

CUSTOMER CONTRACT REQUIREMENTS
PO2 Additive Friction Stir Deposition
CUSTOMER CONTRACT BOEING-2024-PO2-01

CUSTOMER CONTRACT REQUIREMENTS

The following customer contract requirements apply to this Contract to the extent indicated below. Please note, the requirements below are developed in accordance with Buyer's prime contract and are not modified by Buyer for each individual Seller or statement of work. Seller will remain at all times responsible for providing to any government agency, Buyer, or Buyer's customer, evidence of compliance with the requirements herein or that such requirements are not applicable to the extent satisfactory to the requesting party.

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

BOEING-2024-PO2-01 Special Provisions .**11.0 CONFLICTS OF INTEREST AND OTHER WORK**

11.1 Seller will promptly inform Buyer's customer, ASTROA, via the Buyer, of any proposed or ordered Work that will place Seller or any of its suppliers in a situation of actual or potential organizational conflict of interest ("OCI") as that term is referenced in FAR Part 9 If ASTROA or Buyer determines the likelihood of an OCI situation, ASTROA or Buyer will notify the Seller. The parties will use good faith efforts to resolve or mitigate any potential OCI including termination of the affected Work.

11.2 Reserved.

16.0 SPECIAL PROVISIONS

16.1 Subcontractor shall comply with the Special Provisions attached hereto as Schedule C which are incorporated herein by reference. Seller agrees to modify this Agreement to include any mandatory Federal Acquisition Regulation or other applicable Government requirement issued after the Effective Date. Seller shall include all applicable terms and conditions in subcontracts issued to all approved lower-tier subcontractors and require all subcontractors to include such terms and conditions in all lower-tier subcontracts issued in support of the work to be performed under this Agreement

22.0 SUBCONTRACTOR PERSONNEL

- 22.1 Unless otherwise permitted herein, all Seller personnel, including independent contractors, proposed and/or assigned to the Work shall be US Persons. Seller shall notify ASTROA, via the Buyer, immediately in writing of any proposed exceptions to this requirement.
- 22.2 Seller personnel will not be entitled to any of the fringe benefits provided by Boeing or ASTROA to their respective employees. Seller will be solely and entirely responsible for the actions of Subcontractor personnel.
- 22.3 To the extent Seller wishes to subcontract with any other entity for performance of any of the Work, Seller will obtain ASTROA's prior written consent, via the Buyer, to do so. Seller will at all times remain solely and wholly responsible for performance of the Work by its subcontractors and suppliers.

23.0 RECORDS AND AUDIT RIGHTS

- 23.1 Seller will maintain complete and accurate records and books of account relating to its performance of the Work hereunder including, without limitation, records and books of account detailing the costs, fees, and other amounts charged to ASTROA. Subcontractor will retain such books and records for four (4) years after completion of the Work.
- 23.2 The Government will have the right to inspect and audit all of the records and books of account of Seller relating to Seller's performance of the Work hereunder.
- 23.3 Seller may retain an independent accounting firm to conduct any required audits, provided it does so at its own expense. Any audit conducted by an independent audit firm must be conducted according to generally accepted auditing standards.

24.0 RELEASE OF INFORMATION

- 24.1 Except as required by law, regulation, or court order, no public release of any information, or confirmation or denial of same, with respect to this Agreement or the subject matter hereof, will be made by a Seller without the prior written approval of Buyer.
- 24.2 Seller shall not publicly release technical information without written approval from the Buyer, which shall not be unreasonably withheld. The Seller shall submit to the Buyer a request for approval to publicly release technical information via email at least forty-five (45) calendar days prior to the desired release date. At a minimum, the request shall include the name of the publication or electronic resource that the technical information will appear in, the anticipated date that the information will first appear, a verbatim copy of the proposed text to be released, and any supporting information (technical or otherwise) to assist in the review. The Buyer may request additional information from Seller in order to evaluate the publication request. The Buyer as part of its approval can identify its proprietary information or sensitive information for redaction, obfuscation, or disassociation. The Buyer may also request an extension of an additional thirty (30) days to file a patent application for disclosed material. The Government and/or Buyer will exercise best efforts to either approve or disapprove the public release of technical information prior to the desired release date; however, the Government and/or Buyer makes no promise that the request will be resolved within 30 days.
 - 24.3 Where Academic Research Institutions are performing fundamental research as Seler or Seller's subcontractors, the Seller shall and shall require such sub-tier subcontractors to provide papers and publications to the Buyer vi via email for review and comment at least forty-five (45) days prior to the formal paper or publication submission. At a minimum, the request shall include the name of the publication or electronic resource that the technical information will appear in, the anticipated date that the information will first appear, a verbatim copy of the proposed text to be released, and any supporting information (technical or otherwise) to assist in the review. Buyer, ASTROA and the Government reserve the right to request additional information from the Seller or the Academic Research Institution in order to evaluate the request. Buyer, ASTROA and the Government will exercise best efforts to either approve or disapprove the public release of technical information prior to the desired release date; however, Buyer, ASTROA and the Government makes no promise that the request will be resolved within 30 days.
- 24.4 Parties to this Agreement are responsible for assuring that an acknowledgment of Government support will appear in any publication of any material based on or developed under this Agreement, using the following acknowledgement terms:

"This effort was sponsored by the U.S. Government under Other Transaction Agreement number W56HZV-22-9-0001 with ASTRO. The U.S. Government is authorized to reproduce and distribute reprints for Governmental purposes notwithstanding any copyright notation herein."
- 24.5 Parties to this Agreement are also responsible for assuring that every publication of material based on or developed under this Agreement contains the following disclaimer:

"The views and conclusions contained herein are those of the authors and should not be interpreted as necessarily representing the official policies or endorsements, either

expressed or 16 implied, of the U.S. Government."

SCHEDULE C: SPECIAL CONTRACT REQUIREMENTS**A. Definitions**

"Classified" means all information classified in accordance with the national security laws of the U.S.

"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 Agreement, any agency or instrumentality of a foreign government; and firms, institutions or business organizations which are owned or substantially controlled by foreign governments, firms, institutions, or individuals.

"Technology" means discoveries, innovations, know-how and inventions, whether patentable or not, including computer software, recognized under United States law as intellectual creations to which rights of ownership accrue, including, but not limited to, patents, trade secrets, mask works, and copyrights developed under this Agreement.

8. Foreign Access to Technology.

The Parties agree that research findings and technology developments arising under this Agreement may constitute a significant enhancement to the national defense, and to the economic vitality of the United States. Accordingly, access to important technology developments under this Agreement by Foreign Firms or Institutions must be carefully controlled. The controls contemplated in this Section are in addition to, and are not intended to change or supersede, the provisions of the International Traffic in Arms Regulations (ITAR), 22 CFR Parts 120 through 130, the DoD Industrial Security Regulation (DoD 5220.22-R), and the Export Administration Regulations (EAR), 15 CFR Parts 730 through 799.

(1) In order to promote the national security interests of the United States and to effectuate the policies that underlie the regulations cited above, the procedures stated in subparagraphs 8(2) and 8(3) below shall apply to any transfer of Technology. For purposes of this Section, a transfer includes a sale of the company, and sales or licensing of Technology. Transfers do not include:

- (a) Sales of products or components;
- (b) Licenses of software or documentation related to sales of products or components;
- (c) Transfer which provides access to Technology to a Foreign Firm or Institution, which is an approved source for research under this Agreement, provided that such transfer shall be limited to that necessary to allow the firm or institution to perform its approved role under this Agreement; or
- (d) Releases pursuant to Section 24.0 of the Agreement, Release of Information.

(2) Seller shall provide timely notice to ASTROA and the Government, via the Buyer, of any proposed transfers from Subcontractor of Technology developed under this Agreement to Foreign Firms or Institutions. If the Government determines that the transfer may have adverse consequences to the national security interests of the United States, Buyer, Seller and the Government shall jointly endeavor to find alternatives to the proposed transfer which obviate or mitigate potential adverse consequences of the transfer, but which provide substantially equivalent benefits to the Subcontractor.

(3) In any event, the Seller shall provide written notice ASTROA and the Government, via the Buyer, of any proposed transfer by Subcontractor to a Foreign Firm or Institution at least 90 (90) calendar days in advance.

SCHEDULED: INSURANCE REQUIREMENTS

Seller will furnish and keep in force during the entire term of this Agreement the following insurance in at least the following minimum amounts:

1. Workers Compensation (Statutory).
2. Employers Liability with a limit of at least five hundred thousand dollars (\$500,000).
3. Commercial Automobile Insurance with a combined single limit of at least two million dollars (\$2,000,000) covering all owned, non-owned, and hired vehicles.
4. Commercial General Liability Insurance including Broad Form Property Damage, Contractual Liability, and Completed Operations with a combined single limit of at least two million dollars (\$2,000,000) for bodily injury, death, or property damage arising from any one occurrence.
5. Professional Liability with limits of at least five million dollars (\$5,000,000) in the event that Subcontractor will be providing software development or installation, access to Customer or ASTROA information, IT services, engineering, consulting, or other similar professional services.

If Seller does not maintain Workers Compensation insurance and is not required by law to do so, then Seller must provide evidence of current enrollment (by copy of membership or benefits card) in a personal health (medical) plan that will cover any injury, illness, or disease affecting Seller personnel during the performance of this Agreement.

Seller and Seller's lower-tier subcontractors will furnish certificates or adequate proof of the foregoing insurance prior to the performance of the Work authorized by this Agreement. The provisions of this Schedule will survive any termination or expiration of this Agreement.

In the following clauses, "Contractor" shall mean "Seller" unless specifically noted otherwise.

Section A - Required:

A.1 Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services Equipment (August 2020) (Tailored from FAR 52.204-25)

(a) Definitions. As used in this clause-

"Backhaul" means intermediate links between the core network, or backbone network, and the small subnetworks at the edge of the network (e.g., connecting cell phones/towers to the core telephone network). Backhaul can be wireless (e.g., microwave) or wired (e.g., fiber optic, coaxial cable, Ethernet).

"Covered foreign country" means The People's Republic of

China. "Covered telecommunications equipment or

services" means-

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

"Critical technology" means-

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

"Interconnection arrangements" means arrangements governing the physical

connection of two or more networks to allow the use of another's network to hand off traffic where it is ultimately delivered (e.g., connection of a customer of telephone provider A to a customer of telephone company B) or sharing data and other information resources.

"Reasonable inquiry" means an inquiry designed to uncover any information in the entity's possession about the identity of the producer or provider of covered telecommunications equipment or services used by the entity that excludes the need to include an internal or third-party audit.

"Roaming" means cellular communications services (e.g., voice, video, data) received from a visited network when unable to connect to the facilities of the home network either because signal coverage is too weak or because traffic is too high.

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

(b) Prohibition.

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

(2) Reserved.

(c) Exceptions. This clause does not prohibit contractors from providing-

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

(d) Reporting requirement.

(1) In the event Contractor identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or Seller is notified of such by a subcontractor at any tier or any other source, Seller shall report the information in paragraph (d)(2) of this clause via email to Buyer's Authorized Procurement Representative, with the required information in the body of the email.

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

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

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

of covered telecommunications equipment or services.

- (e) Subcontracts. The Contractor shall insert the substance of this clause, including this paragraph (e) and excluding paragraph (b)(2), in all subcontracts and other contractual instruments, including subcontracts for the acquisition of commercial items.

[End of A.1]

Section B - Government Furnished Property (GFP):

B.1 Government Property (Tailored from FAR 52.245-1)

Definitions. As used in this clause-

"Cannibalize" means to remove parts from Government property for use or for installation on other Government property.

"Contractor-acquired property" means property acquired, fabricated, or otherwise provided by the Contractor for performing an agreement, and to which the Government has title.

"Contractor inventory" means-

- (1) Any property acquired by and in the possession of a Contractor or subcontractor under an agreement for which title is vested in the Government and which exceeds the amounts needed to complete full performance under the entire agreement;
- (2) Any property that the Government is obligated or has the option to take over under any type of agreement, e.g., as a result either of any changes in the specifications or plans thereunder or of the termination of the agreement (or subcontract thereunder), before completion of the work, for the convenience or at the option of the Government; and
- (3) Government-furnished property that exceeds the amounts needed to complete full performance under the entire agreement.

"Contractor's managerial personnel" means the Contractor's directors, officers, managers, superintendents, or equivalent representatives who have supervision or direction of-

- (1) All or substantially all of the Contractor's business;
- (2) All or substantially all of the Contractor's operation at any one plant or separate location; or
- (3) A separate and complete major industrial operation.

"Demilitarization" means rendering a product unusable for, and not restorable to, the purpose for which it was designed or is customarily used.

"Discrepancies incident to shipment" means any differences (e.g., count or condition) between the items documented to have been shipped and items actually received.

"Equipment" means a tangible item that is functionally complete for its intended purpose, durable, nonexpendable, and needed for the performance of an agreement. Equipment is not intended for sale, and does not ordinarily lose its identity or become a component part of another article when put into use. Equipment does not include material, real property, special test equipment or special tooling.

"Government-furnished property" means property in the possession of, or directly acquired by, the Government and subsequently furnished to the Contractor for performance of an agreement.

Government-furnished property includes, but is not limited to, spares and property furnished for repair, maintenance, overhaul, or modification.

Government-furnished property also includes contractor-acquired property if the contractor-acquired property is a deliverable under a cost agreement when accepted by the Government for continued use under the agreement.

"Government property" means all property owned or leased by the Government.

Government property includes both Government-furnished and Contractor-acquired property. Government property includes material, equipment, special tooling, special test equipment, and real property. Government property does not

include intellectual property and software.

"Loss of Government property" means unintended, unforeseen or accidental loss, damage or destruction to Government property that reduces the Government's expected economic benefits of the property. Loss of Government property does not include purposeful destructive testing,

obsolescence, normal wear and tear or manufacturing defects. Loss of Government property includes, but is not limited to-

- (1) Items that cannot be found after a reasonable search;
- (2) Theft;
- (3) Damage resulting in unexpected harm to property requiring repair to restore the item to usable condition; or
- (4) Destruction resulting from incidents that render the item useless for its intended purpose or beyond economical repair.

"Material" means property that may be consumed or expended during the performance of an agreement, component parts of a higher assembly, or items that lose their individual identity through incorporation into an end item. Material does not include equipment, special tooling, special test equipment or real property.

"Nonseverable" means property that cannot be removed after construction or installation without substantial loss of value or damage to the installed property or to the premises where installed.

"Precious metals" means silver, gold, platinum, palladium, iridium, osmium, rhodium, and ruthenium.

"Production scrap" means unusable material resulting from production, engineering, operations and maintenance, repair, and research and development agreement activities. Production scrap may have value when re-melted or reprocessed, e.g., textile and metal clippings, borings, and faulty castings and forgings.

"Property" means all tangible property, both real and personal.

"Property Administrator" means an authorized representative of the Agreements Officer appointed in accordance with agency procedures, responsible for administering the agreement requirements and obligations relating to Government property in the possession of a Contractor.

"Property records" means the records created and maintained by the contractor in support of its stewardship responsibilities for the management of Government property.

"Provide" means to furnish, as in Government-furnished property, or to acquire, as in contractor acquired property.

"Real property" See Federal Management Regulation 102-71.20 (41 CFR 102-71.20).

"Sensitive property" means property potentially dangerous to the public safety or security if stolen, lost, or misplaced, or that shall be subject to exceptional physical security, protection, control, and accountability. Examples include weapons, ammunition, explosives, controlled substances, radioactive materials, hazardous materials or wastes, or precious metals.

"Unit acquisition cost" means-

- (1) For Government-furnished property, the dollar value assigned by the Government and identified in the agreement; and
- (2) For contractor-acquired property, the cost derived from the Contractor's records that reflect consistently applied generally accepted accounting principles.

Property management.

- (1) The Contractor shall have a system of internal controls to manage (control, use, preserve, protect, repair, and maintain) Government property in its possession. The system shall be adequate to satisfy the requirements of this clause. In doing so, the Contractor shall

initiate and maintain the processes, systems, procedures, records, and methodologies necessary for effective and efficient control of Government property. The Contractor shall disclose any significant changes to its property management system to the Property Administrator prior to implementation of the changes. The Contractor may employ customary commercial practices, voluntary consensus standards, or industry-leading practices and standards that provide effective and efficient Government property management that are necessary and appropriate for the performance of this agreement (except where inconsistent with law or regulation).

- (2) The Contractor's responsibility extends from the initial acquisition and receipt of property, through stewardship, custody, and use until formally relieved of responsibility by authorized means, including delivery, consumption, expending, sale (as surplus property), or other disposition, or via a completed investigation, evaluation, and final determination for lost property. This requirement applies to all Government property under the Contractor's accountability, stewardship, possession or control, including its vendors or subcontractors (see paragraph (f)(1)(v) of this clause).
- (3) The Contractor shall include the requirements of this clause in all subcontracts under which Government property is acquired or furnished for subcontract performance.
- (4) The Contractor shall establish and maintain procedures necessary to assess its property management system effectiveness and shall perform periodic internal reviews, surveillances, self assessments, or audits. Significant findings or results of such reviews and audits pertaining to Government property shall be made available to the Property Administrator.

Use of Government property.

- (1) The Contractor shall use Government property, either furnished or acquired under this agreement, only for performing this agreement, unless otherwise provided for in this agreement or approved by the Agreements Officer.
- (2) Modifications or alterations of Government property are prohibited, unless they are-
 - (i) Reasonable and necessary due to the scope of work under this agreement or its terms and conditions;
 - (ii) Required for normal maintenance; or
 - (iii) Otherwise authorized by the Agreements Officer.
- (3) The Contractor shall not cannibalize Government property unless otherwise provided for in this agreement or approved by the Agreements Officer.

Government-furnished property.

- (1) The Government shall deliver to the Contractor the Government-furnished property described in this agreement. The Government shall furnish related data and information needed for the intended use of the property. The warranties of suitability of use and timely delivery of Government-furnished property do not apply to property acquired or fabricated by the Contractor as contractor-acquired property and subsequently transferred to another agreement with this Contractor.
- (2) The delivery and/or performance dates specified in this agreement are based upon the expectation that the Government-furnished property will be suitable for agreement performance and will be delivered to the Contractor by the dates stated in the agreement.
 - (i) If the property is not delivered to the Contractor by the dates stated in the agreement, the Agreements Officer shall, upon the Contractor's timely written request, consider an equitable adjustment to the agreement.
 - (ii) In the event property is received by the Contractor, or for Government-furnished property after receipt and installation, in a condition not suitable for its intended use, the Agreements Officer shall, upon the Contractor's timely written request, advise the Contractor on a course of action to remedy the problem. Such action may include repairing, replacing, modifying, returning, or otherwise disposing of the

property at the Government's expense. Upon completion of the required action(s), the Agreements Officer shall consider an equitable adjustment to the agreement (see also paragraph (f)(1)(ii)(A) of this clause).

(iii) The Government may, at its option, furnish property in an "as-is" condition. The Contractor will be given the opportunity to inspect such property prior to the property being provided. In such cases, the Government makes no warranty with respect to the serviceability and/or suitability of the property for agreement performance. Any repairs, replacement, and/or refurbishment shall be at the Contractor's expense.

(3)

- (i) The Agreements Officer may by written notice, at any time-
 - (A) Increase or decrease the amount of Government-furnished property under this agreement;
 - (B) Substitute other Government-furnished property for the property previously furnished, to be furnished, or to be acquired by the Contractor for the Government under this agreement; or
 - (C) Withdraw authority to use property.
- (ii) Upon completion of any action(s) under paragraph (d)(3)(i) of this clause, and the Contractor's timely written request, the Agreements Officer shall consider an equitable adjustment to the agreement.

Title to Government property.

- (1) All Government-furnished property and all property acquired by the Contractor, title to which vests in the Government under this paragraph (collectively referred to as "Government property"), is subject to the provisions of this clause. The Government shall retain title to all Government furnished property. Title to Government property shall not be affected by its incorporation into or attachment to any property not owned by the Government, nor shall Government property become a fixture or lose its identity as personal property by being attached to any real property.

Contractor plans and systems.

- (1) Contractors shall establish and implement property management plans, systems, and procedures at the agreement, program, site or entity level to enable the following outcomes:
 - (i) *Acquisition of Property.* The Contractor shall document that all property was acquired consistent with its engineering, production planning, and property control operations.
 - (ii) *Receipt of Government Property.* The Contractor shall receive Government property and document the receipt, record the information necessary to meet the record requirements of paragraph (f)(1)(iii)(A)(1) through (5) of this clause, identify as Government owned in a manner appropriate to the type of property (e.g., stamp, tag, mark, or other identification), and manage any discrepancies incident to shipment.
 - (A) *Government-furnished property.* The Contractor shall furnish a written statement to the Property Administrator containing all relevant facts, such as cause or condition and a recommended course(s) of action, if overages, shortages, or damages and/or other discrepancies are discovered upon receipt of Government-furnished property.
 - (B) *Contractor-acquired property.* The Contractor shall take all actions necessary to adjust for overages, shortages, damage and/or other discrepancies discovered upon receipt, in shipment of Contractor-acquired property from a vendor or supplier, so as to ensure the proper allocability and allowability of associated costs.
 - (iii) *Records of Government property.* The Contractor shall create and maintain records of all Government property accountable to the agreement, including Government-furnished and Contractor-acquired property.
 - (A) Property records shall enable a complete, current, auditable record of all transactions and shall, unless otherwise approved by the Property Administrator, contain the following:

- (1) The name, part number and description, National Stock Number (if needed for additional item identification tracking and/or disposition), and other data elements as necessary and required in accordance with the terms and conditions of the agreement.
 - (2) Quantity received (or fabricated), issued, and balance-on-hand.
 - (3) Unit acquisition cost.
 - (4) Unique-item identifier or equivalent (if available and necessary for individual item tracking).
 - (5) Unit of measure.
 - (6) Accountable agreement number or equivalent code designation.
 - (7) Location.
 - (8) Disposition.
 - (9) Posting reference and date of transaction.
 - (10) Date placed in service (if required in accordance with the terms and conditions of the agreement).
- (B) *Use of a Receipt and Issue System for Government Material.* When approved by the Property Administrator, the Contractor may maintain, in lieu of formal property records, a file of appropriately cross-referenced documents evidencing receipt, issue, and use of material that is issued for immediate consumption.
- (iv) *Physical inventory.* The Contractor shall periodically perform, record, and disclose physical inventory results. A final physical inventory shall be performed upon agreement completion or termination. The Property Administrator may waive this final inventory requirement, depending on the circumstances (e.g., overall reliability of the Contractor's system or the property is to be transferred to a follow-on agreement).
- (v) *Subcontractor control.*
 - (A) The Contractor shall award subcontracts that clearly identify items to be provided and the extent of any restrictions or limitations on their use. The Contractor shall ensure appropriate flow down of agreement terms and conditions (e.g., extent of liability for loss of Government property).
 - (B) The Contractor shall assure its subcontracts are properly administered and reviews are periodically performed to determine the adequacy of the subcontractor's property management system.
- (vi) *Reports.* The Contractor shall have a process to create and provide reports of discrepancies, loss of Government property, physical inventory results, audits and self-assessments, corrective actions, and other property-related reports as directed by the Agreements Officer.
- (vii) *Relief of stewardship responsibility and liability.* The Contractor shall have a process to enable the prompt recognition, investigation, disclosure and reporting of loss of Government property, including losses that occur at subcontractor or alternate site locations.
 - (A) This process shall include the corrective actions necessary to prevent recurrence.
 - (B) Unless otherwise directed by the Property Administrator, the Contractor shall investigate and report to the Government all incidents of property loss as soon as the facts become known. Such reports shall, at a minimum, contain the following information:
 - (1) Date of incident (if known).
 - (2) The data elements required under (f)(1)(iii)(A).
 - (3) Quantity.
 - (4) Accountable agreement number.
 - (5) A statement indicating current or future need.
 - (6) Unit acquisition cost, or if applicable, estimated sales proceeds, estimated repair or replacement costs.
 - (7) All known interests in commingled material of which includes Government material.
 - (8) Cause and corrective action taken or to be taken to prevent recurrence.
 - (9) A statement that the Government will receive compensation covering

- the loss of Government property, in the event the Contractor was or will be reimbursed or compensated.
 - (10) Copies of all supporting documentation.
 - (11) Last known location.
 - (12) A statement that the property did or did not contain sensitive, export controlled, hazardous, or toxic material, and that the appropriate agencies and authorities were notified.
- (C) Unless the agreement provides otherwise, the Contractor shall be relieved of stewardship responsibility and liability for property when-
- (1) Such property is consumed or expended, reasonably and properly, or otherwise accounted for, in the performance of the agreement, including reasonable inventory adjustments of material as determined by the Property Administrator;
 - (2) Property Administrator grants relief of responsibility and liability for loss of Government property;
 - (3) Property is delivered or shipped from the Contractor's plant, under Government instructions, except when shipment is to a subcontractor or other location of the Contractor; or
 - (4) Property is disposed of in accordance with paragraphs U) and (k) of this clause.
- (viii) *Utilizing Government property.*
- (A) The Contractor shall utilize, consume, move, and store Government Property only as authorized under this agreement. The Contractor shall promptly disclose and report Government property in its possession that is excess to agreement performance.
 - (B) Unless otherwise authorized in this agreement or by the Property Administrator the Contractor shall not commingle Government material with material not owned by the Government.
- (ix) *Maintenance.* The Contractor shall properly maintain Government property. The Contractor's maintenance program shall enable the identification, disclosure, and performance of normal and routine preventative maintenance and repair. The Contractor shall disclose and report to the Property Administrator the need for replacement and/or capital rehabilitation.
- (x) *Property closeout.* The Contractor shall promptly perform and report to the Property Administrator agreement property closeout, to include reporting, investigating and securing closure of all loss of Government property cases; physically inventorying all property upon termination or completion of this agreement; and disposing of items at the time they are determined to be excess to contractual needs.
- (2) The Contractor shall establish and maintain Government accounting source data, as may be required by this agreement, particularly in the areas of recognition of acquisitions, loss of Government property, and disposition of material and equipment.

Systems analysis.

- (1) The Government or Buyer shall have access to the Contractor's premises and all Government property, at reasonable times, for the purposes of reviewing, inspecting and evaluating the Contractor's property management plan(s), systems, procedures, records, and supporting documentation that pertains to Government property. This access includes all site locations and, with the Contractor's consent, all subcontractor premises.
- (2) Records of Government property shall be readily available to authorized Government personnel and shall be appropriately safeguarded.
- (3) Should it be determined by the Government that the Contractor's (or subcontractor's) property management practices are inadequate or not acceptable for the effective management and control of Government property under this agreement, or present an undue risk to the Government, the Contractor shall prepare a corrective action plan when requested by the Property Administer and take all necessary corrective actions as specified by the schedule within the corrective action plan.

- (4) The Contractor shall ensure Government access to subcontractor premises, and all Government property located at subcontractor premises, for the purposes of reviewing, inspecting and evaluating the subcontractor's property management plan, systems, procedures, records, and supporting documentation that pertains to Government property.

Contractor Liability for Government Property.

- (1) Unless otherwise provided for in the agreement, the Contractor shall not be liable for loss of Government property furnished or acquired under this agreement, except when any one of the following applies:
 - (i) The risk is covered by insurance or the Contractor is otherwise reimbursed (to the extent of such insurance or reimbursement). The allowability of insurance costs shall be determined in accordance with 31.205-19.
 - (ii) Loss of Government property that is the result of willful misconduct or lack of good faith on the part of the Contractor's managerial personnel.
 - (iii) The Agreements Officer has, in writing, revoked the Government's assumption of risk for loss of Government property due to a determination under paragraph (g) of this clause that the Contractor's property management practices are inadequate, and/or present an undue risk to the Government, and the Contractor failed to take timely corrective action. If the Contractor can establish by clear and convincing evidence that the loss of Government property occurred while the Contractor had adequate property management practices or the loss did not result from the Contractor's failure to maintain adequate property management practices, the Contractor shall not be held liable.
- (2) The Contractor shall take all reasonable actions necessary to protect the property from further loss. The Contractor shall separate the damaged and undamaged property, place all the affected property in the best possible order, and take such other action as the Property Administrator directs.
- (3) The Contractor shall do nothing to prejudice the Government's rights to recover against third parties for any loss of Government property.
- (4) The Contractor shall reimburse the Government for loss of Government property, to the extent that the Contractor is financially liable for such loss, as directed by the Agreements Officer.
- (5) Upon the request of the Agreements Officer, the Contractor shall, at the Government's expense, furnish to the Government all reasonable assistance and cooperation, including the prosecution of suit and the execution of instruments of assignment in favor of the Government in obtaining recovery.

Equitable adjustment. Equitable adjustments under this clause shall be made in accordance with the procedures of the Changes clause. However, the Government shall not be liable for breach of agreement for the following:

- (1) Any delay in delivery of Government-furnished property.
- (2) Delivery of Government-furnished property in a condition not suitable for its intended use.
- (3) An increase, decrease, or substitution of Government-furnished property.
- (4) Failure to repair or replace Government property for which the Government is responsible.

Contractor inventory disposal. Except as otherwise provided for in this agreement, the Contractor shall not dispose of Contractor inventory until authorized to do so by the Plant Clearance Officer or authorizing official.

- (1) Predisposal requirements.
 - (i) If the Contractor determines that the property has the potential to fulfill requirements under other contracts/agreements, the Contractor, in consultation with the Property Administrator, shall request that the Agreements Officer transfer the property to the contract/agreement in question, or provide authorization for use, as appropriate. In lieu of transferring the property, the Agreements Officer may authorize the Contractor to credit the costs of Contractor acquired property (material only) to the losing contract/agreement, and debit the gaining contract/agreement with the corresponding cost, when such material is needed for use on another contract/agreement. Property no longer needed shall be considered

- contractor inventory.
- (ii) For any remaining Contractor-acquired property, the Contractor may purchase the property at the unit acquisition cost if desired or make reasonable efforts to return unused property to the appropriate supplier at fair market value (less, if applicable, a reasonable restocking fee that is consistent with the supplier's customary practices.)
- (2) *Inventory disposal schedules.*
 - (i) Absent separate agreement terms and conditions for property disposition, and provided the property was not reutilized, transferred, or otherwise disposed of, the Contractor, as directed by the Plant Clearance Officer or authorizing official, shall use Standard Form 1428, Inventory Disposal Schedule or electronic equivalent, to identify and report-
 - (A) Government-furnished property that is no longer required for performance of this agreement;
 - (B) Contractor-acquired property, to which the Government has obtained title under paragraph (e) of this clause, which is no longer required for performance of that contract/agreement; and
 - (C) Termination inventory.
 - (ii) The Contractor may annotate inventory disposal schedules to identify property the Contractor wishes to purchase from the Government, in the event that the property is offered for sale.
 - (iii) Separate inventory disposal schedules are required for aircraft in any condition, flight safety critical aircraft parts, and other items as directed by the Plant Clearance Officer.
 - (iv) The Contractor shall provide the information required by paragraph (f)(1)(iii) of this clause along with the following:
 - (A) Any additional information that may facilitate understanding of the property's intended use.
 - (B) For work-in-progress, the estimated percentage of completion.
 - (C) For precious metals in raw or bulk form, the type of metal and estimated weight.
 - (D) For hazardous material or property contaminated with hazardous material, the type of hazardous material.
 - (E) For metals in mill product form, the form, shape, treatment, hardness, temper, specification (commercial or Government) and dimensions (thickness, width and length).
 - (v) Property with the same description, condition code, and reporting location may be grouped in a single line item.
 - (vi) Scrap should be reported by "lot" along with metal content, estimated weight and estimated value.
- (3) *Submission requirements.*
 - (i) The Contractor shall submit inventory disposal schedules to the Plant Clearance Officer no later than-
 - (A) 30 days following the Contractor's determination that a property item is no longer required for performance of this agreement;
 - (B) 60 days, or such longer period as may be approved by the Plant Clearance Officer, following completion of agreement deliveries or performance; or
 - (C) 120 days, or such longer period as may be approved by the Termination Agreements Officer, following agreement termination in whole or in part.
 - (ii) Unless the Plant Clearance Officer determines otherwise, the Contractor need not identify or report production scrap on inventory disposal schedules, and may process and dispose of production scrap in accordance with its own internal scrap procedures. The processing and disposal of other types of Government-owned scrap will be conducted in accordance with the terms and conditions of the agreement or Plant Clearance Officer direction, as appropriate.
- (4) *Corrections.* The Plant Clearance Officer may-
 - (i) Reject a schedule for cause (e.g., contains errors, determined to be inaccurate); and
 - (ii) Require the Contractor to correct an inventory disposal schedule.
- (5) *Postsubmission adjustments.* The Contractor shall notify the Plant Clearance Officer at

least 10 working days in advance of its intent to remove an item from an approved inventory disposal schedule. Upon approval of the Plant Clearance Officer, or upon expiration of the notice period, the Contractor may make the necessary adjustments to the inventory schedule.

(6) *Storage.*

(i) The Contractor shall store the property identified on an inventory disposal schedule pending receipt of disposal instructions. The Government's failure to furnish disposal instructions within 120 days following acceptance of an inventory disposal schedule may entitle the Contractor to an equitable adjustment for costs incurred to store such property on or after the 121st day.

(ii) The Contractor shall obtain the Plant Clearance Officer's approval to remove property from the premises where the property is currently located prior to receipt of final disposition instructions. If approval is granted, any costs incurred by the Contractor to transport or store the property shall not increase the price or fee of any Government agreement. The storage area shall be appropriate for assuring the property's physical safety and suitability for use. Approval does not relieve the Contractor of any liability for such property under this agreement.

(7) *Disposition instructions.*

(i) The Contractor shall prepare for shipment, deliver f.o.b. origin, or dispose of Contractor inventory as directed by the Plant Clearance Officer. Unless otherwise directed by the Agreements Officer or by the Plant Clearance Officer, the Contractor shall remove and destroy any markings identifying the property as U.S. Government-owned property prior to its disposal.

(ii) The Agreements Officer may require the Contractor to demilitarize the property prior to shipment or disposal. In such cases, the Contractor may be entitled to an equitable adjustment under paragraph (i) of this clause.

(8) *Disposal proceeds.* As directed by the Agreements Officer, the Contractor shall credit the net proceeds from the disposal of Contractor inventory to the agreement, or to the Treasury of the United States as miscellaneous receipts.

(9) *Subcontractor inventory disposal schedules.* The Contractor shall require its Subcontractors to submit inventory disposal schedules to the Contractor in accordance with the requirements of paragraph U)(3) of this clause.

Abandonment of Government property.

- (1) The Government shall not abandon sensitive property or termination inventory without the Contractor's written consent.
- (2) The Government, upon notice to the Contractor, may abandon any nonsensitive property in place, at which time all obligations of the Government regarding such property shall cease.
- (3) Absent agreement terms and conditions to the contrary, the Government may abandon parts removed and replaced from property as a result of normal maintenance actions, or removed from property as a result of the repair, maintenance, overhaul, or modification process.
- (4) The Government has no obligation to restore or rehabilitate the Contractor's premises under any circumstances; however, if Government-furnished property is withdrawn or is unsuitable for the intended use, or if other Government property is substituted, then the equitable adjustment under paragraph (i) of this clause may properly include restoration or rehabilitation costs.

Communication. All communications under this clause shall be in writing.

Contracts outside the United States. If this agreement is to be performed outside of the United States and its outlying areas, the words "Government" and "Government-furnished" (wherever they appear in this clause) shall be construed as "United States Government" and "United States Government-furnished," respectively.

[End of B.1]

Section C - Patent Rights, Data Rights and Copy Rights:**C.1 Patent Rights- Ownership by the Contractor (Tailored from FAR 52.227-11)**

This clause applies only if this contract is for experimental, developmental, or research work and Seller is a small business firm or nonprofit organization. In this clause, "Contractor" or "ASTRO" means Contractor, references to the Government are not changed and the subcontractor has all rights and obligations of the Contractor in the clause.

(a) As used in this clause-

"Invention" means any invention or discovery that is or may be patentable or otherwise protectable under title 35 of the U.S. Code,

"Made" means - When used in relation to any invention other than a plant variety, the conception or first actual reduction to practice of the invention

"Nonprofit organization" means a university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26

U.S.C. 501(c)) and exempt from taxation under section 501(a) of the Internal Revenue Code (26

U.S.C. 501(a)), or any nonprofit scientific or educational organization qualified under a State nonprofit organization statute.

"Practical application" means to manufacture, in the case of a composition of product; to practice, in the case of a process or method; or to operate, in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or The Government regulations, available to the public on reasonable terms.

"Subject invention" means any invention of **ASTRO** made in the performance of work under this contract.

(b) ASTRO's rights.

(1) Ownership.

(i) The Government shall have the initial option to retain title to each subject invention made only by Government employees. The Government shall promptly notify ASTRO upon making this election, and agrees to timely file patent applications at its own expense and agrees to grant to ASTRO a non-exclusive, irrevocable paid-up license to practice the subject invention throughout the world.

(ii) ASTRO shall have the initial option to retain title to each subject invention made jointly by ASTRO and Government employees. ASTRO shall promptly notify the Government upon making this election and agrees to timely file patent applications at its own expense and agrees to grant to the Government a non-exclusive, irrevocable paid-up license to practice, or have practiced for or on its behalf, the subject invention throughout the world.

(2) License.

(i) ASTRO shall retain a nonexclusive royalty-free license throughout the world in each subject invention to which the Government obtains title, unless ASTRO fails to disclose the invention within the times specified in paragraph (c) of this clause. ASTRO license extends to any domestic subsidiaries and affiliates within the corporate structure of which ASTRO is a part, and includes the right to grant sublicenses to the extent ASTRO was legally obligated to do so at agreement award. The license is transferable only with the written approval of the Government, except when transferred to the successor of that part of ASTRO's business to which the invention pertains.

(ii) ASTRO's license may be revoked or modified by the Government to the extent necessary to achieve expeditious practical application of the subject invention in a particular country in accordance with the procedures in FAR 27.302(i)(2) and 27.304- **1(f)**.

(c) ASTRO's obligations.

(1) ASTRO shall disclose in writing each subject invention to the Agreements Officer within 2 months after the inventor discloses it in writing to ASTRO personnel responsible for patent matters. The disclosure shall identify the inventor(s) and

this agreement under which the subject invention was made. It shall be sufficiently complete in technical detail to convey a clear understanding of the subject invention. The disclosure shall also identify any publication, on sale (i.e., sale or offer for sale), or public use of the subject invention, or whether a manuscript describing the subject invention has been submitted for publication and, if so, whether it has been accepted for publication. In addition, after disclosure to the

Government, ASTRO shall promptly notify the Agreements Officer of the acceptance of any manuscript describing the subject invention for publication and any on sale or public use.

- (2) ASTRO shall elect in writing whether or not to retain ownership of any subject invention by notifying the AO within six (6) months of disclosure. In any case where publication, on sale, or public use has initiated the 1-year statutory period during which valid patent protection can be obtained in the United States, the period of election of title shall no later than 60 days prior to the end of the statutory period.
 - (3) ASTRO may request extensions of time for disclosure, election, or filing under paragraphs (c)(1), (c)(2), and (c)(3) of this clause.
 - (4) ASTRO may request an extension to the six (6) month period for ownership election. The AO may, in their discretion, extend the ownership election period, but the ownership election period shall not exceed two (2) years from the disclosure of the subject invention.
- (d) Government's rights-
- (1) Ownership. ASTRO shall assign to the Government, on written request, title to any subject invention-
 - (i) If ASTRO fails to disclose or elect ownership to the subject invention within the times specified in paragraph (c) of this clause, or elects not to retain ownership; provided, that the Government may request title only within 60 days after learning of ASTRO's failure to disclose or elect within the specified times.
 - (ii) In those countries in which ASTRO fails to file patent applications within the times specified in paragraph (c) of this clause; provided, however, that if ASTRO has filed a patent application in a country after the times specified in paragraph (c) of this clause, but prior to its receipt of the written request of the Government, ASTRO shall continue to retain ownership in that country.
 - (iii) In any country in which ASTRO decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in reexamination or opposition proceeding on, a patent on a subject invention.
 - (2) License. If ASTRO retains ownership of any subject invention, the Government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice, or have practiced for or on its behalf, the subject invention throughout the world.
- (e) ASTRO action to protect the Government's interest.
- (1) ASTRO shall execute or have executed and promptly deliver to the Government all instruments necessary to-
 - (i) Establish or confirm the rights the Government has throughout the world in those subject inventions in which ASTRO elects to retain ownership; and
 - (ii) Assign title to the Government when requested under paragraph (d) of this clause and to enable the Government to obtain patent protection and plant variety protection for that subject invention in any country.
 - (2) ASTRO shall require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in ASTRO's format, each subject invention in order that ASTRO can comply with the disclosure provisions of paragraph (c) of this clause, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions. The disclosure format should require, as a minimum, the information required by paragraph (c)(1) of this clause. ASTRO shall instruct such employees, through employee agreements or other suitable educational programs, as to the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.
 - (3) ASTRO shall notify the Agreements Officer of any decisions not to file a non-

provisional patent application, continue the prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceeding on a patent, in any country, not less than 30 days before the expiration of the response or filing period required by the relevant patent office.

- (4) ASTRO shall include, within the specification of any United States non-provisional patent or plant variety protection application and any patent or plant variety protection certificate issuing thereon covering a subject invention, the following statement, "This invention was made with Government support under (identify the contract) awarded by (identify the Government). The Government has certain rights in the invention."
- (f) Reporting on utilization of subject inventions. ASTRO shall submit, on request, periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining utilization of the subject invention that are being made by ASTRO or its licensees or assignees. The reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by ASTRO, and other data and information as the Government may reasonably specify. ASTRO also shall provide additional reports as may be requested by the Government in connection with any march-in proceeding undertaken by the Government in accordance with paragraph (h) of this clause. ASTRO also shall mark any utilization report as confidential/proprietary to help prevent inadvertent release outside the Government. As required by 35 U.S.C. 202(c)(5), the Government will not disclose that information to persons outside the Government without ASTRO's permission.
- (g) Preference for United States industry. Notwithstanding any other provision of this clause, neither ASTRO nor any assignee shall grant to any person the exclusive right to use or sell any subject invention in the United States unless the person agrees that any products embodying the subject invention or produced through the use of the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement for an agreement may be waived by the Government upon a showing by ASTRO or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States, or that under the circumstances domestic manufacture is not commercially feasible.
- (h) March-in rights. ASTRO acknowledges that, with respect to any subject invention in which it has retained ownership, the Government has the right to require licensing pursuant to 35 U.S.C. 203 and 210(c), and in accordance with the procedures in 37 CFR 401.6 and any supplemental regulations of the Government in effect on the date of agreement award.
- (i) Special provisions for contracts with nonprofit organizations. If ASTRO is a nonprofit organization, it shall-
- (1) Not assign rights to a subject invention in the United States without the written approval of the Government, except where an assignment is made to an organization that has as one of its primary functions the management of inventions, provided, that the assignee shall be subject to the same provisions as ASTRO;
 - (2) Share royalties collected on a subject invention with the inventor, including Federal employee co-inventors (but through their agency if the Government deems it appropriate) when the subject invention is assigned in accordance with 35 U.S.C. 202(e) and 37 CFR 401.10;
 - (3) Use the balance of any royalties or income earned by ASTRO with respect to subject inventions, after payment of expenses (including payments to inventors) incidental to the administration of subject inventions for the support of scientific research or education; and
 - (4) Make efforts that are reasonable under the circumstances to attract licensees of subject inventions that are small business concerns, and give a preference to a small business concern when licensing a subject invention if ASTRO determines that the small business concern has a plan or proposal for marketing the invention which, if executed, is equally as likely to bring the invention to practical application as any plans or proposals from applicants that are not small business concerns; provided, that ASTRO is also satisfied that the small business concern has the capability and resources to carry out its plan or proposal. The decision whether to

- give a preference in any specific case will be at the discretion of ASTRO.
- (5) Allow the Secretary of Commerce to review ASTRO's licensing program and decisions regarding small business applicants, and negotiate changes to its licensing policies, procedures, or practices with the Secretary of Commerce when the Secretary's review discloses that ASTRO could take reasonable steps to more effectively implement the requirements of paragraph (i)(4) of this clause.
- U) Communications. [Complete according to agency instructions.]
- (k) Subcontracts.
- (1) ASTRO shall include the substance of this clause, including this paragraph (k), in all subcontracts for experimental, developmental, or research work to be performed by a small business concern or nonprofit organization.
 - (2) ASTRO shall include in all other subcontracts for experimental, developmental, or research work the substance of the patent rights clause required by FAR subpart 27.3.
 - (3) At all tiers, the patent rights clause must be modified to identify the parties as follows: references to the Government are not changed, and the subcontractor has all rights and obligations of ASTRO in the clause. ASTRO shall not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions.
 - (4) In subcontracts, at any tier, the Government, the subcontractor, and ASTRO agree that the mutual obligations of the parties created by this clause constitute an agreement between the subcontractor and the Government with respect to the matters covered by the clause; provided, however, that nothing in this paragraph is intended to confer any jurisdiction under the Contract Disputes statute in connection with proceedings under paragraph (h) of this clause.

[End of C.1]

C.2 Rights in Technical Data - Noncommercial Items (Tailored from DFARS 252.227-7013)

(a) Definitions. As used in this clause-

- (1) "Computer data base" means a collection of data recorded in a form capable of being processed by a computer. The term does not include computer software.
- (2) "Computer program" means a set of instructions, rules, or routines recorded in a form that is capable of causing a computer to perform a specific operation or series of operations.
- (3) "Computer software" means computer programs, source code, source code listings, object code listings, design details, algorithms, processes, flow charts, formulae and related material that would enable the software to be reproduced, recreated, or recompiled. Computer software does not include computer data bases or computer software documentation.
- (4) "Computer software documentation" means owner's manuals, user's manuals, installation instructions, operating instructions, and other similar items, regardless of storage medium, that explain the capabilities of the computer software or provide instructions for using the software.
- (5) "Covered Government support contractor" means a contractor (other than a litigation support contractor) under a contract or agreement, the primary purpose of which is to furnish independent and impartial advice or technical assistance directly to the Government in support of the Government's management and oversight of a program or effort (rather than to directly furnish an end item or service to accomplish a program or effort), provided that the contractor-
 - (i) Is not affiliated with the prime contractor or a first-tier subcontractor on the program or effort, or with any direct competitor of such prime contractor or any such first-tier subcontractor in furnishing end items or services of the type developed or produced on the program or effort; and
 - (ii) Receives access to technical data or computer software for performance of a Government contract or agreement that contains the clause at , Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends.

- (6) "Detailed manufacturing or process data" means technical data that describe the steps, sequences, and conditions of manufacturing, processing or assembly used by the manufacturer to produce an item or component or to perform a process.
- (7) "Developed" means that an item, component, or process exists and is workable. Thus, the item or component must have been constructed or the process practiced. Workability is generally established when the item, component, or process has been analyzed or tested sufficiently to demonstrate to reasonable people skilled in the applicable art that there is a high probability that it will operate as intended. Whether, how much, and what type of analysis or testing is required to establish workability depends on the nature of the item, component, or process, and the state of the art. To be considered "developed," the item, component, or process need not be at the stage where it could be offered for sale or sold on the commercial market, nor must the item, component, or process be actually reduced to practice within the meaning of Title 35 of the United States Code.
- (8) "Developed exclusively at private expense" means development was accomplished entirely with costs charged to indirect cost pools, costs not allocated to a government agreement, or any combination thereof.
 - (i) Private expense determinations should be made at the lowest practicable level.
 - (ii) Under fixed-price contracts or agreements, when total costs are greater than the firm fixed-price or ceiling price of the contract or agreement, the additional development costs necessary to complete development shall not be considered when determining whether development was at government, private, or mixed expense.
- (9) "Developed exclusively with government funds" means development was not accomplished exclusively or partially at private expense.
- (10) "Developed with mixed funding" means development was accomplished partially with costs charged to indirect cost pools and/or costs not allocated to a government contract/agreement, and partially with costs charged directly to a government contract or agreement.
- (11) "Form, fit, and function data" means technical data that describes the required overall physical, functional, and performance characteristics (along with the qualification requirements, if applicable) of an item, component, or process to the extent necessary to permit identification of physically and functionally interchangeable items.
- (12) "Government purpose" means any activity in which the United States Government is a party, including cooperative agreements with international or multi-national defense organizations, or sales or transfers by the United States Government to foreign governments or international organizations. Government purposes include competitive procurement, but do not include the rights to use, modify, reproduce, release, perform, display, or disclose technical data for commercial purposes or authorize others to do so.
- (13) "Government purpose rights" means the rights to-
 - (i) Use, modify, reproduce, release, perform, display, or disclose technical data within the Government without restriction; and
 - (ii) Release or disclose technical data outside the Government and authorize persons to whom release or disclosure has been made to use, modify, reproduce, release, perform, display, or disclose that data for United States government purposes.
- (14) "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, release, or disclose such data or authorize the use or reproduction of the data by persons outside the Government if-
 - (i) The reproduction, release, disclosure, or use is-
 - (A) Necessary for emergency repair and overhaul; or

- (B) A release or disclosure to-
 - (1) A covered Government support contractor in performance of its covered Government support contract for use, modification, reproduction, performance, display, or release or disclosure to a person authorized to receive limited rights technical data; or
 - (2) A foreign government, of technical data other than detailed manufacturing or process data, when use of such data by the foreign government is in the interest of the Government and is required for evaluational or informational purposes;
 - (ii) The recipient of the technical data is subject to a prohibition on the further reproduction, release, disclosure, or use of the technical data; and
 - (iii) The contractor or subcontractor asserting the restriction is notified of such reproduction, release, disclosure, or use.
- (15) "Technical data" means recorded information, regardless of the form or method of the recording, of a scientific or technical nature (including computer software documentation). The term does not include computer software or data incidental to contract administration, such as financial and/or management information.
- (16) "Unlimited rights" means rights to use, modify, reproduce, perform, display, release, or disclose technical data in whole or in part, in any manner, and for any purpose whatsoever, and to have or authorize others to do so.
- (b) 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 other than computer software documentation (see the Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation clause of this agreement for rights in computer software documentation):
 - (1) Unlimited rights. The Government shall have unlimited rights in technical data that are-
 - (i) Data pertaining to an item, component, or process which has been or will be developed exclusively with Government funds;
 - (ii) Studies, analyses, test data, or similar data produced for this agreement, when the study, analysis, test, or similar work was specified as an element of performance;
 - (iii) Created exclusively with Government funds in the performance of a contract or agreement 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 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 agreement or as a result of negotiations; or
 - (ix) Data furnished to the Government, under this or any other Government contract/agreement 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.

(2) Government purpose rights.

- (i) The Government shall have government purpose rights for a five-year period, or such other period as may be negotiated, in technical data-
 - (A) That pertain to items, components, or processes developed with mixed funding except when the Government is entitled to unlimited rights in such data as provided in paragraphs (b)(1)(ii) and (b)(1)(iv) through (b)(1)(ix) of this clause; or
 - (B) Created with mixed funding in the performance of a contract or agreement that does not require the development, manufacture, construction, or production of items, components, or processes.
- (ii) The five-year period, or such other period as may have been negotiated, shall commence upon execution of the contract, agreement, subcontract, letter agreement (or similar contractual instrument), contract or agreement modification, or option exercise that required development of the items, components, or processes or creation of the data described in paragraph (b)(2)(i)(B) of this clause. Upon expiration of the five-year or other negotiated period, the Government shall have unlimited rights in the technical data.
- (iii) The Government shall not release or disclose technical data in which it has government purpose rights unless-
 - (A) Prior to release or disclosure, the intended recipient is subject to the non disclosure agreement at [227.7103-7](#) of the Defense Federal Acquisition Regulation Supplement (DFARS); or
 - (B) The recipient is a Government contractor receiving access to the data for performance of a Government contract/agreement that contains the clause at DFARS 252.227-7025, Limitations on the Use or Disclosure of Government Furnished Information Marked with Restrictive Legends.
- (iv) The Contractor has the exclusive right, including the right to license others, to use technical data in which the Government has obtained government purpose rights under this agreement for any commercial purpose during the time period specified in the government purpose rights legend prescribed in paragraph (f)(2) of this clause.

(3) Limited rights.

- (i) Except as provided in paragraphs (b)(1)(ii) and (b)(1)(iv) through (b)(1)(ix) of this clause, the Government shall have limited rights in technical data-
 - (A) Pertaining to items, components, or processes developed exclusively at private expense and marked with the limited rights legend prescribed in paragraph (f) of this clause; or
 - (B) Created exclusively at private expense in the performance of a contract or agreement that does not require the development, manufacture, construction, or production of items, components, or processes.
- (ii) The Government shall require a recipient of limited rights data for emergency repair or overhaul to destroy the data and all copies in its possession promptly following completion of the emergency repair/overhaul and to notify the Contractor that the data have been destroyed.
- (iii) The Contractor, its subcontractors, and suppliers are not required to provide the Government additional rights to use, modify, reproduce, release, perform, display, or disclose technical data furnished to the Government with limited rights. However, if the Government desires to obtain additional rights in technical data in which it has limited rights, the Contractor agrees to promptly enter into negotiations with the Agreements Officer to determine whether there are acceptable terms for transferring such rights. All technical data in which the Contractor has granted the Government additional rights shall be listed or described in a license agreement made part of the agreement. The license shall enumerate the additional rights granted the Government in such data.
- (iv) The Contractor acknowledges that-
 - (A) Limited rights data are authorized to be released or disclosed to covered Government support contractors;
 - (B) The Contractor will be notified of such release or disclosure;
 - (C) The Contractor (or the party asserting restrictions as identified in the limited rights legend) may require each such covered Government

- support contractor to enter into a non-disclosure agreement directly with the Contractor (or the party asserting restrictions) regarding the covered Government support contractor's use of such data, or alternatively, that the Contractor (or party asserting restrictions) may waive in writing the requirement for a non-disclosure agreement; and
- (D) Any such non-disclosure agreement shall address the restrictions on the covered Government support contractor's use of the limited rights data as set forth in the clause at , Limitations on the Use or Disclosure of Government- Furnished Information Marked with Restrictive Legends. The non-disclosure agreement shall not include any additional terms and conditions unless mutually agreed to by the parties to the non-disclosure agreement.
- (4) Specifically negotiated license rights. The standard license rights granted to the Government under paragraphs (b)(1) through (b)(3) of this clause, including the period during which the Government shall have government purpose rights in technical data, may be modified by mutual agreement to provide such rights as the parties consider appropriate but shall not provide the Government lesser rights than are enumerated in paragraph (a)(14) of this clause. Any rights so negotiated shall be identified in a license agreement made part of this agreement.
- (5) Prior government rights. Technical data that will be delivered, furnished, or otherwise provided to the Government under this agreement, in which the Government has previously obtained rights shall be delivered, furnished, or provided with the pre-existing rights, unless-
- (i) The parties have agreed otherwise; or
 - (ii) Any restrictions on the Government's rights to use, modify, reproduce, release, perform, display, or disclose the data have expired or no longer apply.
- (6) Release from liability. The Contractor agrees to release the Government from liability for any release or disclosure of technical data made in accordance with paragraph (a)(14) or (b)(2)(iii) of this clause, in accordance with the terms of a license negotiated under paragraph (b)(4) of this clause, or by others to whom the recipient has released or disclosed the data and to seek relief solely from the party who has improperly used, modified, reproduced, released, performed, displayed, or disclosed Contractor data marked with restrictive legends.
- (c) Contractor rights in technical data. All rights not granted to the Government are retained by the Contractor.
- (d) Third party copyrighted data. The Contractor shall not, without the written approval of the Agreements Officer, incorporate any copyrighted data in the technical data to be delivered under this agreement unless the Contractor is the copyright owner or has obtained for the Government the license rights necessary to perfect a license or licenses in the deliverable data of the appropriate scope set forth in paragraph (b) of this clause, and has affixed a statement of the license or licenses obtained on behalf of the Government and other persons to the data transmittal document.
- (e) Identification and delivery of data to be furnished with restrictions on use, release, or disclosure.
- (1) This paragraph does not apply to restrictions based solely on copyright.
 - (2) Except as provided in paragraph (e)(3) of this clause, technical data that the Contractor asserts should be furnished to the Government with restrictions on use, release, or disclosure are identified in an attachment to this agreement (the Attachment). The Contractor shall not deliver any data with restrictive markings unless the data are listed on the Attachment.
 - (3) In addition to the assertions made in the Attachment, other assertions may be identified after award when based on new information or inadvertent omissions unless the inadvertent omissions would have materially affected the source selection decision. Such identification and assertion shall be submitted to the Agreements Officer as soon as practicable prior to the scheduled date for delivery of the data, in the following format, and signed by an official authorized to contractually obligate the Contractor:

Identification and Assertion of Restrictions on the Government's

Use, Release, or Disclosure of Technical Data.

The Contractor asserts for itself, or the persons identified below, that the Government's rights to use, release, or disclose the following technical data should be restricted-

Technical Data to be Furnished With Restrictions*	Basis for Assertion**	Asserted Rights Category***	Name of Person Asserting Restrictions****
(LIST)	(LIST)	(LIST)	(LIST)

*If the assertion is applicable to items, components, or processes developed at private expense, identify both the data and each such item, component, or process.

**Generally, the development of an item, component, or process at private expense, either exclusively or partially, is the only basis for asserting restrictions on the Government's rights to use, release, or disclose technical data pertaining to such items, components, or processes. Indicate whether development was exclusively or partially at private expense. If development was not at private expense, enter the specific reason for asserting that the Government's rights should be restricted.

***Enter asserted rights category (e.g., government purpose license rights from a prior agreement, rights in SBIR data generated under another agreement, limited or government purpose rights under this or a prior agreement, or specifically negotiated licenses).

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

Date	
Printed Name and Title	
Signature	

(End of identification and assertion)

- (4) When requested by the Agreements Officer, the Contractor shall provide sufficient information to enable the Agreements Officer to evaluate the Contractor's assertions. The Agreements

Officer reserves the right to add the Contractor's assertions to the Attachment and validate any listed assertion, at a later date, in accordance with the procedures of the Validation of Restrictive Markings on Technical Data clause of this agreement.

- (f) Marking requirements. The Contractor, and its subcontractors or suppliers, may only assert restrictions on the Government's rights to use, modify, reproduce, release, perform, display, or disclose technical data to be delivered under this agreement by marking the deliverable data subject to restriction. Except as provided in paragraph (f)(5) of this clause, only the following legends are authorized under this agreement: the government purpose rights legend at paragraph (f)(2) of this clause; the limited rights legend at paragraph (f)(3) of this clause; or the special license rights legend at paragraph (f)(4) of this clause; and/or a notice of copyright as prescribed under 17 U.S.C. 401 or 402.

- (1) General marking instructions. The Contractor, or its subcontractors or suppliers, shall conspicuously and legibly mark the appropriate legend on all technical data that qualify for such markings. The authorized legends shall be placed on the transmittal document or storage container and, for printed material, each page of the printed material containing technical data for which restrictions are asserted. When only portions of a page of printed material are subject to the asserted restrictions, such portions shall be identified by circling, underscoring, with a note, or other appropriate identifier. Technical data transmitted directly from one computer or computer terminal to another shall contain a notice of asserted restrictions. Reproductions of technical data or any portions thereof subject to asserted restrictions shall also reproduce the asserted restrictions.
- (2) Government purpose rights markings. Data delivered or otherwise furnished to the Government with government purpose rights shall be marked as follows: GOVERNMENT PURPOSE RIGHTS

Contract/Agreement No.		
Contractor Name		
Contractor Address		
Expiration Date		

The Government's rights to use, modify, reproduce, release, perform, display, or disclose these technical data are restricted by paragraph (b)(2) of the Rights in Technical Data Noncommercial Items clause contained in the above identified agreement. No restrictions apply after the expiration date shown above. Any reproduction of technical data or portions thereof marked with this legend must also reproduce the markings.
(End of legend)

- (3) Limited rights markings. Data delivered or otherwise furnished to the Government with limited rights shall be marked with the following legend:
LIMITED RIGHTS

Contract/Agreement No.	
Contractor Name	
Contractor Address	

The Government's rights to use, modify, reproduce, release, perform, display, or disclose these technical data are restricted by paragraph (b)(3) of the Rights in Technical Data- Noncommercial Items clause contained in the above identified agreement. Any reproduction of technical data or portions thereof marked with this legend must also reproduce the markings. Any person, other than the Government, who has been provided access to such data must promptly notify the above named Contractor.
(End of legend)

- (4) Special license rights markings.
- (i) Data in which the Government's rights stem from a specifically negotiated license shall be marked with the following legend:
SPECIAL LICENSE RIGHTS

The Government's rights to use, modify, reproduce, release, perform, display, or disclose these data are restricted by Agreement No. ____ (Insert agreement number)____, License No. ____ (Insert license identifier)____. Any reproduction of technical data or portions thereof marked with this legend must also reproduce the markings.

(End of legend)

- (ii) For purposes of this clause, special licenses do not include government purpose license rights acquired under a prior agreement (see paragraph (b)(5) of this clause).
- (5) Pre-existing data markings. If the terms of a prior contract, agreement or license permitted the Contractor to restrict the Government's rights to use, modify, reproduce, release, perform, display, or disclose technical data deliverable under this agreement, and those restrictions are still applicable, the Contractor may mark such data with the appropriate restrictive legend for which the data qualified under the prior contract, agreement or license. The marking procedures in paragraph (f)(1) of this clause shall be followed.
- (g) Contractor procedures and records. Throughout performance of this agreement, the Contractor and its subcontractors or suppliers that will deliver technical data with other than unlimited rights, shall-
 - (1) Have, maintain, and follow written procedures sufficient to assure that restrictive markings are used only when authorized by the terms of this clause; and
 - (2) Maintain records sufficient to justify the validity of any restrictive markings on technical data delivered under this agreement.
- (h) Removal of unjustified and nonconforming markings.
 - (1) Unjustified technical data markings. The rights and obligations of the parties regarding the validation of restrictive markings on technical data furnished or to be furnished under this agreement are contained in the Validation of Restrictive Markings on Technical Data clause of this agreement. Notwithstanding any provision of this agreement concerning inspection and acceptance, the Government may ignore or, at the Contractor's expense, correct or strike a marking if, in accordance with the procedures in the Validation of Restrictive Markings on Technical Data clause of this agreement, a restrictive marking is determined to be unjustified.
 - (2) Nonconforming technical data markings. A nonconforming marking is a marking placed on technical data delivered or otherwise furnished to the Government under this agreement that is not in the format authorized by this agreement. Correction of nonconforming markings is not subject to the Validation of Restrictive Markings on Technical Data clause of this agreement. If the Agreements Officer notifies the Contractor of a nonconforming marking and the Contractor fails to remove or correct such marking within sixty (60) days, the Government may ignore or, at the Contractor's expense, remove or correct any nonconforming marking.
- (i) Relation to patents. Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government under any patent.
- U) Limitation on charges for rights in technical data.
 - (1) The Contractor shall not charge to this agreement any cost, including, but not limited to, license fees, royalties, or similar charges, for rights in technical data to be delivered under this agreement when-
 - (i) The Government has acquired, by any means, the same or greater rights in the data; or
 - (ii) The data are available to the public without restrictions.
 - (2) The limitation in paragraph U)(1) of this clause-
 - (i) Includes costs charged by a subcontractor or supplier, at any tier, or costs incurred by the Contractor to acquire rights in subcontractor or supplier technical data, if the subcontractor or supplier has been paid for such rights under any other Government contract or agreement or under a license conveying the rights to the Government; and
 - (ii) Does not include the reasonable costs of reproducing, handling, or mailing the documents or other media in which the technical data will be delivered.
- (k) Applicability to subcontractors or suppliers.

- (1) The Contractor shall ensure that the rights afforded its subcontractors and suppliers under 10 U.S.C. 2320, 10 U.S.C. 2321, and the identification, assertion, and delivery processes of paragraph (e) of this clause are recognized and protected.
- (2) Whenever any technical data for noncommercial items, or for commercial items developed in any part at Government expense, is to be obtained from a subcontractor or supplier for delivery to the Government under this agreement, the Contractor shall use this same clause in the subcontract or other contractual instrument, including subcontracts or other contractual instruments for commercial items, and require its subcontractors or suppliers to do so, without alteration, except to identify the parties. This clause will govern the technical data pertaining to noncommercial items or to any portion of a commercial item that was developed in any part at Government expense, and the clause at will govern the technical data pertaining to any portion of a commercial item that was developed exclusively at private expense. No other clause shall be used to enlarge or diminish the Government's, the Contractor's, or a higher-tier subcontractor's or supplier's rights in a subcontractor's or supplier's technical data.
- (3) Technical data required to be delivered by a subcontractor or supplier shall normally be delivered to the next higher-tier contractor, subcontractor, or supplier. However, when there is a requirement in the prime contract or agreement for data which may be submitted with other than unlimited rights by a subcontractor or supplier, then said subcontractor or supplier may fulfill its requirement by submitting such data directly to the Government, rather than through a higher-tier contractor, subcontractor, or supplier.
- (4) The Contractor and higher-tier subcontractors or suppliers shall not use their power to award contracts or agreements as economic leverage to obtain rights in technical data from their subcontractors or suppliers.
- (5) In no event shall the Contractor use its obligation to recognize and protect subcontractor or supplier rights in technical data as an excuse for failing to satisfy its contractual obligation to the Government.

[End of C.2]

C. 5 Deferred Ordering of Technical Data or Computer Software (Tailored from DFARS 252.227- 7027)

In addition to technical data specified elsewhere in this contract to be delivered hereunder, the Government may, at any time during the performance of this contract or within a period of three (3) years after termination or expiration of this contract, order any technical data or generated in the performance of this contract or any subcontract hereunder. When the technical data or is ordered, the Contractor shall be compensated for converting the data or into the prescribed form, for reproduction and delivery. The obligation to deliver the technical data of a subcontractor and pertaining to an item obtained from him shall expire three (3) years after the date of termination or expiration of the subcontract. The Government's rights to use said data or shall be pursuant to the "Rights in Technical Data-Noncommercial" clause of this contract.

[End of C.5]

C.6 Validation of Restrictive Markings on Technical Data (Tailored from DFARS 252.227-7037)

(a) *Definitions.* The terms used in this clause are defined in the Rights in Technical Data-Noncommercial Items clause of this contract.

(b) *Presumption regarding development exclusively at private expense.*

(1) *Commercial items.*

(i) Except as provided in paragraph (b)(2) of this clause, the Agreements Officer will presume that the Contractor's or a subcontractor's asserted use or release restrictions with respect to a commercial item is justified on the basis that the item was developed exclusively at private expense.

(ii) The Agreements Officer will not challenge such assertions unless the Agreements Officer has information that demonstrates that the commercial item was not developed exclusively at private expense.

(2) *Major weapon systems.* In the case of a challenge to a use or release restriction that is asserted with respect to data of the Contractor or a subcontractor for a major weapon

system or a subsystem or component thereof on the basis that the major weapon system, subsystem, or component was developed exclusively at private expense-

(i) The presumption in paragraph (b)(1) of this clause applies to--

(A) A commercial subsystem or component of a major weapon system, if the major weapon system was acquired as a commercial item in accordance with DFARS subpart 234.70 (10 U.S.C. 2379(a));

(B) A component of a subsystem, if the subsystem was acquired as a commercial item in accordance with DFARS subpart 234.70 (10 U.S.C. 2379(b)); and

(C) Any other component, if the component is a commercially available off-the-shelf item or a commercially available off-the-shelf item with modifications of a type customarily available in the commercial marketplace or minor modifications made to meet Federal Government requirements; and

(ii) In all other cases, the challenge to the use or release restriction will be sustained unless information provided by the Contractor or a subcontractor demonstrates that the item or process was developed exclusively at private expense.

(c) *Justification.* The Contractor or subcontractor at any tier is responsible for maintaining records sufficient to justify the validity of its markings that impose restrictions on the Government and others to use, duplicate, or disclose technical data delivered or required to be delivered under the contract or subcontract. Except as provided in paragraph (b)(1) of this clause, the Contractor or subcontractor shall be prepared to furnish to the Agreements Officer a written justification for such restrictive markings in response to a challenge under paragraph (e) of this clause.

(d) *Prechallenge request for information.*

(1) The Agreements Officer may request the Contractor or subcontractor to furnish a written explanation for any restriction asserted by the Contractor or subcontractor on the right of the United States or others to use technical data. If, upon review of the explanation submitted, the Contracting Officer remains unable to ascertain the basis of the restrictive marking, the Agreements Officer may further request the Contractor or subcontractor to furnish additional information in the records of, or otherwise in the possession of or reasonably available to, the Contractor or subcontractor to justify the validity of any restrictive marking on technical data delivered or to be delivered under the contract or subcontract (e.g., a statement of facts accompanied with supporting documentation). The Contractor or subcontractor shall submit such written data as requested by the Agreements Officer within the time required or such longer period as may be mutually agreed.

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

(3) If the Contractor or subcontractor fails to respond to the Agreements Officer's request for information under paragraph (d)(1) of this clause, and the Agreements Officer determines that continued adherence to the marking would make impracticable the subsequent competitive acquisition of the item, component, or process to which the technical data relates, the Contracting Officer may challenge the validity of the marking as described in paragraph (e) of this clause.

(e) *Challenge.*

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

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

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

(iii) State that a DoD Agreements Officer's final decision, issued pursuant to paragraph (a) of this clause, sustaining the validity of a restrictive marking identical to the

asserted restriction, within the three-year period preceding the challenge, shall serve as justification for the asserted restriction if the validated restriction was asserted by the same Contractor or subcontractor (or any licensee of such Contractor or subcontractor) to which such notice is being provided; and

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

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

(3) The Contractor's or subcontractor's written response shall be considered a claim within the meaning of 41 U.S.C. 7101, Contract Disputes, and shall be certified in the form prescribed at 33.207 of the Federal Acquisition Regulation, regardless of dollar amount.

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

(f) *Final decision when Contractor or subcontractor fails to respond.* Upon a failure of a Contractor or subcontractor to submit any response to the challenge notice the Contracting Officer will issue a final decision to the Contractor or subcontractor in accordance with paragraph (b) of this clause and the Disputes clause of this contract pertaining to the validity of the asserted restriction. This final decision shall be issued as soon as possible after the expiration of the time period of paragraph (e)(1)(ii) or (e)(2) of this clause. Following issuance of the final decision, the Contracting Officer will comply with the procedures in paragraphs (g)(2)(ii) through (iv) of this clause.

(g) *Final decision when Contractor or subcontractor responds.*

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

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

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

(iii) The Government agrees that it will continue to be bound by the restrictive marking where a notice of intent to file suit in the United States Claims Court is provided to the Agreements Officer within ninety

(90) days from the issuance of the final decision under paragraph (g)(2)(i) of this clause. The Government will no longer be bound, and the Contractor or subcontractor agrees that the Government may strike or ignore the restrictive markings, if the Contractor or subcontractor fails to file its suit within one (1) year after issuance of the final decision. Notwithstanding the foregoing, where the head of an agency determines, on a nondelegable basis, that urgent or compelling circumstances will not permit waiting for the filing of a suit in the United States Claims Court, the Contractor or subcontractor agrees that the agency may, following notice to the Contractor or subcontractor, authorize release or disclosure of the technical data. Such agency determination may be made at any time after issuance of the final decision and will not affect the Contractor's or subcontractor's right to damages against the United States where its restrictive markings are ultimately upheld or to pursue other relief, if any, as may be provided by law.

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

(h) *Final disposition of appeal or suit.*

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

(i) The restrictive marking on the technical data shall be cancelled, corrected or ignored; and

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

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

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

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

(i) *Duration of right to challenge.* The Government may review the validity of any restriction on technical data, delivered or to be delivered under a contract, asserted by the Contractor or subcontractor. During the period within three (3) years of final payment on a contract or within three (3) years of delivery of the technical data to the Government, whichever is later, the Agreements Officer may review and make a written determination to challenge the restriction. The Government may, however, challenge a restriction on the release, disclosure or use of technical data at any time if such technical data-

(1) Is publicly available;

(2) Has been furnished to the United States without restriction; or

(3) Has been otherwise made available without restriction. Only the Agreements Officer's final decision resolving a formal challenge by sustaining the validity of a restrictive marking constitutes "validation" as addressed in 10 U.S.C. 2321.

U) *Decision not to challenge.* A decision by the Government, or a determination by the Agreements Officer, to not challenge the restrictive marking or asserted restriction shall not constitute "validation."

(k) *Privity of contract.* The Contractor or subcontractor agrees that the Agreements Officer may transact matters under this clause directly with subcontractors at any tier that assert restrictive markings. However, this clause neither creates nor implies privity of contract between the Government and subcontractors.

(l) *Flowdown.* The Contractor or subcontractor agrees to insert this clause in contractual instruments, including subcontracts and other contractual instruments for commercial items, with its subcontractors or suppliers at any tier requiring the delivery of technical data.

[End of C.6]

Section O - Security and Operations Security
(OPSEC):**0.1 Access and General Protection/Security Policy and Procedures**

- (1) The Contractor and all associated subcontractors' employees shall comply with applicable installation, facility, and area commander installation and facility access and local security policies and procedures (provided by the Government representative or Buyer). The contractor shall also provide all information required for background checks to meet installation access requirements to be accomplished by the installation Provost Marshal Office, Director of Emergency Services, or Security Office. The contractor workforce must comply with all personal identity verification requirements as directed by DoD, HQDA, and/or local policy. Should the Force Protection Condition (FPCON) at any individual facility or installation change, the Government may require changes in contractor security matters or processes.
- (2) For contractors requiring Common Access Card (CAC). Before CAC issuance, the contractor employee requires, at a minimum, a favorably adjudicated National Agency Check with Inquiries (NACI) or an equivalent or higher investigation in accordance with Army Directive 2014-05. The contractor employee will be issued a CAC only if duties involve one of the following: (1) Both physical access to a DoD facility and access, via logon, to DoD networks on-site or remotely; (2) Remote access, via logon, to a DoD network using DoD-approved remote access procedures; or (3) Physical access to multiple DoD facilities or multiple non-DoD federally controlled facilities on behalf of the DoD on a recurring basis for a period of six (6) months or more. At the discretion of the sponsoring activity, an initial CAC may be issued on a favorable review of the FBI fingerprint check and a successfully scheduled NACI at the Office of Personnel Management.
- (3) For contractors that do not require CAC, but require access to a DOD facility or installation. The contractor and all associated sub-contractors employees shall comply with adjudication standards, and procedures using the National Crime Information Center Interstate Identification Index (NCIC-11I) and Terrorist Screening Database (TSDB) (Army Directive 2014-05/AR 190- 13), applicable installation, facility and area commander installation/facility access and local security policies and procedures, Non-disclosure Statement; for OCONUS locations, refer to the Status of Forces Agreement and other theater regulations.

[End of 0.1]

- D.7 Contractors shall acquire and need to return all issued U.S. Government Common Access Cards, installation badges, and/or access passes issued specifically for this Subcontract where there is not a continuing need for access

D.8 Personal Identity Verification of Contractor Personnel

- (1) The Contractor shall comply with agency personal identity verification procedures identified in the agreement that implement Homeland Security Presidential Directive-12 (HSPD-12), Office of Management and Budget (OMB) guidance M-05-24 and Federal Information Processing Standards Publication (FIPS PUB) Number 201.
- (2) The Contractor shall account for all forms of Government-provided identification issued to the Contractor employees in connection with performance under this agreement. The Contractor shall return such identification to the issuing agency at the earliest of any of the following, unless otherwise determined by the Government:
 - (a) When no longer needed for agreement performance.
 - (b) Upon completion of the Contractor employee's employment.
 - (c) Upon agreement completion or termination.
- (3) The Agreements Officer may delay final payment under an agreement if the Contractor fails to comply with these requirements.
- (4) The Contractor shall insert the substance of this clause, including this paragraph (4), in all subcontracts when the subcontractor's employees are required to have routine physical access to a Federally-controlled facility and/or routine access to a Federally-controlled information system. It shall be the responsibility of the prime Contractor to return such identification to the issuing agency in accordance with the terms set forth in paragraph (2) of this section, unless otherwise approved in writing by the Agreements Officer.

[End of D.8]

D.10 Disclosure of Information

- (5) The Contractor shall not release to anyone outside the Contractor's organization any unclassified information, regardless of medium (e.g., film, tape, document), pertaining to any part of this agreement or any program related to this agreement, unless-
 - (a) The Agreements Officer has given prior written approval;
 - (b) The information is otherwise in the public domain before the date of release; or
 - (c) The information results from or arises during the performance of a project that involves no covered defense information (as defined in the clause at DFARS [252.204-7012](#)) and has been scoped and negotiated by the contracting activity with the contractor and research performer and determined in writing by the Agreements Officer to be fundamental research (which by definition cannot involve any covered defense information), in accordance with National Security Decision Directive 189, National Policy on the Transfer of Scientific, Technical and Engineering Information, in effect on the date of agreement award and the Under Secretary of Defense (Acquisition, Technology, and Logistics) memoranda on Fundamental Research, dated May 24, 2010, and on Contracted Fundamental Research, dated June 26, 2008 (available at DFARS [PGI 2.4 \(DFARS/PGI view\)](#))).
- (6) Requests for approval under paragraph (1)(a) shall identify the specific information to be released, the medium to be used, and the purpose for the release. The Contractor shall submit its request to the Agreements Officer at least 10 business days before the proposed date for release.
- (7) The Contractor agrees to include a similar requirement, including this paragraph (3), in each subcontract under this agreement. Subcontractors shall submit requests for authorization to release through the prime contractor to the Agreements Officer.

[End of D.10]

D.13 Antiterrorism Awareness Training For Contractors (AT LEVEL I TRAINING)

(Referenced from ACC-DTA Local Clause)

All contractor employees, including subcontractor employees, requiring access to Army installations, facilities, or controlled access areas shall complete AT Level I awareness training within 30 calendar days after agreement start date or effective date of incorporation of this requirement into the task assignment, whichever applies. The contractor shall submit certificates of completion for each affected contractor employee and subcontractor employee to the Agreement Officer's Representative (AOR) (or to the Agreements Officer, if an AOR is not assigned) within 30 calendar days after completion of training by all employees and subcontractor personnel. AT Level I awareness training is available at <https://jkodirect.jten.mil>

[End of D.13]

D.14 iWATCH Training (Referenced from ACC-DTA Local Clause)

The contractor and all associated subcontractors shall brief all employees on the local iWATCH program (training standards provided by the requiring activity Anti-Terrorism Officer (ATO)). This locally developed training will be used to inform employees of the types of behavior to watch for and instruct employees to report suspicious activity to the AOR, if assigned, or the Agreements Officer. This training shall be completed within 60 calendar days of agreement award and within 60 calendar days of new employees' commencing performance, with the results reported to the AOR, or NAMC, no later than 60 calendar days after award. Training may be obtained at <http://www.myarmyonesource.com/familyprogramsandservices/iwatchprogram/default.aspx>

[End of D.14]