

Appendix A - PURCHASE ORDER TERMS AND CONDITIONS OPC PROGRAM (E-2357) JULY 2014

1. ASSIGNMENT

- 1.1 Neither this Purchase Order (P.O.), nor any interest herein, may be assigned in whole or in part by the Seller without the prior written consent of Buyer. Any assignment or attempted assignment by the Seller without said prior written consent shall be null and void; provided, however, Seller may assign its rights to be paid amounts due as a result of performance of this P.O. to a bank, trust company, or other financing institution.
- 1.2 Nothing contained in this Clause shall prohibit any party to this P.O. from assigning any or all of its respective rights, title and interest in and to this P.O. to the assigning party's successor-in-interest by way of corporate merger, consolidation or acquisition, or assignment by operation of law. Such successor expressly assumes, agrees to be bound by, and undertakes to perform each and every one of the provisions of this P.O., and further assumes all obligations and liabilities hereunder of the original party to this P.O.
- 1.3 All rights of the Buyer with respect to this P.O. may be assigned by the Buyer (i) to the Government, or (ii) to such other party as the Government may designate without change in the P.O. price except for any equitable adjustment that may arise due to changes in the place of delivery, or (iii) to any other party, without the Seller's consent.

2. CHANGES

- 2.1 Buyer may make changes within the general scope of this P.O. in any one or more of the following (at any time by written order):
 - (A) drawings, design or specifications where the Supplies to be furnished are to be specifically manufactured for the Buyer in accordance with the drawings, designs or specifications;
 - (B) method of shipment or packaging;
 - (C) place or time of Delivery in the United States of the Supplies to be furnished under the P.O.;
 - (D) description of Services to be performed;
 - (E) time of performance (i.e., hours of the day, days of the week, etc.);
 - (F) place of performance of the Services;
- 2.2 If any such change causes an increase or decrease in the cost of performance, or the time required for performance of the work under this P.O., an equitable adjustment shall be made in the P.O. price or Delivery schedule, or both, and this P.O. shall be modified in writing accordingly. The Seller must submit any proposal for adjustment to the P.O. price or Delivery schedule or both as provided under this Clause within forty-five (45) days from the date of receipt by Seller of the change from Buyer.
- 2.3 Where the cost of property made obsolete or excess as a result of the change is included in the settlement of Seller's proposal for adjustment, Buyer shall have the right to prescribe the manner of disposal of such property.
- 2.4 Buyer's engineering and technical representatives may from time to time render assistance to Seller concerning the Supplies or Services to be furnished pursuant to this P.O. Such representatives are not authorized to initiate a change as herein provided. No change will be binding unless issued in writing by the Buyer's authorized purchasing representative and received by Seller.
- 2.5 Upon Seller's receipt of the written change order, nothing contained in this Clause shall relieve Seller from proceeding without delay in the performance of this P.O. as changed.

3. COMPLIANCE WITH LAWS

Seller shall comply with all applicable Federal, State and local laws, and regulations in performing this P.O. Seller covenants to hold Buyer and its assignees harmless from, any and all costs, damages and expenses (including reasonable attorney's fees) incurred by Buyer and its assignees as a result of any failure of Seller to comply with any such laws and regulations.

Exports of Data exchanged under this P.O. may be subject to the export laws of the United States, including, but not limited to, the U.S. International Traffic in Arms Regulations (ITAR), the Export Administration Act (EAA), the regulations issued by the Office of Foreign Assets Control (OFAC), the Foreign Corrupt Practices Act (FCPA) as codified at 15. U.S.C. §78m & §78dd(1) et seq., the Trading With the Enemy Act (TWEA), and the International Economic Emergency Powers Act (IEEPA). The Parties shall not export, disclose or transfer any such data directly or indirectly without compliance with these and any other applicable laws and regulations.

4. CONDITIONAL ACCEPTANCE OF SUPPLIES

- 4.1 Upon Delivery to the F.O.B. Destination point, the Supplies shall be conditionally accepted by the Buyer ("Conditional Acceptance"). Thereafter, the Buyer may conduct such other inspections and tests as it deems appropriate, including trials as may be provided for in the P.O., and within sixty (60) days from completion of such trials, the Buyer shall notify Seller of the acceptability of the Supplies. If Buyer does not provide written notification to the Seller within the timeframe stated above the Supplies shall be deemed conditionally accepted.
- 4.2 Any Services rendered in support of this P.O. shall be performed in a professional and workmanlike manner in accordance with the specifications referenced in the P.O. Between Conditional Acceptance and Final Acceptance, if any Supply(s)/Services are found not to conform with the requirements of the P.O., the Buyer shall have the right to (i) reject such Supply(s) and return it at Seller's expense, or (ii) require its correction, or in the case of services, re-performance.
- 4.3 Buyer's acceptance of the Supplies or Services and its subsequent use thereof shall not constitute a waiver of any claim based upon the delivery of improper or defective materials or workmanship, or for delayed deliveries, or of Buyer's rights and remedies conferred with respect thereto. Any and all of the rights and remedies conferred upon the Buyer under the P.O. shall be cumulative and in addition to, and not in lieu of, the rights and remedies granted by law for Seller's breach of contract.

5. CONFIDENTIALITY

- 5.1 The Seller and Buyer recognize that information disclosed to and/or acquired by each other hereunder may be confidential and/or proprietary to the disclosing party, the disclosure of which to third parties could result in irreparable harm to the party furnishing such information. The parties agree that each party has the right to seek and obtain temporary, preliminary and permanent injunctive relief to restrain any unauthorized use or disclosure of its proprietary information in addition to all other remedies available to that party in law or equity.
- 5.2 All information of a proprietary nature disclosed by one party to the other party hereto in connection with this P.O. and designated by the disclosing party by an appropriate stamp, marking, or legend as being proprietary to the disclosing party, shall be held in strict confidence by the

receiving party and shall not be duplicated, used or disclosed in whole or in part for any purpose except by the Seller under equivalent conditions of confidentiality, and to the extent strictly necessary to obtain Supplies or Services in the normal course of trade for the performance of this P.O. and to comply with other terms of this P.O.; and except by Buyer to the extent strictly necessary for its intended use as required by the Government under the Prime Contract. Buyer may disclose such information subject to equivalent conditions of confidentiality to their suppliers or prospective suppliers to the extent necessary for defining interface characteristics of Supplies to be delivered hereunder provided that they make such disclosure and restrictions on use as contained in this Clause.

- 5.3 The information to be held in confidence as provided in Paragraphs 5.1 and 5.2 hereof shall not include:
- (A) any information that is in the public domain at the time of disclosure to the receiving party or thereafter comes into the public domain other than by breach by the receiving party of this P.O.; or
 - (B) any information in the possession of the receiving party prior to its receipt from the disclosing party (except through prior disclosures in confidence), or which is independently developed by the receiving party without resort to the disclosed proprietary information; or
 - (C) any information which the receiving party rightfully obtains from a third party without restriction; or
 - (D) any information for which the disclosing party by written agreement authorizes its restricted use or disclosure.
- If any portion of the party's information falls within any one of the above exceptions, the remainder shall continue to be subject to the restrictions of this Clause.
- 5.4 To the extent reasonably necessary for the purpose of this P.O. or the Prime Contract, a party may disclose the information of the other party to the Government provided that the disclosing party makes such disclosure subject to like conditions of confidentiality and to the restrictions set forth in Sections (b)(2) of DFARS 252.227-7013 RIGHTS IN TECHNICAL DATA NON COMMERCIAL ITEMS or such later version as the parties may agree, as appropriate, and marks the information so disclosed with the appropriate restrictive legends as provided in the said DFARS Clauses and such other marking of an industrial property right nature as the party owning the information may require, provided that such marking is not disallowed under the provisions of the Prime Contract. Buyer may furnish to the U.S. Government form, fit and function data, manuals and instructional materials as those expressions are defined in said DFARS Clause with Unlimited Rights subject to the conditions pursuant to subdivisions (b)(l) of said DFARS Clause to the extent required under the Prime Contract.
- 5.5 Either party disclosing or reproducing another party's information hereunder shall replicate in any reproductions made any copyright and other intellectual or industrial property right marks and legends as appear on and/or in such information. Notwithstanding anything to the contrary in the foregoing sentence, in the case of a composite work created by Buyer containing any of the said information the copyright in which vests in the Seller, the Seller hereby agrees to waive the said replication requirement if such composite work is marked with the legend: "This is an unpublished work, the copyright in which rests in Bath Iron Works, Bath, Maine. All rights reserved."
- 5.6 Nothing contained herein shall be construed to prevent either party from complying with the requirement of a court or other regulatory body acting within its jurisdiction to compel disclosure, provided that in the event that either party receives a demand or any other form of compulsory process from any such court or other regulatory body requiring the disclosure of the other party's information, it shall promptly so advise the other party and cooperate to limit the disclosure to the minimum necessary to comply with the requirements of such demand or process as required by law.

6. DEFAULT

- 6.1 Buyer may, by written notice, terminate this P.O. in whole or in part, if the Seller:
- (A) fails to deliver the Supplies or to perform the Services within the time specified in the P.O. or any extension thereof; or
 - (B) fails to make progress so as to endanger performance of this P.O.; or
 - (C) fails to perform any of the other provisions of this P.O.
 - (D) declares bankruptcy, suspends its business operation, or initiates any reorganization and/or arrangement for the benefit of its creditors.
- Buyer's right to terminate this P.O. under Subparagraphs (B) and (C) above shall be exercised if the Seller does not cure such failure within ten (10) days after receipt of "Cure Notice" from Buyer specifying the failure.
- 6.2 If Buyer terminates this P.O. in whole or in part by reason of Seller's default, Buyer may acquire (reprocure) under the terms and conditions and in the manner Buyer considers reasonable and appropriate such similar Supplies or Services to those terminated. The Seller shall be liable to Buyer for any excess costs for Supplies or Services so acquired, it being understood that the Seller shall continue to work on that portion not terminated. With regard to the Seller's liability for excess costs:
- (A) except for defaults by Seller's subcontractors at any tier, the Seller shall not be liable for any excess costs if the failure to perform under the P.O. arises from causes beyond the control and without the fault or negligence of the Seller. Examples of such causes include acts or omissions on the part of Buyer; acts of God; civil strife; labor strikes; actions of the Government, or any sovereign government in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; or, freight embargoes.
 - (B) If the delay or failure is caused by the delay or failure of a subcontractor of the Seller, and if such delay or failure arises out of causes beyond the reasonable control of both the Seller and the subcontractor, and without the fault or negligence of either of them, the Seller shall not be liable to Buyer for excess costs unless the subcontracted Supplies or Services to be furnished by the subcontractor were reasonably obtainable from other sources in sufficient time to permit the Seller to meet the required Delivery schedule.
- 6.3 If the P.O. is terminated for default, Buyer may require the Seller to transfer title and deliver to Buyer or to the Government, any (i) completed Supplies and (ii) partially completed Supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information and contract rights (collectively referred to as "manufacturing materials" in this Clause), that the Seller has specifically produced or acquired for the terminated portion of the P.O. Seller shall also protect and preserve property in its possession in which Buyer has an interest.
- 6.4 Buyer shall pay the P.O. price for completed Supplies and Services previously delivered and accepted. The parties shall agree on the amount of payment for manufacturing material delivered and accepted and for the production and preservation of the property. Failure to agree shall be

- deemed a dispute under the "Disputes" Clause of this P.O. The Seller may not withhold Supplies, or partially completed Supplies, materials, parts, tools, dies, jigs, fixtures, etc. pending a resolution of any such dispute.
- 6.5 If, after termination for Seller's default, it is determined that the Seller was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been for the convenience of Buyer under the Clause entitled "Termination for Convenience" of this P.O.
- 6.6 The rights and remedies of Buyer in this Clause are in addition to any other rights and remedies provided by law or under this P.O.

7. DEFINITIONS

- 7.1 The following words and expressions shall have the meaning hereby assigned to them for the purposes of this P.O. except where otherwise specifically stated or the context so requires:
- (A) "Buyer" shall mean Bath Iron Works having its principle place of business in Bath, Maine.
 - (B) "Contracting Officer" means the Government contracting officer(s) for the Prime Contract. But see Subparagraph (R) below.
 - (C) "Contractor" means Buyer in its capacity as the legal entity which contracts with the Seller by this P.O. But see Subparagraph (R) below.
 - (D) "Days" means calendar days unless otherwise stated.
 - (E) "Delivery" or "Delivered" means the receipt at the F.O.B. Point of all Supplies ordered under the P.O., including all submittals, certifications, documentation and any other Supplies to be furnished under the terms of this P.O.
 - (F) "FAR" means the Federal Acquisition Regulation. "HSAR" means the Homeland Security Acquisition Regulation.
 - (G) "F.O.B." means F.O.B. Destination, unless otherwise stated.
 - (H) "Government" refers to the Government of the United States, or United States Coast Guard (USCG).
 - (I) "Latent Defect" means a defect which is hidden from the knowledge as well as from the sight of the inspector and which could not be discovered by ordinary and reasonable care or by the inspection under the test procedures of this Purchase Order.
 - (J) "Purchase Order "P.O." or Subcontract refers to this contractual instrument and includes changes and/or modifications hereto.
 - (K) "P.O. Price" means the total sum of the Supplies or Services prices which individually may be called unit price(s).
 - (L) "Purchase Specification" means Buyer's statement of specifications for the Item(s) or Services being acquired.
 - (M) "Purchasing Representative" refers to Buyer's authorized representative.
 - (N) "Seller", "Subcontractor", or "Supplier" means the legal entity who sells or contracts to sell Supplies or Services to Buyer by this P.O.
 - (O) "Services" means all or any part of the Services described in this P.O. and includes any incidental Supplies therein.
 - (P) "Supplies" means all or any part of the Supplies, articles, goods, or products contracted for by Buyer through this P.O.
 - (Q) "Supplies' Prices" means the F.O.B. prices for the Supplies.
 - (R) In the FAR, and HSAR Clauses incorporated herein, the cited terms shall have the following meanings: the term "Contractor" shall be deemed to refer to the Seller; the term "Subcontractor" shall be deemed to refer to the Seller's subcontractors; the "Contracting Officer" shall be deemed to refer to Buyer; and the term "Contract" refers to this P.O. except where the context of such clauses demand otherwise. Unless otherwise stated the FAR and HSAR Clauses incorporated herein shall be those in effect on the issuance award date of this P.O., and they shall be interpreted in accordance with the definitions set forth at FAR 2.1
- 7.2 Clause headings are for purposes of reference only and shall in no way affect the interpretation of any of the terms of this P.O.

8. DELIVERY DATE AND EXCUSABLE DELAY

- 8.1 The Delivery Date(s) shall mean the date(s) as set forth in the P.O., or any modification thereto for the Delivery of the Supplies or performance of the Services specified in the P.O.
- 8.2 Notwithstanding any other provision in this P.O. to the contrary, the Seller shall not be liable for failure to perform any of its obligations under this P.O. arising out of causes beyond its reasonable control without Seller's fault or negligence, including, but not limited to, acts or omissions on the part of Buyer; acts of God; civil strife; labor strikes; actions on the part of the Government or sovereign government in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; or, freight embargoes.
- 8.3 If the delay or failure is caused by the delay or failure of a subcontractor of the Seller and if such delay arises out of causes beyond the reasonable control of both the Seller and the Seller's subcontractor, and without the fault or negligence of either of them, the Seller shall not be liable to Buyer for damages occasioned by delays in Delivery unless the Supplies or Services to be furnished by the subcontractor were reasonably obtainable from other known sources in sufficient time to permit the Seller to meet the required Delivery schedule.
- 8.4 In the event of an excusable delay under this Clause the time of performance shall be extended by such period as may be deemed reasonable by the Buyer.
- 8.5 If and whenever it becomes apparent that progress in the furnishing of Supplies and Services is being or is likely to be delayed (whether or not such delay is excusable), the Seller shall within ten (10) working days of becoming aware of such delay give written notice to Buyer of the material circumstances including the cause or causes of the delay and shall give particulars of the expected effects thereof and estimate the extent of the expected delay in Delivery of the Supplies and Services beyond the Delivery date or dates set out in this P.O. Seller shall give such further written notices to Buyer as may be necessary or as Buyer may reasonably require to maintain awareness on the status of the delay in order to mitigate impact of the delay to Buyer's operation.
- 8.6 Seller shall strictly adhere to all Subcontract schedules. Time is and shall remain of the essence in performance of this Subcontract. Seller shall notify Buyer in writing immediately of any actually or potential delay to the performance of this Subcontract. In the event Seller does not deliver acceptable items in accordance with the delivery schedules set forth in the P.O., Seller shall be liable to Buyer for all damages and liability, not otherwise excluded herein, of Buyer resulting therefrom.

9. DISPUTES

- 9.1 "Dispute" as used herein shall mean any and all claims or disputes that in any way arise out of or relate to this Agreement, the negotiation or execution thereof, its performance, or the breach or enforcement thereof. Buyer and Seller intend that the definition of "Dispute" shall have the broadest scope permitted by law and that, without limiting the generality of the foregoing, shall be deemed to include all claims between the parties including, but not limited to, any claims for fraud, misrepresentation, negligence, libel and slander, unfair competition, unfair trade practices, or other tort law claims. The foregoing notwithstanding, the parties also intend and agree that, because of the nature of such matters, the following claims are not subject to the agreement to negotiate set forth herein: (1) claims regarding ownership, validity, infringement, or

misappropriation of either party's intellectual property; (2) claims regarding a breach of obligations relating to the Nondisclosure Agreement(s), if any, or Confidentiality clause herein.

9.2 . Except for the right of either party to apply to a court of competent jurisdiction for equitable relief necessary to preserve the status quo or prevent irreparable harm as established below, the parties agree that any Dispute between them or against any agent, employee, successor, or assign of the other shall be settled, to the extent possible by good faith negotiations. Any dispute, controversy or claim arising out of or in connection with this Agreement, including without limitation any dispute regarding the enforceability of any provision, which cannot be resolved through good faith negotiations within sixty (60) days or such longer period of time as may be mutually agreed between the Parties, shall be submitted to and finally resolved in accordance with the Governing Law Clause herein.

9.3. Until final resolution of any Dispute hereunder, Seller shall proceed diligently with the performance of this Agreement unless otherwise directed by Buyer in writing. Each party acknowledges that the other party will suffer irreparable harm and that there is no adequate remedy at law if, pending settlement or any controversy or claim, the other party fails to diligently perform its obligations under this Agreement. The non-breaching party shall be entitled to interim equitable relief or injunctive relief. In such an event, both parties hereby expressly consent to the jurisdiction of the courts in the State of Maine.

9.4. Buyer's rights under the terms and conditions of this Agreement are cumulative and in addition to any other rights available at law or equity.

9.5. This provision is not applicable to, and does not in any way limit any remedies available to a party with respect to, any dispute between either party to this Agreement and a third-party.

9.6. Disputes Related to Prime Contract:

Until final resolution of any dispute hereunder, Seller shall proceed diligently with the performance of this Subcontract unless otherwise directed by Buyer in writing. 9.7. The following additional terms apply for disputes under this Contract that arise out of or under a Government Prime Contract.

9.7.1. Seller shall provide Buyer with a fully supported written claim, properly certified as prescribed by FAR 33.207, within forty-five (45) days after the claim accrues;

9.7.2. Seller shall cooperate with Buyer in prosecuting Seller's timely made claim or demand and will be bound by the resulting decision of the Contracting Officer; and

9.7.3. Seller shall pay its proportional costs in pursuing the claim.

9.7.4. If Seller fails to provide Buyer with a written claim for any dispute within the timeframe specified herein, Seller is deemed to have waived the claim.

9.7.5. Buyer's entire liability to Seller with respect to any matter prosecuted under the disputes provisions in the Prime Contract shall be limited to the recovery obtained against the Customer for Seller's claims, exclusive of Buyer's related markups.

9.7.6. Buyer may, upon Seller's request and in Buyer's sole discretion, submit the claim or request for equitable adjustment to the Contracting Officer. If Seller is affected by the resulting decision or Buyer elects to appeal, Seller shall pay Seller's proportion of the appeal costs to Buyer.

9.7.7. If Buyer elects not to appeal the decision, Buyer shall notify Seller of that decision within 90 days. If Seller submits a timely request to Buyer to appeal such decision, Buyer will file and sponsor Seller's appeal at Seller's sole cost, if Buyer may do so in good faith.

9.7.8. Buyer has the right to review, prior to submission, any pleadings or other papers Seller may file in such appeal. Seller agrees to delete any admissions or statements in the pleadings or papers to which Buyer objects. If Buyer appeals such decision, whether or not at Seller's request, any decision regarding such appeal shall be binding on Buyer and Seller as it relates to this Contract.

9.7.9 Decisions made by a Contracting Officer which relate to this Contract, are also binding on Seller.

10. EXAMINATION OF RECORDS

10.1 Seller agrees that the Buyer, Contracting Officer or other duly authorized Government Employee shall, until the expiration of three (3) years after final payment under this P.O., have access to and the right to examine any directly pertinent books, documents, papers, and records involving transactions pertaining to this P.O.

10.2 The periods of access to and right of examination of records which relate to (i) Buyer's appeals under the "Disputes" Clause of the Prime Contract, (ii) litigation or settlement of claims arising out of the Prime Contract or (iii) cost and expenses of the Prime Contract or this P.O. shall continue until such appeals, litigation, or claims have been disposed of.

11. FINAL ACCEPTANCE

11.1 As used in this Clause, "Final Acceptance" means the act by which the Buyer assumes for itself ownership of the Supplies. In accordance with the Clause entitled "Conditional Acceptance," the Buyer shall provide written notification to the Seller of the acceptability of the Supplies. If the Buyer does not provide written notification to the Seller within the sixty (60) days following successful completion of Acceptance Trials, the Supplies shall be deemed finally accepted, subject to the provisions of the Clause entitled "Warranty." Payments made under this P.O. shall not be considered as an indication of the acceptability of the Supplies.

11.2 Any Services rendered in support of this P.O. shall be performed in a professional and workmanlike manner, and in accordance with the specifications referenced in the P.O. If, at the time of Final Acceptance, defects are known to exist in a Supply or any Services performed, the Supply/Service may be accepted in writing by Buyer with either a reservation of the Buyer's right to have the Seller correct the known defect(s), re-perform the Service in the event services were provided, or an equitable reduction in price, or both, as may be appropriate under the circumstances. Failure to agree to such reduction in price shall be a dispute concerning a question of fact within the meaning of the Clause entitled "Disputes."

12. FINAL SETTLEMENT

Upon final settlement of the work, Seller shall be entitled to receive any balance owed under this P.O. Such payment to be made within thirty (30) days after the amount of such balance is determined; provided appropriate documentation has been received and approved by Buyer. Seller and each assignee of the Seller, under an assignment in effect at the time of final settlement, shall execute and deliver at the time of and as a condition precedent to any final payment from Buyer, a release of claims and liens from Seller and Seller's subcontractors and from liabilities, obligations, and claims arising under this P.O. in form and substance satisfactory to Buyer, its officers, agents, and employees. If this P.O. shall have been terminated in whole or in part, any such release shall also contain a release of all claims against Buyer arising out of, or by virtue of, such termination.

13. GOVERNING LAW

- 13.1 Any dispute arising solely in connection with or arising out of this Contract not resolved after the parties have exhausted the informal dispute resolution process in accordance with the Disputes clause of this Contract shall be finally settled by litigation in a court of competent jurisdiction in the State of Maine. THE PARTIES HEREBY CONSENT TO SUCH EXCLUSIVE JURISDICTION AND VENUE FOR ANY DISPUTES. TO THE EXTENT PERMITTED BY APPLICABLE LAWS, THE PARTIES EACH WAIVE ANY RIGHTS WHICH EITHER MAY HAVE TO A TRIAL BEFORE A JURY OF ANY DISPUTE ARISING FROM, OR RELATED TO, THIS CONTRACT. THE PARTIES FURTHER STIPULATE AND CONSENT THAT ANY SUCH LITIGATION BEFORE A COURT OF COMPETENT JURISDICTION SHALL BE NON-JURY. The parties may also agree to arbitrate if they so desire. In resolving any dispute under this Contract, each party shall bear its own attorneys' fees and costs and expenses, without regard to any law or statute to the contrary.
- 13.2 The parties agree that irrespective of the place of performance of this P.O., the P.O. shall be construed and interpreted according to the laws (both substantive and procedural) of the State of Maine in effect at the time of the execution of this P.O. as the same would be applied to transactions between residents of the State to be fully performed within the State and without regard to the State's conflict of laws principles.
- 13.3 The choice of law specified in the Contract will not apply to disputes or appeals prosecuted under the Prime Contract. Pending final resolution of any decision, appeal or judgment of any proceedings related to the Contract, Seller shall proceed diligently with the performance of this Contract unless otherwise directed by Buyer in writing.

14. GOVERNMENT PROPERTY/BUYER PROPERTY

- 14.1 Government or Buyer Furnished Property. The Government or Buyer shall deliver to the Seller, for use in connection with and under the terms of this P.O., the property described as Government-Furnished Property (GFP) or Buyer-Furnished Property (BFP), together with such related data and information as the Seller may request and as may reasonably be required for the intended use of such property. The Delivery or performance dates for the Supplies or Services to be furnished by Seller under this P.O. are based upon the expectation that GFP or BFP suitable for use (except for such property furnished "as is") will be delivered to the Seller at the times stated in the P.O. or, if not so stated, in sufficient time to enable Seller to meet such Delivery or performance dates. In the event that GFP or BFP is not delivered to Seller by such time or times, Buyer shall, upon timely written request made by Seller, make a determination of the delay, if any, occasioned the Seller thereby, and shall equitably adjust the Delivery or performance dates or the P.O. price, or both, and any other contractual provision affected by any such delay, in accordance with the procedures provided for in the Clause of this P.O. entitled "Changes." Except for GFP or BFP furnished "as is," in the event the GFP or BFP is received by Seller in a condition not suitable for the intended use the Seller shall, upon receipt thereof, notify Buyer of such fact and, as directed by Buyer, either (i) return such property at Buyer's expense or otherwise dispose of the property, or (ii) effect repairs or modifications. Upon the completion of (i) or (ii) above, Buyer upon written request of Seller shall equitably adjust the Delivery or performance dates or the P.O. price, or both, and any other contractual provision affected by the rejection or disposition, or the repair or modification to GFP or BFP, in accordance with the procedures provided for in the Clause of this P.O. entitled "Changes." The foregoing provisions for adjustment are exclusive and Buyer shall not be liable to suit for breach of contract by reason of any delay in delivery of GFP or BFP or delivery of such property in a condition not suitable for its intended use, a decrease in or substitution of GFP or BFP, or failure to repair or replace GFP for which Government or Buyer is responsible.
- 14.2 Changes in GFP or BFP.
- (A) By notice in writing, Buyer may (i) decrease the property provided or to be provided by the Government or Buyer under this P.O., or (ii) substitute other Government or Buyer owned property for property to be provided by the Government or Buyer, or to be acquired by Seller for the Government or Buyer under this P.O. Seller shall promptly take such action as Buyer may direct with respect to the removal and shipping of property covered by such notice.
- (B) In the event of any decrease in or substitution of property pursuant to subparagraph (A) above, or any withdrawal of authority to use property provided under any other contract or lease, which property Buyer had agreed in the Schedule to make available for the performance of this P.O., Buyer, upon the written request of Seller (or, if the substitution of property causes a decrease in the cost of performance, on his own initiative), shall equitably adjust such contractual provisions as may be affected by the decrease, substitution, or withdrawal, in accordance with the procedures provided for in the Clause entitled "Changes."
- 14.3 Title. Title to all property furnished by the Government or Buyer shall remain in the Government or Buyer respectively. In order to define the obligations of the parties under this Clause, title to each item of facilities, special test equipment, and special tooling (other than that subject to a "Special Tooling" Clause) acquired by the Seller for the Government or Buyer pursuant to this contract shall pass to and vest in the Government or Buyer, respectively, when its use in the performance of this P.O. commences, or upon payment therefor by the Government or Buyer, whichever is earlier, whether or not title previously vested. All GFP or BFP, together with all property acquired by Seller title to which vests in the Government or Buyer under this Paragraph is subject to the provisions of this Clause and is hereinafter collectively referred to as "Government or Buyer property." Title to Government or Buyer property shall not be affected by the incorporation or attachment thereof to any property not owned by the Government or Buyer, nor shall such Government or Buyer property, or any part thereof, be or become a fixture or lose its identity or personality by reason of affixation to any realty.
- 14.4 Property Administration. Seller shall comply with the provisions of Subpart 45.5 of the Federal Acquisition Regulation, as in effect on the date of the P.O., which is hereby incorporated by reference and made a part of this P.O.
- If damage occurs to Government/Buyer property, the risk of which has been assumed by the Government/Buyer under this P.O., the Government/Buyer shall replace the items or the Seller shall make such repairs as the Government/Buyer directs. However, if the Seller cannot effect such repairs within the time required, the Seller shall dispose of the property as directed by the Government/Buyer.
- The Seller represents that the contract price does not include any amount of repairs or replacement for which the Government/Buyer is responsible. Repair or replacement of property for which the Seller is responsible shall be accomplished by the Seller at its own expense.

- 14.5 Use of Government or Buyer Property. Government or Buyer property shall, unless otherwise provided herein or approved by the Government or Buyer, be used only for the performance of this P.O.
- 14.6 Utilization, Maintenance and Repair of Government or Buyer Property. Seller's subcontractors shall be required to maintain and administer, in accordance with sound industrial practice, and in accordance with applicable provisions of Subpart 45.5 of the FAR, a program for the utilization, maintenance, repair, protection and preservation of Government or Buyer property until disposed of by the Seller in accordance with this Clause. In the event that any damage occurs to Government or Buyer property, the risk of which has been assumed by the Government or Buyer under this P.O., the Government or Buyer shall replace such Supplies or the Seller shall make such repair of the property as Buyer directs; provided, however, that if Seller cannot effect such repair within the time required, the Seller shall dispose of such property in the manner directed by Buyer. The contract price includes no compensation to Seller for the performance of any repair or replacement for which the Government or Buyer is responsible, and an equitable adjustment will be made in any contractual provisions affected by such repair or replacement of Government or Buyer property made at the direction of Buyer, in accordance with the procedures provided for in the Clause of this P.O. entitled "Changes." Any repair or replacement for which the Seller is responsible under the provisions of this P.O. shall be accomplished by Seller at his own expense.
- 14.7 Risk of Loss. Unless otherwise provided in this P.O., the Seller assumes the risk of, and shall be responsible for, any loss of or damage to Government or Buyer property provided under this P.O. upon its Delivery to Seller or upon passage of title thereto to the Government or Buyer as provided in Paragraph 14.3 hereof except for reasonable wear and tear and except to the extent that such property is consumed in the performance of this P.O.
- 14.8 Access. The Government or Buyer, and any persons designated by them, shall at all reasonable times have access to the premises wherein any Government or Buyer property is located, for the purposes of inspecting the Government or Buyer property.
- 14.9 Final Accounting and Disposition of Government or Buyer Property. Upon the completion of this P.O., or at such earlier dates as may be fixed by Buyer, the Seller shall submit, in a form acceptable to Buyer, inventory schedules covering all Supplies of Government or Buyer property not consumed in the performance of this P.O. (including any resulting scrap) or not theretofore delivered to the Government or Buyer and shall prepare for shipment, deliver F.O.B. origin, or dispose of the Government or Buyer property, as may be directed or authorized by Buyer. The net proceeds of any such disposal shall be credited to the P.O. price or shall be paid in such other manner as Buyer may direct.
- 14.10 Restoration of Seller's Premises and Abandonment. Unless otherwise provided herein, Buyer:
- (A) may abandon any Government or Buyer property in place, and thereupon all obligations of Buyer regarding such abandoned property shall cease;
 - (B) has no obligation to Seller with regard to restoration or rehabilitation of the Seller's premises, neither in case of abandonment (Paragraph 14.10(A) above), disposition on completion of need or of the P.O. (Paragraph 14.9 above), nor otherwise, except for restoration or rehabilitation costs which are properly included in an equitable adjustment under Paragraph 14.1 and 14.2 above.
- 14.11 Communications. All communications issued pursuant to this Clause shall be in writing.

15. INSPECTION

For the purposes of this Clause the term "Supplies and Services" includes without limitation raw materials, components, intermediate assemblies, and end products.

15.1 Inspection Authority

- (A) Buyer may designate an individual as the Quality Assurance Representative (QAR) to whom all matters concerning Buyer's quality requirements on each P.O. shall be referred by the Seller. The designated QAR and his QAR staff shall possess the necessary Governmental and Company security clearances to be admitted to Seller's facilities and to inspect and test Supplies and review related quality assurance documentation.
- (B) If required deliverable Supplies will be tested and approved for shipment at the location specified in the P.O.
- (C) Deliverable data as required by the Purchase Specification or as otherwise specified for the Supply(s), shall be inspected and accepted by the Buyer at the Buyer's facilities.

15.2 Notice of Testing

Seller shall inform the QAR by written notice (e.g., telex, telefax, etc.) the date of any testing authorized in this Clause. Such notice shall be provided at least twenty one (21) days prior to the actual test date.

15.3 Inspection

- (A) All Supplies shall be subject to inspection and test by the QAR (and/or the Government) at all reasonable times including the period of manufacture and performance and, in any event prior to Final Acceptance.
- (B) In case any Supplies and Services or lots of Supplies or Services are defective in material or workmanship or otherwise not in conformity with the requirements of the P.O., the QAR shall have the right to reject them to require their correction or, in the case of Services, their reperformance.
- (C) All inspections and tests by the Buyer at Seller's facilities shall be performed in such a manner as not to unduly delay the work. Should the performance of such inspection or test unduly delay the work of Seller, such delay shall be excusable within the meaning of the Clause entitled "Delivery Date and Excusable Delays," and Seller shall be entitled to an equitable adjustment in price and/or Delivery pursuant to the Clause entitled "Changes." Buyer reserves the right to charge to the Seller any additional cost to Buyer for inspection and testing when Supplies and Services are not ready at the time stipulated for such inspection or test by Seller's aforementioned notice or if reinspection or test is necessitated by prior rejection.
- (D) Final acceptance or rejection of the Supplies or Services shall be made in accordance with the Final Acceptance clause contained herein. Failure by Buyer to inspect and accept or reject Supplies or Services shall not relieve the Seller of Seller of responsibility for supply of such Supplies or Services in strict accordance with the P.O. requirements.
- (E) The inspection or test by the Buyer of any Supplies or Services or lots thereof does not relieve the Seller from any responsibility regarding defects or other failures to meet the requirements of this P.O. which may be discovered prior to Final Acceptance. Except as otherwise provided in the P.O., Final Acceptance shall be conclusive except in regard to Latent Defects, fraud, or such gross mistakes as amount to fraud or negligence.
- (F) The Seller shall provide and maintain an inspection system in accordance with the Specifications covering the Supplies and Services hereunder. Records of all inspection work by the Seller shall be kept complete and available to the designated QAR during the performance of this P.O. and for such longer period as may be specified elsewhere in this P.O.
- (G) Notwithstanding the requirements for any inspection and test contained in Specifications applicable to this P.O., except where inspections or tests are specified for performance solely by the Buyer, the Seller shall perform or have performed the inspection and test required to substantiate that the Supplies and Services provided under this P.O. conform to the drawings, Specifications and P.O. requirements listed herein.

16. INTELLECTUAL PROPERTY RIGHTS

16.1 Copyright

All Specifications, drawings and technical descriptions and other Data ("Data") acquired from the Seller in connection with this P.O. are the copyright of the Seller, except where expressly stated otherwise on such Data, and shall be treated as unpublished works.

16.2 Use

Nothing contained in this P.O. shall be construed as having granted to, or conferred upon, Buyer any express or implied rights, by license, estoppel or otherwise, to any Data or information or to any invention or discovery or patent which is made or acquired prior to or after the date of this P.O. based on information disclosed under this P.O.

16.3 Registration

The recipient of information acquired hereunder shall not, without the disclosing party's prior written consent, apply for any patent or design registration in respect of information furnished by the disclosing party or any invention or design contained therein or based thereon, or submit or apply to the U.S. Copyright Office or any other national copyright office for copyright registration or any proprietary information furnished by the disclosing party.

16.4 Notice and Assistance Regarding Patent and Copyright Infringement

The Clause NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT FAR 52.227-2 is incorporated herein by reference and forms a part of this P.O.

16.5 Patent Indemnity

The Seller shall indemnify Buyer against claims by owners or licensees of patents and registered designs of the United States granted at the date hereof for infringement thereof by use of sale of the Supplies or Services, PROVIDED:

- (A) this Indemnity shall not extend to infringements resulting from use by the Seller of Buyer's parts, designs or specific instructions or from use or sale in combination with other Supplies where infringements would not have otherwise occurred;
- (B) Buyer shall immediately inform the Seller of claims, shall make no settlement or admission and shall permit the Seller alone (and at the Seller's expense) to deal with claims;
- (C) the Seller's liability under this condition is limited to the amount of royalties or payments in lieu thereof ordered by a court of competent jurisdiction or agreed by Seller with the owner of such rights to be paid to the owner and/or licensee of the patent or design in settlement of any alleged or actual infringement.

17. INVOICES AND PAYMENTS

17.1 Invoices

- (A) An invoice is a written request for payment under this P.O. for Supplies or Services provided by the Seller. In order to be valid, an invoice must include (as applicable):
 - (1) invoice date and Seller's invoice number;
 - (2) name of Seller;
 - (3) the P.O. number, line item number, description of Supplies and Services, quantity, unit of measure, unit price, and extended total;
 - (4) shipment number, date of shipment and shipping point;
 - (5) name and address to which payment is to be sent in accordance with the terms specified in this P.O.;
 - (6) name, title, phone number and address of person to be notified in the event of a defective invoice;
 - (7) any other information or documentation required by other provisions of the P.O.;
 - (8) any prompt payment discounts available; and
 - (9) the invoice amounts for individual Supplies shall be shown separately on any invoice.
- (B) Invoices shall be prepared and submitted electronically unless otherwise specified, and sent to the Invoice Audit Section of Buyer. Invoices may not be submitted by facsimile transmission.
- (C) Buyer shall promptly notify the Seller of any discrepancy or alleged discrepancy in the Seller's invoice, with full details thereof and in any event within five (5) working days of receipt of such invoice.

17.2 Payments

- (A) Buyer shall pay the Seller, upon the submission of valid invoices, the prices stipulated in this P.O. as may be adjusted.
- (B) Seller's valid invoices are payable by Buyer no later than thirty (30) days after receipt thereof. The invoice will be deemed to have been received five (5) days after the invoice date.
- (C) Payment shall be considered to have been made on the date which appears on the payment check.
- (D) Payment shall not be considered as an indication of the acceptability of the Supplies or Services for which payment is made.

18. LIABILITY INSURANCE FOR ACCIDENTS OR DAMAGE

18.1 When Seller is performing any of its obligations on Buyer's premises or on a vessel in which the Seller's Supplies and Services are being used, Seller shall purchase and maintain such insurance as will protect Buyer from claims which may arise out of or as a result from Seller's operations under this P.O., whether such operations be by Seller or by any of Seller's subcontractors or by anyone directly or indirectly employed by either of them, or by anyone for whose acts they may be liable. Said coverage shall include, but not be limited to any insurance required by State, Federal, and local laws, and contractual coverage and completed operations coverage and: (i) Statutory Workers' Compensation as may be required by the locality where the work is being performed, including Longshoremen's and Harbor Worker's Compensation Act; (ii) Employers' Liability - \$1,000,000 per occurrence; (iii) Commercial General Liability - the minimum limits shall be \$1,000,000/\$2,000,000 Personal & Bodily Injury and Property Damage combined single limit per occurrence; and (iv) Automobile Liability - the minimum limits shall be \$1,000,000/\$2,000,000 Bodily Injury and Property Damage combined single limit per occurrence.

18.2 As respects policies under (i) above, the insurance carrier must agree in writing to waive its right to subrogation. Likewise, as respects policies under (iii) and (iv) above, Buyer must be listed as an additional insured. A certificate of insurance evidencing such coverage and conditions must be provided to Buyer prior to the commencement of work and upon renewal of any policies during the course of work. All policies shall provide 30 days advanced written notice of any coverage suspension or material changes, must be written by carriers with A.M. Bests rating of "A-, VII", and licensed to do business in the state where services are to be performed, and shall be primary as respects any coverage which Buyer may carry.

19. LIMITATION OF LIABILITY

19.1 IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER (i) FOR ANY PUNITIVE, EXEMPLARY OR OTHER SPECIAL DAMAGES ARISING UNDER OR RELATING TO THIS AGREEMENT OR THE SUBJECT MATTER HEREOF (ii) FOR ANY INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING WITHOUT LIMITATION LOSS OF USE, INCOME, PROFITS OR ANTICIPATED PROFITS, BUSINESS OR BUSINESS OPPORTUNITY, SAVINGS, DATA, OR BUSINESS REPUTATION) ARISING UNDER OR RELATING TO THIS AGREEMENT OR THE SUBJECT MATTER HEREOF, REGARDLESS OF WHETHER SUCH DAMAGES ARE BASED IN CONTRACT, BREACH OF WARRANTY, TORT, NEGLIGENCE OR ANY OTHER THEORY, AND REGARDLESS OF WHETHER SUCH PARTY HAS BEEN ADVISED OF, KNEW OF, OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES.

(A) THE EXCLUSIONS CONTAINED IN PARAGRAPHS 19.1(i) and (ii) OF THIS SECTION SHALL NOT APPLY TO SELLER'S INDEMNIFICATION OBLIGATIONS SET FORTH IN THIS AGREEMENT AND THE EXCLUSION IN PARAGRAPH 19.1 (ii) SHALL NOT APPLY TO ANY BREACH OF THE CONFIDENTIALITY PROVISIONS OF THIS AGREEMENT.

(B) THIS SECTION SHALL SURVIVE ANY TERMINATION OR EXPIRATION OF THIS AGREEMENT FOR ANY REASON.

NOTWITHSTANDING THE ABOVE, IN THE EVENT OF BREACH BY SELLER, BUYER SHALL BE ENTITLED TO RECOVER DAMAGES, INCLUDING BUT NOT LIMITED TO THOSE THAT ARE DEFINED AS THE COST OF REPROCUREMENT OF SUBSTITUTE GOODS AND/OR SERVICES REQUIRED BY BUYER UNDER THIS CONTRACT.

20. LOGISTIC SUPPORT REQUIREMENTS

20.1 This Clause applies whenever the Specifications, by reference to a military specification or otherwise, specify repair parts or stock components (hereinafter called "repair parts") for a component or item of equipment. The acquisition of such parts or components shall be subject to the terms and conditions of this P.O.

20.2 With respect to components or equipment manufactured other than in the United States or Canada, the Seller agrees that, in addition to any other data required by this P.O., it will furnish under this P.O. sufficient data so that the repair parts can be reproduced in the United States or Canada unless the suppliers of the components or equipment shall have made arrangements satisfactory to Buyer and approved by the Government for the manufacturing of repair parts in the United States or Canada. For the purpose of this Clause, "sufficient data" shall mean detail drawings and other technical information sufficiently extensive in detail to show design, construction, dimensions and operation or function, manufacturing methods or processes, treatment or chemical composition of materials, plant layout, and tooling. All data shall be in the English language and according to the United States system of weights and measures, and drawings for components, assemblies, subassemblies, and parts protected by U.S. patents shall contain a prominent notation to that effect fully identifying the patent or patents involved, and bearing the number of this P.O.

20.3 With respect to all data required to be furnished under this Clause, there shall be granted to the Government, its officers, agents, and employees acting within the scope of their official duties, a royalty-free, nonexclusive and irrevocable license throughout the world for Government purposes to publish, translate, reproduce, deliver, perform, dispose of, and to authorize others to do so, all the aforesaid data. Nothing contained in this Clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or the right otherwise granted to the Government under any patent.

21. MARKING, PACKING, AND PACKAGING

21.1 All packing and packaging shall be in accordance with the Specifications. Unless otherwise specified, material must be packaged to meet or exceed American Society for Testing and Materials (ASTM) Designation D3951-98. When shipping on pallets, material or equipment must be adequately secured to meet ASTM Designation D3951-98, Part 5.1.5, Unitization.

21.2 All shipments shall be marked with the following information:

- (A) Buyer contract number, Buyer P.O. number, or the Delivery Order number
- (B) Buyer line item number
- (C) Buyer catalog number OR NSN (if applicable)
- (D) Quantity shipped
- (E) MSDS # (if applicable)
- (F) QPL Source (if applicable)
- (G) Shelf Life (if applicable)

Markings shall be on the face of each container (i.e., crates, boxes, cartons, etc.) or securely tagged to soft-sided containers.

21.3 All packing lists shall minimally contain the information in paragraph 21.2. The packing list shall be secured to the external surface of each container, or readily accessible upon entry to each container.

The company's commercial shipping document/packing list for P.O. items shall include proof that Government Source Inspection has been performed (if required) and the following PQA statement beneath Seller's statement:

"Required PQA of listed items has been performed. (Signature of Auth. Seller Rep.) , ___(date)
(typed name)_____."

21.4 Tags and labels, when required, shall be Seller's tags or labels conforming to the requirements of the Specification. Seller's forms which indicate serviceable condition shall not be any shade of green or red. Labels are authorized to be used on metal containers. Supplies requiring special certification shall be annotated on inner and outer container tags or labels indicating special certification compliance. Where the size of the shipping container allows, four address labels must be attached to the containers at the following location: (i) one (1) each on top of container, (ii) one (1) each on each side of the container, and (iii) one (1) each on front of container.

Within each container, each Buyer catalog number OR NSN (if applicable) shall be segregated (i.e., bagged, boxed, layered or partitioned) and readily identifiable with tags/labels reflecting information stated in paragraph 21.2 above. If multiple loose Supplies are required to fulfill one Buyer catalog number, mark one item per paragraph 21.2 above and mark all remaining Supplies as part of the Buyer catalog number.

Multiple orders shall not be shipped within a single container.

Multiple shipments to one (1) specified Delivery location on any given day shall be consolidated under one (1) Bill of Lading. Where different Delivery locations are specified by the Buyer, each container shall include only material for one Delivery location. Multiple Delivery locations require separate Bills of Lading.

21.5 MSDS Requirements

(A) General

- (1) The Seller shall provide information for each item of Hazardous Material delivered pursuant to this contract in the form of a current, updated Material Safety Data Sheet (MSDS) in accordance with 29 CFR 1910.1200 Hazard Communication Standard, to the Buyer prior to contract award and in advance of any shipment. The MSDS Sheet shall include a statement (if applicable) that the product contains a toxic chemical or chemicals, by name, subject to the reporting requirements of EPCRA Section 313 (40CFR372).
- (2) In addition, each Material Safety Data Sheet provided by the Seller must contain specific disposal procedures for hazardous waste pursuant to and in accordance with all Resource Conservation Recovery Act (RCRA) Laws and Environmental Protection Agency/Department of Environmental Protection (EPA/DEP) Regulations.
- (3) Buyer will then provide Seller with a MSDS number. The MSDS Number must appear on all packing slips, containers and packing containers and must be written as:

MSDS Number #####

- (4) The use of Buyer provided MSDS Labels (Fluorescent Orange) is mandatory. Labels shall be applied directly to the product.
- (B) Changes: For any change in the product the Seller shall submit a revised/updated MSDS Sheet to Buyer in advance of any shipment.
- (C) Reporting Requirements for 313 Chemicals

- (1) On an annual basis (not later than 30 September of each calendar year) the Seller must provide either an updated MSDS Sheet with any changes or a Certification Statement that the current MSDS Sheet is accurate and complete.
- (2) At a minimum the following must be included: Name of each chemical substance, the Chemical Abstracts Service Registry Number (CAS#); and the percentage of weight of each hazardous substance or chemical in the mixture or trade name product.
- (3) Notification is also required within 30 days of the following events if the Supplier; (1) changes a mixture or trade name product by adding, removing, or changing the percentage by weight of a listed toxic chemical; or (2) discovers that previous notification did not properly identify the toxic chemicals in the mixture or correctly indicate the percentage by weight.
- (4) The reports shall be forwarded to:

Attn: Safety Department, Mail Stop 2240
Bath Iron Works
700 Washington Street
Bath, ME 04530

or

Facsimile 207-442-3356
Attn: Safety Department

- (5) The shipment of all material or equipment to Buyer or another Buyer designated destination must comply with the Hazardous Materials Transportation Act (Title CFR 49 Parts 170-178).

22. NOTICES

Whenever any notice is required or authorized to be given hereunder, such notice shall be sent by registered mail, confirmed receipt of a facsimile transmission or telegraph to the respective individuals identified in the P.O.

23. NOTIFICATION OF CHANGES

23.1 The purpose of this Clause is to provide Buyer with the prompt reporting of any conduct which the Seller considers would constitute a change to this P.O. and/or Buyer's Prime Contract. The parties acknowledge potential changes are to be identified and resolved as they arise. Therefore, except for written change orders issued by Buyer, Seller shall notify Buyer of any conduct which Seller considers constitutes or requires a change to this P.O. and/or Buyer's Prime Contract. Such notice shall be provided promptly, and in any event within twenty (20) calendar days from the date the Seller identifies any such conduct. As used in this Clause, the term "conduct" includes both actions and failures to act, and the furnishing of, or the failure to furnish, any Supply under any provision of this P.O. The notice shall be written and shall state, on the basis of the most accurate information available to the Seller:

- (A) the date, nature and circumstances of the conduct regarded as a change;
- (B) the name, function and activity of the individuals directly involved in or knowledgeable about such conduct;
- (C) the identification of any documents and the substance of any oral communication involved in such conduct;
- (D) the particular elements of contract performance for which the Seller might seek an equitable adjustment under this Clause, including:
 - (1) what Supplies and Services have been or might be affected by the potential change;
 - (2) to the extent practicable, labor or materials or both which have been or might be added, deleted, or wasted by the potential change;
 - (3) to the extent practicable, the Seller's preliminary order of magnitude estimate of cost and schedule effect of the potential change; and
 - (4) what and in what manner are the particular technical requirements or contract requirements regarded as changed.

23.2 Except as provided in Paragraph 23.5 below, following submission of notice the Seller shall take no action to implement a potential change until advised by Buyer in writing as provided in Paragraph 23.3 below, unless the potential change was previously directed by Buyer, in which case the Seller shall conform therewith. Nothing in this Paragraph shall excuse the Seller from proceeding with contract work in accordance with directions issued by Buyer.

23.3 Buyer shall promptly, and in any event within twenty-one (21) calendar days after receipt of notice, respond thereto in writing. In such response, Buyer shall either:

- (A) confirm that the conduct of which the Seller gave notice would constitute a change, and when necessary, direct the mode of further performance, or;
- (B) countermand any conduct regarded by Seller as a change, or;

- (C) deny that the conduct of which Seller gave notice would constitute a change and, when necessary, direct the mode of further performance, or;
- (D) in the event Seller's notice information is inadequate to make a decision under (A), (B), and (C) above, advise Seller what additional information is required.

Failure of Buyer to respond within the time required above shall be deemed a countermand under Paragraph 23.3(B).

- 23.4 Equitable adjustments for changes confirmed by Buyer shall be made in accordance with the Clause entitled "Changes" or any other provision of this P.O. which provides for an equitable adjustment..
- 23.5 Paragraph 23.2 above provides that Seller is to take no action to implement a potential change pending Buyer's response to Seller's notice of the potential change except where specifically directed by Buyer. In special situations, however, where:
 - (A) the circumstances do not allow sufficient time to notify Buyer of the facts prior to the need to proceed with the work, and;
 - (B) the work must proceed to avoid hazards to personnel or property or to avoid additional cost to Buyer, Seller may proceed with work in accordance with the potential change. In such special situations, Seller shall advise Buyer in writing within five (5) days of the conduct giving rise to the potential change that Seller has proceeded and shall describe the nature of the special situation which required proceeding prior to notification. Within twenty (20) days of the conduct giving rise to the potential change, the Seller shall provide notice as required in Paragraph 23.1 above. Buyer shall respond as set forth in Paragraph 23.3 above. If Buyer determines that the conduct constitutes a change and countermands it, Seller shall be entitled to an equitable adjustment for performance in accordance with that change prior to the countermand including performance resulting from the countermand.
- 23.6 When Seller identifies any conduct which may result in delay to Delivery of the Supplies and Services, Seller shall promptly so inform Buyer thereof prior to providing the notice required by Paragraph 23.1 above.

24. ORDER OF PRECEDENCE, INTERPRETATION AND EXCLUSIVE AGREEMENT, AND SEVERABILITY

- 24.1 In the event of any inconsistency between provisions of this P.O., the inconsistency shall be resolved by giving precedence in the following order:
 - (A) any special provisions of this P.O.;
 - (B) standard terms and conditions of this P.O.;
 - (C) Attachments (excluding the Specifications/Buyer Material Ordering Catalog and Statement of Work); and,
 - (D) Buyer Material Ordering Catalog, Specifications, and/or Statement of Work
- 24.2 This P.O. contains and constitutes the entire understanding and agreement between Buyer and the Seller, and supersedes all previous understandings and agreements relative to the subject matter contained herein.
- 24.3 If any provision of this P.O. is declared or found to be illegal, unenforceable or void, then the parties shall be relieved of all obligations under that provision. The remainder of this P.O. shall be held in full force and effect.

25. PERFORMANCE

The parties acknowledge that Seller has special skills, knowledge and ability in the work to be performed under this P.O., and that Buyer is relying on Seller's skills, knowledge and ability in all matters related to Seller's Delivery of the Supplies and Services ordered under this P.O. Seller will use such skills, specific knowledge, ability, best efforts, ingenuity, and due diligence in performing the work and Services in accordance with the requirements of this P.O.

26. UNUSED

27. PROBLEM IDENTIFICATION REPORTS

Problem Identification Reports (PIR) shall be used by Seller to alert Buyer to actual or potential problems, and to establish an early dialogue between Seller and Buyer with regard thereto. As used in this Clause, a problem is a fact or circumstance of which Seller is aware that does, will, or may (1) have an impact on the Delivery Schedule, completion or performance for the cost of this P.O. (increase or decrease), or (2) require a modification of this P.O. Seller shall provide Buyer with a written report of each problem within ten (10) days after Seller identifies such problem. Each PIR shall be dated, reference this P.O., and describe the nature of the problem; the date the problem arose; and, anticipated effects of the problem including, but not limited to, Delivery, and cost of performance, and Seller's recommended resolution of the problem.

Follow up status reports of each contract problem, identified by the original PIR number, shall be furnished monthly, or more frequently as required by the Buyer. A final follow-up report shall be furnished immediately following resolution of each problem.

28. OFFSETS

Should all or part of the item(s) supplied under this P.O. be provided by sources outside the United States or its territories, Seller must inform Buyer of the country of origin and percentage of foreign content. Buyer reserves exclusive right to apply the equivalent value of foreign content in the item(s) provided by the Seller to the Offset Program of the Buyer's choice. Buyer may, at Buyer's discretion, provide written notice waiving its claim to offset credits accruing from this P.O., thereby allowing Seller use and discretionary application of such credits. Seller agrees to assist Buyer in securing Offset Credits from respective foreign government authorities in an amount equal to the value of foreign content in the item(s) provided.

29. QUALITY ASSURANCE REQUIREMENTS

- 29.1 Seller shall establish and maintain a Quality Assurance Program which is subject to audit and approval of Buyer. All Supplies provided under this P.O. shall be inspected by Seller as part of such Program prior to submission for Government inspection and/or prior to shipment to verify conformance with all requirements and Specifications. Seller shall comply with quality requirements when such requirements are invoked by the Specification applicable to the Supplies being purchased. If a Material Ordering Catalog page is invoked, Seller shall examine the page for quality program requirements

- 29.2 Seller shall establish and maintain, subject to Buyer's right to audit, a system of material identification that ensures the use of specified materials and components. Items shipped shall be in such a manner as to permit verification of the use of such specified materials and components upon receipt by Buyer. Raw materials used by Seller in the fabrication or processing of the Supplies shall conform to the physical, chemical and other technical requirements of the applicable material Specification and Seller shall employ laboratory testing as necessary to confirm the identity of raw materials.
- 29.3 Government Procurement Quality Assurance (PQA) or Government Source Inspection. The Government reserves the right to inspect all Supplies. If Government Source Inspection is invoked by the P.O., Government inspection is required prior to shipment of the Supplies by Seller. Upon receipt of this notification, Seller must promptly notify and furnish a copy of the P.O. to the Government Representative who normally services Seller's plant. In the event the representative or office cannot be located, Buyer should be notified immediately. 29.4 When specified by the P.O., Seller shall furnish verifiable test data, including the names of witnessing inspectors and present any other verifiable quality data required by the P.O. or at any time up to and after final payment under the P.O.
- 29.5 Documentation and Other Verifiable Data. Quantitative, semi-quantitative or functional test results must be forwarded to Buyer when specified by the P.O. and/or invoked by Military or Purchase Specifications. Documentation must reflect actual test results and not merely that the minimum requirements of the P.O. or Military Specification have been met. Seller must retain a copy of such documentation for a minimum period of three (3) years after final acceptance of the Supplies.
- 29.6 Non-Conforming Products. Supplies which are received by Buyer and are found to be nonconforming by virtue of the fact that they are not in accordance with this P.O. or that the documentation or verifiable data are missing, incomplete or incorrect, may be returned to Seller at Seller's expense. Prior to returning the non-conforming Supplies, Buyer will notify Seller of the nature of the discrepancy such that, if possible, the discrepancy may be rectified at Seller's expense without returning the material to Seller.

30. RISK OF LOSS

- 30.1 Risk of loss of or damage to Supplies shall remain with Seller until, and shall pass to the Buyer upon, Delivery of the Supplies to the F.O.B. destination point specified in the P.O. and the Buyer's initial acceptance of the Supplies, regardless of whether that acceptance is conditional or final.
- 30.2 The Seller shall not be liable for loss of or damage to Supplies caused by the negligence of officers, agents, or employees of the Buyer acting within the scope of their employment.
- 30.3 The Seller shall bear the risk of loss or damage to any property of the Buyer in Seller's possession or care, and shall maintain adequate insurance so as to cover any such loss or damage, and shall name the Buyer as the additional insured and beneficiary of any payments therefrom with waiver of any right of subrogation.

31. SAFETY AND SECURITY

- 31.1 When the Seller is performing any of its obligations on Buyer's premises or on a vessel in Buyer's care or custody, the Seller and its subcontractors shall comply with all Buyer plant rules and regulations and Buyer security policies and procedures including, but not limited to, the use of personal protective equipment as required. At a minimum, the Seller and its subcontractors shall have in their possession a suitable hardhat, safety glasses with side shields, hearing protectors, and ANSI Z41 approved steel-toed safety shoes. A copy of Buyer's Environmental, Health and Safety Regulations Handbook outlining said policies and procedures can be located at GDBIW.com; select Purchasing, then Forms/Appendices, then Safety Regulations.
- 31.2 If Seller's personnel are to have access to classified material or classified vessel compartments, such personnel will be required to obtain all necessary security clearances prior to their access to such material or compartments.
- 31.3 Seller shall utilize only U.S. citizens in execution of its obligations on Buyer property unless specific prior approval from Buyer is obtained.
- 31.4 By accepting this P.O., the Seller acknowledges that the following is applicable to any work performed on this P.O.:
- 31.4.1 Only trained authorized personnel will operate or service equipment, and then only in accordance with manufacturer's recommendations,
- 31.4.2 Seller is responsible for properly managing hazardous waste generated by Seller in accordance with applicable Federal, State and local regulations. Disposal of hazardous waste shall be coordinated and approved through the Buyer's Environmental Operations Department, and
- 31.4.3 Seller has reviewed the Environmental, Health and Safety Regulations Handbook referenced above, and has duly disseminated it to any applicable personnel performing work on Buyer's property or vessels.

32. SHIPPING AND DELIVERY

- 32.1 Delivery of each item or group of items ordered shall be made no later than the last day of the Delivery time(s) set forth in the P.O. No deliveries shall be made earlier than the designated Delivery time(s) unless authorized in writing by the Buyer's Purchasing Representative.
- 32.2 Items shall be delivered to the locations indicated on the P.O., F.O.B. Destination, unless otherwise specified.

32.3 Freight Collect

- (A) If the P.O. indicates that items are to be shipped "Freight Collect", Buyer will pay all freight charges and no amount covering these charges shall be included in the selling price for an item.
- (B) At least five days prior to the time an item(s) is ready for shipment under this P.O., the Seller shall notify Buyer's Traffic Manager as to when the item(s) will be ready for shipment. The Seller will be given instructions concerning the shipment.
- (C) For shipments of 70 pounds or less that meet United Parcel Service ("UPS") dimensional requirements, ship the item(s) UPS COLLECT. If a single shipment of multiple items together exceed the weight limitations or if an item exceeds the dimensional requirements, follow the procedures in Subparagraph (B).

33. STOP WORK

The provisions of the Clause contained in STOP-WORK ORDER FAR 52.242-15 are hereby incorporated by reference with the following change: The words "Contracting Officer" and "Government" shall mean Buyer; the word "Contractor" shall mean Seller; the words "ninety (90) days" are hereby changed to "one hundred (100) days"; and the words "thirty (30) days" are hereby changed to "twenty (20) days" wherever they appear; and the reference to the "Termination for Convenience" shall be deemed to refer to the Clause entitled herein "Termination for Convenience". In subdivision (2) of Paragraph (B), the expression "asserts a claim for the adjustment within twenty (20) days after the end of the period of work stoppage" shall be understood to mean "shall, within twenty (20) days after the end of the work stoppage, state its intention to make a claim for adjustment".

34. STORAGE

- 34.1 Buyer shall not be responsible for any storage charges incurred by the Seller for Supplies completed prior to the Delivery date. The Buyer may require the Seller to store Supplies furnished under this P.O. beyond the delivery date specified. Any additional storage and local transportation costs incurred by the Seller to store Supplies at Buyer's direction shall be the subject of an equitable adjustment to the P.O. price.
- 34.2 Supplies stored under this Clause shall be placed in a secure location, separate from the Seller's other inventory, identified as Buyer's property and adequately protected. The Seller shall provide insurance in an amount to cover the full value of the Supplies in the event of a loss, with the Buyer designated to receive all proceeds in case of a loss. A certificate issued by the insurer shall be provided to Buyer as evidence of coverage.
- 34.3 Upon receipt by the Buyer of Seller-furnished information (e.g., SDRLs and other deliverables), Government source inspection reports (if any), and evidence of insurance, Seller may invoice Buyer for payment in accordance with the terms of this P.O.
- 34.4 At the direction of the Purchasing Representative, Seller shall remove the Supplies from storage and effect Delivery pursuant to the Delivery Dates of this P.O. and, upon receipt by Buyer at the F.O.B. point, the Supplies shall be accepted pursuant to the "Conditional Acceptance" Clause and the "Final Acceptance" Clause of this P.O.

35 TERMINATION FOR CONVENIENCE

The provisions of the Clause contained in TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (FIXED PRICE) FAR 52.249-2 are hereby incorporated by reference with the following changes: The words "Contracting Officer" shall mean Buyer; the word "Contractor" shall mean Seller; the word "Government" shall mean Buyer except in Paragraphs (b)(4), (b)(6), (b)(8)(c) and (d); and the words "1 year" are changed to "eleven (11) months" in Paragraph (e). Buyer may terminate performance of work under this P.O. in whole or in part, from time to time, if a termination is reasonably required to implement any Government termination, change or direction under the Prime Contract. The Buyer shall terminate by delivering to Seller the extent of termination and the effective date.

36. TITLE

Unless otherwise stated in the Clause entitled "Progress Payments," title to the Supplies covered by the P.O. shall pass from the Seller to the Buyer upon the Buyer's initial acceptance of the Supplies, regardless of whether the acceptance is conditional or final, at the F.O.B. Destination point.

37. DOCUMENTATION OF REQUEST FOR EQUITABLE ADJUSTMENT

- (a) For the purposes of this requirement, the term "change" includes not only a change that is made pursuant to a written order designated as a "change order" but also:
- (1) An engineering change proposed by the Government or the Contractor pursuant to the "Other Change Proposals" or other requirements of this contract and
 - (2) Any act or omission to act on the part of the Government in respect of which a request is made for equitable adjustment under the "CHANGES" clause or any other article or requirement of this contract.
- (b) Whenever the Contractor requests or proposes an equitable adjustment of \$25,000.00 or more per ship with respect to a change made pursuant to a written order designated as a "change order" or with respect to a proposed engineering change and whenever the Contractor requests an equitable adjustment in any amount with respect to any other act or omission to act on the part of the Coast Guard, the proposal supporting such request shall contain the following information for each individual item or element of the request:
- (1) A description of the work required by the contract before the change, which has been deleted by the change;
 - (2) A description of the work deleted by the change which already has been completed;
 - (3) Description of disruption attributable solely to the change; which description shall include a description of any measures taken to lessen the disruptive effect of the change;
 - (4) Delay in delivery attributable solely to the change;
 - (5) Other work or increased costs attributable to the change;
 - (6) Supplementing the foregoing, a narrative statement of the "causal" relationship between the alleged Coast Guard act or omission and the claimed consequences therefore, cross-referenced to the detailed information provided as required above;
 - (7) It is recognized that individual claims for equitable adjustment may not include all of the factors listed in subparagraphs (1) through (6) above, or that the Contractor may not be reasonably able to furnish all of the factors listed in subparagraphs (1) through (6) above. Accordingly, the Contractor is only required to set forth in his proposal, information with respect to those factors which are relevant in the individual claims for equitable adjustment, or which he is reasonably able to furnish.
- (c) In addition to any information required under paragraph b., each proposal submitted in support of a claim for equitable adjustment, under any clause of this contract, of \$500,000 or more shall contain a duly executed SF 1411 with respect to each individual claim item. The information furnished shall be in sufficient detail to permit the Contracting Officer to cross-reference the claimed increased costs, or delay in delivery, or both, as appropriate, as set forth in the SF 1411, with the information submitted pursuant to subparagraphs (b)(1) through (b)(6) hereof.

38. TRIALS

- 38.1 Following installation by the Buyer or performance by the Seller, Supplies and Services will be subjected to trials as provided in the Procurement Specification; however, such trials will not exceed the Specification requirements of the purchase order unless specifically approved by a duly authorized representative of the Seller. During installation and trials, any defects in such Supplies or Services for which the Seller is responsible shall be corrected in accordance with the Conditional Acceptance, Final Acceptance, and Warranty provisions of this purchase order as directed by the Buyer.

39. WAIVER

No waiver by either Buyer or the Seller, whether written or oral, expressed or implied, of any rights under or arising from this P.O. shall be binding on any subsequent occasion and no concession by either Buyer or the Seller shall be treated as a variation of this P.O. unless specifically agreed in writing.

40. WARRANTY

- 40.1 The Seller warrants that all Supplies and Services furnished under this P.O. will be in accordance with all contract requirements and free from defects or inferior materials, equipment, and workmanship for twenty four (24) months after Final Acceptance of the Supplies or Services on the Lead Ship Hull, and twelve (12) months after Final Acceptance of the Supplies or Services on Follow Ship Hulls.
- 40.2 If, within the warranty period, the Buyer finds that the warranted Supplies or Services need to be repaired or changed because of the use of materials, equipment or workmanship which, in its opinion, are inferior, defective or not in accordance with the terms of the P.O., insofar as it is practicable the Buyer shall so inform the Seller in writing and the Seller, if so directed, shall promptly and without additional expense to the Buyer:
- (A) place in satisfactory condition the warranted work;
 - (B) satisfactorily correct direct damage to equipment, the site, the compartment or contents thereof, which is the result of such unsatisfactory warranted work;
 - (C) satisfactorily correct the work, materials and equipment that are disturbed in fulfilling the warranty, including the disturbed work, materials and equipment that may have been warranted under another contract; and
 - (D) furnish such materials or parts and installation instructions as may be required to successfully accomplish the required correction or replacement. The Seller shall also prepare and furnish to the Buyer data and reports applicable to any correction or replacement required under this Clause.
- The decision as to whether the Seller or Buyer will perform the warranty work shall be at the discretion of Buyer provided, however, that insofar as is practicable, the Seller shall be afforded a reasonable opportunity to inspect and correct the questioned materials, equipment or workmanship prior to the performance of the warranty work by the Buyer. When the Buyer directs the Seller to perform the warranty work, if the Seller fails to proceed promptly in accordance with the warranty, Buyer may have such work performed at the expense of the Seller. In matters of extreme urgency, where immediate and definite response and correction of defects is required to maintain safety, prevent imminent further deterioration or damage, or meet urgent operational requirements of the ship, the USCG may take action to correct the deficiency on its own without prior notification to the Buyer. In such cases, the USCG will notify Buyer of action taken within three (3) business days. Buyer will then notify Seller within three (3) business days upon receipt of communication from the USCG. Any equitable adjustment at the Prime Contract level due to said action shall be passed through to Seller as deemed appropriate by Buyer.
- 40.3 Any Supplies, Services or parts thereof corrected, repaired, replaced or otherwise placed in a satisfactory condition shall also be subject to the conditions of this Clause to the same extent as the Supplies or Services initially accepted. The warranties for such Supplies, Services or parts thereof shall be for twelve (12) months to run from the date of Buyer's final acceptance of such corrected, repaired or replaced Supplies or Services or until expiration of the original warranty period, whichever is longer.
- 40.4 The Buyer and/or the Government shall have the right to purchase parts, for installation either from the Seller, or directly from the Actual Parts Manufacturer (APM) without voiding this warranty. Any special warranty that may be required under this P.O. shall be subject to the stipulations set forth above, insofar as they do not conflict with the provisions of such special warranties.
- 40.5 Seller shall obtain each transferable guaranty or warranty of equipment, material or installation thereof which is furnished by any manufacturer, supplier or installer in the ordinary course of the manufacturer's, supplier's or installer's business or trade. In addition, the Seller shall obtain and furnish to the Buyer all information which is required in order to make any such guaranty or warranty legally binding and effective, and shall submit both the information and the guaranty or warranty to the Buyer to meet any time limit requirements specified in the guaranty or warranty, or if no time limit is specified in the guaranty or warranty, prior to completion and acceptance of all work under the P.O.
- 40.6 Any limitations to Seller's warranty obligations expressed in this Clause shall not apply when the defects or deficiencies in such Supplies or Services or the Buyer's final acceptance of such Supplies resulted from the willful misconduct or lack of good faith on the part of the Seller's Quality Assurance (QA) representatives, or its officers, directors, managers or other equivalent representatives who had supervision or direction of production and/or inspection of such Supplies or Services.
- 40.7 No commercial warranty is given hereunder. All implied warranties of "merchantability" and "fitness for a particular purpose" are excluded from any obligation contained in this P.O.
- 40.8 Disputes arising under this Clause shall be resolved in accordance with the Clause entitled "Disputes."

GOVERNMENT "FLOW-DOWN" CLAUSES

Pursuant to Buyer's Prime Contract with the U.S. Government/Coast Guard and Buyer's acquisition policies, the following clauses are included in this P.O. "FAR" refers to the clauses in Part 52 of the Federal Acquisition Regulation (FAR), Chapter 1, Title 48 of the Code of Federal Regulations (CFR). "HSAR" refers to Homeland Security Acquisition Regulation. The FAR and HSAR clauses incorporated herein are those in effect as of the effective date of this P.O., unless a date notation appears in the clause title. When the date is so indicated, the clause in effect on that date is incorporated into the P.O.

In the event additional or revised clauses are invoked in Buyer's Prime Contract upon Award, such clauses shall be flowed down to and accepted by Seller..

CLAUSES INCORPORATED BY REFERENCE (FAR 52.252-2) (FEB 1998)

This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically at this address:

<http://farsite.hill.af.mil/>

FEDERAL ACQUISITION REGULATION (48 CFR CHAPTER 1) CLAUSES

<u>NUMBER</u>	<u>TITLE</u>	<u>DATE</u>
52.202-1	DEFINITIONS	JAN 2012
52.203-3	GRATUITIES	APR 1984
52.203-5	CONVENANT AGAINST CONTINGENT FEES	APR 1984
52.203-6	RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT	SEPT 2006
52.203-7	ANTI-KICKBACK PROCEDURES	OCT 2010
52.203-8	CANCELLATION, RECISSION, AND RECOVERY OF FUNDS FOR ILLEGAL OR IMPROPER ACTIVITY	JAN 1997
52.203-10	PRICE OR FEE ADJUSTMENT FOR ILLEGAL OR IMPROPER ACTIVITY	JAN 1997

52.203-12	LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS	OCT 2010
52.203-13	CONTRACTOR CODE OF BUSINESS ETHICS AND CONDUCT	APR 2010
52.204-2	SECURITY REQUIREMENTS	AUG 1996
52.204-4	PRINTED OR COPIED DOUBLE-SIDED ON RECYCLED PAPER	MAY 2011
52.204-7	SYSTEM FOR AWARD MANAGEMENT	JUL 2013
52.204-9	PERSONAL IDENTITY VERIFICATION OF CONTRACTOR PERSONNEL	JAN 2011
52.204-10	REPORTING EXECUTIVE COMPENSATION AND FIRST-TIER SUBCONTRACTOR AWARDS	JUL 2013
52.209-6	PROTECTING THE GOVERNMENT'S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT	AUG 2013
52.209-9	UPDATES OF PUBLICLY AVAILABLE INFORMATION REGARDING RESPONSIBILITY MATTERS	JUL 2013
52.210-1	MARKET RESEARCH	APR 2011
52.211-5	MATERIAL REQUIREMENTS	AUG 2000
52.215-2	AUDIT AND RECORDS—NEGOTIATION	OCT 2010
52.215-8	ORDER OF PRECEDENCE—UNIFORM CONTRACT FORMAT	OCT 1997
52.215-11	PRICE REDUCTION FOR DEFECTIVE CERTIFIED COST OR PRICING DATA—MODIFICATIONS	AUG 2011
52.215-13	SUBCONTRACTOR CERTIFIED COST OR PRICING DATA—MODIFICATIONS	OCT 2010
52.215-14	INTEGRITY OF UNIT PRICES	OCT 2010
52.215-15	PENSION ADJUSTMENTS AND ASSET REVERSIONS	OCT 2010
52.215-18	REVERSION OR ADJUSTMENT OF PLANS FOR POSTRETIREMENT BENEFITS (PRB) OTHER THAN PENSIONS	JUL 2005
52.215-19	NOTIFICATIONS OF OWNERSHIP CHANGES	OCT 1997
52.215-21	REQUIREMENTS FOR CERTIFIED COST OR PRICING DATA AND DATA OTHER THAN CERTIFIED COST OR PRICING DATA—MODIFICATIONS	OCT 2010
	ALT III	OCT 1997
	Fill-in: Microsoft Office	
52.216-7	ALLOWABLE COST AND PAYMENT	JUN 2013
52.216-8	FIXED FEE	JUN 2011
52.217-7	OPTION FOR INCREASED QUANTITY--SEPARATELY PRICED LINE ITEM	MAR 1989
	Fill-in: the time periods established in Section B.2	
52.219-4	NOTICE OF PRICE EVALUATION PREFERENCE FOR HUBZONE SMALL BUSINESS CONCERNS	JAN 2011
52.219-8	UTILIZATION OF SMALL BUSINESS CONCERNS	JUL 2013J
52.219-9	SMALL BUSINESS SUBCONTRACTING PLAN	JUL 2013
	ALT II	OCT 2001
52.219-16	LIQUIDATED DAMAGES—SUBCONTRACTING PLAN	JAN 1999
52.219-25	SMALL DISADVANTAGED BUSINESS PARTICIPATION PROGRAM—DISADVANTAGED STATUS AND REPORTING	JUL 2013
52.219-28	POST-AWARD SMALL BUSINESS PROGRAM REREPRESENTATION	JUL 2013
52.222-4	CONTRACT WORK HOURS AND SAFETY STANDARDS ACT—OVERTIME COMPENSATION	JUL 2005
52.222-19	CHILD LABOR—COOPERATION WITH AUTHORITIES AND REMEDIES	NOV 2013
52.222-20	WALSH-HEALEY PUBLIC CONTRACTS ACT	OCT 2010
52.222-21	PROHIBITION OF SEGREGATED FACILITIES	FEB 1999
52.222-26	EQUAL OPPORTUNITY	MAR 2007
52.222-35	EQUAL OPPORTUNITY FOR VETERANS	SEP 2010
52.222-36	AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES	OCT 2010
52.222-37	EMPLOYMENT REPORTS ON VETERANS	SEP 2010
52.222-40	NOTIFICATION OF EMPLOYEE RIGHTS UNDER THE NATIONAL LABOR RELATIONS ACT	DEC 2010
52.222-50	COMBATING TRAFFICKING IN PERSONS	FEB 2009
52.222-54	EMPLOYMENT ELIGIBILITY VERIFICATION	AUG 2013
52.223-3	HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA	JAN 1997
	ALT I	JUL 1995
52.223-5	POLLUTION PREVENTATION AND RIGHT-TO-KNOW INFORMATION	MAY 2011
52.223-6	DRUG-FREE WORKPLACE	MAY 2001
52.223-15	ENERGY EFFICIENCY IN ENERGY-CONSUMING PRODUCTS	DEC 2007
52.223-18	ENCOURAGING CONTRACTOR POLICIES TO BAN TEXT MESSAGING WHILE DRIVING	AUG 2011
52.225-1	BUY-AMERICAN ACT—SUPPLIES	FEB 2009
52.225-13	RESTRICTIONS ON CERTAIN FOREIGN PURCHASES	JUN 2008
52.227-1	AUTHORIZATION AND CONSENT	DEC 2007
52.227-2	NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT	DEC 2007
52.227-3	PATENT INDEMNITY	APR 1984
	ALT II	APR 1984
	Fill-in: all commercial items	

52.227-9	REFUND OF ROYALTIES	APR 1984
	Fill-in: Replace "price" with "target cost and target price"	
52.227-10	FILING OF PATENT APPLICATIONS—CLASSIFIED SUBJECT MATTER	DEC 2007
52.228-2	ADDITIONAL BOND SECURITY	OCT 1997
52.228-11	PLEDGES OF ASSETS	JAN 2012
52.228-14	IRREVOCABLE LETTER OF CREDIT	DEC 1999
52.229-3	FEDERAL, STATE, AND LOCAL TAXES	FEB 2013
52.230-2	COST ACCOUNTING STANDARDS	MAY 2012
52.230-3	DISCLOSURE AND CONSISTENCY OF COST ACCOUNTING PRACTICES	MAY 2012
52.230-6	ADMINISTRATION OF COST ACCOUNTING STANDARDS	JUN 2010
52.232-1	PAYMENTS	APR 1984
52.232-8	DISCOUNTS FOR PROMPT PAYMENT	FEB 2002
52.232-11	EXTRAS	APR 1984
52.232-16	PROGRESS PAYMENTS	APR 2012
52.232-17	INTEREST	OCT 2010
52.232-18	AVAILABILITY OF FUNDS	APR 1984
52.232-20	LIMITATION OF COST	APR 1984
52.232-23	ASSIGNMENT OF CLAIMS	JAN 1986
	ALT I	APR 1984
52.232-25	PROMPT PAYMENT	JUL 2013
	ALT I	FEB 2002
52.232-33	PAYMENT BY ELECTRONIC FUNDS TRANSFER—SYSTEM FOR AWARD MANAGEMENT	JUL 2013
52.233-1	DISPUTES	JUL 2002
	ALT I	DEC 1991
52.233-3	PROTEST AFTER AWARD	AUG 1996
52.233-4	APPLICABLE LAW FOR BREACH OF CONTRACT CLAIM	OCT 2004
52.242-1	NOTICE OF INTENT TO DISALLOW COSTS	APR 1984
52.242-2	PRODUCTION PROGRESS REPORTS	APR 1991
52.242-3	PENALTIES FOR UNALLOWABLE COSTS	MAY 2001
52.242-4	CERTIFICATION OF FINAL INDIRECT COSTS	JAN 1997
52.242-13	BANKRUPTCY	JUL 1995
52.242-15	STOP WORK ORDER	AUG 1989
52.243-1	CHANGES—FIXED PRICE	AUG 1987
	ALT II	APR 1984
52.243-2	CHANGES – COST REIMBURSEMENT	AUG 1987
	ALT II	APR 1984
52.243-6	CHANGE ORDER ACCOUNTING	APR 1984
52.243-7	NOTIFICATION OF CHANGES	APR 1984
52.244-2	SUBCONTRACTS	OCT 2010
	(d) Fill-in: C4ISR Systems Integrator	
52.244-5	COMPETITION IN SUBCONTRACTING	DEC 1996
52.244-6	SUBCONTRACTS FOR COMMERCIAL ITEMS	JUL 2013
52.245-1	GOVERNMENT PROPERTY	APR 2012
	ALT I	APR 2012
52.245-9	USE AND CHARGES	APR 2012
52.246-23	LIMITATION OF LIABILITY	FEB 1997
52.246-24	LIMITATION OF LIABILITY — HIGH-VALUE ITEMS	FEB 1997
	ALT I	APR 1984
52.247-1	COMMERCIAL BILL OF LADING NOTATIONS	FEB 2006
52.247-63	PREFERENCE FOR U.S.-FLAG AIR CARRIERS	JUN 2003
52.247-64	PREFERENCE FOR PRIVATELY OWNED U.S.-FLAG COMMERCIAL VESSELS	FEB 2006
52.247-68	REPORT OF SHIPMENT (REPSHIP)	FEB 2006
52.248-1	VALUE ENGINEERING	OCT 2010
52.249-2	TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (FIXED-PRICE)	APR 2012
52.249-6	TERMINATION (COST-REIMBURSEMENT)	MAY 2004
52.249-8	DEFAULT (FIXED-PRICE SUPPLY AND SERVICE)	APR 1984
52.249-14	EXCUSABLE DELAYS	APR 1984
52.251-1	GOVERNMENT SUPPLY SOURCES	APR 2012
52.253-1	COMPUTER GENERATED FORMS	JAN 1991

HOMELAND SECURITY ACQUISITION REGULATION (HSAR) CLAUSES

NUMBER	TITLE	DATE
3052.203-70	INSTRUCTIONS FOR CONTRACTOR DISCLOSURE OF VIOLATIONS	SEP 2012
3052.205-70	ADVERTISEMENTS, PUBLICIZING AWARDS, AND RELEASES ALT 1	SEP 2012
3052.211-70	INDEX FOR SPECIFICATIONS	DEC 2003
3052.219-70	SMALL BUSINESS SUBCONTRACTING PLAN REPORTING	JUN 2006

OZONE-DEPLETING SUBSTANCES (FAR 52.223-11) (MAY 2001)

(a) Definition. "Ozone-depleting substance," as used in this clause, means any substance the Environmental Protection Agency designates in 40 CFR Part 82 as—

- (1) Class I, including, but not limited to, chlorofluorocarbons, halons, carbon tetrachloride, and methyl chloroform; or
- (2) Class II, including, but not limited to, hydrochlorofluorocarbons.

(b) The Contractor shall label products which contain or are manufactured with ozone-depleting substances in the manner and to the extent required by 42 U.S.C. 7671j (b), (c), and (d) and 40 CFR Part 82, Subpart E, as follows:

Warning

Contains (or manufactured with, if applicable) * _____, a substance(s) which harm(s) public health and environment by destroying ozone in the upper atmosphere.

* The Contractor shall insert the name of the substance(s).

HOMELAND SECURITY ACQUISITION REGULATION (HSAR)

3052.222-70	STRIKES OR PICKETING AFFECTING TIMELY COMPLETION OF THE CONTRACT WORK	DEC 2003
3052.242-72	CONTRACTING OFFICER'S TECHNICAL REPRESENTATIVE	DEC 2003
3052.222-70	STRIKES OR PICKETING AFFECTING TIMELY COMPLETION OF THE CONTRACT WORK	DEC 2003

FULL TEXT CLAUSES

NOTIFICATION OF USE OF SUPPORT CONTRACTORS FOR OFFICIAL CONTRACT FILES

(a) The Coast Guard may use a file room management support contractor, hereinafter referred to as "the support contractor", to manage its file room, in which all official contract files, including the official file supporting this procurement, are retained. These official files may contain information that is considered a trade secret, proprietary, business sensitive or otherwise protected pursuant to law or regulation, hereinafter referred to as "protected information". File room management services consist of any of the following: secretarial or clerical support; data entry; document reproduction, scanning, imaging, or destruction; operation, management, or maintenance of paper-based or electronic mail rooms, file rooms, or libraries; and supervision in connection with functions listed herein.

(b) The cognizant Contracting Officer will ensure that any Coast Guard support services contract under which these file room management services are acquired will contain a requirement that:

- (1) The support contractor not disclose any information;
- (2) Individual employees are to be instructed by the support contractor regarding the sensitivity of the official contract files;
- (3) The support contractor performing these services be barred from providing any other supplies and/or services, or competing to do so, to NAVSEA for the period of performance of its contract and for an additional three years thereafter unless otherwise provided by law or regulation; and,

(4) In addition to any other rights the contractor may have, it is a third party beneficiary who has the right of direct action against the support contractor, or any person to whom the support contractor has released or disclosed protected information, for the unauthorized duplication, release, or disclosure of such protected information.

(c) Execution of this contract by the contractor is considered consent to the Coast Guard's permitting access to any information, irrespective of restrictive markings or the nature of the information submitted, by its file room management support contractor for the limited purpose of executing its file room support contract responsibilities.

(d) The Coast Guard will advise contractors when it enters into contracts for these services. The contractors shall enter into separate non-disclosure agreements with the file room contractor and provide copies of all such agreement(s) to the Contracting Officer.

PROHIBITION AGAINST FOREIGN SHIPYARDS

(a) In accordance with 14 U. S. C. 665, the ship, including major components of the hull or superstructure, required by the contract may not be constructed in a foreign shipyard.

SPECIFICATIONS AND STANDARDS

- (a) In the event there are conflicts, inconsistencies or gaps among these standards and specifications, the Contractor shall promptly notify the Contracting Officer upon discovery of such issues for clarification or resolution. The Contractor shall diligently continue performance of this contract to the maximum extent possible in accordance with its terms and conditions as construed by the Contractor until the clarification/decision is received from the Contracting Officer.
Definition: A "first-tier reference" is either: (1) a specification, standard, or drawing that is cited in the contract (including attachments), or (2) the drawings or standards listed in this clause. A "second-tier reference" is either: (1) a specification, standard, or drawing cited in a first-tier reference, or (2) a specification cited in a first-tier drawing.
- (b) All first-tier references are mandatory for use.
- (c) All second tier references regarding product items (that procure physical items) are mandatory for use.
- (d) All second tier references regarding non-product items and lower tier references in the specifications and standards may be used for guidance only.
- (e) First, second, third and fourth tier references are mandatory for welding process, welding inspection process and welding material documents.
- (f) All tiers of reference in non-Government standards are mandatory for use. This applies to military specifications and standards that are lower-tier references in the cited non-Government standards.
- (g) Unless otherwise specified above, all lower tier references in the specifications and standards shall be used for guidance only.
- (h) If, during the performance of this contract, the Contractor believes that outdated or different versions of any specifications or standards exists, the Contractor may request that the contract be updated to include the current version of the applicable specification or standard. Updating shall not affect the form, fit, or function of any deliverable item or increase the cost/price of the item to the Government. The Contractor may elect to submit update requests to the Contracting Officer for approval. The Contractor shall perform in accordance with the existing specifications and standards until notified of approval/disapproval by the Contracting Officer. Any approved alternate specifications or standards will be incorporated into the contract.
-

WARRANTY OF DATA

- (a) Notwithstanding inspection and acceptance by the Government of technical data furnished under this contract, and notwithstanding any provision of this contract concerning the conclusiveness of acceptance, the Contractor warrants that all technical data delivered under this contract will at the time of delivery conform with the specifications and all other requirements of this contract. The warranty period shall extend for three years after completion of the delivery of the line item of data (as identified in DD Form 1423, Contract Data Requirements List) of which the data forms a part; or any longer period specified in the contract.
- (b) The Contractor agrees to notify the Contracting Officer in writing immediately of any breach of the above warranty which the Contractor discovers within the warranty period.
- (c) The following remedies shall apply to all breaches of the warranty, whether the Contractor notifies the Contracting Officer or if the Government notifies the Contractor of the breach in writing within the warranty period:
- (1) By written notice the Contracting Officer may direct the Contractor to correct or replace at the Contractor's expense the nonconforming technical data promptly; or if the Contracting Officer determines that the Government no longer has a requirement for correction or replacement of the data, or that the data can be more reasonably corrected by the Government, inform the Contractor by written notice that the Government elects a price or fee adjustment instead of correction or replacement.
- (d) If the Contractor refuses or fails to comply with a direction under this clause the Contracting Officer may direct by contract or otherwise, correct or replace the nonconforming technical data and charge the cost to the Contractor; or elect a price or fee adjustment instead of correction or replacement.
-

EARNED VALUE MANAGEMENT SYSTEM (252. 234-7002)

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

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

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

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

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

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

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

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

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

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

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

- (1) Contract award;
- (2) The exercise of significant contract options; and
- (3) The incorporation of major modifications.

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

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

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

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

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

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

- (i) Remaining significant deficiencies;
- (ii) The adequacy of any proposed or completed corrective action;
- (iii) System noncompliance, when the Contractor's existing EVMS fails to comply with the earned value management system guidelines in the ANSI/EIA-748; and

(iv) System disapproval, if initial EVMS validation is not successfully completed within the timeframe approved by the Contracting Officer, or if the Contracting Officer determines that the Contractor's earned value management system contains one or more significant deficiencies in high-risk guidelines in ANSI/EIA-748 standards (guidelines 1, 3, 6, 7, 8, 9, 10, 12, 16, 21, 23, 26, 27, 28, 30, or 32). When the Contracting Officer determines that the existing earned value management system contains one or more significant deficiencies in one or more of the remaining 16 guidelines in ANSI/EIA-748 standards, the Contracting Officer will use discretion to disapprove the system based on input received from functional specialists and the auditor.

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

(j) Withholding payments. If the Contracting Officer makes a final determination to disapprove the Contractor's EVMS, the Contracting Officer will withhold payments in accordance with the clause entitled "Contractor Business Systems".

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

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

(m) The Contractor shall require the subcontractors specified below to comply with the requirements of this clause: [list of applicable subcontractors will be identified prior to Phase II proposal submission] _____

DEFERRED ORDERING OF TECHNICAL DATA OR COMPUTER SOFTWARE

In addition to technical data or computer software that is already subject to a contract delivery requirement, the United States may require at any time the delivery of technical data and non commercial computer software that has been generated or utilized in the performance of a contract, and compensate the contractor only for reasonable costs incurred for converting and delivering the data in the required form, upon a determination that—

(A) the technical data is needed for the purpose of reprourement, sustainment, modification, or upgrade (including through competitive means) of a major system or subsystem thereof, a weapon system or subsystem thereof, or any noncommercial item or process; and

(B) the technical data—

- (i) pertains to an item or process developed in whole or in part with Federal funds; or
- (ii) is necessary for the segregation of an item or process from, or the reintegration of that item or process (or a physically or functionally equivalent item or process) with, other items or processes, and,

(C) Provided that the United States is not foreclosed from requiring the delivery of the technical data by a failure to challenge, in accordance with the requirements of paragraph (e) of the Section H clause entitled "Validation Of Restrictive Markings On Technical Data" and paragraph (e) of the Section H clause entitled "Validation Of Asserted Restrictions—Computer Software" of this contract, the contractor's assertion of a use or release restriction on the technical data.

The Government's rights to use said data or computer software shall be pursuant to the "Rights In Technical Data – Noncommercial Items" and "Rights In Noncommercial Computer Software And Noncommercial Computer Software Documentation" clauses of this contract. This clause shall be flowed down to first and second tier subcontractors.

RIGHTS IN TECHNICAL DATA – NONCOMMERCIAL ITEMS

(a) Definitions. As used in this clause—

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

(2) "Computer program" means a set of instructions, rules, or routines recorded in a form that is capable of causing a computer to perform a specific operation or series of operations.

(3) "Computer software" means computer programs, source code, source code listings, object code listings, design details, algorithms, processes, flow charts, formulae and related material that would enable the software to be reproduced, recreated, or recompiled. Computer software does not include computer data bases or computer software documentation.

(4) "Computer software documentation" means owner's manuals, user's manuals, installation instructions, operating instructions, and other similar items, regardless of storage medium, that explain the capabilities of the computer software or provide instructions for using the software.

(5) "Covered Government support contractor" means a contractor under a contract, the primary purpose of which is to furnish independent and impartial advice or technical assistance directly to the Government in support of the Government's management and oversight of a program or effort (rather than to directly furnish an end item or service to accomplish a program or effort), provided that the contractor—

- (i) Is not affiliated with the prime contractor or a first-tier subcontractor on the program or effort, or with any direct competitor of such prime contractor or any such first-tier subcontractor in furnishing end items or services of the type developed or produced on the program or effort; and

(ii) Receives access to technical data or computer software for performance of a Government contract that contains the clause substantially similar to DFARS clause [252.227-7025](#), Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends.

(6) "Detailed manufacturing or process data" means technical data that describe the steps, sequences, and conditions of manufacturing, processing or assembly used by the manufacturer to produce an item or component or to perform a process.

(7) "Developed" means that an item, component, or process exists and is workable. Thus, the item or component must have been constructed or the process practiced. Workability is generally established when the item, component, or process has been analyzed or tested sufficiently to demonstrate to reasonable people skilled in the applicable art that there is a high probability that it will operate as intended. Whether, how much, and what type of analysis or testing is required to establish workability depends on the nature of the item, component, or process, and the state of the art. To be considered "developed," the item, component, or process need not be at the stage where it could be offered for sale or sold on the commercial market, nor must the item, component, or process be actually reduced to practice within the meaning of Title 35 of the United States Code.

(8) "Developed exclusively at private expense" means development was accomplished entirely with costs charged to indirect cost pools, costs not allocated to a government contract, or any combination thereof.

(i) Private expense determinations should be made at the lowest practicable level.

(ii) Under fixed-price contracts, when total costs are greater than the firm-fixed-price or ceiling price of the contract, the additional development costs necessary to complete development shall not be considered when determining whether development was at government, private, or mixed expense.

(9) "Developed exclusively with government funds" means development was not accomplished exclusively or partially at private expense.

(10) "Developed with mixed funding" means development was accomplished partially with costs charged to indirect cost pools and/or costs not allocated to a government contract, and partially with costs charged directly to a government contract.

(11) "Form, fit, and function data" means technical data that describes the required overall physical, functional, and performance characteristics (along with the qualification requirements, if applicable) of an item, component, or process to the extent necessary to permit identification of physically and functionally interchangeable items.

(12) "Government purpose" means any activity in which the United States Government is a party, including cooperative agreements with international or multi-national defense organizations, or sales or transfers by the United States Government to foreign governments or international organizations. Government purposes include competitive procurement, but do not include the rights to use, modify, reproduce, release, perform, display, or disclose technical data for commercial purposes or authorize others to do so.

(13) "Government purpose rights" means the rights to—

(i) Use, modify, reproduce, release, perform, display, or disclose technical data within the Government without restriction; and

(ii) Release or disclose technical data outside the Government and authorize persons to whom release or disclosure has been made to use, modify, reproduce, release, perform, display, or disclose that data for United States government purposes.

(14) "Limited rights" means the rights to use, modify, reproduce, release, perform, display, or disclose technical data, in whole or in part, within the Government. The Government may not, without the written permission of the party asserting limited rights, release or disclose the technical data outside the Government, use the technical data for manufacture, or authorize the technical data to be used by another party, except that the Government may reproduce, release, or disclose such data or authorize the use or reproduction of the data by persons outside the Government if—

(i) The reproduction, release, disclosure, or use is—

(A) Necessary for emergency repair and overhaul;

(B) Necessary for the segregation of an item or process from, or the reintegration of that item or process (or a physically or functionally equivalent item or process) with, other items or processes; or

(C) A release or disclosure to—

(1) A covered Government support contractor, for use, modification, reproduction, performance, display, or release or disclosure to authorized person(s) in performance of a Government contract; or

(2) A foreign government, of technical data, (other than detailed manufacturing or process data) to, or use of such data by the foreign government is in the interest of the Government and is required for evaluational or informational purposes;

(ii) The recipient of the technical data is subject to a prohibition on the further reproduction, release, disclosure, or use of the technical data; and

(iii) The contractor or subcontractor asserting the restriction is notified of such reproduction, release, disclosure, or use.

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

(16) "Unlimited rights" means rights to use, modify, reproduce, perform, display, release, or disclose technical data in whole or in part, in any manner, and for any purpose whatsoever, and to have or authorize others to do so.

(17) "Vessel design" means the design of a vessel, boat, or craft, and its components, including the hull, decks, superstructure, and the exterior surface shape of all external shipboard equipment and systems. The term includes designs described in 10 U.S.C. 7317, and designs protectable under 17 U.S.C. 1301, et seq.

(b) Rights in technical data. The Contractor grants or shall obtain for the Government the following royalty free, world-wide, nonexclusive, irrevocable license rights in technical data other than computer software documentation (see the Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation clause of this contract for rights in computer software documentation):

(1) Unlimited rights. The Government shall have unlimited rights in technical data that are—

(i) Data pertaining to an item, component, or process which has been or will be developed exclusively with Government funds;

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

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

(iv) Form, fit, and function data;

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

(vi) Corrections or changes to technical data furnished to the Contractor by the Government;

(vii) Otherwise publicly available or have been released or disclosed by the Contractor or subcontractor without restrictions on further use, release or disclosure, other than a release or disclosure resulting from the sale, transfer, or other assignment of interest in the technical data to another party or the sale or transfer of some or all of a business entity or its assets to another party;

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

(ix) Data furnished to the Government, under this or any other Government contract or subcontract thereunder, with—

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

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

(2) Government purpose rights.

(i) The Government shall have government purpose rights for a five-year period, or such other period as may be negotiated, in technical data—

(A) That pertain to items, components, or processes developed with mixed funding except when the Government is entitled to unlimited rights in such data as provided in paragraphs (b)(1)(ii) and (b)(1)(iv) through (b)(1)(ix) of this clause; or

(B) Created with mixed funding in the performance of a contract that does not require the development, manufacture, construction, or production of items, components, or processes.

(ii) The five-year period, or such other period as may have been negotiated, shall commence upon execution of the contract, subcontract, letter contract (or similar contractual instrument), contract modification, or option exercise that required development of the items, components, or processes or creation of the data described in paragraph (b)(2)(i)(B) of this clause. Upon expiration of the five-year or other negotiated period, the Government shall have unlimited rights in the technical data.

(iii) The Government shall not release or disclose technical data in which it has government purpose rights unless—

(A) Prior to release or disclosure, the intended recipient is subject to the non-disclosure agreement in the Section attachment entitled “Use and Non-Disclosure Agreement” or

(B) The recipient is a Government contractor receiving access to the data for performance of a Government contract that contains the clause substantially similar to the DFARS clause [252.227-7025](#), Information Marked with Restrictive Legends.

(iv) The Contractor has the exclusive right, including the right to license others, to use technical data in which the Government has obtained government purpose rights under this contract for any commercial purpose during the time period specified in the government purpose rights legend prescribed in paragraph (f)(2) of this clause.

(3) Limited rights.

(i) Except as provided in paragraphs (b)(1)(ii) and (b)(1)(iv) through (b)(1)(ix) of this clause, the Government shall have limited rights in technical data—

(A) Pertaining to items, components, or processes developed exclusively at private expense and marked with the limited rights legend prescribed in paragraph (f) of this clause; or

(B) Created exclusively at private expense in the performance of a contract that does not require the development, manufacture, construction, or production of items, components, or processes.

(ii) The Government shall require a recipient of limited rights data for emergency repair or overhaul to destroy the data and all copies in its possession promptly following completion of the emergency repair/overhaul and to notify the Contractor that the data have been destroyed.

(iii) The Contractor, its subcontractors, and suppliers are not required to provide the Government additional rights to use, modify, reproduce, release, perform, display, or disclose technical data furnished to the Government with limited rights. However, if the Government desires to obtain additional rights in technical data in which it has limited rights, the Contractor agrees to promptly enter into negotiations with the Contracting Officer to determine whether there are acceptable terms for transferring such rights. All technical data in which the Contractor has granted the Government additional rights shall be listed or described in a license agreement made part of the contract. The license shall enumerate the additional rights granted the Government in such data.

(iv) The Contractor acknowledges that—

(A) Limited rights data is authorized to be released or disclosed to covered Government support contractors;

(B) The Contractor will be notified of such release or disclosure;

(C) The Contractor (or the party asserting restrictions as identified in the limited rights legend) may require each such covered Government support contractor to enter into a non-disclosure agreement directly with the Contractor (or the party asserting restrictions) regarding the covered Government support contractor’s use of such data, or alternatively, that the Contractor (or party asserting restrictions) may waive in writing the requirement for a non-disclosure agreement;

(D) Any such non-disclosure agreement shall address the restrictions on the covered Government support contractor’s use of the limited rights data as set forth in the clause at of this contract and shall not include any additional terms and conditions unless mutually agreed to by the parties to the non-disclosure agreement; and

(E) The Contractor shall provide a copy of any such non-disclosure agreement or waiver to the Contracting Officer, upon request.

(4) Specifically negotiated license rights. The standard license rights granted to the Government under paragraphs (b)(1) through (b)(3) of this clause, including the period during which the Government shall have government purpose rights in technical data, may be modified by mutual agreement to provide such rights as the parties consider appropriate but shall not provide the Government

lesser rights than are enumerated in paragraph (a)(14) of this clause. Any rights so negotiated shall be identified in a license agreement made part of this contract.

(5) Prior government rights. Technical data that will be delivered, furnished, or otherwise provided to the Government under this contract, in which the Government has previously obtained rights shall be delivered, furnished, or provided with the pre-existing rights, unless—

(i) The parties have agreed otherwise; or

(ii) Any restrictions on the Government's rights to use, modify, reproduce, release, perform, display, or disclose the data have expired or no longer apply.

(6) Release from liability. The Contractor agrees to release the Government from liability for any release or disclosure of technical data made in accordance with paragraph (a)(14) or (b)(2)(iii) of this clause, in accordance with the terms of a license negotiated under paragraph (b)(4) of this clause, or by others to whom the recipient has released or disclosed the data and to seek relief solely from the party who has improperly used, modified, reproduced, released, performed, displayed, or disclosed Contractor data marked with restrictive legends.

(7) Vessel designs. For a vessel design (including a vessel design embodied in a useful article) that is developed or delivered under this contract, the Government shall have the right to make and have made any useful article that embodies the vessel design, to import the article, to sell the article, and to distribute the article for sale or to use the article in trade, to the same extent that the Government is granted rights in the technical data pertaining to the vessel design.

(c) Contractor rights in technical data. All rights not granted to the Government are retained by the Contractor.

(d) Third party copyrighted data. The Contractor shall not, without the written approval of the Contracting Officer, incorporate any copyrighted data in the technical data to be delivered under this contract unless the Contractor is the copyright owner or has obtained for the Government the license rights necessary to perfect a license or licenses in the deliverable data of the appropriate scope set forth in paragraph (b) of this clause, and has affixed a statement of the license or licenses obtained on behalf of the Government and other persons to the data transmittal document.

(e) Identification and delivery of data to be furnished with restrictions on use, release, or disclosure.

(1) This paragraph does not apply to restrictions based solely on copyright.

(2) Except as provided in paragraph (e)(3) of this clause, technical data that the Contractor asserts should be furnished to the Government with restrictions on use, release, or disclosure are identified in an attachment to this contract (the Attachment). The Contractor shall not deliver any data with restrictive markings unless the data are listed on the Attachment.

(3) In addition to the assertions made in the Attachment, other assertions may be identified after award when based on new information or inadvertent omissions unless the inadvertent omissions would have materially affected the source selection decision. Such identification and assertion shall be submitted to the Contracting Officer as soon as practicable prior to the scheduled date for delivery of the data, in the following format, and signed by an official authorized to contractually obligate the Contractor:

Identification and Assertion of Restrictions on the Government's
Use, Release, or Disclosure of Technical Data.

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

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

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

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

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

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

Date _____
Printed Name and Title _____
Signature _____

(End of identification and assertion)

(4) When requested by the Contracting Officer, the Contractor shall provide sufficient information to enable the Contracting Officer to evaluate the Contractor's assertions. The Contracting Officer reserves the right to add the Contractor's assertions to the Attachment and validate any listed assertion, at a later date, in accordance with the procedures of the Validation of Restrictive Markings on Technical Data clause of this contract.

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

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

(2) Government purpose rights markings. Data delivered or otherwise furnished to the Government with government purpose rights shall be marked as follows:

GOVERNMENT PURPOSE RIGHTS

Contract No.
Contractor Name
Contractor Address

Expiration Date

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

(End of legend)

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

LIMITED RIGHTS

Contract No.
Contractor Name
Contractor Address

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

(End of legend)

(4) Special license rights markings.

(i) Data in which the Government's rights stem from a specifically negotiated license shall be marked with the following legend:

SPECIAL LICENSE RIGHTS

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

(End of legend)

(ii) For purposes of this clause, special licenses do not include government purpose license rights acquired under a prior contract (see paragraph (b)(5) of this clause).

(5) Pre-existing data markings. If the terms of a prior contract or license permitted the Contractor to restrict the Government's rights to use, modify, reproduce, release, perform, display, or disclose technical data deliverable under this contract, and those restrictions are still applicable, the Contractor may mark such data with the appropriate restrictive legend for which the data qualified under the prior contract or license. The marking procedures in paragraph (f)(1) of this clause shall be followed.

(g) Contractor procedures and records. Throughout performance of this contract, the Contractor and its subcontractors or suppliers that will deliver technical data with other than unlimited rights, shall—

(1) Have, maintain, and follow written procedures sufficient to assure that restrictive markings are used only when authorized by the terms of this clause; and

(2) Maintain records sufficient to justify the validity of any restrictive markings on technical data delivered under this contract.

(h) Removal of unjustified and nonconforming markings.

(1) Unjustified technical data markings. The rights and obligations of the parties regarding the validation of restrictive markings on technical data furnished or to be furnished under this contract are contained in the Section H clause entitled "Validation of Restrictive Markings on Technical Data" of this contract. Notwithstanding any provision of this contract concerning inspection and acceptance, the Government may ignore or, at the Contractor's expense, correct or strike a marking if, in accordance with the procedures in the Validation of Restrictive Markings on Technical Data clause of this contract, a restrictive marking is determined to be unjustified.

(2) Nonconforming technical data markings. A nonconforming marking is a marking placed on technical data delivered or otherwise furnished to the Government under this contract that is not in the format authorized by this contract. Correction of nonconforming markings is not subject to the Validation of Restrictive Markings on Technical Data clause of this contract. If the Contracting Officer notifies the Contractor of a nonconforming marking and the Contractor fails to remove or correct such marking within sixty (60) days, the Government may ignore or, at the Contractor's expense, remove or correct any nonconforming marking.

(i) Relation to patents. Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government under any patent.

(j) Limitation on charges for rights in technical data.

(1) The Contractor shall not charge to this contract any cost, including, but not limited to, license fees, royalties, or similar charges, for rights in technical data to be delivered under this contract when—

(i) The Government has acquired, by any means, the same or greater rights in the data; or

(ii) The data are available to the public without restrictions.

(2) The limitation in paragraph (j)(1) of this clause—

(i) Includes costs charged by a subcontractor or supplier, at any tier, or costs incurred by the Contractor to acquire rights in subcontractor or supplier technical data, if the subcontractor or supplier has been paid for such rights under any other Government contract or under a license conveying the rights to the Government; and

(ii) Does not include the reasonable costs of reproducing, handling, or mailing the documents or other media in which the technical data will be delivered.

(k) Applicability to subcontractors or suppliers.

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

RIGHTS IN NONCOMMERCIAL COMPUTER SOFTWARE AND NONCOMMERCIAL COMPUTER SOFTWARE DOCUMENTATION

(a) Definitions. As used in this clause—

- (1) "Commercial computer software" means software developed or regularly used for non-governmental purposes which—
 - (i) Has been sold, leased, or licensed to the public;
 - (ii) Has been offered for sale, lease, or license to the public;
 - (iii) Has not been offered, sold, leased, or licensed to the public but will be available for commercial sale, lease, or license in time to satisfy the delivery requirements of this contract; or
 - (iv) Satisfies a criterion expressed in paragraph (a)(1)(i), (ii), or (iii) of this clause and would require only minor modification to meet the requirements of this contract.
- (2) "Computer database" means a collection of recorded data in a form capable of being processed by a computer. The term does not include computer software.
- (3) "Computer program" means a set of instructions, rules, or routines, recorded in a form that is capable of causing a computer to perform a specific operation or series of operations.
- (4) "Computer software" means computer programs, source code, source code listings, object code listings, design details, algorithms, processes, flow charts, formulae, and related material that would enable the software to be reproduced, recreated, or recompiled. Computer software does not include computer databases or computer software documentation.
- (5) "Computer software documentation" means owner's manuals, user's manuals, installation instructions, operating instructions, and other similar items, regardless of storage medium, that explain the capabilities of the computer software or provide instructions for using the software.
- (6) "Covered Government support contractor" means a contractor under a contract, the primary purpose of which is to furnish independent and impartial advice or technical assistance directly to the Government in support of the Government's management and oversight of a program or effort (rather than to directly furnish an end item or service to accomplish a program or effort), provided that the contractor—
 - (i) Is not affiliated with the prime contractor or a first-tier subcontractor on the program or effort, or with any direct competitor of such prime contractor or any such first-tier subcontractor in furnishing end items or services of the type developed or produced on the program or effort; and
 - (ii) Receives access to technical data or computer software for performance of a Government contract that contains the clause entitled "Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends."

(7) "Developed" means that—

- (i) A computer program has been successfully operated in a computer and tested to the extent sufficient to demonstrate to reasonable persons skilled in the art that the program can reasonably be expected to perform its intended purpose;
- (ii) Computer software, other than computer programs, has been tested or analyzed to the extent sufficient to demonstrate to reasonable persons skilled in the art that the software can reasonably be expected to perform its intended purpose; or
- (iii) Computer software documentation required to be delivered under a contract has been written, in any medium, in sufficient detail to comply with requirements under that contract.

(8) "Developed exclusively at private expense" means development was accomplished entirely with costs charged to indirect cost pools, costs not allocated to a government contract, or any combination thereof.

(i) Private expense determinations should be made at the lowest practicable level.

(ii) Under fixed-price contracts, when total costs are greater than the firm-fixed-price or ceiling price of the contract, the additional development costs necessary to complete development shall not be considered when determining whether development was at government, private, or mixed expense.

(9) "Developed exclusively with government funds" means development was not accomplished exclusively or partially at private expense.

(10) "Developed with mixed funding" means development was accomplished partially with costs charged to indirect cost pools and/or costs not allocated to a government contract, and partially with costs charged directly to a government contract.

(11) "Government purpose" means any activity in which the United States Government is a party, including cooperative agreements with international or multi-national defense organizations or sales or transfers by the United States Government to foreign governments or international organizations. Government purposes include competitive procurement, but do not include the rights to use, modify, reproduce, release, perform, display, or disclose computer software or computer software documentation for commercial purposes or authorize others to do so.

(12) "Government purpose rights" means the rights to—

(i) Use, modify, reproduce, release, perform, display, or disclose computer software or computer software documentation within the Government without restriction; and

(ii) Release or disclose computer software or computer software documentation outside the Government and authorize persons to whom release or disclosure has been made to use, modify, reproduce, release, perform, display, or disclose the software or documentation for United States government purposes.

(13) "Minor modification" means a modification that does not significantly alter the nongovernmental function or purpose of the software or is of the type customarily provided in the commercial marketplace.

(14) "Noncommercial computer software" means software that does not qualify as commercial computer software under paragraph (a)(1) of this clause.

(15) "Restricted rights" apply only to noncommercial computer software and mean the Government's rights to—

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

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

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

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

(A) Use the modified software only as provided in paragraphs (a)(15)(i) and (iii) of this clause; and

(B) Not release or disclose the modified software except as provided in paragraphs (a)(15)(ii), (v), (vi) and (vii) of this clause;

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

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

(B) Such contractors or subcontractors are subject to the section J attachment entitled "Use and non-disclosure Agreement" or are Government contractors receiving access to the software for performance of a Government contract that contains the clause entitled Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends;

(C) The Government shall not permit the recipient to decompile, disassemble, or reverse engineer the software, or use software decompiled, disassembled, or reverse engineered by the Government pursuant to paragraph (a)(15)(iv) of this clause, for any other purpose; and

(D) Such use is subject to the limitation in paragraph (a)(15)(i) of this clause;

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

(A) The intended recipient is subject to the Section J attachment entitled "Use and non-disclosure agreement" of this contract, or is a Government contractor receiving access to the software for performance of a Government contract that contains the clause substantially similar to DFARS [252.227-7025](#), Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends; and

(B) The Government shall not permit the recipient to decompile, disassemble, or reverse engineer the software, or use software decompiled, disassembled, or reverse engineered by the Government pursuant to paragraph (a)(15)(iv) of this clause, for any other purpose; and

(vii) Permit covered Government support contractors to use, modify, reproduce, perform, display, or release or disclose the computer software to authorized person(s) in the performance of Government contracts that contain the clause substantially similar to DFARS [252.227-7025](#), Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends.

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

(b) Rights in computer software or computer software documentation. The Contractor grants or shall obtain for the Government the following royalty free, world-wide, nonexclusive, irrevocable license rights in noncommercial computer software or computer software documentation. All rights not granted to the Government are retained by the Contractor.

(1) Unlimited rights. The Government shall have unlimited rights in—

(i) Computer software developed exclusively with Government funds;

(ii) Computer software documentation required to be delivered under this contract;

(iii) Corrections or changes to computer software or computer software documentation furnished to the Contractor by the Government;

(iv) Computer software or computer software documentation that is otherwise publicly available or has been released or disclosed by the Contractor or subcontractor without restriction on further use, release or disclosure, other than a release or disclosure resulting from the sale, transfer, or other assignment of interest in the software to another party or the sale or transfer of some or all of a business entity or its assets to another party;

(v) Computer software or computer software documentation obtained with unlimited rights under another Government contract or as a result of negotiations; or

(vi) Computer software or computer software documentation furnished to the Government, under this or any other Government contract or subcontract thereunder with—

(A) Restricted rights in computer software, limited rights in technical data, or government purpose license rights and the restrictive conditions have expired; or

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

(2) Government purpose rights.

(i) Except as provided in paragraph (b)(1) of this clause, the Government shall have government purpose rights in computer software developed with mixed funding.

(ii) Government purpose rights shall remain in effect for a period of five years unless a different period has been negotiated. Upon expiration of the five-year or other negotiated period, the Government shall have unlimited rights in the computer software or computer software documentation. The government purpose rights period shall commence upon execution of the contract, subcontract, letter contract (or similar contractual instrument), contract modification, or option exercise that required development of the computer software.

(iii) The Government shall not release or disclose computer software in which it has government purpose rights to any other person unless—

(A) Prior to release or disclosure, the intended recipient is subject to the use and non-disclosure agreement Section J attachment entitled "Use and Non Disclosure Agreement" of this contract; or

(B) The recipient is a Government contractor receiving access to the software or documentation for performance of a Government contract that contains the clause substantially similar to DFARS [252.227-7025](#), Limitations on the Use or Disclosure of Government Furnished Information Marked with Restrictive Legends.

(3) Restricted rights.

(i) The Government shall have restricted rights in noncommercial computer software required to be delivered or otherwise provided to the Government under this contract that were developed exclusively at private expense.

(ii) The Contractor, its subcontractors, or suppliers are not required to provide the Government additional rights in noncommercial computer software delivered or otherwise provided to the Government with restricted rights. However, if the Government desires to obtain additional rights in such software, the Contractor agrees to promptly enter into negotiations with the Contracting Officer to determine whether there are acceptable terms for transferring such rights. All noncommercial computer software in which the Contractor has granted the Government additional rights shall be listed or described in a license agreement made part of the contract (see paragraph (b)(4) of this clause). The license shall enumerate the additional rights granted the Government.

(iii) The Contractor acknowledges that—

(A) Restricted rights computer software is authorized to be released or disclosed to covered Government support contractors;

(B) The Contractor will be notified of such release or disclosure;

(C) The Contractor (or the party asserting restrictions, as identified in the restricted rights legend) may require each such covered Government support contractor to enter into a non-disclosure agreement directly with the Contractor (or the party asserting restrictions) regarding the covered Government support contractor's use of such software, or alternatively, that the Contractor (or party asserting restrictions) may waive in writing the requirement for a non-disclosure agreement;

(D) Any such non-disclosure agreement shall address the restrictions on the covered Government support contractor's use of the restricted rights software as set forth in the clause Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends, and shall not include any additional terms and conditions unless mutually agreed to by the parties to the non-disclosure agreement; and

(E) The Contractor shall provide a copy of any such non-disclosure agreement or waiver to the Contracting Officer, upon request.

(4) Specifically negotiated license rights.

(i) The standard license rights granted to the Government under paragraphs (b)(1) through (b)(3) of this clause, including the period during which the Government shall have government purpose rights in computer software, may be modified by mutual agreement to provide such rights as the parties consider appropriate but shall not provide the Government lesser rights in computer software than are enumerated in paragraph (a)(15) of this clause or lesser rights in computer software documentation than are enumerated in paragraph (a)(14) of the Rights in Technical Data--Noncommercial Items clause of this contract.

(ii) Any rights so negotiated shall be identified in a license agreement made part of this contract.

(5) Prior government rights. Computer software or computer software documentation that will be delivered, furnished, or otherwise provided to the Government under this contract, in which the Government has previously obtained rights shall be delivered, furnished, or provided with the pre-existing rights, unless—

(i) The parties have agreed otherwise; or

(ii) Any restrictions on the Government's rights to use, modify, reproduce, release, perform, display, or disclose the data have expired or no longer apply.

(6) Release from liability. The Contractor agrees to release the Government from liability for any release or disclosure of computer software made in accordance with paragraph (a)(15) or (b)(2)(iii) of this clause, in accordance with the terms of a license negotiated under paragraph (b)(4) of this clause, or by others to whom the recipient has released or disclosed the software, and to seek relief solely from the party who has improperly used, modified, reproduced, released, performed, displayed, or disclosed Contractor software marked with restrictive legends.

(c) Rights in derivative computer software or computer software documentation. The Government shall retain its rights in the unchanged portions of any computer software or computer software documentation delivered under this contract that the Contractor uses to prepare, or includes in, derivative computer software or computer software documentation.

(d) Third party copyrighted computer software or computer software documentation. The Contractor shall not, without the written approval of the Contracting Officer, incorporate any copyrighted computer software or computer software documentation in the software or documentation to be delivered under this contract unless the Contractor is the copyright owner or has obtained for the Government the license rights necessary to perfect a license or licenses in the deliverable software or documentation of the appropriate scope set forth in paragraph (b) of this clause, and prior to delivery of such—

(1) Computer software, has provided a statement of the license rights obtained in a form acceptable to the Contracting Officer; or

(2) Computer software documentation, has affixed to the transmittal document a statement of the license rights obtained.

(e) Identification and delivery of computer software and computer software documentation to be furnished with restrictions on use, release, or disclosure.

(1) This paragraph does not apply to restrictions based solely on copyright.

(2) Except as provided in paragraph (e)(3) of this clause, computer software that the Contractor asserts should be furnished to the Government with restrictions on use, release, or disclosure is identified in an attachment to this contract (the Attachment). The Contractor shall not deliver any software with restrictive markings unless the software is listed on the Attachment.

(3) In addition to the assertions made in the Attachment, other assertions may be identified after award when based on new information or inadvertent omissions unless the inadvertent omissions would have materially affected the source selection decision. Such identification and assertion shall be submitted to the Contracting Officer as soon as practicable prior to the scheduled date for delivery of the software, in the following format, and signed by an official authorized to contractually obligate the Contractor:

Identification and Assertion of Restrictions on the Government's Use, Release, or Disclosure of Computer Software.

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

Computer Software to be Furnished	Basis for Assertion**	Asserted Rights Category***	Name of Person Asserting Restrictions****
(LIST)	(LIST)	(LIST)	(LIST)

*Generally, development at private expense, either exclusively or partially, is the only basis for asserting restrictions on the Government's rights to use, release, or disclose computer software.

**Indicate whether development was exclusively or partially at private expense. If development was not at private expense, enter the specific reason for asserting that the Government's rights should be restricted.

***Enter asserted rights category (e.g., restricted or government purpose rights in computer software, government purpose license rights from a prior contract, rights in SBIR software generated under another contract, or specifically negotiated licenses).

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

Date _____
Printed Name and Title _____
Signature _____

(End of identification and assertion)

(4) When requested by the Contracting Officer, the Contractor shall provide sufficient information to enable the Contracting Officer to evaluate the Contractor's assertions. The Contracting Officer reserves the right to add the Contractor's assertions to the Attachment and validate any listed assertion, at a later date, in accordance with the procedures of the Validation of Asserted Restrictions—Computer Software clause of this contract.

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

(1) General marking instructions. The Contractor, or its subcontractors or suppliers, shall conspicuously and legibly mark the appropriate legend on all computer software that qualify for such markings. The authorized legends shall be placed on the transmittal document or software storage container and each page, or portions thereof, of printed material containing computer software for which restrictions are asserted. Computer software transmitted directly from one computer or computer terminal to another shall contain a notice of asserted restrictions. However, instructions that interfere with or delay the operation of computer software in order to display a restrictive rights legend or other license statement at any time prior to or during use of the computer software, or otherwise cause such interference or delay, shall not be inserted in software that will or might be used in combat or situations that simulate combat conditions, unless the Contracting Officer's written permission to deliver such software has been obtained prior to delivery. Reproductions of computer software or any portions thereof subject to asserted restrictions, shall also reproduce the asserted restrictions.

(2) Government purpose rights markings. Computer software delivered or otherwise furnished to the Government with government purpose rights shall be marked as follows:

GOVERNMENT PURPOSE RIGHTS

Contract No.
Contractor Name
Contractor Address

Expiration Date

The Government's rights to use, modify, reproduce, release, perform, display, or disclose this software are restricted by paragraph (b)(2) of the Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation clause contained in the above identified contract. No restrictions apply after the expiration date shown above. Any reproduction of the software or portions thereof marked with this legend must also reproduce the markings.

(End of legend)

(3) Restricted rights markings. Software delivered or otherwise furnished to the Government with restricted rights shall be marked with the following legend:

RESTRICTED RIGHTS

Contract No.
Contractor Name
Contractor Address

The Government's rights to use, modify, reproduce, release, perform, display, or disclose this software are restricted by paragraph (b)(3) of the Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation clause contained in the above identified contract. Any reproduction of computer software or portions thereof marked with this legend must also reproduce the markings. Any person, other than the Government, who has been provided access to such software must promptly notify the above named Contractor.

(End of legend)

(4) Special license rights markings.

(i) Computer software or computer software documentation in which the Government's rights stem from a specifically negotiated license shall be marked with the following legend:

SPECIAL LICENSE RIGHTS

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

(End of legend)

(ii) For purposes of this clause, special licenses do not include government purpose license rights acquired under a prior contract (see paragraph (b)(5) of this clause).

(5) Pre-existing markings. If the terms of a prior contract or license permitted the Contractor to restrict the Government's rights to use, modify, release, perform, display, or disclose computer software or computer software documentation and those restrictions are still applicable, the Contractor may mark such software or documentation with the appropriate restrictive legend for which the software qualified under the prior contract or license. The marking procedures in paragraph (f)(1) of this clause shall be followed.

(g) Contractor procedures and records. Throughout performance of this contract, the Contractor and its subcontractors or suppliers that will deliver computer software or computer software documentation with other than unlimited rights, shall—

(1) Have, maintain, and follow written procedures sufficient to assure that restrictive markings are used only when authorized by the terms of this clause; and

(2) Maintain records sufficient to justify the validity of any restrictive markings on computer software or computer software documentation delivered under this contract.

(h) Removal of unjustified and nonconforming markings.

(1) Unjustified computer software or computer software documentation markings. The rights and obligations of the parties regarding the validation of restrictive markings on computer software or computer software documentation furnished or to be furnished under this contract are contained in the Validation of Asserted Restrictions--Computer Software and the Validation of Restrictive Markings on Technical Data clauses of this contract, respectively. Notwithstanding any provision of this contract concerning inspection and acceptance, the Government may ignore or, at the Contractor's expense, correct or strike a marking if, in accordance with the procedures of those clauses, a restrictive marking is determined to be unjustified.

(2) Nonconforming computer software or computer software documentation markings. A nonconforming marking is a marking placed on computer software or computer software documentation delivered or otherwise furnished to the Government under this contract that is not in the format authorized by this contract. Correction of nonconforming markings is not subject to the Validation of Asserted Restrictions--Computer Software or the Validation of Restrictive Markings on Technical Data clause of this contract. If the Contracting Officer notifies the Contractor of a nonconforming marking or markings and the Contractor fails to remove or correct such markings within sixty (60) days, the Government may ignore or, at the Contractor's expense, remove or correct any nonconforming markings.

(i) Relation to patents. Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government under any patent.

(j) Limitation on charges for rights in computer software or computer software documentation.

(1) The Contractor shall not charge to this contract any cost, including but not limited to license fees, royalties, or similar charges, for rights in computer software or computer software documentation to be delivered under this contract when—

(i) The Government has acquired, by any means, the same or greater rights in the software or documentation; or

(ii) The software or documentation are available to the public without restrictions.

(2) The limitation in paragraph (j)(1) of this clause—

(i) Includes costs charged by a subcontractor or supplier, at any tier, or costs incurred by the Contractor to acquire rights in subcontractor or supplier computer software or computer software documentation, if the subcontractor or supplier has

been paid for such rights under any other Government contract or under a license conveying the rights to the Government; and

(ii) Does not include the reasonable costs of reproducing, handling, or mailing the documents or other media in which the software or documentation will be delivered.

(k) Applicability to subcontractors or suppliers.

(1) Whenever any noncommercial computer software or computer software documentation is to be obtained from a subcontractor or supplier for delivery to the Government under this contract, the Contractor shall use this same clause in its subcontracts or other contractual instruments, and require its subcontractors or suppliers to do so, without alteration, except to identify the parties. No other clause shall be used to enlarge or diminish the Government's, the Contractor's, or a higher tier subcontractor's or supplier's rights in a subcontractor's or supplier's computer software or computer software documentation.

(2) The Contractor and higher tier subcontractors or suppliers shall not use their power to award contracts as economic leverage to obtain rights in computer software or computer software documentation from their subcontractors or suppliers.

(3) The Contractor shall ensure that subcontractor or supplier rights are recognized and protected in the identification, assertion, and delivery processes required by paragraph (e) of this clause.

(4) In no event shall the Contractor use its obligation to recognize and protect subcontractor or supplier rights in computer software or computer software documentation as an excuse for failing to satisfy its contractual obligation to the Government.

TECHNICAL DATA—COMMERCIAL ITEMS

(a) Definitions. As used in this clause—

(1) "Commercial item" does not include commercial computer software.

(2) "Covered Government support contractor" means a contractor under a contract, the primary purpose of which is to furnish independent and impartial advice or technical assistance directly to the Government in support of the Government's management and oversight of a program or effort (rather than to directly furnish an end item or service to accomplish a program or effort), provided that the contractor—

(i) Is not affiliated with the prime contractor or a first-tier subcontractor on the program or effort, or with any direct competitor of such prime contractor or any such first-tier subcontractor in furnishing end items or services of the type developed or produced on the program or effort; and

(ii) Receives access to technical data or computer software for performance of a Government contract that contains the clause substantially similar to DFARS [252.227-7025](#) Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends.

(3) "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.

(4) The term "item" includes components or processes.

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

(6) "Vessel design" means the design of a vessel, boat, or craft, and its components, including the hull, decks, superstructure, and the exterior surface shape of all external shipboard equipment and systems. The term includes designs described in 10 U.S.C. 7317, and designs protectable under 17 U.S.C. 1301, et seq.

(b) License.

(1) The Government shall have the unrestricted right to use, modify, reproduce, release, perform, display, or disclose technical data, 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

(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 the data without restrictions.

(2) Except as provided in paragraph (b)(1) of this clause, the Government may use, modify, reproduce, release, perform, display, or disclose technical data within the Government only. The Government shall not—

(i) Use the technical data to manufacture additional quantities of the commercial items; or

(ii) 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 items furnished under this contract, or for performance of work by covered Government support contractors.

(3) The Contractor acknowledges that—(i) Technical data covered by paragraph (b)(2) of this clause is authorized to be released or disclosed to covered Government support contractors;

(ii) The Contractor will be notified of such release or disclosure;

(iii) The Contractor (or the party asserting restrictions as identified in a restrictive legend) may require each such covered Government support contractor to enter into a non-disclosure agreement directly with the Contractor (or the party asserting restrictions) regarding the covered Government support contractor's use of such data, or alternatively, that the Contractor (or party asserting restrictions) may waive in writing the requirement for an non-disclosure agreement;

(iv) Any such non-disclosure agreement shall address the restrictions on the covered Government support contractor's use of the data as set forth in the clause Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends, and shall not include any additional terms and conditions unless mutually agreed to by the parties to the non-disclosure agreement; and

(v) The Contractor shall provide a copy of any such non-disclosure agreement or waiver to the Contracting Officer, upon request.

(4) Vessel designs. For a vessel design (including a vessel design embodied in a useful article) that is developed or delivered under this contract, the Government shall have the right to make and have made any useful article that embodies the vessel design, to import the article, to sell the article, and to distribute the article for sale or to use the article in trade, to the same extent that the Government is granted rights in the technical data pertaining to the vessel design.

(c) Additional license rights. The Contractor, its subcontractors, and suppliers are not required to provide the Government additional rights to use, modify, reproduce, release, perform, display, or disclose technical data. However, if the Government desires to obtain additional rights in technical data, the Contractor agrees to promptly enter into negotiations with the Contracting Officer to determine whether there are acceptable terms for transferring such rights. All technical data in which the Contractor has granted the Government additional rights shall be listed or described in a special license agreement made part of this contract. The license shall enumerate the additional rights granted the Government in such data.

(d) Release from liability. The Contractor agrees that the Government, and other persons to whom the Government may have released or disclosed technical data delivered or otherwise furnished under this contract, shall have no liability for any release or disclosure of technical data that are not marked to indicate that such data are licensed data subject to use, modification, reproduction, release, performance, display, or disclosure restrictions.

(e) Applicability to subcontractors or suppliers.

(1) The Contractor shall recognize and protect the rights afforded its subcontractors and suppliers under 10 U.S.C. 2320 and 10 U.S.C. 2321.

(2) Whenever any technical data related to commercial items developed in any part at private expense will be obtained from a subcontractor or supplier for delivery to the Government under this contract, the Contractor shall use this same clause in the subcontract or other contractual instrument, and require its subcontractors or suppliers to do so, without alteration, except to identify the parties. This clause will govern the technical data pertaining to any portion of a commercial item that was developed exclusively at private expense, and the Section H clause entitled "Rights in Technical Data--Noncommercial Items" will govern the technical data pertaining to any portion of a commercial item that was developed in any part at Government expense.

TECHNICAL DATA OR COMPUTER SOFTWARE PREVIOUSLY DELIVERED TO THE GOVERNMENT

The Offeror 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 Offeror has produced for, delivered to, or is obligated to deliver to the Government under any contract or subcontract. The attachment shall identify—

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

TECHNICAL DATA—WITHHOLDING OF PAYMENT

- (a) If technical data specified to be delivered under this contract, is not delivered within the time specified by this contract or is deficient upon delivery (including having restrictive markings not identified in the list described in the clause at Rights In Technical Data--Noncommercial Items (e)(2) or Rights In Noncommercial Computer Software And Noncommercial Computer Software Documentation (e)(2) of this contract), the Contracting Officer may until such data is accepted by the Government, withhold payment to the Contractor of ten percent (10%) of the total contract price or amount unless a lesser withholding is specified in the contract. Payments shall not be withheld nor any other action taken pursuant to this paragraph when the Contractor's failure to make timely delivery or to deliver such data 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.

VALIDATION OF ASSERTED RESTRICTIONS—COMPUTER SOFTWARE

(a) Definitions.

- (1) As used in this clause, unless otherwise specifically indicated, the term "Contractor" means the Contractor and its subcontractors or suppliers.
- (2) Other terms used in this clause are defined in the Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation clause of this contract.

(b) Justification. The Contractor shall maintain records sufficient to justify the validity of any markings that assert restrictions on the Government's rights to use, modify, reproduce, perform, display, release, or disclose computer software delivered or required to be delivered under this contract and shall be prepared to furnish to the Contracting Officer a written justification for such restrictive markings in response to a request for information under paragraph (d) or a challenge under paragraph (f) of this clause.

(c) Direct contact with subcontractors or suppliers. The Contractor agrees that the Contracting Officer may transact matters under this clause directly with subcontractors or suppliers at any tier who assert restrictions on the Government's right to use, modify, reproduce, release, perform, display, or disclose computer software. Neither this clause, nor any action taken by the Government under this clause, creates or implies privity of contract between the Government and the Contractor's subcontractors or suppliers.

(d) Requests for information.

- (1) The Contracting Officer may request the Contractor to provide sufficient information to enable the Contracting Officer to evaluate the Contractor's asserted restrictions. Such information shall be based upon the records required by this clause or other information reasonably available to the Contractor.
- (2) Based upon the information provided, if the—

- (i) Contractor agrees that an asserted restriction is not valid, the Contracting Officer may—

- (A) Strike or correct the unjustified marking at the Contractor's expense; or

- (B) Return the computer software to the Contractor for correction at the Contractor's expense. If the Contractor fails to correct or strike the unjustified restriction and return the corrected software to the Contracting Officer within sixty (60) days following receipt of the software, the Contracting Officer may correct or strike the markings at that Contractor's expense.

(ii) Contracting Officer concludes that the asserted restriction is appropriate for this contract, the Contracting Officer shall so notify the Contractor in writing.

(3) The Contractor's failure to provide a timely response to a Contracting Officer's request for information or failure to provide sufficient information to enable the Contracting Officer to evaluate an asserted restriction shall constitute reasonable grounds for questioning the validity of an asserted restriction.

(e) Government right to challenge and validate asserted restrictions.

(1) The Government, when there are reasonable grounds to do so, has the right to review and challenge the validity of any restrictions asserted by the Contractor on the Government's rights to use, modify, reproduce, release, perform, display, or disclose computer software delivered, to be delivered under this contract, or otherwise provided to the Government in the performance of this contract. Except for software that is publicly available, has been furnished to the Government without restrictions, or has been otherwise made available without restrictions, the Government may exercise this right only within six (6) years after the date(s) the software is delivered or otherwise furnished to the Government, or six (6) years following final payment under this contract, whichever is later.

(2) The absence of a challenge to an asserted restriction shall not constitute validation under this clause. Only a Contracting Officer's final decision or actions of an agency Board of Contract Appeals or a court of competent jurisdiction that sustain the validity of an asserted restriction constitute validation of the restriction.

(f) Major systems. When the Contracting Officer challenges an asserted restriction regarding noncommercial computer software for a major system or a subsystem or component thereof on the basis that the computer software was not developed exclusively at private expense, the Contracting Officer will sustain the challenge unless information provided by the Contractor or subcontractor demonstrates that the computer software was developed exclusively at private expense.

(g) Challenge procedures.

(1) A challenge must be in writing and shall—

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

(ii) Require the Contractor to respond within sixty (60) days;

(iii) Require the Contractor to provide justification for the assertion based upon records kept in accordance with paragraph (b) of this clause and such other documentation that are reasonably available to the Contractor, in sufficient detail to enable the Contracting Officer to determine the validity of the asserted restrictions; and

(iv) State that a Contracting Officer's final decision, during the six -year period preceding this challenge, or action of a court of competent jurisdiction or Board of Contract Appeals that sustained the validity of an identical assertion made by the Contractor (or a licensee) shall serve as justification for the asserted restriction.

(2) The Contracting Officer shall extend the time for response if the Contractor submits a written request showing the need for additional time to prepare a response.

(3) The Contracting Officer may request additional supporting documentation if, in the Contracting Officer's opinion, the Contractor's explanation does not provide sufficient evidence to justify the validity of the asserted restrictions. The Contractor agrees to promptly respond to the Contracting Officer's request for additional supporting documentation.

(4) Notwithstanding challenge by the Contracting Officer, the parties may agree on the disposition of an asserted restriction at any time prior to a Contracting Officer's final decision or, if the Contractor has appealed that decision, filed suit, or provided notice of an intent to file suit, at any time prior to a decision by a court of competent jurisdiction or Board of Contract Appeals.

(5) If the Contractor fails to respond to the Contracting Officer's request for information or additional information under paragraph (g)(1) of this clause, the Contracting Officer shall issue a final decision, in accordance with paragraph (f) of this clause and the Disputes clause of this contract, pertaining to the validity of the asserted restriction.

(6) If the Contracting Officer, after reviewing the written explanation furnished pursuant to paragraph (f)(1) of this clause, or any other available information pertaining to the validity of an asserted restriction, determines that the asserted restriction has—

(i) Not been justified, the Contracting Officer shall issue promptly a final decision, in accordance with the Disputes clause of this contract, denying the validity of the asserted restriction; or

(ii) Been justified, the Contracting Officer shall issue promptly a final decision, in accordance with the Disputes clause of this contract, validating the asserted restriction.

(7) A Contractor receiving challenges to the same asserted restriction(s) from more than one Contracting Officer shall notify each Contracting Officer of the other challenges. The notice shall also state which Contracting Officer initiated the first in time

unanswered challenge. The Contracting Officer who initiated the first in time unanswered challenge, after consultation with the other Contracting Officers who have challenged the restrictions and the Contractor, shall formulate and distribute a schedule that provides the Contractor a reasonable opportunity for responding to each challenge.

(h) Contractor appeal □ Government obligation.

(1) The Government agrees that, notwithstanding a Contracting Officer's final decision denying the validity of an asserted restriction and except as provided in paragraph (h)(3) of this clause, it will honor the asserted restriction—

(i) For a period of ninety (90) days from the date of the Contracting Officer's final decision to allow the Contractor to appeal to the appropriate Board of Contract Appeals or to file suit in an appropriate court;

(ii) For a period of one year from the date of the Contracting Officer's final decision if, within the first ninety (90) days following the Contracting Officer's final decision, the Contractor has provided notice of an intent to file suit in an appropriate court; or

(iii) Until final disposition by the appropriate Board of Contract Appeals or court of competent jurisdiction, if the Contractor has:

(A) appealed to the Board of Contract Appeals or filed suit in an appropriate court within ninety (90) days; or

(B) submitted, within ninety (90) days, a notice of intent to file suit in an appropriate court and filed suit within one year.

(2) The Contractor agrees that the Government may strike, correct, or ignore the restrictive markings if the Contractor fails to—

(i) Appeal to a Board of Contract Appeals within ninety (90) days from the date of the Contracting Officer's final decision;

(ii) File suit in an appropriate court within ninety (90) days from such date; or

(iii) File suit within one year after the date of the Contracting Officer's final decision if the Contractor had provided notice of intent to file suit within ninety (90) days following the date of the Contracting Officer's final decision.

(3) The agency head, on a nondelegable basis, may determine that urgent or compelling circumstances do not permit awaiting the filing of suit in an appropriate court, or the rendering of a decision by a court of competent jurisdiction or Board of Contract Appeals. In that event, the agency head shall notify the Contractor of the urgent or compelling circumstances. Notwithstanding paragraph (h)(1) of this clause, the Contractor agrees that the agency may use, modify, reproduce, release, perform, display, or disclose computer software marked with (i) government purpose legends for any purpose, and authorize others to do so; or (ii) restricted or special license rights for government purposes only. The Government agrees not to release or disclose such software unless, prior to release or disclosure, the intended recipient is subject to the use and non-disclosure agreement at J-17 of this contract Use and Non Disclosure Agreement or is a Government contractor receiving access to the software for performance of a Government contract that contains the clause that is substantially similar to DFARS [252.227-7025](#), Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends. The agency head's determination may be made at any time after the date of the Contracting Officer's final decision and shall not affect the Contractor's right to damages against the United States, or other relief provided by law, if its asserted restrictions are ultimately upheld.

(i) Final disposition of appeal or suit. If the Contractor appeals or files suit and if, upon final disposition of the appeal or suit, the Contracting Officer's decision is:

(1) Sustained—

(i) Any restrictive marking on such computer software shall be struck or corrected at the Contractor's expense or ignored; and

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

(2) Not sustained—

(i) The Government shall be bound by the asserted restriction; and

(ii) If the challenge by the Government is found not to have been made in good faith, 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 in defending the restriction.

(j) Flowdown. The Contractor shall insert this clause in all contracts, purchase orders, and other similar instruments with its subcontractors or suppliers, at any tier, who will be furnishing computer software to the Government in the performance of this contract. The clause may not be altered other than to identify the appropriate parties.

VALIDATION OF RESTRICTIVE MARKINGS ON TECHNICAL DATA

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

(b) Presumption regarding development exclusively at private expense.

(1) Commercial items. For commercially available off-the-shelf items (defined at 41 U.S.C. 104) in all cases, and for all other commercial items except as provided in paragraph (b) (2) of this clause, the Contracting Officer will presume that a Contractor's asserted use or release restrictions are justified on the basis that the item, component, or process was developed exclusively at private expense. The Contracting Officer shall not challenge such assertions unless the Contracting Officer has information that demonstrates that the item, component, or process was not developed exclusively at private expense.

(2) Major systems. The presumption of development exclusively at private expense does not apply to major systems or subsystems or components thereof, except for commercially available off-the-shelf items (which are governed by paragraph (b)(1)) of this clause. When the Contracting Officer challenges an asserted restriction regarding technical data for a major system or a subsystem or component thereof on the basis that the item, component, or process was not developed exclusively at private expense, the Contracting Officer will sustain the challenge unless information provided by the Contractor or subcontractor demonstrates that the item, component, or process was developed exclusively at private expense.

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

(d) Prechallenge request for information.

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

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

(3) If the Contractor or subcontractor fails to respond to the Contracting Officer's request for information under paragraph (d)(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 relates, the Contracting Officer may challenge the validity of the marking as described in paragraph (e) of this clause.

(e) Challenge.

(1) Notwithstanding any provision of this contract concerning inspection and acceptance, if the 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 U.S. Coast Guard Contracting Officer's final decision, issued pursuant to paragraph (g) of this clause, sustaining the validity of a restrictive marking identical to the asserted restriction, within the three-year period preceding the challenge, shall serve as justification for the asserted restriction if the validated restriction was asserted by the same Contractor or subcontractor (or any licensee of such Contractor or subcontractor) to which such notice is being provided; and

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

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

(3) The Contractor's or subcontractor's written response shall be considered a claim within the meaning of the Contract Disputes Act of 1978 (41 U.S.C. 7101), and shall be certified in the form prescribed at 33.207 of the Federal Acquisition Regulation, regardless of dollar amount.

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

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

(g) Final decision when Contractor or subcontractor responds.

(1) If the 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 for issuance of a final decision will be made within sixty (60) days after receipt of the response to the challenge notice.

(2)(i) If the 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 of the longer period that the Government will require. The notification of a longer period for issuance of a final decision will be made within sixty (60) days after receipt of the response to the challenge notice.

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

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

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

(h) Final disposition of appeal or suit.

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

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

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

(2) If the Contractor or subcontractor appeals or files suit and if, upon final disposition of the appeal or suit, the 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 or subcontractor for payment of fees and other expenses (as defined in 28 U.S.C. 2412(d)(2)(A)) incurred by the Contractor or subcontractor in defending the marking, if the challenge by the Government is found not to have been made in good faith.

(i) Duration of right to challenge. The Government may review the validity of any restriction on technical data, delivered or to be delivered under a contract, asserted by the Contractor or subcontractor. During the period within six (6) years of final payment on a contract or within six (6) years of delivery of the technical data to the Government, whichever is later, the Contracting Officer may review and make a written determination to challenge the restriction. The Government may challenge a use or release restriction asserted with respect to technical data by a contractor or subcontractor at any tier under a contract subject to this section if the Contracting Officer finds that—

(A) reasonable grounds exist to question the current validity of the asserted restriction; and

(B) the continued adherence by the United States to the asserted restriction would make it impracticable to procure the item to which the technical data pertain competitively at a later time.

The Government may, however, challenge a restriction on the release, disclosure or use of technical data at any time if such technical data—

(1) Is publicly available;

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

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

(4) Has been the subject of a fraudulently asserted use or release restriction.

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

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

(l) Flowdown. The Contractor or subcontractor agrees to insert this clause in contractual instruments with its subcontractors or suppliers at any tier requiring the delivery of technical data.

PERFORMANCE-BASED PAYMENTS (FAR 52.232-32) (APR 2012)

(a) Amount of payments and limitations on payments. Subject to such other limitations and conditions as are specified in this contract and this clause, the amount of payments and limitations on payments shall be specified in the contract's description of the basis for payment.

(b) Contractor request for performance-based payment. The Contractor may submit requests for payment of performance-based payments not more frequently than monthly, in a form and manner acceptable to the Contracting Officer. Unless otherwise authorized by the Contracting Officer, all performance-based payments in any period for which payment is being requested shall be included in a single request, appropriately itemized and totaled. The Contractor's request shall contain the information and certification detailed in paragraphs (l) and (m) of this clause.

(c) Approval and payment of requests.

(1) The Contractor shall not be entitled to payment of a request for performance based payment prior to successful accomplishment of the event or performance criterion for which payment is requested. The Contracting Officer shall determine whether the event or performance criterion for which payment is requested has been successfully accomplished in accordance with the terms of the contract. The Contracting Officer may, at any time, require the Contractor to substantiate the successful performance of any event or performance criterion which has been or is represented as being payable.

(2) A payment under this performance-based payment clause is a contract financing payment under the Prompt Payment clause of this contract and not subject to the interest penalty provisions of the Prompt Payment Act. The designated payment office will pay approved requests on the 30th day after receipt of the request for performance-based payment by the designated payment office. However, the designated payment office is not required to provide payment if the Contracting Officer requires substantiation as provided in paragraph (c)(1) of this clause, or inquires into the status of an event or performance criterion, or into any of the conditions listed in paragraph (e) of this clause, or into the Contractor certification. The payment period will not begin until the Contracting Officer approves the request.

(3) The approval by the Contracting Officer of a request for performance-based payment does not constitute an acceptance by the Government and does not excuse the Contractor from performance of obligations under this contract.

(d) Liquidation of performance-based payments.

(1) Performance-based finance amounts paid prior to payment for delivery of an item shall be liquidated by deducting a percentage or a designated dollar amount from the delivery payment. If the performance-based finance payments are on a delivery item basis, the liquidation amount for each such line item shall be the percent of that delivery item price that was previously paid under performance-based finance payments or the designated dollar amount. If the performance-based finance payments are on a whole contract basis, liquidation shall be by either predesignated liquidation amounts or a liquidation percentage.

(2) If at any time the amount of payments under this contract exceeds any limitation in this contract, the Contractor shall repay to the Government the excess. Unless otherwise determined by the Contracting Officer, such excess shall be credited as a reduction in the unliquidated performance-based payment balance(s), after adjustment of invoice payments and balances for any retroactive price adjustments.

(e) Reduction or suspension of performance-based payments. The Contracting Officer may reduce or suspend performance-based payments, liquidate performance-based payments by deduction from any payment under the contract, or take a combination of these actions after finding upon substantial evidence any of the following conditions:

(1) The Contractor failed to comply with any material requirement of this contract (which includes paragraphs (h) and (i) of this clause).

(2) Performance of this contract is endangered by the Contractor's—

- (i) Failure to make progress; or
- (ii) Unsatisfactory financial condition.

(3) The Contractor is delinquent in payment of any subcontractor or supplier under this contract in the ordinary course of business.

(f) Title.

(1) Title to the property described in this paragraph (f) shall vest in the Government. Vestiture shall be immediately upon the date of the first performance-based payment under this contract, for property acquired or produced before that date. Otherwise, vestiture shall occur when the property is or should have been allocable or properly chargeable to this contract.

(2) "Property," as used in this clause, includes all of the following described items acquired or produced by the Contractor that are or should be allocable or properly chargeable to this contract under sound and generally accepted accounting principles and practices:

- (i) Parts, materials, inventories, and work in process;
- (ii) Special tooling and special test equipment to which the Government is to acquire title;
- (iii) Nondurable (i.e., noncapital) tools, jigs, dies, fixtures, molds, patterns, taps, gauges, test equipment and other similar manufacturing aids, title to which would not be obtained as special tooling under paragraph (f)(2)(ii) of this clause; and
- (iv) Drawings and technical data, to the extent the Contractor or subcontractors are required to deliver them to the Government by other clauses of this contract.

(3) Although title to property is in the Government under this clause, other applicable clauses of this contract (e.g., the termination clauses) shall determine the handling and disposition of the property.

(4) The Contractor may sell any scrap resulting from production under this contract, without requesting the Contracting Officer's approval, provided that any significant reduction in the value of the property to which the Government has title under this clause is reported in writing to the Contracting Officer.

(5) In order to acquire for its own use or dispose of property to which title is vested in the Government under this clause, the Contractor shall obtain the Contracting Officer's advance approval of the action and the terms. If approved, the basis for payment (the events or performance criteria) to which the property is related shall be deemed to be not in compliance with the terms of the contract and not payable (if the property is part of or needed for performance), and the Contractor shall refund the related performance-based payments in accordance with paragraph (d) of this clause.

(6) When the Contractor completes all of the obligations under this contract, including liquidation of all performance-based payments, title shall vest in the Contractor for all property (or the proceeds thereof) not—

- (i) Delivered to, and accepted by, the Government under this contract; or
- (ii) Incorporated in supplies delivered to, and accepted by, the Government under this contract and to which title is vested in the Government under this clause.

(7) The terms of this contract concerning liability for Government-furnished property shall not apply to property to which the Government acquired title solely under this clause.

(g) Risk of loss. Before delivery to and acceptance by the Government, the Contractor shall bear the risk of loss for property, the title to which vests in the Government under this clause, except to the extent the Government expressly assumes the risk. If any property is lost (see 45.101), the basis of payment (the events or performance criteria) to which the property is related shall be deemed to be not in compliance with the terms of the contract and not payable (if the property is part of or needed for performance), and the Contractor shall refund the related performance-based payments in accordance with paragraph (d) of this clause.

(h) Records and controls. The Contractor shall maintain records and controls adequate for administration of this clause. The Contractor shall have no entitlement to performance-based payments during any time the Contractor's records or controls are determined by the Contracting Officer to be inadequate for administration of this clause.

(i) Reports and Government access. The Contractor shall promptly furnish reports, certificates, financial statements, and other pertinent information requested by the Contracting Officer for the administration of this clause and to determine that an event or other criterion prompting a financing payment has been successfully accomplished. The Contractor shall give the Government reasonable opportunity to examine and verify the Contractor's records and to examine and verify the Contractor's performance of this contract for administration of this clause.

(j) Special terms regarding default. If this contract is terminated under the Default clause, (1) the Contractor shall, on demand, repay to the Government the amount of unliquidated performance-based payments, and (2) title shall vest in the Contractor, on full liquidation of all performance-based payments, for all property for which the Government elects not to require delivery under the Default clause of this contract. The Government shall be liable for no payment except as provided by the Default clause.

(k) Reservation of rights.

(1) No payment or vesting of title under this clause shall—

- (i) Excuse the Contractor from performance of obligations under this contract; or
- (ii) Constitute a waiver of any of the rights or remedies of the parties under the contract.

(2) The Government's rights and remedies under this clause—

- (i) Shall not be exclusive, but rather shall be in addition to any other rights and remedies provided by law or this contract; and
- (ii) Shall not be affected by delayed, partial, or omitted exercise of any right, remedy, power, or privilege, nor shall such exercise or any single exercise preclude or impair any further exercise under this clause or the exercise of any other right, power, or privilege of the Government.

(l) Content of Contractor's request for performance-based payment. The Contractor's request for performance-based payment shall contain the following:

- (1) The name and address of the Contractor;
- (2) The date of the request for performance-based payment;
- (3) The contract number and/or other identifier of the contract or order under which the request is made;
- (4) Such information and documentation as is required by the contract's description of the basis for payment; and
- (5) A certification by a Contractor official authorized to bind the Contractor, as specified in paragraph (m) of this clause.

(m) Content of Contractor's certification. As required in paragraph (l)(5) of this clause, the Contractor shall make the following certification in each request for performance-based payment:

I certify to the best of my knowledge and belief that—

(1) This request for performance-based payment is true and correct; this request (and attachments) has been prepared from the books and records of the Contractor, in accordance with the contract and the instructions of the Contracting Officer;

(2) (Except as reported in writing on _____), all payments to subcontractors and suppliers under this contract have been paid, or will be paid, currently, when due in the ordinary course of business;

(3) There are no encumbrances (except as reported in writing on _____) against the property acquired or produced for, and allocated or properly chargeable to, the contract which would affect or impair the Government's title;

(4) There has been no materially adverse change in the financial condition of the Contractor since the submission by the Contractor to the Government of the most recent written information dated _____; and

(5) After the making of this requested performance-based payment, the amount of all payments for each deliverable item for which performance-based payments have been requested will not exceed any limitation in the contract, and the amount of all payments under the contract will not exceed any limitation in the contract.

INDUSTRIAL RESOURCES DEVELOPED UNDER DEFENSE PRODUCTION ACT TITLE III (FAR 52.234-1) (DEC 1994)

(a) Definitions. "Title III industrial resource" means materials, services, processes, or manufacturing equipment (including the processes, technologies, and ancillary services for the use of such equipment) established or maintained under the authority of Title III, Defense Production Act (50 U.S.C. App. 2091-2093).

"Title III project contractor" means a contractor that has received assistance for the development or manufacture of an industrial resource under [50 U.S.C. App. 2091-2093](#), Defense Production Act.

- (b) The Contractor shall refer any request from a Title III project contractor for testing and qualification of a Title III industrial resource to the Contracting Officer.
- (c) Upon the direction of the Contracting Officer, the Contractor shall test Title III industrial resources for qualification. The Contractor shall provide the test results to the Defense Production Act Office, Title III Program, located at Wright Patterson Air Force Base, Ohio, 45433-7739.
- (d) When the Contracting Officer modifies the contract to direct testing pursuant to this clause, the Government will provide the Title III industrial resource to be tested and will make an equitable adjustment in the contract for the costs of testing and qualification of the Title III industrial resource.
- (e) The Contractor agrees to insert the substance of this clause, including paragraph (e), in every subcontract issued in performance of this contract.

CONTRACTOR EMPLOYEE ACCESS (HSAR 3052.204-71) (SEP 2012)

(a) *Sensitive Information*, as used in this clause, means any information, which if lost, misused, disclosed, or, without authorization is accessed, or modified, could adversely affect the national or homeland security interest, the conduct of Federal programs, or the privacy to which individuals are entitled under section 552a of title 5, United States Code (the Privacy Act), but which has not been specifically authorized under criteria established by an Executive Order or an Act of Congress to be kept secret in the interest of national defense, homeland security or foreign policy. This definition includes the following categories of information:

(1) Protected Critical Infrastructure Information (PCII) as set out in the Critical Infrastructure Information Act of 2002 (Title II, Subtitle B, of the Homeland Security Act, Public Law 107-296, 196 Stat. 2135), as amended, the implementing regulations thereto (Title 6, Code of Federal Regulations, Part 29) as amended, the applicable PCII Procedures Manual, as amended, and any supplementary guidance officially communicated by an authorized official of the Department of Homeland Security (including the PCII Program Manager or his/her designee);

(2) Sensitive Security Information (SSI), as defined in Title 49, Code of Federal Regulations, Part 1520, as amended, "Policies and Procedures of Safeguarding and Control of SSI," as amended, and any supplementary guidance officially communicated by an authorized official of the Department of Homeland Security (including the Assistant Secretary for the Transportation Security Administration or his/her designee);

(3) Information designated as "For Official Use Only," which is unclassified information of a sensitive nature and the unauthorized disclosure of which could adversely impact a person's privacy or welfare, the conduct of Federal programs, or other programs or operations essential to the national or homeland security interest; and

(4) Any information that is designated "sensitive" or subject to other controls, safeguards or protections in accordance with subsequently adopted homeland security information handling procedures.

(b) "Information Technology Resources" include, but are not limited to, computer equipment, networking equipment, telecommunications equipment, cabling, network drives, computer drives, network software, computer software, software programs, intranet sites, and internet sites.

(c) Contractor employees working on this contract must complete such forms as may be necessary for security or other reasons, including the conduct of background investigations to determine suitability. Completed forms shall be submitted as directed by the Contracting Officer. Upon the Contracting Officer's request, the Contractor's employees shall be fingerprinted, or subject to other investigations as required. All Contractor employees requiring recurring access to Government facilities or access to sensitive information or IT resources are required to have a favorably adjudicated background investigation prior to commencing work on this contract unless this requirement is waived under Departmental procedures.

(d) The Contracting Officer may require the Contractor to prohibit individuals from working on the contract if the Government deems their initial or continued employment contrary to the public interest for any reason, including, but not limited to, carelessness, insubordination, incompetence, or security concerns.

(e) Work under this contract may involve access to sensitive information. Therefore, the Contractor shall not disclose, orally or in writing, any sensitive information to any person unless authorized in writing by the Contracting Officer. For those Contractor employees authorized access to sensitive information, the Contractor shall ensure that these persons receive training concerning the protection and disclosure of sensitive information both during and after contract performance.

(f) The Contractor shall include the substance of this clause in all subcontracts at any tier where the subcontractor may have access to Government facilities, sensitive information, or resources.

(g) Before receiving access to IT resources under this contract the individual must receive a security briefing, which the Contracting Officer's Technical Representative (COTR) will arrange, and complete any nondisclosure agreement furnished by DHS.

(h) The Contractor shall have access only to those areas of DHS information technology resources explicitly stated in this contract or approved by the COTR in writing as necessary for performance of the work under this contract. Any attempts by Contractor personnel to gain access to any information technology resources not expressly authorized by the statement of work, other terms and conditions in this contract, or as approved in writing by the COTR, is strictly prohibited. In the event of violation of this provision, DHS will take appropriate actions with regard to the contract and the individual(s) involved.

(i) Contractor access to DHS networks from a remote location is a temporary privilege for mutual convenience while the Contractor performs business for the DHS Component. It is not a right, a guarantee of access, a condition of the contract, or Government Furnished Equipment (GFE).

(j) Contractor access will be terminated for unauthorized use. The Contractor agrees to hold and save DHS harmless from any unauthorized use and agrees not to request additional time or money under the contract for any delays resulting from unauthorized use or access.

(k) Non-U.S. citizens shall not be authorized to access or assist in the development, operation, management or maintenance of Department IT systems under the contract, unless a waiver has been granted by the Head of the Component or designee, with the concurrence of both the Department's Chief Security Officer (CSO) and the Chief Information Officer (CIO) or their designees. Within DHS Headquarters, the waiver may be granted only with the approval of both the CSO and the CIO or their designees. In order for a waiver to be granted:

(1) There must be a compelling reason for using this individual as opposed to a U. S. citizen; and

(2) The waiver must be in the best interest of the Government.

(l) Contractors shall identify in their proposals the names and citizenship of all non-U.S. citizens proposed to work under the contract. Any additions or deletions of non-U.S. citizens after contract award shall also be reported to the contracting officer.