

Special U.S. Government Terms and Conditions for the STP III Program
Effective 04/22/2019

The following customer contract requirements apply to the STP III Program to the extent indicated below. These clauses are Flowdowns to Sub-tier suppliers in support of the STP III Program.

- 1 **FAR Clauses** The following contract clauses are incorporated by reference from the Federal Acquisition Regulation and apply to the extent indicated. In all of the following clauses, "Contractor" and "Offeror" mean Seller.

52.208-8 Required Sources for Helium and Helium Usage Data (APR 2014).

This clause applies if Seller will furnish a major helium requirement as defined in the clause. In paragraph (b)(2), "Contracting Officer" shall mean "Buyer" and "10 days" shall be "5 days".

52.222-19 Child Labor-Cooperation with Authorities and Remedies (JAN 2018). In paragraph (d), "Contracting Officer" means Buyer.

52.227-19 Commercial Computer Software License (DEC 2007).

52.232-39 Unenforceability of Unauthorized Obligations (JUN 2013)

52.251-1 Government Supply Sources (APR 2012).

This clause applies only if Seller is notified by Buyer in writing that Seller is authorized to purchase from Government supply sources in the performance of this contract.

52.222-55, Minimum Wages under Executive Order 13658 (DEC 2015)

This clause applies if this contract is subject to the Service Contract Labor Standards statute or the Wage Rate Requirements (Construction) statute, and is to be performed in whole or in part in the United States. "Contracting Officer" shall mean "Buyer" except for paragraphs (e)(2), (4) and (g). If the Government exercises a withhold identified in the paragraph (g) against Buyer as a result of the Seller's violation of its obligations under this clause, Buyer may impose that withhold against the Seller.

52.222-62, Paid Sick Leave Under Executive Order 13706 (JAN 2017)

This clause applies if the Contract is subject to the Service Contract Labor Standards statute or the Wage Rate Requirements (Construction) statute, and are to be performed in whole or in part in the United States.

52.224-3, Privacy Training (JAN 2017)

The term "Contracting Officer" shall mean "Contracting Officer or Buyer".

52.224-3, Privacy Training Alternate I (JAN 2017)

52.232-40, Providing Accelerated Payments to Small Business Subcontractors (DEC 2013)

This clause applies to contracts with small business concerns. The term "Contractor" retains its original meaning.

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52.245-1 Government Property (JAN 2017).

This clause applies if Government property is acquired or furnished for contract performance. "Government" shall mean Government throughout except the first time it appears in paragraph (g)(1) when "Government" shall mean the Government or the Buyer.

52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (FEB 2006)

This clause does not apply if this contract is for the acquisition of commercial items unless (i) this contract is a contract or agreement for ocean transportation services; or a construction contract; or (ii) the supplies being transported are (a) items the Seller is reselling or distributing to the Government without adding value (generally, the Seller does not add value to the items when it subcontracts items for f.o.b. destination shipment); or (b) shipped in direct support of U.S. military (1) contingency operations; (2) exercises; or (3) forces deployed in connection with United Nations or North Atlantic Treaty Organization humanitarian or peacekeeping operations.

2 Prime Contract Special Provisions The following Prime Contract Special Provisions apply to this purchase order and to the extent indicated. In all of the following clauses, "Contractor", "contractor" and "Offeror" mean "Seller", unless otherwise indicated.

CI.209-002 DISCLOSURE OF OWNERSHIP OR CONTROL BY A FOREIGN GOVERNMENT (NOV 2017)

The term "Contracting Officer" shall mean "Buyer". The term "contractor" shall mean "Seller".

(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.

(4) Proscribed information means:

§ Top Secret information;

§ Communications Security (COMSEC) material, excluding controlled cryptographic items when unkeyed or utilized with unclassified keys;

§ Restricted Data as defined in the U.S. Atomic Energy Act of 1954, as amended;

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§ Special Access Program (SAP) information; or
§ Sensitive Compartmented Information (SCI).

(b) Prohibition on Award. No contract under a national security program may be awarded to an entity controlled by a foreign government if that entity requires access to proscribed information to perform the contract, unless the Director, of Buyer's customer agency or a designee has waived application of 10U.S.C. §2536(a).

(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:

(3) Offeror's point of contact for questions about disclosure (name and phone number with country code, city code, and area code, as applicable);

(4) Name and address of offeror;

(5) Name and address of entity controlled by a foreign government; and

(6) 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 that involve potential access to proscribed information under this solicitation and any resulting contract.

(End of Clause)

CI.209-003 ORGANIZATIONAL CONFLICT OF INTEREST (JUL 2016)

The term "Government" and "Contracting Officer shall mean "Buyer". The term "contractor" shall mean "Seller".

Definitions:

"Avoid" means to prevent the occurrence of an actual or potential OCI through a specific action, such as exclusion of sources or modification of requirements.

"Contractor" means the business entity receiving a contract award, including its employees, agents, and any foreign or domestic divisions, sectors, parent corporation, affiliates, sister corporations, and subsidiaries.

"Conflicted Party" means a contractor for whom an actual organizational conflict of interest exists.

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“Development” means the systematic use of scientific and technical knowledge in the design, development, testing, or evaluation of a potential new product or service (or improvement of an existing product or service) to meet specific performance requirements or objectives. It includes the functions of design engineering, prototyping, and engineering testing, but does not include subcontracted technical effort for the sole purpose of developing an additional source for an existing product. Development does not include the creation of databases, techniques, models, methodologies, or related software in support of a study, analysis, or evaluation conducted as part of a support services contract task.

“Disclosing Party” means the owner or developer of proprietary or sensitive information.

“Firewall” is a combination of procedures and physical security that restricts the flow of sensitive and proprietary information between certain contractor business units and personnel, or between team members under the same contract.

“Mitigate” means to reduce or alleviate the impact of OCI to an acceptable level of risk so that the Government’s interest with regard to fair competition and/or contract performance is not prejudiced.

“Neutralize” means to negate, through a specific action, potential or actual OCI related to an unfair competitive advantage or contractor objectivity during contract performance.

“Organizational Conflict of Interest (OCI)” exists when, due to other activities or relationships, a contractor is unable or potentially unable to render impartial assistance or advice to the Government; or the contractor’s objectivity in performing the contract work is, or might be, otherwise impaired or appear to be impaired; or the contractor gains an unfair competitive advantage due to the contractor’s other contract efforts. There are three types of OCI:

- Unequal Access to Information: The contractor has access to nonpublic information that may provide them an unfair competitive advantage in a later competition for a government contract.
- Biased Ground Rules: As a function of performance on a government contract, the contractor has set the ground rules for another government contract which could skew the competition in their favor.
- Impaired Objectivity: A contractor’s business relationships create an economic incentive to provide biased advice under a government contract.

“Organizational Conflict of Interest Plan” is a structured approach proposed by the contractor or developed by the Government that formally documents the actions required to reduce the risk of identified and/or potential OCI to an acceptable level. A contractor-proposed OCI plan establishes a binding requirement on the contractor.

“Proprietary Information” as used in this clause means information contained in a bid or proposal, cost or pricing data, or any other information disclosed to the Government that is properly designated and/or marked as proprietary by a contractor, in accordance with the law and regulation, and is held in confidence or disclosed under restriction to prevent uncontrolled distribution.

“Sensitive Information” means the Government’s nonpublic planning, budgetary, and acquisition information (to include source selection sensitive, advanced acquisition, and contractor information), and any contractor technical data or computer software delivered to the Government with other than unlimited rights as defined in clause CI.227-002, and marked with

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a conforming marking.

Source Selection Activities are defined as:

- Developing acquisition strategies, acquisition plans, government cost estimates, and source selection plans;
- Developing justifications and approvals;
- Developing estimates of work;
- Developing evaluation factors for award (Section M) and instructions to offerors(Section L)
- Evaluating submitted proposals/quote information, determining competitive range, and ranking bids, proposals, or competitors; and
- Preparing contracts

“Support Services” as used in this clause, include advisory and assistance services, management support services, consultant and professional services; studies, analysis and evaluations; and systems engineering, technical direction and assistance.

“System” refers to the subject of a contract effort, and is defined as the organization of hardware, software, material, facilities, personnel, data, and services needed to perform a designated function with specified results.

(a) The offeror warrants, to the best of its knowledge and belief, that (1) there are no relevant facts that could give rise to organizational conflicts of interest (OCI), as defined herein; or (2) the offeror has disclosed all relevant information regarding any actual or potential OCI. Offerors are encouraged to inform the Contracting Officer of any potential conflicts of interest, including those involving contracts with other foreign or domestic government organizations, before preparing their proposals to determine whether the Government will require mitigation of those conflicts. If the successful offeror was aware, or should have been aware, of an OCI before award of this contract and did not fully disclose that conflict to the Contracting Officer, the Government may terminate the contract for default.

(b) If during contract performance the contractor discovers an OCI involving this contract, the contractor agrees to make an immediate and full disclosure in writing to the Contracting Officer. Such notification will include a description of the action the contractor and/or subcontractor has taken or proposes to take to avoid, neutralize, or mitigate the conflict. The contractor will continue contract performance until notified by the Contracting Officer of any contrary actions to be taken. The Government may terminate this contract for its convenience if it deems such termination to be in the best interest of the Government.

(c) The contractor shall inform the Contracting Officer of any activities, efforts, or actions planned, entered into, or on-going by the contractor or any other corporate entity of the contractor, at the prime or sub- contract level, involving the review of information or providing any advice, assistance, or support to foreign or domestic government agencies, entities, or units outside of Buyer’s customer which may result in a perceived or actual OCI with any known Buyer’s customer activity. The contractor shall provide detailed information to the Contracting Officer as to the specifics of the situation immediately upon its recognition. Based on the severity of the conflict, the Contracting Officer may direct the contractor to take certain actions, revise current work effort, or restrict the contractor's future participation in Buyer’s customer contracts as may be necessary to appropriately neutralize, mitigate, or

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avoid the OCI.

(d) If necessary to mitigate OCI concerns, or when directed to do so by the Contracting Officer, the contractor shall submit an OCI plan for approval. The plan must describe how the contractor will mitigate, neutralize, or avoid potential and/or actual conflicts of interest or unfair competitive advantages. The contractor shall attach a completed Buyer's customer Form CI4-55, *OCI Plan Matrix*, to each new or revised OCI plan submitted to the Contracting Officer. After approval of the OCI plan, the contractor must conduct a yearly self-assessment and submit an annual certification of compliance with the terms of the plan signed by a corporate official at the level of Vice President or above. The contractor shall submit a revised OCI plan for approval whenever corporate, contractual, or personnel changes create or appear to create new OCI concerns, or when directed to do so by the Contracting Officer.

(e) The contractor shall insert a clause containing all the requirements of this clause in all subcontracts for work similar to the services provided by the prime contractor.

(f) Before this contract is modified to add new work or to significantly increase the period of performance, the contractor agrees to submit an OCI disclosure or representation if requested by the Government.

(g) The contractor shall allow the Government to review the contractor's compliance with these provisions or require such self-assessments or additional certifications as the Government deems appropriate.

(End of Clause)

CI.209-005 PROTECTION OF INFORMATION (DEC 2011)

This clause applies if this Contract is for development work that will require Seller to interact with and/or furnish information to other development contractors/subcontractors that require access to sensitive or proprietary information. The term "Government" shall mean "Government and Buyer". The term "Contracting Officer" shall mean "Buyer". The term "contractor" shall mean "Seller".

(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 Buyer's customer 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.

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- (d) The contractor shall 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 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)

CI.223-006 CONTRACTOR COMPLIANCE WITH ENVIRONMENTAL, OCCUPATIONAL SAFETY AND HEALTH, AND SYSTEM SAFETY REQUIREMENTS (OCT 1997)

The term "Contracting Officer" shall mean "Buyer". The term "contractor" shall mean "Seller".

- (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.
- (d) The Contractor shall include this clause in all

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subcontracts.

(End of clause)

CI.227-007 RIGHTS IN BID OR PROPOSAL INFORMATION (JAN 2004)

The term "contractor" or "Offeror" shall mean "Seller.

(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 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)

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CI.227-008 COMMERCIAL TECHNICAL DATA AND COMPUTER SOFTWARE LICENSING— ORDER OF PRECEDENCE (OCT 2014)

(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 CI.209-006 in Section I.

(3) The Licensor agrees that the Government shall have the right to unilaterally add or delete contractors from those supporting the STPIII Program 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 CI.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 STPIII Program equipment and/or software is located consistent with the provisions of the contract between the U.S. Government and the Licensee.

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(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, in particular those set forth in the applicable DD Form 254 (Department of Defense Contract Security Classification Specification).

(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 CI.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.

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- (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, 42U.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.

(End of clause)

**CI.227-017 PATENT RIGHTS – OWNERSHIP BY THE CONTRACTOR
(LARGE BUSINESS (APR 2009))**

- (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

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(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 organization statute.

Practical Application means

(1)(i) To manufacture, in the case of a composition or product;

(i) To practice, in the case of a process or method; or

(ii) 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 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 is 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 contractors business to which the invention pertains.

(ii) The agency

(A) May revoke or modify the contractors 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

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(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 obligations.

(1) The contractor shall

(i) Disclose, in writing, each subject invention to the Contracting Officer within 2 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 non-provisional 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 publication, on sale, or public use;

(ii) File a non-provisional 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 non-provisional) or 6 months from

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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 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 Governments interests.

(d) Government 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 contractors 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 Government 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 contractors 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 filing of patent applications prior to

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U.S. or statutory foreign bars; and

(iii) Execute all papers necessary to file patent applications on subject inventions and to establish the Governments rights in the subject inventions.

(3) The contractor shall notify the Contracting Officer of any decisions not to file a non-provisional 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 non-provisional patent application and any patent issuing thereon covering a subject invention, the following statement: This invention was made with Government support under (identify 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 Governments 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 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 subcontractors.

(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

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- (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 subcontractors 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 contractors 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

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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 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 (c)(5) of this clause;

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

(2) If the Contracting Officer or Buyer 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 (c)(5) of this clause;

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

(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.

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(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 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 patent 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 a consideration for awarding the subcontract, obtain rights in the subcontractors subject inventions; and

(ii) The Government, the prime 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)

**CI.227-018, BUYER'S CUSTOMER ACCESS TO INTERIM DATA LICENSE (FEB 2011)
(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

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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 CI.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 CI.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 CI.209-008, *Support Contractor Corporate Non-Disclosure Agreement*, and CI.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 computersoftware:

(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 publicallyavailable.

(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.

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(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) Contractual delivery of the technical data or computer software;
- (2) Termination of the contract; or
- (3) The end of the period of performance of the contract.

(i) Within six months of the termination of rights hereunder, the Government shall take reasonable efforts to destroy copies of the technical data and computer software disclosed under the provisions of this clause.

(j) 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 CI.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 CI.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.

(k) The foregoing marking options do not prohibit the Government and contractor from establishing alternative specifically negotiated licenses and marking protocols when appropriate.

(l) Buyer's customer 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:

Buyer's customer Interim Access License Rights

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

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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.

(m) 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)

**CI.245-001 CONTRACT-ACCOUNTABLE GOVERNMENT PROPERTY:
RESPONSIBILITIES, USE, REPORTING, AND ADMINISTRATION (NOV 2017)**

(a) General Requirements. The Seller 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 Buyer's customer Acquisition Manual guidance conflict, Buyer's customer Acquisition Manual 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, not intended for sale, and not to 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). Does not include information technology 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. 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 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.

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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. 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 Equipment (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. 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. Excludes 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) *Other 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. Also included are Buyer's customer-funded costs of improvements to leased buildings, structures, and facilities, as well as easements and right-of-way, where Buyer's customer is the lessee or the cost is charged to a Buyer's customer 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. It 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. 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.

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(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. Does not include material, special test equipment, real property, equipment, machine tools, or similar capital items.

(12) *Summary Record* means a single document or data record used to account for components/details of special tooling, or component/details of equipment that does not require tagging (e.g., furniture and body armor) with a unit cost less than \$1,000. Summary records cannot be used for items requiring calibration, property requiring tagging (barcodes), or for classified or sensitive property.

(c) *Property Analyst*. The Buyer has delegated property administration authority to a Buyer Property Analyst.

(d) *Buyer Property Representatives*. The Seller 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 Buyer Property Analyst within 30 days after receipt of this contract and upon assignment of a replacement official. Subcontractors in possession of Government property accountable to this contract shall provide contact information for their property managers to the prime contractor.

(e) *Government Property List*. The Government Property List attached to the solicitation and the resulting contract identifies all Government property offered to the Seller on a no-charge-for-use basis to perform this contract and the dates of availability for each item. Post-award, the inventory of Government property accountable to this contract is maintained in Seller's approved property management system based on the Seller's quarterly property reports.

(f) *Property Transfers*. The Buyer can direct the transfer of contract-accountable property between contracts with Government approval. All transfers must be coordinated 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 Government will evaluate each transfer to ensure that the gaining contract includes the appropriate Government property clauses (52.245-1, 52.245-9 and CI.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 Buyer's 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 below must be attached to the transfer document. Data elements to be included are as follows:

For tagged assets:

1. Description
2. Manufacturer
3. Model
4. Part number
5. Serial number
6. Property Class Code
7. Acquisition date

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8. Disposition or transfer date
9. Contract number received from
10. Property tag number
11. Subcontractor name
12. Subcontractor Number
13. Location Bldg./Rm
14. Location City/State
15. Original Acquisition cost
16. Program code
17. Last physical inventory date
18. Property status
19. Quantity
 - For Material (CAM/GFM)
 1. Nomenclature
 2. Part number
 3. Serial number
 4. Quantity
 5. Acquisition Date
 6. Unit cost
 7. Total cost
 8. Building
 9. Floor
 10. Location
 11. Last Touch Date (Inventory Date)

The Seller must obtain approval of both the gaining and losing Contracting Officers or designees 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). The Seller shall notify the Buyer when such MMAS transfers are executed.

(g) Government Property Accountable to Other Contracts.

(1) The Seller may use Government property in their possession and accountable to another Buyer's customer 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. The Seller may also be authorized to use Government property in their possession accountable to a non-Buyer's customer contract 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;

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- (ii) Use will not impact the owning program or other programs;
 - (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 Buyer's approval letter. Material and tooling are 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 Seller shall submit to the Buyer 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 Buyer within 30 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. 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 Buyer.

(j) Audits and Analyses.

The Government or Buyer will audit/analyze the Seller's processes, controls, policies, accountability, and administration of Government property in accordance with FAR. 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 through the Buyer.

(k) Reporting.

(1) Quarterly Reports. The Seller shall submit quarterly reports of all property financially accountable to this contract and in the possession of the Seller or its subcontractors.

(i) Submit reports not later than the 5th business day before the end of 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

Seller and subcontractor fabrication, procurements, or transfers of government property that occur before the end of the reporting period but after submittal of the quarterly financial report shall be included in the next quarterly financial report.

(ii) Each report must be submitted electronically to the Buyer per section (f) of this clause.

(iii) Seller shall include all contract-accountable property in the possession of their subcontractors in each property report. Subcontractors will not submit property reports directly to the Buyer for their subcontracts.

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(iv) Each tagged item of contract-accountable property must be assigned a Program Code to identify Buyer's customer 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. It includes sensitive assets known as "specials," and property funded by Buyer's customer to conduct research and development activities. Such equipment is typically purchased for a specific research and development project and has no future use beyond that project.

(v) The Seller 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. For each non-program tagged item (excluding material) with a value of \$1,000,000 or more (capital asset) acquired during the reporting period, the Seller must transmit to Buyer an electronic copy of the invoice or other valuation documentation specified below.

(vi) The Seller shall retain acceptable supporting documentation for each contract-accountable non-program capital asset. Acceptable supporting documentation includes the original invoice or purchase order with the corresponding receiving report. For fabricated items, a document certified by the Seller showing the total labor cost of the item (total labor hours multiplied by the applicable labor rates) and the itemized cost of materials is acceptable. The Seller is not required to support the cost of bench stock inventory items such as nuts and bolts.

(vii) If no supporting documentation is available for a non-program capital asset, the valuation should be estimated in accordance with instructions provided by Buyer. This estimate will be certified by Seller property manager and include the following information:

- § Seller subcontract number;
- § Property identification number;
- § Description of property;
- § Acquisition date or date placed in service or receive date;
- § Acquisition value; and
- § Detailed basis of estimate

(viii) For each non-program item with a value of \$1,000,000 or more acquired or manufactured during the reporting period, the contractor must transmit to Buyer an electronic copy of the invoice or other valuation documentation with the next quarterly property report.

(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, Seller 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 the Buyer until required reporting is received, or other action as deemed appropriate by the Buyer.

(2) Subcontractor Property Reports.

(i) The Seller shall maintain the following information for each item of property accountable to this contract that is in the possession of subcontractors:

- § Subcontractor company name;
- § Prime contract number;

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§ Subcontract number;

§ Complete listing of all tagged property;

§ Location of contract-accountable property, to include building, room, city, and state;
and Total quantity and dollar value for all CAM and GFM.

(ii) Seller shall include the information specified in subparagraph (i) in each quarterly property report submitted to Buyer.

(3) Inventory Reports. The Seller shall periodically conduct a physical inventory of contract-accountable property in accordance with leading Industry practices, standards and procedures. The Buyer will approve the frequency and method to be used by the Seller 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 Seller shall submit the results of each physical inventory (to include all inventories performed by the Seller and each subcontractor) to the Buyer not later than 60 days after inventory completion. The Seller shall also post the inventory results to their property records.

(4) Final (Zero) Property Report. After completion of the contract period of performance and within 30 days after disposition of all contract-accountable property under this contract, the Seller shall electronically submit to the Buyer a final zero property report. Each subcontractor that had possession Government property accountable to this contract shall report a final zero property report to the Seller. The Seller shall submit the report to the Buyer certifying the disposition of all contract-accountable property and providing along with documentation supporting the transfer or disposal of all Seller inventory (e.g., SF1428, DD1149).

(l) Reutilization and Disposal.

(1) Reutilization. Government property that has had no activity should be reviewed annually by Seller and Buyer personnel to determine whether reutilization is possible. The Buyer 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 Buyer or as specified by contract.

(2) Disposal. Once inactive Government property has been determined to be excess to contract requirements, the Seller shall screen it against all in-house Government contracts and then shall electronically submit to Buyer a list in Excel format containing items useable on other Government contracts and items to be excessed. In addition to the requirements in FAR 52.245-1, the Seller shall be held to a 120-day standard for plant clearance cases (PCC) unless circumstances dictate otherwise. The Seller shall not close any PCC or retire any property record until Buyer provides notification that all PCC actions have been completed and closed.

(m) Special Test Equipment (STE) Notice of Intent (NOI). The Seller must obtain Buyer 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.

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

(2) Records. The official Government property records shall be maintained by the Seller. 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 (if applicable)

§ Model Number (if applicable)

§ Parent/Child Relationship (applies to STE and higher assemblies with components)(if applicable)

§ Location of the property (including building, room, city, and state)

§ Last physical inventory date

(ii) Material Items

§ Part Number

§ Actual, Average, Moving, or Estimated Cost (as applicable and approved by Buyer)

§ 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 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 Seller 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 Seller. In the event the unit price is not provided on the document, the Seller will take action to obtain the information. If the information is unavailable, the Seller may use estimated costs.

(5) Seller 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 Seller.

(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 Seller purchase or retention of Seller acquired property, or from Seller returns to suppliers.

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- (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 Seller shall include this clause in all subcontracts that will have any Government furnished or contractor-acquired property accountable to the subcontract. When security issues preclude verbatim use of this clause, the Seller shall use a revised version which includes all the requirements of the original clause.

(End of clause)

CI.246-002 CONTRACTOR COUNTERFEIT ELECTRONIC PART DETECTION AND AVOIDANCE SYSTEM (JUL 2017)

This clause applies to contracts for electronic parts or assemblies containing electronic parts or for contracts for the performance of authentication testing. The term "Contractor" means "Buyer" in the first sentence. In paragraph (c)(6), "Contracting Officer" means "Buyer."

The following paragraphs (a) through (e) of this clause do not apply unless the contractor is subject to the Cost Accounting Standards under 41 U.S.C. chapter 15, as implemented in regulations found at 48 CFR 9903.201-1.

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

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.

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.

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

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.

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.

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.

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

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

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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.

Original manufacturer means the original component manufacturer, the original equipment manufacturer, or the contract manufacturer.

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 CI.246-003, Sources of Electronic Parts (also see paragraph (c)(2) of this clause).

(5) Use of suppliers in accordance with the clause at CI.246-003.

(6) Reporting and quarantining of counterfeit electronic parts and suspect counterfeit electronic parts. Reporting is required to the Contracting Officer and to the Government-Industry Data Exchange Program (GIDEP) within 30 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, or purchased by a contractor for delivery to, or on behalf of, the Government, contains counterfeit electronic parts or suspect counterfeit electronic parts. 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.

(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

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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 Contracting Officer for review and acceptance within 60 days after contract award. This submission shall include the criteria to be used by the contractor and subcontractors to select contractor-approved suppliers. In addition, Government review and evaluation of the contractor's policies and procedures will be accomplished as part of the evaluation of the contractor's purchasing system.

(e) The contractor shall include the substance of this clause, excluding the introductory text and including only paragraphs (a) through (e), in subcontracts, including subcontracts for commercial items, for electronic parts or assemblies containing electronic parts.

CI.246-003 SOURCES OF ELECTRONIC PARTS (JUL 2017)

This clause applies if the Contract is for electronic parts or assemblies containing electronics parts, unless Seller is the original manufacturer of the electronic parts. The term "Contractor" means Seller and the term "subcontractor" means Seller's lower-tier suppliers. In paragraph (b)(3)(ii)(A), the term "Contracting Officer" means "Buyer's Authorized Procurement Representative." Seller's notification shall include, at a minimum, identification of the electronic parts being procured, identification of Seller's lower-tier supplier providing such electronic parts, Seller's rationale on acceptability of procuring such parts (including risk mitigation), and identification of the product using such parts (by lot or serial numbers).

(a) Definitions. As used in this clause—

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.

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.

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

Contractor-approved supplier means a supplier that does not have a contractual agreement with the

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original component manufacturer for a transaction, but has been identified as trustworthy by a contractor or subcontractor.

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.

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

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.

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 authorized aftermarket manufacturer or currently available in stock from—

(i) The original manufacturers of the parts;

(ii) Their authorized suppliers; or

(iii) Suppliers that obtain such parts exclusively from the original manufacturers of the parts or 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, 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 and audit by the Contracting Officer; or

(3)(i) Take the actions in paragraph (b)(3)(ii) of this clause if the Contractor—

(A) Obtains an electronic part from—

(1) A source other than any of the sources identified in paragraph (b)(1) or (b)(2) of this clause, due to non-availability from such sources; or

(2) A subcontractor (other than the original manufacturer) that refuses to accept flowdown of this clause; or

(B) Cannot confirm that an electronic part is new or previously unused and that it has not been comingled in supplier new production or stock with used, refurbished, reclaimed, or returned parts.

(ii) If the contractor obtains an electronic part or cannot confirm an electronic part pursuant to

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paragraph (b)(3)(i) of this clause–

(A) Promptly notify the Contracting Officer in writing. If such notification is required for an electronic part to be used in a designated lot of assemblies to be acquired under a single contract, the Contractor may submit one notification for the lot, providing identification of the assemblies containing the parts (e.g., serial numbers);

(B) Be responsible for inspection, testing, and authentication, in accordance with existing applicable industry standards; and

(C) Make documentation of inspection, testing, and authentication of such electronic parts available to the Government upon request.

(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 the Government upon request.

(d) Government sources. Contractors and subcontractors are still 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) Subcontracts. The Contractor shall include the substance of this clause, including this paragraph (e), 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)

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H.4 IDENTIFICATION OF RESTRICTIONS ON GOVERNMENT RIGHTS IN TECHNICAL DATA AND COMPUTER SOFTWARE

(a) In accordance with the Section I General Provisions pertaining to data rights, the Purchase Contractor has identified the technical data and/or computer software listed in paragraph (b) below that may be delivered by Seller with other than unlimited rights.

(b) The Contractor asserts for itself, or the persons identified below, that the Government's rights to use, release, or disclose the following technical data should be restricted.

Technical Data or Computer Software To Be Furnished with Restrictions*	Basis for Assertion **	Asserted Rights Category ***	Name of Entity Asserting Restrictions ****

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

**Generally, the development of an item, component, or process at private expense, either exclusively or partially, is the only basis for asserting restrictions on the Government's rights to use, release, or disclose technical data pertaining to such items, components, or processes. Indicate whether development was exclusively or partially at private expense. If development was not at private expense, enter the specific reason for asserting that the Government's rights should be restricted.

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

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

(End of Clause)

H.5 PRIVACY OR SECURITY SAFEGUARDS

(a) Seller shall not publish or disclose in any manner, without the Buyer's written consent, the details of any safeguards either designed or developed by Seller under this Purchase Contract or otherwise provided by Buyer.

(b) To the extent required to carry out a program of inspection to safeguard against threats and hazards to the security, integrity, and confidentiality of Program data, Seller shall afford Buyer and the Government access to the Seller's facilities, installations, technical capabilities, operations, documentation, records, and databases. Notwithstanding the provisions of this paragraph, only the Government shall have audit rights to Seller proprietary data.

(c) If new or unanticipated threats or hazards are discovered by Buyer, the Government or the Seller, or if existing safeguards have ceased to function, the discoverer shall immediately bring the situation to the attention of the other party.

(End of Clause)

H.7 SOURCE CODE

Hardware, software, and firmware Goods delivered under this Contract shall not contain any third-party software at any supplier or sub-tier (including software that may be considered free software or open source software) not approved by Buyer or that: (a) may require any software to be published, accessed or otherwise made available without the consent of Buyer; or (b) may require distribution, copying or modification of any software free of charge.

(End of Clause)

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H.8. INSPECTION/TEST RECORDS AND PRODUCT SUPPORT – SATELLITE PROGRAMS

- a. **INSPECTIONS AND TEST RECORDS.** During the performance of this Contract and for a period of 7 years after acceptance of all Goods to be delivered under this Contract, Seller shall keep and maintain all inspection and test records, and all other technical data generated under or related to this Contract including, but not limited to, drawings, designs, specifications, and manufacturing and process control records. Upon Buyer's request, Seller shall make available for inspection, and shall allow Buyer to make copies of, and take excerpts from (in the case of proprietary information), all such records and data.

(End of Clause)

b. PRODUCT SUPPORT

1. In the event that any Goods delivered under this Contract become defective or malfunction after the warranty period has expired, the Buyer shall have up to three (3) years after its delivery to its Customer to award a new time and material contract ("New Contract") to the Seller so it may perform, at Buyer's expense, a failure verification or analysis and determine the appropriate corrective action. If after examination, the failure is mutually determined to be due to Seller's defective goods or workmanship issues, Seller shall reimburse Buyer for all costs paid by Buyer, including Fee paid to Seller, under the New Contract only. Seller shall make all reasonable efforts to correct the defects determined to be its responsibility, in all applicable documentation, undelivered Goods, and delivered un-launched Goods, as mutually agreed.
3. Seller shall provide Buyer with full visibility of all relevant technical and programmatic aspects of failures and problems occurring on the ground or in orbit that are similar to the Goods being delivered by Seller under this Contract; however, Seller is not required to provide Buyer information that would violate the confidentiality and commercial sensitivity of Seller's relationships with its other customers.

(End of Clause)

PROHIBITED MATERIALS

The use of tin, zinc, and cadmium is prohibited as specified in the following subparagraphs. Any exceptions to these prohibitions shall be approved in advance in writing by Buyer.

- a. **Tin.** The use of pure unalloyed tin is prohibited as a surface finish for space hardware, including the surface finish on components or parts used inside a hermetic cavity or encapsulated within an assembly. (For example, terminations on chip capacitors in hybrids shall not consist of pure tin; the potted portion of leads on devices that are encapsulated shall not be plated with pure tin.) Solder-dipped tin alloy finishes shall contain at least three percent lead or at least three and a half percent silver. All other tin and tin alloy finishes shall contain at least three percent lead.
- b. **Zinc.** The use of pure zinc is prohibited as a surface finish for space hardware. Unplated brass (an alloy containing copper and zinc as the main constituents) containing greater than 21 percent zinc is prohibited. Brass with greater than 21 percent zinc is acceptable if the brass is over-plated with a minimum of 50 microinches of nickel, or 100 microinches of either copper or gold. Unplated alloys other than brass that contain greater than 10 percent zinc are prohibited. Unplated alloys other than brass alloys that contain greater than 10 percent zinc are acceptable if they are over-plated with a minimum of 50 microinches of nickel, or 100 microinches of either copper or gold. Zinc or alloys containing zinc that are sealed within a hermetic cavity are acceptable.
- c. **Cadmium.** The use of pure cadmium is prohibited as a surface finish for space hardware. Unplated alloys containing greater than five percent cadmium are prohibited. Alloys containing greater than five percent cadmium are acceptable if they are over-plated with a minimum of 50 microinches of nickel, or 100 microinches of either copper or gold. Cadmium or alloys containing cadmium that are sealed within a hermetic cavity are acceptable.

MATERIAL SUBSTITUTION PROHIBITION

A. Unauthorized Material Substitution (General)

Unauthorized material substitutions are not permitted on Buyer's Goods. Unauthorized material substitution includes any deviation from the engineering definition of a raw material. Engineering definition includes Buyer design drawing and applicable specifications, product specification, form, size, shape, chemistry, melt method, origin, temper/condition, product testing or surface finish. Alternate materials specified in the engineering definition (and often described as approved material substitutions therein) do not constitute unauthorized material substitution. Terms and definitions for metallic materials and processing used herein are clarified in ARP1917.

Contact Buyer's Authorized Procurement Representative for details regarding deviations to authorized materials. Seller agrees and understands that such deviations only apply to this purchase contract, and only as indicated in the Buyer's authorized document.

B. Metallic Materials (Specific)

Temper or Condition Conversion - Unless specifically authorized by the engineering definition, conversion of a raw material (i.e. heat treat to change the temper or condition of the material) constitutes material substitution of the condition provided by the manufacturer.

Metallic Raw Materials – Buyer's engineering drawings may refer to obsolete or superseded specifications covering several forms, thicknesses, widths, etc. of the alloy or alloys. The required characteristics of these materials are defined not only by the objective test standards of the specification, but by the processes/methods by which this final form is achieved. These requirements are often captured in the definitions of the required material forms, and may not be explicitly called out in the detailed requirements. The raw material certification results from both the process used to make it and the tests to verify basic properties.

Seller shall ensure that metallic materials covered by current or obsolete/superseded specifications are produced using the standard industry practices designed strictly for the production of stock to the specified thickness, diameter, width or cross sectional area, achieved by thermo-mechanical processing or casting process. Chemical, electrochemical and mechanical methods used for the removal of surface scale or contamination,

or the production of the required surface finish, in accordance with the material specification are acceptable. Raw material must not be re-certified with respect to thickness, diameter, width or cross sectional area or product form. Machining or cutting of thicker product or other product forms shall not be supplied in lieu of specified product unless specifically authorized by Buyer. Raw material certifications for material or parts shall reflect the form and size of the raw material as originally manufactured by the raw material producer.

C. Specification Supersession:

For government specifications and standards canceled after June 1994, Seller and subcontractors at all tiers shall use the last active revision of the canceled specification and standard until an acceptable replacement is included in the requirements of this Contract. Contact the Buyer's Authorized Procurement Representative in the event of any inconsistency in applicable specification or standard.

D. Reports (Full Pedigree from melt to final product) - Raw material certifications shall show clear traceability to the manufacturer(s) of the raw material including ingot source, all thermo-mechanical processing (i.e. forging, rolling, drawing, etc), heat treatment, chemical processing and inspections as required by applicable raw material specification requirements.

E. Chain of Custody (Disguising intermediate ownership) – Suppliers shall not disguise the pedigree of material or chain of ownership by removal of a previous supplier's name, nomenclature or identification.

F. Source of Additional Information - Addition information and guidance may be found through Buyer's Supplier Portal or Buyer's Authorized Procurement Representative.

G. The substance of this Article shall be flowed in all subcontracts at every tier.

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RELEASE OF AUDIT REPORTS

Seller agrees no restrictions will be imposed on the release of any audit report under this contract to Buyer. Such audit report released to Buyer shall be used only for the purpose of negotiating a fair and reasonable contract price. Seller further agrees to include the substance of this clause, including this last sentence, in any subcontract where an audit is, or may be, required.

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Effective: 9/5/2014

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TECHNICAL DATA/TECHNOLOGY LEGEND - U.S. SUPPLIERS

Seller shall include one of the following two (2) legends in solicitations and purchase orders/contracts, as applicable, that contain export-controlled unclassified technical data or technology (as defined by the International Traffic in Arms Regulations [ITAR] and Export Administration Regulations [EAR], respectively) that has been provided to Seller by Buyer:

“EXPORT CONTROLLED – The technical data or software is subject to the International Traffic in Arms Regulations (22 C.F.R. Parts 120-130). Export, re-export or retransfer contrary to U.S. law is prohibited.”

Or

“EXPORT CONTROLLED – The technology or software is subject to the Export Administration Regulations (15 C.F.R. Parts 730-774). Export, re-export or retransfer contrary to U.S. law is prohibited.”

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Effective: 10/21/2014

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DPAS RATING (Variable)

Notwithstanding information to the contrary that may be specified elsewhere herein, the DPAS rating applicable to this contract's line items are listed below:

Purchase contract line items

DPAS rating

Affirmative Action and Nondiscrimination Obligations of Contractors and Subcontractors Regarding Individuals with Disabilities and Veterans.

This clause is applicable if this contract exceeds \$10,000. Pursuant to the requirements of 41 CFR Part 60-741.5(a) and 41 CFR Part 60-300.5(a):

This contractor and subcontractor shall abide by the requirements of 41 CFR 60-741.5 (a). This regulation prohibits discrimination against qualified individuals on the basis of disability and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities.

This contractor and subcontractor shall abide by the requirements of 41 CFR 60-300.5 (a). This regulation prohibits discrimination against qualified protected veterans and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans.

COUNTERFEIT GOODS - ELECTRONIC PARTS

- a. The definitions in DFARS Clause 252.246-7007(a) apply to this clause.
- b. Seller shall permit Buyer to review and audit Seller's Counterfeit Electronic Part Detection and Avoidance System ("System") procedures, practices, processes and related documents to determine whether Seller's System meets the requirements of DFARS Clause 252.246-7007(b)-(c).
- c. If Seller or its subcontractor deliver Goods that contain Counterfeit Electronic Parts to Buyer and as a result the Government withholds any payment due under Buyer's prime contract, Buyer may withhold from Seller an amount equal to the withhold of the prime contract. Furthermore, if, as a result of Seller's or its subcontractor's foregoing conduct, the Government imposes a penalty on or charges Buyer interest, Buyer may recover from Seller the amount of that interest or penalty. Buyer will release such withhold once the Government releases the withhold under Buyer's prime contract, less (i) Buyer's reasonable expenses associated with any testing or validation necessitated by the installation of authentic Goods after Counterfeit Electronic Parts have been replaced, and (ii) any interest or penalty imposed or charged.

I000 REPORTS OF PATENTS

For the purpose of administering FAR 52.227-10, FAR 52.227-11, FAR 52.227-12, DFARS 252.227-7038, or NASA PR 1852.227-70 in this contract, whichever of these clauses is set forth in the terms and conditions of this contract, Seller shall contact Buyer's Authorized Procurement Representative to obtain the name and the address of the Contracting Officer for the required reports. If there is any invention or discovery made which is or may be patentable, Seller must notify the Contracting Officer of such invention.

Reports of inventions and subcontracts, including interim reports, final reports, utilization reports, and other reports required by the above cited clauses, as well as any correspondence with respect to such matter, should be directed to the Contracting Officer unless transmitted in response to correspondence or request from Buyer's Authorized Procurement Representative. Inquiries or requests regarding disposition of rights, election of rights, or related matters should be directed to the Contracting Officer.

Seller shall include this clause in any subcontract hereunder containing FAR 52.227-10, FAR 52.227-11, FAR 52.227-12, DFARS 252.227-7038, or NASA PR 1852.227-70, unless otherwise authorized or directed by the Buyer's Authorized Procurement Representative.