

**CUSTOMER CONTRACT REQUIREMENTS
FUTURE COMBAT SYSTEMS
CONTRACT NO. W56HZV-05-C-0724**

1. The following contract clauses are incorporated by reference from the Federal Acquisition Regulation and apply to the extent indicated. In all of the following clauses, "Contractor" and "Offeror" mean Seller. If this contract is for the procurement of commercial items, as defined in FAR Part 2.101, see Section 3 below.

52.203-6 Restrictions on Subcontractor Sales to the Government (SEP 2006). This clause applies only if this contract exceeds \$100,000.

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

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

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

52.203-11 Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions (SEP 2005). By signing and returning its solicitation response, Seller is executing the certification included in this clause. The certification required by this clause applies only if this contract exceeds \$100,000.

52.203-12 Limitation on Payments to Influence Certain Federal Transactions (SEP 2005). This clause applies only if this Contract exceeds \$100,000. Paragraph (c) (4) is modified to read as follows: "(c) (4) Seller will promptly submit any disclosure required (with written notice to Boeing) directly to the PCO for the prime contract. Boeing will identify the cognizant Government PCO at Seller's request. Each subcontractor certification will be retained in the subcontract file of the awarding contractor."

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

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

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

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

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52.215-10 Price Reduction For Defective Cost or Pricing Data (OCT 1997). This clause applies only if this contract exceeds \$650,000 and is not otherwise exempt. In subparagraph (3) of paragraph (a), insert "of this contract" after "price or cost." 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." (If this contract incorporates a version of H900H (or any variant thereof, such as H900, H900A, H900V, etc.), dated 12/10/2006 or later, FAR 52.215-10 is deleted.)

52.215-12 Subcontractor Cost or Pricing Data (OCT 1997). This clause applies only if this contract exceeds \$650,000 and is not otherwise exempt. The certificate required by paragraph (b) of the referenced clause shall be modified as follows: delete "to the Contracting Officer or the Contracting Officer's representative" and substitute in lieu thereof "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 (excluding subparagraph (b)) (OCT 1997). This clause applies except for contracts at or below \$100,000; 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 2004). This Clause applies to this contract if it meets the requirements of FAR 15.408(g).

52.215-18 Reversion or Adjustment of Plans for Postretirement Benefits (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 Cost or Pricing Data or Information Other Than Cost or Pricing Data - Modifications (OCT 1997). This clause applies only if this contract exceeds \$650,000. The term "Contracting Officer" shall mean Buyer.

52.219-8 Utilization of Small Business Concerns (MAY 2004)

52.219-9 Small Business Subcontracting Plan (JUL 2005). In paragraph (c), "Contracting Officer" shall mean Buyer. This clause applies only if this contract exceeds \$500,000 and Seller is not a small business concern.

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

52.222-20 Walsh-Healey Public Contracts Act (DEC 1996). This clause applies only if this contract exceeds \$10,000.

52.222-21 Prohibition of Segregated Facilities (FEB 1999)

52.222-26 Equal Opportunity (MAR 2007)

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

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

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

52.222-39 Notification of Employee Rights Concerning Payment of Union Dues or Fees (DEC 2004). This clause applies only if this contract exceeds \$100,000.

52.223-3 Hazardous Material Identification and Material Safety Data (JAN 1997). This clause applies only if Seller delivers hazardous material under this contract.

52.223-7 Notice of Radioactive Materials (JAN 1997). This clause applies only if this contract involves (i) radioactive material requiring specific licensing under the regulations issued pursuant to the Atomic Energy Act of 1954, as amended, as set forth in Title 10 of the Code of Federal Regulations, in effect on the date of this contract, or (ii) other radioactive material not requiring specific licensing in which the specific activity is greater than 0.002 microcuries per gram or the activity per item equals or exceeds 0.01 microcuries. "Contracting Officer" shall mean Buyer. In the blank in paragraph (a), insert "60 days."

52.223-11 Ozone Depleting Substances (MAY 2001)

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

52.227-1 Authorization and Consent (JUL 1995), Alternate I (APR 1984)

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

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

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

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

52.229-10 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 (APR 2005). Add "Buyer and " before "the CFAO" in paragraph (m). This provision applies only if Clause H001, H002 or H004 is included in Buyer's contract.

52.234-1 Industrial Resources Developed Under Defense Production Act Title III (DEC 1994)

52.242-15 Stop Work Order (AUG 1989) – Alternate I (April 1984) is incorporated by reference. "Contractor" means Seller. "Government" and "Contracting Officer" mean "Buyer." If this clause is inserted in a cost-reimbursement contract substitute in paragraph (a)(2) the words "the Termination Clause of this contract" for the words "the default, or Termination for Convenience of the Buyer of this contract." In paragraph (b)

substitute the words "an equitable adjustment in the delivery schedule, the estimated cost, the fee, or a combination thereof, and in any other terms of the contract that may be affected" for the words "an equitable adjustment in the delivery schedule or contract price, or both."

52.244-5 Competition in Subcontracting (DEC 1996)

52.244-6 Subcontracts for Commercial Items (MAR 2007)

52.245-2 Government Property (Fixed Price Contracts) (MAY 2004). This clause is not applicable if this contract incorporates Form GP4. "Government" shall mean Government throughout except the first time it appears in paragraph (f) when "Government" shall mean the Government or the Buyer.

52.245-5 Government Property (Cost-Reimbursement, Time-and-Material, or Labor-Hour Contracts) (MAY 2004). This clause applies only if this contract incorporates GP4. "Contractor" means Seller, and "Government" and "Contracting Officer" mean or include Buyer. Paragraph (g) is revised to read as follows: "(g) Risk of Loss. Seller, upon the delivery to it or acquisition by it of any Government property, assumes the risk of and shall be responsible for all loss thereof or damage thereto. When such property is no longer needed for the performance of this contract, or at such other time as may be directed by the Buyer pursuant to paragraph (i) of this clause, Seller shall return such property to the Buyer or the Government, as applicable, in as good condition as when received, except for reasonable wear and tear, and except for such property as has been reasonably consumed in the performance of work hereunder." GP4, article 22, Government-Owned Property, is hereby deleted.

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

52.253-1 Computer Generated Forms (JAN 1991)

2. 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. If this contract is for the procurement of commercial items, as defined in FAR Part 2.101, see Section 3 below.

252.203-7001 Prohibition on Persons Convicted of Fraud or Other Defense-Contract Related Felonies (excluding paragraph (g)) (DEC 2004). This clause applies only if this contract exceeds \$100,000 and does not apply to the purchase of commercial items or commercial components. "Contractor" and "contract" are not changed in paragraphs (a) and (b). In paragraph (e), "Government" shall mean Government or Buyer. In paragraph (f), "through the Buyer" is inserted after "Contracting Officer."

252.204-7000 Disclosure of Information (DEC 1991). Seller will submit requests for authorization to release through Buyer.

252.211-7003 Item Identification and Valuation (JUN 2005). Seller shall comply with the unique item identification requirements of this clause for those subassemblies, components, and parts specified elsewhere in this contract. Such identification and marking shall be a high-capacity 2D machine-readable code to comply with MIL-STD-130, Rev. M. The code may include, as space is available, linear bar code and human readable characters. Unless otherwise specified in Boeing product drawings or specifications, Seller may use either Construct #1 or Construct #2. Seller shall not be required to furnish item valuations as set forth in this clause.

252.211-7006 Radio Frequency Identification (FEB 2007)

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252.215-7000 Pricing Adjustments (DEC 1991). This clause applies only if this contract exceeds \$650,000.

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).

252.223-7003 Change in Place of Performance – Ammunition and Explosives (DEC 1991). This clause applies only if DFARS 252.223-7002 is applicable to this contract. The term "Contracting Officer" means Buyer.

252.223-7007 Safeguarding Sensitive Conventional Arms, Ammunition, and Explosives (SEP 1999).

252.225-7001 Buy American Act and Balance of Payments Program (JUN 2005). The term "end product," as defined in paragraph (a)(3), shall mean the deliverable line items set forth in this contract.

252.225-7002 Qualifying Country Sources as Subcontractors (APR 2003)

252.225-7004 Reporting of Contract Performance Outside the United States (JUN 2005). So that Buyer is able to comply with the requirements of this clause, Seller notify Buyer if it will perform any part of this contract outside the United States and Canada that (1) exceeds \$500,000 in value and (2) could be performed inside the United States or Canada.

252.225-7012 Preference for Certain Domestic Commodities (JUN 2004)

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

ACO:	JoAnne Hamilton Parks
ACO's Address:	DCMA Program Integration Office (PIO) Future Combat Systems Program (FCS) P.O. Box 516 St. Louis MO 63166-0516
Contract Administration Office:	DCMA St. Louis
CAO Address:	325 McDonnell Blvd. M/C 381357 Hazelwood MO 63143
CAO Activity Address Number:	S2606A
Contractor:	The Boeing Company
Contractor's Address:	J.S. McDonnell Blvd. St. Louis MO 63166-0516
Contractor's Cage Code:	69236
Prime Contract Number:	W56HZV-05-C-0724
Prime Contract Dollar Value:	\$16,651,143,629

252.225-7014 Preference for Domestic Specialty Metals (JUN 2005), Alternate I (APR 2003)

252.225-7015 Restriction on Acquisition of Hand or Measuring Tools (JUN 2005)

252.225-7016 Restriction on Acquisition of Ball and Roller Bearings (MAR 2006). This clause does not apply to the purchase of commercial items or to items that do not contain ball or roller bearings.

252.225-7022 Restriction on Acquisition of Polyacrylonitrile (PAN) Based Carbon Fiber (JUN 2005). "Contracting Officer" means Buyer. This clause applies only if the product furnished under this contract contains polyacrylonitrile carbon fibers (alternatively referred to as PAN-based carbon fibers or PAN-based graphite fibers).

252.225-7025 Restriction on Acquisition of Forgings JUN 2005). This clause applies only if this contract is for goods that contain restricted forging items per paragraphs (a) and (b) of the referenced clause.

252.225-7032 Waiver of United Kingdom Levies – Evaluation of Offers (APR 2003). This clause applies if this contract is over \$1,000,000 and is with a United Kingdom firm.

252.225-7043 Antiterrorism/Force Protection for Defense Contractors Outside the United States (MAR 2006). This clause applies only if this contract requires Seller to perform or travel outside the United States and Seller is not (i) a foreign government, (ii) a representative of a foreign government, or (iii) a foreign corporation wholly owned by a foreign government.

252.226-7001 Utilization of Indian Organizations and Indian-Owned Economic Enterprises – DoD Contracts (SEP 2004). This clause applies if this contract exceeds \$500,000 and does not apply to the acquisition of commercial items/services as defined in FAR 2.101.

252.227-7013 Rights in Technical Data – Noncommercial Items (NOV 1995)

252.227-7014 Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation (JUN 95)

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

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

252.227-7019 Validation of Asserted Restrictions – Computer Software (JUN 1995)

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

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

252.227-7037 Validation of Restrictive Markings on Technical Data (SEP 1999)

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

252.231-7000 Supplemental Cost Principles (DEC 1991)

252.235-7003 Frequency Authorization (DEC 1991), Alternate I (DEC 1991). This clause applies only if this contract requires the development, production, construction, testing, or operation of a device for which a radio frequency authorization is required.

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252.244-7000 Subcontracts for Commercial Items and Commercial Components (DoD Contracts) (NOV 2005).

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

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

252.247-7023 Transportation of Supplies by Sea (MAY 2002). This clause applies only if the supplies are of a type described in paragraph (b)(2) of this clause. In paragraph (d), "45 days" is changed to "60 days." In paragraph (g), "Government" means Buyer. If this contract is at or below \$100,000, 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.

252.249-7002 Notification of Proposed Program Termination or Reduction (DEC 1996). This clause applies only if this contract is \$500,000 or more. Seller will comply with the notice and flowdown requirements of paragraph (d)(2) of the referenced clause.

252.251-7000 Ordering From Government Supply Sources (NOV 2004). This clause applies only if Seller is notified by Buyer that Seller is authorized to purchase from Government supply sources in the performance of this contract.

3. If goods or services being procured under this contract are commercial items, as defined in FAR Part 2.101, and clause H203 is incorporated in this contract, the foregoing Government clauses in Sections 1 and 2 above are deleted and the following FAR/DFARS clauses are inserted in lieu thereof:

52.219-8 Utilization of Small Business Concerns (MAY 2004). Include in all subcontracts that offer further subcontracting opportunities. If a subcontract (except subcontracts to small business concerns) exceeds \$500,000 (\$1,000,000 for construction of any public facility), Seller and any lower tier subcontractor must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities.

52.222-26 Equal Opportunity (MAR 2007)

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

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

52.222-39 Notification of Employee Rights Concerning Payment of Union Dues or Fees (DEC 2004). This clause applies only if this contract exceeds \$100,000.

52.247-64 Preference for Privately Owned U.S.-Flag Commercial Vessels (FEB 2006). In paragraph (c)(2) "20" and "30" are changed to 10 and 20 respectively. This clause only applies if this contract is (i) a contract or agreement for ocean transportation services; or a construction contract; or (ii) the supplies being transported are (a) Items the Contractor is reselling or distributing to the Government without adding value (generally, the Contractor does not add value to the items when it subcontracts items for f.o.b. destination shipment); or (b) shipped in direct support of U.S. military (1) contingency operations; (2) exercises; or (3) forces deployed in connection with United Nations or North Atlantic Treaty Organization humanitarian or peacekeeping operations.

252.225-7014, Preference for Domestic Specialty Metals (APR 2003), Alternate I (APR 2003)

252.247-7023 Transportation of Supplies by Sea (MAY 2002). This clause applies only if this contract exceeds \$100,000 and are a type of supplies described in paragraph (b)(2) of this clause. In paragraph (c), "45 days" is changed to "60 days." In paragraph (g) "Government" means Buyer.

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. Cost Accounting Standards

- (1) (Applicable if this contract incorporates clause H001). The version of FAR 52.230-2, Cost Accounting Standards, incorporated by clause H001 is the version dated April 1998.
- (2) (Applicable if this contract incorporates clause H002). The version of FAR 52.230-3, Disclosure and Consistency of Cost Accounting Practices, incorporated by clause H002 is the version dated April 1998.
- (3) (Applicable if this contract incorporates clause H003). The version of FAR 52.230-4, Consistency in Cost Accounting Practices, incorporated by clause H003 is the version dated August 1992.
- (4) (Applicable if this contract incorporates clause H004). The version of FAR 52.230-5, Cost Accounting Standards – Educational Institution, incorporated by clause H004 is the version dated April 1998.

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

A. PROGRAM SECURITY AND PUBLIC RELEASE

(1) Program Security

- (a) General. There are types of information, that are not classified, that require protective measures which restrict its distribution for a variety of reasons. This information is known as "controlled unclassified information (CUI)." This clause 5.A covers the definition of CUI and provides basic information about the nature of this information and the procedures for identifying and controlling it. The types of information considered CUI for the Future Combat Systems (FCS) program are information marked "For official Use Only" by the U.S. Government and Technical Data which if released could cause the FCS program and/or products to be compromised. When handling CUI material, FCS personnel are to comply with these requirements and follow their company policy and/or applicable Proprietary

Information Agreements (PIAs) concerning the protection of proprietary in situations not clearly stated herein.

(b) CUI Description

(1) Technical Data Description. Any recorded information related to experimental, developmental, or engineering works that can be used to define an engineering or manufacturing process or to design, procure, support, maintain, operate, repair, or overhaul FCS material. The data may be graphic or pictorial delineations in media, such as computer software, drawings or photographs, text in specifications, or related performance or design documents, or computer printouts. Examples of technical data include research and engineering data, engineering drawings, and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog-item identifications, and related information, and computer software documentation.

(2) FOR OFFICIAL USE ONLY (FOUO) INFORMATION Description. "For official Use Only (FOUO)" is a Government designation that is applied to **unclassified** information that may be exempt from mandatory release to the public under the Freedom of Information Act. FOUO information on FCS is identified in the FCS Security Classification Guide or from a Government document marked FOUO.

(c) CUI Markings

(1) Marking of FOUO documents will be in accordance with Army Regulation 25-55. (http://www.apd.army.mil/pdf/files/r25_55.pdf). Information extracted from an FOUO document will carry the FOUO marking until formally reviewed by the Government.

(2) Marking of unclassified Technical Data will, at a minimum, include the statements listed below. This does not preclude additional mandated markings as may be required by the FCS contract such as "Competition Sensitive Information."

(a) Government Distribution Statement. Unless otherwise directed by the office of the Program Manager FCS (BCT), the below Government Distribution Statement D is required on all Technical Data delivered to the Government and/or placed on ACE for delivery to the Government. In cases where CUI is not delivered to the Government or placed on ACE, it will be handled and protected in accordance with Company proprietary procedures or applicable proprietary information agreements (PIAs).

DISTRIBUTION STATEMENT D: Distribution authorized to the Department of Defense and U.S. DoD contractors for administrative or operational use (29 October 2003). Other requests for this document shall be referred to Program Manager Future Combat Systems (Brigade Combat Team), (insert official mailing address).

The office of the Program Manager FCS (BCT) may require more or less restrictive Government distribution statements on certain types of CUI information as security needs require. (See, <http://www.dtic.mil/whs/directives/corres/html/523024.htm> for more distribution statements.)

(b) Export Warning Statement. Technical Data contained in documents not approved for export shall display the appropriate export control caveat on the front cover or the title page, as follows:

"WARNING – This document contains Technical Data whose export may be restricted by the Arms Export Control Act (Title 22, U.S.C., Sec 2751, et seq) or the Export Administration Act of 1979, as amended (Title 50, U.S.C., App. 2401 et seq). Violations of these export laws are subject to severe criminal penalties. Disseminate in accordance with provisions of DoD Directive 5230.25."

(3) Sharing Distribution Statement D material outside the Department of Defense. Distribution Statement D authorizes sharing within the DoD and its U.S. DoD contractors. Those DoD organizations include the Armed Services (Army, Navy, Air Force, and Marines) and other DoD agencies.

(<http://www.defenselink.mil/odam/omp/pubs/GuideBook/DoD.htm#Defense%20Agencies>)

Sharing of Distribution Statement D documents with Government agencies outside the DoD requires authorization from the FCS (BCT) Security Office and/or a change to the Distribution Statement.

(d) Protection of CUI Information

(1) Access. FCS CUI is restricted to personnel with a valid need to know the information, unless public release authorization has been obtained. Personnel no longer requiring access to CUI must delete or surrender any in their possession and terminate future access to it.

(2) Storing/Handling. During working hours, reasonable steps should be taken to minimize risk of access to CUI by unauthorized personnel. After working hours, CUI information shall be stored in locked desks, file cabinets, bookcases, locked rooms, or similar means. CUI may not be displayed in public places, such as airports, airplanes, restaurants, etc. Computers used for processing CUI do not need to be accredited for classified use. However, personally owned computers are not authorized for processing CUI. FCS CUI stored electronically on all devices such as company issued laptops, Personal Digital Assistants (PDAs), and removable media are to be physically protected or protected using cryptographic products that are either NIST approved or that comply with FIPS 140-2. Contractors will notify FCS (BCT) Director of Security through the LSI Program Protection Office of any loss of CUI.

(3) Dissemination. CUI printed documents and material containing CUI may be transmitted through mail channels or hand carried without formal courier orders. Use of secure communications is required whenever possible; however, it should be kept in mind that land-line communications for telephone conversations are more secure than cellular and should be utilized whenever available for FCS CUI discussions. Digital transmissions will be by FCS Advanced Collaborative Environment (ACE) or Army Knowledge Online (AKO) collaborative suites. However, when ACE and AKO are not feasible (e.g., when dealing with foreign suppliers, non-FCS associated personnel, etc.), the following guidelines apply:

(a) Collaborative suites may be used by personnel not located on a Government backbone (i.e., NIPRNET) with Government Future Combat Systems (Brigade Combat Team) (FCS)(BCT)) Security Office approval provided all of the following requirements apply:

(1) Only NIST-approved cryptographic vendors and algorithms are used. The latest validation lists may be obtained at: <http://csrc.nist.gov/cryptval/>

(2) An internally hosted service (does not use third-party collaborative suite service provider) and, (excluding currently approved collaborative tools pending final Government determination).

(3) Buyer's Authorized Procurement Representative is notified in writing of the collaborative suite and revision (to facilitate obtaining the FCS Office of the Chief Information Officer and Government FCS (BCT) Security Office approval for utilizing an alternative collaborative suite and version).

(b) Personnel with access to NIPRNET require local Designated Approving Authority (DAA) approval prior to participation in any collaborative suite that **requires installation of mobile code** on the local NIPRNET connected system.

(c) All computers containing FCS CUI must be protected by either physical isolation from all personnel without a valid need for the information or protected using cryptographic products that are either NIST approved or comply with FIPS 140-2. Discretionary access control measures must be used to preclude access to CUI data by authorized users who are not authorized access to CUI information. After working hours, when not in physical possession of the owner, all electronic assets containing FCS CUI must be afforded a reasonable degree of physical protection to prevent theft of FCS information, i.e., locking up laptops or cable locking them to a stationary base.

(d) All transmission/dissemination of CUI identified with a Distribution Statement or marked FOUO (i.e., email and file transfers) must use applications utilizing NIST-approved cryptographic vendors and algorithms. The latest validation lists may be obtained at <http://csrc.nist.gov/crptval/>. This encryption requirement includes passcodes to teleconferences or VIS/iMeeting where there is a reasonable expectation that CUI may be discussed. When encryption is not available, ACE must be used to transmit CUI.

(e) External transmission/dissemination of CUI (i.e. email and file transfers) to or from a DoD computer, to include contract deliverables, shall be encrypted by used of a DoD-approved Public Key Infrastructure Certification. These are available from: <http://iase.disa.mil/pki/eca/iecvendors.html>.

(f) As new technologies become available in the electronics arena, care should be given to providing a reasonable degree of protection to FCS information from known vulnerabilities.

(g) Internet shall be equated with "Public Access." Therefore, CUI must be reviewed and officially approved for public release before placing on the Internet. This is not applicable when the internet is used for e-mail transmissions and encryption is used as noted above.

(4) Disposal. CUI documents shall be destroyed by cross-cut shredding or equivalent tearing into pieces so as not to be easily reconstructed. FCS CUI on removable devices must be cleared (e.g., overwriting memory locations, degaussed) before being disposed of or transferred to another program. Removable media and computing devices may also be disposed of by providing to a company's internal organization responsible for destruction.

(e) Program Protection Plan

The Program Protection Plan (PPP) requirement is effective immediately and is mandatory for use by all FCS program participants, field activities and matrix support personnel at all locations. It shall cover all locations where Critical Program Information (CPI) is researched, manufactured, stored, processed or tested. All PPPs shall be marked, at a minimum, FOR OFFICIAL USE ONLY (FOUO).

(f) Operation Security (OPSEC) Requirements

(1) All U.S. FCS contractors will provide annual FCS OPSEC training for all personnel with the ability to access FCS Controlled Unclassified Information (CUI) and/or classified information. An OPSEC training status report is due no later than 15 November to the Buyer's Authorized Procurement Representative. NOTE: Suppliers who perform classified work should review the DD 254 for supplemental OPSEC requirements.

(2) The OPSEC training status report is required if Seller has the ability to access FCS CUI and/or classified information. The report will provide certification to the following:

- (i) all personnel at Seller's facility with the ability to access FCS CUI and/or classified information have completed OPSEC training;
- (ii) the requirement for OPSEC training for all employees with the ability to access FCS CUI and/or classified information was flowed down to Seller's subcontractors, and
- (iii) Seller has received acknowledgement from its suppliers that OPSEC training has been completed for all employees with the ability to access FCS CUI and/or classified information.

(g) Seller shall include subparagraphs (a), (b), (c), (d), (e), and (f), above, appropriately modified to identify the contractual parties, in all subcontracts that Seller executes for performance of FCS work, and shall require such inclusion in all subsequent subcontracts, regardless of tier.

(2) Public Release

(a) Except for FCS Program information previously approved for public release by the Government under the FCS Program, Seller shall not release any FCS Program information outside of (i) the United States Government, (ii) Buyer, (iii) Seller, (iv) Seller's subcontractors performing FCS work, and (v) Associate Contractors, at any tier, and (vi) any other individual or entity that is contractually bound to protect FCS Program information from public release, regarding the work performed under this Contract without first obtaining approval for Public Release as identified in the DD254 and per this clause.

(b) An electronic copy of Buyer's Request for Public Release, Form X32257, completed with full text and graphics, must be provided to Buyer's Authorized Procurement Representative at least 25 working days prior to the requested date for release of the FCS Program information. If all or part of the FCS Program information was developed by a third party, that third party's written authorization for public release must accompany the Form X32257. All such requests for public release approval will be sent to the PM FCS Brigade Combat Team (BCT) for a review by technical and Security Office personnel, culminating in a determination by the Procuring Contracting Officer (PCO). The PCO will, after appropriate review, either authorize or reject the request for public release of FCS Program information. Note: Authorization may be given contingent on specified changes being made to the material for

which public release has been requested. Seller shall submit such public release requests through Buyer.

- (c) Seller shall include subparagraphs (a) and (b) above, appropriately modified to identify the parties, in all subcontracts that Seller executes for performance of FCS work, and shall require such inclusion in all subsequent subcontracts, regardless of tier.

B. FOREIGN ACCESS TO TECHNOLOGY

(1) Definitions

(a) "Foreign Firm or Institution" means a firm or institution organized or existing under the laws of a country other than the United States, its territories, or possessions. The term includes, for purposes of this contract, any agency or instrumentality of a foreign government, and firms, institutions or business organizations that are owned or substantially controlled by foreign governments, firms, institutions, or individuals.

(b) "Foreign Person" means any natural person who (i) is not a lawful permanent resident of the United States, or of its territories or possessions, as defined by 8 U.S.C. 1101(a)(20) or who (ii) is not a protected individual as defined by 8 U.S.C. 1324b(a)(3). It also means any foreign corporation, business association, partnership, trust, society or any other entity or group that is not incorporated or organized to do business in the United States, as well as international organizations, foreign governments and any agency or subdivision of foreign governments (e.g. diplomatic missions).

(2) Export Compliance

(a) Seller shall comply with all U.S. export control laws and regulations, including the International Traffic in Arms Regulations (ITAR), 22 CFR Parts 120 through 130, and the Export Administration Regulations (EAR), 15 CFR Parts 730 through 799, in the performance of this contract.

(b) Pursuant to ITAR Section 125.4 (b)(3), Seller may disclose classified and unclassified export-controlled technical data to foreign persons when the following conditions apply:

A. The technical data does not disclose details of the design, development, production, or manufacture of any defense article as limited by paragraph 125.4(b)(3).

B. The disclosure supports the programmatic objectives of the PM, UA and relates to technical specifications, design architecture, functional requirements, performance models, purchase orders, and statements of work (SOW). (The term "PM, UA" refers to the Government's Program Manager, Unit of Action and designated staff.)

C. The PM, UA Security Office, Deputy Assistant Secretary of the Army (DASA) Defense Exports and Cooperation (DE&C), Buyer, and Seller have developed agreed-upon processes to define requirements for review and approval of data exported under this exemption.

(c) Pursuant to ITAR Section 125.4(b)(1), Seller may disclose classified and unclassified export-controlled technical data to foreign persons when the following conditions apply:

A. (DASA) (DE&C) provides written direction to Seller to disclose ITAR-controlled technical data to a Foreign Person. The PM, UA may request Seller to provide copies of the

data/information that will be disclosed to the Foreign Person as part of the affirmation process with DASA DE&C.

B. If the PM, UA directs Seller to provide export-controlled technical data to a Foreign Person that is beyond the scope authorized under ITAR Section 125.4(b)(3), then Seller will, pursuant to ITAR Section 125.4(b)(1), document the request and submit a written request to the PM, UA who will certify the conditions specified by Seller exist. The PM, UA will provide the certification to DASA DE&C who may affirm the use of the exemption, in writing to Seller, provided the conditions certified by the PM, UA satisfies the ITAR.

(d) All technical data that is exported under ITAR Sections 125.4(b)(1) must be reviewed and approved by the US Army in accordance with approved disclosure guidelines for FCS.

(e) Before authorizing CUI (Controlled Unclassified Information) disclosures, the PM, UA Disclosure Authority shall ensure that the contract or agreement contains the requisite access, use, and distribution clauses required before disclosing CUI with another government, international organization, or foreign contractor (pursuant to SAAL-RP memo, 27 May 2000, Subject: Authority to Disclose Technical Controlled Unclassified Information (CUI)).

(3) Lower Tier Subcontracts

Seller shall include this article, suitably modified to identify the parties, in all subcontracts hereunder.

C. SENSITIVE GOVERNMENT PROGRAM INFORMATION

(1) In the course of contract performance, the Government or Buyer may furnish Seller information (written, verbal or otherwise) developed outside of the FCS program, regarding Army programs and initiatives that is often sensitive to past, present, and future procurements within the Government (hereafter "Sensitive Government Program Information"). If the Government or Buyer initially makes a disclosure of Sensitive Government Program Information to Seller in non-written form, e.g., verbally, the information disclosed shall be identified as being Sensitive Government Program Information and confirmed as such, in writing by the Government or Buyer within 30 days from such disclosure. Subject to the foregoing, Sensitive Government Program Information will be marked as such before it is provided to Seller. Seller agrees to use reasonable efforts not to use or reproduce Sensitive Government Program Information for any purpose other than fulfilling the FCS Program (the "Purpose"), and to keep Sensitive Government Program Information in confidence, disclosing it only for the Purpose to (i) Seller's employees assigned to or supporting the FCS Program, (ii) the Government and its FCS Program support contractors, and (iii) other companies, organizations, or individuals that have agreed contractually to control Sensitive Government Program Information under the same conditions set forth herein. The obligations set forth above shall not apply: to information which is or becomes publicly available, or to information which is already in the possession of the recipient without restrictions, or to the extent prior written authorization of the Government is given, or after three years after receipt of the information. This provision does not supersede the terms and conditions of other contract clauses governing rights in data and software.

(2) Seller shall establish appropriate written procedures as required to carry out the obligations of this article.

(3) Seller may disclose such Sensitive Government Program Information to subcontractors, regardless of tier, on the FCS program, provided that this article, appropriately modified to identify the contractual parties, is included in each such subcontract.

D. ACQUISITION STREAMLINING 252.211-7000 (DEVIATION)

- (1) The Government's acquisition streamlining objectives are to:
 - (a) Acquire systems that meet stated performance requirements;
 - (b) Avoid over-specification; and
 - (c) Ensure that cost-effective requirements are included in future acquisitions.
- (2) In the event Seller creates acquisition streamlining recommendation(s) relative to the FCS Program goals per paragraph (1) above, submission of such recommendations shall be made electronically to Buyer's Authorized Procurement Representative, in contractor format, for forwarding to the Procuring Contracting Officer. Seller is encouraged to coordinate any recommendations, informally, with Buyer's Authorized Procurement Representative in advance of submission. Advance coordination will preclude the expenditure of effort on streamlining recommendations that may not be accepted by the Government.
- (3) The Government has the right to accept, modify or reject Seller's recommendations.
- (4) Seller shall insert this article, including this paragraph (4), in all subcontracts over \$1 million, awarded in the performance of this contract.

E. RESERVED

F. DATA AND SOFTWARE RIGHTS

(This article is applicable only if Seller will deliver Data or Software under this contract.)

In accordance with DFARS 252.227-7013(b)(4) and DFARS 252.227-7014(b)(4) in this Contract, Buyer and Seller agree to the following Specifically Negotiated License Agreement in all Technical Data ("Data" hereunder), Computer Software and Computer Software Documentation to be delivered under this contract.

- (1)
 - (A) "Data," "Computer Software" and "Computer Software Documentation," as used in this article, shall have the definitions set forth in DFARS 252.227-7013 and 252.227-7014.
 - (B) The period during which the Government shall have Government Purpose Rights (GPR), as defined in DFARS 252.227-7013(b)(2)(ii) and DFARS 252.227-7014(b)(2)(ii), shall be as follows:
 - (A) With respect to deliverable Data, Computer Software and Computer Software Documentation, the Government shall have GPR for 20 years.
 - (B) With respect to day-to-day IPT products as defined in subparagraph (2)(J) below, the Government shall have GPR without expiration.
 - (C) The Government shall have unlimited rights in Data which are form, fit and function data as defined in DFARS 252.227-7013(a)(10).
 - (D) Validation of restrictive markings on Data, Computer Software and Computer Software Documentation shall be accomplished in accordance with DFARS 252.227-7019 and 252.227-7037, as applicable.
 - (E) Markings for all Seller Data, Computer Software and Computer Software Documentation delivered under Seller's predecessor contract will remain valid. New

Data, Computer Software or Computer Software Documentation delivered under this Contract, or revised versions of any Data, Computer Software or Computer Software Documentation previously delivered under Seller's predecessor contract, will comply with the standard marking requirements contained in DFARS 252.227-7013 and DFARS 252.227-7014.

(2)

- (A) Limitations associated with limited-rights Data shall not apply to any Government Systems Engineering and Technical Assistance (SETA) contractors under contract to the Government for the purpose of providing systems engineering and technical assistance services and/or administrative support services; provided that, the parties to whom this Data is disclosed shall have a legitimate need-to-know, and are under contract subject to DFARS clause 252.227-7025 entitled, "Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends."
- (B) Seller agrees to retain and maintain in good condition until three years after completion or termination of Buyer's prime Agreement, all Data or Computer Software or Computer Software Documentation developed under this contract necessary to achieve Practical application (as defined in the FAR Patent Rights Clause included herein) of deliverable items, components and processes. In the event of exercise of the Government's March-in Rights as set forth under the FAR Patent Rights Clause included herein or subparagraph (2)(C) of this article, Seller agrees, upon written request from the Government or Buyer to deliver to the Government (or Buyer if so requested by Buyer on behalf of the Government), Data Computer Software and Computer Software Documentation developed under this Contract necessary to achieve Practical application of deliverable items, components and processes within 60 calendar days from the date of the written request. The Government agrees to pay the costs of delivering such Data and Software and agrees these delivery costs are not covered by payments to Seller under this contract.
- (C) Seller agrees that, with respect to Data Computer Software and Computer Software Documentation developed under this contract necessary to achieve Practical application of deliverable items, components and processes, TACOM has the right to require Buyer (and in turn Seller) to deliver all such Data, Computer Software and Computer Software Documentation to TACOM (through Buyer if so requested) in accordance with its reasonable directions if TACOM determines that:
 - (i) Such action is necessary because Buyer, Seller, or assignee has not taken effective steps within three years after completion or termination of Buyer's prime Contract, consistent with the intent of Buyer's prime Contract, to achieve Practical application of deliverable items, components and processes;
 - (ii) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by Buyer, Seller, assignee, or their licensees within three years after completion or termination of Buyer's prime Contract; or
 - (iii) Such action is necessary to meet requirements for public use and such requirements are not reasonably satisfied by Buyer, Seller, assignee, or licensees within three years after completion or termination of Buyer's prime Contract.
- (D) With respect to all Data, Computer Software and Computer Software Documentation delivered under this contract, the Government will, subject to paragraph (2)(F), receive

Government Purpose Rights, or if subparagraph (2)(E) applies, Unlimited Rights. In the event of the Government's exercise of its right under paragraph (2)(C) of this article, the Government shall, subject to paragraph (2)(F), receive Government Purpose Rights in all such Data, Computer Software or Computer Software Documentation. With respect to all Data, Computer Software and Computer Software Documentation previously delivered to the Government with Government Purpose Rights, the Government shall receive those same rights for the Data, Computer Software or Computer Software Documentation.

- (E) The Government shall have Unlimited Rights in Data, Computer Software or Computer Software Documentation that are:
- (i) Otherwise publicly available or have been released or disclosed by Buyer, Seller or a subcontractor, without restrictions on further use, release or disclosure, other than a release or disclosure resulting from the sale, transfer, or other assignment of interest in the Data, Computer Software or Computer Software Documentation to another party or the sale or transfer of some or all of a business entity or its assets to another party;
 - (ii) Data, Computer Software or Computer Software Documentation in which the Government has obtained Unlimited Rights under another Government Agreement/contract or as a result of negotiations; or
 - (iii) Data, Computer Software or Computer Software Documentation delivered to the Government, under this or any other Government Agreement/contract or subcontract thereunder, with –
 - (aa) Government Purpose Rights or Limited Rights and the restrictive condition(s) has/have expired; or
 - (bb) Government Purpose Rights and Seller's, or a subcontractor's, exclusive right to use such Data for commercial purposes has expired.
- (F) (This paragraph and paragraphs (G), (H), (I) and (J) apply only if this contract incorporates an attachment/exhibit entitled "Data or Software to be Furnished with Restrictions.") Attachment/Exhibit, "Data or Software to be Furnished with Restrictions," lists Data, Software or Software Documentation of Seller and its subcontractors, which Seller or its subcontractor asserts will be furnished with rights that are more restrictive than Government Purpose Rights. This list is subject to the appropriate Validation of Restrictive Markings clause of this contract. The list may be amended, subject to approval of the Government PCO, based upon new information or inadvertent omissions. When an amendment is required to the Attachment/Exhibit, the cognizant Integrated Product Team (IPT) Lead must first approve any such request. The asserting party shall provide documentation supporting the assertions at the time the assertions are forwarded to the Government PCO. The Government PCO will approve or disapprove the assertions after receipt of all requested documentation. No Data, Computer Software or Computer Software Documentation shall be delivered or furnished as day-to-day IPT product under this contract with rights which are more restrictive than Government Purpose Rights unless included in Attachment/Exhibit, "Data or Software to be Furnished with Restrictions."

- (G) Except for Data subject to Unlimited Rights or Special License Rights, the Government shall have Limited Rights in Data required to be delivered to the Government under Buyer's prime Contract (including any Data required to be delivered under this contract) and listed in Attachment/Exhibit, Data or Software to be Furnished with Restrictions.
- (i) Pertaining to items, components, or processes developed exclusively at private expense and marked with the Limited Rights legend prescribed in this contract, or
 - (ii) Created exclusively at private expense in the performance of an Agreement/contract that does not require the development, manufacture, construction, or production of items, components, or processes.
- (H) Except for Computer Software and Computer Software Documentation subject to Unlimited Rights or Special License Rights, the Government shall have Restricted Rights in Computer Software required to be delivered to the Government under Buyer's prime Contract (including any Computer Software and Computer Software Documentation required to be delivered under this contract) that were developed exclusively at private expense and are listed in Attachment/Exhibit, Data or Software to be Furnished with Restrictions.
- (I) The Government will receive a copyright license in any Data, Computer Software or Computer Software Documentation item deliverables that are copyrighted. The license will permit the Government to copy, modify, and/or distribute the Data, Computer Software or Computer Software Documentation item deliverables in any manner consistent with the restrictions in this contract on the Government's use and disclosure of the Data, Computer Software or Computer Software Documentation in the deliverables.
- (J) Data, Computer Software and Computer Software Documentation which are day-to-day IPT products (such as technical assessment results, analysis, distributed product descriptions, trade studies, and plans) that are first generated in the performance of this Contract (or were first generated in the performance of Seller's predecessor contract) and which are made available via the ACE, and which are not listed in Attachment/Exhibit, Data or Software to be Furnished with Restrictions, will be subject to Government Purpose Rights (GPR) unless greater restrictions are applicable thereto as specified in the appropriate "Validation of Restrictive Markings" clause of this contract. In accordance with the foregoing, such day-to-day IPT products will be marked with the appropriate legend as set forth in DFARS 252.227-7013 or 252.227-7014. Day-to-day IPT products do not include Data, Computer Software or Computer Software Documentation which are developed by Seller or a subcontractor that are marked as proprietary and are made available on the ACE to a FCS IPT only for the IPT's use in developing specifications and requirements for future subcontracts under the FCS program.
- (3) Except as otherwise specified elsewhere in this contract, delivery of Computer Software, Computer Software Documentation or Data required by this Contract shall be by electronic means, unless the Statement of Work or specification for individual item(s) of Computer Software, Computer Software Documentation or Data specifies another means of delivery.
- (4) Buyer access, use, and/or acceptance of day-to-day IPT products, as defined herein during performance of this contract, does not constitute waiver of Buyer's right to take delivery of the final Data, Computer Software and Computer Software Documentation developed under the contract.

- (5) The rights in Data, Computer Software and Computer Software Documentation that were originally asserted under Seller's predecessor contract are also asserted under this Contract.
- (6) For purposes of this Contract, terms such as "special rights" refer to specifically negotiated license rights.
- (7) Lower Tier Agreements

Seller shall include this article, suitably modified to identify the Parties, in all subcontracts regardless of tier, which require delivery of Data, Computer Software or Computer Software Documentation to be provided to the Government in the performance of the prime Contract or this contract. Seller will not, as part of the consideration for awarding the subcontract, obtain rights in the lower tier subcontractor's Data, Computer Software or Computer Software Documentation.

G. EFFECT OF TERMINATION ON PATENT RIGHTS AND DATA AND SOFTWARE

In the event of a termination of this contract, it is agreed that disposition of intellectual property developed under this contract shall be in accordance with applicable provisions set forth in this contract. Buyer and Seller will negotiate in good faith a reasonable and timely adjustment of all outstanding issues between the Parties as a result of termination.

H. MANAGEMENT OF THE FCS PROGRAM

Seller is aware that Buyer, as the Lead Systems Integrator of the FCS Program, intends to use a team approach to management of various aspects of this contract. The management team will be comprised of employees of Buyer, as well as Government and associate contract representatives. Seller agrees that it will accept representatives of the Government and associate contractors at meetings, program reviews, test viewings, etc, as though they were employees of Buyer. In order to make the most efficient use of the management-team members, representatives of the Government and/or associate contractors may attend meetings, program reviews, test viewings, etc, without an employee of Buyer being in attendance. Notwithstanding this team approach to management of various aspects of this contract, Seller is aware and agrees that representatives of the Government and associate contractors have no authority to direct the efforts of Seller.

I. QUALIFIED FCS EVMS PROVISION

(This clause applies only if this contract (i) is a cost-type contract that exceeds \$5 million or (ii) exceeds \$50 million regardless of contract type.)

- (a) In the performance of this Contract, Boeing will use its Earned Value Management System (EVMS) as documented in the Integrated Performance Management Manual (IPM Manual) per Advance Agreement (AA) on The Boeing Company EVM System, dated April 26, 2005, between The Boeing Company and the Government regarding the Single Boeing Company EVMS. The IPM Manual has been recognized by the Government as complying with the criteria provided in the DoD Instruction 5000.2 "Operation of the Defense Acquisition System" Table E3.T2 Regulatory Information Requirements, dated 12 May 2003.
- (b)
 - (1) If Boeing's EVMS is not recognized by the cognizant DCMA Divisional Administrative Contracting Officer (DACO) as complying with EVMS criteria (or if Boeing does not have an existing cost/schedule control system that has been accepted by the Department of

Defense), Boeing shall apply the system to the Contract and shall be prepared to demonstrate to the DACO that the EVMS complies with the EVMS criteria referenced in paragraph (a) of this clause.

- (2) Unless a waiver is granted by the DACO, Contractor-proposed EVMS changes require approval of the DACO prior to implementation. The DACO shall advise the Contractor of the acceptability of such changes within 30 calendar days after receipt of the notice of proposed changes from the Contractor. If the advance approval requirements are waived by the DACO, the Contractor shall disclose EVMS changes to the DACO at least 14 calendar days prior to the effective date of implementation.
- (c) The Government shall require Integrated Baseline Reviews (IBR) and subsequent Baseline Quality Reviews (BQR). IBR reviews shall be scheduled as early as practicable and should be conducted within 120 calendar days after (1) Contract award, or (2) the incorporation of major modifications. The objective of IBRs and BQRs is for the Government and Boeing to jointly assess areas, such as Boeing's planning, to ensure (1) complete coverage of the statement of work, (2) logical scheduling of the work activities to include integration of all major performers' (subcontractors) detailed activities into a singular and fully integrated performance measurement baseline that adheres to the program master plan, (3) adequate resourcing, and (4) identification of inherent risks. BQRs will be the logical extension to the IBR to ensure continued integrity of the Performance Measurement Baseline, and will be conducted at periodic intervals when deemed needed by the Government or Boeing throughout the Contract's period of performance.
- (d) Boeing agrees to provide access to all pertinent records and data requested by the Contracting Officer, ACO or other duly authorized Government representative. Access is to permit Government surveillance to ensure that the EVMS complies, and continues to comply, with the criteria referenced in paragraph (a) hereof.
- (e) Sub-Contract Implementation:

(Seller shall comply with the requirements of subparagraph (1), (2), or (3), below, based on the value of the subcontract or as otherwise directed by Buyer.)

- (1) If this contract has a value in excess of \$50M, Seller shall use an Earned Value Management System (EVMS) that conforms to the 32 Guidelines cited in ANSI-748 and has also been certified by DCMA and will use a Cost Performance Report (CPR) to report its EVM information.
- (2) If this contract is a cost or incentive (cost reimbursable) contract valued at or greater than \$20M and less than \$50M, Seller shall implement an Earned Value Management System that complies with ANSI/EIA-748 (latest revision). This requirement is normally discouraged on Firm Fixed Price, and may be waived by the Buyer if appropriate on LOE, time and materials and staff augmentation efforts where integrated planning and control is considered reasonable. Seller may use its DCMA certified EVM System if it has an Advanced Agreement or equivalent in place. If Seller does not have a DoD accepted ANSI/EIA-748 compliant system, a comprehensive plan should be submitted (and forwarded to DCMA, through Buyer, for review and acceptance) that describes the management system and its application to the 32 EVMS Guidelines. In development of the system, Seller will be afforded the necessary latitude and flexibility to develop and implement reasonable management approaches that provide levels of control consistent with the scope of work being performed. A formal EVMS validation review is not required. A collaborative approach lead by DCMA will be utilized for ensuring compliance with ANSI/EIA-748 as

well as the validity of the resulting data. Cost and schedule performance reporting (Contract Performance Report and Integrated Master Schedule) may be appropriately tailored utilizing the latest guidance in the DoD Earned Value Management Implementation Guide (EVMIG).

- (3) If this contract is a cost-type contract greater than \$5M but less than \$20M, comprehensive earned value management requirements are not applicable; however, Seller shall implement and utilize a management approach that conforms to the fundamental concepts of a mainstream integrated planning and control process. That is:
- a. Cost, schedule and technical requirements shall be fully integrated, yielding a time-phased performance measurement baseline suitable for objectively assessing accomplishments at the work performance level.
 - b. Routinely, all levels of management should be involved in identifying and addressing deviations from the plan; determining impacts, corrective actions and forecasting costs of future requirements.
 - c. The baseline should be kept current such that it continues to function as an adequate management frame of reference and represents the current authorized scope of work.

Cost and schedule performance reporting may be appropriately tailored based on guidance in the EVMIG. If a risk-based decision is made to implement full EVMS requirements, the expectations shall be consistent with those described in paragraph (2) above. This requirement is normally discouraged on Firm Fixed Price, and may be waived by Buyer if appropriate on LOE, time and materials and staff augmentation efforts where integrated planning and control is considered reasonable.

- (4) DCMA maintains responsibility for conducting reviews and final approval of formal EVMS validations to determine compliance with the 32 EVMS Guidelines (>\$50M) as well as evaluation of non-validated ANSI/EIA-748 compliant systems (\$20M-\$50M). Reviews will be lead by DCMA and collaboratively performed. The Army reserves the right to review the appropriateness of the planning and control processes for existing suppliers from \$5M to less than \$20M as well as any new suppliers between these same thresholds.
- (f) Seller shall require its subcontractors that receive (i) a subcontract of \$50 million or more, regardless of contract type, to comply with the requirements of paragraph (e)(1), above; (ii) a cost-type subcontract of \$20 million or more but less than \$50 million to comply with the requirements of paragraph (e) (2), above, or (iii) a cost-type subcontract in excess of \$5 million but less than \$20 million to comply with the requirements of paragraph (e)(3), above. Seller shall incorporate this Qualified FCS EVMS Provision, including this paragraph (f), in all such subcontracts.