

Document No. SMD036, Rev. 7

**Flowdowns for Prime Contract HQ0856-21-C-0001, Next Generation Interceptor (NGI)**

Where necessary, to identify the applicable parties under the following clauses, “Contractor” shall mean “Seller,” “Contracting Officer” shall mean “Lockheed Martin Procurement Representative,” “Contract” means this subcontract and “Government” means “Lockheed Martin.” However, the words “Government” and “Contracting Officer” do not change: (1) when a right, act, authorization or obligation can be granted or performed only by the Government or the Prime Contract Contracting Officer or duly authorized representative, including but not limited to (i) audit rights to Seller’s proprietary business records or (ii) any indemnification or limitation of liability obligation, which obligation shall remain with the Government; (2) when title to property is to be transferred directly to the Government, and (3) when the Government is granted ownership or other rights to Seller’s intellectual property or technical data.

**Full Text Clauses**

**Section D Clauses -- Packaging and Marking:**

**D-01 PACKAGING AND MARKING OF TECHNICAL DATA (Apr 2009)** (Applicable for all purchase orders/subcontracts involving the shipment of data and documentation.)

Technical data items shall be preserved, packaged, packed, and marked in accordance with the best commercial practices to meet the packaging requirements of the carrier and insure safe delivery at destination. Classified reports, data and documentation shall be prepared for shipment in accordance with the current National Industrial Security Program Operating Manual (NISPOM), DOD 5220.22-M.

**D-02 PACKAGING AND MARKING OF HARDWARE ITEMS (Apr 2009)** (Applicable for all purchase orders/subcontracts involving the shipment of any hardware.)

- a. The contractor shall utilize best commercial practices for the preservation, packaging, marking and labeling of any hardware delivered under this contract to insure safe delivery at final destination. However, the contractor should also note the requirements of DFARS 252.211-7003, Item Identification and Valuation, if applicable.
- b. Packaging and marking of hazardous materials shall comply with Title 49 of the Code of Federal Regulation and the International Maritime Dangerous Goods Code.

**Section G Clauses – Contract Administration Data:**

**G-02 PATENT INFORMATION (Mar 2021)** (Applicable if (1) Seller is not small business or nonprofit organization subject to FAR 52.227-11, and (2) the purchase order/subcontract is for experimental, developmental, or research work.)

Patent information, in accordance with DFARS 252.227-7038, Patent Rights – Ownership by the Contractor (Large Business), shall be forwarded to:

Missile Defense Agency, Contracts Directorate  
ATTN: Brian Stora

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Building 5222 Martin Road  
 Redstone Arsenal, AL 35898  
 Email: brian.stora@mda.mil (Insert PCO email listed in Clause G-01)

**G-13 NOTICE OF THE GOVERNMENT'S USE OF OUTSIDE CONTRACTORS TO REVIEW SUBMITTED INVOICES, PAYMENT REQUESTS, AND MATERIAL INSPECTION AND RECEIVING REPORTS (May 2009) (Applicable for all purchase orders/subcontracts.)**

The Government may utilize support contractors to assist the Government in the review and evaluation of the offeror's invoices, payment requests, material inspection and receiving reports, and similar requests for payment or evidence of delivery. These contractors will be provided access to these and other records which may contain the proprietary information of the offeror, to include awarded contracts, to support Government officials in reviewing and reconciling invoices, payment records, and the Government's financial and budgetary records, and in facilitating the timely payment of submitted invoices.

The support contractors are prohibited from obtaining proprietary information to which their employees will have access in the performance of their responsibilities and are required to promptly notify the contracting officer of any breach of their employees' non-disclosure obligations. Each of the contractor employees has also been required to execute a non-disclosure agreement which acknowledges their responsibilities to only use proprietary information in performance of the above tasks and for no other reason; that they will not share proprietary information with their employers; that they will not use such information for personal or other benefit; and that they will promptly notify their employers of any breaches of their responsibilities.

Unless the offeror specifically objects in writing, the offeror agrees, by the submission of a proposal, to allow the Government's support contractors to have access to the offeror's proprietary information for the purposes described above.

**Section H Clauses -- Special Contract Requirements**

**H-NGI-01 DATA DELIVERED OR OTHERWISE FURNISHED BY THE CONTRACTOR (Jan 2020)**  
 (Applicable for all purchase orders/subcontracts for data delivered, or otherwise furnished to the Government.)

a. Data delivered, or otherwise furnished to the Government, including to the Integrated Digital Environment (IDE) shall be marked (with the applicable exception noted) and technical data, computer software, and computer software documentation shall be marked with the correct legends in accordance with DFARS 252.227-7013 and 252.227-7014; note that—proprietary is a non-conforming marking. Limited or Restricted rights technical data or computer software or computer software documentation as specified in DFARS 252.227-7013 and 252.227-7014 shall NOT be delivered or otherwise furnished by the contractor under or in conjunction with this contract without prior approval of the Contracting Officer or the Contracting Officer’s Representative. The Contractor shall ensure that quality control procedures are in place to validate accuracy of electronically transmitted data or data otherwise furnished to the Government.

b. Contract Data Requirements List (CDRL) deliverables include CDRL items referenced in the SOW, Section J, and as defined in Attachment 1 to this contract. The Contractor shall officially deliver unclassified CDRL data

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electronically to the designed GMD CDRL tool, MDA Enterprise CDRLvue, accessible from a link on the GM Homepage of the MDA Knowledge Online (MKO) unclassified Portal for the Missile Defense Agency (MDA) as instructed in the respective CDRL. Unclassified CDRL data may also be required to be delivered to additional addresses, as specified in Block 16 of the DD Form 1423. If electronic delivery to the Government via the CDRL tool is not possible, the Contractor shall deliver the CDRL data to the Government via encrypted email or other physical media (e.g., CD or DVD). In addition, CDRLs and other unclassified correspondence related to this contract shall be posted to the IDE. However, unclassified CDRL data shall not be posted to the IDE until acknowledgement of receipt has been received for those CDRLs requiring Government approval.

c. The Contractor shall deliver classified CDRL data IAW the DD254 and DoD 5220.22M and DoDI 5200.48. Additionally, CDRLs and other classified correspondence related to this contract shall be posted to the IDE. However, classified CDRL data shall not be posted to the IDE until acknowledgement of receipt has been received for those CDRLs requiring Government approval.

d. All data transmitted to the Government shall be of sufficient quality that the Government is able to read the data both online and in printed form. If the Government receives a document that has quality/readability issues, the Contractor shall, upon verbal approval by the PCO or a COR/COTR, deliver compact discs and hardcopies of the document as required and IAW with this clause. The Contractor shall work efficiently and effectively to correct any and all quality issues.

e. Data shall be delivered or otherwise furnished to the Government virus-free and in a manipulative/editable format, including Microsoft Word, Excel, PowerPoint, Project and/or Access. Adobe (.pdf files), picture files, and other electronic image media are acceptable only if allowed in Block 16 of the DD Form 1423 for a given data item. For example, narrative portions shall be delivered in Microsoft Word; pricing data in Microsoft Excel; and graphics in Microsoft PowerPoint. If files contain links, the links must be intact and maintained throughout all revisions. Documents with embedded data that are not related to Contractor performance reports, contract funds status reports, cost data summary reports, or functional cost-hour reports shall not contain Contractor pricing information within the embedded data. Nor shall embedded data to unclassified documents be classified information.

This limitation shall flow down to subcontractors.

**H-NGI-02 FEE LIMITATIONS (Jan 2020)**

This clause shall apply to all contract changes after award.

a. Fee is negotiated on an individual basis based upon the level of risk the Contractor will incur during the performance of the effort. The fee shall not exceed the maximum amounts as specified in Section B of this contract.

b. No Fee on Travel, Other Direct Costs, or Commercial Items. The Contractor is not entitled to fee on any travel, other direct costs (ODCs), or commercial items as defined in FAR 2.101. Examples of ODCs include, but are not limited to: renewable licenses, leases, royalties, and contractor-acquired property defined as equipment per FAR 45.101.

c. No Fee/Profit on Subcontractor Fee. The Contractor is not entitled to fee on subcontractor fee.

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d. Limited fee on Proposal Preparation costs (CLINs 0100/1100) The Contractor shall not exceed 3% / 3% base fee. and 8% / 11% Max Award Fee on Proposal Preparation costs.

**H-NGI-04 TEST SCHEDULE ADJUSTMENTS (Jan 2020)**

Adjustments made to contract price due to a change in the ground and/or flight and/or other test schedule will be accomplished as set forth below:

A change to the test schedule means the movement of a test from one test window to the next. A test window is defined as a period of time 90 days before or after the test date as it appears in the Integrated Test Plan (ITP) or a Target of Opportunity published schedule. The movement of a test within a test window will not be grounds for an adjustment to the contract estimated cost and fee. Test schedule changes outside of the original test window caused by the Contractor or the Government may result in a downward or upward adjustment to the contract estimated cost and fee. A change that is beyond the control and without the fault or negligence of the either party will not result in an adjustment to the contract estimated cost and fee.

**H-NGI-05 PROPERTY NECESSARY TO PERFORM THE CONTRACT (Jan 2020)**

(a) The contract target/estimated costs reflect the contractor’s provision of all property necessary to perform under the contract. In the event that such Government property becomes available for use by the contractor to perform under the contract, cost will be subject to, at the PCO’s discretion, a unilateral downward adjustment. Such an adjustment will be based on the proposed cost of the contractor provisioning the property less actual costs incurred as a direct charge to the Contract. An adjustment modification will be issued to reflect the PCO’s determination to adjust the contract cost.

(b) Contractor disagreements with a determination made by the Government pursuant to this clause shall be a dispute under the Disputes clause. However, nothing in this clause nor any Government determination made in conjunction with this clause shall excuse the Contractor from proceeding with its duties under the instant contract.

**H-NGI-06 CONTRACTOR ACCOUNTABILITY FOR QUALITY (Jan 2020)**

(APPLICABLE TO ALL NGI AURs delivered under this contract.)

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

“Command media,” as used in this clause, includes the Contractor’s specifications, engineering drawings, test procedures, and other documentation generated to comply with Statement of Work (SOW) requirements ensuring repeatability in the products produced and services provided.

“Nonconformance” as used in this clause means a condition of any hardware, software, material, or service/workmanship in which one or more characteristics do not conform to requirements.

"Quality escape," as used in this clause, means the Contractor, or any of its subcontractors:

- (1) Failed to detect a nonconformance or failed to follow command media; and

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(2) Said nonconformance or failure to follow command media could adversely affect the performance of a component, subsystem or system; and

(3) Requires an action by the Government or Contractor to bring said item back to compliance with applicable specification requirements.

(b) The rights and remedies afforded the Government and Contractor under this clause are in addition to any other provision of this contract.

(c) The Contracting Officer may make an equitable reduction in any NGI delivery performance incentive fee previously paid under the contract, or payable in the current fiscal year, if at any time during the term of this contract, including pre-acceptance or post-acceptance of any item or service required to be delivered or performed under this contract, the Contracting Officer reasonably determines that:

(1) A quality escape occurred; and

(2) The quality escape was caused solely by Contractor, or any of its subcontractors; and

(3) Resulted in substantial harm to the Government.

The Contracting Officer will notify the Contractor within 30 days of determining a quality escape occurred for which an equitable reduction may result.

(d) The Contracting Officer will consider cost, schedule and performance impacts of the quality escape as well as any recovery and mitigation efforts by the Contractor and/or subcontractor that are taken to reduce the impacts of the quality escape, in deciding whether to make such a reduction. Failure to agree to the reduction in performance incentive fee shall be a dispute under the Disputes Clause of the Contract.

**H-NGI-07 DOWN SELECT (Mar 2020)**

“Down select” as used in this clause, means that the Government may decide to continue funding only a single contract for the Next Generation Interceptor (NGI) requirements. Such a decision is not tantamount to a termination and, as such, is not governed by any termination provision of this contract.

The Government intends to award two NGI contracts with a contract performance period through Critical Design Review (CDR) as defined in the SOW Section 2.1. Knowledge Point (KP) #3. At this time, the Government estimates that funding will be available for two NGI contracts only through Preliminary Design Review (PDR) as defined in the Statement of Work (SOW) Section 2.1, KP #1. However, the Government may request additional funding sufficient to continue contract performance for two NGI contracts through CDR. Notwithstanding the aforementioned intent, the Government reserves the right at any time during contract performance to make a down select decision to have only one contractor continue contract performance, including by exercising contract option(s) on only one contract. While a down select decision is at the discretion of the Government, a decision could occur under any of the following circumstances:

1. Government funding Limitation

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- 2. Contractor’s failure to timely complete a Knowledge Point
- 3. Determination that, based on the criteria below, a down select is in the best interest of the Government.

If the Government decides to down select, the Contracting Officer will provide preliminary written notice to both Contractors of the intent to do so. The Contracting Officer will also provide both Contractors written notice of the down select decision.

To execute the down select, the Government will perform a best value determination using objective evidence from contract performance to date. The following preliminary criteria are provided for informational purposes only. These criteria are not final, and the Government reserves the right to change the criteria at time of contract award to be incorporated into this clause. Draft criteria to execute the down select are as follows:

- a. Progress towards overall technical solution in terms of expected performance;
- b. Maturity of design in terms of design stability, verification, and demonstrated performance to date
- c. Estimated risk adjusted schedule to complete development, testing, and fielding of initial production quantities based on contract performance and remaining scope to include priced options
- d. The Not to Exceed production estimate at PDR or the Firm Cost Proposal at CDR, and the estimated cost to negate threat scenarios in the performance specification.
- e. Production Readiness
- f. Sustainability and Maintainability of the design

After a down select decision is made, the Government will discontinue funding the Contractor not selected to continue performance in accordance with FAR Clause 52.232-22, Limitation of Funds.

**H-06 INSURANCE (Apr 2009)** (Applicable for all purchase orders/subcontracts.)

In accordance with FAR Part 28.307-2, the Contractor shall maintain the types of insurance and coverage listed below:

TYPES OF INSURANCE	MINIMUM AMOUNT
Workmen's Compensation and all occupational disease Employer's Liability including all occupational disease when not covered by Workmen's Compensation above	As required by Federal and State law \$100,000 per accident
General Liability (Comprehensive) Bodily Injury	\$500,000 per occurrence
Automobile Liability (Comprehensive)	
Bodily Injury per person	\$200,000
Bodily Injury per accident	\$500,000

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Property Damage per accident \$ 20,000

**H-08 PUBLIC RELEASE OF INFORMATION (Mar 2020)** (Applicable for all purchase orders/subcontracts. All references to communications and data submittals to the PCO shall be through the Lockheed Martin Procurement Representative.)

a. In addition to the requirements of National Industrial Security Program Operations Manual (DoD 5220.22-M), all foreign and domestic contractor(s) and its subcontractors are required to comply with the following:

1) Any official MDA information/materials that a contractor/subcontractor intends to release to the public that pertains to any work under performance of this contract, the Missile Defense Agency (MDA) will perform a prepublication review prior to authorizing any release of information/materials.

2) At a minimum, these information/materials may be technical papers, presentations, articles for publication, key messages, talking points, speeches, and social media or digital media, such as press releases, photographs, fact sheets, advertising, posters, videos, etc.

b. Subcontractor public information/materials must be submitted for approval through the prime contractor to MDA.

c. Upon request to the MDA Procuring Contracting Officer (PCO), contractors shall be provided the “Request for Industry Media Engagement” form (or any superseding MDA form).

d. At least 45 calendar days prior to the desired release date, the contractor must submit the required form and information/materials to be reviewed for public release to MDAPressOperations@mda.mil, and simultaneously provide courtesy copy to the appropriate PCO. (Additional distribution emails can be added by the Program Office to ensure proper internal coordination and tracking of PR requests.)

e. All information/materials submitted for MDA review must be an exact copy of the intended item(s) to be released, must be of high quality and are free of tracked changes and/or comments. Photographs must have captions, and videos must have the intended narration included. All items must be marked with the applicable month, day, and year.

f. No documents or media shall be publicly released by the Contractor without MDA Public Release approval.

g. Once information has been cleared for public release, it resides in the public domain and must always be used in its originally cleared context and format. Information previously cleared for public release but containing new, modified or further developed information must be re-submitted

**H-09 ORGANIZATIONAL CONFLICT OF INTEREST (Apr 2020)** (Applicable for all purchase orders/subcontracts.)

a. Purpose: The purpose of this clause is to ensure that:

(1) the Contractor is rendering impartial assistance and advice to the Government at all times under this contract and related Government contracts;

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(2) the Contractor's objectivity in performing work under this contract or related Government contracts is not impaired; and

(3) the Contractor does not obtain an unfair competitive advantage by virtue of its access to non-public Government information, or by virtue of its access to proprietary information belonging to others.

b. Scope: The Organizational Conflict of Interest (OCI) rules, procedures and responsibilities described in FAR 9.5 "Organizational and Consultant Conflicts of Interest", FAR 3.101-1 "Standards of Conduct – General, DFARS 209.5 "Organizational and Consultant Conflicts of Interest," and in this clause are applicable to the prime Contractor (including any affiliates and successors-in-interest), as well as any co-sponsor, joint-venture partner, consultant, subcontractor or other entity participating in the performance of this contract. The Contractor shall flow this clause down to all subcontracts, consulting agreements, teaming agreements, or other such arrangements which have OCI concerns, while modifying the terms "contract", "Contractor", and "Contracting Officer" as appropriate to preserve the Government's rights.

c. Access to and Use of Nonpublic Information: If in performance of this contract the contractor obtains access to nonpublic information such as plans, policies, reports, studies, financial plans, or data which has not been released or otherwise made available to the public, the Contractor agrees it shall not use such information for any private purpose or release such information without prior written approval from the Contracting Officer.

d. Access to and Protection of Proprietary Information: The Contractor agrees to exercise due diligence to protect proprietary information from misuse or unauthorized disclosure in accordance with FAR 9.505-4. The Contractor may be requested to enter into a written non-disclosure agreement with a third party asserting proprietary restrictions, if required in the performance of the contract.

e. In accordance with FAR 3.101-1, the Contractor shall also take all appropriate measures to prevent the existence of conflicting roles that might bias the Contractor's judgement, give the Contractor an unfair competitive advantage, and deprive MDA of objective advice or assistance that can result from hiring former Government employees. (See Health Net Fed. Svcs, B-401652.3).

f. Restrictions on Participating in Other Government Contract Efforts. NONE

g. OCI Disclosures: The Contractor shall disclose to the Contracting Officer all facts relevant to the existence of an actual or potential OCI, using an OCI Analysis/Disclosure Form which the Contracting Officer will provide upon request. This disclosure shall include a description of the action the Contractor has taken or plans to take to avoid, neutralize or mitigate the OCI.

h. Remedies and Waiver:

(1) If the contractor fails to comply with any requirements of FAR 9.5, FAR 3.101-1, DFARS 209.5, or this clause, the Government may terminate this contract for default, disqualify the Contractor from subsequent related contractual efforts if necessary to neutralize a resulting organizational conflict of interest, and/or pursue other remedies permitted by law or this contract. If the Contractor discovers and promptly reports an actual or potential OCI subsequent to contract award, the Contracting Officer may terminate this contract for convenience if such termination is deemed to be in the best interest of the Government, or take other appropriate actions.



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(2) The parties recognize that the requirements of this clause may continue to impact the contractor after contract performance is completed, and that it is impossible to foresee all future impacts. Accordingly, the Contractor may at any time seek an OCI waiver from the Director, MDA by submitting a written waiver request to the Contracting Officer. Any such request shall include a full description of the OCI and detailed rationale for the OCI waiver.

**H-10 ENABLING CLAUSE FOR BMD INTERFACE SUPPORT (Apr 2009)** (Applicable for all purchase orders/subcontracts.)

- a. It is anticipated that, during the performance of this contract, the Contractor will be required to support Technical Interface/Integration Meetings (TIMS) with other Ballistic Missile Defense (BMD) Contractors and other Government agencies. Appropriate organizational conflicts of interest clauses and additional costs, if any, will be negotiated as needed to protect the rights of the Contractor and the Government.
- b. Interface support deals with activities associated with the integration of the requirements of this contract into BMD system plans and the support of key Missile Defense Agency (MDA) program reviews.
- c. The Contractor agrees to cooperate with BMD Contractors by providing access to technical matters, provided, however, the Contractor will not be required to provide proprietary information to non-Government entities or personnel in the absence of a non-disclosure agreement between the Contractor and such entities.
- d. The Contractor further agrees to include a clause in each subcontract requiring compliance with paragraph c. above, subject to coordination with the Contractor. This agreement does not relieve the Contractor of its responsibility to manage its subcontracts effectively, nor is it intended to establish privity of contract between the Government and such subcontractors.
- e. Personnel from BMD Contractors or other Government agencies or Contractors are not authorized to direct the Contractor in any manner.
- f. This clause shall not prejudice the Contractor or its subcontractors from negotiating separate organizational conflict of interest agreements with BMD Contractors; however, these agreements shall not restrict any of the Government's rights established pursuant to this clause or any other contract.

**H-11 MDA VISIT AUTHORIZATION PROCEDURES (Aug 2014)** (Applicable for purchase orders/subcontracts with scope requiring travel to MDA office(s) in support of meetings/reviews/briefings.)

- a. The Contractor shall submit all required visit clearances in accordance with current NISPOM regulations. Visit clearances shall identify the contract number.

For Visit Requests to the National Capital Region send to:

JPAS SMO Code: DDAAU4  
 Missile Defense Agency  
 Attn: Access Control Center  
 5700 18th Street, Bldg 245

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Fort Belvoir, VA 22060-5573  
571-231-8249  
571-231-8099 FAX  
ACC@MDA.mil

For Visit Requests to Huntsville, AL send to:

Missile Defense Agency,  
JPAS SMO Code: DDAAUH  
Attn: Visitor Control  
Bldg 5224 Martin Road  
Redstone Arsenal, AL 35898  
256-450-3214 or 256-450-3216  
256-450-3222 FAX  
mdaaccesscontrolhsv@mda.mil

For Visit Requests to Colorado Springs, CO send to:

Missile Defense Agency,  
SMO Code: DDAAUJ  
Attn: Visitor Control  
720 Irwin Drive, Bldg 720 Room 125  
Schriever AFB, CO 80912  
719-721-0362 or 719-721-8230  
719-721-8399 FAX  
dossosvar@mda.mil

b. The COR is authorized to approve visit requests for the Contracting Officer.

**H-20 SENSITIVE INFORMATION TECHNOLOGY WORK (Jul 2011)** (Applicable if Seller will perform work on sensitive Information Technology (IT)/Automated Data Processing (ADP) systems.)

a. DoD 5200.2-R, DoD Personnel Security Program, requires Contractor personnel, who perform work on sensitive Information Technology (IT)/Automated Data Processing (ADP) systems (hereafter referred to as IT), to be assigned to positions which are designated at one of three sensitivity levels (IT-I, IT-II or IT-III). These designations equate to Critical Sensitive, Non-Critical Sensitive, and Non-Sensitive. Working On-Site in any MDA Facility requires a minimum Sensitivity of IT-II. The following investigations are required:

IT-I designated positions require a Single Scope Background Investigation (SSBI).

IT-II designated positions require a National Agency Check with Law and Credit (NACLC).

IT-III positions associated with MDA are found only at contractor's facilities. See below for requirement.

b. The required investigation will be completed prior to the assignment of individuals to sensitive duties associated with the position.

c. For IT-III positions at the Contractor's facility, the Contractor will forward their employee information

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(completed SF 85P, Questionnaire for Positions of Public Trust), and two (2) DD Forms 258 (Fingerprint cards) either electronically or on magnetic media to: Missile Defense Agency, Security and Emergency Management; ATTN: Personnel Security, 5700 18th Street, Bldg 245, Fort Belvoir, VA 22060-5573.

d. MDA retains the right to request removal of Contractor personnel, regardless of prior clearance or adjudication status, whose actions, while assigned to this contract, clearly conflict with the interests of the Government. The reason for removal will be fully documented in writing by the Contracting Officer. When and if such removal occurs, the Contractor will within 30 working days assign qualified personnel to any vacancy(ies) thus created.

**H-27 FOREIGN PERSONS (Jun 2010)** (Applicable for all purchase orders/subcontracts)

1. "Foreign National" (also known as Foreign Persons) as used in this clause means any person who is NOT:

- a. a citizen or national of the United States; or
- b. a lawful permanent resident; or
- c. a protected individual as defined by 8 U.S.C.1324b(a)(3).

"Lawful permanent resident" is a person having the status of having been lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws and such status not having changed.

"Protected individual" is an alien who is lawfully admitted for permanent residence, is granted the status of an alien lawfully admitted for temporary residence under 8 U.S.C.1160(a) or 8 U.S.C.1255a(a)(1), is admitted as a refugee under 8 U.S.C.1157, or is granted asylum under section 8 U.S.C.1158; but does not include (i) an alien who fails to apply for naturalization within six months of the date the alien first becomes eligible (by virtue of period of lawful permanent residence) to apply for naturalization or, if later, within six months after November 6, 1986, and (ii) an alien who has applied on a timely basis, but has not been naturalized as a citizen within 2 years after the date of the application, unless the alien can establish that the alien is actively pursuing naturalization, except that time consumed in the Service's processing the application shall not be counted toward the 2-year period."

2. Prior to contract award, the contractor shall identify any lawful U.S. permanent residents and foreign nationals expected to be involved on this project as a direct employee, subcontractor or consultant. For these individuals, in addition to resumes, please specify their country of origin, the type of visa or work permit under which they are performing and an explanation of their anticipated level of involvement on this project. You may be asked to provide additional information during negotiations in order to verify the foreign citizen's eligibility to participate on a contract. Supplemental information provided in response to this clause will be protected in accordance with Privacy Act (5 U.S.C. 552a), if applicable, and the Freedom of Information Act (5 U.S.C. 552(b)(6)). After award of the contract, the Contractor shall promptly notify the Contracting Officer and Contracting Officer's Representative with the information above prior to making any personnel changes involving foreign persons. No changes involving foreign persons will be allowed without prior approval from the Contracting Officer. This clause does not remove any liability from the contractor to comply with applicable ITAR and EAR export control obligations and restrictions. This clause shall be included in any subcontract.

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a. The following terms applicable to this clause are defined as follows:

1. DoD Official. Serves in DoD in one of the following positions: Program Director, Deputy Program Director, Program Manager, Deputy Program Manager, Procuring Contracting Officer, Administrative Contracting Officer, or Contracting Officer's Representative.

2. Technical Document. Any recorded information (including software) that conveys scientific and technical information or technical data.

3. Scientific and Technical Information. Communicable knowledge or information resulting from or pertaining to the conduct or management of effort under this contract. (Includes programmatic information).

4. Technical Data. As defined in DFARS 252.227-7013.

b. Except as otherwise set forth in the Contract Data Requirements List (CDRL), DD Form 1423 the distribution of any technical documents prepared under this contract, in any stage of development or completion, is prohibited outside of the contractor and applicable subcontractors under this contract unless authorized by the Contracting Officer in writing. However, distribution of technical data is permissible to DOD officials having a "need to know" in connection with this contract or any other MDA contract provided that the technical data is properly marked according to the terms and conditions of this contract. When there is any doubt as to "need to know" for purposes of this paragraph, the Contracting Officer or the Contracting Officer's Representative will provide direction. Authorization to distribute technical data by the Contracting Officer or the Contracting Officer's Representative does not constitute a warranty of the technical data as it pertains to its accuracy, completeness, or adequacy. The contractor shall distribute this technical data relying on its own corporate best practices and the terms and conditions of this contract. Consequently, the Government assumes no responsibility for the distribution of such technical data nor will the Government have any liability, including third party liability, for such technical data should it be inaccurate, incomplete, improperly marked or otherwise defective. Therefore, such a distribution shall not violate 18 United States Code § 1905.

c. All technical documents prepared under this contract shall be marked with the following distribution statement, warning, and destruction notice identified in sub-paragraphs 1, 2, and 3 below. When it is technically not feasible to use the entire WARNING statement, an abbreviated marking may be used, and a copy of the full statement added to the "Notice To Accompany Release of Export Controlled Data" required by DoD Directive 5230.25.

1. DISTRIBUTION STATEMENT F: Further dissemination only as directed by Missile Defense Agency, MDA/GMX Next Generation Interceptor Project Office (date of determination: 23 Feb 2021) or higher DoD authority

2. WARNING - This document contains technical data whose export is restricted by the Arms Export Control Act (Title 22, U.S.C., Sec 2751, et seq.) or the Export Administration Act of 1979 (Title 50, U.S.C., App. 2401 et seq), as amended. Violations of these export laws are subject to severe criminal penalties. Disseminate in accordance with provisions of DoD Directive 5230.25

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3. DESTRUCTION NOTICE - For classified documents follow the procedures in DOD 5220.22-M, National Industrial Security Program Operating Manual, February 2006, Incorporating Change 1, March 28, 2013, Chapter 5, Section 7, or DoDM 5200.01-Volume 3, DoD Information Security Program: Protection of Classified Information, Enclosure 3, Section 17. For controlled unclassified information follow the procedures in DoDM 5200.01-Volume 4, Information Security Program: Controlled Unclassified Information.

d. The Contractor shall insert the substance of this clause, including this paragraph, in all subcontracts.

**H-29 COMMERCIAL COMPUTER SOFTWARE LICENSE (Mar 2013)** (Applicable for all purchase orders/subcontracts that will use commercial computer software with license restrictions.)

a. Unless otherwise approved by the PCO, commercial computer software licenses shall, upon delivery and acceptance, designate the U.S. Government as a contingent licensee, able to replace the Contractor as the primary licensee upon notifying the licensor. A copy of the negotiated license shall be furnished to the PCO. The terms of the licenses cannot be inconsistent with Federal procurement law and must satisfy user needs. This includes the Contractor's /subcontractor's needs for the software to perform this contract and the Government's needs for the software to accomplish the Government's ultimate objectives. At a minimum, this shall include the rights to make an archive copy of the software, to relocate the computer on which the software resides, to re-host the software on a different computer, to permit access by support contractors, and to permit the Government to transfer the license to another contractor.

b. Nothing in this clause shall take precedence over any other clause or provision of this contract. Government concurrence, as defined in paragraph a. above, does not in any way affect the Government's technical data rights as established by the terms and conditions of this contract.

**H-35 INCORPORATING COMMERCIAL AND OPEN SOURCE SOFTWARE (Aug 2012)** (Applicable if Seller will be providing anything with computer software. Communication with the Contracting Officer shall be through Lockheed Martin.)

a. DFARS 252.227-7014(d) requires the written approval of the PCO before the Contractor may incorporate any copyrighted computer software in the software to be delivered under this contract.

b. A request for approval to incorporate Commercial Computer Software should be accompanied by a license that conforms with the requirements of the Commercial Computer Software Licenses clause of this contract.

c. A request for approval to incorporate Open Source Software must be accompanied by the applicable license, a detailed description of the source of the software and how it has been or will be used, and an explanation of the restrictions imposed and potential risks and liabilities.

d. Nothing in this clause shall take precedence over any other clause or provision of this contract. Government concurrence, as defined in paragraph a above, does not in any way affect the Government's technical data rights as established by the terms and conditions of this contract.

**H-36 CONTRACTOR IDENTIFICATION AND ASSERTION OF RESTRICTIONS ON THE GOVERNMENT'S USE, RELEASE, OR DISCLOSURE OF NON-COMMERCIAL TECHNICAL DATA OR COMPUTER SOFTWARE (Dec 2011)** (Applicable for all purchase orders/subcontracts.)

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- a. The contractor and its subcontractors shall provide a completed Attachment in accordance with DFARS 252.227-7017 entitled "Identification and Assertion of Restrictions on the Government's Use, Release, or Disclosure of Technical Data or Computer Software" that is signed and dated by a responsible official of the Contractor. This Attachment is incorporated herein by reference as if fully set forth. The Attachment identifies and provides information pertaining to technical data (including computer software documentation) and computer software that the contractor and subcontractors claim to qualify for delivery with less than Unlimited Rights. The contractor agrees not to withhold delivery of the technical data or software based on its claims. The Government shall investigate the validity of the contractor's claims and therefore reserves all its rights regarding the technical data/software in question, to include those rights set forth in: DFARS 252.227-7013, Rights in Technical Data - Noncommercial Items; DFARS 252.227-7014, Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation; DFARS 252.227-7019, Validation of Asserted Restrictions-- Computer Software; DFARS 252.227-7028, Technical Data or Computer Software Previously Delivered To the Government; and, DFAR 252.227-7037, Validation Of Restrictive Markings On Technical Data clauses until a determination is made.
- b. The contractor shall have, maintain, and follow written procedures sufficient to assure that restrictive markings/legends are used only when authorized by the terms of this contract and shall maintain records sufficient to justify the validity of any restrictive markings/legends on any technical data or computer software or computer software documentation delivered under this contract. The Contractor agrees that the Government has Unlimited Rights as defined by DFARS 252.227-7013 and 252.227-7014 in any deliverable technical data or computer software or computer software documentation not listed in the Attachment and that such data or software will not be subject to any restrictive markings or legends.

**H-37 INSERTION OF LIMITED OR RESTRICTED RIGHTS (Dec 2010)** (Applicable for all purchase orders/subcontracts. Communication with the Government shall be through Lockheed Martin.)

- a. Hardware items which are subject to Limited Rights in their associated technical data as defined in DFARS 252.227-7013 and software items which are subject to Restricted Rights as defined in DFARS 252.227-7014 shall not be incorporated into the design of any systems, or models/simulations thereof under this contract without the prior written authorization of the PCO. The Contractor's request shall include a rough order of magnitude (ROM) estimate to perform development if the data or software cannot be used as requested. If the PCO does not provide a decision within 30 days of the request, the request is considered denied. In the event the PCO authorizes inclusion of the Limited Rights technical data and/or Restricted software, such data or software will be added as an attachment within Section J.
- b. Using Government assets in an Independent Research and Development (IRAD) project may be authorized on a case by case basis. The Contractor's request shall include an offer of consideration for use of such Government assets. The Government will evaluate the request, including the Contractor's offer of consideration, and either approve, deny, or offer an alternative form of consideration. Any such consideration will be mutually agreed to by the parties prior to use of Government assets. Consideration should include, at a minimum, specially negotiated rights granting the Government a license for Government Purpose Rights IAW DFARS 252.227-7013 and 252.227-7014 in the subject IRAD project. When the Contractor requests the use of Government assets for an IRAD project, the request shall include the purpose of the IRAD project and the potential benefit to the Government. The Contractor will be required to execute a bailment agreement prior to the transfer or use of Government assets.

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**H-40 INDEMNIFICATION AGAINST UNUSUALLY HAZARDOUS RISKS (Apr 2012)** (Applicable to purchase orders/subcontracts involving unusually hazardous risks – Indemnification is not provided automatically. Purchase order/subcontract applications are to be sent to Lockheed Martin for submittal to the Government.)

The legal authority to indemnify contractors for unusually hazardous risks for research, development and testing activities is 10 USC 2354. Previous indemnification from other contracts does not carry over to this resulting contract. The Contractor may request indemnification for effort under this contract at any time. Contractor requests for indemnification must be prepared in accordance with the requirements of FAR 50.104-3. The MDA will fairly process request(s) in good faith to the applicable approving authority within the Department of Defense. The MDA will not, however, make adjustments to the estimated cost or schedule of this contract if indemnification is not granted through this process.

**H-41 COST ESTIMATING METHODS (Mar 2015)** (Applicable for all purchase orders/subcontracts.)

The following cost estimating methods shall be used as requested by the Government:

- a. Planning Estimate - The purpose of a planning estimate is to support Government planning. Planning estimates may only be requested by the PCO. A planning estimate shall be provided to the Government in 1 to 2 calendar days or as designated by the PCO. This estimate is very limited in scope, involves minimal pricing ground rules and assumptions from the Government, and is generally comprised of ranges/parametrics. Documentation provided shall be high level scope and funding estimates by Government fiscal year sent via email.
- b. Rough Order of Magnitude (ROM) - The purpose of a ROM estimate is to support Government budgetary decisions and potential authorization of unpriced actions in the event there is insufficient time for a Not-to-Exceed (NTE) estimate. ROM estimates may only be requested by the PCO. ROM estimates shall be provided to the Government within 5 calendar days or as designated by the PCO. This non-binding estimate is limited in scope, involves limited analysis, and develops a high level baseline to include a high level SOW, schedule, and equipment lists. The ROM estimate is not generated based on formal Basis of Estimates (BOEs) and by design provides limited supporting rationale. Subcontractor input will be included if schedule allows. Documentation provided shall include scope and funding estimates by Government fiscal year in a briefing package submitted by contracts letter to the Government.
- c. Not-to-Exceed (NTE) - The purpose of an NTE estimate is to support critical Government budgetary decisions, and a binding basis on which to issue unpriced actions. NTEs may only be requested by the PCO. NTE estimates shall be provided to the Government within 10 calendar days or as designated by the PCO. This estimate involves more in depth analysis, develops a baseline to include a statement of work, schedule, and required equipment lists. The NTE estimate shall be based on Basis of Estimate (BOEs) and estimated materials (as required), including supporting rationale. Applicable subcontractor input shall be included as required. Documentation required shall include scope and funding estimates by Government fiscal year in a briefing package submitted by contracts letter to the Government. The Contractor's NTE must be valid for a minimum of one hundred eighty (180) calendar days.

**H-43 IMPACT OF GOVERNMENT TEAM PARTICIPATION/ACCESS (Jun 2012)** (Applicable for all purchase orders/subcontracts.)

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The Government/Contractor organizational/interface approach (e.g., Integrated Product Teams, Team Execution Reviews, Technical Interchange Meetings, and/or Working Groups), will require frequent, close interaction and/or surveillance between the Government and Contractor/subcontractor team members during contract performance. For this purpose the Contractor, recognizing its privity of contract with the Government, authorizes the Government to communicate directly with, and where appropriate visit as well as monitor, the Contractor's subcontractors.

Seller is required to notify the Lockheed Martin Procurement Representative immediately when Seller is contacted directly by the Government.

This access/interface is necessary to support the Government's quality and program management approach which emphasizes systematic surveillance and evaluation techniques used to assess Contractor/subcontractor performance. Government team members may offer advice, information, support, and facilitate rapid Government feedback on team-related products, provide clarification, and review Contractor/subcontractor progress. Neither the Contractor nor the subcontractor shall construe such advice, surveillance, reviews and clarifications by Government team members as Government-directed changes to the terms of this contract. The Lockheed Martin Subcontract Manager is the only individual authorized to direct or approve any change to the terms of this contract.

**H-45 AS IS GOVERNMENT FURNISHED DATA/DOCUMENTATION AND COMPUTER SOFTWARE (Jan 2013)** (Applicable for all purchase orders/subcontracts when Government furnished data/documentation and/or computer software is provided.)

All technical data and computer software (as defined in DFARS 252.227-7013 and DFARS 252.227-7014) furnished by the Government is in an "as is" condition without any warranty as to its accuracy, completeness, or adequacy. The contractor shall use this technical data and computer software at its own risk. The Government assumes no responsibility for such furnished data/documentation/computer software nor will the Government have any liability for equitable adjustments to the terms and conditions of this contract should such data/documentation/computer software prove to be inaccurate, incomplete, or otherwise defective.

**FAR Clauses****52.203-7, Anti-Kickback Procedures (Jun 2020)**

**52.203-16, Preventing Personal Conflicts of Interest (Jun 2020)** (Applicable if this purchase orders/subcontracts exceeds the simplified acquisition threshold in FAR 2.101; and in which Seller employees will perform acquisition functions closely associated with inherently governmental functions (i.e., instead of performance only by a self-employed individual).)

**52.204-18, Commercial and Government Entity Code Maintenance (Aug 2020)** (Seller shall maintain their CAGE code(s) throughout the life of the purchase order/subcontract.)



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**52.215-12, Subcontractor Certified Cost or Pricing Data (DEVIATION) (Jun 2020)** (The version of the clause in DoD Class Deviation [2018-O0015](#) applies in lieu of the standard FAR version of the clause.)

**52.215-13, Subcontractor Certified Cost or Pricing Data - Modifications (DEVIATION) (Jun 2020)** (The version of the clause in DoD Class Deviation [2018-O0015](#) applies in lieu of the standard FAR version of the clause.)

**52.215-23, Limitations on Pass-Through Charges (Jun 2020) and Alternate I (Oct 2009)** (Alternate I will also apply.)

**52.217-2, Cancellation Under Multiyear Contracts (Oct 1997)** (Applicable to multi-year purchase orders/subcontracts. "Contracting Officer" and "Government" means "Lockheed Martin." In paragraph (e) "1 year" is changed to "six months.")

**52.223-16, Acquisition of EPEAT®-Registered Personal Computer Products (Oct 2015) and Alternate I (Jun 2014)** (Applicable if Seller will be delivering personal computers products to the Government, acquired by Seller for use in performing services at a Federally-controlled facility; furnished under the prime contract for use by the Government. Alternate I will also apply.)

**52.224-1, Privacy Act Notification (Apr 1984)** (Applicable if Seller will be required to design, develop, or operate a system of records on individuals required to accomplish an agency function.)

**52.224-2, Privacy Act (Apr 1984)** (Applicable if Seller will be required to design, develop, or operate such a system of records.)

**52.232-17, Interest (May 2014)** (Applicable if this purchase order/subcontract contains any clauses which refers to an Interest clause. "Government" means "Lockheed Martin.")

**52.232-39, Unenforceability of Unauthorized Obligations (Jun 2013)** (Applicable for all purchase orders/subcontracts, including purchase orders/subcontracts for commercial items, where software or services will be retransferred to the Government.)

**52.243-2, Changes – Cost Reimbursement (Aug 1987) and Alternate V (Apr 1984)** (Alternate V will also apply if this purchase order/subcontract is for research and development.)

**52.245-9, Use And Charges (Apr 2012)** (Applicable for all purchase orders/subcontracts, including purchase orders/subcontracts for commercial items, will involve the use of government property subject to this clause. Communications with the Government under this clause will be made through Lockheed Martin.)

**52.246-8, Inspection of Research and Development – Cost Reimbursement (May 2001)** (Applicable if Seller has a cost reimbursement purchase order/subcontract that is for research and development. "Government" means

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"Lockheed Martin" except (1) in paragraphs (b), (c) and (d) where it means "Lockheed Martin and the Government" and in paragraph (k) where the term is unchanged.)

**52.247-68, Report of Shipment (REPSHIP) (Feb 2006)** (Applicable if Seller will be shipping supplies directly to the Government.)

**52.249-1, Termination for Convenience of the Government (Fixed-Price) (Short Form) (Apr 1984)** (Applicable if this purchase order/subcontract is fixed-price and does not exceed the simplified acquisition threshold. "Contracting Officer" and "Government" mean "Lockheed Martin.")

**52.249-6, Termination (Cost-Reimbursement) (May 2004) and Alternate IV (Sep 1996)** (Alternate IV will also apply if this purchase order/subcontract is time-and-material or labor-hour.)

**DFARS Clauses**

**252.204-7000, Disclosure of Information (Oct 2016)** (Applicable for all purchase orders/subcontracts. In paragraph (b) "Contracting Officer" means "Lockheed Martin" and "10 days" means "20 days.")

**252.204-7004, Antiterrorism Awareness Training for Contractors (Feb 2019)** (Applicable for all purchase orders/subcontracts, including purchase orders/subcontracts for commercial items, where performance requires routine physical access to a Federally-controlled facility or military installation.)

**252.204-7018, Prohibition on the Acquisition of Covered Defense Telecommunications Equipment or Services (Dec 2019)** (Applicable for all purchase orders/subcontracts, including purchase orders/subcontracts for commercial items. Copies if reports provided by Seller under this clause will be provided to Lockheed Martin.)

**252.208-7000, Intent to Furnish Precious Metals as Government-Furnished Material (Dec 1991)** (Applicable for all purchase orders/subcontracts, including purchase orders/subcontracts for commercial items, that involve precious metals.)

**252.211-7007, Reporting of Government-Furnished Property (Aug 2012)** (Applicable if Seller will be in possession of Government property for the performance of this purchase order/subcontract.)

**252.211-7008, Use of Government-Assigned Serial Numbers (Sep 2010)** (Applicable for purchase orders/subcontracts, including purchase orders/subcontracts for commercial items, where the seller will be in the possession of Government property for the performance of the purchase order/subcontract. If Lockheed Martin will assume responsibility for marking the property, the clause may be excluded from the purchase order/subcontract.)

**252.216-7004, Award Fee Reduction or Denial for Jeopardizing the Health or Safety of Government Personnel (Sep 2011)** (Applicable for all purchase orders/subcontracts containing award fee provisions. Seller shall reimburse Lockheed Martin for any reduction in fees under the prime contract to the extent Seller's acts or omissions are responsible for covered incidents pursuant to this clause.)

**252.216-7009, Allowability of Legal Costs Incurred in Connection With a Whistleblower Proceeding (Sep 2013)** (Does not apply to fixed price purchase orders/subcontracts.)

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**252.225-7052, Restriction on the Acquisition of Certain Magnets and Tungsten (DEVIATION) (Oct 2020)** (The version of the clause in DoD Class Deviation [2020-O0006](#) applies in lieu of the standard DFARS version of the clause.)

**252.225-7978, Restriction on Acquisition of Certain Magnets and Tungsten (DEVIATION [2019-O0006](#)) (Jan 2019)** (Applicable for all purchase orders/subcontracts, including purchase orders/subcontracts for commercial items, for supplies.)

**252.227-7017, Identification and Assertion of Use, Release, or Disclosure Restrictions (Jan 2011)** (Applicable for all purchase orders/subcontracts. "Offeror" means "Seller." Contracting Officer" means "Lockheed Martin or Contracting Officer." In paragraphs (a) and (b) the references to the SBIR data rights clause are deleted.)

**252.234-7002, Earned Value Management System (DEVIATION) (Sep 2015)** (The version of the clause in DoD Class Deviation [2015-O0017](#) applies in lieu of the standard DFARS version of the clause. Applicable if Seller is listed in paragraph (k) of this clause in the prime contract. "Government" means "Lockheed Martin and Government." Paragraphs (i) and (j) are deleted.

**252.234-7004, Cost and Software Data Reporting System--Basic (Nov 2014)** (Applicable if this purchase orders/subcontracts in excess of \$50,000,000. In paragraph (b), "Government" means "Lockheed Martin.")

**252.239-7000, Protection Against Compromising Emanations (Oct 2019)** (Applicable if classified work is required. "Contracting Officer" means "Lockheed Martin." "Government" means "Lockheed Martin and the Government" in paragraphs (c) and (d).)

**252.239-7001, Information Assurance Contractor Training and Certification (Jan 2008)** (Applicable if Seller will be accessing DoD Information Systems.)

**252.243-7002, Requests for Equitable Adjustment (Dec 2012)** (Applicable for all purchase orders/subcontracts over \$150,000. "Government" means "Lockheed Martin.")

**252.245-7001, Tagging, Labeling, and Marking of Government-Furnished Property (Dec 2017)** (Applicable for all purchase orders/subcontracts, including purchase orders/subcontracts for commercial items, where the items furnished by Seller will be subject to serialized tracking.)

**252.245-7004, Reporting, Reutilization, and Disposal (Dec 2017)** (Applicable for all purchase orders/subcontracts, including purchase orders/subcontracts for commercial items, containing the clause at 52.245-1, Government Property. "Contracting Officer" means "Lockheed Martin.")

**252.246-7001, Warranty of Data (Mar 2014)** (Applicable if Seller will be delivering data. "Government" means "Lockheed Martin or the Government." "Contracting Officer" means "Lockheed Martin." The last sentence in paragraph (b) is changed to read as follows: The warranty period shall extend for three years after completion of delivery of the data to Lockheed Martin, or if the data is delivered to the Government, either by Lockheed Martin or Seller, the warranty period shall extend for three years after delivery to the Government.")