

Common Terms and Conditions Guide
Section 5 – Government Contract Requirements

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**FUTURE COMBAT SYSTEMS (FCS) SYSTEM
DEVELOPMENT AND DEMONSTRATION (SDD)
CONTRACT NO. W56HZV-05-C-0724**

If Form GP1 is applicable to this procurement, this Attachment constitutes the Government clauses contemplated by Article 29. If Form GP2 is applicable to this procurement, this Attachment constitutes the Government clauses contemplated by Article 28. If Form GP3 is applicable to this procurement, this Attachment constitutes the Government clauses contemplated by Article 41. If Form GP4 is applicable to this procurement, this Attachment constitutes the Government clauses contemplated by Article 31. If this contract is for the procurement of commercial items, as defined in FAR Part 2.101, see Section 3 below.

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.

52.203-6 Restrictions on Subcontractor Sales to the Government (JUL 1995). 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 (APR 1991). 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 (JUN 2003). This clause applies only if this Contract exceeds \$100,000. Paragraph (c)(4) is modified to read as follows: "(c)(4) Seller will promptly submit any disclosure required (with written notice to Boeing) directly to the PCO for the prime contract. Boeing will identify the cognizant Government PCO at Seller's request. Each subcontractor certification will be retained in the subcontract file of the awarding contractor.

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

52.211-5 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.

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

52.215-10 Price Reduction For Defective Cost or Pricing Data (OCT 1997). This clause applies only if this contract exceeds \$550,000 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."

52.215-12 Subcontractor Cost or Pricing Data (OCT 1997). This clause applies only if this contract exceeds \$550,000 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 "The Boeing Company or any of its wholly owned subsidiaries."

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), Alternates I, II, and III (OCT 1997). This clause applies only if this contract exceeds the threshold set forth in FAR 15.403-4. The term "Contracting Officer" shall mean Buyer.

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 (subparagraph (b)(1) through (11)) (APR 2002).

52.222-35 Equal Opportunity for Special Disabled, Veterans of the Vietnam Era, and Other Eligible Veterans (DEC 2001). This clause applies only if this contract exceeds \$25,000.

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

52.222-37 Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (DEC 2001). This clause applies only if this contract exceeds \$25,000.

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 the" before "Contracting Officer in paragraph (f). This provision applies if Clause 3050, 3051, or 3066 is included in Buyer's contract.

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

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52.244-5 Competition in Subcontracting (DEC 1996)

52.244-6 Subcontracts for Commercial Items (DEC 2004)

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.

52.245-18 Special Test Equipment (FEB 1993). Change "30 days" to "45 days" in paragraph (b) and (c). The notice of intent to procure special test equipment required by this clause shall be forwarded to the Buyer.

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

52.247-67 Submission of Commercial Transportation Bills to the General Services Administration for Audit (JUN 1997).

52.253-1 Computer Generated Forms (JAN 1991).

2. DoD Contracts. If this Contract is placed under a Department of Defense Contract, 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. Unless otherwise provided, the clauses are those in effect as of the date of this contract.

252.203-7001 Prohibition on Persons Convicted of Fraud or Other Defense-Contract Related Felonies (excluding paragraph (g)) (DEC2004). 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". Paragraph (g) is deleted and "Contracting Officer" shall mean 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).

252.215-7000 Pricing Adjustments (DEC 1991). This clause applies only if this contract exceeds \$550,000.

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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 (JUN 2005). 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	_____
Activity Address	DCMC Boeing _____
Activity Address Number	_____
Prime Contractor	The Boeing Company
Prime Contractor's Address	_____
Cage Code	_____
Prime Contract Number	_____
Prime Contract Dollar Value	\$ _____

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 (JUN 2005). This clause does not apply to the purchase of commercial items other than ball or roller bearings or to items which contain no 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).

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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 an United Kingdom firm.

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.

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.

252.228-7005 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.

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

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

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

252.247-7023 Transportation of Supplies by Sea (MAY 2002). This clause applies 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.

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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, 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 (subparagraph (b)(1) through (11)) (APR 2002).

52.222-35 Affirmative Action for Special Disabled and Vietnam Era Veterans (Dec 2001). This clause applies only if this contract exceeds \$25,000.

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 (APR 2003). 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 3050). The version of FAR 52.230-2, Cost Accounting

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Standards, incorporated by clause 3050 is the version dated April 1998.

- (2) (Applicable if this contract incorporates clause 3051). The version of FAR 52.230-3, Disclosure and Consistency of Cost Accounting Practices, incorporated by clause 3051 is the version dated April 1998.
 - (3) (Applicable if this contract incorporates clause 3065). The version of FAR 52.230-4, Consistency in Cost Accounting Practices, incorporated by clause 3065 is the version dated August 1992.
 - (4) (Applicable if this contract incorporates clause 3066). The version of FAR 52.230-5, Cost Accounting Standards – Educational Institution, incorporated by clause 3066 is the version dated April 1998.
 - (5) (Applicable if this contract incorporates clause 3067). The version of FAR 52.230-3, Disclosure and Consistency of Cost Accounting Practices, incorporated by clause 3067 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) 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.
- (2) All such requests for public release approval will be sent to the PM UA 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 to disseminate FCS Program information publicly. Note that 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.
- (3) Seller shall include subparagraphs (1) and (2) 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.

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

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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)(1), Seller may disclose classified and unclassified export-controlled technical data to foreign persons when the following conditions apply: The Deputy Assistant Secretary of the Army (DASA) Defense Exports and Cooperation (DE&C) (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. The term “PM, UA” refers to the Government’s Program Manager, Unit of Action, and their designated staff.

(C) 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.

(D) 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

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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 it includes 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 any 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. 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.

F. DATA AND SOFTWARE RIGHTS

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

(1) Definitions

- (A) "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, 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 the FAR Patent Rights Clause included herein.

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- (B) “Software,” as used in this article, 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.
- (C) “Government Purpose Rights,” as used in this article, means rights to use, modify, duplicate, release, perform, display, or disclose Data or Software, 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 do not include any commercial purpose or use. The Government Purpose Rights granted herein are without expiration.
- (D) “Limited Rights,” as used in this article, means the rights to use, modify, reproduce, release, perform, display, or disclose 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 Data outside the Government, use the Data for manufacture, or authorize the Data to be used by another party, except that the Government may reproduce, release or disclose such Data or authorize the use or reproduction of the Data by persons outside the Government if reproduction, release, disclosure, or use is:
- (i) Necessary for emergency repair and overhaul; or
 - (ii) A release or disclosure of 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 Data; and
 - (iv) Buyer or its subcontractor asserting the restriction is notified of such reproduction, release, disclosure, or use.
 - (v) However, such express limitation 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.”
- (E) “Special License Rights,” as used in this article, applies only to Data or Software developed at private expense prior to the date, or outside the scope, of this contract. This designation may not apply to a required deliverable under this contract unless agreed to by the Government, e.g. for commercial Software or Data pertaining to commercial items. If the Government requests the Data or Software, asserted by Buyer, or a subcontractor, as subject to Special License Rights, a specific written agreement identifying use, purpose and access must be executed prior to the Data or Software being provided to the Government and made a part of Attachment 6, Data or Software to be Furnished with Restrictions. If the Government and Buyer, or a subcontractor, do not agree to satisfactory terms then the Data or Software shall not be provided to the Government.

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- (F) “Restricted Rights,” as used in this article, applies only to noncommercial Software and means the Government's rights to --
- (i) Use a computer program with one computer at one time. The program may not be accessed by more than one terminal or central processing unit or time shared unless otherwise permitted by this contract;
 - (ii) Transfer a computer program to another Government agency without the further permission of Buyer 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 article;
 - (iii) Make the minimum number of copies of the Software required for safekeeping (archive), backup, or modification purposes;
 - (iv) Modify Software provided that the Government may --
 - (aa) Use the modified Software only as provided in this article; and
 - (bb) Not release or disclose the modified Software except as provided in this article;
 - (v) Permit contractors or subcontractors performing service contracts (as defined by 37.101 of the Federal Acquisition Regulation) in support of this or a related contract to use Software to diagnose and correct deficiencies in a computer program, to modify 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 --
 - (aa) The Government notifies the party which has granted Restricted Rights that a release or disclosure to particular contractors or subcontractors was made;
 - (bb) 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”;
 - (cc) 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 (1)(F)(iv) of this article, for any other purpose; and
 - (dd) Such use is subject to the limitation in paragraph (1)(F)(i) of this article; 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

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Software when necessary to perform the repairs or overhaul, or to modify the Software to reflect the repairs or overhaul made, provided that --

- (aa) 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
 - (bb) 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 this clause, for any other purpose.
- (G) "Unlimited rights," as used in this article, means rights to use, modify, reproduce, perform, display, release, or disclose Data or Software, in any manner, and for any purpose whatsoever, and to have or authorize others to do so.
- (2) Allocation of Principal Rights
- (A) This contract shall be performed with Government funding.
 - (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 Software 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 paragraph (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 and Software developed under this Agreement 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 and Software 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 and Software 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 Agreement, consistent with the intent of Buyer's prime Agreement, 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 Agreement; or

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- (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 Agreement.
- (D) With respect to all Data and Software delivered under this contract, the Government will, subject to paragraph (2)(F), receive Government Purpose Rights, or if paragraph (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 or Software. With respect to all Data and Software previously delivered to the Government with Government Purpose Rights, the Government shall receive those same rights for the Data or Software.
- (E) The Government shall have Unlimited Rights in Data or Software that are:
 - (i) Otherwise publicly available or have been released or disclosed by Buyer, 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 or Software to another party or the sale or transfer of some or all of a business entity or its assets to another party;
 - (ii) Data or Software in which the Government has obtained Unlimited Rights under another Government Agreement/contract or as a result of negotiations; or
 - (iii) Data or Software 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 Buyer's, or a subcontractor's, exclusive right to use such Data for commercial purposes has expired.
- (F) (This paragraph applies 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 or Software of Seller, and its subcontractors, which will be furnished with rights which are more restrictive than Government Purpose Rights. This list is subject to Government approval before Buyer enters into this contract and also paragraph (4) of this article. Any subcontract which includes Data or Software to be included in Attachment/Exhibit, Data or Software to be Furnished with Restrictions, must be approved by the Government prior to Seller entering into the subcontract. The list may be amended, subject to approval of the Government, based upon new information or inadvertent omissions. The cognizant Integrated Product Team (IPT) Leader and IPT Co-Leader must first approve any such requested amendment. No Data or Software shall be delivered 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 Agreement (including any Data required to be delivered under this contract) and are listed in Attachment/Exhibit, Data or Software to be Furnished with Restrictitons.

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- (i) Pertaining to items, components, or processes developed exclusively at private expense and marked with the Limited Rights legend prescribed in this article, 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 Software subject to Unlimited Rights or Special License Rights, the Government shall have Restricted Rights in Software required to be delivered to the Government under Buyer's prime Agreement (including any Software 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 or Software item deliverables that are copyrighted. The license will permit the Government to copy, modify, and/or distribute the Data or Software item deliverables in any manner consistent with the restrictions in this article on the Government's use and disclosure of the Data or Software in the deliverables.
- (3) Marking of Data or Software
- (A) Any Data or Software delivered or provided pursuant to paragraph (2)(D) above, shall be marked with the following legend:

“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.”

- (B) Any Data or Software delivered or provided pursuant to paragraph (2)(E) above, shall be unmarked or marked with the following legend:

“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.”

- (C) Any Data or Software delivered or provided pursuant to paragraphs (2)(G), (2)(H), or (1)(E), shall be marked with one of the following legends:

(2)(G)

“LIMITED RIGHTS”

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

(2)(H)

“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

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Company and the Government.”

(1)(E) **“SPECIAL LICENSE RIGHTS”**

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

(4) Validation of Asserted Restrictions – Data and Software

- (A) Seller shall maintain records sufficient to justify the validity of any markings that assert restrictions on Data or Software delivered or required to be delivered under this contract and shall be prepared to furnish to the Grants Officer a written justification for such restrictive markings in response to a request by the Grants Officer (which may be provided by Boeing to Seller) for such information.
- (B) Buyer agrees that the Grants Officer may transact matters under this clause directly with subcontractors or suppliers, at any tier, who assert restrictions on Data or Software. Neither this clause, nor any action taken by the Government under this clause, creates or implies privity of contract between the Government and Buyer’s subcontractors or suppliers.
- (C) Requests for Information: The Grant’s Officer may request Buyer (and in turn Seller) or Seller to provide sufficient information to evaluate Seller’s asserted restrictions.
 - (i) Based upon the information provided, the Grants Officer may –
 - (aa) If Seller agrees that the asserted restriction is not valid,
 - (I) Strike or correct the unjustified marking at Seller’s expense; or
 - (II) Return the Data or Software to Buyer (and in turn to Seller) or Seller for correction at Seller’s expense, or
 - (bb) Conclude that the asserted restriction is appropriate for this Agreement, and notify Buyer (and in turn Seller) or Seller in writing.
 - (ii) Seller’s failure to provide a timely response to a Grants Officer’s (or Buyer’s) request for information shall constitute reasonable grounds for questioning the validity of an asserted restriction.
- (D) Government Right to Challenge and Validate Asserted Restrictions
 - (i) The Government has the right to challenge any restrictions asserted by Buyer and/or Seller on Data or Software delivered or provided for system or hardware performance under the prime Agreement. Except for Data or Software that is publicly available, or has been furnished to the Government without restrictions, or has been otherwise made available without restrictions, the Government may exercise this right only within the later of three years after the date(s) the Data or

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Software is delivered or provided to the Government, or three years following final payment under the prime Agreement.

- (ii) Only a Grants Officer's final decision or a court of competent jurisdiction that sustain the validity of an asserted restriction constitute validation of the restriction.

(E) Challenge Procedures

- (i) A challenge must be in writing and shall –
 - (aa) State the specific grounds for challenging the asserted restriction;
 - (bb) Require Buyer (and in turn Seller) or Seller to respond within 60 days; and
 - (cc) Require Buyer (and in turn Seller) or Seller to provide justification for the assertion, in sufficient detail to enable the Grants Officer to determine the validity of the asserted restrictions.
- (ii) The Grants Officer shall extend the time for response if Buyer (on behalf of Seller) or Seller submits a written request with appropriate justification.
- (iii) The Grants Officer may request additional supporting documentation if, in the Grants Officer's opinion, Buyer's (or Seller's) explanation does not provide sufficient evidence to justify the validity of the asserted restrictions.
- (iv) Notwithstanding challenge by the Grants Officer, the Parties may agree on the disposition of an asserted restriction at any time prior to a Grants Officer's final decision or, if Buyer (or Seller) has appealed that decision at any time prior to a decision by a court of competent jurisdiction.
- (v) If Seller fails to respond to the Grants Officer's request (or Buyer's on behalf of the Grants Officer) for information, the Grants Officer shall issue a final decision, in accordance with the Disputes article of the prime Agreement, pertaining to the validity of the asserted restriction.
- (vi) If the Grants Officer determines that the asserted restriction has –
 - (aa) Not been justified, the Grants Officer shall issue promptly a final decision subject to the Disputes article of the prime Agreement denying the validity of the asserted restriction; or
 - (bb) Been justified, the Grants Officer shall issue promptly a final decision validating the asserted restriction.

- (F) The Government agrees, notwithstanding a Grants Officer final decision denying validity of the asserted restriction, that it will honor the asserted restriction for a period of 90 days, after which if there is no formal challenge to the decision, the Government may strike the restriction, remove the legends and there is no liability incurred by this action.

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(5) Lower Tier Agreements

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

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 provisions set forth in the Patent Rights and Data and Software Rights provisions of 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. PROPRIETARY COMPONENTS

- (1) Proprietary components are not permitted on the FCS Program unless explicitly approved by the Government. Therefore, Seller shall not introduce the use of proprietary components under this contract unless the Government has previously approved such use. Government approval will be obtained through Buyer.
- (2) Seller shall include this clause, including this subparagraph (2), in all subcontracts.