

# **NORTHROP GRUMMAN SYSTEMS CORPORATION**

## **ADDENDUM TO TERMS IN SUPPORT OF P093 PROGRAM PRIME CONTRACT: 17-C-3186**

All of the additional terms and conditions set forth below are incorporated in and made part of this Order. Any conflict between any of the conditions contained in this addendum and those appearing on Northrop Grumman Purchase Order Terms and Conditions shall be resolved in favor of the conditions in the addendum.

### **ADDITIONS**

#### **A. PROHIBITION ON PERSONS CONVICTED OF FRAUD OR OTHER DEFENSE-CONTRACT-RELATED FELONIES (SEP 2013)**

(a) Definitions. As used in this clause-

- (1) "Arising out of a contract with the DoD" means any act in connection with
  - (i) Attempting to obtain;
  - (ii) Obtaining; or
  - (iii) Performing a contract or first-tier subcontract of any agency, department, or component of the Department of Defense (DoD).

(2) "Conviction of fraud or any other felony" means any conviction for fraud or a felony in violation of state or Federal criminal statutes, whether entered on a verdict or plea, including a plea of nolo contendere, for which sentence has been imposed.

(3) "Date of conviction" means the date judgment was entered against the individual.

(b) Any individual who is convicted after September 29, 1988, of fraud or any other felony arising out of a contract with the DoD is prohibited from serving-

- (1) In a management or supervisory capacity on this contract;
- (2) On the board of directors of the Contractor;
- (3) As a consultant, agent, or representative for the Contractor; or
- (4) In any other capacity with the authority to influence, advise, or control the decisions of the Contractor with regard to this contract.

(c) Unless waived, the prohibition in paragraph (b) of this clause applies for not less than 5 years from the date of conviction.

(d) 10 U.S.C. 2408 provides that the Contractor shall be subject to a criminal penalty of not more than \$500,000 if convicted of knowingly--

- (1) Employing a person under a prohibition specified in paragraph (b) of this clause; or
- (2) Allowing such a person to serve on the board of directors of the contractor or first-tier subcontractor.

(e) In addition to the criminal penalties contained in 10 U.S.C. 2408, the Government may consider other available remedies, such as--

- (1) Suspension or debarment;
- (2) Cancellation of the contract at no cost to the Government; or
- (3) Termination of the contract for default.

(f) The contractor may submit written requests for waiver of the prohibition in paragraph (b) of this clause to the Contracting Officer. Requests shall clearly identify--

- (1) The person involved;
- (2) The nature of the conviction and resultant sentence or punishment imposed;
- (3) The reasons for the requested waiver; and

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(4) An explanation of why a waiver is in the interest of national security.

(g) The contractor agrees to include the substance of this clause in all first-tier subcontracts exceeding the simplified acquisition threshold in Part 2 of the Federal Acquisition Regulation, except those for commercial items or components.

### **B. DISCLOSURE OF OWNERSHIP OR CONTROL BY A FOREIGN GOVERNMENT (NOV 2017)**

The offeror shall disclose any interest a foreign government has in the offeror when that interest constitutes control by a foreign government as defined in this provision

### **C. ORGANIZATION CONFLICT OF INTEREST (JUL 2016)**

The offeror warrants, to the best of its knowledge and belief, there are no relevant facts that could give rise to OCI and has disclosed all relevant information regarding any actual or potential OCI

### **D. CONTRACTOR COMPLIANCE WITH ENVIRONMENTAL, SAFETY AND HEALTH, AND SYSTEM SAFETY REQUIREMENTS (OCT 1997)**

(a) In performing work under this contract, the contractor shall comply with

- (1) All applicable Federal, State, and local environmental, occupational safety and health, and system safety laws, regulations, policies and procedures in effect as of the date the contract is executed;
- (2) Any regulations, policies and procedures in effect at any Government facility where work will be performed;
- (3) Any contract specific requirements; and
- (4) Any Contracting Officer direction.

(b) Conflicting Requirements. The contractor shall provide written notification to the Contracting Officer of any conflicts in requirements. The notification will describe the conflicting requirements and their source; provide an estimate of any impact to the contract's cost, schedule, and any other terms and conditions; and provide a recommended solution. The notification will also identify any external organizations that the Contracting Officer or the contractor may have to coordinate with in order to implement the solution. The Contracting Officer will review the notification and provide written direction. Until the Contracting Officer issues that direction, the contractor will continue performance of the contract, to the extent practicable, giving precedence in the following order to requirements that originate from:

- (1) Federal, state, and local laws, regulations, policies and procedures;
- (2) Government facility regulations, policies and procedures; and
- (3) Contract specific direction.

(c) Material Condition of Contract. Environmental, occupational safety and health, and system safety requirements are a material condition of this contract. Failure of the contractor to maintain and administer an environmental and safety program that is compliant with the requirements of this contract shall constitute grounds for termination for default.

(d) The Contractor shall include this clause in all subcontracts.

### **E. EARNED VALUE MANAGEMENT SYSTEM (JAN 2006)**

(a) *Definitions.* As used in this clause——

“Acceptable earned value management system” means an earned value management system that generally complies with system criteria in paragraph (b) of this clause.

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“Earned value management system” means an earned value management system that complies with the earned value management system guidelines in the ANSI/EIA-748.

“Significant deficiency” means a shortcoming in the system that materially affects the ability of officials of the Department of Defense to rely upon information produced by the system that is needed for management purposes.

(b) *System criteria.* In the performance of this contract, the Contractor shall use—

(1) An Earned Value Management System (EVMS) that complies with the EVMS guidelines in the American National Standards Institute/Electronic Industries Alliance Standard 748, Earned Value Management Systems (ANSI/EIA-748); and

(2) Management procedures that provide for generation of timely, reliable, and verifiable information for the Contract Performance Report (CPR) and the Integrated Master Schedule (IMS) required by the CPR and IMS data items of this contract.

(c) If this contract has a value of \$50 million or more, the Contractor shall use an EVMS that has been determined to be acceptable by the Cognizant Federal Agency (CFA). If, at the time of award, the Contractor’s EVMS has not been determined by the CFA to be in compliance with the EVMS guidelines as stated in paragraph (b)(1) of this clause, the Contractor shall apply its current system to the contract and shall take necessary actions to meet the milestones in the Contractor’s EVMS plan.

(d) If this contract has a value of less than \$50 million, the Government will not make a formal determination that the Contractor’s EVMS complies with the EVMS guidelines in ANSI/EIA-748 with respect to the contract. The use of the Contractor’s EVMS for this contract does not imply a Government determination of the Contractor’s compliance with the EVMS guidelines in ANSI/EIA-748 for application to future contracts. The Government will allow the use of a Contractor’s EVMS that has been formally reviewed and determined by the CFA to be in compliance with the EVMS guidelines in ANSI/EIA-748.

(e) The Contractor shall submit notification of any proposed substantive changes to the EVMS procedures and the impact of those changes to the CFA. If this contract has a value of \$50 million or more, unless a waiver is granted by the CFA, any EVMS changes proposed by the Contractor require approval of the CFA prior to implementation. The CFA will advise the Contractor of the acceptability of such changes as soon as practicable (generally within 30 calendar days) after receipt of the Contractor’s notice of proposed changes. If the CFA waives the advance approval requirements, the Contractor shall disclose EVMS changes to the CFA at least 14 calendar days prior to the effective date of implementation.

(f) The Government will schedule integrated baseline reviews as early as practicable, and the review process will be conducted not later than 180 calendar days after—

(1) Contract award;

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(2) The exercise of significant contract options; and

(3) The incorporation of major modifications.

During such reviews, the Government and the Contractor will jointly assess the Contractor's baseline to be used for performance measurement to ensure complete coverage of the statement of work, logical scheduling of the work activities, adequate resourcing, and identification of inherent risks.

(g) The Contractor shall provide access to all pertinent records and data requested by the Contracting Officer or duly authorized representative as necessary to permit Government surveillance to ensure that the EVMS complies, and continues to comply, with the performance criteria referenced in paragraph (b) of this clause.

(h) When indicated by contract performance, the Contractor shall submit a request for approval to initiate an over-target baseline or over-target schedule to the Contracting Officer. The request shall include a top-level projection of cost and/or schedule growth, a determination of whether or not performance variances will be retained, and a schedule of implementation for the rebaselining. The Government will acknowledge receipt of the request in a timely manner (generally within 30 calendar days).

(i) *Significant deficiencies.* (1) The Contracting Officer will provide an initial determination to the Contractor, in writing, of any significant deficiencies. The initial determination will describe the deficiency in sufficient detail to allow the Contractor to understand the deficiency.

(2) The Contractor shall respond within 30 days to a written initial determination from the Contracting Officer that identifies significant deficiencies in the Contractor's EVMS. If the Contractor disagrees with the initial determination, the Contractor shall state, in writing, its rationale for disagreeing.

(3) The Contracting Officer will evaluate the Contractor's response and notify the Contractor, in writing, of the Contracting Officer's final determination concerning—

(i) Remaining significant deficiencies;

(ii) The adequacy of any proposed or completed corrective action;

(iii) System noncompliance, when the Contractor's existing EVMS fails to comply with the earned value management system guidelines in the ANSI/EIA-748; and

(iv) System disapproval, if initial EVMS validation is not successfully completed within the time frame approved by the Contracting Officer, or if the Contracting Officer determines that the Contractor's earned value management system contains one or more significant deficiencies in high-risk guidelines in ANSI/EIA-748 standards (guidelines 1, 3, 6, 7, 8, 9, 10, 12, 16, 21, 23, 26, 27, 28, 30, or 32). When the Contracting Officer determines that the

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existing earned value management system contains one or more significant deficiencies in one or more of the remaining 16 guidelines in ANSI/EIA-748 standards, the Contracting Officer will use discretion to disapprove the system based on input received from functional specialists and the auditor.

(4) If the Contractor receives the Contracting Officer's final determination of significant deficiencies, the Contractor shall, within 45 days of receipt of the final determination, either correct the significant deficiencies or submit an acceptable corrective action plan showing milestones and actions to eliminate the significant deficiencies.

(j) *Withholding payments.* If the Contracting Officer makes a final determination to disapprove the Contractor's EVMS, and the contract includes the clause at [252.242-7005](#), Contractor Business Systems, the Contracting Officer will withhold payments in accordance with that clause.

(k) With the exception of paragraphs (i) and (j) of this clause, the Contractor shall require its subcontractors to comply with EVMS requirements as follows:

(1) For subcontracts valued at \$50 million or more, the following subcontractors shall comply with the requirements of this clause:

[Contracting Officer to insert names of subcontractors (or subcontracted effort if subcontractors have not been selected) designated for application of the EVMS requirements of this clause.]

(2) For subcontracts valued at less than \$50 million, the following subcontractors shall comply with the requirements of this clause, excluding the requirements of paragraph (c) of this clause:

[Contracting Officer to insert names of subcontractors (or subcontracted effort if subcontractors have not been selected) designated for application of the EVMS requirements of this clause.]

(End of clause)

### F. RIGHTS IN TECHNICAL DATA AND COMPUTER SOFTWARE: NONCOMMERCIAL ITEMS (FEB 2011)

(a) Definitions. As used in this clause:

(1) Business data means recorded information, regardless of the form or method of the recording, including specific business data contained in a computer database, of a financial, administrative, cost or pricing, or management nature, or other information incidental to contract administration or protected from disclosure under the Freedom of Information Act, 5 U.S.C. 552(b)(4).

(2) Computer data base means a collection of data recorded in a form capable of being processed and operated by a computer. The term does not include computer software.

(3) Computer program means a set of instructions, rules, or routines, recorded in a form that is

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capable of causing a computer to perform a specific operation or series of operations.

(4) 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 databases or computer software documentation.

(5) Computer software documentation means owners manuals, users 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 or maintaining the software.

(6) Delivery means the formal act of transferring technical data, computer software, or business data to the Government as expressly delineated in the contract (including, but not limited to the Contract Data Requirements List, the statement of work, or elsewhere in the contract), in accordance with a specified schedule.

(7) Detailed manufacturing or process data means technical data and computer software that describes 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.

(8) Developed means that an item, component, or process, or an element of computer software has been shown through sufficient analysis or test to demonstrate to one of ordinary skill in the applicable art that there is a reasonable probability that the item, component, process, or element of computer software will work or perform its intended application, function, or purpose.

(9) Developed exclusively at private expense means development was accomplished entirely with costs charged to indirect cost pools, costs not allocated to a Government contract, or any combination thereof. Under fixed-price contracts, when total costs are greater than the firm-fixed-price or ceiling price of the contract, the additional development costs necessary to complete development shall not be considered when determining whether development was at Government, private, or mixed expense. Private expense determinations should be made at the lowest practicable level.

(10) Developed exclusively with Government funds means all the costs of development were charged directly to a Government contract.

(11) 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, and partially with costs charged directly to a Government contract.

(12) 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. For computer software it means data identifying source, functional characteristics, and performance requirements, but specifically excludes the source code, algorithms, processes, formulas, and flow charts of the software.

(13) 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 providing technical data and computer software for use in a competitive procurement, but do not include the rights to use, modify, reproduce, release, perform, display, or disclose technical data and computer software for commercial purposes or authorize others to do so.

(14) Technical data means recorded information (regardless of the form or method of the recording, including computer databases) of a scientific or technical nature (including computer software documentation). The term includes recorded information of a scientific or technical nature that is included in computer databases (See 41 U.S.C. 403(8)). This term does not include computer software or business data.

(b) Government Rights in Technical Data and Computer Software.

(1) Government purpose rights means the rights to use, modify, reproduce, release, perform, display, or disclose technical data or computer software within the Government without restriction, to release or disclose technical data or computer software outside the Government, and to authorize persons to whom release has been made to use, modify, reproduce, perform, or display that technical data or computer software, provided that the recipient exercises such rights for Government purposes only.

(i) The Government shall have Government purpose rights for a five-year period after contract

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completion or for such other period as may be mutually negotiated. Upon expiration of the five-year or other negotiated period, the Government shall have unlimited rights in the technical data or computer software.

(ii) The contractor has the exclusive right, including the right to license others, to use technical data or computer software in which the Government has obtained Government purpose rights under this contract, for any commercial purpose during the time period specified in paragraph (b)(1)(i) above and/or in the Government purpose rights legend prescribed by this clause.

(iii) The Government shall have Government purpose rights in technical data or computer software delivered under this contract that:

(A) Pertain to items, components, computer software, or processes developed with mixed funding, except when the Government is entitled to unlimited rights;

(B) Were created with mixed funding in the performance of a contract that does not specifically require the development, manufacture, construction, or production of items, components, computer software, or processes;

(C) The contractor has previously or is currently providing with Government purpose rights under another Government contract; or

(D) The parties have agreed shall be delivered with Government purpose rights.

(iv) The Government may release the technical data or computer software to any third party as described in paragraph (b)(1) above if:

(A) The receiving development contractor(s) or subcontractor(s) contract arrangements are subject to clauses I-40, Protection of Information, and I-24, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends;

(B) The receiving support contractor(s) or subcontractor(s) contract arrangements are subject to clause I-24, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends.

(C) The Government and contractor agree to cooperate to ensure that execution of any additional agreements shall not delay or inhibit performance of this contract. Such agreements shall not otherwise restrict any rights due the Government under this contract;

(2) Limited rights means the rights to use, modify, reproduce, release, perform, display, or disclose technical data, in whole or in part, within the Government.

(i) 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 such reproduction, release, disclosure, or use is:

(A) Necessary for emergency repair and overhaul. In each instance of disclosure outside the Government, the Government shall:

(I) Prohibit the further reproduction, release, or disclosure of such technical data;

(II) Notify the party who has granted limited rights that such reproduction or use by, or release or disclosure to particular contractors or subcontractors is necessary;

(III) Insert clause I-40, Protection of Information, and I-24, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends, into the contractual arrangement with the receiving development contractors;

(IV) Insert clause I-24, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends, into the contractual arrangement with the receiving support contractor(s). An additional non-disclosure, confidentiality, proprietary information, or similar agreement may be required by the owner of the technical data, but only on an exception basis, e.g., when such third party is or may be a direct competitor of the owner of the technical data. In the event an additional agreement is deemed necessary, the Contracting Officer shall be notified prior to its execution; and

(V) Require the recipient of limited rights technical data necessary for emergency repair or overhaul to destroy such technical data and any copies in its possession promptly following completion of the emergency repair/overhaul, and to notify the contractor that it has been destroyed; or

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- (B) Is in the interest of the Government when a release or disclosure of technical data (other than detailed manufacturing or process data) to, or use of such data by, a foreign government is required for evaluation or information purposes, and is subject to a prohibition on further release, disclosure, or use of the technical data.
- (ii) The Government and the contractor agree to cooperate to ensure that execution of necessary NDAs shall not delay or inhibit performance of this contract. Said agreements shall not otherwise restrict any rights due the Government under this contract.
- (iii) Except as otherwise provided under paragraphs (b)(6)(i)-(xi), the Government shall have limited rights in technical data delivered under this contract that:
- (A) Pertain to items, components, or processes developed exclusively at private expense and marked with the limited rights legends prescribed by this clause;
  - (B) Created exclusively at private expense in the performance of a contract that does not require the development, manufacture, construction, or production of items, components, or processes; or
  - (C) The parties have agreed shall be delivered with limited rights.
- (iv) The contractor and its subcontractors are not required to provide the Government additional rights to use, modify, reproduce, release, perform, or display, 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 Contracting 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 contract. The license shall enumerate the additional rights granted the Government in such items.
- (3) Prior Government rights means that technical data or computer software that will be delivered, furnished, or otherwise provided to the Government under this contract, 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.
- (4) Restricted rights apply only to non-commercial computer software, and means the Governments rights to:
- (i) Use a computer program with one computer at one time. The program may not be accessed by more than one terminal or central processing unit or time-shared unless otherwise permitted by this contract;
  - (ii) Transfer a computer program to another Government agency without the further permission of the contractor if the transferor destroys all copies of the program and related computer software documentation in its possession and notifies the licensor of the transfer. Transferred programs remain subject to the provisions of this clause;
  - (iii) Make the minimum number of copies of the computer software required for safekeeping (archive), backup, or modification purposes;
  - (iv) Modify computer software, provided that the Government may
    - (A) Use the modified software only as provided in paragraphs (b)(4)(i) and (iii) of this clause; and
    - (B) Not release or disclose the modified software except as provided in paragraphs (b)(4)(ii), (v) and (vi) of this clause;
  - (v) Permit contractors or subcontractors performing service contracts in support of this or a related contract to use computer software to diagnose and correct deficiencies in a computer program, to modify computer software to enable a computer program to be combined with, adapted to, or merged with other computer programs, or when necessary to respond to urgent tactical situations, provided that
    - (A) The Government notifies the party which has granted restricted rights that a release or disclosure to particular contractors or subcontractors is necessary;
    - (B) The receiving development contractor(s) or subcontractor(s) contract arrangements are subject to clauses I-40, Protection of Information, and I-24, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends;
    - (C) The receiving support contractor(s) or subcontractor(s) contract arrangements are



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subject to clause I-24, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends

- (D) The Government and contractor agree to cooperate to ensure that execution of any additional agreements shall not delay or inhibit performance of this contract. Such agreements shall not otherwise restrict any rights due the Government under this contract;
  - (E) The Government shall not permit the recipient to decompile, disassemble, or reverse engineer the software, or use software decompiled, disassembled, or reverse engineered by the Government pursuant to paragraph (b)(4)(iv) of this clause, for any other purpose; and
  - (F) Such use is subject to the limitation in paragraph (b)(4)(i) of this clause.
- (vi) Permit contractors or subcontractors performing emergency repairs or overhaul of items or components of items procured under this or a related contract to use the computer software when necessary to perform the repairs or overhaul, or to modify the computer software to reflect the repairs or overhaul made, provided that
- (A) The receiving development contractor(s) or subcontractor(s) contract arrangements are subject to clauses I-40, Protection of Information, and I-24, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends;
  - (B) The receiving support contractor(s) or subcontractor(s) contract arrangements are subject to clause I-24, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends.
  - (C) The Government and contractor agree to cooperate to ensure that execution of any additional agreements shall not delay or inhibit performance of this contract. Such agreements shall not otherwise restrict any rights due the Government under this contract.
  - (D) The Government shall not permit the recipient to decompile, disassemble, or reverse engineer the software, or use software decompiled, disassembled, or reverse engineered by the Government pursuant to paragraph (b)(4)(iv) of this clause, for any other purpose.
- (vii) The Government shall have restricted rights in noncommercial computer software required to be delivered or otherwise provided to the Government under this contract that was developed exclusively at private expense.
- (viii) The contractor, its subcontractors, or suppliers are not required to provide the Government additional rights in noncommercial computer software delivered or otherwise provided to the Government with restricted rights. However, if the Government desires to obtain additional rights in such software, the contractor agrees to promptly enter into negotiations with the Contracting Officer to determine whether there are acceptable terms for transferring such rights. All noncommercial computer software in which the contractor has granted the Government additional rights shall be listed or described in a license agreement made part of the contract (see paragraph (b)(5) of this clause). The license shall enumerate the additional rights granted the Government.
- (5) Specifically negotiated license rights means a license granted by the contractor wherein the standard license rights granted to the Government under paragraphs (b)(1), (2), (3), (4), and (6), including the period during which the Government shall have government purpose rights in technical data or computer software, are modified by mutual agreement to provide such rights as the parties consider appropriate, but does not provide the Government lesser rights than limited rights for technical data or restricted rights for computer software unless mutually agreed by the contracting parties. Any rights so negotiated shall be identified in a license agreement made part of this contract and incorporated into Section J.
- (6) Unlimited rights means the rights to use, modify, reproduce, perform, display, release, or disclose technical data and computer software in whole or in part, in any manner and for any purpose whatsoever, and to have or authorize others to do so. The Government shall have unlimited rights in:
- (i) Technical data pertaining to an item, component, or process, or pertaining to software code or a software program that has been or will be developed exclusively with Government funds;
  - (ii) Computer software developed exclusively with Government funds;
  - (iii) Form, fit, and function data;
  - (iv) Technical data that is necessary for installation, operation, maintenance, or training purposes (other than detailed manufacturing or process data);
  - (v) Studies, analyses, test data, or similar data when the study, analysis, test, or similar work was specified as an element of performance;

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- (vi) Computer software documentation required to be delivered under this contract;
  - (vii) Technical data created exclusively with Government funds in the performance of a contract that does not require the development, manufacture, construction, or production of items, components, or processes;
  - (viii) Corrections or changes to technical data or computer software furnished by the Government;
  - (ix) Technical data or computer software that is otherwise publicly available or has been released or disclosed by the contractor or subcontractor without restriction on the 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 or computer software to another party, or the sale or transfer of some or all of a business entity or its assets to another party;
  - (x) Technical data or computer software in which the Government has obtained unlimited rights under another Government contract or as a result of negotiations;
  - (xi) Technical data or computer software furnished to the Government under this or any other Government contract or subcontract thereunder, with Government purpose rights, limited rights, or restricted rights, and the restrictive condition(s) has/have expired, or the Government purpose rights and the contractor's exclusive right to use such data for commercial purposes have expired.
- (c) For business data marked as proprietary or with similar legends, the Government may duplicate, use, and disclose such data within the Government solely for evaluation, verification, validation, reporting, and program monitoring and management purposes in connection with this contract. The Government may disclose such business data to its support contractors identified in clause I-10,
- (1) The receiving development contractor(s) or subcontractor(s) contract arrangements are subject to clauses I-40, Protection of Information, and I-24, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends;
  - (2) The receiving support contractor(s) or subcontractor(s) contract arrangements are subject to clause I-24, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends.
    - (i) The Government and contractor agree to cooperate to ensure that execution of any additional agreements shall not delay or inhibit performance of this contract. Such agreements shall not otherwise restrict any rights due the Government under this contract;
- (d) Other Information That Cannot Easily Be Categorized. For information that cannot easily be categorized as technical data or business data (e.g., program schedules, Earned Value Management System reports, and program management reports), and is of sufficient detail to show a contractors confidential business practices, shall be identified before or as soon as practicable after contract award. The parties will agree as to the parties rights and obligations in such data and how it is to be marked, handled, used, and disclosed to third parties. Such agreement shall be in writing, attached to, and made a part of the contract.
- (e) Release from Liability. The contractor agrees to release the Government from liability for any release or disclosure of technical data and computer software made in accordance with this clause, in accordance with the terms of a license per 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.
- (f) Rights in Derivative Computer Software or Computer Software Documentation. The Government shall retain its rights in the unchanged portions of any computer software or computer software documentation delivered under this contract that the contractor uses to prepare, or includes in, derivative computer software or computer software documentation.
- (g) Contractor Rights in Technical Data and Computer Software. The contractor retains all rights not granted to the Government.
- (h) Third Party Copyrights. The contractor shall not, without the written approval of the Contracting Officer, incorporate any copyrighted data in the technical data and computer software to be delivered under this contract unless the contractor is the copyright owner or has obtained for the Government the license rights necessary to perfect a license or licenses of the

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appropriate scope as defined in paragraphs (b)(1), (2), (4) and (6) of this clause, and has affixed a statement of the license or licenses obtained on behalf of the Government and other persons to the technical data and computer software transmittal document.

- (i) Assertions of Other than Unlimited Rights.
  - (1) This paragraph does not apply to restrictions based solely on copyright.
  - (2) Except as provided in paragraph (i)(3) of this clause, technical data and/or computer software that the contractor asserts should be furnished to the Government with restrictions on use, release, or disclosure are identified in an attachment to this contract. The contractor shall not deliver any technical data or computer software with restrictive markings unless the technical data or computer software is listed in the Attachment.
  - (3) The contractor may make other assertions of other than unlimited rights in technical data and/or computer software after contract award. Such assertions must be based on new information or inadvertent omission unless the inadvertent omission would have materially affected the source selection decision in the reasonable determination of the Contracting Officer (in which case no assertion based on an inadvertent omission may be allowed).
  - (4) The contractor shall submit such post-contract award assertion(s) to the Contracting Officer as soon as practicable but prior to the scheduled date for delivery of the technical data or computer software. All new assertions submitted after award shall be added to the Attachment in a timely fashion after submission of the assertion to the Contracting Officer. An official authorized to contractually obligate the contractor must sign the assertion(s). The contractor assertion(s) shall include the information specified in paragraph (d) of clause I-39, Identification and Assertion of Use, Release, or Disclosure Restrictions.
  - (5) The Contracting Officer may request the contractor to provide sufficient information to enable the Government to evaluate the contractor's assertion(s). The Contracting 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 outlined in I-23, Validation of Restrictive Markings on Technical Data and Computer Software.
- (j) Marking Requirements for Delivered Technical Data or Computer Software. The contractor may only assert restrictions on the Government's rights to use, modify, reproduce, release, perform, display, or disclose technical data and computer software delivered to the Government by marking such technical data and computer software. Such markings shall be in the form of legends found in paragraphs (k)(1) through (4), or as otherwise authorized in this contract, (e.g., pursuant to an agreement for the marking of mixed data pursuant to paragraph (d) of this clause). The notice of copyright prescribed under 17 U.S.C. 401 or 402 (with language, if applicable, noting that the Government contributed funding and therefore has rights in the copyrighted material as specified in clause I-22) is also allowed.
- (k) General Marking Instructions. The contractor shall conspicuously and legibly mark the appropriate legend on all technical data and computer software that qualify for such markings. The authorized legends shall be placed on the transmittal document or storage container and, for printed material, on the title/cover page of the printed material containing technical data or computer software for which restrictions are asserted. Mark each subsequent sheet of data with an abbreviated marking(s) to indicate the applicable restrictive rights assertion(s), and refer to the title/cover page for additional information. When only portions of a page of printed material are subject to the asserted restrictions, such portions shall be identified by circling, underscoring, annotating, or other appropriate identifier. Technical data and computer software transmitted directly from one computer or computer terminal to another shall contain a notice of asserted restrictions. Reproductions of technical data and computer software, or any portions thereof subject to asserted restrictions, shall also reproduce the asserted restrictions.
  - (1) Government Purpose Rights Markings. Technical data or computer software delivered or otherwise furnished to the Government with Government purpose rights shall be marked as follows:

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Government Purpose Rights

Contract No: \_\_\_\_\_

Contractor Name: \_\_\_\_\_

Contractor Address: \_\_\_\_\_

Expiration Date: \_\_\_\_\_

The Government's rights to use, modify, reproduce, release, perform, display, or disclose these technical data and computer software are restricted by paragraph (b)(1) of clause I-22, Rights in Technical Data and Computer Software: Noncommercial Items, contained in the contract identified above. No restrictions apply after the expiration date shown above. Any reproduction of technical data or computer software, or portions thereof marked with this legend, must also reproduce the markings.

(2) Limited Rights Markings. Technical data delivered or otherwise furnished to the Government with limited rights shall be marked as follows:

Limited Rights

Contract 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)(2) of clause I-22, Rights in Technical Data and Computer Software: Noncommercial Items, contained in the contract identified above. Any reproduction of technical data, or portions thereof marked with this legend, must also reproduce the markings. Any person, other than Government officials or others specifically authorized by the Government, who has been provided access to this technical data must promptly notify the above-named contractor.

(3) Restricted Rights Markings. Computer software delivered or otherwise furnished to the Government with restricted rights shall be marked with the following legend:

Restricted Rights

Contract No: \_\_\_\_\_

Contractor Name: \_\_\_\_\_

Contractor Address: \_\_\_\_\_

The Government's rights to use, modify, reproduce, release, perform, display, or disclose this computer software are restricted by paragraph (b)(4) of clause I-22, Rights in Technical Data and Computer Software: Noncommercial Items, contained in the contract identified above. Any reproduction of computer software 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 computer software must promptly notify the above-named contractor.

(4) Special License Rights Markings. Technical data and computer software in which the Government's rights stem from a specifically negotiated license shall be marked with the following legend:

Special License Rights

Contract No: \_\_\_\_\_

Contractor Name: \_\_\_\_\_

Contractor Address: \_\_\_\_\_

The Government's rights to use, modify, reproduce, release, perform, display, or disclose this data and/or software are restricted by \_\_\_\_\_ [Insert license identifier]. Any reproduction of technical data, computer software, or portions thereof marked with this legend must also reproduce the markings.

(1) Pre-Existing Data Markings. If the terms of a prior contract or license permitted the contractor to restrict the Government's rights to use, modify, reproduce, release, perform, display, or disclose a technical data or computer software deliverable under this contract, and those restrictions are still applicable, the contractor may mark such technical data or computer software with the appropriate restrictive conforming legend for which the technical data

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or computer software qualified under the prior contract or license. The marking procedures in paragraphs (j) and (k) of this clause shall be followed (m) Removal of Unjustified Markings. Notwithstanding any other provision of this contract concerning inspection and acceptance, if any technical data or computer software delivered or otherwise provided under this contract are marked with the notices specified at (k)(1)-(4) of this clause, and the use of such is not authorized by this clause, the Government may ignore, or at the contractors expense, correct or strike the marking if, in accordance with the procedures in clause I-23, Validation of Restrictive Markings on Technical Data and Computer Software, of this contract, the technical data or computer software is delivered or otherwise provided with a restrictive marking determined to be unjustified.

(n) Removal of Nonconforming Markings. A nonconforming marking is a marking placed on technical data or computer software delivered to the Government under this contract that is not in a format authorized by this contract. Correction of nonconforming markings is not subject to the Validation of Restrictive Markings on Technical Data and Computer Software clause of this contract. To the extent practicable, the Government shall return technical data or computer software marked with nonconforming markings to the contractor and provide the contractor an opportunity to correct or strike the nonconforming marking at no cost to the Government. If the contractor fails to correct the nonconforming marking and return the corrected technical data or computer software within 60 days following the contractor's receipt of the data, the Contracting Officer may ignore, or at the contractor's expense, remove, correct, or strike any nonconforming marking.

(o) Unmarked Technical Data or Computer Software. Technical data or computer software delivered to the Government under this contract without restrictive markings as set forth herein shall be presumed to have been delivered with unlimited rights and may be released or disclosed without restriction. However, to the extent the technical data or computer software has not been disclosed without restriction outside the Government, the contractor may request, within six months after delivery of such technical data or computer software (or a longer time approved by the Contracting Officer for good cause shown), permission to have notices placed on qualifying technical data or computer software at the contractors expense, and the Contracting Officer may agree to do so if the contractor:

- (1) Identifies the technical data or computer software on which the omitted notice is to be placed;
- (2) Demonstrates that the omission of the notice was inadvertent;
- (3) Establishes that the use of the proposed notice is authorized; and
- (4) Acknowledges that the Government has no liability with respect to the disclosure, use, or reproduction of any such technical data or computer software made prior to the addition of the notice or resulting from the omission of the notice.

(p) 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.

(q) Limitation on Charges for Rights in Technical Data or Computer Software.

- (1) The contractor shall not charge to this contract any cost, including but not limited to license fees, royalties, or similar charges, for rights in technical data or computer software to be delivered under this contract when
  - (i) The Government has acquired, by any means, the same or greater rights in the technical data or computer software; or
  - (ii) The technical data or computer software is available to the public without restrictions.
- (2) The limitation in paragraph (q)(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 or computer software if the subcontractor or supplier has been paid for such rights under any other Government contract or under a license conveying the rights to the Government; and

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- (ii) Does not include the reasonable costs of reproducing, handling, or mailing the documents or other media in which the technical data or computer software will be delivered.
- (r) 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 (i) of this clause are recognized and protected.
  - (2) Whenever any technical data or computer software for noncommercial items is to be obtained from a subcontractor or supplier for delivery to the Government under this contract, the contractor shall flow down this clause to all of its subcontractors, vendors or suppliers (at any tier), and require its subcontractors, vendors, or suppliers to do so, without alteration, except to identify the parties. 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 or computer software.
  - (3) Technical data or computer software 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 for technical data or computer software 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 technical data or computer software 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 as economic leverage to obtain rights in technical data or computer software 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 or computer software as an excuse for failing to satisfy its contractual obligation to the Government.

### **G. VALIDATION OF RESTRICTIVE MARKINGS ON TECHNICAL DATA AND COMPUTER SOFTWARE (Feb 2011)**

- (a) The Government shall presume that a contractor's asserted use or release restrictions are justified on the basis that the item (to include computer software), component, or process was developed exclusively at private expense for commercial items as defined in FAR Part 12. The Government will not challenge such assertions unless information the Government demonstrates that the item, component, or process was not developed exclusively at private expense.
- (b) Justification. The contractor is responsible for maintaining records sufficient to justify the validity of its markings that restrictions on the Government's right to use, modify, reproduce, perform, display, release, or disclose technical data or computer software delivered or required to be delivered under the contract or subcontract. Except for commercial items, the contractors shall be prepared to furnish to the Contracting Officer a written justification for such restrictive markings in response to a challenge under paragraph (e) of this clause.
- (c) Pre-challenge Request for Information.
  - (1) The Contracting Officer may request the contractor to furnish a written explanation for any restriction asserted by the contractor on the right of the United States to use, or authorize use of, technical data or computer software. If, upon review of the explanation submitted, the Contracting Officer remains unable to ascertain the basis of the restrictive marking, the Contracting Officer may further request the contractor to furnish additional information in the records of, or otherwise in the possession of or reasonably available to, the contractor to justify the validity of any restrictive marking on technical data or computer software, accompanied with supporting documentation. The contractor shall submit such written data within a reasonable time after it is requested by the Contracting Officer.
  - (2) If the Contracting Officer, after reviewing the written data furnished pursuant to paragraph (c)(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

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- of the item, component, or process to which the technical data or computer software relates, the Contracting Officer shall follow the procedures in paragraph (d) of this clause.
- (3) If the contractor fails to respond to the Contracting Officer's request for information under paragraph (c)(1) of this clause, and the Contracting 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 or computer software relates, the Contracting Officer may challenge the validity of the marking as described in paragraph (d) of this clause.
- (d) Challenge.
- (1) Notwithstanding any provision of this contract concerning inspection and acceptance, if the Contracting 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 Contracting Officer's final decision, issued pursuant to paragraph (f) 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 (e) of this clause.
- (2) The Contracting Officer shall extend the time for response 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 the Contract Disputes Act of 1978, and shall be certified in the form prescribed at FAR Subpart 33.207, 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 Contracting Officer of the existence of more than one challenge. The notice shall also state which Contracting Officer initiated the first unanswered challenge. The Contracting Officer initiating the first unanswered challenge after consultation with the contractor 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 an opportunity to respond to each challenge notice. All parties will be bound by this schedule.
- (e) Final Decision When Contractor or Subcontractor Fails to Respond. When a contractor or subcontractor fails to respond to a challenge notice, other than a failure to respond to a challenge related to a commercial item, the Contracting Officer will issue a final decision to the contractor or subcontractor in accordance with 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 (d)(1)(ii) or (d)(2) of this clause. Following issuance of the final decision, the Contracting Officer will comply with the procedures in paragraphs (f)(2)(ii) through (iv) of this clause.
- (f) Final Decision When the Contractor Responds.
- (1) If the Contracting Officer determines that the contractor or subcontractor has justified the validity of the restrictive marking, the Contracting 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 subcontractors response to the challenge notice, or within such longer period that the Contracting Officer has notified the contractor or subcontractor that the Government will require. The notification of a longer period will be made within sixty (60) days after receipt of the response to the challenge notice.
- (2) (i) If the Contracting Officer determines that the validity of the restrictive marking is not justified, the Contracting 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 contractors or subcontractors response to the challenge notice, or within such longer period that

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the Contracting Officer has notified the contractor or subcontractor that the Government will require. The notification of a longer period 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 ninety (90) days from the issuance of the Contracting Officer's final decision. The contractor 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 Contracting Officer within ninety (90) days from the issuance of the Contracting Officer's final decision under paragraph (f)(2)(i) of this clause. If the contractor fails to appeal, file suit, or provide a notice of intent to file suit to the Contracting Officer within the ninety-day period, the Government may cancel or ignore the restrictive markings, and the failure of the contractor to take the required action constitutes agreement with the Contracting Officer's final decision.
  - (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 Contracting Officer within ninety (90) days from the issuance of the final decision under paragraph (f)(2)(i) of this clause. The Government will no longer be bound, and the contractor agrees that the Government may strike or ignore the restrictive markings, if the contractor fails to file its suit within one (1) year after issuance of the Contracting Officer's final decision. Notwithstanding the foregoing, where the Government agency's Director, Office of Contracts determines that urgent or compelling circumstances will not permit waiting for the filing of a suit in the United States Claims Court, the contractor agrees that the Government may, following notice to the contractor, authorize release or disclosure of the technical data or computer software. Such determination may be made at any time after issuance of the Contracting Officer's final decision, and will not affect the contractor'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 Act until final disposition by an agency Board of Contract Appeals or the United States Claims Court. Notwithstanding the foregoing, where the Government agency's Director, Office of Contracts determines, 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 agrees that the Government may authorize release or disclosure of the technical data or computer software. Such determination may be made at any time after issuance of the final decision and will not affect the contractor'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.
- (g) 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 Contracting Officer's decision is sustained:
    - (i) The restrictive marking on the technical data or computer software shall be struck, canceled, ignored, or corrected at the contractor's or subcontractor's expense; and
    - (ii) If the restrictive marking is found not to be substantially justified, the contractor or subcontractor asserting the restriction 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 Contracting 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 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.
- (h) Duration of Right to Challenge. The Government, when there are reasonable grounds, may review and challenge the validity of any restriction asserted by the contractor or subcontractor on the Government's rights to use, modify, reproduce, release, perform, display, or disclose technical data or computer software delivered, to be delivered, or otherwise provided by the Contractor or subcontractor in the performance of a contract.



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During the period within three (3) years of final payment on a contract, or within three (3) years of delivery of the technical data or computer software to the Government, whichever is later, the Contracting Officer may review and make a written determination to challenge any restriction. The Government may, however, challenge a restriction on the release, disclosure, or use of technical data or computer software at any time if such technical data or computer software:

- (1) Is publicly available;
  - (2) Has been furnished to the United States without restriction; or
  - (3) Has been otherwise made available without restriction.
    - (i) Decision Not to Challenge. The absence of a challenge to an asserted restriction shall not constitute validation under this clause. Only the Contracting Officers final decision resolving a formal challenge by sustaining the validity of a restrictive marking, or actions of an agency Board of Contract Appeals or a court of competent jurisdiction sustaining the assertion, constitutes validation as addressed in 10 U.S.C. 2321.
- (j) Privity of Contract. The contractor or subcontractor agrees that the Contracting Officer may transact matters under this clause directly with subcontractors at any tier that assert restrictive markings or assert restrictions on the Governments right to use, modify, release, perform, display, or disclose technical data or computer software. However, neither this clause nor any action taken by the Government under this clause shall create or imply privity of contract between the Government and subcontractors.
- (k) Flowdown. The contractor or subcontractor agrees to insert this clause in contractual instruments with its subcontractors or suppliers at any tier requiring the delivery of technical data or computer software, except contractual instruments for commercial items or commercial components.

### H. RIGHTS IN BID OR PROPOSAL INFORMATION (JAN 2004)

- (a) Definitions. The terms "technical data" and "computer software" are defined in the Rights in Technical Data and Computer Software: Noncommercial Items clause of this contract.
- (b) Government Rights to Contract Award. By submission of its offer, the offeror agrees that the Government:
- (1) May reproduce the bid or proposal, or any portions thereof, to the extent necessary to evaluate the offer.
  - (2) Except as provided in paragraph (d) of this clause, shall use information contained in the bid or proposal only for evolutionary purposes and shall not disclose, directly or indirectly, such information to any person, including potential evaluators, unless that person has by the Contracting Officer to receive such information.
- (c) Government Rights Subsequent to Contract Award. The contractor agrees:
- (1) Except as provided in paragraphs (c)(2), (d), and (e) of this clause, the Government shall have the rights to use, modify, reproduce, release, perform, display, or disclose information contained in the contractor's bid or proposal within the Government.
  - (2) The Government's right to use, modify, reproduce, release perform, display, or disclose information that is technical data or computer software required to be delivered under this contract are determined by the Rights in Technical Data and Computer Software: Noncommercial Items clause of this contract.
- (d) Government-Furnished Information. The Government's rights with respect to technical data or computer software contained in the contractor's bid or proposal provided to the contractor by the Government are subject only to restrictions on use, modification, reproduction, release, performance, display, or disclosure, if any, imposed by the developer or licensor of such data or software.
- (e) Information Available Without Restrictions. The Government's rights to use, modify, reproduce, release, perform, display, or, disclose information contained in a bid or proposal, including technical data or computer software, and to permit others to do so, shall not be restricted in any manner if such information has been released or disclosed to the Government or to other persons without restrictions other than a release or disclosure resulting from the sale, transfer, or other assignment of interest in the information to another party, or the sale or transfer of some or all of a business entity or its assets to another party.
- (f) Flow-down. The contractor shall include this clause in all subcontracts or similar contractual instruments, and require its subcontractors or suppliers to do so without alteration, except to identify the parties.

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### **I. SUBCONTRACTOR REPORTING, MONITORING AND CONSENT (SEP 2009)**

- (a) Definition. As used in this clause:  
Subcontract means any contract or contractual action entered into by the prime contractor or a subcontractor for the purpose of obtaining supplies, materials, equipment, or services of any kind under this contract. It includes, but is not limited to purchase orders, transfers of commercial items between divisions, subsidiaries, or affiliates of a contractor or subcontractor, and work performed within a company but outside the main location, division, or facility under an Intra-Work Transfer Agreement (IWTa), Intra-Divisional Work Agreement (IDWA), Assist Work Authorization (AWA), or other similar arrangement.  
Subcontractor means any supplier, distributor, vendor, or firm that furnishes supplies, materials, equipment, or services of any kind under this contract or a subcontract entered into in connection with this contract, regardless of dollar value.
- (b) Flow-Down. The requirements of this clause must be included in all subcontracts directly chargeable to this contract, except for those subcontracts with US-owned companies to provide only unclassified commercial products and/or services on a fixed-price basis.
- (c) Reporting. The prime contractor shall submit an annual report of all subcontracts directly chargeable to this contract by 30 June each year, and a final close-out report within 90 days after contract completion. Individual fixed-price subcontracts under \$5,000 with US-owned companies to provide unclassified commercial products and/or services that will not be incorporated into a contract deliverable (e.g., office supplies, travel, postage) need not be reported. Reports will be electronically uploaded into a Government database by the prime contractor. Each subcontract report must include the following information in the format specified in the Excel spreadsheet:
- Prime Contract Number
  - Subcontractor Tier
  - Subcontract Security Classification
  - Relationship Between Prime Contractor and Subcontractor
  - Subcontractor Business Name, Full Address, and Country
  - Subcontractor Data Universal Numbering System (DUNS) Number
  - Subcontractor Contractor and Government Entity (CAGE) Code
  - Subcontractor Business Type
  - Subcontractor Country of Ownership
  - Subcontractor's Parent Company
  - DUNS Number of Company Awarding Subcontract
  - Subcontract Number
  - Subcontract Value (Cumulative to Date)
  - Subcontract Period of Performance
  - Subcontract Place of Performance (City, State, Country)
  - Brief Description of Subcontract Effort
  - Primary Subcontract Type
  - Method Used to Select Subcontractor (Competitive or Sole-Source)
- (d) Monitoring. The parties agree that the Government shall have the right to:
- (1) Review all documentation pertaining to source selections or other competitive sourcing activities, fact-finding, and negotiation sessions with or for subcontractors or potential subcontractors;
  - (2) Observe any subcontractor test, verification, validation, shipment, or similar event; and
  - (3) Attend any subcontractor design review, milestone review, program review, or similar event. Unless expressly agreed to by the prime contractor and the Contracting Officer, the Government will not require a subcontractor event to be rescheduled due to the Government's inability to attend.
- (e) Consent. The Government asserts its right for consent to subcontract on this contract.
- (1) Consent from the Contracting Officer in accordance with FAR Subpart 44.2, is required before awarding any subcontract exceeding \$50 million.
  - (2) The Contracting Officer's written consent is required before awarding any subcontract that will exceed \$3 million or five percent of prime contract value, whichever is less, to a company listed on any Government contractor watch-list or award restriction registry.
  - (3) All requests for consent to subcontract must be submitted in writing, and provide the information specified in FAR Clause 52.244-2(e), as well as evidence that the company meets the standards of

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responsibility defined in FAR 9.104 .

- (f) Privity. Government collection of subcontract information, surveillance of subcontractor performance, and consent to subcontract do not relieve the contractor of any responsibility for the effective management of all subcontracts and for the overall success of this contract. Actions taken under the authority of this clause do not establish privity of contract between the Government and subcontractors under this contract. The Government will not provide direction to or request action by any subcontractor except through the prime. However, all subcontractors must respond to direct requests for information from the Government, either directly or through the prime.
- (g) Security. The Government reserves the right to direct the removal of any subcontractor under this contract on the basis of Government security concerns. The contractor shall be responsible for any lack of due diligence or negligence in the selection of a subcontractor, and will not be entitled to an equitable adjustment if the Contracting Officer determines that the Government's need to remove the contractor for security reasons is the fault of the contractor or subcontractor.

### **J. PROHIBITION OF CONTRACTING FOR CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT (AUG 2020)**

In lieu of FAR clause 52.204-25. Section 889(a)(1)(B), 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 to procure or obtain, or provide 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. (Reporting Requirement: Within one day of identification or notification, and mitigation actions within 10 days)

### **K. CONTRACT ACCOUNTABLE GOVERNMENT PROPERTY: RESPONSIBILITIES, USE, REPORTING, AND ADMINISTRATION (NOV 2017)**

- (a) General Requirements. The contractor shall maintain adequate property control procedures, records, and a system of identification for all Government property accountable to this contract in accordance with FAR Part 45. The terms Government property, contract accountable property, Government equipment, and contractor-acquired property/material are used interchangeably and equally within this clause. All items provided to the contractor, including equipment, and facilities are equally considered to be Government property.
- (b) Reserved.
- (c) Contractor Property Representatives. The contractor shall provide the name, address, and telephone number of the company official responsible for establishing and maintaining control of Government property under this contract to the Contracting Officer within thirty (30) days after receipt of this contract.
- (d) Government Property List. The Government Property List in this contract identifies all Government-owned items and information available to the contractor on a no-charge-for-use basis for performance of this contract, and the dates of availability. The Contracting Officer will update the list as changes occur so that it always reflects all the Government property authorized for transfer to the contractor, whether or not actually transferred. The contractor must obtain approval of the Contracting Officer or designee before property transfers occur, except for property with a unit cost less than \$10,000 transferred within an approved Material Management and Accounting System (MMAS). Transfers between contracts must be documented in a DD Form 250, DD Form 1149, Contracting Officer letter, contract modification, or email. This documentation shall serve as the only record necessary to document transfers.
- (e) Government Property Accountable to Other Government Contracts. The contractor may use Government property in their possession accountable to other Government contracts if the Contracting Officer of the other contracts provides written authorization of their approval for use. Such use shall be on a rent-free, non-interference basis. Use is authorized on the basis that it will not interfere with performance of the Government contracts under which the property was originally furnished or acquired, and such use shall be in accordance with the terms and conditions of those contracts as well as the appropriate Contracting Officer's approval letter. This paragraph does not apply to Government-furnished material.
- (f) Title. Title to all Government-furnished property remains vested with the Government. Upon completion or termination of this contract, the Contractor shall submit to the Contracting Officer a list of all property acquired under the contract during the contract period. The list shall describe each item, including the

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manufacturer, model number, date acquired, cost, and condition and shall be submitted to the Government within 60 calendar days after completion or termination of the contract.

- (g) Promotional Items. The contractor shall promptly identify to the Contracting Officer any promotional items (stand-alone or otherwise) received in conjunction with their purchases on behalf of the Government. Upon receipt and adjudication by the Government, the contractor shall follow the direction of the Contracting Officer with regard to the promotional items.
- (h) Audits and Analyses. The Government shall audit/analyze the contractor's processes, controls, policies, accountability, and administration of Government property. Audit/analysis teams will be composed of property analysts and subject matter experts in contracting, logistics, accounting, and finance, and may include Government contractors.
- (i) Reporting. The contractor shall submit quarterly reports in the method prescribed by the Government of all property accountable to this contract and in the possession of the contractor or subcontractors/vendors. Reports shall be submitted not later than 15 December, 15 March, 15 June, and 15 September. Each report must be submitted electronically, with full line-item detail. Each item must include a data field containing the appropriate Program Code to identify the program under which the item was originally acquired, or to designate the item as "non-program." For each non-program item with a value of \$100,000 or more acquired or manufactured during the reporting period, the contractor must provide an electronic copy of the invoice or other valuation documentation. Contractor quarterly reporting shall be considered an update to the Government Property List in the contract. The contractor shall submit a final report within 30 days after disposition of all contract accountable property. Changes to these reporting requirements, including changes in frequency, style, substance, and level of detail, may be made at any time during the performance of this contract at no change in contract value. Failure to provide required reporting may result in termination of this contract, suspension of payment by the Government until required reporting is received, or other action as deemed appropriate by the Contracting Officer.
- (j) Special Test Equipment. The contractor must obtain Contracting Officer approval before acquiring or fabricating special test equipment at Government expense unless the equipment is itemized in this contract.
- (k) Flowdown. The contractor shall include this clause in all subcontracts.

### **L. DEFERRED DELIVERY OF TECHNICAL DATA OR COMPUTER SOFTWARE (MAY 2005)**

The Government may identify technical data or computer software (as defined below) for deferred delivery at any time during contract performance by listing such technical data or computer software in an attachment to this contract titled "Deferred Delivery." The Government may require delivery of the items identified for deferred delivery up to three (3) years after either acceptance of all deliverables or contract termination, whichever is later. This clause will be flowed down to all subcontractors.

Technical data means recorded information, regardless of the form or method of recording, of a scientific or technical nature (including computer software documentation). The term does not include information incidental to contract administration, such as financial and/or management information.

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 databases or computer software documentation. For the purpose of this clause, the term "computer software" shall also refer to "computer software documentation". Computer software documentation means owner's manuals, user's manuals, installation instructions, operating instructions, concepts of operations, and other similar items, regardless of storage medium, that explain the capabilities of the computer software or provide instructions for using the software. Computer software documentation shall be considered to be an integral/ necessary part of the computer software with which it is associated unless otherwise delineated in this clause.

### **M. DEFERRED ORDERING OF TECHNICAL DATA OR COMPUTER SOFTWARE (SEP 2013)**

- (a) The Government may defer ordering technical data, computer software (as defined in I-21 or I-22), or other information not easily categorized (as defined in clause I-22(d) and mutually agreed to by the contractual parties) that is generated during the performance of this contract for a period of up to three (3) years after either acceptance of all deliverables or contract termination, whichever is later.

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- (b) The categories of technical data, computer software, and other information not easily categorized that is subject to deferred ordering under this clause are incorporated into the contract in the Contract Data Requirements List item that describes the Data Accession List attached to the contract.
- (c) When the technical data, computer software, or other information not easily categorized is ordered, the contractor shall be reasonably compensated for converting the data or computer software into the prescribed form, for reproduction, and for delivery.
- (d) The Government's rights to use said technical data and computer software shall be pursuant to the Rights in Technical Data and Computer Software clause(s) of this contract (I-21 and I-22).
- (e) This clause shall be flowed down to all subcontractors.

### **N. PATENT RIGHTS—OWNERSHIP BY THE CONTRACTOR (LARGE BUSINESS) (APR 2009) ALT II**

- (a) Definitions. As used in this clause—

“Invention” means—

- (1) Any invention or discovery that is or may be patentable or otherwise protectable under Title 35 of the United States Code; or
- (2) Any variety of plant that is or may be protectable under the Plant Variety Protection Act (7 U.S.C. 2321, et seq.).

“Made” means—

- (1) When used in relation to any invention other than a plant variety, means the conception or first actual reduction to practice of the invention; or
- (2) When used in relation to a plant variety, means that the contractor has at least tentatively determined that the variety has been reproduced with recognized characteristics.

“Nonprofit organization” means—

- (1) A university or other institution of higher education;
- (2) An organization of the type described in the Internal Revenue Code at 26 U.S.C. 501(c)(3) and exempt from taxation under 26 U.S.C. 501(a); or
- (3) Any nonprofit scientific or educational organization qualified under a State nonprofit organization statute.

“Practical application” means—

- (1)
  - (i) To manufacture, in the case of a composition or product;
  - (ii) To practice, in the case of a process or method; or
  - (iii) To operate, in the case of a machine or system; and
- (2) In each case, under such conditions as to establish that—
  - (i) The invention is being utilized; and
  - (ii) The benefits of the invention are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.

“Subject invention” means any invention of the contractor made in the performance of work under this contract.

- (b) Contractor's rights.

- (1) Ownership. The contractor may elect to retain ownership of each subject invention throughout the world in accordance with the provisions of this clause.
- (2) License.
  - (i) The contractor shall retain a nonexclusive royalty-free license throughout the world in each subject invention to which the Government obtains title, unless the contractor fails to disclose the invention within the times specified in paragraph (c) of this clause. The contractor's license—
    - (A) Extends to any domestic subsidiaries and affiliates within the corporate structure of which the contractor is a part;
    - (B) Includes the right to grant sublicenses to the extent the contractor was legally obligated to do so at the time of contract award; and
    - (C) Is transferable only with the approval of the agency, except when transferred to the successor of that part of the contractor's business to which the invention pertains.
  - (ii) The agency—
    - (A) May revoke or modify the contractor's domestic license to the extent necessary to

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- achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with 37 CFR Part 404 and agency licensing regulations;
- (B) Will not revoke the license in that field of use or the geographical areas in which the contractor has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public; and
  - (C) May revoke or modify the license in any foreign country to the extent the contractor, its licensees, or the domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.
- (iii) Before revoking or modifying the license, the agency—
    - (A) Will furnish the contractor a written notice of its intention to revoke or modify the license; and
    - (B) Will allow the contractor 30 days (or such other time as the funding agency may authorize for good cause shown by the contractor) after the notice to show cause why the license should not be revoked or modified.
  - (iv) The contractor has the right to appeal, in accordance with 37 CFR Part 404 and agency regulations, concerning the licensing of Government-owned inventions, any decision concerning the revocation or modification of the license.
  - (v) The agency reserves the right to—
    - (A) Unilaterally amend this contract to identify specific treaties or international agreements entered into or to be entered into by the Government after the effective date of this contract; and
    - (B) Exercise those license or other rights that are necessary for the Government to meet its obligations to foreign governments, their nationals, and international organizations under any treaties or international agreement with respect to subject inventions made after the date of the amendment.
- (c) Contractor's obligations.
- (1) The contractor shall—
    - (i) Disclose, in writing, each subject invention to the Contracting Officer within 2 months after the inventor discloses it in writing to contractor personnel responsible for patent matters, or within 6 months after the contractor first becomes aware that a subject invention has been made, whichever is earlier;
    - (ii) Include in the disclosure—
      - (A) The inventor(s) and the contract under which the invention was made;
      - (B) Sufficient technical detail to convey a clear understanding of the invention; and
      - (C) Any publication, on sale (i.e., sale or offer for sale), or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication; and
    - (iii) After submission of the disclosure, promptly notify the Contracting Officer of the acceptance of any manuscript describing the invention for publication and of any on sale or public use.
  - (2) The contractor shall elect in writing whether or not to retain ownership of any subject invention by notifying the Contracting Officer at the time of disclosure or within 8 months of disclosure, as to those countries (including the United States) in which the contractor will retain ownership. However, in any case where publication, on sale, or public use has initiated the one-year statutory period during which valid patent protection can be obtained in the United States, the agency may shorten the period of election of title to a date that is no more than 60 days prior to the end of the statutory period.
  - (3) The contractor shall—
    - (i) File either a provisional or a nonprovisional patent application on an elected subject invention within one year after election, provided that in all cases the application is filed prior to the end of any statutory period wherein valid patent protection can be obtained in the United States after a publication, on sale, or public use;
    - (ii) File a nonprovisional application within 10 months of the filing of any provisional application; and
    - (iii) File patent applications in additional countries or international patent offices within either 10 months of the first filed patent application (whether provisional or nonprovisional) or 6 months

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from the date the Commissioner of Patents grants permission to file foreign patent applications where such filing has been prohibited by a Secrecy Order.

- (4) The contractor may request extensions of time for disclosure, election, or filing under paragraphs (c)(1), (2), and (3) of this clause. The Contracting Officer will normally grant the extension unless there is reason to believe the extension would prejudice the Government's interests.
- (d) Government's rights.
  - (1) Ownership. The contractor shall assign to the agency, upon written request, title to any subject invention—
    - (i) If the contractor elects not to retain title to a subject invention;
    - (ii) If the contractor fails to disclose or elect the subject invention within the times specified in paragraph (c) of this clause and the agency requests title within 60 days after learning of the contractor's failure to report or elect within the specified times;
    - (iii) In those countries in which the contractor fails to file patent applications within the times specified in paragraph (c) of this clause, provided that, if the contractor 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 agency, the contractor shall continue to retain ownership in that country; and
    - (iv) In any country in which the contractor 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 the contractor 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 behalf of the United States, the subject invention throughout the world.
- (e) Contractor action to protect the Government's interest.
  - (1) The contractor shall execute or have executed and promptly deliver to the agency all instruments necessary to—
    - (i) Establish or confirm the rights the Government has throughout the world in those subject inventions in which the contractor elects to retain ownership; and
    - (ii) Assign title to the agency when requested under paragraph (d)(1) of this clause and enable the Government to obtain patent protection for that subject invention in any country.
  - (2) The contractor shall—
    - (i) Require, by written agreement, its employees, other than clerical and non-technical employees, to—
      - (A) Disclose each subject invention promptly in writing to personnel identified as responsible for the administration of patent matters, so that the contractor can comply with the disclosure provisions in paragraph (c) of this clause; and
      - (B) Provide the disclosure in the contractor's format, which should require, as a minimum, the information required by paragraph (c)(1) of this clause;
    - (ii) Instruct its 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 statutory foreign bars; and
    - (iii) Execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions.
  - (3) The contractor shall notify the Contracting Officer of any decisions not to file a nonprovisional 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) The contractor shall include, within the specification of any United States nonprovisional patent application and any patent issuing thereon covering a subject invention, the following statement: "This invention was made with Government support under (identify the contract) awarded by (identify the agency). The Government has certain rights in this invention."
  - (5) The contractor shall—
    - (i) Establish and maintain active and effective procedures to ensure that subject inventions are promptly identified and disclosed to contractor personnel responsible for patent matters;

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- (ii) Include in these procedures the maintenance of—
    - (A) Laboratory notebooks or equivalent records and other records as are reasonably necessary to document the conception and/or the first actual reduction to practice of subject inventions; and
    - (B) Records that show that the procedures for identifying and disclosing the inventions are followed; and
  - (iii) Upon request, furnish the Contracting Officer a description of these procedures for evaluation and for determination as to their effectiveness.
- (6) The contractor shall, when licensing a subject invention, arrange to—
  - (i) Avoid royalty charges on acquisitions involving Government funds, including funds derived through the Government's Military Assistance Program or otherwise derived through the Government;
  - (ii) Refund any amounts received as royalty charges on the subject inventions in acquisitions for, or on behalf of, the Government; and
  - (iii) Provide for the refund in any instrument transferring rights in the invention to any party.
- (7) The contractor shall furnish to the Contracting Officer the following:
  - (i) Interim reports every 12 months (or any longer period as may be specified by the Contracting Officer) from the date of the contract, listing subject inventions during that period and stating that all subject inventions have been disclosed or that there are no subject inventions.
  - (ii) A final report, within 3 months after completion of the contracted work, listing all subject inventions or stating that there were no subject inventions, and listing all subcontracts at any tier containing a patent rights clause or stating that there were no subcontracts.
- (8)
  - (i) The contractor shall promptly notify the Contracting Officer in writing upon the award of any subcontract at any tier containing a patent rights clause by identifying—
    - (A) The subcontractor;
    - (B) The applicable patent rights clause;
    - (C) The work to be performed under the subcontract; and
    - (D) The dates of award and estimated completion.
  - (ii) The contractor shall furnish, upon request, a copy of the subcontract, and no more frequently than annually, a listing of the subcontracts that have been awarded.
- (9) In the event of a refusal by a prospective subcontractor to accept one of the clauses specified in paragraph (1)(1) of this clause, the contractor—
  - (i) Shall promptly submit a written notice to the Contracting Officer setting forth the subcontractor's reasons for the refusal and other pertinent information that may expedite disposition of the matter; and
  - (ii) Shall not proceed with that subcontract without the written authorization of the Contracting Officer.
- (10) The contractor shall provide to the Contracting Officer, upon request, the following information for any subject invention for which the contractor has retained ownership:
  - (i) Filing date.
  - (ii) Serial number and title.
  - (iii) A copy of any patent application (including an English-language version if filed in a language other than English).
  - (iv) Patent number and issue date.
- (11) The contractor shall furnish to the Government, upon request, an irrevocable power to inspect and make copies of any patent application file.
- (f) Reporting on utilization of subject inventions.
  - (1) The contractor shall—
    - (i) Submit upon request periodic reports no more frequently than annually on the utilization of a subject invention or on efforts in obtaining utilization of the subject invention that are being made by the contractor or its licensees or assignees;
    - (ii) Include in the reports information regarding the status of development, date of first commercial sale or use, gross royalties received by the contractor, and other information as the agency may reasonably specify; and
    - (iii) Provide additional reports that the agency may request in connection with any march-in



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- proceedings undertaken by the agency in accordance with paragraph (h) of this clause.
- (2) To the extent permitted by law, the agency shall not disclose the information provided under paragraph (f)(1) of this clause to persons outside the Government without the contractor's permission, if the data or information is considered by the contractor or its licensee or assignee to be "privileged and confidential" (see 5 U.S.C. 552(b)(4)) and is so marked.
  - (g) Preference for United States industry. Notwithstanding any other provision of this clause, the contractor agrees that neither the contractor 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 agency may waive the requirement for an exclusive license agreement upon a showing by the contractor or its assignee that—
    - (1) 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
    - (2) Under the circumstances, domestic manufacture is not commercially feasible.
  - (h) March-in rights. The contractor acknowledges that, with respect to any subject invention in which it has retained ownership, the agency has the right to require licensing pursuant to 35 U.S.C. 203 and 210(c), 37 CFR 401.6, and any supplemental regulations of the agency in effect on the date of contract award.
    - (i) Other inventions. Nothing contained in this clause shall be deemed to grant to the Government any rights with respect to any invention other than a subject invention.
  - (j) Examination of records relating to inventions.
    - (1) The Contracting Officer or any authorized representative shall, until 3 years after final payment under this contract, have the right to examine any books (including laboratory notebooks), records, and documents of the contractor relating to the conception or first reduction to practice of inventions in the same field of technology as the work under this contract to determine whether—
      - (i) Any inventions are subject inventions;
      - (ii) The contractor has established procedures required by paragraph (e)(5) of this clause; and
      - (iii) The contractor and its inventors have complied with the procedures.
    - (2) If the Contracting Officer learns of an unreported contractor invention that the Contracting Officer believes may be a subject invention, the contractor shall be required to disclose the invention to the agency for a determination of ownership rights.
    - (3) Any examination of records under this paragraph (j) shall be subject to appropriate conditions to protect the confidentiality of the information involved.
  - (k) Withholding of payment (this paragraph does not apply to subcontracts).
    - (1) Any time before final payment under this contract, the Contracting Officer may, in the Government's interest, withhold payment until a reserve not exceeding \$50,000 or 5 percent of the amount of the contract, whichever is less, is set aside if, in the Contracting Officer's opinion, the contractor fails to—
      - (i) Establish, maintain, and follow effective procedures for identifying and disclosing subject inventions pursuant to paragraph (e)(5) of this clause;
      - (ii) Disclose any subject invention pursuant to paragraph (c)(1) of this clause;
      - (iii) Deliver acceptable interim reports pursuant to paragraph (e)(7)(i) of this clause; or
      - (iv) Provide the information regarding subcontracts pursuant to paragraph (e)(8) of this clause.
    - (2) The reserve or balance shall be withheld until the Contracting Officer has determined that the contractor has rectified whatever deficiencies exist and has delivered all reports, disclosures, and other information required by this clause.
    - (3) The Government will not make final payment under this contract before the contractor delivers to the Contracting Officer—
      - (i) All disclosures of subject inventions required by paragraph (c)(1) of this clause;
      - (ii) An acceptable final report pursuant to paragraph (e)(7)(ii) of this clause; and
      - (iii) All past due confirmatory instruments.
    - (4) The Contracting Officer may decrease or increase the sums withheld up to the maximum authorized in paragraph (k)(1) of this clause. No amount shall be withheld under this paragraph while the amount specified by this paragraph is being withheld under other provisions of the contract. The withholding of any amount or the subsequent payment thereof shall not be construed as a waiver of any Government right.
  - (l) Subcontracts.

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- (1) The contractor—
  - (i) Shall include the substance of the Patent Rights—Ownership by the Contractor clause set forth at 52.227-11 of the Federal Acquisition Regulation (FAR), in all subcontracts for experimental, developmental, or research work to be performed by a small business concern or nonprofit organization; and
  - (ii) Shall include the substance of this clause, including this paragraph (1), in all other subcontracts for experimental, developmental, or research work, unless a different patent rights clause is required by FAR 27.303.
- (2) For subcontracts at any tier—
  - (i) The patents rights clause included in the subcontract shall retain all references to the Government and shall provide to the subcontractor all the rights and obligations provided to the contractor in the clause. The contractor shall not, as consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions; and
  - (ii) The Government, the contractor, and the subcontractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and the Government with respect to those matters covered by this clause. However, nothing in this paragraph is intended to confer any jurisdiction under the Contract Disputes Act in connection with proceedings under paragraph (h) of this clause.

### **O. GOVERNMENT ACCESS TO INTERIM DATA LICENSE (FEB 2011)**

- (a) Definition. As used in this clause, Integrated Data Environment (IDE) means a mutually agreed to data storage and information management environment that facilitates Government and Industry information sharing and exchange, whether electronically or via hardcopy, to enable timely access and submission of information of all types and form.
- (b) If the contractor provides the Government access (whether electronically, via hard copy, person-to-person exchanges, IDE, or other means) to technical data or computer software prior to the contractually scheduled delivery date, or to technical data or computer software that is not otherwise subject to delivery, the Government's access shall not constitute delivery of such technical data or computer software under this contract. Unless otherwise expressly set forth in an attachment to this contract as described in paragraph (d) of clause I-22, Rights in Technical Data and Computer Software: Noncommercial Items, this clause will also apply to data that cannot easily be categorized as technical data or business data to which the Government is given access prior to delivery, or which is not otherwise subject to delivery.
- (c) Subject to the restrictions set forth below, the Government may use, duplicate, and disclose such technical data or computer software within the Government in connection with the performance of this contract for such purposes as administration, evaluation, problem resolution, and technical collaboration with the contractor. The Government may disclose such technical data or computer software to its support contractors identified in clause I-10, Enabling Clause for Prime and Support Contractor Relationships, for these same purposes if and when the receiving support contractor(s) or subcontractor(s) contract arrangements are subject to clause I-24, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends.
  - (1) An additional non-disclosure, confidentiality, proprietary information, or similar agreement may be required by the owner of the technical data or computer software, but only on an exception basis, e.g., when such third party is or may be a direct competitor of the owner of the technical data or computer software. In the event an additional agreement is deemed necessary, the Contracting Officer shall be notified prior to its execution. The Government and contractor agree to cooperate to ensure that execution of any additional agreements shall not delay or inhibit performance of this contract. Such agreements shall not otherwise restrict any rights due the Government under this contract. All rights not granted to the Government are retained by the contractor.
- (d) The Government shall not use, nor allow others to use, such technical data or computer software for the purposes of manufacturing, re-procurement, or other competitive purposes against the contractor's interest, or any other purpose not directly related to this contract. The restrictions on use and further disclosure shall not apply to technical data or computer software:
  - (1) Independently developed by or for the Government by persons not having access to the contractor's technical data or computer software, as evidenced in written documentation;
  - (2) In which the Government has otherwise acquired lawful rights in the use and further disclosure of the

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- technical data or computer software; or
- (3) Are otherwise publically available.
- (e) The Government shall comply with reasonable access terms. Nothing in this clause diminishes the Governments rights under any other provision of this contract in delivered technical data or computer software.
- (f) All technical data or computer software to which the Government is provided access under this clause that is not intended to be responsive to the formal contract data requirements is provided as is, and does not give rise to any express or implied warranty. The contractor shall not be liable to the Government for any Government use or reliance on such technical data or computer software outside of the rights granted in this section.
- (g) Government access under this clause shall not modify the rights and obligations of the parties with respect to technical data or computer software under the contracts termination provisions. In addition, Government access to such technical data or computer software resident on a contractor system does not create a Government record for purposes of the Freedom of Information Act, 5 U.S.C. 552(b)(4).
- (h) The Governments rights to access, use, duplicate, and disclose technical data or computer software granted within this provision shall terminate upon earliest occurrence of any of the following events:
- (1) Contractual delivery of the technical data or computer software;
  - (2) Termination of the contract; or
  - (3) The end of the period of performance of the contract.
    - (i) Within six months of the termination of rights hereunder, the Government shall take reasonable efforts to destroy copies of the technical data and computer software disclosed under the provisions of this clause.
- (j) General Interim Access Marking Instructions.
- (1) The contractor may choose how to mark (or otherwise identify) technical data or computer software that has not or will not be delivered, from the following options:
    - (i) With a conforming restrictive legend pursuant to clause I-22(k)(1)-(4);
    - (ii) With the interim access license legend specified in this clause;
    - (iii) With a proprietary marking; or
    - (iv) With a proprietary marking and interim access license legend
  - (2) If technical data or computer software is marked with a conforming restrictive legend pursuant to clause I-22(k)(1)-(4), the Government may use that technical data or computer software in accordance with the rights specified in such legend.
  - (3) If the interim access license legend is used, the rights and restrictions that apply to the Government are as set forth in the interim access license provided by this clause.
  - (4) If technical data or computer software is marked with only proprietary markings, the Government is not bound by those proprietary markings for this contract, but must comply with the rights and restrictions of the interim access license provided by this clause.
  - (5) In the event a proprietary marking and interim access license legend is used, the Government is not bound by those proprietary markings for this contract, but must comply with the rights and restrictions of the interim access license provided by this clause.
- (k) The foregoing marking options do not prohibit the Government and contractor from establishing alternative specifically negotiated licenses and marking protocols when appropriate.
- (l) Government Interim Access License Rights Markings. Technical data or computer software in which the Government is granted an interim access license provided by this clause shall be marked with the following legend:
- Government Interim Access License Rights  
Contract No. \_\_\_\_\_  
Contractor Name: \_\_\_\_\_  
Contractor Address: \_\_\_\_\_
- The Government may use, duplicate, and disclose this technical data or computer software within the Government in connection with the performance of this contract for such purposes as administration, evaluation, problem resolution, and technical collaboration with the contractor. The Government may disclose such technical data or computer software to its support contractors for these same purposes if and when such support contractors have executed a non-disclosure agreement with the contractor, or as otherwise expressly permitted by the contractor. Any reproduction of technical data or portions thereof marked with this legend must also reproduce the markings.

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- (m) The contractor shall include this interim access license clause in all subcontracts or similar contractual instruments for non-commercial items, and require its subcontractors or suppliers to do so without alteration, except to identify the parties.

### **P. GOODS AND SERVICES TAX (AUSTRALIA) (FEB 2007)**

The supplies and /or services identified in this contract are to be bid and delivered at a price exclusive of Australian Goods and Services Tax (GST) (If goods/services are procured in Australia)

### **Q. HIRING CITIZENS OF AUSTRALIA AND THE UNITED KINGDOM (APR 2011)**

The contract is permitted to hire citizens of Australia (AU) and the United Kingdom (UK) in accordance with the Security Measures (Australia) clause and the Security Responsibilities (Australia) clause in this contract.

### **R. SECURITY MEASURES (AUSTRALIA) (JAN 2008)**

Take all reasonable steps to ensure that employees engaged on any work in connection with the contract have notice that Crimes Act of 1914 Section 79 pertaining to official secrets applies to them and ensure all affiliated employees sign a statement of acknowledgment.

### **S. SECURITY RESPONSIBILITIES (AUSTRALIA) (MAY 2016)**

Contractor and Subcontractor shall ensure that any subcontract with an AU company shall include a Security Aspects Letter that shall specify that requirements for the prime contractor to report to the United States Government (USG) any adverse personnel security information regarding cleared employees and changes impacting the FOCI.

### **T. TECHNICAL DATA AND COMPUTER SOFTWARE PREVIOUSLY DELIVERED TO THE GOVERNMENT (OCT 2015)**

The contractor shall attach to its offer an identification of all documents or other media incorporating technical data or computer software it intends to deliver under this contract with other than unlimited rights that are identical or substantially similar to documents or other media that the contractor has produced for, delivered to, or is obligated to deliver to the Government under any contract or subcontract

### **U. COMMERCIAL TECHNICAL DATA AND COMPUTER SOFTWARE LICENSING - ORDER OF PRECEDENCE (OCT 2014)**

- (a) Upon delivery of any commercial item technical data, computer software, computer software documentation, or any combination thereof, to the Government contained in any CLIN or CDRL, the following provisions shall take precedence over conflicting provisions in any license associated with those items, notwithstanding any provisions in those licenses to the contrary through renewals or extensions, as needed, to this contract:

(1) The Government shall have the right to use, perform, display, or disclose that commercial item technical data, in whole or in part, within the Government.

(2) The Government may not, without the written permission of the Licensor, release or disclose the commercial item technical data and commercial computer software outside the Government, use the commercial item technical data and computer software for manufacture, or authorize the commercial item technical data and computer software to be used by another party, except that the Government may reproduce, release, or disclose such data and software or authorize the use or reproduction of such data and software by persons outside the Government (including their subcontractors) to perform their respective contract(s) as identified in I-7.

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- (3) The Licensor agrees that the Government shall have the right to unilaterally add or delete contractors from those supporting the contract at any time, and its exercise of that right shall not entitle the Licensor to an equitable adjustment or a modification of any other terms and conditions of this contract.
- (4) The duration of this license shall be, at a minimum, for the period of performance of this contract (including options, if exercised) unless the license specifies a longer period.
- (5) License rights related to technical data described in, and granted to the U.S. Government under clause I-15 shall apply to all such technical data associated with delivered computer software including, but not limited to, users' manuals, installation instructions, and operating instructions.
- (6) Disputes arising between the Licensee and the U.S. Government pertaining to the provisions of the License shall be subject to the Contract Disputes Act. Furthermore, the jurisdiction and forum for disputes hereunder upon delivery to the U.S. Government shall be the Armed Services Board of Contract Appeals (ASBCA) or the U.S. Court of Federal Claims (COFC), as appropriate.
- (7) By law, the U.S. Government cannot enter into any indemnification agreement where the Governments liability is indefinite, indeterminate, unlimited, and in violation of the Anti-Deficiency Act; therefore, any such indemnification provision in this License shall be void.
- (8) In the event the Licensee files a claim with the U.S. Government on behalf of the Licensor and prevails in a dispute with the Government relating to that claim, the Licensor agrees that damages and remedies awarded shall exclude attorney's fees.
- (9) Subject to the security requirements set forth in this contract, and upon receiving written consent by the U.S. Government, the Licensor may be permitted to enter Government installations for purposes such as software usage audits or other forms of inspection.
- (10) The items provided hereunder may be installed and used at any U.S. Government installation worldwide at which contract equipment and/or software is located consistent with the provisions of the contract between the U.S. Government and the Licensee.
- (11) Under no circumstances shall terms of the License or any modifications thereto renew automatically so as to obligate funds in advance of funds being appropriated in contravention of the Anti-Deficiency Act.
- (12) The Licensor shall comply with, and all delivered items shall conform to, all applicable Government security/classification rules and regulations applicable to this agreement, in particular those set forth in the applicable DD Form 254 (Department of Defense Contract Security Classification Specification).
- (13) The Licensor understands that the ultimate purpose of the Licensee entering into this License with the Licensor is for the Licensor to supply to the U.S. Government a critical component of a weapons system whose continued sustainment is mandated by Federal law (10 U.S.C. 2281, 42 U.S.C. 14712). Accordingly, should the U.S. Government use, release or disclose the items described in this License in a manner inconsistent with the terms of this License, the U.S. Government shall not be required to de-install and stop using those items or return such items to the Licensee, and the Licensor's remedy will be limited to monetary damages.
- (14) In the event of inconsistencies between the License and Federal law, Federal law shall apply.
- (15) The Government shall not be required to comply with the terms and conditions of any License that is inconsistent with any applicable laws, regulations, or policies pursuant to export controlled items.
- (16) Any claim the Licensee files with the U.S. Government on behalf of the Licensor, and any claim the U.S. Government files with the Licensor, shall be submitted within the period specified in FAR 52.233-01 (Disputes).

(b) Subcontractor Flow-down. The contractor (Licensee) shall include the following clause in any agreement between it and its subcontractors (Licensors) that require the delivery of commercial item technical data, computer software, or computer software documentation, and this clause shall be in effect during the period of performance of this contract or into perpetuity for perpetual licenses:

This Addendum is entered into between \_\_\_\_\_ (Licensee) and \_\_\_\_\_ (Licensor) and relates to the commercial item technical data, computer software, or computer software documentation (Items) licensed to the

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Licensee by the Licensors through the Licensees License Agreement (Agreement), and this Addendum is incorporated by reference into the Agreement. The Addendum terms will come into effect if and when the Agreement is transferred to the Government. All references to such Items shall include all software updates (e.g., software maintenance patches, version changes, new releases) and future substitutions made by the Licensors. Upon delivery of that/those Items, Licensors and Licensee agree that the following provisions in this Addendum shall take precedence over conflicting provisions, if any, in the Agreement notwithstanding any provisions in the Agreement to the contrary:

- (1) License rights related to technical data granted to the U.S. Government under clause I-15(b)(1) shall apply to all technical data associated with delivered computer software including, but not limited to, users manuals, installation instructions, and operating instructions.
- (2) Disputes arising between the Licensee and the U.S. Government pertaining to the provisions of the Agreement shall be subject to the Contract Disputes Act. Furthermore, the jurisdiction and forum for disputes hereunder upon delivery to the U.S. Government shall be the Armed Services Board of Contract Appeals (ASBCA) or the U.S. Court of Federal Claims (COFC), as appropriate.
- (3) By law, the U.S. Government cannot enter into any indemnification agreement where the Governments liability is indefinite, indeterminate, unlimited, and in violation of the Anti-Deficiency Act; therefore, any such indemnification provision in this Agreement shall be void.
- (4) In the event the Licensee files a claim with the U.S. Government on behalf of the Licensors and prevails in a dispute with the Government relating to that claim, the Licensors agree that damages and remedies awarded shall exclude attorney's fees.
- (5) Upon receiving written consent by the U.S. Government, the Licensors may be permitted to enter Government installations for purposes such as software usage audits or other forms of inspection.
- (6) The Items provided hereunder may be installed and used at any U.S. Government installation worldwide consistent with the provisions of the contract between the U.S. Government and the Licensee (e.g., limitations on number of executing instances of software, number of users, other processing volume limitations).
- (7) Under no circumstances shall terms of the Agreement or any modifications thereto renew automatically so as to obligate funds in advance of funds being appropriated in contravention of the Anti-Deficiency Act.
- (8) Licensors shall comply with, and all delivered Items shall conform to, all applicable Government security/classification rules and regulations applicable to this Agreement, in particular those set forth in the applicable DD Form 254 (Department of Defense, Contract Security Classification Specification).
- (9) Licensors understand that the ultimate purpose of the Licensee entering into this Agreement with the Licensors is for the Licensors to supply to the U.S. Government a critical component of a weapons system whose continued sustainment is mandated by Federal law (10 U.S.C. 2281, 42 U.S.C. 14712). Accordingly, should the U.S. Government use, release, or disclose the Items described in this Agreement in a manner inconsistent with the terms of this Agreement, the U.S. Government shall not be required to uninstall and stop using those Items or return such Items to the Licensee.
- (10) In the event of inconsistencies between the Agreement and Federal law, Federal law shall apply

### **V. CONTRACTOR COUNTERFEIT ELECTRONIC PART DETECTION AND AVOIDANCE SYSTEM (JUL 2017)**

#### **(a) Definitions. As used in this clause—**

Authorized aftermarket manufacturer means an organization that fabricates a part under a contract with, or with the express written authority of, the original component manufacturer based on the original component manufacturer's designs, formulas, and/or specifications.

Authorized supplier means a supplier, distributor, or an aftermarket manufacturer with a contractual arrangement with, or the express written authority of, the original manufacturer or current design activity to buy, stock, repack, sell, or distribute the part.

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Contract manufacturer means a company that produces goods under contract for another company under the label or brand name of that company.

Contractor-approved supplier means a supplier that does not have a contractual agreement with the original component manufacturer for a transaction, but has been identified as trustworthy by a contractor or subcontractor.

Counterfeit electronic part means an unlawful or unauthorized reproduction, substitution, or alteration that has been knowingly mismarked, misidentified, or otherwise misrepresented to be an authentic, unmodified electronic part from the original manufacturer, or a source with the express written authority of the original manufacturer or current design activity, including an authorized aftermarket manufacturer. Unlawful or unauthorized substitution includes used electronic parts represented as new, or the false identification of grade, serial number, lot number, date code, or performance characteristics.

Electronic part means an integrated circuit, a discrete electronic component (including, but not limited to, a transistor, capacitor, resistor, or diode), or a circuit assembly. Obsolete electronic part means an electronic part that is no longer available from the original manufacturer or an authorized aftermarket manufacturer.

Original component manufacturer means an organization that designs and/or engineers a part and is entitled to any intellectual property rights to that part.

Original equipment manufacturer means a company that manufactures products that it has designed from purchased components and sells those products under the company's brand name.

Original manufacturer means the original component manufacturer, the original equipment manufacturer, or the contract manufacturer.

Suspect counterfeit electronic part means an electronic part for which credible evidence (including, but not limited to, visual inspection or testing) provides reasonable doubt that the electronic part is authentic.

(b) Acceptable counterfeit electronic part detection and avoidance system. The contractor shall establish and maintain an acceptable counterfeit electronic part detection and avoidance system. Failure to maintain an acceptable counterfeit electronic part detection and avoidance system, as defined in this clause, may result in disapproval of the contractor's purchasing system and affect the allow ability of costs of counterfeit electronic parts or suspect counterfeit electronic parts and the cost of rework or corrective action that may be required to remedy the use or inclusion of such parts.

(c) System criteria. A counterfeit electronic part detection and avoidance system shall include risk-based policies and procedures that address, at a minimum, the following areas:

- (1) The training of personnel.
- (2) The inspection and testing of electronic parts, including criteria for acceptance and rejection. Tests and inspections shall be performed in accordance with accepted Government- and Industry-recognized techniques. Selection of tests and inspections shall be based on minimizing risk to the Government. Determination of risk shall be based on the assessed probability of receiving a counterfeit electronic part; the probability that the inspection or test selected will detect a counterfeit electronic part; and the potential negative consequences of a counterfeit electronic part being installed (e.g., human safety, mission success) where such consequences are made known to the contractor.
- (3) Processes to abolish counterfeit parts proliferation within the contractor's supply chain.
- (4) Risk-based processes that enable tracking of electronic parts from the original manufacturer to product acceptance by the Government, whether the electronic parts are supplied as discrete electronic parts or are contained in assemblies, in accordance with paragraph (c) of the clause at I-34, Sources of Electronic Parts (also see paragraph (c)(2) of this clause).
- (5) Use of suppliers in accordance with the clause at I-34.
- (6) Reporting and quarantining of counterfeit electronic parts and suspect counterfeit electronic parts. Reporting is required to the Contracting Officer and to the Government-Industry Data Exchange Program (GIDEP) within 30 days after the contractor becomes aware of, or has reason to suspect that, any electronic part or end item, component, part, or assembly containing electronic parts purchased by the Government, or purchased by a contractor for delivery to, or on behalf of, the Government, contains

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counterfeit electronic parts or suspect counterfeit electronic parts. Counterfeit electronic parts and suspect counterfeit electronic parts shall be quarantined and protected as evidence along with original documentation, and shall not be returned to the seller or otherwise returned to the supply chain until such time that the parts are determined to be authentic.

(7) Methodologies to identify suspect counterfeit parts and to rapidly determine if a suspect counterfeit part is, in fact, counterfeit.

(8) Design, operation, and maintenance of systems to detect and avoid counterfeit electronic parts and suspect counterfeit electronic parts. The contractor may elect to use current Government- or Industry-recognized standards to meet this requirement.

(9) Flow down of counterfeit detection and avoidance requirements, including applicable system criteria provided herein, to subcontractors at all levels in the supply chain that are responsible for buying or selling electronic parts or assemblies containing electronic parts, or for performing authentication testing.

(10) Process for keeping continually informed of current counterfeiting information and trends, including detection and avoidance techniques contained in appropriate industry standards, and using such information and techniques for continuously upgrading internal processes.

(11) Process for screening GIDEP reports and other credible sources of counterfeiting information to avoid the purchase or use of counterfeit electronic parts.

(12) Control of obsolete electronic parts in order to maximize the availability and use of authentic, originally designed, and qualified electronic parts throughout the product's life cycle.

(d) The contractor shall submit a comprehensive description of their counterfeit electronic part detection and avoidance system to the Contracting Officer for review and acceptance within 60 days after contract award. This submission shall include the criteria to be used by the contractor and subcontractors to select contractor approved suppliers. In addition, Government review and evaluation of the contractor's policies and procedures will be accomplished as part of the evaluation of the contractor's purchasing system.

(e) The contractor shall include the substance of this clause in subcontracts, including subcontracts for commercial items, for electronic parts or assemblies containing electronic parts.

### W. SOURCES OF ELECTRONIC PARTS (JUL 2017)

(a) Definitions. As used in this clause—

Authorized aftermarket manufacturer means an organization that fabricates a part under a contract with, or with the express written authority of, the original component manufacturer based on the original component manufacturer's designs, formulas, and/or specifications.

Authorized supplier means a supplier, distributor, or an aftermarket manufacturer with a contractual arrangement with, or the express written authority of, the original manufacturer or current design activity to buy, stock, repack, sell, or distribute the part.

Contract manufacturer means a company that produces goods under contract for another company under the label or brand name of that company.

Contractor-approved supplier means a supplier that does not have a contractual agreement with the original component manufacturer for a transaction, but has been identified as trustworthy by a contractor or subcontractor.

Electronic part means an integrated circuit, a discrete electronic component (including, but not limited to, a transistor, capacitor, resistor, or diode), or a circuit assembly.

Original component manufacturer means an organization that designs and/or engineers a part and is entitled to any intellectual property rights to that part.

Original equipment manufacturer means a company that manufactures products that it has designed from purchased components and sells those products under the company's brand name.



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Original manufacturer means the original component manufacturer, the original equipment manufacturer, or the contract manufacturer.

(b) Selecting suppliers. The Contractor shall—

(1) First obtain electronic parts that are in production by the original manufacturer or an authorized aftermarket manufacturer or currently available in stock from—

- (i) The original manufacturers of the parts;
- (ii) Their authorized suppliers; or
- (iii) Suppliers that obtain such parts exclusively from the original manufacturers of the parts or their authorized suppliers;

(2) If electronic parts are not available as provided in paragraph (b)(1) of this clause, obtain electronic parts that are not in production by the original manufacturer or an authorized aftermarket manufacturer, and that are not currently available in stock from a source listed in paragraph (b)(1) of this clause, from suppliers identified by the Contractor as contractor-approved suppliers, provided that—

- (i) For identifying and approving such contractor-approved suppliers, the Contractor uses established counterfeit prevention industry standards and processes (including inspection, testing, and authentication), such as the DoD-adopted standards at <https://assist.dla.mil>;
- (ii) The Contractor assumes responsibility for the authenticity of parts provided by such contractor-approved suppliers, and for the compliance of such parts with the standards specified in this contract; and
- (iii) The Contractor's selection of such contractor-approved suppliers is subject to review and audit by the Contracting Officer; or

(3)(i) Take the actions in paragraph (b)(3)(ii) of this clause if the Contractor—

(A) Obtains an electronic part from—

(1) A source other than any of the sources identified in paragraph (b)(1) or (b)(2) of this clause, due to non-availability from such sources; or

(2) A subcontractor (other than the original manufacturer) that refuses to accept flowdown of this clause; or

(B) Cannot confirm that an electronic part is new or previously unused and that it has not been comingled in supplier new production or stock with used, refurbished, reclaimed, or returned parts.

(ii) If the contractor obtains an electronic part or cannot confirm an electronic part pursuant to paragraph

(b)(3)(i) of this clause—

(A) Promptly notify the Contracting Officer in writing. If such notification is required for an electronic part to be used in a designated lot of assemblies to be acquired under a single contract, the Contractor may submit one notification for the lot, providing identification of the assemblies containing the parts (e.g., serial numbers);

(B) Be responsible for inspection, testing, and authentication, in accordance with existing applicable industry standards; and

(C) Make documentation of inspection, testing, and authentication of such electronic parts available to the Government upon request.

(c) Traceability. If the Contractor is not the original manufacturer of, or authorized supplier for, an electronic part, the Contractor shall—

(1) Have risk-based processes (taking into consideration the consequences of failure of an electronic part) that enable tracking of electronic parts from the original manufacturer to product acceptance by the Government, whether the electronic part is supplied as a discrete electronic part or is contained in an assembly;

(2) If the Contractor cannot establish this traceability from the original manufacturer for a specific electronic part, be responsible for inspection, testing, and authentication, in accordance with existing applicable industry standards; and

(3)(i) Maintain documentation of traceability (paragraph (c)(1) of this clause) or the inspection, testing, and authentication required when traceability cannot be established (paragraph (c)(2) of this clause) in accordance with FAR Subpart 4.7; and

(ii) Make such documentation available to the Government upon request.

(d) Government sources. Contractors and subcontractors are still required to comply with the requirements of paragraphs (b) and (c) of this clause, as applicable, if—

(1) Authorized to purchase electronic parts from the Federal Supply Schedule;

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- (2) Purchasing electronic parts from suppliers accredited by the Defense Microelectronics Activity; or
- (3) Requisitioning electronic parts from Government inventory/stock under the authority of FAR Clause 52.251-1, Government Supply Sources.
- (i) The cost of any required inspection, testing, and authentication of such parts may be charged as a direct cost.
- (ii) The Government is responsible for the authenticity of the requisitioned parts. If any such part is subsequently found to be counterfeit or suspect counterfeit, the Government will—
  - (A) Promptly replace such part at no charge; and
  - (B) Consider an adjustment in the contract schedule to the extent that replacement of the counterfeit or suspect counterfeit electronic parts caused a delay in performance.
- (e) Subcontracts. The Contractor shall include the substance of this clause, including this paragraph (e), in subcontracts, including subcontracts for commercial items that are for electronic parts or assemblies containing electronic parts, unless the subcontractor is the original manufacturer.

### **X. PROHIBITION OF CONTRACTING FOR HARDWARE, SOFTWARE, AND SERVICES DEVELOPED OR PROVIDED BY KASPERSKY LAB AND OTHER COVERED ENTITIES (AUG 2018)**

(a) *Definitions.* As used in this clause—

*Covered article* means any hardware, software, or service that—

- (1) Is developed or provided by a covered entity;
- (2) Includes any hardware, software, or service developed or provided in whole or in part by a covered entity; or
- (3) Contains components using any hardware or software developed in whole or in part by a covered entity.

*Covered entity* means—

- (1) Kaspersky Lab;
- (2) Any successor entity to Kaspersky Lab;
- (3) Any entity that controls, is controlled by, or is under common control with Kaspersky Lab; or
- (4) Any entity of which Kaspersky Lab has a majority ownership.

(b) *Prohibition.* Section 1634 of Division A of the National Defense Authorization Act for Fiscal Year 2018 (Pub. L. 115-91) prohibits Government use of any covered article. The Contractor is prohibited from—

- (1) Providing any covered article that the Government will use on or after October 1, 2018; and

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(2) Using any covered article on or after October 1, 2018, in the development of data or deliverables first produced in the performance of the contract.

*(c) Reporting requirement.*

(1) In the event the Contractor identifies a covered article provided to the Government during contract performance, or the Contractor is notified of such by a subcontractor at any tier or any other source, the Contractor shall report, in writing, to the Contracting Officer or, in the case of the Department of Defense, to the website at <https://dibnet.dod.mil>. For indefinite delivery contracts, the Contractor shall report to the Contracting Officer for the indefinite delivery contract and the Contracting Officer(s) for any affected order or, in the case of the Department of Defense, identify both the indefinite delivery contract and any affected orders in the report provided at <https://dibnet.dod.mil>.

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

(i) Within 1 business day from the date of such identification or notification: the contract number; the order number(s), if applicable; supplier name; brand; model number (Original Equipment Manufacturer (OEM) 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 report pursuant to paragraph (c)(1) 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 a covered article, any reasons that led to the use or submission of the covered article, and any additional efforts that will be incorporated to prevent future use or submission of covered articles.

(d) Subcontracts. The Contractor shall insert the substance of this clause, including this paragraph (d), in all subcontracts, including subcontracts for the acquisition of commercial items. (End of clause)

## II. REVISIONS

A. The following changes are made to clause 58 entitled, "Federal Acquisition Regulation (FAR) and Defense Far Supplement (DFARS) Flowdown Provisions":

1. Add the following FAR clauses, which are incorporated herein and made a part hereof

52.222-19	<b>Child Labor-Cooperation with Authorities and Remedies</b>
52.223-99	<b>Ensuring Adequate COVID-19 Safety Protocols for Federal Contractors</b>
52.227-1 (Alt I)	<b>Authorization and Consent (ALT I)</b>
52.233-3 (Alt I)	Used in cases where cost reimbursement contract is contemplated for Protest after Award
52.244-2	<b>Subcontracts</b> - When this clause is included in a fixed-price type contract, consent to subcontract is required only on unpriced contract actions (including unpriced modifications or unpriced delivery orders), and only if required in accordance with paragraph (c ) or (d) of this clause.

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52.247-63

**Preference for U.S.-Flag Air Carriers** - Applicable to any Order and lower-tier subcontracts that involve international air transportation and are greater than the simplified acquisition threshold (\$250K).

2. Delete all DFARS clauses.

### III. Special Clauses

**Medical Clearance for United States Personnel** – Contractor personnel who are US citizens and selected for assignment to the Joint Defense Facility Pine Gap (JDFPG) shall be medically approved as specified in this clause.

### IV. Other Contract Clauses

**Customer Inspector General and the Customer Hotline** - The contractor must report to the Customer Inspector General (IG) any and all possible violations of federal law or illegal intelligence activities related to this contract by individuals charging directly or indirectly to this contract.

**Notice of Litigation** - The contractor shall within five business days notify the Contracting Officer of any litigation filed by a third party.

**Release of Contract Information** - The contractor shall not use or allow to be used any aspect of this contract for publicity, advertisement, or any other public relations purpose. Must obtain written approval for the Contracting Officer before releasing any information related to this contract.

**Protection of Information (Dec 2011)** - Contractor agrees that it shall not disclose, divulge, discuss, or otherwise reveal information to anyone or any organization not authorized access to such information.

**Enabling Clause for Prime and Support Contractor Relationships (Oct 2011)** - Government currently has, or may enter into, contracts with one or more of the following companies, the primary purpose of which is to furnish independent and impartial advice or technical assistance directly to the Government in support of the Governments management and oversight of a program or effort.

**Utilization of Small Business Concerns (Dec 2011)** - Contractor agrees to award subcontracts with veteran-owned small businesses, service-disabled veteran-owned small businesses, HUB Zone small businesses, small disadvantaged businesses, and women-owned small business.

**Safety Precautions for Ammunition and Explosives (Jan 2004)** - Contractor shall allow the Government access to the contractor's facilities, personnel, and safety program documentation. The contractor shall allow authorized Government representatives to evaluate safety programs, implementation, and facilities.

**Foreign Temporary Duty travel (Oct 2014)** - All contractor and subcontractor personnel performing foreign travel under the associated contract shall contact the customer in advance to coordinate pre-deployment requirements.

**Technical Data or Computer Software Previously Delivered to the Government (Oct 2015)** - The contractor shall attach to its offer an identification of all documents or other media incorporating technical data or computer software it intends to deliver under this contract with other than unlimited rights that are identical or substantially similar to documents or other media that the contractor has produced for, delivered to, or is obligated to deliver to the Government under any contract or subcontract.

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**Patent Rights - Ownership by the Contractor (Large Business) Alternate II (Apr 2009)** - Contractor shall disclose each subject invention promptly in writing to the Government.

**Customer Access to Interim Data License (Feb 2011)** - Integrated Data Environment (IDE) means a mutually agreed to data storage and information management environment that facilitates Government and Industry information sharing and exchange, whether electronically or via hardcopy, to enable timely access and submission of information of all types and form.

**Subcontracts (Educational Institutions) (Mar 2015)** - The Contractor shall obtain written authorization from the Contracting Officer prior to award, extension, or renewal of a subcontract with the educational institution.

**Subcontracts Reporting, Monitoring, Consent, and Notification (Feb 2018)** - The prime contractor shall submit an annual report of all first - and second-tier subcontracts directly chargeable to this contract by 30 June each year, and a final close-out report within 90 days after contract completion.

**Contract-Accountable Government Property: Responsibilities, Use, reporting, and Administration (Nov 2017)** - Details regarding maintaining adequate property control procedure, records, and a system of identification for all Government property accountable to this contract in accordance with FAR 52.245-1 and this clause.

**Industry Partner Access (Oct 2020)** - The contractor will require government controlled information, including national security information up to and including sensitive compartmented information, at the contractors facility.