

Flowdown Attachment

RIS FDA-2022.0328

Contract No.: 16-C-0325

Project Description: Palinode

DPAS Rating: DX-A7

If the Purchase Order on date of award is valued at or above the threshold specified in FAR 19.702(a), located at <https://www.acquisition.gov/far/19.702>, and is not for commercial items, the following applies:

In order to meet the requirements of Small Business Subcontracting Plan requirements, the Seller agrees to provide a Small Business Subcontracting Plan prior to the award of a Purchase Order. The referenced plan should contain goals for subcontracting with small businesses, small disadvantaged businesses, woman-owned small business, historically under-utilized small business, veteran owned and service disabled veteran owned businesses in accordance with the plan requirements outlined in the special agency clause below titled, "Small Business Subcontracting Plan."

In addition, the Seller must submit an Individual Subcontracting Report (ISR) via the Electronic Subcontracting Reporting System (eSRS) (<http://www.esrs.gov>) on a semi-annual basis for reporting periods ending on March 31st and September 30th. Reports are due no later than 30 days after the close of each reporting period.

Email for Seller's official acknowledging or rejecting the ISR: ris.esrs@raytheon.com
(Seller must include contractor official on the ISR report email notification)

The following customer contract requirements apply to this Order or Purchase Order to the extent indicated below and are hereby incorporated into the Order or Purchase Order by full text or by reference with the same force and effect as if they were given in full text. Upon Supplier's or Seller's request, Buyer's Purchasing Representative will make their full text available. Also, the full text of a FAR or DFARS provision or clause may be accessed electronically at these addresses: <https://www.acquisition.gov/dfars/part-252-solicitation-provisions-and-contract-clauses> or <https://www.acquisition.gov/far/>:

Whenever necessary to make the context of the Clauses applicable to the Order or Purchase Order, the term "Contractor" or "Offeror" shall mean "Supplier" or "Seller", "Subcontractor" shall mean "Seller's Subcontractor", the term "Contract" shall mean the Order or Purchase Order, and the term "Government", "Contracting Officer" and equivalent phrases shall mean Buyer, except the terms "Government" and "Contracting Officer" do not change: (a) in the phrases, "Government Property", "Government-Furnished Property", and "Government-Owned Property", (b) in the patent Clauses if incorporated herein, (c) when a right, act, authorization, or obligation can be granted or performed only by the Government or the Contracting Officer or a duly authorized representative, such as in FAR 52.227-1 and FAR 52.227-2, (d) when title to property is to be transferred directly to the Government, (e) when access to Proprietary Information is required, except as specifically otherwise provided herein, and (f) where specifically modified herein. Supplier or Seller shall incorporate into each lower-tier subcontract placed in support of the Order or Purchase Order all applicable Clauses in accordance with the flowdown requirements specified in each such Clause. If any of the following clauses do not apply to this Order or Purchase Order, such clauses are considered to be self-deleting.

FAR CLAUSES INCORPORATED BY REFERENCE:

Clause Number	Title	Applicability (Reference to "Purchase Orders" includes underlying Solicitations)	Applies to Commercial (C) and/or Non-Commercial (NC) procurements	
			C	NC
52.203-13	Contractor Code of Business Ethics and Conduct (Oct 2015)	Applicable to all Purchase Orders, including for Commercial Items pursuant to 52.244-6, (i) that have a value more than \$5.5 million; and (ii) that have a performance period of more than 120 days. (In Paragraph (b)(3)(i), the meaning of "agency office of the Inspector General" and "Contracting Officer" does not change, in Paragraph (b)(3)(ii) the meaning of "Government" does not change, and in Paragraphs (b)(3)(iii) and (c)(2)(ii)(F), the meaning of "OIG of the ordering agency", "IG of the agency" "agency OIG" and "Contracting Officer" do not change.	X	X
52.215-2	Audit and Records – Negotiation (Oct 2010)	Applicable to the following Purchase Orders that exceed the Simplified Acquisition Threshold: (i) that are cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeterminable type or any combination of these, (ii) for which certified cost or pricing data are required; or (iii) that require Seller to furnish reports as discussed in paragraph (e) of the clause.	X	X
52.215-10	Price Reduction for Defective Certified Cost or Pricing Data (Aug 2011)	Applicable to all Purchase Orders that require the Seller to provide certified cost or pricing data. This clause does not apply to Purchase Orders for commercial items or if the Seller qualifies for any of the other exemptions in FAR 15.403-1.		X
52.215-12	Subcontractor Certified Cost or Pricing Data (JUN 2020)	Applicable to Purchase Orders in excess of \$2 Million. This clause does not apply to Purchase Orders for commercial items or if the Seller qualifies for any of the other exemptions in FAR 15.403-1.		X
52.215-14	Integrity of Unit Prices (Oct 2010)	Applicable to Purchase Orders less paragraph (b) in the clause, except for construction or architect-engineer services under FAR Part 36; utility services under FAR Part 41; services		X

Revision No. 4, dated June 16, 2023

Unrestricted Content

Clause Number	Title	Applicability (Reference to “Purchase Orders” includes underlying Solicitations)	Applies to Commercial (C) and/or Non-Commercial (NC) procurements	
			C	NC
		where supplies are not required; and petroleum products.		
52.222-19	Child Labor—Cooperation with Authorities and Remedies (DEC 2022)	Applicable to Purchase Orders for the acquisition of supplies that are expected to exceed the micro-purchase thresholds.	X	X
52.222-20	Contracts for Materials, Supplies, Articles and Equipment Exceeding \$15,000 (May 2014)	Applicable to Purchase Orders over \$15,000.	X	X
52.222-35	Equal Opportunity for Veterans (Oct 2015)	Applicable to all Purchase Orders, including for Commercial Items pursuant to 52.244-6, of \$150,000 or more. Foreign Sellers: Applicable to Purchase Orders when the listing of employment openings for purposes of work to be performed under this Purchase Order occur and are filled within the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, and Wake Island.	X	X
52.222-36	Equal Opportunity for Workers with Disabilities (Jul 2014)	Applicable to all Purchase Orders, including for Commercial Items pursuant to 52.244-6, exceeding \$15,000. Foreign Sellers: Applicable to Purchase Orders to the extent that work under the Purchase Order will be performed in the United States, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, or Wake Island or Seller is recruiting employees in the United States, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, or Wake Island to work on the Purchase Order.	X	X
52.222-54	Employment Eligibility Verification (Nov 2021)	Applicable to all Purchase Orders (i) for construction or commercial or noncommercial services (except commercial services that are part of a purchase of a COTS item, or an item that would be a COTS item, but for minor modifications, performed by the COTS	X	X

Unrestricted Content

Clause Number	Title	Applicability (Reference to “Purchase Orders” includes underlying Solicitations)	Applies to Commercial (C) and/or Non-Commercial (NC) procurements	
			C	NC
		provider, and that are normally provided for that COTS item); (ii) has a value more than \$3,500; and (iii) includes work performed in the United States. Foreign Sellers: “United States” means the 50 States, the District of Columbia, Puerto Rico, Guam, the Commonwealth of the Northern Mariana Islands, and the U.S. Virgin Islands.		
52.223-6	Drug-Free Workplace (May 2001)	Applicable to Purchase Orders except when (i) the value of the acquisition is at or below the Simplified Acquisition Threshold, however, the requirements shall apply to contracts of any value awarded to an individual; (ii) the Purchase Order is for the acquisition of commercial items; or (iii) performance or partial performance will be outside the United States and its outlying areas.		X
52.223-15	Energy Efficiency in Energy-Consuming Products (Dec 2007)	Applicable to all Purchase Orders for energy consuming products unless the product is not listed in the ENERGY STAR Program or EFMP.	X	X
52.223-16	Acquisition of EPEAT®-Registered Personal Computer Products (Oct 2015)	Applicable to all Purchase Orders for personal computer products as defined in the clause	X	X
52.225-1	Buy American Act—Supplies (May 2014)	Applicable to all Purchase Orders except for commercially available off-the-shelf items (COTS) as defined at FAR 2.101.	X	X
52.232-39	Unenforceability of Unauthorized Obligations (Jun 2013)	Applicable to all Purchase Orders involving EULA, TOS, or similar software agreement.	X	X
52.232-40	Providing Accelerated Payments to Small Business Subcontractors (MAR 2023)	Applicable to all Purchase Orders, including for Commercial Items pursuant to 52.244-6, with small business concerns, including Purchase Orders with small business concerns for the acquisition of commercial products or commercial services.	X	X
52.237-3	Continuity of Services (JAN 1991)	Applicable to Purchase Orders when services under the contract are	X	X

Unrestricted Content

Clause Number	Title	Applicability (Reference to “Purchase Orders” includes underlying Solicitations)	Applies to Commercial (C) and/or Non-Commercial (NC) procurements	
			C	NC
		considered vital to the Government and must be continued without interruption.		
52.243-2	Changes-Cost-Reimbursement (AUG 1987) - Alternate II (APR 1984)	Applicable to cost-reimbursement Purchase Orders.	X	X
52.247-64	Preference for Privately Owned U S Flag Commercial Vessels Alternate II (Nov 2021)	Applicable to all Purchase Orders, including for Commercial Items pursuant to 52.244-6, except those exempted in paragraph (e) (4) of the clause.	X	X
52.251-1	Government Supply Sources (Apr 2012)	Applicable to Purchase Orders when Buyer flows express authorization for Seller to use Government Supply Sources.	X	X

FAR CLAUSES INCORPORATED BY FULL TEXT:

52.215-12 SUBCONTRACTOR CERTIFIED COST OR PRICING DATA (JUNE 2020) (ALTERNATE 1) (AUG 2020)

(Applicable to Purchase Orders in excess of \$2 Million. This clause does not apply to Purchase Orders for commercial items or if the Seller qualifies for any of the other exemptions in FAR 15.403-1.)

Before awarding any subcontract expected to exceed the threshold for submission of certified cost or pricing data in Federal Acquisition Regulation (FAR) 15.403-4(a)(1), on the date of agreement on price or the date of award, whichever is later; or before pricing any subcontract modification involving a pricing adjustment expected to exceed the threshold for submission of certified cost or pricing data in FAR 15.403-4(a)(1), the Contractor shall require the subcontractor to submit certified cost or pricing data (actually or by specific identification in writing), in accordance with FAR 15.408, Table 15-2 (to include any information reasonably required to explain the subcontractor's estimating process such as the judgmental factors applied and the mathematical or other methods used in the estimate, including those used in projecting from known data, and the nature and amount of any contingencies included in the price), unless an exception under 15.403-1(b) applies. If the threshold for submission of certified cost or pricing data specified in FAR 15.403-4(a)(1) is adjusted for inflation as set forth in FAR 1.109(a), then pursuant to FAR 1.109(d) the changed threshold applies throughout the remaining term of the contract, unless there is a subsequent threshold adjustment.

(b) The Contractor shall require the subcontractor to certify in substantially the form prescribed in FAR 15.406-2 that, to the best of its knowledge and belief, the data submitted under paragraph (a) of this clause were accurate, complete, and current as of the date of agreement on the negotiated price of the subcontract or subcontract modification.

(c) In each subcontract that, when entered into, exceeds the threshold for submission of certified cost or pricing data in FAR 15.403-4(a)(1), the Contractor shall insert either—

Revision No. 4, dated June 16, 2023

Unrestricted Content

(1) The substance of this clause, including this paragraph (c), if paragraph (a) of this clause requires submission of certified cost or pricing data for the subcontract; or

(2) The substance of the clause at FAR 52.215-13, Subcontractor Certified Cost or Pricing Data-Modifications.

(End of clause)

Alternate I (Aug 2020). As prescribed in 15.408 (d)(2), substitute the following paragraph (a) in place of paragraph (a) of the basic clause:

(a) Unless an exception under FAR 15.403-1 applies, the Contractor shall require the subcontractor to submit certified cost or pricing data (actually or by specific identification in writing), in accordance with FAR 15.408, Table 15-2 (to include any information reasonably required to explain the subcontractor's estimating process such as the judgmental factors applied and the mathematical or other methods used in the estimate, including those used in projecting from known data, and the nature and amount of any contingencies included in the price)—

(1) Before modifying any subcontract that was awarded prior to July 1, 2018, involving a pricing adjustment expected to exceed \$750,000; or

(2) Before awarding any subcontract expected to exceed \$2 million on or after July 1, 2018, or modifying any subcontract that was awarded on or after July 1, 2018, involving a pricing adjustment expected to exceed \$2 million.

(End of clause)

52.216-7 ALLOWABLE COST AND PAYMENT (AUG 2018)

(Applicable to Cost Reimbursement or Time & Material Purchase Orders. Seller must execute assignment documents in accordance with requirements in the clause. Applies to non-commercial procurements only.)

(a) Invoicing.

(1) The Government will make payments to the Contractor when requested as work progresses, but (except for small business concerns) not more often than once every 2 weeks, in amounts determined to be allowable by the Contracting Officer in accordance with Federal Acquisition Regulation (FAR) Subpart 31.2 in effect on the date of this contract and the terms of this contract. The Contractor may submit to an authorized representative of the Contracting Officer, in such form and reasonable detail as the representative may require, an invoice or voucher supported by a statement of the claimed allowable cost for performing this contract.

(2) Contract financing payments are not subject to the interest penalty provisions of the Prompt Payment Act. Interim payments made prior to the final payment under the contract are contract financing payments, except interim payments if this contract contains Alternate I to the clause at 52.232-25.

(3) The designated payment office will make interim payments for contract financing on the _____ *[Contracting Officer insert day as prescribed by agency head; if not prescribed, insert "30th"]* day after the

Revision No. 4, dated June 16, 2023

Unrestricted Content

designated billing office receives a proper payment request. In the event that the Government requires an audit or other review of a specific payment request to ensure compliance with the terms and conditions of the contract, the designated payment office is not compelled to make payment by the specified due date.

(b) Reimbursing costs.

(1) For the purpose of reimbursing allowable costs (except as provided in paragraph (b)(2) of this clause, with respect to pension, deferred profit sharing, and employee stock ownership plan contributions), the term “costs” includes only—

(i) Those recorded costs that, at the time of the request for reimbursement, the Contractor has paid by cash, check, or other form of actual payment for items or services purchased directly for the contract;

(ii) When the Contractor is not delinquent in paying costs of contract performance in the ordinary course of business, costs incurred, but not necessarily paid, for—

(A) Supplies and services purchased directly for the contract and associated financing payments to subcontractors, provided payments determined due will be made—

(1) In accordance with the terms and conditions of a subcontract or invoice; and

(2) Ordinarily within 30 days of the submission of the Contractor’s payment request to the Government;

(B) Materials issued from the Contractor’s inventory and placed in the production process for use on the contract;

(C) Direct labor;

(D) Direct travel;

(E) Other direct in-house costs; and

(F) Properly allocable and allowable indirect costs, as shown in the records maintained by the Contractor for purposes of obtaining reimbursement under Government contracts; and

(iii) The amount of financing payments that have been paid by cash, check, or other forms of payment to subcontractors.

(2) Accrued costs of Contractor contributions under employee pension plans shall be excluded until actually paid unless—

(i) The Contractor’s practice is to make contributions to the retirement fund quarterly or more frequently; and

(ii) The contribution does not remain unpaid 30 days after the end of the applicable quarter or shorter payment period (any contribution remaining unpaid shall be excluded from the Contractor's indirect costs for payment purposes).

(3) Notwithstanding the audit and adjustment of invoices or vouchers under paragraph (g) of this clause, allowable indirect costs under this contract shall be obtained by applying indirect cost rates established in accordance with paragraph (d) of this clause.

(4) Any statements in specifications or other documents incorporated in this contract by reference designating performance of services or furnishing of materials at the Contractor's expense or at no cost to the Government shall be disregarded for purposes of cost-reimbursement under this clause.

(c) *Small business concerns.* A small business concern may receive more frequent payments than every 2 weeks.

(d) Final indirect cost rates.

(1) Final annual indirect cost rates and the appropriate bases shall be established in accordance with Subpart 42.7 of the Federal Acquisition Regulation (FAR) in effect for the period covered by the indirect cost rate proposal.

(2)(i) The Contractor shall submit an adequate final indirect cost rate proposal to the Contracting Officer (or cognizant Federal agency official) and auditor within the 6-month period following the expiration of each of its fiscal years. Reasonable extensions, for exceptional circumstances only, may be requested in writing by the Contractor and granted in writing by the Contracting Officer. The Contractor shall support its proposal with adequate supporting data.

(ii) The proposed rates shall be based on the Contractor's actual cost experience for that period. The appropriate Government representative and the Contractor shall establish the final indirect cost rates as promptly as practical after receipt of the Contractor's proposal.

(iii) An adequate indirect cost rate proposal shall include the following data unless otherwise specified by the cognizant Federal agency official:

(A) Summary of all claimed indirect expense rates, including pool, base, and calculated indirect rate.

(B) *General and Administrative expenses (final indirect cost pool).* Schedule of claimed expenses by element of cost as identified in accounting records (Chart of Accounts).

(C) *Overhead expenses (final indirect cost pool).* Schedule of claimed expenses by element of cost as identified in accounting records (Chart of Accounts) for each final indirect cost pool.

(D) *Occupancy expenses (intermediate indirect cost pool).* Schedule of claimed expenses by element of cost as identified in accounting records (Chart of Accounts) and expense reallocation to final indirect cost pools.

(E) Claimed allocation bases, by element of cost, used to distribute indirect costs.

Revision No. 4, dated June 16, 2023

Unrestricted Content

- (F) Facilities capital cost of money factors computation.
- (G) Reconciliation of books of account (*i.e.*, General Ledger) and claimed direct costs by major cost element.
- (H) Schedule of direct costs by contract and subcontract and indirect expense applied at claimed rates, as well as a subsidiary schedule of Government participation percentages in each of the allocation base amounts.
- (I) Schedule of cumulative direct and indirect costs claimed and billed by contract and subcontract.
- (J) *Subcontract information*. Listing of subcontracts awarded to companies for which the contractor is the prime or upper-tier contractor (include prime and subcontract numbers; subcontract value and award type; amount claimed during the fiscal year; and the subcontractor name, address, and point of contact information).
- (K) Summary of each time-and-materials and labor-hour contract information, including labor categories, labor rates, hours, and amounts; direct materials; other direct costs; and, indirect expense applied at claimed rates.
- (L) Reconciliation of total payroll per IRS form 941 to total labor costs distribution.
- (M) Listing of decisions/agreements/approvals and description of accounting/organizational changes.
- (N) Certificate of final indirect costs (see [52.242-4](#), Certification of Final Indirect Costs).
- (O) Contract closing information for contracts physically completed in this fiscal year (include contract number, period of performance, contract ceiling amounts, contract fee computations, level of effort, and indicate if the contract is ready to close).
- (iv) The following supplemental information is not required to determine if a proposal is adequate, but may be required during the audit process:
- (A) Comparative analysis of indirect expense pools detailed by account to prior fiscal year and budgetary data.
- (B) General organizational information and limitation on allowability of compensation for certain contractor personnel. See 31.205-6(p). Additional salary reference information is available at <https://www.whitehouse.gov/wp-content/uploads/2017/11/ContractorCompensationCapContractsAwardedBeforeJune24.pdf> and <https://www.whitehouse.gov/wp-content/uploads/2017/11/ContractorCompensationCapContractsAwardedafterJune24.pdf>.
- (C) Identification of prime contracts under which the contractor performs as a subcontractor.

Revision No. 4, dated June 16, 2023

Unrestricted Content

(D) Description of accounting system (excludes contractors required to submit a CAS Disclosure Statement or contractors where the description of the accounting system has not changed from the previous year's submission).

(E) Procedures for identifying and excluding unallowable costs from the costs claimed and billed (excludes contractors where the procedures have not changed from the previous year's submission).

(F) Certified financial statements and other financial data (*e.g.*, trial balance, compilation, review, *etc.*).

(G) Management letter from outside CPAs concerning any internal control weaknesses.

(H) Actions that have been and/or will be implemented to correct the weaknesses described in the management letter from subparagraph (G) of this section.

(I) List of all internal audit reports issued since the last disclosure of internal audit reports to the Government.

(J) Annual internal audit plan of scheduled audits to be performed in the fiscal year when the final indirect cost rate submission is made.

(K) Federal and State income tax returns.

(L) Securities and Exchange Commission 10-K annual report.

(M) Minutes from board of directors meetings.

(N) Listing of delay claims and termination claims submitted which contain costs relating to the subject fiscal year.

(O) Contract briefings, which generally include a synopsis of all pertinent contract provisions, such as: contract type, contract amount, product or service(s) to be provided, contract performance period, rate ceilings, advance approval requirements, pre-contract cost allowability limitations, and billing limitations.

(v) The Contractor shall update the billings on all contracts to reflect the final settled rates and update the schedule of cumulative direct and indirect costs claimed and billed, as required in paragraph (d)(2)(iii)(I) of this section, within 60 days after settlement of final indirect cost rates.

(3) The Contractor and the appropriate Government representative shall execute a written understanding setting forth the final indirect cost rates. The understanding shall specify (i) the agreed-upon final annual indirect cost rates, (ii) the bases to which the rates apply, (iii) the periods for which the rates apply, (iv) any specific indirect cost items treated as direct costs in the settlement, and (v) the affected contract and/or subcontract, identifying any with advance agreements or special terms and the applicable rates. The understanding shall not change any monetary ceiling, contract obligation, or specific cost allowance or disallowance provided for in this contract. The understanding is incorporated into this contract upon execution.

Revision No. 4, dated June 16, 2023

Unrestricted Content

(4) Failure by the parties to agree on a final annual indirect cost rate shall be a dispute within the meaning of the Disputes clause.

(5) Within 120 days (or longer period if approved in writing by the Contracting Officer) after settlement of the final annual indirect cost rates for all years of a physically complete contract, the Contractor shall submit a completion invoice or voucher to reflect the settled amounts and rates. The completion invoice or voucher shall include settled subcontract amounts and rates. The prime contractor is responsible for settling subcontractor amounts and rates included in the completion invoice or voucher and providing status of subcontractor audits to the contracting officer upon request.

(6)(i) If the Contractor fails to submit a completion invoice or voucher within the time specified in paragraph (d)(5) of this clause, the Contracting Officer may—

(A) Determine the amounts due to the Contractor under the contract; and

(B) Record this determination in a unilateral modification to the contract.

(ii) This determination constitutes the final decision of the Contracting Officer in accordance with the Disputes clause.

(e) *Billing rates.* Until final annual indirect cost rates are established for any period, the Government shall reimburse the Contractor at billing rates established by the Contracting Officer or by an authorized representative (the cognizant auditor), subject to adjustment when the final rates are established. These billing rates—

(1) Shall be the anticipated final rates; and

(2) May be prospectively or retroactively revised by mutual agreement, at either party's request, to prevent substantial overpayment or underpayment.

(f) *Quick-closeout procedures.* Quick-closeout procedures are applicable when the conditions in FAR 42.708(a) are satisfied.

(g) *Audit.* At any time or times before final payment, the Contracting Officer may have the Contractor's invoices or vouchers and statements of cost audited. Any payment may be—

(1) Reduced by amounts found by the Contracting Officer not to constitute allowable costs; or

(2) Adjusted for prior overpayments or underpayments.

(h) Final payment.

(1) Upon approval of a completion invoice or voucher submitted by the Contractor in accordance with paragraph (d)(5) of this clause, and upon the Contractor's compliance with all terms of this contract, the Government shall promptly pay any balance of allowable costs and that part of the fee (if any) not previously paid.

(2) The Contractor shall pay to the Government any refunds, rebates, credits, or other amounts (including interest, if any) accruing to or received by the Contractor or any assignee under this contract, to the extent that those amounts are properly allocable to costs for which the Contractor has been reimbursed by the Government. Reasonable expenses incurred by the Contractor for securing refunds, rebates, credits, or other amounts shall be allowable costs if approved by the Contracting Officer. Before final payment under this contract, the Contractor and each assignee whose assignment is in effect at the time of final payment shall execute and deliver—

(i) An assignment to the Government, in form and substance satisfactory to the Contracting Officer, of refunds, rebates, credits, or other amounts (including interest, if any) properly allocable to costs for which the Contractor has been reimbursed by the Government under this contract; and

(ii) A release discharging the Government, its officers, agents, and employees from all liabilities, obligations, and claims arising out of or under this contract, except—

(A) Specified claims stated in exact amounts, or in estimated amounts when the exact amounts are not known;

(B) Claims (including reasonable incidental expenses) based upon liabilities of the Contractor to third parties arising out of the performance of this contract; provided, that the claims are not known to the Contractor on the date of the execution of the release, and that the Contractor gives notice of the claims in writing to the Contracting Officer within 6 years following the release date or notice of final payment date, whichever is earlier; and

(C) Claims for reimbursement of costs, including reasonable incidental expenses, incurred by the Contractor under the patent clauses of this contract, excluding, however, any expenses arising from the Contractor's indemnification of the Government against patent liability.

(End of clause)

52.244-2 SUBCONTRACTS (JUN 2020)

Paragraphs (g) and (h) of the clause are applicable to all Purchase Orders. Applies to commercial and non-commercial procurements.

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

“Approved purchasing system” means a Contractor’s purchasing system that has been reviewed and approved in accordance with part 44 of the Federal Acquisition Regulation (FAR).

“Consent to subcontract” means the Contracting Officer’s written consent for the Contractor to enter into a particular subcontract.

Subcontract means any contract, as defined in FAR subpart 2.1, entered into by a subcontractor to furnish supplies or services for performance of the prime contract or a subcontract. It includes, but is not limited to, purchase orders, and changes and modifications to purchase orders.

(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.

Revision No. 4, dated June 16, 2023

Unrestricted Content

(c) If the Contractor does not have an approved purchasing system, consent to subcontract is required for any subcontract that-

- (1) Is of the cost-reimbursement, time-and-materials, or labor-hour type; or
- (2) Is fixed-price and exceeds-

(i) For a contract awarded by the Department of Defense, the Coast Guard, or the National Aeronautics and Space Administration, the greater of the simplified acquisition threshold, as defined in FAR 2.101 on the date of subcontract award, or 5 percent of the total estimated cost of the contract; or

(ii) For a contract awarded by a civilian agency other than the Coast Guard and the National Aeronautics and Space Administration, either the simplified acquisition threshold, as defined in FAR 2.101 on the date of subcontract award, or 5 percent of the total estimated cost of the contract.

(d) If the Contractor has an approved purchasing system, the Contractor nevertheless shall obtain the Contracting Officer's written consent before placing the following subcontracts:

Subcontracts greater than \$25 million.

(e) (1) The Contractor shall notify the Contracting Officer reasonably in advance of placing any subcontract or modification thereof for which consent is required under paragraph (b), (c), or (d) of this clause, including the following information:

(i) A description of the supplies or services to be subcontracted.

(ii) Identification of the type of subcontract to be used.

(iii) Identification of the proposed subcontractor.

(iv) The proposed subcontract price.

(v) The subcontractor's current, complete, and accurate certified cost or pricing data and Certificate of Current Cost or Pricing Data, if required by other contract provisions.

(vi) The subcontractor's Disclosure Statement or Certificate relating to Cost Accounting Standards when such data are required by other provisions of this contract.

(vii) A negotiation memorandum reflecting-

(A) The principal elements of the subcontract price negotiations;

(B) The most significant considerations controlling establishment of initial or revised prices;

(C) The reason certified cost or pricing data were or were not required;

(D) The extent, if any, to which the Contractor did not rely on the subcontractor's certified cost or pricing data in determining the price objective and in negotiating the final price;

(E) The extent to which it was recognized in the negotiation that the subcontractor's certified cost or pricing data were not accurate, complete, or current; the action taken by the Contractor and the subcontractor; and the effect of any such defective data on the total price negotiated;

(F) The reasons for any significant difference between the Contractor's price objective and the price negotiated; and

(G) A complete explanation of the incentive fee or profit plan when incentives are used. The explanation shall identify each critical performance element, management decisions used to quantify each incentive element, reasons for the incentives, and a summary of all trade-off possibilities considered.

(2) The Contractor is not required to notify the Contracting Officer in advance of entering into any subcontract for which consent is not required under paragraph (b), (c), or (d) of this clause.

(f) Unless the consent or approval specifically provides otherwise, neither consent by the Contracting Officer to any subcontract nor approval of the Contractor's purchasing system shall constitute a determination-

- (1) Of the acceptability of any subcontract terms or conditions;
- (2) Of the allowability of any cost under this contract; or
- (3) To relieve the Contractor of any responsibility for performing this contract.

(g) No subcontract or modification thereof placed under this contract shall provide for payment on a cost-plus-a-percentage-of-cost basis, and any fee payable under cost-reimbursement type subcontracts shall not exceed the fee limitations in FAR 15.404-4(c)(4)(i).

(h) The Contractor shall give the Contracting Officer immediate written notice of any action or suit filed and prompt notice of any claim made against the Contractor by any subcontractor or vendor that, in the opinion of the Contractor, may result in litigation related in any way to this contract, with respect to which the Contractor may be entitled to reimbursement from the Government.

(i) The Government reserves the right to review the Contractor's purchasing system as set forth in FAR subpart 44.3.

(j) Paragraphs (c) and (e) of this clause do not apply to the following subcontracts, which were evaluated during negotiations:

(End of clause)

52.248-1 VALUE ENGINEERING (OCT 2010)

Applicable to Purchase Orders over \$150,000. Applies to commercial and non-commercial procurements.

(a) *General.* The Contractor is encouraged to develop, prepare, and submit value engineering change proposals (VECP's) voluntarily. The Contractor shall share in any net acquisition savings realized from accepted VECP's, in accordance with the incentive sharing rates in paragraph (f) of this clause.

(b) *Definitions.*

"Acquisition savings," as used in this clause, means savings resulting from the application of a VECP to contracts awarded by the same contracting office or its successor for essentially the same unit. Acquisition savings include—

(1) Instant contract savings, which are the net cost reductions on this, the instant contract, and which are equal to the instant unit cost reduction multiplied by the number of instant contract units affected by the VECP, less the Contractor's allowable development and implementation costs;

(2) Concurrent contract savings, which are net reductions in the prices of other contracts that are definitized and ongoing at the time the VECP is accepted; and

(3) Future contract savings, which are the product of the future unit cost reduction multiplied by the number of future contract units in the sharing base. On an instant contract, future contract savings include savings on increases in quantities after VECP acceptance that are due to contract modifications, exercise of options, additional orders, and funding of subsequent year requirements on a multiyear contract.

“Collateral savings,” as used in this clause, means those measurable net reductions resulting from a VECP in the agency’s overall projected collateral costs, exclusive of acquisition savings, whether or not the acquisition cost changes.

“Contracting office” includes any contracting office that the acquisition is transferred to, such as another branch of the agency or another agency’s office that is performing a joint acquisition action.

“Contractor’s development and implementation costs,” as used in this clause, means those costs the Contractor incurs on a VECP specifically in developing, testing, preparing, and submitting the VECP, as well as those costs the Contractor incurs to make the contractual changes required by Government acceptance of a VECP.

“Future unit cost reduction,” as used in this clause, means the instant unit cost reduction adjusted as the Contracting Officer considers necessary for projected learning or changes in quantity during the sharing period. It is calculated at the time the VECP is accepted and applies either—

(1) Throughout the sharing period, unless the Contracting Officer decides that recalculation is necessary because conditions are significantly different from those previously anticipated; or

(2) To the calculation of a lump-sum payment, which cannot later be revised.

“Government costs,” as used in this clause, means those agency costs that result directly from developing and implementing the VECP, such as any net increases in the cost of testing, operations, maintenance, and logistics support. The term does not include the normal administrative costs of processing the VECP or any increase in this contract’s cost or price resulting from negative instant contract savings.

“Instant contract,” as used in this clause, means this contract, under which the VECP is submitted. It does not include increases in quantities after acceptance of the VECP that are due to contract modifications, exercise of options, or additional orders. If this is a multiyear contract, the term does not include quantities funded after VECP acceptance. If this contract is a fixed-price contract with prospective price redetermination, the term refers to the period for which firm prices have been established.

“Instant unit cost reduction” means the amount of the decrease in unit cost of performance (without deducting any Contractor’s development or implementation costs) resulting from using the VECP on this, the instant contract. If this is a service contract, the instant unit cost reduction is normally equal to the number of hours per line-item task saved by using the VECP on this contract, multiplied by the appropriate contract labor rate.

“Negative instant contract savings” means the increase in the cost or price of this contract when the acceptance of a VECP results in an excess of the Contractor’s allowable development and implementation costs over the product of the instant unit cost reduction multiplied by the number of instant contract units affected.

Revision No. 4, dated June 16, 2023

Unrestricted Content

“Net acquisition savings” means total acquisition savings, including instant, concurrent, and future contract savings, less Government costs.

“Sharing base,” as used in this clause, means the number of affected end items on contracts of the contracting office accepting the VECP.

“Sharing period,” as used in this clause, means the period beginning with acceptance of the first unit incorporating the VECP and ending at a calendar date or event determined by the contracting officer for each VECP.

“Unit,” as used in this clause, means the item or task to which the Contracting Officer and the Contractor agree the VECP applies.

“Value engineering change proposal (VECP)” means a proposal that—

- (1) Requires a change to this, the instant contract, to implement; and
- (2) Results in reducing the overall projected cost to the agency without impairing essential functions or characteristics; *provided*, that it does not involve a change—
 - (i) In deliverable end item quantities only;
 - (ii) In research and development (R&D) end items or R&D test quantities that is due solely to results of previous testing under this contract; or
 - (iii) To the contract type only.

(c) *VECP preparation.* As a minimum, the Contractor shall include in each VECP the information described in paragraphs (c)(1) through (8) of this clause. If the proposed change is affected by contractually required configuration management or similar procedures, the instructions in those procedures relating to format, identification, and priority assignment shall govern VECP preparation. The VECP shall include the following:

- (1) A description of the difference between the existing contract requirement and the proposed requirement, the comparative advantages and disadvantages of each, a justification when an item’s function or characteristics are being altered, the effect of the change on the end item’s performance, and any pertinent objective test data.
- (2) A list and analysis of the contract requirements that must be changed if the VECP is accepted, including any suggested specification revisions.
- (3) Identification of the unit to which the VECP applies.
- (4) A separate, detailed cost estimate for (i) the affected portions of the existing contract requirement and (ii) the VECP. The cost reduction associated with the VECP shall take into account the Contractor’s allowable development and implementation costs, including any amount attributable to subcontracts under the Subcontracts paragraph of this clause.
- (5) A description and estimate of costs the Government may incur in implementing the VECP, such as test and evaluation and operating and support costs.

Revision No. 4, dated June 16, 2023

Unrestricted Content

- (6) A prediction of any effects the proposed change would have on collateral costs to the agency.
- (7) A statement of the time by which a contract modification accepting the VECP must be issued in order to achieve the maximum cost reduction, noting any effect on the contract completion time or delivery schedule.
- (8) Identification of any previous submissions of the VECP, including the dates submitted, the agencies and contract numbers involved, and previous Government actions, if known.

(d) *Submission.* The Contractor shall submit VECP’s to the Contracting Officer, unless this contract states otherwise. If this contract is administered by other than the contracting office, the Contractor shall submit a copy of the VECP simultaneously to the Contracting Officer and to the Administrative Contracting Officer.

(e) Government action.

(1) The Contracting Officer will notify the Contractor of the status of the VECP within 45 calendar days after the contracting office receives it. If additional time is required, the Contracting Officer will notify the Contractor within the 45-day period and provide the reason for the delay and the expected date of the decision. The Government will process VECP’s expeditiously; however, it will not be liable for any delay in acting upon a VECP.

(2) If the VECP is not accepted, the Contracting Officer will notify the Contractor in writing, explaining the reasons for rejection. The Contractor may withdraw any VECP, in whole or in part, at any time before it is accepted by the Government. The Contracting Officer may require that the Contractor provide written notification before undertaking significant expenditures for VECP effort.

(3) Any VECP may be accepted, in whole or in part, by the Contracting Officer’s award of a modification to this contract citing this clause and made either before or within a reasonable time after contract performance is completed. Until such a contract modification applies a VECP to this contract, the Contractor shall perform in accordance with the existing contract. The decision to accept or reject all or part of any VECP is a unilateral decision made solely at the discretion of the Contracting Officer.

(f) *Sharing rates.* If a VECP is accepted, the Contractor shall share in net acquisition savings according to the percentages shown in the table below. The percentage paid the Contractor depends upon—

- (1) This contract’s type (fixed-price, incentive, or cost-reimbursement);
- (2) The sharing arrangement specified in paragraph (a) of this clause (incentive, program requirement, or a combination as delineated in the Schedule); and
- (3) The source of the savings (the instant contract, or concurrent and future contracts), as follows:

Contractor’s Share of Net Acquisition Savings (Figure in Percent)		
Contract Type	Incentive (Voluntary)	Program Requirement (Mandatory)

Revision No. 4, dated June 16, 2023

Unrestricted Content

	Instant Contract Rate	Concurrent and Future Contract Rate	Instant Contract Rate	Concurrent and Future Contract Rate
Fixed-price (includes fixed-price-award-fee; excludes other fixed-price incentive contracts)	*50	*50	25	25
Incentive (fixed-price or cost) (other than award fee)	(**)	*50	(**)	25
Cost-reimbursement (includes cost-plus-award-fee; excludes other cost-type incentive contracts)	***25	***25	15	15

* The Contracting Office may increase the Contractor's sharing rate to as high as 75 percent for each VECP.

** Same sharing arrangement as the contract's profit or fee adjustment formula.

*** The Contracting Office may increase the Contractor's sharing rate to as high as 50 percent for each VECP.

(g) Calculating net acquisition savings.

(1) Acquisition savings are realized when (i) the cost or price is reduced on the instant contract, (ii) reductions are negotiated in concurrent contracts, (iii) future contracts are awarded, or (iv) agreement is reached on a lump-sum payment for future contract savings (see paragraph (i)(4) of this clause). Net acquisition savings are first realized, and the Contractor shall be paid a share, when Government costs and any negative instant contract savings have been fully offset against acquisition savings.

(2) Except in incentive contracts, Government costs and any price or cost increases resulting from negative instant contract savings shall be offset against acquisition savings each time such savings are realized until they are fully offset. Then, the Contractor's share is calculated by multiplying net acquisition savings by the appropriate Contractor's percentage sharing rate (see paragraph (f) of this clause). Additional Contractor shares of net acquisition savings shall be paid to the Contractor at the time realized.

(3) If this is an incentive contract, recovery of Government costs on the instant contract shall be deferred and offset against concurrent and future contract savings. The Contractor shall share through the contract incentive structure in savings on the instant contract items affected. Any negative instant contract savings shall be added to the target cost or to the target price and ceiling price, and the amount shall be offset against concurrent and future contract savings.

(4) If the Government does not receive and accept all items on which it paid the Contractor's share, the Contractor shall reimburse the Government for the proportionate share of these payments.

(h) *Contract adjustment.* The modification accepting the VECP (or a subsequent modification issued as soon as possible after any negotiations are completed) shall—

(1) Reduce the contract price or estimated cost by the amount of instant contract savings, unless this is an incentive contract;

Revision No. 4, dated June 16, 2023

Unrestricted Content

(2) When the amount of instant contract savings is negative, increase the contract price, target price and ceiling price, target cost, or estimated cost by that amount;

(3) Specify the Contractor's dollar share per unit on future contracts, or provide the lump-sum payment;

(4) Specify the amount of any Government costs or negative instant contract savings to be offset in determining net acquisition savings realized from concurrent or future contract savings; and

(5) Provide the Contractor's share of any net acquisition savings under the instant contract in accordance with the following:

(i) Fixed-price contracts—add to contract price.

(ii) Cost-reimbursement contracts—add to contract fee.

(i) Concurrent and future contract savings.

(1) Payments of the Contractor's share of concurrent and future contract savings shall be made by a modification to the instant contract in accordance with paragraph (h)(5) of this clause. For incentive contracts, shares shall be added as a separate firm-fixed-price line item on the instant contract. The Contractor shall maintain records adequate to identify the first delivered unit for 3 years after final payment under this contract.

(2) The Contracting Officer shall calculate the Contractor's share of concurrent contract savings by—

(i) Subtracting from the reduction in price negotiated on the concurrent contract any Government costs or negative instant contract savings not yet offset; and

(ii) Multiplying the result by the Contractor's sharing rate.

(3) The Contracting Officer shall calculate the Contractor's share of future contract savings by—

(i) Multiplying the future unit cost reduction by the number of future contract units scheduled for delivery during the sharing period;

(ii) Subtracting any Government costs or negative instant contract savings not yet offset; and

(iii) Multiplying the result by the Contractor's sharing rate.

(4) When the Government wishes and the Contractor agrees, the Contractor's share of future contract savings may be paid in a single lump sum rather than in a series of payments over time as future contracts are awarded. Under this alternate procedure, the future contract savings may be calculated when the VECP is accepted, on the basis of the Contracting Officer's forecast of the number of units that will be delivered during the sharing period. The Contractor's share shall be included in a modification to this contract (see paragraph (h)(3) of this clause) and shall not be subject to subsequent adjustment.

Revision No. 4, dated June 16, 2023

Unrestricted Content

(5) *Alternate no-cost settlement method.* When, in accordance with subsection [48.104-4](#) of the Federal Acquisition Regulation, the Government and the Contractor mutually agree to use the no-cost settlement method, the following applies:

(i) The Contractor will keep all the savings on the instant contract and on its concurrent contracts only.

(ii) The Government will keep all the savings resulting from concurrent contracts placed on other sources, savings from all future contracts, and all collateral savings.

(j) *Collateral savings.* If a VECP is accepted, the Contracting Officer will increase the instant contract amount, as specified in paragraph (h)(5) of this clause, by a rate from 20 to 100 percent, as determined by the Contracting Officer, of any projected collateral savings determined to be realized in a typical year of use after subtracting any Government costs not previously offset. However, the Contractor's share of collateral savings will not exceed the contract's firm-fixed-price, target price, target cost, or estimated cost, at the time the VECP is accepted, or \$100,000, whichever is greater. The Contracting Officer will be the sole determiner of the amount of collateral savings.

(k) *Relationship to other incentives.* Only those benefits of an accepted VECP not rewardable under performance, design-to-cost (production unit cost, operating and support costs, reliability and maintainability), or similar incentives shall be rewarded under this clause. However, the targets of such incentives affected by the VECP shall not be adjusted because of VECP acceptance. If this contract specifies targets but provides no incentive to surpass them, the value engineering sharing shall apply only to the amount of achievement better than target.

(l) *Subcontracts.* The Contractor shall include an appropriate value engineering clause in any subcontract of \$150,000 or more and may include one in subcontracts of lesser value. In calculating any adjustment in this contract's price for instant contract savings (or negative instant contract savings), the Contractor's allowable development and implementation costs shall include any subcontractor's allowable development and implementation costs, and any value engineering incentive payments to a subcontractor, clearly resulting from a VECP accepted by the Government under this contract. The Contractor may choose any arrangement for subcontractor value engineering incentive payments, *provided*, that the payments shall not reduce the Government's share of concurrent or future contract savings or collateral savings.

(m) *Data.* The Contractor may restrict the Government's right to use any part of a VECP or the supporting data by marking the following legend on the affected parts:

These data, furnished under the Value Engineering clause of contract _____, shall not be disclosed outside the Government or duplicated, used, or disclosed, in whole or in part, for any purpose other than to evaluate a value engineering change proposal submitted under the clause. This restriction does not limit the Government's right to use information contained in these data if it has been obtained or is otherwise available from the Contractor or from another source without limitations.

If a VECP is accepted, the Contractor hereby grants the Government unlimited rights in the VECP and supporting data, except that, with respect to data qualifying and submitted as limited rights technical data, the Government shall have the rights specified in the contract modification implementing the VECP and shall

Revision No. 4, dated June 16, 2023

Unrestricted Content

appropriately mark the data. (The terms “unlimited rights” and “limited rights” are defined in [Part 27](#) of the Federal Acquisition Regulation.)

(End of clause)

SPECIAL AGENCY CLAUSES INCORPORATED BY FULL TEXT:

1. EARNED VALUE MANAGEMENT SYSTEM (JUL 2018)

(Applicable to all Orders in lieu of FAR 52.234-2, 52.234-3, and 52.234-4 when the contract meets the following criteria: (1) cost reimbursement or fixed-price incentive; (2) have applicable work scope; (3) have a total value greater than or equal to \$50 million (including priced options); and (4) have a period of performance greater than one year. Inapplicable to Orders in the following situations: (1) firm-fixed price Orders, level-of-effort Orders, Services Orders, Time-and-Materials Orders, or Orders for commercial items issued under FAR Part 12; (2) quick reaction or contingency operations; or (3) less than 12 months period of performance.)

(a) In the performance of this contract, the contractor shall establish, maintain, and implement an earned value management system (EVMS) that complies with the 32 guidelines contained in Electronics Industries Alliance (EIA) Standard 748, Earned Value Management Systems (herein referred to as the Guidelines).

(b) The contractor shall provide access to the company EVMS description and supplemental procedures, plans, records, data, and personnel to ensure compliance with the Guidelines. The contractor shall provide all proposed changes to the EVMS description and supplemental procedures for U.S. Government EVM Focal Point review prior to implementation. The U.S. Government EVM Focal Point will determine whether the modified EVMS description and supplemental procedures meet the intent of the Guidelines.

(c) The contractor shall flow down the requirements of this clause to all cost-reimbursable and fixed-price incentive subcontracts with applicable work scope (as defined in G34.005-70(a)), a total value greater than \$50 million (including priced options), and a period of performance greater than one year.

(d) Cost-reimbursable and fixed-price incentive contracts and subcontracts with applicable work scope, a total value greater than \$100 million (including priced options), and a period of performance greater than one year require the contractor and subcontractor(s) to demonstrate EVMS implementation to the U.S. Government EVM Focal Point at EVMS implementation reviews.

(e) The contractor shall conduct Integrated Baseline Reviews with the U.S. Government Program Manager, Contracting Officer, and U.S. Government EVM Focal Point no later than 180 days after contract award or authorization to proceed; whenever a significant change to the baseline occurs; as agreed to by the parties; or at the discretion of the Contracting Officer. The contractor shall conduct IBRs on subcontracts with EVMS flow down requirements and provide the Contracting Officer insight into subcontract IBR plans, conduct, and results.

(f) The contractor shall notify the Contracting Officer of any significant changes to the Performance Measurement Baseline prior to implementing the change. A significant change shall be by mutual agreement of all parties.

(g) Prior to implementing an Over Target Baseline (OTB) and/or Over Target Schedule (OTS), the contractor shall submit to the Contracting Officer ground rules, assumptions, scope, impact, plans to adjust variances, potential reporting changes, documentation recommendations, and planned dates for implementation. The Contracting Officer shall approve the OTB/OTS prior to implementation.

(h) The Contracting Officer is the only representative of the Government authorized to negotiate, execute, or modify this contract. Should any action by the U.S. Government EVM Focal Point or other Government personnel

Revision No. 4, dated June 16, 2023

Unrestricted Content

imply a commitment on the part of the Government which would affect the terms of this contract, the contractor must notify the Contracting Officer and obtain approval prior to proceeding.

(End of clause)

2. CONTRACT-ACCOUNTABLE GOVERNMENT PROPERTY: RESPONSIBILITIES, USE, REPORTING, AND ADMINISTRATION (JULY 2018)

(Applicable only if Seller will be receiving contract-accountable government property hereunder.)

(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 52.245-1 and this clause. If FAR and this guidance conflict, the guidance will have precedence. 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, material, and facilities are equally considered to be Government property.

(b) Definitions. As used in this clause:

(1) *Agency-Peculiar Property (AP)* means Government property, consisting of end items and integral components of military weapons systems, along with the related peculiar support equipment which is not readily available as a commercial item.

(2) *Equipment (EQ)* means a tangible asset that is functionally complete for its intended purpose, durable, nonexpendable, needed for the performance of a contract. Equipment is not intended for sale and does not ordinarily lose its identity or become a part of another article when put into use (e.g., machine tools, furniture, vehicles, and test equipment, including their accessory or auxiliary items). Equipment does not include information technology (IT) items as defined below.

(3) *Government Furnished Material (GFM)* means property provided to a contractor by the Government that may be incorporated into or attached to a deliverable end item or that may be consumed or expended in performing a contract. GFM includes assemblies, expendable components, parts, raw and processed materials, and small tools and supplies that may be consumed in normal use in performing a contract. GFM does not include equipment, special tooling, special test equipment, real property, or information technology that has been incorporated into a higher assembly or an item incorporated into an item of special test equipment.

(4) *Government-Owned, Contractor-Acquired Material (CAM)* means property acquired or otherwise provided by the contractor to which the Government has title, and that may be incorporated into or attached to a deliverable end item or that may be consumed or expended in performing a contract. CAM includes assemblies, expendable components, parts, raw and processed materials, and small tools and supplies that may be consumed in normal use in performing a contract. CAM does not include equipment, special tooling, special test equipment, real property, or information technology equipment that has been incorporated into a higher assembly or an item incorporated into a higher assembly or an item incorporated into an item of special test equipment.

(5) *Information Technology (IT)* means equipment or interconnected systems or subsystems of equipment that is used in the automated acquisition, storage, analysis, evaluation, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information. IT includes computers, ancillary equipment (including imaging peripherals, input, output, and storage devices necessary for security and surveillance), peripheral equipment designed to be controlled by the central processing unit of a computer, software, firmware, and similar procedures, services (including support services), and related resources. IT does not include equipment that contains imbedded information technology that is used as an integral part of the product, but the principal function of which is not the acquisition, storage, analysis, evaluation, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information.

(6) *Land (L)* means land, land rights, and improvements to land.

(7) *Real Property (RP)* means buildings, improvements to buildings, utility distribution systems, prefabricated structures, and fixed equipment required for the operation of a building which is permanently attached to and a part of the building and cannot be removed without cutting into the walls, ceilings, or floors. Examples of fixed equipment required for functioning of a building include plumbing, heating and lighting equipment, elevators, central air conditioning systems, and built-in safes and vaults. Foundations and work necessary for installing special tooling, special test equipment, or plant equipment are not included. This category includes acquisitions and improvements of structures and facilities other than buildings, such as power production facilities and distribution systems, reclamation and irrigation facilities, flood control and navigation aids, utility systems (heating, sewage, water and electrical) when they serve several buildings or structures, communication systems, traffic aids, roads and bridges, and nonstructural improvements such as sidewalks, parking areas, and fences. RP also includes U.S. Government-funded costs of improvements to leased buildings, structures, and facilities, as well as easements and right-of-way, where U.S. Government is the lessee or the cost is charged to a U.S. Government contract. Contractors shall report leasehold improvements with a unit acquisition cost of \$1,000,000 or more and a useful life of two years or more.

(8) *Property management system* means the contractor's system or systems for managing and controlling Government property.

(9) *Significant deficiency* means a system shortcoming that materially affects the reliability of required management information produced by the system.

(10) *Special Test Equipment (STE)* means a single or multipurpose integrated test unit engineered, designed, fabricated, or modified to accomplish special purpose testing in performing a contract. STE consists of items or assemblies of equipment including foundations and similar improvements necessary for installing special test equipment, and standard or general purpose items or components that are interconnected and interdependent so as to become a new functional entity for special testing purposes. STE does not include material, special tooling, real property, and equipment items used for general testing purposes or property that with relatively minor expense can be made suitable for general purpose use.

(11) *Special Tooling (ST)* means jigs, dies, fixtures, molds, patterns, taps, gauges, and all components of these items including foundations and similar improvements necessary for installing special tooling, and which are of such a specialized nature that without substantial modification or alteration their use is limited to the development or production of particular supplies or parts thereof or to the performance of particular services. ST does not include material, special test equipment, real property, equipment, machine tools, or similar capital assets.

(12) *Summary Record* means a single document or data record used to account for components and details of special (small) tooling and/or equipment that do not require tagging (e.g., furniture and body armor) with a unit cost less than \$1,000. Summary records cannot be used for items requiring calibration, property requiring tagging (barcodes), or for classified or sensitive property.

(c) **Property Analyst.** The Contracting Officer has delegated property administration authority to an U.S. Government Property Analyst.

(d) **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 and the assigned U.S. Government Property Analyst within 30 days after receipt of this contract and upon assignment of a replacement official. Subcontractors in possession of Government property accountable to this contract shall provide contact information for their property managers to the prime contractor.

(e) **Government Property List.** The Government Property List in Attachment **NN** of the solicitation and the resulting contract identifies all Government property offered to the contractor on a no-charge-for-use basis to perform this contract and the dates of availability for each item. Post-award, the inventory of Government property accountable to this contract is maintained in the Electronic Procurement Exchange/Property Management Module

Revision No. 4, dated June 16, 2023

Unrestricted Content

(Epx/PMM) based on the contractor's quarterly property reports. After receipt of the contractor's initial quarterly property reports.

(f) Property Transfers. The Government can direct the transfer of contract-accountable property between contracts. All transfers must be coordinated between the losing and gaining Contracting Officers and Property Analysts, and by the COTRs, Associate Property Management Officers, and other Program Office personnel as appropriate. The Property Analyst will evaluate each transfer to ensure that the gaining contract includes the appropriate Government property clauses (52.245-1, 52.245-9 and this clause), assist in validating the gaining contract requirement, and verify that the transfer will not adversely impact the losing contract. Transfers between contracts must be documented using a DD Form 1149, a Contracting Officer letter, or a contract modification. This documentation shall serve as the only record necessary to document transfers. When multiple items are transferred, a listing of items with all data elements prescribed in the *FOCUS User's Guide* must be attached to the transfer document. The contractor must obtain approval of both the gaining and losing Contracting Officers or designees before property transfers occur, except for contractor-acquired material with a unit cost less than \$10,000 transferred within an approved Material Management and Accounting System (MMAS). If requested by the U.S. government Property Analyst, the contractor shall notify the U.S. Government Property Analyst when such MMAS transfers are executed.

(g) Government Property Accountable to Other Contracts.

(1) The contractor may use Government property in their possession and accountable to another U.S. Government contract for the performance of this contract on a rent-free, non-interference use (RFNIU) basis if approved in writing by the Contracting Officers for both contracts. The contractor may also be authorized to use Government property in their possession accountable to a non-U.S. Government contract if approved in writing by the Contracting Officers for both contracts. Requests for RFNIU must contain a liability provision from the requesting contract, and stipulate that:

- (i) The property will be used on a strictly rent-free, non-interference basis;
- (ii) Use will not impact the owning program;
- (iii) The property will be returned upon request from the owning contract to meet its urgent needs;
- (iv) The form, fit, and function of the property will not be altered without written approval from the owning Contracting Officer; and
- (v) The property will be controlled and accounted for at all times.

(2) RFNIU transactions must comply with the terms and conditions of both contracts as well as with any provisions in the Contracting Officer's approval letter. Material is not eligible for RFNIU.

(h) Title. Title to all Government-furnished property and all contractor acquired property which has been reimbursed under the contract remains vested with the Government. Upon completion or termination of this contract, the Contractor shall submit to the Contracting Officer and Property Analyst a list of all property acquired under the contract during the contract period. The list shall describe each item, including the manufacturer, model number, part number, serial number, date acquired, cost, location, and condition, and shall be submitted to the U.S. Government Property Analyst within 60 calendar days after completion or termination of the contract.

(i) Promotional Items. Stand-alone promotional items received from a vendor in conjunction with a Government purchase, whether as Government-furnished property or contractor-acquired property, must be accounted for as Government property in the contractor's Property Management System (PMS). If the contractor has a valid need to use the promotional items to fulfill contractual requirements, the items shall be managed as contract-accountable property. If there is no valid need for the items under the contract, the contractor shall disposition the items as directed by the Contracting Officer.

(j) Audits and Analyses.

(1) The U.S. Government Property Analysts will audit/analyze the contractor's processes, controls, policies,

Revision No. 4, dated June 16, 2023

Unrestricted Content

accountability, and administration of Government property in accordance with FAR and the requirements of this clause. Failure of the contractor to maintain an adequate property management system may result in revocation of the Government's assumption of risk by the Contracting Officer.

(2) Support Property Administration for subcontractors and alternate locations will be performed in accordance with FAR 45.502 and 45.503, and applicable special U.S. government agency provisions. When an U.S. Government prime contractor is also performing as a subcontractor on another U.S. Government contract, the U.S. Government Property Analysts will, when appropriate, include any property accountable to that subcontract in their analysis of the prime contractor. This support property administration applies to the property analysis and represents no change to the prime contractor to subcontractor relationship with respect to plant clearance, Loss, Damage, Destruction, or Theft (LDDT), and property reporting.

(k) Reporting.

(1) Quarterly Reports. The contractor shall submit quarterly reports of all property financially accountable to this contract and in the possession of the contractor or subcontractors. Reports shall be prepared in accordance with the CCDWS User's Guide, and the following guidance:

(i) Submit reports not later than the 15th day after each of the following reporting periods:

- First Quarter: 1 September -30 November
- Second Quarter: 1 December – 28/29 February
- Third Quarter: 1 March – 31 May
- Annual Report: 1 June – 31 August

(ii) Each report must be submitted electronically by uploading full line-item detail for all contract-accountable property, regardless of value, into the Consolidated Contractor Database (CCD). The CCD is hosted on the U.S. Government Contractor Wide-Area Network (CWAN), and serves as the primary portal for the submission of contract information, including property data, into Epx/PMM. Reports may be submitted via other means if approved by the U.S. Government Property Analyst.

(iii) Prime contractors shall include all contract-accountable property in the possession of their subcontractors in each property report. Subcontractors will not submit property reports to the U.S. Government for their subcontracts. Contractors without access to FOCUS shall forward the subcontractor information to the U.S Government Property Analyst via email.

(iv) Each tagged item of contract-accountable property must be assigned a Program Code to identify the U.S. Government program under which the item was originally acquired, or to designate the item as "non-program." These codes are listed in the FOCUS User's Guide. Non-program property is contract-accountable property acquired for general, administrative, or support activities. Program property comprises contract-accountable property purchased to support the acquisition of a satellite, command and control system, data-processing system, or space launch. It includes sensitive assets known as "specials," and property funded by AS&T to conduct research and development activities. Such equipment is typically purchased for a specific research and development project and has no future use beyond that project.

(v) The contractor shall retain documents which support the data in their property reports for the periods specified in FAR Subpart 4.7 or for the life of the asset, whichever is longer. For each non-program tagged item (excluding material) with a value of \$1,000,000 or more (capital asset) acquired during the reporting period, the contractor must upload an electronic copy of the invoice or other valuation documentation specified below.

(vi) The contractor shall retain acceptable supporting documentation for each contract-accountable non-program capital asset. Acceptable supporting documentation includes the original invoice or purchase order with the corresponding receiving report. For fabricated items, a document certified by the contractor showing the total labor cost of the item (total labor hours multiplied by the applicable labor rates) and the

Revision No. 4, dated June 16, 2023

Unrestricted Content

itemized cost of materials is acceptable. The contractor is not required to support the cost of bench stock inventory items such as nuts and bolts.

(vii) If no supporting documentation is available for a non-program capital asset, the valuation should be estimated in accordance with instructions provided by the U.S. Government Property Analyst. This estimate will be certified by the contractor property manager and include the following information:

- Contract number;
- Property identification number;
- Description of property;
- Acquisition date or date placed in service or receive date;
- Acquisition value; and
- Detailed basis of estimate.

(viii) For each non-program item with a value of \$1,000,000 or more acquired or manufactured during the reporting period, the contractor must upload an electronic copy of the invoice or other valuation documentation with the next quarterly property report.

(ix) 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. When changes in Federal Accounting Standards and OMB reporting requirements occur, contractors may also be required to submit supplemental information with this report. 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.

(2) Subcontractor Property Reports.

(i) The contractor shall submit an Excel spreadsheet with each quarterly property report providing the following information for all U.S. Government contract-accountable property in the possession of subcontractors:

- Subcontractor company name;
- Prime contract number;
- Subcontract number;
- Complete listing of all tagged property;
- Location of contract-accountable property; to include building, room, city and state, and
- Total quantity and dollar value for all CAM and GFM

(ii) The subcontractor property report details shall be included in the quarterly property report through the FOCUS web portal or submitted via email to the U.S. Government Property Analyst.

(iii) In addition to the quarterly reporting requirements described above, each prime contractor shall submit a detailed spreadsheet containing the information in section (i) with their third quarter property report.

(3) Inventory Reports. The contractor shall periodically conduct a physical inventory of contract-accountable property in accordance with leading Industry practices, standards and procedures. The U.S. Government Property Analyst will approve the frequency and method to be used by the contractor for the physical inventory process. Under a manual inventory system, the property inventoried shall be tagged or marked in a manner that indicates that the item has been inventoried. The tags used are normally color-coded or identify the current year, and should be designed to last through the inventory cycle. The contractor shall submit the results of each physical inventory (to include all inventories performed by the prime contractor and each

Revision No. 4, dated June 16, 2023

Unrestricted Content

subcontractor) to the U.S. Government Property Analyst not later than 60 days after inventory completion. The contractor shall also post the inventory results to their property records.

(4) Final (Zero) Property Report. After completion of the contract period of performance and within 30 days after disposition of all contract-accountable property under an U.S. Government contract, the prime contractor shall submit a final zero property report through the FOCUS web portal. Each subcontractor that had possession of Government property accountable to this contract shall report a final zero property report to the prime contractor. Prime contractors without access to FOCUS shall submit the report directly to the U.S. Government Property Analyst certifying the disposition of all contract-accountable property and providing along with documentation supporting the transfer or disposal of all contractor inventory (e.g., SF1428, DD 1149).

(l) Reutilization and Disposal.

(1) Reutilization. Government property that has had no activity should be reviewed annually by contractor and Government personnel to determine whether reutilization is possible. The U.S. Government Property Analyst should work in concert with the contractors to ensure that the Program Offices have sufficient time to determine use inside or outside the organization. Government property is not to be stored, retained, or held by the contractor without proper authority from the Government or as specified by contract.

(2) Disposal. Once inactive Government property has been determined to be excess to contract requirements, the contractor shall screen it against all in-house Government contracts prior to screening by the U.S. Government Property Analyst. In addition to the requirements in FAR 52.245-1, the contractor shall be held to a 120-day standard for plant clearance cases (PCC) unless circumstances dictate otherwise. The U.S. Government Property Analyst will process and track all PCC using Epx/PMM. The contractor shall not close any PCC or retire any property record until the U.S. Government Property Analyst provides notification that all PCC actions have been completed and closed.

(m) Special Test Equipment (STE) Notice of Intent (NOI). 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 and/or specified in the contractor's proposal as STE. The NOI shall include details such as description, quantity, and dollar value of all components that make up the item of STE. The NOI shall also include a full and complete justification validating why the item is being requested and classified as STE.

(n) Property Classification and Records.

(1) Property Classification. The contractor shall include the appropriate Property Classification Code defined in paragraph (b) of this clause when establishing property records and preparing property reports for U.S. Government contract-accountable property.

(2) Records. The official U.S. Government property records shall be maintained by the contractor. All records shall contain the basic information as required in FAR 52.245-1 (f) (iii). In addition, all property records must include the following information (exceptions may be approved by the U.S. Government Property Analyst):

(i) Tagged Assets

- Classification of the property (same as type of property)
- Serial Number (if applicable)
- Parent/Child Relationship (applies to STE and higher assemblies with components)
- Location of the property (including building room, city, and state)
- Last physical inventory date

(ii) Material Items

- Part Number

Revision No. 4, dated June 16, 2023

Unrestricted Content

- Actual, Average, Moving, or Estimated Cost (as applicable)
- Acquisition/in-service date
- Summary of quantity, line items and dollar value

(3) System Records. When items of property are part of a system, such as components of STE or a higher assembly, each individual item/component shall have its own individual record showing the actual or estimated cost with the parent-child relationship clearly established. For example, the cost of STE components can be captured either in the total unit cost of the STE or as individually-priced components. The components of a parent-child relationship that are tracked and costed individually must also be disposed of individually. However, if the costs are tracked as a total unit cost, each component will be disposed of separately by decrementing the total unit cost of the STE. The contractor shall document how it tracks the cost of STE and higher assembly components.

(4) Records of Pricing Information. The unit price of Government-Furnished Property (GFP) will be provided on the documentation covering shipment of the property to the contractor. In the event the unit price is not provided on the document, the contractor will take action to obtain the information. If the information is unavailable, the contractor may use estimated costs.

(5) Contractors shall decrement their contract property records as appropriate to reflect the following property actions:

(i) Lost, Damaged, Destroyed, and Theft. Deletion amounts that result from relief from responsibility under FAR 45.503 granted during the reporting period.

(ii) Transferred in Place. Deletion amounts that result from transfer of property to a follow-on contract with the same contractor.

(iii) Transferred to Another Government Agency. Deletion amounts that result from transfer of property to another Government agency.

(iv) Purchased at Cost/Returned for Credit. Deletion amounts that result from contractor purchase or retention of contractor acquired property, or from contractor returns to suppliers.

(v) Disposed of Through Plant Clearance Process. Deletions other than transfers within the Federal Government (e.g., donations to eligible recipients, sold at less than cost, or abandoned/ directed destruction).

(vi) Other. Types of deletion other than those reported in (i) through (v) of this section.

(o) Flowdown. The contractor shall include this clause in all subcontracts that will have any Government-furnished or contractor-acquired property accountable to the subcontract. When security issues preclude verbatim use of this clause, the contractor shall use a revised version which includes all the requirements of the original clause.

(End of clause)

3. CONTRACTOR COUNTERFEIT ELECTRONIC PART DETECTION AND AVOIDANCE SYSTEM (NOV 2022)

(Applicable to Orders subject to Cost Accounting Standards.)

The following paragraphs (a) through (e) of this clause do not apply unless the contractor is subject to the Cost Accounting Standards under 41 U.S.C. chapter 15, as implemented in regulations found at 48 CFR 9903.201-1.

(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.

Revision No. 4, dated June 16, 2023

Unrestricted Content

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, repackage, 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.

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 allowability 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

Revision No. 4, dated June 16, 2023

Unrestricted Content

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 Sources of Electronic Parts (also see paragraph (c)(2) of this clause).
 - (5) Use of suppliers in accordance with the clause at Sources of Electronic Parts.
 - (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 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, excluding the introductory text and including only paragraphs (a) through (e), in subcontracts, including subcontracts for commercial items, for electronic parts or assemblies containing electronic parts.

(End of clause)

4. SOURCES OF ELECTRONIC PARTS (NOV 2022)

(Applicable to all Orders, including Orders for the acquisition of commercial products and commercial services, when procuring: (1) electronic parts; (2) end items, components, parts, or assemblies containing electronic parts; or (3) services, if the contractor will supply electronic parts or components, parts, or assemblies containing electronic parts as part of the service.)

(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.

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, audit, and approval by the Contracting Officer, generally in conjunction with a contractor purchasing system review or other surveillance of purchasing practices by the contract administration office, or if the Government obtains credible evidence that a contractor-approved supplier has provided counterfeit parts. The Contractor may proceed with the acquisition of electronic parts from a contractor-approved supplier unless otherwise notified 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;

(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 products or commercial services that are for electronic parts or assemblies containing electronic parts, unless the subcontractor is the original manufacturer.

(End of clause)

5. PROHIBITION ON PERSONS CONVICTED OF FRAUD OR OTHER DEFENSE-CONTRACT-RELATED FELONIES (NOV 2022)

(Applicable to all Orders exceeding the simplified acquisition threshold, except Orders for commercial products or commercial services.)

(a) Definitions. As used in this clause—

Revision No. 4, dated June 16, 2023

Unrestricted Content

- (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;

Revision No. 4, dated June 16, 2023

Unrestricted Content

- (3) The reasons for the requested waiver; and
- (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, appropriately modified to reflect the identity and relationship of the parties, in all first-tier subcontracts exceeding the simplified acquisition threshold in Part 2 of the Federal Acquisition Regulation, except those for commercial products or commercial services.
- (h) Pursuant to 10 U.S.C. 2408(c), defense contractors and subcontractors may obtain information as to whether a particular person has been convicted of fraud or any other felony arising out of a contract with the DoD by contacting the Office of Justice Programs, The Denial of Benefits Office, U.S. Department of Justice, telephone 301-937-1542; www.ojp.usdoj.gov/BJA/grant/DPFC.html.

(End of clause)

6. PERSONAL CONDUCT (OCT 2014)

(Applicable if Seller will be performing services at a U.S. Government facility.)

- (a) The Contractor, its employees, and its subcontractors shall comply with the conduct requirements in effect at the Government's work site. The Contracting Officer reserves the right to exclude or remove from the work site any employee of the contractor or of a subcontractor whom the Government deems careless, uncooperative, or whose continued employment on the work site is deemed by the Government to be contrary to the public interest.
- (b) The Contractor shall inform its employees that the U.S. Government has a zero tolerance policy for harassing behavior. Any Contractor or subcontractor employee determined by the Government to have engaged in harassing behavior shall be immediately escorted from the premises and denied further access to the worksite. The Contractor shall emphasize this requirement to its employees.
- (c) The Contractor shall also inform its employees with access to U.S. Government information systems that they shall use those systems only for official U.S. Government authorized purposes and shall access only that information for which they have a valid need-to-know. Unauthorized collection, transmission, or use of U.S. Government procurement and financial information constitutes a misuse of government-controlled information and in most circumstances a violation of non-disclosure agreements that can result in severe consequences for all parties involved, including criminal punishment, civil liability, and revocation of access.
- (d) Exclusion from the worksite under the circumstances described in this clause shall not relieve the Contractor from full performance of the contract, nor will it provide the basis for an excusable delay or any claims against the Government.

(End of clause)

7. PROTECTION AGAINST COMPROMISING EMANATIONS (APR 2014)

(Applicable if Supplier's performance under the Order will require processing national security information.)

- (a) The contractor shall implement countermeasures in compliance with U.S. Government Directive 100-5, Requirements, if electronically processing classified U.S. Government information.
- (b) Contract deliverables that process, store, or transmit national security information shall be designed to minimize the possibility of compromising emanations.
- (c) The Government may, as part of its inspection and acceptance, conduct tests to ensure that equipment or systems delivered under this contract satisfy the security standards specified. Notwithstanding the existence of valid accreditations of equipment prior to the award of this contract, the Government may conduct additional tests at the installation site or contractor's facility.

(End of clause)

8. CONTINUITY OF OPERATIONS REQUIREMENTS (SEP 2009)

(Applicable if Seller will be performing work at a U.S. Government facility.)

(a) The work performed under this contract has been determined by the Government to be mission-essential. In the event of an emergency affecting a U.S. Government facility, the contractor shall continue providing support under this contract in accordance with the Government's instructions.

(b) Incident to an emergency affecting a U.S. Government facility, the Government may unilaterally make any of the following changes within the general scope of the contract:

- (1) Services to be performed;
- (2) Location of performance; and/or
- (3) Time of performance.

(c) If the support provided by the contractor in response to an emergency event causes an increase or decrease in costs, or otherwise affects any other term or condition of this contract, the contract may be subject to a request for an equitable adjustment in accordance with the *Changes* clause of this contract.

(End of clause)

9. INFORMATION TECHNOLOGY-INFORMATION ASSURANCE-INFORMATION MANAGEMENT REQUIREMENTS (MAR 2020)

(Applicable to all Orders when the Supplier will be required to access, operate, maintain, design, build, and/or acquire an information system processing national security information.)

(a) Definitions. The terms used in this clause are defined in Committee on National Security Systems Instruction (CNSSI) 4009, Committee on National Security Systems *Glossary*.

(b) This clause shall apply to any aspect of this contract involving access to or processing of national security information, up to and including sensitive compartmented information (SCI).

(c) The contractor shall comply with the requirements of:

- (1) Government Information Technology-Information Assurance-Information Management Contract Requirements Document (IT-IA-IM CRD).
- (2) For contracts involving IT system development and production, and/or requiring access to classified Government networks, ICD 503, *Intelligence Community Information Technology Systems Security Risk Management*, and CNSSI 1253, *Security Categorization and Control Selection for National Security Systems*;
- (3) Other IT-IA-IM policies, standards, and special access program classification and program security guidance specified in the contract; and
- (4) The latest revision to each document listed above, notice of which has been furnished to the contractor by the Government.

(d) If, subsequent to the date of this contract, the IT-IA-IM requirements of this contract are changed by the Government, and if the changes cause an increase or decrease in costs or otherwise affect any other term

Revision No. 4, dated June 16, 2023

Unrestricted Content

or condition of this contract, the contract may be subject to an equitable adjustment under the Changes clause of this contract.

- (e) The prime contractor is responsible for providing IT-IA-IM oversight for all subcontractor relationships that are formed as the result of this contract. The contractor shall include provisions in all subcontracts that substantially conform to the requirements of this clause.
- (f) If any provision of the contract conflicts with instructions issued by the Contracting Officer, the contractor shall notify the Contracting Officer who will resolve the conflict. When IT-IA-IM regulations are in conflict, the contractor shall follow the most restrictive guidance and immediately refer the matter to the Contracting Officer for resolution.
- (g) The contractor shall report security and compliance status and reconfigure national security systems as directed by the Government.
- (h) The IT-IA-IM requirements specified in this clause are a material condition of this contract. Failure of the contractor to maintain and administer an information security program compliant with the IT-IA-IM requirements of this contract constitutes grounds for termination for default.

(End of clause)

10. PRIME CONTRACTS AND SUBCONTRACTS WITH EDUCATIONAL INSTITUTIONS (Nov 2018)

(Applicable to Orders with educational institutions.)

(a) Acknowledgement and Approval. All contracts and subcontracts with educational institutions, to include Federally Funded Research and Development Centers and University Affiliated Research Centers managed by an educational institution, require written acknowledgement and approval by a responsible official (e.g., president, chancellor, provost, director, or equivalent senior official) authorized to approve such contracts on behalf of the educational institution. This letter shall acknowledge the involvement of the U.S. Government customer with the educational institution and approve the proposed contractual relationship.

(b) Subcontracts. The Contractor shall obtain a signed letter conforming to the sample letter at paragraph (e) below from the educational institution and submit a copy of the letter in an attachment to its offer (pre-award) or directly to the Contracting Officer (post-award). The Contractor may coordinate drafting of the letter with the Buyer's Purchasing Representative prior to submittal to the educational institution.

(e) Sample Letter Template:

SAMPLE LETTER

Dear *[Contracting Officer or Contractor Representative]*:

Pursuant to Executive Order 12333, this letter acknowledges that I am an official of *[name of educational institution]* authorized to approve any contract issued by *[name of contractor or other government agency]* in support of the *[insert agency name here]*. I further acknowledge that I am aware that the *[insert agency name here]* will be involved in any resulting contract and do hereby, on behalf of *[name of educational institution]*, approve such a contractual relationship.

[Appropriate Senior Official]

(End of clause)

11. ORGANIZATIONAL CONFLICT OF INTEREST (JUL 2016)

Revision No. 4, dated June 16, 2023

Unrestricted Content

(Applicable if Seller is providing services hereunder similar to those provided by the Buyer to the U.S. Government as determined by the Buyer's Purchasing Representative.)

(a) Definitions.

Organizational Conflict of Interest (OCI) exists when, due to other activities or relationships, a contractor is unable or potentially unable to render impartial assistance or advice to the Government; or the contractor's objectivity in performing the contract work is, or might be, otherwise impaired or appear to be impaired; or the contractor gains an unfair competitive advantage due to the contractor's other contract efforts. There are three types of OCI:

- **Unequal Access to Information:** The contractor has access to nonpublic information that may provide them an unfair competitive advantage in a later competition for a government contract.
- **Biased Ground Rules:** As a function of performance on a government contract, the contractor has set the ground rules for another government contract which could skew the competition in their favor.
- **Impaired Objectivity:** A contractor's business relationships create an economic incentive to provide biased advice under a government contract.

(b) The offeror warrants, to the best of its knowledge and belief, that (1) there are no relevant facts that could give rise to organizational conflicts of interest (OCI), as defined above; or (2) the offeror has disclosed all relevant information regarding any actual or potential OCI. Offerors are encouraged to inform the Contracting Officer of any potential conflicts of interest, including those involving contracts with other foreign or domestic government organizations, before preparing their proposals to determine whether the Government will require mitigation of those conflicts. If the successful offeror was aware, or should have been aware, of an OCI before award of this contract and did not fully disclose that conflict to the Contracting Officer, the Government may terminate the contract for default.

(c) If during contract performance the contractor discovers an OCI involving this contract, the contractor agrees to make an immediate and full disclosure in writing to the Contracting Officer. Such notification will include a description of the action the contractor and/or subcontractor has taken or proposes to take to avoid, neutralize, or mitigate the conflict. The contractor will continue contract performance until notified by the Contracting Officer of any contrary actions to be taken. The Government may terminate this contract for its convenience if it deems such termination to be in the best interest of the Government.

(d) The contractor shall inform the Contracting Officer of any activities, efforts, or actions planned, entered into, or on-going by the contractor or any other corporate entity of the contractor, at the prime or sub-contract level, involving the review of information or providing any advice, assistance, or support to foreign or domestic government agencies, entities, or units outside of the U.S. Government which may result in a perceived or actual OCI with any known U.S. Government activity. The contractor shall provide detailed information to the Contracting Officer as to the specifics of the situation immediately upon its recognition. Based on the severity of the conflict, the Contracting Officer may direct the contractor to take certain actions, revise current work effort, or restrict the contractor's future participation in U.S. Government contracts as may be necessary to appropriately neutralize, mitigate, or avoid the OCI.

(e) If necessary to mitigate OCI concerns, or when directed to do so by the Contracting Officer, the contractor shall submit an OCI plan for approval. The plan must describe how the contractor will mitigate, neutralize, or avoid potential and/or actual conflicts of interest or unfair competitive advantages. The contractor shall attach a completed OCI Plan Matrix (attached hereto as Exhibit NN) to each new or revised OCI plan submitted to the Contracting Officer. After approval of the OCI plan, the contractor must conduct a yearly self-assessment and submit an annual certification of compliance with the terms of the plan signed by a corporate official at the level of Vice President or above. The contractor shall submit a revised OCI plan for approval whenever corporate, contractual, or personnel changes create or appear to create new OCI concerns, or when directed to do so by the Contracting Officer.

Revision No. 4, dated June 16, 2023

Unrestricted Content

(e) The contractor shall insert a clause containing all the requirements of this clause in all subcontracts for work similar to the services provided by the prime contractor.

(f) Before this contract is modified to add new work or to significantly increase the period of performance, the contractor agrees to submit an OCI disclosure or representation if requested by the Government.

(g) The contractor shall allow the Government to review the contractor's compliance with these provisions or require such self-assessments or additional certifications as the Government deems appropriate.

(End of clause)

12. ORGANIZATIONAL CONFLICT OF INTEREST: SUPPORT SERVICES (OCT 2014)

(Applicable if the value of this contract exceeds the Simplified Acquisition Threshold.)

(a) Determination. This contract requires the contractor to provide support services to the Government that may result in actual or potential conflicts of interest for the contractor, or may provide the contractor with the potential to attain an unfair competitive advantage. To effectively mitigate such issues while fulfilling this contract, the contractor shall comply fully with the requirements and restrictions of this clause.

(b) Notification. The contractor shall notify the Contracting Officer promptly upon learning that their company and/or any foreign or domestic division, sector, parent corporation, affiliate, sister corporation, or subsidiary thereof, intends to bid as a prime contractor or subcontractor at any tier on a solicitation to supply a particular system, program, and/or contract, or to serve as a subcontractor, vendor, or consultant to the supplier for any acquisition for which the contractor is providing program support under this contract. When this situation occurs, the contractor shall be prohibited from providing support for source selection activities for that system, program, and/or contract until the date of contract award. Upon notification by the contractor, the Contracting Officer will make a determination whether the contractor accrued an actual conflict prior to solicitation pursuant to their activities under this contract.

(c) Employee Restrictions. Contractor employees providing support services under this contract shall wait a minimum of two years from the date they stop working under this contract before beginning work on another proposal or contract to supply to the Government (either as a prime contractor or subcontractor) or act as a consultant to a supplier of any supplies or services that are directly or indirectly related to the subject of any work or services performed under this contract. This restriction applies whether the former support contract employee is now working for the same support contractor, for another division of the same corporation, or for a different company.

(d) Organizational Conflict of Interest Plan.

(1) The contractor shall submit an organizational conflict of interest (OCI) plan to the Contracting Officer describing how the contractor will mitigate, neutralize, or avoid any potential or actual conflicts of interest or unfair competitive advantage. Contract award shall not occur before Government approval of the contractor OCI plan.

(2) The restrictions of this clause apply fully except as amended in the approved OCI plan.

(3) The contractor shall conduct a yearly self-assessment and submit an annual certification of compliance with the terms of the OCI plan signed by a corporate official no lower than the Vice President or corporate equivalent.

(4) The contractor shall notify the Contracting Officer within seven calendar days whenever corporate, contractual, or personnel changes create or appear to create new organizational conflict of interest concerns. When necessary to mitigate those concerns, the contractor shall submit a revised OCI plan for approval, or may be directed to do so at any time by the Contracting Officer.

(5) In rare instances, the Director, Office of Contracts may waive the restrictions of this clause.

(e) Corporate Changes. The contractor shall inform the Contracting Officer within seven calendar days of the

Revision No. 4, dated June 16, 2023

Unrestricted Content

effective date of any corporate merger, acquisition, and/or divestiture that may affect this contract or the U.S. Government in any way.

(f) Flow-down. The requirements of this clause shall be included in all subcontracts above the simplified acquisition threshold. Subcontractors shall be subject to this clause in the same manner as the contractor.

(g) Corporate Organizational Conflict of Interest Plan. If the contractor has an approved Corporate OCI Plan on file with the U.S. Government's Office of Contracts Policy in accordance with government requirements, the most current approved version of the plan is incorporated into this contract by reference and is in full effect. If the contractor withdraws its approved Corporate OCI Plan in accordance with government requirements, and is unable to provide an acceptable OCI plan or to obtain a waiver, the Contracting Officer may terminate this contract for default due to non-compliance with OCI requirements

(End of clause)

13. SUPPORT CONTRACTOR CORPORATE NON-DISCLOSURE AGREEMENT (FEB 2011)

(Applicable in all support services Order that require access to sensitive or proprietary information.)

(a) Definitions. As used in this clause:

(1) *Proprietary information* means information contained in a bid or proposal, cost or pricing data, or any other information disclosed to the Government, including a contractor's technical data, computer software, or business data (as those terms are defined in the *Rights in Technical Data and Computer Software: Noncommercial Items* clause of this contract) that is properly designated and/or marked as proprietary by a contractor in accordance with law and regulation, and is held in confidence or disclosed under restriction to prevent uncontrolled distribution.

(2) *Sensitive information* means the Government's nonpublic planning, budgetary, and acquisition information (to include source selection sensitive, advanced acquisition, and contract information), and any contractor technical data or computer software delivered to the Government with limited or restricted rights (as defined in the *Rights in Technical Data and Computer Software: Noncommercial Items* clause of this contract), and marked with a conforming marking.

(3) *Disclosing party* means the owner or developer of proprietary or sensitive information.

(4) *Support contractor*, for purposes of this agreement, means a contractor under a contract the primary purpose of which is to furnish management support services, consultant and professional services; studies, analysis and evaluations; systems engineering, technical direction and assistance; operations and maintenance activities; and other services that may provide contractor employees access to sensitive or proprietary information.

(5) *Unauthorized disclosure* means the disclosure of sensitive or proprietary information to any party who does not have a need to know that information or who is not contractually authorized to access the information.

(b) Purpose. This support contract requires the contractor to have access to sensitive information and the proprietary information of other contractors, subcontractors, suppliers, and vendors. Any sensitive or proprietary information disclosed to the contractor by the Government, another authorized contractor, or a disclosing party under the provisions of this clause shall not be used by the receiving contractor for any purpose other than support of the Government contract for which it was furnished. The contractor understands that its unauthorized disclosure of such sensitive or proprietary information would be injurious to the interests of the Government and the owner of the information, and shall therefore protect such information from disclosure by exercising the same degree of care used to protect its own proprietary information, and with no less than a reasonable standard of care for protection.

(c) Corporate Non-Disclosure Agreement. To relieve the contractor from the burden of negotiating separate agreements to access or use disclosed proprietary information originating from other contractors, subcontractors,

Revision No. 4, dated June 16, 2023

Unrestricted Content

suppliers, and vendors, as well as U.S. Government program offices, the Government and contractor agree that this clause sets forth the rights and obligations of the contractor in its role as a support contractor and its subcontractors regarding the use, handling, protection, and safeguarding of sensitive or proprietary information on this contract. The contractor agrees to protect any such information for as long as it remains subject to restrictions. This clause is meant to satisfy the non-disclosure agreement (NDA) requirements set forth in 10 U.S.C. §2320(f)(2)(B). As such, the contractor shall only enter into a separate NDA, confidentiality agreement, proprietary information agreement, or similar agreement with a disclosing party whose proprietary information is accessed or used in the performance of this contract on an exception basis, such as when the contractor is or may reasonably be expected to be a competitor of the disclosing party. The contractor shall notify the Contracting Officer if an additional agreement is required by a disclosing party. Any such protections provided by such agreement for contractor proprietary information are in addition to, and take precedence over, the terms of this clause regarding contractor proprietary information.

(d) Third-Party Beneficiaries. In its role as a support contractor, the contractor agrees that each disclosing party (contractor, subcontractor, supplier, or vendor) which, pursuant to its U.S. Government contract or subcontract, discloses proprietary information to the Government or to the support contractor is a third-party beneficiary of this clause.

(e) Liability for Unauthorized Disclosure. The contractor agrees that the unauthorized disclosure of sensitive or proprietary information constitutes a breach of contract that may subject the contractor to appropriate legal remedies. If the Government or the disclosing party seeks legal remedy for breach by the contractor in their role as a support contractor, the contractor agrees:

- (1) It will not require the Government to be added as a necessary party to any enforcement action between the disclosing party and the contractor;
- (2) It will not seek a court to require either to post bond or to prove damages to seek injunctive relief;
- (3) To consent to federal jurisdiction for Government actions; and
- (4) That the disclosing party may bring a direct, civil action in law or equity against the support contractor in any state or federal court of competent jurisdiction.

(f) Cooperation. The contractor agrees in the event of an unauthorized disclosure, whether suspected or actual, to promptly notify the Government and the disclosing party, and cooperate with the Government and the disclosing party, whether acting separately or independently, in support of any reasonable fact-finding efforts and mutually agreed upon resolution actions. Any costs incurred by the contractor in said fact-finding efforts will not be passed on to the Government or disclosing party.

(g) Flowdown. The requirements of this clause shall be flowed down to and included in all subcontracts directly chargeable to this contract. The contractor shall notify the Contracting Officer within seven business days of the award of any support subcontract. The notification shall identify the programs and/or contracts being supported, certify that the subcontractors have executed all appropriate implementing NDAs, and confirm that the terms of this clause have been accepted by the subcontractor.

(h) Implementing NDAs. Except as set forth elsewhere in this clause, the contractor shall make sensitive or proprietary information available only to individuals who have a valid need to access the information. The contractor shall require each individual requiring access to sensitive or proprietary information to execute an implementing NDA before granting access to such information. This individual implementing NDA shall include all the elements specified in U.S. Government Guide N85 (available from the Buyer's Purchasing Representative upon request). The contractor shall maintain a list of individuals who have signed NDAs and have access to sensitive or proprietary information as an attachment to its approved OCI Plan for this contract, and submit an annual certification of compliance with the terms of the plan.

(i) Identification of Proprietary Information. Proprietary information shall be protected pursuant to this clause if it is disclosed:

- (1) In writing and clearly marked on its face as "proprietary" or with other words of similar meaning;
 - (2) Orally or visually (for instance, during a plant tour, briefing, or demonstration), and is identified as proprietary at the time of the oral or visual disclosure by the Government or a contractor. The contractor shall treat all such information as proprietary unless within fifteen days the contractor coordinates with the Government or disclosing party to obtain a written version of the proprietary information and determine the extent of the proprietary claims;
 - (3) By electronic transmission (e.g., facsimile, electronic mail, etc.) in either human readable form or machine readable form, and the disclosing party marks it electronically as proprietary within the electronic transmission, with such marking to be displayed in human readable form along with any display of the proprietary information; or
 - (4) By delivery of an electronic storage medium or memory device, and the disclosing party marks the storage medium or memory device itself as containing proprietary information and electronically marks the stored information as proprietary, such marking to be displayed in human readable form along with any display of the proprietary information.
- (j) Permissible Disclosure. Notwithstanding paragraph (e) above, the contractor is authorized to discuss and disclose sensitive or proprietary information that it receives in support of a particular Government program to employees of that particular Government program office pursuant to this contract pursuant to this contract and the license granted the Government by the disclosing party (including other support contractors supporting that same specific program), and other senior Government executives outside of the program offices provided that any sensitive or proprietary information continues to bear the same legend(s) affixed by the disclosing party, whether provided in its original form or in some other format.
- (k) Exceptions to Liability for Unauthorized Disclosure. The support contractor shall not be liable for unauthorized disclosure of sensitive or proprietary information if it can be demonstrated in written documentation or other competent evidence that the information was:
- (1) Already known to the support contractor without restriction on its use or disclosure at the time of its disclosure by the Government or the disclosing party;
 - (2) In the public domain or became publicly known through no wrongful act of the support contractor;
 - (3) Sensitive information disclosed by the support contractor with the Contracting Officer's prior written approval;
 - (4) Proprietary information disclosed by the contractor with the disclosing party's prior written permission;
 - (5) Independently developed by the support contractor, subsequent to its receipt, without the use of any sensitive or proprietary information;
 - (6) Disclosed to the support contractor by a third party who was legally entitled to disclose the same and who did not acquire the proprietary information from the disclosing party;
 - (7) Specifically provided in writing by the Government to the support contractor with an unlimited rights license; or
 - (8) Disclosed by the support contractor as required by law, regulatory or legislative authority, including subpoenas, criminal or civil investigative demands, or similar processes, provided the support contractor provides the disclosing party that originated the proprietary information with prompt written notice so that the disclosing party may seek a protective order or other appropriate remedy, and provided that, in the absence of a timely protective order, the support contractor furnishes only that minimum portion of the sensitive or proprietary information that is legally required.
- (l) Licenses. Nothing contained in this clause, including the disclosure of any information hereunder, shall be construed as granting to the contractor a license or right to use the sensitive or proprietary information, either

Revision No. 4, dated June 16, 2023

Unrestricted Content

express or implied, under any patent, copyright, trade secret, or other intellectual property right now or hereafter owned by or controlled by or controlled by the disclosing party.

(m) No Warranties. The contractor expressly agrees that each disclosing party who discloses proprietary information to the contractor makes no warranties, assurances, guarantees, or representations as to the accuracy, completeness, or technical or scientific quality of any of their proprietary information. Without restricting the generality of the foregoing, no warranty, assurance, guarantee, or representation is made by any disclosing party as to the merchantability, fitness for a particular purpose, or non-infringement of patents, copyrights, trademarks, trade secrets, or any other rights of third parties of any proprietary information disclosed to the support contractor.

(n) Compliance with Export Control Laws. The contractor shall not export (to include disclosing or providing access to a foreign person located anywhere as defined in 22 C.F.R §120.16) any technical information furnished by the disclosing party without first complying with all applicable U.S. export control laws and regulations, including the requirements of the International Traffic in Arms Regulations and the Export Administration Regulations. The contractor will first obtain the written consent of the disclosing party who originated the proprietary information before submitting an application to export such proprietary information.

(o) Notices. For any notice required or contemplated by this clause, the support contractor has the burden of determining from the Contracting Officer the disclosing party's contractual point of contact, and for providing written notice thereto. The Contracting Officer will provide a list of the points of contact for service of notices for all support contractors identified in conjunction with the *Enabling Clause for Prime and Support Contractor Relationships* clause of this contract. Notice shall be deemed to have been given on:

- (1) The date received if delivered personally or by overnight courier;
- (2) The third day after being deposited in the U.S. mail, postage prepaid; or
- (3) The date sent if sent by facsimile transmission or e-mail with a digital copy of the notice.

(q) Return of Sensitive and Proprietary Information. All proprietary information disclosed to the support contractor by the Government or a disclosing party shall remain the property of the disclosing party. Sensitive or proprietary information shall be destroyed or otherwise returned promptly at the request of the Government or a disclosing party, together with any copies thereof, to include that stored by computer memory or data storage system, and the contractor will certify to the disclosing party that it has done so. Notwithstanding the foregoing, the contractor may retain an archival copy for dispute resolution purposes in its legal counsel's office, as well as copies of any reports prepared for and provided to the Government specific to performance of this contract that contain or refer to the sensitive or proprietary information.

(p) No Waiver. Failure by the Government or a disclosing party to enforce any requirement in this clause shall not constitute a waiver in any subsequent breach of that requirement. If any requirement of this clause or part of such requirement is or becomes invalid or unenforceable, the remaining requirements shall remain in effect.

(r) Effective Date. The requirements of this clause shall be in force as of the effective date of this contract, and expire upon the completion or termination of this contract. These requirements may only be terminated or amended by the Contracting Officer and the contractor by supplemental agreement. The confidentiality requirements of this clause shall survive completion or termination of this contract.

(End of clause)

14. INTENTION TO USE CONSULTANTS (JAN 2005)

(Applicable to Orders involving the services of non-Government consultants in technical advisory, and consulting roles for overall technical review of activities covered by the Order).

(a) The Government intends to utilize the services of non-Government consultants in technical, advisory, and consulting roles for overall technical review of the activities covered by this contract. Although the consultants shall not have the right of technical direction, they will attend technical reviews, participate in technical

interchange meetings, observe processing and production efforts, witness fabrication and assembly, and monitor testing within contractor and subcontractor facilities. Such consultants will provide advice to the Government concerning viability of technical approaches, utilization of acceptable procedures, value and results of tests, and the like. The consultants will therefore require access to program-related contractor and subcontractor facilities and documentation. Contractor proprietary data shall not be made available to consultants unless and until a protection agreement has been generated between the consultant and the contractor, and evidence of such agreement has been made available to the Contracting Officer.

(b) It is expressly understood that the operations of this clause will not be the basis for an equitable adjustment.

(End of clause)

15. COST ESTIMATING SYSTEM REQUIREMENTS (JAN 2005)

(a) Definition.

Estimating system means the contractor's policies, procedures, and practices for generating estimates of costs and other data included in proposals submitted to customers in the expectation of receiving contract awards. The estimating system includes the contractor's organizational structure; established lines of authority, duties, and responsibilities; internal controls and managerial reviews; workflow, coordination, and communication; and estimating methods, techniques, accumulation of historical costs, and other analyses used to generate cost estimates.

(b) General.

(1) The contractor shall establish, maintain, and comply with an estimating system that is consistently applied and produces reliable, verifiable, supportable, and documented cost estimates that are an acceptable basis for negotiation of fair and reasonable prices.

(2) The system should be consistent and integrated with the contractor's related management systems, and subject to applicable financial control systems.

(c) Applicability. Paragraphs (d) and (e) of this clause apply if the contractor is a large business or received, in its fiscal year preceding award of this contract, Government prime contracts or subcontracts totaling \$50 million or more for which certified cost or pricing data were required.

(d) System Requirements.

(1) The contractor shall disclose its estimating system to the Government in writing. If the contractor wants the Government to protect this information as privileged or confidential, the contractor must mark the documents with the appropriate legends before submission.

(2) An estimating system disclosure is adequate when the contractor documentation accurately describes those policies, procedures, and practices that the contractor currently uses to prepare cost proposals, and provides sufficient detail for the Government to reasonably make an informed judgment regarding the adequacy of the contractor's estimating practices.

(3) The contractor shall comply with its disclosed estimating system, and disclose significant changes to the cost estimating system to the Government on a timely basis.

(e) Estimating System Deficiencies.

(1) The contractor shall respond to a written report from the Government which identifies deficiencies in the contractor's estimating system as follows:

(i) If the contractor agrees with the report findings and recommendations, the contractor shall, within 30

Revision No. 4, dated June 16, 2023

Unrestricted Content

days, state its agreement in writing, and, within 60 days, correct the deficiencies or submit a corrective action plan proposing milestones and actions leading to elimination of the deficiencies.

(ii) If the contractor disagrees with the report, the contractor shall, within 30 days, state its rationale for disagreeing.

(2) The Government will evaluate the contractor's response and notify the contractor of the determination concerning remaining deficiencies and/or the adequacy of any proposed or completed corrective action.

(End of clause)

16. EXTENDING CONTRACTS SUBJECT TO THE SERVICE CONTRACT ACT (OCT 2003)

(Applicable only if this contract is subject to the Service Contract Act.)

The Government may unilaterally extend the period of performance of this contract to promote competition or for other reasons in the best interests of the Government for a period not to exceed six months.

(End of clause)

17. UTILIZATION OF SMALL BUSINESS CONCERNS (DEC 2011)

(Applicable to all Orders when the contract amount is expected to exceed the simplified acquisition threshold unless (1) a personal services contract is contemplated; or (2) the contract, together with all of its subcontracts, will be performed entirely outside the United States and its outlying areas. This clause is to be used in lieu of FAR 52.219-8.)

(a) It is the policy of the United States that small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns shall have the maximum practicable opportunity to participate in performing contracts let by any Federal Agency, including contracts and subcontracts for subsystems, assemblies, components and related services for major systems. It is further the policy of the United States that its prime contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts with small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns.

(b) The contractor hereby agrees to carry out this policy in the awarding of subcontracts to the fullest extent consistent with efficient contract performance. The contractor further agrees to cooperate in any studies or surveys as may be conducted by the Contracting Officer or his representative as may be necessary to determine the extent of the contractor's compliance with this clause.

(c) Definitions. As used in this contract—

“HubZone Small Business Concern” means a small business concern that appears on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration.

“Service-disabled Veteran-owned Small Business Concern” —

(1) Means a small business concern—

(i) Not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans; and

(ii) The management and daily business operations of which are controlled by one or more service-disabled veterans or, in the case of a veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran.

(2) *“Service-disabled Veteran”* means a veteran, as defined in 38 U.S.C. 101(2), with a disability that is

service-connected, as defined in 38 U.S.C.101(16).

“*Small Business Concern*” means a small business as defined pursuant to Section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto.

“*Small Disadvantaged Business Concern*” means a small business concern that represents, as part of its offer that—

(1)(i) It has received certification as a small disadvantaged business concern consistent with 13 CFR part 124, subpart B;

(ii) No material change in disadvantaged ownership and control has occurred since its certification;

(iii) Where the concern is owned by one or more individuals, the net worth of each individual upon whom the certification is based does not exceed \$750,000 after taking into account the applicable exclusions set forth at 13 CFR 124.104(c)(2); and

(iv) It is identified, on the date of its representation, as a certified small disadvantaged business in the Central Contractor Registration (CCR) Dynamic Small Business Search database maintained by the Small Business Administration, or

(2) It represents in writing that it qualifies as a small disadvantaged business (SDB) for any Federal subcontracting program, and believes in good faith that it is owned and controlled by one or more socially and economically disadvantaged individuals and meet the SDB eligibility criteria of 13 CFR 124.1002.

“*Veteran-owned Small Business Concern*” means a small business concern—

(1) Not less than 51 percent of which is owned by one or more veterans (as defined at 38 U.S.C.101(2)) or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans; and

(2) The management and daily business operations of which are controlled by one or more veterans.

“*Women-owned Small Business Concern*” means a small business concern—

(1) That is at least 51 percent owned by one or more women, or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and

(2) Whose management and daily business operations are controlled by one or more women.

(d)(1) Contractors acting in good faith may rely on written representations by their subcontractors regarding their status as a small business concern, a veteran-owned small business concern, a service-disabled veteran-owned small business concern, a HUBZone small business concern, a small disadvantaged business concern, or a women-owned small business concern.

(2) The contractor shall confirm that a subcontractor representing itself as a HUBZone small business concern is certified by SBA as a HUBZone small business concern by accessing the CCR database at <http://www.sba.gov/hubzone>.

(End of clause)

18. SMALL BUSINESS SUBCONTRACTING PLAN (OCT 2015)

(Applicable to all Orders that offer subcontracting possibilities, are expected to exceed \$700,000 (\$1.5 million for construction of public facility), and are required to include the *Utilization of Small Business Concerns* clause, but not in contracts awarded to a small business concern. This clause is to be used in lieu of FAR 52.219-9.)

(a) This clause does not apply to small business concerns.

(b) Definitions. As used in this clause—

“Alaska Native Corporation (ANC)” means any Regional Corporation, Village Corporation, Urban Corporation, or Group Corporation organized under the laws of the State of Alaska in accordance with the Alaska Native Claims Settlement Act, as amended (43 U.S.C. 1601, et seq.) and which is considered a minority and economically disadvantaged concern under the criteria at 43 U.S.C. 1626(e)(1). This definition also includes ANC direct and indirect subsidiary corporations, joint ventures, and partnerships that meet the requirements of 43 U.S.C. 1626(e)(2).

“Commercial Item” means a product or service that satisfies the definition of commercial item in section 2.101 of the Federal Acquisition Regulation.

“Commercial Plan” means a subcontracting plan (including goals) that covers the offeror’s fiscal year and that applies to the entire production of commercial items sold by either the entire company or a portion thereof (e.g., division, plant, or product line).

“Indian Tribe” means any Indian tribe, band, group, pueblo, or community, including native villages and native groups (including corporations organized by Kenai, Juneau, Sitka, and Kodiak) as defined in the Alaska Native Claims Settlement Act (43 U.S.C.A. 1601 et seq.), that is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs in accordance with 25 U.S.C. 1452(c). This definition also includes Indian-owned economic enterprises that meet the requirements of 25 U.S.C. 1452(e).

“Individual Contract Plan” means a subcontracting plan that covers the entire contract period (including option periods), applies to a specific contract, and has goals that are based on the offeror’s planned subcontracting in support of the specific contract, except that indirect costs incurred for common or joint purposes may be allocated on a prorated basis to the contract.

“Master Plan” means a subcontracting plan that contains all the required elements of an individual contract plan, except goals, and may be incorporated into individual contract plans, provided the master plan has been approved.

“Subcontract” means any agreement (other than one involving an employer-employee relationship) entered into by a Federal Government prime contractor or subcontractor calling for supplies or services required for performance of the contract or subcontract.

(c) The offeror, upon request by the Contracting Officer, shall submit and negotiate a subcontracting plan, where applicable, that separately addresses subcontracting with small business, service-disabled veteran-owned small business, HUBZone small business concerns, small disadvantaged business, and women-owned small business concerns. If the offeror is submitting an individual contract plan, the plan must separately address subcontracting with small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns, with a separate part for the basic contract and separate parts for each option (if any). The plan shall be included in and made a part of the resultant contract. The subcontracting plan shall be negotiated within the time specified by the Contracting Officer. Failure to submit and negotiate the subcontracting plan shall make the offeror ineligible for award of a contract.

(d) The offeror's subcontracting plan shall include the following:

(1) Goals, expressed in terms of percentages of total planned subcontracting dollars, for the use of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns as subcontractors. The offeror shall include all subcontracts that contribute to contract performance, and may include a proportionate share of products and services that are normally allocated as indirect costs. In accordance with 43 U.S.C. 1626:

(i) Subcontracts awarded to an ANC or Indian tribe shall be counted towards the subcontracting goals for small business and small disadvantaged business (SDB) concerns, regardless of the size or Small Business Administration certification status of the ANC or Indian tribe.

(ii) Where one or more subcontractors are in the subcontract tier between the prime contractor and the

Revision No. 4, dated June 16, 2023

Unrestricted Content

ANC or Indian tribe, the ANC or Indian tribe shall designate the appropriate contractor(s) to count the subcontract towards its small business and small disadvantaged business subcontracting goals.

(A) In most cases, the appropriate contractor is the contractor that awarded the subcontract to the ANC or Indian tribe.

(B) If the ANC or Indian tribe designates more than one contractor to count the subcontract toward its goals, the ANC or Indian tribe shall designate only a portion of the total subcontract award to each contractor. The sum of the amounts designated to various contractors cannot exceed the total value of the subcontract.

(C) The ANC or Indian tribe shall give a copy of the written designation to the Contracting Officer, the prime contractor, and the subcontractors in between the prime contractor and the ANC or Indian tribe within 30 days of the date of the subcontract award.

(D) If the Contracting Officer does not receive a copy of the ANC's or the Indian tribe's written designation within 30 days of the subcontract award, the contractor that awarded the subcontract to the ANC or Indian tribe will be considered the designated contractor.

(2) A statement of—

(i) Total dollars planned to be subcontracted for an individual contract plan; or the offeror's total projected sales, expressed in dollars, and the total value of projected subcontracts to support the sales for a commercial plan;

(ii) Total dollars planned to be subcontracted to small business concerns (including ANC and Indian tribes;

(iii) Total dollars planned to be subcontracted to veteran-owned small business concerns;

(iv) Total dollars planned to be subcontracted to service-disabled veteran-owned small business;

(v) Total dollars planned to be subcontracted to HUBZone small business concerns;

(vi) Total dollars planned to be subcontracted to small disadvantaged business concerns (including ANCs and Indian tribes); and

(vii) Total dollars planned to be subcontracted to women-owned small business concerns.

(3) A description of the principal types of supplies and services to be subcontracted, and an identification of the types planned for subcontracting to—

(i) Small business concerns;

(ii) Veteran-owned small business concerns;

(iii) Service-disabled veteran-owned small business concerns;

(iv) HUBZone small business concerns;

(v) Small disadvantaged business concerns; and

(vi) Women-owned small business concerns.

(4) A description of the method used to develop the subcontracting goals in paragraph (d)(1) of this clause.

(5) A description of the method used to identify potential sources for solicitation purposes (e.g., existing company source lists, the Central Contractor Registration database (CCR), veterans service organizations, the National Minority Purchasing Council Vendor Information Service, the Research and Information Division of the Minority Business Development Agency in the Department of Commerce, or small, HUBZone, small disadvantaged, and women-owned small business trade associations). A firm may rely on the information contained in CCR as an accurate representation of a concern's size and ownership characteristics for the purposes of maintaining a small, veteran-owned small, service-disabled veteran-owned small, HUBZone small,

Revision No. 4, dated June 16, 2023

Unrestricted Content

small disadvantaged, and women-owned small business source list. Use of CCR as its source list does not relieve a firm of its responsibilities (e.g., outreach, assistance, counseling, or publicizing subcontracting opportunities) in this clause.

(6) A statement as to whether or not the offeror included indirect costs in establishing subcontracting goals, and a description of the method used to determine the proportionate share of indirect costs to be incurred with—

- (i) Small business concerns (including ANC and Indian tribes);
- (ii) Veteran-owned small business concerns;
- (iii) Service-disabled veteran-owned small business concerns;
- (iv) HUBZone small business concerns;
- (v) Small disadvantaged business concerns (including ANC and Indian tribes); and
- (vi) Women-owned small business concerns.

(7) The name of the individual employed by the offeror who will administer the offeror's subcontracting program, and a description of the duties of the individual.

(8) A description of the efforts the offeror will make to assure that small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns have an equitable opportunity to compete for subcontracts.

(9) Assurances that the offeror will include the clause of this contract entitled Utilization of Small Business Concerns in all subcontracts that offer further subcontracting opportunities, and that the offeror will require all subcontractors (except small business concerns) that receive subcontracts in excess of \$700,000 (\$1.5 million for construction of any public facility) with further subcontracting possibilities to adopt a subcontracting plan that complies with the requirements of this clause.

(10) Assurances that the offeror will cooperate in any studies or surveys as may be required by the contracting agency in order to determine the extent of compliance by the offeror with the subcontracting plan.

(11) A description of the types of records that will be maintained concerning procedures that have been adopted to comply with the requirements and goals in the plan, including establishing source lists; and a description of the offeror's efforts to locate small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns and award subcontracts to them. The records shall include at least the following (on a plant-wide or company-wide basis, unless otherwise indicated):

- (i) Source lists (e.g., CCR), guides, and other data that identify small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns.
- (ii) Organizations contacted in an attempt to locate sources that are small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, or women-owned small business concerns.
- (iii) Records on each subcontract solicitation resulting in an award of more than \$150,000, indicating—
 - (A) Whether small business concerns were solicited and, if not, why not;
 - (B) Whether veteran-owned small business concerns were solicited and, if not, why not;
 - (C) Whether service-disabled veteran-owned small business concerns were solicited and, if not, why not;
 - (D) Whether HUBZone small business concerns were solicited and, if not, why not;

Revision No. 4, dated June 16, 2023

Unrestricted Content

- (E) Whether small disadvantaged business concerns were solicited and, if not, why not;
 - (F) Whether women-owned small business concerns were solicited and, if not, why not; and
 - (G) If applicable, the reason award was not made to a small business concern.
- (iv) Records of any outreach efforts to contact—
- (A) Trade associations;
 - (B) Business development organizations; and
 - (C) Conferences and trade fairs to locate small, HUBZone small, small disadvantaged, and women-owned small business sources.
 - (D) Veterans service organizations.
- (v) Records of internal guidance and encouragement provided to buyers through—
- (A) Workshops, seminars, training, etc.; and
 - (B) Monitoring performance to evaluate compliance with the program’s requirements.
- (vi) On a contract-by-contract basis, records to support award data submitted by the offeror to the Government, including the name, address, and business size of each subcontractor. Contractors having commercial plans need not comply with this requirement.
- (e) In order to effectively implement this plan to the extent consistent with efficient contract performance, the contractor shall perform the following functions:
- (1) Assist small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation by such concerns. Where the contractor's lists of potential small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business subcontractors are excessively long, reasonable effort shall be made to give all such small business concerns an opportunity to compete over a period of time.
 - (2) Provide adequate and timely consideration of the potentialities of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns in all “make-or-buy” decisions.
 - (3) Counsel and discuss subcontracting opportunities with representatives of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business firms.
 - (4) Confirm that a subcontractor representing itself as a HUBZone small business concern is identified as a certified HUBZone small business concern by accessing the CCR database.
 - (5) Provide notice to subcontractors concerning penalties and remedies for misrepresentations of business status as small, veteran-owned small business, HUBZone small, small disadvantaged, or women-owned small business for the purpose of obtaining a subcontract that is to be included as part or all of a goal contained in the contractor’s subcontracting plan.
 - (6) For all competitive subcontracts over the simplified acquisition threshold in which a small business concern received a small business preference, upon determination of the successful subcontract offeror, the contractor must inform each unsuccessful small business subcontract offeror in writing of the name and location of the apparent successful offeror prior to award of the contract.
- (f) A master plan on a plant or division-wide basis that contains all the elements required by paragraph (d) of this clause, except goals, may be incorporated by reference as a part of the subcontracting plan required of the offeror

by this clause; provided—

- (1) The master plan has been approved,
- (2) The offeror ensures that the master plan is updated as necessary and provides copies of the approved master plan, including evidence of its approval, to the Contracting Officer; and
- (3) Goals and any deviations from the master plan deemed necessary by the Contracting Officer to satisfy the requirements of this contract are set forth in the individual subcontracting plan.

(g) A commercial plan is the preferred type of subcontracting plan for contractors furnishing commercial items. The commercial plan shall relate to the offeror's planned subcontracting generally, for both commercial and Government business, rather than solely to the Government contract. Once the contractor's commercial plan has been approved, the Government will not require another subcontracting plan from the same contractor while the plan remains in effect, as long as the product or service being provided by the contractor continues to meet the definition of a commercial item.

(h) Prior compliance of the offeror with other such subcontracting plans under previous contracts will be considered by the Contracting Officer in determining the responsibility of the offeror for award of the contract.

(i) A contract may have no more than one plan. When a modification meets the criteria in FAR 19.702 for a plan, or an option is exercised, the goals associated with the modification or option shall be added to those in the existing subcontract plan.

(j) Subcontracting plans are not required from subcontractors when the prime contract contains FAR Clause 52.212-5, *Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items*, or when the subcontractor provides a commercial item subject to FAR Clause 52.244-6, *Subcontracts for Commercial Items*, under a prime contract.

(k) The failure of the contractor or subcontractor to comply in good faith with—

- (1) The clause of this contract entitled Utilization of Small Business Concerns; or
- (2) An approved plan required by this clause, shall be a material breach of the contract.

(End of clause)

19. CONTRACTOR COMPLIANCE WITH ENVIRONMENTAL, OCCUPATIONAL SAFETY AND HEALTH, AND SYSTEM SAFETY REQUIREMENTS (OCT 1997)

(Applicable to all Orders.)

(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:

Revision No. 4, dated June 16, 2023

Unrestricted Content

- (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.

(End of clause)

20. INSURANCE (SEP 1996)

(Applicable to all Orders.)

In addition to insurance requirements set forth elsewhere in the Order (if any), the following kinds and minimum amounts of insurance are applicable in the performance of the work under this contract:

(a) Workmen's Compensation and Employer's Liability Insurance. The contractor shall comply with applicable Federal and State workers' compensation and occupational disease statutes. If occupational diseases are not compensable under those statutes, they shall be covered under the employer's liability section of the insurance policy, except when contract operations are so commingled with contractor commercial operations that it would not be practical to require this coverage. Employer liability coverage of at least \$100,000 is required, except in States with exclusive or monopolistic funds that do not permit workers compensation to be written by private carriers.

(b) General Liability Insurance. Bodily injury liability insurance coverage written on the comprehensive form of policy of at least \$500,000 per occurrence is required.

(c) Automobile Liability Insurance. Automobile liability insurance written on the comprehensive form of policy is required. The policy shall provide for bodily injury and property damage liability covering the operation of all automobiles used in connection with performing the contract. Policies covering automobiles operated in the United States shall provide coverage of at least \$200,000 per person and \$500,000 per occurrence for bodily injury and \$20,000 per occurrence for property damage. The amount of liability coverage on other policies shall be commensurate with any legal requirements of the locality and sufficient to meet normal and customary claims.

(d) Aircraft Public and Passenger Liability Insurance. When aircraft are used in connection with performing the contract, aircraft public and passenger liability insurance coverage shall be at least \$200,000 per person and \$500,000 per occurrence for bodily injury, other than passenger liability, and \$200,000 per occurrence for property damage. Coverage for passenger liability bodily injury shall be at least \$200,000 multiplied by the number of seats or passengers, whichever is greater.

(End of clause)

21. PROHIBITION ON CONTRACTOR ACQUISITION OF PERSONAL PROPERTY FOR USE BY GOVERNMENT EMPLOYEES (JUL 2004)

(Applicable to all Orders except for those Order which have such purchases as their specific purpose.)

(a) The contractor shall not purchase personal property directly chargeable under this contract specifically for transfer to and use by a Government employee. This prohibition includes, but is not limited to, notebook and desktop computers, personal digital assistants, pagers, and cellular telephones.

(b) The contractor shall notify the Contracting Officer in writing within 30 days whenever any item of personal property acquired by the contractor is transferred to a Government employee and removed from the contractor's property records. This notification must include the following information for each item transferred:

Revision No. 4, dated June 16, 2023

Unrestricted Content

- (1) Item description, including manufacturer, model, and serial number;
- (2) Acquisition cost and date;
- (3) Name and organization of the Government employee receiving the item; and
- (4) Date of transfer.

(End of clause)

22. EARLY DISMISSAL AND CLOSURE OF GOVERNMENT FACILITIES (JUL 2018)

(Applicable if Seller will be performing work at a U.S. Government facility.)

(a) In the event of early dismissal or facility closure due to severe weather or other hazardous conditions, contractor employees regularly assigned to work at a government facility (on-site contractors) should follow parent company time charging policy. Contractor employees are prohibited from direct charging non-working hours to an U.S. Government contract.

(b) When Government personnel are dismissed early incident to a holiday or special event unrelated to severe weather or hazardous conditions, on-site contractors will normally continue working established hours. Contractors who choose to depart early are not permitted to direct-charge the non-working hours to an U.S. Government contract.

(c) Contractors are responsible for predetermining and disclosing their charging practices for early dismissal, delayed openings, or closings in accordance with the FAR, applicable cost accounting standards, and company policy. Contractors shall follow their disclosed charging practices during the contract period of performance, and shall not follow any verbal directions to the contrary.

(End of clause)

23. CONTRACT CHANGE PROPOSALS (NOV 2018)

(Applicable to all Orders.)

(a) The Contracting Officer may ask the contractor to prepare change proposals for technical, engineering, or other contract changes within the scope of this contract. Upon receipt of a written request from the Contracting Officer, and in accordance with the Contracting Officer's instructions, the contractor shall prepare and submit a proposal for contract changes. The contractor may initiate change proposals for Government consideration when appropriate. Contractor-initiated change proposals shall follow the guidelines set forth below for Government requested change proposals. A change proposal accepted in accordance with the *Changes* clause of this contract shall not be considered an authorization to the contractor to exceed the estimated cost in the contract Schedule unless the estimated cost is increased by the change order or other contract modification. For fixed price contracts or SLINs, and when costs are a factor in a price adjustment under this contract, the contract cost principles and procedures in FAR Part 31 and government agency cost principles and procedures in effect on the date of this contract apply.

(b) Contract change orders to be initiated by the Contracting Officer will, to the maximum extent practicable, be coordinated with the contractor prior to submission of a firm cost proposal. The firm cost proposal will be prepared in such form and substance as to represent a request for contract adjustment pursuant to the *Changes* clause of this contract and, unless authorized by the Contracting Officer, will normally be received prior to the issuance of authorization for the contractor to proceed with the work incorporated by the change. The firm cost proposal shall be referenced in the change order, and is the maximum adjustment to be made in the total contract price (i.e., target cost, estimated cost, target fee or fixed fee, as appropriate for the type of contract), or in the delivery schedule (or time of performance) by reason of the change. The contract change must also change specific technical parameters of the contract (i.e., statement of work, specification, statement of objectives, concept of

operations) to reflect the totality of the change, including cost and schedule, as appropriate. In no event shall the definitive equitable adjustment exceed the limitations established with the exception of adjustments affected by rate changes which have been approved by the Government subsequent to the submittal date of the firm cost proposal. This exception applies provided that the original firm cost proposal submittal utilized Government approved rates.

(c) Firm cost proposals submitted by the contractor which require modification because of redirection by the Contracting Officer so that the original firm cost proposal submitted is no longer applicable (i.e., 10 percent or more change in value) may require the timely resubmission of a revised firm cost proposal. Otherwise, the parties will negotiate changes affecting the cost proposal during negotiations or as changes to the original proposal.

(d) If time will not permit the submission of a firm cost proposal for the contemplated change, the Contracting Officer may authorize the contractor to submit a written ceiling rough order of magnitude (CROM) amount for the change. The contractor agrees that the CROM is the maximum adjustment to be made in the total contract price (i.e. target cost, estimated cost, target fee or fixed fee, as appropriate for the type of contract), or in the delivery schedule (or time of performance) by reason of the change. The Contracting Officer may also solicit such agreement on CROM limitations for adjustments to any other provisions of the contract which may be subject to equitable adjustment by reason of the change. Any such written agreement shall be cited in the change order and, upon its issuance, shall be a binding part of the contract. In no event shall the definitive equitable adjustment exceed the limitations so established.

(e) The contractor agrees that firm cost proposals submitted pursuant to this clause shall remain valid for a period of 90 days after submission and that CROMs submitted pursuant to this clause shall remain valid for a period of 30 days after submission. A change proposal accepted in accordance with the *Changes* clause of this contract shall not be considered an authorization to the contractor to exceed the estimated cost in the contract Schedule, unless the estimated cost is increased by the change order or other contract modification.

(End of clause)

24. SUBCONTRACTS (EDUCATIONAL INSTITUTIONS) (MAR 2015)

(Applicable to all Orders with educational institutions.)

(a) The contractor shall obtain written authorization from the Contracting Officer prior to award, extension, or renewal of a subcontract with an educational institution.

(b) The contractor shall obtain a letter from an official with authority to approve contracts on behalf of the subcontractor that acknowledges the subcontractor's involvement with the Intelligence Community and approves the proposed contractual relationship. The contractor shall submit a copy of this letter to the Contracting Officer along with a description of the work to be subcontracted and a technical justification documenting the necessity in relation to the project as a condition for obtaining the required written authorization. The following sample letter may be used to fulfill this requirement.

SAMPLE LETTER

Dear *[Contracting Officer or Contractor Representative]*:

Pursuant to Executive Order 12333, this letter acknowledges that I am an official of *[name of educational institution]* authorized to approve any contract issued by *[name of contractor or other government agency]* in support of the *[name of Buyer's U.S. Government customer agency]*. I further acknowledge that I am aware that the *[name of Buyer's U.S. Government customer agency]* will be involved in any resulting contract and do hereby, on behalf of *[name of educational institution]*, approve such a contractual relationship.

[Appropriate Senior Official]

(c) The requirements of this clause must be included in all subcontracts.

(End of clause)

25. NOTICE OF LITIGATION (AUG 2010)

(Applicable to all Orders involving litigation.)

(a) With respect to litigation to which the contractor is a party relating to this contract:

(1) The contractor shall, within five business days, notify the Contracting Officer of any litigation filed by a third party (including individuals, organizations, and federal, state, or local governmental entities) or subpoena involving or in any way relating to this contract and/or related subcontracts. Said notice shall include a copy of all documents filed with the court in connection with the litigation or subpoena to the extent such documents are not covered by a court-ordered seal or protective order.

(2) The Contracting Officer shall have the right to examine any pertinent documents filed with the court during the conduct of the litigation, and any documents and records provided to the third party in response to the subpoena.

(b) The contractor agrees to insert this clause in any subcontract under this contract.

(End of clause)

26. ENABLING CLAUSE FOR PRIME AND SUPPORT CONTRACTOR RELATIONSHIPS (OCT 2011)

(Applicable to all Orders for development work that requires the contractor to interact with and/or furnish information to the Government's support contractors.)

(a) The 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 Government's management and oversight of a program or effort. These companies (hereafter referred to as support contractors), are obligated by the terms of clause *Support Contractor Corporate Non-Disclosure Agreement* (clause provided for references purposes below), incorporated into their respective contracts, and/or by separate non-disclosure, confidentiality, proprietary information, or similar agreements to safeguard the sensitive and proprietary information of other contractors, subcontractors, suppliers, and vendors to which they have access.

Aerospace
Scitor
TASC
LAMUS
Quantech Services
MYSTEK
SOLVARIS
ARIS
Gartner Inc.

(b) In the performance of this contract, the contractor agrees to cooperate with the companies listed above. Cooperation includes, but is not limited to, allowing the listed support contractors to attend meetings; observe technical activities; discuss with the contractor technical matters related to this program at meetings or otherwise; and access contractor integrated data environments and facilities used in the performance of the contract.

(c) The contractor must provide the support contractors access to data such as, but not limited to, design and development analyses; test data, procedures, and results; research, development, and planning data; parts, equipment, and process specifications; testing and test equipment specifications; quality control procedures; manufacturing and assembly procedures; schedule and milestone data; and other contract data. To fulfill contractual requirements to the Government, support contractors engaged in general systems engineering and integration efforts and technical support are normally authorized access to information pertaining to this contract.

Revision No. 4, dated June 16, 2023

Unrestricted Content

Exceptions, such as when the contractor seeks to restrict access to contractor trade secrets, will be handled on a case-by-case basis. If the contractor seeks to limit distribution of data to Government personnel only, the contractor must submit this request in writing to the Contracting Officer.

(d) The contractor further agrees to include in all subcontracts, except for those to provide only commercial and/or non-developmental items, a clause requiring the subcontractor and succeeding levels of subcontractors to comply with the response and access provisions of paragraph (b) above, subject to coordination with the contractor. This clause does not relieve the contractor of the responsibility to manage the subcontracts effectively and efficiently, nor is it intended to establish privity of contract between the Government or support contractors and such subcontractors.

(e) The contractor and its subcontractors are not required to take contractual direction from support contractors.

(f) Clauses *Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends* (below) and *Support Contractor Corporate Non-Disclosure Agreement* (clause provided for references purposes below), which will be incorporated into all U.S. Government agency support contracts, require the support contractors to protect data and software related to this contract, and prohibit them from using such data for any purpose other than performance of the support contract.

(g) Support contractors shall protect the proprietary information of disclosing contractors, subcontractors, suppliers, and vendors in accordance with clause *Support Contractor Corporate Non-Disclosure Agreement* (clause provided for references purposes below). Because this clause provides that such disclosing contractors, subcontractors, suppliers, and vendors are intended to be third-party beneficiaries, all such disclosing parties agree that these terms satisfy the non-disclosure agreement requirements set forth in 10 U.S.C. §2320(f)(2)(B). Accordingly, the contractor may only enter into a separate non-disclosure, confidentiality, proprietary information, or similar agreement with a disclosing party on an exception basis, and only after notifying the Contracting Officer. The Government and the disclosing contractors, subcontractors, suppliers, and vendors agree to cooperate to ensure that the execution of any non-disclosure agreement does not delay or inhibit performance of this contract, and the Government shall require support contractors to do the same. Such agreements shall not otherwise restrict any rights due the Government under this contract. Separate non-disclosure agreements may be executed only in the following exceptional circumstances:

- (1) The support contractor is a direct competitor of the disclosing party in furnishing end items or services of the type developed or produced for the program or effort;
- (2) The support contractor will require access to extremely sensitive business data; or
- (3) Other unique business situations exist in which the disclosing party can clearly demonstrate that clause *Support Contractor Corporate Non-Disclosure Agreement* (clause provided for references purposes below) does not adequately protect their competitive interests.

(h) Any proprietary information furnished to support contractors shall be:

- (1) Disclosed in writing and clearly marked "proprietary" or with other words of similar meaning; or
- (2) Disclosed orally or visually (for instance, during a plant tour, briefing, or demonstration) and identified as proprietary information at the time of the oral or visual disclosure by the Government or a disclosing party. The support contractors shall treat all such information as proprietary unless within fifteen (15) days the support contractor coordinates with the Government or disclosing party to obtain a written version of the proprietary information and determine the extent of the proprietary claims; or
- (3) Disclosed by electronic transmission (e.g., facsimile, electronic mail, etc.) in either human readable form or machine readable form, and the contractor marks it electronically as proprietary within the electronic transmissions, such marking to be displayed in human readable form along with any display of the proprietary information; or
- (4) Disclosed by delivery of an electronic storage medium or memory device, and the contractor marks the

Revision No. 4, dated June 16, 2023

Unrestricted Content

storage medium or memory device itself as containing proprietary information and electronically marks the stored information as proprietary, such marking to be displayed in human readable form along with any display of the proprietary information.

(i) The contractor agrees not to hold the support contractor liable for unauthorized disclosure of proprietary information if it can be demonstrated in written documentation or other competent evidence that the information was:

- (1) Already known to the support contractor without restriction on its use or disclosure at the time of its disclosure by the disclosing party;
- (2) In the public domain or becomes publicly known through no wrongful act of the support contractor;
- (3) Proprietary information disclosed by the support contractor with the contractor’s prior written permission;
- (4) Independently developed by the support contractor, subsequent to its receipt, without the use of any proprietary information;
- (5) Disclosed to the support contractor by a third party who was legally entitled to disclose the same and who did not acquire the proprietary information from the disclosing party;
- (6) Specifically provided in writing by the U.S. Government to the support contractor with an unlimited rights license; or
- (7) Disclosed by the support contractor as required by law, regulatory or legislative authority, including subpoenas, criminal or civil investigative demands, or similar processes, provided the support contractor provides the disclosing party that originated the proprietary information with prompt written notice so that the disclosing party may seek a protective order or other appropriate remedy, and provided that, in the absence of a timely protective order, the support contractor furnishes only that minimum portion of the proprietary information that is legally required.

(j) Any notice to the support contractor(s) required or contemplated under the provisions of this clause or clause *Support Contractor Corporate Non-Disclosure Agreement* (clause provided for references purposes below) shall be in writing and shall be deemed to have been given on:

- (1) The date received if delivered personally or by overnight courier;
- (2) The third day after being deposited in the U.S. mail, postage prepaid; or
- (3) The date sent if sent by facsimile transmission or e-mail with a digital copy.

(k) The Government and contractor agree to cooperate in resolving any unauthorized disclosure or misuse of proprietary information by a support contractor. This shall not be construed as requiring the contractor to conduct an inquiry into an unauthorized disclosure or misuse, or as authorizing the allocation of costs for such an inquiry directly to this contract. Any costs incurred by the contractor in said fact-finding efforts may be allowable and allocable upon determination of the Contracting Officer after adjudicating the circumstances related to any unauthorized disclosures or misuse.

(End of clause)

27. KEY PERSONNEL (AUG 2010)

(Applicable to all Orders.)

(a) The contractor shall identify the key technical, management, and administrative personnel to be assigned to work under this contract:

Name	Title	Percentage Time On This Contract
TBD		

(b) The personnel specified above are considered essential for the work to be performed under this contract. At least thirty days prior to replacing any of the specified individuals, the contractor shall notify the Contracting Officer, and shall submit resumes of the proposed replacements in sufficient detail to permit evaluation of program impact due to the planned substitution. Each proposed replacement must meet or exceed the qualifications specified in the statement of work. Unless otherwise directed by the Contracting Officer within the 30-day notice period, the contractor may replace the individual with the proposed replacement. The contractor may not deviate from the procedure outlined above without written consent from the Contracting Officer, except for extraordinary circumstances such as death, disability, or employee termination. Such extraordinary circumstances will be handled on a case-by-case basis between the Contracting Officer and the contractor.

(End of clause)

28. PROHIBITION ON STORAGE AND DISPOSAL OF TOXIC AND HAZARDOUS MATERIALS (JAN 2004)

(Applicable to Orders involving toxic or hazardous materials.)

(a) Definitions. As used in this clause:

(1) *Storage* means a non-transitory, semi-permanent or permanent holding, placement, or leaving of material. It does not include a temporary accumulation of a limited quantity of a material used in or a waste generated or resulting from authorized activities, such as servicing, maintenance, or repair of Government items, equipment, or facilities.

(2) *Toxic or hazardous materials* means those materials identified in the EPA Title III List of Lists.

(b) The contractor is prohibited from transporting, storing, disposing, or using toxic or hazardous materials in performing this contract except for those materials listed in (c) below or when authorized in writing by the Contracting Officer.

(c) The following toxic and hazardous materials are authorized for use in the performance of this contract:

Toxic Material	Use	Limitations

(End of clause)

29. TECHNICAL DATA AND COMPUTER SOFTWARE: COMMERCIAL PRODUCT AND COMMERCIAL SERVICE (NOV 2022)

(Applicable to all Order involving technical data or computer software in lieu of FAR 52.227-14.)

(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) Commercial product and commercial service have the meanings defined in FAR 2.101.
 - (3) Computer database 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.
 - (4) Computer program means a set of instructions, rules, or routines, recorded in a form that is capable of causing a computer to perform a specific operation or series of operations.
 - (5) 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. The term does not include computer databases or computer software documentation.
 - (6) Computer software documentation means owner's manuals, user's manuals, installation instructions, operating instructions, and other similar items, regardless of storage medium, that explain the capabilities of the computer software or provide instructions for using or maintaining the computer software.
 - (7) 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.
 - (8) 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) License in Commercial Technical Data.
- (1) The Government shall have the unrestricted right to use, modify, reproduce, release, perform, display, or disclose technical data relating to a commercial product or commercial service, and to permit others to do so, that:
 - (i) Have been provided to the Government or others without restrictions on use, modification, reproduction, release, or further disclosure other than a release or disclosure resulting from the sale, transfer, or other assignment of interest in the technical data to another party, or the sale or transfer of some or all of a business entity or its assets to another party;
 - (ii) Are form, fit, and function data;
 - (iii) Are a correction or change to technical data furnished to the contractor by the Government;
 - (iv) Are necessary for operation, maintenance, installation, or training (other than detailed manufacturing or process data); or

Revision No. 4, dated June 16, 2023

Unrestricted Content

- (v) Have been provided to the Government under a prior contract or licensing agreement through which the Government has acquired the rights to use, modify, reproduce, release, perform, display, or disclose technical data without restrictions.
 - (2) Except as provided in paragraph (b)(1), the Government may use, modify, reproduce, release, perform, display, or disclose technical data within the Government only.
 - (3) The Government shall not use the technical data to manufacture additional quantities or release, perform, display, disclose, or authorize use of the technical data outside the Government without the contractor's written permission unless a release, disclosure, or permitted use is necessary for emergency repair or overhaul of the commercial products furnished under this contract, or for performance of work by Government support contractors.
- (c) License in Commercial Computer Software. Commercial computer software and commercial computer software documentation shall be acquired under the licenses customarily provided to the public unless such licenses are inconsistent with federal procurement law or do not otherwise satisfy user needs. The Government shall have only the rights specified in the license under which the commercial computer software and commercial computer software documentation was obtained. Such license shall be attached to and made a part of this contract.
- (d) Additional License Rights. The contractor and its subcontractors are not required to provide the Government additional rights to use, modify, reproduce, release, perform, display, or disclose technical data or computer software. However, if the Government desires to obtain additional rights in technical data or computer software, the contractor agrees to promptly enter into negotiations with the Contracting Officer to determine whether acceptable terms for transferring such rights can be reached. All technical data and computer software in which the contractor grants the Government additional rights shall be listed or described in a special license agreement made part of this contract. The license shall specifically enumerate the additional rights granted the Government.
- (e) Release From Liability. The contractor agrees that the Government, and other persons to whom the Government may have released or disclosed technical data or computer software delivered or otherwise furnished under this contract, shall have no liability for any release or disclosure of technical data or computer software that are not marked to indicate that such data are licensed data subject to use, modification, reproduction, release, performance, display, or disclosure restrictions.

(End of clause)

30. VALIDATION OF RESTRICTIVE MARKINGS ON TECHNICAL DATA AND COMPUTER SOFTWARE (NOV 2022)

(Applicable to all Orders involving technical data or computer software except contractual instruments for commercial products and commercial services.)

- (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 products and commercial services 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 products and commercial services, 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 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.

Revision No. 4, dated June 16, 2023

Unrestricted Content

- (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 product or commercial service, 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 subcontractor's 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 contractor's or subcontractor's 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.
- (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 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 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. 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

Revision No. 4, dated June 16, 2023

Unrestricted Content

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 Officer’s 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 Government’s 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 products and commercial services.

(End of clause)

31. LIMITATIONS ON THE USE OR DISCLOSURE OF GOVERNMENT-FURNISHED INFORMATION MARKED WITH RESTRICTIVE LEGENDS (NOV 2022)

(Applicable to all Orders when it is anticipated or expected that Buyer will provide Seller for performance of the Order, technical data and computer software marked with another party’s restrictive legend(s).)

(a) The terms “limited rights,” “restricted rights,” “special license rights,” and “Government purpose rights” are defined in the Rights in Technical Data and Computer Software: Noncommercial Items clause of this contract.

(b) Technical data or computer software provided to the contractor as Government-furnished information (GFI) under this contract may be subject to restrictions on use, modification, reproduction, release, performance, display, or further disclosure.

(1) **GFI Marked with Limited or Restricted Rights Legends.** The contractor shall use, modify, reproduce, perform, or display technical data received from the Government with limited rights legends, or computer software received with restricted rights legends only in the performance of this contract. The contractor shall not, without the express written permission of the party whose name appears in the legend, release or disclose such data or software to any unauthorized person. Prior to providing limited rights technical data or restricted rights computer software as GFI, the Government shall ensure that:

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

Revision No. 4, dated June 16, 2023

Unrestricted Content

- (ii) The receiving support contractor(s) or subcontractor(s) contract arrangements are subject to clauses *Support Contractor Corporate Non-Disclosure Agreement*, and *Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends*.
- (2) GFI Marked with Government Purpose Rights Legends. The contractor shall use technical data or computer software received from the Government with Government purpose rights legends for Government purposes only. The contractor shall not, without the express written permission of the party whose name appears in the restrictive legend, use, modify, reproduce, release, perform, or display such technical data or computer software for any commercial purpose, or disclose such data or software to a person other than its subcontractors, suppliers, or prospective subcontractors or suppliers who require the data or software to submit offers for, or perform, contracts under this contract. Prior to disclosing the data or software, the contractor shall coordinate with the Contracting Officer before requiring the persons to whom disclosure will be made to complete and sign non-disclosure agreements including the same limitations included in this paragraph.
- (3) GFI Marked with Special License Rights Legends. The contractor shall use, modify, reproduce, release, perform, or display technical data or computer software received from the Government with specially negotiated license legends only as permitted in the license. Such data or software may not be released or disclosed to other persons unless permitted by the license.
- (4) GFI technical data or computer software marked with commercial restrictive legends.
 - (i) The contractor shall use, modify, reproduce, perform, display technical data and/or computer software that is or pertains to a commercial product or commercial service and is received from the Government with a commercial restrictive legend (i.e. marked to indicate that such data are subject to use, modification, reproduction, release, performance, display, or disclosure restrictions) only in the performance of this contract. The Contractor shall not, without the express written permission of the party whose name appears in the legend, use the technical data to manufacture additional quantities of the commercial product, release or disclose such data to any unauthorized person. Prior to providing technical data or computer software marked with commercial restrictive legends, the Government shall ensure that:
 - (A) The receiving development contractor(s) or subcontractor(s) contract arrangements are subject to clauses *Protection of Information*, and *Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends*; and
 - (B) The receiving support contractor(s) or subcontractor(s) contract arrangements are subject to clauses *Support Contractor Corporate Non-Disclosure Agreement*, and *Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends*.
- (c) Indemnification and Creation of Third Party Beneficiary Rights. The contractor agrees:
 - (1) To indemnify and hold harmless the Government, its agents, and employees from every claim or liability, including attorney's fees, court costs, and expenses, arising out of, or in any way related to, the misuse or unauthorized modification, reproduction, release, performance, display, or disclosure of technical data or computer software received from the Government with restrictive legends by the contractor or any person to whom the contractor has released or disclosed such data or software; and

Revision No. 4, dated June 16, 2023

Unrestricted Content

- (2) That the party whose name appears on the restrictive legend, in addition to any other rights it may have, is a third party beneficiary who has the right of direct action against the contractor, or any person to whom the contractor has released or disclosed such data or software, for the unauthorized duplication, release, or disclosure of technical data or computer software subject to restrictive legends.

(End of clause)

32. TECHNICAL DATA OR COMPUTER SOFTWARE PREVIOUSLY DELIVERED TO THE GOVERNMENT (OCT 2015)

(Applicable to Orders involving technical data or computer software.)

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. This requirement shall be flowed down to all subcontractors at all levels. The attachment shall identify:

- (a) The contract number under which the technical data or computer software was produced;
- (b) The contract number under which, and the name and address of the organization to whom, the technical data or computer software was most recently delivered or will be delivered; and
- (c) Any limitations on the Government's right to use or disclose the technical data or computer software, including, when applicable, identification of the earliest date the limitations expire.

(End of clause)

33. RIGHTS IN BID OR PROPOSAL INFORMATION (JUL 2018)

(Applicable to all Orders.)

(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 prior 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 evaluation purposes and shall not disclose, directly or indirectly, such information to any person, including potential evaluators, unless that person has been authorized 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

Revision No. 4, dated June 16, 2023

Unrestricted Content

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) Flowdown. 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.

(End of clause)

34. DEFERRED DELIVERY OF TECHNICAL DATA OR COMPUTER SOFTWARE (MAY 2005)

(Applicable to all Orders that include the *Technical Data and Computer Software: Commercial Items* clause or the *Rights in Technical Data and Computer Software: Noncommercial Items* clause, and when it is in the Government's best interests to defer the delivery of technical data and computer software.)

The Government may identify technical data or computer software (as defined in the *Technical Data and Computer Software: Commercial Items* clause or the *Rights in Technical Data and Computer Software: Noncommercial Items* clause) for deferred delivery at any time during contract performance by listing such technical data or computer software in an attachment to Section J of 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.

(End of clause)

35. DEFERRED ORDERING OF TECHNICAL DATA OR COMPUTER SOFTWARE (SEP 2013)

(Applicable to Orders in lieu of FAR 52.227-16 that include the *Technical Data and Computer Software: Commercial Items* or *Rights in Technical Data and Computer Software: Noncommercial Items* clauses.)

(a) The Government may defer ordering technical data, computer software (as defined in the *Technical Data and Computer Software: Commercial Items* clause or the *Rights in Technical Data and Computer Software: Noncommercial Items* clause), or other information not easily categorized (as defined in paragraph (d) of the *Rights in Technical Data and Computer Software: Noncommercial Items* clause 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.

(b) The categories of technical data, computer software, and other information not easily categorized that is subject to deferred ordering under this clause may be:

(1) Incorporated into the contract in the Subcontract Data Requirements List item that describes the Data Accession List attached to the contract; or

(2) Identified by the Government via a process agreed to by the parties and incorporated as an attachment to the contract in Section J prior to contract award.

(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.e., the *Technical Data and Computer Software: Commercial Items* or the *Rights in Technical Data and Computer Software: Noncommercial Items* clauses).

(e) This clause shall be flowed down to all subcontractors.

(End of clause)

36. TECHNICAL DATA AND COMPUTER SOFTWARE: WITHHOLDING OF PAYMENT (NOV 2007)

(Applicable to all Orders, in lieu of FAR 52.227-21, that contain the *Rights in Technical Data and Computer Software: Noncommercial Items* clause to authorize the withholding of contract payments totaling at least \$5million or three percent of the contract price (whichever is less), and not more than ten percent of the contract price pending delivery, correction, or replacement of the nonconforming technical data and computer software, or negotiation of an equitable reduction in contract price.)

(a) If technical data and computer software (as defined in the *Rights in Technical Data and Computer Software: Noncommercial Items* clause) specified to be delivered under this contract are not delivered within the time specified by this contract, or are deficient upon delivery (including having unauthorized restrictive markings), the Contracting Officer shall, until such data and computer software are accepted by the Government, withhold all subsequent payments to the contractor until a reserve is established totaling “3 percent of the total contract price or \$5 million, whichever is less”. Payments shall not be withheld nor any other action taken pursuant to this paragraph when the Contracting Officer determines that the contractor's failure to make timely delivery or to deliver the technical data or computer software without deficiencies arises out of causes beyond the control and without the fault or negligence of the contractor.

(b) The withholding of any amount or subsequent payment to the contractor shall not be construed as a waiver of any rights accruing to the Government under this contract. Use of this clause constitutes a determination by the Contracting Officer that the limitation established by FAR Clause 52.232-9, Limitation on Withholding of Payments, shall not apply to the amount withheld under this clause.

(End of clause)

37. PATENTS--REPORTING OF SUBJECT INVENTIONS (APR 2009)

(Applicable to Orders in lieu of FAR 52.227-11, Patent Rights – Ownership by the Contractor.)

The contractor shall furnish the Contracting Officer the following:

(a) Interim reports every twelve (12) months (or such 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 such inventions.

(b) A final report, within three (3) months after completion of the contracted work, listing all subject inventions or stating that there were no such inventions.

(c) Upon request, the filing date, serial number and title, a copy of the patent application and patent number, and issue data for any subject invention for which the contractor has retained title.

(d) Upon request, the contractor shall furnish the Government an irrevocable power to inspect and make copies of the patent application file.

(End of clause)

38. CONSIDERATION AND PAYMENT – SERVICES (JAN 2004)

(Applicable only if deemed incorporated in the Order by the Buyer's Purchasing Representative.)

(a) Upon receipt of a proper payment voucher (SF 1034), the Government shall pay the contractor for those services accepted by the Government the amount(s) indicated in Section B.

(b) To support final payment for work performed, the contractor shall attach a Certificate of Completion to the final payment voucher indicating satisfactory completion of all the effort required by each SLIN. This certification shall be signed and dated by an individual authorized to commit the contractor, and shall be submitted in essentially the following format:

CERTIFICATE OF COMPLETION

I hereby certify that _____ [company name] has completed all the

Revision No. 4, dated June 16, 2023

Unrestricted Content

requirements of CLIN(s) _____ of contract number _____. I further certify that the supplies and/or services are of the quality specified, and are in all respects in compliance with the contract requirements, including specifications and/or drawings, packaging, packing, and marking requirements, and in the quantities required by the contract.

Date of Execution: _____

Signature: _____

Typed Name and Title: _____

(End of clause)

39. SERVICE CONTRACT REPORTING (SEP 2014)

(Applicable only if any work performed hereunder is subject to the Service Contract Act.)

The contractor shall submit service contract data in accordance with the Service Contract Reporting Subcontract Data Requirements List (SDRL) in Section NN, Attachment NN.

(End of clause)

40. INTELLIGENCE COMMUNITY INFORMATION TECHNOLOGY ENTERPRISE IMPLEMENTATION (NOV 2018)

(a) The U.S. Government is transitioning future and legacy systems to the Intelligence Community Information Technology Enterprise (IC ITE). The emergence of IC ITE services such as Commercial Cloud Services (C2S) removes the dependency of U.S. Government procurements to include unique hardware or to plan location-specific installations. IC ITE services will instead offer environments for development, testing, and operations of future capabilities as software applications rather than stand-alone systems.

(b) Therefore, as specified in the statement of work/statement of objectives, the contractor shall develop and deliver U.S. Government software as applications on government-provided infrastructure in accordance with published IC ITE standards and service catalogs. The contractor shall not provide capabilities which duplicate any IC ITE or U.S. government enterprise service.

(End of clause)

41. SUBCONTRACT REPORTING, MONITORING, CONSENT, AND NOTIFICATION (MAY 2019)

(Applicable to Orders above the simplified acquisition threshold, to include commercial item contracts for the acquisition of flight hardware.)

(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, and changes and modifications to purchase orders. For purposes of consent, the definition of *subcontract* in FAR 52.244-2 applies.

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 first-tier 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 by 30 June each year providing the data specified below for all first- and second-tier subcontracts directly chargeable to this contract that were awarded and/or modified within the previous twelve months. Individual fixed-price subcontracts under \$5,000 with US-owned

Revision No. 4, dated June 16, 2023

Unrestricted Content

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 submitted electronically through the FOCUS Web Portal on the Contractor Wide-Area Network (CWAN). Prime contractors without CWAN access will prepare their reports using the Excel Add-in Tool available on the U.S. Government Acquisition Research Center (ARC) website, and submit via email. Each subcontract report must include the following information in the format specified in FOCUS and in the Excel Add-in Tool:

- Prime Contract Number or Task Order Number
- Subcontractor Tier
- Is the Subcontract Classified?
- Relationship Between Prime Contractor and Subcontractor
- Subcontractor Business Name
- Subcontractor Street Address
- Subcontractor City
- Subcontractor State
- Subcontractor Zip Code
- Subcontractor Country
- Subcontractor Data Universal Numbering System (DUNS) Number
- Subcontractor Contractor and Government Entity (CAGE) Code
- Subcontractor Business Type
- Is the Subcontractor a Woman-owned Business?
- Is the Subcontractor a Veteran-owned Business?
- Is the Subcontractor a Service-disabled Veteran-owned Business?
- Is the Subcontractor a HUBZone Small Business?
- Subcontractor Country of Ownership
- DUNS Number of Company Awarding Subcontract
- Subcontractor's Parent Company Business Name
- Subcontract or Purchase Order Number
- Subcontract Value (Cumulative to Date)
- Subcontract Period of Performance – Start Date
- Subcontract Period of Performance – End Date
- Subcontract Place of Performance – City
- Subcontract Place of Performance – State
- Subcontract Place of Performance – Country
- Brief Description of Subcontract Effort
- Primary Subcontract Type

Revision No. 4, dated June 16, 2023

Unrestricted Content

- 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;
- (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; and
- (4) Review and agree to the contractor's make-or-buy program when necessary to ensure negotiation of reasonable contract prices or satisfactory performance.

(e) Consent.

- (1) All consent to subcontract requirements in FAR Clause 52.244-2 apply to this contract. In addition, the contractor shall obtain the Contracting Officer's written consent before awarding any subcontract with a value over \$50 million, or that exceeds \$3 million or five percent of prime contract value, whichever is less, to a company listed on the U.S. Government Subcontract Consent Registry. Contractors without access to this website can contact the Contracting Officer to confirm which companies are listed.
- (2) Requests for consent to subcontract shall be submitted in writing to the Contracting Officer, and provide, at a minimum, the information specified in FAR 52.244-2(e).

(f) Notification. The prime contractor shall provide written notification to the Contracting Officer and COTR when a subcontract is expected to exceed the negotiated cost baseline by 15 percent.

(g) 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.

(h) 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.

(End of clause)

40. CONTRACT-ACCOUNTABLE GOVERNMENT PROPERTY: RESPONSIBILITIES, USE, REPORTING, AND ADMINISTRATION (NOV 2022)

(Applicable only if Seller will be receiving contract-accountable government property hereunder.)

(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 52.245-1 and this clause. If FAR and this guidance conflict, the guidance will have precedence. 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, material, and facilities are equally considered to be Government property.

(b) Definitions. As used in this clause:

(1) *Agency-Peculiar Property (AP)* means Government property, consisting of end items and integral components of military weapons systems, along with the related peculiar support equipment which is not readily available as a commercial product.

(2) *Equipment (EQ)* means a tangible asset that is functionally complete for its intended purpose, durable, nonexpendable, needed for the performance of a contract. Equipment is not intended for sale and does not ordinarily lose its identity or become a part of another article when put into use (e.g., machine tools, furniture, vehicles, and test equipment, including their accessory or auxiliary items). Equipment does not include information technology (IT) items as defined below.

(3) *Government Furnished Material (GFM)* means property provided to a contractor by the Government that may be incorporated into or attached to a deliverable end item or that may be consumed or expended in performing a contract. GFM includes assemblies, expendable components, parts, raw and processed materials, and small tools and supplies that may be consumed in normal use in performing a contract. GFM does not include equipment, special tooling, special test equipment, real property, or information technology that has been incorporated into a higher assembly or an item incorporated into an item of special test equipment.

(4) *Government-Owned, Contractor-Acquired Material (CAM)* means property acquired or otherwise provided by the contractor to which the Government has title, and that may be incorporated into or attached to a deliverable end item or that may be consumed or expended in performing a contract. CAM includes assemblies, expendable components, parts, raw and processed materials, and small tools and supplies that may be consumed in normal use in performing a contract. CAM does not include equipment, special tooling, special test equipment, real property, or information technology equipment that has been incorporated into a higher assembly or an item incorporated into a higher assembly or an item incorporated into an item of special test equipment.

(5) *Information Technology (IT)* means equipment or interconnected systems or subsystems of equipment that is used in the automated acquisition, storage, analysis, evaluation, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information. IT includes computers, ancillary equipment (including imaging peripherals, input, output, and storage devices necessary for security and surveillance), peripheral equipment designed to be controlled by the central processing unit of a computer, software, firmware, and similar procedures, services (including support services), and related resources. IT does not include equipment that contains imbedded information technology that is used as an integral part of the product, but the principal function of which is not the acquisition, storage, analysis, evaluation, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information.

(6) *Land (L)* means land, land rights, and improvements to land.

(7) *Real Property (RP)* means buildings, improvements to buildings, utility distribution systems, prefabricated structures, and fixed equipment required for the operation of a building which is permanently attached to and a part of the building and cannot be removed without cutting into the walls, ceilings, or floors. Examples of fixed equipment required for functioning of a building include plumbing, heating and lighting equipment, elevators, central air conditioning systems, and built-in safes and vaults. Foundations and work necessary for installing special tooling, special test equipment, or plant equipment are not included. This category includes acquisitions and improvements of structures and facilities other than buildings, such as power production facilities and distribution systems, reclamation and irrigation facilities, flood control and navigation aids, utility systems (heating, sewage, water and electrical) when they serve several buildings or structures, communication systems, traffic aids, roads and bridges, and nonstructural improvements such as sidewalks, parking areas, and fences. RP also includes U.S. Government-funded costs of improvements to leased buildings, structures, and facilities, as well as easements and right-of-way, where U.S. Government is the lessee or the cost is charged to a U.S. Government contract. Contractors shall report leasehold improvements with a unit acquisition cost of \$1,000,000 or more and a useful life of two years or more.

(8) *Property management system* means the contractor's system or systems for managing and controlling

Government property.

(9) *Significant deficiency* means a system shortcoming that materially affects the reliability of required management information produced by the system.

(10) *Special Test Equipment (STE)* means a single or multipurpose integrated test unit engineered, designed, fabricated, or modified to accomplish special purpose testing in performing a contract. STE consists of items or assemblies of equipment including foundations and similar improvements necessary for installing special test equipment, and standard or general purpose items or components that are interconnected and interdependent so as to become a new functional entity for special testing purposes. STE does not include material, special tooling, real property, and equipment items used for general testing purposes or property that with relatively minor expense can be made suitable for general purpose use.

(11) *Special Tooling (ST)* means jigs, dies, fixtures, molds, patterns, taps, gauges, and all components of these items including foundations and similar improvements necessary for installing special tooling, and which are of such a specialized nature that without substantial modification or alteration their use is limited to the development or production of particular supplies or parts thereof or to the performance of particular services. ST does not include material, special test equipment, real property, equipment, machine tools, or similar capital assets.

(12) *Summary Record* means a single document or data record used to account for components and details of special (small) tooling and/or equipment that do not require tagging (e.g., furniture and body armor) with a unit cost less than \$1,000. Summary records cannot be used for items requiring calibration, property requiring tagging (barcodes), or for classified or sensitive property.

(c) **Property Analyst.** The Contracting Officer has delegated property administration authority to an U.S. Government Property Analyst.

(d) **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 and the assigned U.S. Government Property Analyst within 30 days after receipt of this contract and upon assignment of a replacement official. Subcontractors in possession of Government property accountable to this contract shall provide contact information for their property managers to the prime contractor.

(e) **Government Property List.** The Government Property List in Attachment NN of the solicitation and the resulting contract identifies all Government property offered to the contractor on a no-charge-for-use basis to perform this contract and the dates of availability for each item. Post-award, the inventory of Government property accountable to this contract is maintained in the Electronic Procurement Exchange/Property Management Module (Epx/PMM) based on the contractor's quarterly property reports. After receipt of the contractor's initial quarterly property report, the Contracting Officer may delete the Government Property List from the contract.

(f) **Property Transfers.** The Government can direct the transfer of contract-accountable property between contracts. All transfers must be coordinated between the losing and gaining Contracting Officers and Property Analysts, and by the COTRs, Associate Property Management Officers, and other Program Office personnel as appropriate. The Property Analyst will evaluate each transfer to ensure that the gaining contract includes the appropriate Government property clauses (52.245-1, 52.245-9 and this clause), assist in validating the gaining contract requirement, and verify that the transfer will not adversely impact the losing contract. Transfers between contracts must be documented using a DD Form 1149, a Contracting Officer letter, or a contract modification. This documentation shall serve as the only record necessary to document transfers. When multiple items are transferred, a listing of items with all data elements prescribed in the *FOCUS User's Guide* must be attached to the transfer document. The contractor must obtain approval of both the gaining and losing Contracting Officers or designees before property transfers occur, except for contractor-acquired material with a unit cost less than \$10,000 transferred within an approved Material Management and Accounting System (MMAS). If requested by the U.S. government Property Analyst, the contractor shall notify the U.S. Government Property Analyst when such

MMAS transfers are executed.

(g) Government Property Accountable to Other Contracts.

(1) The contractor may use Government property in their possession and accountable to another U.S. Government contract for the performance of this contract on a rent-free, non-interference use (RFNIU) basis if approved in writing by the Contracting Officers for both contracts. The contractor may also be authorized to use Government property in their possession accountable to a non-U.S. Government contract if approved in writing by the Contracting Officers for both contracts. Requests for RFNIU must contain a liability provision from the requesting contract, and stipulate that:

- (i) The property will be used on a strictly rent-free, non-interference basis;
- (ii) Use will not impact the owning program;
- (iii) The property will be returned upon request from the owning contract to meet its urgent needs;
- (iv) The form, fit, and function of the property will not be altered without written approval from the owning Contracting Officer; and
- (v) The property will be controlled and accounted for at all times.

(2) RFNIU transactions must comply with the terms and conditions of both contracts as well as with any provisions in the Contracting Officer's approval letter. Material is not eligible for RFNIU.

(h) Title. Title to all Government-furnished property and all contractor acquired property which has been reimbursed under the contract remains vested with the Government. Upon completion or termination of this contract, the Contractor shall submit to the Contracting Officer and Property Analyst a list of all property acquired under the contract during the contract period. The list shall describe each item, including the manufacturer, model number, part number, serial number, date acquired, cost, location, and condition, and shall be submitted to the U.S. Government Property Analyst within 60 calendar days after completion or termination of the contract.

(i) Promotional Items. Stand-alone promotional items received from a vendor in conjunction with a Government purchase, whether as Government-furnished property or contractor-acquired property, must be accounted for as Government property in the contractor's Property Management System (PMS). If the contractor has a valid need to use the promotional items to fulfill contractual requirements, the items shall be managed as contract-accountable property. If there is no valid need for the items under the contract, the contractor shall disposition the items as directed by the Contracting Officer.

(j) Audits and Analyses.

(1) The U.S. Government Property Analysts will audit/analyze the contractor's processes, controls, policies, accountability, and administration of Government property in accordance with FAR and the requirements of this clause. Failure of the contractor to maintain an adequate property management system may result in revocation of the Government's assumption of risk by the Contracting Officer.

(2) Support Property Administration for subcontractors and alternate locations will be performed in accordance with FAR 45.502 and 45.503, and applicable special U.S. government agency provisions. When an U.S. Government prime contractor is also performing as a subcontractor on another U.S. Government contract, the U.S. Government Property Analysts will, when appropriate, include any property accountable to that subcontract in their analysis of the prime contractor. This support property administration applies to the property analysis and represents no change to the prime contractor to subcontractor relationship with respect to plant clearance, Loss, Damage, Destruction, or Theft (LDDT), and property reporting.

(k) Reporting.

(1) Quarterly Reports. The contractor shall submit quarterly reports of all property financially accountable to this contract and in the possession of the contractor or subcontractors. Reports shall be prepared in accordance with the CCDWS User's Guide, and the following guidance:

Revision No. 4, dated June 16, 2023

Unrestricted Content

(i) Submit reports not later than the 15th day after each of the following reporting periods:

- First Quarter: 1 September -30 November
- Second Quarter: 1 December – 28/29 February
- Third Quarter: 1 March – 31 May
- Annual Report: 1 June – 31 August

(ii) Each report must be submitted electronically by uploading full line-item detail for all contract-accountable property, regardless of value, through the FOCUS web portal on the U.S. Government Contractor Wide-Area Network (CWAN). FOCUS serves as the primary portal for the submission of contract information, including property data, into Epx/PMM. Reports may be submitted via other means if approved by the U.S. Government Property Analyst.

(iii) Prime contractors shall include all contract-accountable property in the possession of their subcontractors in each property report. Subcontractors will not submit property reports to the U.S. Government for their subcontracts. Contractors without access to FOCUS shall forward the subcontractor information to the U.S Government Property Analyst via email.

(iv) Each tagged item of contract-accountable property must be assigned a Program Code to identify the U.S. Government program under which the item was originally acquired, or to designate the item as “non-program.” These codes are listed in the FOCUS User’s Guide. Non-program property is contract-accountable property acquired for general, administrative, or support activities. Program property comprises contract-accountable property purchased to support the acquisition of a satellite, command and control system, data-processing system, or space launch. It includes sensitive assets known as “specials,” and property funded by AS&T to conduct research and development activities. Such equipment is typically purchased for a specific research and development project and has no future use beyond that project.

(v) The contractor shall retain documents which support the data in their property reports for the periods specified in FAR Subpart 4.7 or for the life of the asset, whichever is longer. For each non-program tagged item (excluding material) with a value of \$1,000,000 or more (capital asset) acquired during the reporting period, the contractor must upload an electronic copy of the invoice or other valuation documentation specified below.

(vi) The contractor shall retain acceptable supporting documentation for each contract-accountable non-program capital asset. Acceptable supporting documentation includes the original invoice or purchase order with the corresponding receiving report. For fabricated items, a document certified by the contractor showing the total labor cost of the item (total labor hours multiplied by the applicable labor rates) and the itemized cost of materials is acceptable. The contractor is not required to support the cost of bench stock inventory items such as nuts and bolts.

(vii) If no supporting documentation is available for a non-program capital asset, the valuation should be estimated based on catalogs, like items, industrial or government engineering estimates, or instructions provided by the U.S. Government Property Analyst. This estimate will be certified by the contractor property manager and include the following information:

- Contract number;
- Property identification number;
- Description of property;
- Acquisition date or date placed in service or receive date;
- Acquisition value; and
- Detailed basis of estimate.

Revision No. 4, dated June 16, 2023

Unrestricted Content

(viii) For each non-program item with a value of \$1,000,000 or more acquired or manufactured during the reporting period, the contractor must upload an electronic copy of the invoice or other valuation documentation with the next quarterly property report.

(ix) 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. When changes in Federal Accounting Standards and OMB reporting requirements occur, contractors may also be required to submit supplemental information with this report. 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.

(2) Subcontractor Property Reports.

(i) The prime ensure that the following information for all U.S. Government contract-accountable property in the possession of subcontractors:

- Subcontractor company name;
- Prime contract number;
- Subcontract number;
- Complete listing of all tagged property;
- Location of contract-accountable property; to include building, room, city and state, and
- Total quantity and dollar value for all CAM and GFM

(ii) The subcontractor property report details shall be included in the quarterly property report through the FOCUS web portal or submitted via email to the U.S. Government Property Analyst.

(iii) In addition to the quarterly reporting requirements described above, each prime contractor shall submit a detailed spreadsheet containing the information in section (i) with their third quarter property report.

(3) Inventory Reports. The contractor shall periodically conduct a physical inventory of contract-accountable property in accordance with leading Industry practices, standards and procedures. The U.S. Government Property Analyst will approve the frequency and method to be used by the contractor for the physical inventory process. Under a manual inventory system, the property inventoried shall be tagged or marked in a manner that indicates that the item has been inventoried. The tags used are normally color-coded or identify the current year, and should be designed to last through the inventory cycle. The contractor shall submit the results of each physical inventory (to include all inventories performed by the prime contractor and each subcontractor) to the U.S. Government Property Analyst not later than 60 days after inventory completion. The contractor shall also post the inventory results to their property records.

(4) Final (Zero) Property Report. After completion of the contract period of performance and within 30 days after disposition of all contract-accountable property under an U.S. Government contract, the prime contractor shall submit a final zero property report through the FOCUS web portal. Each subcontractor that had possession of Government property accountable to this contract shall report a final zero property report to the prime contractor. Prime contractors without access to FOCUS shall submit the report directly to the U.S. Government Property Analyst certifying the disposition of all contract-accountable property and providing along with documentation supporting the transfer or disposal of all contractor inventory (e.g., SF1428, DD 1149).

(I) Reutilization and Disposal.

(1) Reutilization. Government property that has had no activity should be reviewed annually by contractor and Government personnel to determine whether reutilization is possible. The U.S. Government Property Analyst should work in concert with the contractors to ensure that the Program Offices have sufficient time to determine use inside or outside the organization. Government property is not to be stored, retained, or held by

Revision No. 4, dated June 16, 2023

Unrestricted Content

the contractor without proper authority from the Government or as specified by contract.

(2) Disposal. Once inactive Government property has been determined to be excess to contract requirements, the contractor shall screen it against all in-house Government contracts prior to screening by the U.S. Government Property Analyst. In addition to the requirements in FAR 52.245-1, the contractor shall be held to a 120-day standard for plant clearance cases (PCC) unless circumstances dictate otherwise. The U.S. Government Property Analyst will process and track all PCC using Epx/PMM. The contractor shall not close any PCC or retire any property record until the U.S. Government Property Analyst provides notification that all PCC actions have been completed and closed.

(m) Special Test Equipment (STE) Notice of Intent (NOI). 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 and/or specified in the contractor's proposal as STE. The NOI shall include details such as description, quantity, and dollar value of all components that make up the item of STE. The NOI shall also include a full and complete justification validating why the item is being requested and classified as STE.

(n) Property Classification and Records.

(1) Property Classification. The contractor shall include the appropriate Property Classification Code defined in paragraph (b) of this clause when establishing property records and preparing property reports for U.S. Government contract-accountable property.

(2) Records. The official U.S. Government property records shall be maintained by the contractor. All records shall contain the basic information as required in FAR 52.245-1 (f) (iii). In addition, all property records must include the following information (exceptions may be approved by the U.S. Government Property Analyst):

(i) Tagged Assets

- Classification of the property (same as type of property)
- Serial Number (if applicable)
- Model Number (if applicable)
- Parent/Child Relationship (applies to STE and higher assemblies with components)
- Location of the property (include building room, city, and state)
- Last physical inventory date

(ii) Material Items

- Part Number
- Actual, Average, Moving, or Estimated Cost (as applicable)
- Acquisition/in-service date
- Summary of quantity, line items and dollar value

(3) System Records. When items of property are part of a system, such as components of STE or a higher assembly, each individual item/component shall have its own individual record showing the actual or estimated cost with the parent-child relationship clearly established. For example, the cost of STE components can be captured either in the total unit cost of the STE or as individually-priced components. The components of a parent-child relationship that are tracked and costed individually must also be disposed of individually. However, if the costs are tracked as a total unit cost, each component will be disposed of separately by decrementing the total unit cost of the STE. The contractor shall document how it tracks the cost of STE and higher assembly components.

(4) Records of Pricing Information. The unit price of Government-Furnished Property (GFP) will be provided on

Revision No. 4, dated June 16, 2023

Unrestricted Content

the documentation covering shipment of the property to the contractor. In the event the unit price is not provided on the document, the contractor will take action to obtain the information. If the information is unavailable, the contractor may use estimated costs.

(5) Contractors shall decrement their contract property records as appropriate to reflect the following property actions:

(i) Lost, Damaged, Destroyed, and Theft. Deletion amounts that result from relief from responsibility under FAR 45.503 granted during the reporting period.

(ii) Transferred in Place. Deletion amounts that result from transfer of property to a follow-on contract with the same contractor.

(iii) Transferred to Another Government Agency. Deletion amounts that result from transfer of property to another Government agency.

(iv) Purchased at Cost/Returned for Credit. Deletion amounts that result from contractor purchase or retention of contractor acquired property, or from contractor returns to suppliers.

(v) Disposed of Through Plant Clearance Process. Deletions other than transfers within the Federal Government (e.g., donations to eligible recipients, sold at less than cost, or abandoned/ directed destruction).

(vi) Other. Types of deletion other than those reported in (i) through (v) of this section.

(o) Flowdown. The contractor shall include this clause in all subcontracts that will have any Government-furnished or contractor-acquired property accountable to the subcontract. When security issues preclude verbatim use of this clause, the contractor shall use a revised version which includes all the requirements of the original clause.

(End of clause)

41. PROTECTION OF INFORMATION (DEC 2011)

(Applicable if Seller will be performing development work that will require access to sensitive or proprietary information, interacting with other development contractors and/or furnishing such information to, or receiving such information from, other development contractors.)

(a) It is the Government's intent to ensure proper handling of sensitive information that will be provided to, or developed by, the contractor during contract performance. It is also the Government's intent to protect the proprietary rights of industrial contractors whose data the contractor may receive in fulfilling its contractual commitments hereunder.

(b) Accordingly, the contractor agrees that it shall not disclose, divulge, discuss, or otherwise reveal information to anyone or any organization not authorized access to such information. The contractor shall require each individual requiring access to sensitive or proprietary information, including each of its current and future employees assigned to work under this contract, and each subcontractor and its current and future employees assigned to work on subcontracts issued hereunder, to execute an implementing nondisclosure agreement (NDA) before granting access to such information. The contractor shall make these individual agreements (or a listing of the employees executing such an agreement) available to the Contracting Officer upon request. These restrictions do not apply to such information after the U.S. Government has released it to the contractor community, either in preparation for or as part of a future procurement, or through such means as dissemination at Contractor Industrial Forums.

(c) The contractor shall include in each subcontract a clause requiring compliance by the subcontractor and succeeding levels of subcontractors with the terms and conditions herein.

(d) The contractor shall indemnify and hold harmless the Government, its agents, and employees from every claim or liability, including attorney's fees, court costs, and expenses arising out of, or in any way related to, the misuse or unauthorized modification, reproduction, release, performance, display, or disclosure of data with restrictive

Revision No. 4, dated June 16, 2023

Unrestricted Content

legends received in performance of this contract by the contractor or any person to whom the contractor has released or disclosed the data.

(e) The contractor shall allow the Government to review contractor compliance with these provisions or require such self-assessments or additional certifications as the Government deems appropriate.

(End of clause)

42. PROHIBITION ON CONTRACTING FOR HARDWARE, SOFTWARE, AND SERVICES DEVELOPED OR PROVIDED BY KASPERSKY LAB AND OTHER COVERED ENTITIES (NOV 2022)

(Applicable to all Orders in lieu of FAR 52.204-23.)

(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 (including subcontractors at any tier) that the Government will use; and
- (2) Using any covered article, in the development of data or deliverables first produced in the performance of the contract or order.

(c) Reporting requirement.

(1) In the event the Contractor identifies a covered article provided, or to be provided, to the Government during contract performance, or if 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. For indefinite delivery contracts or simplified acquisitions, the Contractor shall report to the Contracting Officer for both the indefinite delivery contract and for any affected orders.

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

- (i) Within one business day from the date of such identification: The contract number; the order number(s), if applicable; supplier name; brand; model number (Original Equipment

Revision No. 4, dated June 16, 2023

Unrestricted Content

Manufacturer (OEM) number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.

(ii) Within ten 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 products or commercial services.

(End of clause)

43. EXPORT CONTROLLED ITEMS (NOV 2018)

(Applicable to all Orders.)

(a) *Definition.* "Export-controlled items," as used in this clause, means items subject to the Export Administration Regulations (EAR) (15 CFR Parts 730-774) or the International Traffic in Arms Regulations (ITAR) (22 CFR Parts 120-130). The term includes:

- (1) "Defense items," defined in the Arms Export Control Act, 22 U.S.C. 2778(j)(4)(A), as defense articles, defense services, and related technical data, and further defined in the ITAR, 22 CFR Part 120.
- (2) "Items," defined in the EAR as "commodities", "software", and "technology," terms that are also defined in the EAR, 15 CFR 772.1.

(b) The Contractor shall comply with all applicable laws and regulations regarding export-controlled items, including, but not limited to, the requirement for contractors to register with the Department of State in accordance with the ITAR. The Contractor shall consult with the Department of State regarding any questions relating to compliance with the ITAR and shall consult with the Department of Commerce regarding any questions relating to compliance with the EAR.

(c) The Contractor's responsibility to comply with all applicable laws and regulations regarding export-controlled items exists independent of, and is not established or limited by, the information provided by this clause.

(d) Nothing in the terms of this contract adds, changes, supersedes, or waives any of the requirements of applicable Federal laws, Executive orders, and regulations, including but not limited to—

- (1) The Export Administration Act of 1979, as amended (50 U.S.C. App. 2401, et seq.);
- (2) The Arms Export Control Act (22 U.S.C. 2751, et seq.);
- (3) The International Emergency Economic Powers Act (50 U.S.C. 1701, et seq.);
- (4) The Export Administration Regulations (15 CFR Parts 730-774);
- (5) The International Traffic in Arms Regulations (22 CFR Parts 120-130); and
- (6) Executive Order 13222, as extended.

(e) The Contractor shall include the substance of this clause, including this paragraph (e), in all subcontracts.

(End of clause)

44. CONTRACT PAYMENT WITHHOLDING-FIXED FEE (JUL 2018)

After payment of 85 percent of the total fixed fee payable under this contract, the Government shall withhold all subsequent payments of fixed fee until a reserve is established in an amount not to exceed 15 percent of total fixed fee payable under the contract or \$(VARIABLE) [\$100,000 maximum], whichever is less.

45. PROHIBITION ON CONTRACTING FOR CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT (NOV 2022)

(Applicable to all Orders in lieu of FAR 52.204-25.)

(a) Definitions. As used in this clause—

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

Covered foreign country means The People's Republic of China.

Covered telecommunications equipment or services means—

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

Critical technology means—

- (1) Defense articles or defense services included on the United States Munitions List set forth in the International Traffic in Arms Regulations under subchapter M of chapter I of title 22, Code of Federal Regulations;
- (2) Items included on the Commerce Control List set forth in Supplement No. 1 to part 774 of the Export Administration Regulations under subchapter C of chapter VII of title 15, Code of Federal Regulations, and controlled-
 - (i) Pursuant to multilateral regimes, including for reasons relating to national security, chemical and biological weapons proliferation, nuclear nonproliferation, or missile technology; or

Revision No. 4, dated June 16, 2023

Unrestricted Content

- (ii) For reasons relating to regional stability or surreptitious listening;
 - (3) Specially designed and prepared nuclear equipment, parts and components, materials, software, and technology covered by part 810 of title 10, Code of Federal Regulations (relating to assistance to foreign atomic energy activities);
 - (4) Nuclear facilities, equipment, and material covered by part 110 of title 10, Code of Federal Regulations (relating to export and import of nuclear equipment and material);
 - (5) Select agents and toxins covered by part 331 of title 7, Code of Federal Regulations, part 121 of title 9 of such Code, or part 73 of title 42 of such Code; or
 - (6) Emerging and foundational technologies controlled pursuant to section 1758 of the Export Control Reform Act of 2018 (50 U.S.C. 4817).

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

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

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

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

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

(2) 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, 2020, from entering into a contract, or extending or renewing a contract, with an entity that uses any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, unless an exception at paragraph (c) of this clause applies or the covered telecommunication equipment or services are covered by a waiver described in FAR 4.2104. This prohibition applies to the use of covered telecommunications equipment or services, regardless of whether that use is in performance of work under a Federal contract.

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

Revision No. 4, dated June 16, 2023

Unrestricted Content

- (1) A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or
 - (2) Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.
- (d) Reporting requirement.
- (1) In the event the Contractor identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or the Contractor is notified of such by a subcontractor at any tier or by any other source, the Contractor shall report the information in paragraph (d)(2) of this clause to the Contracting Officer. 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.
 - (2) The Contractor shall report the following information pursuant to paragraph (d)(1) of this clause
 - (i) Within one business day from the date of such identification or notification: the contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.
 - (ii) Within 10 business days of submitting the information in paragraph (d)(2)(i) of this clause: any further available information about mitigation actions undertaken or recommended.
- In addition, the Contractor shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.
- (e) Subcontracts. The Contractor shall insert the substance of this clause, including this paragraph (e) and excluding paragraph (b)(2), in all subcontracts and other contractual instruments, including subcontracts for the acquisition of commercial products or commercial services.

(End of clause)

42. FOREIGN OWNERSHIP, CONTROL, OR INFLUENCE (NOV 2022)

(Applicable to all Order where Supplier will be performing classified work.)

- (a) Definitions.

"FOCI Information," as used in this clause, means a complete set of Foreign Ownership, Control, or Influence (FOCI) documents to include a Standard Form 328, Certificate Pertaining to Foreign Interests (SF 328), an Organizational Entity Structure (OES) form when there is a parent-level entity, and a Key Management Personnel List (KMPL).

- (b) Pre-Award: The Offeror is required to submit FOCI Information. In the case of a corporate family, a contractor or offeror may submit consolidated FOCI Information. The OES shall include the complete ownership chain from the highest parent, domestic or foreign, down to any subsidiaries or affiliates the contractor may own.

Revision No. 4, dated June 16, 2023

Unrestricted Content

The Offeror is also required to request, collect, and submit the complete FOCI Information from all proposed subcontractors and/or lower-tier subcontractors performing classified work. The Offeror is responsible for the thoroughness and completeness of each subcontractor's and/or lower-tier subcontractor's FOCI Information.

All affirmative answers contained in a SF 328 must explain the identity, nature, degree, and impact on its organization or activities. The Government reserves the right to request additional information.

The KMPL must identify the Company Security Officer (CSO) and the required senior management by name, position, social security number, date/place of birth, citizenship status, ownership interest in the company, security clearances and any supplemental information which may be requested.

(c) Post-Award: The Contractor shall report any changes in FOCI status and KMPL information during the period of performance of this contract for itself and any subcontractors performing classified work. An updated SF 328 is required, whenever there is a change in a response to any questions on the SF 328. An updated KMPL is required whenever there is a key management personnel change. The documentation shall be submitted to the Contracting Officer. Failure to provide timely notice may result in termination of Government accredited locations and this contract.

(d) Subcontracts. The Contractor shall insert the substance of this clause, including this paragraph (d) in all subcontracts which are performing classified work. The Contractor shall be responsible for compliance by any Subcontractor or lower-tier Subcontractor with the provisions set forth in paragraphs (a) through (d) of this clause.

(End of Clause)

4. DISCLOSURE OF OWNERSHIP OR CONTROL BY A FOREIGN GOVERNMENT (NOV 2017)

(Applicable only if Seller will be performing work that involves potential access to proscribed information, as defined below.)

(a) Definitions. As used in this clause:

(1) Effectively owned or controlled means that a foreign government or any entity controlled by a foreign government has the power, either directly or indirectly, whether exercised or exercisable, to control the election, appointment, or tenure of the offeror's officers or a majority of the offeror's board of directors by any means, e.g., ownership, contract, or operation of law (or equivalent power for unincorporated organizations).

(2) Entity controlled by a foreign government means any domestic or foreign organization or corporation that is effectively owned or controlled by a foreign government, or any individual acting on behalf of a foreign government. It does not include an organization or corporation that is owned, but is not controlled, either directly or indirectly, by a foreign government if the ownership of that organization or corporation by that foreign government was effective before 23 October 1992.

(3) Foreign government includes the state and the government of any country (other than the United States and its outlying areas) as well as any political subdivision, agency, or instrumentality thereof.

(4) Proscribed information means:

- Top Secret information;

Revision No. 4, dated June 16, 2023

Unrestricted Content

- Communications Security (COMSEC) material, excluding controlled cryptographic items when un-keyed or utilized with unclassified keys;
- Restricted Data as defined in the U.S. Atomic Energy Act of 1954, as amended;
- Special Access Program (SAP) information; or
- Sensitive Compartmented Information (SCI).

(b) Prohibition on Award. No contract under a national security program may be awarded to an entity controlled by a foreign government if that entity requires access to proscribed information to perform the contract, unless the U.S. Government has waived application of 10 U.S.C. §2536(a).

(c) Disclosure.

(1) 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. If the offeror is a subsidiary, it shall also disclose any reportable interest a foreign government has in any entity that owns or controls the subsidiary, including reportable interest concerning the offeror's immediate parent, intermediate parents, and the ultimate parent.

(2) The offeror shall submit a current SF 328, Certificate Pertaining to Foreign Interests, with their proposal. The SF 328 must include the following information:

- Offeror's point of contact for questions about disclosure (name and phone number with country code, city code, and area code, as applicable);
- Name and address of offeror;
- Name and address of entity controlled by a foreign government; and
- Description of interest, ownership percentage, and identification of foreign government.

(d) If during contract performance the foreign government ownership or control status of the contractor changes, the contractor shall submit an updated SF 328 to the Contracting Officer within one week of the change.

(e) Flow-down. The offeror agrees to include the requirements of this clause in all subcontract solicitations and resulting subcontracts that involve potential access to proscribed information under this solicitation and any resulting contract.

(End of clause)