

UNITED STATES GOVERNMENT PRIME CONTRACT FLOWDOWNS

OTHER TRANSACTION AUTHORITY (OTA)

The provisions listed below are incorporated by reference and made a part of this Agreement. Unless otherwise limited in the Agreement, each provision applies in its entirety.

This document includes clauses that flow down Epirus's U.S. Government regulatory and customer obligations. To the extent any clause include in this document is inapplicable to the performance of this Contract, the parties shall consider such clauses to be self-deleting and shall not impose any obligations upon the Seller. In the event of any conflict or inconsistency between the provisions of this document and any other terms and conditions of this Agreement, including any exhibits, appendices, or incorporated documents, the provisions of this document shall control and take precedence to the extent necessary to resolve such conflict or inconsistency. This precedence applies specifically to the U.S. Government flowdown requirements related to the obligations contained herein.

These provisions shall be flowed down to all lower-tier subcontractors and suppliers.

All references to "Performer" shall mean Seller.

All references to "Agreement" shall mean the agreement between Epirus and Seller.

All reference to "Government" shall remain unchanged and shall refer to the U.S. Government and its duly authorized representatives.

Contents

FAR 52.211-15 Defense Priority and Allocation Requirements (APR 2008)	2
<i>DPAS Rating: DO-C5</i>	
ARTICLE I: CONFIDENTIAL AND/OR PROPRIETARY INFORMATION.....	2
<i>Applicability: This Article is only applicable to Purchase Orders and/or Subcontracts that require the disclosure of Confidential and/or Proprietary Information.</i>	
ARTICLE II: PATENT RIGHTS.....	3
<i>Applicability: This Article is only applicable to Purchase Orders and/or Subcontracts for experimental, developmental, or research work.</i>	
ARTICLE III: DATA RIGHTS.....	6
<i>Applicability: Please see subsections for applicability</i>	
ARTICLE IV: EXPORT COMPLIANCE	28
ARTICLE V: LIABILITY	28
ARTICLE VI: FINANCIAL RECORDS	28
ARTICLE VII: SAFEGUARDING GOVERNMENT CONTROLLED UNCLASSIFIED INFORMATION AND CONTROLLED TECHNICAL INFORMATION AND CYBER INCIDENT REPORTING	28
ARTICLE VIII: FOREIGN ACCESS TO TECHNOLOGY	32
<i>Applicability: This Article is only applicable to Purchase Orders and/or Subcontracts for experimental, developmental, or research work.</i>	

FAR 52.211-15 Defense Priority and Allocation Requirements (APR 2008)

This is a rated order certified for national defense, emergency preparedness, and energy program use, and the Contractor shall follow all the requirements of the Defense Priorities and Allocations System regulation (15 CFR 700).

DPAS Rating: **DO-C5**

ARTICLE I: CONFIDENTIAL AND/OR PROPRIETARY INFORMATION

Applicability: This Article is only applicable to Purchase Orders and/or Subcontracts that require the disclosure of Confidential and/or Proprietary Information.

A. Exchange of Information

Epirus may from time to time disclose Epirus or Government Confidential and/or Proprietary Information to the Performer for use by the Performer in connection this Agreement; and the Performer may from time to time disclose information that is Confidential and/or Proprietary Information to Epirus or the Government in connection with this Agreement.

B. Definitions

"Disclosing Party" means the Performer or Epirus who discloses Confidential and/or Proprietary Information as contemplated by the subsequent paragraphs.

"Receiving Party" means the Performer, or Epirus who receives Confidential and/or Proprietary Information disclosed by a Disclosing Party.

"Confidential and/or Proprietary Information" means information and materials of a Disclosing Party which are designated as non-public, confidential and/or proprietary or as a Trade Secret in writing by such Disclosing Party, whether by letter or by use of an appropriate stamp or legend, prior to or at the same time any such information or materials are disclosed by such Disclosing Party to the Receiving Party. Notwithstanding the foregoing, materials and other information which are orally, visually, or electronically disclosed by a Disclosing Party, or are disclosed in writing without an appropriate letter, stamp, or legend, shall constitute Confidential and/or Proprietary Information or a Trade Secret if such Disclosing Party, within thirty (30) calendar days after such disclosure, delivers to the Receiving Party a written document or documents describing the material or information and indicating that it is confidential and/or proprietary or a Trade Secret, provided that any disclosure of information by the Receiving Party prior to receipt of such notice shall not constitute a breach by the Receiving Party of its obligations under this Paragraph.

"Trade Secret" means all forms and types of financial, business, scientific, technical, economic or engineering or otherwise proprietary information, including, but not limited to, patterns, plans, compilations, program devices, formulas, algorithms, designs, prototypes, methods, techniques, processes, procedures, programs or codes, whether tangible or intangible, and whether or how stored, compiled, or memorialized physically, electronically, graphically, photographically, or in writing if:

- (1) The owner thereof has taken reasonable measures to keep such information secret; and
- (2) The information derives independent economic value, actual or potential, from not being generally known to and not being readily ascertainable through proper means, by the public.

"Trade Secret" does not mean data, software, or software documentation delivered and to be delivered in performance of this Agreement and each Project Agreement, which would be governed by Article III, Data Rights.

C. Confidentiality and Authorized Disclosure:

(1) The Receiving Party agrees, to the extent permitted by law, that Confidential and/or Proprietary Information shall remain the property of the Disclosing Party, and that, unless otherwise agreed to by the Disclosing Party, Confidential and/or Proprietary Information shall not be disclosed, divulged or otherwise communicated by it to third parties or used by it for any purposes other than in connection with this Agreement and the licenses granted in Article III, Data Rights. However, the duty to protect all Confidential and/or Proprietary Information shall not extend to materials or information that:

- (1) Are received or become available without restriction to the Receiving Party under a proper, separate agreement,
- (2) Are not identified with a suitable notice or legend (subject to the cure procedures described in the definition of "Confidential and/or Proprietary Information" above),
- (3) Are lawfully in possession of the Receiving Party without such restriction to the Receiving Party at the time of disclosure thereof as demonstrated by prior written records,
- (4) Are or later become part of the public domain through no fault of the Receiving Party,
- (5) Are received by the Receiving Party from a third party having no obligation of confidentiality to the Disclosing Party that made the disclosure,
- (6) Are developed independently by the Receiving Party without use of Confidential and/or Proprietary Information as evidenced by written records,
- (7) Are required by law or regulation to be disclosed; provided, however, that the Receiving Party has provided written notice to the Disclosing Party promptly so as to enable such Disclosing Party to seek a protective order or otherwise prevent disclosure of such information.

D. Return of Confidential and/or Proprietary Information

Upon the request of the Performer, Epirus will promptly return all copies and other tangible manifestations of the Confidential and/or Proprietary Information disclosed to Epirus by the Performer. Upon request by Epirus, the Performer shall promptly return all copies and other tangible manifestations of the Confidential and/or Proprietary Information disclosed by Epirus to the Performer. As used in this Section, tangible manifestations include human readable media as well as magnetic and digital storage media. In the event that return of all tangible manifestations is not practicable, the Party may propose an alternative process to ensure the verifiable destruction of such tangible manifestations. Such alternative process must be agreed upon in writing by both parties prior to implementation.

E. Term:

The obligations of the Receiving Party under this Article shall continue for a period of five (5) years after the expiration or termination of the Project Agreement under which the information was provided.

F. Flowdown:

Epirus and the Performer shall flow down the requirements of this Article to their respective personnel, and their agents (including employees and subcontractors) at all levels, receiving such Confidential and/or Proprietary Information under this Agreement.

ARTICLE II: PATENT RIGHTS

Applicability: This Article II is only applicable to Purchase Orders and/or Subcontracts for experimental, developmental, or research work.

A. Reserved

B. Allocation of Principal Rights

1. Unless the Performer shall have notified the US Government, in accordance with subparagraph C.2 below, that the Performer does not intend to retain title, the Performer shall retain the entire right, title, and interest throughout the world to each Subject Invention consistent with the provisions of this Article.
2. With respect to any Subject Invention in which the Performer retains title, the Government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced on behalf of the United States the Subject Invention throughout the world.

C. Invention Disclosure, Election of Title, and Filing of Patent Application

1. The Performer shall disclose each Subject Invention to the US Government within four (4) months after the inventor discloses it in writing to his company personnel responsible for patent matters. The disclosure to the US Government shall be in the form of a written report and shall identify the Agreement and circumstances under which the Invention was made and the identity of the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding, to the extent known at the time of the disclosure, of the nature, purpose, operation, and the physical, chemical, biological, or electrical characteristics of the Invention. The disclosure shall also identify any publication, sale, or public use of the invention and whether a manuscript describing the Invention has been submitted and/or accepted for publication at the time of disclosure.
2. If the Performer determines that it does not intend to retain title to any such Invention, the Performer shall notify the US Government, in writing, within eight (8) months of disclosure to the US Government. However, in any case where publication, sale, or public use has initiated the one-year statutory period wherein valid patent protection can still be obtained in the United States, the period for such notice may be shortened by the US Government to a date that is no more than sixty (60) calendar days prior to the end of the statutory period.
3. The Performer shall file its initial patent application on a Subject Invention to which it elects to retain title within one (1) year after election of title or, if earlier, prior to the end of the statutory period wherein valid patent protection can be obtained in the United States after a publication, or sale, or public use. The Performer may elect to file patent applications in additional countries, including the European Patent Office and the Patent Cooperation Treaty, within either ten (10) months of the corresponding initial patent application or six (6) months from the date permission is granted by the Commissioner for Patents to file foreign patent applications, where such filing has been prohibited by a Secrecy Order.
4. The Performer shall notify the US Government of any decisions not to continue the prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceedings on a patent, in any country, not less than thirty (30) calendar days before the expiration of the response period required by the relevant patent office.
5. Requests for extension of the time for disclosure election, and filing under Article II, may be granted at the US Government discretion after considering the circumstances of the Performer and the overall effect of the extension.
6. The Performer shall submit to the US Government annual listings of Subject Inventions. At the completion of the Agreement, the Performer shall submit a comprehensive listing of all subject inventions identified during the course of the Agreement and the current status of each.

D. Conditions When the Government May Obtain Title

Upon the US Government's written request, the Performer shall convey title to any Subject Invention to the US Government under any of the following conditions:

1. If the Performer fails to disclose or elects not to retain title to the Subject Invention within the times specified in Paragraph C of this Article; however, the US Government may only request title within sixty (60) calendar days after learning of the failure of the Performer to disclose or elect within the specified times;
2. In those countries in which the Performer fails to file patent applications within the times specified in Paragraph C of this Article; however, if the Performer has filed a patent application in a country after the times specified in Paragraph C of this Article, but prior to its receipt of the written request by the US Government, the Performer shall continue to retain title in that country; or
3. In any country in which the Performer decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in reexamination or opposition proceedings on, a patent on a Subject Invention.

E. Minimum Rights to the Performer and Protection of the Performer's Right to File

1. The Performer shall retain a nonexclusive, royalty-free license throughout the world in each subject invention to which the Government obtains title, except if the Performer fails to disclose the Subject Invention within the times specified in Paragraph C of this Article. The Performer's license extends to its domestic subsidiaries and affiliates, including Canada, if any, and includes the right to grant licenses of the same scope to the extent that the Performer was legally obligated to do so at the time the Agreement was awarded. The license is transferable only with the approval of the US Government, except when transferred to the successor of that part of the business to which the Subject Invention pertains. the US Government approval for license transfer shall not be unreasonably withheld.
2. The Performer's domestic license may be revoked or modified by the US Government to the extent necessary to achieve expeditious practical application of the Subject Invention pursuant to an application for an exclusive license submitted consistent with appropriate provisions at 37 C.F.R. Part 404. This license shall not be revoked in that field of use or the geographical areas in which the Performer has achieved practical application and continues to make the benefits of the Subject Invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of the US Government to the extent the Performer, its licensees, or the subsidiaries or affiliates have failed to achieve practical application in that foreign country.
3. Before revocation or modification of the license, the US Government shall furnish the Performer a written notice of its intention to revoke or modify the license, and the Performer shall be allowed thirty (30) calendar days (or such other time as may be authorized for good cause shown) after the notice to show cause why the license should not be revoked or modified.

F. Action to Protect the Government's Interest

1. The Performer agrees to execute or to have executed and promptly deliver to the US Government all instruments necessary to (i) establish or confirm the rights the Government has throughout the world in those Subject Inventions to which the Performer elects to retain title, and (ii) convey title to the US Government when requested under Paragraph D of this Article and to enable the Government to obtain patent protection throughout the world in that Subject Invention.
2. The Performer agrees to require by written agreement with its employees, other than clerical and non-technical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the Performer each Subject Invention made under this Agreement in order that the Performer can comply with the disclosure provisions of Paragraph C of this Article. The Performer shall instruct employees, through employee agreements or other suitable educational programs, on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to United States or foreign statutory bars.
3. The Performer shall include, within the specification of any United States patent application and any patent issuing thereon covering a subject invention, the following statement:

This invention was made with Government support under Agreement No. [Insert Subcontract Number] awarded by Epirus. The Government has certain rights in the invention.

G. Lower Tier Agreements

The Performer shall include this Article, suitably modified, in all subcontracts or lower tier agreements, regardless of tier, for experimental, developmental, or research work.

H. Reporting on Utilization of Subject Inventions

1. The Performer agrees to submit, during the term of the Agreement, an annual report on the utilization of a Subject Invention or on efforts at obtaining such utilization that are being made by the Performer or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the Performer, and such other data and information as the agency may reasonably specify. The Performer also agrees to provide additional reports as may be requested by the US Government in connection with any march-in proceedings undertaken by the US Government in accordance with Paragraph J of this Article. The US Government agrees it shall not disclose such information to persons outside the Government without permission of the Performer, unless required by law.
2. All required reporting shall be submitted to the AO and Administrative Agreements Officer (AAO), where one is appointed.

I. Preference for American Industry

Notwithstanding any other provision of this clause, the Performer agrees that it shall not grant to any person the exclusive right to use or sell any Subject Invention in the United States unless such person agrees that any product embodying the Subject Invention or produced through the use of the subject invention shall be manufactured substantially in the United States. However, in individual cases, the requirements for

such an agreement may be waived by the US Government upon a showing by the Performer that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that, under the circumstances, domestic manufacture is not commercially feasible.

J. March-in Rights

The Performer agrees that, with respect to any Subject Invention in which it has retained title, the US Government has the right to require the Performer, an assignee, or exclusive licensee of a Subject Invention to grant a non-exclusive license to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the Performer, assignee, or exclusive licensee refuses such a request, the US Government has the right to grant such a license itself if the US Government determines that:

1. Such action is necessary because the Performer or assignee has not taken effective steps, consistent with the intent of this Agreement, to achieve practical application of the Subject Invention;
2. Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the Performer, assignee, or their licensees;
3. Such action is necessary to meet requirements for public use and such requirements are not reasonably satisfied by the Performer, assignee, or licensees; or
4. Such action is necessary because the agreement required by Paragraph I of this Article has not been obtained or waived or because a licensee of the exclusive right to use or sell any Subject Invention in the United States is in breach of such Agreement.

K. Opportunity to Cure

Certain provisions of this Article provide that the Government may gain title or a license to a Subject Invention by reason of the Performers action, or failure to act, within the times required by this Article. Prior to claiming such rights (including any rights under Article, Paragraph J), the Government will give written notice to the Performer of the Government's intent, and afford the Performer, a reasonable time to cure such action or failure to act. The length of the cure period will depend on the circumstances, but in no event will be more than sixty (60) days. The Performer may also use the cure period to show good cause why the claiming of such title or right would be inconsistent with the intent of this Agreement in light of the appropriate timing for introduction of the technology in question, the relative funding and participation of the parties in the development of the invention, and other factors.

L. Background Inventions

In no event shall the provisions set forth in this Article apply to any Background Inventions or Patents. The Performer or their subcontractors, shall retain the entire right, title, and interest throughout the world to each such Background Invention and Patent that each Party brings to the Project issued under this Agreement. The Performer, and its subcontractors, hereby agree that the Government's exercise of data rights received under this Agreement shall not be deemed an infringement of any Background Inventions or Patents. The Government shall not have any other rights under this Agreement to such Background Inventions and Patents. Projects to be funded under this Agreement will list Background Inventions and Patents anticipated to be used on the Project; such listing may be amended by the Parties as appropriate to reflect changes in such plans.

M. Survival Rights

Provisions of this Article shall survive termination of this Agreement.

N. Patent Rights Provisions

Rights in patents, including patents involving third parties, under this Agreement shall be determined in accordance with the following provisions:

1. Authorization and Consent. The Government authorizes and consents to all use and manufacture of any invention described in and covered by a United States patent in the performance of this agreement or any subcontract at any tier.
2. Notice and Assistance Regarding Patent and Copyright Infringement.
 - (a) The Performer shall report to the Agreements Officer, promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this agreement of which the Performer has knowledge.
 - (b) In the event of any claim or suit against the Government on account of any alleged patent or copyright infringement arising out of the performance of this agreement or out of the use of any supplies furnished or work or services performed under this agreement, the Performer shall furnish to the Government, when requested by the Agreements Officer, all evidence and information in the Performer's possession pertaining to such claim or suit. Such evidence and information shall be furnished at the expense of the Government except where the Performer has agreed to indemnify the Government.
3. Patent Indemnity.
 - (a) The Performer shall indemnify the Government and its officers, agents, and employees against liability, including costs, for infringement of any United States patent (except a patent issued upon an application that is now or may hereafter be withheld from issue pursuant to a Secrecy Order under 35 U.S.C.181) arising out of the manufacture or delivery of supplies, the performance of services, or the construction, alteration, modification, or repair of real property (hereinafter referred to as "construction work") under this agreement, or out of the use or disposal by or for the account of the Government of such supplies or construction work.

(b) This indemnity shall not apply unless the Performer shall have been informed as soon as practicable by the Government of the suit or action alleging such infringement and shall have been given such opportunity as is afforded by applicable laws, rules, or regulations to participate in its defense. Further, this indemnity shall not apply to-

- (1) An infringement resulting from compliance with specific written instructions of the Agreements Officer directing a change in the supplies to be delivered or in the materials or equipment to be used, or directing a manner of performance of the agreement not normally used by the Performer;
- (2) An infringement resulting from addition to or change in supplies or components furnished or construction work performed that was made subsequent to delivery or performance; or
- (3) A claimed infringement that is unreasonably settled without the consent of the Performer, unless required by final decree of a court of competent jurisdiction.

(c) This patent indemnification shall not apply to the following items:

N/A [Agreements Officer list and/or identify the items to be excluded from this indemnity.]

4. Filing of Patent Applications – Classified Subject Matter.

(a) Before filing or causing to be filed a patent application in the United States disclosing any subject matter of this agreement classified “Secret” or higher, the Performer shall, citing the 30-day provision below, transmit the proposed application to the Agreements Officer. The Government shall determine whether, for reasons of national security, the application should be placed under an order of secrecy, sealed in accordance with the provision of 35 U.S.C.181-188, or the issuance of a patent otherwise delayed under pertinent United States statutes or regulations. The Performer shall observe any instructions of the Agreements Officer regarding the manner of delivery of the patent application to the United States Patent Office, but the Performer shall not be denied the right to file the application. If the Agreements Officer shall not have given any such instructions within 30 days from the date of mailing or other transmittal of the proposed application, the Performer may file the application.

(b) Before filing a patent application in the United States disclosing any subject matter of this agreement classified “Confidential,” the Performer shall furnish to the Agreements Officer a copy of the application for Government determination whether, for reasons of national security, the application should be placed under an order of secrecy or the issuance of a patent should be otherwise delayed under pertinent United States statutes or regulations.

(c) Where the subject matter of this agreement is classified for reasons of security, the Performer shall not file, or cause to be filed, in any country other than in the United States as provided in paragraphs (a) and (b) of this provision, an application or registration for a patent containing any of the subject matter of this agreement without first obtaining written approval of the Agreements Officer.

(d) When filing any patent application coming within the scope of this provision, the Performer shall observe all applicable security regulations covering the transmission of classified subject matter and shall promptly furnish to the Agreements Officer the serial number, filing date, and name of the country of any such application. When transmitting the application to the United States Patent Office, the Performer shall by separate letter identify by agency and number the agreement or contracts that require security classification markings to be placed on the application.

(e) The Performer shall include the substance of this provision, including this paragraph (e), in all subcontracts that cover or are likely to cover classified subject matter.

ARTICLE III: DATA RIGHTS

A. General

The Government shall receive Unlimited Rights to all technical data, computer software, and documentation developed or delivered under this Agreement, or pertaining to any item, component, or process developed or delivered under this Agreement, except for the technical data and computer software that was previously developed at private expense.

B. Data Rights Provisions

1. Rights in Technical Data – Noncommercial Items

Applicability: This provision, Rights in Technical Data – Non Commercial Items, is applicable only to Purchase Orders and/or Subcontracts where the Seller is required to develop or deliver technical data pertaining to noncommercial products or commercial services.

(a) *Definitions.* As used:

- (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) "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.
- (6) "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 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.
- (7) "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.
- (8) "Developed exclusively with government funds" means development was not accomplished exclusively or partially at private expense.
- (9) "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.
- (10) "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.
- (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 technical data 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 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.
- (13) "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 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 reproduction, release, disclosure, or use is—
- (i) Necessary for emergency repair and overhaul; or
 - (ii) A release or disclosure of technical data (other than detailed manufacturing or process data) to, or use of such data by, a foreign government that is in the interest of the Government and is required for evaluational or informational purposes;
 - (iii) Subject to a prohibition on the further reproduction, release, disclosure, or use of the technical data; and
 - (iv) The performer or subcontractor asserting the restriction is notified of such reproduction, release, disclosure, or use.
- (14) "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.
- (15) "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 Performer 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 provision of this agreement 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 agreement, 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 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 Performer by the Government;
- (vii) Otherwise publicly available or have been released or disclosed by the Performer 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 agreement or as a result of negotiations; or
- (ix) Data furnished to the Government, under this or any other Government contract or agreement 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 Performer'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)(ii) and (b)(iv) through (b)(ix) of this clause; or
 - (B) Created with mixed funding in the performance of a contract or agreement 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 agreement, 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—
 - (A) Prior to release or disclosure, the intended recipient is subject to the non-disclosure agreement; or
 - (B) The recipient is a Government contractor receiving access to the data for performance of a Government contract that contains "Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends."
- (iv) The Performer 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 agreement 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 provision, 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 provision; or

(B) Created exclusively at private expense in the performance of a contract or agreement 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 Performer that the data have been destroyed.

(iii) The Performer, 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 Performer agrees to promptly enter into negotiations with the Agreements Officer to determine whether there are acceptable terms for transferring such rights. All technical data in which the Performer has granted the Government additional rights shall be listed or described in a license agreement made part of the agreement. The license shall enumerate the additional rights granted the Government in such data.

(4) Specifically negotiated license rights. The standard license rights granted to the Government under paragraphs (b)(1) through (b)(3) of this provision, 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)(13) of this provision. Any rights so negotiated shall be identified in a license agreement made part of this agreement.

(5) Prior government rights. Technical data that will be delivered, furnished, or otherwise provided to the Government under this agreement, 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 Performer agrees to release the Government from liability for any release or disclosure of technical data made in accordance with paragraph (a)(13) or (b)(2)(iii) of this provision, in accordance with the terms of a license negotiated under paragraph (b)(4) of this provision, 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 Performer data marked with restrictive legends.

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

(d) *Third party copyrighted data*. The Performer shall not, without the written approval of the Agreements Officer, incorporate any copyrighted data in the technical data to be delivered under this agreement unless the Performer 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 provision, 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 provision, technical data that the Performer asserts should be furnished to the Government with restrictions on use, release, or disclosure are identified in a separate attachment to this agreement. The Performer 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 Agreements Officer as soon as practicable prior to the scheduled date for delivery of the data, in the same format as the Attachment, and signed by an official authorized to contractually obligate the Performer.

(4) When requested by the Agreement Officer, the Performer shall provide sufficient information to enable the Agreements Officer to evaluate the Performer's assertions. The Agreements Officer reserves the right to add the Performer'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 provision of this agreement.

(f) *Marking requirements*. The Performer, 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 agreement by marking the deliverable data subject to restriction. Except as provided in paragraph (f)(5) of this provision, only the following legends are authorized under this agreement: the government purpose rights legend at paragraph (f)(2) of this provision; the limited rights legend at paragraph (f)(3) of this provision; or the special license rights legend at paragraph (f)(4) of this provision; and/or a notice of copyright as prescribed under 17 U.S.C. 401 or 402.

(1) General marking instructions. The Performer, 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

Agreement No.
Performer Name
Performer 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 provision contained in the above identified agreement. No restrictions apply after the expiration date shown above. Any reproduction of technical data or portions thereof marked with this legend must also reproduce the markings.

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

LIMITED RIGHTS

Agreement No.
Performer Name
Performer 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 provision contained in the above identified agreement. 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 Performer.

(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 Agreement No. ____ (Insert agreement number) ____, License No. ____ (Insert license identifier) ____. Any reproduction of technical data or portions thereof marked with this legend must also reproduce the markings.

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

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

(g) Performer procedures and records. Throughout performance of this agreement, the Performer 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 provision; and

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

(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 agreement are contained in the Validation of Restrictive Markings on Technical Data provision of this agreement. Notwithstanding any provision of this agreement concerning inspection and acceptance, the Government may ignore or, at the Performer's expense, correct or strike a marking if, in accordance with the procedures in the Validation of Restrictive Markings on Technical Data provision of this agreement, 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 agreement that is not in the format authorized by this agreement. Correction of nonconforming markings is not subject to the Validation of Restrictive Markings on Technical Data provision of this agreement. If the Agreements Officer notifies the Performer of a nonconforming marking and the Performer fails to remove or correct such marking within sixty (60) days, the Government may ignore or, at the Performer's expense, remove or correct any nonconforming marking.

(i) *Relation to patents.* Nothing contained in this provision 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 Performer shall not charge to this agreement any cost, including, but not limited to, license fees, royalties, or similar charges, for rights in technical data to be delivered under this agreement 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 provision—

(i) Includes costs charged by a subcontractor or supplier, at any tier, or costs incurred by the Performer 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 Performer 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 provision are recognized and protected.

(2) Whenever any technical data for noncommercial items is to be obtained from a subcontractor or supplier for delivery to the Government under this agreement, the Performer shall use this same provision in the subcontract or other contractual instrument, and require its subcontractors or suppliers to do so, without alteration, except to identify the parties. No other provision shall be used to enlarge or diminish the Government's, the Performer'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 performer, subcontractor, or supplier. However, when there is a requirement in the prime agreement 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 performer, subcontractor, or supplier.

(4) The Performer 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 Performer 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.

(l) *Publication for sale.*

(1) This paragraph only applies to technical data in which the Government has obtained unlimited rights or a license to make an unrestricted release of technical data.

(2) The Government shall not publish a deliverable technical data item or items identified in this agreement as being subject to paragraph (l) of this provision or authorize others to publish such data on its behalf if, prior to publication for sale by the Government and within twenty-four (24) months following the date specified in this agreement for delivery of such data or the removal of any national security or export control restrictions, whichever is later, the Performer publishes that item or items for sale and promptly notifies the Agreements Officer of such publication(s). Any such publication shall include a notice identifying the number of this agreement and the Government's rights in the published data.

(3) This limitation on the Government's right to publish for sale shall continue as long as the data are reasonably available to the public for purchase.

2. Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation

Applicability: This clause is applicable only to Purchase Orders and/or Subcontracts where the Seller is required to develop or deliver noncommercial computer software or computer software documentation.

(a) Definitions. —

- (1) "Commercial computer software" means software developed or regularly used for nongovernmental 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 agreement; or
 - (iv) Satisfies a criterion expressed in paragraph (a)(1)(i), (ii), or (iii) and would require only minor modification to meet the requirements of this agreement.
- (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) 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 Performer—
 - (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, 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;
 - (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) "Other than commercial computer software" means software that does not qualify as commercial computer software under the definition of "commercial computer software".

(15) "Restricted rights" apply only to other than commercial 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 agreement;

(ii) Transfer a computer program to another Government agency without the further permission of the Performer 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;

(iii) Make a reasonable number of copies of the computer software required for the purposes of safekeeping (archive), backup, or modification, or other activities authorized in paragraphs (a)(15)(i), (ii), and (iv) through (vii);

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

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

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

(v) Use, and permit contractors or subcontractors performing service contracts (see 37.101 of the Federal Acquisition Regulation) in support of this or a related agreement/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 any such release or disclosure to particular contractors or subcontractors was made;

(B) Such contractors or subcontractors are subject to the use and nondisclosure agreement at or are Government contractors receiving access to the software for performance of a Government contract containing "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), for any other purpose; and

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

(vi) Use, and 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 emergency repairs or overhaul, or to modify the computer software to reflect the repairs or overhaul made, provided that—

(A) The intended recipient is subject to the use and nondisclosure agreement or is a Government contractor receiving access to the software for performance of a Government contract that contains "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), for any other purpose; and

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

(vii) Use, modify, reproduce, perform, display, or release or disclose computer software to a person authorized to receive restricted rights computer software for management and oversight of a program or effort, and permit covered Government support contractors in the performance of covered Government support contracts that contains "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) , for any other purpose; and

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

(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 Performer grants or shall obtain for the Government the following royalty free, worldwide, nonexclusive, irrevocable license rights in other than commercial computer software or computer software documentation. All rights not granted to the Government are retained by the Performer.

(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 agreement;

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

(iv) Computer software or computer software documentation that is otherwise publicly available or has been released or disclosed by the Performer 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;

(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/agreement 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 Performer'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) , 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 agreement, 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; or

(B) The recipient is a Government contractor receiving access to the software or documentation for performance of a Government contract that contains , "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 other than commercial computer software required to be delivered or otherwise provided to the Government under this agreement that were developed exclusively at private expense.

(ii) The Performer, its subcontractors, or suppliers are not required to provide the Government additional rights in other than commercial 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 Performer agrees to promptly enter into negotiations with the Agreements Officer to determine whether there are acceptable terms for transferring such rights. All other than commercial computer software in which the Performer has granted the Government additional rights shall be listed or described in a license agreement made part of the agreement (see paragraph (b)(4)). The license shall enumerate the additional rights granted the Government.

(iii) The Performer acknowledges that—

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

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

(C) The Performer (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 Performer (or the party asserting restrictions) regarding the covered Government support contractor's use of such software, or alternatively, that the Performer (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, "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), 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 the definition of "restricted rights" or lesser rights in computer software documentation than are enumerated in paragraph (a)(14) of the Rights in Technical Data—Other Than Commercial Products and Commercial Services provision of this agreement.

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

(5) Prior government rights. Computer software or computer software documentation that will be delivered, furnished, or otherwise provided to the Government under this agreement, in which the Government has previously obtained rights shall be delivered, furnished, or provided with the preexisting 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 Performer 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), in accordance with the terms of a license negotiated under paragraph (b)(4), 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 Performer 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 agreement that the Performer uses to prepare, or includes in, derivative computer software or computer software documentation.

(d) Third party copyrighted computer software or computer software documentation. The Performer shall not, without the written approval of the Agreements Officer, incorporate any copyrighted computer software or computer software documentation in the software or documentation to be delivered under this agreement unless the Performer 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) , and prior to delivery of such—

(1) Computer software, has provided a statement of the license rights obtained in a form acceptable to the Agreements 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), computer software that the Performer asserts should be furnished to the Government with restrictions on use, release, or disclosure is identified in a separate attachment to this agreement. The Performer 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 Agreements Officer as soon as practicable prior to the scheduled date for delivery of the software, in the same format as the Attachment, and signed by an official authorized to contractually obligate the Performer.

(4) When requested by the Agreements Officer, the Performer shall provide sufficient information to enable the Agreements Officer to evaluate the Performer's assertions. The Agreements Officer reserves the right to add the Performer'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"

(f) Marking requirements. The Performer, 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), only the following legends are authorized under this agreement: the government purpose rights legend at paragraph (f)(2); the restricted rights legend at paragraph (f)(3); or the special license rights legend at paragraph (f)(4); and/or a notice of copyright as prescribed under 17 U.S.C. 401 or 402.

(1) General marking instructions. The Performer, 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 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 Agreements 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

Agreement No.
Performer Name
Performer 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 Other Than Commercial Computer Software and Other Than Commercial Computer Software Documentation" provision contained in the above identified agreement. 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.

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

RESTRICTED RIGHTS

Agreement No.
Performer Name
Performer 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 Other Than Commercial Computer Software and Other Than Commercial Computer Software Documentation" contained in the above identified agreement. Any reproduction of computer software or portions thereof marked with this legend must also reproduce the markings. Any person, other than the Government, who has been provided access to such software must promptly notify the above named Performer.

(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 Agreement No. ____ (Insert agreement 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, special licenses do not include government purpose license rights acquired under a prior contract (see paragraph (b)(5)).

(5) Pre-existing markings. If the terms of a prior contract or license permitted the Performer 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 Performer 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) shall be followed.

(g) Performer procedures and records. Throughout performance of this agreement, the Performer 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; and
- (2) Maintain records sufficient to justify the validity of any restrictive markings on computer software or computer software documentation delivered under this agreement.

(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 agreement are contained in the "Validation of Asserted Restrictions—Computer Software" and the "Validation of Restrictive Markings on Technical Data" provisions of this agreement, respectively. Notwithstanding any provision of this agreement concerning inspection and acceptance, the Government may ignore or, at the Performer's expense, correct or strike a marking if, in accordance with the procedures of those listed statements, 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 agreement that is not in the format authorized by this agreement. Correction of nonconforming markings is not subject to the "Validation of Asserted Restrictions—Computer Software" or the "Validation of Restrictive Markings on Technical Data" provisions of this agreement. If the Agreements Officer notifies the Performer of a nonconforming marking or markings and the Performer fails to remove or correct such markings within sixty (60) days, the Government may ignore or, at the Performer's expense, remove or correct any nonconforming markings.

(i) Relation to patents. Nothing contained 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 Performer shall not charge to this agreement 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 agreement 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) —

- (i) Includes costs charged by a subcontractor or supplier, at any tier, or costs incurred by the Performer 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 other than commercial computer software or computer software documentation is to be obtained from a subcontractor or supplier for delivery to the Government under this agreement, the Performer shall use this same subject statement 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 provision shall be used to enlarge or diminish the Government's, the Performer's, or a higher tier subcontractor's or supplier's rights in a subcontractor's or supplier's computer software or computer software documentation.

(2) The Performer 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 Performer shall ensure that subcontractor or supplier rights are recognized and protected in the identification, assertion, and delivery processes required by paragraph (e).

(4) In no event shall the Performer 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.

3. Technical Data — Commercial Products and Commercial Services

Applicability: This clause is applicable only to Purchase Orders and/or Subcontracts where the Seller is required to deliver any technical data related to commercial products or commercial services developed in any part at private expense.

(a) Definitions. —

(1) Commercial product and commercial service includes commercial components and commercial processes but does not include commercial computer software.

(2) "Covered Government support contractor" means a contractor (other than a litigation support contractor covered) 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 "Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends."

(3) "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.

(4) "Technical data" means recorded information, regardless of the form or method of recording, of a scientific or technical nature (including computer software documentation). The term does not include computer software or financial, administrative, cost or pricing, or management information, or information incidental to contract administration.

(b) License.

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

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

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

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

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

(v) Have been provided to the Government under a prior contract or licensing agreement through which the Government has acquired the rights to use, modify, reproduce, release, perform, display, or disclose the data without restrictions.

(2) Except as provided in paragraph (b)(1), the Government may use, modify, reproduce, release, perform, display, or disclose technical data within the Government only. The Government shall not—

(i) Use the technical data to manufacture additional quantities of the commercial products; or (ii) Release, perform, display, disclose, or authorize use of the technical data outside the Government without the Performer's written permission unless a release, disclosure, or permitted use is necessary for emergency repair or overhaul of the commercial products furnished under this contract, or for performance of work by covered Government support contractors.

(3) The Performer acknowledges that—

(i) Technical data covered by paragraph (b)(2) are authorized to be released or disclosed to covered Government support contractors;

(ii) The Performer will be notified of such release or disclosure;

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

(iv) Any such non-disclosure agreement shall address the restrictions on the covered Government support contractor's use of the data as set forth in "Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends." The nondisclosure agreement shall not include any additional terms and conditions unless mutually agreed to by the parties to the non-disclosure agreement.

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

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

(e) Applicability to subcontractors or suppliers.

(1) The Performer shall recognize and protect the rights afforded its subcontractors and suppliers under 10 U.S.C. 3771-3775 and 10 U.S.C. 3781-3786.

(2) Whenever any technical data related to commercial products or commercial services developed in any part at private expense will be obtained from a subcontractor or supplier for delivery to the Government under this agreement, the Performer shall use this same subject statement in the subcontract or other contractual instrument, including subcontracts and other contractual instruments for commercial products or commercial services, and require its subcontractors or suppliers to do so, without alteration, except to identify the parties. This statement will govern the technical data pertaining to any portion of a commercial product or commercial service that was developed exclusively at private expense, and the provision at Article III (1), "Rights in Technical Data – Noncommercial Items," will govern the technical data pertaining to any portion of a commercial product or commercial service that was developed in any part at Government expense.

4. Technical Data – Commercial Items

Applicability: This Article is only applicable to Purchase Orders and/or Subcontracts where the Seller is required to deliver any technical data related to commercial items, as defined in FAR 2.101.

(a) Definitions. As used:

(1) "Commercial item" does not include commercial computer software.

(2) "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.

(3) The term "item" includes components or processes.

(4) "Technical data" means recorded information, regardless of the form or method of 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.

(b) License.

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

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

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

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

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

(v) Have been provided to the Government under a prior contract or licensing agreement through which the Government has acquired the rights to use, modify, reproduce, release, perform, display, or disclose the data without restrictions.

(2) Except as provided in paragraph (b)(1), the Government may use, modify, reproduce, release, perform, display, or disclose technical data within the Government only. The Government shall not—

(i) Use the technical data to manufacture additional quantities of the commercial items; or

(ii) Release, perform, display, disclose, or authorize use of the technical data outside the Government without the Performer's written permission unless a release, disclosure or permitted use is necessary for emergency repair or overhaul of the commercial items furnished under this agreement.

(c) Additional license rights. The Performer, its subcontractors, and suppliers are not required to provide the Government additional rights to use, modify, reproduce, release, perform, display, or disclose technical data. However, if the Government desires to obtain additional rights in technical data, the Performer agrees to promptly enter into negotiations with the Agreements Officer to determine whether there are acceptable terms for transferring such rights. All technical data in which the Performer has granted the Government

additional rights shall be listed or described in a special license agreement made part of this agreement. The license shall enumerate the additional rights granted the Government in such data.

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

5. Rights in Bid or Proposal Information

(a) Definitions.

(1) For agreements that require the delivery of technical data, the terms "technical data" and "computer software" are defined in the "Rights in Technical Data--Noncommercial Item" provision of this agreement.

(2) For agreements that do not require the delivery of technical data, the term "computer software" is defined in the "Rights in Noncommercial Computer and Noncommercial Computer Software Documentation" provision of this agreement.

(b) Government rights prior to agreement award. By submission of its offer, the Performer agrees that the Government—

(1) May reproduce the bid or proposal, or any portions thereof, to the extent necessary to evaluate the offer.

(2) Except as provided in paragraph (d), shall use information contained in the bid or proposal only for evaluational purposes and shall not disclose, directly or indirectly, such information to any person including potential evaluators, unless that person has been authorized by the head of the agency, his or her designee, or the Agreements Officer to receive such information.

(c) Government rights subsequent to agreement award. The Performer agrees—

(1) Except as provided in paragraphs (c)(2), (d), and (e), the Government shall have the rights to use, modify, reproduce, release, perform, display, or disclose information contained in the Performer's bid or proposal within the Government. The Government shall not release, perform, display, or disclose such information outside the Government without the Performer's written permission.

(2) The Government's right to use, modify, reproduce, release, perform, display, or disclose information that is technical data or computer software required to be delivered under this agreement are determined by the "Rights in Technical Data--Noncommercial Items" or the "Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation" provisions of this agreement.

(d) Government-furnished information. The Government's rights with respect to technical data or computer software contained in the Performer's bid or proposal that were provided to the Performer by the Government are subject only to restrictions on use, modification, reproduction, release, performance, display, or disclosure, if any, imposed by the developer or licensor of such data or software.

(e) Information available without restrictions. The Government's rights to use, modify, reproduce, release, perform, display, or disclose information contained in a bid or proposal, including technical data or computer software, and to permit others to do so, shall not be restricted in any manner if such information has been released or disclosed to the Government or to other persons without restrictions other than a release or disclosure resulting from the sale, transfer, or other assignment of interest in the information to another party or the sale or transfer of some or all of a business entity or its assets to another party.

(f) Flowdown. The Performer shall include all subcontracts or similar contractual instruments and require its subcontractors or suppliers to do so without alteration, except to identify the parties.

6. Identification and Assertion of Use, Release, or Disclosure Restrictions

Applicability: This provision is only applicable to Purchase Orders and/or Subcontracts where the Seller will be providing other than commercial technical data, including computer software documentation, or computer software to be delivered with other than unlimited rights.

(a) The terms used in this provision are defined contained in this agreement —

(1) If a selected Performer will be required to deliver technical data, the "Rights in Technical Data--Noncommercial Items" provision of this agreement.

(2) If a selected Performer will not be required to deliver technical data, "the Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation" provision of this agreement.

(b) The identification and assertion requirements in this provision apply only to technical data, including computer software documentation, or computer software to be delivered with other than unlimited rights. Notification and identification is not required for restrictions based solely on copyright.

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

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

(e) If the Performer is awarded an agreement, the assertions identified in paragraph (d) of this provision shall be listed in an attachment to that agreement. Upon request by the Agreements Officer, the Performer shall provide sufficient information to enable the Agreements Officer to evaluate any listed assertion.

7. Validation of Asserted Restrictions – Computer Software

Applicability: This provision is only applicable to Purchase Orders and/or Subcontracts where the Seller will be furnishing other than commercial computer software.

(a) Definitions.

(1) "Performer" means the Performer and its subcontractors or suppliers.

(2) Other terms used are defined in the "Rights in Other Than Commercial Computer Software and Other Than Commercial Computer Software Documentation" provision of this agreement.

(b) Justification. The Performer shall maintain records sufficient to justify the validity of any markings that assert restrictions on the Government's rights to use, modify, reproduce, perform, display, release, or disclose computer software delivered or required to be delivered under this agreement and shall be prepared to furnish to the Agreements Officer a written justification for such restrictive markings in response to a request for information under paragraph (d) or a challenge under paragraph (f).

(c) Direct contact with subcontractors or suppliers. The Performer agrees that the Agreements Officer may transact matters directly with subcontractors or suppliers at any tier who assert restrictions on the Government's right to use, modify, reproduce, release, perform, display, or disclose computer software. Neither this subject statement, nor any action taken by the Government under this subject statement, creates or implies privity of contract between the Government and the Performer's subcontractors or suppliers.

(d) Requests for information.

(1) The Agreements Officer may request the Performer to provide sufficient information to enable the Agreements Officer to evaluate the Performer's asserted restrictions. Such information shall be based upon the records required or other information reasonably available to the Performer.

(2) Based upon the information provided, if the—

(i) Performer agrees that an asserted restriction is not valid, the Agreements Officer may—

(A) Strike or correct the unjustified marking at the Performer's expense; or

(B) Return the computer software to the Performer for correction at the Performer's expense. If the Performer fails to correct or strike the unjustified restriction and return the corrected software to the Agreements Officer within sixty (60) days following receipt of the software, the Agreements Officer may correct or strike the markings at that Performer's expense.

(ii) Agreements Officer concludes that the asserted restriction is appropriate for this agreement, the Agreements Officer shall so notify the Performer in writing.

(3) The Performer's failure to provide a timely response to an Agreements Officer's request for information or failure to provide sufficient information to enable the Agreements Officer to evaluate an asserted restriction shall constitute reasonable grounds for questioning the validity of an asserted restriction.

(e) Government right to challenge and validate asserted restrictions.

(1) The Government, when there are reasonable grounds to do so, has the right to review and challenge the validity of any restrictions asserted by the Performer on the Government's rights to use, modify, reproduce, release, perform, display, or disclose computer software delivered, to be delivered under this agreement, or otherwise provided to the Government in the performance of this agreement. Except for software that is publicly available, has been furnished to the Government without restrictions, or has been otherwise made available without restrictions, the Government may exercise this right only within three years after the date(s) the software is delivered or otherwise furnished to the Government, or three years following final payment under this agreement, whichever is later.

(2) The absence of a challenge to an asserted restriction shall not constitute validation. Only an Agreements Officer's final decision or actions of an agency Board of Contract Appeals or a court of competent jurisdiction that sustain the validity of an asserted restriction constitute validation of the restriction.

(f) Challenge procedures.

(1) A challenge must be in writing and shall—

(i) State the specific grounds for challenging the asserted restriction;

(ii) Require the Performer to respond within sixty (60) days;

(iii) Require the Performer to provide justification for the assertion based upon records kept in accordance with paragraph (b) and such other documentation that are reasonably available to the Performer, in sufficient detail to enable the Agreements Officer to determine the validity of the asserted restrictions; and

(iv) State that an Agreements Officer's final decision, during the three-year period preceding this challenge, or action of a court of competent jurisdiction or Board of Contract Appeals that sustained the validity of an identical assertion made by the Performer (or a licensee) shall serve as justification for the asserted restriction.

(2) The Agreements Officer shall extend the time for response if the Performer submits a written request showing the need for additional time to prepare a response.

(3) The Agreements Officer may request additional supporting documentation if, in the Agreements Officer's opinion, the Performer's explanation does not provide sufficient evidence to justify the validity of the asserted restrictions. The Performer agrees to promptly respond to the Agreements Officer's request for additional supporting documentation.

(4) Notwithstanding challenge by the Agreements Officer, the parties may agree on the disposition of an asserted restriction at any time prior to an Agreements Officer's final decision or, if the Performer has appealed that decision, filed suit, or provided notice of an intent to file suit, at any time prior to a decision by a court of competent jurisdiction or Board of Contract Appeals.

(5) If the Performer fails to respond to the Agreements Officer's request for information or additional information under paragraph (f)(1), the Agreements Officer shall issue a final decision, in accordance with the Disputes Article of this agreement, pertaining to the validity of the asserted restriction.

(6) If the Agreements Officer, after reviewing any available information pertaining to the validity of an asserted restriction, determines that the asserted restriction has—

(i) Not been justified, the Agreements Officer shall issue promptly a final decision, in accordance with the Disputes Article of this agreement, denying the validity of the asserted restriction; or

(ii) Been justified, the Agreements Officer shall issue promptly a final decision, in accordance with the Disputes Article of this agreement, validating the asserted restriction.

(7) A Performer receiving challenges to the same asserted restriction(s) from more than one Agreements or Contracting Officer shall notify each Agreements or Contracting Officer of the other challenges. The notice shall also state which Agreements or Contracting Officer initiated the first in time unanswered challenge. The Agreements or Contracting Officer who initiated the first in time unanswered challenge, after consultation with the other Agreements or Contracting Officers who have challenged the restrictions and the Performer, shall formulate and distribute a schedule that provides the Performer a reasonable opportunity for responding to each challenge.

(g) Performer appeal—Government obligation.

(1) The Government agrees that, notwithstanding an Agreements Officer's final decision denying the validity of an asserted restriction and except as provided in paragraph (g)(3), it will honor the asserted restriction—

(i) For a period of ninety (90) days from the date of the Agreements Officer's final decision to allow the Performer to appeal to the appropriate Board of Contract Appeals or to file suit in an appropriate court;

(ii) For a period of one year from the date of the Agreements Officer's final decision if, within the first ninety (90) days following the Agreements Officer's final decision, the Performer has provided notice of an intent to file suit in an appropriate court; or

(iii) Until final disposition by the appropriate Board of Contract Appeals or court of competent jurisdiction, if the Performer has:

(A) appealed to the Board of Contract Appeals or filed suit in an appropriate court within ninety (90) days; or

(B) submitted, within ninety (90) days, a notice of intent to file suit in an appropriate court and filed suit within one year.

(2) The Performer agrees that the Government may strike, correct, or ignore the restrictive markings if the Performer fails to—

(i) Appeal to a Board of Contract Appeals within ninety (90) days from the date of the Agreements Officer's final decision;

(ii) File suit in an appropriate court within ninety (90) days from such date; or

(iii) File suit within one year after the date of the Agreements Officer's final decision if the Performer had provided notice of intent to file suit within ninety (90) days following the date of the Agreements Officer's final decision.

(3) The agency head, on a nondelegable basis, may determine that urgent or compelling circumstances do not permit awaiting the filing of suit in an appropriate court, or the rendering of a decision by a court of competent jurisdiction or Board of Contract Appeals. In that event, the agency head shall notify the Performer of the urgent or compelling circumstances. Notwithstanding paragraph (g)(1), the Performer agrees that the agency may use, modify, reproduce, release, perform, display, or disclose computer software marked with (i) government purpose legends for any purpose, and authorize others to do so; or (ii) restricted or special license rights for government purposes only. The Government agrees not to release or disclose such software unless, prior to release or disclosure, the intended recipient is subject to the use and non-disclosure agreement or is a Government

contractor receiving access to the software for performance of a Government contract, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends. The agency head's determination may be made at any time after the date of the Agreements Officer's final decision and shall not affect the Performer's right to damages against the United States, or other relief provided by law, if its asserted restrictions are ultimately upheld.

(h) Final disposition of appeal or suit. If the Performer appeals or files suit and if, upon final disposition of the appeal or suit, the Agreements Officer's decision is:

(1) Sustained—

(i) Any restrictive marking on such computer software shall be struck or corrected at the Performer's expense or ignored; and

(ii) If the asserted restriction is found not to be substantially justified, the Performer shall be liable to the Government for payment of the cost to the Government of reviewing the asserted restriction and the fees and other expenses (as defined in 28 U.S.C. 2412(d)(2)(A)) incurred by the Government in challenging the restriction, unless special circumstances would make such payment unjust.

(2) Not sustained—

(i) The Government shall be bound by the asserted restriction; and

(ii) If the challenge by the Government is found not to have been made in good faith, the Government shall be liable to the Performer for payment of fees and other expenses (as defined in 28 U.S.C. 2412(d)(2)(A)) incurred by the Performer in defending the restriction.

(i) Flowdown. The Performer shall insert this provision in all contracts, purchase orders, and other similar instruments with its subcontractors or suppliers, at any tier, who will be furnishing computer software to the Government in the performance of this agreement. The provision may not be altered other than to identify the appropriate parties.

8. Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends

Applicability: This provision is applicable only to Purchase Orders and/or Subcontracts where Government-furnished technical data or computer software marked with restrictive legends is provided.

(a) (1) For agreements requiring the delivery of technical data, the terms "limited rights" and "Government purpose rights" are defined in the "Rights in Technical Data--Noncommercial Items" provision of this agreement.

(2) For agreements that do not require the delivery of technical data, the terms "government purpose rights" and "restricted rights" are defined in the "Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation" provision of this agreement.

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

(1) GFI marked with limited or restricted rights legends. The Performer shall use, modify, reproduce, perform, or display technical data received from the Government with limited rights legends or computer software received with restricted rights legends only in the performance of this agreement. The Performer shall not, without the express written permission of the party whose name appears in the legend, release or disclose such data or software to any person.

(2) GFI marked with government purpose rights legends. The Performer shall use technical data or computer software received from the Government with government purpose rights legends for government purposes only. The Performer shall not, without the express written permission of the party whose name appears in the restrictive legend, use, modify, reproduce, release, perform, or display such data or software for any commercial purpose or disclose such data or software to a person other than its subcontractors, suppliers, or prospective subcontractors or suppliers, who require the data or software to submit offers for, or perform, contracts under this agreement. Prior to disclosing the data or software, the Performer shall require the persons to whom disclosure will be made to complete and sign the non-disclosure agreement.

(3) GFI marked with specially negotiated license rights legends. The Performer shall use, modify, reproduce, release, perform, or display technical data or computer software received from the Government with specially negotiated license legends only as permitted in the license. Such data or software may not be released or disclosed to other persons unless permitted by the license and, prior to release or disclosure, the intended recipient has completed the non-disclosure agreement. The Performer shall modify paragraph (1)(c) of the non-disclosure agreement to reflect the recipient's obligations regarding use, modification, reproduction, release, performance, display, and disclosure of the data or software.

(c) Indemnification and creation of third party beneficiary rights. The Performer agrees—

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

(2) That the party whose name appears on the restrictive legend, in addition to any other rights it may have, is a third party beneficiary who has the right of direct action against the Performer, or any person to whom the Performer has released or

disclosed such data or software, for the unauthorized duplication, release, or disclosure of technical data or computer software subject to restrictive legends.

9. Deferred Ordering of Technical Data or Computer Software

Applicability: This provision is only applicable to Purchase Orders and/or Subcontracts where the Seller will be generating or delivering any technical data or computer software.

In addition to technical data or computer software specified elsewhere in this agreement to be delivered hereunder, the Government may, at any time during the performance of this agreement or within a period of three (3) years after acceptance of all items (other than technical data or computer software) to be delivered under this agreement or the termination of this agreement, order any technical data or computer software generated in the performance of this agreement or any subcontract hereunder. When the technical data or computer software is ordered, the Performer shall be compensated for converting the data or computer software into the prescribed form, for reproduction and delivery. The obligation to deliver the technical data of a subcontractor and pertaining to an item obtained from him shall expire three (3) years after the date the Performer accepts the last delivery of that item from that subcontractor under this agreement. The Government's rights to use said data or computer software shall be pursuant to the "Rights in Technical Data and Computer Software" provision of this agreement.

10. Technical Data – Withholding of Payment

Applicability: This provision is only applicable to Purchase Orders and/or Subcontracts where the Seller will be delivering any noncommercial technical data under this Agreement.

(a) If technical data specified to be delivered under this agreement, is not delivered within the time specified by this agreement or is deficient upon delivery (including having restrictive markings not identified in the list described in the clause at the "Rights in Technical Data – Noncommercial Items" provision of this agreement, the Agreements Officer may, until such data is accepted by the Government, withhold payment to the Performer of ten percent (10%) of the total agreement price or amount unless a lesser withholding is specified in the agreement. Payments shall not be withheld nor any other action taken pursuant to this paragraph when the Performer's failure to make timely delivery or to deliver such data without deficiencies arises out of causes beyond the control and without the fault or negligence of the Performer.

(b) The withholding of any amount or subsequent payment to the Performer shall not be construed as a waiver of any rights accruing to the Government under this agreement.

11. Validation of Restrictive Markings on Technical Data

Applicability: This provision is only applicable when the Seller will be delivering any noncommercial technical data with restrictions under this Agreement.

The Performer or subcontractor agrees to insert this in contractual instruments with its subcontractors or suppliers at any tier requiring the delivery of technical data, except contractual instruments for commercial items or commercial components.

(a) Definitions. The terms used are defined in the "Rights in Technical Data—Noncommercial Items" provision of this agreement.

(b) Agreements or Contracts for commercial items--presumption of development at private expense. Under an agreement or contract for a commercial item, component, or process, the Department of Defense shall presume that a Performer's asserted use or release restrictions are justified on the basis that the item, component, or process was developed exclusively at private expense. The Department shall not challenge such assertions unless information the Department provides demonstrates that the item, component, or process was not developed exclusively at private expense.

(c) Justification. The Performer or subcontractor at any tier is responsible for maintaining records sufficient to justify the validity of its markings that impose restrictions on the Government and others to use, duplicate, or disclose technical data delivered or required to be delivered under the agreement or subcontract. Except under agreements or contracts for commercial items, the Performer or subcontractor shall be prepared to furnish to the Agreements Officer a written justification for such restrictive markings in response to a challenge under paragraph (e).

(d) Prechallenge request for information.

(1) The Agreements Officer may request the Performer or subcontractor to furnish a written explanation for any restriction asserted by the Performer or subcontractor on the right of the United States or others to use technical data. If, upon review of the explanation submitted, the Agreements Officer remains unable to ascertain the basis of the restrictive marking, the Agreements Officer may further request the Performer or subcontractor to furnish additional information in the records of, or otherwise in the possession of or reasonably available to, the Performer or subcontractor to justify the validity of any restrictive marking on technical data delivered or to be delivered under the agreement or subcontract (e.g., a statement of facts accompanied with supporting documentation). The Performer or subcontractor shall submit such written data as requested by the Agreements Officer within the time required or such longer period as may be mutually agreed.

(2) If the Agreements Officer, after reviewing the written data furnished pursuant to paragraph (d)(1), or any other available information pertaining to the validity of a restrictive marking, determines that reasonable grounds exist to question the current validity of the marking and that continued adherence to the marking would make impracticable the subsequent competitive

acquisition of the item, component, or process to which the technical data relates, the Agreements Officer shall follow the procedures in paragraph (e).

(3) If the Performer or subcontractor fails to respond to the Agreement Officer's request for information under paragraph (d)(1), and the Agreement's Officer determines that continued adherence to the marking would make impracticable the subsequent competitive acquisition of the item, component, or process to which the technical data relates, the Agreements Officer may challenge the validity of the marking as described in paragraph (e) .

(e) Challenge.

(1) Notwithstanding any provision of this agreement concerning inspection and acceptance, if the Agreements Officer determines that a challenge to the restrictive marking is warranted, the Agreements Officer shall send a written challenge notice to the Performer or subcontractor asserting the restrictive markings. Such challenge shall—

(i) State the specific grounds for challenging the asserted restriction;

(ii) Require a response within sixty (60) days justifying and providing sufficient evidence as to the current validity of the asserted restriction;

(iii) State that a DoD Agreements or Contracting Officer's final decision, issued pursuant to paragraph (g), sustaining the validity of a restrictive marking identical to the asserted restriction, within the three-year period preceding the challenge, shall serve as justification for the asserted restriction if the validated restriction was asserted by the same Performer or subcontractor (or any licensee of such Performer or subcontractor) to which such notice is being provided; and

(iv) State that failure to respond to the challenge notice may result in issuance of a final decision pursuant to paragraph (f).

(2) The Agreements Officer shall extend the time for response as appropriate if the Performer or subcontractor submits a written request showing the need for additional time to prepare a response.

(3) The Performer's or subcontractor's written response shall be considered a claim within the meaning of the Contract Disputes Act of 1978 (41 U.S.C. 601, et seq.), and shall be certified regardless of dollar amount.

(4) A Performer or subcontractor receiving challenges to the same restrictive markings from more than one Agreements or Contracting Officer shall notify each Agreements or Contracting Officer of the existence of more than one challenge. The notice shall also state which Agreements or Contracting Officer initiated the first in time unanswered challenge. The Agreements or Contracting Officer initiating the first in time unanswered challenge after consultation with the Performer or subcontractor and the other Agreements or Contracting Officers, shall formulate and distribute a schedule for responding to each of the challenge notices to all interested parties. The schedule shall afford the Performer or subcontractor an opportunity to respond to each challenge notice. All parties will be bound by this schedule.

(f) Final decision when Performer or subcontractor fails to respond. Upon a failure of a Performer or subcontractor to submit any response to the challenge notice, other than a failure to respond under a contract for commercial items, the Agreements Officer will issue a final decision to the Performer or subcontractor in accordance with the Disputes Article of this agreement pertaining to the validity of the asserted restriction. This final decision shall be issued as soon as possible after the expiration of the time period of paragraph (e)(1)(ii) or (e)(2). Following issuance of the final decision, the Agreements Officer will comply with the procedures in paragraphs (g)(2)(ii) through (iv).

(g) Final decision when Performer or subcontractor responds.

(1) If the Agreements Officer determines that the Performer or subcontractor has justified the validity of the restrictive marking, the Agreements Officer shall issue a final decision to the Performer or subcontractor sustaining the validity of the restrictive marking, and stating that the Government will continue to be bound by the restrictive marking. This final decision shall be issued within sixty (60) days after receipt of the Performer's or subcontractor's response to the challenge notice, or within such longer period that the Agreements Officer has notified the Performer or subcontractor that the Government will require. The notification of a longer period for issuance of a final decision will be made within sixty (60) days after receipt of the response to the challenge notice.

(2) (i) If the Agreements Officer determines that the validity of the restrictive marking is not justified, the Agreements Officer shall issue a final decision to the Performer or subcontractor in accordance with the Disputes Article of this agreement. Notwithstanding paragraph (e) of the Disputes Article, the final decision shall be issued within sixty (60) days after receipt of the Performer's or subcontractor's response to the challenge notice, or within such longer period that the Agreements Officer has notified the Performer or subcontractor of the longer period that the Government will require. The notification of a longer period for issuance of a final decision will be made within sixty (60) days after receipt of the response to the challenge notice.

(ii) The Government agrees that it will continue to be bound by the restrictive marking for a period of ninety (90) days from the issuance of the Agreements Officer's final decision under paragraph (g)(2)(i). The Performer or subcontractor agrees that, if it intends to file suit in the United States Claims Court it will provide a notice of intent to file suit to the Agreements Officer within ninety (90) days from the issuance of the Agreements Officer's final decision under paragraph (g)(2)(i). If the Performer or subcontractor fails to appeal, file suit, or provide a notice of intent to file suit to the Agreements Officer within the ninety (90)-day period, the Government may cancel or ignore the restrictive markings, and the failure of the Performer or subcontractor to take the required action constitutes agreement with such Government action.

- (iii) The Government agrees that it will continue to be bound by the restrictive marking where a notice of intent to file suit in the United States Claims Court is provided to the Agreements Officer within ninety (90) days from the issuance of the final decision under paragraph (g)(2)(i). The Government will no longer be bound, and the Performer or subcontractor agrees that the Government may strike or ignore the restrictive markings, if the Performer or subcontractor fails to file its suit within one (1) year after issuance of the final decision. Notwithstanding the foregoing, where the head of an agency determines, on a nondelegable basis, that urgent or compelling circumstances will not permit waiting for the filing of a suit in the United States Claims Court, the Performer or subcontractor agrees that the agency may, following notice to the Performer or subcontractor, authorize release or disclosure of the technical data. Such agency determination may be made at any time after issuance of the final decision and will not affect the Performer's or subcontractor's right to damages against the United States where its restrictive markings are ultimately upheld or to pursue other relief, if any, as may be provided by law.
- (iv) The Government agrees that it will be bound by the restrictive marking where an appeal or suit is filed pursuant to the Contract Disputes Act until final disposition by an agency Board of Contract Appeals or the United States Claims Court. Notwithstanding the foregoing, where the head of an agency determines, on a nondelegable basis, following notice to the Performer that urgent or compelling circumstances will not permit awaiting the decision by such Board of Contract Appeals or the United States Claims Court, the Performer or subcontractor agrees that the agency may authorize release or disclosure of the technical data. Such agency determination may be made at any time after issuance of the final decision and will not affect the Performer's or subcontractor's right to damages against the United States where its restrictive markings are ultimately upheld or to pursue other relief, if any, as may be provided by law.
- (h) Final disposition of appeal or suit.
 - (1) If the Performer or subcontractor appeals or files suit and if, upon final disposition of the appeal or suit, the Agreements Officer's decision is sustained—
 - (i) The restrictive marking on the technical data shall be cancelled, corrected or ignored; and
 - (ii) If the restrictive marking is found not to be substantially justified, the Performer or subcontractor, as appropriate, shall be liable to the Government for payment of the cost to the Government of reviewing the restrictive marking and the fees and other expenses (as defined in 28 U.S.C. 2412(d)(2)(A)) incurred by the Government in challenging the marking, unless special circumstances would make such payment unjust.
 - (2) If the Performer or subcontractor appeals or files suit and if, upon final disposition of the appeal or suit, the Agreements Officer's decision is not sustained—
 - (i) The Government shall continue to be bound by the restrictive marking; and
 - (ii) The Government shall be liable to the Performer or subcontractor for payment of fees and other expenses (as defined in 28 U.S.C. 2412(d)(2)(A)) incurred by the Performer or subcontractor in defending the marking, if the challenge by the Government is found not to have been made in good faith.
 - (i) Duration of right to challenge. The Government may review the validity of any restriction on technical data, delivered or to be delivered under an agreement, asserted by the Performer or subcontractor. During the period within three (3) years of final payment on an agreement or within three (3) years of delivery of the technical data to the Government, whichever is later, the Agreements Officer may review and make a written determination to challenge the restriction. The Government may, however, challenge a restriction on the release, disclosure or use of technical data at any time if such technical data—
 - (1) Is publicly available;
 - (2) Has been furnished to the United States without restriction; or
 - (3) Has been otherwise made available without restriction. Only the Agreements Officer's final decision resolving a formal challenge by sustaining the validity of a restrictive marking constitutes "validation" as addressed in 10 U.S.C. 2321.
 - (j) Decision not to challenge. A decision by the Government, or a determination by the Agreements Officer, to not challenge the restrictive marking or asserted restriction shall not constitute "validation."
 - (k) Privity of contract. The Performer or subcontractor agrees that the Agreements Officer may transact matters under this subject statement directly with subcontractors at any tier that assert restrictive markings. However, this subject statement neither creates nor implies privity of contract between the Government and subcontractors.
 - (l) Flowdown. The Performer or subcontractor agrees to insert this in contractual instruments with its subcontractors or suppliers at any tier requiring the delivery of technical data, except contractual instruments for commercial items or commercial components.

C. Copyrights

The Performer reserves the right to protect by copyright original works developed under this Agreement. All such copyrights will be in the name of the Performer. The Performer grants to the U.S. Government a non-exclusive, non-transferable, royalty-free, fully paid-up, perpetual license to reproduce, prepare derivative works, distribute copies to the public and perform publicly and display publicly, for governmental purposes, any copyrighted materials developed under this Agreement, and to authorize others to do so. However, notwithstanding the above, proprietary or otherwise protected information (including technical data and software) shall not be disclosed or released unless such release or disclosure is allowed under at least one of the above cited data rights provisions or this Agreement.

In the event technical data are exchanged with a notice indicating that the data are protected under copyright as a published, copyrighted work, and it is also indicated on the data that such data existed prior to, or was produced outside of, the relevant Project, the Party receiving the data and others acting on its behalf may only reproduce, distribute and prepare derivative works for the purpose of carrying out that Party's responsibilities under this Agreement. The Performer is responsible for affixing appropriate markings indicating the rights of the Government on all technical data delivered under this Agreement.

D. Data First Produced by the Government

To the extent that Data first produced by the Government during the performance of Agreement is used by or on behalf of the Performer in the performance of any Project, the Government shall retain its preexisting rights in such Data, including modifications or changes, made by either Government or Performer, to such Data as part of the performance under the Project. Such Data will, to the extent permitted by law, be appropriately marked with a suitable notice or legend and maintained in confidence by the Performer for a period of ten (10) years after the development of the information, with the express understanding that during the aforesaid period such data may be disclosed and used (under suitable protective conditions) by or on behalf of the Government for Government purposes only.

E. Prior Technology

In the event it is necessary for the Government to furnish the Performer with Data which existed prior to, or was produced outside of this Agreement, and such Data is so identified with a suitable notice or legend, the Data will be maintained in confidence and disclosed and used by the Performer only for the purpose of carrying out the responsibilities under this Agreement. Data protection will include proprietary markings and handling, and the signing of non-disclosure agreements by the Performers employees and/or their subcontractors' employees. Upon completion of activities under this Agreement, such data will be disposed of as requested by the Government.

F. Project Agreement Holder's Prior Technology

In the event it is necessary for a Performer to furnish the Government with Data, which is not technical data, computer software, or computer software documentation, and which existed prior to, or was produced outside of, this Agreement, and such Data embodies trade secrets or comprises commercial or financial information which is privileged or confidential, and such data is so identified with a suitable notice or legend, the data will be maintained in confidence and disclosed and used by the Government and such Government Contractors or contract employees that the Government may hire on a temporary or periodic basis only for the purpose of carrying out the Government's responsibilities under this Agreement consistent with the provisions of Article III of this document. Data protection will include proprietary markings and handling, and the signing of non-disclosure agreements by such Government Contractors or contract employees. The Performer furnishing data which existed prior to, or was produced outside of this Agreement, has the right to license such data to other entities not a party to this Agreement for a fee and/or royalty payments as determined by the Performer furnishing such data.

G. Allocation of Principal Rights

1. The Parties agree that in consideration for Government funding, the Performer intends to reduce to practical application items, components and processes developed under this Agreement.
2. With respect to Data developed or generated under this Agreement related to the scope of this Agreement the Government shall receive rights in accordance with Paragraph A of this Article III.
3. With respect to Data delivered pursuant to under the Agreement, the Government shall receive rights in accordance with Paragraph A of this Article.
4. March-In Rights
 - (a) In the event the Government chooses to exercise its March-in Rights, as defined in Article II, Section J of this Agreement, the Performer agrees, upon written request from the Government, to deliver at no additional cost to the Government, all Data necessary to achieve practical application within sixty (60) calendar days from the date of the written request. The Government shall retain Unlimited Rights, as defined in Article III of this Agreement, to this delivered Data.

To facilitate any potential deliveries, the Performer agrees to retain and maintain in good condition until three (3) years after completion or termination of this Agreement, all Data necessary to achieve practical application of any Subject Invention, defined as "Any invention first actually reduced to practice in the performance of work under this Agreement."

H. Marking of Data

Pursuant to the Data Rights provisions above, any Data delivered under this Agreement shall be marked with the following legend unless otherwise noted in Paragraph B:

Use, duplication, or disclosure is subject to the restrictions as stated in Subcontract [insert Subcontract Number] between Epirus and the Performer.

I. Survival Rights

Provisions of this Article shall survive termination of this Agreement.

J. Flowdown

The performer shall include this Article, suitably modified to identify all parties, in all Project Agreements or lower-tier agreements. This Article shall, in turn, be included in all sub-tier subcontracts or other forms of lower-tier agreement, regardless of tier.

ARTICLE IV: EXPORT COMPLIANCE

Performer agrees to comply with U.S. Export regulations including, but not limited to, the requirements of the Arms Export Control Act, as amended 22 U.S.C. § 2751-2794, including the International Traffic in Arms Regulation (ITAR), 22 C.F.R. § 120 et seq.; and the Export Administration Act of 1979, 50 U.S.C. app. § 2401- 2420. Each party is responsible for obtaining from the Government export licenses or other authorizations/approvals, if required, for information or materials provided from one party to another under this Agreement. Accordingly, the Performer, shall not export, directly, or indirectly, any products and/or technology, Confidential Information, Trade Secrets, or Classified and Unclassified Technical Data in violation of any U.S. Export laws or regulations.

ARTICLE V: LIABILITY

A. Waiver of Liability

Performer agrees to waive any claims for any injury to or death of its own employees or employees of its contractors, or subcontractors, or for damage to or loss of its own property or that of contractors or subcontractors, whether such injury, death, damage or loss arises through negligence or otherwise, except in the case of willful misconduct.

B. Damages

The Parties shall not be liable to each other for consequential, punitive, special and incidental damages or other indirect damages, whether arising in contract (including warranty), tort (whether or not arising from the negligence of a Party) or otherwise, except to the extent such damages are caused by a Party's willful misconduct. Notwithstanding the foregoing, claims for contribution toward third-party injury, damage, or loss are not limited, waived, released, or disclaimed.

C. Extension of Waiver of Liability

The Performer agrees to extend the waiver of liability set forth above any tier under this Agreement by requiring them, by contract or otherwise, to agree to waive all claims described above against the Parties to this Agreement. The Performer also agrees to flow down the damages limitation set forth above to any tier.

D. Applicability

Notwithstanding the other provisions of this article, this Waiver of Liability shall not be applicable to:

- (1) Claims between the Performer and Epirus regarding nonpayment of funds, except for any remedies available under this Agreement's Termination clause, if any;
- (2) Claims for damage caused by willful misconduct; and
- (3) Intellectual property claims.

ARTICLE VI: FINANCIAL RECORDS

Applicability: This Article is not applicable if the Seller has not entered into any other contract, grant, cooperative agreement that provides for audit access to its records by a government entity in the year prior to 13 June 2025.

To the extent that the total government payments under Epirus's Agreement with the US Government exceed \$5,000,000, the Comptroller General of the United States, in its discretion, shall have access to and the right to examine records of any party to the Agreement or any entity that participates in the performance of this Agreement that directly pertain, to and involve transactions relating to, the Agreement for a period of three (3) years after final payment is made. This requirement shall not apply with respect to any party to this Agreement or any entity that participates in the performance of the Agreement, or any subordinate element of such party or entity, that, in the year prior to the date of the Agreement, has not entered into any other contract, grant, cooperative agreement, or other transaction agreement that provides for audit access to its records by a government entity in the year prior to the date of this Agreement. This paragraph only applies to any record that is created or maintained in the ordinary course of business or pursuant to a provision of law. The terms of this paragraph shall be included in all sub-agreements/contracts to the Agreement.

ARTICLE VII: SAFEGUARDING GOVERNMENT CONTROLLED UNCLASSIFIED INFORMATION AND CONTROLLED TECHNICAL INFORMATION AND CYBER INCIDENT REPORTING

A. Background

Protection of US Government Controlled Unclassified Information (CUI) and Controlled Technical Information (CTI) is of paramount importance to the US Government and can directly impact the ability of the US Government to successfully conduct its mission. Therefore, this Article requires the performer to protect US Government CUI and CTI that resides on the performer's information systems. This article also requires the performer to rapidly report any cyber incident involving US Government CUI or CTI.

B. Safeguarding US Government CUI and CTI

The performer shall implement National Institute of Standards and Technology (NIST) Special Publication (SP) 800-171 Rev 1, Protecting Controlled Unclassified Information in Nonfederal Systems and Organizations (Dec. 2016), as revised, for US Government CUI and CTI that

resides on the performer's information systems. Consistent with Chapter 2 of NIST SP 800-171 Rev 1, implementation may be tailored to facilitate equivalent safeguarding measures used in the performer systems and organization. Any suspected loss or compromise of US Government CUI or CTI that resides on the performer's information systems shall be considered a cyber-incident and require the performer to rapidly report the incident to US Government in accordance with paragraph C below.

C. Provisions:

1. Limitations on the Use or Disclosure of Third-Party Contractor Reported Cyber Incident Information

(a) Definitions. As used —

"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.

"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 controlled technical information or other information (as described in the Controlled Unclassified Information (CUI) Registry at <http://www.archives.gov/cui/registry/category-list.html>) that requires safeguarding or dissemination controls pursuant to and consistent with law, regulations, and Governmentwide policies, and is—

- (1) Marked or otherwise identified in the agreement and provided to the Performer by or on behalf of DoD in support of the performance of the agreement; or
- (2) Collected, developed, received, transmitted, used, or stored by or on behalf of the Performer in support of the performance of the agreement.

"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.

"Information system" means a discrete set of information resources organized for the collection, processing, maintenance, use, sharing, dissemination, or disposition of information.

"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 covered defense information is recorded, stored, or printed within a covered contractor information system.

"Technical information" means technical data or computer software, as those terms are defined in "Rights in Technical Data-Other Than Commercial Products and Commercial Services" provision in Article III, regardless of whether or not this subject statement is incorporated in this agreement. 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) Restrictions. The Performer agrees that the following conditions apply to any information it receives or creates in the performance of this agreement that is information obtained from a third party's reporting of a cyber incident pursuant to "Safeguarding Covered Defense Information and Cyber Incident Reporting" provision below (or derived from such information obtained):

- (1) The Performer 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 "Safeguarding Covered Defense Information and Cyber Incident Reporting" provision below, and shall not be used for any other purpose.
- (2) The Performer shall protect the information against unauthorized release or disclosure.
- (3) The Performer shall ensure that its employees are subject to use and non-disclosure obligations consistent with this provision 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 nondisclosure agreement between the Government and Performer, as required by paragraph (b)(3) of this provision.
- (5) A breach of these obligations or restrictions may subject the Performer 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 provision.

(c) Subcontracts. The Performer 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.

2. Safeguarding Covered Defense Information and Cyber Incident Reporting

(a) Definitions. As used —

“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.

“Performer attributional/proprietary information” means information that identifies the performer(s), whether directly or indirectly, by the grouping of information that can be traced back to the performer(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.

“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 unclassified 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 controlled technical information or other information, as described in the Controlled Unclassified Information (CUI) Registry at <http://www.archives.gov/cui/registry/category-list.html>, that requires safeguarding or dissemination controls pursuant to and consistent with law, regulations, and Government-wide policies, and is—

(1) Marked or otherwise identified in the agreement and provided to the Performer by or on behalf of DoD in support of the performance of the agreement; or

(2) Collected, developed, received, transmitted, used, or stored by or on behalf of the Performer in support of the performance of the agreement.

“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.

“Information system” means a discrete set of information resources organized for the collection, processing, maintenance, use, sharing, dissemination, or disposition of information.

“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 covered defense information is recorded, stored, or printed within a covered contractor 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.

“Rapidly report” 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 “Rights in Technical Data—Noncommercial Items” provision in Article III. 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 Performer shall provide adequate security on all covered contractor information systems. To provide adequate security, the Performer shall implement, at a minimum, the following information security protections:

(1) For covered Performer information systems that are part of an Information Technology (IT) service or system operated on behalf of the Government, the following security requirements apply:

(i) Cloud computing services shall be subject to the security requirements specified in the DoDI 8510.01.

(ii) Any other such IT service or system (i.e., other than cloud computing) shall be subject to the security requirements

specified elsewhere in this agreement.

(2) For covered performer 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), the following security requirements apply:

(i) Except as provided in paragraph (b)(2)(ii), the covered performer information system shall be subject to 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" (available via the internet at <http://dx.doi.org/10.6028/NIST.SP.800-171>) in effect at the time the agreement is issued or as authorized by the Agreements Officer.

(ii) The Performer shall implement NIST SP 800-171, as soon as practical, but not later than December 31, 2017. For all contracts awarded prior to October 1, 2017, the Performer shall notify the DoD Chief Information Officer (CIO), via email at osd.dibcsia@mail.mil, within 30 days of agreement award, of any security requirements specified by NIST SP 800-171 not implemented at the time of agreement award.

(iii) The Performer shall submit requests to vary from NIST SP 800-171 in writing to the Agreements Officer, for consideration by the DoD CIO. The Performer need not implement any security requirement adjudicated by an authorized representative of the DoD CIO to be non-applicable or to have an alternative, but equally effective, security measure that may be implemented in its place.

(iv) If the DoD CIO has previously adjudicated the performer's requests indicating that a requirement is not applicable or that an alternative security measure is equally effective, a copy of that approval shall be provided to the Agreements Officer when requesting its recognition under this agreement.

(v) If the Performer intends to use an external cloud service provider to store, process, or transmit any covered defense information in performance of this agreement, the Performer shall require and ensure that the cloud service provider meets security requirements equivalent to those established by the Government for the Federal Risk and Authorization Management Program (FedRAMP) Moderate baseline (<https://www.fedramp.gov/resources/documents/>) and that the cloud service provider complies with requirements in paragraphs (c) through (g) for cyber incident reporting, malicious software, media preservation and protection, access to additional information and equipment necessary for forensic analysis, and cyber incident damage assessment.

(vi) Apply other information systems security measures when the Performer reasonably determines that information systems security measures, in addition to those identified in paragraphs (b)(1) and (2), may be required to provide adequate security in a dynamic environment or to accommodate special circumstances (e.g., medical devices) and any individual, isolated, or temporary deficiencies based on an assessed risk or vulnerability. These measures may be addressed in a system security plan.

(c) DoD safeguarding and use of performer 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) that includes contractor attributional/proprietary information, including such information submitted in accordance with paragraph (c). To the maximum extent practicable, the Performer shall identify and mark attributional/proprietary information. In making an authorized release of such information, the Government will implement appropriate procedures to minimize the Performer 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.

(d) Use and release of performer attributional/proprietary information not created by or for DoD. Information that is obtained from the performer (or derived from information obtained from the performer) 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

(e) Use and release of contractor attributional/proprietary information created by or for DoD. Information that is obtained from the performer (or derived from information obtained from the contractor) that is created by or for DoD (including the information submitted pursuant to paragraph (c)) is authorized to be used and released outside of DoD for purposes and activities authorized by paragraph (i), 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.

(f) The Performer shall conduct activities in accordance with applicable laws and regulations on the interception, monitoring, access, use, and disclosure of electronic communications and data.

(g) Other safeguarding or reporting requirements. The safeguarding required in no way abrogates the Performer's responsibility for other safeguarding pertaining to its unclassified information systems as required by other applicable articles of this agreement, or as a result of other applicable U.S. Government statutory or regulatory requirements.

D. Cyber-Incident Reporting

Upon discovery of a cyber-incident involving US Government CUI or CTI, the performer shall take immediate steps to mitigate any further loss or compromise. The performer shall rapidly report the incident to the US Government and provide sufficient details of the event—including identification of detected and isolated malicious software—to enable the US Government to assess the situation and provide feedback to the performer regarding further reporting and potential mitigation actions. The performer shall preserve and protect images of all known affected information systems and all relevant monitoring/packet capture data for at least 90 days from reporting the cyber incident to enable the US Government to assess the cyber incident. The performer agrees to rapidly implement security measures as recommended by the US Government and to provide to the US Government any additionally requested information to help the Parties resolve the cyber incident and to prevent future cyber incidents.

E. Public Release

All information and data covered by this Article must be reviewed and approved by Epirus prior to any public release. The performer shall submit all requests in writing to the Epirus POC for processing.

F. Lower Tier Agreements

The performer shall include this Article in all subcontracts or lower tier agreements, regardless of tier, for work performed in support of this Agreement.

G. Definitions

Compromise: 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.

Controlled Technical Information (CTI): 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.

Controlled Unclassified Information (CUI): Unclassified information that requires safeguarding or dissemination controls, pursuant to and consistent with applicable law, regulations, and Government-wide policies. The use, marking, dissemination, and storage of CUI can be found in DoD Manual 5200.01 Volume 4 "Controlled Unclassified Information".

Cyber Incident: 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. For Official Use Only (FOUO): A protective marking to be applied to controlled unclassified information when disclosure to the public of that particular record, or portion thereof, would reasonably be expected to cause a foreseeable harm to an interest protected by one or more provisions of the FOIA. This includes information that qualifies for protection pursuant to the provisions of the Privacy Act of 1974, as amended. See DoD Manual 5400.07 "DoD Freedom of Information Act (FOIA) Program" for detailed information on categories of information that may qualify for exemption from public release.

Information System: A discrete set of information resources organized for the collection, processing, maintenance, use, sharing, dissemination, or disposition of information.

Rapidly Report: Report to the US Government within 72 hours of discovery of any cyber incident.

ARTICLE VIII: FOREIGN ACCESS TO TECHNOLOGY

Applicability: This Article is only applicable to Purchase Orders and/or Subcontracts for experimental, developmental, or research work.

A. General

The Parties agree that research findings and technology developments arising under this Agreement may constitute a significant enhancement to the national defense, and to the economic vitality of the United States. Accordingly, access to important technology developments under this Agreement by Foreign Firms or Institutions must be carefully controlled. The controls contemplated in this Article are in addition to, and are not intended to change or supersede, the provisions of the International Traffic in Arms Regulations (22 C.F.R. Part 120, et seq.), the National Security Program Operating Manual (NISPOM) (DoD 5220.22-M), and the Department of Commerce's Export Administration Regulations (15 C.F.R. Part 730, et seq.).

B. Restrictions on Sale or Transfer of Technology to Foreign Firms or Institutions

1. In order to promote the national security interests of the United States and to effectuate the policies that underlie the regulations cited above, the procedures stated in subparagraphs B.2, B.3, and B.4 below shall apply to any transfer of Technology developed in performance of this Agreement. For purposes of this paragraph, a transfer includes a sale of the company, and sales or licensing of Technology except as provided herein. Transfers do not include:

- a. Sales of products or components embodying or utilizing Technology developed under this Agreement; or
- b. Licenses of software or documentation related to sales, leasing or licensing of products or components embodying or utilizing Technology developed under this Agreement or

c. Transfer to foreign subsidiaries of the Performer for purposes related to this Agreement; or

d. Transfer which provides access to Technology to a Foreign Firm or Institution which is an approved source of supply or source for the performance of services or provision of supplies or products under this Agreement provided that such transfer shall be limited to that necessary to allow the firm or institution to perform its approved role under this Agreement.

2. The Performer shall provide timely notice to the US Government of any proposed transfers from the Performer of Technology developed under this Agreement to Foreign Firms or Institutions. If US Government determines that the transfer may have adverse consequences to the national security interests of the United States, the Performer, its vendors, and US Government shall jointly endeavor to find alternatives to the proposed transfer which obviate or mitigate potential adverse consequences of the transfer but which provide substantially equivalent benefits to the Performer.

3. In any event, the Performer shall provide written notice to the US Government AOR and the US Government AO of any proposed transfer to a Foreign Firm or Institution at least sixty (60) calendar days prior to the proposed date of transfer. Such notice shall cite this Article and shall state specifically what is to be transferred and the general terms of the transfer. Within thirty (30) calendar days of receipt of the Performer's written notification, the US Government AO shall advise the Performer whether it consents to the proposed transfer. In cases where US Government does not concur or sixty (60) calendar days after receipt and the US Government provides no decision, the Performer may utilize the procedures under the Disputes clause of this Agreement. No transfer shall take place until a decision is rendered.

4. In the event a transfer of Technology to Foreign Firms or Institutions which is (i) required to be reported pursuant to paragraph 1 above, and (ii) NOT approved by US Government takes place, the Performer shall (a) refund to US Government funds paid for the development of the Technology and (b) the Government shall have a non-exclusive, nontransferable, irrevocable, paid-up license to practice, or to have practiced on behalf of the United States, the Technology throughout the world for Government and any and all other purposes, particularly to effectuate the intent of this Agreement. Upon request of the Government, the Performer shall provide written confirmation of such licenses.

C. Lower Tier Agreements

The Performer shall include this Article, suitably modified, to identify the Parties, in all subcontracts or lower tier agreements, regardless of tier, for experimental, developmental, or research work.