

Supplemental Terms and Conditions for the D2201 Top Gun Cougar Program

The following FAR clauses apply to this Contract:

<u>52.203-15</u>	WHISTLEBLOWER PROTECTIONS UNDER THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009
<u>52.203-16</u>	PREVENTING PERSONAL CONFLICTS OF INTEREST
<u>52.204-21</u>	BASIC SAFEGUARDING OF COVERED CONTRACTOR INFORMATION SYSTEMS
<u>52.204-23</u>	PROHIBITION ON CONTRACTING FOR HARDWARE, SOFTWARE, AND SERVICES DEVELOPED OR PROVIDED BY KASPERSKY LAB AND OTHER COVERED ENTITIES
<u>52.212-04</u>	CONTRACT TERMS AND CONDITIONS—COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES
<u>52.215-2</u>	AUDIT AND RECORDS-NEGOTIATION
<u>52.219-9</u>	SMALL BUSINESS SUBCONTRACTING PLAN
<u>52.222-56</u>	CERTIFICATION REGARDING TRAFFICKING IN PERSONS COMPLIANCE PLAN
<u>52.222-99</u>	ESTABLISHING A MINIMUM WAGE FOR CONTRACTORS
<u>52.227-3</u>	PATENT INDEMNITY
<u>52.230-2</u>	COST ACCOUNTING STANDARDS

The following DFARS clauses apply to this Contract:

<u>252.204-7004</u>	LEVEL I ANTITERRORISM AWARENESS TRAINING FOR CONTRACTORS
<u>252.208-7000</u>	INTENT TO FURNISH PRECIOUS METALS AS GOVERNMENT-FURNISHED MATERIAL
<u>252.215-7008</u>	ONLY ONE OFFER
<u>252.219-7003</u>	SMALL BUSINESS SUBCONTRACTING PLAN (DOD CONTRACTS)—BASIC
<u>252.219-7004</u>	SMALL BUSINESS SUBCONTRACTING PLAN (TEST PROGRAM)
<u>252.222-7007</u>	RESTRICTIONS ON EMPLOYMENT OF PERSONNEL
<u>252.223-7006</u>	PROHIBITION ON STORAGE, TREATMENT, AND DISPOSAL OF TOXIC OR HAZARDOUS MATERIALS—BASIC
<u>252.225-7052</u>	RESTRICTION ON THE ACQUISITION OF CERTAIN MAGNETS, TANTALUM, AND TUNGSTEN
<u>252.227-7013</u>	RIGHTS IN TECHNICAL DATA—NONCOMMERCIAL ITEMS
<u>252.234-7004</u>	COST AND SOFTWARE DATA REPORTING SYSTEM—BASIC
<u>252.235-7003</u>	FREQUENCY AUTHORIZATION—BASIC
<u>252.235-7023</u>	CONTINUATION OF ESSENTIAL CONTRACTOR SERVICES

252.234-7002A (DEVIATION 2015-O0017) EARNED VALUE MANAGEMENT SYSTEM. (DEVIATION 2015-O0017)

(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 contract, the Contractor shall use-

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

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

(c) If this contract has a value of **\$100** million or more, the Contractor shall use an EVMS that has been determined to be acceptable by the Cognizant Federal Agency (CFA). If, at the time of award, the Contractor's EVMS has not been determined by the CFA to be in compliance with the EVMS guidelines as stated in paragraph (b)(1) of this clause, the Contractor shall apply its current system to the contract and shall take necessary actions to meet the milestones in the Contractor's EVMS plan.

(d) If this contract has a value of less than **\$100** million, the Government will not make a formal determination that the Contractor's EVMS complies with the EVMS guidelines in ANSI/EIA-748 with respect to the contract. The use of the Contractor's EVMS for this contract does not imply a Government determination of the Contractor's compliance with the EVMS guidelines in ANSI/EIA-748 for application to future contracts. The Government will allow the use of a Contractor's EVMS that has been formally reviewed and determined by the CFA to be in compliance with the EVMS guidelines in ANSI/EIA-748.

(e) The Contractor shall submit notification of any proposed substantive changes to the EVMS procedures and the impact of those changes to the CFA. If this contract has a value of **\$100** million or more, unless a waiver is granted by the CFA, any EVMS changes proposed by the Contractor require approval of the CFA prior to implementation. The CFA will advise the Contractor of the acceptability of such changes as soon as practicable (generally within 30 calendar days) after receipt of the Contractor's notice of proposed changes. If the CFA waives the advance approval requirements, the Contractor shall disclose EVMS changes to the CFA at least 14 calendar days prior to the effective date of implementation.

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

(1) Contract award;

(2) The exercise of significant contract options; and

(3) The incorporation of major modifications.

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

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

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

(i) Significant deficiencies.

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

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

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

(i) Remaining significant deficiencies;

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

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

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

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

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

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

(1) For subcontracts valued at **\$100** million or more, the following subcontractors shall comply with the requirements of this clause:

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

(2) For subcontracts valued at less than **\$100** million, the following subcontractors shall comply with the requirements of this clause, excluding the requirements of paragraph (c) of this clause:

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

(End of clause)