NORTHROP GRUMMAN SYSTEMS CORPORATION
ADDENDUM TO TERMS AND CONDITIONS FOR SUBCONTRACTS IN SUPPORT OF ONTARIO III
PRIME CONTRACT 17-C-0318

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

I. ADDITIONS

A. PROHIBITION ON PERSONS CONVICTED OF FRAUD OR OTHER DEFENSE CONTRACT-RELATED FELONIES (VARIATION)

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

(1) "Arising out of a contract with the DoD" means any act in connection with—

(i) Attempting to obtain;

(ii) Obtaining; or

(iii) Performing a contract or first-tier subcontract of any agency, department, or component of the Department of Defense (DoD).

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

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

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

(1) In a management or supervisory capacity on this Order;

(2) On the board of directors of the Seller;

(3) As a consultant, agent, or representative for the Seller; or

(4) In any other capacity with the authority to influence, advise, or control the decisions of the Seller with regard to this Order.

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

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

(1) Employing a person under a prohibition specified in paragraph (b) of this clause; or

(2) Allowing such a person to serve on the board of directors of the Seller.

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

(1) Suspension or debarment;

(2) Cancellation of the Order at no cost to the Buyer; or

(3) Termination of the Order for default.

(f) The Seller may submit written requests for waiver of the prohibition in paragraph (b) of this clause to the Buyer. Requests shall clearly identify—

(1) The person involved;

(2) The nature of the conviction and resultant sentence or punishment imposed;

(3) The reasons for the requested waiver; and

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

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

(h) Pursuant to 10 U.S.C. 2408(c), defense Sellers may obtain information as to whether a particular person has been convicted of fraud or any other felony arising out of a contract with the DoD by contacting The Office of Justice Programs, The Denial of Federal Benefits Office, U.S. Department of Justice, telephone 301-937-1542; www.ojp.usdoj.gov/BJA/grant/DPFC.html.

B. REQUIREMENT TO INFORM EMPLOYEES OF WHISTLEBLOWER RIGHTS (VARIATION)

(a) The Seller shall inform its employees in writing, in the predominant native language of the workforce, of contractor employee whistleblower rights and protections under 10 U.S.C. 2409.

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

C. SUBCONTRACTING WITH FIRMS THAT ARE OWNED OR CONTROLLED BY THE GOVERNMENT OF A COUNTRY THAT IS A STATE SPONSOR OF TERRORISM (VARIATION)

(a) Unless the Buyer determines that there is a compelling reason to do so, the Seller shall not enter into any subcontract in excess of $35,000 with a firm, or a subsidiary of a firm, that is identified in the Exclusions section of the System for Award Management (SAM Exclusions) as being ineligible for the award of Defense contracts or subcontracts because it is owned or controlled by the government of a country that is a state sponsor of terrorism.

(b) A corporate officer or a designee of the Seller shall notify the Buyer, in writing, before entering into a subcontract with a party that is identified, in SAM Exclusions, as being ineligible for the award of Defense contracts or subcontracts because it is owned or controlled by the government of a country that is a state sponsor of terrorism. The notice must include the name of the proposed subcontractor and the compelling reason(s) for doing business with the subcontractor notwithstanding its inclusion in SAM Exclusions.

D. ACQUISITION STREAMLINING (VARIATION)

(a) The Buyer's acquisition streamlining objectives are to—

(1) Acquire systems that meet stated performance requirements;

(2) Avoid over-specification; and

(3) Ensure that cost-effective requirements are included in future acquisitions.

(b) The Seller shall—

(1) Prepare and submit acquisition streamlining recommendations in accordance with the statement of work of this contract; and

(2) Format and submit the recommendations as prescribed by data requirements on the contract data requirements list of this Order.

(c) The Buyer has the right to accept, modify, or reject the Seller's recommendations.

(d) The Seller shall insert this clause, including this paragraph (d), in all subcontracts over $1.5 million, awarded in the performance of this Order.

E. ITEM UNIQUE IDENTIFICATION AND VALUATION (VARIATION)

(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 http://www.acq.osd.mil/dpap/pdi/uid/iuid_equivalents.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.

"Buyer's unit acquisition cost" means—

(1) For fixed-price type line, subline, or exhibit line items, the unit price identified in the Order at the time of delivery;

(2) For cost-type or undefinitized line, subline, or exhibit line items, the Seller's estimated fully burdened unit cost to the Buyer at the time of delivery; and

(3) For items produced under a time-and-materials contract, the Seller's estimated fully burdened unit cost to the Buyer 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 Buyer 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 http://www.acq.osd.mil/dpap/pdi/uid/uii_types.html.

(b) The Seller shall deliver all items under a contract line, subline, or exhibit line item.

(c) *Unique item identifier.*

(1) The Seller shall provide a unique item identifier for the following:

(i) Delivered items for which the Buyer'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 Buyer'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 Seller 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 Seller.

(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 Seller 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 Seller:

(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 Seller 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 Seller 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 Order, the Seller 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) Buyer's unit acquisition cost.
(11) Unit of measure.
(12) Type designation of the item as specified in the contract 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 Seller shall report as part of the Material Inspection and Receiving Report specified elsewhere in this Order, 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 Seller 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 NA. If WAWF is not required by this contract, 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, Contract Data Requirements List, DD Form 1423.

(g) *Subcontracts*. If the Seller acquires by subcontract, any item(s) for which item unique identification is required in accordance with paragraph (c)(1) of this clause, the Seller shall include this clause, including this paragraph (g), in the applicable subcontract(s), including subcontracts for commercial items.

F. BUY AMERICAN AND BALANCE OF PAYMENTS PROGRAM – BASIC (VARIATION)

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

"Commercially available off-the-shelf (COTS) item"—

(i) Means any item of supply (including construction material) that is—

(A) A commercial item (as defined in paragraph (1) of the definition of "commercial item" in section 2.101 of the Federal Acquisition Regulation);

(B) Sold in substantial quantities in the commercial marketplace; and

(C) Offered to the Buyer, under an Order or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and

(ii) Does not include bulk cargo, as defined in 46 U.S.C. 40102(4), such as agricultural products and petroleum products.

"Component" means an article, material, or supply incorporated directly into an end product.

"Domestic end product" means—

(i) An unmanufactured end product that has been mined or produced in the United States; or

(ii) An end product manufactured in the United States if—

(A) The cost of its qualifying country components and its components that are mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. The cost of components includes transportation costs to the place of incorporation into the end product and U.S. duty (whether or not a duty-free entry certificate is issued). Scrap generated, collected, and prepared for processing in the United States is considered domestic. A component is considered to have been mined, produced, or manufactured in the United States (regardless of its source in fact) if the end product in which it is incorporated is manufactured in the United States and the component is of a class or kind for which the Buyer has determined that—

(1) Sufficient and reasonably available commercial quantities of a satisfactory quality are not mined, produced, or manufactured in the United States; or

(2) It is inconsistent with the public interest to apply the restrictions of the Buy American statute; or

(B) The end product is a COTS item.

"End product" means those articles, materials, and supplies to be acquired under this contract for public use.

"Foreign end product" means an end product other than a domestic end product.

"Qualifying country" means a country with a reciprocal defense procurement memorandum of understanding or international agreement with the United States in which both countries agree to remove barriers to purchases of supplies produced in the other country or services performed by sources of the other country, and the memorandum or agreement complies, where applicable, with the requirements of section 36 of the Arms Export Control Act (22 U.S.C. 2776) and with 10 U.S.C. 2457. Accordingly, the following are qualifying countries: Australia, Austria, Belgium, Canada, Czech Republic, Denmark, Egypt, Estonia, Finland, France, Germany, Greece, Israel, Italy, Japan, Luxembourg, Netherlands, Norway, Poland, Portugal, Slovenia, Spain, Sweden, Switzerland, Turkey, United Kingdom of Great Britain and Northern Ireland.

"Qualifying country component" means a component mined, produced, or manufactured in a qualifying country.

"Qualifying country end product" means—

(i) An unmanufactured end product mined or produced in a qualifying country; or

(ii) An end product manufactured in a qualifying country if —

(A) The cost of the following types of components exceeds 50 percent of the cost of all its components:

(*1*) Components mined, produced, or manufactured in a qualifying country.

(*2*) Components mined, produced, or manufactured in the United States.

(*3*) Components of foreign origin of a class or kind for which the Buyer has determined that sufficient and reasonably available commercial quantities of a satisfactory quality are not mined, produced, or manufactured in the United States; or

(B) The end product is a COTS item.

"United States" means the 50 States, the District of Columbia, and outlying areas.

(b) This clause implements 41 U.S.C chapter 83, Buy American. In accordance with 41 U.S.C. 1907, the component test of the Buy American statute is waived for an end product that is a COTS item (see section 12.505(a)(1) of the Federal Acquisition Regulation). Unless otherwise specified, this clause applies to all line items in the Order.

(c) The Seller shall deliver only domestic end products unless, in its offer, it specified delivery of other end products in the Buy American: Balance of Payments Program Certificate provision of the solicitation. If the Seller certified in its offer that it will deliver a qualifying country end product, the Seller shall deliver a qualifying country end product or, at the Seller's option, a domestic end product.

(d) The Order price does not include duty for end products or components for which the Seller will claim duty-free entry.

G. RESTRICTION ON ACQUISITION OF CERTAIN ARTICLES CONTAINING SPECIALTY METALS (VARIATION)

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

"Alloy" means a metal consisting of a mixture of a basic metallic element and one or more metallic, or non-metallic, alloying elements.

(i) For alloys named by a single metallic element (e.g., titanium alloy), it means that the alloy contains 50 percent or more of the named metal (by mass).

(ii) If two metals are specified in the name (e.g, nickel-iron alloy), those metals are the two predominant elements in the alloy, and together they constitute 50 percent or more of the alloy (by mass).

"Assembly" means an item forming a portion of a system or subsystem that—

(i) Can be provisioned and replaced as an entity; and

(ii) Incorporates multiple, replaceable parts.

"Commercial derivative military article" means an item acquired by the Department of Defense that is or will be produced using the same production facilities, a common supply chain, and the same or similar production processes that are used for the production of articles predominantly used by the general public or by nongovernmental entities for purposes other than governmental purposes.

"Commercially available off-the-shelf item"—

(i) Means any item of supply that is—

(A) A commercial item (as defined in paragraph (1) of the definition of "commercial item" in section 2.101 of the Federal Acquisition Regulation);

(B) Sold in substantial quantities in the commercial marketplace; and

(C) Offered to the Buyer, under this Order or a subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and

(ii) Does not include bulk cargo, as defined in 46 U.S.C. 40102(4), such as agricultural products and petroleum products.

"Component" means any item supplied to the Buyer as part of an end item or of another component.

"Electronic component" means an item that operates by controlling the flow of electrons or other electrically charged particles in circuits, using interconnections of electrical devices such as resistors, inductors, capacitors, diodes, switches, transistors, or integrated circuits. The term does not include structural or mechanical parts of an assembly containing an electronic component, and does not include any high performance magnets that may be used in the electronic component.

"End item" means the final production product when assembled or completed and ready for delivery under a line item of this Order.

"High performance magnet" means a permanent magnet that obtains a majority of its magnetic properties from rare earth metals (such as samarium).

"Produce" means—

(i) Atomization;

(ii) Sputtering; or

(iii) Final consolidation of non-melt derived metal powders.

"Qualifying country" means any country listed in the definition of "Qualifying country" at FAR Part 25.

"Required form" means in the form of mill product, such as bar, billet, wire, slab, plate, or sheet, and in the grade appropriate for the production of—

(i) A finished end item to be delivered to the Buyer under this Order; or

(ii) A finished component assembled into an end item to be delivered to the Buyer under this Order.

"Specialty metal" means—

(i) Steel—

(A) With a maximum alloy content exceeding one or more of the following limits: manganese, 1.65 percent; silicon, 0.60 percent; or copper, 0.60 percent; or

(B) Containing more than 0.25 percent of any of the following elements: aluminum, chromium, cobalt, molybdenum, nickel, niobium (columbium), titanium, tungsten, or vanadium;

(ii) Metal alloys consisting of—

(A) Nickel or iron-nickel alloys that contain a total of alloying metals other than nickel and iron in excess of 10 percent; or

(B) Cobalt alloys that contain a total of alloying metals other than cobalt and iron in excess of 10 percent;

(iii) Titanium and titanium alloys; or

(iv) Zirconium and zirconium alloys.

"Steel" means an iron alloy that includes between .02 and 2 percent carbon and may include other elements.

"Subsystem" means a functional grouping of items that combine to perform a major function within an end item, such as electrical power, attitude control, and propulsion.

(b) *Restriction.* Except as provided in paragraph (c) of this clause, any specialty metals incorporated in items delivered under this Order shall be melted or produced in the United States, its outlying areas, or a qualifying country.

(c) *Exceptions.* The restriction in paragraph (b) of this clause does not apply to—

(1) Electronic components.

(2)(i) Commercially available off-the-shelf (COTS) items, other than—

(A) Specialty metal mill products, such as bar, billet, slab, wire, plate, or sheet, that have not been incorporated into COTS end items, subsystems, assemblies, or components;

(B) Forgings or castings of specialty metals, unless the forgings or castings are incorporated into COTS end items, subsystems, or assemblies;

(C) Commercially available high performance magnets that contain specialty metal, unless such high performance magnets are incorporated into COTS end items or subsystems; and

(D) COTS fasteners, unless—

(1) The fasteners are incorporated into COTS end items, subsystems, assemblies, or components; or

(2) The fasteners qualify for the commercial item exception in paragraph (c)(3) of this clause.

(ii) A COTS item is considered to be "without modification" if it is not modified prior to contractual acceptance by the next higher tier in the supply chain.

(A) Specialty metals in a COTS item that was accepted without modification by the next higher tier are excepted from the restriction in paragraph (b) of this clause, and remain excepted, even if a piece of the COTS item subsequently is removed (e.g., the end is removed from a COTS screw or an extra hole is drilled in a COTS bracket).

(B) Specialty metals that were not contained in a COTS item upon acceptance, but are added to the COTS item after acceptance, are subject to the restriction in paragraph (b) of this clause (e.g., a special reinforced handle made of specialty metal is added to a COTS item).

(C) If two or more COTS items are combined in such a way that the resultant item is not a COTS item, only the specialty metals involved in joining the COTS items together are subject to the restriction in paragraph (b) of this clause (e.g., a COTS aircraft is outfitted with a COTS engine that is not the COTS engine normally provided with the aircraft).

(D) For COTS items that are normally sold in the commercial marketplace with various options, items that include such options are also COTS items. However, if a COTS item is

offered to the Buyer with an option that is not normally offered in the commercial marketplace, that option is subject to the restriction in paragraph (b) of this clause (e.g. - An aircraft is normally sold to the public with an option for installation kits. The Department of Defense requests a military-unique kit. The aircraft is still a COTS item, but the military-unique kit is not a COTS item and must comply with the restriction in paragraph (b) of this clause unless another exception applies).

(3) Fasteners that are commercial items, if the manufacturer of the fasteners certifies it will purchase, during the relevant calendar year, an amount of domestically melted or produced specialty metal, in the required form, for use in the production of fasteners for sale to the Department of Defense and other customers, that is not less than 50 percent of the total amount of the specialty metal that it will purchase to carry out the production of such fasteners for all customers.

(4) Items manufactured in a qualifying country.

(5) Specialty metals for which the Government has determined in accordance with FAR Part 25 that specialty metal melted or produced in the United States, its outlying areas, or a qualifying country cannot be acquired as and when needed in—

(i) A satisfactory quality;

(ii) A sufficient quantity; and

(iii) The required form.

(6) End items containing a minimal amount of otherwise noncompliant specialty metals (i.e., specialty metals not melted or produced in the United States, an outlying area, or a qualifying country, that are not covered by one of the other exceptions in this paragraph (c)), if the total weight of such noncompliant metals does not exceed 2 percent of the total weight of all specialty metals in the end item, as estimated in good faith by the Seller. This exception does not apply to high performance magnets containing specialty metals.

(d) *Reserved*

(e) *Subcontracts.*

(1) Reserved.

(2) The Seller shall insert paragraphs (a) through (c) and this paragraph (e)(2) of this clause in subcontracts, including subcontracts for commercial items, that are for items containing specialty metals to ensure compliance of the end products that the Seller will deliver to the Buyer. When inserting this clause in subcontracts, the Seller shall—

(i) Modify paragraph (c)(6) of this clause only as necessary to facilitate management of the minimal content exception at the prime contract level. The minimal content exception does not apply to specialty metals contained in high-performance magnets; and

(ii) Not further alter the clause other than to identify the appropriate parties.

H. PREFERENCE FOR CERTAIN DOMESTIC COMMODITIES (VARIATION)

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

"Component" means any item supplied to the Buyer as part of an end product or of another component.

"End product" means supplies delivered under a line item of this Order.

"Qualifying country" means a country with a reciprocal defense procurement memorandum of understanding or international agreement with the United States in which both countries agree to remove barriers to purchases of supplies produced in the other country or services performed by sources of the other country, and the memorandum or agreement complies, where applicable, with the requirements of section 36 of the Arms Export Control Act (22 U.S.C. 2776) and with 10 U.S.C. 2457. Accordingly, the following are qualifying countries:

Australia, Austria, Belgium, Canada, Czech Republic, Denmark, Egypt, Estonia, Finland, France, Germany, Greece, Israel, Italy, Japan, Luxembourg, Netherlands, Norway, Poland, Portugal, Slovenia, Spain, Sweden, Switzerland, Turkey, United Kingdom of Great Britain and Northern Ireland.

"Structural component of a tent"—

(i) Means a component that contributes to the form and stability of the tent (e.g., poles, frames, flooring, guy ropes, pegs);

(ii) Does not include equipment such as heating, cooling, or lighting.

"United States" means the 50 States, the District of Columbia, and outlying areas.

"U.S.-flag vessel" means a vessel of the United States or belonging to the United States, including any vessel registered or having national status under the laws of the United States.

(b) The Seller shall deliver under this Order only such of the following items, either as end products or components, that have been grown, reprocessed, reused, or produced in the United States:

(1) Food.

(2) Clothing and the materials and components thereof, other than sensors, electronics, or other items added to, and not normally associated with, clothing and the materials and components thereof. Clothing includes items such as outerwear, headwear, underwear, nightwear, footwear, hosiery, handwear, belts, badges, and insignia.

(3)(i) Tents and structural components of tents;

(ii) Tarpaulins; or

(iii) Covers.

(4) Cotton and other natural fiber products.

(5) Woven silk or woven silk blends.

(6) Spun silk yarn for cartridge cloth.

(7) Synthetic fabric, and coated synthetic fabric, including all textile fibers and yarns that are for use in such fabrics.

(8) Canvas products.

(9) Wool (whether in the form of fiber or yarn or contained in fabrics, materials, or manufactured articles).

(10) Any item of individual equipment (Federal Supply Class 8465) manufactured from or containing fibers, yarns, fabrics, or materials listed in this paragraph (b).

(c) This clause does not apply—

(1) To items listed in section 25.104(a) of the Federal Acquisition Regulation (FAR), or other items for which the Government has determined that a satisfactory quality and sufficient quantity cannot be acquired as and when needed at U.S. market prices;

(2) To incidental amounts of cotton, other natural fibers, or wool incorporated in an end product, for which the estimated value of the cotton, other natural fibers, or wool—

(i) Is not more than 10 percent of the total price of the end product; and

(ii) Does not exceed the simplified acquisition threshold in FAR Part 2;

(3) To waste and byproducts of cotton or wool fiber for use in the production of propellants and explosives;

(4) To foods, other than fish, shellfish, or seafood, that have been manufactured or processed in the United States, regardless of where the foods (and any component if applicable) were grown or produced. Fish, shellfish, or seafood manufactured or processed in the United States and fish, shellfish, or seafood contained in foods manufactured or processed in the United States shall be provided in accordance with paragraph (d) of this clause;

(5) To chemical warfare protective clothing produced in a qualifying country; or

(6) To fibers and yarns that are for use in synthetic fabric or coated synthetic fabric (but does apply to the synthetic or coated synthetic fabric itself), if—

(i) The fabric is to be used as a component of an end product that is not a textile product. Examples of textile products, made in whole or in part of fabric, include:

(A) Draperies, floor coverings, furnishings, and bedding (Federal Supply Group 72, Household and Commercial Furnishings and Appliances);

(B) Items made in whole or in part of fabric in Federal Supply Group 83, Textile/leather/furs/apparel/findings/tents/flags, or Federal Supply Group 84, Clothing, Individual Equipment and Insignia;

(C) Upholstered seats (whether for household, office, or other use); and

(D) Parachutes (Federal Supply Class 1670); or

(ii) The fibers and yarns are para-aramid fibers and continuous filament para-aramid yarns manufactured in a qualifying country.

(d)(1) Fish, shellfish, and seafood delivered under this contract, or contained in foods delivered under this Order—

(i) Shall be taken from the sea by U.S.-flag vessels; or

(ii) If not taken from the sea, shall be obtained from fishing within the United States; and

(2) Any processing or manufacturing of the fish, shellfish, or seafood shall be performed on a U.S.-flag vessel or in the United States.

I. DUTY-FREE ENTRY (VARIATION)

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

"Component," means any item supplied to the Buyer 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—

(i) "Designated country end product," as defined in the Trade Agreements (either basic or alternate) clause of this Order;

(ii) "Free Trade Agreement country end product," other than a "Bahrainian 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 Order, basic or its Alternate II;

(iii) "Canadian end product," as defined in the Buy American—Free Trade Agreements—Balance of Payments Program (either alternate I or alternate III) clause of this Order; or

(iv) "Free Trade Agreement country end product" other than a "Bahrainian end product," "Korean end product," "Moroccan end product," "Panamanian end product," or "Peruvian end product," as defined in of the Buy American—Free Trade Agreements—Balance of Payments Program (either alternate IV or alternate V) clause of this Order.

"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 Order, 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 Order or the applicable subcontract, the price of this Order 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 Order; or

(3) Other supplies for which the Seller estimates that duty will exceed $300 per shipment into the customs territory of the United States.

(c) The Seller shall—

(1) Claim duty-free entry only for supplies that the Seller intends to deliver to the Buyer under this Order, 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 Buyer.

(d) Except as the Seller may otherwise agree, the Buyer 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 contract 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 Buyer 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 Seller, including the Seller's delivery address; or

(ii) Military installation; and

(2) Include the following information:

(i) Subcontract Order 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) New York, ATTN: Customs Team, DCMAE-GNTF, 207 New York Avenue, Staten Island, New York, 10305-5013, 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 Seller'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 Seller's plant and no duty-free entry certificate is required due to a trade agreement, the Seller 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 contract, e.g., for DCMA Dayton, S3605A.

(f) *Preparation of customs forms.*

(1)(i) Except for shipments consigned to a military installation, the Seller 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 Order; 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 Seller shall identify on the customs forms those items that are eligible for duty-free entry.

(g) The Seller shall—

(1) Prepare (if the Seller 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 contract.

(h) The Seller shall notify the Northrop Grumman Subcontracts Manager 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 Buyer or for incorporation in end items to be delivered to the Buyer. The Seller shall furnish the notice to the Northrop Grumman Subcontracts Manager immediately upon award to the supplier and shall include in the notice—

(1) The Seller's name, address, and Commercial and Government Entity (CAGE) code;

(2) Subcontract number and, if applicable, delivery order number;

(3) Total dollar value of the prime contract or delivery order;

(4) Date of the last scheduled delivery under the prime contract 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 Seller 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 Buyer;

(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 Order if—

(1) The supplies are identical in nature to supplies purchased by the Seller 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 Order.

(j) The Seller 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 Seller estimates that duty will exceed $200 per unit;

(2) Require subcontractors to include the number of this contract 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) Reserved

(ii) Reserved

(iii) The information required by paragraphs (h)(1), (2), and (3) of this clause.

J. EXPORT CONTROLLED ITEMS (VARIATION)

(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 Seller 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 Seller 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 Seller'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 Order 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 Seller shall include the substance of this clause, including this paragraph (e), in all subcontracts.

K. RIGHTS IN TECHNICAL DATA--NONCOMMERCIAL ITEMS (VARIATION)

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

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

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

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

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

(5) "Covered Buyer support Seller" means a Seller (other than a litigation support Seller covered by NA) under a Order, the primary purpose of which is to furnish independent and impartial advice or technical assistance directly to the Buyer in support of the Buyer'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 Seller—

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

(ii) Receives access to technical data or computer software for performance of a Government contract that contains the clause at 52.227-14 Rights in Data - General.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) Necessary for emergency repair and overhaul; or

(B) A release or disclosure to—

(*1*) A covered Buyer support Seller in performance of its covered Buyer support contract for use, modification, reproduction, performance, display, or release or disclosure to a person authorized to receive limited rights technical data; or

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

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

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

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

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

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

(1) *Unlimited rights*. The Buyer 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 Order, 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 an Order 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 Seller by the Buyer;

(vii) Otherwise publicly available or have been released or disclosed by the Seller 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 Buyer has obtained unlimited rights under another Government contract or as a result of negotiations; or

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

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

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

(2) *Government purpose rights*.

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

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

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

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

(iii) The Buyer 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 a non-disclosure agreement; or

(B) The recipient is a Government contractor receiving access to the data for performance of a Government contract that contains the clause at FAR 52.227-14 Rights in Data - General.

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

(3) *Limited rights*.

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

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

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

(ii) The Buyer 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 Seller that the data have been destroyed.

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

(iv) The Seller acknowledges that—

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

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

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

(D) Any such non-disclosure agreement shall address the restrictions on the covered Buyer support Seller's use of the limited rights data as set forth in the clause at FAR 52.227-14 Rights in Data - General. The non-disclosure agreement shall not include any additional terms and conditions unless mutually agreed to by the parties to the non-disclosure agreement.

(4) *Specifically negotiated license rights*. The standard license rights granted to the Buyer under paragraphs (b)(1) through (b)(3) of this clause, including the period during which the Buyer 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 Buyer lesser rights than are enumerated in paragraph (a)(14) of this clause. Any rights so negotiated shall be identified in a license agreement made part of this Order.

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

(i) The parties have agreed otherwise; or

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

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

(c) *Buyer rights in technical data*. All rights not granted to the Buyer are retained by the Seller.

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

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

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

(2) Except as provided in paragraph (e)(3) of this clause, technical data that the Seller asserts should be furnished to the Buyer with restrictions on use, release, or disclosure are identified in an attachment to this Order (the Attachment). The Seller 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 Buyer 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 Seller:

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

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

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

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

**Generally, the development of an item, component, or process at private expense, either exclusively or partially, is the only basis for asserting restrictions on the Buyer'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 Buyer's rights should be restricted.

***Enter asserted rights category (e.g., Buyer purpose license rights from a prior Order, rights in SBIR data generated under another Order, limited or Buyer purpose rights under this or a prior Order, 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 Buyer, the Seller shall provide sufficient information to enable the Buyer to evaluate the Contractor's assertions. The Contracting Officer reserves the right to add the Seller's

assertions to the Attachment and validate any listed assertion, at a later date, in accordance with the procedures of the Validation of Restrictive Markings on Technical Data clause of this Order.

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

(1) *General marking instructions*. The Seller, or its subcontractors, 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) *Buyer purpose rights markings*. Data delivered or otherwise furnished to the Buyer with Buyer purpose rights shall be marked as follows:

BUYER PURPOSE RIGHTS
Seller No.
Seller Name
Seller Address
Expiration Date

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

(End of legend)

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

LIMITED RIGHTS
Seller No.
Seller Name
Seller Address

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

(End of legend)

(4) *Special license rights markings*.

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

SPECIAL LICENSE RIGHTS

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

(End of legend)

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

(5) *Pre-existing data markings*. If the terms of a prior contract or license permitted the Seller to restrict the Buyer's rights to use, modify, reproduce, release, perform, display, or disclose technical data deliverable

under this Order, and those restrictions are still applicable, the Seller may mark such data with the appropriate restrictive legend for which the data qualified under the prior contract or license. The marking procedures in paragraph (f)(1) of this clause shall be followed.

(g) *Seller procedures and records*. Throughout performance of this Order, the Seller and its subcontractors 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 Order.

(h) *Removal of unjustified and nonconforming markings*.

(1) *Unjustified technical data markings*. The rights and obligations of the parties regarding the validation of restrictive markings on technical data furnished or to be furnished under this Order are contained in the Validation of Restrictive Markings on Technical Data clause of this Order. Notwithstanding any provision of this contract concerning inspection and acceptance, the Buyer may ignore or, at the Seller'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 Order, 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 Buyer under this Order that is not in the format authorized by this contract. Correction of nonconforming markings is not subject to the Validation of Restrictive Markings on Technical Data clause of this contract. If the Buyer notifies the Seller of a nonconforming marking and the Seller fails to remove or correct such marking within sixty (60) days, the Buyer may ignore or, at the Seller's expense, remove or correct any nonconforming marking.

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

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

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

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

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

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

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

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

(k) *Applicability to subcontractors or suppliers*.

(1) The Seller shall ensure that the rights afforded its subcontractors and suppliers under 10 U.S.C. 2320, 10 U.S.C. 2321, and the identification, assertion, and delivery processes of paragraph (e) of this clause are recognized and protected.

(2) Whenever any technical data for noncommercial items, or for commercial items developed in any part at Buyer expense, is to be obtained from a subcontractor or supplier for delivery to the Buyer under this Order, the Seller shall use this same clause in the subcontract or other contractual instrument, including subcontracts or other contractual instruments for commercial items, and require its subcontractors or suppliers to do so, without alteration, except to identify the parties. This clause will govern the technical data pertaining to noncommercial items or to any portion of a commercial item that was developed in any part at Buyer expense, and the clause at Technical Data-Commercial Items will govern the technical data pertaining to any portion of a commercial item that was developed exclusively at private expense. No other clause shall be used to enlarge or diminish the Buyer's, the Seller's, or a higher-tier subcontractor's or supplier's rights in a subcontractor's or supplier's technical data.

(3) Technical data required to be delivered by a subcontractor or supplier shall normally be delivered to the next higher-tier contractor, subcontractor, or supplier. However, when there is a requirement in the prime contract for data which may be submitted with other than unlimited rights by a subcontractor or supplier, then said subcontractor or supplier may fulfill its requirement by submitting such data directly to the Buyer, rather than through a higher-tier contractor, subcontractor, or supplier.

(4) The Seller and higher-tier subcontractors or suppliers shall not use their power to award contracts as economic leverage to obtain rights in technical data from their subcontractors or suppliers.
(5) In no event shall the Seller 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 Buyer.

L. RIGHTS IN NONCOMMERCIAL COMPUTER SOFTWARE AND NONCOMMERCIAL COMPUTER SOFTWARE DOCUMENTATION (VARIATION)

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

(1) "Commercial computer software" means software developed or regularly used for non-governmental purposes which—

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

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

(iii) Has not been offered, sold, leased, or licensed to the public but will be available for commercial sale, lease, or license in time to satisfy the delivery requirements of this Order; or

(iv) Satisfies a criterion expressed in paragraph (a)(1)(i), (ii), or (iii) of this clause and would require only minor modification to meet the requirements of this Order.

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

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

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

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

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

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

(ii) Receives access to technical data or computer software for performance of a Government contract that contains the clause at FAR 52.227-14 Rights in Data - General, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends.

(7) "Developed" means that—

(i) A computer program has been successfully operated in a computer and tested to the extent sufficient to demonstrate to reasonable persons skilled in the art that the program can reasonably be expected to perform its intended purpose;

(ii) Computer software, other than computer programs, has been tested or analyzed to the extent sufficient to demonstrate to reasonable persons skilled in the art that the software can reasonably be expected to perform its intended purpose; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(B) Such contractors or subcontractors are subject to a use and non-disclosure agreement or are Government contractors receiving access to the software for performance of a Government contract that contains the clause at FAR 52.227-14 Rights in Data - General;

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

(D) Such use is subject to the limitations in paragraphs (a)(15)(i) through (iii) of this clause;

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

(A) The intended recipient is subject to a use and non-disclosure agreement or is a Government contractor receiving access to the software for performance of a Government contract that contains the clause at 52.227-14 Rights in Data – General;

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

(C) Such use is subject to the limitations in paragraphs (a)(15)(i) through (iii) of this clause; and

(vii) Permit covered Government support contractors in the performance of covered Government support contracts that contain the clause at FAR 52.227-14 Rights in Data - General, 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—

(A) 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 (a)(15)(iv) of this clause, for any other purpose; and

(B) Such use is subject to the limitations in paragraphs (a)(15)(i) through (iv) of this clause.

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

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

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

(i) Computer software developed exclusively with Government funds;

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

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

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

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

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

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

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

(2) *Government purpose rights*.

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

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

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

(A) Prior to release or disclosure, the intended recipient is subject to a use and non-disclosure agreement; or

(B) The recipient is a Government contractor receiving access to the software or documentation for performance of a Government contract that contains the clause at FAR 52.227-14 Rights in Data - General.

(3) *Restricted rights*.

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

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

(iii) The Contractor acknowledges that—

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

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

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

(D) Any such non-disclosure agreement shall address the restrictions on the covered Government support contractor's use of the restricted rights software as set forth in the clause at FAR 52.227-14 Rights in Data - General. The non-disclosure agreement shall not include any additional terms and conditions unless mutually agreed to by the parties to the non-disclosure agreement.

(4) *Specifically negotiated license rights*.

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

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

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

(i) The parties have agreed otherwise; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Date _____

Printed Name and Title _____

Signature _____

(End of identification and assertion)

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

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

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

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

GOVERNMENT PURPOSE RIGHTS

Contract No.
Contractor Name
Contractor Address
Expiration Date

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

(End of legend)

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

RESTRICTED RIGHTS
Contract No.

Seller Name
Seller Address

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

(End of legend)

(4) *Special license rights markings*.

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

SPECIAL LICENSE RIGHTS

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

(End of legend)

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

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

(g) *Seller procedures and records*. Throughout performance of this Order, the Seller 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 Order.

(h*) Removal of unjustified and nonconforming markings*.

(1) *Unjustified computer software or computer software documentation markings*. The rights and obligations of the parties regarding the validation of restrictive markings on computer software or computer software documentation furnished or to be furnished under this contract are contained in the Validation of Asserted Restrictions--Computer Software and the Validation of Restrictive Markings on Technical Data clauses of this contract, respectively. Notwithstanding any provision of this Order concerning inspection and acceptance, the Buyer may ignore or, at the Seller'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 Buyer under this Order that is not in the format authorized by this contract. Correction of nonconforming markings is not subject to the Validation of Asserted Restrictions--Computer Software or the Validation of Restrictive Markings on Technical Data clause of this contract. If the Buyer notifies the Seller of a nonconforming marking or markings and the Seller fails to remove or correct such markings within sixty (60) days, the Buyer may ignore or, at the Seller's expense, remove or correct any nonconforming markings.

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

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

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

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

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

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

(i) Includes costs charged by a subcontractor or supplier, at any tier, or costs incurred by the Seller 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 Buyer contract or under a license conveying the rights to the Buyer; and

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

(k) *Applicability to subcontractors or suppliers*.

(1) Whenever any noncommercial computer software or computer software documentation is to be obtained from a subcontractor or supplier for delivery to the Buyer under this Order, the Seller shall use this same clause in its subcontracts or other contractual instruments, and require its subcontractors or suppliers to do so, without alteration, except to identify the parties. No other clause shall be used to enlarge or diminish the Buyer's, the Seller'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 Seller 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 Seller shall ensure that subcontractor or supplier rights are recognized and protected in the identification, assertion, and delivery processes required by paragraph (e) of this clause.

(4) In no event shall the Seller 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 Buyer.

M. TECHNICAL DATA—COMMERCIAL ITEMS (VARIATION)

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

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

(2) "Covered Buyer support Seller" means a Seller (other than a litigation support Seller covered by Rights in Noncommercial Computer Software and Noncommercial Software Documentation) under a contract, the primary purpose of which is to furnish independent and impartial advice or technical assistance directly to the Buyer in support of the Buyer'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 Seller —

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

(ii) Receives access to technical data or computer software for performance of a Government contract that contains the clause at FAR 52.227-14 Rights in Data - General.

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

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

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

(b) *License.*

(1) The Buyer 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 Buyer 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 Seller by the Buyer;

(iv) Are necessary for operation, maintenance, installation, or training (other than detailed manufacturing or process data); or

(v) Have been provided to the Buyer under a prior contract or licensing agreement through which the Buyer has acquired the rights to use, modify, reproduce, release, perform, display, or disclose the data without restrictions.

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

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

(ii) Release, perform, display, disclose, or authorize use of the technical data outside the Buyer without the Seller's written permission unless a release, disclosure, or permitted use is necessary for emergency repair or overhaul of the commercial items furnished under this Order, or for performance of work by covered Buyer support Sellers.

(3) The Seller acknowledges that—

rights to use, modify, reproduce, release, perform, display, or disclose the data without restrictions.

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

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

(ii) Release, perform, display, disclose, or authorize use of the technical data outside the Buyer without the Seller's written permission unless a release, disclosure, or permitted use is necessary for emergency repair or overhaul of the commercial items furnished under this Order, or for performance of work by covered Buyer support Sellers.

(3) The Seller acknowledges that—

(i) Technical data covered by paragraph (b)(2) of this clause are authorized to be released or disclosed to covered Buyer support Sellers;

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

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

(iv) Any such non-disclosure agreement shall address the restrictions on the covered Buyer support Seller's use of the data as set forth in the clause at FAR 52.227-14 Rights in Data - General. The non-disclosure agreement shall not include any additional terms and conditions unless mutually agreed to by the parties to the non-disclosure agreement.

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

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

(e) *Applicability to subcontractors or suppliers*.

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

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

N. RIGHTS IN BID OR PROPOSAL INFORMATION (VARIATION)

(a) *Definitions*.

(1) For contracts that require the delivery of technical data, the terms "technical data" and "computer software" are defined in the Rights in Technical Data--Noncommercial Item clause of this Order or, if this is a Order awarded under the Small Business Innovation Research Program, the Rights in Noncommercial Technical Data and Computer Software--Small Business Innovation Research (SBIR) Program clause of this Order.

(2) For contracts that do not require the delivery of technical data, the term "computer software" is defined in the Rights in Noncommercial Computer and Noncommercial Computer Software Documentation clause of this Order or, if this is a Order awarded under the Small Business Innovation Research Program, the Rights in Noncommercial Technical Data and Computer Software--Small Business Innovation Research (SBIR) Program clause of this Order.

(b) *Buyer rights prior to contract award*. By submission of its offer, the Offeror agrees that the Buyer—

(1) May reproduce the bid or proposal, or any portions thereof, to the extent necessary to evaluate the offer.

(2) Except as provided in paragraph (d) of this clause, shall use information contained in the bid or proposal only for evaluational purposes and shall not disclose, directly or indirectly, such information to any person including potential evaluators, unless that person has been authorized by the head of the agency, his or her designee, or the Buyer to receive such information.

(c) *Buyer rights subsequent to contract award*. The Seller agrees—

(1) Except as provided in paragraphs (c)(2), (d), and (e) of this clause, the Buyer shall have the rights to use, modify, reproduce, release, perform, display, or disclose information contained in the Seller's bid or proposal within the Buyer. The Buyer shall not release, perform, display, or disclose such information outside the Buyer without the Seller's written permission.

(2) The Buyer's right to use, modify, reproduce, release, perform, display, or disclose information that is technical data or computer software required to be delivered under this Order are determined by the Rights in Technical Data--Noncommercial Items, Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation, or Rights in Noncommercial Technical Data and Computer Software--Small Business Innovation Research (SBIR) Program clause(s) of this Order.

(d) *Buyer-furnished information*. The Buyer's rights with respect to technical data or computer software contained in the Seller's bid or proposal that were provided to the Seller by the Buyer are subject only to restrictions on use, modification, reproduction, release, performance, display, or disclosure, if any, imposed by the developer or licensor of such data or software.

(e*) Information available without restrictions*. The Buyer's rights to use, modify, reproduce, release, perform, display, or, disclose information contained in a bid or proposal, including technical data or computer software, and to permit others to do so, shall not be restricted in any manner if such information has been released or disclosed to the Buyer or to other persons without restrictions other than a release or disclosure resulting from the sale, transfer, or other assignment of interest in the information to another party or the sale or transfer of some or all of a business entity or its assets to another party.

(f) *Flowdown.* The Seller shall include this clause in all subcontracts or similar contractual instruments and require its subcontractors or suppliers to do so without alteration, except to identify the parties.

O. VALIDATION OF ASSERTED RESTRICTIONS—COMPUTER SOFTWARE (VARIATION)

(a) *Definitions.*

(1) As used in this clause, unless otherwise specifically indicated, the term "Seller" means the Seller and its subcontractors or suppliers.

(2) Other terms used in this clause are defined in the Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation clause of this Order.

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

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

(d) *Requests for information*.

(1) The Buyer may request the Seller to provide sufficient information to enable the Buyer to evaluate the Seller's asserted restrictions. Such information shall be based upon the records required by this clause or other information reasonably available to the Seller.

(2) Based upon the information provided, if the—

(i) Seller agrees that an asserted restriction is not valid, the Buyer may—

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

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

(ii) Buyer concludes that the asserted restriction is appropriate for this Order, the Buyer shall so notify the Seller in writing.

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

(e) *Buyer right to challenge and validate asserted restrictions*.

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

(2) The absence of a challenge to an asserted restriction shall not constitute validation under this clause. Only a Buyer’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 Seller to respond within sixty (60) days;

(iii) Require the Seller 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 Seller, in sufficient detail to enable the Buyer to determine the validity of the asserted restrictions; and

(iv) State that a Buyer’s final decision, during the three-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 Seller (or a licensee) shall serve as justification for the asserted restriction.

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

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

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

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

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

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

(7) A Seller receiving challenges to the same asserted restriction(s) from more than one Buyer shall notify each Buyer of the other challenges. The notice shall also state which Buyer initiated the first in time unanswered challenge. The Buyer who initiated the first in time unanswered challenge, after consultation with the other Buyers who have challenged the restrictions and the Seller, shall formulate and distribute a schedule that provides the Seller a reasonable opportunity for responding to each challenge.

(g) *Seller appeal/Buyer obligation.*

(1) The Government agrees that, notwithstanding a Buyer'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 ninety (90) days from the date of the Buyer's final decision to allow the Seller to appeal to the appropriate Board of Contract Appeals or to file suit in an appropriate court;

(ii) For a period of one year from the date of the Buyer's final decision if, within the first ninety (90) days following the Buyer's final decision, the Seller 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 Seller has:

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

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

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

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

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

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

(3) The agency head, on a nondelegable basis, may determine that urgent or compelling circumstances do not permit awaiting the filing of suit in an appropriate court, or the rendering of a decision by a court of competent jurisdiction or Board of Contract Appeals. In that event, the agency head shall notify the Seller of the urgent or compelling circumstances. Notwithstanding paragraph (g)(1) of this clause, the Seller agrees that the agency may use, modify, reproduce, release, perform, display, or disclose computer software marked with (i) Buyer purpose legends for any purpose, and authorize others to do so; or (ii) restricted or special license rights for Buyer purposes only. The Buyer agrees not to release or disclose such software unless, prior to release or disclosure, the intended recipient is subject to a use and non-disclosure agreement, or is a

Buyer Seller receiving access to the software for performance of a Government contract that contains the clause at FAR 52.227-14 Rights in Data - General. The agency head's determination may be made at any time after the date of the Buyer's final decision and shall not affect the Seller'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 Seller appeals or files suit and if, upon final disposition of the appeal or suit, the Buyer's decision is:

(1) Sustained—

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

(ii) If the asserted restriction is found not to be substantially justified, the Seller shall be liable to the Buyer for payment of the cost to the Buyer 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 Buyer in challenging the restriction, unless special circumstances would make such payment unjust.

(2) Not sustained—

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

(ii) If the challenge by the Buyer is found not to have been made in good faith, the Buyer shall be liable to the Seller for payment of fees and other expenses (as defined in 28 U.S.C. 2412(d)(2)(A)) incurred by the Seller in defending the restriction.

(i) *Flowdown.* The Seller shall insert this clause in all Orders, and other similar instruments with its subcontractors or suppliers, at any tier, who will be furnishing computer software to the Buyer in the performance of this Order. The clause may not be altered other than to identify the appropriate parties.

P. **DEFERRED ORDERING OF TECHNICAL DATA OR COMPUTER SOFTWARE (VARIATION)**

In addition to technical data or computer software specified elsewhere in this Order to be delivered hereunder, the Buyer may, at any time during the performance of this Order 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 Order or the termination of this contract, order any technical data or computer software generated in the performance of this Order or any subcontract hereunder. When the technical data or computer software is ordered, the Seller 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 Seller accepts the last delivery of that item from that subcontractor under this Order. The Buyer's rights to use said data or computer software shall be pursuant to the "Rights in Technical Data and Computer Software" clause of this Order.

Q. VALIDATION OF RESTRICTIVE MARKINGS ON TECHNICAL DATA (VARIATION)

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

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

(1) *Commercial items*.

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

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

(2) *Major weapon systems.* In the case of a challenge to a use or release restriction that is asserted with respect to data of the Seller or a subcontractor for a major weapon system or a subsystem or component thereof on the basis that the major weapon system, subsystem, or component was developed exclusively at private expense—

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

(A) A commercial subsystem or component of a major weapon system, if the major weapon system was acquired as a commercial item in accordance with FAR Part 12;

(B) A component of a subsystem, if the subsystem was acquired as a commercial item in accordance with FAR Part 12; and

(C) Any other component, if the component is a commercially available off-the-shelf item or a commercially available off-the-shelf item with modifications of a type

customarily available in the commercial marketplace or minor modifications made to meet Federal Government requirements; and

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

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

(d) *Prechallenge request for information.*

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

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

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

(e) *Challenge.*

(1) Notwithstanding any provision of this Order concerning inspection and acceptance, if the Buyer determines that a challenge to the restrictive marking is warranted, the Buyer shall send a written challenge notice to the Seller or subcontractor asserting the restrictive markings. Such challenge shall—

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

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

(iii) State that a Buyer's final decision, issued pursuant to paragraph (g) of this clause, sustaining the validity of a restrictive marking identical to the asserted restriction, within the three-year period preceding the challenge, shall serve as justification for the asserted restriction if the validated restriction was asserted by the same Seller or subcontractor (or any licensee of such Seller 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 Buyer shall extend the time for response as appropriate if the Seller or subcontractor submits a written request showing the need for additional time to prepare a response.

(3) The Seller'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 Seller or subcontractor receiving challenges to the same restrictive markings from more than one Buyer shall notify each Buyer of the existence of more than one challenge. The notice shall also state which Buyer initiated the first in time unanswered challenge. The Buyer initiating the first in time unanswered challenge after consultation with the Seller or subcontractor and the

other Buyers, shall formulate and distribute a schedule for responding to each of the challenge notices to all interested parties. The schedule shall afford the Seller or subcontractor an opportunity to respond to each challenge notice. All parties will be bound by this schedule.

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

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

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

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

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

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

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

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

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

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

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

(2) If the Seller or subcontractor appeals or files suit and if, upon final disposition of the appeal or suit, the Buyer's decision is not sustained—

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

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

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

(1) Is publicly available;

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

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

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

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

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

R. PATENT RIGHTS—OWNERSHIP BY THE CONTRACTOR (LARGE BUSINESS) (VARIATION)

(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 Seller 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 Seller made in the performance of work under this Order.

(b) *Seller's rights.*

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

(2) *License.*

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

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

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

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

(ii) The agency—

(A) May revoke or modify the Seller'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 Seller 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 Seller, 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 Seller a written notice of its intention to revoke or modify the license; and

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

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

(c) Seller*'s obligations.*

(1) The Seller shall—

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

(ii) Include in the disclosure—

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

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

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

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

(2) The Seller shall elect in writing whether or not to retain ownership of any subject invention by notifying the Buyer at the time of disclosure or within 8 months of disclosure, as to those countries (including the United States) in which the Seller 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 Seller 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 Seller may request extensions of time for disclosure, election, or filing under paragraphs (c)(1), (2), and (3) of this clause. The Buyer will normally grant the extension unless there is reason to believe the extension would prejudice the Buyer's interests.

(d) *Buyer's rights.*

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

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

(ii) If the Seller 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 Seller's failure to report or elect within the specified times;

(iii) In those countries in which the Seller fails to file patent applications within the times specified in paragraph (c) of this clause, provided that, if the Seller 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 Seller shall continue to retain ownership in that country; and

(iv) In any country in which the Seller 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 Seller retains ownership of any subject invention, the Buyer 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) *Seller action to protect the Buyers's interest.*

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

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

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

(2) The Seller 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 Seller can comply with the disclosure provisions in paragraph (c) of this clause; and

(B) Provide the disclosure in the Seller'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 Buyer's rights in the subject inventions.

(3) The Seller shall notify the Buyer 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 Seller 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 Buyer support under (identify the contract) awarded by (identify the agency). The Buyer has certain rights in this invention."

(5) The Seller shall—

(i) Establish and maintain active and effective procedures to ensure that subject inventions are promptly identified and disclosed to Seller 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 Buyer a description of these procedures for evaluation and for determination as to their effectiveness.

(6) The Seller 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 Seller shall furnish to the Buyer the following:

(i) Interim reports every 12 months (or any longer period as may be specified by the Buyer) from the date of the Order, 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 Seller shall promptly notify the Buyer 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 Seller 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 Seller—

(i) Shall promptly submit a written notice to the Buyer 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 Buyer.

(10) The Seller shall provide to the Buyer, upon request, the following information for any subject invention for which the Seller 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 Seller shall furnish to the Buyer, upon request, an irrevocable power to inspect and make copies of any patent application file.

(f) *Reporting on utilization of subject inventions.*

(1) The Seller 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 Seller 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 Seller, 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 Buyer without the Seller's permission, if the data or information is considered by the Seller 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 Seller agrees that neither the Seller 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 Seller 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 Seller acknowledges that, with respect to any subject invention in which it has retained ownership, the agency has the right to require licensing pursuant to 35 U.S.C. 203 and 210(c), 37 CFR 401.6, and any supplemental regulations of the agency in effect on the date of contract award.

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

(j) *Examination of records relating to inventions.*

(1) The Buyer or any authorized representative shall, until 3 years after final payment under this Order, have the right to examine any books (including laboratory notebooks), records, and documents of the Seller relating to the conception or first reduction to practice of inventions in the same field of technology as the work under this Order to determine whether—

(i) Any inventions are subject inventions;

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

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

(2) If the Buyer learns of an unreported Seller invention that the Buyer believes may be a subject invention, the Seller 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 Order, the Buyer may, in the Government's interest, withhold payment until a reserve not exceeding $50,000 or 5 percent of the amount of the contract, whichever is less, is set aside if, in the Buyer's opinion, the Seller 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 Buyer has determined that the Seller has rectified whatever deficiencies exist and has delivered all reports, disclosures, and other information required by this clause.

(3) The Buyer will not make final payment under this Order before the Seller delivers to the Buyer—

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

(l) *Subcontracts.*

(1) The Seller—

(i) Shall include the substance of the Patent Rights—Ownership by the Seller 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 Buyer and shall provide to the subcontractor all the rights and obligations provided to the Seller in the clause. The Seller shall not, as consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions; and

(ii) The Buyer, the Seller, and the subcontractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and the Buyer 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.

S. PATENTS—REPORTING OF SUBJECT INVENTIONS (VARIATION)

The Seller shall furnish the Buyer the following:

(a) Interim reports every twelve (12) months (or such longer period as may be specified by the Buyer) from the date of the Order, listing subject inventions during that period and stating that all subject inventions have been disclosed or that there are no such inventions.

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

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

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

T. **EARNED VALUE MANAGEMENT SYSTEM (VARIATION)**

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

"Acceptable earned value management system" means an earned value management system that generally complies with system criteria in paragraph (b) of this clause.
"Earned value management system" means an earned value management system that complies with the earned value management system guidelines in the ANSI/EIA-748.
"Significant deficiency" means a shortcoming in the system that materially affects the ability of officials of the Department of Defense to rely upon information produced by the system that is needed for management purposes.

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

(c) If this Order has a value of $50 million or more, the Seller shall use an EVMS that has been determined to be acceptable by the Cognizant Federal Agency (CFA). If, at the time of award, the Seller'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 Seller shall apply its current system to the contract and shall take necessary actions to meet the milestones in the Seller's EVMS plan.

(d) If this Order has a value of less than $50 million, the Buyer will not make a formal determination that the Seller's EVMS complies with the EVMS guidelines in ANSI/EIA-748 with respect to the contract. The use of the Seller's EVMS for this Order does not imply a Buyer determination of the Seller's compliance with the EVMS guidelines in ANSI/EIA-748 for application to future contracts. The Buyer will allow the use of a Seller'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 Seller shall submit notification of any proposed substantive changes to the EVMS procedures and the impact of those changes to the CFA. If this contract has a value of $50 million or more, unless a waiver is granted by the CFA, any EVMS changes proposed by the Seller require approval of the CFA prior to implementation. The CFA will advise the Seller of the acceptability of such changes as soon as practicable (generally within 30 calendar days) after receipt of the Seller's notice of proposed changes. If the CFA waives the advance approval requirements, the Seller shall disclose EVMS changes to the CFA at least 14 calendar days prior to the effective date of implementation.

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

(1) Contract award;

(2) The exercise of significant contract options; and

(3) The incorporation of major modifications.

During such reviews, the Buyer and the Seller will jointly assess the Seller'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 Seller shall provide access to all pertinent records and data requested by the Buyer or duly authorized representative as necessary to permit Buyer surveillance to ensure that the EVMS complies, and continues to comply, with the performance criteria referenced in paragraph (b) of this clause.

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

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

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

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

(i) Remaining significant deficiencies;

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

(iii) System noncompliance, when the Seller'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 Buyer, or if the Buyer determines that the Seller's earned value management system contains one or more significant deficiencies in high-risk guidelines in ANSI/EIA-748 standards (guidelines 1, 3, 6, 7, 8, 9, 10, 12, 16, 21, 23, 26, 27, 28, 30, or 32). When the Buyer determines that the existing earned value management system contains one or more significant deficiencies in one or more of the remaining 16 guidelines in ANSI/EIA-748 standards, the Buyer will use discretion to disapprove the system based on input received from functional specialists and the auditor.

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

(j) *Withholding payments*. If the Buyer makes a final determination to disapprove the Seller's EVMS, and the contract includes the clause at Contractor Business Systems, the Buyer will withhold payments in accordance with that clause.

(k) With the exception of paragraphs (i) and (j) of this clause, the Seller 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:

[Buyer 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:

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

U. FREQUENCY AUTHORIZATION—BASIC (VARIATION)

(a) The Seller shall obtain authorization for radio frequencies required in support of this Order.

(b) For any experimental, developmental, or operational equipment for which the appropriate frequency allocation has not been made, the Seller shall provide the technical operating characteristics of the proposed electromagnetic radiating device to the Buyer during the initial planning, experimental, or developmental phase of contract performance.

(c) The Buyer shall furnish the procedures for obtaining radio frequency authorization.

(d) The Seller shall include this clause, including this paragraph (d), in all subcontracts requiring the development, production, construction, testing, or operation of a device for which a radio frequency authorization is required.

V. NOTIFICATION OF POTENTIAL SAFETY ISSUES (VARIATION)

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

"Credible information" means information that, considering its source and the surrounding circumstances, supports a reasonable belief that an event has occurred or will occur.

"Critical safety item" means a part, subassembly, assembly, subsystem, installation equipment, or support equipment for a system that contains a characteristic, any failure, malfunction, or absence of which could have a safety impact.

"Safety impact" means the occurrence of death, permanent total disability, permanent partial disability, or injury or occupational illness requiring hospitalization; loss of a weapon system; or property damage exceeding $1,000,000.

"Subcontractor" means any supplier, distributor, vendor, or firm that furnishes supplies or services to or for the Seller or another subcontractor under this Order.

(b) The Seller shall provide notification, in accordance with paragraph (c) of this clause, of—

(1) All nonconformances for parts identified as critical safety items acquired by the Buyer under this Order; and

(2) All nonconformances or deficiencies that may result in a safety impact for systems, or subsystems, assemblies, subassemblies, or parts integral to a system, acquired by or serviced for the Buyer under this Order.

(c) The Seller—

(1) Shall notify the Bueyr as soon as practicable, but not later than 72 hours, after discovering or acquiring credible information concerning nonconformances and deficiencies described in paragraph (b) of this clause; and

(2) Shall provide a written notification to the Buyer within 5 working days that includes—

(i) A summary of the defect or nonconformance;

(ii) A chronology of pertinent events;

(iii) The identification of potentially affected items to the extent known at the time of notification;

(iv) A point of contact to coordinate problem analysis and resolution; and

(v) Any other relevant information.

(d) The Seller—

(1) Is responsible for the notification of potential safety issues occurring with regard to an item furnished by any subcontractor; and

(2) Shall facilitate direct communication between the Buyer and the subcontractor as necessary.

(e) Notification of safety issues under this clause shall be considered neither an admission of responsibility nor a release of liability for the defect or its consequences. This clause does not affect any right of the Buyer or the Seller established elsewhere in this Order.

(f)(1) The Seller shall include the substance of this clause, including this paragraph (f), in subcontracts for—

(i) Parts identified as critical safety items;

(ii) Systems and subsystems, assemblies, and subassemblies integral to a system; or

(iii) Repair, maintenance, logistics support, or overhaul services for systems and subsystems, assemblies, subassemblies, and parts integral to a system.

(2) For those subcontracts, including subcontracts for commercial items, described in paragraph (f)(1) of this clause, the Seller shall require the subcontractor to provide the notification required by paragraph (c) of this clause to—

(i) The Seller or higher-tier subcontractor; and

(ii) The Buyer, if the subcontractor is aware of the Buyer for the Order.

W. TRANSPORTATION OF SUPPLIES BY SEA—BASIC (VARIATION)

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

"Components" means articles, materials, and supplies incorporated directly into end products at any level of manufacture, fabrication, or assembly by the Seller or any subcontractor.

"Department of Defense" (DoD) means the Army, Navy, Air Force, Marine Corps, and defense agencies.

"Foreign-flag vessel" means any vessel that is not a U.S.-flag vessel.

"Ocean transportation" means any transportation aboard a ship, vessel, boat, barge, or ferry through international waters.

"Subcontractor" means a supplier, materialman, distributor, or vendor at any level below the prime contractor whose contractual obligation to perform results from, or is conditioned upon, award of the prime contract and who is performing any part of the work or other requirement of the prime contract.

"Supplies" means all property, except land and interests in land, that is clearly identifiable for eventual use by or owned by the DoD at the time of transportation by sea.

(i) An item is clearly identifiable for eventual use by the DoD if, for example, the contract documentation contains a reference to a DoD contract number or a military destination.

(ii) "Supplies" includes (but is not limited to) public works; buildings and facilities; ships; floating equipment and vessels of every character, type, and description, with parts, subassemblies, accessories, and equipment; machine tools; material; equipment; stores of all kinds; end items; construction materials; and components of the foregoing.

"U.S.-flag vessel" means a vessel of the United States or belonging to the United States, including any vessel registered or having national status under the laws of the United States.

(b)(1) The Seller shall use U.S.-flag vessels when transporting any supplies by sea under this Order.

(2) A subcontractor transporting supplies by sea under this Order shall use U.S.-flag vessels if—

(i) This Order is a construction contract; or
(ii) The supplies being transported are—
(A) Noncommercial items; or
(B) Commercial items that—
(1) The Seller is reselling or distributing to the Buyer without adding value (generally, the Seller does not add value to items that it subcontracts for f.o.b. destination shipment);
(2) Are shipped in direct support of U.S. military contingency operations, exercises, or forces deployed in humanitarian or peacekeeping operations; or
(3) Are commissary or exchange cargoes transported outside of the Defense Transportation System in accordance with 10 U.S.C. 2643.

(c) The Seller and its subcontractors may request that the Buyer authorize shipment in foreign-flag vessels, or designate available U.S.-flag vessels, if the Seller or a subcontractor believes that—
(1) U.S.-flag vessels are not available for timely shipment;
(2) The freight charges are inordinately excessive or unreasonable; or
(3) Freight charges are higher than charges to private persons for transportation of like goods.

(d) The Seller must submit any request for use of foreign-flag vessels in writing to the Buyer at least 45 days prior to the sailing date necessary to meet its delivery schedules. The Buyer will process requests submitted after such date(s) as expeditiously as possible, but the Buyer's failure to grant approvals to meet the shipper's sailing date will not of itself constitute a compensable delay under this or any other clause of this Order. Requests shall contain at a minimum—
(1) Type, weight, and cube of cargo;
(2) Required shipping date;
(3) Special handling and discharge requirements;
(4) Loading and discharge points;
(5) Name of shipper and consignee;
(6) Prime contract number; and
(7) A documented description of efforts made to secure U.S.-flag vessels, including points of contact (with names and telephone numbers) with at least two U.S.-flag carriers contacted. Copies of telephone notes, telegraphic and facsimile message or letters will be sufficient for this purpose.

(e) The Seller shall, within 30 days after each shipment covered by this clause, provide the Buyer, one copy of the rated on board vessel operating carrier's ocean bill of lading, which shall contain the following information:
(1) Prime contract number;
(2) Name of vessel;
(3) Vessel flag of registry;
(4) Date of loading;
(5) Port of loading;
(6) Port of final discharge;
(7) Description of commodity;
(8) Gross weight in pounds and cubic feet if available;
(9) Total ocean freight in U.S. dollars; and
(10) Name of steamship company.

(f) If this Order exceeds the simplified acquisition threshold, the Seller shall provide with its final invoice under this Order a representation that to the best of its knowledge and belief—
(1) No ocean transportation was used in the performance of this Order;
(2) Ocean transportation was used and only U.S.-flag vessels were used for all ocean shipments under the Order;
(3) Ocean transportation was used, and the Seller had the written consent of the Buyer for all foreign-flag ocean transportation; or
(4) Ocean transportation was used and some or all of the shipments were made on foreign-flag vessels without the written consent of the Buyer. The Seller shall describe these shipments in the following format:

	ITEM DESCRIPTION	CONTRACT LINE ITEMS	QUANTITY
TOTAL			

(g) If this Order exceeds the simplified acquisition threshold and the final invoice does not include the required representation, the Buyer will reject and return it to the Seller as an improper invoice for the purposes of the Prompt Payment clause of this Order. In the event there has been unauthorized use of foreign-flag vessels in the performance of this Order, the Buyer is entitled to equitably adjust the Order, based on the unauthorized use.

(h) In the award of subcontracts, for the types of supplies described in paragraph (b) (2) of this clause, including subcontracts for commercial items, the Seller shall flow down the requirements of this clause as follows:

(1) The Seller shall insert the substance of this clause, including this paragraph (h), in subcontracts that exceed the simplified acquisition threshold in part 2 of the Federal Acquisition Regulation.

(2) The Seller shall insert the substance of paragraphs (a) through (e) of this clause, and this paragraph (h), in subcontracts that are at or below the simplified acquisition threshold in part 2 of the Federal Acquisition Regulation.

X. NOTIFICATION OF ANTICIPATED CONTRACT TERMINATION OR REDUCTION (VARIATION)

(a) *Definitions.*

"Major defense program" means a program that is carried out to produce or acquire a major system (as defined in 10 U.S.C. 2302(5)) (see also DoD 5000.2-R, Mandatory Procedures for Major Defense Acquisition Programs (MDAPs) and Major Automated Information System (MAIS) Acquisition Programs.

"Substantial reduction" means a reduction of 25 percent or more in the total dollar value of funds obligated by the contract.

(b) Section 1372 of the National Defense Authorization Act for Fiscal Year 1994 (Pub. L. 103-160) and Section 824 of the National Defense Authorization Act for Fiscal Year 1997 (Pub. L. 104-201) are intended to help establish benefit eligibility under the Job Training Partnership Act (29 U.S.C. 1661 and 1662) for employees of DoD contractors and subcontractors adversely affected by contract terminations or substantial reductions under major defense programs.

(c) *Notice to employees and state and local officials.* Within 2 weeks after the Buyer notifies the Seller that contract funding will be terminated or substantially reduced, the Seller shall provide notice of such anticipated termination or reduction to—

(1) Each employee representative of the Seller's employees whose work is directly related to the defense contract; or

(2) If there is no such representative, each such employee;

(3) The State dislocated worker unit or office described in section 311(b)(2) of the Job Training Partnership Act (29 U.S.C. 1661(b)(2)); and

(4) The chief elected official of the unit of general local government within which the adverse effect may occur.

(d) *Notice to Sellers.* Not later than 60 days after the Seller receives the Buyer's notice of the anticipated termination or reduction, the Seller shall—

(1) Provide notice of the anticipated termination or reduction to each first-tier subcontractor with a subcontract of $700,000 or more; and

(2) Require that each such subcontractor—

(i) Provide notice to each of its subcontractors with a subcontract of $150,000 or more; and

(ii) Impose a similar notice and flowdown requirement to subcontractors with subcontracts of $150,000 or more.

(e) The notice provided an employee under paragraph (c) of this clause shall have the same effect as a notice of termination to the employee for the purposes of determining whether such employee is eligible for training, adjustment assistance, and employment services under section 325 or 325A of the Job Training Partnership Act (29 U.S.C. 1662d, 1662d-1). If the Seller has specified that the anticipated contract termination or reduction is not likely to result in plant closure or mass layoff, as defined in 29 U.S.C. 2101, the employee shall be eligible only for services under section 314(b) and paragraphs (1) through (14), (16), and (18) of section 314(c) of the Job Training Partnership Act (29 U.S.C. 1661c(b) and paragraphs (1) through (14), (16), and (18) of section 1661c(c)).

Y. ENABLING CLAUSE FOR GOVERNMENT PROGRAM CONTRACTS REQUIRING INTERFACE WITH THE AEROSPACE FFRDC CONTRACT SUPPORT

a. The U.S. Government Program Office has entered into a contract with The Aerospace Corporation, a California nonprofit corporation operating a Federally Funded Research and Development Center (FFRDC), for the services of a technical group that will support the DoD/U.S. Government program office by performing General Systems Engineering and Integration, Technical Review, and/or Technical Support including informing the commander or director of the various Department of Defense ("DoD") organizations it supports and any U.S. Government program office of product or process defects and other relevant information, which, if not disclosed to the U.S. Government, could have adverse effects on the reliability and mission success of a U.S. Government program.

1. General Systems Engineering and Integration (GSE&I) deals with overall system definition; integration both within the system and with associated systems; analysis of system segment and subsystem design; design compromises and tradeoffs; definition of interfaces; review of hardware and software, including manufacturing and quality control; observation, review and evaluation of tests and test data; support of launch, flight test, and orbital operations; appraisal of the contractors' technical performance through meetings with contractors and subcontractors, exchange and analysis of information on progress and problems; review of plans for future work; developing solutions to problems; technical alternatives for reduced program risk; providing comments and recommendations in writing to the applicable DoD System Program Manager and/or Project Officer as an independent technical assessment for consideration for modifying the program or redirecting the contractor's efforts; all to the extent necessary to assure timely and economical accomplishment of program objectives consistent with mission requirements.

2. Technical Review (TR) includes the process of appraising the technical performance of the contractor through meetings, exchanging information on progress and problems, reviewing reports, evaluating presentations, reviewing hardware and software, witnessing and evaluating tests, analyzing plans for future work, evaluating efforts relative to contract technical objectives, and providing comments and recommendations in writing to the applicable U.S. Government Program Manager as an independent technical assessment for consideration for modifying the program or redirecting the contractor's efforts to assure timely and economical accomplishment of program objectives.

3. Technical Support (TS) deals with broad areas of specialized needs of customers for planning, system architecting, research and development, horizontal engineering, or analytical activities for which The Aerospace Corporation is uniquely qualified by virtue of its specially qualified personnel, facilities, or corporate memory. The categories of TS tasks are: Selected Research, Development, Test and Evaluation; Plans and System Architecture; Multi-Program Systems Enhancement; International Technology Assessment; and Acquisition Support.

b. In the performance of this contract, the contractor agrees to cooperate with The Aerospace Corporation by 1) responding to invitations from authorized U.S. Government personnel to attend meetings; 2) by providing access to technical information and research, development planning data such as, but not limited to, design and development analyses, test data and results, equipment and process specifications, test and test equipment specifications and procedures, parts and quality control procedures, records and data, manufacturing and assembly procedures, and schedule and milestone data, all in their original form or reproduced form and including top-level life cycle cost* data, where available; 3) by delivering data as specified in the Contract Data Requirements List; 4) by discussing technical matters relating to this program; 5) by providing access to contractor facilities utilized in the performance of this contract; 6) and by allowing observation of technical activities by appropriate technical personnel of The Aerospace Corporation. The Aerospace Corporation personnel engaged in GSE&I, TR, and/or TS efforts: (i) are authorized access to all such technical information (including proprietary information) pertaining to this contract and may discuss and disclose it to the applicable DoD personnel in a program office; (ii) are authorized to discuss and disclose such technical information (including proprietary information) to the commander or director of the various DoD organizations it supports and any U.S. Government personnel in a program office which, if not disclosed to the U.S. Government, could have adverse effects on the reliability and mission success of a U.S. Government program; and (iii) Aerospace shall make the technical information (including proprietary information) available only to its Trustees, officers, employees, contract labor, consultants, and attorneys who have a need to know.

c. The contractor further agrees to include in all subcontracts a clause requiring compliance by subcontractor and supplier and succeeding levels of subcontractors and suppliers with the response and access and disclosure provisions of this Enabling Clause, subject to coordination with the contractor, except for subcontracts for commercial items or commercial services. This agreement does not relieve the contractor of its responsibility to manage the subcontracts effectively and efficiently nor is it intended

to establish privity of contract between the Government or The Aerospace Corporation and such subcontractors or suppliers, except as indicated in paragraph (d) below.

d. The Aerospace Corporation shall protect the proprietary information of contractors, subcontractors, and suppliers in accordance with the Master Non-disclosure Agreement The Aerospace Corporation entered into with the U.S. Government, a copy of which is available upon request. This Master Non-disclosure Agreement satisfies the Nondisclosure Agreement requirements set forth in 10 U.S.C. §2320 (f)(2)(8), and provides that such contractors, subcontractors, and suppliers are intended third-party beneficiaries under the Master Non-disclosure Agreement and shall have the full rights to enforce the terms and conditions of the Master Non-disclosure Agreement directly against The Aerospace Corporation, as if they had been signatory party hereto. Each such contractor, subcontractor, or supplier hereby waives any requirement for The Aerospace Corporation to enter into any separate company-to-company confidentiality or other non-disclosure agreements.

e. Aerospace shall make the technical information (including proprietary information) available only to its Trustees, officers, employees, contract labor, consultants, and attorneys who have a need to know, and Aerospace shall maintain between itself and the foregoing binding agreements of general application as may be necessary to fulfill their obligations under the Master Non-disclosure Agreement referred to herein, and Aerospace agrees that it will inform contractors, subcontractors, and suppliers if it plans to use consultants, or contract labor personnel and, upon the request of such contractor, subcontractor, or supplier, to have its consultants and contract labor personnel execute non-disclosure agreements directly therewith.

f. The Aerospace Corporation personnel are not authorized to direct the contractor in any manner. The contractor agrees to accept technical direction as follows:

1. Technical direction under this subcontract will be given to the contractor solely by the Northrop Grumman Subcontract Manager.

2. Whenever it becomes necessary to modify the subcontract and redirect the effort, a change order signed by the Northrop Grumman Subcontract Manager Contracting Officer or signed by both the Northrop Grumman Subcontracts Manager and the Subcontractor will be issued.

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*Cost data is defined as information associated with the programmatic elements of life cycle (concept, development, production, operations, and retirement) of the system/program. As defined, cost data differs from "financial" data, which is defined as information associated with the internal workings of a company or contractor that is not specific to a project or program.

II. REVISIONS

A. The following changes are made to clause entitled, “FAR Provisions/Clauses”:

1. Add the following FAR clauses:

52.222-19 CHILD LABOR- COOPERATION WITH AUTHORITIES AND REMEDIES