

MS Proprietary\_DRAFT\_Flowdowns\_07-31-2024

**FLOW DOWN CLAUSES AND SPECIAL CONTRACT PROVISIONS  
U.S. Government Clauses**

**Prime Contract No.: MS PROPRIETARY  
Customer Contract No.: 10014327  
Modification/Rev. Number: DRAFT  
Type of Agreement: U.S. Government Solicitation (RFP) DPAS Rating: DO-A1  
Date of Creation: 07-31-2024**

***The following customer contract requirements apply to any Purchase Order referencing the above U.S. Government prime contract number and are hereby incorporated into the Purchase Order by full text or by reference with the same force and effect as if they were given in full text. The terms and conditions of the versions of the "Flowdown of U.S. Government Contract Clauses Under U.S. Government Contracts" and "Flowdown Updates" documents in effect on the date of the particular Order shall also apply. These documents are made available at the RTX Supplier Site. The full text of FAR/DFARS clauses may be accessed at <https://www.acquisition.gov/>.***

In all provisions and clauses listed herein, terms shall be revised to suitably identify the party to establish Supplier's obligations to Buyer and to the Government, and to enable Buyer to meet its obligations under the prime contract. Without limiting the generality of the foregoing, and except where further clarified or modified below, the term "Government" and equivalent phrases shall mean "Buyer", the term "Contracting Officer" shall mean "Buyer's Purchasing Representative", the term "Contractor" or "Offeror" shall mean "Supplier", "Subcontractor" shall mean "Supplier's Subcontractor" under this Purchase Order, and the term "Contract" shall mean this "Purchase Order". For the avoidance of doubt, the words "Government" and "Contracting Officer" do not change: (1) when a right, act, authorization or obligation can be granted or performed only by the Government or the prime contract Contracting Officer or duly authorized representative, such as in FAR 52.227-1 and FAR 52.227-2 or (2) when title to property is to be transferred directly to the Government. Supplier shall incorporate into each lower tier contract issued in support of this Purchase Order all applicable FAR and DFARS provisions and clauses in accordance with the flow down requirements specified in such clauses. Nothing in this Purchase Order grants Supplier a direct right of action against the Government. If any of the following FAR or DFARS clauses do not apply to this Purchase Order, such clauses are considered to be self-deleting.

These FAR, DFAR, and special contract provisions are subject to change. Buyer or Buyer Affiliates reserve the right to add or update any FAR or DFAR clause or special contract provision based on customer contract directives.

Capitalized words used herein and not otherwise defined shall have the meanings ascribed to them in the Terms and Conditions.

The requirements below are in accordance with the U.S. Government prime contract and are not modified by Buyer for each individual Supplier. Supplier will remain at all times responsible for providing to any government agency, Buyer, or Buyer's customer, evidence of compliance with the requirements herein or that such requirements are not applicable to the extent satisfactory to the requesting party.

**CLAUSES INCORPORATED BY REFERENCE:**

**FAR CLAUSES**

CLAUSE	TITLE
52.202-1	Definitions (June 2020)
52.203-10	Price or Fee Adjustment for Illegal or Improper Activity (May 2014)
52.203-12	Limitation on Payments to Influence Certain Federal Transactions (June 2020)
52.203-13	Contractor Code of Business Ethics and Conduct (Nov 2021)
52.203-17	Contractor Employee Whistleblower Rights and Requirement To Inform Employees of Whistleblower Rights (June 2020)
52.203-19	Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements (Jan 2017)
52.203-5	Covenant Against Contingent Fees (May 2014)
52.203-6	Restrictions on Subcontractor Sales to the Government (June 2020)
52.203-7	Anti-Kickback Procedures (June 2020)
52.203-8	Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity (May 2014)
52.204-1	Approval of Contract (Dec 1989)
52.204-2	Security Requirements (March 2021)
52.204-4	Printed or Copied Double-Sided on Postconsumer Fiber Content Paper (May 2011)
52.204-8	Annual Representations and Certifications (May 2022)
52.204-13	System for Award Management Maintenance (Oct 2018)
52.204-18	Commercial and Government Entity Code Maintenance (Aug 2020)
52.204-19	Incorporation by Reference of Representations and Certifications (Dec 2014)
52.204-23	Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities (Nov 2021)
52.204-24	Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment (Nov 2021)
52.204-25	Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment (Nov 2021)
52.209-10	Prohibition on Contracting with Inverted Domestic Corporations (Nov 2015)
52.209-6	Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment (Nov 2021)
52.209-9	Updates of Publicly Available Information Regarding Responsibility Matters (Oct 2018)
52.210-1	Market Research (Nov 2021)
52.211-17	Delivery of Excess Quantities (Sep 1989)
52.211-5	Material Requirements (Aug 2000)
52.211-8	Alternate III Time of Delivery. - (Alternate III) (June 1997)
52.215-2	Audit and Records-Negotiation (June 2020)
52.215-14	Integrity of Unit Prices (Nov 2021)
52.215-15	Pension Adjustments and Asset Reversions (Oct 2010)
52.215-18	Reversion or Adjustment of Plans for Postretirement Benefits (PRB) Other Than Pensions (July 2005)
52.216-10	Incentive Fee (June 2011)
52.216-11	Cost Contract-No Fee (April 1984)
52.216-16	Incentive Price Revision-Firm Target (Jan 2022)
52.216-16	Alternate I Incentive Price Revision-Firm Target. (Alternate I) (Jan 2022)
52.216-7	Allowable Cost and Payment (Aug 2018)

52.216-8	Fixed Fee (June 2011)
52.217-09	Option to Extend the Term of the Contract (March 2000)
52.217-7	Option for Increased Quantity-Separately Priced Line Item (March 1989)
52.217-8	Option to Extend Services (Nov 1999)
52.219-16	Liquidated Damages-Subcontracting Plan (Sep 2021)
52.219-28	Post-Award Small Business Program Representation (Sep 2021)
52.219-28	Alternate I Post-Award Small Business Program Representation. (Alternate I) Sep 2021
52.219-4	Notice of Price Evaluation Preference for HUBZone Small Business Concerns (Sep 2021)
52.219-8	Utilization of Small Business Concerns (Oct 2018)
52.219-9	Small Business Subcontracting Plan (Nov 2021)
52.219-9	Alternate II Small Business Subcontracting Plan. - (Alternate II) (Nov 2021)
52.222-19	Child Labor-Cooperation with Authorities and Remedies (Jan 2022)
52.222-21	Prohibition of Segregated Facilities (April 2015)
52.222-26	Equal Opportunity (Sep 2016)
52.222-3	Convict Labor (June 2003)
52.222-35	Equal Opportunity for Veterans (June 2020)
52.222-36	Equal Opportunity for Workers with Disabilities (June 2020)
52.222-37	Employment Reports on Veterans (June 2020)
52.222-40	Notification of Employee Rights Under the National Labor Relations Act (Dec 2010)
52.222-50	Combating Trafficking in Persons (Nov 2021)
52.222-54	Employment Eligibility Verification (May 2022)
52.223-11	Ozone-Depleting Substances and High Global Warming Potential Hydrofluorocarbons (June 2016)
52.223-14	Acquisition of EPEAT®-Registered Televisions (June 2014)
52.223-17	Affirmative Procurement of EPA-designated Items in Service and Construction Contracts (Aug 2018)
52.223-18	Encouraging Contractor Policies to Ban Text Messaging While Driving (June 2020)
52.223-20	Aerosols (June 2016)
52.225-13	Restrictions on Certain Foreign Purchases (Feb 2021)
52.227-1	Authorization and Consent (June 2020)
52.227-10	Filing of Patent Applications-Classified Subject Matter (Dec 2007)
52.227-2	Notice and Assistance Regarding Patent and Copyright Infringement (June 2020)
52.227-3	Patent Indemnity (April 1984)
52.227-3	Alternate I Patent Indemnity. (Alternate I) (April 1984)
52.229-12	Tax on Certain Foreign Procurements (Feb 2021)
52.229-3	Federal, State, and Local Taxes (Feb 2013)
52.230-2	Cost Accounting Standards (Jun 2020)
52.232-1	Payments (April 1984)
52.232-11	Extras. Apr 1984
52.232-16	Alternate II Progress Payments. (Alternate II) Nov 2021
52.232-16	Alternate III Progress Payments. - (Alternate III) (Nov 2021)
52.232-16	Alternate I Progress Payments. (Alternate I) (Nov 2021)
52.232-16	Deviation 2020-O0010 Progress Payments (DEVIATION 2020-O0010)(Revision 1) Nov 2021
52.232-17	Interest (May 2014)
52.232-20	Limitation of Cost (April 1984)
52.232-22	Limitation of Funds (April 1984)

52.232-23	Assignment of Claims (May 2014)
52.232-25	Prompt Payment (Jan 2017)
52.232-25	Alternate I Prompt Payment. - (Alternate I) (Jan 2017)
52.232-29	Terms for Financing of Purchases of Commercial Products and Commercial Services (Nov 2021)
52.232-32	Performance-Based Payments (April 2012)
52.232-39	Unenforceability of Unauthorized Obligations (June 2013)
52.232-40	Providing Accelerated Payments to Small Business Subcontractors (Nov 2021)
52.232-7	Payments under Time-and-Materials and Labor-Hour Contracts (Nov 2021)
52.232-8	Discounts for Prompt Payment. Feb 2002
52.233-1	Disputes (May 2014)
52.233-3	Protest after Award (Aug 1996)
52.233-3	Alternate I Protest after Award. - (Alternate I) (Aug 1996)
52.233-4	Applicable Law for Breach of Contract Claim (Oct 2004)
52.234-1	Industrial Resources Developed Under Title III, Defense Production Act (Sep 2016)
52.242-1	Notice of Intent to Disallow Costs (April 1984)
52.242-4	Certification of Final Indirect Costs (Jan 1997)
52.242-13	Bankruptcy (July 1995)
52.242-15	Stop-Work Order (Aug 1989)
52.242-15	Alternate I Stop-Work Order. - (Alternate I) (Aug 1989)
52.242-17	Government Delay of Work (April 1984)
52.242-2	Production Progress Reports (April 1991)
52.242-3	Penalties for Unallowable Costs (Sep 2021)
52.242-5	Payments to Small Business Subcontractors (Jan 2017)
52.243-1	Changes-Fixed-Price (Aug 1987)
52.243-1	Alternate II Changes-Fixed-Price (Alternate II) (Aug 1987)
52.243-2	Changes-Cost-Reimbursement (Aug 1987)
52.243-2	Alternate II Changes-Cost-Reimbursement (Alternate II) (Aug 1987)
52.243-3	Changes-Time-and-Materials or Labor-Hours (Sep 2000)
52.243-6	Change Order Accounting (April 1984)
52.243-7	Notification of Changes (Jan 2017)
52.244-2	Subcontracts (June 2020)
52.244-6	Subcontracts for Commercial Products and Commercial Services (Jan 2022)
52.245-1	Government Property (Sep 2021)
52.245-1	Alternate I Government Property. (Alternate I) (Sep 2021)
52.245-9	Use and Charges (April 2012)
52.246-15	Certificate of Conformance (April 1984)
52.246-16	Responsibility for Supplies (April 1984)
52.246-2	Inspection of Supplies-Fixed-Price. (Aug 1996)
52.246-2	Alternate I Inspection of Supplies-Fixed-Price. (Alternate I) (Aug 1996)
52.246-25	Limitation of Liability-Services (Feb 1997)
52.246-26	Reporting Nonconforming Items (Nov 2021)
52.246-3	Inspection of Supplies-Cost-Reimbursement (May 2001)
52.246-4	Inspection of Services-Fixed-Price (Aug 1996)
52.246-5	Inspection of Services-Cost-Reimbursement (April 1984)

52.246-6	Inspection-Time-and-Material and Labor-Hour (May 2001)
52.246-6 A	Alternate I Inspection-Time-and-Material and Labor-Hour. (Alternate I) (May 2001)
52.247-1	Commercial Bill of Lading Notations (Feb 2006)
52.247-34	F.o.b. Destination (Nov 1991)
52.247-55	F.o.b. Point for Delivery of Government-Furnished Property (June 2003)
52.249-2	Termination for Convenience of the Government (Fixed-Price) (April 2012)
52.249-6	Termination (Cost-Reimbursement) (May 2004)
52.249-6	Alternate IV Termination (Cost-Reimbursement). (Alternate IV) May 2004
52.249-8	Default (Fixed-Price Supply and Service) (April 1984)
52.250-5	SAFETY Act Equitable Adjustment (Feb 2009)
52.252-2	Clauses Incorporated by Reference (Feb 1998)
52.252-4	Alterations in Contract (April 1984)
52.252-6	Authorized Deviations in Clauses (Nov 2020)
52.253-1	Computer Generated Forms (Jan 1991)

### **DFARS CLAUSES**

<b>CLAUSE</b>	<b>TITLE</b>
252.203-7000	Requirements Relating to Compensation of Former DoD Officials (Sep 2011)
252.203-7001	Prohibition on Persons Convicted of Fraud or Other Defense-Contract-Related Felonies (Dec 2008)
252.203-7002	Requirement to Inform Employees of Whistleblower Rights (Sep 2013)
252.203-7003	Agency Office of the Inspector General (Aug 2019)
252.203-7004	Display of Hotline Posters (Aug 2019)
252.204-7000	Disclosure of Information (Oct 2016)
252.204-7003	Control of Government Personnel Work Product (April 1992)
252.204-7009	Limitations on the Use or Disclosure of Third-Party Contractor Reported Cyber Incident Information (Oct 2016)
252.204-7012	Safeguarding Covered Defense Information and Cyber Incident Reporting (Dec 2019)
252.204-7015	Notice of Authorized Disclosure of Information for Litigation Support (May 2016)
252.204-7016	Covered Defense Telecommunications Equipment or Services-Representation
252.204-7017	Prohibition on the Acquisition of Covered Defense Telecommunications Equipment or Services-Representation (May 2021)
252.204-7018	Prohibition on the Acquisition of Covered Defense Telecommunications Equipment or Services (Jan 2021)
252.204-7019	Notice of NIST SP 800-171 DoD Assessment Requirements (Mar 2022)
252.204-7020	NIST SP 800-171 DoD Assessment Requirements (March 2022)
252.204-7021	Cybersecurity Maturity Model Certification Requirement (Nov 2020)
252.204-7023	Reporting Requirements for Contracted Services (July 2021)
252.205-7000	Provision of Information to Cooperative Agreement Holders (Dec 1991)
252.208-7000	Intent to Furnish Precious Metals as Government-Furnished Material (Dec 1991)
252.209-7004	Subcontracting with Firms that are Owned or Controlled by the Government of a Country that is a State Sponsor of Terrorism (May 2019)
252.209-7007	Prohibited Financial Interests for Lead System Integrators (July 2009)
252.209-7010	Critical Safety Items (Aug 2011)
252.211-7003	Item Unique Identification and Valuation (March 2022)
252.211-7006	Passive Radio Frequency Identification (Dec 2019)

252.211-7007	Reporting of Government-Furnished Property (March 2022)
252.211-7008	Use of Government-Assigned Serial Numbers (Sep 2010)
252.215-7004	Requirement for Submission of Data Other Than Certified Cost or Pricing Data-Modifications-Canadian Commercial Corporation (Oct 2013)
252.215-7015	Program Should-Cost Review (Nov 2019)
252.216-7000	Economic Price Adjustment--Basic Steel, Aluminum, Brass, Bronze, or Copper Mill Products (March 2012)
252.219-7003	Small Business Subcontracting Plan (DoD Contracts) (Dec 2019)
252.222-7006	Restrictions on the Use of Mandatory Arbitration Agreements (Dec 2010)
252.223-7004	Drug-Free Work Force (Sep 1988)
252.223-7008	Prohibition of Hexavalent Chromium (June 2013)
252.225-7001	Buy American and Balance of Payments Program (March 2022)
252.225-7002	Qualifying Country Sources as Subcontractors (March 2022)
252.225-7009	Restriction on Acquisition of Certain Articles Containing Specialty Metals (Dec 2019)
252.225-7011	Restriction on Acquisition of Supercomputers (June 2005)
252.225-7012	Preference for Certain Domestic Commodities (April 2022)
252.225-7048	Export-Controlled Items (June 2013)
252.225-7056	Prohibition Regarding Business Operations with the Maduro Regime (May 2022)
252.226-7001	Utilization of Indian Organizations, Indian-Owned Economic Enterprises, and Native Hawaiian Small Business Concerns (April 2019)
252.227-7013	Rights in Technical Data--Noncommercial Items (Feb 2014)
252.227-7014	Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation (Mar 2023)
252.227-7015	Technical Data - Commercial Items (Feb 2014)
252.227-7016	Rights in Bid or Proposal Information (Jan 2011)
252.227-7017	Identification and Assertion of Use, Release, or Disclosure Restrictions (Jan 2011)
252.227-7027	Deferred Ordering of Technical Data or Computer Software (April 1988)
252.227-7028	Technical Data or Computer Software Previously Delivered to the Government (June 1995)
252.227-7030	Technical Data - Withholding of Payment (March 2000)
252.227-7037	Validation of Restrictive Markings on Technical Data (April 2022)
252.228-7001	Ground and Flight Risk (June 2010)
252.228-7005	Mishap Reporting and Investigation Involving Aircraft, Missiles, and Space Vehicles (Nov 2019)
252.232-7007	Limitation of Government's Obligation (April) 2014
252.232-7010	Levies on Contract Payments (Dec 2006)
252.232-7013	Performance-Based Payments-Deliverable-Item Basis (April 2020)
252.232-7017	Accelerating Payments to Small Business Subcontractors-Prohibition on Fees and Consideration (April 2020)
252.234-7002	Earned Value Management System (May 2011)
252.234-7003	Notice of Cost and Software Data Reporting System (Nov 2014)
252.234-7004	Cost and Software Data Reporting System (Nov 2014)
252.237-7010	Prohibition on Interrogation of Detainees by Contractor Personnel (June 2013)
252.239-7000	Protection Against Compromising Emanations (Oct 2019)
252.239-7001	Information Assurance Contractor Training and Certification (Jan 2008)
252.239-7010	Cloud Computing Services (Oct 2016)
252.239-7016	Telecommunications Security Equipment, Devices, Techniques, and Services (Dec 1991)
252.239-7018	Supply Chain Risk (Feb 2019)

252.242-7004	Material Management and Accounting System (May 2011)
252.242-7005	Contractor Business Systems (Feb 2012)
252.242-7006	Accounting System Administration (Feb 2012)
252.243-7001	Pricing of Contract Modifications (Dec 1991)
252.243-7002	Requests for Equitable Adjustment (Dec 2012)
252.244-7000	Subcontracts for Commercial Items (Jan 2021)
252.244-7001	Contractor Purchasing System Administration (May 2014)
252.245-7001	Tagging, Labeling, and Marking of Government-Furnished Property (April 2012)
252.245-7002	Reporting Loss of Government Property (Jan 2021)
252.245-7003	Contractor Property Management System Administration (April 2012)
252.245-7004	Reporting, Reutilization, and Disposal (Dec 2017)
252.246-7003	Notification of Potential Safety Issues (June 2013)
252.246-7007	Contractor Counterfeit Electronic Part Detection and Avoidance System (Aug 2016)
252.246-7008	Sources of Electronic Parts (May 2018)
252.247-7023	Transportation of Supplies by Sea (Feb 2019)
252.249-7002	Notification of Anticipated Contract Termination or Reduction (June 2020)

**CLAUSES INCORPORATED IN FULL TEXT:**

**H-0001, Commercial Computer Software License(s) (March 2018)**

In accordance with this clause, the Offeror/Contractor (hereinafter, "Contractor") shall provide license agreement information for all COMMERCIAL computer software licenses to be obtained on behalf of or transferred to the US Government under this contract. In this arrangement, the Government may ultimately become the Licensee in certain COMMERCIAL computer software licenses, which software is specifically defined at DFARS 252.227-7014(a)(1). The Government will acquire commercial computer software or COMMERCIAL computer software documentation under the license(s) that are customarily provided to the public. However, in order to permit the Government to become a Licensee in the COMMERCIAL computer software licenses, said licenses must conform to the terms and conditions specified below. The terms and conditions in this clause do not apply to Open Source.

COMMERCIAL computer software licenses shall be provided to the Government Contracting Officer concurrent with proposal submission to the extent said licenses are known at the time an offer is submitted to the Government--or otherwise as soon as said licenses become known by the Contractor. The terms and conditions specified below shall take precedence over any and all conflicting or otherwise inconsistent terms and conditions defined in any and all COMMERCIAL computer software licenses intended for the Government to become a Licensee. In order to simplify the process of conforming software licenses to the terms and conditions specified herein, it is not necessary to edit or otherwise modify the licenses--rather the terms and conditions specified herein shall be hereby incorporated by reference into the licenses or otherwise implied therein.

Applicability to subcontractor(s), vendor(s) or supplier(s) - whenever any COMMERCIAL computer software or computer software documentation is to be obtained from a subcontractor, vendor or supplier for delivery to the Government under this contract, the Contractor shall use this same clause in its subcontract(s) or other contractual instrument(s), and require its subcontractor, vendor or supplier 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, vendor's or supplier's rights in said computer software or computer software documentation.

Accordingly, in executing this contract the Contractor hereby consents and agrees to the terms and conditions herein and agrees to obtain similar consent and agreement from any subcontractor, vendor or supplier ultimately providing COMMERCIAL computer software or software documentation to the Government for which

the Government may become a Licensee. The terms and conditions required to permit any COMMERCIAL computer software licenses to be transferred to the Government (e.g., Government to become a Licensee) include the following: [Notice: At the Government's sole discretion, the Contractor may be excused from any one or more of the following terms and conditions]

1. Any software license shall be perpetual in nature and shall not permit the Licensor to unilaterally terminate the contract or license for the Licensor's convenience.
2. The software license shall not reference that the Licensee is using certain software products in any notification to the public without express written permission from the Government (e.g., no publicity rights permitted).
3. The Licensee is a Federal entity governed by Federal Statutes, Case Law, and Federal Regulations. Therefore, the software license shall not make reference to binding the Licensee through any laws of any municipality, state, or foreign country.
4. The software license shall not include any clauses indicating a right to enter the premise of Licensee for the purpose of auditing the use of any software license, as the Licensee cannot allow an auditor physical access to the Licensee's facility due to security concerns. The software license may permit a written notice to be provided to Licensee indicating a substantiated belief that the Licensee is not using the software within the terms described in the license and the Licensee may consider conducting its own internal audit and providing a certified statement of its findings to an appropriate Requestor.
5. The software license shall not include any clauses that in any way restrict assignment to the Government and restrict a Licensee (Contractor) from maintaining its status as a Licensee while at the same time permitting the usage of related software by the Government.
6. The license shall not comment on the entitlement to attorney fees in the event of a dispute.
7. The license shall not restrict the Government from using the product at various sites (i.e., applicable to a product-type license for a movable product, as opposed to a site-specific license for a non-movable product) nor use of the product by various Government agencies or third parties performing work on behalf of the Government under the MS PROPRIETARY Program. In performance of the MS PROPRIETARY Program, Government personnel as well as Government contractors may use the software. Additionally, the software may be used at Government sites and Government contractor sites and the sites may change over time. Thus, the software license shall be flexible to accommodate this situation if applicable.
8. The license shall not include non-substitution language that would preclude or limit the Government from switching to another vendor/reseller or another product to fulfill MS PROPRIETARY Program requirements.
9. The following clauses (and no other) shall supersede all dispute clauses in the software license agreement(s) and shall be operative in dispute resolution:
  - a. Since the Licensee is a Government entity, any dispute arising from or in connection with this agreement shall be subject to resolution in accordance with the Disputes Clause included in the basic contract or the Government may also consider resolving any disputes using an appropriate non-binding Alternate Dispute Resolution (ADR) remedy; and
  - b. The software license shall not include any injunctive relief clauses as the Licensor cannot prevent the Licensee from performing mission operations. However, the Licensor may seek monetary damages.
10. Contractor shall provide a listing of license renewal dates and associated fees/costs if applicable. Automatic renewal terms are not acceptable for any license associated with the MS PROPRIETARY Program.
11. Contractor shall provide a listing and copies of all commercial computer software licenses related to this Government Contract MS PROPRIETARY Program.
12. The Contractor shall provide documentation to clearly correlate or map software license(s) to:



(Please see: Section J Attachment #11)

a) Contract Line Item Number (CLIN); and

b) Contractor Reference Architecture element corresponding to or containing the component or item furnished with restrictions.

It should be understood that the Offeror/Contractor must provide sufficient information, so that a 3rd party observer can readily determine where certain Commercial computer software corresponding to certain license(s) are physically located on the System to be delivered under the contract-to the extent that said Commercial computer software resides on the System."

13. The software license(s) shall not include any provisions that are inconsistent with "Requirements" defined in the present solicitation or any related contract.

14. The software license(s) shall not include any provisions operative to claim ownership rights in any Government Furnished Information (GFI) notwithstanding whether or not the GFI may have interacted with certain software associated with the software license(s)

15. The Government reserves the right to inspect or test any software, software documentation or service associated with the software license(s) for compliance with the requirements defined in the present solicitation or any related contract. In the event that said software, software documentation or service are deemed non-compliant with said requirements, the Government at its discretion shall be entitled to replacement, refund or equitable relief

16. Consistent with the terms and conditions of this clause, the terms described below shall also be incorporated by reference to all COMMERCIAL computer software licenses with advanced notice to and consent of applicable subcontractors, vendors or suppliers of said computer software licenses (if applicable), for which the Government may become a Licensee: "The Government agrees to the provisions of the present Software License, as set forth above and affixed as an attachment to this Government Contract MS PROPRIETARY Program, to the extent that the provisions of the Software License are consistent with Federal procurement law(s) and at least the Department of Defense Federal Acquisition Regulation Supplement (DFARS) section 227.7202 and said contract. In the event that any of the provisions of the present Software License are determined to be inconsistent with Federal procurement law(s); DFARS section 227.7202 and said contract, the parties to the present Software License hereby agree that said provision(s) shall be null and void. In the event that any of said provision(s) are rendered null and void, as described hereinabove, the remaining provision(s) of said License shall remain in full force and effect.

#### **H-0002, Government Rights in System Interface Technical Data/Software (October 2021)**

1. In accordance with this clause and applicable CDRLs, the Offeror/Contractor (hereinafter, "Contractor") shall deliver technical data and software relating to modular system interface(s) to the US Government under this contract. The associated Government license rights in said technical data or software relating to said modular system interface(s) shall be defined below in subsection 5.

2. Precedence: The terms and conditions specified below shall take precedence over any and all conflicting or otherwise inconsistent terms and conditions defined in any and all other documents ancillary to the present U.S. Government contract.

3. Flow-down provision: Applicability to subcontractor(s), vendor(s) or supplier(s) - whenever any technical data or software relating to any system interface(s) is to be obtained from a subcontractor, vendor or supplier for delivery to the Government under this contract, the Contractor shall use this same clause in its subcontract(s) or other contractual instrument(s), and require its subcontractor, vendor or supplier 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 subcontractor's, vendor's or supplier's rights in said technical data or software relating to any modular system interface(s).

4. Consent: Accordingly, in executing this contract the Contractor hereby consents and agrees to the terms and conditions herein and agrees to obtain similar consent and agreement from any subcontractor, vendor or supplier ultimately providing technical data and/or software relating to any modular system interface(s) to the Government for which the Government may become a Licensee.

5. The Government's license rights in said technical data or software (hereinafter collectively referred to as "Data") relating to said modular system interface(s) shall be defined as follows:

a. Modular system interfaces developed completely at Government expense-

i. The Government shall have an unlimited rights license in Data pertaining to a modular system interface developed exclusively at Government expense and used in a modular open system design or architecture; or

ii. The Government shall have an unlimited rights license in Data pertaining to a modular system interface; whereby said Data is defined as Form, Fit and Function (FFF) data, within the meaning of 10 U.S.C. 3771; DFARS 252.227-7013 or elsewhere in this contract.

b. Modular system interfaces developed with mixed Government and Private/Contractor expense -

i. The Government shall have a Government Purpose Rights license in Data pertaining to a modular system interface developed using any mixture of Government and Contractor expense and used in a modular open system design or architecture.

c. Modular system interfaces developed exclusively at Private/Contractor expense -

i. The Government shall have a Government Purpose Rights license in Data pertaining to a modular system interface developed exclusively using Contractor expense and used in a modular open system design or architecture. In this respect, the Contracting Officer shall negotiate with the contractor the appropriate and reasonable compensation for said license rights in said Data. Contractor shall submit a proposed compensation for said license rights under this subsection concurrent with proposal submission--to the extent that it is known or should be known at the time of proposal submission that the Government will obtain rights under this subsection.

6. The Contractor shall provide documentation to clearly correlate or map software license(s) to: (Please see: Section J Attachment #11)

a) Contract Line Item Number (CLIN); and

b) Contractor Reference Architecture element corresponding to or containing the component or item furnished with restrictions.

It should be understood that the Offeror/Contractor must provide sufficient information, so that a 3rd party observer can readily determine where certain Commercial computer software corresponding to certain license(s) are physically located on the System to be delivered under the contract--to the extent that said Commercial computer software resides on the System.

Note: To view delivery obligations under this contract; please reference: Attachment 10 - Contractor Reference Architecture and Attachment 11 - Data Rights Assertion Table.

### **H-0003, Modular Open System Architecture (MOSA) Technology Development Definitions and Contractor Responsibilities (October 2021)**

I. Definitions:

a. Open Architecture: To be considered open, a system must be modular, interoperable, extensible, reusable, composable, maintainable, and must employ open standards for major system interfaces within the system deliverable (hardware and software).

b. Open Standards: requires that at least the elements described below to be satisfied.

- i. Widely used, consensus-based, published, and maintained by recognized standards organizations.
      - ii. Freely and publicly available under royalty-free terms.
      - iii. Free of all requirements for execution of a license agreement, non-disclosure agreement, grant, click through arrangement, or any form of paperwork, to deploy conforming implementations of the standard.
      - iv. Free of all requirements for other technology that fails to meet this "open standard" criteria.
      - v. All patents to the implementation of the standard are to be licensed under royalty-free terms for unrestricted use or covered by a promise of non-assertion when practiced by open-source software.
    - c. Open Development Collaboration: requires that a team-based process be used to design, acquire, implement, deploy, and use the system deliverable. The team's collaboration, correspondence, and decisions shall be persistently documented using an online mechanism that provides read/write access to all team members. The contractor shall provide unlimited rights to the content placed in the on-line mechanism unless such content is appropriately marked in accordance with applicable clauses of this contract. Access to this content may be restricted by the Government to only members of the respective team, as may be deemed necessary by the government representatives.
    - d. Open Source (Software): requires that the system deliverable be free of license restrictions (e.g., all royalties and other such fees for sale or use) preventing the DoD from giving, selling or in any way distributing the software as a component of an aggregate software distribution containing programs from several different sources. Source code must be included and allowed to be distributed in textual form as well as in compiled form. The license must allow for modifications and derivative works, and allow those changes to be distributed under the same terms as the license of the original software. The license must protect the integrity of the author's original source code. The license must require derivative works to carry a different name or version number from the original software. The license must require that the original source code be distributed as pristine based sources plus patches, so that "unofficial" changes (those made and added to the source by parties other than the original author) can be made available but easily distinguished from the base source. The rights attached to the software must be applicable to all whom the software is redistributed without the need for execution of an additional license by those parties. The rights attached to the software must be free from all dependencies on the software's being part of a particular software redistribution. The license must be free from all restrictions on other software that is distributed along with the licensed software. The license must be free of all provisions that may be predicated on any individual technology or style of interface (The license must be technology neutral.).
    - e. Open Systems: requires the system deliverable to employ a modular open standard or open architecture design approach to provide for affordable change, enable evolutionary acquisition and rapid fielding of the system without interoperability issues with other presently fielded systems. Further in this regard, the system deliverable must use widely supported and consensus-based standards for its major system interfaces. Implementations of the components within the system deliverable must conform to open standard or open architecture interface specifications. The open standard or open architecture interface specifications of components included within the system deliverable must be fully defined, available to the public and be maintained according to group consensus.

II. Contractor responsibilities:

- a. The contractor is hereby required to use or otherwise incorporate, as appropriate, development practices, design procedures or architectures which conform to the following definitions, as defined above in sections 1 through 5 of this clause:
    - i. Open Architectures;

- ii. Open Standards;
- iii. Open Development Collaboration;
- iv. Open Source (Software); and
- v. Open Systems.

**H-0004, AFLCMC/WV, DELIVERY AND LICENSE RIGHTS FOR TECHNICAL DATA AND COMPUTER SOFTWARE NECESSARY FOR OPERATION, MAINTENANCE, INSTALLATION, AND TRAINING (OMIT) AND FORM, FIT, FUNCTION (FFF) (Jun 2022)**

Definitions:

- I. "Required Data" includes all noncommercial and commercial: technical data, including technical data meeting the definition of detailed manufacturing or process data at DFARS 252.227-7013(a)(6) (DMPD); development tools (including compilers); computer software (including source code and scripts and libraries used by the source code); computer software documentation; computer databases, digital models and graphics pertaining to MS PROPRIETARY Weapon System and its subsystems, subassemblies, components and support equipment that is required or used when conducting Operation, Maintenance, Installation, or Training (OMIT) activities and Form, Fit, Function data, regardless of whether such activities are performed by Air Force military, civilian, or contract personnel. "Required Data" also includes identifying, cataloging, stocking, sourcing, acquiring, procuring, replenishing, packaging, handling, storing, and transporting any MS PROPRIETARY Weapon System and its subsystems, subassemblies, components and support equipment.
- II. "Operation" includes all procedures, guidance, and instructions for operating, testing, utilization of, familiarization of, emergency use of, and functional use of MS PROPRIETARY Program Weapon System and its subsystems, subassemblies, components and support equipment to perform the intended functions.
- III. "Maintenance" includes all capabilities to maintain, sustain, inspect, test, service, adjust, troubleshoot, analyze, remove, replace, repair, install, disassemble, reassemble, or overhaul (to maintain in, or restore to, a serviceable condition) any MS PROPRIETARY Weapon System and its subsystems, subassemblies, components and support equipment. Maintenance includes Depot-Level Maintenance, Organizational-Level Maintenance, and sustainment of the Required Data itself.
- IV. "Installation" includes infrastructure(s) such as facility planning, site surveys, maintenance facilities, supply chain management, test cells, test stands and benches, tools, support equipment, communications, data links, security, data information technology, and all other data and planning used in the initial standup and continued operations, training, sustainment, and maintenance at all operational sites as well as "Organizational-Level Maintenance" and "Depot-Level Maintenance" requirements in support of the MS PROPRIETARY Weapon System and its subsystems, subassemblies, components and support equipment.
- V. "Training" includes formal and informal classroom, simulation, and supervised and unsupervised instruction in the operation, use, testing, supply chain management and maintenance for the MS PROPRIETARY Weapon System and its subsystems, subassemblies, components and support equipment. "
- VI. The contractor shall provide all Form, Fit and Function (FFF) data licensed rights in accordance with DFARS 252.227-7013. Consistent with the definitions included in 10 USC 3771; DFARS 252.227-7013 and /or DFARS Subpart 227.71, FFF data are further defined to include:
  - a. Form data that enables MS PROPRIETARY engineering to identify source, size and configuration of items, and components if originally fielded articles are no longer available, maintainable or excessively costly to sustain and require replacement to keep the entire weapon system supportable;
  - b. Fit data that enables MS PROPRIETARY engineering to identify mating and attachment characteristics of items and components if originally fielded articles are no longer available, maintainable or excessively costly to sustain and require replacement to keep the entire weapon system supportable;

- c. Function data that enables MS PROPRIETARY engineering to identify functional characteristics, and performance requirements of items and components if originally fielded articles are no longer available, maintainable or excessively costly to sustain and require replacement to keep the entire weapon system supportable;
  - d. All technical data that pertains to an item, component or process developed in whole or in part with federal funds; or data that is necessary for the segregation of an item, component or process from, or the reintegration of that item, component or process (or a physically or functionally equivalent item or process) with, other items or processes; and
  - e. All information related to or deriving from Interface Control Documents, to include hardware and software data.
- VII. "Depot-Level Maintenance" includes:
- a. installation, inspection, localization, isolation, disassembly, interchange, repair, reassembly, alignment, checkout;
  - b. maintenance performed, including modification, testing and reclamation, on material requiring repair, overhaul, or complete rebuild of parts, assemblies, subassemblies, and end items;
  - c. software maintenance; and
  - d. maintenance performed for continuous airworthiness.
  - e. "Depot-Level Maintenance" does not include the manufacture of new items but may include the overhaul or refurbishment of existing items.
- VIII. "Organizational-Level Maintenance" is on-equipment and off-equipment maintenance exclusively performed in the field, on the flight line, or at the equipment site. "Organizational-Level Maintenance" includes: inspection, service, lubrication, adjustment, calibration, preventive maintenance, limited repair, or replacement of equipment, as well as the replacement of parts, minor assemblies, and subassemblies.
- IX. "Software Maintenance" as used in this contract includes only the decompiling of the source code, repair of the code to accomplish its original purpose, and the recompiling of the source code regardless of whether or not the maintenance results in a new software release version. "Software Maintenance" does not include enhancement of the source code capability.
- X. Other terms used in this special contract requirement that are defined in the following clauses have the same meaning in this clause as set forth in those clauses:
- a. DFARS 252.227-7013;
  - b. DFARS 252.227-7014; and
  - c. DFARS 252.227-7015

**Delivery Requirements.** Pursuant to the applicable CDRLs, the contractor shall deliver all technical data and computer software documentation necessary for organizational and Depot level maintenance of the entire MS PROPRIETARY weapon system and equipment.

**General.** The contractor shall provide the technical data, development tools, and computer software documentation having characteristics (e.g.; content, format, and delivery medium) necessary for organizational and depot-level maintenance. The Government requirements for such technical data or computer software include:

- I. No less information or detail than industry standards, nor less than the Contractor typically requires or uses to perform such OMIT activities; and
- II. Additional information or detail necessary for military purposes related to OMIT activities.

**Depot-Level Maintenance Technical Data and Computer Software Documentation.** Technical data and computer software documentation described under Exhibits A, B and C must comprise a complete package of all technical data and computer software documentation necessary for maintenance for the entire MS PROPRIETARY Weapon System. This includes technical data and computer software documentation necessary for installation and de-installation, and disassembly and reassembly, at the lowest practicable segregable level that does not require detailed manufacturing or process information. Examples of technical

data and computer software that are needed to perform maintenance include, but are not limited to, the following:

- I. Detailed technical data and information regarding all systems;
- II. Depot-Level and Organizational-Level Maintenance technical data and information regarding all systems, subsystems, and components;
- III. Interface Control Documents (ICDs);
- IV. Computer software source code necessary to perform Depot-Level Maintenance or Organizational-Level Maintenance of computer programs and scripts;
- V. Computer software libraries used by source code necessary to perform Depot-Level Maintenance or Organizational-Level Maintenance of computer programs and scripts;
- VI. Computer software compilers and computer software tools necessary to perform Depot-Level Maintenance or Organizational-Level Maintenance of computer programs and scripts; and
- VII. Computer software and computer software documentation necessary to perform Depot-Level Maintenance or Organizational-Level Maintenance on computer programs and scripts

License Rights. Pursuant to the contract clauses governing rights in technical data and computer software (e.g., DFARS 252.227-7013, 252.227-7014, and 252.227-7015), the Government is granted unlimited rights in technical data (other than DMPD) required for OMIT/FFF activities and computer software documentation.

Technical Data and Computer Software of Subcontractors and Suppliers. The Contractor's obligations in this special contract clause shall apply to all Technical Data and Computer Software, including all Technical Data and Computer Software developed, delivered, or otherwise provided by subcontractors or suppliers at any tier, and regardless of whether the Technical Data and Computer Software is or relates to commercial items or noncommercial items. The Contractor shall include these requirements in its subcontracts or other contractual or legal instruments with its subcontractors or suppliers at any tier.

Validation of Asserted Restrictions and Restrictive Markings. Nothing in this special contract requirement limits or otherwise affects the parties' rights or obligations specified in DFARS 252.227-7019 or DFARS 252.227-7037.

Mapping/documenting data and licensing information: The Contractor shall provide documentation to clearly correlate, or map OMIT and FFF data information as well as related license(s) to Section J Attachment #11 which includes:

- I. The Contractor shall provide documentation to clearly correlate or map software license(s) to: (Please see: Section J Attachment #11)
  - a. Contract Line Item Number (CLIN); and
  - b. Contractor Reference Architecture element corresponding to or containing the component or item furnished with restrictions
- II. It should be understood that the Offeror/Contractor must provide sufficient information, so that a 3rd party observer can readily determine where certain OMIT and FFF data corresponding to certain license(s) are physically located on the System to be delivered under the contract-to the extent that said OMIT and FFF data resides on the System.
- III. Note 1: Applicability to subcontractor(s), vendor(s) or supplier(s): Whenever any Technical Data/Software Documentation (i.e., OMIT/FFF data) is to be obtained from a subcontractor, vendor or supplier for delivery to the Government under this contract, the Contractor shall use this same clause in its subcontract(s) or other contractual instrument(s), and require its subcontractor, vendor or supplier 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, vendor's or supplier's rights in said Technical Data/Software Documentation (i.e., OMIT/FFF data). The Contractor shall provide documentation to clearly correlate or map software license(s) to: (Please see: Section J Attachment #11)
  - a. Contract Line Item Number (CLIN); and

- b. Contractor Reference Architecture element corresponding to or containing the component or item furnished with restrictions.
- IV. It should be understood that the Offeror/Contractor must provide sufficient information, so that a 3rd party observer can readily determine where certain OMIT and FFF data corresponding to certain license(s) are physically located on the System to be delivered under the contract-to the extent that said OMIT and FFF data resides on the System.