

**AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT**

1. CONTRACT ID CODE  
U

PAGE OF PAGES  
1 2

2. AMENDMENT/MODIFICATION NO.  
P00001

3. EFFECTIVE DATE  
12-Jul-2017

4. REQUISITION/PURCHASE REQ. NO.  
N/A

5. PROJECT NO. (If applicable)  
N/A

6. ISSUED BY CODE

N00174

7. ADMINISTERED BY (If other than Item 6)

CODE

S1103A

NSWC IHEODTD  
4081 North Jackson Road  
Indian Head MD 20640-5116

DCMA ATLANTA  
2300 LAKE PARK DRIVE, SUITE 300  
SMYRNA GA 30080

SCD: C

8. NAME AND ADDRESS OF CONTRACTOR (No., street, county, State, and Zip Code)

Orbis Sibro, Inc.  
270 West Coleman Blvd. Suite2A  
Mt. Pleasant SC 29464-5649

9A. AMENDMENT OF SOLICITATION NO.

9B. DATED (SEE ITEM 11)

[X]

10A. MODIFICATION OF CONTRACT/ORDER NO.

N00178-04-D-4100 / N0017417F3006

10B. DATED (SEE ITEM 13)

15-Jun-2017

CAGE CODE 1SEL4

FACILITY CODE

**11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS**

The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offers  is extended,  is not extended. Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended, by one of the following methods: (a) By completing Items 8 and 15, and returning one (1) copy of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGEMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.

12. ACCOUNTING AND APPROPRIATION DATA (If required)

**13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS, IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.**

- (\*) A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: (Specify authority) THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A.
- B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (such as changes in paying office, appropriation date, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(b).
- C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF: 43.103(a)(3) Bilateral Modification
- D. OTHER (Specify type of modification and authority)

E. IMPORTANT: Contractor  is not,  is required to sign this document and return 1 copies to the issuing office.

14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF section headings, including solicitation/contract subject matter where feasible.)  
SEE PAGE 2

15A. NAME AND TITLE OF SIGNER (Type or print)

16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print)

15B. CONTRACTOR/OFFEROR

15C. DATE SIGNED

16B. UNITED STATES OF AMERICA

16C. DATE SIGNED

11-Jul-2017

BY

12-Jul-2017

(Signature of person authorized to sign)

(Signature of Contracting Officer)

NSN 7540-01-152-8070

30-105

STANDARD FORM 30 (Rev. 10-83)

PREVIOUS EDITION UNUSABLE

Prescribed by GSA  
FAR (48 CFR) 53.243

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## GENERAL INFORMATION

The purpose of this modification is to incorporate a final DD 1423 and DID under Section J listed as Exhibit A and Attachment 5; as well as update clause 52.244-2 – Subcontracts with the listed subcontractors under this contract under Section I.

1. Section J is hereby revised to incorporate the following documents as follows:

Attachment 5 - DID (OT-17-20197)

Exhibit A - A001 - CDRL 1423

2. Section I is hereby revised to update the subcontractors listed under clause 52.244-2 as follows:

3. All other terms and conditions remain unchanged.

4. CONTRACTOR'S STATEMENT OF RELEASE

**THE PARTIES HAVE CONSIDERED WHETHER AN EQUITABLE ADJUSTMENT IN THE CONTRACT PRICE, DELIVERY SCHEDULE, OR OTHER TERMS AND CONDITIONS OF THE CONTRACT IS WARRANTED BY VIRTUE OF THE ABOVE CHANGE(S) TO THE CONTRACT. THE PARTIES AGREE THAT NO SUCH ADJUSTMENT IS WARRANTED. THE CONTRACTOR WAIVES ALL RIGHT, TITLE AND INTEREST, IF ANY, TO FURTHER EQUITABLE ADJUSTMENTS ARISING UNDER THIS MODIFICATION.**

5. Questions regarding this modification should be directed to

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**SECTION B SUPPLIES OR SERVICES AND PRICES**

CLIN - SUPPLIES OR SERVICES

For Cost Type Items:

Item	PSC	Supplies/Services	Qty	Unit	Target Cost	Target Fee	CPIF
7000	R425	Base Year Labor (O&MN,N)		LH			
		Max Fee					
		Min Fee					
		Government Overrun Share Line					
		Government Underrun Share Line					
700001	R425	Funding Only (O&MN,N)					

Item	PSC	Supplies/Services	Qty	Unit	Est. Cost	Fixed Fee	CPFF
7001	R425	Base Year Surge, Option - (See Notes A, B, E & H) (O&MN,N)		LH			
		Option					

For Cost Type / NSP Items

Item	PSC	Supplies/Services	Qty	Unit	Target Cost	Target Fee	CPIF
7002		NOT SEPERATELY PRICED Data CLIN (CDRLS)	1.0	LO			NSP

For Cost Type Items:

Item	PSC	Supplies/Services	Qty	Unit	Target Cost	Target Fee	CPIF
7100	R425	Option Year 1 Labor, Option (O&MN,N)		LH			
		Option					
		Max Fee					
		Min Fee					
		Government Overrun Share Line					

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Item	PSC	Supplies/Services	Qty	Unit	Target Cost	Target Fee	CPIF
		Government Underrun Share Line					

Item	PSC	Supplies/Services	Qty	Unit	Est. Cost	Fixed Fee	CPFF
7101	R425	Option Year 1 Surge, Option - (O&MN,N) Option		LH			

Item	PSC	Supplies/Services	Qty	Unit	Target Cost	Target Fee	CPIF
7200	R425	Option Year 2 Labor, Option (O&MN,N) Option  Max Fee  Min Fee  Government Overrun Share Line  Government Underrun Share Line		LH			

Item	PSC	Supplies/Services	Qty	Unit	Est. Cost	Fixed Fee	CPFF
7201	R425	Option Year 2 Surge, Option (O&MN,N) Option		LH			

Item	PSC	Supplies/Services	Qty	Unit	Target Cost	Target Fee	CPIF
7300	R425	Award Term 1, Option (O&MN,N) Option  Max Fee  Min Fee  Government Overrun Share Line		LH			

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Item	PSC	Supplies/Services	Qty	Unit	Target Cost	Target Fee	CPIF
		Government Underrun Share Line					

Item	PSC	Supplies/Services	Qty	Unit	Est. Cost	Fixed Fee	CPFF
7301	R425	Award Term 1 Surge, Option (O&MN,N) Option		LH			

Item	PSC	Supplies/Services	Qty	Unit	Target Cost	Target Fee	CPIF
7400	R425	Award Term 2, Option (O&MN,N) Option  Max Fee  Min Fee  Government Overrun Share Line  Government Underrun Share Line		LH			

Item	PSC	Supplies/Services	Qty	Unit	Est. Cost	Fixed Fee	CPFF
7401	R425	Award Term 2 Surge, Option (O&MN,N) Option		LH			

For ODC Items:

Item	PSC	Supplies/Services	Qty	Unit	Est. Cost
9000	R425	Base Year ODCs [In support of CLINS 7000 and 7001] - (O&MN,N)	1.0	LO	
900001	R425	Funding Only (O&MN,N)			
9100	R425	Option Year 1 ODCs, Option [In support of CLINS 7100 and 7101] (O&MN,N) Option	1.0	LO	
9200	R425	Option Year 2 ODCs, Option [In support of CLINS 7200 and 7201] (O&MN,N) Option	1.0	LO	

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Item	PSC	Supplies/Services	Qty	Unit	Est. Cost
9300	R425	Award Term 1 ODCs, Option [In support of CLINS 7300 and 7301] (O&MN,N)  Option	1.0	LO	
9400	R425	Award Term 2 ODCs, Option [In support of CLINS 7400 and 7401] (O&MN,N)  Option	1.0	LO	

#### **HQ B-2-0004 EXPEDITING CONTRACT CLOSEOUT (NAVSEA) (DEC 1995)**

(a) As part of the negotiated fixed price or total estimated amount of this contract, both the Government and the Contractor have agreed to waive any entitlement that otherwise might accrue to either party in any residual dollar amount of \$500 or less at the time of final contract closeout. The term "residual dollar amount" shall include all money that would otherwise be owed to either party at the end of the contract, except that, amounts connected in any way with taxation, allegations of fraud and/or antitrust violations shall be excluded. For purposes of determining residual dollar amounts, offsets of money owed by one party against money that would otherwise be paid by that party may be considered to the extent permitted by law.

(b) This agreement to waive entitlement to residual dollar amounts has been considered by both parties. It is agreed that the administrative costs for either party associated with collecting such small dollar amounts could exceed the amount to be recovered.

#### **HQ B-2-0007 LIMITATION OF COST OR LIMITATION OF FUNDS**

The clause entitled "LIMITATION OF COST" (FAR 52.232-20) or "LIMITATION OF FUNDS" (FAR 52.232-22), as appropriate, shall apply separately and independently to each separately identified estimated cost.

#### **HQ B-2-0015 PAYMENTS OF FEE(S) (LEVEL OF EFFORT – ALTERNATE 1) (NAVSEA) (MAY 2010)**

(Applicable to CLIN 7000 and if exercised, CLINS 7001, 7100, 7101, 7200, 7201, 7300, 7301, 7400, and 7401).

(a) For purposes of this contract, "fee" means "target fee" in cost-plus-incentive-fee type contracts, "base fee" in cost-plus-award-fee type contracts, or "fixed fee" in cost-plus-fixed-fee type contracts for level of effort type contracts.

(b) The Government shall make payments to the Contractor, subject to and in accordance with the clause in this contract entitled "FIXED FEE" (FAR 52.216-8) or "INCENTIVE FEE", (FAR 52.216-10), as applicable. Such payments shall be submitted by and payable to the Contractor pursuant to the clause of this contract entitled "ALLOWABLE COST AND PAYMENT" (FAR52.216-7), subject to the withholding terms and conditions of the "FIXED FEE" or "INCENTIVE FEE" clause, as applicable, and shall be paid at the hourly

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rate(s) specified above per man-hour performed and invoiced. Total fee(s) paid to the Contractor shall not exceed the fee amount(s) set forth in this contract. In no event shall the Government be required to pay the Contractor any amount in excess of the funds obligated under this contract.

**HQ B-2-0020 TRAVEL COSTS - ALTERNATE I (NAVSEA) (APR 2015)**

- (a) Except as otherwise provided herein, the Contractor shall be reimbursed for its actual travel costs in accordance with FAR 31.205-46. The costs to be reimbursed shall be those costs determined to be allowable, allocable and reasonable by the Procuring Contracting Officer, Administrative Contracting Officer or their duly authorized representative, as advised by DCAA.
- (b) Reimbursable travel costs include only that travel performed from the Contractor's facility to the worksite, in and around the worksite, and from the worksite to the Contractor's facility.
- (c) Relocation costs and travel costs incidental to relocation are allowable to the extent provided in FAR 31.205-35; however, Contracting Officer approval shall be required prior to incurring relocation expenses and travel costs incidental to relocation.
- (d) The Contractor shall not be reimbursed for the following daily local travel costs:
  - (i) travel at U.S. Military Installations where Government transportation is available,
  - (ii) travel performed for personal convenience/errands, including commuting to and from work, and
  - (iii) travel costs incurred in the replacement of personnel when such replacement is accomplished for the Contractor's or employee's convenience.

**HQ B-2-0021 CONTRACT SUMMARY FOR PAYMENT OFFICE (COST TYPE) (NAVSEA) (FEB 1997)**

This entire Task Order is cost type.

(End of clause)

Cost-Plus-Incentive-Fee CLINS (Labor CLINS):

- 7000
- 7100
- 7200
- 7300
- 7400

Cost-Plus-Fixed-Fee CLINS (Surge CLINS):

- 7001
- 7101
- 7201
- 7301
- 7401

Cost Reimbursable Only CLINS (Travel/ ODC CLINS):

- 9000

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9100  
9200  
9300  
  
9400

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## **SECTION C DESCRIPTIONS AND SPECIFICATIONS**

### **1. BACKGROUND:**

The Surface Maintenance Engineering Planning Program (SURFMEPP) is currently supported under contract N00178-04-D-4078-EH01 by McKean Defense Group - a small business organization whose contract will be completed on January 25, 2016. The intent of this follow-on contract is to provide a continuous and uninterrupted flow of work to support the SURFMEPP mission. The Government intends to provide such work by awarding this contract in a timely manner to that responsible offeror whose proposal provides the Best Value to the Government.

### **2. PURPOSE:**

The Surface Maintenance Engineering Planning Program (SURFMEPP) was established to provide centralized surface ship life cycle maintenance engineering, and class maintenance planning and management closely aligned with the Fleet, Surface Warfare Enterprise, and NAVSEA needs and priorities. SURFMEPP's primary mission is to maintain and modernize in-service ships throughout their life cycle. This primary mission is centered on a complete, well-engineered, and continuously improving Class Maintenance Plan (CMP) that facilitates the Planning, Programming, Budgeting, and Execution (PPBE) process, streamlines maintenance processing, develops maintenance strategies, and directly supports surface ship Expected Service Life (ESL) goals. The successful offeror will provide technical, programmatic, and administrative support for Fleet/Type Commander Staffs in support of SURFMEPP's primary mission.

### **3. GENERAL REQUIREMENTS**

**3.1** The Contractor shall have electronic mail capability, provide e-mail addresses for all employees, and have the necessary connectivity to communicate with the Government and with other Contractors. Microsoft (MS) Outlook is preferred in order to communicate and coordinate meetings and schedules. The Contractor is responsible for obtaining Navy Enterprise accounts for employees requiring access to DoD databases.

**3.2** The Contractor shall be responsible for obtaining all necessary PKI Certificates for employees who must access DoD websites in the performance of this contract but who do not need access to DoD Facilities. For those employees who must access DoD Facilities, the Contractor shall take the necessary steps to obtain Common Access Cards (CACs).

**3.3** All data/deliverables produced under this Task Order shall become the property of the Government.

**3.4** The Contractor shall provide an integrated team and ramp up immediately by having its team in place and fully functioning within 4 weeks of contract award.

**3.5** The work performed under this contract shall be work ranging from an unclassified level to work classified at the SECRET level.

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**3.6 Performance Standards and Assessment Plan.** The following Performance Standards and Assessment Plan serves as a basis for determining whether performance outcomes have satisfactorily met performance standards and whether the resultant delivery of service(s) is considered acceptable performance.

**3.6.1 Performance Standards:**

1. The delivery requirements shall be consistent with the needs of the mission as identified by the Contracting Officer's Representative (COR).
2. Studies, analyses, presentations and technical and status reports, shall be factually accurate and complete, reflect high quality, and adhere to due dates and deadlines in accordance with DD Form 1423, Exhibit A.
3. All services rendered shall reflect innovative and technological management techniques employed to increase efficiency and cost control.

**3.6.2 Performance Assessment Plan:**

1. Contractor performance will be formally assessed by means of Award Term Reviews and annual Contractor Performance Assessment Reports (CPARS).
2. Contractor performance under this effort will be evaluated using the following criteria and will be conducted in accordance with the Government Quality Assurance Surveillance Plan (QASP) - See Attachment 13.

**3.7** Tasks shall be performed at Norfolk Naval Station, Norfolk, VA, San Diego Naval Station, Mayport Naval Station, Mayport, FL and COMNAVSURFPAC HQ and will potentially require travel to other locations in Continental United States (CONUS) and Outside Continental United States (OCONUS).

**4**

**4. TASK AREAS:**

**4.1 The Contractor shall provide technical and programmatic support for Fleet/Type Commander staffs as follows:**

Provide Availability Work Package (AWP) Managers (AWPMs) to both COMNAVSURFLANT and COMNAVSURFPAC Type Commander (TYCOM) staffs to assist with the development, scheduling, planning, and tracking of surface ship depot level maintenance and modernization work. Specific duties include:

- Monitor depot level availability schedule changes.
- Assist in depot level availability schedule extension message development.

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- Document and maintain root cause data for depot level availability schedule extensions.
- Develop, monitor, and maintain depot level availability planning milestones.
- Schedule and monitor execution of shipboard events to include: Total Ship Readiness

Assessment visits, Continuous Maintenance Availabilities, Maintenance Windows

of Opportunity, and Board of Inspection and Survey (INSURV) material inspections.

- Monitor surface ship maintenance funding controls and maintenance requirements during the depot level planning process.
  - Assist in the development of reports or naval messages in support of the Type Desk Officer with stakeholder communications and management during the depot level planning process.

**4.2** Provide support for planning and execution of Fleet alterations to include:

- Develop ship class execution strategies or fielding plans.
- Close Automated Work Requests for completed Fleet alterations.
- Document and maintain Fleet alteration execution costs.
- Publish Fleet alteration schedules for depot level availabilities by hull.
- Collaborate with SURFMEPP in developing execution strategies for the Program Objective Memorandum (POM) and DoN/Fleet Alteration Scheduling Team/Ship Sheet processes.

**4.3** Monitor the progress of Mandatory Technical Requirements (MTRs) upon AWP turnover from SURFMEPP.

**4.4** Produce deferral letters for TYCOM in support of mandatory assessments or mandatory work. Collaborate with maintenance and modernization community stakeholders to ensure that all Mandatory Technical Requirements (MTRs) trade-off decisions are captured in TYCOM deferral letters. Document decisions and discussions in After Action Reports (AARs).

**4.5** Review cost estimates for planned repairs and alterations.

**4.6** Support depot level availability duration studies to ensure that corrective maintenance and life cycle maintenance impacts are understood. Provide analyses and reports to maintenance and modernization stakeholders.

**4.7** Plan and participate in meetings and events to include: TYCOM depot level availability planning conferences, Life Cycle Planning Conferences, Mid-Cycle reviews, AWP turnover meetings, Integrated Project Team Development (IPTD) meetings, AWP close-out meetings, Surface Team One Knowledge Sharing Network forums, milestone meetings for advanced planning, and CNO availability work planning meetings including A-410 meetings and events.

**4.8** Provide an After Action Report (AAR) for each event. AARs can be in summary form not to exceed 2 pages in length.

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**4.9** Monitor the depot level planning process to ensure required maintenance is scheduled to correct Departures from Specifications. Where required maintenance is not scheduled for execution, support TYCOM staff communications with shipboard personnel to ensure planning of required repairs. Document contact with the ship and correction of identified problems in monthly report summary.

**4.10** Analyze and schedule necessary action items to address Class Advisories, Fleet Advisories, and In Service Engineering Agent advisories. Track completion of advisories by hull and report to maintenance and modernization stakeholders.

**4.11** Prepare and deliver maintenance and modernization planning process briefs, presentations, and updates.

## **5. SECURITY REQUIREMENTS**

Much, but not all of the work under this Task Order shall be UNCLASSIFIED. A portion of the work may be classified at the CONFIDENTIAL or SECRET level. Security Requirements pertaining to “Facility” and “Personnel” are as follows:

### **5.1 FACILITY**

- There is no requirement to work with classified materials at other than government sites.
- There is no requirement to store classified material in a secure container at the contractor’s site.

### **5.2 PERSONNEL**

- All personnel must be U.S. citizens. (Exceptions on a case by case basis).
- All personnel must have a SECRET clearance. (Interim SECRET clearances will be accepted)
- Contractor employees may be required to access SIPRNet to accomplish assigned tasks.
- Work performed in Government work spaces can contain information considered to be of a sensitive nature and at times require a CONFIDENTIAL or SECRET level clearance. Scenarios include and are not limited to: co-location with government personnel accessing classified material, knowledge of ship movements and locations, knowledge of material deficiencies and degraded readiness conditions on Navy surface combatants and expeditionary warfare ships.

### **HQ C-1-0001 DATA REQUIREMENTS (NAVSEA) (SEP 1990)      MAR 2003**

The data to be furnished hereunder shall be prepared in accordance with the Contract Data Requirements List, DD Form 1423, Exhibit(s) A, attached hereto.

### **HQ C-2-0002 ACCESS TO PROPRIETARY DATA OR COMPUTER SOFTWARE (NAVSEA) (JUN 1994)**

- (a) Performance under this contract may require that the Contractor have access to technical

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data, computer software, or other sensitive data of another party who asserts that such data or software is proprietary. If access to such data or software is required or to be provided, the Contractor shall enter into a written agreement with such party prior to gaining access to such data or software. The agreement shall address, at a minimum, (1) access to, and use of, the proprietary data or software exclusively for the purposes of performance of the work required by this contract, and (2) safeguards to protect such data or software from unauthorized use or disclosure for so long as the data or software remains proprietary. In addition, the agreement shall not impose any limitation upon the Government or its employees with respect to such data or software. A copy of the executed agreement shall be provided to the Contracting Officer. The Government may unilaterally modify the contract to list those third parties with which the Contractor has agreement(s).

(b) The Contractor agrees to: (1) indoctrinate its personnel who will have access to the data or software as to the restrictions under which access is granted; (2) not disclose the data or software to another party or other Contractor personnel except as authorized by the Contracting Officer; (3) not engage in any other action, venture, or employment wherein this information will be used, other than under this contract, in any manner inconsistent with the spirit and intent of this requirement; (4) not disclose the data or software to any other party, including, but not limited to, joint venture, affiliate, successor, or assign of the Contractor; and (5) reproduce the restrictive stamp, marking, or legend on each use of the data or software whether in whole or in part.

(c) The restrictions on use and disclosure of the data and software described above also apply to such information received from the Government through any means to which the Contractor has access in the performance of this contract that contains proprietary or other restrictive markings.

(d) The Contractor agrees that it will promptly notify the Contracting Officer of any attempt by an individual, company, or Government representative not directly involved in the effort to be performed under this contract to gain access to such proprietary information. Such notification shall include the name and organization of the individual, company, or Government representative seeking access to such information.

(e) The Contractor shall include this requirement in subcontracts of any tier which involve access to information covered by paragraph (a), substituting "subcontractor" for "Contractor" where appropriate.

(f) Compliance with this requirement is a material requirement of this contract.

#### **HQ C-2-0004 ACCESS TO THE VESSEL(S) (AT) (NAVSEA) (JAN 1983)**

Officers, employees and associates of other prime Contractors with the Government and their subcontractors, shall, as authorized by the Supervisor, have, at all reasonable times, admission to the plant, access to the vessel(s) where and as required, and be permitted, within the plant and on the vessel(s) required, to perform and fulfill their respective obligations to the Government. The Contractor shall make reasonable arrangements with the Government or Contractors of the Government, as shall have been identified and authorized by the Supervisor to be given admission to the plant and access to the vessel(s) for office space, work areas, storage or shop areas, or other facilities and services, necessary for the performance of the respective responsibilities involved, and

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reasonable to their performance.

**HQ C-2-0011 COMPUTER SOFTWARE AND/OR COMPUTER DATABASE(S)  
DELIVERED TO AND/OR RECEIVED FROM THE GOVERNMENT (NAVSEA) (APR  
2004)**

(a) The Contractor agrees to test for viruses all computer software and/or computer databases, as defined in the clause entitled "RIGHTS IN NONCOMMERCIAL COMPUTER SOFTWARE AND NONCOMMERCIAL COMPUTER SOFTWARE DOCUMENTATION" (DFARS 252.227-7014), before delivery of that computer software or computer database in whatever media and on whatever system the software is delivered. The Contractor warrants that any such computer software and/or computer database will be free of viruses when delivered.

(b) The Contractor agrees to test any computer software and/or computer database(s) received from the Government for viruses prior to use under this contract.

(c) Unless otherwise agreed in writing, any license agreement governing the use of any computer software to be delivered as a result of this contract must be paid-up and perpetual, or so nearly perpetual as to allow the use of the computer software or computer data base with the equipment for which it is obtained, or any replacement equipment, for so long as such equipment is used. Otherwise the computer software or computer database does not meet the minimum functional requirements of this contract. In the event that there is any routine to disable the computer software or computer database after the software is developed for or delivered to the Government, that routine shall not disable the computer software or computer database until at least twenty-five calendar years after the delivery date of the affected computer software or computer database to the Government.

(d) No copy protection devices or systems shall be used in any computer software or computer database delivered under this contract to restrict or limit the Government from making copies. This does not prohibit license agreements from specifying the maximum amount of copies that can be made.

(e) Delivery by the Contractor to the Government of certain technical data and other data is now frequently required in digital form rather than as hard copy. Such delivery may cause confusion between data rights and computer software rights. It is agreed that, to the extent that any such data is computer software by virtue of its delivery in digital form, the Government will be licensed to use that digital-form with exactly the same rights and limitations as if the data had been delivered as hard copy.

(f) Any limited rights legends or other allowed legends placed by a Contractor on technical data or other data delivered in digital form shall be digitally included on the same media as the digital-form data and must be associated with the corresponding digital-form technical data to which the legends apply to the extent possible. Such legends shall also be placed in human readable form on a visible surface of the media carrying the digital-form data as delivered, to the extent possible.

**HQ C-2-0037 ORGANIZATIONAL CONFLICT OF INTEREST (NAVSEA) (JUL 2000)**

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(a) "Organizational Conflict of Interest" means that because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to the Government, or the person's objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage. "Person" as used herein includes Corporations, Partnerships, Joint Ventures, and other business enterprises.

(b) The Contractor warrants that to the best of its knowledge and belief, and except as otherwise set forth in the contract, the Contractor does not have any organizational conflict of interest(s) as defined in paragraph (a).

(c) It is recognized that the effort to be performed by the Contractor under this contract may create a potential organizational conflict of interest on the instant contract or on a future acquisition. In order to avoid this potential conflict of interest, and at the same time to avoid prejudicing the best interest of the Government, the right of the Contractor to participate in future procurement of equipment and/or services that are the subject of any work under this contract shall be limited as described below in accordance with the requirements of FAR 9.5.

(d) (1) The Contractor agrees that it shall not release, disclose, or use in any way that would permit or result in disclosure to any party outside the Government any information provided to the Contractor by the Government during or as a result of performance of this contract. Such information includes, but is not limited to, information submitted to the Government on a confidential basis by other persons. Further, the prohibition against release of Government provided information extends to cover such information whether or not in its original form, e.g., where the information has been included in Contractor generated work or where it is discernible from materials incorporating or based upon such information. This prohibition shall not expire after a given period of time.

(2) The Contractor agrees that it shall not release, disclose, or use in any way that would permit or result in disclosure to any party outside the Government any information generated or derived during or as a result of performance of this contract. This prohibition shall expire after a period of three years after completion of performance of this contract.

(3) The prohibitions contained in subparagraphs (d)(1) and (d)(2) shall apply with equal force to any affiliate of the Contractor, any subcontractor, consultant, or employee of the Contractor, any joint venture involving the Contractor, any entity into or with which it may merge or affiliate, or any successor or assign of the Contractor. The terms of paragraph (f) of this Special Contract Requirement relating to notification shall apply to any release of information in contravention of this paragraph (d).

(e) The Contractor further agrees that, during the performance of this contract and for a period of three years after completion of performance of this contract, the Contractor, any affiliate of the Contractor, any subcontractor, consultant, or employee of the Contractor, any joint venture involving the Contractor, any entity into or with which it may subsequently merge or affiliate, or any other successor or assign of the Contractor, shall not furnish to the United States Government, either as a prime contractor or as a subcontractor, or as a consultant to a prime contractor or subcontractor, any system, component or services which is the subject of the work to be performed under this contract. This exclusion does not apply to any re-competition for those systems, components or services furnished pursuant to this contract. As provided in FAR 9.505-2, if the Government procures the system, component, or services on the basis of

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work statements growing out of the effort performed under this contract, from a source other than the Contractor, subcontractor, affiliate, or assign of either, during the course of performance of this contract or before the three year period following completion of this contract has lapsed, the Contractor may, with the authorization of the cognizant Contracting Officer, participate in a subsequent procurement for the same system, component, or service. In other words, the Contractor may be authorized to compete for procurement(s) for systems, components or services subsequent to an intervening procurement.

(f) The Contractor agrees that, if after award, it discovers an actual or potential organizational conflict of interest, it shall make immediate and full disclosure in writing to the Contracting Officer. The notification shall include a description of the actual or potential organizational conflict of interest, a description of the action which the Contractor has taken or proposes to take to avoid, mitigate, or neutralize the conflict, and any other relevant information that would assist the Contracting Officer in making a determination on this matter. Notwithstanding this notification, the Government may terminate the contract for the convenience of the Government if determined to be in the best interest of the Government.

(g) Notwithstanding paragraph (f) above, if the Contractor was aware, or should have been aware, of an organizational conflict of interest prior to the award of this contract or becomes, or should become, aware of an organizational conflict of interest after award of this contract and does not make an immediate and full disclosure in writing to the Contracting Officer, the Government may terminate this contract for default.

(h) If the Contractor takes any action prohibited by this requirement or fails to take action required by this requirement, the Government may terminate this contract for default.

(i) The Contracting Officer's decision as to the existence or nonexistence of an actual or potential organizational conflict of interest shall be final.

(j) Nothing in this requirement is intended to prohibit or preclude the Contractor from marketing or selling to the United States Government its PLs in existence on the effective date of this contract; nor, shall this requirement preclude the Contractor from participating in any research and development or delivering any design development model or prototype of any such equipment. Additionally, sale of catalog or standard commercial items are exempt from this requirement.

(k) The Contractor shall promptly notify the Contracting Officer, in writing, if it has been tasked to evaluate or advise the Government concerning its own products or activities or those of a competitor in order to ensure proper safeguards exist to guarantee objectivity and to protect the Government's interest.

(l) The Contractor shall include this requirement in subcontracts of any tier which involve access to information or situations/conditions covered by the preceding paragraphs, substituting "subcontractor" for "Contractor" where appropriate.

(m) The rights and remedies described herein shall not be exclusive and are in addition to other rights and remedies provided by law or elsewhere included in this contract.

(n) Compliance with this requirement is a material requirement of this contract.

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### **HQ C-2-0063 USE OF NAVY SUPPORT CONTRACTORS FOR OFFICIAL CONTRACT FILES (NAVSEA) (APR 2004)**

(a) NAVSEA may use a file room management support Contractor, hereinafter referred to as "the support Contractor", to manage its file room, in which all official contract files, including the official file supporting this procurement, are retained. These official files may contain information that is considered a trade secret, proprietary, business sensitive or otherwise protected pursuant to law or regulation, hereinafter referred to as "protected information". File room management services consist of any of the following: secretarial or clerical support; data entry; document reproduction, scanning, imaging, or destruction; operation, management, or maintenance of paper-based or electronic mail rooms, file rooms, or libraries; and supervision in connection with functions listed herein.

(b) The cognizant Contracting Officer will ensure that any NAVSEA contract under which these file room management services are acquired will contain a requirement that:

(1) The support Contractor not disclose any information;

(2) Individual employees are to be instructed by the support Contractor regarding the sensitivity of the official contract files;

(3) The support Contractor performing these services be barred from providing any other supplies and/or services, or competing to do so, to NAVSEA for the period of performance of its contract and for an additional three years thereafter unless otherwise provided by law or regulation; and,

(4) In addition to any other rights the Contractor may have, it is a third party beneficiary who has the right of direct action against the support Contractor, or any person to whom the support Contractor has released or disclosed protected information, for the unauthorized duplication, release, or disclosure of such protected information.

(c) Execution of this contract by the Contractor is considered consent to NAVSEA's permitting access to any information, irrespective of restrictive markings or the nature of the information submitted, by its file room management support Contractor for the limited purpose of executing its file room support contract responsibilities.

(d) NAVSEA may, without further notice, enter into contracts with other Contractors for these services. Contractors are free to enter into separate non-disclosure agreements with the file room Contractor. (Please contact Director, E Business Division for Contractor specifics.) However, any such agreement will not be considered a prerequisite before information submitted is stored in the file room or otherwise encumber the Government.

### **HQ C-2-0066 CONTRACTOR SAFETY AND HEALTH REQUIREMENTS FOR ACCESS TO NAVSEA/PEO SITE (NAVSEA) (MAY 2012)**

(a) Contractor personnel shall comply with all badging and security procedures required to gain access to any NAVSEA/PEO site. Contact the Contracting Officer's Representative (COR) for specific requirements.

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(b) Contractors are required to adhere to the requirements of 29 CFR 1910, 29 CFR 1926 and applicable state and local requirements while in NAVSEA/PEO government spaces. Contractors who are injured on site shall notify SEA 04RS, Safety Office, via the COR.

(c) NAVSEA/PEO site facilities are low to mid-rise buildings with elevators and a contractor operated restaurant facility in building 197. Utility areas, electrical/phone closets and the roof are generally secured areas with restricted access. NAVSEA/PEO HQ sites generally exhibit low hazards with no personal protection equipment (PPE) requirements. Hazards are those typically found in an office environment. Slips, trips and falls on wet/icy surfaces, pest control, and ergonomic concerns are the primary hazards. It is expected that contractor employees will have received training from their employer on hazards associated with the areas in which they will be working and know what to do in order to protect themselves.

(d) Contractors whose employees perform work within NAVSEA/PEO government spaces in excess of 1000 hours per calendar quarter during a calendar year shall submit the data elements on OSHA Form 300A, Summary of Work Related Injuries and Illnesses, for those employees to SEA 04RS via the Contracting Officer's Representative by 15 January for the previous calendar year, even if no work related injuries or illnesses occurred.

(e) Any contractor employee exhibiting unsafe behavior may be removed from the NAVSEA/PEO site. Such removal shall not relieve the contractor from meeting its contractual obligations and shall not be considered an excusable delay as defined in FAR 52.249-14.

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## SECTION D PACKAGING AND MARKING

### APPLICABLE TO ALL ITEMS

There are no packaging or marking requirements under this Task Order. All requirements for the packaging and marking of supplies or documents associated with the services being procured under this Task Order shall be packaged, packed, and marked in accordance with the provisions set forth below or as specified in the Technical Instructions.

### HQ D-1-0001 DATA PACKAGING LANGUAGE

Data to be delivered by Integrated Digital Environment (IDE) or other electronic media shall be as specified in the contract.

All unclassified data shall be prepared for shipment in accordance with best commercial practice.

Classified reports, data, and documentation shall be prepared for shipment in accordance with National Industrial Security Program Operating Manual (NISPOM), DOD 5220.22-M dated 28 February 2006.

### HQ D-2-0008 MARKING OF REPORTS (NAVSEA) (SEP 1990)

All reports delivered by the Contractor to the Government under this contract shall prominently show on the cover of the report:

- (1) name and business address of the Contractor
- (2) contract number
- (3) task order number
- (4) whether the contract was competitively or non-competitively awarded
- (5) sponsor:           \* Name of Individual Sponsor:  
\_\_\_\_\_ \* Name of Requiring Activity:  
\_\_\_\_\_ \* City and State:

Naval Sea Systems Command  
Attn: TBD  
1333 Isaac Hull Avenue, SE  
Washington Navy Yard, DC 20376  
Telephone:  
E-mail:

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## **SECTION E INSPECTION AND ACCEPTANCE**

### **CLAUSES INCORPORATED IN FULL TEXT**

#### **HQ E-1-0001 INSPECTION AND ACCEPTANCE OF DATA**

Inspection and acceptance of all data shall be as specified on the attached Contract Data Requirements List(s), DD Form 1423.

#### **HQ E-1-0007 INSPECTION AND ACCEPTANCE OF LOE SERVICES**

Applicable to CLIN (7000); and if exercised CLINS (7001, 7100, 7101, 7200, and 7201) and if awarded and exercised CLINS (7300, 7301, 7400, and 7401). Inspection and acceptance shall be made by the Contracting Officer's Representative (COR) or a designated representative of the Government.

Inspection and acceptance for ODC's shall be made by the COR or a designated representative of the Government specified in an applicable TI.

*\*Note that the COR is identified in Section G of this Task Order.*

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## **SECTION F DELIVERABLES OR PERFORMANCE**

The periods of performance for the following Items are as follows:

7000	6/16/2017 - 6/15/2018
9000	6/16/2017 - 6/15/2018

## **CLAUSES INCORPORATED IN FULL TEXT**

### **HQ F-1-0003 PERFORMANCE LANGUAGE FOR LOE SERVICES (NAVSEA)**

The contractor shall perform the work described in SECTION C, at the level of effort specified in SECTION B as follows:

#### **CLIN - DELIVERIES OR PERFORMANCE**

The periods of performance for the following Items are as follows:

7000	6/16/2017 - 6/15/2018
9000	6/16/2017 - 6/15/2018

The periods of performance for the following Option Items are as follows:

7001	6/16/2017 - 6/15/2018
7100	6/16/2018 - 6/15/2019
7101	6/16/2018 - 6/15/2019
7200	6/16/2019 - 6/15/2020
7201	6/16/2019 - 6/15/2020
7300	6/16/2020 - 6/15/2021
7301	6/16/2020 - 6/15/2021
7400	6/16/2021 - 6/15/2022
7401	6/16/2021 - 6/15/2022
9100	6/16/2018 - 6/15/2019
9200	6/16/2019 - 6/15/2020
9300	6/16/2020 - 6/15/2021
9400	6/16/2021 - 6/15/2022

### **HQ F-2-0003 DATA DELIVERY LANGUAGE FOR SERVICES ONLY PROCUREMENTS (NAVSEA)**

All data to be furnished under this contract shall be delivered prepaid to the destination(s) and at the time(s) specified on the Contract Data Requirements List(s), DD Form 1423.

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## **SECTION G CONTRACT ADMINISTRATION DATA**

### **CLAUSES INCORPORATED IN FULL TEXT:**

#### **HQ G-2-0002 CONTRACTOR'S FACILITY ADDRESS**

Enter below the address (street and number, city, county, state and zip code) of the Contractor's facility which will administer the contract if such address is different from the address shown on the SF 26 or SF 33, as applicable.

#### **HQ G-2-0003 CONTRACTING OFFICER'S REPRESENTATIVE**

The Contractor shall forward a copy of all invoices to the Contracting Officer's Representative

1333 Isaac Hull Ave, SE  
Washington Navy Yard Washington, DC 20376

**OTHER POINTS OF CONTACT** - The Government points of contact for this Task Order are as follows:

#### **BUSINESS FINANCIAL MANAGER (BFM)**

1333 Isaac Hull Avenue, SE  
Washington Navy Yard, DC 20376

#### **OMBUDSMAN (NAVSEA AND OVERARCHING)**

Naval Sea Systems Command  
Attn: Robert Kilpatrick, SEA 021  
1333 Isaac Hull Avenue, SE  
Washington Navy Yard, DC 20376  
Telephone: (202) 781-1683  
E-mail: [robert.kilpatrick@navy.mil](mailto:robert.kilpatrick@navy.mil)

#### **PROCURING CONTRACTING OFFICER (PCO)**

Naval Surface Warfare Center Indian Head Explosive Ordnance Disposal Technology Division

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(NSWC IHEODTD)

4081 North Jackson Road  
Indian Head, MD 20640

**PURCHASE OFFICE REPRESENTATIVE (POR)**

Naval Surface Warfare Center Indian Head Explosive Ordnance Disposal Technology Division  
(NSWC IHEODTD)

4081 North Jackson Road  
Indian Head, MD 20640

*The Government reserves the right to unilaterally change the points of contact at anytime.*

**HQ G-2-0009 SUPPLEMENTAL INSTRUCTIONS REGARDING INVOICING (NAVSEA)  
(APR 2015)**

(a) For other than firm fixed priced contract line item numbers (CLINs), the Contractor agrees to segregate costs incurred under this contract/task order (TO), as applicable, at the lowest level of performance, either at the technical instruction (TI), sub line item number (SLIN), or contract line item number (CLIN) level, rather than on a total contract/TO basis, and to submit invoices reflecting costs incurred at that level. Supporting documentation in Wide Area Workflow (WAWF) for invoices shall include summaries of work charged during the period covered as well as overall cumulative summaries by individual labor categories, rates, and hours (both straight time and overtime) invoiced; as well as, a cost breakdown of other direct costs (ODCs), materials, and travel, by TI, SLIN, or CLIN level. For other than firm fixed price subcontractors, subcontractors are also required to provide labor categories, rates, and hours (both straight time and overtime) invoiced; as well as, a cost breakdown of ODCs, materials, and travel invoiced. Supporting documentation may be encrypted before submission to the prime contractor for WAWF invoice submittal. Subcontractors may email encryption code information directly to the Contracting Officer (CO) and Contracting Officer Representative (COR). Should the subcontractor lack encryption capability, the subcontractor may also email detailed supporting cost information directly to the CO and COR; or other method as agreed to by the CO.

(b) Contractors submitting payment requests and receiving reports to WAWF using either Electronic Data Interchange (EDI) or Secure File Transfer Protocol (SFTP) shall separately send an email notification to the COR and CO on the same date they submit the invoice in WAWF. No payments shall be due if the contractor does not provide the COR and CO email notification as required herein.

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### **DFARS 252.204-0005 LINE ITEM SPECIFIC: BY CANCELLATION DATE (SEP 2009)**

The payment office shall make payment using the ACRN with the earliest cancellation date first, exhausting all funds in that ACRN, before disbursing funds from the next. In the event there is more than one ACRN associated with the same cancellation date, the payment amount shall be disbursed from each ACRN with the same cancellation date in the same proportion as the amount of funding obligated for each ACRN with the same cancellation date.

### **DFARS 252.232-7006 WIDE AREA WORKFLOW PAYMENT INSTRUCTIONS (MAY 2013)**

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

“Department of Defense Activity Address Code (DoDAAC)” is a six position code that uniquely identifies a unit, activity, or organization.

“Document type” means the type of payment request or receiving report available for creation in Wide Area WorkFlow (WAWF).

“Local processing office (LPO)” is the office responsible for payment certification when payment certification is done external to the entitlement system.

(b) *Electronic invoicing.* The WAWF system is the method to electronically process vendor payment requests and receiving reports, as authorized by DFARS 252.232-7003, Electronic Submission of Payment Requests and Receiving Reports.

(c) *WAWF access.* To access WAWF, the Contractor shall—

(1) Have a designated electronic business point of contact in the System for Award Management at <https://www.acquisition.gov>; and

(2) Be registered to use WAWF at <https://wawf.eb.mil/> following the step-by-step procedures for self-registration available at this web site.

(d) *WAWF training.* The Contractor should follow the training instructions of the WAWF Web-Based Training Course and use the Practice Training Site before submitting payment requests through WAWF. Both can be accessed by selecting the “Web Based Training” link on the WAWF home page at <https://wawf.eb.mil/>

(e) *WAWF methods of document submission.* Document submissions may be via web entry,

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Electronic Data Interchange, or File Transfer Protocol.

(f) *WAWF payment instructions*. The Contractor must use the following information when submitting payment requests and receiving reports in WAWF for this contract/order:

(1) Document type. The Contractor shall use the following document type(s).

Cost Voucher (Cost Reimbursable, T&M , LH, or FPI)

(2) Inspection/acceptance location. The Contractor shall select the following inspection/acceptance location(s) in WAWF, as specified by the contracting officer.

Destination/Destination

(3) Document routing. The Contractor shall use the information in the Routing Data Table below only to fill in applicable fields in WAWF when creating payment requests and receiving reports in the system.

Routing Data Table\*

<i>Field Name in WAWF</i>	<i>Data to be entered in WAWF</i>
Pay Official DoDAAC	HQ0338
Issue By DoDAAC	N00174
Admin DoDAAC	S1103A
Inspect By DoDAAC	N00024
Ship To Code	See Section F
Ship From Code	See Section F
Mark For Code	See Section F
Service Approver (DoDAAC)	N00024
Service Acceptor (DoDAAC)	S1103A
Accept at Other DoDAAC	N/A
LPO DoDAAC	N/A
DCAA Auditor DoDAAC	HAA632
Other DoDAAC(s)	N/A

(4) *Payment request and supporting documentation*. The Contractor shall ensure a payment request includes appropriate contract line item and subline item descriptions of the work performed or supplies delivered, unit price/cost per unit, fee (if applicable), and all relevant back-up documentation, as defined in DFARS Appendix F, (e.g. timesheets) in support of each payment request.

(5) *WAWF email notifications*. The Contractor shall enter the e-mail address identified below in

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the “Send Additional Email Notifications” field of WAWF once a document is submitted in the system.

(g) *WAWF point of contact.*

(1) The Contractor may obtain clarification regarding invoicing in WAWF from the following contracting activity’s WAWF point of contact:

NAVSEA HQ WAWF Helpdesk: [WAWFHQ@navy.mil](mailto:WAWFHQ@navy.mil) OR Your local contracting office WAWF POC/Group Administrator (GAM).

Tammy Winter (tammy.winter@navy.mil)

(2) For technical WAWF help, contact the WAWF Helpdesk at 866-618-5988.

#### **DFARS 252.232-7003 ELECTRONIC SUBMISSION OF PAYMENT REQUESTS AND RECEIVING REPORTS (JUN 2012)**

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

- (1) “Contract financing payment” and “invoice payment” have the meanings given in section 32.001 of the Federal Acquisition Regulation.
- (2) “Electronic form” means any automated system that transmits information electronically from the initiating system to all affected systems. Facsimile, e-mail, and scanned documents are not acceptable electronic forms for submission of payment requests. However, scanned documents are acceptable when they are part of a submission of a payment request made using Wide Area WorkFlow (WAWF) or another electronic form authorized by the Contracting Officer.
- (3) “Payment request” means any request for contract financing payment or invoice payment submitted by the Contractor under this contract.
- (4) “Receiving report” means the data required by the clause at [252.246-7000](#), Material Inspection and Receiving Report.

(b) Except as provided in paragraph (c) of this clause, the Contractor shall submit payment requests and receiving reports using WAWF, in one of the following electronic formats that WAWF accepts: Electronic Data Interchange, Secure File Transfer Protocol, or World Wide Web input. Information regarding WAWF is available on the Internet at <https://wawf.eb.mil/>.

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(c) The Contractor may submit a payment request and receiving report using other than WAWF only when—

(1) The Contracting Officer administering the contract for payment has determined, in writing, that electronic submission would be unduly burdensome to the Contractor. In such cases, the Contractor shall include a copy of the Contracting Officer’s determination with each request for payment

(2) DoD makes payment for commercial transportation services provided under a Government rate tender or a contract for transportation services using a DoD-approved electronic third party payment system or other exempted vendor payment/invoicing system (e.g., PowerTrack, Transportation Financial Management System, and Cargo and Billing System)

(3) DoD makes payment for rendered health care services using the TRICARE Encounter Data System (TEDS) as the electronic format; or

(4) When the Governmentwide commercial purchase card is used as the method of payment, only submission of the receiving report in electronic form is required.

(d) The Contractor shall submit any non-electronic payment requests using the method or methods specified in Section G of the contract.

(e) In addition to the requirements of this clause, the Contractor shall meet the requirements of the appropriate payment clauses in this contract when submitting payment requests.

**DFARS 252.246-7000 MATERIAL INSPECTION AND RECEIVING REPORT (MAR 2008)**

(a) At the time of each delivery of supplies or services under this contract, the Contractor shall prepare and furnish to the Government a material inspection and receiving report in the manner and to the extent required by Appendix F, Material Inspection and Receiving Report, of the Defense FAR Supplement.

(b) Contractor submission of the material inspection and receiving information required by Appendix F of the Defense FAR Supplement by using the Wide Area WorkFlow (WAWF) electronic form (see paragraph (b) of the clause at 252.232-7003) fulfills the requirement for a material inspection and receiving report (DD Form 250). Two copies of the receiving report (paper copies of either the DD Form 250 or the WAWF report) shall be distributed with the shipment, in accordance with Appendix F, Part 4, F-401, Table 1, of the Defense FAR Supplement.

Accounting Data

SLINID	PR Number	Amount
700001	130064925700001	
LLA :		

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AA 1771804 8B5B 251 00024 0 050120 2D 000000 A00004038425

900001 130064925700002

LLA :

AA 1771804 8B5B 251 00024 0 050120 2D 000000 A00004038425

BASE Funding  
Cumulative Funding

MOD P00001 Funding  
Cumulative Funding 3

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## **SECTION H SPECIAL CONTRACT REQUIREMENTS**

### **NAVSEA 5252.202-9101 ADDITIONAL DEFINITIONS (MAY 1993)**

As used throughout this contract, the following terms shall have the meanings set forth below:

- (a) DEPARTMENT - means The Department of the Navy.
- (b) REFERENCES TO THE FEDERAL ACQUISITION REGULATION (FAR) - All references to the FAR in this contract shall be deemed to also reference the appropriate sections of the Defense FAR Supplement (DFARS), unless clearly indicated otherwise.
- (c) REFERENCES TO ARMED SERVICES PROCUREMENT REGULATION OR DEFENSE ACQUISITION REGULATION - All references in this document to either the Armed Services Procurement Regulation (ASPR) or the Defense Acquisition Regulation (DAR) shall be deemed to be references to the appropriate sections of the FAR/DFARS.

### **NAVSEA 5252.242-9115 TECHNICAL INSTRUCTIONS (APR 2015)**

- (a) Performance of the work hereunder may be subject to written technical instructions signed by the Contracting Officer and the Contracting Officer's Representative specified in Section G of this contract. As used herein, technical instructions are defined to include the following:
  - (2) Guidelines to the Contractor which assist in the interpretation of drawings, specifications or technical portions of work description.
  - (b) Technical instructions must be within the general scope of work stated in the contract. Technical instructions may not be used to: (1) assign additional work under the contract; (2) direct a change as defined in the "CHANGES" clause of this contract; (3) increase or decrease the contract price or estimated contract amount (including fee), as applicable, the level of effort, or the time required for contract performance; or (4) change any of the terms, conditions or specifications of the contract.
  - (c) If, in the opinion of the Contractor, any technical instruction calls for effort outside the scope of the contract or is inconsistent with this requirement, the Contractor shall notify the Contracting Officer in writing within ten (10) working days after the receipt of any such instruction. The Contractor shall not proceed with the work affected by the technical instruction unless and until the Contractor is notified by the Contracting Officer that the technical instruction is within the scope of this contract.
  - (d) Nothing in the foregoing paragraph shall be construed to excuse the Contractor from

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performing that portion of the contractual work statement which is not affected by the disputed technical instruction.

**NAVSEA 5252.216-9122 LEVEL OF EFFORT - ALTERNATE I (MAY 2010)**

(a) The Contractor agrees to provide the total level of effort specified in the next sentence in performance of the work described in Sections B and C of this contract. The total level of effort for the performance of this contract shall be \_\_\_\_\_ total man-hours of direct labor, including subcontractor direct labor for those subcontractors specifically identified in the Contractor's proposal as having hours included in the proposed level of effort.

(b) Of the total man-hours of direct labor set forth above, it is estimated that \_\_\_\_\_ man-hours are uncompensated effort. Uncompensated effort is defined as hours provided by personnel in excess of 40 hours per week without additional compensation for such excess work. All other effort is defined as compensated effort. If no effort is indicated in the first sentence of this paragraph, uncompensated effort performed by the Contractor shall not be counted in fulfillment of the level of effort obligations under this contract.

(c) Effort performed in fulfilling the total level of effort obligations specified above shall only include effort performed in direct support of this contract and shall not include time and effort expended on such things as (local travel to and from an employee's usual work location), uncompensated effort while on travel status, truncated lunch periods, work (actual or inferred) at an employee's residence or other non-work locations (except as provided in paragraph (i) below), or other time and effort which does not have a specific and direct contribution to the tasks described in Sections B and C.

(d) The level of effort for this contract shall be expended at an average rate of approximately (Offeror to fill in) hours per week. It is understood and agreed that the rate of man-hours per month may fluctuate in pursuit of the technical objective, provided such fluctuation does not result in the use of the total man-hours of effort prior to the expiration of the term hereof, except as provided in the following paragraph.

(e) If, during the term hereof, the Contractor finds it necessary to accelerate the expenditure of direct labor to such an extent that the total man-hours of effort specified above would be used prior to the expiration of the term, the Contractor shall notify the Contracting Officer in writing setting forth the acceleration required, the probable benefits which would result, and an offer to undertake the acceleration at no increase in the estimated cost or fee together with an offer, setting forth a proposed level of effort, cost breakdown, and proposed fee, for continuation of the work until expiration of the term hereof. The offer shall provide that the work proposed will be subject to the terms and conditions of this contract and any additions or changes required by then current law, regulations, or directives, and that the offer, with a written notice of acceptance by the Contracting Officer, shall constitute a binding contract. The Contractor shall not accelerate any effort until receipt of such written approval by the Contracting Officer. Any agreement to

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accelerate will be formalized by contract modification.

(f) The Contracting Officer may, by written order, direct the Contractor to accelerate the expenditure of direct labor such that the total man-hours of effort specified in paragraph (a) above would be used prior to the expiration of the term. This order shall specify the acceleration required and the resulting revised term. The Contractor shall acknowledge this order within five days of receipt.

(g) The Contractor shall provide and maintain an accounting system, acceptable to the Administrative Contracting Officer and the Defense Contract Audit Agency (DCAA), which collects costs incurred and effort (compensated and uncompensated, if any) provided in fulfillment of the level of effort obligations of this contract. The Contractor shall indicate on each invoice the total level of effort claimed during the period covered by the invoice, separately identifying compensated effort and uncompensated effort, if any.

(h) Within 45 days after completion of the work under each separately identified period of performance hereunder, the Contractor shall submit the following information in writing to the Contracting Officer with copies to the cognizant Contract Administration Office and to the DCAA office to which vouchers are submitted:

- (1) The total number of man-hours of direct labor expended during the applicable period;
- (2) A breakdown of this total showing the number of man-hours expended in each direct labor classification and associated direct and indirect costs;
- (3) A breakdown of other costs incurred;
- (4) The Contractor's estimate of the total allowable cost incurred under the contract for the period. Within 45 days after completion of the work under the contract, the Contractor shall submit, in addition, in the case of a cost underrun; and
- (5) The amount by which the estimated cost of this contract may be reduced to recover excess funds. All submissions shall include subcontractor information.

(i) Unless the Contracting Officer determines that alternative worksite arrangements are detrimental to contract performance, the Contractor may perform up to 10% of the hours at an alternative worksite, provided the Contractor has a company-approved alternative worksite plan. The primary worksite is the traditional "main office" worksite. An alternative worksite means an employee's residence or a telecommuting center. A telecommuting center is a geographically convenient office setting as an alternative to an employee's main office. The Government reserves the right to review the Contractor's alternative worksite plan. In the event performance becomes unacceptable, the Contractor will be prohibited from counting the hours performed at the alternative worksite in fulfilling the total level of effort obligations of the contract. Regardless of work location, all contract terms and conditions including security requirements and labor laws remain in effect. The Government shall not incur any additional cost nor provide additional equipment for contract performance as a result of the Contractor's election to implement an alternative worksite plan.

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(j) Notwithstanding any of the provisions in the above paragraphs and subject to the LIMITATION OF FUNDS or LIMITATION OF COST clauses, as applicable, the period of performance may be extended and the estimated cost may be increased in order to permit the Contractor to provide all of the man-hours listed in paragraph (a) above. The Contractor shall continue to be paid fee for each manhour performed in accordance with the terms of the contract.

**5252.232-9104 ALLOTMENT OF FUNDS (JAN 2008)**

(a) This contract is incrementally funded with respect to both cost and fee. The amount(s) presently available and allotted to this contract for payment of fee for incrementally funded contract line item number/contract subline item number (CLIN/SLIN), subject to the clause entitled "FIXED FEE" (FAR 52.216-8) or "INCENTIVE FEE" (FAR 52.216-10), as appropriate, is specified below. The amount(s) presently available and allotted to this contract for payment of cost for incrementally funded CLINs/SLINs is set forth below. As provided in the clause of this contract entitled "LIMITATION OF FUNDS" (FAR 52.232-22), the CLINs/SLINs covered thereby, and the period of performance for which it is estimated the allotted amount(s) will cover are as follows:

<u>ITEM(S)</u>	<u>ALLOTED TO COST</u>	<u>ALLOTED TO FEE</u>	<u>ESTIMATED PERIOD OF PERFORMANCE</u>
CLIN 7000 (Base Year)			16 June 2017 to 15 June 2018
CLIN 9000 (Base Year)			16 June 2017 to 15 June 2018

(b) The parties contemplate that the Government will allot additional amounts to this contract from time to time for the incrementally funded CLINs/SLINs by unilateral contract modification, and any such modification shall state separately the amount(s) allotted for cost, the amount(s) allotted for fee, the CLINs/SLINs covered thereby, and the period of performance which the amount(s) are expected to cover.

(c) CLINs/SLINs 7000 are fully funded and performance under these CLINs/SLINs is subject to the clause of this contract entitled "LIMITATION OF COST" (FAR 52.232-20) or "LIMITATION OF COST (FACILITIES)" (FAR 52.232-21), as applicable.

(d) The Contractor shall segregate costs for the performance of incrementally funded CLINs/SLINs from the costs of performance of fully funded CLINs/SLINs.

**NAVSEA 5252.237-9106: SUBSTITUTION OF PERSONNEL (SEP 1990)**

(a) The Contractor agrees that a partial basis for award of this contract is the list of key personnel proposed. Accordingly, the Contractor agrees to assign to this contract those key persons whose resumes were submitted with the proposal necessary to fulfill the requirements of

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the contract. No substitution shall be made without prior notification to and concurrence of the Contracting Officer in accordance with this requirement.

(b) All proposed substitutes shall have qualifications equal to or higher than the qualifications of the person to be replaced. The Contracting Officer shall be notified in writing of any proposed substitution at least forty-five (45) days, or ninety (90) days if a security clearance is to be obtained, in advance of the proposed substitution. Such notification shall include: (1) an explanation of the circumstances necessitating the substitution; (2) a complete resume of the proposed substitute; and (3) any other information requested by the Contracting Officer to enable him/her to judge whether or not the Contractor is maintaining the same high quality of personnel that provided the partial basis for award.

**NAVSEA 5252.237-9106: SUBSTITUTION OF PERSONNEL (SEP 1990)**

(a)

The Contractor agrees that a partial basis for award of this contract is the list of key personnel proposed. Accordingly, the Contractor agrees to assign to this contract those key persons whose resumes were submitted with the proposal necessary to fulfill the requirements of the contract. No substitution shall be made without prior notification to and concurrence of the Contracting Officer in accordance with this requirement.

(b) All proposed substitutes shall have qualifications equal to or higher than the qualifications of the person to be replaced. The Contracting Officer shall be notified in writing of any proposed substitution at least forty-five (45) days, or ninety (90) days if a security clearance is to be obtained, in advance of the proposed substitution. Such notification shall include: (1) an explanation of the circumstances necessitating the substitution; (2) a complete resume of the proposed substitute; and (3) any other information requested by the Contracting Officer to enable him/her to judge whether or not the Contractor is maintaining the same high quality of personnel that provided the partial basis for award.

**NAVSEA 5252.227-9113: GOVERNMENT-INDUSTRY DATA EXCHANGE PROGRAM (APR 2015)**

(a) The Contractor shall participate in the appropriate interchange of the Government-Industry Data Exchange Program (GIDEP) in accordance with GIDEP PUBLICATION 1 dated April 2008. Data entered is retained by the program and provided to qualified participants. Compliance with this requirement shall not relieve the Contractor from complying with any other requirement of the contract.

(b) The Contractor agrees to insert paragraph (a) of this requirement in any subcontract hereunder exceeding \$500,000.00. When so inserted, the word "Contractor" shall be changed to "Subcontractor".

(c) GIDEP materials, software and information are available without charge from:

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GIDEP Operations Center  
P.O. Box 8000  
Corona, CA 92878-8000  
Phone: (951) 898-3207  
FAX: (951) 898-3250  
Internet: <http://www.gidep.org>

**NOTIFICATION CONCERNING DETERMINATION OF SMALL BUSINESS SIZE STATUS**

For the purposes of the following FAR clauses: FAR 52.219-6 NOTICE OF TOTAL SMALL BUSINESS SET-ASIDE, FAR 52.219-3 NOTICE OF HUBZONE SET-ASIDE OR SOLE SOURCE AWARD, FAR 52.219-18 NOTIFICATION OF COMPETITION LIMITED TO ELIGIBLE 8(A) CONCERNS, and FAR 52.219-27 NOTICE OF SERVICE-DISABLED VETERAN-OWNED SMALL BUSINESS SET-ASIDE, the determination of whether a small business concern is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, qualified as a small business under the size standards in this solicitation, and further, meets the definition of a HUBZone small business concern, a small business concern certified by the SBA for participation in the SBAs 8(a) program, or a service disabled veteran-owned small business concern, as applicable, shall be based on the status of said concern at the time of award of the SeaPort-e MAC and as further determined in accordance with Special Contract Requirements.

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## **SECTION I CONTRACT CLAUSES**

### **CLAUSES INCORPORATED BY FULL TEXT**

#### **FAR 52.219-6 NOTICE OF TOTAL SMALL BUSINESS SET-ASIDE (NOV 2011)**

(a) *Definition.* "Small business concern," as used in this clause, means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the size standards in this solicitation.

(b) *Applicability.* This clause applies only to--

- (1) Contracts that have been totally set aside or reserved for small business concerns; and
- (2) Orders set aside for small business concerns under multiple-award contracts as described in 8.405-5 and 16.505(b)(2)(i)(F).\*

(c) *General.*

- (1) Offers are solicited only from small business concerns. Offers received from concerns that are not small business concerns shall be considered nonresponsive and will be rejected.
- (2) Any award resulting from this solicitation will be made to a small business concern.

(d) *Agreement.* A small business concern submitting an offer in its own name shall furnish, in performing the contract, only end items manufactured or produced by small business concerns in the United States or its outlying areas. If this procurement is processed under simplified acquisition procedures and the total amount of this contract does not exceed \$25,000, a small business concern may furnish the product of any domestic firm. This paragraph does not apply to construction or service contracts.

#### **FAR 52.216-10 INCENTIVE FEE (JUN 2011)**

(a) *General.* The Government shall pay the Contractor for performing this contract a fee determined as provided in this contract.

(b) *Target cost and target fee.* The target cost and target fee specified in the Schedule are subject to adjustment if the contract is modified in accordance with paragraph (d) of this clause.

(1) "Target cost," as used in this contract, means the estimated cost of this contract as initially negotiated, adjusted in accordance with paragraph (d) below.

(2) "Target fee," as used in this contract, means the fee initially negotiated on the assumption that this contract would be performed for a cost equal to the estimated cost initially negotiated, adjusted in accordance with paragraph (d) of this clause.

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(c) Withholding of payment.

(1) Normally, the Government shall pay the fee to the Contractor as specified in the Schedule. However, when the Contracting Officer considers that performance or cost indicates that the Contractor will not achieve target, the Government shall pay on the basis of an appropriate lesser fee. When the Contractor demonstrates that performance or cost clearly indicates that the Contractor will earn a fee significantly above the target fee, the Government may, at the sole discretion of the Contracting Officer, pay on the basis of an appropriate higher fee.

(2) Payment of the incentive fee shall be made as specified in the Schedule; provided that the Contracting Officer withholds a reserve not to exceed 15 percent of the total incentive fee or \$100,000, whichever is less, to protect the Government's interest. The Contracting Officer shall release 75 percent of all fee withholds under this contract after receipt of an adequate certified final indirect cost rate proposal covering the year of physical completion of this contract, provided the Contractor has satisfied all other contract terms and conditions, including the submission of the final patent and royalty reports, and is not delinquent in submitting final vouchers on prior years' settlements. The Contracting Officer may release up to 90 percent of the fee withholds under this contract based on the Contractor's past performance related to the submission and settlement of final indirect cost rate proposals.

(d) Equitable adjustments. When the work under this contract is increased or decreased by a modification to this contract or when any equitable adjustment in the target cost is authorized under any other clause, equitable adjustments in the target cost, target fee, minimum fee, and maximum fee, as appropriate, shall be stated in a supplemental agreement to this contract.

(e) Fee payable.

(1) The fee payable under this contract shall be the target fee increased by 50 cents for every dollar that the total allowable cost is less than the target cost or decreased by 50 cents for every dollar that the total allowable cost exceeds the target cost. In no event shall the fee be greater than eight (8%) percent or less than one (1%) percent of the target cost.

(2) The fee shall be subject to adjustment, to the extent provided in paragraph (d) of this clause, and within the minimum and maximum fee limitations in paragraph (e)(1) of this clause, when the total allowable cost is increased or decreased as a consequence of --

(i) Payments made under assignments; or

(ii) Claims excepted from the release as required by paragraph (h)(2) of the Allowable Cost and Payment clause.

(3) If this contract is terminated in its entirety, the portion of the target fee payable shall not be subject to an increase or decrease as provided in this paragraph. The termination shall be accomplished in accordance with other applicable clauses of this contract.

(4) For the purpose of fee adjustment, "total allowable cost" shall not include allowable costs arising out of --

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(i) Any of the causes covered by the Excusable Delays clause to the extent that they are beyond the control and without the fault or negligence of the Contractor or any subcontractor;

(ii) The taking effect, after negotiating the target cost, of a statute, court decision, written ruling, or regulation that results in the Contractor's being required to pay or bear the burden of any tax or duty or rate increase in a tax or duty;

(iii) Any direct cost attributed to the Contractor's involvement in litigation as required by the Contracting Officer pursuant to a clause of this contract, including furnishing evidence and information requested pursuant to the Notice and Assistance Regarding Patent and Copyright Infringement clause;

(iv) The purchase and maintenance of additional insurance not in the target cost and required by the Contracting Officer, or claims for reimbursement for liabilities to third persons pursuant to the Insurance Liability to Third Persons clause;

(v) Any claim, loss, or damage resulting from a risk for which the Contractor has been relieved of liability by the Government Property clause; or

(vi) Any claim, loss, or damage resulting from a risk defined in the contract as unusually hazardous or as a nuclear risk and against which the Government has expressly agreed to indemnify the Contractor.

(5) All other allowable costs are included in "total allowable cost" for fee adjustment in accordance with this paragraph (e), unless otherwise specifically provided in this contract.

(f) Contract modification. The total allowable cost and the adjusted fee determined as provided in this clause shall be evidenced by a modification to this contract signed by the Contractor and Contracting Officer.

(g) Inconsistencies. In the event of any language inconsistencies between this clause and provisioning documents or Government options under this contract, compensation for spare parts or other supplies and services ordered under such documents shall be determined in accordance with this clause.

**FAR 52.217-9 OPTION TO EXTEND THE TERM OF THE CONTRACT (MAR 2000)  
(NAVSEA VARIATION) (APR 2015)**

(a) The Government may extend the term of this contract by written notice(s) to the Contractor within the periods specified below. If more than one option exists the Government has the right to unilaterally exercise any such option whether or not it has exercised other options.

*Note: The Government has the right within the time constraints stated below to fully exercise each of the below option CLINs for the full level of effort stated in Section B or to partially exercise each of the below Option CLINs for less than the full level of effort stated in Section B and may exercise the Option for each CLIN multiple times until the entire level of effort for that CLIN is awarded.*

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<u>ITEMS</u>	<u>LATEST OPTION EXERCISE DATE</u>
7001	No later than 12 months after the Task Order Award date
7100	No later than 12 months after the Task Order Award date
7101	No later than 12 months after the Task Order Award date
7200	No later than 24 months after the Task Order Award date
7201	No later than 24 months after the Task Order Award date
7300	No later than 36 months after the Task Order Award date
7301	No later than 36 months after the Task Order Award date
7400	No later than 48 months after the Task Order Award date
7401	No later than 48 months after the Task Order Award date
9100	No later than 12 months after the Task Order Award date
9200	No later than 24 months after the Task Order Award date
9300	No later than 36 months after the Task Order Award date
9400	No later than 48 months after the Task Order Award date

(b) If the Government exercises this option, the extended contract shall be considered to include this option clause.

(c) The total duration of this contract, including the exercise of any option(s) under this clause, shall not exceed five (5) years, however, in accordance with paragraph (j) of the requirement of this contract entitled "LEVEL OF EFFORT – ALTERNATE 1", (NAVSEA 5252.216-9122), if the total manhours delineated in paragraph (a) of the LEVEL OF EFFORT requirement, have not been expended within the period specified above, the Government may require the Contractor to continue to perform the work until the total number of manhours specified in paragraph (a) of the aforementioned requirement have been expended.

**FAR 52.244-2 Subcontracts (Oct 2010) Alternate I (JUN 2007)**

(a) Definitions. As used in this clause—

“Approved purchasing system” means a Contractor’s purchasing system that has been reviewed and approved in accordance with Part 44 of the Federal Acquisition Regulation (FAR).

“Consent to subcontract” means the Contracting Officer’s written consent for the Contractor to enter into a particular subcontract.

“Subcontract” means any contract, as defined in FAR Subpart 2.1, entered into by a subcontractor to furnish supplies or services for performance of the prime contract or a subcontract. It includes, but is not limited to, purchase orders, and changes and modifications to purchase orders.

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(b) When this clause is included in a fixed-price type contract, consent to subcontract is required only on unpriced contract actions (including unpriced modifications or unpriced delivery orders), and only if required in accordance with paragraph (c) or (d) of this clause.

(c) If the Contractor does not have an approved purchasing system, consent to subcontract is required for any subcontract that—

(1) Is of the cost-reimbursement, time-and-materials, or labor-hour type; or

(2) Is fixed-price and exceeds—

(i) For a contract awarded by the Department of Defense, the Coast Guard, or the National Aeronautics and Space Administration, the greater of the simplified acquisition threshold or 5 percent of the total estimated cost of the contract; or

(ii) For a contract awarded by a civilian agency other than the Coast Guard and the National Aeronautics and Space Administration, either the simplified acquisition threshold or 5 percent of the total estimated cost of the contract.

(d) If the Contractor has an approved purchasing system, the Contractor nevertheless shall obtain the Contracting Officer's written consent before placing the following subcontracts:

***Note: Regarding 52.244-2 -- SUBCONTRACTS (OCT 2010- ALTERNATE I (JUNE 2007)), teaming arrangement with any firm not included in the Contractor's basic IDIQ contract must be submitted to the basic MAC Contracting Officer for approval. Team member (subcontract) additions after Task Order award must be approved by the Task Order Contracting Officer.***

(e)(1) The Contractor shall notify the Contracting Officer reasonably in advance of placing any subcontract or modification thereof for which consent is required under paragraph (b), (c), or (d) of this clause, including the following information:

(i) A description of the supplies or services to be subcontracted.

(ii) Identification of the type of subcontract to be used.

(iii) Identification of the proposed subcontractor.

(iv) The proposed subcontract price.

(v) The subcontractor's current, complete, and accurate certified cost or pricing data and Certificate of Current Cost or Pricing Data, if required by other contract provisions.

(vi) The subcontractor's Disclosure Statement or Certificate relating to Cost Accounting Standards when such data are required by other provisions of this contract.

(vii) A negotiation memorandum reflecting—

(A) The principal elements of the subcontract price negotiations;

(B) The most significant considerations controlling establishment of initial or revised prices;

(C) The reason certified cost or pricing data were or were not required;

(D) The extent, if any, to which the Contractor did not rely on the subcontractor's certified cost or pricing data in determining the price objective and in negotiating the final price;

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(E) The extent to which it was recognized in the negotiation that the subcontractor's certified cost or pricing data were not accurate, complete, or current; the action taken by the Contractor and the subcontractor; and the effect of any such defective data on the total price negotiated;

(F) The reasons for any significant difference between the Contractor's price objective and the price negotiated; and

(G) A complete explanation of the incentive fee or profit plan when incentives are used. The explanation shall identify each critical performance element, management decisions used to quantify each incentive element, reasons for the incentives, and a summary of all trade-off possibilities considered.

(e)(2) If the Contractor has an approved purchasing system and consent is not required under paragraph (c), or (d) of this clause, the Contractor nevertheless shall notify the Contracting Officer reasonably in advance of entering into any (i) cost-plus-fixed-fee subcontract, or (ii) fixed-price subcontract that exceeds either the simplified acquisition threshold or 5 percent of the total estimated cost of this contract. The notification shall include the information required by paragraphs (e)(1)(i) through (e)(1)(iv) of this clause

(f) Unless the consent or approval specifically provides otherwise, neither consent by the Contracting Officer to any subcontract nor approval of the Contractor's purchasing system shall constitute a determination—

(1) Of the acceptability of any subcontract terms or conditions;

(2) Of the allowability of any cost under this contract; or

(3) To relieve the Contractor of any responsibility for performing this contract.

(g) No subcontract or modification thereof placed under this contract shall provide for payment on a cost-plus-a-percentage-of-cost basis, and any fee payable under cost-reimbursement type subcontracts shall not exceed the fee limitations in FAR 15.404-4(c)(4)(i).

(h) The Contractor shall give the Contracting Officer immediate written notice of any action or suit filed and prompt notice of any claim made against the Contractor by any subcontractor or vendor that, in the opinion of the Contractor, may result in litigation related in any way to this contract, with respect to which the Contractor may be entitled to reimbursement from the Government.

(i) The Government reserves the right to review the Contractor's purchasing system as set forth in FAR Subpart 44.3.

(j) Paragraphs (c) and (e) of this clause do not apply to the following subcontracts, which were evaluated during negotiations:

**Subcontractors performing under this effort are:**

**DFARS 252.204-7009 LIMITATIONS ON THE USE OR DISCLOSURE OF THIRD-PARTY CONTRACTOR REPORTED CYBER INCIDENT INFORMATION (DEC 2015)**

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

“Compromise” means disclosure of information to unauthorized persons, or a violation of the security policy of a system, in which unauthorized intentional or unintentional disclosure, modification, destruction, or loss of an object, or the copying of information to unauthorized media may have

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occurred.

“Controlled technical information” means technical information with military or space application that is subject to controls on the access, use, reproduction, modification, performance, display, release, disclosure, or dissemination. Controlled technical information would meet the criteria, if disseminated, for distribution statements B through F using the criteria set forth in DoD Instruction 5230.24, Distribution Statements on Technical Documents. The term does not include information that is lawfully publicly available without restrictions.

“Covered defense information” means unclassified information that—

(1) Is—

(i) Provided to the contractor by or on behalf of DoD in connection with the performance of the contract; or

(ii) Collected, developed, received, transmitted, used, or stored by or on behalf of the contractor in support of the performance of the contract; and

(2) Falls in any of the following categories:

(i) Controlled technical information.

(ii) *Critical information (operations security)*. Specific facts identified through the Operations Security process about friendly intentions, capabilities, and activities vitally needed by adversaries for them to plan and act effectively so as to guarantee failure or unacceptable consequences for friendly mission accomplishment (part of Operations Security process).

(iii) *Export control*. Unclassified information concerning certain items, commodities, technology, software, or other information whose export could reasonably be expected to adversely affect the United States national security and nonproliferation objectives. To include dual use items; items identified in export administration regulations, international traffic in arms regulations and munitions list; license applications; and sensitive nuclear technology information.

(iv) Any other information, marked or otherwise identified in the contract, that requires safeguarding or dissemination controls pursuant to and consistent with law, regulations, and Governmentwide policies (e.g., privacy, proprietary business information).

“Cyber incident” means actions taken through the use of computer networks that result in a compromise or an actual or potentially adverse effect on an information system and/or the information residing therein.

(b) *Restrictions*. The Contractor agrees that the following conditions apply to any information it receives or creates in the performance of this contract that is information obtained from a third-party’s reporting of a cyber incident pursuant to DFARS clause [252.204-7012](#), Safeguarding Covered Defense Information and Cyber Incident Reporting (or derived from such information obtained under that clause):

(1) The Contractor shall access and use the information only for the purpose of furnishing advice or technical assistance directly to the Government in support of the Government’s activities related to clause [252.204-7012](#), and shall not be used for any other purpose.

(2) The Contractor shall protect the information against unauthorized release or disclosure.

(3) The Contractor shall ensure that its employees are subject to use and non-disclosure obligations consistent with this clause prior to the employees being provided access to or use of the information.

(4) The third-party contractor that reported the cyber incident is a third-party beneficiary of the non-disclosure agreement between the Government and Contractor, as required by paragraph (b)(3) of this clause.

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(5) A breach of these obligations or restrictions may subject the Contractor to—

(i) Criminal, civil, administrative, and contractual actions in law and equity for penalties, damages, and other appropriate remedies by the United States; and

(ii) Civil actions for damages and other appropriate remedies by the third party that reported the cyber incident, as a third party beneficiary of this clause.

(c) *Subcontracts.* The Contractor shall include this clause, including this paragraph (c), in subcontracts, or similar contractual instruments, for services that include support for the Government’s activities related to safeguarding covered defense information and cyber incident reporting, including subcontracts for commercial items, without alteration, except to identify the parties.

**DFARS 252.204-7012 SAFEGUARDING COVERED DEFENSE INFORMATION AND CYBER INCIDENT REPORTING (DEC 2015)**

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

“Adequate security” means protective measures that are commensurate with the consequences and probability of loss, misuse, or unauthorized access to, or modification of information.

“Compromise” means disclosure of information to unauthorized persons, or a violation of the security policy of a system, in which unauthorized intentional or unintentional disclosure, modification, destruction, or loss of an object, or the copying of information to unauthorized media may have occurred.

“Contractor attributional/proprietary information” means information that identifies the contractor(s), whether directly or indirectly, by the grouping of information that can be traced back to the contractor(s) (e.g., program description, facility locations), personally identifiable information, as well as trade secrets, commercial or financial information, or other commercially sensitive information that is not customarily shared outside of the company.

“Contractor information system” means an information system belonging to, or operated by or for, the Contractor.

“Controlled technical information” means technical information with military or space application that is subject to controls on the access, use, reproduction, modification, performance, display, release, disclosure, or dissemination. Controlled technical information would meet the criteria, if disseminated, for distribution statements B through F using the criteria set forth in DoD Instruction 5230.24, Distribution Statements on Technical Documents. The term does not include information that is lawfully publicly available without restrictions.

“Covered contractor information system” means an information system that is owned, or operated by or for, a contractor and that processes, stores, or transmits covered defense information.

“Covered defense information” means unclassified information that—

(i) Is—

(A) Provided to the contractor by or on behalf of DoD in connection with the performance of the contract; or

(B) Collected, developed, received, transmitted, used, or stored by or on behalf of the contractor in support of the performance of the contract; and

(ii) Falls in any of the following categories:

(A) *Controlled technical information.*

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(B) *Critical information (operations security)*. Specific facts identified through the Operations Security process about friendly intentions, capabilities, and activities vitally needed by adversaries for them to plan and act effectively so as to guarantee failure or unacceptable consequences for friendly mission accomplishment (part of Operations Security process).

(C) *Export control*. Unclassified information concerning certain items, commodities, technology, software, or other information whose export could reasonably be expected to adversely affect the United States national security and nonproliferation objectives. To include dual use items; items identified in export administration regulations, international traffic in arms regulations and munitions list; license applications; and sensitive nuclear technology information.

(D) Any other information, marked or otherwise identified in the contract, that requires safeguarding or dissemination controls pursuant to and consistent with law, regulations, and Governmentwide policies (e.g., privacy, proprietary business information).

“Cyber incident” means actions taken through the use of computer networks that result in a compromise or an actual or potentially adverse effect on an information system and/or the information residing therein.

“Forensic analysis” means the practice of gathering, retaining, and analyzing computer-related data for investigative purposes in a manner that maintains the integrity of the data.

“Malicious software” means computer software or firmware intended to perform an unauthorized process that will have adverse impact on the confidentiality, integrity, or availability of an information system. This definition includes a virus, worm, Trojan horse, or other code-based entity that infects a host, as well as spyware and some forms of adware.

“Media” means physical devices or writing surfaces including, but is not limited to, magnetic tapes, optical disks, magnetic disks, large-scale integration memory chips, and printouts onto which information is recorded, stored, or printed within an information system.

“Operationally critical support” means supplies or services designated by the Government as critical for airlift, sealift, intermodal transportation services, or logistical support that is essential to the mobilization, deployment, or sustainment of the Armed Forces in a contingency operation.

“Rapid(ly) report(ing)” means within 72 hours of discovery of any cyber incident.

“Technical information” means technical data or computer software, as those terms are defined in the clause at DFARS [252.227-7013](#), Rights in Technical Data-Non Commercial Items, regardless of whether or not the clause is incorporated in this solicitation or contract. Examples of technical information include research and engineering data, engineering drawings, and associated lists, specifications, standards, process sheets, manuals, technical reports, technical orders, catalog-item identifications, data sets, studies and analyses and related information, and computer software executable code and source code.

(b) *Adequate security*. The Contractor shall provide adequate security for all covered defense information on all covered contractor information systems that support the performance of work under this contract. To provide adequate security, the Contractor shall—

(1) Implement information systems security protections on all covered contractor information systems including, at a minimum—

(i) For covered contractor information systems that are part of an Information Technology (IT) service or system operated on behalf of the Government—

(A) Cloud computing services shall be subject to the security requirements specified in the clause [252.239-7010](#), Cloud Computing Services, of this contract; and

(B) Any other such IT service or system (i.e., other than cloud computing) shall be subject to the security requirements specified elsewhere in this contract; or

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(ii) For covered contractor information systems that are not part of an IT service or system operated on behalf of the Government and therefore are not subject to the security requirement specified at paragraph (b)(1)(i) of this clause—

(A) The security requirements in National Institute of Standards and Technology (NIST) Special Publication (SP) 800-171, “Protecting Controlled Unclassified Information in Nonfederal Information Systems and Organizations,” <http://dx.doi.org/10.6028/NIST.SP.800-171> that is in effect at the time the solicitation is issued or as authorized by the Contracting Officer, as soon as practical, but not later than December 31, 2017. The Contractor shall notify the DoD CIO, via email at [osd.dibcsia@mail.mil](mailto:osd.dibcsia@mail.mil), within 30 days of contract award, of any security requirements specified by NIST SP 800-171 not implemented at the time of contract award; or

(B) Alternative but equally effective security measures used to compensate for the inability to satisfy a particular requirement and achieve equivalent protection accepted in writing by an authorized representative of the DoD CIO; and

(2) Apply other information systems security measures when the Contractor reasonably determines that information systems security measures, in addition to those identified in paragraph (b)(1) of this clause, may be required to provide adequate security in a dynamic environment based on an assessed risk or vulnerability.

(c) *Cyber incident reporting requirement.*

(1) When the Contractor discovers a cyber incident that affects a covered contractor information system or the covered defense information residing therein, or that affects the contractor’s ability to perform the requirements of the contract that are designated as operationally critical support, the Contractor shall—

(i) Conduct a review for evidence of compromise of covered defense information, including, but not limited to, identifying compromised computers, servers, specific data, and user accounts. This review shall also include analyzing covered contractor information system(s) that were part of the cyber incident, as well as other information systems on the Contractor’s network(s), that may have been accessed as a result of the incident in order to identify compromised covered defense information, or that affect the Contractor’s ability to provide operationally critical support; and

(ii) Rapidly report cyber incidents to DoD at <http://dibnet.dod.mil>.

(2) *Cyber incident report.* The cyber incident report shall be treated as information created by or for DoD and shall include, at a minimum, the required elements at <http://dibnet.dod.mil>.

(3) *Medium assurance certificate requirement.* In order to report cyber incidents in accordance with this clause, the Contractor or subcontractor shall have or acquire a DoD-approved medium assurance certificate to report cyber incidents. For information on obtaining a DoD-approved medium assurance certificate, see <http://iase.disa.mil/pki/eca/Pages/index.aspx>.

(d) *Malicious software.* The Contractor or subcontractors that discover and isolate malicious software in connection with a reported cyber incident shall submit the malicious software in accordance with instructions provided by the Contracting Officer.

(e) *Media preservation and protection.* When a Contractor discovers a cyber incident has occurred, the Contractor shall preserve and protect images of all known affected information systems identified in paragraph (c)(1)(i) of this clause and all relevant monitoring/packet capture data for at least 90 days from the submission of the cyber incident report to allow DoD to request the media or decline interest.

(f) *Access to additional information or equipment necessary for forensic analysis.* Upon request by DoD, the Contractor shall provide DoD with access to additional information or equipment that is necessary to conduct a forensic analysis.

(g) *Cyber incident damage assessment activities.* If DoD elects to conduct a damage assessment, the Contracting Officer will request that the Contractor provide all of the damage assessment information

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gathered in accordance with paragraph (e) of this clause.

(h) *DoD safeguarding and use of contractor attributional/proprietary information.* The Government shall protect against the unauthorized use or release of information obtained from the contractor (or derived from information obtained from the contractor) under this clause that includes contractor attributional/proprietary information, including such information submitted in accordance with paragraph (c). To the maximum extent practicable, the Contractor shall identify and mark attributional/proprietary information. In making an authorized release of such information, the Government will implement appropriate procedures to minimize the contractor attributional/proprietary information that is included in such authorized release, seeking to include only that information that is necessary for the authorized purpose(s) for which the information is being released.

(i) *Use and release of contractor attributional/proprietary information not created by or for DoD.* Information that is obtained from the contractor (or derived from information obtained from the contractor) under this clause that is not created by or for DoD is authorized to be released outside of DoD—

- (1) To entities with missions that may be affected by such information;
- (2) To entities that may be called upon to assist in the diagnosis, detection, or mitigation of cyber incidents;
- (3) To Government entities that conduct counterintelligence or law enforcement investigations;
- (4) For national security purposes, including cyber situational awareness and defense purposes (including with Defense Industrial Base (DIB) participants in the program at 32 CFR part 236); or
- (5) To a support services contractor (“recipient”) that is directly supporting Government activities under a contract that includes the clause at [252.204-7009](#), Limitations on the Use or Disclosure of Third-Party Contractor Reported Cyber Incident Information.

(j) *Use and release of contractor attributional/proprietary information created by or for DoD.* Information that is obtained from the contractor (or derived from information obtained from the contractor) under this clause that is created by or for DoD (including the information submitted pursuant to paragraph (c) of this clause) is authorized to be used and released outside of DoD for purposes and activities authorized by paragraph (i) of this clause, and for any other lawful Government purpose or activity, subject to all applicable statutory, regulatory, and policy based restrictions on the Government’s use and release of such information.

(k) The Contractor shall conduct activities under this clause in accordance with applicable laws and regulations on the interception, monitoring, access, use, and disclosure of electronic communications and data.

(l) *Other safeguarding or reporting requirements.* The safeguarding and cyber incident reporting required by this clause in no way abrogates the Contractor’s responsibility for other safeguarding or cyber incident reporting pertaining to its unclassified information systems as required by other applicable clauses of this contract, or as a result of other applicable U.S. Government statutory or regulatory requirements.

(m) *Subcontracts.* The Contractor shall—

- (1) Include this clause, including this paragraph (m), in subcontracts, or similar contractual instruments, for operationally critical support, or for which subcontract performance will involve a covered contractor information system, including subcontracts for commercial items, without alteration, except to identify the parties; and
- (2) When this clause is included in a subcontract, require subcontractors to rapidly report cyber incidents directly to DoD at <http://dibnet.dod.mil> and the prime Contractor. This includes providing the incident report number, automatically assigned by DoD, to the prime Contractor (or next

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higher-tier subcontractor) as soon as practicable.

## **252.227-7013 RIGHTS IN TECHNICAL DATA--NONCOMMERCIAL ITEMS (FEB 2014)**

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

- (1) “Computer data base” means a collection of data recorded in a form capable of being processed by a computer. The term does not include computer software.
- (2) “Computer program” means a set of instructions, rules, or routines recorded in a form that is capable of causing a computer to perform a specific operation or series of operations.
- (3) “Computer software” means computer programs, source code, source code listings, object code listings, design details, algorithms, processes, flow charts, formulae and related material that would enable the software to be reproduced, recreated, or recompiled. Computer software does not include computer data bases or computer software documentation.
- (4) “Computer software documentation” means owner's manuals, user's manuals, installation instructions, operating instructions, and other similar items, regardless of storage medium, that explain the capabilities of the computer software or provide instructions for using the software.
- (5) "Covered Government support contractor" means a contractor (other than a litigation support contractor covered by [252.204-7014](#)) under a contract, the primary purpose of which is to furnish independent and impartial advice or technical assistance directly to the Government in support of the Government’s management and oversight of a program or effort (rather than to directly furnish an end item or service to accomplish a program or effort), provided that the contractor—
  - (i) Is not affiliated with the prime contractor or a first-tier subcontractor on the program or effort, or with any direct competitor of such prime contractor or any such first-tier subcontractor in furnishing end items or services of the type developed or produced on the program or effort; and
  - (ii) Receives access to technical data or computer software for performance of a Government contract that contains the clause at [252.227-7025](#), Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends.
- (6) “Detailed manufacturing or process data” means technical data that describe the steps, sequences, and conditions of manufacturing, processing or assembly used by the manufacturer to produce an item or component or to perform a process.
- (7) “Developed” means that an item, component, or process exists and is workable. Thus, the item or component must have been constructed or the process practiced. Workability is generally established when the item, component, or process has been analyzed or tested sufficiently to demonstrate to reasonable people skilled in the applicable art that there is a high probability that it will operate as intended. Whether, how much, and what type of analysis or testing is required to establish workability depends on the nature of the item, component, or process, and the state

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of the art. To be considered “developed,” the item, component, or process need not be at the stage where it could be offered for sale or sold on the commercial market, nor must the item, component, or process be actually reduced to practice within the meaning of Title 35 of the United States Code.

(8) “Developed exclusively at private expense” means development was accomplished entirely with costs charged to indirect cost pools, costs not allocated to a government contract, or any combination thereof.

(i) Private expense determinations should be made at the lowest practicable level.

(ii) Under fixed-price contracts, when total costs are greater than the firm-fixed-price or ceiling price of the contract, the additional development costs necessary to complete development shall not be considered when determining whether development was at government, private, or mixed expense.

(9) “Developed exclusively with government funds” means development was not accomplished exclusively or partially at private expense.

(10) “Developed with mixed funding” means development was accomplished partially with costs charged to indirect cost pools and/or costs not allocated to a government contract, and partially with costs charged directly to a government contract.

(11) “Form, fit, and function data” means technical data that describes the required overall physical, functional, and performance characteristics (along with the qualification requirements, if applicable) of an item, component, or process to the extent necessary to permit identification of physically and functionally interchangeable items.

(12) “Government purpose” means any activity in which the United States Government is a party, including cooperative agreements with international or multi-national defense organizations, or sales or transfers by the United States Government to foreign governments or international organizations. Government purposes include competitive procurement, but do not include the rights to use, modify, reproduce, release, perform, display, or disclose technical data for commercial purposes or authorize others to do so.

(13) “Government purpose rights” means the rights to—

(i) Use, modify, reproduce, release, perform, display, or disclose technical data within the Government without restriction; and

(ii) Release or disclose technical data outside the Government and authorize persons to whom release or disclosure has been made to use, modify, reproduce, release, perform, display, or disclose that data for United States government purposes.

(14) “Limited rights” means the rights to use, modify, reproduce, release, perform, display, or disclose technical data, in whole or in part, within the Government. The Government may not, without the written permission of the party asserting limited rights, release or disclose the

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technical data outside the Government, use the technical data for manufacture, or authorize the technical data to be used by another party, except that the Government may reproduce, release, or disclose such data or authorize the use or reproduction of the data by persons outside the Government if—

(i) The reproduction, release, disclosure, or use is—

(A) Necessary for emergency repair and overhaul; or

(B) A release or disclosure to—

(1) A covered Government support contractor in performance of its covered Government support contract for use, modification, reproduction, performance, display, or release or disclosure to a person authorized to receive limited rights technical data; or

(2) A foreign government, of technical data other than detailed manufacturing or process data, when use of such data by the foreign government is in the interest of the Government and is required for evaluational or informational purposes;

(ii) The recipient of the technical data is subject to a prohibition on the further reproduction, release, disclosure, or use of the technical data; and

(iii) The contractor or subcontractor asserting the restriction is notified of such reproduction, release, disclosure, or use.

(15) “Technical data” means recorded information, regardless of the form or method of the recording, of a scientific or technical nature (including computer software documentation). The term does not include computer software or data incidental to contract administration, such as financial and/or management information.

(16) “Unlimited rights” means rights to use, modify, reproduce, perform, display, release, or disclose technical data in whole or in part, in any manner, and for any purpose whatsoever, and to have or authorize others to do so.

(b) *Rights in technical data.* The Contractor grants or shall obtain for the Government the following royalty free, world-wide, nonexclusive, irrevocable license rights in technical data other than computer software documentation (see the Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation clause of this contract for rights in computer software documentation):

(1) *Unlimited rights.* The Government shall have unlimited rights in technical data that are—

(i) Data pertaining to an item, component, or process which has been or will be developed exclusively with Government funds;

(ii) Studies, analyses, test data, or similar data produced for this contract, when the study, analysis, test, or similar work was specified as an element of performance;

(iii) Created exclusively with Government funds in the performance of a contract that does not

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require the development, manufacture, construction, or production of items, components, or processes;

(iv) Form, fit, and function data;

(v) Necessary for installation, operation, maintenance, or training purposes (other than detailed manufacturing or process data);

(vi) Corrections or changes to technical data furnished to the Contractor by the Government;

(vii) Otherwise publicly available or have been released or disclosed by the Contractor or subcontractor without restrictions on further use, release or disclosure, other than a release or disclosure resulting from the sale, transfer, or other assignment of interest in the technical data to another party or the sale or transfer of some or all of a business entity or its assets to another party;

(viii) Data in which the Government has obtained unlimited rights under another Government contract or as a result of negotiations; or

(ix) Data furnished to the Government, under this or any other Government contract or subcontract thereunder, with—

(A) Government purpose license rights or limited rights and the restrictive condition(s) has/have expired; or

(B) Government purpose rights and the Contractor's exclusive right to use such data for commercial purposes has expired.

(2) *Government purpose rights.*

(i) The Government shall have government purpose rights for a five-year period, or such other period as may be negotiated, in technical data—

(A) That pertain to items, components, or processes developed with mixed funding except when the Government is entitled to unlimited rights in such data as provided in paragraphs (b)(1)(ii) and (b)(1)(iv) through (b)(1)(ix) of this clause; or

(B) Created with mixed funding in the performance of a contract that does not require the development, manufacture, construction, or production of items, components, or processes.

(ii) The five-year period, or such other period as may have been negotiated, shall commence upon execution of the contract, subcontract, letter contract (or similar contractual instrument), contract modification, or option exercise that required development of the items, components, or processes or creation of the data described in paragraph (b)(2)(i)(B) of this clause. Upon expiration of the five-year or other negotiated period, the Government shall have unlimited rights in the technical data.

(iii) The Government shall not release or disclose technical data in which it has government purpose rights unless—

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(A) Prior to release or disclosure, the intended recipient is subject to the non-disclosure agreement at [227.7103-7](#) of the Defense Federal Acquisition Regulation Supplement (DFARS); or

(B) The recipient is a Government contractor receiving access to the data for performance of a Government contract that contains the clause at DFARS [252.227-7025](#), Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends.

(iv) The Contractor has the exclusive right, including the right to license others, to use technical data in which the Government has obtained government purpose rights under this contract for any commercial purpose during the time period specified in the government purpose rights legend prescribed in paragraph (f)(2) of this clause.

(3) *Limited rights.*

(i) Except as provided in paragraphs (b)(1)(ii) and (b)(1)(iv) through (b)(1)(ix) of this clause, the Government shall have limited rights in technical data—

(A) Pertaining to items, components, or processes developed exclusively at private expense and marked with the limited rights legend prescribed in paragraph (f) of this clause; or

(B) Created exclusively at private expense in the performance of a contract that does not require the development, manufacture, construction, or production of items, components, or processes.

(ii) The Government shall require a recipient of limited rights data for emergency repair or overhaul to destroy the data and all copies in its possession promptly following completion of the emergency repair/overhaul and to notify the Contractor that the data have been destroyed.

(iii) The Contractor, its subcontractors, and suppliers are not required to provide the Government additional rights to use, modify, reproduce, release, perform, display, or disclose technical data furnished to the Government with limited rights. However, if the Government desires to obtain additional rights in technical data in which it has limited rights, the Contractor agrees to promptly enter into negotiations with the Contracting Officer to determine whether there are acceptable terms for transferring such rights. All technical data in which the Contractor has granted the Government additional rights shall be listed or described in a license agreement made part of the contract. The license shall enumerate the additional rights granted the Government in such data.

(iv) The Contractor acknowledges that—

(A) Limited rights data are authorized to be released or disclosed to covered Government support contractors;

(B) The Contractor will be notified of such release or disclosure;

(C) The Contractor (or the party asserting restrictions as identified in the limited rights legend) may require each such covered Government support contractor to enter into a non-disclosure agreement directly with the Contractor (or the party asserting restrictions) regarding the covered

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Government support contractor's use of such data, or alternatively, that the Contractor (or party asserting restrictions) may waive in writing the requirement for a non-disclosure agreement; and

(D) Any such non-disclosure agreement shall address the restrictions on the covered Government support contractor's use of the limited rights data as set forth in the clause at [252.227-7025](#), Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends. The non-disclosure agreement shall not include any additional terms and conditions unless mutually agreed to by the parties to the non-disclosure agreement.

(4) *Specifically negotiated license rights.* The standard license rights granted to the Government under paragraphs (b)(1) through (b)(3) of this clause, including the period during which the Government shall have government purpose rights in technical data, may be modified by mutual agreement to provide such rights as the parties consider appropriate but shall not provide the Government lesser rights than are enumerated in paragraph (a)(14) of this clause. Any rights so negotiated shall be identified in a license agreement made part of this contract.

(5) *Prior government rights.* Technical data that will be delivered, furnished, or otherwise provided to the Government under this contract, in which the Government has previously obtained rights shall be delivered, furnished, or provided with the pre-existing rights, unless—

(i) The parties have agreed otherwise; or

(ii) Any restrictions on the Government's rights to use, modify, reproduce, release, perform, display, or disclose the data have expired or no longer apply.

(6) *Release from liability.* The Contractor agrees to release the Government from liability for any release or disclosure of technical data made in accordance with paragraph (a)(14) or (b)(2)(iii) of this clause, in accordance with the terms of a license negotiated under paragraph (b)(4) of this clause, or by others to whom the recipient has released or disclosed the data and to seek relief solely from the party who has improperly used, modified, reproduced, released, performed, displayed, or disclosed Contractor data marked with restrictive legends.

(c) *Contractor rights in technical data.* All rights not granted to the Government are retained by the Contractor.

(d) *Third party copyrighted data.* The Contractor shall not, without the written approval of the Contracting Officer, incorporate any copyrighted data in the technical data to be delivered under this contract unless the Contractor is the copyright owner or has obtained for the Government the license rights necessary to perfect a license or licenses in the deliverable data of the appropriate scope set forth in paragraph (b) of this clause, and has affixed a statement of the license or licenses obtained on behalf of the Government and other persons to the data transmittal document.

(e) *Identification and delivery of data to be furnished with restrictions on use, release, or disclosure.*

(1) This paragraph does not apply to restrictions based solely on copyright.

(2) Except as provided in paragraph (e)(3) of this clause, technical data that the Contractor asserts should be furnished to the Government with restrictions on use, release, or disclosure are identified in an attachment to this contract (the Attachment). The Contractor shall not deliver any data with restrictive markings unless the data are listed on the Attachment.

(3) In addition to the assertions made in the Attachment, other assertions may be identified after award when based on new information or inadvertent omissions unless the inadvertent omissions would have materially affected the source selection decision. Such identification and assertion shall be submitted to the Contracting Officer as soon as practicable prior to the scheduled date for delivery of the data, in the following format, and signed by an official authorized to contractually obligate the Contractor:

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

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			Name of Person
to be Furnished	Basis for	Asserted Rights	Asserting
With Restrictions*	Assertion**	Category***	Restrictions****
(LIST)	(LIST)	(LIST)	(LIST)

\*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.

Date \_\_\_\_\_

Printed Name and Title \_\_\_\_\_

Signature \_\_\_\_\_

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(End of identification and assertion)

(4) When requested by the Contracting Officer, the Contractor shall provide sufficient information to enable the Contracting Officer to evaluate the Contractor's assertions. The Contracting Officer reserves the right to add the Contractor's assertions to the Attachment and validate any listed assertion, at a later date, in accordance with the procedures of the Validation of Restrictive Markings on Technical Data clause of this contract.

(f) *Marking requirements.* The Contractor, and its subcontractors or suppliers, may only assert restrictions on the Government's rights to use, modify, reproduce, release, perform, display, or disclose technical data to be delivered under this contract by marking the deliverable data subject to restriction. Except as provided in paragraph (f)(5) of this clause, only the following legends are authorized under this contract: the government purpose rights legend at paragraph (f)(2) of this clause; the limited rights legend at paragraph (f)(3) of this clause; or the special license rights legend at paragraph (f)(4) of this clause; and/or a notice of copyright as prescribed under 17 U.S.C. 401 or 402.

(1) *General marking instructions.* The Contractor, or its subcontractors or suppliers, shall conspicuously and legibly mark the appropriate legend on all technical data that qualify for such markings. The authorized legends shall be placed on the transmittal document or storage container and, for printed material, each page of the printed material containing technical data for which restrictions are asserted. When only portions of a page of printed material are subject to the asserted restrictions, such portions shall be identified by circling, underscoring, with a note, or other appropriate identifier. Technical data transmitted directly from one computer or computer terminal to another shall contain a notice of asserted restrictions. Reproductions of technical data or any portions thereof subject to asserted restrictions shall also reproduce the asserted restrictions.

(2) *Government purpose rights markings.* Data delivered or otherwise furnished to the Government with government purpose rights shall be marked as follows:

#### GOVERNMENT PURPOSE RIGHTS

Contract No.

Contractor Name

Contractor Address

Expiration Date

The Government's rights to use, modify, reproduce, release, perform, display, or disclose these technical data are restricted by paragraph (b)(2) of the Rights in Technical Data—Noncommercial Items clause contained in the above identified contract. No restrictions apply after the expiration

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date shown above. Any reproduction of technical data or portions thereof marked with this legend must also reproduce the markings.

(End of legend)

(3) *Limited rights markings.* Data delivered or otherwise furnished to the Government with limited rights shall be marked with the following legend:

#### LIMITED RIGHTS

Contract No.

Contractor Name

Contractor Address

The Government's rights to use, modify, reproduce, release, perform, display, or disclose these technical data are restricted by paragraph (b)(3) of the Rights in Technical Data--Noncommercial Items clause contained in the above identified contract. Any reproduction of technical data or portions thereof marked with this legend must also reproduce the markings. Any person, other than the Government, who has been provided access to such data must promptly notify the above named Contractor.

(End of legend)

(4) *Special license rights markings.*

(i) Data in which the Government's rights stem from a specifically negotiated license shall be marked with the following legend:

#### SPECIAL LICENSE RIGHTS

The Government's rights to use, modify, reproduce, release, perform, display, or disclose these data are restricted by Contract No. \_\_\_\_ (Insert contract number) \_\_\_\_, License No. \_\_\_\_ (Insert license identifier) \_\_\_\_. Any reproduction of technical data or portions thereof marked with this legend must also reproduce the markings.

(End of legend)

(ii) For purposes of this clause, special licenses do not include government purpose license rights acquired under a prior contract (see paragraph (b)(5) of this clause).

(5) *Pre-existing data markings.* If the terms of a prior contract or license permitted the Contractor to restrict the Government's rights to use, modify, reproduce, release, perform,

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display, or disclose technical data deliverable under this contract, and those restrictions are still applicable, the Contractor may mark such data with the appropriate restrictive legend for which the data qualified under the prior contract or license. The marking procedures in paragraph (f)(1) of this clause shall be followed.

(g) *Contractor procedures and records.* Throughout performance of this contract, the Contractor and its subcontractors or suppliers that will deliver technical data with other than unlimited rights, shall—

(1) Have, maintain, and follow written procedures sufficient to assure that restrictive markings are used only when authorized by the terms of this clause; and

(2) Maintain records sufficient to justify the validity of any restrictive markings on technical data delivered under this contract.

(h) *Removal of unjustified and nonconforming markings.*

(1) *Unjustified technical data markings.* The rights and obligations of the parties regarding the validation of restrictive markings on technical data furnished or to be furnished under this contract are contained in the Validation of Restrictive Markings on Technical Data clause of this contract. Notwithstanding any provision of this contract concerning inspection and acceptance, the Government may ignore or, at the Contractor's expense, correct or strike a marking if, in accordance with the procedures in the Validation of Restrictive Markings on Technical Data clause of this contract, a restrictive marking is determined to be unjustified.

(2) *Nonconforming technical data markings.* A nonconforming marking is a marking placed on technical data delivered or otherwise furnished to the Government under this contract that is not in the format authorized by this contract. Correction of nonconforming markings is not subject to the Validation of Restrictive Markings on Technical Data clause of this contract. If the Contracting Officer notifies the Contractor of a nonconforming marking and the Contractor fails to remove or correct such marking within sixty (60) days, the Government may ignore or, at the Contractor's expense, remove or correct any nonconforming marking.

(i) *Relation to patents.* Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government under any patent.

(j) *Limitation on charges for rights in technical data.*

(1) The Contractor shall not charge to this contract any cost, including, but not limited to, license fees, royalties, or similar charges, for rights in technical data to be delivered under this contract when—

(i) The Government has acquired, by any means, the same or greater rights in the data; or

(ii) The data are available to the public without restrictions.

(2) The limitation in paragraph (j)(1) of this clause—

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(i) Includes costs charged by a subcontractor or supplier, at any tier, or costs incurred by the Contractor to acquire rights in subcontractor or supplier technical data, if the subcontractor or supplier has been paid for such rights under any other Government contract or under a license conveying the rights to the Government; and

(ii) Does not include the reasonable costs of reproducing, handling, or mailing the documents or other media in which the technical data will be delivered.

*(k) Applicability to subcontractors or suppliers.*

(1) The Contractor shall ensure that the rights afforded its subcontractors and suppliers under 10 U.S.C. 2320, 10 U.S.C. 2321, and the identification, assertion, and delivery processes of paragraph (e) of this clause are recognized and protected.

(2) Whenever any technical data for noncommercial items, or for commercial items developed in any part at Government expense, is to be obtained from a subcontractor or supplier for delivery to the Government under this contract, the Contractor shall use this same clause in the subcontract or other contractual instrument, including subcontracts or other contractual instruments for commercial items, and require its subcontractors or suppliers to do so, without alteration, except to identify the parties. This clause will govern the technical data pertaining to noncommercial items or to any portion of a commercial item that was developed in any part at Government expense, and the clause at [252.227-7015](#) will govern the technical data pertaining to any portion of a commercial item that was developed exclusively at private expense. No other clause shall be used to enlarge or diminish the Government's, the Contractor's, or a higher-tier subcontractor's or supplier's rights in a subcontractor's or supplier's technical data.

(3) Technical data required to be delivered by a subcontractor or supplier shall normally be delivered to the next higher-tier contractor, subcontractor, or supplier. However, when there is a requirement in the prime contract for data which may be submitted with other than unlimited rights by a subcontractor or supplier, then said subcontractor or supplier may fulfill its requirement by submitting such data directly to the Government, rather than through a higher-tier contractor, subcontractor, or supplier.

(4) The Contractor and higher-tier subcontractors or suppliers shall not use their power to award contracts as economic leverage to obtain rights in technical data from their subcontractors or suppliers.

(5) In no event shall the Contractor use its obligation to recognize and protect subcontractor or supplier rights in technical data as an excuse for failing to satisfy its contractual obligation to the Government.

**252.227-7014 RIGHTS IN NONCOMMERCIAL COMPUTER SOFTWARE AND  
NONCOMMERCIAL COMPUTER SOFTWARE DOCUMENTATION (FEB 2014)**

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

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- (1) “Commercial computer software” means software developed or regularly used for non-governmental purposes which—
- (i) Has been sold, leased, or licensed to the public;
  - (ii) Has been offered for sale, lease, or license to the public;
  - (iii) Has not been offered, sold, leased, or licensed to the public but will be available for commercial sale, lease, or license in time to satisfy the delivery requirements of this contract; or
  - (iv) Satisfies a criterion expressed in paragraph (a)(1)(i), (ii), or (iii) of this clause and would require only minor modification to meet the requirements of this contract.
- (2) “Computer database” means a collection of recorded data in a form capable of being processed by a computer. The term does not include computer software.
- (3) “Computer program” means a set of instructions, rules, or routines, recorded in a form that is capable of causing a computer to perform a specific operation or series of operations.
- (4) “Computer software” means computer programs, source code, source code listings, object code listings, design details, algorithms, processes, flow charts, formulae, and related material that would enable the software to be reproduced, recreated, or recompiled. Computer software does not include computer databases or computer software documentation.
- (5) “Computer software documentation” means owner's manuals, user's manuals, installation instructions, operating instructions, and other similar items, regardless of storage medium, that explain the capabilities of the computer software or provide instructions for using the software.
- (6) "Covered Government support contractor" means a contractor (other than a litigation support contractor covered by [252.204-7014](#)) under a contract, the primary purpose of which is to furnish independent and impartial advice or technical assistance directly to the Government in support of the Government’s management and oversight of a program or effort (rather than to directly furnish an end item or service to accomplish a program or effort), provided that the contractor—
- (i) Is not affiliated with the prime contractor or a first-tier subcontractor on the program or effort, or with any direct competitor of such prime contractor or any such first-tier subcontractor in furnishing end items or services of the type developed or produced on the program or effort; and
  - (ii) Receives access to technical data or computer software for performance of a Government contract that contains the clause at [252.227-7025](#), Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends.
- (7) “Developed” means that—
- (i) A computer program has been successfully operated in a computer and tested to the extent sufficient to demonstrate to reasonable persons skilled in the art that the program can reasonably be expected to perform its intended purpose;

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(ii) Computer software, other than computer programs, has been tested or analyzed to the extent sufficient to demonstrate to reasonable persons skilled in the art that the software can reasonably be expected to perform its intended purpose; or

(iii) Computer software documentation required to be delivered under a contract has been written, in any medium, in sufficient detail to comply with requirements under that contract.

(8) “Developed exclusively at private expense” means development was accomplished entirely with costs charged to indirect cost pools, costs not allocated to a government contract, or any combination thereof.

(i) Private expense determinations should be made at the lowest practicable level.

(ii) Under fixed-price contracts, when total costs are greater than the firm-fixed-price or ceiling price of the contract, the additional development costs necessary to complete development shall not be considered when determining whether development was at government, private, or mixed expense.

(9) “Developed exclusively with government funds” means development was not accomplished exclusively or partially at private expense.

(10) “Developed with mixed funding” means development was accomplished partially with costs charged to indirect cost pools and/or costs not allocated to a government contract, and partially with costs charged directly to a government contract.

(11) “Government purpose” means any activity in which the United States Government is a party, including cooperative agreements with international or multi-national defense organizations or sales or transfers by the United States Government to foreign governments or international organizations. Government purposes include competitive procurement, but do not include the rights to use, modify, reproduce, release, perform, display, or disclose computer software or computer software documentation for commercial purposes or authorize others to do so.

(12) “Government purpose rights” means the rights to—

(i) Use, modify, reproduce, release, perform, display, or disclose computer software or computer software documentation within the Government without restriction; and

(ii) Release or disclose computer software or computer software documentation outside the Government and authorize persons to whom release or disclosure has been made to use, modify, reproduce, release, perform, display, or disclose the software or documentation for United States government purposes.

(13) “Minor modification” means a modification that does not significantly alter the nongovernmental function or purpose of the software or is of the type customarily provided in the commercial marketplace.

(14) “Noncommercial computer software” means software that does not qualify as commercial computer software under paragraph (a)(1) of this clause.

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(15) "Restricted rights" apply only to noncommercial computer software and mean the Government's rights to—

(i) Use a computer program with one computer at one time. The program may not be accessed by more than one terminal or central processing unit or time shared unless otherwise permitted by this contract;

(ii) Transfer a computer program to another Government agency without the further permission of the Contractor if the transferor destroys all copies of the program and related computer software documentation in its possession and notifies the licensor of the transfer. Transferred programs remain subject to the provisions of this clause;

(iii) Make the minimum number of copies of the computer software required for safekeeping (archive), backup, or modification purposes;

(iv) Modify computer software provided that the Government may—

(A) Use the modified software only as provided in paragraphs (a)(15)(i) and (iii) of this clause; and

(B) Not release or disclose the modified software except as provided in paragraphs (a)(15)(ii), (v), (vi) and (vii) of this clause;

(v) Permit contractors or subcontractors performing service contracts (see 37.101 of the Federal Acquisition Regulation) in support of this or a related contract to use computer software to diagnose and correct deficiencies in a computer program, to modify computer software to enable a computer program to be combined with, adapted to, or merged with other computer programs or when necessary to respond to urgent tactical situations, provided that—

(A) The Government notifies the party which has granted restricted rights that a release or disclosure to particular contractors or subcontractors was made;

(B) Such contractors or subcontractors are subject to the use and non-disclosure agreement at [227.7103-7](#) of the Defense Federal Acquisition Regulation Supplement (DFARS) or are Government contractors receiving access to the software for performance of a Government contract that contains the clause at DFARS [252.227-7025](#), Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends;

(C) The Government shall not permit the recipient to decompile, disassemble, or reverse engineer the software, or use software decompiled, disassembled, or reverse engineered by the Government pursuant to paragraph (a)(15)(iv) of this clause, for any other purpose; and

(D) Such use is subject to the limitations in paragraphs (a)(15)(i) through (iii) of this clause;

(vi) Permit contractors or subcontractors performing emergency repairs or overhaul of items or components of items procured under this or a related contract to use the computer software when necessary to perform the repairs or overhaul, or to modify the computer software to reflect the repairs or overhaul made, provided that—

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(A) The intended recipient is subject to the use and non-disclosure agreement at DFARS [227.7103-7](#) or is a Government contractor receiving access to the software for performance of a Government contract that contains the clause at DFARS [252.227-7025](#), Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends;

(B) The Government shall not permit the recipient to decompile, disassemble, or reverse engineer the software, or use software decompiled, disassembled, or reverse engineered by the Government pursuant to paragraph (a)(15)(iv) of this clause, for any other purpose; and

(C) Such use is subject to the limitations in paragraphs (a)(15)(i) through (iii) of this clause; and

(vii) Permit covered Government support contractors in the performance of covered Government support contracts that contain the clause at [252.227-7025](#), Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends, to use, modify, reproduce, perform, display, or release or disclose the computer software to a person authorized to receive restricted rights computer software, provided that—

(A) The Government shall not permit the covered Government support contractor to decompile, disassemble, or reverse engineer the software, or use software decompiled, disassembled, or reverse engineered by the Government pursuant to paragraph (a)(15)(iv) of this clause, for any other purpose; and

(B) Such use is subject to the limitations in paragraphs (a)(15)(i) through (iv) of this clause.

(16) “Unlimited rights” means rights to use, modify, reproduce, release, perform, display, or disclose computer software or computer software documentation in whole or in part, in any manner and for any purpose whatsoever, and to have or authorize others to do so.

(b) *Rights in computer software or computer software documentation.* The Contractor grants or shall obtain for the Government the following royalty free, world-wide, nonexclusive, irrevocable license rights in noncommercial computer software or computer software documentation. All rights not granted to the Government are retained by the Contractor.

(1) *Unlimited rights.* The Government shall have unlimited rights in—

(i) Computer software developed exclusively with Government funds;

(ii) Computer software documentation required to be delivered under this contract;

(iii) Corrections or changes to computer software or computer software documentation furnished to the Contractor by the Government;

(iv) Computer software or computer software documentation that is otherwise publicly available or has been released or disclosed by the Contractor or subcontractor without restriction on further use, release or disclosure, other than a release or disclosure resulting from the sale, transfer, or other assignment of interest in the software to another party or the sale or transfer of some or all of a business entity or its assets to another party;

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(v) Computer software or computer software documentation obtained with unlimited rights under another Government contract or as a result of negotiations; or

(vi) Computer software or computer software documentation furnished to the Government, under this or any other Government contract or subcontract thereunder with—

(A) Restricted rights in computer software, limited rights in technical data, or government purpose license rights and the restrictive conditions have expired; or

(B) Government purpose rights and the Contractor's exclusive right to use such software or documentation for commercial purposes has expired.

(2) *Government purpose rights.*

(i) Except as provided in paragraph (b)(1) of this clause, the Government shall have government purpose rights in computer software developed with mixed funding.

(ii) Government purpose rights shall remain in effect for a period of five years unless a different period has been negotiated. Upon expiration of the five-year or other negotiated period, the Government shall have unlimited rights in the computer software or computer software documentation. The government purpose rights period shall commence upon execution of the contract, subcontract, letter contract (or similar contractual instrument), contract modification, or option exercise that required development of the computer software.

(iii) The Government shall not release or disclose computer software in which it has government purpose rights to any other person unless—

(A) Prior to release or disclosure, the intended recipient is subject to the use and non-disclosure agreement at DFARS [227.7103-7](#); or

(B) The recipient is a Government contractor receiving access to the software or documentation for performance of a Government contract that contains the clause at DFARS [252.227-7025](#), Limitations on the Use or Disclosure of Government Furnished Information Marked with Restrictive Legends.

(3) *Restricted rights.*

(i) The Government shall have restricted rights in noncommercial computer software required to be delivered or otherwise provided to the Government under this contract that were developed exclusively at private expense.

(ii) The Contractor, its subcontractors, or suppliers are not required to provide the Government additional rights in noncommercial computer software delivered or otherwise provided to the Government with restricted rights. However, if the Government desires to obtain additional rights in such software, the Contractor agrees to promptly enter into negotiations with the Contracting Officer to determine whether there are acceptable terms for transferring such rights. All noncommercial computer software in which the Contractor has granted the Government additional rights shall be listed or described in a license agreement made part of the contract (see

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paragraph (b)(4) of this clause). The license shall enumerate the additional rights granted the Government.

(iii) The Contractor acknowledges that—

(A) Restricted rights computer software is authorized to be released or disclosed to covered Government support contractors;

(B) The Contractor will be notified of such release or disclosure;

(C) The Contractor (or the party asserting restrictions, as identified in the restricted rights legend) may require each such covered Government support contractor to enter into a non-disclosure agreement directly with the Contractor (or the party asserting restrictions) regarding the covered Government support contractor's use of such software, or alternatively, that the Contractor (or party asserting restrictions) may waive in writing the requirement for a non-disclosure agreement; and

(D) Any such non-disclosure agreement shall address the restrictions on the covered Government support contractor's use of the restricted rights software as set forth in the clause at [252.227-7025](#), Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends. The non-disclosure agreement shall not include any additional terms and conditions unless mutually agreed to by the parties to the non-disclosure agreement.

(4) *Specifically negotiated license rights.*

(i) The standard license rights granted to the Government under paragraphs (b)(1) through (b)(3) of this clause, including the period during which the Government shall have government purpose rights in computer software, may be modified by mutual agreement to provide such rights as the parties consider appropriate but shall not provide the Government lesser rights in computer software than are enumerated in paragraph (a)(15) of this clause or lesser rights in computer software documentation than are enumerated in paragraph (a)(14) of the Rights in Technical Data--Noncommercial Items clause of this contract.

(ii) Any rights so negotiated shall be identified in a license agreement made part of this contract.

(5) *Prior government rights.* Computer software or computer software documentation that will be delivered, furnished, or otherwise provided to the Government under this contract, in which the Government has previously obtained rights shall be delivered, furnished, or provided with the pre-existing rights, unless—

(i) The parties have agreed otherwise; or

(ii) Any restrictions on the Government's rights to use, modify, reproduce, release, perform, display, or disclose the data have expired or no longer apply.

(6) *Release from liability.* The Contractor agrees to release the Government from liability for any release or disclosure of computer software made in accordance with paragraph (a)(15) or (b)(2)(iii) of this clause, in accordance with the terms of a license negotiated under paragraph

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(b)(4) of this clause, or by others to whom the recipient has released or disclosed the software, and to seek relief solely from the party who has improperly used, modified, reproduced, released, performed, displayed, or disclosed Contractor software marked with restrictive legends.

(c) *Rights in derivative computer software or computer software documentation.* The Government shall retain its rights in the unchanged portions of any computer software or computer software documentation delivered under this contract that the Contractor uses to prepare, or includes in, derivative computer software or computer software documentation.

(d) *Third party copyrighted computer software or computer software documentation.* The Contractor shall not, without the written approval of the Contracting Officer, incorporate any copyrighted computer software or computer software documentation in the software or documentation to be delivered under this contract unless the Contractor is the copyright owner or has obtained for the Government the license rights necessary to perfect a license or licenses in the deliverable software or documentation of the appropriate scope set forth in paragraph (b) of this clause, and prior to delivery of such—

(1) Computer software, has provided a statement of the license rights obtained in a form acceptable to the Contracting Officer; or (2) Computer software documentation, has affixed to the transmittal document a statement of the license rights obtained.

(e) *Identification and delivery of computer software and computer software documentation to be furnished with restrictions on use, release, or disclosure.*

(1) This paragraph does not apply to restrictions based solely on copyright.

(2) Except as provided in paragraph (e)(3) of this clause, computer software that the Contractor asserts should be furnished to the Government with restrictions on use, release, or disclosure is identified in an attachment to this contract (the Attachment). The Contractor shall not deliver any software with restrictive markings unless the software is listed on the Attachment.

(3) In addition to the assertions made in the Attachment, other assertions may be identified after award when based on new information or inadvertent omissions unless the inadvertent omissions would have materially affected the source selection decision. Such identification and assertion shall be submitted to the Contracting Officer as soon as practicable prior to the scheduled date for delivery of the software, in the following format, and signed by an official authorized to contractually obligate the Contractor:

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

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

Computer Software	Basis for		Name of Person
to be Furnished		Asserted Rights	Asserting

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With Restrictions* (LIST)	Assertion** (LIST)	Category*** (LIST)	Restrictions**** (LIST)
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\*Generally, development at private expense, either exclusively or partially, is the only basis for asserting restrictions on the Government's rights to use, release, or disclose computer software.

\*\*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., restricted or government purpose rights in computer software, government purpose license rights from a prior contract, rights in SBIR software generated under another contract, or specifically negotiated licenses).

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

Date \_\_\_\_\_  
Printed Name and Title \_\_\_\_\_  
\_\_\_\_\_  
Signature \_\_\_\_\_

(End of identification and assertion)

(4) When requested by the Contracting Officer, the Contractor shall provide sufficient information to enable the Contracting Officer to evaluate the Contractor's assertions. The Contracting Officer reserves the right to add the Contractor's assertions to the Attachment and validate any listed assertion, at a later date, in accordance with the procedures of the Validation of Asserted Restrictions—Computer Software clause of this contract.

(f) *Marking requirements.* The Contractor, and its subcontractors or suppliers, may only assert restrictions on the Government's rights to use, modify, reproduce, release, perform, display, or disclose computer software by marking the deliverable software or documentation subject to restriction. Except as provided in paragraph (f)(5) of this clause, only the following legends are authorized under this contract: the government purpose rights legend at paragraph (f)(2) of this clause; the restricted rights legend at paragraph (f)(3) of this clause; or the special license rights legend at paragraph (f)(4) of this clause; and/or a notice of copyright as prescribed under 17 U.S.C. 401 or 402.

(1) *General marking instructions.* The Contractor, or its subcontractors or suppliers, shall conspicuously and legibly mark the appropriate legend on all computer software that qualify for such markings. The authorized legends shall be placed on the transmittal document or software storage container and each page, or portions thereof, of printed material containing computer software for which restrictions are asserted. Computer software transmitted directly from one computer or computer terminal to another shall contain a notice of asserted restrictions. However, instructions that interfere with or delay the operation of computer software in order to

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display a restrictive rights legend or other license statement at any time prior to or during use of the computer software, or otherwise cause such interference or delay, shall not be inserted in software that will or might be used in combat or situations that simulate combat conditions, unless the Contracting Officer's written permission to deliver such software has been obtained prior to delivery. Reproductions of computer software or any portions thereof subject to asserted restrictions, shall also reproduce the asserted restrictions.

(2) *Government purpose rights markings.* Computer software delivered or otherwise furnished to the Government with government purpose rights shall be marked as follows:

#### GOVERNMENT PURPOSE RIGHTS

Contract No.

Contractor Name

Contractor Address

Expiration Date

The Government's rights to use, modify, reproduce, release, perform, display, or disclose this software are restricted by paragraph (b)(2) of the Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation clause contained in the above identified contract. No restrictions apply after the expiration date shown above. Any reproduction of the software or portions thereof marked with this legend must also reproduce the markings.

(End of legend)

(3) *Restricted rights markings.* Software delivered or otherwise furnished to the Government with restricted rights shall be marked with the following legend:

#### RESTRICTED RIGHTS

Contract No.

Contractor Name

Contractor Address

The Government's rights to use, modify, reproduce, release, perform, display, or disclose this software are restricted by paragraph (b)(3) of the Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation clause contained in the above identified contract. Any reproduction of computer software or portions thereof marked with this legend

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must also reproduce the markings. Any person, other than the Government, who has been provided access to such software must promptly notify the above named Contractor.

(End of legend)

(4) *Special license rights markings.*

(i) Computer software or computer software documentation in which the Government's rights stem from a specifically negotiated license shall be marked with the following legend:

**SPECIAL LICENSE RIGHTS**

The Government's rights to use, modify, reproduce, release, perform, display, or disclose these data are restricted by Contract No.

\_\_\_\_(Insert contract number)\_\_\_\_, License No. \_\_\_\_ (Insert license identifier)\_\_\_\_. Any reproduction of computer software, computer software documentation, or portions thereof marked with this legend must also reproduce the markings.

(End of legend)

(ii) For purposes of this clause, special licenses do not include government purpose license rights acquired under a prior contract (see paragraph (b)(5) of this clause).

(5) *Pre-existing markings.* If the terms of a prior contract or license permitted the Contractor to restrict the Government's rights to use, modify, release, perform, display, or disclose computer software or computer software documentation and those restrictions are still applicable, the Contractor may mark such software or documentation with the appropriate restrictive legend for which the software qualified under the prior contract or license. The marking procedures in paragraph (f)(1) of this clause shall be followed.

(g) *Contractor procedures and records.* Throughout performance of this contract, the Contractor and its subcontractors or suppliers that will deliver computer software or computer software documentation with other than unlimited rights, shall—

(1) Have, maintain, and follow written procedures sufficient to assure that restrictive markings are used only when authorized by the terms of this clause; and

(2) Maintain records sufficient to justify the validity of any restrictive markings on computer software or computer software documentation delivered under this contract.

(h) *Removal of unjustified and nonconforming markings.*

(1) *Unjustified computer software or computer software documentation markings.* The rights and obligations of the parties regarding the validation of restrictive markings on computer software or computer software documentation furnished or to be furnished under this contract are contained in the Validation of Asserted Restrictions--Computer Software and the Validation of Restrictive Markings on Technical Data clauses of this contract, respectively. Notwithstanding any

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provision of this contract concerning inspection and acceptance, the Government may ignore or, at the Contractor's expense, correct or strike a marking if, in accordance with the procedures of those clauses, a restrictive marking is determined to be unjustified.

(2) *Nonconforming computer software or computer software documentation markings.* A nonconforming marking is a marking placed on computer software or computer software documentation delivered or otherwise furnished to the Government under this contract that is not in the format authorized by this contract. Correction of nonconforming markings is not subject to the Validation of Asserted Restrictions--Computer Software or the Validation of Restrictive Markings on Technical Data clause of this contract. If the Contracting Officer notifies the Contractor of a nonconforming marking or markings and the Contractor fails to remove or correct such markings within sixty (60) days, the Government may ignore or, at the Contractor's expense, remove or correct any nonconforming markings.

(i) *Relation to patents.* Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government under any patent.

(j) *Limitation on charges for rights in computer software or computer software documentation.*

(1) The Contractor shall not charge to this contract any cost, including but not limited to license fees, royalties, or similar charges, for rights in computer software or computer software documentation to be delivered under this contract when—

(i) The Government has acquired, by any means, the same or greater rights in the software or documentation; or

(ii) The software or documentation are available to the public without restrictions.

(2) The limitation in paragraph (j)(1) of this clause—

(i) Includes costs charged by a subcontractor or supplier, at any tier, or costs incurred by the Contractor to acquire rights in subcontractor or supplier computer software or computer software documentation, if the subcontractor or supplier has been paid for such rights under any other Government contract or under a license conveying the rights to the Government; and

(ii) Does not include the reasonable costs of reproducing, handling, or mailing the documents or other media in which the software or documentation will be delivered.

(k) *Applicability to subcontractors or suppliers.*

(1) Whenever any noncommercial computer software or computer software documentation is to be obtained from a subcontractor or supplier for delivery to the Government under this contract, the Contractor shall use this same clause in its subcontracts or other contractual instruments, and require its subcontractors or suppliers to do so, without alteration, except to identify the parties. No other clause shall be used to enlarge or diminish the Government's, the Contractor's, or a higher tier subcontractor's or supplier's rights in a subcontractor's or supplier's computer

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software or computer software documentation.

(2) The Contractor and higher tier subcontractors or suppliers shall not use their power to award contracts as economic leverage to obtain rights in computer software or computer software documentation from their subcontractors or suppliers.

(3) The Contractor shall ensure that subcontractor or supplier rights are recognized and protected in the identification, assertion, and delivery processes required by paragraph (e) of this clause.

(4) In no event shall the Contractor use its obligation to recognize and protect subcontractor or supplier rights in computer software or computer software documentation as an excuse for failing to satisfy its contractual obligation to the Government.

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## **SECTION J LIST OF ATTACHMENTS**

Attachment 1: Performance Report

Attachment 2: Award Term Plan

Attachment 3: Quality Assurance Surveillance Plan (QASP)

Attachment 4: SEA 21P Organizational Chart

Attachment 5: Contractor Progress and Status Report DID - (OT-17-20197)

Attachment 6: DD254

Exhibit A CDRL A001