

Supplemental Terms and Conditions for the D2105 Program

Prime Contract Flowdowns based on U.S. Government FINAL RFP For FAR and Supplement Program Clauses

A. GOVERNMENT SUBCONTRACT

This Contract is entered into by the parties in support of a U.S. Government Contract. As used in the clauses referenced below and otherwise in this Contract:

1. “Commercial product or commercial service” means commercial product or commercial service any such product as defined in FAR 2.101.
2. “Commercially available off-the shelf (COTS) item” means a COTS item as defined in FAR 2.101.
3. “Contract” means this contract.
4. “Contracting Officer” shall mean the U.S. Government Contracting Officer for SEAKR’s government prime contract under which this Contract is entered.
5. “Contractor” and “Offeror” mean the SELLER acting as the immediate (first-tier) subcontractor to SEAKR.
6. “Prime Contract” means the contract between SEAKR and the U.S. Government or between SEAKR and its higher-tier contractor who has a contract with the U.S. Government.
7. “Subcontract” means any contract placed by the Contractor or lower-tier subcontractors under this Contract.
8. SEAKR shall be solely responsible for all liaison, coordination, and communication with the SEAKR customer, including the U.S. Government, as it affects the applicable prime contract, this Contract, and any related contract or subcontract, except for normal business matters normally conducted with the U.S. Government (for example: DCAA audits and reviews, patent reports and direct requests from the U.S. Government pertaining to the Subcontract Reporting, Monitoring and Consent clause, etc.).
9. Notwithstanding any clause to the contrary, access to audit Contractor’s financial books and records shall be limited to the U.S. Government.
10. The terms “Government” and “Contracting Officer” do not change when a right, act, authorization or obligation can be granted or performed only by the Government or the Government Contracting Officer or his duly authorized representative.

B. NOTES

The following Notes apply to the clauses below only when specified in the parenthetical phrase following the clause title and date.

1. Substitute "SEAKR" for "Government" or “United States” throughout this clause.
2. Substitute "SEAKR Procurement Representative" for "Contracting Officer”, “Administrative Contracting Officer”, and “ACO” throughout this clause.
3. Insert “and SEAKR” after “Government” throughout this clause.
4. Insert “or SEAKR” after “Government” throughout this clause.
5. Communication/notification required under this clause from/to SELLER to/from the Contracting Officer shall be through SEAKR.
6. Insert “and SEAKR” after “Contracting Officer” throughout the clause.
7. Insert “or SEAKR Procurement Representative” after “Contracting Officer” throughout the clause.
8. If SELLER is an international contractor, this clause applies to this Contract only if Work under the Contract will be performed in the United States or Contractor is recruiting employees in the United States to Work on the Contract.

- C. This Contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text, and are applicable, including any notes following the clause citation, to this Contract. Upon request, SEAKR will make their full text available. If the date or substance of the clause

actually incorporated in the Prime Contract, the date or substance of the clause incorporated by said Prime contract shall apply instead. Seller shall include in each lower-tier subcontract the appropriate flow-down as required by FAR and G-clauses included in this Contract

D. The following Federal Acquisition Regulation (FAR) clauses apply to this Contract as set forth below:

<i>Applicable FAR Clauses based upon non-commercial or commercial product or commercial services, which are incorporated in your Contract:</i>			
<i>FAR Clause</i>		<i>U.S. Government Non-Commercial product or commercial services</i>	<i>U.S. Government Commercial product or commercial services</i>
52.204-23 Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities (JUL 2018)	Delete this clause, in lieu thereof G52.204-015 applies.	Delete this clause, in lieu thereof G52.204-015 applies.	Delete this clause, in lieu thereof G52.204-015 applies.
52.208-8 Required Sources for Helium and Helium Usage Data (Aug 2018) In paragraph (b) "Contracting Officer means "Buyer".	Add this clause. Note 2 applies in paragraph (b).	Add this clause. Note 2 applies in paragraph (b).	Add this clause. Note 2 applies in paragraph (b).
52.215-22 Limitations on Pass-Through Charges- Identification on Subcontract Effort (OCT 2009)	Add this clause.	N/A	Add this clause.
52.217-2 Cancellation Under Multiyear Contract (OCT 1997).	Add this clause. "Contracting Officer" and "Government" means "SEAKR." Notes 1 and 2 apply. In paragraph (e) "1 year" is changed to "six months."	Add this clause. "Contracting Officer" and "Government" means "SEAKR." Notes 1 and 2 apply. In paragraph (e) "1 year" is changed to "six months."	Add this clause. "Contracting Officer" and "Government" means "SEAKR." Notes 1 and 2 apply. In paragraph (e) "1 year" is changed to "six months."
52.219-8 Utilization of small business concerns (OCT 2018) (Note 8 applies.)	Delete this clause, in lieu thereof G52.219-001 applies.	Delete this clause, in lieu thereof G52.219-001 applies.	Delete this clause, in lieu thereof G52.219-001 applies.
52.219-9 Small Business Subcontracting Plan (OCT 2018) (Note 8 applies.)	Delete this clause, in lieu thereof G52.219-002 applies.	N/A	Delete this clause, in lieu thereof G52.219-002 applies.
52.222-50 Combating Trafficking in Persons	Change date to JAN 2019. (Note 2 applies, in paragraph (e) Note 3 applies.)	Change date to JAN 2019. (Note 2 applies, in paragraph (e) Note 3 applies.)	Change date to JAN 2019. (Note 2 applies, in paragraph (e) Note 3 applies.)
52.227-6 Royalty Information (APR 1984)	Add this clause.	N/A	Add this clause.
52.227-3 Patent Indemnity Alt 1 (APR 1984)	Add this clause. Paragraph (c) insert "non-commercial items."	Add this clause.	Add this clause. Paragraph (c) insert "non-commercial items."
52.227-19 Commercial Computer Software License (Dec 2007)	Add this clause.	No change required.	Add this clause.
52.230-2 Cost Accounting Standards (OCT 2015)	Delete this clause when full CAS coverage applies and negotiated contract awarded occur on or after July 1, 2018, in lieu thereof G52.230-002	N/A	Delete this clause when full CAS coverage applies and negotiated contract awarded occur on or after July 1, 2018, in lieu thereof G52.230-002

Applicable FAR Clauses based upon non-commercial or commercial product or commercial services, which are incorporated in your Contract:			
FAR Clause		U.S. Government Non-Commercial product or commercial services	U.S. Government Commercial product or commercial services
	applies. Paragraph (d) sets CAS threshold when contract exceeds \$2M.		applies. Paragraph (d) sets CAS threshold when contract exceeds \$2M.
52.232-17 Interest (MAY 2014). Applies only to FPIF contract types. "Government" means "SEAKR".	Add this clause. Note 1 applies. N/A for FFP contract types.	N/A	Add this clause. Note 1 applies.
52.232-32 Performance-Based Payments (APR 2012).	Add this clause, Note 1 and 2 apply, except with respect to property where the reference to Government shall remain unchanged. Subparagraph (c)(2) is deleted.	If using PBP to finance, then add this clause, Note 1 and 2 apply, except with respect to property where the reference to Government shall remain unchanged. Subparagraph (c)(2) is deleted.	N/A
52.232-39 Unenforceability of Unauthorized Obligations (Jun 2013)	Add this clause. Applies when software or services will be retransferred to the Government.	Add this clause. Applies when software or services will be retransferred to the Government.	Add this clause. Applies when software or services will be retransferred to the Government.
52.239-1 Privacy or Security Safeguards (AUG 1996)	Add this clause.	N/A	Add this clause.
52.244-6 Subcontracts for Commercial Items	Change date to August 2019.	Change date to August 2019.	Change date to August 2019.
52.245-1 Government Property (JAN 2017) Alt I (APR 2012)	Add this clause.	Add this clause.	Add this clause.
52.245-9 Use and Charges (APR 2012) (Applies if FAR 52.245-1 applies to this Contract.) Communication with the Government under this clause shall be made through SEAKR.	Add this clause.	Add this clause.	Add this clause.
52.246-24 Limitation of Liability – High-Value Items (FEB 1997)	Add this clause. Applies to high value line items only. For the purpose of this clause an item is a high value item if the unit cost of the item exceeds \$100,000. This clause is applicable only to the extent the Government limits SEAKR's liability under its Prime Contract stemming from SELLER's acts, omission, or Work. The reference to Government acceptance shall mean "acceptance by the Government of the Prime Contract end item containing SELLER's items."	N/A	Add this clause. Applies to high value line items only. For the purpose of this clause an item is a high value item if the unit cost of the item exceeds \$100,000. This clause is applicable only to the extent the Government limits SEAKR's liability under its Prime Contract stemming from SELLER's acts, omission, or Work. The reference to Government acceptance shall mean "acceptance by the Government of the Prime Contract end item containing SELLER's items."

E. The following Supplemental Program clauses apply to this Contract:

Clause

<i>Number</i>	<i>Clause Title (Full Text Follows)</i>	Non-Commercial Products and Services	Commercial Products and Services
G52.203-002	Prohibition on Persons Convicted of Fraud or Other Defense-Contract-Related Felonies (Nov 2022)	X	N/A
G52.204-008	Notice of Litigation (AUG 2010) (Note 6 applies, except in subparagraph (a)(2). In paragraph (a)(1), change “five business days” to “three business days”.)	X	X
G52.204-009	U/FOUO Release of Contract Information (JAN 2020) (Note 6 applies.)	X	X
G52.204-013	Prime Contractors and Subcontractors with Educational Institutions (NOV 2018)	X	X
G52.204-015	Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities (Nov 2022 (Note 5 applies. SELLER shall provide SEAKR copies of any reports provided under this clause which relate to the performance of this Contract.)	X	X
G52.204-017	Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment (Nov 2022) (Note 4 applies in paragraph (b). Reports required by this clause will be made to SEAKR.)	X	X
G52.209-002 Modified	Disclosure of Foreign Ownership or Control by a Foreign Government (NOV 2017) (Note 6 applies to paragraph (b) and Note 2 applies to paragraph (d).)	X	X
G52.209-005	Protection of Information (DEC 2011) (Insert in paragraph (b) SEAKR Procurement Representative after Contracting Officer; Insert in Paragraphs (d) and (e) SEAKR after Government. Applies if this contract is for development work that will require development contractors to interact with and/or furnish information to other development contractors that require access to sensitive or proprietary information.)	X	X
G52.209-006	Enabling Clause for Prime and Support Contractor Relationships (OCT 2011)	X	X
G52.215-003	Intention to Use Consultants (JAN 2005)	X	X
G52.215-014	Cost Estimating System Requirements (JAN 2005) (Applies to Contracts when cost or pricing data is provided.)	X	N/A
G52.219-001	Utilization of Small Business Concerns (DEC 2011)	X	X
G52.219-002	Small Business Subcontracting Plan (Nov 2022) (Applies if this Contract exceeds \$700,000 and Contractor is not a small business. Note 2 applies. The Contractor’s subcontracting plan is incorporated herein by reference.)	X	N/A
G52.222-002	U//FOUO)Exceptions to Federal Labor Requirements (JAN 2020) (Note 6 applies.)	X	X
G52.223-005	Prohibition on Storage and Disposal of Toxic and Hazardous Materials (JAN 2004) (None authorized. Note 7 applies.)	X	X
G52.223-006	Contractor Compliance with Environmental, Occupational Safety and Health, and System Safety Requirements (OCT 1997) (Note 7 applies.)	X	X
G52.223-007	Elimination of Class I Ozone Depleting Substances (ODS) (APR 2004) (None approved. Note 2 applies.)	X	X
G52.223-008	Contractor Identification of Ozone Depleting Substances (ODS) (JAN 2004)	X	X
G52.225-003	Export Controlled Items (NOV 2018)	X	X

G52.227-001	Technical Data and Computer Software: Commercial product and Commercial Service (Nov 2022) (Rights shall flow to the Government. SEAKR is granted a limited license to use data and software for this program.)	X	X
G52.227-002	Rights In Technical Data and Computer Software: Noncommercial product or commercial services (FEB 2011) (Note 3 applies. This clause applies if any technical data or computer software for noncommercial product or commercial services is to be obtained from Contractor, its subcontractors or its suppliers for delivery to the Government under this Contract. Rights shall flow to the Government. SEAKR is granted a limited license to use data and software for this program. Delete the following words in paragraph (b)(5) “and incorporated into Section J”.)	X	N/A
G52.227-003	Validation of Restrictive Markings on Technical Data and Computer Software (FEB 2011) This clause applies if this Contract requires delivery of technical data or computer software.	X	N/A
G52.227-004	Identification and Assertion of Use, Release, or Disclosure Restrictions (JUL 2018) (Note 7 applies.)	X	X
G52.227-005	Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legend (Nov 2022) (Note 3 applies in paragraph (c)(1).)	X	N/A
G52.227-006	Technical Data or Computer Software Previously Delivered to the Government (OCT 2015) (Note 4 applies.)	X	X
G52.227-007	Rights in Bid or Proposal Information (JUL 2018)	X	X
G52.227-008	Commercial Technical Data and Computer Software Licensing - Order of Precedence (Nov 2022)	X	X
G52.227-009	Deferred Delivery of Technical Data Or Computer Software (MAY 2005) (Applies only if this contract includes a requirement for deferred delivery data. Note 1 applies. Delete the following words in the first paragraph “Section J of”.)	X	X
G52.227-010	Deferred Ordering of Technical Data or Computer Software (SEPT 2013) (Note 4 applies. Substitute the words “Subcontractor Data Requirements List (SDRL)” for the words “Contractor Data Requirements List.” Delete the following words in paragraph (b)(2) “in Section J prior to contract award”.)	X	X
G52.227-011	Technical Data and Computer Software: Withholding of Payment (NOV 2007) (Notes 1 and 2 apply to (a). Note 4 applies to (b). In paragraph (a), insert: “3 percent of the total contract price or \$5,000,000, whichever is less” for “(VARIABLE)”.)	X	X
G52.227-015	Data Requirements (FEB 2011) (Substitute the words “Subcontractor Data Requirements List (SDRL)” for the words “Contractor Data Requirements List.”)	X	X
G52.227-017	Patent Rights-Ownership by the Contractor (Large Business) (APR 2009) (Applies to R&D contracts.)	X	N/A
G52.227-018 Deviation	Government Access to Interim Data License (FEB 2011) (GOVERNMENT DEVIATION)	X	N/A
G52.227-019	Pre-award and Post-award Identification and Assertion of Restrictions on Technical Data Pertaining to a Commercial product or commercial service Product commercial services and Commercial Computer Software (Nov 2022)	X	X
G52.228-003	Mishap Reporting and Investigation Involving Aircraft, Missiles, and Space Launch Vehicles (FEB 2020) (Notes 2 and 4 apply.)	X	X
G52.228-004	Insurance (SEP 1996)	X	X
G52.230-002	Cost Accounting Standard (JAN 2018)	X	X
G52.231-001	Supplemental Cost Principles (SEP 2013)	X	X
G52.231-002	Allowability of Special Security Costs (JAN 2004)	X	N/A

G52.231-003	Contractor Training and Education (SEP 2013)	X	N/A
G52.231-004	Prohibition on Contractor Acquisition of Personal Property for Use By Government Employees (JUL 2004)	X	N/A
G52.234-002	Earned Value Management System (JUL 2018) () (Note 4 applies. Note 2 applies to paragraph (f).) (Applies if cost reimbursable or fixed price incentive and if this Contract is valued at more than \$100 million.)	X	x
G52.244-001	Subcontracts (Educational Institutions) (MAR 2015) (Requires Contracting Officer written consent to subcontract with an educational institution.)	X	X
G52.244-002	Subcontract Reporting, Monitoring, Consent, and Notification (MAY 2019)	X	X
G52.244-002 Alt 1	Alternate I (MAY 2019)	X	N/A
G52.245-001	Contract-Accountable Government Property: Responsibilities, Use, Reporting, and Administration (JUL 2018)	X	X
G52.246-002	Contractor Counterfeit Electronic Part Detection and Avoidance System (Nov 2022)	X	X
G52.246-003	Sources of Electronic Parts (NOV 2022)	X	X
H-7	Supply Chain Risk Management	X	X

G. Supplemental Program clauses in full text:

<i>Clause Number</i>	<i>Clause Text</i>
G52.203-002	<p>Prohibition on Persons Convicted of Fraud or Other Defense-Contract-Related Felonies (SEPT 2013)</p> <p>(a) Definitions. As used in this clause—</p> <p>(1) “Arising out of a contract with the DoD” means any act in connection with—</p> <ul style="list-style-type: none">(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). <p>(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 <i>nolo contendere</i>, for which sentence has been imposed.</p> <p>(3) “Date of conviction” means the date judgment was entered against the individual.</p> <p>(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—</p> <ul style="list-style-type: none">(1) In a management or supervisory capacity on this contract;(2) On the board of directors of the Contractor;(3) As a consultant, agent, or representative for the Contractor; or(4) In any other capacity with the authority to influence, advise, or control the decisions of the Contractor with regard to this contract. <p>(c) Unless waived, the prohibition in paragraph (b) of this clause applies for not less than 5 years from the date of conviction.</p> <p>(d) 10 U.S.C. 2408 provides that the Contractor shall be subject to a criminal penalty of not more than \$500,000 if convicted of knowingly—</p> <ul style="list-style-type: none">(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 contractor or first-tier subcontractor. <p>(e) In addition to the criminal penalties contained in 10 U.S.C. 2408, the Government may consider other available remedies, such as—</p> <ul style="list-style-type: none">(1) Suspension or debarment;(2) Cancellation of the contract at no cost to the Government; or(3) Termination of the contract for default. <p>(f) The contractor may submit written requests for waiver of the prohibition in paragraph (b) of this clause to the Contracting Officer. Requests shall clearly identify—</p> <ul style="list-style-type: none">(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. <p>(g) The contractor 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.</p> <p>(h) Pursuant to 10 U.S.C. 2408(c), defense contractors and subcontractors 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 Benefits Office, U.S. Department of Justice, telephone 301-937-1542; www.ojp.usdoj.gov/BJA/grant/DPFC.html.</p> <p>(End of clause)</p>
G52.204-008	<p>Notice of Litigation (AUG 2010) (Note 6 applies, except in subparagraph (a)(2).)</p> <p>(a) With respect to litigation to which the contractor is a party relating to this contract</p> <ul style="list-style-type: none">(1) The contractor shall, within three business days, notify the Contracting Officer of any litigation filed by a third party (including individuals, organizations, and federal, state, or local governmental entities) or subpoena involving or in any way relating to this contract and/or related subcontracts. Said notice shall include a copy of all documents filed with the court in connection with the litigation or subpoena to the extent such documents are not covered by a court-ordered seal or protective order.(2) The Contracting Officer shall have the right to examine any pertinent documents filed with the court during the conduct of the litigation, and any documents and records provided to the third party in response to the subpoena.

(b) The contractor agrees to insert this clause in any subcontract under this contract.

(End of clause)

**G52.204-009
Modified**

Release of Contract Information (JAN 2020) () (Note 6 applies.)

Insert the following clause in all solicitations and contracts:

(a) Public announcement of this contract award and contract action is prohibited. The contractor shall not use or allow to be used any aspect of this contract for publicity, advertisement, or any other public relations purpose. This obligation will not expire upon completion or termination of this contract but shall continue until rescinded by the U.S. Government.

(b) The contractor must obtain the Contracting Officer's written approval before publishing a technical paper, making a presentation, or releasing any information based on, referencing, or related to this contract or subcontract.

(c) No past performance information regarding this contract shall be provided to any other Government, commercial, or private organization or individual without the express written approval of the Contracting Officer.

(d) The contractor agrees to insert this clause in any subcontract under this contract.

(End of clause)

**G52.204-013
Modified**

Prime Contractors and Subcontractors with Educational Institutions (NOV 2018) ()

(a) Acknowledgement and Approval. All contracts and subcontracts with educational institutions, to include Federally Funded Research and Development Centers and University Affiliated Research Centers managed by an educational institution, require written acknowledgement and approval by a responsible official (e.g., president, chancellor, provost, director, or equivalent senior official) authorized to approve such contracts on behalf of the educational institution. This letter shall acknowledge the involvement of the Intelligence Community with the educational institution and approve the proposed contractual relationship. Those FFRDCs managed by an educational institution are also considered U.S. educational institutions.

(b) Subcontracts. The offeror shall submit a copy of the signed letter from the educational institution conforming to the sample letter below in an attachment to its offer.

SAMPLE LETTER

Dear [Contractor Representative]:

Pursuant to Executive Order 12333, this letter acknowledges that I am an official of [name of educational institution] authorized to approve any contract issued by [name of contractor] in support of a U.S. Government Intelligence Agency. I further acknowledge that I am aware that this government agency will be involved in any resulting contract and do hereby, on behalf of [name of educational institution], approve such a contractual relationship.

(End of clause)

G52.204-015

Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities (AUG 2018) (Note 5 applies. SELLER shall provide SEAKR copies of any reports provided under this clause which relate to the performance of this Contract.)

Use the following clause in lieu of FAR clause 52.204-23, in all solicitations and contracts:

PROHIBITION ON CONTRACTING FOR HARDWARE, SOFTWARE, AND SERVICES DEVELOPED OR PROVIDED BY KASPERSKY LAB AND OTHER COVERED ENTITIES (AUG 2018)

(a) Definitions. As used in this clause –

Covered article means any hardware, software, or service that –

(1) Is developed or provided by a covered entity;

(2) Includes any hardware, software, or service developed or provided in whole or in part by a covered entity; or

(3) Contains components using any hardware or software developed in whole or in part by a covered entity.

Covered entity means –

(1) Kaspersky Lab;

(2) Any successor entity to Kaspersky Lab;

(3) Any entity that controls, is controlled by, or is under common control with Kaspersky Lab; or

(4) Any entity of which Kaspersky Lab has a majority ownership.

(b) Prohibition. Section 1634 of Division A of the National Defense Authorization Act for Fiscal Year 2018 (Pub. L. 115-91) prohibits Government use of any covered article. The Contractor is prohibited from –

- (1) Providing any covered article (including subcontractors at any tier) that the Government will use; and
- (2) Using any covered article, in the development of data or deliverables first produced in the performance of the contract or order.

(c) Reporting requirement.

(1) In the event the Contractor identifies a covered article provided, or to be provided, to the Government during contract performance, or if the Contractor is notified of such by a subcontractor at any tier or any other source, the Contractor shall report, in writing, to the Contracting Officer. For indefinite delivery contracts or simplified acquisitions, the Contractor shall report to the Contracting Officer for both the indefinite delivery contract and for any affected orders.

(2) The Contractor shall report the following information pursuant to paragraph (c)(1) of this clause:

(i) Within one business day from the date of such identification: The contract number; the order number(s), if applicable; supplier name; brand; model number (Original Equipment Manufacturer (OEM) number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.

(ii) Within ten business days of submitting the report pursuant to paragraph (c)(1) of this clause: Any further available information about mitigation actions undertaken or recommended. In addition, the Contractor shall describe the efforts it undertook to prevent use or submission of a covered article, any reasons that led to the use or submission of the covered article, and any additional efforts that will be incorporated to prevent future use or submission of covered articles.

(d) Subcontracts. The Contractor shall insert the substance of this clause, including this paragraph (d), in all subcontracts, including subcontracts for the acquisition of commercial items.

(End of clause)

G52.204-017 Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment (AUG 2019) (Note 4 applies in paragraph (b). Reports required by this clause will be made to SEAKR.)

Use the following clause in lieu of FAR clause 52.204-25, in all solicitations and contracts:

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

“Covered foreign country” means The People’s Republic of China.

“Covered telecommunications equipment or services” means—

(1) Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities);

(2) For the purpose of public safety, security of Government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities);

(3) Telecommunications or video surveillance services provided by such entities or using such equipment; or

(4) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

“Critical technology” means—

(1) Defense articles or defense services included on the United States Munitions List set forth in the International Traffic in Arms Regulations under subchapter M of chapter I of title 22, Code of Federal Regulations;

(2) Items included on the Commerce Control List set forth in Supplement No. 1 to part 774 of the Export Administration Regulations under subchapter C of chapter VII of title 15, Code of Federal Regulations, and controlled-

(i) Pursuant to multilateral regimes, including for reasons relating to national security, chemical and biological weapons proliferation, nuclear nonproliferation, or missile technology; or

(ii) For reasons relating to regional stability or surreptitious listening;

(3) Specially designed and prepared nuclear equipment, parts and components, materials, software, and technology covered by part 810 of title 10, Code of Federal Regulations (relating to assistance to foreign atomic energy activities);

(4) Nuclear facilities, equipment, and material covered by part 110 of title 10, Code of Federal Regulations (relating to export and import of nuclear equipment and material);

(5) Select agents and toxins covered by part 331 of title 7, Code of Federal Regulations, part 121 of title 9 of such Code, or part 73 of title 42 of such Code; or

(6) Emerging and foundational technologies controlled pursuant to section 1758 of the Export Control Reform Act of 2018 (50 U.S.C. 4817).

“Substantial or essential component” means any component necessary for the proper function or performance of a piece of equipment, system, or service.

(b) *Prohibition.* Section 889(a)(1)(A) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits the head of an executive agency on or after August 13, 2019, from procuring or obtaining, or extending or renewing a contract to procure or obtain, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. The Contractor is prohibited from providing to the Government any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, unless an exception at paragraph (c) of this clause applies or the covered telecommunication equipment or services are covered by a waiver described in Federal Acquisition Regulation 4.2104.

(c) *Exceptions.* This clause does not prohibit contractors from providing—

(1) A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or

(2) Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(d) *Reporting requirement.*

(1) In the event the Contractor identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or the Contractor is notified of such by a subcontractor at any tier or by any other source, the Contractor shall report the information in paragraph (d)(2) of this clause to the Contracting Officer. For indefinite delivery contracts, the Contractor shall report to the Contracting Officer for the indefinite delivery contract and the Contracting Officer(s) for any affected order.

(2) The Contractor shall report the following information pursuant to paragraph (d)(1) of this clause

(i) Within one business day from the date of such identification or notification: the contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.

(ii) Within 10 business days of submitting the information in paragraph (d)(2)(i) of this clause: any further available information about mitigation actions undertaken or recommended. In addition, the Contractor shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.

(e) *Subcontracts.* The Contractor shall insert the substance of this clause, including this paragraph (e), in all subcontracts and other contractual instruments, including subcontracts for the acquisition of commercial items. (End of clause)

**G52.209-002
Modified**

Disclosure of Foreign Ownership or Control by a Foreign Government (NOV 2017) () (Note 6 applies to paragraph (b), and Note 2 applies to paragraph (d).)

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

(1) “Effectively owned or controlled” means that a foreign government or any entity controlled by a foreign government has the power, either directly or indirectly, whether exercised or exercisable, to control the election, appointment, or tenure of the offeror’s officers or a majority of the offeror’s board of directors by any means, e.g., ownership, contract, or operation of law (or equivalent power for unincorporated organizations).

(2) “Entity controlled by a foreign government” means any domestic or foreign organization or corporation that is effectively owned or controlled by a foreign government, or any individual acting on behalf of a foreign government. It does not include an organization or corporation that is owned, but is not controlled, either directly or indirectly, by a

foreign government if the ownership of that organization or corporation by that foreign government was effective before 23 October 1992.

(3) "Foreign government" includes the state and the government of any country (other than the United States and its outlying areas) as well as any political subdivision, agency, or instrumentality thereof.

(b) *Prohibition on Award.* No contract may be awarded to an entity controlled by a foreign government, unless the Contracting Officer has approved such award.

(c) *Disclosure.*

(1) The offeror shall disclose any interest a foreign government has in the offeror when that interest constitutes control by a foreign government as defined in this provision. If the offeror is a subsidiary, it shall also disclose any reportable interest a foreign government has in any entity that owns or controls the subsidiary, including reportable interest concerning the offeror's immediate parent, intermediate parents, and the ultimate parent.

(2) The offeror shall submit a current SF 328, Certificate Pertaining to Foreign Interests, with their proposal. The SF 328 must include the following information:

- Offeror's point of contact for questions about disclosure (name and phone number with country code, city code, and area code, as applicable);
- Name and address of offeror;
- Name and address of entity controlled by a foreign government; and
- Description of interest, ownership percentage, and identification of foreign government.

(d) If during contract performance the foreign government ownership or control status of the contractor changes, the contractor shall submit an updated SF 328 to the Contracting Officer within one week of the change.

(e) *Flow-down.* The offeror agrees to include the requirements of this clause in all subcontract solicitations and resulting subcontracts under this solicitation and any resulting contract.

(End of clause)

**G52.209-005
Modified**

Protection of Information (DEC 2011) (Insert in paragraph (b) SEAKR Procurement Representative after Contracting Officer; Insert in Paragraphs (d) and (e) SEAKR after Government. Applies if this contract is for development work that will require development contractors to interact with and/or furnish information to other development contractors that require access to sensitive or proprietary information.)

- (a) It is the Government's intent to ensure proper handling of sensitive information that will be provided to, or developed by, the contractor during contract performance. It is also the Government's intent to protect the proprietary rights of industrial contractors whose data the contractor may receive in fulfilling its contractual commitments hereunder.
- (b) Accordingly, the contractor agrees that it shall not disclose, divulge, discuss, or otherwise reveal information to anyone or any organization not authorized access to such information. The contractor shall require each individual requiring access to sensitive or proprietary information, including each of its current and future employees assigned to work under this contract, and each subcontractor and its current and future employees assigned to work on subcontracts issued hereunder, to execute an implementing nondisclosure agreement (NDA) before granting access to such information. The contractor shall make these individual agreements (or a listing of the employees executing such an agreement) available to the Contracting Officer upon request. These restrictions do not apply to such information after the U.S. Government has released it to the contractor community, either in preparation for or as part of a future procurement, or through such means as dissemination at Contractor Industrial Forums.
- (c) The contractor shall include in each subcontract a clause requiring compliance by the subcontractor and succeeding levels of subcontractors with the terms and conditions herein.
- (d) The contractor shall indemnify and hold harmless the Government, its agents, and employees from every claim or liability, including attorneys fees, court costs, and expenses arising out of, or in any way related to, the misuse or unauthorized modification, reproduction, release, performance, display, or disclosure of data with restrictive legends received in performance of this contract by the contractor or any person to whom the contractor has released or disclosed the data.
- (e) The contractor shall allow the Government to review contractor compliance with these provisions or require such self-assessments or additional certifications as the Government deems appropriate.

(End of clause)

G52.209-006

Enabling Clause for Prime and Support Contractor Relationships (OCT 2011) (The Third-Party Proprietary Information Agreement incorporated as an Exhibit to this Contract includes the names of the support contractors.)

- (a) The Government currently has, or may enter into, contracts with one or more of the following companies, 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. These companies (hereafter referred to as support contractors), are obligated by the terms of clause G52.209-008, Support Contractor Corporate Non-Disclosure Agreement, incorporated into their respective contracts, and/or by separate non-disclosure, confidentiality, proprietary information, or similar agreements to safeguard the sensitive and proprietary information of other contractors, subcontractors, suppliers, and vendors to which they have access.

See Third Party Proprietary Information Agreement in this Contract

- (b) In the performance of this contract, the contractor agrees to cooperate with the companies listed above. Cooperation includes, but is not limited to, allowing the listed support contractors to attend meetings; observe technical activities; discuss with the contractor technical matters related to this program at meetings or otherwise; and access contractor integrated data environments and facilities used in the performance of the contract.
- (c) The contractor must provide the support contractors access to data such as, but not limited to, design and development analyses; test data, procedures, and results; research, development, and planning data; parts, equipment, and process specifications; testing and test equipment specifications; quality control procedures; manufacturing and assembly procedures; schedule and milestone data; and other contract data. To fulfill contractual requirements to the Government, support contractors engaged in general systems engineering and integration efforts and technical support are normally authorized access to information pertaining to this contract. Exceptions, such as when the contractor seeks to restrict access to contractor trade secrets, will be handled on a case-by-case basis. If the contractor seeks to limit distribution of data to Government personnel only, the contractor must submit this request in writing to the Contracting Officer.
- (d) The contractor further agrees to include in all subcontracts, except for those to provide only commercial and/or non-developmental items, a clause requiring the subcontractor and succeeding levels of subcontractors to comply with the response and access provisions of paragraph (b) above, subject to coordination with the contractor. This clause does not relieve the contractor of the responsibility to manage the subcontracts effectively and efficiently, nor is it intended to establish privity of contract between the Government or support contractors and such subcontractors.
- (e) The contractor and its subcontractors are not required to take contractual direction from support contractors.
- (f) Clauses G52.227-005, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends, and G52.209-008, which will be incorporated into all Government support contracts for this prime contract, require the support contractors to protect data and software related to this contract, and prohibit them from using such data for any purpose other than performance of the support contract.
- (g) Support contractors shall protect the proprietary information of disclosing contractors, subcontractors, suppliers, and vendors in accordance with clause G52.209-008. Because this clause provides that such disclosing contractors, subcontractors, suppliers, and vendors are intended to be third-party beneficiaries, all such disclosing parties agree that these terms satisfy the non-disclosure agreement requirements set forth in 10 U.S.C. §2320(f)(2)(B). Accordingly, the contractor may only enter into a separate non-disclosure, confidentiality, proprietary information, or similar agreement with a disclosing party on an exception basis, and only after notifying the Contracting Officer. The Government and the disclosing contractors, subcontractors, suppliers, and vendors agree to cooperate to ensure the execution of any non-disclosure agreement does not delay or inhibit performance of this contract, and the Government shall require support contractors to do the same. Such agreements shall not otherwise restrict any rights due the Government under this contract. Separate non-disclosure agreements may be executed only in the following exceptional circumstances:
 - (1) The support contractor is a direct competitor of the disclosing party in furnishing end items or services of the type developed or produced for the program or effort;
 - (2) The support contractor will require access to extremely sensitive business data; or
 - (3) Other unique business situations exist in which the disclosing party can clearly demonstrate that clause G52.209-008 does not adequately protect their competitive interests.
- (h) Any proprietary information furnished to support contractors shall be:
 - (1) Disclosed in writing and clearly marked "proprietary" or with other words of similar meaning; or
 - (2) Disclosed orally or visually (for instance, during a plant tour, briefing, or demonstration) and identified as proprietary information at the time of the oral or visual disclosure by the Government or a disclosing party. The support contractors shall treat all such information as proprietary unless within fifteen (15) days the support contractor coordinates with the Government or disclosing party to obtain a written version of the proprietary information and determine the extent of the proprietary claims; or
 - (3) Disclosed by electronic transmission (e.g., facsimile, electronic mail, etc.) in either human readable form or machine readable form, and the contractor marks it electronically as proprietary within the electronic transmissions, such marking to be displayed in human readable form along with any display of the proprietary information; or
 - (4) Disclosed by delivery of an electronic storage medium or memory device, and the contractor marks the storage medium or memory device itself as containing proprietary information and electronically marks the stored information as proprietary, such marking to be displayed in human readable form along with any display of the proprietary information.

- (i) The contractor agrees not to hold the support contractor liable for unauthorized disclosure of proprietary information if it can be demonstrated in written documentation or other competent evidence that the information was:
 - (1) Already known to the support contractor without restriction on its use or disclosure at the time of its disclosure by the disclosing party;
 - (2) In the public domain or becomes publicly known through no wrongful act of the support contractor;
 - (3) Proprietary information disclosed by the support contractor with the contractor's prior written permission;
 - (4) Independently developed by the support contractor, subsequent to its receipt, without the use of any proprietary information;
 - (5) Disclosed to the support contractor by a third party who was legally entitled to disclose the same and who did not acquire the proprietary information from the disclosing party; or
 - (6) Specifically provided in writing by the U.S. Government to the support contractor with an unlimited rights license; or
 - (7) Disclosed by the support contractor as required by law, regulatory or legislative authority, including subpoenas, criminal or civil investigative demands, or similar processes, provided the support contractor provides the disclosing party that originated the proprietary information with prompt written notice so that the disclosing party may seek a protective order or other appropriate remedy, and provided that, in the absence of a timely protective order, the support contractor furnishes only that minimum portion of the proprietary information that is legally required.
- (j) Any notice to the support contractor(s) required or contemplated under the provisions of this clause or clause G52.209-008, Support Contractor Corporate Non-Disclosure Agreement, shall be in writing and shall be deemed to have been given on:
 - (1) The date received if delivered personally or by overnight courier;
 - (2) The third day after being deposited in the U.S. mail, postage prepaid; or
 - (3) The date sent if sent by facsimile transmission or e-mail with a digital copy.
- (k) The Government and contractor agree to cooperate in resolving any unauthorized disclosure or misuse of proprietary information by a support contractor. This shall not be construed as requiring the contractor to conduct an inquiry into an unauthorized disclosure or misuse, or as authorizing the allocation of costs for such an inquiry directly to this contract. Any costs incurred by the contractor in said fact-finding efforts may be allowable and allocable upon determination of the Contracting Officer after adjudicating the circumstances related to any unauthorized disclosures or misuse.

(End of clause)

G52.215-003

Intention to Use Consultants (JAN 2005)

- (a) The Government intends to utilize the services of non-Government consultants in technical, advisory, and consulting roles for overall technical review of the activities covered by this contract. Although the consultants shall not have the right of technical direction, they will attend technical reviews, participate in technical interchange meetings, observe processing and production efforts, witness fabrication and assembly, and monitor testing within contractor and subcontractor facilities. Such consultants will provide advice to the Government concerning viability of technical approaches, utilization of acceptable procedures, value and results of tests, and the like. The consultants will therefore require access to program-related contractor and subcontractor facilities and documentation. Contractor proprietary data shall not be made available to consultants unless and until a protection agreement has been generated between the consultant and the contractor, and evidence of such agreement has been made available to the Contracting Officer.
- (b) It is expressly understood that the operations of this clause will not be the basis for an equitable adjustment.

(End of clause)

G52.215-014

Cost Estimating System Requirements (JAN 2005) (Applies to Contracts when cost and pricing data are provided)

- (a) Definition.

Estimating system means the contractor's policies, procedures, and practices for generating estimates of costs and other data included in proposals submitted to customers in the expectation of receiving contract awards. The estimating system includes the contractor's organizational structure; established lines of authority, duties, and responsibilities; internal controls and managerial reviews; workflow, coordination, and communication; and estimating methods, techniques, accumulation of historical costs, and other analyses used to generate cost estimates.
- (b) General.
 - (1) The contractor shall establish, maintain, and comply with an estimating system that is consistently applied and produces reliable, verifiable, supportable, and documented cost estimates that are an acceptable basis for negotiation of fair and reasonable prices.

- (2) The system should be consistent and integrated with the contractor's related management systems, and subject to applicable financial control systems.
 - (c) Applicability. Paragraphs (d) and (e) of this clause apply if the contractor is a large business or received, in its fiscal year preceding award of this contract, Government prime contracts or subcontracts totaling \$50 million or more for which certified cost or pricing data were required.
 - (d) System Requirements.
 - (1) The contractor shall disclose its estimating system to the Government in writing. If the contractor wants the Government to protect this information as privileged or confidential, the contractor must mark the documents with the appropriate legends before submission.
 - (2) An estimating system disclosure is adequate when the contractor documentation accurately describes those policies, procedures, and practices that the contractor currently uses to prepare cost proposals, and provides sufficient detail for the Government to reasonably make an informed judgment regarding the adequacy of the contractor's estimating practices.
 - (3) The contractor shall comply with its disclosed estimating system, and disclose significant changes to the cost estimating system to the Government on a timely basis.
 - (e) Estimating System Deficiencies.
 - (1) The contractor shall respond to a written report from the Government which identifies deficiencies in the contractor's estimating system as follows:
 - (i) If the contractor agrees with the report findings and recommendations, the contractor shall, within 30 days, state its agreement in writing, and, within 60 days, correct the deficiencies or submit a corrective action plan proposing milestones and actions leading to elimination of the deficiencies.
 - (ii) If the contractor disagrees with the report, the contractor shall, within 30 days, state its rationale for disagreeing.
 - (2) The Government will evaluate the contractor's response and notify the contractor of the determination concerning remaining deficiencies and/or the adequacy of any proposed or completed corrective action.
- (End of clause)

G52.215-016 Subcontractor Certified Cost or Pricing Data – Modifications (JUN 2018)

Insert the following clause, in lieu of FAR clause FAR 52.215-13:

- (a) The requirements of paragraphs (b) and (c) of this clause shall–
 - (1) Become operative only for any modification of a subcontract that was awarded prior to 1 July 2018, involving a pricing adjustment expected to exceed \$750,000, or any modification of a subcontract awarded on or after 1 July 2018, involving a pricing adjustment expected to exceed \$2 million; and
 - (2) Be limited to such modifications.
- (b) Unless an exception under FAR 15.403-1 applies, the Contractor shall require the subcontractor to submit certified cost or pricing data (actually or by specific identification in writing), in accordance with FAR 15.408, Table 15-2 (to include any information reasonably required to explain the subcontractor's estimating process such as the judgmental factors applied and the mathematical or other methods used in the estimate, including those used in projecting from known data, and the nature and amount of any contingencies included in the price)–
 - (1) Before modifying any subcontract that was awarded prior to 1 July 2018, involving a pricing adjustment expected to exceed \$750,000, or
 - (2) Before modifying any subcontract that was awarded on or after 1 July 2018, involving a pricing adjustment expected to exceed \$2 million.
- (c) The Contractor shall require the subcontractor to certify in substantially the form prescribed in FAR 15.406-2 that, to the best of its knowledge and belief, the data submitted under paragraph (b) of this clause were accurate, complete, and current as of the date of agreement on the negotiated price of the subcontract or subcontract modification.
- (d) The Contractor shall insert the substance of this clause, including this paragraph (d), in each subcontract that exceeds \$2 million.

(End of clause)

G52.219-001 Utilization of Small Business Concerns (DEC 2011)

- (a) It is the policy of the United States that small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns shall have the maximum practicable opportunity to participate in performing contracts let by any Federal Agency, including contracts and subcontracts for subsystems, assemblies, components and related services for major systems. It is further the policy of the United States that its prime contractors establish procedures to ensure the timely payment of

amounts due pursuant to the terms of their subcontracts with small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns.

- (b) The contractor hereby agrees to carry out this policy in the awarding of subcontracts to the fullest extent consistent with efficient contract performance. The contractor further agrees to cooperate in any studies or surveys as may be conducted by the Contracting Officer or his representative as may be necessary to determine the extent of the contractor's compliance with this clause.

- (c) Definitions. As used in this contract—

HubZone Small Business Concern means a small business concern that appears on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration.

Service-disabled Veteran-owned Small Business Concern--

- (1) Means a small business concern—

- (i) Not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans; and
- (ii) The management and daily business operations of which are controlled by one or more service-disabled veterans or, in the case of a veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran.

- (2) *Service-disabled Veteran* means a veteran, as defined in 38 U.S.C.101 (2), with a disability that is service-connected, as defined in 38 U.S.C.101 (16).

Small Business Concern means a small business as defined pursuant to Section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto.

Small Disadvantaged Business Concern means a small business concern that represents, as part of its offer that—

- (1) (i) It has received certification as a small disadvantaged business concern consistent with 13 CFR part 124, subpart B;
- (ii) No material change in disadvantaged ownership and control has occurred since its certification;
- (iii) Where the concern is owned by one or more individuals, the net worth of each individual upon whom the certification is based does not exceed \$750,000 after taking into account the applicable exclusions set forth at 13 CFR 124.104(c)(2); and
- (iv) It is identified, on the date of its representation, as a certified small disadvantaged business in the Central Contractor Registration (CCR) Dynamic Small Business Search database maintained by the Small Business Administration, or
- (2) It represents in writing that it qualifies as a small disadvantaged business (SDB) for any Federal subcontracting program, and believes in good faith that it is owned and controlled by one or more socially and economically disadvantaged individuals and meet the SDB eligibility criteria of 13 CFR 124.1002.

Veteran-owned Small Business Concern means a small business concern—

- (1) Not less than 51 percent of which is owned by one or more veterans (as defined at 38 U.S.C.101 (2)) or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans; and
- (2) The management and daily business operations of which are controlled by one or more veterans.

Women-owned Small Business Concern means a small business concern—

- (1) That is at least 51 percent owned by one or more women, or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and
- (2) Whose management and daily business operations are controlled by one or more women.
- (d) (1) Contractors acting in good faith may rely on written representations by their subcontractors regarding their status as a small business concern, a veteran-owned small business concern, a service-disabled veteran-owned small business concern, a HUBZone small business concern, a small disadvantaged business concern, or a women-owned small business concern.
- (2) The contractor shall confirm that a subcontractor representing itself as a HUBZone small business concern is certified by SBA as a HUBZone small business concern by accessing the CCR database at <http://www.sba.gov/hubzone>.

(End of clause)

G52.219-002 Small Business Subcontracting Plan (OCT 2015)

(Applies if this Contract exceeds \$700,000 and Contractor is not a small business. Note 2 applies. The Contractor's subcontracting plan is incorporated herein by reference.)

- (a) This clause does not apply to small business concerns.

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

Alaska Native Corporation (ANC) means any Regional Corporation, Village Corporation, Urban Corporation, or Group Corporation organized under the laws of the State of Alaska in accordance with the Alaska Native Claims

Settlement Act, as amended (43 U.S.C. 1601, *et seq.*) and which is considered a minority and economically disadvantaged concern under the criteria at 43 U.S.C. 1626(e)(1). This definition also includes ANC direct and indirect subsidiary corporations, joint ventures, and partnerships that meet the requirements of 43 U.S.C. 1626(e)(2).

Commercial Item means a product or service that satisfies the definition of commercial item in section 2.101 of the Federal Acquisition Regulation.

Commercial Plan means a subcontracting plan (including goals) that covers the offeror's fiscal year and that applies to the entire production of commercial items sold by either the entire company or a portion thereof (e.g., division, plant, or product line).

Indian Tribe means any Indian tribe, band, group, pueblo, or community, including native villages and native groups (including corporations organized by Kenai, Juneau, Sitka, and Kodiak) as defined in the Alaska Native Claims Settlement Act (43 U.S.C.A. 1601 *et seq.*), that is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs in accordance with 25 U.S.C. 1452(c). This definition also includes Indian-owned economic enterprises that meet the requirements of 25 U.S.C. 1452(e).

Individual Contract Plan means a subcontracting plan that covers the entire contract period (including option periods), applies to a specific contract, and has goals that are based on the offeror's planned subcontracting in support of the specific contract, except that indirect costs incurred for common or joint purposes may be allocated on a prorated basis to the contract.

Master Plan means a subcontracting plan that contains all the required elements of an individual contract plan, except goals, and may be incorporated into individual contract plans, provided the master plan has been approved.

Subcontract means any agreement (other than one involving an employer-employee relationship) entered into by a Federal Government prime contractor or subcontractor calling for supplies or services required for performance of the contract or subcontract.

- (c) The offeror, upon request by the Contracting Officer, shall submit and negotiate a subcontracting plan, where applicable, that separately addresses subcontracting with small business, service-disabled veteran-owned small business, HUBZone small business concerns, small disadvantaged business, and women-owned small business concerns. If the offeror is submitting an individual contract plan, the plan must separately address subcontracting with small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns, with a separate part for the basic contract and separate parts for each option (if any). The plan shall be included in and made a part of the resultant contract. The subcontracting plan shall be negotiated within the time specified by the Contracting Officer. Failure to submit and negotiate the subcontracting plan shall make the offeror ineligible for award of a contract.
- (d) The offeror's subcontracting plan shall include the following:
- (1) Goals, expressed in terms of percentages of total planned subcontracting dollars, for the use of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns as subcontractors. The offeror shall include all subcontracts that contribute to contract performance, and may include a proportionate share of products and services that are normally allocated as indirect costs. In accordance with 43 U.S.C. 1626:
 - (i) Subcontracts awarded to an ANC or Indian tribe shall be counted towards the subcontracting goals for small business and small disadvantaged business (SDB) concerns, regardless of the size or Small Business Administration certification status of the ANC or Indian tribe.
 - (ii) Where one or more subcontractors are in the subcontract tier between the prime contractor and the ANC or Indian tribe, the ANC or Indian tribe shall designate the appropriate contractor(s) to count the subcontract towards its small business and small disadvantaged business subcontracting goals.
 - (A) In most cases, the appropriate contractor is the contractor that awarded the subcontract to the ANC or Indian tribe.
 - (B) If the ANC or Indian tribe designates more than one contractor to count the subcontract toward its goals, the ANC or Indian tribe shall designate only a portion of the total subcontract award to each contractor. The sum of the amounts designated to various contractors cannot exceed the total value of the subcontract.
 - (C) The ANC or Indian tribe shall give a copy of the written designation to the Contracting Officer, the prime contractor, and the subcontractors in between the prime contractor and the ANC or Indian tribe within 30 days of the date of the subcontract award.
 - (D) If the Contracting Officer does not receive a copy of the ANC's or the Indian tribe's written designation within 30 days of the subcontract award, the contractor that awarded the subcontract to the ANC or Indian tribe will be considered the designated contractor.
 - (2) A statement of--
 - (i) Total dollars planned to be subcontracted for an individual contract plan; or the offeror's total projected sales, expressed in dollars, and the total value of projected subcontracts to support the sales for a commercial plan;
 - (ii) Total dollars planned to be subcontracted to small business concerns (including ANC and Indian

- tribes);
 - (iii) Total dollars planned to be subcontracted to veteran-owned small business concerns;
 - (iv) Total dollars planned to be subcontracted to service-disabled veteran-owned small business;
 - (v) Total dollars planned to be subcontracted to HUBZone small business concerns;
 - (vi) Total dollars planned to be subcontracted to small disadvantaged business concerns (including ANC and Indian tribes); and
 - (vii) Total dollars planned to be subcontracted to women-owned small business concerns.
- (3) A description of the principal types of supplies and services to be subcontracted, and an identification of the types planned for subcontracting to—
 - (i) Small business concerns;
 - (ii) Veteran-owned small business concerns;
 - (iii) Service-disabled veteran-owned small business concerns;
 - (iv) HUBZone small business concerns;
 - (v) Small disadvantaged business concerns; and
 - (vi) Women-owned small business concerns.
 - (4) A description of the method used to develop the subcontracting goals in paragraph (d)(1) of this clause.
 - (5) A description of the method used to identify potential sources for solicitation purposes (e.g., existing company source lists, the Central Contractor Registration database (CCR), veterans service organizations, the National Minority Purchasing Council Vendor Information Service, the Research and Information Division of the Minority Business Development Agency in the Department of Commerce, or small, HUBZone, small disadvantaged, and women-owned small business trade associations). A firm may rely on the information contained in CCR as an accurate representation of a concern's size and ownership characteristics for the purposes of maintaining a small, veteran-owned small, service-disabled veteran-owned small, HUBZone small, small disadvantaged, and women-owned small business source list. Use of CCR as its source list does not relieve a firm of its responsibilities (e.g., outreach, assistance, counseling, or publicizing subcontracting opportunities) in this clause.
 - (6) A statement as to whether or not the offeror included indirect costs in establishing subcontracting goals, and a description of the method used to determine the proportionate share of indirect costs to be incurred with—
 - (i) Small business concerns(including ANC and Indian tribes);
 - (ii) Veteran-owned small business concerns;
 - (iii) Service-disabled veteran-owned small business concerns;
 - (iv) HUBZone small business concerns;
 - (v) Small disadvantaged business concerns (including ANC and Indian tribes); and
 - (vi) Women-owned small business concerns.
 - (7) The name of the individual employed by the offeror who will administer the offeror's subcontracting program, and a description of the duties of the individual.
 - (8) A description of the efforts the offeror will make to assure that small business, veteran-owned small business, service-disabled veteran-owned small business HUBZone small business, small disadvantaged business, and women-owned small business concerns have an equitable opportunity to compete for subcontracts.
 - (9) Assurances that the offeror will include the clause of this contract entitled *Utilization of Small Business Concerns* in all subcontracts that offer further subcontracting opportunities, and that the offeror will require all subcontractors (except small business concerns) that receive subcontracts in excess of \$700,000 (\$1,500,000 for construction of any public facility) with further subcontracting possibilities to adopt a subcontracting plan that complies with the requirements of this clause.
 - (10) Assurances that the offeror will cooperate in any studies or surveys as may be required by the contracting agency in order to determine the extent of compliance by the offeror with the subcontracting plan.
 - (11) A description of the types of records that will be maintained concerning procedures that have been adopted to comply with the requirements and goals in the plan, including establishing source lists; and a description of the offeror's efforts to locate small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns and award subcontracts to them. The records shall include at least the following (on a plant-wide or company-wide basis, unless otherwise indicated):
 - (i) Source lists (e.g., CCR), guides, and other data that identify small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns.
 - (ii) Organizations contacted in an attempt to locate sources that are small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, or women-owned small business concerns.
 - (iii) Records on each subcontract solicitation resulting in an award of more than \$150,000, indicating--
 - (A) Whether small business concerns were solicited and, if not, why not;
 - (B) Whether veteran-owned small business concerns were solicited and, if not, why not;

- (C) Whether service-disabled veteran-owned small business concerns were solicited and, if not, why not;
 - (D) Whether HUBZone small business concerns were solicited and, if not, why not;
 - (E) Whether small disadvantaged business concerns were solicited and, if not, why not;
 - (F) Whether women-owned small business concerns were solicited and, if not, why not; and
 - (G) If applicable, the reason award was not made to a small business concern.
- (iv) Records of any outreach efforts to contact--
- (A) Trade associations;
 - (B) Business development organizations;
 - (C) Conferences and trade fairs to locate small, HUBZone small, small disadvantaged, and women-owned small business sources; and
 - (D) Veterans service organizations.
- (v) Records of internal guidance and encouragement provided to buyers through--
- (A) Workshops, seminars, training, etc.; and
 - (B) Monitoring performance to evaluate compliance with the program's requirements.
- (vi) On a contract-by-contract basis, records to support award data submitted by the offeror to the Government, including the name, address, and business size of each subcontractor. Contractors having commercial plans need not comply with this requirement.
- (e) In order to effectively implement this plan to the extent consistent with efficient contract performance, the contractor shall perform the following functions:
- (1) Assist small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation by such concerns. Where the contractor's lists of potential small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business subcontractors are excessively long, reasonable effort shall be made to give all such small business concerns an opportunity to compete over a period of time.
 - (2) Provide adequate and timely consideration of the potentialities of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns in all "make-or-buy" decisions.
 - (3) Counsel and discuss subcontracting opportunities with representatives of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business firms.
 - (4) Confirm that a subcontractor representing itself as a HUBZone small business concern is identified as a certified HUBZone small business concern by accessing the CCR database.
 - (5) Provide notice to subcontractors concerning penalties and remedies for misrepresentations of business status as small, veteran-owned small business, HUBZone small, small disadvantaged, or women-owned small business for the purpose of obtaining a subcontract that is to be included as part or all of a goal contained in the contractor's subcontracting plan.
 - (6) For all competitive subcontracts over the simplified acquisition threshold in which a small business concern received a small business preference, upon determination of the successful subcontract offeror, the contractor must inform each unsuccessful small business subcontract offeror in writing of the name and location of the apparent successful offeror prior to award of the contract.
- (f) A master plan on a plant or division-wide basis that contains all the elements required by paragraph (d) of this clause, except goals, may be incorporated by reference as a part of the subcontracting plan required of the offeror by this clause; provided--
- (1) The master plan has been approved,
 - (2) The offeror ensures that the master plan is updated as necessary and provides copies of the approved master plan, including evidence of its approval, to the Contracting Officer; and
 - (3) Goals and any deviations from the master plan deemed necessary by the Contracting Officer to satisfy the requirements of this contract are set forth in the individual subcontracting plan.
- (g) A commercial plan is the preferred type of subcontracting plan for contractors furnishing commercial items. The commercial plan shall relate to the offeror's planned subcontracting generally, for both commercial and Government business, rather than solely to the Government contract. Once the contractor's commercial plan has been approved, the Government will not require another subcontracting plan from the same contractor while the plan remains in effect, as long as the product or service being provided by the contractor continues to meet the definition of a commercial item.
- (h) Prior compliance of the offeror with other such subcontracting plans under previous contracts will be considered by the Contracting Officer in determining the responsibility of the offeror for award of the contract.

- (i) A contract may have no more than one plan. When a modification meets the criteria in FAR 19.702 for a plan, or an option is exercised, the goals associated with the modification or option shall be added to those in the existing subcontract plan.
- (j) Subcontracting plans are not required from subcontractors when the prime contract contains FAR Clause 52.212-5, *Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items*, or when the subcontractor provides a commercial item subject to FAR Clause 52.244-6, *Subcontracts for Commercial Items*, under a prime contract.
- (k) The failure of the contractor or subcontractor to comply in good faith with--
 - (1) The clause of this contract entitled Utilization of Small Business Concerns; or
 - (2) An approved plan required by this clause, shall be a material breach of the contract.

(End of clause)

G52.219-002 Alt 1 Small Business Subcontracting Plan Alt 1 (Dec 2011)

(Applies if this Contract exceeds \$700,000 and Contractor is not a small business. Note 2 applies. The Contractor's subcontracting plan is incorporated herein by reference.)

Substitute the following paragraph (c) for paragraph (c) of the basic clause when subcontracting plans are required to be submitted with proposals:

(c) Proposal submitted in response to this solicitation shall include a subcontracting plan that separately addresses subcontracting with small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns. If the offeror is submitting an individual contract plan, the plan must separately address subcontracting with small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns, with a separate part for the basic contract and separate parts for each option (if any). The plan shall be included in and made a part of the resultant contract. The subcontracting plan shall be negotiated within the time specified by the Contracting Officer. Failure to submit and negotiate a subcontracting plan shall make the offeror ineligible for award of a contract.

(End of clause)

G52.222-002 Exceptions to Federal Labor Requirements (JAN 2020) (Note 6 applies.)

While fulfilling the requirements of the FAR Part 22 Clauses included in this contract, the contractor shall not directly contact the Department of Labor citing this contract without first obtaining the written approval of the Contracting Officer.

(End of clause)

G52.223-005 Prohibition on Storage and Disposal of Toxic and Hazardous Materials (JAN 2004) (Note 7 applies)

(a) Definitions. As used in this clause:

- (1) *Storage* means a non-transitory, semi-permanent or permanent holding, placement, or leaving of material. It does not include a temporary accumulation of a limited quantity of a material used in or a waste generated or resulting from authorized activities, such as servicing, maintenance, or repair of Government items, equipment, or facilities.
- (2) *Toxic or hazardous materials* means those materials identified in the EPA Title III List of Lists.
- (b) The contractor is prohibited from transporting, storing, disposing, or using toxic or hazardous materials in performing this contract except for those materials listed in (c) below or when authorized in writing by the Contracting Officer.

(c) The following toxic and hazardous materials are authorized for use in the performance of this contract:

Toxic Material	Use	Limitations
<i>None</i>		

(End of clause)

G52.223-006 Contractor Compliance with Environmental, Occupational Safety and Health, and System Safety Requirements (OCT 1997) (Note 7 applies)

- (a) In performing work under this contract, the contractor shall comply with-
 - (1) All applicable Federal, State, and local environmental, occupational safety and health, and system safety laws, regulations, policies and procedures in effect as of the date the contract is executed;

- (2) Any regulations, policies and procedures in effect at any Government facility where work will be performed;
 - (3) Any contract specific requirements; and
 - (4) Any Contracting Officer direction.
- (b) **Conflicting Requirements.** The contractor shall provide written notification to the Contracting Officer of any conflicts in requirements. The notification will describe the conflicting requirements and their source; provide an estimate of any impact to the contract's cost, schedule, and any other terms and conditions; and provide a recommended solution. The notification will also identify any external organizations that the Contracting Officer or the contractor may have to coordinate with in order to implement the solution. The Contracting Officer will review the notification and provide written direction. Until the Contracting Officer issues that direction, the contractor will continue performance of the contract, to the extent practicable, giving precedence in the following order to requirements that originate from:
- (1) Federal, state, and local laws, regulations, policies and procedures;
 - (2) Government facility regulations, policies and procedures; and
 - (3) Contract specific direction.
- (c) **Material Condition of Contract.** Environmental, occupational safety and health, and system safety requirements are a material condition of this contract. Failure of the contractor to maintain and administer an environmental and safety program that is compliant with the requirements of this contract shall constitute grounds for termination for default.

(End of clause)

G52.223-007 Elimination of Class I Ozone Depleting Substances (ODS) (APR 2004) (Note 2 applies)

- (a) Unless authorized under paragraph (b) below, use of a Class I ODS (as defined in 40 CFR 82) is prohibited under this contract.
- (b) Where considered essential, specific approval has been obtained to require use of the following substances:

Substance	Application/Use	Quantity
<i>None</i>		
- (c) The offeror/contractor shall notify the Contracting Officer if any Class I ODS not specifically listed above is required in the performance of this contract.

(End of clause)

G52.223-008 Contractor Identification of Ozone Depleting Substances (ODS) (JAN 2004)

- (a) ODS are defined in 40 CFR 82.
- (b) As part of the contractor's proposal, the contractor shall identify all standards and specifications applicable to the proposed contract which may be met only through the use of an ODS. The contractor shall specifically call out the specification or standard and the ODS proposed for use. Unless otherwise identified in the contractor's proposal, and subsequent approval for use granted by the Government, the contractor will be expected to perform all specifications and standards without the use of ODS.
- (c) Identification required by paragraph (b) above shall be in a separate volume of the contractor's proposal. Page limitations do not apply to this separate volume.

(End of clause)

G52.225-003 Export Controlled Items (NOV 2018)

- (a) *Definition.* "Export-controlled items," as used in this clause, means items subject to the Export Administration Regulations (EAR) (15 CFR Parts 730-774) or the International Traffic in Arms Regulations (ITAR) (22 CFR Parts 120-130). The term includes:
 - (1) "Defense items," defined in the Arms Export Control Act, 22 U.S.C. 2778(j)(4)(A), as defense articles, defense services, and related technical data, and further defined in the ITAR, 22 CFR Part 120.
 - (2) "Items," defined in the EAR as "commodities", "software", and "technology," terms that are also defined in the EAR, 15 CFR 772.1.
- (b) The Contractor shall comply with all applicable laws and regulations regarding export-controlled items, including, but not limited to, the requirement for contractors to register with the Department of State in accordance with the ITAR. The Contractor shall consult with the Department of State regarding any questions relating to compliance with the ITAR and shall consult with the Department of Commerce regarding any questions relating to compliance with the EAR.

(c) The Contractor's responsibility to comply with all applicable laws and regulations regarding export-controlled items exists independent of, and is not established or limited by, the information provided by this clause.

(d) Nothing in the terms of this contract adds, changes, supersedes, or waives any of the requirements of applicable Federal laws, Executive orders, and regulations, including but not limited to—

- (1) The Export Administration Act of 1979, as amended (50 U.S.C. App. 2401, et seq.);
- (2) The Arms Export Control Act (22 U.S.C. 2751, et seq.);
- (3) The International Emergency Economic Powers Act (50 U.S.C. 1701, et seq.);
- (4) The Export Administration Regulations (15 CFR Parts 730-774);
- (5) The International Traffic in Arms Regulations (22 CFR Parts 120-130); and
- (6) Executive Order 13222, as extended.

(e) The Contractor shall include the substance of this clause, including this paragraph (e), in all subcontracts.
(End of clause)

G52.227-001

Technical Data and Computer Software: Commercial Items (JUL 2018) (Rights shall flow to the Government. SEAKR is granted a limited license to use data and software for this program.)

(a) Definitions. As used in this clause:

(1) *Business data* means recorded information, regardless of the form or method of the recording, including specific business data contained in a computer database, of a financial, administrative, cost or pricing, or management nature, or other information incidental to contract administration or protected from disclosure under the Freedom of Information Act, 5 U.S.C. §552(b)(4).

(2) *Commercial item* means:

(i) Any item, other than real property, but inclusive of computer software, that is of a type customarily used by the general public or by non-governmental entities for purposes other than governmental purposes, and—

- (A) Has been sold, leased, or licensed to the general public; or
- (B) Has been offered for sale, lease, or license to the general public;

(ii) Any item that evolved from an item described in paragraph (i) of this definition through advances in technology or performance, and that is not yet available in the commercial marketplace, but will be available in the commercial marketplace in time to satisfy the delivery requirements under a Government solicitation or contract;

(iii) Any item that would satisfy a criterion expressed in paragraphs (i) or (ii) of this definition, but for—

- (A) Modifications of a type customarily available in the commercial marketplace; or
- (B) Minor modifications of a type not customarily available in the commercial marketplace made to meet Federal Government requirements. "Minor modifications" means modifications that do not significantly alter the non-governmental function or essential physical characteristics of an item or component or change the purpose of a process or computer software. Factors to be considered in determining whether a modification is minor include the value and size of the modification and the comparative value and size of the final product. Dollar values and percentages may be used as guideposts, but are not conclusive evidence that a modification is minor;

(iv) Any combination of items meeting the requirements of paragraphs (i), (ii), (iii), or (v) of this definition that are of a type customarily combined and sold in combination to the general public;

(v) Installation services, maintenance services, repair services, training services, and other services if—

(A) Such services are procured for support of an item referred to in paragraph (i), (ii), (iii), or (iv) of this definition, regardless of whether such services are provided by the same source or at the same time as the item; and

(B) The source of such services provides similar services contemporaneously to the general public under terms and conditions similar to those offered to the Federal Government;

(vi) Services of a type offered and sold competitively in substantial quantities in the commercial marketplace based on established catalog or market prices for specific tasks performed or specific outcomes to be achieved, and under standard commercial terms and conditions. For purposes of these services—

(A) "Catalog price" means a price included in a catalog, price list, schedule, or other form that is regularly maintained by the manufacturer or vendor, is either published or otherwise available for inspection by customers, and states prices at which sales are currently, or were last, made to a significant number of buyers constituting the general public; and

(B) "Market prices" means current prices that are established in the course of ordinary trade between buyers and sellers free to bargain, and that can be substantiated through competition or from sources independent of the offerors.

(vii) Any item, combination of items, or service referred to in paragraphs (i) through (vi) of this definition, notwithstanding the fact that the item, combination of items, or service is transferred between or among separate divisions, subsidiaries, or affiliates of a contractor; or (viii) A non-developmental item, if the procuring agency determines the item was developed exclusively at private expense and sold in substantial quantities, on a competitive basis, to multiple State and local governments.

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

(4) *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.

(5) *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. The term does not include computer databases or computer software documentation.

(6) *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 or maintaining the computer software.

(7) *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. For computer software it means data identifying source, functional characteristics, and performance requirements, but specifically excludes the source code, algorithms, processes, formulas, and flow charts of the software.

(8) *Technical data* means recorded information (regardless of the form or method of the recording, including computer databases) of a scientific or technical nature (including computer software documentation). The term includes recorded information of a scientific or technical nature that is included in computer databases. (See 41 U.S.C. §403(8)). This term does not include computer software or business data.

(b) License in Commercial Technical Data.

(1) The Government shall have the unrestricted right to use, modify, reproduce, release, perform, display, or disclose technical data relating to a commercial item, and to permit others to do so, that:

(i) Have been provided to the Government or others without restrictions on use, modification, reproduction, release, or further disclosure other than a release or disclosure resulting from the sale, transfer, or other assignment of interest in the technical data to another party, or the sale or transfer of some or all of a business entity or its assets to another party;

(ii) Are form, fit, and function data;

(iii) Are a correction or change to technical data furnished to the contractor by the Government;

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

(v) Have been provided to the Government under a prior contract or licensing agreement through which the Government has acquired the rights to use, modify, reproduce, release, perform, display, or disclose technical data without restrictions. (2) Except as provided in paragraph (b)(1), the Government may use, modify, reproduce, release, perform, display, or disclose technical data within the Government only.

(3) The Government shall not use the technical data to manufacture additional quantities or release, perform, display, disclose, or authorize use of the technical data outside the Government without the contractor's written permission unless a release, disclosure, or permitted use is necessary for emergency repair or overhaul of the commercial items furnished under this contract, or for performance of work by Government support contractors.

(c) License in Commercial Computer Software. Commercial computer software and commercial computer software documentation shall be acquired under the licenses customarily provided to the public unless such licenses are inconsistent with federal procurement law or do not otherwise satisfy user needs. The Government shall have only the rights specified in the license under which the commercial computer software and commercial computer software documentation was obtained. Such license shall be attached to and made a part of this contract.

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

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

(End of clause)

G52.227-002

Rights in Technical Data and Computer Software: Noncommercial Items (FEB 2011)

(Note 3 applies. This clause applies if any technical data or computer software for noncommercial items is to be obtained from Contractor, its subcontractors or its suppliers for delivery to the Government under this Contract. Rights shall flow to the Government. SEAKR is granted a limited license to use data and software for this program.)

(a) Definitions. As used in this clause:

(1) *Business data* means recorded information, regardless of the form or method of the recording, including specific business data contained in a computer database, of a financial, administrative, cost or pricing, or management nature, or other information incidental to contract administration or protected from disclosure under the Freedom of Information Act, 5 U.S.C. §552(b)(4).

(2) *Computer data base* means a collection of data recorded in a form capable of being processed and operated 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 or maintaining the software.
 - (6) *Delivery* means the formal act of transferring technical data, computer software, or business data to the Government as expressly delineated in the contract (including, but not limited to the Contract Data Requirements List, the statement of work, or elsewhere in the contract), in accordance with a specified schedule.
 - (7) *Detailed manufacturing or process data* means technical data and computer software that describes 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.
 - (8) *Developed* means that an item, component, or process, or an element of computer software has been shown through sufficient analysis or test to demonstrate to one of ordinary skill in the applicable art that there is a reasonable probability that the item, component, process, or element of computer software will work or perform its intended application, function, or purpose.
 - (9) *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. 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. Private expense determinations should be made at the lowest practicable level.
 - (10) *Developed exclusively with Government funds* means all the costs of development were charged directly to a Government contract.
 - (11) *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.
 - (12) *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. For computer software it means data identifying source, functional characteristics, and performance requirements, but specifically excludes the source code, algorithms, processes, formulas, and flow charts of the software.
 - (13) *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 providing technical data and computer software for use in a competitive procurement, but do not include the rights to use, modify, reproduce, release, perform, display, or disclose technical data and computer software for commercial purposes or authorize others to do so.
 - (14) *Technical data* means recorded information (regardless of the form or method of the recording, including computer databases) of a scientific or technical nature (including computer software documentation). The term includes recorded information of a scientific or technical nature that is included in computer databases (See 41 U.S.C. §403(8)). This term does not include computer software or business data.
- (b) Government Rights in Technical Data and Computer Software.
- (1) *Government purpose rights* means the rights to use, modify, reproduce, release, perform, display, or disclose technical data or computer software within the Government without restriction, to release or disclose technical data or computer software outside the Government, and to authorize persons to whom release has been made to use, modify, reproduce, perform, or display that technical data or computer software, provided that the recipient exercises such rights for Government purposes only.
 - (i) The Government shall have Government purpose rights for a five-year period after contract completion or for such other period as may be mutually negotiated. Upon expiration of the five-year or other negotiated period, the Government shall have unlimited rights in the technical data or computer software.
 - (ii) The contractor has the exclusive right, including the right to license others, to use technical data or computer software in which the Government has obtained Government purpose rights under this contract, for any commercial purpose during the time period specified in paragraph (b)(1)(i) above and/or in the Government purpose rights legend prescribed by this clause.
 - (iii) The Government shall have Government purpose rights in technical data or computer software delivered under this contract that:

- (A) Pertain to items, components, computer software, or processes developed with mixed funding, except when the Government is entitled to unlimited rights;
 - (B) Were created with mixed funding in the performance of a contract that does not specifically require the development, manufacture, construction, or production of items, components, computer software, or processes;
 - (C) The contractor has previously or is currently providing with Government purpose rights under another Government contract; or
 - (D) The parties have agreed shall be delivered with Government purpose rights.
- (iv) The Government may release the technical data or computer software to any third party as described in paragraph (b)(1) above if:
- (A) The receiving development contractor(s) or subcontractor(s) contract arrangements are subject to clauses G52.209-005, *Protection of Information*, and G52.227-005, *Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends*;
 - (B) The receiving support contractor(s) or subcontractor(s) contract arrangements are subject to clauses G52.209-008, *Support Contractor Corporate Non-Disclosure Agreement*, and G52.227-005, *Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends*. When clause G52.209-008 is used, additional non-disclosure, confidentiality, proprietary information, or similar agreements may be required by the owner of the technical data or computer software, but only on an exception basis, e.g., when such third party is or may be a direct competitor of the owner of the technical data or computer software. In the event an additional agreement is deemed necessary, the Contracting Officer shall be notified prior to its execution.
 - (C) The Government and contractor agree to cooperate to ensure that execution of any additional agreements shall not delay or inhibit performance of this contract. Such agreements shall not otherwise restrict any rights due the Government under this contract;
- (2) *Limited rights* means the rights to use, modify, reproduce, release, perform, display, or disclose technical data, in whole or in part, within the Government.
- (i) The Government may not, without the written permission of the party asserting limited rights, release or disclose the technical data outside the Government, use the technical data for manufacture, or authorize the technical data to be used by another party, except that the Government may reproduce, release, or disclose such data, or authorize the use or reproduction of the data by persons outside the Government if such reproduction, release, disclosure, or use is:
 - (A) Necessary for emergency repair and overhaul. In each instance of disclosure outside the Government, the Government shall:
 - (I) Prohibit the further reproduction, release, or disclosure of such technical data;
 - (II) Notify the party who has granted limited rights that such reproduction or use by, or release or disclosure to particular contractors or subcontractors is necessary;
 - (III) Insert clause G52.209-005, *Protection of Information*, and G52.227-005, *Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends*, into the contractual arrangement with the receiving development contractors;
 - (IV) Insert clause G52.209-008, *Support Contractor Corporate Non-Disclosure Agreement*, and G52.227-005, *Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends*, into the contractual arrangement with the receiving support contractor(s). An additional non-disclosure, confidentiality, proprietary information, or similar agreement may be required by the owner of the technical data, but only on an exception basis, e.g., when such third party is or may be a direct competitor of the owner of the technical data. In the event an additional agreement is deemed necessary, the Contracting Officer shall be notified prior to its execution; and
 - (V) Require the recipient of limited rights technical data necessary for emergency repair or overhaul to destroy such technical data and any copies in its possession promptly following completion of the emergency repair/overhaul, and to notify the contractor that it has been destroyed; or
 - (B) Is in the interest of the Government when a release or disclosure of technical data (other than detailed manufacturing or process data) to, or use of such data by, a foreign government is required for evaluation or information purposes, and is subject to a prohibition on further release, disclosure, or use of the technical data.
 - (ii) The Government and the contractor agree to cooperate to ensure that execution of necessary NDAs shall not delay or inhibit performance of this contract. Said agreements shall not otherwise restrict any rights due the Government under this contract.
 - (iii) Except as otherwise provided under paragraphs (b)(6)(i)-(xi), the Government shall have limited rights in technical data delivered under this contract that:
 - (A) Pertain to items, components, or processes developed exclusively at private expense and marked with the limited rights legends prescribed by this clause;
 - (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; or

- (C) The parties have agreed shall be delivered with limited rights.
- (iv) The contractor and its subcontractors are not required to provide the Government additional rights to use, modify, reproduce, release, perform, or display, technical data furnished to the Government with limited rights. However, if the Government desires to obtain additional rights in technical data in which it has limited rights, the contractor agrees to promptly enter into negotiations with the Contracting Officer to determine whether there are acceptable terms for transferring such rights. All technical data in which the contractor has granted the Government additional rights shall be listed or described in a license agreement made part of the contract. The license shall enumerate the additional rights granted the Government in such items.
- (3) *Prior Government rights* means that technical data or computer software 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.
- (4) *Restricted rights* apply only to non-commercial computer software, and means 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 (b)(4)(i) and (iii) of this clause; and
 - (B) Not release or disclose the modified software except as provided in paragraphs (b)(4)(ii), (v) and (vi) of this clause;
 - (v) Permit contractors or subcontractors performing service contracts 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 is necessary;
 - (B) The receiving development contractor(s) or subcontractor(s) contract arrangements are subject to clauses G52.209-005, *Protection of Information*, and G52.227-005, *Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends*;
 - (C) The receiving support contractor(s) or subcontractor(s) contract arrangements are subject to clauses G52.209-008, *Support Contractor Corporate Non-Disclosure Agreement*, and G52.227-005, *Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends*. When clause G52.209-008 is used, additional non-disclosure, confidentiality, proprietary information, or similar agreements may be required by the owner of the technical data or computer software, but only on an exception basis, e.g., when such third party is or may be a direct competitor of the owner of the technical data or computer software. In the event an additional agreement is deemed necessary, the Contracting Officer shall be notified prior to its execution.
 - (D) The Government and contractor agree to cooperate to ensure that execution of any additional agreements shall not delay or inhibit performance of this contract. Such agreements shall not otherwise restrict any rights due the Government under this contract;
 - (E) 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 (b)(4)(iv) of this clause, for any other purpose; and
 - (F) Such use is subject to the limitation in paragraph (b)(4)(i) of this clause.
 - (vi) Permit contractors or subcontractors performing emergency repairs or overhaul of items or components of items procured under this or a related contract to use the computer software when necessary to perform the repairs or overhaul, or to modify the computer software to reflect the repairs or overhaul made, provided that—
 - (A) The receiving development contractor(s) or subcontractor(s) contract arrangements are subject to clauses G52.209-005, *Protection of Information*, and G52.227-005, *Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends*;

- (B) The receiving support contractor(s) or subcontractor(s) contract arrangements are subject to clauses G52.209-008, *Support Contractor Corporate Non-Disclosure Agreement*, and G52.227-005, *Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends*. When clause G52.209-008 is used, additional non-disclosure, confidentiality, proprietary information, or similar agreements may be required by the owner of the technical data or computer software, but only on an exception basis, e.g., when such third party is or may be a direct competitor of the owner of the technical data or computer software. In the event an additional agreement is deemed necessary, the Contracting Officer shall be notified prior to its execution.
- (C) The Government and contractor agree to cooperate to ensure that execution of any additional agreements shall not delay or inhibit performance of this contract. Such agreements shall not otherwise restrict any rights due the Government under this contract.
- (D) 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 (b)(4)(iv) of this clause, for any other purpose.
- (vii) The Government shall have restricted rights in noncommercial computer software required to be delivered or otherwise provided to the Government under this contract that was developed exclusively at private expense.
- (viii) 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)(5) of this clause). The license shall enumerate the additional rights granted the Government.
- (5) *Specifically negotiated license rights* means a license granted by the contractor wherein the standard license rights granted to the Government under paragraphs (b)(1), (2), (3), (4), and (6), including the period during which the Government shall have government purpose rights in technical data or computer software, are modified by mutual agreement to provide such rights as the parties consider appropriate, but does not provide the Government lesser rights than limited rights for technical data or restricted rights for computer software unless mutually agreed by the contracting parties. Any rights so negotiated shall be identified in a license agreement made part of this contract and incorporated into the contract.
- (6) *Unlimited rights* means the rights to use, modify, reproduce, perform, display, release, or disclose technical data and computer software in whole or in part, in any manner and for any purpose whatsoever, and to have or authorize others to do so. The Government shall have unlimited rights in:
 - (i) Technical data pertaining to an item, component, or process, or pertaining to software code or a software program that has been or will be developed exclusively with Government funds;
 - (ii) Computer software developed exclusively with Government funds;
 - (iii) Form, fit, and function data;
 - (iv) Technical data that is necessary for installation, operation, maintenance, or training purposes (other than detailed manufacturing or process data);
 - (v) Studies, analyses, test data, or similar data when the study, analysis, test, or similar work was specified as an element of performance;
 - (vi) Computer software documentation required to be delivered under this contract;
 - (vii) Technical data created exclusively with Government funds in the performance of a contract that does not require the development, manufacture, construction, or production of items, components, or processes;
 - (viii) Corrections or changes to technical data or computer software furnished by the Government;
 - (ix) Technical data or computer software that is otherwise publicly available or has been released or disclosed by the contractor or subcontractor without restriction on the 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 or computer software to another party, or the sale or transfer of some or all of a business entity or its assets to another party;
 - (x) Technical data or computer software in which the Government has obtained unlimited rights under another Government contract or as a result of negotiations;
 - (xi) Technical data or computer software furnished to the Government under this or any other Government contract or subcontract thereunder, with Government purpose rights, limited rights, or restricted rights, and the restrictive condition(s) has/have expired, or the Government purpose rights and the contractor's exclusive right to use such data for commercial purposes have expired.
- (c) For business data marked as proprietary or with similar legends, the Government may duplicate, use, and disclose such data within the Government solely for evaluation, verification, validation, reporting, and program monitoring and management purposes in connection with this contract. The Government may disclose such business data to its support contractors identified in clause G52.209-006, *Enabling Clause for Prime and Support Contractor Relationships*, for these same purposes if and when:

- (1) The receiving development contractor(s) or subcontractor(s) contract arrangements are subject to clauses G52.209-005, *Protection of Information*, and G52.227-005, *Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends*;
- (2) The receiving support contractor(s) or subcontractor(s) contract arrangements are subject to clauses G52.209-008, *Support Contractor Corporate Non-Disclosure Agreement*, and G52.227-005, *Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends*. When clause G52.209-008 is used, additional non-disclosure, confidentiality, proprietary information, or similar agreement may be required by the owner of the business data, but only on an exception basis, e.g., when such third party is or may be a direct competitor of the owner of the technical data or computer software. In the event an additional agreement is deemed necessary, the Contracting Officer shall be notified prior to its execution.
 - (i) The Government and contractor agree to cooperate to ensure that execution of any additional agreements shall not delay or inhibit performance of this contract. Such agreements shall not otherwise restrict any rights due the Government under this contract;
- (d) Other Information That Cannot Easily Be Categorized. For information that cannot easily be categorized as technical data or business data (e.g., program schedules, Earned Value Management System reports, and program management reports), and is of sufficient detail to show a contractor's confidential business practices, shall be identified before or as soon as practicable after contract award. The parties will agree as to the parties' rights and obligations in such data and how it is to be marked, handled, used, and disclosed to third parties. Such agreement shall be in writing, attached to, and made a part of the contract.
- (e) Release from Liability. The contractor agrees to release the Government from liability for any release or disclosure of technical data and computer software made in accordance with this clause, in accordance with the terms of a license per this clause, or by others to whom the recipient has released or disclosed the data, and to seek relief solely from the party who has improperly used, modified, reproduced, released, performed, displayed, or disclosed contractor data marked with restrictive legends.
- (f) 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.
- (g) Contractor Rights in Technical Data and Computer Software. The contractor retains all rights not granted to the Government.
- (h) Third Party Copyrights. The contractor shall not, without the written approval of the Contracting Officer, incorporate any copyrighted data in the technical data and computer software 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 of the appropriate scope as defined in paragraphs (b)(1), (2), (4) and (6) of this clause, and has affixed a statement of the license or licenses obtained on behalf of the Government and other persons to the technical data and computer software transmittal document.
- (i) Assertions of Other than Unlimited Rights.
 - (1) This paragraph does not apply to restrictions based solely on copyright.
 - (2) Except as provided in paragraph (i)(3) of this clause, technical data and/or computer software that the contractor asserts should be furnished to the Government with restrictions on use, release, or disclosure are identified in an attachment to this contract (the "Attachment"). The contractor shall not deliver any technical data or computer software with restrictive markings unless the technical data or computer software is listed in the Attachment.
 - (3) The contractor may make other assertions of other than unlimited rights in technical data and/or computer software after contract award. Such assertions must be based on new information or inadvertent omission unless the inadvertent omission would have materially affected the source selection decision in the reasonable determination of the Contracting Officer (in which case no assertion based on an inadvertent omission may be allowed).
 - (4) The contractor shall submit such post-contract award assertion(s) to the Contracting Officer as soon as practicable but prior to the scheduled date for delivery of the technical data or computer software. All new assertions submitted after award shall be added to the Attachment in a timely fashion after submission of the assertion to the Contracting Officer. An official authorized to contractually obligate the contractor must sign the assertion(s). The contractor assertion(s) shall include the information specified in paragraph (d) of clause G52.227-004, *Identification and Assertion of Use, Release, or Disclosure Restrictions*.
 - (5) The Contracting Officer may request the contractor to provide sufficient information to enable the Government to evaluate the contractor's assertion(s). 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 outlined in clause G52.227-003, *Validation of Restrictive Markings on Technical Data and Computer Software*.
- (j) Marking Requirements for Delivered Technical Data or Computer Software. The contractor may only assert restrictions on the Government's rights to use, modify, reproduce, release, perform, display, or disclose technical data and computer software delivered to the Government by marking such technical data and computer software. Such markings shall be in the form of legends found in paragraphs (k)(1) through (4), or as otherwise authorized in this contract, (e.g., pursuant to an agreement for the marking of mixed data pursuant to paragraph (d) of this

clause). The notice of copyright prescribed under 17 U.S.C. §401 or §402 (with language, if applicable, noting that the Government contributed funding and therefore has rights in the copyrighted material as specified in clause G52.227-002) is also allowed.

- (k) General Marking Instructions. The contractor shall conspicuously and legibly mark the appropriate legend on all technical data and computer software that qualify for such markings. The authorized legends shall be placed on the transmittal document or storage container and, for printed material, on the title/cover page of the printed material containing technical data or computer software for which restrictions are asserted. Mark each subsequent sheet of data with an abbreviated marking(s) to indicate the applicable restrictive rights assertion(s), and refer to the title/cover page for additional information. When only portions of a page of printed material are subject to the asserted restrictions, such portions shall be identified by circling, underscoring, annotating, or other appropriate identifier. Technical data and computer software transmitted directly from one computer or computer terminal to another shall contain a notice of asserted restrictions. Reproductions of technical data and computer software, or any portions thereof subject to asserted restrictions, shall also reproduce the asserted restrictions.

- (1) Government Purpose Rights Markings. Technical data or computer software delivered or otherwise furnished to the Government with Government purpose rights shall be marked as follows:

Government Purpose Rights

Contract No: _____

Contractor Name: _____

Contractor Address: _____

Expiration Date: _____

The Government's rights to use, modify, reproduce, release, perform, display, or disclose these technical data and computer software are restricted by paragraph (b)(1) of clause G52.227-002, *Rights in Technical Data and Computer Software: Noncommercial Items*, contained in the contract identified above. No restrictions apply after the expiration date shown above. Any reproduction of technical data or computer software, or portions thereof marked with this legend, must also reproduce the markings.

(End of legend)

- (2) Limited Rights Markings. Technical data delivered or otherwise furnished to the Government with limited rights shall be marked as follows:

Limited Rights

Contract No: _____

Contractor Name: _____

Contractor Address: _____

The Government's rights to use, modify, reproduce, release, perform, display, or disclose these technical data are restricted by paragraph (b)(2) of clause G52.227-002, *Rights in Technical Data and Computer Software: Noncommercial Items*, contained in the contract identified above. Any reproduction of technical data, or portions thereof marked with this legend, must also reproduce the markings. Any person, other than Government officials or others specifically authorized by the Government, who has been provided access to this technical data must promptly notify the above-named contractor.

(End of legend)

- (3) Restricted Rights Markings. Computer software delivered or otherwise furnished to the Government with restricted rights shall be marked with the following legend:

Restricted Rights

Contract No: _____

Contractor Name: _____

Contractor Address: _____

The Government's rights to use, modify, reproduce, release, perform, display, or disclose this computer software are restricted by paragraph (b)(4) of clause G52.227-002, *Rights in Technical Data and Computer Software: Noncommercial Items*, contained in the contract identified above. Any reproduction of computer software or portions thereof marked with this legend must also reproduce the markings.

Any person, other than the Government, who has been provided access to such computer software must promptly notify the above-named contractor.

(End of legend)

- (4) Special License Rights Markings. Technical data and computer software in which the Government's rights stem from a specifically negotiated license shall be marked with the following legend:

Special License Rights

Contract No: _____

Contractor Name: _____

Contractor Address: _____

The Government's rights to use, modify, reproduce, release, perform, display, or disclose this data and/or software are restricted by _____ [*Insert license identifier*]. Any reproduction of technical data, computer software, or portions thereof marked with this legend must also reproduce the markings.

(End of legend)

- (l) Pre-Existing Data Markings. If the terms of a prior contract or license permitted the contractor to restrict the Government's rights to use, modify, reproduce, release, perform, display, or disclose a technical data or computer software deliverable under this contract, and those restrictions are still applicable, the contractor may mark such technical data or computer software with the appropriate restrictive conforming legend for which the technical data or computer software qualified under the prior contract or license. The marking procedures in paragraphs (j) and (k) of this clause shall be followed.
- (m) Removal of Unjustified Markings. Notwithstanding any other provision of this contract concerning inspection and acceptance, if any technical data or computer software delivered or otherwise provided under this contract are marked with the notices specified at (k)(1)-(4) of this clause, and the use of such is not authorized by this clause, the Government may ignore, or at the contractor's expense, correct or strike the marking if, in accordance with the procedures in clause G52.227-003, *Validation of Restrictive Markings on Technical Data and Computer Software*, of this contract, the technical data or computer software is delivered or otherwise provided with a restrictive marking determined to be unjustified.
- (n) Removal of Nonconforming Markings. A nonconforming marking is a marking placed on technical data or computer software delivered to the Government under this contract that is not in a format authorized by this contract. Correction of nonconforming markings is not subject to the *Validation of Restrictive Markings on Technical Data and Computer Software* clause of this contract. To the extent practicable, the Government shall return technical data or computer software marked with nonconforming markings to the contractor and provide the contractor an opportunity to correct or strike the nonconforming marking at no cost to the Government. If the contractor fails to correct the nonconforming marking and return the corrected technical data or computer software within 60 days following the contractor's receipt of the data, the Contracting Officer may ignore, or at the contractor's expense, remove, correct, or strike any nonconforming marking.
- (o) Unmarked Technical Data or Computer Software. Technical data or computer software delivered to the Government under this contract without restrictive markings as set forth herein shall be presumed to have been delivered with unlimited rights and may be released or disclosed without restriction. However, to the extent the technical data or computer software has not been disclosed without restriction outside the Government, the contractor may request, within six months after delivery of such technical data or computer software (or a longer time approved by the Contracting Officer for good cause shown), permission to have notices placed on qualifying technical data or computer software at the contractor's expense, and the Contracting Officer may agree to do so if the contractor:
- (1) Identifies the technical data or computer software on which the omitted notice is to be placed;
 - (2) Demonstrates that the omission of the notice was inadvertent;
 - (3) Establishes that the use of the proposed notice is authorized; and
 - (4) Acknowledges that the Government has no liability with respect to the disclosure, use, or reproduction of any such technical data or computer software made prior to the addition of the notice or resulting from the omission of the notice.
- (p) Relation to Patents. Nothing contained in this clause shall imply a license to the Government under any patent, or be construed as affecting the scope of any license or other right otherwise granted to the Government under any patent.
- (q) Limitation on Charges for Rights in Technical Data or Computer Software.
- (1) The contractor shall not charge to this contract any cost, including but not limited to license fees, royalties, or similar charges, for rights in technical data or computer software to be delivered under this contract when—
 - (i) The Government has acquired, by any means, the same or greater rights in the technical data or computer software; or
 - (ii) The technical data or computer software is available to the public without restrictions.

- (2) The limitation in paragraph (q)(1) of this clause—
 - (i) Includes costs charged by a subcontractor or supplier, at any tier, or costs incurred by the contractor to acquire rights in subcontractor or supplier technical data or computer software if the subcontractor or supplier has been paid for such rights under any other Government contract or under a license conveying the rights to the Government; and
 - (ii) Does not include the reasonable costs of reproducing, handling, or mailing the documents or other media in which the technical data or computer software will be delivered.
- (r) Applicability to Subcontractors or Suppliers.
 - (1) The contractor 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 (i) of this clause are recognized and protected.
 - (2) Whenever any technical data or computer software for noncommercial items is to be obtained from a subcontractor or supplier for delivery to the Government under this contract, the contractor shall flow down this clause to all of its subcontractors, vendors or suppliers (at any tier), and require its subcontractors, vendors, or suppliers to do so, without alteration, except to identify the parties. No other clause shall be used to enlarge or diminish the Government's, the contractor's, or a higher-tier subcontractor's or supplier's rights in a subcontractor's or supplier's technical data or computer software.
 - (3) Technical data or computer software 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 technical data or computer software 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 technical data or computer software directly to the Government, rather than through a higher-tier contractor, subcontractor, or supplier.
 - (4) The contractor and higher-tier subcontractors or suppliers shall not use their power to award contracts as economic leverage to obtain rights in technical data or computer software from their subcontractors or suppliers.
 - (5) In no event shall the contractor use its obligation to recognize and protect subcontractor or supplier rights in technical data or computer software as an excuse for failing to satisfy its contractual obligation to the Government.

(End of clause)

G52.227-003

Validation of Restrictive Markings on Technical Data and Computer Software (FEB 2011) This clause applies if this Contract requires delivery of technical data or computer software.

- (a) The Government shall presume that a contractor's asserted use or release restrictions are justified on the basis that the item (to include computer software), component, or process was developed exclusively at private expense for commercial items as defined in FAR Part 12. The Government will not challenge such assertions unless information the Government demonstrates that the item, component, or process was not developed exclusively at private expense.
- (b) Justification. The contractor is responsible for maintaining records sufficient to justify the validity of its markings that restrictions on the Government's right to use, modify, reproduce, perform, display, release, or disclose technical data or computer software delivered or required to be delivered under the contract or subcontract. Except for commercial items, the contractors shall be prepared to furnish to the Contracting Officer a written justification for such restrictive markings in response to a challenge under paragraph (e) of this clause.
- (c) Pre-challenge Request for Information.
 - (1) The Contracting Officer may request the contractor to furnish a written explanation for any restriction asserted by the contractor on the right of the United States to use, or authorize use of, technical data or computer software. If, upon review of the explanation submitted, the Contracting Officer remains unable to ascertain the basis of the restrictive marking, the Contracting Officer may further request the contractor to furnish additional information in the records of, or otherwise in the possession of or reasonably available to, the contractor to justify the validity of any restrictive marking on technical data or computer software, accompanied with supporting documentation. The contractor shall submit such written data within a reasonable time after it is requested by the Contracting Officer.
 - (2) If the Contracting Officer, after reviewing the written data furnished pursuant to paragraph (c)(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 or computer software relates, the Contracting Officer shall follow the procedures in paragraph (d) of this clause.
 - (3) If the contractor fails to respond to the Contracting Officer's request for information under paragraph (c)(1) of this clause, and the Contracting Officer determines that continued adherence to the marking would make impracticable the subsequent competitive acquisition of the item, component, or process to which the technical data or computer software relates, the Contracting Officer may challenge the validity of the marking as described in paragraph (d) of this clause.
- (d) Challenge.

- (1) Notwithstanding any provision of this contract concerning inspection and acceptance, if the Contracting Officer determines that a challenge to the restrictive marking is warranted, the Contracting Officer shall send a written challenge notice to the contractor or subcontractor asserting the restrictive markings. Such challenge shall:
 - (i) State the specific grounds for challenging the asserted restriction;
 - (ii) Require a response within sixty (60) days justifying and providing sufficient evidence as to the current validity of the asserted restriction;
 - (iii) State that a Contracting Officer's final decision, issued pursuant to paragraph (f) of this clause, sustaining the validity of a restrictive marking identical to the asserted restriction, within the three-year period preceding the challenge, shall serve as justification for the asserted restriction if the validated restriction was asserted by the same contractor or subcontractor (or any licensee of such contractor or subcontractor to which such notice is being provided); and
 - (iv) State that failure to respond to the challenge notice may result in issuance of a final decision pursuant to paragraph (e) of this clause.
- (2) The Contracting Officer shall extend the time for response if the contractor or subcontractor submits a written request showing the need for additional time to prepare a response.
- (3) The contractor's or subcontractor's written response shall be considered a claim within the meaning of the Contract Disputes Act of 1978 and shall be certified in the form prescribed at FAR Subpart 33.207, regardless of dollar amount.
- (4) A contractor or subcontractor receiving challenges to the same restrictive markings from more than one Contracting Officer shall notify each Contracting Officer of the existence of more than one challenge. The notice shall also state which Contracting Officer initiated the first unanswered challenge. The Contracting Officer initiating the first unanswered challenge after consultation with the contractor and the other Contracting Officers, shall formulate and distribute a schedule for responding to each of the challenge notices to all interested parties. The schedule shall afford the contractor an opportunity to respond to each challenge notice. All parties will be bound by this schedule.
- (e) Final Decision When Contractor or Subcontractor Fails to Respond. When a contractor or subcontractor fails to respond to a challenge notice, other than a failure to respond to a challenge related to a commercial item, the Contracting Officer will issue a final decision to the contractor or subcontractor in accordance with the *Disputes* clause of this contract pertaining to the validity of the asserted restriction. This final decision shall be issued as soon as possible after the expiration of the time period of paragraph (d)(1)(ii) or (d)(2) of this clause. Following issuance of the final decision, the Contracting Officer will comply with the procedures in paragraphs (f)(2)(ii) through (iv) of this clause.
- (f) Final Decision When the Contractor Responds.
 - (1) If the Contracting Officer determines that the contractor or subcontractor has justified the validity of the restrictive marking, the Contracting Officer shall issue a final decision to the contractor or subcontractor sustaining the validity of the restrictive marking, and stating that the Government will continue to be bound by the restrictive marking. This final decision shall be issued within sixty (60) days after receipt of the contractor's or subcontractor's response to the challenge notice, or within such longer period that the Contracting Officer has notified the contractor or subcontractor that the Government will require. The notification of a longer period will be made within sixty (60) days after receipt of the response to the challenge notice.
 - (2)
 - (i) If the Contracting Officer determines that the validity of the restrictive marking is not justified, the Contracting Officer shall issue a final decision to the contractor or subcontractor in accordance with the *Disputes* clause of this contract. Notwithstanding paragraph (e) of the *Disputes* clause, the final decision shall be issued within sixty (60) days after receipt of the contractor's or subcontractor's response to the challenge notice, or within such longer period that the Contracting Officer has notified the contractor or subcontractor that the Government will require. The notification of a longer period will be made within sixty (60) days after receipt of the response to the challenge notice.
 - (ii) The Government agrees that it will continue to be bound by the restrictive marking for ninety (90) days from the issuance of the Contracting Officer's final decision. The contractor agrees that if it intends to file suit in the United States Claims Court, it will provide a notice of intent to file suit to the Contracting Officer within ninety (90) days from the issuance of the Contracting Officer's final decision under paragraph (f)(2)(i) of this clause. If the contractor fails to appeal, file suit, or provide a notice of intent to file suit to the Contracting Officer within the ninety-day period, the Government may cancel or ignore the restrictive markings, and the failure of the contractor to take the required action constitutes agreement with the Contracting Officer's final decision.
 - (iii) The Government agrees that it will continue to be bound by the restrictive marking where a notice of intent to file suit in the United States Claims Court is provided to the Contracting Officer within ninety (90) days from the issuance of the final decision under paragraph (f)(2)(i) of this clause. The Government will no longer be bound, and the contractor agrees that the Government may strike or ignore the restrictive markings, if the contractor fails to file its suit within one (1) year after issuance of the Contracting Officer final decision. Notwithstanding the foregoing, where the Government agency's Director, Office of Contracts determines that urgent or compelling circumstances will not permit waiting for the filing of a suit in the United States Claims Court, the contractor agrees that the Government may, following notice to the contractor, authorize release or disclosure of the technical data or computer software. Such determination may be made at any time after issuance of the Contracting Officer final decision, and will not affect the contractor's right to damages against the

United States where its restrictive markings are ultimately upheld, or to pursue other relief, if any, as may be provided by law.

- (iv) The Government agrees that it will be bound by the restrictive marking where an appeal or suit is filed pursuant to the Contract Disputes Act until final disposition by an agency Board of Contract Appeals or the United States Claims Court. Notwithstanding the foregoing, where the Government agency's Director, Office of Contracts determines, following notice to the contractor that urgent or compelling circumstances will not permit awaiting the decision by such Board of Contract Appeals or the United States Claims Court, the contractor agrees that the Government may authorize release or disclosure of the technical data or computer software. Such determination may be made at any time after issuance of the final decision and will not affect the contractor'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.
 - (g) Final Disposition of Appeal or Suit.
 - (1) If the contractor or subcontractor appeals or files suit, and if, upon final disposition of the appeal or suit, the Contracting Officer's decision is sustained:
 - (i) The restrictive marking on the technical data or computer software shall be struck, canceled, ignored, or corrected at the contractor's or subcontractor's expense; and
 - (ii) If the restrictive marking is found not to be substantially justified, the contractor or subcontractor asserting the restriction shall be liable to the Government for payment of the cost to the Government of reviewing the restrictive marking and the fees and other expenses (as defined in 28 U.S.C. §2412(d)(2)(A)) incurred by the Government in challenging the marking, unless special circumstances would make such payment unjust.
 - (2) If the contractor or subcontractor appeals or files suit, and if, upon final disposition of the appeal or suit, the Contracting Officer's decision is not sustained:
 - (i) The Government shall continue to be bound by the restrictive marking; and
 - (ii) The Government shall be liable to the contractor for payment of fees and other expenses (as defined in 28 U.S.C. §2412(d)(2)(A)) incurred by the contractor or subcontractor in defending the marking if the challenge by the Government is found not to have been made in good faith.
 - (h) Duration of Right to Challenge. The Government, when there are reasonable grounds, may review and challenge the validity of any restriction asserted by the contractor or subcontractor on the Government's rights to use, modify, reproduce, release, perform, display, or disclose technical data or computer software delivered, to be delivered, or otherwise provided by the Contractor or subcontractor in the performance of a contract. During the period within three (3) years of final payment on a contract, or within three (3) years of delivery of the technical data or computer software to the Government, whichever is later, the Contracting Officer may review and make a written determination to challenge any restriction. The Government may, however, challenge a restriction on the release, disclosure, or use of technical data or computer software at any time if such technical data or computer software:
 - (1) Is publicly available;
 - (2) Has been furnished to the United States without restriction; or
 - (3) Has been otherwise made available without restriction.
 - (i) Decision Not to Challenge. The absence of a challenge to an asserted restriction shall not constitute "validation" under this clause. Only the Contracting Officer's final decision resolving a formal challenge by sustaining the validity of a restrictive marking, or actions of an agency Board of Contract Appeals or a court of competent jurisdiction sustaining the assertion, constitutes "validation" as addressed in 10 U.S.C. §2321.
 - (j) Privity of Contract. The contractor or subcontractor agrees that the Contracting Officer may transact matters under this clause directly with subcontractors at any tier that assert restrictive markings or assert restrictions on the Government's right to use, modify, release, perform, display, or disclose technical data or computer software. However, neither this clause nor any action taken by the Government under this clause shall create or imply privity of contract between the Government and subcontractors.
 - (k) Flowdown. The contractor or subcontractor agrees to insert this clause in contractual instruments with its subcontractors or suppliers at any tier requiring the delivery of technical data or computer software, except contractual instruments for commercial items or commercial components.
- (End of clause)

**G52.227-004
Deviation**

**Identification and Assertion of Use, Release, or Disclosure Restrictions (JUL 2018) (GOVERNMENT
DEVIATION) (Note 7 Applies.)**

(a) The terms used in this clause are defined in the *Technical Data and Computer Software: Noncommercial Items* clause contained in this contract.

(b) The identification and assertion requirements in this clause apply to technical data and computer software to be delivered with other than Unlimited Rights. Notification and identification is not required for restrictions based solely on copyright.

(c) Offers submitted in response to this solicitation shall identify, to the extent known at the time an offer is submitted to the Government, the technical data or computer software that the offeror, its subcontractors or suppliers, or potential subcontractors or suppliers, assert should be furnished to the Government with restrictions on use, release, or disclosure.

(d) The contractor's assertions, including the assertions of its subcontractors or suppliers, shall be submitted as an attachment to its offer/proposal in the following format, dated and signed by an official authorized to contractually obligate the contractor:

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

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

Column 1 Technical Data (TD) or Computer Software (CS) to Be Furnished With Restrictions	Column 2 Description of TD and/or CS	Column 3 Date	Column 4 Basis for Assertion	Column 5 Asserted Rights Category	Column 6 Company or Person Asserting Rights/Restrictions	Column 7 Security Classification
(LIST)	(LIST)	(LIST)	(LIST)	(LIST)	(LIST)	(LIST)

(1) For technical data (other than computer software documentation) pertaining to items, components, or processes developed at private expense, identify both the deliverable technical data and each such item, component, or process (to include document titles, version numbers, and dates for clarity). For computer software or computer software documentation, identify the software or documentation (to include document and software titles, version numbers, and dates for clarity).

(2) Provide a brief description of the purpose and contents of the technical data and/or computer software.

(3) Provide the date in which the technical data package and/or computer software was generated.

(4) Generally, development at private expense, either exclusively or partially, is the only basis for asserting restrictions. For technical data, other than computer software documentation, development refers to development of the item, component, or process to which the data pertain. The Government's rights in computer software documentation generally may not be restricted. For computer software, development refers to the software. Indicate whether development was accomplished exclusively or partially at private expense. If development was not accomplished at private expense, or for computer software documentation, enter the specific basis for asserting restrictions.

(5) Enter the asserted rights category (e.g., Government purpose license rights from a prior contract, limited, restricted, or Government purpose rights under this or a prior contract, or specially negotiated licenses).

(6) Identify the corporation, individual, or other person, as appropriate.

(7) Identify the security classification of the technical data package and/or computer software. Enter "None" if no security classification.

(8) Enter "None" when all data or software will be submitted without restrictions.

Date: _____

Printed Name and Title: _____

Signature: _____

(End of identification and assertion)

(e) A contractor's failure to submit, complete, or sign the notification and identification required by paragraph (d) of this provision with its offer will constitute a minor informality. If assertions are required and the contractor does not correct such informality within the time prescribed by the Contracting Officer, the offer may be ineligible for award.

(f) If the contractor is awarded a contract, the assertions identified in paragraph (d) of this provision shall be included in an attachment (the Attachment) and incorporated as a separate attachment in the resultant contract. Upon request by the Contracting Officer, the contractor shall provide sufficient information to enable the Contracting Officer to evaluate any listed assertion. Updates to the assertion list shall be included in an amended Attachment.

(End of clause)

G52.227-005

Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends (JUL 2018) (Note 3 applies in paragraph (c)(1).)

(a) The terms "limited rights," "restricted rights," "special license rights," and "Government purpose rights" are defined in the *Rights in Technical Data and Computer Software: Noncommercial Items* clause of this contract.

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

(1) GFI Marked with Limited or Restricted Rights Legends. The contractor shall use, modify, reproduce, perform, or display technical data received from the Government with limited rights legends, or computer software received with restricted rights legends only in the performance of this contract. The contractor shall not, without the express written permission of the party whose name appears in the legend, release or disclose such data or software to any unauthorized person. Prior to providing limited rights technical data or restricted rights computer software as GFI, the Government shall ensure that:

(i) The receiving development contractor(s) or subcontractor(s) contract arrangements are subject to clauses, *Protection of Information*, and, *Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends*; and

(ii) The receiving support contractor(s) or subcontractor(s) contract arrangements are subject to clauses, *Support Contractor Corporate Non-Disclosure Agreement*, and G52.227-005, *Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends*.

(2) GFI Marked with Government Purpose Rights Legends. The contractor shall use technical data or computer software received from the Government with Government purpose rights legends for Government purposes only. The contractor shall not, without the express written permission of the party whose name appears in the restrictive legend, use, modify, reproduce, release, perform, or display such technical data or computer software for any commercial purpose, or disclose such data or software to a person other than its subcontractors, suppliers, or prospective subcontractors or suppliers who require the data or software to submit offers for, or perform, contracts under this contract. Prior to disclosing the data or software, the contractor shall coordinate with the Contracting Officer before requiring the persons to whom disclosure will be made to complete and sign non-disclosure agreements including the same limitations included in this paragraph.

(3) GFI Marked with Special License Rights Legends. The contractor shall use, modify, reproduce, release, perform, or display technical data or computer software received from the Government with specially negotiated license legends only as permitted in the license. Such data or software may not be released or disclosed to other persons unless permitted by the license.

(4) GFI technical data or computer software marked with commercial restrictive legends.

(i) The contractor shall use, modify, reproduce, perform, display technical data and/or computer software that is or pertains to a commercial item and is received from the Government with a commercial restrictive legend (i.e. marked to indicate that such data are subject to use, modification, reproduction, release, performance, display, or disclosure restrictions) only in the performance of this contract. The Contractor shall not, without the express written permission of the party whose name appears in the legend, use the technical data to manufacture additional quantities of the commercial items, release or disclose such data to any unauthorized person. Prior to providing technical data or computer software marked with commercial restrictive legends, the Government shall ensure that:

(A) The receiving development contractor(s) or subcontractor(s) contract arrangements are subject to clauses, *Protection of Information*, and G52.227-005, *Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends*; and

(B) The receiving support contractor(s) or subcontractor(s) contract arrangements are subject to clauses, *Support Contractor Corporate Non-Disclosure Agreement*, and G52.227-005, *Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends*.

(c) Indemnification and Creation of Third-Party Beneficiary Rights. The contractor agrees:

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

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

(End of clause)

G52.227-006 Technical Data or Computer Software Previously Delivered to the Government (OCT 2015) (Note 4 applies.)

The contractor shall attach to its offer an identification of all documents or other media incorporating technical data or computer software it intends to deliver under this contract with other than unlimited rights that are identical or substantially similar to documents or other media that the contractor has produced for, delivered to, or is obligated to deliver to the Government under any contract or subcontract. This requirement shall be flowed down to all subcontractors at all levels. The attachment shall identify:

(a) The contract number under which the technical data or computer software was produced;

(b) The contract number under which, and the name and address of the organization to whom, the technical data or computer software was most recently delivered or will be delivered; and

(c) Any limitations on the Government's right to use or disclose the technical data or computer software, including, when applicable, identification of the earliest date the limitations expire.
(End of clause)

G52.227-007 Rights in Bid or Proposal Information (JUL 2018)

(a) Definitions. The terms “technical data” and “computer software” are defined in the *Rights in Technical Data and Computer Software: Noncommercial Items* clause of this contract.

(b) Government Rights prior to Contract Award. By submission of its offer, the offeror agrees that the Government:

- (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 Contracting Officer to receive such information.

(c) Government Rights Subsequent to Contract Award. The contractor agrees:

- (1) Except as provided in paragraphs (c)(2), (d), and (e) of this clause, the Government shall have the rights to use, modify, reproduce, release, perform, display, or disclose information contained in the contractor's bid or proposal within the Government.
- (2) The Government'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 contract are determined by the *Rights in Technical Data and Computer Software: Noncommercial Items* clause of this contract.

(d) Government-Furnished Information. The Government's rights with respect to technical data or computer software contained in the contractor's bid or proposal provided to the contractor by the Government 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 Government'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 Government 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 contractor 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.
(End of clause)

G52.227-008 Deviation

Commercial Technical Data and Computer Software Licensing—Order of Precedence (OCT 2014) (GOVERNMENT DEVIATION)

(a) Upon delivery of any commercial item technical data, computer software, computer software documentation, or any combination thereof, to the Government contained in any CLIN or CDRL, the following provisions shall take precedence over conflicting provisions in any license associated with those items, notwithstanding any provisions in those licenses to the contrary through renewals or extensions, as needed, to this contract:

- (1) The Government shall have the right to use, perform, display, or disclose that commercial item technical data, in whole or in part, within the Government.
- (2) The Government may not, without the written permission of the Licensor, release or disclose the commercial item technical data and commercial computer software outside the Government, use the commercial item technical data and computer software for manufacture, or authorize the commercial item technical data and computer software to be used by another party, except that the Government may reproduce, release, or disclose such data and software or authorize the use or reproduction of such data and software by persons outside the Government (including their subcontractors) to perform their respective contract(s) as identified in G52.209-006, *Enabling Clause for Prime and Support Contractor Relationships*.
- (3) The Licensor agrees that the Government shall have the right to unilaterally add or delete contractors from those supporting the Government's Prime Contract at any time, and its exercise of that right shall not entitle the Licensor to an equitable adjustment or a modification of any other terms and conditions of this contract.
- (4) The duration of this license shall be, at a minimum, for the period of performance of this contract (including options, if exercised) unless the license specifies a longer period.
- (5) License rights related to technical data described in and granted to the U.S. Government under clause G52.227-001 shall apply to all such technical data associated with delivered computer software including, but not limited to, user's manuals, installation instructions, and operating instructions.
- (6) Disputes arising between the Licensee and the U.S. Government pertaining to the provisions of the License shall be subject to the Contract Disputes Act. Furthermore, the jurisdiction and forum for disputes hereunder

upon delivery to the U.S. Government shall be the Armed Services Board of Contract Appeals (ASBCA) or the U.S. Court of Federal Claims (COFC), as appropriate.

(7) By law, the U.S. Government cannot enter into any indemnification agreement where the Government's liability is indefinite, indeterminate, unlimited, and in violation of the Anti-Deficiency Act; therefore, any such indemnification provision in this License shall be void.

(8) In the event the Licensee files a claim with the U.S. Government on behalf of the Licensor and prevails in a dispute with the Government relating to that claim, the Licensor agrees that damages and remedies awarded shall exclude attorney's fees.

(9) Subject to the security requirements set forth in this contract, and upon receiving written consent by the U.S. Government, the Licensor may be permitted to enter Government installations for purposes such as software usage audits or other forms of inspection.

(10) The items provided hereunder may be installed and used at any U.S. Government installation worldwide at which such equipment and/or software supports the Government's Prime Contract with SEAKR is located consistent with the provisions of the contract between the U.S. Government and the Licensee.

(11) Under no circumstances shall terms of the License or any modifications thereto renew automatically so as to obligate funds in advance of funds being appropriated in contravention of the Anti-Deficiency Act.

(12) The Licensor shall comply with, and all delivered items shall conform to, all applicable Government Security/Classification rules and regulations applicable to this Agreement if any.

(13) The Licensor understands that the ultimate purpose of the Licensee entering into this License with the Licensor is for the Licensor to supply to the U.S. Government a critical component of a weapons system whose continued sustainment is mandated by Federal law (10 U.S.C. § 2281, 42 U.S.C. § 14712). Accordingly, should the U.S. Government use, release or disclose the items described in this License in a manner inconsistent with the terms of this License, the U.S. Government shall not be required to de-install and stop using those Items or return such Items to the Licensee and the Licensor's remedy will be limited to monetary damages.

(14) In the event of inconsistencies between the License and Federal law, Federal law shall apply.

(15) The Government shall not be required to comply with the terms and conditions of any License that is inconsistent with any applicable laws, regulations, or policies pursuant to export controlled items.

(16) Any claim the Licensee files with the U.S. Government on behalf of the Licensor, and any claim the U.S. Government files with the Licensor, shall be submitted within the period specified in FAR §52.233-01 ("Disputes").

(b) Subcontractor Flow-down. The contractor ("Licensee") shall include the following clause in any agreement between it and its subcontractors ("Licensors") that require the delivery of commercial item technical data, computer software, or computer software documentation, and this clause shall be in effect during the period of performance of this contract or into perpetuity for perpetual licenses:

This Addendum is entered into between _____ ("Licensee") and _____ ("Licensor") and relates to the commercial item technical data, computer software, or computer software documentation ("Items") licensed to the Licensee by the Licensor through the Licensee's License Agreement ("Agreement"), and this Addendum is incorporated by reference into the Agreement. The Addendum terms will come into effect if and when the Agreement is transferred to the Government. All references to such Items shall include all software updates (e.g., software maintenance patches, version changes, new releases) and future substitutions made by the Licensor. Upon delivery of that/those Items, Licensor and Licensee agree that the following provisions in this Addendum shall take precedence over conflicting provisions, if any, in the Agreement notwithstanding any provisions in the Agreement to the contrary:

(1) License rights related to technical data granted to the U.S. Government under clause G52.227-001(b)(1) shall apply to all technical data associated with delivered computer software including, but not limited to, user's manuals, installation instructions, and operating instructions.

(2) Disputes arising between the Licensee and the U.S. Government pertaining to the provisions of the Agreement shall be subject to the Contract Disputes Act. Furthermore, the jurisdiction and forum for disputes hereunder upon delivery to the U.S. Government shall be the Armed Services Board of Contract Appeals (ASBCA) or the U.S. Court of Federal Claims (COFC), as appropriate.

(3) By law, the U.S. Government cannot enter into any indemnification agreement where the Government's liability is indefinite, indeterminate, unlimited, and in violation of the Anti-Deficiency Act; therefore, any such indemnification provision in this Agreement shall be void.

(4) In the event the Licensee files a claim with the U.S. Government on behalf of the Licensor and prevails in a dispute with the Government relating to that claim, the Licensor agrees that damages and remedies awarded shall exclude attorney's fees

(5) Upon receiving written consent by the U.S. Government, the Licensor may be permitted to enter Government installations for purposes such as software usage audits or other forms of inspection.

(6) The Items provided hereunder may be installed and used at any U.S. Government installation worldwide consistent with the provisions of the contract between the U.S. Government and the Licensee (e.g., limitations on number of executing instances of software, number of users, other processing volume limitations).

(7) Under no circumstances shall terms of the Agreement or any modifications thereto renew automatically so as to obligate funds in advance of funds being appropriated in contravention of the Anti-Deficiency Act.

(8) Licensor shall comply with, and all delivered Items shall conform to, all applicable Government Security/Classification rules and regulations applicable to this Agreement, in particular those set forth in the applicable DD Form 254 (Department of Defense, Contract Security Classification Specification).

(9) Licensor understands that the ultimate purpose of the Licensee entering into this Agreement with the Licensor is for the Licensor to supply to the U.S. Government a critical component of a weapons system whose continued sustainment is mandated by Federal law (10 U.S.C. § 2281, 42 U.S.C. § 14712). Accordingly, should the U.S. Government use, release, or disclose the Items described in this Agreement in a manner inconsistent with the terms of this Agreement, the U.S. Government shall not be required to uninstall and stop using those Items or return such Items to the Licensee.

(10) In the event of inconsistencies between the Agreement and Federal law, Federal law shall apply.

(11) This Addendum shall be flowed down to all subcontractors/suppliers, including sub-tier subcontractors/suppliers.

(End of clause)

G52.227-009 **Deferred Delivery of Technical Data or Computer Software (MAY 2005)** (Applies only if this contract includes a requirement for deferred delivery data. Note 1 applies.)

The Government may identify technical data or computer software (as defined in the *Technical Data and Computer Software: Commercial Items* or *Rights in Technical Data and Computer Software: Noncommercial Items* clause of this contract) for deferred delivery at any time during contract performance by listing such technical data or computer software in an attachment to this contract entitled "Deferred Delivery." The Government may require delivery of the items identified for deferred delivery up to three (3) years after either acceptance of all deliverables or contract termination, whichever is later. This clause will be flowed down to all subcontractors.

(End of clause)

G52.227-010 **Deferred Ordering of Technical Data or Computer Software (SEPT 2013)** (Note 4 applies.)

- (a) The Government may defer ordering technical data, computer software (as defined in *clause G52.227-001* or *G52.227-002*), or other information not easily categorized (as defined in *clause G52.227-002(d)*) and mutually agreed to by the contractual parties) that is generated during the performance of this contract for a period of up to three (3) years after either acceptance of all deliverables or contract termination, whichever is later.
- (b) The categories of technical data, computer software, and other information not easily categorized that is subject to deferred ordering under this clause may be:
 - (1) Incorporated into the contract in the Contract Data Requirements List item that describes the Data Accession List attached to the contract; or
 - (2) Identified by the Government via a process agreed to by the parties and incorporated as an attachment to the contract.
- (c) When the technical data, computer software, or other information not easily categorized is ordered, the contractor shall be reasonably compensated for converting the data or computer software into the prescribed form, for reproduction, and for delivery.
- (d) The Government's rights to use said technical data and computer software shall be pursuant to the *Rights in Technical Data and Computer Software* clause(s) of this contract (*G52.227-001* and *G52.227-002*).
- (e) This clause shall be flowed down to all subcontractors.

(End of clause)

G52.227-011 **Technical Data and Computer Software: Withholding of Payment (NOV 2007)** (Notes 1 and 2 apply to (a). Note 4 applies to (b).)

- (a) If technical data and computer software (as defined in the *Rights In Technical Data and Computer Software: Noncommercial Items* clause of this contract) specified to be delivered under this contract are not delivered within the time specified by this contract, or are deficient upon delivery (including having unauthorized restrictive markings), the Contracting Officer shall, until such data and computer software are accepted by the Government, withhold all subsequent payments to the contractor until a reserve is established totaling five (5) percent of the total contract price. Payments shall not be withheld, nor any other action taken pursuant to this paragraph when the Contracting Officer determines that the contractor's failure to make timely delivery or to deliver the technical data or computer software without deficiencies arises out of causes beyond the control and without the fault or negligence of the contractor.
- (b) The withholding of any amount or subsequent payment to the contractor shall not be construed as a waiver of any rights accruing to the Government under this contract. Use of this clause constitutes a determination by the Contracting Officer that the limitation established by FAR Clause 52.232-9, *Limitation on Withholding of Payments*, shall not apply to the amount withheld under this clause.

G52.227-015 **Data Requirements (FEB 2011)** (Substitute the words "Subcontractor Data Requirements List (SDRL)" for the words "Contractor Data Requirements List.")

The contractor is required to deliver the data items listed on the Contractor Data Requirements List, data items identified in and deliverable under any contract clause of FAR Part 52 or the Supplemental Terms and Conditions made a part of this contract, and other data as may be specified in the Statement of Work, Statement of Objectives, Specification(s), or elsewhere in this contract.

(End of clause)

G52.227-017 **PATENT RIGHTS—OWNERSHIP BY THE CONTRACTOR (LARGE BUSINESS) (APR 2009)** (Applies to R&D contracts.)

(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” means—

- (1) When used in relation to any invention other than a plant variety, means the conception or first actual reduction to practice of the invention; or
- (2) When used in relation to a plant variety, means that the contractor has at least tentatively determined that the variety has been reproduced with recognized characteristics.

“Nonprofit organization” means—

- (1) A university or other institution of higher education;
- (2) An organization of the type described in the Internal Revenue Code at 26 U.S.C. §501(c)(3) and exempt from taxation under 26 U.S.C. 501(a); or
- (3) Any nonprofit scientific or educational organization qualified under a State nonprofit organization statute.

“Practical application” means—

- (1)(i) To manufacture, in the case of a composition or product;
- (ii) To practice, in the case of a process or method; or
- (iii) To operate, in the case of a machine or system; and
- (2) In each case, under such conditions as to establish that—
 - (i) The invention is being utilized; and
 - (ii) The benefits of the invention are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.

“Subject invention” means any invention of the contractor made in the performance of work under this contract.

(b) Contractor’s rights.

- (1) Ownership. The contractor may elect to retain ownership of each subject invention throughout the world in accordance with the provisions of this clause.
- (2) License.
 - (i) The contractor shall retain a nonexclusive royalty-free license throughout the world in each subject invention to which the Government obtains title, unless the contractor fails to disclose the invention within the times specified in paragraph (c) of this clause. The contractor’s license—
 - (A) Extends to any domestic subsidiaries and affiliates within the corporate structure of which the contractor is a part;
 - (B) Includes the right to grant sublicenses to the extent the contractor was legally obligated to do so at the time of contract award; and
 - (C) Is transferable only with the approval of the agency, except when transferred to the successor of that part of the contractor’s business to which the invention pertains.
 - (ii) The agency—
 - (A) May revoke or modify the contractor’s domestic license to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with 37 CFR Part 404 and agency licensing regulations;
 - (B) Will not revoke the license in that field of use or the geographical areas in which the contractor has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public; and
 - (C) May revoke or modify the license in any foreign country to the extent the contractor, its licensees, or the domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.
 - (iii) Before revoking or modifying the license, the agency—
 - (A) Will furnish the contractor a written notice of its intention to revoke or modify the license; and
 - (B) Will allow the contractor 30 days (or such other time as the funding agency may authorize for good cause shown by the contractor) after the notice to show cause why the license should not be revoked or modified.
 - (iv) The contractor has the right to appeal, in accordance with 37 CFR Part 404 and agency regulations, concerning the licensing of Government-owned inventions, any decision concerning the revocation or modification of the license.
- (c) Contractor’s obligations.
 - (1) The contractor shall—
 - (i) Disclose, in writing, each subject invention to the Contracting Officer within two months after the inventor discloses it in writing to contractor personnel responsible for patent matters, or within 6 months after the contractor first becomes aware that a subject invention has been made, whichever is earlier;
 - (ii) Include in the disclosure—
 - (A) The inventor(s) and the 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 Contracting Officer of the acceptance of any manuscript describing the invention for publication and of any on sale or public use.
- (2) The contractor shall elect in writing whether or not to retain ownership of any subject invention by notifying the Contracting Officer at the time of disclosure or within 8 months of disclosure, as to those countries (including the United States) in which the contractor will retain ownership. However, in any case where publication, on sale, or public use has initiated the one-year statutory period during which valid patent protection can be obtained in the United States, the agency may shorten the period of election of title to a date that is no more than 60 days prior to the end of the statutory period.
- (3) The contractor shall—
 - (i) File either a provisional or a nonprovisional patent application on an elected subject invention within one year after election, provided that in all cases the application is filed prior to the end of any statutory period wherein valid patent protection can be obtained in the United States after a publication, on sale, or public use;
 - (ii) File a nonprovisional application within 10 months of the filing of any provisional application; and
 - (iii) File patent applications in additional countries or international patent offices within either 10 months of the first filed patent application (whether provisional or nonprovisional) or 6 months from the date the Commissioner of Patents grants permission to file foreign patent applications where such filing has been prohibited by a Secrecy Order.
- (4) The contractor may request extensions of time for disclosure, election, or filing under paragraphs (c)(1), (2), and (3) of this clause. The Contracting Officer will normally grant the extension unless there is reason to believe the extension would prejudice the Government's interests.
- (d) Government's rights.
 - (1) Ownership. The contractor shall assign to the agency, upon written request, title to any subject invention—
 - (i) If the contractor elects not to retain title to a subject invention;
 - (ii) If the contractor fails to disclose or elect the subject invention within the times specified in paragraph (c) of this clause and the agency requests title within 60 days after learning of the contractor's failure to report or elect within the specified times;
 - (iii) In those countries in which the contractor fails to file patent applications within the times specified in paragraph (c) of this clause, provided that, if the contractor has filed a patent application in a country after the times specified in paragraph (c) of this clause, but prior to its receipt of the written request of the agency, the contractor shall continue to retain ownership in that country; and
 - (iv) In any country in which the contractor decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in reexamination or opposition proceeding on, a patent on a subject invention.
 - (2) License. If the contractor retains ownership of any subject invention, the Government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice, or have practiced for or on behalf of the United States, the subject invention throughout the world.
 - (e) Contractor action to protect the Government's interest.
 - (1) The contractor shall execute or have executed and promptly deliver to the agency all instruments necessary to—
 - (i) Establish or confirm the rights the Government has throughout the world in those subject inventions in which the contractor elects to retain ownership; and
 - (ii) Assign title to the agency when requested under paragraph (d)(1) of this clause and enable the Government to obtain patent protection for that subject invention in any country.
 - (2) The contractor shall—
 - (i) Require, by written agreement, its employees, other than clerical and non-technical employees, to—
 - (A) Disclose each subject invention promptly in writing to personnel identified as responsible for the administration of patent matters, so that the contractor can comply with the disclosure provisions in paragraph (c) of this clause; and
 - (B) Provide the disclosure in the contractor's format, which should require, as a minimum, the information required by paragraph (c)(1) of this clause;
 - (ii) Instruct its employees, through employee agreements or other suitable educational programs, as to the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or statutory foreign bars; and
 - (iii) Execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions.
 - (3) The contractor shall notify the Contracting Officer of any decisions not to file a nonprovisional patent application, continue the prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceeding on a patent, in any country, not less than 30 days before the expiration of the response or filing period required by the relevant patent office.
 - (4) The contractor shall include, within the specification of any United States nonprovisional patent application and any patent issuing thereon covering a subject invention, the following statement: "This invention was made with

Government support under (identify the contract) awarded by (identify the agency). The Government has certain rights in this invention.”

(5) The contractor shall—

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

(ii) Include in these procedures the maintenance of—

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

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

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

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

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

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

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

(7) The contractor shall furnish to the Contracting Officer the following:

(i) Interim reports every 12 months (or any longer period as may be specified by the Contracting Officer) from the date of the contract, 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 three months after completion of the contracted work, listing all subject inventions or stating that there were no subject inventions, and listing all subcontracts at any tier containing a patent rights clause or stating that there were no subcontracts.

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

(A) The subcontractor;

(B) The applicable patent rights clause;

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

(D) The dates of award and estimated completion.

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

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

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

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

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

(i) Filing date.

(ii) Serial number and title.

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

(iv) Patent number and issue date.

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

(f) Reporting on utilization of subject inventions.

(1) The contractor shall—

(i) Submit upon request periodic reports no more frequently than annually on the utilization of a subject invention or on efforts in obtaining utilization of the subject invention that are being made by the contractor or its licensees or assignees;

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

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

(2) To the extent permitted by law, the agency shall not disclose the information provided under paragraph (f)(1) of this clause to persons outside the Government without the contractor’s permission, if the data or information is

considered by the contractor or its licensee or assignee to be “privileged and confidential” (see 5 U.S.C. 552(b)(4)) and is so marked.

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

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

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

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

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

(j) Examination of records relating to inventions.

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

(i) Any inventions are subject inventions;

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

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

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

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

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

(1) Any time before final payment under this contract, the Contracting Officer 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 Contracting Officer’s opinion, the contractor fails to—

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

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

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

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

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

(3) The Government will not make final payment under this contract before the contractor delivers to the Contracting Officer—

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

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

(iii) All past due confirmatory instruments.

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

(l) Subcontracts.

(1) The contractor—

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

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

(2) For subcontracts at any tier—

- (i) The patents rights clause included in the subcontract shall retain all references to the Government and shall provide to the subcontractor all the rights and obligations provided to the contractor in the clause. The contractor shall not, as consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions; and
- (ii) The Government, the contractor, and the subcontractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and the Government with respect to those matters covered by this clause. However, nothing in this paragraph is intended to confer any jurisdiction under the Contract Disputes Act in connection with proceedings under paragraph (h) of this clause.

(End of clause)

**G52.227-018
Deviation**

Government Access to Interim Data License (FEB 2011) (GOVERNMENT DEVIATION)

- (a) Definition. As used in this clause, *Integrated Data Environment (IDE)* means a mutually agreed to data storage and information management environment that facilitates Government and Industry information sharing and exchange, whether electronically or via hardcopy, to enable timely access and submission of information of all types and form.
- (b) If the contractor provides the Government access (whether electronically, via hard copy, person-to-person exchanges, IDE, or other means) to technical data or computer software prior to the contractually scheduled delivery date, or to technical data or computer software that is not otherwise subject to delivery, the Government's access shall not constitute delivery of such technical data or computer software under this contract. Unless otherwise expressly set forth in an attachment to this contract as described in paragraph (d) of clause G52.227-002, *Rights in Technical Data and Computer Software: Noncommercial Items*, this clause will also apply to data that cannot easily be categorized as technical data or business data to which the Government is given access prior to delivery, or which is not otherwise subject to delivery.
- (c) Subject to the restrictions set forth below, the Government may use, duplicate, and disclose such technical data or computer software within the Government in connection with the performance of this contract for such purposes as administration, evaluation, problem resolution, and technical collaboration with the contractor. The Government may disclose such technical data or computer software to its support contractors identified in clause G52.209-006, *Enabling Clause for Prime and Support Contractor Relationships*, for these same purposes if and when the receiving support contractor(s) or subcontractor(s) contract arrangements are subject to clauses G52.209-008, *Support Contractor Corporate Non-Disclosure Agreement*, and G52.227-005, *Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends*.
 - (1) An additional non-disclosure, confidentiality, proprietary information, or similar agreement may be required by the owner of the technical data or computer software, but only on an exception basis, e.g., when such third party is or may be a direct competitor of the owner of the technical data or computer software. In the event an additional agreement is deemed necessary, the Contracting Officer shall be notified prior to its execution. The Government and contractor agree to cooperate to ensure that execution of any additional agreements shall not delay or inhibit performance of this contract. Such agreements shall not otherwise restrict any rights due the Government under this contract. All rights not granted to the Government are retained by the contractor.
- (d) The Government shall not use, nor allow others to use, such technical data or computer software for the purposes of manufacturing, re-procurement, or other competitive purposes against the contractor's interest, or any other purpose not directly related to this contract. The restrictions on use and further disclosure shall not apply to technical data or computer software:
 - (1) Independently developed by or for the Government by persons not having access to the contractor's technical data or computer software, as evidenced in written documentation;
 - (2) In which the Government has otherwise acquired lawful rights in the use and further disclosure of the technical data or computer software; or
 - (3) Are otherwise publicly available.
- (e) The Government shall comply with reasonable access terms. Nothing in this clause diminishes the Government's rights under any other provision of this contract in delivered technical data or computer software.
- (f) All technical data or computer software to which the Government is provided access under this clause that is not intended to be responsive to the formal contract data requirements is provided "as is," and does not give rise to any express or implied warranty. The contractor shall not be liable to the Government for any Government use or reliance on such technical data or computer software outside of the rights granted in this section.
- (g) Government access under this clause shall not modify the rights and obligations of the parties with respect to technical data or computer software under the contract's termination provisions. In addition, Government access to such technical data or computer software resident on a contractor system does not create a "Government record" for purposes of the Freedom of Information Act, 5 U.S.C. §552(b)(4).
- (h) The Government's rights to access, use, duplicate, and disclose technical data or computer software granted within this provision shall terminate upon earliest occurrence of any of the following events:
 - (1) Termination of the contract; or
 - (2) The end of the period of performance of the contract, except the Government has the right to retain copies of such technical data or computer software granted within this provision to use, duplicate, and disclose for 3 years after termination of the contract or the end of the contract period of performance (POP).

- (3) Within 3 years of the termination of the contract or 3 years after the end of the contract period of performance, the Government shall take reasonable efforts to destroy copies of the technical data and computer software disclosed under the provisions of this clause.
- (i) General Interim Access Marking Instructions.
 - (1) The contractor may choose how to mark (or otherwise identify) technical data or computer software that has not or will not be delivered, from the following options:
 - (i) With a conforming restrictive legend pursuant to clause G52.227-002(k)(1)-(4);
 - (ii) With the interim access license legend specified in this clause;
 - (iii) With a proprietary marking; or
 - (iv) With a proprietary marking and interim access license legend
 - (2) If technical data or computer software is marked with a conforming restrictive legend pursuant to clause G52.227-002(k)(1)-(4), the Government may use that technical data or computer software in accordance with the rights specified in such legend.
 - (3) If the interim access license legend is used, the rights and restrictions that apply to the Government are as set forth in the interim access license provided by this clause.
 - (4) If technical data or computer software is marked with only proprietary markings, the Government is not bound by those proprietary markings for this contract, but must comply with the rights and restrictions of the interim access license provided by this clause.
 - (5) In the event a proprietary marking and interim access license legend is used, the Government is not bound by those proprietary markings for this contract, but must comply with the rights and restrictions of the interim access license provided by this clause.
- (j) The foregoing marking options do not prohibit the Government and contractor from establishing alternative specifically negotiated licenses and marking protocols when appropriate.
- (k) Government Interim Access License Rights Markings. Technical data or computer software in which the Government is granted an interim access license provided by this clause shall be marked with the following legend:

Government Interim Access License Rights

Contract No. _____
 Contractor Name: _____
 Contractor Address: _____

The Government may use, duplicate, and disclose this technical data or computer software within the Government in connection with the performance of this contract for such purposes as administration, evaluation, problem resolution, and technical collaboration with the contractor. The Government may disclose such technical data or computer software to its support contractors for these same purposes if and when such support contractors have executed a non-disclosure agreement with the contractor, or as otherwise expressly permitted by the contractor. Any reproduction of technical data or portions thereof marked with this legend must also reproduce the markings.

- (l) The contractor shall include this interim access license clause in all subcontracts or similar contractual instruments for non-commercial items and require its subcontractors or suppliers to do so without alteration, except to identify the parties.
- (End of clause)

**G52.227-019
 Modified**

Pre-Award and Post-Award Identification and Assertion of Restrictions on Technical Data Pertaining to a Commercial Item and Commercial Computer Software (OCT 2015) (SEAKR MODIFIED)

- (a) Identification and Assertion of Restrictions. The offeror shall not deliver or otherwise provide to SEAKR any commercial technical data or commercial computer software with restrictive markings (or otherwise subject to restrictions on access, use, modification, reproduction, release, performance, display, or disclosure) unless the commercial technical data or commercial computer software are identified in accordance with the following requirements:
 - (1) Pre-Award. The offeror (including its subcontractors or suppliers, or potential subcontractors or suppliers, at any tier) shall identify all commercial technical data and commercial computer software that it proposes will be delivered or otherwise provided (including all option CLINs, if exercised) with less than Unlimited Rights, to the extent known at the time an offer is submitted to the SEAKR:
 - (i) The offeror shall also identify and assert any restrictions for all commercial computer software, including open source software, and commercial technical data (i.e., technical data pertaining to a commercial item) using the format provided in paragraph (d) below.
 - (ii) An offeror's failure to submit, adequately complete, or sign the notification and identification required by paragraph (d) of this clause with its offer will constitute a minor informality. If assertions are required

and the offeror does not correct such informality within the time prescribed by the SEAKR Procurement Representative, the offer may be ineligible for award.

- (iii) If the offeror is awarded a contract, the assertions identified in this clause shall be listed in an attachment to that contract. Upon request by the SEAKR Procurement Representative, the offeror shall provide sufficient information to enable the Contracting Officer to evaluate any listed assertion. Updates to the Commercial Assertions List shall be included in an amended attachment.
- (2) Post-Award. In addition to the pre-award assertions made in the attachment pursuant to paragraph (b)(1)(iii), other assertions on technical data pertaining to a commercial item and commercial computer software 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 identifications and assertions shall be submitted to the SEAKR Procurement Representative as soon as practicable prior to the scheduled date for delivery of the technical data/computer software, following the same requirements and using the same table format for pre-award assertions found in paragraph (d), and signed by an official authorized to contractually obligate the contractor.
- (b) Copies of Commercial Licenses. The offeror shall provide copies of all commercial licenses to commercial technical data or commercial computer software which the offeror proposes to deliver, including third party licenses, and these shall be submitted as an attachment to its offer. The Government will review the licenses to ensure that the licenses terms are consistent with federal procurement law and meet the Government's end user needs. All such commercial licenses will be made part of an attachment to the contract at award. If the offeror intends to deliver commercial technical data under the terms of clause G52.227-001, instead of its own commercial license, the offeror shall list clause G52.227-001 in the table at paragraph (d) below.
 - (1) Typical licensing terms that are inconsistent with federal procurement law can include jurisdiction and venue (must be Federal law and venue), indemnification of vendor and automatic renewals (Anti-Deficiency Act violation), order of precedence (the contract takes precedence over license), dispute resolution (must be in accordance with Disputes clause in the contract), and injunctive relief (no injunctive relief against the Government is available, per 28 USC §1498(b)). This list is not all-inclusive, but is intended to convey the most common license terms that are problematic to the Government, and the must be resolved prior to award. See clause G52.227-008, Commercial Technical Data and Computer Software Licensing - Order of Precedence, for additional clarification.
 - (2) With respect to the Government program user needs for technical data and computer software delivered under this contract, the Government will need to distribute the commercial computer software and technical data outside of Government for any purpose where the Government is a party, but only under conditions that prohibit any further distribution by the third party recipient. To accomplish the distribution, the Government intends use non-disclosure agreements discussed in clauses G52.209-005, Protection of Information, and G52.209-008, Support Contractor Corporate Non-Disclosure Agreement. Additional non-disclosure agreements deemed necessary by the owner of the licensed technical data or computer software shall be submitted to the SEAKR Procurement Representative to send to the Contracting Officer for review prior to execution.
 - (3) If the offeror intends to use third party commercial technical data or commercial computer software in the performance of the contract, and then deliver the commercial technical data or computer software to SEAKR and the Government at the conclusion of the contract, the offeror should list such commercial technical data or computer software in the table at paragraph (d). The offeror shall also ensure that the applicable license is transferable to the Government. The Government criteria for software license review will be the same for third party vendors as for the offeror's commercial computer software as described in paragraph (b)(1) and (b)(2) of this clause once the Government becomes the end user. The offeror should accomplish the actions in the paragraph prior to award of the contract.
- (c) Use of Open Source Software (OSS) Without Delivery. The Government treats OSS as a category of commercial computer software. If the contractor proposes to deliver OSS while performing under the contract, the contractor shall follow the same rules as prescribed in this clause as for commercial computer software. Additionally, if the contractor proposes to use, but not deliver, commercial computer software (including OSS), the contractor must ensure that such use does not: (i) create, or purport to create, any Government distribution obligations with respect to the computer software deliverables; or (ii) grant, or purport to grant, to any third party any rights to or immunities under Government intellectual property or Government data rights to the Government computer software deliverables.
- (d) Table Format for Identification and Assertion of Restrictions. Commercial technical data and commercial computer software restrictions shall be identified as follows:

Identification of Commercial Technical Data/Computer Software (Including Open Source Software) Use and Modifications (Commercial Assertions List)

Commercial Technical Data/Computer Software Title, Version #, and License*	Technical Use/Implementing Approach**	If OSS, Was OSS Modified by Contractor?***	Name of Contractor Delivering Commercial Software****

*For commercial technical data (other than computer software documentation) pertaining to items, components, or processes developed at private expense, identify both the deliverable technical data and each such item, component, or process. For computer software or computer software documentation, identify the computer software or computer software documentation. The complete title and version number of the computer software should be listed. If OSS, list the license and version number. If a version number is not available, provide some other means of identification (e.g., checksum data). If commercial technical data is being delivered under the terms of clause G52.227-001, then clause G52.227-001 should be listed. If the OSS was downloaded from a website, the website address should also be provided but an actual copy of the license shall still be provided as set forth in paragraph (d). Enter "None" if all commercial technical data or commercial computer software will be submitted without restrictions.

**The functionality of the commercial computer software should be described, as well as where it is being used within the larger computer software deliverable, if applicable.

***If OSS is being used, the offeror should state whether it has modified the OSS or plans to do so.

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

Date: _____

Printed Name and Title: _____

Signature: _____

(End of identification and assertion)

(End of clause)

G52.228-003 Mishap Reporting and Investigation Involving Aircraft, Missiles, and Space Launch Vehicles (FEB 2020)
(Notes 2 and 4 apply.)

(a) The contractor shall report promptly to the Contracting Officer all pertinent facts relating to each mishap involving an aircraft, missile, or space launch vehicle being manufactured, modified, repaired, or overhauled in connection with this contract.

(b) If the Government conducts an investigation of the mishap, the contractor shall cooperate and assist the Government's personnel until the investigation is complete.

(c) The contractor shall include a clause in subcontracts under this contract to require subcontractor cooperation and assistance in mishap investigations.

(End of clause)

G52.228-004 Insurance (SEP 1996)

The following kinds and minimum amounts of insurance are applicable in the performance of the work under this contract:

(a) Workmen's Compensation and Employer's Liability Insurance. The contractor shall comply with applicable Federal and State workers' compensation and occupational disease statutes. If occupational diseases are not compensable under those statutes, they shall be covered under the employer's liability section of the insurance policy, except when contract operations are so commingled with contractor commercial operations that it would not be practical to require this coverage. Employer liability coverage of at least \$100,000 is required, except in States with exclusive or monopolistic funds that do not permit workers compensation to be written by private carriers.

(b) General Liability Insurance. Bodily injury liability insurance coverage written on the comprehensive form of policy of at least \$500,000 per occurrence is required.

(c) Automobile Liability Insurance. Automobile liability insurance written on the comprehensive form of policy is required. The policy shall provide for bodily injury and property damage liability covering the operation of all automobiles used in connection with performing the contract. Policies covering automobiles operated in the United States shall provide coverage of at least \$200,000 per person and \$500,000 per occurrence for bodily injury and \$20,000 per occurrence for property damage. The amount of liability coverage on other policies shall be commensurate with any legal requirements of the locality and sufficient to meet normal and customary claims.

(d) Aircraft Public and Passenger Liability Insurance. When aircraft are used in connection with performing the contract, aircraft public and passenger liability insurance coverage shall be at least \$200,000 per person and \$500,000 per occurrence for bodily injury, other than passenger liability, and \$200,000 per occurrence for property damage.

Coverage for passenger liability bodily injury shall be at least \$200,000 multiplied by the number of seats or passengers, whichever is greater.
(End of clause)

G52.230-002 Cost Accounting Standards (JUN 2018)

Insert the following clause, in lieu of FAR clause 52.230-2, in negotiated contracts awarded on or after 1 July 2018, unless the contract is exempted (see 48 CFR 9903.201-1), the contract is subject to modified coverage (see 48 CFR 9903.201-2), or the clause, *Disclosure and Consistency of Cost Accounting Practices–Foreign Concerns*, is used:

(a) Unless the contract is exempt under 48 CFR 9903.201-1 and 9903.201-2, the provisions of 48 CFR Part 9903 are incorporated herein by reference and the Contractor, in connection with this contract, shall–

(1) (CAS-covered Contracts Only) By submission of a Disclosure Statement, disclose in writing the Contractor's cost accounting practices as required by 48 CFR 9903.202-1 through 9903.202-5, including methods of distinguishing direct costs from indirect costs and the basis used for allocating indirect costs. The practices disclosed for this contract shall be the same as the practices currently disclosed and applied on all other contracts and subcontracts being performed by the Contractor and which contain a Cost Accounting Standards (CAS) clause. If the Contractor has notified the Contracting Officer that the Disclosure Statement contains trade secrets and commercial or financial information which is privileged and confidential, the Disclosure Statement shall be protected and shall not be released outside of the Government.

(2) Follow consistently the Contractor's cost accounting practices in accumulating and reporting contract performance cost data concerning this contract. If any change in cost accounting practices is made for the purposes of any contract or subcontract subject to CAS requirements, the change must be applied prospectively to this contract and the Disclosure Statement must be amended accordingly. If the contract price or cost allowance of this contract is affected by such changes, adjustment shall be made in accordance with subparagraph (a)(4) or (a)(5) of this clause, as appropriate.

(3) Comply with all CAS, including any modifications and interpretations indicated thereto contained in 48 CFR Part 9904, in effect on the date of award of this contract or, if the Contractor has submitted certified cost or pricing data, on the date of final agreement on price as shown on the Contractor's signed certificate of current cost or pricing data. The Contractor shall also comply with any CAS (or modifications to CAS) which hereafter become applicable to a contract or subcontract of the Contractor. Such compliance shall be required prospectively from the date of applicability to such contract or subcontract.

(4) (i) Agree to an equitable adjustment as provided in the Changes clause of this contract if the contract cost is affected by a change which, pursuant to subparagraph (a)(3) of this clause, the Contractor is required to make to the Contractor's established cost accounting practices.

(ii) Negotiate with the Contracting Officer to determine the terms and conditions under which a change may be made to a cost accounting practice, other than a change made under other provisions of subparagraph (a)(4) of this clause; provided that no agreement may be made under this provision that will increase costs paid by the United States.

(iii) When the parties agree to a change to a cost accounting practice, other than a change under subdivision (a)(4)(i) of this clause, negotiate an equitable adjustment as provided in the Changes clause of this contract.

(5) Agree to an adjustment of the contract price or cost allowance, as appropriate, if the Contractor or a subcontractor fails to comply with an applicable Cost Accounting Standard, or to follow any cost accounting practice consistently and such failure results in any increased costs paid by the United States. Such adjustment shall provide for recovery of the increased costs to the United States, together with interest thereon computed at the annual rate established under section 6621(a)(2) of the Internal Revenue Code of 1986 (26 U.S.C. 6621(a)(2)) for such period, from the time the payment by the United States was made to the time the adjustment is effected. In no case shall the Government recover costs greater than the increased cost to the Government, in the aggregate, on the relevant contracts subject to the price adjustment, unless the Contractor made a change in its cost accounting practices of which it was aware or should have been aware at the time of price negotiations and which it failed to disclose to the Government.

(b) If the parties fail to agree whether the Contractor or a subcontractor has complied with an applicable CAS in 48 CFR 9904 or a CAS rule or regulation in 48 CFR 9903 and as to any cost adjustment demanded by the United States, such failure to agree will constitute a dispute under 41 U.S.C. chapter 71, Contract Disputes.

(c) The Contractor shall permit any authorized representatives of the Government to examine and make copies of any documents, papers, or records relating to compliance with the requirements of this clause.

(d) The Contractor shall include in all negotiated subcontracts which the Contractor enters into, the substance of this clause, except paragraph (b), and shall require such inclusion in all other subcontracts, of any tier, including the obligation to comply with all CAS in effect on the subcontractor's award date or if the subcontractor has submitted certified cost or pricing data, on the date of final agreement on price as shown on the subcontractor's signed Certificate of Current Cost or Pricing Data. If the subcontract is awarded to a business unit which pursuant to 48 CFR 9903.201-2 is subject to other types of CAS coverage, the substance of the applicable clause set forth in subsection 30.201-4 of the Federal Acquisition Regulation shall be inserted. This requirement shall apply only to negotiated subcontracts in excess of \$2 million, except that the requirement shall not apply to negotiated subcontracts otherwise exempt from the requirement to include a CAS clause as specified in 48 CFR 9903.201-1.

(End of clause)

G52.231-001 **Supplemental Cost Principals (SEP 2013) ()**
Modified

The determination, negotiation, and allowability of costs under this contract shall be in accordance with Part 31 of the Federal Acquisition Regulation in effect on the date of this contract.
(End of clause)

G52.231-002 **Allowability of Special Security Costs (JAN 2004)**

The costs of the special security requirements required by this Contract are allowable as a direct charge against this Contract. However, this determination of allowability shall not constitute a determination of the adequacy or approval of the Contractor's disclosure statement(s), and such costs are only allowable as a direct charge to this Contract so long as they continue to be set forth as direct charges to Contracts in the Contractor's approved disclosure statement(s).
(End of clause)

G52.231-003 **Contractor Training and Education (SEP 2013) ()**
Modified

The costs of contractor employee training and education are allowable as a direct charge against this contract only if approved in advance by the SEAKR Procurement Representative as unique to this contract and directly applicable to the work to be performed under the contract. However, this determination of allowability shall not constitute a determination of the adequacy or approval of the contractor's disclosure statement(s), and such costs are only allowable as a direct charge to this contract so long as they continue to be set forth as direct charges to contracts in the contractor's approved disclosure statement(s). Commercially available training and education are not considered unique to this contract.
(End of clause)

G52.231-004 **Prohibition on Contractor Acquisition of Personal Property for Use By Government Employees (JUL 2004)**

- (a) The contractor shall not purchase personal property directly chargeable under this contract specifically for transfer to and use by a Government employee. This prohibition includes, but is not limited to, notebook and desktop computers, personal digital assistants, pagers, and cellular telephones.
 - (b) The contractor shall notify the Contracting Officer in writing within 30 days whenever any item of personal property acquired by the contractor is transferred to a Government employee and removed from the contractor's property records. This notification must include the following information for each item transferred:
 - (1) Item description, including manufacturer, model, and serial number;
 - (2) Acquisition cost and date;
 - (3) Name and organization of the Government employee receiving the item; and
 - (4) Date of transfer.
- (End of clause)

G52.234-002 **Earned Value Management System (JUL 2018) ()** (Applies if cost reimbursable or fixed price incentive and if this Contract is valued at more than \$100 million.)
Modified

- (a) In the performance of this contract, the contractor shall establish, maintain, and implement an earned value management system (EVMS) that complies with the 32 guidelines contained in Electronics Industries Alliance (EIA) Standard 748, *Earned Value Management Systems* (herein referred to as the *Guidelines*).
- (b) The contractor shall provide access to the company EVMS description and supplemental
- (c) procedures, plans, records, data, and personnel to ensure compliance with the Guidelines. The contractor shall provide all proposed changes to the EVMS description and supplemental procedures for SEAKR and the Government EVM Focal Point review prior to implementation. The Government EVM Focal Point will determine whether the modified EVMS description and supplemental procedures meet the intent of the Guidelines.
- (d) The contractor shall flow down the requirements of this clause to all cost-reimbursable
- (e) and fixed-price incentive subcontracts with applicable work scope, a total value greater than \$50 million (including priced options), and a period of performance greater than one year.
- (f) Cost-reimbursable and fixed-price incentive contracts and subcontracts with applicable
- (g) work scope, a total value greater than \$100 million (including priced options), and a period of performance greater than one year require the contractor and subcontractor(s) to demonstrate EVMS implementation to SEAKR and the Government EVM Focal Point at EVMS implementation reviews.
- (h) The contractor shall conduct an Integrated Baseline Reviews jointly with SEAKR, Government Program Manager, Contracting Officer and the Government EVM Focal Point no later than 90 days after contract award or authorization to proceed; whenever a significant change to the baseline occurs; as agreed to by the parties; or at the discretion of SEAKR Procurement Representative. The contractor shall conduct IBRs on subcontracts with EVMS flow down requirements and provide the Contracting Officer and SEAKR Procurement Representative insight into subcontract IBR plans, conduct, and results.
- (i) The contractor shall notify the SEAKR Procurement Representative of any significant changes to the Performance Measurement Baseline prior to implementing the change. A significant change shall be by mutual agreement of all parties.

- (j) Prior to implementing an Over Target Baseline (OTB) and/or Over Target Schedule
- (k) (OTS), the contractor shall submit to the SEAKR Procurement Representative ground rules, assumptions, scope, impact, plans to adjust variances, potential reporting changes, documentation recommendations, and planned dates for implementation. The SEAKR Procurement Representative shall approve the OTB/OTS prior to implementation.
- (l) The SEAKR Procurement Representative is the only representative of SEAKR authorized to negotiate, execute, or modify this contract. Should any action by other SEAKR personnel or the Government EVM Focal Point or other Government personnel imply a commitment on the part of SEAKR or the Government which would affect the terms of this contract, the contractor shall notify the SEAKR Procurement Representative and obtain approval prior to proceeding.

G52.239-001 Information Assurance Contractor Training and Certification (APR 2014)

- (a) The Contractor shall ensure that personnel accessing information systems have the proper and current information assurance certification to perform information assurance functions in accordance with DoD 8570.01-M, Information Assurance Workforce Improvement Program. The Contractor shall meet the applicable information assurance certification requirements, including –
 - (1) DoD-approved information assurance workforce certifications appropriate for each category and level as listed in the current version of DoD 8570.01-M; and
 - (2) Appropriate computing environment/operation system certification for information assurance technical and computer network defense positions as required by DoD 8570.01-M.
 - (b) Upon request by the Government, the Contractor shall provide documentation supporting the information assurance certification status of personnel performing information assurance function.
 - (c) Contractor personnel who do not have proper and current certifications shall be denied access to Government information systems for the purpose of performing information assurance functions. When this clause is added to a contract post-award, the Contractor will have 180 days from the date of contract modification to meet the applicable certification requirements of this clause.
- (End of clause)

G52.244-001 Modified Subcontracts (Educational Institutions) (MAR 2015) () (Requires Contracting Officer written consent to subcontract with an educational institution.)

- (a) The Contractor shall obtain written authorization through SEAKR from the Contracting Officer prior to award, extension or renewal of a subcontract with an educational institution.
 - (b) The Contractor shall obtain a letter from an official with authority to approve contracts on behalf of the subcontractor that acknowledges the subcontractor’s involvement with a U.S. Government Intelligence Agency and approves the proposed contractual relationship. The Contractor shall submit a copy of this letter to the Contracting Officer along with a description of the work to be subcontracted and a technical justification documenting the necessity in relation to the project as a condition for obtaining the required written authorization. The sample letter is provided in clause G.52.204-13.
 - (c) The requirements of this clause must be included in all subcontracts.
- (End of clause)

G52.244-002 Modified Subcontract Reporting, Monitoring, Consent, and Notification (MAY 2019) ()

Insert the following clause in solicitations and contracts above the simplified acquisition threshold:

(a) Definition. As used in this clause:
Subcontract means any contract or contractual action entered into by the prime contractor or a subcontractor for the purpose of obtaining supplies, materials, equipment, or services of any kind under this contract. It includes but is not limited to purchase orders, and changes and modifications to purchase orders. For purposes of consent, the definition of *subcontract* in FAR 52.244-2 applies.

Subcontractor means any supplier, distributor, vendor, or firm that furnishes supplies, materials, equipment, or services of any kind under this contract or a subcontract entered into in connection with this contract, regardless of dollar value.

(b) Flow-Down. The requirements of this clause must be included in all first-tier subcontracts directly chargeable to this contract, except for those subcontracts with US-owned companies to provide only unclassified commercial products and/or services on a fixed-price basis.

(c) Reporting. Contractor shall submit an annual report of all first- and second-tier subcontracts directly chargeable to this contract by 31 May each year, and a final close-out report within 90 days after contract completion. First-tier subcontracts that are exempt from this reporting requirement shall meet all of the following criteria: (i) individual firm fixed-price subcontracts, (ii) under \$5,000, (iii) with U.S. owned company, (iv) unclassified commercial products and/or services are provided, and (v) will not be incorporated into a SEAKR contract deliverable (e.g., office supplies, travel, postage). Reports must be in Microsoft Excel in accordance with the Subcontract Data Requirements

List (SDRL) and its Data Item Description (DID) or as follows including the following information in the format specified in the Subcontract Reporting Application, Excel spreadsheet, provided by SEAKR:

- Prime Contract Number or Task Order Number
- Subcontractor Tier
- Is the Subcontract Classified (Yes/No)
- Relationship Between Prime Contractor and Subcontractor
- Subcontractor Business Name, Street Address, City, State, Zip Code and Country
- Subcontractor Data Universal Numbering System (DUNS) Number
- Subcontractor Contractor and Government Entity (CAGE) Code
- Subcontractor Business Type whether Woman-owned, Veteran-owned Business, Service-disabled Veteran-owned Business, and or HUBZone Small Business?
- Subcontractor Country of Ownership
- DUNS Number of Company Awarding Subcontract
- Subcontractor's Parent Company Business Name
- Subcontract or Purchase Order Number, Value (Cumulative to Date), Period of Performance – Start/End Date
- Subcontract Place of Performance – City, State, Country
- Brief Description of Subcontract Effort
- Primary Subcontract Type
- Method Used to Select Subcontractor (Competitive or Sole-Source)

(d) Monitoring. The parties agree that the Government and SEAKR, except for subparagraphs (1) and (4) where those subparagraphs only apply to the Government, shall have the right to:

- (1) Review all documentation pertaining to source selections or other competitive sourcing activities, fact-finding, and negotiation sessions with or for subcontractors or potential subcontractors;
- (2) Observe any subcontractor test, verification, validation, shipment, or similar event;
- (3) Attend any subcontractor design review, milestone review, program review, or similar event. Unless expressly agreed to by SEAKR and the Contracting Officer, the Government will not require a subcontractor event to be rescheduled due to the Government's inability to attend; and
- (4) Review and agree to the contractor's make-or-buy program when necessary to ensure negotiation of reasonable contract prices or satisfactory performance.

(e) Consent.

- (1) All consent to subcontract requirements in FAR Clause 52.244-2 apply to this contract. In addition, the contractor shall obtain the Contracting Officer's and SEAKR's written consent before awarding any subcontract with a value over \$50 million. Requests for consent to subcontract must be submitted in writing via the SEAKR Procurement Representative, and provide the information specified in FAR 52.244-2(e).
- (2) The Contracting Officer's and/or SEAKR's written consent is required before awarding any subcontract that will exceed \$3 million or five percent of prime contract value, whichever is less.
- (3) Requests for consent to subcontract shall be submitted in writing through SEAKR to the Contracting Officer, and provide, at a minimum, the information specified in FAR 52.244-2(e).

(f) Notification. The prime contractor shall provide written notification to the Contracting Officer and COTR when a subcontract is expected to exceed the negotiated cost baseline by 15 percent. (Applicable to Cost Reimbursement contract types only.)

(g) Privity. Government collection of subcontract information, surveillance of subcontractor performance, and consent to subcontract do not relieve the contractor of any responsibility for the effective management of all subcontracts and for the overall success of this contract. Actions taken under the authority of this clause do not establish privity of contract between the Government and subcontractors under this contract. The Government will not provide direction to or request action by any subcontractor except through the prime. However, all subcontractors must respond to direct requests for information from the Government, either directly or through the prime.

(h) Security. The Government reserves the right to direct the removal of any subcontractor under this contract on the basis of Government security concerns. The contractor shall be responsible for any lack of due diligence or negligence in the selection of a subcontractor, and will not be entitled to an equitable adjustment if the Contracting Officer determines that the Government's need to remove the contractor for security reasons is the fault of the contractor or subcontractor.

(End of clause)

**G52.244-002
Alt 1
MODIFIED**

Alternate I (MAY 2019) ()

If the solicitation and contract is for a Major System Acquisition, insert the following paragraphs (d) and (e) in place of the corresponding paragraphs in the basic clause, and re-number the succeeding paragraphs:

(d) Monitoring. The Contractor shall prepare a Subcontractor Monitoring Strategy (SMS) specific to this Contract and submit a draft to the SEAKR Procurement Representative for review and approval within 90 days after Contract

award, or as stipulated in writing by the SEAKR Procurement Representative. This document must include a process for notifying the SEAKR Procurement Representative and the SEAKR Subcontract Manager in advance of each significant test, meeting, review, and event at the Contractor and subcontractor level. It must also address the requirements listed in the SEAKR provided form, Subcontract Monitoring Strategy Matrix, a completed copy of which must be submitted to the SEAKR Procurement Representative with each new or revised SMS. The parties also agree that the Government shall have the right to:

- (1) Review all documentation pertaining to source selections or other competitive sourcing activities, fact-finding, and negotiation sessions with or for subcontractors or potential subcontractors;
- (2) Observe any subcontractor test, verification, validation, shipment, or similar event;
- (3) Attend any subcontractor design review, milestone review, program review, or similar event. Unless expressly agreed to by SEAKR and the Contracting Officer, the Government will not require a subcontractor event to be rescheduled due to the Government's inability to attend; and
- (4) Review and agree on the contractor's make-or-buy program when necessary to ensure negotiation of reasonable contract prices or satisfactory performance.

(e) Consent. The Government asserts its right for consent to subcontract on this contract.

- (1) Contracting Officer consent in accordance with FAR Subpart 44.2 is required before awarding any subcontract exceeding \$50 million.
 - (2) The Contracting Officer's and/or SEAKR's written consent is required before awarding any subcontract that will exceed \$3 million or five percent of prime contract value, whichever is less.
 - (3) All requests for consent to subcontract shall be submitted in writing to the SEAKR, and provide, at a minimum, the information specified in FAR 52.244-2(e).
- (End of clause)

G52.245-001

Contract-Accountable Government Property: Responsibilities, Use, Reporting, and Administration (JUL 2018)

()

(a) General Requirements. The contractor shall maintain adequate property control procedures, records, and a system of identification for all Government property accountable to this contract in accordance with FAR 52.245-1 and this clause. If FAR and SEAKR's government customer contractual guidance conflict, the government customer contractual guidance will have precedence. The terms "Government property," "contract accountable property," "Government equipment," and "contractor-acquired property/material" are used interchangeably and equally within this clause. All items provided to the contractor, including equipment, material, and facilities are equally considered to be Government property.

(b) Definitions. As used in this clause:

- (1) *Agency-Peculiar Property (AP)* means Government property, consisting of end items and integral components of military weapons systems, along with the related peculiar support equipment which is not readily available as a commercial item.
- (2) *Equipment (EQ)* means a tangible asset that is functionally complete for its intended purpose, durable, nonexpendable, needed for the performance of a contract. Equipment is not intended for sale and does not ordinarily lose its identity or become a part of another article when put into use (e.g., machine tools, furniture, vehicles, and test equipment, including their accessory or auxiliary items). Equipment does not include information technology (IT) items as defined below.
- (3) *Government Furnished Material (GFM)* means property provided to a contractor by the Government that may be incorporated into or attached to a deliverable end item or that may be consumed or expended in performing a contract. Includes assemblies, expendable components, parts, raw and processed materials, and small tools and supplies that may be consumed in normal use in performing a contract. GFM includes assemblies, expendable components, parts, raw and processed materials, and small tools and supplies that may be consumed in normal use in performing a contract. GFM does not include equipment, special tooling, special test equipment, real property, or information technology that has been incorporated into a higher assembly or an item incorporated into an item of special test equipment.
- (4) *Government-Owned, Contractor-Acquired Material (CAM)* means property acquired or otherwise provided by the contractor to which the Government has title, and that may be incorporated into or attached to a deliverable end item or that may be consumed or expended in performing a contract. CAM includes assemblies, expendable components, parts, raw and processed materials, and small tools and supplies that may be consumed in normal use in performing a contract. CAM does not include equipment, special tooling, special test equipment, real property, or information technology equipment that has been incorporated into a higher assembly or an item incorporated into a higher assembly or an item incorporated into an item of special test equipment.
- (5) *Information Technology (IT)* means equipment or interconnected systems or subsystems of equipment that is used in the automated acquisition, storage, analysis, evaluation, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information. IT includes computers, ancillary equipment (including imaging peripherals, input, output, and storage devices necessary for security and surveillance), peripheral equipment designed to be controlled by the central processing unit of a computer, software, firmware, and similar procedures, services (including support services), and related resources. IT does not include any equipment that contains imbedded information technology that is used as an integral part of the product, but the principal function of which is not the acquisition, storage, analysis, evaluation, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information.

(6) *Land (L)* means land, land rights, and improvements to land.

(7) *Real Property (RP)* means buildings, improvements to buildings, utility distribution systems, prefabricated structures, and fixed equipment required for the operation of a building which is permanently attached to and a part of the building and cannot be removed without cutting into the walls, ceilings, or floors. Examples of fixed equipment required for functioning of a building include plumbing, heating and lighting equipment, elevators, central air conditioning systems, and built-in safes and vaults. Foundations and work necessary for installing special tooling, special test equipment, or plant equipment are not included. This category includes acquisitions and improvements of structures and facilities other than buildings, such as power production facilities and distribution systems, reclamation and irrigation facilities, flood control and navigation aids, utility systems (heating, sewage, water and electrical) when they serve several buildings or structures, communication systems, traffic aids, roads and bridges, and nonstructural improvements such as sidewalks, parking areas, and fences. RP also includes government-funded costs of improvements to leased buildings, structures, and facilities, as well as easements and right-of-way, where government is the lessee or the cost is charged to a government contract. Contractors shall report leasehold improvements with a unit acquisition cost of \$1,000,000 or more and a useful life of two years or more.

(8) *Property management system* means the contractor's system or systems for managing and controlling Government property.

(9) *Significant deficiency* means a system shortcoming that materially affects the reliability of required management information produced by the system.

(10) *Special Test Equipment (STE)* means a single or multipurpose integrated test unit engineered, designed, fabricated, or modified to accomplish special purpose testing in performing a contract. STE consists of items or assemblies of equipment including foundations and similar improvements necessary for installing special test equipment, and standard or general purpose items or components that are interconnected and interdependent so as to become a new functional entity for special testing purposes. STE does not include material, special tooling, real property, and equipment items used for general testing purposes or property that with relatively minor expense can be made suitable for general purpose use.

(11) *Special Tooling (ST)* means jigs, dies, fixtures, molds, patterns, taps, gauges, and all components of these items including foundations and similar improvements necessary for installing special tooling, and which are of such a specialized nature that without substantial modification or alteration their use is limited to the development or production of particular supplies or parts thereof or to the performance of particular services. ST does not include material, special test equipment, real property, equipment, machine tools, or similar capital assets.

(12) Reserved.

(c) Property Analyst. The SEAKR Procurement Representative has delegated property administration authority to a SEAKR Property Analyst.

(d) Contractor Property Representatives. The contractor shall provide the name, address, and telephone number of the company official responsible for establishing and maintaining control of Government property under this contract to the SEAKR Procurement Representative and the assigned SEAKR Property Analyst within 30 calendar days after receipt of this contract and upon assignment of a replacement official.

(e) Government Property List. The Government Property List in the resulting contract identifies all Government property offered to the contractor on a no-charge-for-use basis to perform this contract and the dates of availability for each item. The SEAKR Procurement Representative will update the list as changes occur so that it always identifies all the Government property authorized for transfer to the contractor under this contract, whether or not the items have actually been transferred. The Government Property List is not intended to include all Government property accountable to this contract; the inventory of Government property accountable to this contract is maintained in the Electronic Procurement Exchange/Property Management Module (Epx/PMM) based on SEAKR's quarterly property reports.

(f) Property Transfers. The Government through SEAKR can direct the transfer of contract-accountable property between contracts. All transfers must be coordinated through SEAKR for authorization between the losing and gaining Contracting Officers and Property Analysts, and by the COTRs, Associate Property Management Officers, and other Program Office personnel as appropriate. The SEAKR Property Analyst will evaluate each transfer to ensure that the gaining contract includes the appropriate Government property clauses (52.245-1, 52.245-9 and G52.245-001), assist in validating the gaining contract requirement, and verify that the transfer will not adversely impact the losing contract. Transfers between contracts must be documented using a DD Form 1149, a SEAKR Procurement Representative letter, or a contract modification. This documentation shall serve as the only record necessary to document transfers. When multiple items are transferred, a listing of items with all data elements prescribed in the contractual flow downs must be attached to the transfer document. The contractor must obtain approval of the SEAKR Procurement Representative or designee before property transfers occur, except for contractor acquired material with a unit cost less than \$10,000 transferred within an approved Material Management and Accounting System (MMAS). If requested by the SEAKR Property Analyst, the contractor shall notify the SEAKR Property Analyst when such MMAS transfers are executed.

(g) Government Property Accountable to Other Contracts.

(1) The contractor may use Government property in their possession and accountable to another government contract for the performance of this contract on a rent-free, non-interference use (RFNIU) basis if approved in writing by the Contracting Officers for both contracts. Requests for RFNIU must contain a liability provision from the requesting contract, and stipulate that:

- (i) The property will be used on a strictly rent-free, non-interference basis;
- (ii) Use will not impact the owning program;
- (iii) The property will be returned upon request from the owning contract to meet its urgent needs;

- (iv) The form, fit, and function of the property will not be altered without written approval from the owning Contracting Officer; and
- (v) The property will be controlled and accounted for at all times.
- (2) RFNIU transactions must comply with the terms and conditions of both contracts as well as with any provisions in the SEAKR Procurement Representative's approval letter. Material is not eligible for RFNIU.
- (h) Title. Title to all Government-furnished property and all contractor acquired property which has been reimbursed under the contract remains vested with the Government. Upon completion or termination of this contract, the Contractor shall submit to the SEAKR Procurement Representative and SEAKR Property Analyst a list of all property acquired under the contract during the contract period. The list shall describe each item, including the manufacturer, model number, part number, serial number, date acquired, cost, location, and condition, and shall be submitted to the SEAKR Property Analyst within 45 calendar days after completion or termination of the contract.
- (i) Promotional Items. Stand-alone promotional items received from a vendor in conjunction with a Government purchase, whether as Government-furnished property or contractor-acquired property, must be accounted for as Government property in the contractor's Property Management System (PMS). If the contractor has a valid need to use the promotional items to fulfill contractual requirements, the items shall be managed as contract-accountable property. If there is no valid need for the items under the contract, the contractor will disposition the items as directed by the SEAKR Procurement Representative.
- (j) Audits and Analyses.
- (1) The SEAKR Property Analysts will audit/analyze the contractor's processes, controls, policies, accountability, and administration of Government property in accordance with FAR and customer contractual requirements. Failure of the contractor to maintain a compliant property management system may result in revocation of the Government's assumption of risk by the Contracting Officer.
- (2) Support Property Administration for subcontractors and alternate locations will be performed in accordance with FAR 45.502 and 45.503, and applicable government provisions. When contractor is also performing as a subcontractor on another SEAKR contract, the SEAKR Property Analysts will, when appropriate, include any property accountable to that subcontract in their analysis of the prime contractor. This support property administration applies to the property analysis and represents no change to the prime contractor to subcontractor relationship with respect to plant clearance, Loss, Damage, Destruction, or Theft (LDDT), and property reporting.
- (k) Reporting.
- (1) Quarterly Reports. The contractor shall submit quarterly reports of all property accountable to this contract and in the possession of the contractor or subcontractors. Reports shall be prepared in accordance with the contractual flow downs, and the following guidance:
- (a) Submit reports not later than the 7th day after each of the following reporting periods:
- First Quarter: 1 September -30 November
 - Second Quarter: 1 December – 28/29 February
 - Third Quarter: 1 March – 31 May
 - Annual Report: 1 June – 31 August
- (ii) Each report must be submitted electronically to the SEAKR Procurement Representative and a copy to the SEAKR Property Analyst.
- (iii) Contractors shall include all contract-accountable property in the possession of their subcontractors in each property report.
- (iv) Each tagged item of contract-accountable property must be assigned a Program Code to identify the government program under which the item was originally acquired, or to designate the item as "non-program." Non-program property is contract-accountable property acquired for general, administrative, or support activities. Program property comprises contract-accountable property purchased to support the acquisition of a satellite, command and control system, data-processing system, or space launch.
- (v) The contractor shall retain documents which support the data in their property reports for the periods specified in FAR Subpart 4.7 or for the life of the asset, whichever is longer.
- (vi) Reserved.
- (vii) Reserved.
- (viii) Reserved.
- (ix) Changes to these reporting requirements, including changes in frequency, style, substance, and level of detail, may be made at any time during the performance of this contract at no change in contract value. When changes in Federal Accounting Standards and OMB reporting requirements occur, contractors may also be required to submit supplemental information with this report. Failure to provide required reporting may result in termination of this contract, suspension of payment by SEAKR until required reporting is received, or other action as deemed appropriate by the SEAKR Procurement Representative.
- (2) Subcontractor Property Reports.
- (i) Reserved.
- (ii) The subcontractor property report details shall be included in the quarterly financial property report submittal, reference section (k)(1).
- (3) Inventory Reports. The contractor shall periodically conduct a physical inventory of contract-accountable property in accordance with leading Industry practices, standards and procedures. The SEAKR Property Analyst will approve the frequency and method to be used by the contractor for the physical inventory process. Under a manual inventory system, the property inventoried shall be tagged or marked in a manner that indicates that the item has been inventoried. The tags used are normally color-coded or identify the current year, and should be designed to last through the inventory cycle. The contractor shall submit the results of each physical inventory (to include all inventories performed by the prime contractor and each subcontractor) to the SEAKR Procurement Representative or

SEAKR Property Analyst no later than 60 days after inventory completion or per the contractual flow downs. The contractor shall also post the inventory results to their property records.

(4) Final (Zero) Property Report. Upon completion of all work and disposition of all contract-accountable property under this contract, the contractor shall submit a final zero property report to the SEAKR Procurement Representative certifying the disposition of all contract-accountable property and providing along with documentation supporting the transfer or disposal of all contractor inventory (e.g., SF1428, DD 1149).

(l) Reutilization and Disposal.

(1) Reutilization. Government property that has had no activity should be reviewed annually by contractor and SEAKR personnel to determine whether reutilization is possible. The SEAKR Property Analyst should work in concert with the contractors to ensure that the Program Offices have sufficient time to determine use inside or outside the organization. Government property is not to be stored, retained, or held by the contractor without proper authority from the SEAKR Procurement Representative or as specified by contract.

(2) Disposal. Once inactive Government property has been determined to be excess to contract requirements, the contractor shall screen it against all in-house Government contracts prior to screening by the SEAKR Property Analyst. In addition to the requirements in FAR 52.245-1, the contractor shall be held to a 100-day standard for plant clearance cases (PCC) unless circumstances dictate otherwise. The SEAKR Property Analyst will process and track all PCC. The contractor shall not close any PCC or retire any property record until the SEAKR Property Analyst provides notification that all PCC actions have been completed and closed.

(m) Special Test Equipment (STE) Notice of Intent (NOI). The contractor must obtain the SEAKR Procurement Representative's approval before acquiring or fabricating special test equipment at Government expense unless the equipment is itemized in this contract and/or specified in the contractor's proposal as STE. The NOI shall include details such as description, quantity, and dollar value of all components that make up the item of STE. The NOI shall also include a full and complete justification validating why the item is being requested and classified as STE.

(n) Property Classification and Records.

(1) Property Classification. The contractor shall include the appropriate Property Classification Code defined in paragraph (b) of this clause when establishing property records and preparing property reports for contract-accountable property.

(2) Records. The official Government property records shall be maintained by the contractor. All records shall contain the basic information as required in FAR 52.245-1 (f) (iii). In addition, all property records must include the following information:

(i) Tagged Assets

- Classification of the property (same as type of property)
- Serial Number
- Model Number
- Parent/Child Relationship (applies to STE and higher assemblies with components)
- Location of the property (include building, room, city, and state)
- Last physical inventory date

(ii) Material Items

- Part Number
- Actual, Average, Moving, or Estimated Cost
- Acquisition/in-service date
- Summary of quantity, line items, and dollar value

(3) System Records. When items of property are part of a system, such as components of STE or a higher assembly, each individual item/component shall have its own individual record showing the actual or estimated cost with the parent-child relationship clearly established. For example, the cost of STE components can be captured either in the total unit cost of the STE or as individually-priced components. The components of a parent-child relationship that are tracked and costed individually must also be disposed of individually. However, if the costs are tracked as a total unit cost, each component will be disposed of separately by decrementing the total unit cost of the STE. The contractor shall document how it tracks the cost of STE and higher assembly components.

(4) Records of Pricing Information. The unit price of Government-Furnished Property (GFP) will be provided on the documentation covering shipment of the property to the contractor. In the event the unit price is not provided on the document, the contractor will take action to obtain the information. If the information is unavailable, the contractor may use estimated costs.

(5) Deletions from Contractor Property Records. Contractors shall decrement their contract property records as appropriate to reflect the following property actions:

(i) Lost, Damaged, Destroyed, and Theft. Deletion amounts that result from relief from responsibility under FAR 45.503 granted during the reporting period.

(ii) Transferred in Place. Deletion amounts that result from transfer of property to a follow-on contract with the same contractor.

(iii) Transferred to Another Government Agency. Deletion amounts that result from transfer of property to another Government agency.

(iv) Purchased at Cost/Returned for Credit. Deletion amounts that result from contractor purchase or retention of contractor acquired property, or from contractor returns to suppliers.

(v) Disposed of Through Plant Clearance Process. Deletions other than transfers within the Federal Government (e.g., donations to eligible recipients, sold at less than cost, or abandoned/ directed destruction).

(vi) Other. Types of deletion other than those reported in (i) through (v) of this section.

(o) Flowdown. The contractor shall include this clause in all subcontracts that will have any Government-furnished or contractor-acquired property accountable to the subcontract.
(End of Clause)

**G52.246-002
Modified/
Deviation**

**Contractor Counterfeit Electronic Part Detection and Avoidance System (JUL 2017) (; GOVERNMENT
DEVIATION 2019-21)**

(a) Definitions. As used in this clause—

(1) *Authorized aftermarket manufacturer* means an organization that fabricates a part under a contract with, or with the express written authority of, the original component manufacturer based on the original component manufacturer's designs, formulas, and/or specifications.

(2) *Authorized supplier* means a supplier, distributor, or an aftermarket manufacturer with a contractual arrangement with, or the express written authority of, the original manufacturer or current design activity to buy, stock, repackage, sell, or distribute the part.

(3) *Contract manufacturer* means a company that produces goods under contract for another company under the label or brand name of that company.

(4) *Contractor-approved supplier* means a supplier that does not have a contractual agreement with the original component manufacturer for a transaction, but has been identified as trustworthy by a contractor or subcontractor.

(5) *Counterfeit electronic part* means an unlawful or unauthorized reproduction, substitution, or alteration that has been knowingly mismarked, misidentified, or otherwise misrepresented to be an authentic, unmodified electronic part from the original manufacturer, or a source with the express written authority of the original manufacturer or current design activity, including an authorized aftermarket manufacturer. Unlawful or unauthorized substitution includes used electronic parts represented as new, or the false identification of grade, serial number, lot number, date code, or performance characteristics.

(6) *Electronic part* means an integrated circuit, a discrete electronic component (including, but not limited to, a transistor, capacitor, resistor, or diode), or a circuit assembly.

(7) *Obsolete electronic part* means an electronic part that is no longer available from the original manufacturer or an authorized aftermarket manufacturer.

(8) *Original component manufacturer* means an organization that designs and/or engineers a part and is entitled to any intellectual property rights to that part.

(9) *Original equipment manufacturer* means a company that manufactures products that it has designed from purchased components and sells those products under the company's brand name.

(10) *Original manufacturer* means the original component manufacturer, the original equipment manufacturer, or the contract manufacturer.

(11) *Suspect counterfeit electronic part* means an electronic part for which credible evidence (including, but not limited to, visual inspection or testing) provides reasonable doubt that the electronic part is authentic.

(b) Acceptable counterfeit electronic part detection and avoidance system. The contractor shall establish and maintain an acceptable counterfeit electronic part detection and avoidance system. Failure to maintain an acceptable counterfeit electronic part detection and avoidance system, as defined in this clause, may result in disapproval of the contractor's purchasing system and affect the allowability of costs of counterfeit electronic parts or suspect counterfeit electronic parts and the cost of rework or corrective action that may be required to remedy the use or inclusion of such parts.

(c) System criteria. A counterfeit electronic part detection and avoidance system shall include risk-based policies and procedures that address, at a minimum, the following areas:

(1) The training of personnel.

(2) The inspection and testing of electronic parts, including criteria for acceptance and rejection. Tests and inspections shall be performed in accordance with accepted Government- and Industry-recognized techniques. Selection of tests and inspections shall be based on minimizing risk to the Government. Determination of risk shall be based on the assessed probability of receiving a counterfeit electronic part; the probability that the inspection or test selected will detect a counterfeit electronic part; and the potential negative consequences of a counterfeit electronic part being installed (e.g., human safety, mission success) where such consequences are made known to the Contractor.

- (3) Processes to abolish counterfeit parts proliferation within the Contractor's supply chain.
- (4) Risk-based processes that enable tracking of electronic parts from the original manufacturer to product acceptance by the Government, whether the electronic parts are supplied as discrete electronic parts or are contained in assemblies, in accordance with paragraph (c) of the clause at G52.246-003, Sources of Electronic Parts (also see paragraph (c)(2) of this clause).
- (5) Use of suppliers in accordance with the clause at G52.246-003 and in this Contract.
- (6) Reporting and quarantining of counterfeit electronic parts and suspect counterfeit electronic parts. The Contractor shall report to the SEAKR Procurement Representative within two (2) business days after the Contractor becomes aware of, or has reason to suspect that, any electronic part or end item, component, part, or assembly containing electronic parts purchased by the Government, purchased by SEAKR, or purchased by a Contractor for delivery to, or on behalf of, the Government or SEAKR, contains counterfeit electronic parts or suspect counterfeit electronic parts. Within 30 days after the discovery, the Contractor shall provide to SEAKR a completed DD Form 1938, Government Industry Data Exchange Program (GIDEP) Alert, but shall not submit the Alert to the GIDEP Operations Center (gidep@gidep.org) unless and until directed to so by the Contracting Officer and the SEAKR Procurement Representative after the Government has confirmed the parts to be counterfeit, fraudulent, or malicious. Counterfeit electronic parts and suspect counterfeit electronic parts shall be quarantined and protected as evidence along with original documentation, and shall not be returned to the seller or otherwise returned to the supply chain until such time that the parts are determined to be authentic. The Contractor shall not notify the source supplier that the items are suspected of being counterfeit.
- (7) Methodologies to identify suspect counterfeit parts and to rapidly determine if a suspect counterfeit part is, in fact, counterfeit.
- (8) Design, operation, and maintenance of systems to detect and avoid counterfeit electronic parts and suspect counterfeit electronic parts. The contractor may elect to use current Government- or Industry-recognized standards to meet this requirement.
- (9) Flow down of counterfeit detection and avoidance requirements, including applicable system criteria provided herein, to subcontractors at all levels in the supply chain that are responsible for buying or selling electronic parts or assemblies containing electronic parts, or for performing authentication testing.
- (10) Process for keeping continually informed of current counterfeiting information and trends, including detection and avoidance techniques contained in appropriate industry standards, and using such information and techniques for continuously upgrading internal processes.
- (11) Process for screening GIDEP reports and other credible sources of counterfeiting information to avoid the purchase or use of counterfeit electronic parts.
- (12) Control of obsolete electronic parts in order to maximize the availability and use of authentic, originally designed, and qualified electronic parts throughout the product's life cycle.
- (d) The Contractor shall submit a comprehensive description of their counterfeit electronic part detection and avoidance system to the SEAKR Procurement Representative for review and acceptance within 60 days after Contract award. This submission shall include criteria to be used by the Contractor and subcontractors to select Contractor-approved suppliers. In addition, the contractor shall support when requested, Government review and evaluation of the contractor's policies and procedures accomplished as part of the evaluation of the contractor's purchasing system.
- (e) The Contractor shall include the substance of this clause, paragraphs (a) through (e), in subcontracts, including subcontracts for commercial items, for electronic parts or assemblies containing electronic parts.
(End of clause)

**G52.246-003
Modified**

Sources of Electronic Parts (NOV 2018) ()

- (a) **Definitions.** As used in this clause—
- (1) *Authorized aftermarket manufacturer* means an organization that fabricates a part under a contract with, or with the express written authority of, the original component manufacturer based on the original component manufacturer's designs, formulas, and/or specifications.
- (2) *Authorized supplier* means a supplier, distributor, or an aftermarket manufacturer with a contractual arrangement with, or the express written authority of, the original manufacturer or current design activity to buy, stock, repackage, sell, or distribute the part.
- (3) *Contract manufacturer* means a company that produces goods under contract for another company under the label or brand name of that company.

- (4) *Contractor-approved supplier* means a supplier that does not have a contractual agreement with the original component manufacturer for a transaction, but has been identified as trustworthy by a contractor or subcontractor.
- (5) *Electronic part* means an integrated circuit, a discrete electronic component (including, but not limited to, a transistor, capacitor, resistor, or diode), or a circuit assembly.
- (6) *Original component manufacturer* means an organization that designs and/or engineers a part and is entitled to any intellectual property rights to that part.
- (7) *Original equipment manufacturer* means a company that manufactures products that it has designed from purchased components and sells those products under the company's brand name.
- (8) *Original manufacturer* means the original component manufacturer, the original equipment manufacturer, or the contract manufacturer.
- (b) Selecting suppliers. The Contractor shall—
- (1) First obtain electronic parts that are in production by the original manufacturer or an original manufacturer authorized aftermarket manufacturer or currently available in stock from—
- (i) The original manufacturers of the parts; or
- (ii) Their authorized suppliers.
- (2) If electronic parts are not available as provided in paragraph (b)(1) of this clause, obtain electronic parts that are not in production by the original manufacturer or an authorized aftermarket manufacturer, and that are not currently available in stock from a source listed in paragraph (b)(1) of this clause, from suppliers identified by the Contractor as contractor-approved suppliers and Contractor obtains the advance written approval of SEAKR before procuring the part(s), provided that—
- (i) For identifying and approving such contractor-approved suppliers, the Contractor uses established counterfeit prevention industry standards and processes (including inspection, testing, and authentication), such as the DoD-adopted standards at <https://assist.dla.mil>;
- (ii) The Contractor assumes responsibility for the authenticity of parts provided by such contractor-approved suppliers, and for the compliance of such parts with the standards specified in this contract; and
- (iii) The Contractor's selection of such contractor-approved suppliers is subject to review, audit, and approval by the Contracting Officer, generally in conjunction with a contracting purchasing system review or other surveillance of purchasing practices by the contract administration office.
- (iv) The Government does not have credible evidence that a contractor-approved supplier has provided counterfeit parts.
- (3) Reserved.
- (4) The foregoing paragraphs (b)(1) and (b)(2) including SEAKR's approval of procuring an electronic part from a supplier does not relieve Contractor's total responsibility and liability of the electronic part(s) procured and used. In the event Contractor delivers electronic parts under this contract which constitutes or includes counterfeit electronic parts, then SEAKR shall have and may exercise rights and remedies as provided by this contract and applicable law.
- (c) Traceability. If the Contractor is not the original manufacturer of, or authorized supplier for, an electronic part, the Contractor shall—
- (1) Have risk-based processes (taking into consideration the consequences of failure of an electronic part) that enable tracking of electronic parts from the original manufacturer to product acceptance by the Government, whether the electronic part is supplied as a discrete electronic part or is contained in an assembly;
- (2) If the Contractor cannot establish this traceability from the original manufacturer for a specific electronic part, be responsible for inspection, testing, and authentication, in accordance with existing applicable industry standards; and
- (3)(i) Maintain documentation of traceability (paragraph (c)(1) of this clause) or the inspection, testing, and authentication required when traceability cannot be established (paragraph (c)(2) of this clause) in accordance with FAR Subpart 4.7; and
- (ii) Make such documentation available to SEAKR upon request.
- (d) Government sources. Contractors and subcontractors are required to comply with the requirements of paragraphs (b) and (c) of this clause, as applicable, if—
- (1) Authorized to purchase electronic parts from the Federal Supply Schedule;
- (2) Purchasing electronic parts from suppliers accredited by the Defense Microelectronics Activity; or
- (3) Requisitioning electronic parts from Government inventory/stock under the authority of FAR Clause 52.251-1, *Government Supply Sources*.
- (i) The cost of any required inspection, testing, and authentication of such parts may be charged as a direct cost.

- (ii) The Government is responsible for the authenticity of the requisitioned parts. If any such part is subsequently found to be counterfeit or suspect counterfeit, the Government will–
 - (A) Promptly replace such part at no charge; and
 - (B) Consider an adjustment in the contract schedule to the extent that replacement of the counterfeit or suspect counterfeit electronic parts caused a delay in performance.
 - (e) Contractor sources. Contractors and subcontractors are required to comply with the requirements of paragraphs (b) and (c) of this clause, as applicable, if–
 - (1) Electronic parts are provided by a contractor to another contractor.
 - (i) The cost of any required inspection, testing, and authentication of such parts may be charged as a direct cost.
 - (ii) The entity providing the parts is responsible for the authenticity of the parts. If any such part is subsequently found to be counterfeit or suspect counterfeit, the entity providing the parts will–
 - (A) Promptly replace such part at no charge; and
 - (B) Consider an adjustment in the contract or subcontract schedule, as applicable, to the extent that replacement of the counterfeit or suspect counterfeit electronic parts caused a delay in performance.
 - (f) Subcontracts. The Contractor shall include the substance of this clause, including this paragraph (f), in subcontracts, including subcontracts for commercial items that are for electronic parts or assemblies containing electronic parts, unless the subcontractor is the original manufacturer.
- (End of clause)

**H-5
Modified**

Special Risk of Loss – Fixed Price Performance Based Payments ()

- a. The following may be substituted for the below specified clause paragraphs under unforeseen circumstances, such as, but not limited to the perils of fires, explosions, earthquakes, floods, tidal waves, acts of war, droughts, civil disobedience, or terrorism. SEAKR Procurement Representative will provide notice to the Contractor when this language will go into effect. This language will not be applicable in cases of Contractor negligence, lack of good faith, or willful misconduct on the part of the Contractor or one of its subcontractors.
- b. Substitute the following language for paragraph (g) of clause 52.232-32: (g) Risk of Loss. Under unforeseen circumstances, such as, but not limited to acts of God, acts of war, civil disobedience, or terrorism, before delivery to and acceptance by SEAKR, the Government bears the risk of loss for property allocable to this Contract, the title to which vests in the Government under this clause. The Contractor bears risk in circumstances of contractor negligence or willful misconduct. Notwithstanding the foregoing, pursuant to Contract clause “Funding and Limitation of Obligation”, SEAKR will not be obligated in any event to pay the Contractor in excess of the amount identified therein. A determination of loss pursuant to this clause will be reviewed and approved as just and reasonable by the SEAKR Vice President in consultation with the Supply Chain Director.
- c. Substitute the following for clause 52.245-1, Alternate I: (h)(1) Under unforeseen circumstances, such as, but not limited to acts of God, acts of war, civil disobedience, or terrorism, the Government assumes the risk of any loss of Government property. A determination of the liability for government property pursuant to this clause will be reviewed and approved as just and reasonable by SEAKR’s government customer.

**H-7
Modified**

Supply Chain Risk Management ()

- a. The Contractor shall provide a list of all known suppliers to support SEAKR’s government customer activities 30 days prior to SEAKR’s Delta-SRR/SDR or the Contractor Initiation Review (CIR):
 - i. The supplier lists shall be updated, as a minimum, at each segment level programmatic milestone.
 - ii. The supplier list shall identify which suppliers are foreign suppliers.
- b. The Contractor shall use Original Equipment Manufacturers/Original Component Manufacturers (OEM/OCM) or their authorized distributors only.
- c. The Contractor, subcontractors and sub-tier contractors shall report to the SEAKR Procurement Representative and SEAKR Program Security Officer any supply chain compromises within 72 hours after discovering a supply chain compromise (verified or suspected).
- d. The Contractor shall notify SEAKR Procurement Representative and SEAKR Program Security Officer any reporting of increased foreign ownership in any of their subcontractors and sub-tier contractors.
- e. SEAKR will notify the affected Contractor(s) when a new threat / vulnerability is discovered by the government.
- f. The Contractor, subcontractor and/or sub-tier contractor shall be able to work directly with SEAKR and/or the Government Program Office (GPO) to mitigate any discovered vulnerabilities during the program.