ATTACHMENT 0055 – TAILORED FAR AND DFARS CLAUSES INCORPORATED INTO AGREEMENT

30 March 2026

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Section A – Antiterrorism, Security, and OPSEC Terms and Conditions:

A.1 Security Requirements (March 2021) (Tailored from FAR 52.204-2)

(a) This clause applies to the extent that this agreement involves access to information classified "Confidential," "Secret," or "Top Secret."

(b) The Contractor shall comply with-

(1) The Security Agreement DD Form441, including the National Industrial Security Program Operating Manual (32 CFR part 117); and

(2) Any revisions to that manual, notice of which has been furnished to the Contractor.

(c) If, subsequent to the date of this agreement, the security classification or security requirements under this agreement are changed by the Government and if the changes cause an increase or decrease in security costs or otherwise affect any other term or condition of this agreement, the agreement shall be subject to an equitable adjustment as if the changes were directed under the Changes clause of this agreement.

(d) The Contractor agrees to insert terms that conform substantially to the language of this clause, including this paragraph (d) but excluding any reference to the Changes clause of this agreement, in all subcontracts under this agreement that involve access to classified information.

A.2 Personal Identity Verification of Contractor Personnel (January 2011) (Tailored from FAR 52.204-9)

(a) The Contractor shall comply with agency personal identity verification procedures identified in the agreement that implement Homeland Security Presidential Directive-12 (HSPD-12), Office of Management and Budget (OMB) guidance M-05-24 and Federal Information Processing Standards Publication (FIPS PUB) Number 201.

(b) The Contractor shall account for all forms of Government-provided identification issued to the Contractor employees in connection with performance under this agreement. The Contractor shall return such identification to the issuing agency at the earliest of any of the following, unless otherwise determined by the Government:

(1) When no longer needed for agreement performance.

(2) Upon completion of the Contractor employee's employment.

(3) Upon agreement completion or termination.

(c) The Agreement Officer may delay final payment under a agreement if the Contractor fails to comply with these requirements.

(d) The Contractor shall insert the substance of this clause, including this paragraph (d), in all subcontracts when the subcontractor's employees are required to have routine physical access to a Federally controlled facility and/or routine access to a Federally controlled information system. It shall be the responsibility of the prime Contractor to return such identification to the issuing agency in accordance with the terms set forth in paragraph (b) of this section, unless otherwise approved in writing by the Agreement Officer.

A.3 Disclosure of Information (October 2016) (Tailored from DFARS 252.204-7000)

(a) The Contractor shall not release to anyone outside the Contractor's organization any unclassified information, regardless of medium (e.g., film, tape, document), pertaining to any part of this agreement or any program related to this agreement, unless—

(1) The Agreement Officer has given prior written approval;

(2) The information is otherwise in the public domain before the date of release; or

(3) The information results from or arises during the performance of a project that involves no covered defense information (as defined in the clause at DFARS 252.204-7012) and has been scoped and negotiated by the contracting activity with the contractor and research performer and determined in writing by the Agreement Officer to be fundamental research (which by definition cannot involve any covered defense information), in accordance with National Security Decision Directive 189, National Policy on the Transfer of Scientific, Technical and Engineering Information, in effect on the date of agreement award and the Under Secretary of Defense (Acquisition and Sustainment) memoranda on Fundamental Research, dated May 24, 2010, and on Contracted Fundamental Research, dated June 26, 2008 (available at DFARS PGI 204.4).

(b) Requests for approval under paragraph (a)(1) shall identify the specific information to be released, the medium to be used, and the purpose for the release. The Contractor shall submit its request to the Agreement Officer at least 10 business days before the proposed date for release.

(c) The Contractor agrees to include a similar requirement, including this paragraph (c), in each subcontract under this agreement. Subcontractors shall submit requests for authorization to release through the prime contractor to the Agreement Officer.

A.4 Information Assurance Contractor Training and Certification (January 2008) (Tailored from DFARS 252.239-7001)

(a) The Contractor shall ensure that personnel accessing information systems have the proper and current information assurance certification to perform information assurance functions in accordance with DoDM 8140.03, Information Assurance Workforce Improvement Program. The Contractor shall meet the applicable information assurance certification requirements, including—

(1) DoD-approved information assurance workforce certifications appropriate for each category and level as listed in the current version of DoDM 8140.03; and

(2) Appropriate operating system certification for information assurance technical positions as required by DoDM 8140.03.

(b) Upon request by the Government, the Contractor shall provide documentation supporting the information assurance certification status of personnel performing information assurance functions.

(c) Contractor personnel who do not have proper and current certifications shall be denied access to DoD information systems for the purpose of performing information assurance functions.

Section B – Government Furnished Property (GFP) Terms and Conditions:

B.1 Government Property (September 2021) (Tailored from FAR 52.245-1 ALT I)

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

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

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

Contractor inventory means-

(1) Any property acquired by and in the possession of a Contractor or subcontractor under a agreement for which title is vested in the Government and which exceeds the amounts needed to complete full performance under the entire agreement;

(2) Any property that the Government is obligated or has the option to take over under any type of agreement, e.g., as a result either of any changes in the specifications or plans thereunder or of the termination of the agreement (or subcontract thereunder), before completion of the work, for the convenience or at the option of the Government; and

(3) Government-furnished property that exceeds the amounts needed to complete full performance under the entire agreement.

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

(1) All or substantially all of the Contractor's business;

(2) All or substantially all of the Contractor's operation at any one plant or separate location; or

(3) A separate and complete major industrial operation.

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

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

Equipment means a tangible item that is functionally complete for its intended purpose, durable, nonexpendable, and needed for the performance of a agreement. Equipment is not intended for sale, and does not ordinarily lose its identity or become a component part of another article when

put into use. Equipment does not include material, real property, special test equipment or special tooling.

Government-furnished property means property in the possession of, or directly acquired by, the Government and subsequently furnished to the Contractor for performance of a agreement. Government-furnished property includes, but is not limited to, spares and property furnished for repair, maintenance, overhaul, or modification. Government-furnished property also includes contractor-acquired property if the contractor-acquired property is a deliverable under a cost agreement when accepted by the Government for continued use under the agreement.

Government property means all property owned or leased by the Government. Government property includes both Government- furnished and Contractor-acquired property. Government property includes material, equipment, special tooling, special test equipment, and real property. Government property does not include intellectual property and software.

Loss of Government property means unintended, unforeseen or accidental loss, damage or destruction to Government property that reduces the Government's expected economic benefits of the property. Loss of Government property does not include purposeful destructive testing, loss from incidents where equipment is being integrated into a vehicle and may experience damage from a wiring or other integration issue, provided that the contractor is able to document that it followed appropriate integration practices, obsolescence, normal wear and tear or manufacturing defects. Loss of Government property includes, but is not limited to-

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

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

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

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

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

Property means all tangible property, both real and personal.

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

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

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

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

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

Unit acquisition cost means-

(1) For Government-furnished property, the dollar value assigned by the Government and identified in the agreement; and

(2) For contractor-acquired property, the cost derived from the Contractor's records that reflect consistently applied generally accepted accounting principles.

(b) *Property management.*

(1) The Contractor shall have a system of internal controls to manage (control, use, preserve, protect, repair, and maintain) Government property in its possession. The system shall be adequate to satisfy the requirements of this clause. In doing so, the Contractor shall initiate and maintain the processes, systems, procedures, records, and methodologies necessary for effective and efficient control of Government property. The Contractor shall disclose any significant changes to its property management system to the Property Administrator prior to implementation of the changes. The Contractor may employ customary commercial practices, voluntary consensus standards, or industry-leading practices and standards that provide effective and efficient Government property management that are necessary and appropriate for the performance of this agreement (except where inconsistent with law or regulation).

(2) The Contractor's responsibility extends from the initial acquisition and receipt of property, through stewardship, custody, and use until formally relieved of responsibility by authorized means, including delivery, consumption, expending, sale (as surplus property), or other disposition, or via a completed investigation, evaluation, and final determination for lost property. This requirement applies to all Government property

under the Contractor's accountability, stewardship, possession or control, including its vendors or subcontractors (see paragraph (f)(1)(v) of this clause).

(3) The Contractor shall include the requirements of this clause in all subcontracts under which Government property is acquired or furnished for subcontract performance.

(4) The Contractor shall establish and maintain procedures necessary to assess its property management system effectiveness and shall perform periodic internal reviews, surveillances, self-assessments, or audits. Significant findings or results of such reviews and audits pertaining to Government property shall be made available to the Property Administrator.

(c) *Use of Government property.*

(1) The Contractor shall use Government property, either furnished or acquired under this agreement, only for performing this agreement, unless otherwise provided for in this agreement or approved by the Agreement Officer.

(2) Modifications or alterations of Government property are prohibited, unless they are-

(i) Reasonable and necessary due to the scope of work under this agreement or its terms and conditions;

(ii) Required for normal maintenance; or

(iii) Otherwise authorized by the Agreement Officer.

(3) The Contractor shall not cannibalize Government property unless otherwise provided for in this agreement or approved by the Agreement Officer.

(d) *Government-furnished property.*

(1) The Government shall deliver to the Contractor the Government-furnished property described in this agreement. The Government shall furnish related data and information needed for the intended use of the property. The warranties of suitability of use and timely delivery of Government-furnished property do not apply to property acquired or fabricated by the Contractor as contractor-acquired property and subsequently transferred to another agreement with this Contractor.

(2) The delivery and/or performance dates specified in this agreement are based upon the expectation that the Government-furnished property will be suitable for agreement performance and will be delivered to the Contractor by the dates stated in the agreement.

(i) If the property is not delivered to the Contractor by the dates stated in the agreement, the Agreement Officer shall, upon the Contractor's timely written request, consider an equitable adjustment to the agreement.

(ii) In the event property is received by the Contractor, or for Government-furnished property after receipt and installation, in a condition not suitable for its intended use, the Agreement Officer shall, upon the Contractor's timely written request, advise the Contractor on a course of action to remedy the problem. Such action may include repairing, replacing, modifying, returning, or otherwise disposing of the property at the Government's expense. Upon completion of the required action(s), the Agreement Officer shall consider an equitable adjustment to the agreement (see also paragraph (f)(1)(ii)(A) of this clause).

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

(3)(i) The Agreement Officer may by written notice, at any time-

(A) Increase or decrease the amount of Government-furnished property under this agreement;

(B) Substitute other Government-furnished property for the property previously furnished, to be furnished, or to be acquired by the Contractor for the Government under this agreement; or

(C) Withdraw authority to use property.

(ii) Upon completion of any action(s) under paragraph (d)(3)(i) of this clause, and the Contractor's timely written request, the Agreement Officer shall consider an equitable adjustment to the agreement.

(e) *Title to Government property.*

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

(2) Title vests in the Government for all property acquired or fabricated by the Contractor in accordance with the financing provisions or other specific requirements for passage of title in the agreement. Under fixed price type contracts, in the absence of financing provisions or other specific requirements for passage of title in the agreement, the Contractor retains title to all property acquired by the Contractor for use on the agreement, except for property identified as a deliverable end item. If a deliverable item

is to be retained by the Contractor for use after inspection and acceptance by the Government, it shall be made accountable to the agreement through a agreement modification listing the item as Government-furnished property.

(3) *Title under Cost-Reimbursement or Time-and-Material Contracts or Cost-Reimbursable line items under Fixed-Price contracts*.

(i) Title to all property purchased by the Contractor for which the Contractor is entitled to be reimbursed as a direct item of cost under this agreement shall pass to and vest in the Government upon the vendor's delivery of such property.

(ii) Title to all other property, the cost of which is reimbursable to the Contractor, shall pass to and vest in the Government upon-

(A) Issuance of the property for use in agreement performance;

(B) Commencement of processing of the property for use in agreement performance; or

(C) Reimbursement of the cost of the property by the Government, whichever occurs first.

(f) *Contractor plans and systems*.

(1) Contractors shall establish and implement property management plans, systems, and procedures at the agreement, program, site or entity level to enable the following outcomes:

(i) *Acquisition of Property.* The Contractor shall document that all property was acquired consistent with its engineering, production planning, and property control operations.

(ii) *Receipt of Government Property*. The Contractor shall receive Government property and document the receipt, record the information necessary to meet the record requirements of paragraph (f)(1)(iii)(A)(*1*) through (*5*) of this clause, identify as Government owned in a manner appropriate to the type of property (*e.g.*, stamp, tag, mark, or other identification), and manage any discrepancies incident to shipment.

(A) *Government-furnished property*. The Contractor shall furnish a written statement to the Property Administrator containing all relevant facts, such as cause or condition and a recommended course(s) of action, if overages, shortages, or damages and/or other discrepancies are discovered upon receipt of Government-furnished property.

(B) *Contractor-acquired property*. The Contractor shall take all actions necessary to adjust for overages, shortages, damage and/or other discrepancies discovered upon receipt, in shipment of Contractor-acquired property from a vendor or supplier, so as to ensure the proper allocability and allowability of associated costs.

(iii) *Records of Government property.* The Contractor shall create and maintain records of all Government property accountable to the agreement, including Government-furnished and Contractor-acquired property.

(A) Property records shall enable a complete, current, auditable record of all transactions and shall, unless otherwise approved by the Property Administrator, contain the following:

(1) The name, part number and description, National Stock Number (if needed for additional item identification tracking and/or disposition), and other data elements as necessary and required in accordance with the terms and conditions of the agreement.

(2) Quantity received (or fabricated), issued, and balance-on-hand.

(3) Unit acquisition cost.

(4) Unique-item identifier or equivalent (if available and necessary for individual item tracking).

(5) Unit of measure.

(6) Accountable agreement number or equivalent code designation.

(7) Location.

(8) Disposition.

(9) Posting reference and date of transaction.

(10) Date placed in service (if required in accordance with the terms and conditions of the agreement).

(B) *Use of a Receipt and Issue System for Government Material*. When approved by the Property Administrator, the Contractor may maintain, in lieu of formal property records, a file of appropriately cross-referenced documents evidencing receipt, issue, and use of material that is issued for immediate consumption.

(iv) *Physical inventory*. The Contractor shall periodically perform, record, and disclose physical inventory results. A final physical inventory shall be performed

upon agreement completion or termination. The Property Administrator may waive this final inventory requirement, depending on the circumstances (*e.g.*, overall reliability of the Contractor's system or the property is to be transferred to a follow-on agreement).

(v) *Subcontractor control*.

(A) The Contractor shall award subcontracts that clearly identify items to be provided and the extent of any restrictions or limitations on their use. The Contractor shall ensure appropriate flow down of agreement terms and conditions (*e.g.*, extent of liability for loss of Government property.

(B) The Contractor shall assure its subcontracts are properly administered and reviews are periodically performed to determine the adequacy of the subcontractor's property management system.

(vi) *Reports*. The Contractor shall have a process to create and provide reports of discrepancies, loss of Government property, physical inventory results, audits and self-assessments, corrective actions, and other property-related reports as directed by the Agreement Officer.

(vii) *Relief of stewardship responsibility and liability*. The Contractor shall have a process to enable the prompt recognition, investigation, disclosure and reporting of loss of Government property, including losses that occur at subcontractor or alternate site locations.

(A) This process shall include the corrective actions necessary to prevent recurrence.

(B) Unless otherwise directed by the Property Administrator, the Contractor shall investigate and report to the Government all incidents of property loss as soon as the facts become known. Such reports shall, at a minimum, contain the following information:

(1) Date of incident (if known).

(2) The data elements required under (f)(1)(iii)(A).

(3) Quantity.

(4) Accountable agreement number.

(5) A statement indicating current or future need.

(6) Unit acquisition cost, or if applicable, estimated sales proceeds, estimated repair or replacement costs.

(7) All known interests in commingled material of which includes Government material.

(8) Cause and corrective action taken or to be taken to prevent recurrence.

(9) A statement that the Government will receive compensation covering the loss of Government property, in the event the Contractor was or will be reimbursed or compensated.

(10) Copies of all supporting documentation.

*(11)*Last known location.

(12) A statement that the property did or did not contain sensitive, export controlled, hazardous, or toxic material, and that the appropriate agencies and authorities were notified.

(C) Unless the agreement provides otherwise, the Contractor shall be relieved of stewardship responsibility and liability for property when-

(1) Such property is consumed or expended, reasonably and properly, or otherwise accounted for, in the performance of the agreement, including reasonable inventory adjustments of material as determined by the Property Administrator;

(2) Property Administrator grants relief of responsibility and liability for loss of Government property;

(3) Property is delivered or shipped from the Contractor's plant, under Government instructions, except when shipment is to a subcontractor or other location of the Contractor; or

(4) Property is disposed of in accordance with paragraphs (j) and (k) of this clause.

(viii) *Utilizing Government property*.

(A) The Contractor shall utilize, consume, move, and store Government Property only as authorized under this agreement. The Contractor shall promptly disclose and report Government property in its possession that is excess to agreement performance.

(B) Unless otherwise authorized in this agreement or by the Property Administrator the Contractor shall not commingle Government material with material not owned by the Government.

(ix) *Maintenance*. The Contractor shall properly maintain Government property. The Contractor's maintenance program shall enable the identification, disclosure, and performance of normal and routine preventative maintenance and repair. The Contractor shall disclose and report to the Property Administrator the need for replacement and/or capital rehabilitation.

(x) *Property closeout*. The Contractor shall promptly perform and report to the Property Administrator agreement property closeout, to include reporting, investigating and securing closure of all loss of Government property cases; physically inventorying all property upon termination or completion of this agreement; and disposing of items at the time they are determined to be excess to contractual needs.

(2) The Contractor shall establish and maintain Government accounting source data, as may be required by this agreement, particularly in the areas of recognition of acquisitions, loss of Government property, and disposition of material and equipment.

(g) Systems analysis.

(1) The Government shall have access to the Contractor's premises and all Government property, at reasonable times, for the purposes of reviewing, inspecting and evaluating the Contractor's property management plan(s), systems, procedures, records, and supporting documentation that pertains to Government property. This access includes all site locations and, with the Contractor's consent, all subcontractor premises.

(2) Records of Government property shall be readily available to authorized Government personnel and shall be appropriately safeguarded.

(3) Should it be determined by the Government that the Contractor's (or subcontractor's) property management practices are inadequate or not acceptable for the effective management and control of Government property under this agreement, or present an undue risk to the Government, the Contractor shall prepare a corrective action plan when requested by the Property Administrator and take all necessary corrective actions as specified by the schedule within the corrective action plan.

(h) *Contractor Liability for Government Property.*

(1) The Contractor assumes the risk of, and shall be responsible for, any loss of Government property upon its delivery to the Contractor as Government-furnished property. However, the Contractor is not responsible for reasonable wear and tear to Government property or for Government property properly consumed in performing this agreement. Additionally, should a loss of Government property occur while in possession of the contractor, that are due to circumstances the contractor reasonably believes were beyond its control, the contractor shall document these circumstances and provide them to the AOR and Agreement Officer, who will take the circumstances into account and

consider reducing or eliminating the contractor liability for loss if the circumstances support such an action.

(2) The Contractor shall take all reasonable actions necessary to protect the property from further loss. The Contractor shall separate the damaged and undamaged property, place all the affected property in the best possible order, and take such other action as the Property Administrator directs.

(3) The Contractor shall do nothing to prejudice the Government's rights to recover against third parties for any loss of Government property.

(4) The Contractor shall reimburse the Government for loss of Government property, to the extent that the Contractor is financially liable for such loss, as directed by the Agreement Officer.

(5) Upon the request of the Agreement Officer, the Contractor shall, at the Government's expense, furnish to the Government all reasonable assistance and cooperation, including the prosecution of suit and the execution of instruments of assignment in favor of the Government in obtaining recovery.

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

(1) Any delay in delivery of Government-furnished property.

(2) Delivery of Government-furnished property in a condition not suitable for its intended use.

(3) An increase, decrease, or substitution of Government-furnished property.
(4) Failure to repair or replace Government property for which the Government is responsible.

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

(1) Predisposal requirements.

(i) If the Contractor determines that the property has the potential to fulfill requirements under other contracts, the Contractor, in consultation with the Property Administrator, shall request that the Agreement Officer transfer the property to the agreement in question, or provide authorization for use, as appropriate. In lieu of transferring the property, the Agreement Officer may authorize the Contractor to credit the costs of Contractor-acquired property (material only) to the losing agreement, and debit the gaining agreement with the corresponding cost, when such

material is needed for use on another agreement. Property no longer needed shall be considered contractor inventory.

(ii) For any remaining Contractor-acquired property, the Contractor may purchase the property at the unit acquisition cost if desired or make reasonable efforts to return unused property to the appropriate supplier at fair market value (less, if applicable, a reasonable restocking fee that is consistent with the supplier's customary practices.)

(2) *Inventory disposal schedules*.

(i) Absent separate agreement terms and conditions for property disposition, and provided the property was not reutilized, transferred, or otherwise disposed of, the Contractor, as directed by the Plant Clearance Officer or authorizing official, shall use Standard Form 1428, Inventory Disposal Schedule or electronic equivalent, to identify and report-

(A) Government-furnished property that is no longer required for performance of this agreement;

(B) Contractor-acquired property, to which the Government has obtained title under paragraph (e) of this clause, which is no longer required for performance of that agreement; and

(C) Termination inventory.

(ii) The Contractor may annotate inventory disposal schedules to identify property the Contractor wishes to purchase from the Government, in the event that the property is offered for sale.

(iii) Separate inventory disposal schedules are required for aircraft in any condition, flight safety critical aircraft parts, and other items as directed by the Plant Clearance Officer.

(iv) The Contractor shall provide the information required by FAR 52.245-1(f)(1)(iii) along with the following:

(A) Any additional information that may facilitate understanding of the property's intended use.

(B) For work-in-progress, the estimated percentage of completion.

(C) For precious metals in raw or bulk form, the type of metal and estimated weight.

(D) For hazardous material or property contaminated with hazardous material, the type of hazardous material.

(E) For metals in mill product form, the form, shape, treatment, hardness, temper, specification (commercial or Government) and dimensions (thickness, width and length).

(v) Property with the same description, condition code, and reporting location may be grouped in a single line item.

(vi) Scrap should be reported by "lot" along with metal content, estimated weight and estimated value.

(3) *Submission requirements*.

(i) The Contractor shall submit inventory disposal schedules to the Plant Clearance Officer no later than-

(A) 30 days following the Contractor's determination that a property item is no longer required for performance of this agreement;

(B)60 days, or such longer period as may be approved by the Plant Clearance Officer, following completion of agreement deliveries or performance; or

(C) 120 days, or such longer period as may be approved by the Termination Agreement Officer, following agreement termination in whole or in part.

(ii) Unless the Plant Clearance Officer determines otherwise, the Contractor need not identify or report production scrap on inventory disposal schedules, and may process and dispose of production scrap in accordance with its own internal scrap procedures. The processing and disposal of other types of Government-owned scrap will be conducted in accordance with the terms and conditions of the agreement or Plant Clearance Officer direction, as appropriate.

(4) *Corrections*. The Plant Clearance Officer may-

(i) Reject a schedule for cause (*e.g.*, contains errors, determined to be inaccurate); and

(ii) Require the Contractor to correct an inventory disposal schedule.

(5) *Post submission adjustments*. The Contractor shall notify the Plant Clearance Officer at least 10 working days in advance of its intent to remove an item from an approved inventory disposal schedule. Upon approval of the Plant Clearance Officer, or upon expiration of the notice period, the Contractor may make the necessary adjustments to the inventory schedule.

(6) *Storage*.

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

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

(7) Disposition instructions.

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

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

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

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

(k) *Abandonment of Government property*.

(1) The Government shall not abandon sensitive property or termination inventory without the Contractor's written consent.

(2) The Government, upon notice to the Contractor, may abandon any nonsensitive property in place, at which time all obligations of the Government regarding such property shall cease.

(3) Absent agreement terms and conditions to the contrary, the Government may abandon parts removed and replaced from property as a result of normal maintenance actions, or

removed from property as a result of the repair, maintenance, overhaul, or modification process.

(4) The Government has no obligation to restore or rehabilitate the Contractor's premises under any circumstances; however, if Government-furnished property is withdrawn or is unsuitable for the intended use, or if other Government property is substituted, then the equitable adjustment under paragraph (i) of this clause may properly include restoration or rehabilitation costs.

(l) *Communication*. All communications under this clause shall be in writing.

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

B.2 Use and Charges (April 2012) (Tailored from FAR 52.245-9)

(a) Definitions. Definitions applicable to this agreement are provided in the clause at 52.245-1, Government Property. Additional definitions as used in this clause include:

Rental period means the calendar period during which Government property is made available for nongovernmental purposes.

Rental time means the number of hours, to the nearest whole hour, rented property is actually used for nongovernmental purposes. It includes time to set up the property for such purposes, perform required maintenance, and restore the property to its condition prior to rental (less normal wear and tear).

(b) Use of Government property. The Contractor may use the Government property without charge in the performance of-

(1) Contracts with the Government that specifically authorize such use without charge;

(2) Subcontracts of any tier under Government prime contracts if the Agreement Officer having cognizance of the prime agreement-

(i) Approves a subcontract specifically authorizing such use; or

(ii) Otherwise authorizes such use in writing; and

(3) Other work, if the Agreement Officer specifically authorizes in writing use without charge for such work.

(c) Rental. If granted written permission by the Agreement Officer, or if it is specifically provided for in the Schedule, the Contractor may use the Government property (except material) for a rental fee for work other than that provided in paragraph (b) of this clause. Authorizing such use of the Government property does not waive any rights of the Government to terminate the Contractor's right to use the Government property. The rental fee shall be determined in accordance with the following paragraphs.

(d) General.

(1) Rental requests shall be submitted to the Administrative Agreement Officer (ACO), identify the property for which rental is requested, propose a rental period, and compute an estimated rental charge by using the Contractor's best estimate of rental time in the formulae described in paragraph (e) of this clause.

(2) The Contractor shall not use Government property for nongovernmental purposes, including Independent Research and Development, until a rental charge for real property, or estimated rental charge for other property, is agreed upon. Rented property shall be used only on a non-interference basis.

(e) Rental charge.

(1) Real property and associated fixtures.

(i) The Contractor shall obtain, at its expense, a property appraisal from an independent licensed, accredited, or certified appraiser that computes a monthly, daily, or hourly rental rate for comparable commercial property. The appraisal may be used to compute rentals under this clause throughout its effective period or, if an effective period is not stated in the appraisal, for one year following the date the appraisal was performed. The Contractor shall submit the appraisal to the ACO at least 30 days prior to the date the property is needed for nongovernmental use. Except as provided in paragraph (e)(1)(iii) of this clause, the ACO shall use the appraisal rental rate to determine a reasonable rental charge.

(ii) Rental charges shall be determined by multiplying the rental time by the appraisal rental rate expressed as a rate per hour. Monthly or daily appraisal rental rates shall be divided by 720 or 24, respectively, to determine an hourly rental rate.

(iii) When the ACO believes the appraisal rental rate is unreasonable, the ACO shall promptly notify the Contractor. The parties may agree on an alternative means for computing a reasonable rental charge.

(iv) The Contractor shall obtain, at its expense, additional property appraisals in the same manner as provided in paragraph (e)(1)(i) if the effective period has expired and the Contractor desires the continued use of property for nongovernmental use. The Contractor may obtain additional appraisals within the effective period of the current appraisal if the market prices decrease substantially.

(2) Other Government property. The Contractor may elect to compute the rental charge using the appraisal method described in paragraph (e)(1) of this clause subject to the constraints therein or the following formula in which rental time shall be expressed in increments of not less than one hour with portions of hours rounded to the next higher hour: The hourly rental charge is calculated by multiplying 2 percent of the acquisition cost by the hours of rental time, and dividing by 720.

(3) Alternative methodology. The Contractor may request consideration of an alternative basis for computing the rental charge if it considers the monthly rental rate or a time-based rental unreasonable or impractical.

(f) Rental payments.

(1) Rent is due 60 days following completion of the rental period or as otherwise specified in the agreement. The Contractor shall compute the rental due, and furnish records or other supporting data in sufficient detail to permit the ACO to verify the rental time and computation. Payment shall be made by check payable to the Treasurer of the United States and sent to the agreement administration office identified in this agreement, unless otherwise specified by the Agreement Officer.

(2) Interest will be charged if payment is not made by the date specified in paragraph (f)(1) of this clause. Interest will accrue at the "Renegotiation Board Interest Rate" (published in the Federal Register semiannually on or about January 1st and July 1st) for the period in which the rent is due.

(3) The Government's acceptance of any rental payment under this clause, in whole or in part, shall not be construed as a waiver or relinquishment of any rights it may have against the Contractor stemming from the Contractor's unauthorized use of Government property or any other failure to perform this agreement according to its terms.

(g) Use revocation. At any time during the rental period, the Government may revoke nongovernmental use authorization and require the Contractor, at the Contractor's expense, to return the property to the Government, restore the property to its pre-rental condition (less normal wear and tear), or both.

(h) Unauthorized use. The unauthorized use of Government property can subject a person to fines, imprisonment, or both, under 18 U.S.C. 641.

B.3 Management and Reporting of Government Property (January 2024) (Tailored from DFARS 252.245-7005)

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

"As is" means that the Government makes no warranty with respect to the serviceability and/or suitability of the Government property for agreement performance and that the Government will not pay for any repairs, replacement, and/or refurbishment of the property.

"Commercial and Government Entity (CAGE) code" means—

(1) An identifier assigned to entities located in the United States or its outlying areas by the Defense Logistics Agency (DLA) Commercial and Government Entity (CAGE) Branch to identify a commercial or government entity by unique location; or

(2) An identifier assigned by a member of the North Atlantic Treaty Organization (NATO) or by the NATO Support and Procurement Agency (NSPA) to entities located outside the United States and its outlying areas that the DLA Commercial and Government Entity (CAGE) Branch records and maintains in the CAGE master file. This type of code is known as a NATO CAGE (NCAGE) code.

"Contractor-acquired property," "contractor inventory," "Government property," "Government-furnished property," and "loss of Government property" have the meanings given in the Federal Acquisition Regulation (FAR) 52.245-1, Government Property, clause of this agreement.

"Demilitarization" means the act of eliminating the functional capabilities and inherent military design features from DoD personal property. Methods and degree range from removal and destruction of critical features to total destruction by cutting, tearing, crushing, mangling, shredding, melting, burning, etc.

"Export-controlled items" has the meaning given in the Defense Federal Acquisition Regulation Supplement (DFARS) 252.225-7048 Export-Controlled Items., Export-Controlled Items, clause of this agreement.

"Ineligible transferee" means an individual, an entity, or a country—

(1) Excluded from Federal programs by the General Services Administration as identified in the System for Award Management Exclusions located at https://sam.gov;

(2) Delinquent on obligations to the U.S. Government under surplus sales contracts;

(3) Designated by the Department of Defense as ineligible, debarred, or suspended from defense contracts; or

(4) Subject to denial, debarment, or other sanctions under export control laws and related laws and regulations, and orders administered by the Department of State, the Department of Commerce, the Department of Homeland Security, or the Department of the Treasury.

"Item unique identification" means a system of assigning, reporting, and marking DoD property with unique item identifiers that have machine-readable data elements to distinguish an item from all other like and unlike items.

"National stock number" means a 13-digit stock number used to identify items of supply. It consists of a four-digit Federal Supply Code and a nine-digit National Item Identification Number.

"Reparable item" means an item, typically in unserviceable condition, furnished to the contractor for maintenance, repair, modification, or overhaul.

"Scrap" means property that has no value except for its basic material content. For purposes of demilitarization, scrap is defined as recyclable waste and discarded materials derived from items that have been rendered useless beyond repair, rehabilitation, or restoration such that the item's original identity, utility, form, fit, and function have been destroyed. Items can be classified as scrap if processed by cutting, tearing, crushing, mangling, shredding, or melting. Intact or recognizable components and parts are not "scrap."

"Serially-managed item" means an item designated by DoD to be uniquely tracked, controlled, or managed in maintenance, repair, and/or supply systems by means of its serial number or unique item identifier.

"Serviceable or usable property" means property with potential for reutilization or sale as is or with minor repairs or alterations. "Supply condition code" means a classification of materiel in terms of readiness for issue and use or to identify action underway to change the status of materiel. "Unique item identifier (UII)" means a set of data elements marked on an item that is globally unique and unambiguous. The term includes a concatenated UII or a DoD recognized unique identification equivalent.

(b) *Reporting Government property*.

(1) The Contractor shall use the Government Furnished Property (GFP) module of the Procurement Integrated Enterprise Environment (PIEE) to—

(i) Report receipt of GFP; (ii) Report the transfer of GFP to another DoD agreement;

(iii) Report the shipment of GFP to the Government or to a contractor. The GFP module generates the electronic equivalent of the DD Form 1149, DD Form 1348-1, or other required shipping documents;

(iv) Report when serially-managed items of GFP are incorporated into a higher-level component, assembly, or end item;

(v) Report the loss of Government property in accordance with paragraph (f)(1)(vii) of the FAR 52.245-1 clause of this agreement;

(vi) Complete the plant clearance inventory schedule in accordance with paragraph (j)(2) of the FAR 52.245-1 clause of this agreement, unless disposition instructions are otherwise included in this agreement. The GFP module generates the electronic equivalent of the Standard Form (SF) 1428, Inventory Disposal Schedule; and (vii) Submit a request to buy back or to convert to GFP items of Contractor-acquired property.

(2) Information regarding the GFP module is available in the GFP Module Vendor Guide at https://dodprocurementtoolbox.com/site-pages/gfp-resources. Users may also register for access to the GFP module and obtain training on the PIEE home page at https://piee.eb.mil.

(3) In complying with paragraphs (b)(1)(i) through (iv) of this clause, the Contractor shall report the updated status of the property to the GFP module within 7 business days of the date the change in status occurs, unless otherwise specified in the agreement.

(4) The Contractor shall use Wide Area Workflow in accordance with DFARS Appendix F, Material Inspection and Receiving Report, to report the shipment of reparable items after completion of repair, maintenance, modification, or overhaul.

(5) When Government property is in the possession of subcontractors, the Contractor shall ensure that reporting is accomplished using the data elements required in paragraph (c) of this clause.

(c) *Records of Government property*. To facilitate reporting of Government property to the GFP module, the Contractor's property records, in addition to the requirements of paragraph (f)(1)(iii) of the FAR 52.245-1 clause of this agreement, shall enable recording of the following data elements:

(1) National stock number (NSN). If an NSN is not available, use either the combination of the manufacturer's CAGE code and part number, or model number.

(2) CAGE code on the accountable Government agreement.

(3) Received/sent (shipped) date.

(4) Accountable Government agreement number.

(5) Serial number (for serially-managed items that do not have a UII); and

(6) Supply condition code (only required for reporting of reparable items). For information on Federal supply condition codes, see DLM 4000.25, Defense Logistics Management Standards (DLMS), Volume 2, Supply Standards and Procedures, Appendix 2.5 at https://www.dla.mil/HQ/InformationOperations/DLMS/elibrary/manuals/v2/.

(d) *Marking, reporting, and UII registration of GFP requirements*. The Contractor—

(1) Shall assign the UII and mark the reparable items identified as serially managed in the GFP attachment to this agreement with an item unique identification (IUID) data matrix, when the technical drawing for the item is accessible to the Contractor and includes IUID data matrix location and marking method;

(2) Shall report the UII either before or during shipment of the repaired item;

(3) Is not required to mark items that were previously marked with an IUID data matrix and registered in accordance with DFARS 252.211-7003 Item Unique Identification and Valuation., Item Unique Identification and Valuation; and

(4) Shall assign a new UII, then mark and register the item, when the conditions of paragraph (d)(1) are met, if an item is found to be marked but not registered in the IUID Registry.

(e) *Disposing of Government property*.

(1) The Contractor shall complete the plant clearance inventory schedule using the plant clearance capability of the GFP module of the PIEE to generate an electronic equivalent of the SF 1428, Inventory Disposal Schedule. The plant clearance inventory schedule requires the following:

(i) If known, the applicable Federal supply code (FSC) for all items, except items in scrap condition.

(ii) If known, the manufacturer name for all aircraft components under Federal supply group 16 or 17 and FSCs 2620, 2810, 2915, 2925, 2935, 2945, 2995, 4920, 5821, 5826, 5841, 6340, and 6615.

(iii) The manufacturer name, make, model number, model year, and serial number for all aircraft under FSCs 1510 and 1520.

(2) If the schedules are acceptable, the plant clearance officer will confirm acceptance in the GFP module plant clearance capability, which will transmit a notification to the Contractor. The electronic acceptance is equivalent to the DD Form 1637, Notice of Acceptance of Inventory.

(f) *Demilitarization, mutilation, and destruction*. If demilitarization, mutilation, or destruction of contractor inventory is required, the Contractor shall demilitarize, mutilate, or destroy contractor inventory, in accordance with the terms and conditions of the agreement and consistent with Defense Demilitarization Manual, DoD Manual (DoDM) 4160.28-M, edition in effect as of the date of this agreement. If the property is available for purchase, the plant clearance officer may authorize the purchaser to demilitarize, mutilate, or destroy as a condition of sale provided the property is not inherently dangerous to public health and safety.

(g) *Classified Contractor inventory*. The Contractor shall dispose of classified contractor inventory in accordance with applicable security guides and regulations or as directed by the Agreement Officer.

(h) *Inherently dangerous Contractor inventory*. Contractor inventory that is dangerous to public health or safety shall not be disposed of unless rendered innocuous or until adequate safeguards are provided.

(i) Contractor inventory located in foreign countries. Consistent with agreement terms and conditions, property disposition shall be in accordance with foreign and U.S. laws and regulations, including laws and regulations involving export controls, host nation requirements, final governing standards, and government-to-government agreements. The Contractor's responsibility to comply with all applicable laws and regulations regarding export-controlled items exists independent of, and is not established or limited by, the information provided by this clause.

(j) *Disposal of scrap*.

(1) Contractor scrap procedures.

(i) The Contractor shall include, within its property management procedure, a process for the accountability and management of Government-owned scrap. The process shall, at a minimum, provide for the effective and efficient disposition of scrap, including sales to scrap dealers, so as to minimize costs, maximize sales proceeds, and contain the necessary internal controls for mitigating the improper release of non-scrap property.

(ii) The Contractor may commingle Government and contractor-owned scrap and provide routine disposal of scrap, with plant clearance officer concurrence, when determined to be effective and efficient.

(2) Scrap warranty. The plant clearance officer may require the Contractor to secure from scrap buyers a DD Form 1639, Scrap Warranty.

(k) *Sale of surplus Contractor inventory*.

(1) Sales procedures.

(i) The Contractor shall conduct sales of contractor inventory (both useable property and scrap) in accordance with the requirements of this agreement and plant clearance officer direction. The Contractor shall include in its invitation for bids the sales terms and conditions provided by the plant clearance officer.

(ii) The Contractor may conduct internet-based sales, to include use of a third party.

(iii) If the Contractor wishes to bid on the sale, the Contractor or its employees shall submit bids to the plant clearance officer prior to soliciting bids from other prospective bidders.

(iv) The Contractor shall solicit bids to obtain adequate competition. Negotiated sales are subject to obtaining such competition as is feasible under the circumstances of the negotiated sale.

(v) The Contractor shall solicit bids at least 15 calendar days before bid opening to allow adequate opportunity to inspect the property and prepare bids.

(vi) For large sales, the Contractor may use summary lists of items offered as bid sheets with detailed descriptions attached.

(vii) In addition to providing notice of the proposed sale to prospective bidders, the Contractor may, when the results are expected to justify the additional expense, display a notice of the proposed sale in appropriate public places, e.g., publish a sales notice on the internet, in appropriate trade journals or magazines, and in local newspapers.

(viii) The plant clearance officer or designated Government representative will witness the bid opening. The Contractor shall submit the bid abstract in electronic format to the plant clearance officer within 2 days of bid opening. If the Contractor is unable to submit the bid abstract electronically, the Contractor may submit 2 copies of the abstract manually within 2 days of bid opening. The plant clearance officer will not approve award to any bidder who is an ineligible transferee.

(2) Required terms and conditions for sales contracts. The Contractor shall include the following terms and conditions in sales contracts:

(i) For sales contracts or other documents transferring title: “The Purchaser certifies that the property covered by this agreement will be used in [insert name of country]. In the event of resale or export by the Purchaser of any of the property, the Purchaser agrees to obtain the appropriate U.S. and foreign export or re-export license approval.”

(ii) For sales contracts that require demilitarization, mutilation, or destruction of property:

“The following items [insert list provided by plant clearance officer] require demilitarization, mutilation, or destruction by the Purchaser. Additional instructions are provided in accordance with Defense Demilitarization Manual, DoDM 4160.28-M, edition in effect as of the date of this sales agreement. A Government representative will certify and verify demilitarization of items.

Prepare demilitarization certificates in accordance with DoDM 4160.28, Volume 2, section 4.5, DEMIL Certificate (see figure 2, Example DEMIL Certificate)."

(iii) Removal and title transfer:

"Property requiring demilitarization shall not be removed, and title shall not pass to the Purchaser, until demilitarization has been accomplished and verified by a Government representative."

(iv) Assumption of cost incident to demilitarization:

"The Purchaser agrees to assume all costs incident to the demilitarization and to restore the working area to its present condition after removing the demilitarized property."

(v) Failure to demilitarize:

"If the Purchaser fails to demilitarize, mutilate, or destroy the property as specified in the sales agreement, the Contractor may, upon giving 10 days written notice to the Purchaser—

(A) Repossess, demilitarize, and return the property to the Purchaser, in which case the Purchaser hereby agrees to pay to the Contractor, prior to the return of the property, all costs incurred by the Contractor in repossessing, demilitarizing, and returning the property;

(B) Repossess, demilitarize, and resell the property, and charge the defaulting Purchaser with all costs incurred by the Contractor. The Contractor shall deduct these costs from the purchase price and refund the balance of the purchase price, if any, to the Purchaser. In the event the costs exceed the purchase price, the defaulting Purchaser hereby agrees to pay these costs to the Contractor; or

(C) Repossess and resell the property under similar terms and conditions, and charge the defaulting Purchaser with all costs incurred by the Contractor. The Contractor shall deduct these costs from the original purchase price and refund the balance of the purchase price, if any, to the defaulting Purchaser. Should the excess costs to the Contractor exceed the purchase price, the defaulting Purchaser hereby agrees to pay these costs to the Contractor."

(l) *Restrictions on purchase or retention of Contractor inventory*. The Contractor may not knowingly sell the inventory to any person or that person's agent, employee, or household member if that person—

(1) Is a civilian employee of DoD or the U.S. Coast Guard;

(2) Is a member of the Armed Forces of the United States, including the U.S. Coast Guard; or

(3) Has any functional or supervisory responsibilities for or within DoD's property disposal, disposition, or plant clearance programs or for the disposal of contractor inventory.

(m) *Proceeds from sales of surplus property*. Unless otherwise provided in the agreement, the proceeds of any sale, purchase, or retention shall be—

(1) Forwarded to the Agreement Officer;

(2) Credited to the Government as part of the settlement agreement pursuant to the termination of the agreement;

(3) Credited to the price or cost of the agreement; or

(4) Applied as otherwise directed by the Agreement Officer.

B.4 Contractor Property Management System Administration (January 2025) (Tailored from DFARS 252.245-7003)

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

"Acceptable property management system" means a property system that complies with the system criteria in paragraph (c) of this clause.

"Material weakness" means a deficiency or combination of deficiencies in the internal control over information in contractor business systems, such that there is a reasonable possibility that a material misstatement of such information will not be prevented, or detected and corrected, on a timely basis. A reasonable possibility exists when the likelihood of an event occurring is—

(1) Probable; or

(2) More than remote but less than likely (section 806 of Pub. L. 116-283).

"Property management system" means the Contractor's system or systems for managing and controlling Government property.

(b) *General.* The Contractor shall establish and maintain an acceptable property management system. Failure to maintain an acceptable property management system, as defined in this clause, may result in disapproval of the system by the Agreement Officer and/or withholding of payments.

(c) *System criteria*. The Contractor's property management system shall be in accordance with paragraphs (b) and (f) of the agreement clause at Federal Acquisition Regulation 52.245-1.

(d) *Material weaknesses.*

(1) The Agreement Officer will provide an initial determination to the Contractor, in writing, of any material weaknesses. The initial determination will describe the underlying deficiency in sufficient detail to allow the Contractor to understand the weaknesses or deficiency.

(2) The Contractor shall respond within 30 days to a written initial determination from the Agreement Officer that identifies material weaknesses in the Contractor's property management system. If the Contractor disagrees with the initial determination, the Contractor shall state, in writing, its rationale for disagreeing.

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

(i) Remaining material weaknesses;

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

(iii) System disapproval, if the Agreement Officer determines that one or more material weaknesses remain.

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

(f) Withholding payments. If the Agreement Officer makes a final determination to disapprove the Contractor's property management system, and the agreement includes the clause at 252.242-7005 , Contractor Business Systems, the Agreement Officer will withhold payments in accordance with that clause.

B.5 Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends (January 2025) (Tailored from DFARS 252.227-7025)

(a) Definitions. As used in this clause—

(1) For agreements in which the Government will furnish the Contractor with technical data, the terms "covered Government support contractor," "limited rights," and "Government purpose rights" are defined in the clause at 252.227-7013 , Rights in Technical Data–Other Than Commercial Products and Commercial Services.

(2) For agreements in which the Government will furnish the Contractor with computer software or computer software documentation, the terms "covered Government support contractor," "government purpose rights," and "restricted rights" are defined in the clause at 252.227-7014 , Rights in Other Than Commercial Computer Software and Other Than Commercial Computer Software Documentation.

(3) For Small Business Innovation Research (SBIR) Program and Small Business Technology Transfer (STTR) Program contracts, the terms “covered Government support contractor,” “government purpose rights,” “limited rights,” “restricted rights,” and “SBIR/STTR data rights” are defined in the clause at 252.227-7018, Rights in Other Than Commercial Technical Data and Computer Software—Small Business Innovation Research Program and Small Business Technology Transfer Program.

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

(1) *GFI marked with limited rights, restricted rights, or SBIR/STTR data rights legends.*

(i) The Contractor shall use, modify, reproduce, perform, or display technical data received from the Government with limited rights legends, computer software received with restricted rights legends, or SBIR/STTR technical data or computer software received with SBIR/STTR data rights legends (during the SBIR/STTR data protection period) only in the performance of this agreement. The Contractor shall not, without the express written permission of the party whose name appears in the legend, release or disclose such data or software to any unauthorized person.

(ii) If the Contractor is a covered Government support contractor, the Contractor is also subject to the additional terms and conditions at paragraph (b)(5) of this clause.

(2) *GFI marked with government purpose rights legends*. The Contractor shall use technical data or computer software received from the Government with government purpose rights legends for government purposes only. The Contractor shall not, without the express written permission of the party whose name appears in the restrictive legend, use, modify, reproduce, release, perform, or display such data or software for any commercial purpose or disclose such data or software to a person other than its subcontractors, suppliers, or prospective subcontractors or suppliers, who require the data or software to submit offers for, or perform, agreements under this agreement. Prior to disclosing the data or software, the Contractor shall require the persons to whom disclosure will be made to complete and sign the nondisclosure agreement at 227.7103-7 of the Defense Federal Acquisition Regulation Supplement (DFARS).

(3) *GFI marked with specially negotiated license rights legends*.

(i) The Contractor shall use, modify, reproduce, release, perform, or display technical data or computer software received from the Government with specially negotiated license legends only as permitted in the license. Such data or software may not be released or disclosed to other persons unless permitted by the license and, prior to release or disclosure, the intended recipient has completed the nondisclosure agreement at DFARS 227.7103-7. The Contractor shall modify paragraph (1)(c) of the nondisclosure agreement to reflect the recipient's obligations regarding use, modification, reproduction, release, performance, display, and disclosure of the data or software.

(iii) If the Contractor is a covered Government support contractor, the Contractor may also be subject to some or all of the additional terms and conditions at paragraph (b)(5) of this clause, to the extent such terms and conditions are required by the specially negotiated license.

(4) *GFI technical data marked with commercial restrictive legends*.

(i) The Contractor shall use, modify, reproduce, perform, or display technical data that are or pertain to a commercial product or commercial service and are received from the Government with a commercial restrictive legend (i.e., marked to indicate that such data are subject to use, modification, reproduction, release, performance, display, or disclosure restrictions) only in the performance of this agreement. The Contractor shall not, without the express written permission of the party whose name appears in the legend, use the technical data to manufacture additional quantities of the commercial products or commercial services, or release or disclose such data to any unauthorized person.

(ii) If the Contractor is a covered Government support contractor, the Contractor is also subject to the additional terms and conditions at paragraph (b)(5) of this clause.

(5) *Covered Government support contractors.* If the Contractor is a covered Government support contractor receiving technical data or computer software marked with restrictive legends pursuant to paragraphs (b)(1)(ii), (b)(3)(ii), or (b)(4)(ii), the Contractor further agrees and acknowledges that—

(i) The technical data or computer software will be accessed and used for the sole purpose of furnishing independent and impartial advice or technical assistance directly to the Government in support of the Government’s management and oversight of the program or effort to which such technical data or computer software relates, as stated in this agreement,

and shall not be used to compete for any Government or non-Government agreement;

(ii) The Contractor will take all reasonable steps to protect the technical data or computer software against any unauthorized release or disclosure;

(iii) The Contractor will ensure that the party whose name appears in the legend is notified of the access or use within 30days of the Contractor's access or use of such data or software;

(iv) The Contractor will enter into a nondisclosure agreement with the party whose name appears in the legend, if required to do so by that party, and that any such nondisclosure agreement will implement the restrictions on the Contractor's use of such data or software as set forth in this clause. The nondisclosure agreement shall not include any additional terms and conditions unless mutually agreed to by the parties to the nondisclosure agreement; and

(v) That a breach of these obligations or restrictions may subject the Contractor to—

(A) Criminal, civil, administrative, and contractual actions in law and equity for penalties, damages, and other appropriate remedies by the United States; and

(B) Civil actions for damages and other appropriate remedies by the party whose name appears in the legend.

(c) *Indemnification and creation of third party beneficiary rights*. The Contractor agrees—

(1) To indemnify and hold harmless the Government, its agents, and employees from every claim or liability, including attorneys fees, court costs, and expenses, arising out of, or in any way related to, the misuse or unauthorized modification, reproduction, release, performance, display, or disclosure of technical data or computer software received from the Government with restrictive legends by the Contractor or any person to whom the Contractor has released or disclosed such data or software; and

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

(d) The Contractor shall ensure that its employees are subject to use and nondisclosure obligations consistent with this clause prior to the employees being provided access to or use of any GFI covered by this clause.

Section C – Cost Terms and Conditions:

C.1 Availability of Funds (April 1984) (Tailored from FAR 52.232-18)

Funds are not presently available for this agreement. The Government's obligation under this agreement is contingent upon the availability of appropriated funds from which payment for agreement purposes can be made. No legal liability on the part of the Government for any payment may arise until funds are made available to the Agreement Officer for this agreement and until the Contractor receives notice of such availability, to be confirmed in writing by the Agreement Officer.

C.2 Limitation of Funds (April 1984) (Tailored from FAR 52.232-22)

(a) The parties estimate that performance of this agreement will not cost the Government more than (1) the estimated cost specified in the Schedule or, (2) if this is a cost-sharing agreement, the Government's share of the estimated cost specified in the Schedule. The Contractor agrees to use its best efforts to perform the work specified in the Schedule and all obligations under this agreement within the estimated cost, which, if this is a cost-sharing agreement, includes both the Government's and the Contractor's share of the cost.

(b) The Schedule specifies the amount presently available for payment by the Government and allotted to this agreement, the items covered, the Government's share of the cost if this is a cost-sharing agreement, and the period of performance it is estimated the allotted amount will cover. The parties contemplate that the Government will allot additional funds incrementally to the agreement up to the full estimated cost to the Government specified in the Schedule, exclusive of any fee. The Contractor agrees to perform, or have performed, work on the agreement up to the point at which the total amount paid and payable by the Government under the agreement approximates but does not exceed the total amount actually allotted by the Government to the agreement.

(c) The Contractor shall notify the Agreement Officer in writing whenever it has reason to believe that the costs it expects to incur under this agreement in the next 60 days, when added to all costs previously incurred, will exceed 75 percent of (1) the total amount so far allotted to the agreement by the Government or, (2)if this is a cost-sharing agreement, the amount then allotted to the agreement by the Government plus the Contractor's corresponding share. The notice shall state the estimated amount of additional funds required to continue performance for the period specified in the Schedule.

(d) Sixty days before the end of the period specified in the Schedule, the Contractor shall notify the Agreement Officer in writing of the estimated amount of additional funds, if any, required to continue timely performance under the agreement or for any further period specified in the Schedule or otherwise agreed upon, and when the funds will be required.

(e) If, after notification, additional funds are not allotted by the end of the period specified in the Schedule or another agreed-upon date, upon the Contractor's written request the Agreement

Officer will terminate this agreement on that date in accordance with the provisions of the Termination clause of this agreement. If the Contractor estimates that the funds available will allow it to continue to discharge its obligations beyond that date, it may specify a later date in its request, and the Agreement Officer may terminate this agreement on that later date.

(f) Except as required by other provisions of this agreement, specifically citing and stated to be an exception to this clause-

(1) The Government is not obligated to reimburse the Contractor for costs incurred in excess of the total amount allotted by the Government to this agreement; and

(2) The Contractor is not obligated to continue performance under this agreement (including actions under the Termination clause of this agreement) or otherwise incur costs in excess of-

(i) The amount then allotted to the agreement by the Government or;

(ii) If this is a cost-sharing agreement, the amount then allotted by the Government to the agreement plus the Contractor's corresponding share, until the Agreement Officer notifies the Contractor in writing that the amount allotted by the Government has been increased and specifies an increased amount, which shall then constitute the total amount allotted by the Government to this agreement.

(g) The estimated cost shall be increased to the extent that (1) the amount allotted by the Government or, (2)if this is a cost-sharing agreement, the amount then allotted by the Government to the agreement plus the Contractor's corresponding share, exceeds the estimated cost specified in the Schedule. If this is a cost-sharing agreement, the increase shall be allocated in accordance with the formula specified in the Schedule.

(h) No notice, communication, or representation in any form other than that specified in paragraph (f)(2) of this clause, or from any person other than the Agreement Officer, shall affect the amount allotted by the Government to this agreement. In the absence of the specified notice, the Government is not obligated to reimburse the Contractor for any costs in excess of the total amount allotted by the Government to this agreement, whether incurred during the course of the agreement or as a result of termination.

(i) When and to the extent that the amount allotted by the Government to the agreement is increased, any costs the Contractor incurs before the increase that are in excess of-

(1) The amount previously allotted by the Government or;

(2) If this is a cost-sharing agreement, the amount previously allotted by the Government to the agreement plus the Contractor's corresponding share, shall be allowable to the same extent as if incurred afterward, unless the Agreement Officer issues a termination or other notice and directs that the increase is solely to cover termination or other specified expenses.

(j) Change orders shall not be considered an authorization to exceed the amount allotted by the Government specified in the Schedule, unless they contain a statement increasing the amount allotted.

(k) Nothing in this clause shall affect the right of the Government to terminate this agreement. If this agreement is terminated, the Government and the Contractor shall negotiate an equitable distribution of all property produced or purchased under the agreement, based upon the share of costs incurred by each.

(l) If the Government does not allot sufficient funds to allow completion of the work, the Contractor is entitled to a percentage of the fee specified in the Schedule equaling the percentage of completion of the work contemplated by this agreement.

C.3 Earned Value Management System (January 2025) (Tailored from DFARS 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.
>
> "Material weakness" means a deficiency or combination of deficiencies in the internal control over information in contractor business systems, such that there is a reasonable possibility that a material misstatement of such information will not be prevented, or detected and corrected, on a timely basis. A reasonable possibility exists when the likelihood of an event occurring is—
>
> > (1) Probable; or
> >
> > (2) More than remote but less than likely (section 806 of Pub. L. 116-283).

(b) *System criteria*. In the performance of this agreement, 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 agreement.

(c) If this agreement 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 agreement and shall take necessary actions to meet the milestones in the Contractor's EVMS plan.

(d) If this agreement 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 agreement. The use of the Contractor's EVMS for this agreement does not imply a Government determination of the Contractor's compliance with the EVMS guidelines in ANSI/EIA-748 for application to future contracts/agreements. 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 agreement 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) Agreement award;

(2) The exercise of significant agreement 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 Agreement 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 agreement performance, the Contractor shall submit a request for approval to initiate an over-target baseline or over-target schedule to the Agreement 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

re-baselining. The Government will acknowledge receipt of the request in a timely manner (generally within 30 calendar days).

(i) Material weaknesses.

(1) The Agreement Officer will provide an initial determination to the Contractor, in writing, of any material weaknesses. The initial determination will describe the underlying deficiency in sufficient detail to allow the Contractor to understand the weakness or deficiency.

(2) The Contractor shall respond within 30 days to a written initial determination from the Agreement Officer that identifies material weaknesses 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 Agreement Officer will evaluate the Contractor's response and notify the Contractor, in writing, of the Agreement Officer's final determination concerning—

(i) Remaining material weaknesses;

(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 Agreement Officer, or if the Agreement Officer determines that the Contractor's earned value management system contains one or more material weaknesses 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 Agreement Officer determines that the existing earned value management system contains one or more material weaknesses in one or more of the remaining 16 guidelines in ANSI/EIA-748 standards, the Agreement Officer will use discretion to disapprove the system based on input received from functional specialists and the auditor.

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

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

(k) Subcontracts. 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:

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

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

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

Section D – Patent Rights, Data Rights, and Copy Rights Terms and Conditions:

D.1 Patent Rights—Ownership by the Contractor (June 2012) (Tailored from DFARS 252.227-7038)

(a) Definitions. As used in this clause—

"Invention" means—

(1) Any invention or discovery that is or may be patentable or otherwise protectable under Title 35 of the United States Code; or

(2) Any variety of plant that is or may be protectable under the Plant Variety Protection Act (7 U.S.C. 2321, et seq.).

"Made"—

(1) When used in relation to any invention other than a plant variety, means the conception or first actual reduction to practice of the invention; or

(2) When used in relation to a plant variety, means that the Contractor has at least tentatively determined that the variety has been reproduced with recognized characteristics.

"Nonprofit organization" means—

(1) A university or other institution of higher education;

(2) An organization of the type described in the Internal Revenue Code at 26 U.S.C. 501(c)(3) and exempt from taxation under 26 U.S.C. 501(a); or

(3) Any nonprofit scientific or educational organization qualified under a State nonprofit organization statute.

"Practical application" means—

(1) (i) To manufacture, in the case of a composition or product;

(ii) To practice, in the case of a process or method; or

(iii) To operate, in the case of a machine or system; and

(2) In each case, under such conditions as to establish that—

(i) The invention is being utilized; and

(ii) The benefits of the invention are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.

"Subject invention" means any invention of the Contractor made in the performance of work under this agreement.

(b) Contractor's rights.

(1) Ownership. The Contractor may elect to retain ownership of each subject invention throughout the world in accordance with the provisions of this clause.

(2) License.

(i) The Contractor shall retain a nonexclusive royalty-free license throughout the world in each subject invention to which the Government obtains title, unless the Contractor fails to disclose the invention within the times specified in paragraph (c) of this clause. The Contractor's license—

(A) Extends to any domestic subsidiaries and affiliates within the corporate structure of which the Contractor is a part;

(B) Includes the right to grant sublicenses to the extent the Contractor was legally obligated to do so at the time of agreement award; and

(C) Is transferable only with the approval of the agency, except when transferred to the successor of that part of the Contractor's business to which the invention pertains.

(ii) The agency—

(A) May revoke or modify the Contractor's domestic license to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with 37 CFR Part 404 and agency licensing regulations;

(B) Will not revoke the license in that field of use or the geographical areas in which the Contractor has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public; and

(C) May revoke or modify the license in any foreign country to the extent the Contractor, its licensees, or the domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.

(iii) Before revoking or modifying the license, the agency—

(A) Will furnish the Contractor a written notice of its intention to revoke or modify the license; and

(B) Will allow the Contractor 30 days (or such other time as the funding agency may authorize for good cause shown by the Contractor) after the notice to show cause why the license should not be revoked or modified.

(iv) The Contractor has the right to appeal, in accordance with 37 CFR Part 404 and agency regulations, concerning the licensing of Government-owned inventions, any decision concerning the revocation or modification of the license.

(c) Contractor's obligations.

(1) The Contractor shall—

(i) Disclose, in writing, each subject invention to the Agreement Officer within 2 months after the inventor discloses it in writing to Contractor personnel responsible for patent matters, or within 6 months after the Contractor first becomes aware that a subject invention has been made, whichever is earlier;

(ii) Include in the disclosure—

(A) The inventor(s) and the agreement under which the invention was made;

(B) Sufficient technical detail to convey a clear understanding of the invention; and

(C) Any publication, on sale (i.e., sale or offer for sale), or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication; and

(iii) After submission of the disclosure, promptly notify the Agreement Officer of the acceptance of any manuscript describing the invention for publication and of any on sale or public use.

(2) The Contractor shall elect in writing whether or not to retain ownership of any subject invention by notifying the Agreement Officer at the time of disclosure or within 8 months of disclosure, as to those countries (including the United States) in which the Contractor will retain ownership. However, in any case where publication, on sale, or public use has initiated the 1-year statutory period during which valid patent protection can be obtained in the United States, the agency may shorten the period of election of title to a date that is no more than 60 days prior to the end of the statutory period.

(3) The Contractor shall—

(i) File either a provisional or a nonprovisional patent application on an elected subject invention within 1 year after election, provided that in all cases the application is filed prior to the end of any statutory period wherein valid patent protection can be obtained in the United States after a publication, on sale, or public use;

(ii) File a nonprovisional application within 10 months of the filing of any provisional application; and

(iii) File patent applications in additional countries or international patent offices within either 10 months of the first filed patent application (whether provisional or nonprovisional) or 6 months from the date the Commissioner of Patents grants permission to file foreign patent applications where such filing has been prohibited by a Secrecy Order.

(4) The Contractor may request extensions of time for disclosure, election, or filing under paragraphs (c)(1), (2), and (3) of this clause. The Agreement Officer will normally grant the extension unless there is reason to believe the extension would prejudice the Government's interests.

(d) Government's rights.

(1) Ownership. The Contractor shall assign to the agency, upon written request, title to any subject invention—

(i) If the Contractor elects not to retain title to a subject invention;

(ii) If the Contractor fails to disclose or elect the subject invention within the times specified in paragraph (c) of this clause and the agency requests title within 60 days after learning of the Contractor's failure to report or elect within the specified times;

(iii) In those countries in which the Contractor fails to file patent applications within the times specified in paragraph (c) of this clause, provided that, if the Contractor has filed a patent application in a country after the times specified in paragraph (c) of this clause, but prior to its receipt of the written request of the agency, the Contractor shall continue to retain ownership in that country; and

(iv) In any country in which the Contractor decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in reexamination or opposition proceeding on, a patent on a subject invention.

(2) License. If the Contractor retains ownership of any subject invention, the Government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice, or

have practiced for or on behalf of the United States, the subject invention throughout the world.

(e) Contractor action to protect the Government's interest.

(1) The Contractor shall execute or have executed and promptly deliver to the agency all instruments necessary to—

(i) Establish or confirm the rights the Government has throughout the world in those subject inventions in which the Contractor elects to retain ownership; and

(ii) Assign title to the agency when requested under paragraph (d)(1) of this clause and enable the Government to obtain patent protection for that subject invention in any country.

(2) The Contractor shall—

(i) Require, by written agreement, its employees, other than clerical and nontechnical employees, to—

(A) Disclose each subject invention promptly in writing to personnel identified as responsible for the administration of patent matters, so that the Contractor can comply with the disclosure provisions in paragraph (c) of this clause; and

(B) Provide the disclosure in the Contractor's format, which should require, as a minimum, the information required by paragraph (c)(1) of this clause;

(ii) Instruct its employees, through employee agreements or other suitable educational programs, as to the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or statutory foreign bars; and

(iii) Execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions.

(3) The Contractor shall notify the Agreement Officer of any decisions not to file a nonprovisional patent application, continue the prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceeding on a patent, in any country, not less than 30 days before the expiration of the response or filing period required by the relevant patent office.

(4) The Contractor shall include, within the specification of any United States nonprovisional patent application and any patent issuing thereon covering a subject invention, the following statement: "This invention was made with Government support

under (identify the agreement) awarded by (identify the agency). The Government has certain rights in this invention."

(5) The Contractor shall—

(i) Establish and maintain active and effective procedures to ensure that subject inventions are promptly identified and disclosed to Contractor personnel responsible for patent matters;

(ii) Include in these procedures the maintenance of—

(A) Laboratory notebooks or equivalent records and other records as are reasonably necessary to document the conception and/or the first actual reduction to practice of subject inventions; and

(B) Records that show that the procedures for identifying and disclosing the inventions are followed; and

(iii) Upon request, furnish the Agreement Officer a description of these procedures for evaluation and for determination as to their effectiveness.

(6) The Contractor shall, when licensing a subject invention, arrange to—

(i) Avoid royalty charges on acquisitions involving Government funds, including funds derived through the Government's Military Assistance Program or otherwise derived through the Government;

(ii) Refund any amounts received as royalty charges on the subject inventions in acquisitions for, or on behalf of, the Government; and

(iii) Provide for the refund in any instrument transferring rights in the invention to any party.

(7) The Contractor shall furnish to the Agreement Officer the following:

(i) Interim reports every 12 months (or any longer period as may be specified by the Agreement Officer) from the date of the agreement, listing subject inventions during that period and stating that all subject inventions have been disclosed or that there are no subject inventions.

(ii) A final report, within 3 months after completion of the contracted work, listing all subject inventions or stating that there were no subject inventions, and listing all subcontracts at any tier containing a patent rights clause or stating that there were no subcontracts.

(8)(i) The Contractor shall promptly notify the Agreement Officer in writing upon the award of any subcontract at any tier containing a patent rights clause by identifying—

(A) The subcontractor;

(B) The applicable patent rights clause;

(C) The work to be performed under the subcontract; and

(D) The dates of award and estimated completion.

(ii) The Contractor shall furnish, upon request, a copy of the subcontract, and no more frequently than annually, a listing of the subcontracts that have been awarded.

(9) In the event of a refusal by a prospective subcontractor to accept one of the clauses specified in paragraph (l)(1) of this clause, the Contractor—

(i) Shall promptly submit a written notice to the Agreement Officer setting forth the subcontractor's reasons for the refusal and other pertinent information that may expedite disposition of the matter; and

(ii) Shall not proceed with that subcontract without the written authorization of the Agreement Officer.

(10) The Contractor shall provide to the Agreement Officer, upon request, the following information for any subject invention for which the Contractor has retained ownership:

(i) Filing date.

(ii) Serial number and title.

(iii) A copy of any patent application (including an English-language version if filed in a language other than English).

(iv) Patent number and issue date.

(11) The Contractor shall furnish to the Government, upon request, an irrevocable power to inspect and make copies of any patent application file.

(f) Reporting on utilization of subject inventions.

(1) The Contractor shall—

(i) Submit upon request periodic reports no more frequently than annually on the utilization of a subject invention or on efforts in obtaining utilization of the

subject invention that are being made by the Contractor or its licensees or assignees;

(ii) Include in the reports information regarding the status of development, date of first commercial sale or use, gross royalties received by the Contractor, and other information as the agency may reasonably specify; and

(iii) Provide additional reports that the agency may request in connection with any march-in proceedings undertaken by the agency in accordance with paragraph (h) of this clause.

(2) To the extent permitted by law, the agency shall not disclose the information provided under paragraph (f)(1) of this clause to persons outside the Government without the Contractor's permission, if the data or information is considered by the Contractor or its licensee or assignee to be "privileged and confidential" (see 5 U.S.C. 552(b)(4)) and is so marked.

(g) Preference for United States industry. Notwithstanding any other provision of this clause, the Contractor agrees that neither the Contractor nor any assignee shall grant to any person the exclusive right to use or sell any subject invention in the United States unless the person agrees that any products embodying the subject invention or produced through the use of the subject invention will be manufactured substantially in the United States. However, in individual cases, the agency may waive the requirement for an exclusive license agreement upon a showing by the Contractor or its assignee that—

(1) Reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States; or

(2) Under the circumstances, domestic manufacture is not commercially feasible.

(h) March-in rights. The Contractor acknowledges that, with respect to any subject invention in which it has retained ownership, the agency has the right to require licensing pursuant to 35 U.S.C. 203 and 210(c), 37 CFR 401.6, and any supplemental regulations of the agency in effect on the date of agreement award.

(i) Other inventions. Nothing contained in this clause shall be deemed to grant to the Government any rights with respect to any invention other than a subject invention.

(j) Examination of records relating to inventions.

(1) The Agreement Officer or any authorized representative shall, until 3 years after final payment under this agreement, have the right to examine any books (including laboratory notebooks), records, and documents of the Contractor relating to the conception or first

reduction to practice of inventions in the same field of technology as the work under this agreement to determine whether—

(i) Any inventions are subject inventions;

(ii) The Contractor has established procedures required by paragraph (e)(5) of this clause; and

(iii) The Contractor and its inventors have complied with the procedures.

(2) If the Agreement Officer learns of an unreported Contractor invention that the Agreement Officer believes may be a subject invention, the Contractor shall be required to disclose the invention to the agency for a determination of ownership rights.

(3) Any examination of records under this paragraph (j) shall be subject to appropriate conditions to protect the confidentiality of the information involved.

(k) Withholding of payment (this paragraph does not apply to subcontracts).

(1) Any time before final payment under this agreement, the Agreement Officer may, in the Government's interest, withhold payment until a reserve not exceeding $50,000 or 5 percent of the amount of the agreement, whichever is less, is set aside if, in the Agreement Officer's opinion, the Contractor fails to—

(i) Establish, maintain, and follow effective procedures for identifying and disclosing subject inventions pursuant to paragraph (e)(5) of this clause;

(ii) Disclose any subject invention pursuant to paragraph (c)(1) of this clause;

(iii) Deliver acceptable interim reports pursuant to paragraph (e)(7)(i) of this clause; or

(iv) Provide the information regarding subcontracts pursuant to paragraph (e)(8) of this clause.

(2) The reserve or balance shall be withheld until the Agreement Officer has determined that the Contractor has rectified whatever deficiencies exist and has delivered all reports, disclosures, and other information required by this clause.

(3) The Government will not make final payment under this agreement before the Contractor delivers to the Agreement Officer—

(i) All disclosures of subject inventions required by paragraph (c)(1) of this clause;

(ii) An acceptable final report pursuant to paragraph (e)(7)(ii) of this clause; and

(iii) All past due confirmatory instruments.

(4) The Agreement Officer may decrease or increase the sums withheld up to the maximum authorized in paragraph (k)(1) of this clause. No amount shall be withheld under this paragraph while the amount specified by this paragraph is being withheld under other provisions of the agreement. The withholding of any amount or the subsequent payment thereof shall not be construed as a waiver of any Government right.

(l) Subcontracts.

(1) The Contractor—

(i) Shall include the substance of the Patent Rights—Ownership by the Contractor clause set forth at 52.227-11 of the Federal Acquisition Regulation (FAR), in all subcontracts for experimental, developmental, or research work to be performed by a small business concern or nonprofit organization; and

(ii) Shall include the substance of this clause, including this paragraph (l), in all other subcontracts for experimental, developmental, or research work, unless a different patent rights clause is required by FAR 27.303.

(2) For subcontracts at any tier—

(i) The patents rights clause included in the subcontract shall retain all references to the Government and shall provide to the subcontractor all the rights and obligations provided to the Contractor in the clause. The Contractor shall not, as consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions; and

(ii) The Government, the Contractor, and the subcontractor agree that the mutual obligations of the parties created by this clause constitute a agreement between the subcontractor and the Government with respect to those matters covered by this clause. However, nothing in this paragraph is intended to confer any jurisdiction under the Contract Disputes statute in connection with proceedings under paragraph (h) of this clause.

D.2 Rights in Technical Data—Other Than Commercial Products and Commercial Services (January 2025) (Tailored from DFARS 252.227-7013)

(a) Definitions. As used in this clause—

"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.

“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.

“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.

“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.

”Covered Government support contractor” means a contractor (other than a litigation support contractor covered by 252.204-7014) under a agreement, the primary purpose of which is to furnish independent and impartial advice or technical assistance directly to the Government in support of the Government’s management and oversight of a program or effort, (rather than to directly furnish an end item or service to accomplish a program or effort), provided that the contractor—

> (1) 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
>
> (2) Receives access to technical data or computer software for performance of a Government agreement that contains the clause at 252.227-7025 , Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends.

“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.

“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.

“Developed exclusively at private expense” means development was accomplished entirely with costs charged to indirect cost pools, costs not allocated to a Government agreement, or any combination thereof.

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

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

“Developed exclusively with government funds” means development was not accomplished exclusively or partially at private expense.

“Developed with mixed funding” means development was accomplished partially with costs charged to indirect cost pools and/or costs not allocated to a government agreement, and partially with costs charged directly to a government agreement.

“Form, fit, and function data” means technical data that describe 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.

“Generated” means, with regard to technical data or computer software, first created in the performance of this agreement.

“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.

“Government purpose rights” means the rights to—

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

(2) 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.

“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—

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

(i) Necessary for emergency repair and overhaul; or

(ii) A release or disclosure to—

(A) A covered Government support contractor in performance of its covered Government support agreement for use, modification, reproduction, performance, display, or release or disclosure to a person authorized to receive limited rights technical data; or

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

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

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

"Small Business Innovation Research/Small Business" Technology Transfer (SBIR/STTR) data means all technical data or computer software developed or generated in the performance of a phase I, II, or III SBIR/STTR agreement or subcontract.

"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 financial, administrative, cost or pricing, or management information, or information incidental to agreement administration.

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

(b) Applicability.

(1) Except as provided in paragraph (b)(2) of this clause—

(i) This clause governs all technical data pertaining to other than commercial products or commercial services or to any portion of a commercial product or commercial servicethat was developed in any part at Government expense; and

(ii) The clause at Defense Federal Acquisition Regulation Supplement (DFARS) 252.227-7015, Technical Data—Commercial Products and Commercial Services,

governs the technical data pertaining to any portion of a commercial product or commercial service that was developed exclusively at private expense.

(2) The clause at DFARS 252.227-7018, Rights in Other Than Commercial Technical Data and Computer Software—Small Business Innovation Research Program and Small Business Technology Transfer Program, governs technical data that are SBIR/STTR data.

(c) Rights in technical data. The Contractor grants or shall obtain for the Government the following royalty free, worldwide, nonexclusive, irrevocable license rights in technical data other than computer software documentation (see the DFARS 252.227-7014, Rights in Other Than Commercial Computer Software and Other Than Commercial Computer Software Documentation, clause of this agreement for rights in computer software documentation):

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

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

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

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

(iv) Form, fit, and function data;

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

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

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

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

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

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

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

(2) Government purpose rights.

(i) The Government shall have government purpose rights for a 5-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 (c)(1)(ii) and (c)(1)(iv) through (c)(1)(ix) of this clause; or

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

(ii) The 5-year period, or such other period as may have been negotiated, shall commence upon execution of the agreement, subcontract, letter agreement (or similar contractual instrument), agreement modification, or option exercise that required development of the items, components, or processes or creation of the data described in paragraph (c)(2)(i)(B) of this clause. Upon expiration of the 5-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 nondisclosure agreement at DFARS 227.7103-7 ; or

(B) The recipient is a Government contractor receiving access to the data for performance of a Government agreement that contains the clause at DFARS 252.227-7025 , Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends.

(iv) The Contractor has the exclusive right, including the right to license others, to use technical data in which the Government has obtained government purpose rights under this agreement for any commercial purpose during the time period specified in the government purpose rights legend prescribed in paragraph (g)(3) of this clause.

(3) Limited rights.

(i) Except as provided in paragraphs (c)(1)(ii) and (c)(1)(iv) through (c)(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 (g) of this clause; or

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

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

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

(iv) The Contractor acknowledges that—

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

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

(C) The Contractor (or the party asserting restrictions as identified in the limited rights legend) may require each such covered Government support contractor to enter into a nondisclosure 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 nondisclosure agreement; and

(D) Any such nondisclosure 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 DFARS 252.227-7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends. The nondisclosure agreement shall not include any additional terms and conditions unless mutually agreed to by the parties to the nondisclosure agreement.

(4) Specifically negotiated license rights. The standard license rights granted to the Government under paragraphs (c)(1) through (c)(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 the definition of "limited rights" of this clause. Any rights so negotiated shall be identified in a license agreement made part of this agreement.

(5) Prior government rights. Technical data that will be delivered, furnished, or otherwise provided to the Government under this agreement, in which the Government has previously obtained rights shall be delivered, furnished, or provided with the preexisting 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 the definition of "limited rights" or paragraph (c)(2)(iii) of this clause, in accordance with the terms of a license negotiated under paragraph (c)(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 legend.

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

(e) Third party copyrighted data. The Contractor shall not, without the written approval of the Agreement Officer, incorporate any copyrighted data in the technical data to be delivered under this agreement unless the Contractor is the copyright owner or has obtained for the Government the license rights necessary to perfect a license or licenses in the deliverable data of the appropriate scope set forth in paragraph (c) 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.

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

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

IDENTIFICATION AND ASSERTION OF RESTRICTIONS ON THE GOVERNMENT'S USE, RELEASE, OR DISCLOSURE OF TECHNICAL DATA

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

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

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

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

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

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

Date	_____
Printed Name and Title	_____
	_____
Signature	_____

(End of identification and assertion)

(4) When requested by the Agreement Officer, the Contractor shall provide sufficient information to enable the Agreement Officer to evaluate the Contractor's assertions. The Agreement 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 in the DFARS 252.227-7037, Validation of Restrictive Markings on Technical Data, clause of this agreement.

(g) Marking requirements. The Contractor, and its subcontractors or suppliers, may only assert restrictions on the Government's rights to use, modify, reproduce, release, perform, display, or disclose technical data to be delivered under this agreement by marking the deliverable data subject to restriction. Except as provided in paragraph (g)(6) of this clause, only the following legends are authorized under this agreement: the government purpose rights legend at paragraph (g)(3) of this clause; the limited rights legend at paragraph (g)(4) of this clause; the special license rights legend at paragraph (g) (5) of this clause; and 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) Omitted markings.

(i) Technical data delivered or otherwise provided under this agreement without restrictive markings will be presumed to have been delivered with unlimited rights. To the extent practicable, if the Contractor has requested permission (see paragraph (g)(2)(ii) of this clause) to correct an inadvertent omission of markings, the Agreement Officer will not release or disclose the technical data pending evaluation of the request.

(ii) The Contractor may request permission to have conforming and justified restrictive markings placed on unmarked technical data at its expense. The request must be received by the Agreement Officer within 6 months following the furnishing or delivery of such technical data, or any extension of that time approved by the Agreement Officer. The Contractor shall—

(A) Identify the technical data that should have been marked;

(B) Demonstrate that the omission of the marking was inadvertent, the proposed marking is justified and conforms with the requirements for the marking of technical data contained in this clause; and

(C) Acknowledge, in writing, that the Government has no liability with respect to any disclosure, reproduction, or use of the technical data made prior to the addition of the marking or resulting from the omission of the marking.

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

GOVERNMENT PURPOSE RIGHTS

Agreement Number
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 (c)(2) of the DFARS 252.227-7013,

Rights in Technical Data—Other Than Commercial Products and Commercial Services, clause contained in the above identified agreement. No restrictions apply after the expiration date shown above. Any reproduction of technical data or portions thereof marked with this legend must also reproduce the markings.

(End of legend)

(4) Limited rights markings. Data delivered or otherwise furnished to the Government with limited rights shall be marked as follows:

LIMITED RIGHTS

Agreement Number
Contractor Name
Contractor Address

The Government's rights to use, modify, reproduce, release, perform, display, or disclose these technical data are restricted by paragraph (c)(3) of the DFARS 252.227-7013, Rights in Technical Data—Other Than Commercial Products and Commercial Services, clause contained in the above identified agreement. Any reproduction of technical data or portions thereof marked with this legend must also reproduce the markings. Any person, other than the Government, who has been provided access to such data must promptly notify the above named Contractor.

(End of legend)

(5) Special license rights markings.

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

SPECIAL LICENSE RIGHTS

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

(End of legend)

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

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

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

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

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

(i) Removal of unjustified and nonconforming markings.

(1) Unjustified technical data markings. The rights and obligations of the parties regarding the validation of restrictive markings on technical data furnished or to be furnished under this agreement are contained in the DFARS 252.227-7037, Validation of Restrictive Markings on Technical Data, clause of this agreement. Notwithstanding any provision of this agreement concerning inspection and acceptance, the Government may ignore or, at the Contractor's expense, correct or strike a marking if, in accordance with the procedures in the Validation of Restrictive Markings on Technical Data clause of this agreement, a restrictive marking is determined to be unjustified.

(2) Nonconforming technical data markings. A nonconforming marking is a marking placed on technical data delivered or otherwise furnished to the Government under this agreement that is not in the format authorized by this agreement. Correction of nonconforming markings is not subject to the DFARS 252.227-7037, Validation of Restrictive Markings on Technical Data, clause of this agreement. If the Agreement Officer notifies the Contractor of a nonconforming marking and the Contractor fails to remove or correct such marking within 60 days, the Government may ignore or, at the Contractor's expense, remove or correct any nonconforming marking.

(j) 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.

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

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

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

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

(2) The limitation in paragraph (k)(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 agreement or under a license conveying the rights to the Government; and

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

(l) Subcontractors or suppliers.

(1) The Contractor shall ensure that the rights afforded its subcontractors and suppliers under 10 U.S.C.3771–3775, 10 U.S.C. 3781-3786, 15 U.S.C. 638(j)(1)(B)(iii) and (v), and the identification, assertion, and delivery processes of paragraph (f) of this clause are recognized and protected.

(2) Whenever any technical data for other than commercial products or commercial services, or for commercial products or commercial services developed in any part at Government expense, are to be obtained from a subcontractor or supplier for delivery to the Government under this agreement, the Contractor shall use the following clause(s) in the subcontract or other contractual instrument, including subcontracts or other contractual instruments for commercial products or commercial services, and require its subcontractors or suppliers to do so, without alteration, except to identify the parties:

(i)(A) Except as provided in paragraph (l)(2)(ii) of this clause, use this clause to govern the technical data pertaining to other than commercial products and

commercial services or to any portion of a commercial product or commercial service that was developed in any part at Government expense.

(B) Use the clause at DFARS 252.227-7015 , Technical Data—Commercial Products and Commercial Services, to govern the technical data pertaining to any portion of a commercial product or commercial service that was developed exclusively at private expense.

(ii) Use the clause at DFARS 252.227-7018, Rights in Other Than Commercial Technical Data and Computer Software—Small Business Innovation Research Program and Small Business Technology Transfer Program, to govern technical data that are SBIR/STTR data.

(3) 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.

(4) 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 agreement for data which may be submitted with other than unlimited rights by a subcontractor or supplier, then said subcontractor or supplier may fulfill its requirement by submitting such data directly to the Government, rather than through a higher-tier contractor, subcontractor, or supplier.

(5) 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.

(6) 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.

D.3 Rights in Other Than Commercial Computer Software and Other Than Commercial Computer Software Documentation (January 2025) (Tailored from DFARS 252.227-7014)

(a) Definitions. As used in this clause—

“Commercial computer software” means software developed or regularly used for non-governmental purposes which—

(1) Has been sold, leased, or licensed to the public;

(2) Has been offered for sale, lease, or license to the public;

(3) 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 agreement; or

(4) Satisfies a criterion expressed in paragraph (1), (2), or (3) of this definition and would require only minor modification to meet the requirements of this agreement.

“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.

“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.

“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.

“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.

"Covered Government support contractor" means a contractor (other than a litigation support contractor covered by 252.204-7014) under a agreement, the primary purpose of which is to furnish independent and impartial advice or technical assistance directly to the Government in support of the Government’s management and oversight of a program or effort (rather than to directly furnish an end item or service to accomplish a program or effort), provided that the contractor—

(1) 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

(2) Receives access to technical data or computer software for performance of a Government agreement that contains the clause at 252.227-7025 , Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends.

“Developed” means that—

(1) 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;

(2) 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

(3) Computer software documentation required to be delivered under a agreement has been written, in any medium, in sufficient detail to comply with requirements under that agreement.

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

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

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

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

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

"Generated" means, with regard to technical data or computer software, first created in the performance of this agreement.

"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.

"Government purpose rights" means the rights to—

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

(2) 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.

This is a middle path unique to defense contracts that allows contractors to have the exclusive right to use the technical data or computer software in the commercial market. Unless otherwise agreed, Government Purpose Rights convert to Unlimited Rights five (5) years after execution of the Agreement.

"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.

"Other than commercial computer software" means software that does not qualify as commercial computer software under the definition of "commercial computer software" of this clause.

"Restricted rights" apply only to other than commercial computer software and mean the Government's rights to—

(1) 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 agreement;

(2) 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;

(3) Make a reasonable number of copies of the computer software required for the purposes of safekeeping (archive), backup, modification, or other activities authorized in paragraphs (1), (2), and (4) through (7) of this definition;

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

(i) Use the modified software only as provided in paragraphs (1) and (3) of this definition; and

(ii) Not release or disclose the modified software except as provided in paragraphs (2), (5), (6), and (7) of this definition;

(5) Use, and permit contractors or subcontractors performing service contracts (see 37.101 of the Federal Acquisition Regulation) in support of this or a related agreement 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—

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

(ii) Such contractors or subcontractors are subject to the use and nondisclosure agreement at 227.7103-7 of the Defense Federal Acquisition Regulation Supplement (DFARS) or are Government contractors receiving access to the software for performance of a Government agreement that contains the clause at DFARS252.227-7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends;

(iii) 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 (4) of this definition, for any other purpose; and

(iv) Such use is subject to the limitations in paragraphs (1) through (3) of this definition;

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

(i) The intended recipient is subject to the use and nondisclosure agreement at DFARS 227.7103-7 or is a Government contractor receiving access to the software for performance of a Government agreement that contains the clause at DFARS 252.227-7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends;

(ii) 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 (4) of this definition, for any other purpose; and

(iii) Such use is subject to the limitations in paragraphs (1) through (3) of this definition; and

(7) Use, modify, reproduce, perform, display, or release or disclose computer software to a person authorized to receive restricted rights computer software for management and oversight of a program or effort, and permit covered Government support contractors in the performance of covered Government support contracts that contain the clause at 252.227–7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends, to use, modify, reproduce, perform, display, or release or disclose the computer software to a person authorized to receive restricted rights computer software, provided that—

(i) The Government shall not permit the covered Government support contractor to decompile, disassemble, or reverse engineer the software, or use software

decompiled, disassembled, or reverse engineered by the Government pursuant to paragraph (4) of this definition, for any other purpose; and

(ii) Such use is subject to the limitations in paragraphs (1) through (4) of this definition.

"Small Business Innovation Research/Small Business Technology Transfer (SBIR/STTR) data" means all technical data or computer software developed or generated in the performance of a phase I, II, or III SBIR/STTR agreement or subcontract.

"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) Applicability. This clause governs all other than commercial computer software or other than commercial computer software documentation, except that the clause at DFARS 252.227-7018, Rights in Other Than Commercial Technical Data and Computer Software--Small Business Innovation Research Program and Small Business Technology Transfer Program, governs any computer software or computer software documentation that is SBIR/STTR data.

(c) Rights in computer software or computer software documentation. The Contractor grants or shall obtain for the Government the following royalty free, worldwide, nonexclusive, irrevocable license rights in other than commercial 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 agreement;

(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 agreement or as a result of negotiations; or

(vi) Computer software or computer software documentation furnished to the Government, under this or any other Government agreement 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 (c)(1) of this clause, the Government shall have government purpose rights in computer software development with mixed funding.

(ii) Government purpose rights shall remain in effect for a period of 5 years unless a different period has been negotiated. Upon expiration of the 5-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 agreement, subcontract, letter agreement (or similar contractual instrument), agreement 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 nondisclosure agreement at DFARS 227.7103-7 ; or

(B) The recipient is a Government contractor receiving access to the software or documentation for performance of a Government agreement that contains the clause at 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 other than commercial computer software required to be delivered or otherwise provided to the Government under this agreement that were developed exclusively at private expense.

(ii) The Contractor, its subcontractors, or suppliers are not required to provide the Government additional rights in other than commercial 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 Agreement Officer to determine whether there are acceptable terms for transferring such rights. All other than commercial 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 agreement (see paragraph (c)(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 nondisclosure 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 nondisclosure agreement; and

(D) Any such nondisclosure agreement shall address the restrictions on the covered Government support contractor's use of the restricted rights software as set forth in the clause at DFARS 252.227-7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends. The nondisclosure agreement shall not include any additional terms and conditions unless mutually agreed to by the parties to the nondisclosure agreement.

(4) Specifically negotiated license rights.

(i) The standard license rights granted to the Government under paragraphs (c)(1) through (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 the definition of "restricted rights" of this clause, or lesser rights in computer software documentation than are enumerated in the definition of "limited rights" of the DFARS 252.227-7013, Rights in Technical Data—Other Than Commercial Products and Commercial Services, clause of this agreement.

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

(5) Prior Government rights. Computer software or computer software documentation that will be delivered, furnished, or otherwise provided to the Government under this agreement, in which the Government has previously obtained rights shall be delivered, furnished, or provided with the preexisting 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 the definition of "restricted rights" or paragraph (c)(2)(iii) of this clause, in accordance with the terms of a license negotiated under paragraph (c)(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.

(d) 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 agreement that the Contractor uses to prepare, or includes in, derivative computer software or computer software documentation.

(e) Third party copyrighted computer software or computer software documentation. The Contractor shall not, without the written approval of the Agreement Officer, incorporate any copyrighted computer software or computer software documentation in the software or documentation to be delivered under this agreement unless the Contractor is the copyright owner or has obtained for the Government the license rights necessary to perfect a license or licenses in the deliverable software or documentation of the appropriate scope set forth in paragraph (c) 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 Agreement Officer; or

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

(f) 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 (f)(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 agreement (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 Agreement Officer as soon as practicable prior to the scheduled data 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 With Restrictions*1	Basis for Assertion**2	Asserted Rights Category***3	Name of Person Asserting Restrictions****4
(LIST)	(LIST)	(LIST)	(LIST)

*1Generally, 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.

**2Indicate 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.

***3Enter asserted rights category (e.g., restricted or government purpose rights in computer software, government purpose license rights from a prior agreement, rights in SBIR/STTR data generated under another agreement, or specifically negotiated licenses).

****4Corporation, individual, or other person, as appropriate.

Date _____

Printed Name and Title _____

_____

Signature _____

(End of identification and assertion)

(4) When requested by the Agreement Officer, the Contractor shall provide sufficient information to enable the Agreement Officer to evaluate the Contractor's assertions. The Agreement 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 in the DFARS 252.227-7019, Validation of Asserted Restrictions—Computer Software, clause of this agreement.

(g) 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 (g)(6) of this clause, only the following legends are authorized under this agreement: the government purpose rights legend at paragraph (g) (3) of this clause; the restricted rights legend at paragraph (g) (4) of this clause; the special license rights legend at paragraph (g) (5) of this clause; and 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 transmitted 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 Agreement 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) Omitted markings.

(i) Computer software or computer software documentation delivered or otherwise provided under this agreement without restrictive markings will be presumed to have been delivered with unlimited rights. To the extent practicable, if the Contractor has requested permission (see paragraph (g)(2)(ii) of this clause) to correct an inadvertent omission of markings, the Agreement Officer will not

release or disclose the software or documentation pending evaluation of the request.

(ii) The Contractor may request permission to have conforming and justified restrictive markings placed on unmarked computer software or computer software documentation at its expense. The request must be received by the Agreement Officer within 6 months following the furnishing or delivery of such software or documentation, or any extension of that time approved by the Agreement Officer. The Contractor shall—

(A) Identify the software or documentation that should have been marked;

(B) Demonstrate that the omission of the marking was inadvertent, the proposed marking is justified and conforms with the requirements for the marking of computer software or computer software documentation contained in this clause; and

(C) Acknowledge, in writing, that the Government has no liability with respect to any disclosure, reproduction, or use of the software or documentation made prior to the addition of the marking or resulting from the omission of the marking.

(3) 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

Agreement Number
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 (c)(2) of the DFARS 252.227-7014, Rights in Other Than Commercial Computer Software and Other Than Commercial Computer Software Documentation, clause contained in the above identified agreement. 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)

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

RESTRICTED RIGHTS

Agreement Number

Contractor Name

Contractor Address

The Government's rights to use, modify, reproduce, release, perform, display, or disclose this software are restricted by paragraph (c)(3) of the DFARS 252.227-7014, Rights in Other Than Commercial Computer Software and Other Than Commercial Computer Software Documentation, clause contained in the above identified agreement. 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)

(5) Special license rights markings.

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

SPECIAL LICENSE RIGHTS

The Government's rights to use, modify, reproduce, release, perform, display, or disclose this software are restricted by Agreement Number [Insert agreement number] ____, License Number____ [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 agreement (see paragraph (c)(5) of this clause).

(6) Preexisting markings. If the terms of a prior agreement 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 agreement or license. The Contractor shall follow the marking procedures in paragraph (g)(1) of this clause.

(h) Contractor procedures and records. Throughout performance of this agreement, 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 agreement.

(i) 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 agreement are contained in the DFARS 252.227-7019, Validation of Asserted Restrictions—Computer Software, and the DFARS 252.227-7037, Validation of Restrictive Markings on Technical Data, clauses of this agreement, respectively. Notwithstanding any provision of this agreement concerning inspection and acceptance, the Government may ignore or, at the Contractor's expense, correct or strike a marking if, in accordance with the procedures 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 agreement that is not in the format authorized by this agreement. Correction of nonconforming markings is not subject to the DFARS 252.227-7019, Validation of Asserted Restrictions—Computer Software, or the DFARS 252.227-7037, Validation of Restrictive Markings on Technical Data, clause of this agreement. If the Agreement Officer notifies the Contractor of a nonconforming marking or markings and the Contractor fails to remove or correct such markings within 60 days, the Government may ignore or, at the Contractor's expense, remove or correct any nonconforming markings.

(j) 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.

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

(1) The Contractor shall not charge to this agreement any cost, including but not limited to license fees, royalties, or similar charges, for rights in computer software or computer software documentation to be delivered under this agreement 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 (k)(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 agreement or under a license conveying the rights to the Government; and

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

(l) Subcontractors or suppliers.

(1)(i) Except as provided in paragraph (l)(1)(ii) of this clause, whenever any other than commercial computer software or other than commercial computer software documentation is to be obtained from a subcontractor or supplier for delivery to the Government under this agreement, the Contractor shall use this clause in its subcontracts or other contractual instruments, and require its subcontractors or suppliers to do so, without alteration, except to identify the parties.

(ii) The Contractor shall use the clause at DFARS 252.227-7018, Rights in Other Than Commercial Technical Data and Computer Software—Small Business Innovation Research Program and Small Business Technology Transfer Program, to govern computer software or computer software documentation that is SBIR/STTR data.

(iii) 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 (f) 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.

D.4 Validation of Asserted Restrictions – Computer Software (January 2025) (Tailored from DFARS 252.227-7019)

(a) Definitions. As used in this clause—

“Contractor”, unless otherwise specifically indicated, means the Contractor and its subcontractors or suppliers.

Other terms are defined in the 252.227-7014, Rights in Other Than Commercial Computer Software and Other Than Commercial Computer Software Documentation, clause of this agreement.

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

(c) Direct contact with subcontractors or suppliers. The Contractor agrees that the Agreement 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 agreement between the Government and the Contractor's subcontractors or suppliers.

(d) Requests for information.

(1) The Agreement Officer may request the Contractor to provide sufficient information to enable the Agreement 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 Agreement 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 marking and return the corrected software to the Agreement Officer within 60 days following receipt of the software, the Agreement Officer may correct or strike the marking at the Contractor's expense;

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

(3) The Contractor's failure to provide a timely response to a Agreement Officer's request for information or failure to provide sufficient information to enable the Agreement 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 agreement, or otherwise provided to the Government in the performance of this agreement. Except for software that is publicly available, has been furnished to the Government without restrictions, has been otherwise made available without restrictions, or is the subject of a fraudulently asserted use or release restriction, the Government may exercise this right only within 6 years after the date(s) the software is delivered or otherwise furnished to the Government, or 6 years following final payment under this agreement, whichever is later.

(2) The absence of a challenge to an asserted restriction shall not constitute validation under this clause. Only a Agreement 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) 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 in writing within 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 Agreement Officer to determine the validity of the asserted restrictions; and

(iv) State that a Agreement Officer's final decision, during the 3-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 Agreement 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 Agreement Officer may request additional supporting documentation if, in the Agreement 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 Agreement Officer's request for additional supporting documentation.

(4) Notwithstanding challenge by the Agreement Officer, the parties may agree on the disposition of an asserted restriction at any time prior to a Agreement 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 Agreement Officer's request for information or additional information under paragraph (f)(1) of this clause, the Agreement Officer shall issue a final decision, in accordance with the Disputes clause of this agreement, pertaining to the validity of the asserted restriction.

(6) If the Agreement Officer, after reviewing any available information pertaining to the validity of an asserted restriction, determines that the asserted restriction has—

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

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

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

after consultation with the other Agreement 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.

(g) Contractor appeal—Government obligation.

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

(i) For a period of 90 days from the date of the Agreement 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 1 year from the date of the Agreement Officer's final decision if, within the first 90 days following the Agreement 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 90 days; or

(B) Submitted, within 90 days, a notice of intent to file suit in an appropriate court and filed suit within 1 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 Agreement Officer's final decision;

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

(iii) File suit within 1 year after the date of the Agreement Officer's final decision if the Contractor had provided notice of intent to file suit within 90 days following the date of the Agreement Officer's final decision.

(3)(i) 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 (g)(1) of this clause, the Contractor agrees that the agency may use, modify, reproduce, release, perform, display, or disclose computer software marked with—

(A) Government purpose legends for any purpose, and authorize others to do so; or

(B) Restricted or special license rights for Government purposes only.

(ii) 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 nondisclosure agreement at Defense Federal Acquisition Regulation Supplement (DFARS) 227.7103-7 , or is a Government contractor receiving access to the software for performance of a Government agreement that contains the clause at 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 Agreement 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.

(h) Final disposition of appeal or suit. If the Contractor appeals or files suit and if, upon final disposition of the appeal or suit, the Agreement 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.

(i) Flow down. 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 agreement. The clause may not be altered other than to identify the appropriate parties.

D.5 Technical Data--Withholding of Payment (March 2000) (Tailored from DFARS 252.227-7030)

(a) If technical data specified to be delivered under this agreement, is not delivered within the time specified by this agreement or is deficient upon delivery (including having restrictive markings not identified in the list described in the clause at 252.227-7013 (e)(2) or 252.227-7018 (e)(2) of this agreement), the Agreement Officer may until such data is accepted by the Government, withhold payment to the Contractor of ten percent (10%) of the total agreement price or amount unless a lesser withholding is specified in the agreement. 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 agreement.

D.6 Deferred Ordering of Technical Data or Computer Software (April 1988) (Tailored from DFARS 252.227-7027)

In addition to technical data or computer software specified elsewhere in this agreement to be delivered hereunder, the Government may, at any time during the performance of this agreement or within a period of three (3) years after acceptance of all items (other than technical data or computer software) to be delivered under this agreement or the termination of this agreement, order any technical data or computer software generated in the performance of this agreement or any subcontract hereunder. When the technical data or computer software is ordered, the Contractor shall be compensated for converting the data or computer software into the prescribed form, for reproduction and delivery. The obligation to deliver the technical data of a subcontractor and pertaining to an item obtained from him shall expire three (3) years after the date the Contractor accepts the last delivery of that item from that subcontractor under this agreement. The Government's rights to use said data or computer software shall be pursuant to the “Rights in Technical Data and Computer Software” clause of this agreement.

D.7 Validation of Restrictive Markings on Technical Data (January 2025) (Tailored from DFARS 252.227-7037)

(a) Definitions. The terms used in this clause are defined in the Rights in Technical Data—Other Than Commercial Products and Commercial Services clause of this agreement.

(b) Commercial products or commercial services–presumption regarding development exclusively at private expense. The Agreement Officer will presume that the Contractor’s or a subcontractor’s asserted use or release restrictions with respect to a commercial product or

commercial service are justified on the basis that the item was developed exclusively at private expense. The Agreement Officer will not issue a challenge unless there are reasonable grounds to question the validity of the assertion that the commercial product or commercial service 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 asserted restrictions on the rights of the Government and others to use, duplicate, release, or disclose technical data delivered, required to be delivered, or otherwise provided to the Government under the agreement or subcontract. Except as provided in paragraph (b) of this clause, the Contractor or subcontractor shall be prepared to furnish to the Agreement Officer a written justification for such asserted restrictions in response to a challenge under paragraph (e) of this clause.

(d) Prechallenge request for information.

(1) The Agreement Officer may request the Contractor or subcontractor to furnish a written explanation for any asserted restriction on the right of the United States or others to use, disclose, or release technical data. If, upon review of the explanation submitted, the Agreement Officer cannot determine the basis of the asserted restriction, the Agreement 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 asserted restriction on technical data delivered, to be delivered, or otherwise provided to the Government under the agreement 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 Agreement Officer within the time required or such longer period as may be mutually agreed.

(2) If the Agreement 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 an asserted restriction, determines that reasonable grounds exist to question the current validity of the asserted restriction and that continued adherence to the asserted restriction would make impracticable the subsequent competitive acquisition of the item or process to which the technical data relates, the Agreement Officer will follow the procedures in paragraph (e) of this clause.

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

(e) Challenge.

(1) Notwithstanding any provision of this agreement concerning inspection and acceptance, if the Agreement Officer determines that a challenge to the asserted restriction is warranted, the Agreement Officer will send a written challenge notice to the Contractor or subcontractor making the asserted restriction. The challenge notice and all related correspondence shall be subject to handling procedures for classified information and controlled unclassified information. Such challenge will—

(i) State the specific grounds for challenging the asserted restriction including, for commercial products or commercial services, sufficient information to reasonably demonstrate that the commercial product or commercial service was not developed exclusively at private expense ;

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

(iii) State that a DoD Agreement Officer's final decision, issued pursuant to paragraph (g) of this clause, sustaining the validity of a prior asserted restriction restrictive marking identical to the current asserted restriction, within the three3-year period preceding the current challenge, shall serve as justification for the current asserted restriction if the prior 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 Agreement Officer will extend the time for response as appropriate if the Contractor or subcontractor submits a written request showing the need for additional time to prepare a response.

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

(4) A Contractor or subcontractor receiving challenges to the same asserted restrictions from more than one Agreement Officer shall notify each Agreement Officer of the existence of more than one challenge. The notice shall also state which Agreement Officer initiated the first in time unanswered challenge. The Agreement Officer initiating the first in time unanswered challenge after consultation with the Contractor or subcontractor and the other Agreement Officers, will formulate and distribute a schedule for responding to each of the challenge notices to all interested parties. The schedule will 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 Agreement Officer will issue a final decision to the Contractor or subcontractor in accordance with the Disputes clause of this agreement. In order to sustain the challenge for commercial products or commercial services, the Agreement Officer will provide information demonstrating that the commercial product or commercial service was not developed exclusively at private expense . This final decision will 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 Agreement 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 Agreement Officer determines that the Contractor or subcontractor has justified the validity of the asserted restriction restrictive marking, the Agreement Officer will issue a final decision to the Contractor or subcontractor sustaining that sustains the validity of the asserted restriction restrictive marking, and stating that states that the Government will continue to be bound by the asserted restriction restrictive marking. The Agreement Officer will issue this final decision within 60 days after receipt of the Contractor's or subcontractor's response to the challenge notice, or within such longer period that the Agreement Officer has notified the Contractor or subcontractor that the Government will require. The Agreement Officer will provide notification of any longer period for issuance of a final decision will be made within 60 days after receipt of the response to the challenge notice.

(2)(i) If the Agreement Officer determines that the validity of the asserted restriction is not justified, the Agreement Officer will issue a final decision to the Contractor or subcontractor in accordance with the Disputes clause of this agreement. To sustain the challenge for commercial products or commercial services, the Agreement Officer will provide information demonstrating that the commercial product or commercial service was not developed exclusively at private expense. Notwithstanding paragraph (e) of the Disputes clause, the final decision will be issued within 60 days after receipt of the Contractor’s or subcontractor’s response to the challenge notice, or within such longer period that the Agreement 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 60 days after receipt of the response to the challenge notice.

(ii) The Government agrees that it will continue to be bound by the asserted restriction for a period of 90 days from the issuance of the Agreement 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 Court of Federal Claims, it will provide a notice of intent to file suit to the Agreement Officer within 90 days from the issuance of the Agreement 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 Agreement Officer within the 90-day period, the Government may cancel or ignore the restrictive

markings that are based on the asserted restrictions, 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 asserted restriction where a notice of intent to file suit in the United States Court of Federal Claims is provided to the Agreement Officer within 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 marking that is based on the asserted restriction, if the Contractor or subcontractor fails to file its suit within 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 Court of Federal Claims , 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 asserted restrictions 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 asserted restrictions where an appeal or suit is filed pursuant to the Contract Disputes statute until final disposition by an agency Board of Contract Appeals or the United States 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 Court of Federal Claims, 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 asserted restrictions 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 Agreement Officer's decision is sustained—

(i) The restrictive marking that is based on the asserted restriction on the technical data shall be cancelled, corrected, or ignored; and

(ii) If the asserted restriction 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 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 asserted restriction, 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 Agreement Officer's decision is not sustained—

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

(ii) The Government will 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.

(1) The Government may review the validity of any restriction on technical data, delivered or to be delivered under a agreement, asserted by the Contractor or subcontractor. During the period within 6 years of final payment on a agreement or within 6 years of delivery of the technical data to the Government, whichever is later, the Agreement Officer may review and make a written determination to challenge the restriction. The Government may, however, challenge a restriction on the release, disclosure, or use of technical data at any time if such technical data—

(i) Are publicly available;

(ii) Have been furnished to the United States without restriction;

(iii) Have been otherwise made available without restriction; or

(iv) Are the subject of a fraudulently asserted use or release restriction.

(2) Only the Agreement 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. 3785(c).

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

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

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

D.8 Warranty of Data (March 2024) (Tailored from DFARS 252.246-7001)

(a) Definition. “Technical data” has the same meaning as given in the clause in this agreement entitled Rights in Technical Data and Computer Software.

(b) Warranty. Notwithstanding inspection and acceptance by the Government of technical data furnished under this agreement, and notwithstanding any provision of this agreement concerning the conclusiveness of acceptance, the Contractor warrants that all technical data delivered under this agreement will at the time of delivery conform with the specifications and all other requirements of this agreement. 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, Data Requirements List) of which the data forms a part; or any longer period specified in the agreement.

(c) Contractor Notification. The Contractor agrees to notify the Agreement Officer in writing immediately of any breach of the above warranty which the Contractor discovers within the warranty period.

(d) Remedies. The following remedies shall apply to all breaches of the warranty, whether the Contractor notifies the Agreement Officer in accordance with paragraph (c) of this clause or if the Government notifies the Contractor of the breach in writing within the warranty period:

(1) Within a reasonable time after such notification, the Agreement Officer may—

(i) By written notice, direct the Contractor to correct or replace at the Contractor's expense the nonconforming technical data promptly; or

(ii) If the Agreement 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.

(2) If the Contractor refuses or fails to comply with a direction under paragraph (d)(1)(i) of this clause, the Agreement Officer may, within a reasonable time of the refusal or failure—

(i) By agreement or otherwise, correct or replace the nonconforming technical data and charge the cost to the Contractor; or

(ii) Elect a price or fee adjustment instead of correction or replacement.

(3) The remedies in this clause represent the only way to enforce the Government's rights under this clause.

(e) The provisions of this clause apply anew to that portion of any corrected or replaced technical data furnished to the Government under paragraph (d)(1)(i) of this clause.

D.9 Technical Data -- Commercial Products and Commercial Services (January 2025)
(Tailored from DFARS 252.227-7015)

(a) Definitions. As used in this clause—

"Commercial product and commercial service" includes commercial components and commercial processes but does not include commercial computer software.

"Covered Government support contractor" means a contractor (other than a litigation support contractor covered by 252.204-7014) under a agreement, the primary purpose of which is to furnish independent and impartial advice or technical assistance directly to the Government in support of the Government's management and oversight of a program or effort (rather than to directly furnish an end item or service to accomplish a program or effort), provided that the contractor—

(1) 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

(2) Receives access to technical data or computer software for performance of a Government agreement that contains the clause at 252.227-7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends.

"Form, fit, and function data" means technical data that describe 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.

"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 financial, administrative, cost or pricing, or management information, or information incidental to agreement administration.

(b) Applicability. This clause governs the technical data pertaining to any portion of a commercial product or commercial service that was developed exclusively at private

expense. If the commercial product or commercial service was developed in any part at Government expense—

(1) The clause at Defense Federal Acquisition Regulation Supplement (DFARS) 252.227-7018, Rights in Other Than Commercial Technical Data and Computer Software—Small Business Innovation Research Program and Small Business Technology Transfer Program, governs technical data that are generated during any portion of performance that is covered under the Small Business Innovation Research (SBIR) Program or Small Business Technology Transfer (STTR) Program; and

(2) The clause at DFARS 252.227-7013, Rights in Technical Data—Other Than Commercial Products and Commercial Services, governs the technical data pertaining to any portion of a commercial product or commercial service that was developed in any part at Government expense and is not covered under the SBIR or STTR program.

(c) 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 agreement 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 (c)(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 products; 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 products furnished under this agreement, or for performance of work by covered Government support contractors.

(3) The Contractor acknowledges that—

(i) Technical data covered by paragraph (c)(2) of this clause are 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 nondisclosure 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 nondisclosure agreement; and

(iv) Any such nondisclosure agreement shall address the restrictions on the covered Government support contractor's use of the data as set forth in the clause at DFARS 252.227-7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends. The nondisclosure agreement shall not include any additional terms and conditions unless mutually agreed to by the parties to the nondisclosure agreement.

(d) 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 Agreement 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 agreement. The license shall enumerate the additional rights granted the Government in such data.

(e) 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 agreement, 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.

(f) Subcontractors or suppliers.

(1) The Contractor shall recognize and protect the rights afforded its subcontractors and suppliers under 10 U.S.C. 3771–3775,10 U.S.C. 3781-3786, and 15 U.S.C. 638(j)(1)(B)(iii) and (v).

(2) Whenever any technical data related to commercial products or commercial services developed in any part at private expense will be obtained from a subcontractor or supplier for delivery to the Government under this agreement, the Contractor shall use this clause in the subcontract or other contractual instrument, including subcontracts and other contractual instruments for commercial products or commercial services, 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 product or commercial service that was developed exclusively at private expense, and the Contractor shall use the following clauses to https://www.acq.osd.mil/dpap/dars/dfars/html/current/252227.htm#252.227-7013govern the technical data pertaining to any portion of a commercial product or commercial service that was developed in any part at Government expense:

(i) Use the clause at DFARS 252.227-7013, Rights in Technical Data—Other Than Commercial Products and Commercial Services, to govern any technical data that are not generated during any portion of performance that is covered under the SBIR or STTR program.

(ii) Use the clause at 252.227-7018, Rights in Other Than Commercial Technical Data and Computer Software—Small Business Innovation Research Program and Small Business Technology Transfer Program, to govern technical data that are generated during any portion of performance that is covered under the SBIR or STTR program.

D.10 Technical Data or Computer Software Previously Delivered to the Government (June 1995) (Tailored from DFARS 252.227-7028)

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 agreement 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/agreement or subcontract/sub agreement. The attachment shall identify—

(a) The agreement number under which the data or software were produced;

(b) The agreement 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.

Section E – Miscellaneous Terms and Conditions:

E.1 Safeguarding Covered Defense Information and Cyber Incident Reporting (MAY 2024) (DEVIATION 2024-O0013 REVISION 1) (Tailored from DFARS 252.204-7012)

(a) Definitions. As used in this clause—

"Adequate security" means protective measures that are commensurate with the consequences and probability of loss, misuse, or unauthorized access to, or modification of information.

"Compromise" means disclosure of information to unauthorized persons, or a violation of the security policy of a system, in which unauthorized intentional or unintentional disclosure, modification, destruction, or loss of an object, or the copying of information to unauthorized media may have occurred.

"Contractor attributional/proprietary information" means information that identifies the contractor(s), whether directly or indirectly, by the grouping of information that can be traced back to the contractor(s) (e.g., program description, facility locations), personally identifiable information, as well as trade secrets, commercial or financial information, or other commercially sensitive information that is not customarily shared outside of the company.

"Controlled technical information" means technical information with military or space application that is subject to controls on the access, use, reproduction, modification, performance, display, release, disclosure, or dissemination. Controlled technical information would meet the criteria, if disseminated, for distribution statements B through F using the criteria set forth in DoD Instruction 5230.24, Distribution Statements on Technical Documents. The term does not include information that is lawfully publicly available without restrictions.

"Covered contractor information system" means an unclassified information system that is owned, or operated by or for, a contractor and that processes, stores, or transmits covered defense information.

"Covered defense information" means unclassified controlled technical information or other information, as described in the Controlled Unclassified Information (CUI) Registry at http://www.archives.gov/cui/registry/category-list.html, that requires safeguarding or dissemination controls pursuant to and consistent with law, regulations, and Governmentwide policies, and is—

> (1) Marked or otherwise identified in the agreement, task order, or delivery order and provided to the contractor by or on behalf of DoD in support of the performance of the agreement; or
>
> (2) Collected, developed, received, transmitted, used, or stored by or on behalf of the contractor in support of the performance of the agreement.

“Cyber incident” means actions taken through the use of computer networks that result in a compromise or an actual or potentially adverse effect on an information system and/or the information residing therein.

“Forensic analysis” means the practice of gathering, retaining, and analyzing computer-related data for investigative purposes in a manner that maintains the integrity of the data.

“Information system” means a discrete set of information resources organized for the collection, processing, maintenance, use, sharing, dissemination, or disposition of information.

“Malicious software” means computer software or firmware intended to perform an unauthorized process that will have adverse impact on the confidentiality, integrity, or availability of an information system. This definition includes a virus, worm, Trojan horse, or other code-based entity that infects a host, as well as spyware and some forms of adware.

“Media” means physical devices or writing surfaces including, but is not limited to, magnetic tapes, optical disks, magnetic disks, large-scale integration memory chips, and printouts onto which covered defense information is recorded, stored, or printed within a covered contractor information system.

‘‘Operationally critical support’’ means supplies or services designated by the Government as critical for airlift, sealift, intermodal transportation services, or logistical support that is essential to the mobilization, deployment, or sustainment of the Armed Forces in a contingency operation.

“Rapidly report” means within 72 hours of discovery of any cyber incident.

“Technical information” means technical data or computer software, as those terms are defined in the clause at DFARS 252.227-7013 , Rights in Technical Data—Other Than Commercial Products and Commercial Services, regardless of whether or not the clause is incorporated in this solicitation or agreement. Examples of technical information include research and engineering data, engineering drawings, and associated lists, specifications, standards, process sheets, manuals, technical reports, technical orders, catalog-item identifications, data sets, studies and analyses and related information, and computer software executable code and source code.

(b) Adequate security. The Contractor shall provide adequate security on all covered contractor information systems. To provide adequate security, the Contractor shall implement, at a minimum, the following information security protections:

> (1) For covered contractor information systems that are part of an Information Technology (IT) service or system operated on behalf of the Government, the following security requirements apply:
>
> > (i) Cloud computing services shall be subject to the security requirements specified in the clause 252.239-7010 , Cloud Computing Services, of this agreement.

(ii) Any other such IT service or system (i.e., other than cloud computing) shall be subject to the security requirements specified elsewhere in this agreement.

(2) For covered contractor information systems that are not part of an IT service or system operated on behalf of the Government and therefore are not subject to the security requirement specified at paragraph (b)(1) of this clause, the following security requirements apply:

(i) Except as provided in paragraph (b)(2)(ii) of this clause, the covered contractor information system shall be subject to the security requirements in National Institute of Standards and Technology (NIST) Special Publication (SP) 800-171, "Protecting Controlled Unclassified Information in Nonfederal Information Systems and Organizations" (available via the internet at https://csrc.nist.gov/publications/sp800) in effect at the time the solicitation is issued or as authorized by the Agreement Officer.

(ii)(A) The Contractor shall implement NIST SP 800-171, as soon as practical, but not later than December 31, 2017. For all contracts awarded prior to October 1, 2017, the Contractor shall notify the DoD Chief Information Officer (CIO), via email at osd.dibcsia@mail.mil, within 30 days of agreement award, of any security requirements specified by NIST SP 800-171 not implemented at the time of agreement award.

(B) The Contractor shall submit requests to vary from NIST SP 800-171 in writing to the Agreement Officer, for consideration by the DoD CIO. The Contractor need not implement any security requirement adjudicated by an authorized representative of the DoD CIO to be nonapplicable or to have an alternative, but equally effective, security measure that may be implemented in its place.

(C) If the DoD CIO has previously adjudicated the contractor's requests indicating that a requirement is not applicable or that an alternative security measure is equally effective, a copy of that approval shall be provided to the Agreement Officer when requesting its recognition under this agreement.

(D) If the Contractor intends to use an external cloud service provider to store, process, or transmit any covered defense information in performance of this agreement, the Contractor shall require and ensure that the cloud service provider meets security requirements equivalent to those established by the Government for the Federal Risk and Authorization Management Program (FedRAMP) Moderate baseline (https://www.fedramp.gov/documents-templates/) and that the cloud service provider complies with requirements in paragraphs (c) through (g) of this clause for cyber incident reporting, malicious software, media preservation and protection, access to additional information and

equipment necessary for forensic analysis, and cyber incident damage assessment.

(3) Apply other information systems security measures when the Contractor reasonably determines that information systems security measures, in addition to those identified in paragraphs (b)(1) and (2) of this clause, may be required to provide adequate security in a dynamic environment or to accommodate special circumstances (e.g., medical devices) and any individual, isolated, or temporary deficiencies based on an assessed risk or vulnerability. These measures may be addressed in a system security plan.

(c) Cyber incident reporting requirement.

(1) When the Contractor discovers a cyber incident that affects a covered contractor information system or the covered defense information residing therein, or that affects the contractor's ability to perform the requirements of the agreement that are designated as operationally critical support and identified in the agreement, the Contractor shall—

(i) Conduct a review for evidence of compromise of covered defense information, including, but not limited to, identifying compromised computers, servers, specific data, and user accounts. This review shall also include analyzing covered contractor information system(s) that were part of the cyber incident, as well as other information systems on the Contractor's network(s), that may have been accessed as a result of the incident in order to identify compromised covered defense information, or that affect the Contractor's ability to provide operationally critical support; and

(ii) Rapidly report cyber incidents to DoD at https://dibnet.dod.mil.

(2) Cyber incident report. The cyber incident report shall be treated as information created by or for DoD and shall include, at a minimum, the required elements at https://dibnet.dod.mil.

(3) Medium assurance certificate requirement. In order to report cyber incidents in accordance with this clause, the Contractor or subcontractor shall have or acquire a DoD-approved medium assurance certificate to report cyber incidents. For information on obtaining a DoD-approved medium assurance certificate, see https://public.cyber.mil/eca/.

(d) Malicious software. When the Contractor or subcontractors discover and isolate malicious software in connection with a reported cyber incident, submit the malicious software to DoD Cyber Crime Center (DC3) in accordance with instructions provided by DC3 or the Agreement Officer. Do not send the malicious software to the Agreement Officer.

(e) Media preservation and protection. When a Contractor discovers a cyber incident has occurred, the Contractor shall preserve and protect images of all known affected information systems identified in paragraph (c)(1)(i) of this clause and all relevant monitoring/packet capture

data for at least 90 days from the submission of the cyber incident report to allow DoD to request the media or decline interest.

(f) Access to additional information or equipment necessary for forensic analysis. Upon request by DoD, the Contractor shall provide DoD with access to additional information or equipment that is necessary to conduct a forensic analysis.

(g) Cyber incident damage assessment activities. If DoD elects to conduct a damage assessment, the Agreement Officer will request that the Contractor provide all of the damage assessment information gathered in accordance with paragraph (e) of this clause.

(h) DoD safeguarding and use of contractor attributional/proprietary information. The Government shall protect against the unauthorized use or release of information obtained from the contractor (or derived from information obtained from the contractor) under this clause that includes contractor attributional/proprietary information, including such information submitted in accordance with paragraph (c). To the maximum extent practicable, the Contractor shall identify and mark attributional/proprietary information. In making an authorized release of such information, the Government will implement appropriate procedures to minimize the contractor attributional/proprietary information that is included in such authorized release, seeking to include only that information that is necessary for the authorized purpose(s) for which the information is being released.

(i) Use and release of contractor attributional/proprietary information not created by or for DoD. Information that is obtained from the contractor (or derived from information obtained from the contractor) under this clause that is not created by or for DoD is authorized to be released outside of DoD—

(1) To entities with missions that may be affected by such information;

(2) To entities that may be called upon to assist in the diagnosis, detection, or mitigation of cyber incidents;

(3) To Government entities that conduct counterintelligence or law enforcement investigations;

(4) For national security purposes, including cyber situational awareness and defense purposes (including with Defense Industrial Base (DIB) participants in the program at 32 CFR part 236); or

(5) To a support services contractor (“recipient”) that is directly supporting Government activities under a agreement that includes the clause at 252.204-7009 , Limitations on the Use or Disclosure of Third-Party Contractor Reported Cyber Incident Information.

(j) Use and release of contractor attributional/proprietary information created by or for DoD. Information that is obtained from the contractor (or derived from information obtained from the contractor) under this clause that is created by or for DoD (including the information submitted

pursuant to paragraph (c) of this clause) is authorized to be used and released outside of DoD for purposes and activities authorized by paragraph (i) of this clause, and for any other lawful Government purpose or activity, subject to all applicable statutory, regulatory, and policy based restrictions on the Government's use and release of such information.

(k) The Contractor shall conduct activities under this clause in accordance with applicable laws and regulations on the interception, monitoring, access, use, and disclosure of electronic communications and data.

(l) Other safeguarding or reporting requirements. The safeguarding and cyber incident reporting required by this clause in no way abrogates the Contractor's responsibility for other safeguarding or cyber incident reporting pertaining to its unclassified information systems as required by other applicable clauses of this agreement, or as a result of other applicable U.S. Government statutory or regulatory requirements.

(m) Subcontracts. The Contractor shall—

(1) Include this clause, including this paragraph (m), in subcontracts, or similar contractual instruments, for operationally critical support, or for which subcontract performance will involve covered defense information, including subcontracts for commercial products or commercial services, without alteration, except to identify the parties. The Contractor shall determine if the information required for subcontractor performance retains its identity as covered defense information and will require protection under this clause, and, if necessary, consult with the Agreement Officer; and

(2) Require subcontractors to—

(i) Notify the prime Contractor (or next higher-tier subcontractor) when submitting a request to vary from a NIST SP 800-171 security requirement to the Agreement Officer, in accordance with paragraph (b)(2)(ii)(B) of this clause; and

(ii) Provide the incident report number, automatically assigned by DoD, to the prime Contractor (or next higher-tier subcontractor) as soon as practicable, when reporting a cyber incident to DoD as required in paragraph (c) of this clause.

E.2 Electronic Submission of Payment Requests (December 2018) (Tailored from DFARS 252.232-7003)

(a) Definitions. As used in this clause—

"Contract financing payment" means an authorized Government disbursement of monies to a contractor prior to acceptance of supplies or services by the Government.

(1) Contract financing payments include—

(i) Advance payments;

(ii) Performance-based payments;

(iii) Commercial advance and interim payments;

(iv) Progress payments based on cost under the clause at Federal Acquisition Regulation (FAR) 52.232-16, Progress Payments;

(v) Progress payments based on a percentage or stage of completion (see FAR 32.102(e)), except those made under the clause at FAR 52.232-5, Payments Under Fixed-Price Construction Contracts, or the clause at FAR 52.232-10, Payments Under Fixed-Price Architect-Engineer Contracts; and

(vi) Interim payments under a cost reimbursement agreement, except for a cost reimbursement agreement for services when Alternate I of the clause at FAR 52.232-25, Prompt Payment, is used.

(2) Contract financing payments do not include—

(i) Invoice payments;

(ii) Payments for partial deliveries; or

(iii) Lease and rental payments.

“Electronic form” means any automated system that transmits information electronically from the initiating system to affected systems.

“Invoice payment” means a Government disbursement of monies to a contractor under a agreement or other authorization for supplies or services accepted by the Government.

(1) Invoice payments include—

(i) Payments for partial deliveries that have been accepted by the Government;

(ii) Final cost or fee payments where amounts owed have been settled between the Government and the contractor;

(iii) For purposes of subpart 32.9 only, all payments made under the clause at 52.232-5, Payments Under Fixed-Price Construction Contracts, and the clause at 52.232-10, Payments Under Fixed-Price Architect-Engineer Contracts; and

(iv) Interim payments under a cost-reimbursement agreement for services when Alternate I of the clause at 52.232-25, Prompt Payment, is used.

(2) Invoice payments do not include agreement financing payments.

“Payment request” means any request for agreement financing payment or invoice payment submitted by the Contractor under this agreement or task or delivery order.

“Receiving report” means the data prepared in the manner and to the extent required by Appendix F, Material Inspection and Receiving Report, of the Defense Federal Acquisition Regulation Supplement.

(b) Except as provided in paragraph (d) of this clause, the Contractor shall submit payment requests and receiving reports in electronic form using Wide Area WorkFlow (WAWF). The Contractor shall prepare and furnish to the Government a receiving report at the time of each delivery of supplies or services under this agreement or task or delivery order.

(c) Submit payment requests and receiving reports to WAWF in one of the following electronic formats:

(1) Electronic Data Interchange.

(2) Secure File Transfer Protocol.

(3) Direct input through the WAWF website.

(d) The Contractor may submit a payment request and receiving report using methods other than WAWF only when—

(1) The Contractor has requested permission in writing to do so, and the Agreement Officer has provided instructions for a temporary alternative method of submission of payment requests and receiving reports in the agreement administration data section of this agreement or task or delivery order;

(2) DoD makes payment for commercial transportation services provided under a Government rate tender or a agreement for transportation services using a DoD-approved electronic third party payment system or other exempted vendor payment/invoicing system (e.g., PowerTrack, Transportation Financial Management System, and Cargo and Billing System);

(3) DoD makes payment on a agreement or task or delivery order for rendered health care services using the TRICARE Encounter Data System; or

(4) The Governmentwide commercial purchase card is used as the method of payment, in which case submission of only the receiving report in WAWF is required.

(e) Information regarding WAWF is available at https://wawf.eb.mil/.

(f) In addition to the requirements of this clause, the Contractor shall meet the requirements of the appropriate payment clauses in this agreement when submitting payment requests.

E.3 Prohibition on a ByteDance Covered Application (June 2023) (Tailored from FAR 52.204-27)

(a)Definitions. As used in this clause—

Covered application means the social networking service TikTok or any successor application or service developed or provided by ByteDance Limited or an entity owned by ByteDance Limited.

Information technology, as defined in 40 U.S.C. 11101(6)—

> (1) Means any equipment or interconnected system or subsystem of equipment, used in the automatic acquisition, storage, analysis, evaluation, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information by the executive agency, if the equipment is used by the executive agency directly or is used by a contractor under a agreement with the executive agency that requires the use—
>
> > (i) Of that equipment; or
> >
> > (ii) Of that equipment to a significant extent in the performance of a service or the furnishing of a product;
>
> (2) Includes computers, ancillary equipment (including imaging peripherals, input, output, and storage devices necessary for security and surveillance), peripheral equipment designed to be controlled by the central processing unit of a computer, software, firmware and similar procedures, services (including support services), and related resources; but
>
> (3) Does not include any equipment acquired by a Federal contractor incidental to a Federal agreement.

(b) Prohibition. Section 102 of Division R of the Consolidated Appropriations Act, 2023 (Pub. L. 117-328), the No TikTok on Government Devices Act, and its implementing guidance under Office of Management and Budget (OMB) Memorandum M-23-13, dated February 27, 2023, "No TikTok on Government Devices" Implementation Guidance, collectively prohibit the presence or use of a covered application on executive agency information technology, including certain equipment used by Federal contractors. The Contractor is prohibited from having or using a covered application on any information technology owned or managed by the Government, or on any information technology used or provided by the Contractor under this agreement, including equipment provided by the Contractor's employees; however, this prohibition does not apply if the Agreement Officer provides written notification to the Contractor that an exception has been granted in accordance with OMB Memorandum M-23-13.

(c) Subcontracts. The Contractor shall insert the substance of this clause, including this paragraph (c), in all subcontracts, including subcontracts for the acquisition of commercial products or commercial services.

E.4 Compliance with Safeguarding Covered Defense Information Controls (October 2016)
(Tailored from DFARS 252.204-7008)

(a) Definitions. As used in this provision—

"Controlled technical information," "covered contractor information system," "covered defense information," "cyber incident," "information system," and "technical information" are defined in clause 252.204-7012 , Safeguarding Covered Defense Information and Cyber Incident Reporting.

(b) The security requirements required by agreement clause 252.204-7012 , shall be implemented for all covered defense information on all covered contractor information systems that support the performance of this agreement.

(c) For covered contractor information systems that are not part of an information technology service or system operated on behalf of the Government (see 252.204-7012 (b)(2)—

(1) By submission of this offer, the Offeror represents that it will implement the security requirements specified by National Institute of Standards and Technology (NIST) Special Publication (SP) 800-171 "Protecting Controlled Unclassified Information in Nonfederal Information Systems and Organizations" (see http://dx.doi.org/10.6028/NIST.SP.800-171) that are in effect at the time the solicitation is issued or as authorized by the Agreement Officer not later than December 31, 2017.

(2)(i) If the Offeror proposes to vary from any of the security requirements specified by NIST SP 800-171 that are in effect at the time the solicitation is issued or as authorized by the Agreement Officer, the Offeror shall submit to the Agreement Officer, for consideration by the DoD Chief Information Officer (CIO), a written explanation of—

(A) Why a particular security requirement is not applicable; or

(B) How an alternative but equally effective, security measure is used to compensate for the inability to satisfy a particular requirement and achieve equivalent protection.

(ii) An authorized representative of the DoD CIO will adjudicate offeror requests to vary from NIST SP 800-171 requirements in writing prior to agreement award. Any accepted variance from NIST SP 800-171 shall be incorporated into the resulting agreement.

E.5 Identification and Assertion of Use, Release, or Disclosure Restrictions (January 2025)
(Tailored from DFARS 252.227-7017)

(a) Definitions. As used in this provision—

"Computer software" is defined in—

(1) The 252.227-7014, Rights in Other Than Commercial Computer Software and Other Than Commercial Computer Software Documentation, clause of this solicitation; or

(2) If this solicitation contemplates a agreement under the Small Business Innovation Research Program or Small Business Technology Transfer Program, the 252.227-7018, Rights in Other Than Commercial Technical Data and Computer Software—Small Business Innovation Research Program and Small Business Technology Transfer Program, clause of this solicitation.

"SBIR/STTR data" is defined in the 252.227-7018, Rights in Other Than Commercial Technical Data and Computer Software—Small Business Innovation Research Program and Small Business Technology Transfer Program, clause of this solicitation.

"Technical data" is defined in—

(1) The 252.227-7013, Rights in Technical Data—Other Than Commercial Products and Commercial Services, clause of this solicitation; or

(2) If this solicitation contemplates a agreement under the Small Business Innovation Research Program or Small Business Technology Transfer Program, the 252.227-7018, Rights in Other Than Commercial Technical Data and Computer Software—Small Business Innovation Research Program and Small Business Technology Transfer Program, clause of this solicitation.

(b) The identification and assertion requirements in this provision apply only to technical data, including computer software documentation, or computer software to be delivered with other than unlimited rights. For contracts to be awarded under the Small Business Innovation Research (SBIR) Program or Small Business Technology Transfer (STTR) Program, these requirements apply to SBIR/STTR data that will be generated under the resulting agreement and will be delivered with SBIR/STTR data rights and to any other data that will be delivered with other than unlimited rights. Notification and identification are not required for restrictions based solely on copyright.

(c) Offers submitted in response to this solicitation shall identify, to the extent known at the time an offer is submitted to the Government, the technical data or computer software that the Offeror, its subcontractors or suppliers, or potential subcontractors or suppliers, assert should be furnished to the Government with restrictions on use, release, or disclosure.

(d) The Offeror’s assertions, including the assertions of its subcontractors or suppliers or potential subcontractors or suppliers [,] shall be submitted as an attachment to its offer in the following format, dated and signed by an official authorized to contractually obligate the Offeror:

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

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

Technical Data or Computer Software to be Furnished With Restrictions* [1]	Basis for Assertion** [2]	Asserted Rights Category*** [3]	Name of Person Asserting Restrictions**** [4]
(LIST)***** [5]	(LIST)	(LIST)	(LIST)

* [1] For technical data (other than computer software documentation) pertaining to items, components, or processes developed at private expense, identify both the deliverable technical data and each such item, component, or process. For computer software or computer software documentation identify the software or documentation.

** [2] Generally, development at private expense, either exclusively or partially, is the only basis for asserting restrictions. For technical data, other than computer software documentation, development refers to development of the item, component, or process to which the data pertain. The Government's rights in computer software documentation generally may not be restricted. For computer software, development refers to the software. Indicate whether development was accomplished exclusively or partially at private expense. If development was not accomplished at private expense, or for computer software documentation, enter the specific basis for asserting restrictions.

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

**** [4] Corporation, individual, or other person, as appropriate.

***** [5] Enter “none” when all data or software will be submitted without restrictions.

Date	_____
Printed Name and Title	_____
	_____
Signature	_____

(End of identification and assertion)

(e) An offeror's failure to submit, complete, or sign the notification and identification required by paragraph (d) of this provision with its offer may render the offer ineligible for award.

(f) If the Offeror is awarded a agreement, the assertions identified in paragraph (d) of this provision shall be listed in an attachment to that agreement. Upon request by the Agreement Officer, the Offeror shall provide sufficient information to enable the Agreement Officer to evaluate any listed assertion.

E.6 Notice of NIST SP 800-171 DoD Assessment Requirements (November 2023) (Tailored from DFARS 252.204-7019)

(a) Definitions.

“Basic Assessment”, “Medium Assessment”, and “High Assessment” have the meaning given in the clause 252.204-7020, NIST SP 800-171 DoD Assessments.

“Covered contractor information system” has the meaning given in the clause 252.204-7012, Safeguarding Covered Defense Information and Cyber Incident Reporting, of this solicitation.

(b) Requirement. In order to be considered for award, if the Offeror is required to implement NIST SP 800–171, the Offeror shall have a current assessment (i.e., not more than 3 years old unless a lesser time is specified in the solicitation) (see 252.204–7020) for each covered contractor information system that is relevant to the offer, agreement, task order, or delivery order. The Basic, Medium, and High NIST SP 800–171 DoD Assessments are described in the NIST SP 800–171 DoD Assessment Methodology located at https://www.acq.osd.mil/asda/dpc/cp/cyber/docs/safeguarding/NIST-SP-800-171-Assessment-Methodology-Version-1.2.1-6.24.2020.pdf .

(c) Procedures.

(1) The Offeror shall verify that summary level scores of a current NIST SP 800-171 DoD Assessment (i.e., not more than 3 years old unless a lesser time is specified in the solicitation) are posted in the Supplier Performance Risk System (SPRS) () for all covered contractor information systems relevant to the offer.

(2) If the Offeror does not have summary level scores of a current NIST SP 800-171 DoD Assessment (i.e., not more than 3 years old unless a lesser time is specified in the solicitation) posted in SPRS, the Offeror may conduct and submit a Basic Assessment to for posting to SPRS in the format identified in paragraph (d) of this provision.

(d) Summary level scores. Summary level scores for all assessments will be posted 30 days post-assessment in SPRS to provide DoD Components visibility into the summary level scores of strategic assessments.

(1) Basic Assessments. An Offeror may follow the procedures in paragraph (c)(2) of this provision for posting Basic Assessments to SPRS.

(i) The email shall include the following information:

(A) Cybersecurity standard assessed (e.g., NIST SP 800-171 Rev 1).

(B) Organization conducting the assessment (e.g., Contractor self-assessment).

(C) For each system security plan (security requirement 3.12.4) supporting the performance of a DoD agreement—

(1) All industry Commercial and Government Entity (CAGE) code(s) associated with the information system(s) addressed by the system security plan; and

(2) A brief description of the system security plan architecture, if more than one plan exists.

(D) Date the assessment was completed.

(E) Summary level score (e.g., 95 out of 110, NOT the individual value for each requirement).

(F) Date that all requirements are expected to be implemented (i.e., a score of 110 is expected to be achieved) based on information gathered from associated plan(s) of action developed in accordance with NIST SP 800-171.

(ii) If multiple system security plans are addressed in the email described at paragraph (d)(1)(i) of this section, the Offeror shall use the following format for the report:

System Security Plan	CAGE Codes supported by this plan	Brief description of the plan architecture	Date of assessment	Total Score	Date score of 110 will achieved

(2) Medium and High Assessments. DoD will post the following Medium and/or High Assessment summary level scores to SPRS for each system assessed:

(i) The standard assessed (e.g., NIST SP 800-171 Rev 1).

(ii) Organization conducting the assessment, e.g., DCMA, or a specific organization (identified by Department of Defense Activity Address Code (DoDAAC)).

(iii) All industry CAGE code(s) associated with the information system(s) addressed by the system security plan.

(iv) A brief description of the system security plan architecture, if more than one system security plan exists.

(v) Date and level of the assessment, i.e., medium or high.

(vi) Summary level score (e.g., 105 out of 110, not the individual value assigned for each requirement).

(vii) Date that all requirements are expected to be implemented (i.e., a score of 110 is expected to be achieved) based on information gathered from associated plan(s) of action developed in accordance with NIST SP 800-171.

(3) Accessibility.

(i) Assessment summary level scores posted in SPRS are available to DoD personnel, and are protected, in accordance with the standards set forth in DoD Instruction 5000.79, Defense-wide Sharing and Use of Supplier and Product Performance Information (PI).

(ii) Authorized representatives of the Offeror for which the assessment was conducted may access SPRS to view their own summary level scores, in accordance with the SPRS Software User's Guide for Awardees/Contractors available at https://www.sprs.csd.disa.mil/pdf/SPRS_Awardee.pdf.

(iii) A High NIST SP 800-171 DoD Assessment may result in documentation in addition to that listed in this section. DoD will retain and protect any such documentation as "Controlled Unclassified Information (CUI)" and intended for internal DoD use only. The information will be protected against unauthorized use and release, including through the exercise of applicable exemptions under the Freedom of Information Act (e.g., Exemption 4 covers trade secrets and commercial or financial information obtained from a contractor that is privileged or confidential).

E.7 Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment (November 2021) (Tailored from FAR 52.204-25)

(a) Definitions. As used in this clause—

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

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

Covered telecommunications equipment or services means–

(1) Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities);

(2) For the purpose of public safety, security of Government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities);

(3) Telecommunications or video surveillance services provided by such entities or using such equipment; or

(4) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

Critical technology means–

(1) Defense articles or defense services included on the United States Munitions List set forth in the International Traffic in Arms Regulations under subchapter M of chapter I of title 22, Code of Federal Regulations;

(2) Items included on the Commerce Control List set forth in Supplement No. 1 to part 774 of the Export Administration Regulations under subchapter C of chapter VII of title 15, Code of Federal Regulations, and controlled-

(i) Pursuant to multilateral regimes, including for reasons relating to national security, chemical and biological weapons proliferation, nuclear nonproliferation, or missile technology; or

(ii) For reasons relating to regional stability or surreptitious listening;

(3) Specially designed and prepared nuclear equipment, parts and components, materials, software, and technology covered by part 810 of title 10, Code of Federal Regulations (relating to assistance to foreign atomic energy activities);

(4) Nuclear facilities, equipment, and material covered by part 110 of title 10, Code of Federal Regulations (relating to export and import of nuclear equipment and material);

(5) Select agents and toxins covered by part 331 of title 7, Code of Federal Regulations, part 121 of title 9 of such Code, or part 73 of title 42 of such Code; or

(6) Emerging and foundational technologies controlled pursuant to section 1758 of the Export Control Reform Act of 2018 (50 U.S.C. 4817).

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

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

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

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

(b) Prohibition. (1)Section 889(a)(1)(A) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits the head of an executive agency on or after August 13, 2019, from procuring or obtaining, or extending or renewing a agreement to procure or obtain, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. The Contractor is prohibited from providing to the Government any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, unless an exception at paragraph (c) of this clause applies or the covered telecommunication equipment or services are covered by a waiver described in FAR 4.2104.
(2)Section 889(a)(1)(B) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits the head of an executive agency on or after August 13, 2020, from entering into a agreement, or extending or renewing a agreement, with an entity that uses any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, unless an exception at paragraph (c) of this clause applies or the covered telecommunication equipment or services are covered by a waiver described in FAR 4.2104. This prohibition applies to the use of covered telecommunications equipment or services, regardless of whether that use is in performance of work under a federal agreement.

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

(1) A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or

(2) Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(d) Reporting requirement. (1)In the event the Contractor identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during agreement performance, or the Contractor is notified of such by a subcontractor at any tier or by any other source, the Contractor shall report the information in paragraph (d)(2) of this clause to the Agreement Officer, unless elsewhere in this agreement are established procedures for reporting the information; in the case of the Department of Defense, the Contractor shall report to the website at https://dibnet.dod.mil. For indefinite delivery contracts, the Contractor shall report to the Agreement Officer for the indefinite delivery agreement and the Agreement Officer(s) for any affected order or, in the case of the Department of Defense, identify both the indefinite delivery agreement and any affected orders in the report provided at https://dibnet.dod.mil.

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

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

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

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

E.8 Changes – Cost-Reimbursement (August 1987) (Tailored from FAR 52.243-2 Alternate II)

(a) The Agreement Officer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this agreement in any one or more of the following:

(1) Description of services to be performed.

(2) Time of performance (i.e., hours of the day, days of the week, etc.).

(3) Place of performance of the services.

(4) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for the Government in accordance with the drawings, designs, or specifications.

(5) Method of shipment or packing of supplies.

(6) Place of delivery.

(b) If any such change causes an increase or decrease in the estimated cost of, or the time required for, performance of any part of the work under this agreement, whether or not changed by the order, or otherwise affects any other terms and conditions of this agreement, the Agreement Officer shall make an equitable adjustment in the-

(1) Estimated cost, delivery or completion schedule, or both;

(2) Amount of any fixed fee; and

(3) Other affected terms and shall modify the agreement accordingly.

(c) The Contractor must assert its right to an adjustment under this clause within 30 days from the date of receipt of the written order. However, if the Agreement Officer decides that the facts justify it, the Agreement Officer may receive and act upon a proposal submitted before final payment of the agreement.

(d) Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, nothing in this clause shall excuse the Contractor from proceeding with the agreement as changed.

(e) Notwithstanding the terms and conditions of paragraphs (a) and (b) of this clause, the estimated cost of this agreement and, if this agreement is incrementally funded, the funds allotted for the performance of this agreement, shall not be increased or considered to be increased except by specific written modification of the agreement indicating the new agreement estimated cost and, if this agreement is incrementally funded, the new amount allotted to the agreement. Until this modification is made, the Contractor shall not be obligated to continue performance or incur costs beyond the point established in the Limitation of Cost or Limitation of Funds clause of this agreement.

E.9 Safeguarding Sensitive Conventional Arms, Ammunition, and Explosives (November 2023) (Tailored from DFARS 252.223-7007)

(a) Definition. As used in this clause—

"Arms, ammunition, and explosives (AA&E)," means those items within the scope of DoD Manual 5100.76, Physical Security of Sensitive Conventional Arms, Ammunition, and Explosives.

(b) The requirements of DoD Manual 5100.76 apply to the following items of AA&E being developed, produced, manufactured, or purchased for the Government, or provided to the Contractor as Government-furnished property under this agreement:

NOMENCLATURE	NATIONAL STOCK NUMBER	SENSITIVITY/CATEGORY
Machine Gun, M240	1005-01-025-8095	SRC-II
Machine Gun, M240B Ammo	1005-01-412-3126	SRC-II

(c) The Contractor shall comply with the requirements of DoD Manual 5100.76, as specified in the statement of work. The edition of DoD Manual 5100.76 in effect on the date of issuance of the solicitation for this agreement shall apply.

(d) The Contractor shall allow representatives of the Defense Counterintelligence and Security Agency (DCSA), and representatives of other appropriate offices of the Government, access at all reasonable times into its facilities and those of its subcontractors, for the purpose of performing surveys, inspections, and investigations necessary to review compliance with the physical security standards applicable to this agreement.

(e) The Contractor shall notify the cognizant DCSA field office of any subcontract involving AA&E within 10 days after award of the subcontract.

(f) Subcontracts. The Contractor shall ensure that the requirements of this clause are included in all subcontracts, at every tier—

(1) For the development, production, manufacture, or purchase of AA&E; or

(2) When AA&E will be provided to the subcontractor as Government-furnished property.

(g) Nothing in this clause shall relieve the Contractor of its responsibility for complying with applicable Federal, state, and local laws, ordinances, codes, and regulations (including requirements for obtaining licenses and permits) in connection with the performance of this agreement.

E.10 Item Unique Identification and Valuation (January 2023) (Tailored from DFARS 252.211-7003)

(a) Definitions. As used in this clause—

“Automatic identification device” means a device, such as a reader or interrogator, used to retrieve data encoded on machine-readable media.

“Concatenated unique item identifier” means—

(1) For items that are serialized within the enterprise identifier, the linking together of the unique identifier data elements in order of the issuing agency code, enterprise identifier, and unique serial number within the enterprise identifier; or

(2) For items that are serialized within the original part, lot, or batch number, the linking together of the unique identifier data elements in order of the issuing agency code; enterprise identifier; original part, lot, or batch number; and serial number within the original part, lot, or batch number.

“Data matrix” means a two-dimensional matrix symbology, which is made up of square or, in some cases, round modules arranged within a perimeter finder pattern and uses the Error Checking and Correction 200 (ECC200) specification found within International Standards Organization (ISO)/International Electrotechnical Commission (IEC) 16022.

“Data qualifier” means a specified character (or string of characters) that immediately precedes a data field that defines the general category or intended use of the data that follows.

“DoD recognized unique identification equivalent” means a unique identification method that is in commercial use and has been recognized by DoD. All DoD recognized unique identification equivalents are listed at https://www.acq.osd.mil/asda/dpc/ce/ds/unique-id.html .

“DoD item unique identification” means a system of marking items delivered to DoD with unique item identifiers that have machine-readable data elements to distinguish an item from all other like and unlike items. For items that are serialized within the enterprise identifier, the unique item identifier shall include the data elements of the enterprise identifier and a unique serial number. For items that are serialized within the part, lot, or batch number within the enterprise identifier, the unique item identifier shall include the data elements of the enterprise identifier; the original part, lot, or batch number; and the serial number.

“Enterprise” means the entity (e.g., a manufacturer or vendor) responsible for assigning unique item identifiers to items.

“Enterprise identifier” means a code that is uniquely assigned to an enterprise by an issuing agency.

“Government’s unit acquisition cost” means—

(1) For fixed-price type line, subline, or exhibit line items, the unit price identified in the agreement at the time of delivery;

(2) For cost-type or undefinitized line, subline, or exhibit line items, the Contractor’s estimated fully burdened unit cost to the Government at the time of delivery; and

(3) For items produced under a time-and-materials contract, the Contractor’s estimated fully burdened unit cost to the Government at the time of delivery.

“Issuing agency” means an organization responsible for assigning a globally unique identifier to an enterprise, as indicated in the Register of Issuing Agency Codes for ISO/IEC 15459, located at http://www.aimglobal.org/?Reg_Authority15459.

“Issuing agency code” means a code that designates the registration (or controlling) authority for the enterprise identifier.

“Item” means a single hardware article or a single unit formed by a grouping of subassemblies, components, or constituent parts.

“Lot or batch number” means an identifying number assigned by the enterprise to a designated group of items, usually referred to as either a lot or a batch, all of which were manufactured under identical conditions.

“Machine-readable” means an automatic identification technology media, such as bar codes, contact memory buttons, radio frequency identification, or optical memory cards.

“Original part number” means a combination of numbers or letters assigned by the enterprise at item creation to a class of items with the same form, fit, function, and interface.

“Parent item” means the item assembly, intermediate component, or subassembly that has an embedded item with a unique item identifier or DoD recognized unique identification equivalent.

“Serial number within the enterprise identifier” means a combination of numbers, letters, or symbols assigned by the enterprise to an item that provides for the differentiation of that item from any other like and unlike item and is never used again within the enterprise.

“Serial number within the part, lot, or batch number” means a combination of numbers or letters assigned by the enterprise to an item that provides for the differentiation of that item from any other like item within a part, lot, or batch number assignment.

“Serialization within the enterprise identifier” means each item produced is assigned a serial number that is unique among all the tangible items produced by the enterprise and is never used again. The enterprise is responsible for ensuring unique serialization within the enterprise identifier.

“Serialization within the part, lot, or batch number” means each item of a particular part, lot, or batch number is assigned a unique serial number within that part, lot, or batch number assignment. The enterprise is responsible for ensuring unique serialization within the part, lot, or batch number within the enterprise identifier.

“Type designation” means a combination of letters and numerals assigned by the Government to a major end item, assembly or subassembly, as appropriate, to provide a convenient means of differentiating between items having the same basic name and to indicate modifications and changes thereto.

“Unique item identifier” means a set of data elements marked on items that is globally unique and unambiguous. The term includes a concatenated unique item identifier or a DoD recognized unique identification equivalent.

“Unique item identifier type” means a designator to indicate which method of uniquely identifying a part has been used. The current list of accepted unique item identifier types is maintained at https://www.acq.osd.mil/asda/dpc/ce/ds/unique-id.html .

(b) The Contractor shall deliver all items under a contract line, subline, or exhibit line item.

(c) Unique item identifier.

(1) The Contractor shall provide a unique item identifier for the following:

(i) Delivered items for which the Government's unit acquisition cost is $5,000 or more, except for the following line items:

Contract Line, Subline, or

Exhibit Line-Item Number Item Description

_____

_____

_____

(ii) Items for which the Government's unit acquisition cost is less than $5,000 that are identified in the Schedule or the following table:

Contract Line, Subline, or

Exhibit Line-Item Number Item Description

_____

_____

_____

(If items are identified in the Schedule, insert "See Schedule" in this table.)

(iii) Subassemblies, components, and parts embedded within delivered items, items with warranty requirements, DoD serially managed reparables and DoD serially managed nonreparables as specified in Attachment Number ____.

(iv) Any item of special tooling or special test equipment as defined in FAR 2.101 that have been designated for preservation and storage for a Major Defense Acquisition Program as specified in Attachment Number ____.

(v) Any item not included in (i), (ii), (iii), or (iv) for which the contractor creates and marks a unique item identifier for traceability.

(2) The unique item identifier assignment and its component data element combination shall not be duplicated on any other item marked or registered in the DoD Item Unique Identification Registry by the contractor.

(3) The unique item identifier component data elements shall be marked on an item using two dimensional data matrix symbology that complies with ISO/IEC International Standard 16022, Information technology – International symbology specification – Data matrix; ECC200 data matrix specification.

(4) Data syntax and semantics of unique item identifiers. The Contractor shall ensure that—

(i) The data elements (except issuing agency code) of the unique item identifier are encoded within the data matrix symbol that is marked on the item using one of the following three types of data qualifiers, as determined by the Contractor:

(A) Application Identifiers (AIs) (Format Indicator 05 of ISO/IEC International Standard 15434), in accordance with ISO/IEC International Standard 15418, Information Technology – EAN/UCC Application Identifiers and Fact Data Identifiers and Maintenance and ANSI MH 10.8.2 Data Identifier and Application Identifier Standard.

(B) Data Identifiers (DIs) (Format Indicator 06 of ISO/IEC International Standard 15434), in accordance with ISO/IEC International Standard 15418, Information Technology – EAN/UCC Application Identifiers and Fact Data Identifiers and Maintenance and ANSI MH 10.8.2 Data Identifier and Application Identifier Standard.

(C) Text Element Identifiers (TEIs) (Format Indicator 12 of ISO/IEC International Standard 15434), in accordance with the Air Transport Association Common Support Data Dictionary; and

(ii) The encoded data elements of the unique item identifier conform to the transfer structure, syntax, and coding of messages and data formats specified for Format Indicators 05, 06, and 12 in ISO/IEC International Standard 15434, Information Technology – Transfer Syntax for High Capacity Automatic Data Capture Media.

(5) Unique item identifier.

(i) The Contractor shall—

(A) Determine whether to—

(1) Serialize within the enterprise identifier;

(2) Serialize within the part, lot, or batch number; or

(3) Use a DoD recognized unique identification equivalent (e.g. Vehicle Identification Number); and

(B) Place the data elements of the unique item identifier (enterprise identifier; serial number; DoD recognized unique identification equivalent; and for serialization within the part, lot, or batch number only: original part, lot, or batch number) on items requiring marking by paragraph (c)(1) of this clause, based on the criteria provided in MIL-STD-130, Identification Marking of U.S. Military Property, latest version;

(C) Label shipments, storage containers and packages that contain uniquely identified items in accordance with the requirements of MIL-STD-129, Military Marking for Shipment and Storage, latest version; and

(D) Verify that the marks on items and labels on shipments, storage containers, and packages are machine readable and conform to the applicable standards. The contractor shall use an automatic identification technology device for this verification that has been programmed to the requirements of Appendix A, MIL-STD-130, latest version.

(ii) The issuing agency code—

(A) Shall not be placed on the item; and

(B) Shall be derived from the data qualifier for the enterprise identifier.

(d) For each item that requires item unique identification under paragraph (c)(1)(i), (ii), or (iv) of this clause or when item unique identification is provided under paragraph (c)(1)(v), in addition to the information provided as part of the Material Inspection and Receiving Report specified elsewhere in this agreement, the Contractor shall report at the time of delivery, as part of the Material Inspection and Receiving Report, the following information:

(1) Unique item identifier.

(2) Unique item identifier type.

(3) Issuing agency code (if concatenated unique item identifier is used).

(4) Enterprise identifier (if concatenated unique item identifier is used).

(5) Original part number (if there is serialization within the original part number).

(6) Lot or batch number (if there is serialization within the lot or batch number).

(7) Current part number (optional and only if not the same as the original part number).

(8) Current part number effective date (optional and only if current part number is used).

(9) Serial number (if concatenated unique item identifier is used).

(10) Government's unit acquisition cost.

(11) Unit of measure.

(12) Type designation of the item as specified in the agreement schedule, if any.

(13) Whether the item is an item of Special Tooling or Special Test Equipment.

(14) Whether the item is covered by a warranty.

(e) For embedded subassemblies, components, and parts that require DoD item unique identification under paragraph (c)(1)(iii) of this clause or when item unique identification is provided under paragraph (c)(1)(v), the Contractor shall report as part of the Material Inspection and Receiving Report specified elsewhere in this agreement, the following information:

(1) Unique item identifier of the parent item under paragraph (c)(1) of this clause that contains the embedded subassembly, component, or part.

(2) Unique item identifier of the embedded subassembly, component, or part.

(3) Unique item identifier type.**

(4) Issuing agency code (if concatenated unique item identifier is used).**

(5) Enterprise identifier (if concatenated unique item identifier is used).**

(6) Original part number (if there is serialization within the original part number).**

(7) Lot or batch number (if there is serialization within the lot or batch number).**

(8) Current part number (optional and only if not the same as the original part number).**

(9) Current part number effective date (optional and only if current part number is used).**

(10) Serial number (if concatenated unique item identifier is used).**

(11) Description.

** Once per item.

(f) The Contractor shall submit the information required by paragraphs (d) and (e) of this clause as follows:

(1) End items shall be reported using the receiving report capability in Wide Area Workflow (WAWF) in accordance with the clause at 252.232-7003. If WAWF is not required by this agreement, and the contractor is not using WAWF, follow the procedures at http://dodprocurementtoolbox.com/site/uidregistry/.

(2) Embedded items shall be reported by one of the following methods—

(i) Use of the embedded items capability in WAWF;

(ii) Direct data submission to the IUID Registry following the procedures and formats at http://dodprocurementtoolbox.com/site/uidregistry/; or

(iii) Via WAWF as a deliverable attachment for exhibit line item number (fill in) ___, Unique Item Identifier Report for Embedded Items, Data Requirements List, DD Form 1423.

(g) Subcontracts. If the Contractor acquires by subcontract any item(s) for which item unique identification is required in accordance with paragraph (c)(1) of this clause, the Contractor shall include this clause, including this paragraph (g), in the applicable subcontract(s), including subcontracts for commercial products or commercial services.

E.11 Excusable Delays (April 1984) (Tailored from FAR 52.249-14)

(a) Except for defaults of subcontractors at any tier, the Contractor shall not be in default because of any failure to perform this agreement under its terms if the failure arises from causes beyond the control and without the fault or negligence of the Contractor. Examples of these causes are (1) acts of God or of the public enemy, (2) acts of the Government in either its sovereign or contractual capacity, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions, (7) strikes, (8) freight embargoes, and (9) unusually severe weather. In each instance, the failure to perform must be beyond the control and without the fault or negligence of the Contractor. "Default" includes failure to make progress in the work so as to endanger performance.

(b) If the failure to perform is caused by the failure of a subcontractor at any tier to perform or make progress, and if the cause of the failure was beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either, the Contractor shall not be deemed to be in default,- unless-

(1) The subcontracted supplies or services were obtainable from other sources;

(2) The Agreement Officer ordered the Contractor in writing to purchase these supplies or services from the other source; and

(3) The Contractor failed to comply reasonably with this order.

(c) Upon request of the Contractor, the Agreement Officer shall ascertain the facts and extent of the failure. If the Agreement Officer determines that any failure to perform results from one or more of the causes above, the delivery schedule shall be revised, subject to the rights of the Government under the termination clause of this agreement.

E.12 Duty-Free Entry (November 2023) (Tailored from DFARS 252.225-7013)

(a) Definitions. As used in this clause—

"Component," means any item supplied to the Government as part of an end product or of another component.

"Customs territory of the United States" means the 50 States, the District of Columbia, and Puerto Rico.

"Eligible product" means—

(1) "Designated country end product," as defined in the Trade Agreements (either basic or alternate) clause of this agreement;

(2) *Free Trade Agreement country end product,* other than a Bahraini *end product,* a *Moroccan end product,* a *Panamanian end product,* or a *Peruvian end product,* as defined in the Buy American—Free Trade Agreements—Balance of Payments Program (either basic or alternate II) clause of this agreement; or

(3) *Free Trade Agreement country end product* other than a Bahraini *end product, Korean end product, Moroccan end product, Panamanian end product,* or *Peruvian end product,* as defined in the Buy American—Free Trade Agreements—Balance of Payments Program (either alternate IV or alternate V) clause of this agreement.

"Qualifying country" and "qualifying country end product" have the meanings given in the Trade Agreements clause, the Buy American and Balance of Payments Program clause, or the Buy American—Free Trade Agreements—Balance of Payments Program clause of this agreement, basic or alternate.

(b) Except as provided in paragraph (i) of this clause, or unless supplies were imported into the customs territory of the United States before the date of this agreement or the applicable subcontract, the price of this agreement shall not include any amount for duty on—

(1) End items that are eligible products or qualifying country end products;

(2) Components (including, without limitation, raw materials and intermediate assemblies) produced or made in qualifying countries, that are to be incorporated in U.S.-made end products to be delivered under this agreement; or

(3) Other supplies for which the Contractor estimates that duty will exceed $300 per shipment into the customs territory of the United States.

(c) The Contractor shall—

(1) Claim duty-free entry only for supplies that the Contractor intends to deliver to the Government under this agreement, either as end items or components of end items; and

(2) Pay duty on supplies, or any portion thereof, that are diverted to nongovernmental use, other than—

(i) Scrap or salvage; or

(ii) Competitive sale made, directed, or authorized by the Agreement Officer.

(d) Except as the Contractor may otherwise agree, the Government will execute duty-free entry certificates and will afford such assistance as appropriate to obtain the duty-free entry of supplies

(1) For which no duty is included in the agreement price in accordance with paragraph (b) of this clause; and

(2) For which shipping documents bear the notation specified in paragraph (e) of this clause.

(e) For foreign supplies for which the Government will issue duty-free entry certificates in accordance with this clause, shipping documents submitted to Customs shall—

(1) Consign the shipments to the appropriate—

(i) Military department in care of the Contractor, including the Contractor's delivery address; or

(ii) Military installation; and

(2) Include the following information:

(i) Prime agreement number and, if applicable, delivery order number.

(ii) Number of the subcontract for foreign supplies, if applicable.

(iii) Identification of the carrier.

(iv)(A) For direct shipments to a U.S. military installation, the notation: "UNITED STATES GOVERNMENT, DEPARTMENT OF DEFENSE Duty-Free Entry to be claimed pursuant to Section XXII, Chapter 98, Subchapter VIII, Item 9808.00.30 of the Harmonized Tariff Schedule of the United States. Upon arrival of shipment at the appropriate port of entry, District Director of Customs, please release shipment under 19 CFR Part 142 and notify Commander, Defense Contract Management Agency (DCMA), St. Louis, MO, ATTN: Duty Free Entry Team, 1222 Spruce Street, Room 9.300, St. Louis, MO 63103-2812, for execution of Customs Form 7501, 7501A, or 7506 and any required duty-free entry certificates."

(B) If the shipment will be consigned to other than a military installation, e.g., a domestic contractor's plant, the shipping document notation shall be altered to include the name and address of the contractor, agent, or broker who will notify Commander, DCMA New York, for execution of the duty-free entry certificate. (If the shipment will be consigned to a contractor's plant and no duty-free entry certificate is required due to a trade agreement, the Contractor shall claim duty-free entry under the applicable trade agreement and shall comply with the U.S. Customs Service requirements. No notification to Commander, DCMA New York, is required.)

(v) Gross weight in pounds (if freight is based on space tonnage, state cubic feet in addition to gross shipping weight).

(vi) Estimated value in U.S. dollars.

(vii) Activity address number of the contract administration office administering the prime agreement, e.g., for DCMA Dayton, S3605A.

(f) *Preparation of customs forms.*

(1)(i) Except for shipments consigned to a military installation, the Contractor shall—

(A) Prepare any customs forms required for the entry of foreign supplies into the customs territory of the United States in connection with this agreement; and

(B) Submit the completed customs forms to the District Director of Customs, with a copy to DCMA NY for execution of any required duty-free entry certificates.

(ii) Shipments consigned directly to a military installation will be released in accordance with sections 10.101 and 10.102 of the U.S. Customs regulations.

(2) For shipments containing both supplies that are to be accorded duty-free entry and supplies that are not, the Contractor shall identify on the customs forms those items that are eligible for duty-free entry.

(g) The Contractor shall—

(1) Prepare (if the Contractor is a foreign supplier), or shall instruct the foreign supplier to prepare, a sufficient number of copies of the bill of lading (or other shipping document) so that at least two of the copies accompanying the shipment will be available for use by the District Director of Customs at the port of entry;

(2) Consign the shipment as specified in paragraph (e) of this clause; and

(3) Mark on the exterior of all packages—

(i) "UNITED STATES GOVERNMENT, DEPARTMENT OF DEFENSE"; and

(ii) The activity address number of the contract administration office administering the prime agreement.

(h) The Contractor shall notify the Administrative Contracting Officer (ACO) in writing of any purchase of eligible products or qualifying country supplies to be accorded duty-free entry, that are to be imported into the customs territory of the United States for delivery to the Government or for incorporation in end items to be delivered to the Government. The Contractor shall furnish the notice to the ACO immediately upon award to the supplier and shall include in the notice—

(1) The Contractor's name, address, and Commercial and Government Entity (CAGE) code;

(2) Prime agreement number and, if applicable, delivery order number;

(3) Total dollar value of the prime agreement or delivery order;

(4) Date of the last scheduled delivery under the prime agreement or delivery order;

(5) Foreign supplier's name and address;

(6) Number of the subcontract for foreign supplies;

(7) Total dollar value of the subcontract for foreign supplies;

(8) Date of the last scheduled delivery under the subcontract for foreign supplies;

(9) List of items purchased;

(10) An agreement that the Contractor will pay duty on supplies, or any portion thereof, that are diverted to nongovernmental use other than—

(i) Scrap or salvage; or

(ii) Competitive sale made, directed, or authorized by the Agreement Officer;

(11) Country of origin; and

(12) Scheduled delivery date(s).

(i) This clause does not apply to purchases of eligible products or qualifying country supplies in connection with this agreement if—

(1) The supplies are identical in nature to supplies purchased by the Contractor or any subcontractor in connection with its commercial business; and

(2) It is not economical or feasible to account for such supplies so as to ensure that the amount of the supplies for which duty-free entry is claimed does not exceed the amount purchased in connection with this agreement.

(j) The Contractor shall—

(1) Insert the substance of this clause, including this paragraph (j), in all subcontracts for—

(i) Qualifying country components; or

(ii) Nonqualifying country components for which the Contractor estimates that duty will exceed $200 per unit;

(2) Require subcontractors to include the number of this agreement on all shipping documents submitted to Customs for supplies for which duty-free entry is claimed pursuant to this clause; and

(3) Include in applicable subcontracts—

(i) The name and address of the ACO for this agreement;

(ii) The name, address, and activity address number of the contract administration office specified in this agreement; and

(iii) The information required by paragraphs (h)(1), (2), and (3) of this clause.

E.13 EXPORT-CONTROLLED ITEMS (June 2013) (Tailored from DFARS 252.225-7048)

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

(1) “Defense items,” defined in the Arms Export Control Act, 22 U.S.C. 2778(j)(4)(A), as defense articles, defense services, and related technical data, and further defined in the ITAR, 22 CFR Part 120.

(2) “Items,” defined in the EAR as “commodities”, “software”, and “technology,” terms that are also defined in the EAR, 15 CFR 772.1.

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

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

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

(1) The Export Administration Act of 1979, as amended (50 U.S.C. App. 2401, et seq.);

(2) The Arms Export Control Act (22 U.S.C. 2751, et seq.);

(3) The International Emergency Economic Powers Act (50 U.S.C. 1701, et seq.);

(4) The Export Administration Regulations (15 CFR Parts 730-774);

(5) The International Traffic in Arms Regulations (22 CFR Parts 120-130); and

(6) Executive Order 13222, as extended.

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

E.14 Contractor Compliance With the Cybersecurity Maturity Model Certification Level Requirements (November 2025) (Tailored from DFARS 252.204-7021)

(a) Definitions. As used in this clause—

“Controlled unclassified information” means information the Government creates or possesses, or information an entity creates or possesses for or on behalf of the Government, that a law, regulation, or Governmentwide policy requires or permits an agency to handle using safeguarding or dissemination controls (32 CFR 2002.4(h)).

“Current” means—

(1) With regard to Conditional Cybersecurity Maturity Model Certification (CMMC) Status—

(i) Not older than 180 days for Conditional Level 2 (Self) assessments and Conditional Level 2 (certified third-party assessment organization (C3PAO)) assessments, with—

(A) No changes in compliance with the requirements at 32 CFR part 170 since the Conditional CMMC Status date (see 32 CFR 170.16 and 170.17); and

(B) A corresponding affirmation of continuous compliance by an affirming official (see 32 CFR 170.4); and

(ii) Not older than 180 days for Conditional Level 3 (Defense Industrial Base Cybersecurity Assessment Center (DIBCAC)) assessments, with—

(A) No changes in compliance with the requirements at 32 CFR part 170 since the Conditional CMMC Status date (see 32 CFR 170.18); and

(B) A corresponding affirmation of continuous compliance by an affirming official;

(2) With regard to Final CMMC Status—

(i) Not older than 1 year for Final Level 1 (Self), with—

(A) No changes in compliance with the requirements at 32 CFR part 170 since the Final CMMC Status date (see 32 CFR 170.15); and

(B) A corresponding affirmation of continuous compliance, not older than 1 year, by an affirming official;

(ii) Not older than 3 years for Final Level 2 (Self) assessments and Final Level 2 (C3PAO) assessments, with—

(A) No changes in compliance with the requirements at 32 CFR part 170 since the Final CMMC Status date (see 32 CFR 170.16 and 170.17); and

(B) A corresponding affirmation of continuous compliance, not older than 1 year, by an affirming official; and

(iii) Not older than 3 years for Final Level 3 (DIBCAC) assessments, with—

(A) No changes in compliance with the requirements at 32 CFR part 170 since the Final CMMC Status date (see 32 CFR 170.18); and

(B) A corresponding affirmation of continuous compliance, not older than 1 year, by an affirming official; and

(3) With regard to affirmation of continuous compliance (32 CFR 170.22), not older than 1 year with no changes in compliance with the requirements at 32 CFR part 170.

"Cybersecurity Maturity Model Certification (CMMC) status" means the result of meeting or exceeding the minimum required score for the corresponding assessment. The potential statuses are as follows:

(1) Final Level 1 (Self).

(2) Conditional Level 2 (Self).

(3) Final Level 2 (Self).

(4) Conditional Level 2 (C3PAO).

(5) Final Level 2 (C3PAO).

(6) Conditional Level 3 (DIBCAC).

(7) Final Level 3 (DIBCAC).

"Cybersecurity Maturity Model Certification unique identifier (CMMC UID)" means 10 alpha-numeric characters assigned to each CMMC assessment and reflected in the Supplier Performance Risk System (SPRS) for each contractor information system.

"Federal contract information (FCI)" means information, not intended for public release, that is provided by or generated for the Government under a contract/agreement to develop or deliver a product or service to the Government. It does not include information provided by the Government to the public, such as on public websites, or simple transactional information, such as information necessary to process payments.

"Plan of action and milestones" means a document that identifies tasks to be accomplished. It details resources required to accomplish the elements of the plan, any milestones in meeting the tasks, and scheduled completion dates for the milestones, as defined in National Institute of Standards and Technology Special Publication 800-115 (32 CFR 170.21).

(b) Framework. The Cybersecurity Maturity Model Certification (CMMC) is a framework for assessing a contractor's compliance with applicable information security protections (see 32 CFR part 170).

(c) Duplication. The CMMC assessments will not duplicate efforts from any other comparable DoD assessment, except for rare circumstances when a reassessment may be necessary, for example, when there are indications of issues with cybersecurity and/or compliance with CMMC requirements.

(d) *Requirements.* The Contractor shall—

(1)(i) Have and maintain for the duration of the agreement a current CMMC status at the following CMMC level, or higher: CMMC Level 2 (Self) at inception of the agreement award, Level 2 (C3PAO) within 180 days of agreement award, with Level 3 (DIBCAC) upon notification from the Agreements Officer for all information systems used in performance of the agreement, task order, or delivery order that process, store, or transmit FCI or CUI; and

(ii) Consult 32 CFR 170.23 related to the flowdown of the CMMC requirements, and flow down the correct CMMC level to subcontracts and other contractual instruments;

(2) Only process, store, or transmit FCI or CUI on contractor information systems that have a CMMC status at the CMMC level required in paragraph (d)(1) of this clause, or higher;

(3) Complete on an annual basis, and maintain as current, an affirmation, by the affirming official (see 32 CFR 170.4), of continuous compliance with the requirements associated with the CMMC level required in paragraph (d)(1) of this clause in the Supplier Performance Risk System (SPRS) (https://piee.eb.mil) for each CMMC UID applicable to each of the contractor information systems that process, store, or transmit FCI or CUI and that are used in performance of the agreement;

(4) Ensure all subcontractors and suppliers complete prior to subcontract award, and maintain on an annual basis, an affirmation, by the affirming official (see 32 CFR 170.4), of continuous compliance with the requirements associated with the CMMC level required for the subcontract or other contractual instrument for each of the subcontractor information systems that process, store, or transmit FCI or CUI and that are used in performance of the subcontract; and

(5) If the Contractor has a CMMC Status of Conditional, successfully close out a valid plan of action and milestones (32 CFR 170.21) to achieve a CMMC Status of Final.

(e) Reporting. The Contractor shall—

(1) Submit to the Agreements Officer—

(i) The CMMC UID(s) issued by SPRS for contractor information systems that will process, store, or transmit FCI or CUI during performance of the agreement; and

(ii) Any changes in the CMMC UIDs generated in SPRS throughout the life of the agreement, task order, or delivery order, if applicable;

(2) Enter into SPRS the results of a current self-assessment for each CMMC UID, not covered by a C3PAO assessment or DIBCAC assessment, applicable to each of the contractor information systems that process, store, or transmit FCI or CUI and that are used in performance of the agreement; and

(3) Complete in SPRS on an annual basis and maintain as current an affirmation of continuous compliance by the affirming official (see 32 CFR 170.4) for each self-assessment, C3PAO assessment, or DIBCAC assessment required under the agreement in SPRS.

(f) *Subcontracts.* The Contractor shall—

(1) Insert the substance of this clause, including this paragraph (f) and excluding paragraph (e)(1), in subcontracts and other contractual instruments, including those for the acquisition of commercial products and commercial services, excluding commercially available off-the-shelf items, if the subcontract or other contractual instrument will contain a requirement to process, store, or transmit FCI or CUI; and

(2) Prior to awarding a subcontract or other contractual instrument, ensure that the subcontractor has a current CMMC certificate or current CMMC status at the CMMC level that is appropriate for the information that is being flowed down to the subcontractor based on the requirements at 32 CFR 170.23.