

**Common Terms and Conditions Guide**  
**Section 5 – Government Contract Requirements**

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**PRELIMINARY**  
**DAAE07-03-9-F001**  
**FUTURE COMBAT SYSTEMS (FCS) SYSTEM DEVELOPMENT AND**  
**DEMONSTRATION (SDD) AGREEMENT**

- (a) 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" shall mean Seller.
- (1) 52.203-6 Restrictions on Subcontractor Sales to the Government (JUL 1995). This clause applies only if this contract exceeds \$100,000.
  - (2) 52.204-2 Security Requirements (AUG 1996) (excluding any reference to the Changes clause of this contract). This clause applies only if access to classified information is required.
  - (3) 52.215-15 Pension Adjustments and Asset Reversions (DEC 1998). This clause applies only if under this contract certified cost or pricing data is required or preaward or postaward cost determinations are subject to FAR part 31. Buyer may withhold or recover from Seller such sums as the Contracting Officer withholds or recovers from Buyer because of liabilities of Seller or its subcontractors under this clause. "Contracting Officer" shall mean Buyer.
  - (4) 52.215-18 Reversion or Adjustment of Plans for Postretirement Benefits (PRB) Other Than Pensions (OCT 1997). This clause applies only if under this contract certified cost or pricing data is required or preaward or postaward cost determinations are subject to FAR subpart 31.2. Buyer may withhold or recover from Seller such sums as the Contracting Officer withholds or recovers from Buyer because of liabilities of Seller or its subcontractors under this clause. "Contracting Officer" shall mean Buyer.
  - (5) 52.215-19 Notification of Ownership Changes (OCT 1997). This clause applies only if under this contract certified cost or pricing data is required or preaward or postaward cost determinations are subject to FAR subpart 31.2. Buyer may withhold or recover from Seller such sums as the Contracting Officer withholds or recovers from Buyer because of liabilities of Seller or its subcontractors under this clause. "Contracting Officer" shall mean Buyer.
  - (6) 52.219-8 Utilization of Small Business Concerns (OCT 2000)
  - (7) 52.219-9 Small Business Subcontracting Plan (JAN 2002). This clause applies only if this contract exceeds \$500,000 and Seller is not a small business concern. In paragraph (c), "Contracting Officer" shall mean Buyer. Seller shall incorporate Buyer's goals (TBD) for Small Businesses, Small, disadvantaged Businesses, Women-Owned Small Businesses, HUBZone Small Businesses, and Veteran-Owned Small Businesses in its Small Business Subcontracting Plan and shall ensure that its first and second tier

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subcontractors that are required to have Small Business Subcontracting Plans incorporate these goals in their Small Business Subcontracting Plans.

- (8) 52.222-1 Notice to the Government of Labor Disputes (FEB 1997). "Contracting Officer" shall mean Buyer.
- (9) 52.222-2 Payment of Overtime Premiums (JUL 1990). The word "zero" is inserted in the blank space indicated by an asterisk.
- (10) 52.222-21 Prohibition of Segregated Facilities (FEB 1999)
- (11) 52.222-26 Equal Opportunity (APR 2002) [subparagraphs (b)(1) through (11)]
- (12) 52.222-35 Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (DEC 2001). This clause applies only if this contract exceeds \$25,000.
- (13) 52.222-36 Affirmative Action for Workers With Disabilities (JUN 1998). This clause applies only if this contract exceeds \$10,000.
- (14) 52.222-37 Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (DEC 2001). This clause applies only if this contract exceeds \$25,000.
- (15) 52.223-3 Hazardous Material Identification and Material Safety Data (DEC 1991). This clause applies only if Seller will deliver hazardous materials.
- (16) 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."
- (17) 52.223-11 Ozone Depleting Substances (MAY 2001)
- (18) 52.225-8 Duty-Free Entry (FEB 2000). This clause applies only if supplies are be afforded duty-free entry or foreign supplies in excess of \$10,000 may be imported into the customs territory of the United States.
- (19) 52.225-13 Restrictions on Certain Foreign Purchases (JUL 2000)
- (20) 52.227-1 Authorization and Consent (JUL 1995), Alternate I (APR 1984)
- (21) 52.227-2 Notice and Assistance Regarding Patent and Copyright Infringement (AUG 1996). This clause applies only if this contract exceeds

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\$100,000. A copy of each notice sent to the Government will be sent to Buyer.

- (22) 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.
- (23) 52.227-11 Patent Rights – Retention by the Contractor (Short Form) (JUN 1997). This clause applies only if this contract is for experimental, developmental, or research work and Seller is a small business or nonprofit organization.
- (24) 52.227-12 Patent Rights – Retention by the Contractor (Long Form) (JAN 1997). This clause applies only if this contract is for experimental, developmental, or research work and Seller is not a small business or nonprofit organization.
- (25) 52.229-10 State of New Mexico Gross Receipts and Compensating Tax (OCT 88). 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.
- (26) 52.234-1 Industrial Resources Developed Under Defense Production Act Title III (FEB 1995)
- (27) 52.242-15 Stop Work Order (AUG 89). Change "90 days" and "30 days" to "100 days" and "20 days" respectively. "Contracting Officer" and "Government" shall mean Buyer. This clause applies only if this contract incorporates GP3 or GP4. If this contract incorporates GP3, in paragraph (a)(2) delete "the Default, or the Termination for Convenience of the Government, clause of this contract" and substitute in lieu thereof "the Termination for Convenience or Cancellation for Default clause of this contract." If this contract incorporates GP4, (i) in paragraph (a)(2) delete "the Default, or Termination for Convenience for the Government clause of this contract" and substitute in lieu thereof "the Termination/Cancellation clause of this contract" and (ii) in paragraph (b) delete "an equitable adjustment in the delivery schedule or contract price, or both" and substitute in lieu thereof "an equitable in the schedule, the cost, or the fee, or a combination thereof, and in any other terms of this contract that may be affected."
- (28) 52.245-2 Government Property (DEC 1989)
- (29) 52.245-18 Special Test Equipment (FEB 1993)
- (30) 52.247-63 Preference for U.S. – Flag Air Carriers (JAN 1997). This clause applies only if this contract may involve international air transportation

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- (b) 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" shall mean Seller.
- (1) 252.203-7001 Prohibition on Persons Convicted of Fraud or Other Defense-Contract-Related Felonies (MAR 1999). This clause applies only if this contract exceeds \$100,000 and is not for commercial items or components.
  - (2) 252.204-7000 Disclosure of Information (DEC 1991). Seller will submit requests for authorization to release through Buyer.
  - (3) 252.209-7000 Acquisition From Subcontractors Subject to On-Site Inspection Under the Intermediate-Range Nuclear Forces (INF) Treaty (NOV 1995). This clause applies only if this contract exceeds \$100,000 and is not for commercial items.
  - (4) 252.211-7000 Acquisition Streamlining (DEC 1991). This clause applies only if this contract exceeds \$1,000,000.
  - (5) 252.223-7001 Hazard Warning Labels (DEC 1991). This clause applies only if Seller delivers hazardous material under this contract.
  - (6) 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).
  - (7) 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.
  - (8) 252.223-7007 Safeguarding Sensitive Conventional Arms, Ammunition, and Explosives (OCT 2002)
  - (9) 252.225-7010 Duty-Free Entry -- Additional Provisions (AUG 2000). This clause applies only if FAR 52.225-8 is applicable to this contract. Additional information referenced in this clause is available on request.
  - (10) 252.225-7032 Waiver of United Kingdom Levies (OCT 1992). This clause applies only if a lower tier subcontract over \$1 million with a U.K. firm is anticipated.

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- (11) 252.225-7043 Antiterrorism/Force Protection for Defense Contractors Outside the United States (JUN 1998). 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.
- (12) 252.227-7016 Rights in Bid or Proposal Information (JUN 1995). This clause applies only if DFARS 252.227-7013, Rights in Technical Data-Noncommercial Items; or, DFARS 252.227-7014, Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation, applies.
- (13) 252.227-7019 Validation of Asserted Restrictions -- Computer Software (JUN 1995). This clause applies only if this contract requires Seller to provide computer software to Buyer for delivery to the Government.
- (14) 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.
- (15) 252.227-7037 Validation of Restrictive Markings on Technical Data (SEP 1999). This clause applies only if the delivery of technical data is required under this contract and the contract is not for commercial items or commercial components.
- (16) 252.228-7005 Accident Reporting and Investigation Involving Aircraft, Missiles, and Space Launch Vehicles (DEC 1991)
- (17) 252.231-7000 Supplemental Cost Principles (DEC 1991)
- (18) 252.235-7003 Frequency Authorization (DEC 1991). This clause applies only if this contract involves the development, production, construction, testing, or operation of a device for which a radio frequency authorization is required.
- (19) 252.239-7000 Protection Against Compromising Emanations (DEC 1991). This clause applies only if computer equipment or systems that will be used to process classified information will be delivered under this contract.
- (20) 252.244-7000 Subcontracts for Commercial Items and Commercial Components (DOD Contracts) (MAR 2000)
- (21) 252.245-7001 Reports of Government Property (MAY 1994). Seller will provide information Buyer may require to complete Buyer's annual report.
- (22) 252.247-7023 Transportation of Supplies by Sea (MAR 2000). This clause applies only if this contract exceeds \$100,000 and the supplies being transported are noncommercial items or commercial items that (i) Seller is

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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.

- (23) 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.
- (24) 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.
- (25) 252.251-7000 Ordering From Government Supply Sources (MAY 1995). This clause applies only if Seller is notified by Buyer that it is authorized to purchase from Government supply sources in the performance of this contract.

(c) Cost Accounting Standards

- (1) The version of FAR 52.230-2, Cost Accounting Standards, incorporated by clause 3050 is the version dated April 1998.
- (2) The version of FAR 52.230-3, Disclosure and Consistency of Cost Accounting Practices, incorporated by clause 3051 is the version dated April 1998.

(d) Government Audit of Records.

- (1) This article shall flow down to any entity that participates in the performance of the Future Combat Systems System Development and Demonstration Agreement (Agreement). As used in this article, "records" includes books, documents, accounting procedures and practices, and other data, regardless of the type and regardless of whether such items are in written form, in the form of computer data, or in any other form.
- (2) Seller's relevant financial records are subject to examination or audit on behalf of US Army TACOM by the Government for a period not to exceed three years after final payment has been made under this Agreement. Seller shall provide the Grants Officer or designee direct access to sufficient

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records and information to ensure full accountability for all funds paid, or proposed to be paid to it, under the Agreement. The Grants Officer will require annual audits of cost-reimbursement based subcontracts. A final audit will be conducted at the end of the program; the final audit will not duplicate or re-examine the results of prior year audits except to verify that any outstanding issues have been resolved. Such audit, examination, or access shall be performed during business hours on business days upon prior written notice and shall be subject to the security requirements of the audited party. This clause shall not be construed to require any party, or entity, or subordinate element of such party or entity, that participates in the performance of this Agreement, to create or maintain any record that is not otherwise maintained in the ordinary course of business or pursuant to a provision of law.

- (3) The Comptroller General, at its discretion, shall have access to and the right to examine records of any party to the Agreement or any entity that participates in the performance of the Agreement that directly pertain to, and involve transactions relating to, the Agreement. Excepted from this requirement is any party to the Agreement or any entity that participates in the performance of the Agreement, or any subordinate element of such party or entity, that has not entered into any other agreement (contract, grant, cooperative agreement, or "other transaction") that provides for audit access by a Government entity in the year prior to the date of the Agreement. The only records of a party, other entity, or subordinate element referred to in this paragraph that the Comptroller General may examine are records of the same type as the records the Government has had the right to examine under the audit clauses of the previous agreements that were entered into by that particular party, entity, or subordinate element. This paragraph shall not be construed to require any party, entity, or subordinate element of such party or entity that participates in the performance of the Agreement to create or maintain any record that is not otherwise maintained in the ordinary course of business or pursuant to a provision of law.

(e) Accounting Practices

- (1) Prior to the submission of invoices to Buyer, Seller shall have and maintain an accounting system which: (i) complies with Generally Accepted Accounting Principles and Cost Accounting Standards (CAS), as both are applicable to Seller under this contract; (ii) complies with the requirements of this contract; and (iii) ensures that appropriate arrangements have been made for receiving, distributing and accounting for Federal funds.
  - (A) The contract cost principles in 48 CFR 31 and 48 CFR 231 (in the Federal Acquisition Regulation (FAR) and Defense Federal Acquisition Regulation Supplement (DFARS)) shall apply to determine the allowability of costs charged to this contract.
  - (B) Further, the allowability of any expenditures incurred in the performance of any subcontract will be subject to those Federal cost

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principles and accounting standards applicable to the particular type of organization concerned (e.g., full-, modified-, or no CAS coverage).

- (C) Within 30 days after award of this contract, Seller shall submit the following information to Buyer's cognizant contract administration office, with a copy furnished to the Grants Officer, for transmittal to the contract administration office cognizant of the subcontractor's facility:
  - (i) Seller's name and contract number.
  - (ii) Dollar amount and date of award.
  - (iii) Name of Contractor making the award.
- (3) Buyer agrees to notify the Grants Officer in writing within 30 days of an anticipated change in cost accounting practices that will affect the cost of this contract.
- (4) Buyer agrees to an adjustment of the cost and fee of this contract, as appropriate, if Buyer or any subcontractor fails to comply with this article or fails to follow any applicable cost accounting practice consistently and such failure results in any increased costs paid by the United States.
- (5) Buyer shall require that this article, including the obligation to comply with all Federal cost principles in effect on the subcontractor's award date, be included in all subcontracts, of any tier..
- (f) Foreign Access to Technology
  - (1) Definition. "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.
  - (2) Seller will notify Buyer of its intention to export any technology developed under this contract prior to notification as required by the International Traffic in Arms Regulation (ITAR) of the United States Department of State ("ITAR," United States Code of Federal Regulations, Title 22, Parts 120-130, inclusive). No technology will be transferred, and no technical data, assistance or service will be furnished, to any Foreign Firm or Institution in violation of the ITAR, the Export Administration Regulations of the United States Department of Commerce (United States Code of Federal Regulations, Title 15, Parts 768-799, inclusive) or any other applicable laws or regulations of the United States.
  - (3) Lower Tier Agreements. Seller shall include this article, suitably modified to identify the parties, in all subcontracts.



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(g) Civil Rights

This contract is subject to the requirements of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000-d), as amended, relating to nondiscrimination in employment.

(h) Data Correction and Update

Notwithstanding inspection and acceptance by Buyer of data or software delivered under this contract, and notwithstanding any provision of this contract concerning the conclusiveness of acceptance, Buyer shall have the right to require Seller to correct (or update) any such data or software found deficient (or outdated), within three years of the delivery of such data or software. Such correction shall be at Buyer's expense.

(i) Data Rights

**(This article is the Data Rights article exactly as it appears in the draft of DAAE07-03-9-F001, Future Combat Systems (FCS) System Development and Demonstration (SDD) Phase. Buyer contemplates that it will be substantially revised in the final version of DAAE07-03-9-F001; therefore, no effort has been made to modify it to be suitable for incorporation in subcontracts. An appropriately modified Data Rights article will be added to 5068 as soon as possible.)**

**ARTICLE XVIII: DATA RIGHTS**

**A. Definitions**

1. "Data", as used in this article, means recorded information, regardless of form or method of recording, of a scientific or technical nature, which includes but is not limited to, software, trade secrets, and mask works. The term does not include financial, administrative, cost, pricing or management information and does not include subject inventions included under Article XVIII, Patent Rights.

2. "**Government Purpose Rights**", as used in this Article, means rights to use, modify, duplicate, release, perform, display, or disclose Data, in whole or in part and in any manner, for Government purposes only, and to have or permit others to do so for Government purposes only. Government purposes include competitive procurements but does not include any commercial purpose or use. The Government Purpose Rights granted herein are without expiration. Any data for which the Government has been granted "Government Purpose Rights" (as defined herein) shall be provided with "Government Purpose Rights".

3. "**Limited Rights**", means the rights to use, modify, reproduce, release, perform, display, or disclose technical data, in whole or in part, within the Government. The Government may not, without the written permission of the party asserting limited rights, release or disclose the technical data outside the Government, use the technical data for manufacture, or authorize the technical data to be used by another party, except that the Government may reproduce,

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release or disclose such data or authorize the use or reproduction of the data by persons outside the Government if reproduction, release, disclosure, or use is:

- (i) Necessary for emergency repair and overhaul; or
- (ii) A release or disclosure of technical data (other than detailed manufacturing or process data) to, or use of such data by, a foreign government that is in the interest of the Government and is required for evaluational or informational purposes;
- (iii) Subject to a prohibition on the further reproduction, release, disclosure, or use of the technical data; and
- (iv) The contractor or subcontractor asserting the restriction is notified of such reproduction, release, disclosure, or use.

However, such express limitation shall not apply to SETA or support 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 is under contract subject to DFARS clause 252.227-7025 entitled, "Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends

4. **"No Rights"** - The identification of "No Rights" is a declaration that applies only to items developed prior to the date of the Agreement or Subcontract. The specific item or data must be identified and defined. This designation may not apply to a required deliverable under this Agreement. If the information is requested by the Government a specific agreement identifying use, purpose and access must be executed prior to the information being provided. If satisfactory terms are not arrived at the item or data will not be provided.

5. **"Restricted Rights"**, "apply only to noncommercial computer software and mean the Government's rights to --

(i) Use a computer program with one computer at one time. The program may not be accessed by more than one terminal or central processing unit or time shared unless otherwise permitted by this contract;

(ii) Transfer a computer program to another Government agency without the further permission of the Contractor if the transferor destroys all copies of the program and related computer software documentation in its possession and notifies the licensor of the transfer. Transferred programs remain subject to the provisions of this clause;

(iii) Make the minimum number of copies of the computer software required for safekeeping (archive), backup, or modification purposes;

(iv) Modify computer software provided that the Government may --

(A) Use the modified software only as provided in paragraphs (a)(14)(i) and (iii) of this clause; and

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(B) Not release or disclose the modified software except as provided in paragraphs (a)(14)(ii), (v) and (vi) of this clause;

(v) Permit contractors or subcontractors performing service contracts (see 37.101 of the Federal Acquisition Regulation) in support of this or a related contract to use computer software to diagnose and correct deficiencies in a computer program, to modify computer software to enable a computer program to be combined with, adapted to, or merged with other computer programs or when necessary to respond to urgent tactical situations, provided that --

(A) The Government notifies the party which has granted restricted rights that a release or disclosure to particular contractors or subcontractors was made;

(B) Such contractors or subcontractors are subject to the use and non-disclosure agreement at 227.7103-7 of the Defense Federal Acquisition Regulation Supplement (DFARS) or are Government contractors receiving access to the software for performance of a Government contract that contains the clause at DFARS 252.227-7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends;

(C) The Government shall not permit the recipient to decompile, disassemble, or reverse engineer the software, or use software decompiled, disassembled, or reverse engineered by the Government pursuant to paragraph (a)(14)(iv) of this clause, for any other purpose; and

(D) Such use is subject to the limitation in paragraph (a)(14)(i) of this clause; and

(vi) Permit contractors or subcontractors performing emergency repairs or overhaul of items or components of items procured under this or a related contract to use the computer software when necessary to perform the repairs or overhaul, or to modify the computer software to reflect the repairs or overhaul made, provided that --

(A) The intended recipient is subject to the use and non-disclosure agreement at DFARS 227.7103-7 or is a Government contractor receiving access to the software for performance of a Government contract that contains the clause at DFARS 252.227-7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends; and

(B) The Government shall not permit the recipient to decompile, disassemble, or reverse engineer the software, or use software decompiled, disassembled, or reverse engineered by the Government pursuant to paragraph (a)(14)(iv) of this clause, for any other purpose.

6. **“Software”** means computer software documentation, computer programs, object code listings, source code, and related materials that would enable the software to be reproduced, recreated or recompiled.

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7. "**Unlimited rights**" means rights to use, modify, reproduce, perform, display, release, or disclose technical data, computer software, or computer software documentation in whole or in part, in any manner, and for any purpose whatsoever, and to have or authorize others to do so.

(a) Rights in technical data. The Contractor grants or shall obtain for the Government the following royalty free, world-wide, nonexclusive, irrevocable license rights in technical data, noncommercial computer software, or computer software documentation:

(b) Unlimited rights. The Government shall have unlimited rights in technical data, noncommercial computer software, or computer software documentation that are :

(i) Data pertaining to hardware or software items, components, or processes which have been or will be developed exclusively with Government funds;

(ii) Studies, analyses, test data, computer software documentation or similar data produced for this contract, when the study, analysis, test, computer software documentation or similar work was specified as an element of performance;

(iii) Created exclusively with Government funds in the performance of a contract that does not require the development, manufacture, construction, or production of items, components, or processes;

(iv) Form, fit, and function data;

(v) Necessary for installation, operation, maintenance, or training purposes (other than detailed manufacturing or process data);

(vi) Corrections or changes to technical data, noncommercial computer software, or computer software documentation furnished to the Contractor by the Government;

(vii) Otherwise publicly available or have been released or disclosed by the Contractor or 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 technical data to another party or the sale or transfer of some or all of a business entity or its assets to another party;

(viii) Data in which the Government has obtained unlimited rights under another Government contract or as a result of negotiations; or

(ix) Data, including noncommercial computer software, or computer software documentation furnished to the Government, under this or any other Government contract or subcontract thereunder, with --

(A) Government purpose license rights or limited rights and the restrictive condition(s) has/have expired; or

(B) Government purpose rights and the Contractor's exclusive right to use such data for commercial purposes has expired.

**B. Allocation of Principal Rights**

1. This Agreement shall be performed with Government funding. The Parties agree that in consideration of the terms of the Agreement, Boeing intends to reduce to practical application items, components and processes developed under this Agreement.

2. Boeing agrees to retain and maintain in good condition until five (5) years after completion or termination of this Agreement, all Data or Software developed under this Agreement necessary to achieve practical application. In the event of exercise of the Government's March-in Rights as set forth under Article XVIII or

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subparagraph B.3 of this Article, Boeing agrees, upon written request from the Government, to deliver at no additional cost to the Government, all Data and Software developed under this Agreement necessary to achieve practical application within sixty (60) calendar days from the date of the written request.

3. Boeing agrees that, with respect to Data and Software developed under this Agreement necessary to achieve practical application, TACOM has the right to require Boeing to deliver all such Data and Software to TACOM in accordance with its reasonable directions if TACOM determines that:

- (a) Such action is necessary because Boeing or assignee has not taken effective steps within five (5) years after completion or termination of this Agreement, consistent with the intent of this Agreement, to achieve practical application of the technology developed during the performance of this Agreement;
- (b) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by Boeing, assignee, or their licensees within five (5) years after completion or termination of this Agreement; or
- (c) Such action is necessary to meet requirements for public use and such requirements are not reasonably satisfied by Boeing, assignee, or licensees within five (5) years after completion or termination of this Agreement.

4. With respect to all Data and Software developed or necessary to achieve the required FCS SOS or FOS capabilities, regardless of funding source, the Government will receive Government Purpose Rights at a minimum. In the event of the Government's exercise of its right under subparagraph B.3 of this Article, the Government shall receive Government Purpose Rights.

5. With any item of Data or Software, including Software Documentation, that is or has been provided with unlimited rights both the item itself and any modifications made under this agreement shall be provided with unlimited rights.

**C. Marking of Data or Software**

Pursuant to subparagraph B.4 above, any Data or Software delivered or provided under this Agreement shall be marked with the following legends:

**"GOVERNMENT PURPOSE RIGHTS"**

"The Government is granted Government Purpose Rights to this Data or Software. Use, duplication, or disclosure is subject to the restrictions as stated in Agreement DAAE07-03-9-F001 between The Boeing Company and the Government."

Pursuant to subparagraph B.5 above, any Data or Software delivered or provided under this Agreement shall be marked with the following legends:

**"UNLIMITED RIGHTS"**

"The Government is granted Unlimited Rights to this Data or Software. Use, duplication, or disclosure is subject to the restrictions as stated in Agreement DAAE07-03-9-F001 between The Boeing Company and the Government."

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Pursuant to subparagraph D.2 below, any Data or Software delivered or provided under this Agreement shall be marked with the following legends:

**“LIMITED RIGHTS”**

“The Government is granted Limited Rights to this Data or Software. Use, duplication, or disclosure is subject to the restrictions as stated in Agreement DAAE07-03-9-F001 between The Boeing Company and the Government.”

**“RESTRICTED RIGHTS”**

“The Government is granted Restricted Rights to this Software. Use, duplication, or disclosure is subject to the restrictions as stated in Agreement DAAE07-03-9-F001 between The Boeing Company and the Government.”

**“NO RIGHTS”**

“The Government is granted No Rights to this Data. Use, duplication, or disclosure is subject to the restrictions of a Special Data Use Agreement as provided for in Agreement DAAE07-03-9-F001 between The Boeing Company and the Government.”

**D. Lower Tier Agreements**

1. Boeing shall flow down the provisions of this Article to its first tier subcontractors who are providing Systems, Subsystems or Components for the FCS FOS. Boeing shall require this Article, suitably modified to identify the Parties, in all second tier subcontracts or lower tier agreements, regardless of tier, for work performed on this Agreement. Boeing will not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's Data or Software.

2. If any proposed subcontractor, including Boeing business units, requires providing to the Government Data or Software rights less than those described in subparagraph B. 4. or B. 5., above, the Boeing Contracts Manager will notify the Government Agreements Officer prior to entering into the subcontracts. Such a notification shall be mutually discussed by the Parties and acceptance of lesser rights shall require a bi-lateral modification to this Agreement. All such Data or Software items shall be identified and documented in Table B in Attachment 8. The format of Table B shall be as identified below. If the desired designation is "No Rights" the four conditions identified below must be present:

- a. applies only to items developed prior to the date of the Agreement or Subcontract, and
- b. the specific item or data must be identified and defined, and
- c. may not apply to a required deliverable under this Agreement, and
- d. a mutually acceptable (Government, LSI and owner of item) Special Data Use Agreement must have been executed which identifies, when the information will be provide, limitations on who may access the information, and the defined, limited purpose for which the data is being provided.

Table B – Data or Software to be Furnished with Restrictions

<b>Data or Software to be</b>	<b>Basis for Assertion</b>	<b>Asserted Rights Category</b>	<b>Name of Person Asserting</b>
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<b>Furnishe d with Restricti ons</b>			<b>Restriction s</b>

(j) Design and Source Considerations; Clauses That Must be Considered in Both Design and Production Planning. Buyer has been advised by its customer that the following DFARS clauses, while not required for the FCS SDD Agreement, will be mandatory under any subsequent contract for Long Lead Items, Low Rate Initial Production, or Production. To the extent that they are applicable to subcontractors, Seller shall consider these clauses in its planning for transition to production. Design limitations and supply chain management decisions required to comply with these clauses will be documented in sufficient detail, so that, in the event of any subsequent contract for Long lead Items, Low Rate Initial Production, or Production, compliance with the requirements of these clauses can be demonstrated.

- (1) 252.225-7001 Buy American Act and Balance of Payments Program (JAN 1994)
- (2) 252.225-7002 Qualifying Country Sources as Subcontractors (DEC 1991)
- (3) 252.225-7014 Preference for Domestic Specialty Metals (MAR 1998)
- (4) 252.225-7016 Restriction on Acquisition of Ball and Roller Bearings (DEC 2000)
- (5) 252.225-7022 Restriction on Acquisition of Polyacrylonitrile (PAN) Based Carbon Fiber (DEC 1991)
- (6) 252.225-7025 Restriction on Acquisition of Forgings (JUN 1997)
- (7) 252.225-7026 Reporting of Contract Performance Outside the United States (JUN 2000)
- (8) 252.225-7030 Restriction on Acquisition of Carbon, Alloy, and Armor Steel Plate (OCT 1992)
- (9) 252.225-7031 Secondary Arab Boycott of Israel (JUN 1992)