAN 2017). Clauses in paragraph (c) (1) are applicable to Seller for

commercial items ordered by Buyer from Seller under this contract.

**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.

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

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

**252.203-7001 Prohibition on Persons Convicted of Fraud or Other Defense-Contract-Related Felonies** (DEC 2008). 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 and is not for the purchase of commercial items or commercial components. Except in paragraph (a), "this contract" and "the contract" mean the contract between Buyer and Seller. In subparagraph (d)(2), delete the words "or first-tier subcontractor." In paragraph (e), the remedies described in subparagraphs (2) and (3) are available to Buyer, not the Government. In paragraph (f), "through the Buyer" is inserted after "Contracting Officer." Paragraph (g) is deleted.

**252.203-7002 REQUIREMENT TO INFORM EMPLOYEES OF WHISTLEBLOWER RIGHTS** (SEP 2013).

**252.203-7003 Agency Office of the Inspector General.** (DEC 2012). This clause applies if FAR 52.203-13 applies.

**252.203-7004 DISPLAY OF HOTLINE POSTER** (OCT 2016). The clause applies to contracts that exceed \$5.5 million except for when the contract is for the acquisition of a commercial item.

**252.204-7000 Disclosure of Information** (OCT 2016). Seller shall submit requests for authorization to release information through Buyer. Seller shall submit written requests to Buyer a minimum of 25 days prior to proposed date of release.

**252.204-7009 Limitations on the Use or Disclosure of Third-Party Contractor Reported Cyber Incident Information** (OCT 2016). This clause applies to contracts for services that include support for the Government's activities related to safeguarding covered defense information and cyber incident reporting, including contracts for commercial items.

**252.204-7012 Safeguarding Covered Defense Information and Cyber Incident Reporting** (OCT 2016). This clause applies if the Contract is for operationally critical support or where performance will involve a covered contractor information system. The term "contractor" retains its original meaning wherever the word is not capitalized. In the terms "Contractor attributional/proprietary information," "Contractor information system" and "covered contractor information system," the term "contractor" also retains its original meaning. In paragraph (b)(2), the applicable security standard that applies to this Contract is NIST SP 800-171, Revision 1. In paragraphs (d) and (g), "Contracting Officer" shall mean "Contracting Officer or Buyer." In paragraph (m)(2), the term "prime Contractor" retains its original meaning. In accordance with paragraph (m)(2)(i), Seller shall notify Buyer when submitting a request to the Contracting Officer to vary from NIST SP 800-171, Revision 1. Reporting to Buyer in accordance with (m)(2)(ii) shall be accomplished via [abuse@Boeing.com](mailto:abuse@Boeing.com) with a copy to the Buyer's Authorized Procurement Representative. The Boeing 1st tier subcontractor promptly shall report lower tier subcontractor information it receives. Seller represents and warrants that (i) it is in compliance with the requirements of DFARS Clause 252.204-7012 as modified by the preceding paragraph, or (ii) that, pursuant to paragraph (b)(2)(ii)(B), it has submitted a request applicable to this Contract for a variance from the requirements of NIST SP 800-171, Revision 1 to the US Government Contracting Office and that Seller's request for such variance was approved by an authorized representative of the DoD CIO.

**252.204-7015 NOTICE OF AUTHORIZED DISCLOSURE OF INFORMATION FOR LITIGATION SUPPORT** (MAY 2016).

**252.215-7000 Pricing Adjustments** (DEC 2012). This clause applies only if this contract exceeds the threshold set forth in FAR 15.403-4.



**252.215-7010 Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data** (JAN 2018). "Offeror" shall mean "Seller" and the term "Contracting Officer" shall mean "Buyer." In paragraph (d) (3), "10 days" is changed to "7 days."

**252.219-7003 Small Business Subcontracting Plan (DoD Contracts)** (MAR 2016). Paragraph (e) is deleted.

**252.223-7001 Hazard Warning Labels** (DEC 1991). This clause applies only if Seller delivers hazardous material under this contract. The term Offeror means Seller.

**252.223-7002 Safety Precautions for Ammunition and Explosives** (MAY 1994). This clause applies only if this contract involves ammunition or explosives. "Government" means Government or Buyer in paragraph (b)(2), each time it appears in (e), (f)(1), (f)(2), the first time it appears in (g)(1)(i), and in (g)(3). "Government" means Buyer in paragraphs (c)(3), (c)(4), (c)(5), and the second time it appears in (g)(1)(i). "Contracting Officer" means Contracting Officer and Buyer in paragraph (g)(4). "Contracting Officer" means Buyer in paragraphs (c)(1), (c)(2), (c)(3), (c)(4), (c)(5), and each time it appears in (d).

**252.223-7006 Prohibition on Storage, Treatment, And Disposal of Toxic Or Hazardous Materials** (SEP 2014). This clause applies if the contract requires, may require, or permits Seller access to a DoD installation. Seller shall include this clause in any of their subcontracts.

**252.225-7001 Buy American and Balance of Payments Program** (DEC 2016). In paragraph (c), the phrase "in the Buy American Balance of Payments Program Certificate provision of the solicitation" is deleted and the word "certified" is deleted and replaced with the word "specified."

**252.225-7002 Qualifying Country Sources as Subcontractors** (DEC 2016).

**252.225-7008 Restriction on Acquisition of Specialty Metals** (MAR 2013). This clause applies if the contract exceeds \$150,000.

**252.225-7009 Restriction on Acquisition of Certain Articles Containing Specialty Metals** (OCT 2014). Paragraphs (d) and (e) of this clause are excluded. In paragraph (d) (1) (i), "Contracting Officer" means Buyer. In paragraph (e)(2) "Government" means Buyer. Paragraph (c)(6) is revised as follows: (c)(6) End items of the prime contract containing a minimal amount of otherwise noncompliant specialty metals (*i.e.*, specialty metals not melted or produced in the United States, an outlying area, or a qualifying country, that are not covered by one of the other exceptions in this paragraph (c)), if the total weight of such noncompliant metals does not exceed 2 percent of the total weight of all specialty metals in that end item. This exception does not apply to high performance magnets containing specialty metals. If the Seller will furnish goods that contain otherwise noncompliant specialty metals (*i.e.*, specialty metals not melted or produced in the United States, an outlying area, or a qualifying country, that are not covered by one of the other exceptions in this paragraph (c)), then the Seller shall disclose to the Buyer (i) the total weight of all specialty metals in each of the goods of this contract, and (ii) the total weight of the noncompliant specialty metals in each of those goods. In the calculation of total weight of noncompliant specialty metals in each of the goods, exclude the weight of specialty metals covered by other exemptions in this paragraph (c).

**252.225-7012 Preference for Certain Domestic Commodities** (DEC 2016).

**252.225-7048 Export-Controlled Items** (JUN 2013).

**252.226-7001 Utilization of Indian Organizations and Indian-Owned Economic Enterprises--DoD Contracts and Native Hawaiian Small Business Concerns** (SEP 2004). This clause applies only if this contract exceeds \$500,000.

**252.227-7013 Rights In Technical Data -- Noncommercial Items** (FEB 2014). This clause applies when technical data for noncommercial items, or for commercial items developed in any part at Government expense, is to be obtained from Seller or Seller's subcontractors for delivery to the Government.

**252.227-7014 Rights In Noncommercial Computer Software And Noncommercial Computer Software Documentation** (FEB 2014). This clause applies when noncommercial computer software or computer software documentation is to be obtained from Seller or Seller's subcontractors for delivery to the Government.

**252.227-7015 Technical Data -- Commercial Items** (FEB 2014). This clause applies whenever any technical data related to commercial items is developed in any part at private expense and will be obtained from Seller or its subcontractors for delivery to the Government.

**252.227-7016 Rights in Bid or Proposal Information** (JAN 2011).

**252.227-7017 Identification and Assertion of Use, Release, or Disclosure Restrictions** (JAN 2011).

**252.227-7019 Validation of Asserted Restrictions - Computer Software** (SEP 2016).

**252.227-7025 Limitations on the Use or Disclosure of Government-Furnished Information Marked With Restrictive Legends** (MAY 2013). In paragraph (c)(1), the term "Government" shall mean "Government and Buyer".

**252.227-7026 Deferred Delivery of Technical Data or Computer Software** (APR 1988). This clause applies only if the delivery of data is required or if computer software may be originated, developed or delivered under this contract.

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

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

**252.227-7037 Validation of Restrictive Markings on Technical Data** (SEP 2016).

**252.227-7038 Patent Rights—Ownership By The Contractor (Large Business)** (JUN 2012). This clause applies only if this contract is for experimental, developmental, or research work and Seller is not a small business firm or nonprofit organization.

**252.228-7001 Ground and Flight Risk** (JUN 2010). Seller acknowledges that the Customer Contract includes DFARS 252.228-7001, Ground and Flight Risk (JUN 2010) (the "GFRC"), and that the GFRC incorporates DCMA Instruction 8210.1 (21 August 2013), CONTRACTOR'S FLIGHT AND GROUND OPERATIONS, by reference. Seller shall have procedures in place to implement the requirements of the GFRC and DCMA Instruction 8210.1 (21 August 2013), and to enable Buyer to meet its obligations under the prime contract.

**252.231-7000 Supplemental Cost Principles** (DEC 1991).

**252.239-7010 Cloud Computing Services** (OCT 2016). Paragraph (b)(1) shall read as follows: This clause applies to contracts that involve or may involve cloud computing services in performance of the Contract, including contracts for commercial items. If Seller proposes to use cloud computing services in the performance of the contract, Seller shall obtain approval from the Buyer prior to utilizing such cloud computing services in performance of the contract. Any requests to and notifications or approvals from the Contracting Officer shall be communicated through Buyer.

**252.244-7000 Subcontracts for Commercial Items** (JUN 2013).

**252.245-7001 Tagging, Labeling, and Marking Of Government-Furnished Property** (APR 2012).

**252.245-7004 Reporting, Reutilization, and Disposal** (SEP 2016). This clause applies if this contract contains FAR 52.245-1, Government Property. The term "Contracting Officer" shall mean "Buyer".

**252.247-7023 Transportation of Supplies by Sea-Basic** (APR 2014). This clause applies if this contract is for supplies that are of a type described in paragraph (b)(2) of this clause. In paragraph (d), "45 days" is changed to "60 days." If this contract exceeds the simplified acquisition threshold, paragraphs (a)-(h) apply. In paragraph (g) "Government" means Buyer. If this contract is at or below the simplified acquisition threshold, paragraphs (f) and (g) are excluded.

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

**252.239-7001 Information Assurance Contractor Training and Certification (JAN 2008).**

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

**52.203-13 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 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 (JAN 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.

**252.203-7002 REQUIREMENT TO INFORM EMPLOYEES OF WHISTLEBLOWER RIGHTS (SEP 2013).**

**252.204-7009 Limitations on the Use or Disclosure of Third Party Contractor Reported Cyber Incident Information (OCT 2016).** This clause applies if the Contract is for services that include support for the Government's activities related to safeguarding covered defense information and cyber incident reporting, including contracts for commercial items.

**252.204-7012 Safeguarding Covered Defense Information and Cyber Incident Reporting (OCT 2016).** This clause applies if the Contract is for operationally critical support or where performance will involve a covered contractor information system. The term "contractor" retains its original meaning wherever the word is not capitalized. In the terms "Contractor attributional/proprietary information," "Contractor information system" and "covered contractor information system," the term "contractor" also retains its original meaning. In paragraph (b)(2), the applicable security standard that applies to this Contract is NIST SP 800-171, Revision 1. In paragraphs (d) and (g), "Contracting Officer" shall mean "Contracting Officer or Buyer." In paragraph (m)(2), the term "prime Contractor" retains its original meaning. In accordance with paragraph (m)(2)(i), Seller shall notify Buyer when submitting a request to the Contracting Officer to vary from NIST SP 800-171, Revision 1. Reporting to Buyer in accordance with (m)(2)(ii) shall be accomplished via [abuse@Boeing.com](mailto:abuse@Boeing.com) with a copy to the Buyer's Authorized Procurement Representative. The Boeing 1st tier subcontractor promptly shall report lower tier subcontractor information it receives.

Seller represents and warrants that (i) it is in compliance with the requirements of DFARS Clause 252.204-7012 as modified by the preceding paragraph, or (ii) that, pursuant to paragraph (b)(2)(ii)(B), it has submitted a request applicable to this Contract for a variance from the requirements of NIST SP 800-171, Revision 1 to the US Government Contracting Office and that Seller's request for such variance was approved by an authorized representative of the DoD CIO.

**252.204-7015 NOTICE OF AUTHORIZED DISCLOSURE OF INFORMATION FOR LITIGATION SUPPORT (MAY 2016).**

**252.225-7001 Buy American and Balance of Payments Program (DEC 2016).** In paragraph (c), the phrase "in the Buy American Balance of Payments Program Certificate provision of the solicitation" is deleted and the word "certified" is deleted and replaced with the word "specified."

**252.225-7009 Restriction on Acquisition of Certain Articles Containing Specialty Metals (OCT 2014).** Paragraph (d) and (e)(1) of this clause is excluded. Paragraph (e) of this clause is included wherein "Government" means Buyer.

**252.225-7012 Preference for Certain Domestic Commodities (DEC 2016).**

**252.225-7048 Export-Controlled Items (JUN 2013).**

**252.226-7001 Utilization of Indian Organizations and Indian-Owned Economic Enterprises--DoD Contracts and Native Hawaiian Small Business Concerns (SEP 2004).** This clause applies only if this contract exceeds \$500,000.

**252.227-7013 Rights In Technical Data -- Noncommercial Items (FEB 2014).** This clause applies when technical data for noncommercial items, or for commercial items developed in any part at Government expense, is to be obtained from Seller or Seller's subcontractors for delivery to the Government.

**252.227-7015 Technical Data -- Commercial Items (FEB 2014).** This clause applies whenever any technical data related to commercial items is developed in any part at private expense and will be obtained from Seller or its subcontractors for delivery to the Government.

**252.227-7037 Validation of Restrictive Markings on Technical Data (SEP 2016).**

**252.239-7010 Cloud Computing Services (OCT 2016).** Paragraph (b)(1) shall read as follows: This clause applies to contracts that involve or may involve cloud computing services in performance of the Contract, including contracts for commercial items. If Seller proposes to use cloud computing services in the performance of the contract, Seller shall obtain approval from the Buyer prior to utilizing such cloud computing services in performance of the contract. Any requests to and notifications or approvals from the Contracting Officer shall be communicated through Buyer.

**252.244-7000 Subcontracts for Commercial Items (JUN 2013).**

**252.247-7023 Transportation of Supplies by Sea-Basic (APR 2014).** This clause applies if this contract is for supplies that are of a type described in paragraph (b)(2) of this clause. In paragraph (d), "45 days" is changed to "60 days." If this contract exceeds the simplified acquisition threshold, paragraphs (a)-(h) apply. In paragraph (g) "Government" means Buyer. If this contract is at or below the simplified acquisition threshold, paragraphs (f) and (g) are excluded.

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

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

**H-08 PUBLIC RELEASE OF INFORMATION (Jun 2013)**

- a. The policies and procedures outlined herein apply to information submitted by Seller and his subcontractors for approval for public release. Prior to public release, all information must be cleared as shown in the "National Industrial Security Program Operations Manual" (DoD 5220.22-M). At a minimum, these materials may be technical papers, presentations, articles for publication and speeches or mass media material, such as press releases, photographs, fact sheets, advertising, posters, compact discs, videos, etc.
- b. All materials which relate to the work performed by Seller under this contract must be submitted to Buyer for review and approval prior to release to the public. Seller and Seller's subcontractor's public information materials must be submitted for approval through Buyer.
- c. Upon request through Buyer, the Contracting Officer's Representative (COR) will provide the Government Form, "Security and Policy Review" or any superseding Government form. Seller must complete Sections A-C and E-H of the Form (or comply with the instructions of any superseding form) and submit it to Buyer with the materials to be cleared. If the information was previously cleared, provide the Public Release Case Number, if available, and a copy of the previous document highlighting the updated information.
- d. Seller must submit the following to Buyer at least 75 days in advance of the proposed release date:
  - (1) the completed Form 003 and one (1) electronic copy of the material to be reviewed. File size must not exceed 25MB; and,
  - (2) a written statement, including:
    - (a) to whom the material is to be released;
    - (b) the desired date for public release;
    - (c) a statement that the material has been reviewed and approved by officials of the contractor or the subcontractor, for public release; and,
    - (d) the contract number.
- e. The items submitted must be complete. Photographs must have captions.
- f. Outlines, rough drafts, marked-up copy (with handwritten notes), incorrect distribution statements, For Official Use Only (FOUO) information, export controlled, or International Traffic in Arms Regulations (ITAR) information will not be accepted or cleared.
- g. Abstracts or abbreviated materials may be submitted if the intent is to determine the feasibility of going further in preparing a complete paper for clearance. However, clearance of abstracts or abbreviated materials does not satisfy the requirement for clearance of the entire paper.
- h. The Government is responsible for coordinating the public release review. The Government will work directly with the COR if there are questions or concerns regarding submissions. Government will not work with contractors who have not gone through their COR.

- i. The COR will notify Buyer of the agency's final decision regarding the status of the request.
- j. Once information has been cleared for public release, it is in the public domain and must always be used in its originally cleared context and format. Information previously cleared for public release but containing new, modified or further developed information must be submitted again for public release following the steps outlined in items a. through h. above.

#### **H-09 ORGANIZATIONAL CONFLICT OF INTEREST (Jun 2012)**

- a. Purpose: The primary purpose of this clause is to aid in ensuring that:
  - (1) Seller's objectivity and judgment are not biased because of its present or planned interests which relate to work under this contract;
  - (2) Seller does not obtain unfair competitive advantage by virtue of its access to non-public information regarding the Government's program plans and actual or anticipated resources; and
  - (3) Seller does not obtain unfair competitive advantage by virtue of its access to proprietary information belonging to others.
- b. Scope: Organizational Conflict of Interest (OCI) rules, procedures and responsibilities as described in FAR Subpart 9.5 shall be applicable to this contract and any resulting subcontracts.
  - (1) The general rules in FAR 9.505-1 through 9.505-4 and the restrictions described herein shall apply to performance or participation by Seller and any of its affiliates or their successors-in-interest (hereinafter collectively referred to as "Contractor") in the activities covered by this contract as prime Contractor, subcontractor, co-sponsor, joint venture, consultant, or in any similar capacity.
  - (2) The Government's OCI policy is in Attachment X of this contract.
- c. Access to and Use of Nonpublic Information: If Seller, in performance of this contract, obtains access to nonpublic information such as plans, policies, reports, studies, financial plans, or data which has not been released or otherwise made available to the public, Seller agrees that without prior written approval of the Contracting Officer, obtained through Buyer, it shall not:
  - (1) use such information for any private purpose;
  - (2) release such information.
- d. Access to and Protection of Proprietary Information: Seller agrees to exercise diligent effort to protect proprietary information from misuse or unauthorized disclosure in accordance with the provisions of FAR 9.505-4. Seller may be required to enter into a written non-disclosure agreement with the third party asserting proprietary restrictions.
- e. Subcontracts: Seller shall include this clause in consulting agreements, teaming agreements, subcontracts, or other arrangements for provision of services or supplies of any tier. The terms "contract", "Contractor", and "Contracting Officer" shall be appropriately modified to preserve the Government's rights.
- f. Representations and Disclosures:
  - (1) Seller represents that it has disclosed to Buyer, prior to award, all facts relevant to the existence or potential existence of organizational conflicts of interest as that term is used in FAR Subpart 9.5. To facilitate disclosure and Contracting Officer approval, Seller shall complete an OCI Analysis/Disclosure Form for each contract or subcontract (form shall be requested from the Procuring Contracting Officer, through Buyer).
  - (2) Seller represents that if it discovers an organizational conflict of interest or potential conflict of interest after award, a prompt and full disclosure shall be made in writing to Buyer. This disclosure shall include a description of the action Seller has taken or proposes to take in order to avoid or mitigate such conflicts.
- g. Remedies and Waiver:
  - (1) For breach of any of the above restrictions or for non-disclosure or misrepresentation of any relevant facts required to be disclosed concerning this contract, Buyer may: terminate this contract for default; the Government may disqualify Seller from subsequent related contractual efforts if necessary to neutralize a resulting organizational conflict of interest; and pursue such other remedies as may be permitted by law or this contract. If, however, in compliance with this clause, Seller discovers and promptly reports an organizational conflict of interest (or the potential thereof) subsequent to contract award, Buyer may terminate this contract for convenience if such termination is deemed to be in the best interest of the Buyer or the Government or take other appropriate actions.
  - (2) The parties recognize that this clause has potential effects which will survive the performance of this contract and that it is impossible to foresee each circumstance to which it might be applied in the future. Accordingly, Seller may at any time seek a waiver from the Buyer by submitting a full written description of the requested waiver and the reasons in support thereof.

**H-27 FOREIGN PERSONS (Jun 2010)**

1. "Foreign National" (also known as Foreign Persons) as used in this clause means any person who is NOT:
  - a. a citizen or national of the United States; or
  - b. a lawful permanent resident; or
  - c. a protected individual as defined by 8 U.S.C.1324b(a)(3).

"Lawful permanent resident" is a person having the status of having been lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws and such status not having changed.

"Protected individual" is an alien who is lawfully admitted for permanent residence, is granted the status of an alien lawfully admitted for temporary residence under 8 U.S.C.1160(a) or 8 U.S.C.1255a(a)(1), is admitted as a refugee under 8 U.S.C.1157, or is granted asylum under section 8 U.S.C.1158; but does not include (i) an alien who fails to apply for naturalization within six months of the date the alien first becomes eligible (by virtue of period of lawful permanent residence) to apply for naturalization or, if later, within six months after November 6, 1986, and (ii) an alien who has applied on a timely basis, but has not been naturalized as a citizen within 2 years after the date of the application, unless the alien can establish that the alien is actively pursuing naturalization, except that time consumed in the Service's processing the application shall not be counted toward the 2-year period."

2. Prior to contract award, Seller shall identify any lawful U.S. permanent residents and foreign nationals expected to be involved on this project as a direct employee, subcontractor or consultant. For these individuals, in addition to resumes, please specify their country of origin, the type of visa or work permit under which they are performing and an explanation of their anticipated level of involvement on this project. You may be asked to provide additional information during negotiations in order to verify the foreign citizen's eligibility to participate on a contract. Supplemental information provided in response to this clause will be protected in accordance with Privacy Act (5 U.S.C. 552a), if applicable, and the Freedom of Information Act (5 U.S.C. 552(b)(6)). After award of the contract, Seller shall promptly notify Buyer with the information above prior to making any personnel changes involving foreign persons. No changes involving foreign persons will be allowed without prior approval from the Contracting Officer, which will be obtained through Buyer. This clause does not remove any liability from the contractor to comply with applicable ITAR and EAR export control obligations and restrictions. This clause shall be included in any subcontract.

**H-28 DISTRIBUTION CONTROL OF TECHNICAL INFORMATION (AUG 2014)**

- a. The following terms applicable to this clause are defined as follows:
  1. DoD Official. Serves in DoD in one of the following positions: Program Director, Deputy Program Director, Program Manager, Deputy Program Manager, Procuring Contracting Officer, Administrative Contracting Officer, or Contracting Officer's Representative.
  2. Technical Document. Any recorded information (including software) that conveys scientific and technical information or technical data.
  3. Scientific and Technical Information. Communicable knowledge or information resulting from or pertaining to the conduct or management of effort under this contract. (Includes programmatic information).
  4. Technical Data. As defined in DFARS 252.227-7013.
- b. Except as otherwise set forth in the Contract Data Requirements List (CDRL), DD Form 1423 the distribution of any technical documents prepared under this contract, in any stage of development or completion, is prohibited outside of Seller and applicable subcontractors under this contract unless authorized by the Contracting Officer in writing, obtained through Buyer. However, distribution of technical data is permissible to DOD officials having a "need to know" in connection with this contract or any other contract provided that the technical data is properly marked according to the terms and conditions of this contract. When there is any doubt as to "need to know" for purposes of this paragraph, the Contracting Officer or the Contracting Officer's Representative will provide direction, through Buyer. Authorization to distribute technical data by the Contracting Officer or the Contracting Officer's Representative does not constitute a warranty of the technical data as it pertains to its accuracy, completeness, or adequacy. Seller shall distribute this technical data relying on its own corporate best practices and the terms and conditions of this contract. Consequently, the Government and Buyer assumes no responsibility for the distribution of such technical data nor will the Government or Buyer have any liability,



including third party liability, for such technical data should it be inaccurate, incomplete, improperly marked or otherwise defective. Therefore, such a distribution shall not violate 18 United States Code § 1905.

- c. All technical documents prepared under this contract shall be marked with the following distribution statement, warning, and destruction notice identified in sub-paragraphs 1, 2, and 3 below. When it is technically not feasible to use the entire WARNING statement, an abbreviated marking may be used, and a copy of the full statement added to the "Notice To Accompany Release of Export Controlled Data" required by DoD Directive 5230.25.
  1. DISTRIBUTION - [TBD- Insert the appropriate distribution statement and complete the statement, if necessary, to include the applicable controlling office.]
  2. WARNING - This document contains technical data whose export is restricted by the Arms Export Control Act (Title 22, U.S.C., Sec 2751, et seq.) or the Export Administration Act of 1979 (Title 50, U.S.C., App. 2401 et seq), as amended. Violations of these export laws are subject to severe criminal penalties. Disseminate in accordance with provisions of DoD Directive 5230.25
  3. DESTRUCTION NOTICE - For classified documents follow the procedures in DOD 5220.22-M, National Industrial Security Program Operating Manual, February 2006, Incorporating Change 1, March 28, 2013, Chapter 5, Section 7, or DoDM 5200.01-Volume 3, DoD Information Security Program: Protection of Classified Information, Enclosure 3, Section 17. For controlled unclassified information follow the procedures in DoDM 5200.01-Volume 4, Information Security Program: Controlled Unclassified Information.
- d. Seller shall insert the substance of this clause, including this paragraph, in all subcontracts.

#### **H-29 COMMERCIAL COMPUTER SOFTWARE LICENSE (Mar 2013)**

- a. Unless otherwise approved by the PCO, obtained through Buyer, commercial computer software licenses shall, upon delivery and acceptance, designate the U.S. Government as a contingent licensee, able to replace Buyer as the primary licensee, upon notifying the licensor. A copy of the negotiated license shall be furnished to the PCO, through Buyer. The terms of the licenses cannot be inconsistent with Federal procurement law and must satisfy user needs. This includes Buyer's / Seller's/Seller's subcontractor's needs for the software to perform this contract and the Government's needs for the software to accomplish the Government's ultimate objectives. At a minimum, this shall include the rights to make an archive copy of the software, to relocate the computer on which the software resides, to re-host the software on a different computer, to permit access by support contractors, and to permit the Government to transfer the license to another contractor.
- b. Nothing in this clause shall take precedence over any other clause or provision of this contract. Government concurrence, as defined in paragraph a above, does not in any way affect the Buyer's or Government's technical data rights as established by the terms and conditions of this contract.

#### **H-35 INCORPORATING COMMERCIAL AND OPEN SOURCE SOFTWARE (Aug 2012)**

- a. DFARS 252.227-7014(d) requires the written approval of the PCO before Buyer may incorporate any copyrighted computer software in the software to be delivered to Buyer's Customer under this contract.
- b. A request to Buyer or approval to incorporate Commercial Computer Software should be accompanied by a license that conforms with the requirements of the Commercial Computer Software Licenses clause of this contract.
- c. A request to Buyer for approval to incorporate Open Source Software must be accompanied by the applicable license, a detailed description of the source of the software and how it has been or will be used, and an explanation of the restrictions imposed and potential risks and liabilities.
- d. Nothing in this clause shall take precedence over any other clause or provision of this contract. Government concurrence, as defined in paragraph a above, and obtained through Buyer, does not in any way affect the Government's technical data rights as established by the terms and conditions of this contract.

#### **H-36 CONTRACTOR IDENTIFICATION AND ASSERTION OF RESTRICTIONS ON THE GOVERNMENT'S USE, RELEASE, OR DISCLOSURE OF NON-COMMERCIAL TECHNICAL DATA OR COMPUTER SOFTWARE (DEC 2011)**

- a. Seller and its subcontractors shall provide a completed Attachment in accordance with DFARS 252.227-7017 entitled "Identification and Assertion of Restrictions on the Government's Use, Release, or Disclosure of Technical Data or Computer Software" that is signed and dated by a responsible official of Seller. This Attachment is incorporated herein by reference as if fully set forth. The Attachment identifies and provides information pertaining to technical data (including computer software documentation) and computer software

that Seller and subcontractors claim to qualify for delivery with less than Unlimited Rights. Seller agrees not to withhold delivery of the technical data or software based on its claims. The Government shall investigate the validity of Seller's claims and therefore reserves all its rights regarding the technical data/software in question, to include those rights set forth in: DFARS 252.227-7013, Rights in Technical Data - Noncommercial Items; DFARS 252.227-7014, Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation; DFARS 252.227-7019, Validation of Asserted Restrictions--Computer Software; DFARS 252.227-7028, Technical Data or Computer Software Previously Delivered To the Government; and, DFAR 252.227-7037, Validation Of Restrictive Markings On Technical Data clauses until a determination is made.

- b. Seller shall have, maintain, and follow written procedures sufficient to assure that restrictive markings/legends are used only when authorized by the terms of this contract and shall maintain records sufficient to justify the validity of any restrictive markings/legends on any technical data or computer software or computer software documentation delivered under this contract. Seller agrees that the Government has Unlimited Rights as defined by DFARS 252.227-7013 and 252.227-7014 in any deliverable technical data or computer software or computer software documentation not listed in the Attachment and that such data or software will not be subject to any restrictive markings or legends.

#### **H-37 INSERTION OF LIMITED OR RESTRICTED RIGHTS (DEC 2010)**

- a. Hardware items which are subject to Limited Rights in their associated technical data as defined in DFARS 252.227-7013 and software items which are subject to Restricted Rights as defined in DFARS 252.227-7014 shall not be incorporated into the design of any systems, or models/simulations thereof under this contract without the prior written authorization of the PCO, which shall be obtained through Buyer. Seller's request shall include a rough order of magnitude (ROM) estimate to perform development if the data
- b. or software cannot be used as requested. If the PCO does not provide a decision within 30 days of the request, the request is considered denied. In the event the PCO authorizes inclusion of the Limited Rights technical data and/or Restricted software, such data or software will be added as an attachment to this Contract.
- c. Using Government assets in an Independent Research and Development (IRAD) project may be authorized on a case by case basis, through coordination with Buyer and Buyer's customer. Seller's request shall include an offer of consideration for use of such Government assets. The Government will evaluate the request, including Seller's offer of consideration, and either approve, deny, or offer an alternative form of consideration. Any such consideration will be mutually agreed to by the parties prior to use of Government assets. Consideration should include, at a minimum, specially negotiated rights granting the Government a license for Government Purpose Rights IAW DFARS 252.227-7013 and 252.227-7014 in the subject IRAD project. When Seller requests the use of Government assets for an IRAD project, the request shall include the purpose of the IRAD project and the potential benefit to the Government. Seller will be required to execute a bailment agreement prior to the transfer or use of Government assets.

#### **H-42 FOREIGN PERSONS (May 2012)**

- a. "Foreign National" (also known as Foreign Persons) as used in this clause means any person who is NOT:
  1. a citizen or national of the United States; or
  2. a lawful permanent resident; or
  3. a protected individual as defined by 8 U.S.C.1324b(a)(3).

"Lawful permanent resident" is a person having the status of having been lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws and such status not having changed.

"Protected individual" is an alien who is lawfully admitted for permanent residence, is granted the status of an alien lawfully admitted for temporary residence under 8 U.S.C.1160(a) or 8 U.S.C.1255a(a)(1), is admitted as a refugee under 8 U.S.C.1157, or is granted asylum under section 8 U.S.C.1158; but does not include (i) an alien who fails to apply for naturalization within six months of the date the alien first becomes eligible (by virtue of period of lawful permanent residence) to apply for naturalization or, if later, within six months after November 6, 1986, and (ii) an alien who has applied on a timely basis, but has not been naturalized as a citizen within 2 years after the date of the application, unless the alien can establish that the alien is actively pursuing naturalization, except that time consumed in the Service's processing the application shall not be counted toward the 2-year period."

- b. All employees of all entities that make up Seller's team, whether subcontractors, consultants, or anyone who works with or on behalf of Seller will be citizens of the U.S.

**H-43 IMPACT OF GOVERNMENT TEAM PARTICIPATION/ACCESS (JUN 2012)**

The Government/Buyer organizational/interface approach (e.g., Integrated Product Teams, Team Execution Reviews, Technical Interchange Meetings, and/or Working Groups), will require frequent, close interaction and/or surveillance between the Government and Buyer/Seller/Seller's subcontractors' team members during contract performance. For this purpose Buyer, recognizing its privity of contract with the Government, authorizes the Government to communicate directly with, and where appropriate visit as well as monitor, Seller. This access/interface is necessary to support the Government's quality and program management approach which emphasizes systematic surveillance and evaluation techniques used to assess Buyer /Seller performance. Government team members may offer advice, information, support, and facilitate rapid Government feedback on team-related products, provide clarification, and review Buyer/Seller progress; however, the responsibility and accountability for successfully accomplishing the requirements of this contract remain solely with Buyer. Neither Buyer nor Seller shall construe such advice, surveillance, reviews and clarifications by Government team members as Government-directed changes to the terms of this contract. Buyer is the only individual authorized to direct or approve any change to the terms of this contract with Seller.

**252.246-7001 WARRANTY OF DATA (MAR 2014)**

The warranty period in paragraph (b) in three years from the Government's acceptance of the final items of data under this contract. "Contractor" shall mean Seller and "Government" and "Contracting Officer" shall mean Buyer.

- (a) Definition. "Technical data" has the same meaning as given in the clause in this contract entitled, Rights in Technical Data and Computer Software.
- (b) Warranty. Notwithstanding inspection and acceptance by Buyer of technical data furnished under this contract, and notwithstanding any provision of this contract concerning the conclusiveness of acceptance, Seller warrants that all technical data delivered under this contract will at the time of delivery conform with the specifications and all other requirements of this contract. The warranty period shall extend for three years from the Government's acceptance of the final items of data delivered under this Contract, of which the data forms a part; or any longer period specified in the contract.
- (c) Seller Notification. Seller agrees to notify Buyer in writing immediately of any breach of the above warranty which Seller discovers within the warranty period.
- (d) Remedies. The following remedies shall apply to all breaches of the warranty, whether Seller notifies Buyer in accordance with paragraph (c) of this clause or if Buyer notifies Seller of the breach in writing within the warranty period:
  - (1) Within a reasonable time after such notification, Buyer may--
    - (i) By written notice, direct Seller to correct or replace at Seller's expense the nonconforming technical data promptly; or
    - (ii) If Buyer determines that Buyer or Buyer's Customer no longer has a requirement for correction or replacement of the data, or that the data can be more reasonably corrected by Buyer or Buyer's Customer, inform Seller by written notice that Buyer elects a price or fee adjustment instead of correction or replacement.
  - (2) If Seller refuses or fails to comply with a direction under paragraph (d)(1)(i) of this clause, Buyer may - within a reasonable time of the refusal or failure--
    - (i) By contract or otherwise, correct or replace the nonconforming technical data and charge the cost to Seller; or
    - (ii) Elect a price or fee adjustment instead of correction or replacement.
  - (3) The remedies in this clause represent the only way to enforce Buyer's rights under this clause.
- (e) The provisions of this clause apply anew to that portion of any corrected or replaced technical data furnished to Buyer under paragraph (d)(1)(i) of this clause.