Where necessary, to identify the applicable parties under the following clauses, “Contractor” shall mean “Seller,” “Contracting Officer” shall mean “Lockheed Martin Procurement Representative,” “Contract” means this subcontract and “Government” means “Lockheed Martin.” However, the words “Government” and “Contracting Officer” do not change: (1) when a right, act, authorization or obligation can be granted or performed only by the Government or the Prime Contract Contracting Officer or duly authorized representative, including but not limited to (i) audit rights to Seller’s proprietary business records or (ii) any indemnification or limitation of liability obligation, which obligation shall remain with the Government; (2) when title to property is to be transferred directly to the Government, and (3) when the Government is granted ownership or other rights to Seller’s intellectual property or technical data.

**Full Text Clauses**

**Prime Contract 80MSFC20C0020 Clauses:**

**Section H Clauses - Special Contract Requirements**

**MSFC 52.209-92, Disclosure of Organizational Conflict of Interest (OCI) after Contract Award (May 2017)** (Applicable for all purchase orders/subcontracts where the work includes or may include tasks related to an OCI. Communications with the Government under this clause shall be made through Lockheed Martin.)

(a) If the Contractor identifies an actual or potential organizational conflict of interest that has not already been adequately disclosed and resolved (or waived in accordance with FAR 9.503), the Contractor shall make a prompt and full disclosure in writing to the Contracting Officer. This disclosure shall include a description of the action the Contractor has taken or proposes to take in order or resolve the conflict. This reporting requirement also includes subcontractors’ actual or potential organizational conflicts of interest not adequately disclosed and resolved prior to award.

(b) Organizational Conflict of Interest Plan. If there is an OCI plan in the contract, the Contractor shall periodically update the plan, based on changes such as changes to the legal entity, the overall structure of the organization, subcontractor arrangements, contractor management, ownership, ownership relationships or modification of the work scope.

(End of clause)

**MSFC 52.209-94, Resolution of Organizational Conflict of Interest (May 2017)** (Applicable for all purchase orders/subcontracts where the work includes or may include tasks related to an OCI. Communications with the Government under this clause shall be made through Lockheed Martin.)

(a) The Organizational Conflict of Interest (OCI) Plan and its obligations (which includes any appended resolution strategies related to identified OCIs), are hereby incorporated in the contract by reference.

(b) *Changes*.

(1) Either the Contractor or the Government may propose changes to the OCI Plan. Such changes are subject to the mutual agreement of the parties and will become effective only upon incorporating the change into the plan by contract amendment.

(2) In the event that the Government and the Contractor cannot agree upon a mutually acceptable change, the Government reserves the right to make a unilateral change to the OCI Plan as necessary, with the approval of the head of the contracting activity, subject to Contractor appeal as provided in the Disputes clause.

(c) *Violation*. The Contractor shall report any violation of the OCI Plan, whether by its own personnel or those of the Government or other contractors, to the Contracting Officer. This report shall include a description of the violation and the actions the Contractor has taken or proposes to take to mitigate and avoid repetition of the violation. After conducting such further inquiries and discussions as may be necessary, the Contracting Officer and the Contractor shall agree on appropriate corrective action, if any, or the Contracting Officer shall direct corrective action.

(d) *Breach*. Any breach of the above restrictions or any nondisclosure or misrepresentation of any relevant facts required regarding OCI to be disclosed may result in termination of this contract for default or other remedies as may be available under law or regulation.

(e) *Subcontracts*. The Contractor shall include the substance of this clause, including this paragraph (e), in subcontracts where the work includes or may include tasks related to the OCI. The terms “Contractor” and “Contracting Officer” shall be appropriately modified to reflect the change in parties and to preserve the Government’s rights.

(End of clause)

**MSFC 52.223-91, Hazardous Material Reporting (Feb 2016)** (Applicable if Seller will be transporting or accepting delivery of any hazardous materials on-site at Marshall Space Flight Center, Johnson Space Center, and/or the Michoud Assembly Facility.)

(a) If during the performance of this contract, the Contractor transports or accepts delivery of any hazardous materials (hazardous as defined under the latest version of Federal Standard No. 313, including revisions adopted during the term of the contract) on-site to Marshall Space Flight Center, the hazardous material shall be processed through MSFC Central Receiving to be bar-coded for inventory. Alternative receiving points may be designated if approval is granted in accordance with MWI 8550.5, “Hazardous Material Management.” Chemical containers shall be managed in accordance with the provisions of MWI 8550.5. The Contractor shall be responsible for ensuring that all Contractor/subcontractor personnel are made aware of and comply with this clause.

(b) Nothing contained in this clause shall relieve the Contractor from complying with applicable Federal, State, and local laws, codes, ordinances, and regulations (including the obtaining of licenses and permits) in connection with hazardous material; or with clauses regarding hazardous materials, which may be contained in the contract and/or order.

(End of clause)

**1852.228-76, Cross-Waiver of Liability for International Space Station Activities (Oct 2012) (DEVIATED)** (The version of the clause in this Deviated version applies in lieu of the standard NFS version.)

**This ISS Cross Waiver is applicable to the civil lunar Gateway (including all Artemis) contracts, which is considered an evolutionary capability of the ISS pursuant to Article 14 of the IGA.**

(a) The Intergovernmental Agreement for the International Space Station (“ISS”) (hereinafter, the “IGA”) contains a cross-waiver of liability provision to encourage participation in the exploration, exploitation, and use of outer space through the ISS and any addition of evolutionary capabilities utilizing Article 14 of the IGA, including the civil lunar Gateway (“Gateway”). The cross-waiver of liability in this clause is intended to be broadly construed to achieve this objective.

(b) As used in this clause and for purposes of this Contract, the term:

(1) “Agreement” refers to any NASA Space Act agreement or contract that contains the cross-waiver of liability provision authorized by 14 CFR Part 1266.102.

(2) “Damage” means:

(i) Bodily injury to, or other impairment of health of, or death of, any person;

(ii) Damage to, loss of, or loss of use of any property;

(iii) Loss of revenue or profits; or

(iv) Other direct, indirect, or consequential Damage.

(3) “Launch” means the intentional ignition of the first-stage motor(s) of the Launch Vehicle intended to place or try to place a Launch Vehicle (which may or may not include any Transfer Vehicle, Payload or crew) from Earth:

(i) in a suborbital trajectory;

(ii) in Earth orbit in outer space;

(iii) in lunar orbit; or

(iv) otherwise in outer space,

(v) including Launch Services activities involved in the preparation of a Launch Vehicle, Transfer Vehicle or Payload for launch.

(4) “Launch Services” means:

(i) Activities involved in the preparation of a Launch Vehicle, Transfer Vehicle, Payload, or crew (including crew training), if any, for launch; and

(ii) The conduct of a Launch.

(5) “Launch Vehicle” means an object, or any part thereof, intended for launch, launched from Earth, or returning to Earth which carries Payloads or persons, or both.

(6) “Partner State” includes each Contracting Party for which the Agreement Among the Government of Canada, Governments of Member States of the European Space Agency, the Government of Japan, The Government of the Russian Federation, and the Government of the United States of America concerning Cooperation on the Civil International Space Station (IGA) has entered into force, pursuant to Article 25 of the IGA or pursuant to any successor Agreement.

A Partner State includes its Cooperating Agency. It also includes any entity specified in the Memorandum of Understanding (MOU) between NASA and the Government of Japan's Cooperating Agency in the implementation of that MOU.

(7) “Party” means a party to an Agreement involving activities in connection with the Gateway, including the parties to this contract.

(8) “Payload” means all property to be flown or used on or in a Launch Vehicle, Transfer Vehicle, and/or the Gateway and element(s) thereof.

(9) “Protected Space Operations” means all Launch or Transfer Vehicle activities, Gateway activities, and Payload activities on Earth, in outer space, or in transit between Earth and outer space performed in implementation of the IGA, MOUs concluded pursuant to the IGA, implementing arrangements, and contracts to perform work in support of NASA’s obligations under these Agreements. It includes, but is not limited to:

(i) Research, design, development, test, manufacture, assembly, integration, operation, or use of Launch or Transfer Vehicles, the Gateway, Payloads, or instruments, as well as related support equipment and facilities and services; and

(ii) All activities related to ground support, test, training, simulation, or guidance and control equipment and related facilities or services. “Protected Space Operations” also includes all activities related to evolution of the ISS (which includes Gateway), as provided for in Article 14 of the IGA. “Protected Space Operations” excludes activities on Earth which are conducted on return from the Gateway to develop further a Payload's product or process for use other than for Gateway-related activities in implementation of the IGA.

(10) “Reentry” means to purposefully return or attempt to return, through completion of recovery, a Transfer Vehicle, Payload, or crew from the Gateway, Earth orbit, or outer space to Earth.

(11) “Reentry Services” means:

(i) Activities involved in the preparation of a Transfer Vehicle, Payload, or crew (including crew training), if any, for Reentry; and

(ii) The conduct of a Reentry through completion of recovery.

(12) “Related Entity” means:

(i) A contractor or subcontractor of a Party or a Partner State at any tier;

(ii) A user or customer of a Party or a Partner State at any tier; or

(iii) A contractor or subcontractor of a user or customer of a Party or a Partner State at any tier. The terms “contractor” and “subcontractor” include suppliers of any kind.

(13) “Space Station” means the International Space Station, and any additional evolutionary capabilities made pursuant to Article 14 of the IGA, including the civil lunar Gateway.

(14) “Transfer Vehicle” means any vehicle that operates in space and transfers Payloads or persons or both between two different space objects, between two different locations on the same space object, or between a space object and the surface of a celestial body. A Transfer Vehicle also includes a vehicle that departs from and returns to the same location on a space object.

(c) Cross-waiver of liability:

(1) The Contractor agrees to a cross-waiver of liability pursuant to which it waives all claims against any of the entities or persons listed in paragraphs (c)(1)(i) through (c)(1)(iv) of this clause based on Damage arising out of Protected Space Operations. This cross-waiver shall apply only if the person, entity, or property causing the Damage is involved in Protected Space Operations and the person, entity, or property damaged is damaged by virtue of its involvement in Protected Space Operations. The cross-waiver shall apply to any claims for Damage, whatever the legal basis for such claims, against:

(i) A Party as defined in (b)(7) of this clause;

(ii) A Partner State, including the United States of America;

(iii) A Related Entity of any entity identified in paragraph (c)(1)(i) or (c)(1)(ii) of this clause; or

(iv) The employees of any of the entities identified in paragraphs (c)(1)(i) through (c)(1)(iii) of this clause.

(2) In addition, the contractor shall, by contract or otherwise, extend the cross-waiver of liability set forth in paragraph (c)(1) of this clause, to its Related Entities by requiring them, by contract or otherwise, to:

(i) Waive all claims against the entities or persons identified in paragraphs (c)(1)(i) through (c)(1)(iv) of this clause; and

(ii) Require that their Related Entities waive all claims against the entities or persons identified in paragraphs (c)(1)(i) through (c)(1)(iv) of this clause.

(3) For avoidance of doubt, this cross-waiver of liability includes a cross-waiver of claims arising from the Convention on International Liability for Damage Caused by Space Objects, which entered into force on September 1, 1972, where the person, entity, or property causing the Damage is involved in Protected Space Operations and the person, entity, or property damaged is damaged by virtue of its involvement in Protected Space Operations.

(4) Notwithstanding the other provisions of this clause, this cross-waiver of liability shall not be applicable to:

(i) Claims between the Contractor and its own Related Entities or between its Related Entities;

(ii) Claims made by a natural person, his/her estate, survivors or subrogees (except when a subrogee is a Party to an Agreement or is otherwise bound by the terms of this cross-waiver) for bodily injury to, or other impairment of health of, or death of, such person;

(iii) Claims for Damage caused by willful misconduct;

(iv) Intellectual property claims;

(v) Claims for Damage resulting from a failure of the contractor to extend the cross-waiver of liability to its subcontractors or related entities, pursuant to paragraph (c)(2) of this clause;

(vi) Claims by the Government arising out of or relating to the contractor’s failure to perform its obligations under this contract.

(5) Nothing in this clause shall be construed to create the basis for a claim or suit where none would otherwise exist.

(d) Waiver of claims Between the Government and Contractor:

(1) This clause provides for a reciprocal waiver of claims between the Government and the Contractor and their Related Entities as described in paragraph (c) above, except that the Government shall waive such claims only to the extent such claims exceed the maximum amount of the Contractor’s insurance or financial capability required under paragraph (f) below. This reciprocal waiver of claims shall not apply to rights and obligations arising from the application of any of the other clauses in the contract or to rights and obligations arising from activities that are not within the scope of this contract.

(2) Pursuant to paragraph (c)(2), the Contractor shall extend this waiver of claims to its Related Entities by requiring them, by contract or otherwise, to waive all claims against the Government and its Related Entities.

(e) If the Contractor is required to obtain a Federal Aviation Administration (FAA) license in accordance with 51 U.S.C. 50901 et seq., for all Launch Services and Reentry Services performed under this Contract, this waiver of claims shall not be applicable to activities under this Contract that are subject to the FAA license. This waiver of claims shall cover all other activities performed under this Contract.

(f) Throughout the performance of the contract, the Contractor shall maintain insurance, or demonstrate financial capability to compensate, for damages (as defined in paragraph (b)(2)(ii)) to U.S. Government property, except for:

(i) damage to Gateway element(s) on-orbit;

(ii) damage or loss resulting from the willful misconduct of the Government or its employees; and

(iii) damage to U.S. Government property that is otherwise covered pursuant to insurance required for FAA licensing.

For the avoidance of doubt, for obligations within this (f) clause, the Contractor is not required to obtain insurance or demonstrate financial capability for any damages caused to the Gateway element(s) that occur on orbit during performance of this Contract.

Such insurance shall be an amount up to $100 million, or the maximum amount available in the market at reasonable cost, subject to approval by the Contracting Officer. Financial capability, if authorized by the Contracting Officer, shall be in the amount of $100 million. The Contractor shall provide acceptable evidence of the insurance or financial capability to the Contracting Officer, subject to Contracting Officer approval. Insurance policies shall name the United States Government as an additional insured party. Once approved by the Contracting Officer, insurance policies may not be modified or canceled without the prior, written approval of the Contracting Officer. In the event any losses or damages are covered by such insurance, the Government may, at its discretion, request that insurance proceeds be applied directly to the repair or replacement of such damage or loss, rather than paid directly to the Government. The Government may request that all insurance proceeds be made payable directly to the party making the repairs or providing a replacement. Such repair or replacement shall be to the satisfaction of the Contracting Officer. If losses or damages exceed available insurance, the Government shall have the right to prioritize the application of insurance proceeds.

(End of Clause)

**1852.228-78, Cross-Waiver of Liability for Science or Space Exploration Activities Unrelated to the International Space Station (Oct 2012) (DEVIATED)** (The version of the clause in this Deviated version applies in lieu of the standard NFS version.)

(a) *Applicability*. The purpose of this clause is to extend a cross-waiver of liability to NASA contracts for work done in support of Agreements between Parties involving Science or Space Exploration activities that are not related to the International Space Station (ISS) or Gateway but involve a launch. This cross-waiver of liability shall be broadly construed to achieve the objective of furthering participation in space exploration, use, and investment.

(b) *Definitions*. As used in this clause, the term:

(1) “Agreement” refers to any contract or NASA Space Act agreement that contains the cross-waiver of liability provision authorized in 14 CFR Part 1266.104.

(2) "Damage" means:

(i) Bodily injury to, or other impairment of health of, or death of, any person;

(ii) Damage to, loss of, or loss of use of any property;

(iii) Loss of revenue or profits; or

(iv) Other direct, indirect, or consequential Damage;

(3) “Launch” means the intentional ignition of the first-stage motor(s) of the Launch Vehicle intended to place or try to place a Launch Vehicle (which may or may not include any Transfer Vehicle, Payload or crew) from Earth:

(i) in a suborbital trajectory;

(ii) in Earth orbit in outer space;

(iii) in lunar orbit; or

(iv) otherwise in outer space,

(v) including Launch Services activities involved in the preparation of a Launch Vehicle, Transfer Vehicle or Payload for launch.

(4) “Launch Services” means:

(i) Activities involved in the preparation of a Launch Vehicle, Transfer Vehicle, Payload, or crew (including crew training), if any, for launch; and

(ii) The conduct of a Launch.

(5) “Launch Vehicle” means an object, or any part thereof, intended for launch, launched from Earth, or returning to Earth which carries Payloads or persons, or both.

(6) "Party" means a party to an Agreement involving activities in connection with the Artemis program, including the Parties to this contract.

(7) "Payload" means all property to be flown or used on or in a Launch Vehicle, Transfer Vehicle, and/or Orion and element(s) thereof.

(8) "Protected Space Operations" means all Launch or Transfer Vehicle activities and Payload activities on Earth, in outer space, or in transit between Earth and outer space in implementation of an Agreement for Science or Space Exploration activities unrelated to the ISS or Gateway that involves a launch.

(i) Protected Space Operations includes, but is not limited to:

(A) Research, design, development, test, manufacture, assembly, integration, operation, or use of Launch or Transfer Vehicles, Payloads, or instruments, as well as related support equipment and facilities and services; and

(B) All activities related to ground support, test, training, simulation, or guidance and control equipment, and related facilities or services.

(ii) Protected Space Operations excludes:

(A) Activities on Earth which are conducted on return from space to develop further a payload's product or process other than for the activities within the scope of an Agreement; and

(B) Activities on the lunar surface.

(9) “Reentry” means to purposefully return or attempt to return, through completion of recovery, a Transfer Vehicle, Payload, or crew from the Gateway, Earth orbit, or outer space to Earth.

(10) “Reentry Services” means:

(i) Activities involved in the preparation of a Transfer Vehicle, Payload, or crew (including crew training), if any, for Reentry; and

(ii) The conduct of a Reentry through completion of recovery.

(11) "Related entity" means:

(i) A contractor or subcontractor of a Party at any tier;

(ii) A user or customer of a Party at any tier; or

(iii) A contractor or subcontractor of a user or customer of a Party at any tier. The terms "contractors" and "subcontractors" include suppliers of any kind.

(12) “Transfer Vehicle” means any vehicle that operates in space and transfers Payloads or persons or both between two different space objects, between two different locations on the same space object, or between a space object and the surface of a celestial body. A Transfer Vehicle also includes a vehicle that departs from and returns to the same location on a space object.

(c) *Cross-waiver of liability*.

(1) The Contractor agrees to a waiver of liability pursuant to which it waives all claims against any of the entities or persons listed in paragraphs (c)(1)(i) through (c)(1)(iv) of this clause based on Damage arising out of Protected Space Operations. This cross-waiver shall apply only if the person, entity, or property causing the Damage is involved in Protected Space Operations and the person, entity, or property damaged is damaged by virtue of its involvement in Protected Space Operations. The waiver shall apply to any claims for Damage, whatever the legal basis for such claims, against—

(i) A Party;

(ii) A Party to another NASA Agreement or contract that includes flight on the same Launch Vehicle;

(iii) A Related Entity of any entity identified in paragraphs (c)(1)(i) or (c)(1)(ii) of this clause; or

(iv) The employees of any of the entities identified in (c)(1)(i) through (iii) of this clause.

(2) The Contractor agrees to extend the cross-waiver of liability as set forth in paragraph (c)(1) of this clause to its own subcontractors at all tiers by requiring them, by contract or otherwise, to:

(i) Waive all claims against the entities or persons identified in paragraphs (c)(1)(i) through (c)(1)(iv) of this clause; and

(ii) Require that their Related Entities waive all claims against the entities or persons identified in paragraphs (c)(1)(i) through (c)(1)(iv) of this clause.

(3) For avoidance of doubt, this cross-waiver of liability includes a cross-waiver of claims arising from the Convention on International Liability for Damage Caused by Space Objects, entered into force on 1 September 1972, in which the person, entity, or property causing the Damage is involved in Protected Space Operations and the person, entity, or property damaged is damaged by virtue of its involvement in Protected Space Operations.

(4) Notwithstanding the other provisions of this clause, this cross-waiver of liability shall not be applicable to:

(i) Claims between the Contractor and its own Related Entities or between its Related Entities;

(ii) Claims made by a natural person, his/her estate, survivors, or subrogees (except when a subrogee is a Party to an Agreement or is otherwise bound by the terms of this cross-waiver) for bodily injury to, or other impairment of health, or death of such person;

(iii) Claims for Damage caused by willful misconduct;

(iv) Intellectual property claims;

(v) Claims for damages resulting from a failure of the contractor to extend the cross-waiver of liability to its subcontractors and related entities, pursuant to paragraph (c)(2) of this clause; or

(vi) Claims by the Government arising out of or relating to a contractor’s failure to perform its obligations under this contract.

(d) *Waiver of claims between the Government and Contractor*.

(1) This clause provides for a reciprocal waiver of claims between the Government and the Contractor and their Related Entities as described in paragraph (c) above, except that the Government shall waive such claims only to the extent such claims exceed the maximum amount of the Contractor’s insurance or financial capability as required under paragraph (e), below. This reciprocal waiver of claims shall not apply to rights and obligations arising from the application of any of the other clauses in the contract or to rights and obligations arising from activities that are not within the scope of this contract.

(2) Pursuant to paragraph (c)(2), the Contractor shall extend this waiver of claims to its Related Entities by requiring them, by contract or otherwise, to waive all claims against the Government and its Related Entities.

(e) *Insurance and financial capability requirements*.

(i) Throughout the performance of the contract, the Contractor shall maintain insurance, or demonstrate financial capability to compensate, for damage to U.S. Government property, except for:

(A) Damage to Orion on-orbit;

(B) Damage or loss resulting from the willful misconduct of the Government or its employees; or

(C) Damage to U.S. Government property that is otherwise covered pursuant to the insurance required for FAA licensing.

(ii) The insurance required by paragraph (e)(i) shall be in the amount of $100 million, or a lesser amount that is the maximum amount available in the market at reasonable cost, subject to approval by the Contracting Officer. Financial capability, if authorized by the Contracting Officer, shall be in the amount of $100 million.

(iii) Insurance policies shall name the United States Government as an additional insured party.

(iv) The Contractor shall provide evidence of the insurance or financial capability to the Contracting Officer upon request, and such insurance or financial capability is subject to Contracting Officer approval. Once approved by the Contracting Officer, the Contractor shall not modify or cancel the insurance policy without the prior, written approval of the Contracting Officer.

(v) In the event any losses or damages are covered by insurance, the Government may, at its discretion, request that insurance proceeds be applied directly to the repair or replacement of such damage or loss, rather than paid directly to the Government. The Government may request that all insurance proceeds be made payable directly to the party making the repairs or providing a replacement. Such repair or replacement shall be to the satisfaction of the Contracting Officer. If losses or damages exceed available insurance, the Government shall have the right to prioritize the application of insurance proceeds.

(f) *Exclusion for FAA-licensed activities*. If the Contractor is required to obtain a Federal Aviation Administration (FAA) license in accordance with 51 U.S.C. 50901 et seq., for any Launch Services or Reentry Services performed under this contract, this waiver of claims shall not be applicable to activities under this contract that are subject to the FAA license.

(g) *Basis for a claim or suit*. Nothing in this clause shall be construed to create the basis for a claim or suit where none would otherwise exist.

(End of clause)

**GOVERNMENT INSIGHT** (Communications with the Government under this clause shall be made through Lockheed Martin.)

(a) *Applicability.* This clause describes the primary working-level mechanism for contract performance monitoring by the Government.

(b) *Definition.*

(1) “Insight” means the Government gaining an understanding of the Contractor’s activities and data, including an understanding of those activities necessary to assess technical progress, schedule performance, and how the Contractor is managing risks while successfully completing contract requirements and achieving final certification. Insight is not approval or disapproval authority, but insight may provide information for the Government to use in, and expedite, approval procedures otherwise contemplated by this contract.

(2) “Safety critical” means a condition, event, operation, process, function, equipment or system (including software and firmware) with potential for personnel injury or loss, or with potential for loss or damage to vehicles, equipment or facilities, loss or excessive degradation of the function of critical equipment, or which is necessary to control a hazard.

(c) *Areas open to insight.* Except for related financial information, the Contractor shall provide NASA real-time, or otherwise timely as appropriate to respond to a request from NASA, insight into:

(1) The design, development, analysis, and testing of all HLS systems, subsystems, and components, including schedules, performance metrics, risks, and management processes;

(2) Launch site operations supporting the launch of any HLS components, including spacecraft-to-launch vehicle integration, spacecraft handling procedures, launch commit criteria, and range safety analysis;

(3) HLS mission operations, including flight plans, rules, and procedures, trajectory and mission design, crew and flight control team training, real-time operations, and space communications and navigation networks; and

(4) Any additional safety or mission-critical activities or data identified by NASA during contract performance.

(d) *NASA Insight Team.*

(1) The Contractor shall provide insight to NASA personnel and support services contractor(s) from the following NASA program offices: Artemis, Gateway, Exploration Systems Development, and Launch Services Program. NASA will inform the Contractor of the individual(s) within NASA who are the insight designee(s) for this contract (collectively, the “NASA Insight Team”), who are subject to change at any time at NASA’s sole discretion.

(2) The NASA Insight Team is not authorized on behalf of the Government to direct Contractor performance, execute major or minor contract modifications, or otherwise provide direction on contractual requirements or contract interpretation. Any action(s) taken by the Contractor in response to direction given by any person other than the Contracting Officer or his/her authorized designees shall be entirely at the Contractor’s own risk. The Contractor shall immediately notify the Contracting Officer of any alleged contract changes.

(e) *Insight procedures.*

(1) *Access*. The Contractor shall provide NASA and its support services contractor(s) access to all data and activities necessary for the Government to achieve insight into the areas identified in paragraph (c). At a minimum, access is the ability, both remotely and on-site at the Contractor’s facilities, to locate and review all data and activities.

(2) *Possession and transformation of data*. The Contractor shall permit, and when requested, facilitate the Government in downloading or otherwise taking possession (e.g., printing) of data subject to insight. The Government may store such data on Government systems or at Government facilities and transform the data as deemed necessary by the Government to effectuate insight.

(3) *Contractor facilitator team*. The Contractor shall establish a team of Contractor personnel to help facilitate the Government’s insight, including facilitating physical and/or virtual access to data and Contractor activities.

(4) *Accommodations at Contractor facilities*. NASA may elect to have representation by Government personnel and/or NASA’s support services contractor(s) performing insight activities as a resident office at the Contractor’s facilities for the life of the contract. In such scenarios, the Contractor, in accordance with the Contractor’s Insight Implementation Plan, shall provide reasonable accommodations and services, such as badging, furniture, telephones, internet access, and use of easily accessible scanners, printers and copy machines at each location. Electronic data transfer compatibility between the resident office and off-site NASA institutions is required, as well as remote access for select NASA personnel at NASA centers to Contractor databases where electronic files are posted and revisions maintained.

(5) *RBA*. The Contractor shall facilitate members of the NASA Insight Team participating in quality assurance functions for all safety-critical items/processes/products identified by a risk-based analysis (RBA). A RBA is an iterative analysis based on a comprehensive understanding of the design, development, testing, critical manufacturing/assembly processes, and operations used to identify areas of risk. The Contractor shall support the RBA, by providing technical expertise, as required.

(f) *Contractor notification requirements.*

(1) The Contractor shall notify the NASA Insight Team sufficiently in advance of technical meetings, control boards, reviews, tests, and any other areas identified for Government Quality Assurance associated with certification to permit meaningful Government participation in the subject event.

(2) The Contractor shall notify NASA of qualification or test anomalies involving similar vehicles, systems, subassemblies and components. The Contractor shall make available to NASA all problem reports or discrepancy reports on vehicle systems’ failures and anomalies. This shall include insight into fleet-wide problems, anomalies, Material Review Board actions, deviations or waivers to systems, subsystems, materials, processes, and test equipment including those used on non-NASA missions.

(3) In the event of an anomaly, launch or mission failure, the Contractor shall support NASA’s mishap investigation in accordance with NFS 1852.223-70 SAFETY AND HEALTH MEASURES AND MISHAP REPORTING (DEC 2015), incorporated herein, and the other terms and conditions set forth in this contract, or shall allow NASA to fully participate in the Contractor’s Mishap Investigation Board or equivalent entity, including those for non-NASA missions that utilize the same space transportation vehicles (as defined in the contract section H clause, “Domestic Source Requirements”) developed or utilized under this contract.

(g) *Effects of insight.*

(1) Insight should result in an effective working relationship between the Government and the Contractor leading to a NASA certification of the Contractor’s HLS.

(2) If, through insight, the NASA Insight Team observes any of the following: Contractor non-compliance with requirements or the other terms and conditions of the contract; a difference in interpretation of test results; or disagreement with the Contractor’s technical approach, the NASA Insight Team will elevate the issue through the appropriate HLS boards. Through an effective, functioning relationship, the Government and Contractor should strive to resolve issues at the lowest working level and minimize issues elevated to program boards. Program boards will disposition recommendations in a timely manner and provide oversight resolution if necessary. Resulting board decisions and direction will be transmitted to the Contractor through the Contracting Officer. If disposition results in a requirement change, the contract changes clause shall govern. If the Contractor and Contracting Officer disagree on whether the board disposition provided is within the requirements of the contract, the contract disputes clause will govern.

(3) The parties agree that information obtained through insight does not constitute notice, actual or constructive, for any purpose.

(4) Insight does not affect or modify in any way the Government’s right to pursue remedies for nonconforming services or work.

(5) Insight does not affect or modify the Contractor’s responsibility for full performance as set forth in this contract. The Government’s insight under this clause shall not be construed as: authorization; endorsement or approval of milestones; certification or final acceptance or rejection of certification success; or as a defense to any finding of mission failure or final acceptance or rejection of contract deliverables.

(h) *Government use of insight data.*

(1) The data generated as a result of Government insight may be used, modified, reproduced, released, performed, displayed, or disclosed within the Government and its support service contractors. The Government may not, without written permission of the Contractor, release or disclose the data outside the Government, except as otherwise required by law, use the technical data for manufacture, or authorize the technical data to be used by a party outside the Government. Data accessed or obtained by the Government under this clause is not subject to the licensing provisions or other terms and conditions pertaining to technical data and computer software established in FAR 52.227-14 Rights in General – Deviated as incorporated into this contract. The Government’s right to use data accessed or obtained by the Government pursuant to this clause is limited to the terms and conditions of this clause.

(2) The Trade Secrets Act (18 U.S.C. § 1905) prohibits NASA personnel from disclosing the Contractor’s proprietary information unless authorized by law to do so. NASA will undertake all necessary precautions in order to ensure that Contractor confidential or proprietary information is protected throughout contract performance.

(i) *Flow down to subcontractors and suppliers.* The Contractor shall ensure the Government has insight into the activities and data of: (1) the Contractor; and (2) all subcontractors and suppliers performing or supporting any safety critical work, or handling or creating data required to certify any portion of the HLS. Fulfillment of this clause may require the Contractor to execute third-party data rights agreements with its suppliers, as well as rights to information developed under other programs, to provide adequate NASA insight on parts and services procured by the Contractor. The Contractor shall incorporate the applicable provisions of this clause into its contracts with subcontractors and suppliers to which this clause applies, or shall otherwise obtain signed commitments to comply with the terms of this clause and related contract requirements from those entities.

(j) *Insight Implementation Plan*. The Contractor’s Insight Implementation Plan shall comply with the requirements of this clause and specify, in detail, how the Contractor will accomplish the requirements of this clause. Where the plan and this clause conflict, this clause shall govern.

(End of Clause)

**DOMESTIC SOURCE REQUIREMENTS**

(a) *Definitions*. As used in this clause, the following definitions apply.

(1) “Components” means those materials and supplies directly incorporated into a domestic end product.

(2) “Controlling interest” means ownership of an amount of equity in such entity sufficient to direct management of the entity or to avoid transactions entered into by management. Ownership of at least fifty-one (51) percent of the equity in an entity creates a presumption that such an interest is controlling; however, the ultimate determination as to whether the interest is controlling resides with NASA.

(3) “Domestic end product” means a product for which the cost of its components that are mined, produced, or manufactured in the United States exceed fifty (50) percent of the cost of all of its components. The cost of each component includes transportation costs to the place of incorporation into the product and any applicable duty (whether or not a duty-free entry certificate is issued). Assembly, integration, and testing would be necessarily included in the cost of manufacturing. The manufacturing costs of domestic end products, including all labor and services associated with such manufacturing, should be included in the overall calculation when determining if the cost of components exceed 50% of all components per the clause.

(4) “Research and development” means basic research; applied research; design and development of subsystems and components; and completion of all certification milestone reviews, excluding certification of flight readiness, and concluding with design certification review.

(5) “Space transportation services” means: final testing, assembly, and integration of a complete HLS; integration of the HLS with the launch vehicle and preparation of that integrated vehicle for flight; and the conduct of transporting a space transportation vehicle or payload to, from, or within outer space, or in suborbital trajectory. This includes, but is not limited to: launch of any or all HLS components, whether integrated or not; transportation to and docking with Gateway; and transportation between Gateway and the lunar surface.

(6) “Space transportation vehicle” means any vehicle constructed for the purpose of operating in, or transporting a payload both to and within, space.

(7) “United States commercial provider” means any corporation, partnership, joint venture, association, or other entity which is organized or existing under the laws of the United States or any State, and whose controlling interest is held by United States citizens or permanent residents.

(b) *Domestic source restrictions*.

(1) *Research and development*. The contractor may incorporate foreign participation in research and development efforts if the participation is effectuated through the no-exchange-of-funds policy as set forth in NFS 1836.016-70(b). In accordance with NFS 1835.016-70(a)(3), NASA funding may not be used for subcontracted foreign research and development efforts. However, subject to the other provisions of this clause, and in furtherance of completing research and development under this contract, the contractor may make direct purchases from non-U.S. sources of supplies and/or services, including major components or subsystems, if those services or supplies are not, in and of themselves, research and development efforts. Minor modifications of existing supplies for use on or integration into HLS shall not constitute research and development for purposes of this paragraph.

(2) *Services*. In accordance with 51 U.S.C. § 50131, space transportation services shall be provided by United States commercial providers. The contractor may utilize subcontractors for the performance of this work only if the total value of the space transportation services performed by non-United States commercial providers does not exceed 50% of the total price for space transportation services paid by the Government under this contract.

(3) *Vehicle composition*. In accordance with NFS 1835.016-70(a)(3) and national space policy, the direct purchase of supplies and/or services, which do not constitute research and development, from non-U.S. sources by U.S. award recipients is permitted, provided, however, all space transportation vehicles utilized by the contractor in performance of this contract, including but not limited to launch vehicles and the integrated HLS, shall be domestic end products.

(c) *Certification and materiality*.

(1) *Certification*. Offerors must certify that they meet all requirements of this clause in responding to this solicitation. Offerors that fail to meet these requirements are ineligible for award.

(2) *Materiality*. The Contractor’s compliance with this clause is a material condition of receiving contract payments. The Contractor shall comply with this clause at all times during contract performance. The Contractor’s failure to comply with the terms of this clause may result in the Government exercising its right to terminate the contract for default in accordance with FAR 52.249-9 and the applicable terms of this contract. The Government may choose not to exercise its right to terminate the contract; however, such an election is not a waiver of its right to do so in the future.

(End of clause)

PUBLIC AFFAIRS (Communications with the Government under this clause shall be made through Lockheed Martin.)

(a) It is anticipated that the Contractor will execute media events to cover major contract activities. The Contractor may, consistent with Federal law and this Contract, release general information regarding its activities conducted within the scope of the Contract:

(1) The Contractor will coordinate with the NASA Public Affairs Office (PAO) at Marshall Spaceflight Center and at Headquarters in a timely manner prior to major media releases, media interviews, news conferences, contingency statements, media scouts, photo opportunities and film crew activities regarding NASA HLS-related efforts.

(2) The use of any direct quote by a NASA official shall be submitted for NASA concurrence to ensure accuracy prior to its release.

(3) NASA will coordinate, with the Contractor, public releases of information to obtain comments and technical corrections related to the Contractor’s HLS-related efforts prior to NASA’s release of information to the public. The Contractor shall use its best efforts to provide its review and comments back to NASA within five (5) days of the request. If comments are not provided within the five (5) day time period, the submitted content will be considered acceptable for release. For breaking news items, there may be a need for more timely release of information to the public in which case the Government PAO team will coordinate with the Contractor for imminent release.

(4) The Contractor shall assist the NASA PAO in developing the mission commentary for NASA Television by furnishing HLS background material.

(5) The Contractor may also be requested to provide information to support the development of press kit documents and NASA news conferences.

(6) At a minimum of forty-five (45) days in advance, the Contractor shall work with the COR to coordinate any public affairs requirements for any launches, landings, major milestones and tests under this contract.

(7) If the Contractor has knowledge that the press is inquiring about an event that meets criteria set forth in NFS 1852.223-70 SAFETY AND HEALTH MEASURES AND MISHAP REPORTING (DEC 2015), the Contractor shall promptly notify the Contracting Officer, or designee, of the event. The Contracting Officer, or designee, will facilitate access to NASA Public Affairs. NASA Public Affairs will work with the Contractor to generate a coordinated response to the Press and the public.

(b) The Contractor shall protect NASA crew member’s audio and imagery for all contract activities in order to protect NASA crew member privacy. For downlinked audio and imagery, the Contractor shall route the data in real-time to the NASA Mission Control Center. NASA will monitor feed(s) and instruct the Contractor to remove the feed from release to the public in the event of a privacy concern. For imagery and audio recorded during flight operations and recovered post-flight, the Contractor shall send a copy of the data to NASA for review. The Contractor shall not release any video and/or audio with NASA crew members in view until the NASA review is complete. NASA will inform the Contractor if any data is restricted. Restricted data cannot be released by the Contractor, either internally or externally, or used in anyway. Data that does not contain NASA crew members may be used by the Contractor after proper coordination in accordance with paragraph (a) above.

(c) The Contractor shall not use the words “National Aeronautics and Space Administration” or the letters “NASA” in connection with a product or service in a manner reasonably calculated to convey any impression that such product or service has the authorization, support, sponsorship, or endorsement of NASA, which does not, in fact, exist. In addition, the Contractor shall submit in advance any proposed public use of the NASA name or initials for NASA review and approval. NASA approval shall be based on applicable law and policy governing the use of the NASA name and initials. NASA’s approval will not be unreasonably withheld. Use of NASA emblems/devices (i.e., NASA Seal, NASA Insignia, NASA logotype, NASA Program Identifiers, and the NASA Flag) is governed by 14 C.F.R. Part 1221. The Contractor shall not publicly use such emblems/devices without prior NASA review and approval in accordance with such regulations.

(d) NASA does not endorse or sponsor any commercial product, service, or activity. NASA’s certification of the HLS under this Contract does not constitute certification or endorsement by NASA that the HLS is safe for public transportation of humans in space and to and from the lunar surface. NASA’s HLS certification means the Contractor’s HLS has met NASA’s safety requirements for transporting NASA crew in space and to and from the lunar surface. The Contractor agrees that nothing in this Contract will be construed to imply that NASA authorizes supports, endorses, or sponsors any product or service of the Contractor resulting from activities conducted under this Contract.

(End of Clause)

MISSION SUCCESS DETERMINATION

(a) *Applicability*. Except as otherwise specified within this clause, for the mission portion of the work under this contract, the terms and conditions contained in this clause are in lieu of the terms and conditions that apply in the event of a default as prescribed in clause 52.249-9 Default (Fixed-Price Research and Development) (Deviated) and paragraph (j) of clause 52.232-32 Performance Based Payments. Reference by any clause or other term of this contract to termination for default provisions or procedures shall be interpreted as referring to this clause when the event that would potentially qualify as a default pursuant to paragraph (a)(1) of clause 52.249-9 Default (Fixed-Price Research and Development) (Deviated) will or does occur during the mission portion of the work under this contract.

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

(1) “Crew” means two (2) U.S. Government astronauts.

(2) “Full mission success” means that the Contractor has achieved all primary and secondary objectives as defined in the Statement of Work.

(3) “Mishap” has the definition contained within NASA Procedural Requirement 8621.1C.

(4) “Mission” means the period of performance under the prime contract that begins when the Contractor (BUYER) has achieved, as determined solely by the Contracting Officer, all of the milestone acceptance criteria for the “Lunar Orbit Checkout Review” milestone, and ends:

(i) Upon the safe return of the crew from the lunar surface to Gateway or Orion; or

(ii) At the time the Contractor ceases attempting to achieve, or is no longer capable of achieving, any of the primary objectives listed in the Statement of Work, as applicable to either the Base period scope of work or the Option A scope of work.

(5) “Mission failure” means loss of one or more primary objectives, or a serious injury or fatality that occurs during performance of the mission and as a result of the mission.

(6) “Partial mission success” means that the Contractor has, as the objectives are defined in the Statement of Work:

(i) Achieved all primary objectives; and

(ii) Failed to achieve one or more secondary objectives.

(7) “Serious injury” means any injury resulting from a mishap in which any one or more of the following apply:

(i) Requires hospitalization for more than forty-eight (48) hours, commencing within seven (7) days from the date the injury occurred;

(ii) Results in a fracture of any bone (except simple fractures of fingers, toes, or nose);

(iii) Causes severe hemorrhages or nerve, muscle, or tendon damage;

(iv) Involves any internal organ; or

(v) Involves second- or third-degree burns, or any burns affecting more than five (5) percent of the body surface.

(8) “U.S. Government astronaut” means any individual who meets the definition of “government astronaut” under 51 U.S.C. § 50902(4)(A), (B), and (C)(i), which means an individual who is an employee of the U.S. Government, including the uniformed services, engaged in the performance of a Federal function under authority of law or an Executive Act and designated as a government astronaut by NASA in accordance with applicable NASA requirements.

(c) *Mission success determination*.

(1) The Contracting Officer has the sole authority to determine whether any mission undertaken by the Contractor pursuant to this contract achieved full mission success, partial mission success, or constituted a mission failure.

(2) At the Contracting Officer’s request, the Contractor shall submit any data or other evidence related to the performance of the mission, including data or other evidence of the BUYER submitted to the Contractor, in order to aid the Contracting Officer in making a mission success determination.

(3) Within fifteen (15) calendar days from receipt by the Contracting Officer of all of the data requested under paragraph (c)(2), the Contracting Officer will make the mission success determination and thereafter provide timely notice of this determination to the Contractor. The Contractor shall promptly provide a copy of such notice to the SELLER.

(d) *Milestone payment amount determination*.

(1) Following adjudication and payment, if any, of the Contractor’s final milestone payment according to the terms and conditions of this clause, the Government’s final milestone payment obligations to the Contractor will be fully satisfied, and the Contractor shall not be entitled to any additional final milestone payment pursuant to any other term or condition of this contract.

(2) *Payment eligibility*.

(i) Upon a determination from the Contracting Officer that the Contractor has achieved full mission success, subject to the other terms of this clause, the Contractor is eligible for payment by the Government of the full amount of the Contractor’s final milestone payment.

(ii) Upon a determination from the Contracting Officer that the Contractor has achieved partial mission success, subject to the other terms of this clause, the Contractor is eligible for payment by the Government of no more than half (50%) of the Contractor’s final milestone payment.

(iii) Upon a determination from the Contracting Officer that the Contractor has experienced a mission failure, the Contractor is ineligible for payment by the Government of any final milestone payment.

(3) Payment of the final milestone payment. NASA shall make the final milestone payment to the Contractor in the applicable amount pursuant to paragraph (d)(2) of this clause if:

(i) The mission has concluded, and the Contractor has participated in the post-mission assessment review as required under this contract; and

(ii) The Contractor, as determined solely by the Contracting Officer, has met all of the final milestone acceptance criteria as specified in this contract, including delivery of all items required to be delivered by the Contractor as part of this milestone’s acceptance criteria.

(e) *Contractor’s willful misconduct or gross negligence*. If an event or events occur during performance of the mission that would potentially qualify as a default pursuant to paragraph (a)(1) of clause 52.249-9 Default (Fixed-Price Research and Development) (Deviated), and such event or events were the result of the Contractor’s willful misconduct or gross negligence, this clause no longer governs, and the Government shall have all of the rights and remedies made available under clause 52.249-9 Default (Fixed-Price Research and Development) (Deviated).

(f) *Control of the HLS*. The parties agree that the terms and conditions of this clause remain in effect whether the Contractor or the Government is in control, operational or otherwise, of the HLS in any capacity during performance of the mission.

(g) *Application to SELLER*. Any determination by the Contracting Officer that BUYER is not eligible for full payment of the final milestone payment under this clause shall not effect BUYER’s obligation to make full payment of the final milestone payment under Article 7, Final Payment, of the subcontract awarded by BUYER to SELLER, unless the Contracting Officer has determined that the SELLER’s work, in whole or in part, used to perform the mission caused less than full mission success. In the event of such determination, the final milestone payment to SELLER shall be reduced only to the extent that its work has caused less than full mission success. For example, if the Contracting Officer determines that the (i) BUYER has achieved partial mission success under this clause and would be eligible for payment of 50% of its final milestone payment, and (ii) the performance of SELLER’s work (e.g., the Ascent Element) caused 25% of the partial mission success, then SELLER shall be paid 75% of the final milestone payment under Article 7, Final Payment.

(End of Clause)

DELIVERY OF DATA AND HARDWARE IN THE EVENT OF TERMINATION FOR CONVENIENCE OR DEFAULT

In the event of a termination for the convenience of the Government, or a termination for default, the Government may elect to take title to and request delivery of any items specified in subsections (i) and (ii) of that clause, as well as any: (1) completed or partially-completed work not previously delivered to, and accepted by, the Government, including, but not limited to, any partially completed draft technical data packages, computer software, and computer software documentation otherwise required as deliverables under this contract, and any hardware developed during the performance of this contract, regardless of whether the Contractor would have been required to deliver such hardware; and (2) other property specifically produced or acquired for the terminated or non-terminated portion of this contract, including, but not limited to, any long lead hardware or software items, or components thereof, procured under any CLIN of this contract. Upon direction of the Contracting Officer, the Contractor shall also protect and preserve property in its possession in which the Government has an interest.

(End of Clause)

CROSS WAIVER OF LIABILITY FOR LUNAR SURFACE ACTIVITIES

(a) As used in this clause—

(1) “Damage” means:

(i) Bodily injury to, impairment of health of, or death of, any person;

(ii) Damage to, loss of, or loss of use of, any property;

(iii) Loss of revenue or profits; or

(iv) Other direct, indirect, or consequential damage.

(2) “Lunar Surface Activities” means activities performed pursuant to this contract on the surface of the Moon. Lunar Surface Activities commence upon contact with the lunar surface and conclude with liftoff from the lunar surface.

(3) “Party” means either NASA or the Contractor, as appropriate (collectively, the “Parties”).

(4) “Related Entity” means:

(i) A contractor or subcontractor of a Party at any tier;

(ii) A user or customer of a Party at any tier; or

(iii) A contractor or subcontractor of a user or customer of a Party at any tier. The terms “contractor” and “subcontractor” include suppliers of any kind.

(b) Each Party hereby waives any claim against the other Party, employees of the other Party, the other Party’s Related Entities, or employees of the other Party’s Related Entities, for Damage arising from or related to Lunar Surface Activities.

(c) This reciprocal waiver of claims shall not apply to rights and obligations arising from the application of any of the other clauses in the contract or to rights and obligations arising from activities that are not within the scope of this Contract.

(d) Each Party shall extend this cross-waiver to its Related Entities by requiring them, by contract or otherwise, to waive all claims against the other Party, Related Entities of the other Party, and employees of the other Party or of its Related Entities, for Damage arising from or related to Lunar Surface Activities.

(e) Notwithstanding the other provisions of this clause, this cross-waiver of liability shall not be applicable to:

(1) Claims between a Party and its own Related Entity or between its own Related Entities;

(2) Claims made by a natural person, his/her estate, survivors, or subrogees (except when a subrogee is a Party to this contract or is otherwise bound by the terms of this cross-waiver) for bodily injury, other impairment of health, or death of such natural person;

(3) Intellectual property claims;

(4) Claims for Damage caused by willful misconduct;

(5) Claims for Damage resulting from a failure of a Party to extend the cross-waiver of liability to its Related Entities pursuant to paragraph (c) of this clause; or

(6) Claims by a Party arising out of or relating to the other Party’s failure to perform its obligations under this contract.

(f) Nothing in this clause shall be construed to create the basis for a claim or suit where none would exist.

(End of clause)

CONTRACTOR USE OF GOVERNMENT-FURNISHED EQUIPMENT, PROPERTY, OR INFORMATION (Applicable if this purchase order/subcontract involves the use of government-furnished resources subject to this clause.)

(a) *Applicability*. The terms and conditions set forth in this clause are applicable to all Government-furnished equipment, property, or information (collectively, Government-furnished resources” or “GFR” as used in this clause), whether required by the Government for use or requested by the Contractor for use during performance of this contract, and for which the Contractor will take title and will not return to the Government after use. This clause does not apply to items loaned to the Contractor by the Government during performance. In the event of a conflict between this clause and the provisions of the Federal Acquisition Regulation or the NASA FAR Supplement, the terms and conditions of this clause govern.

(b) *Specific GFR Subject to the Terms of this Clause*.

(1) Mandatory. NASA has prescribed a list of GFR that are required for Contractor use during performance of the contract on a no-charge basis. The Contractor must utilize this GFR as a condition of performance of this contract.

(2) Optional. NASA has provided a list of GFR that the Contractor may elect to use during performance of the contract. Additionally, the Contractor may propose to utilize other GFR not otherwise listed, subject to its availability. The Contractor shall make a formal written request to a NASA Center, Component Facility, or the Jet Propulsion Laboratory (JPL) (any one of which is a “Performing Organization” hereafter in this clause). Such proposed requests must be within the scope of the contract and are subject to the availability of that GFR and the Performing Organization’s ability and willingness to provide them. The Offeror/Contractor shall document its request for planned use of this GFR through the execution and submission with proposal of one or more Optional Government-furnished Equipment or Property Agreements (“OGFPAs”) and will be bound by the terms set forth in those Agreements. During contract performance, the Parties may agree to execute additional OGFPAs if they mutually determine such agreements are necessary to respond to new or changed circumstances that arise during performance. The Offeror shall follow the instructions for use of OGFPAs as provided in solicitation Attachment K – Optional Government-furnished Equipment or Property Agreements (OGFPAs). The Offeror shall contact the Performing Organization Point of Contact to negotiate the terms of each OGFPA; however, the Point of Contact’s signature shall not constitute a binding commitment on behalf of the Government of the availability of such GFR or a commitment to provide it by a date certain. Each Performing Organization shall provide a cost for each OGFPA, but the Offeror shall not include this cost in its firm fixed price. The total cost of all OGFPAs will be added to the Offeror’s Total Evaluated Price for proposal evaluation purposes only. In the event the Contractor requests the use of GFR during performance, the Contractor shall be responsible for the cost of any such GFR by the Contractor, and the Parties shall effectuate the addition of new OGFPAs, and corresponding contract price adjustments, pursuant to the FAR 52.243-1 – Changes – Fixed-Price (ALT I) as incorporated herein.

(c) *Disclaimer*. In the event that GFR is in the possession of or is the responsibility of a prior or current NASA contractor, such GFR shall be governed by the terms and conditions of the contract(s) under which it is accountable. No representation or warranty is made by the Government as to the fitness or suitability of said GFR for its intended use under this contract; it being understood and agreed that the said GFR is being made available for use under this contract on an “as is” basis in accordance with paragraph (d)(2)(iii) of clause 52.251-1 – Government Property.

(d) *Title*. Upon delivery by NASA, title to all GFR shall vest with the Contractor. Such equipment or property shall be the sole responsibility of the Contractor and shall not be the subject of claims or other equitable adjustments for deficiency of said property or equipment.

(e) *Termination*. If this contract is terminated for any reason, at the Contracting Officer’s request, the Contractor shall immediately return all GFR to NASA.

(f) *Delays in Delivery*. The Government shall not be responsible for conflicts, delays, or disruptions to any Contractor work due to the Contractor’s use of GFR under this contract. Further, the Contractor agrees that late delivery of GFR requested by the Contractor for incorporation under this contract shall not be the subject of claims or other requests for equitable adjustment. The Contractor expressly agrees that it remains solely responsible for the adequacy, suitability, performance, and timely delivery of any GFR utilized when performing this contract.

(g) *Contractor Responsibility*. Notwithstanding the Contractor’s use of GFR under this contract, the Contractor remains fully responsible for the performance of all requirements as set forth in this contract. The Government’s provision of the requested, optional GFR as described in this clause shall not be construed as: authorization; endorsement or approval of milestones; certification or final acceptance or rejection of certification success; or as a defense to any finding of mission failure or final acceptance or rejection of contract deliverables.

(End of clause)

**MARKING REQUIREMENTS FOR TECHNICAL DATA AND COMPUTER SOFTWARE**

(a) *Definitions*. The definitions contained in FAR 52.227-14 Rights in Data – General (Deviated) as incorporated into this contract apply to this clause.

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

(1) General marking instructions. The Contractor, or its subcontractors or suppliers, shall conspicuously and legibly mark the appropriate legend on all technical data or computer software 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. 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 Contracting Officer's written permission to deliver such software has been obtained prior to delivery. Reproductions of computer software or any portions thereof subject to asserted restrictions, shall also reproduce the asserted restrictions.

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

**GOVERNMENT PURPOSE RIGHTS**

|  |  |
| --- | --- |
| Contract No. |  |
| Contractor Name |  |
| Contractor Address |  |
|  |  |
| Expiration Date |  |

The Government's rights to use, modify, reproduce, release, perform, display, or disclose these technical data or this software are restricted by the above identified contract. No restrictions apply after the expiration date shown above. Any reproduction of technical data, software, or portions thereof marked with this legend must also reproduce the markings.

(End of legend)

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

**LIMITED RIGHTS**

|  |  |
| --- | --- |
| Contract No. |  |
| Contractor Name |  |
| Contractor Address |  |
|  |  |

The Government's rights to use, modify, reproduce, release, perform, display, or disclose these technical data are restricted by the above identified contract. Any reproduction of technical data or portions thereof marked with this legend must also reproduce the markings. Any person, other than the Government, who has been provided access to such data must promptly notify the above named Contractor.

(End of legend)

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

**RESTRICTED RIGHTS**

|  |  |
| --- | --- |
| Contract No. |  |
| Contractor Name |  |
| Contractor Address |  |
|  |  |

The Government's rights to use, modify, reproduce, release, perform, display, or disclose this software are restricted by the above identified contract. 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 Contractor.

(End of legend)

(5) *Special license rights markings*.

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

**SPECIAL LICENSE RIGHTS**

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

(End of legend)

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

(6) *Pre-existing markings*. If the terms of a prior contract or license permitted the Contractor to restrict the Government's rights to use, modify, reproduce, release, perform, display, or disclose technical data, computer software, or computer software documentation deliverable under this contract, and those restrictions are still applicable, the Contractor may mark such data, software, or documentation with the appropriate restrictive legend for which the data qualified under the prior contract or license.

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

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

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

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

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

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

(e) Markings for scientific or technical articles. The contractor shall mark each scientific and technical article based on or containing data first produced in the performance of this contract and submitted for publication in academic, technical or professional journals, symposia proceedings, or similar works with a notice, similar in all material respects to the following, on the cover or first page of the article, reflecting the Government’s non- exclusive worldwide license in the copyright:

**GOVERNMENT RIGHTS NOTICE**

This work was authored by employees of [insert the name of the Contractor] under Contract No. [insert contract number] with the National Aeronautics and Space Administration. The United States Government retains and the publisher, by accepting the article for publication, acknowledges that the United States Government retains a non-exclusive, paid-up, irrevocable, worldwide license to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, or allow others to do so, for United States Government purposes. All other rights are reserved by the copyright owner.

(End of Notice)

(f) *Flow down to subcontractors and suppliers*.

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

(2) Whenever any technical data for noncommercial items, or for commercial items developed in any part at Government expense, is to be obtained from a subcontractor or supplier for delivery to the Government under this contract, the Contractor shall use this same clause in the subcontract or other contractual instrument, including subcontracts or other contractual instruments for commercial items, and require its subcontractors or suppliers to do so, without alteration, except to identify the parties.

(3) Whenever any noncommercial computer software or computer software documentation is to be obtained from a subcontractor or supplier for delivery to the Government under this contract, the Contractor shall use this same clause in its subcontracts or other contractual instruments, and require its subcontractors or suppliers to do so, without alteration, except to identify the parties.

(End of clause)

**VALIDATION AND CHALLENGE PROCEDURES FOR TECHNICAL DATA AND COMPUTER SOFTWARE**

(a) *Definitions*. The definitions contained in FAR 52.227-14 Rights in Data – General (Deviated) as incorporated into this contract apply to this clause.

(b) *Validation of markings on technical data and computer software*.

(1) *Presumption regarding development exclusively at private expense* – Commercial Item. The Contracting Officer will presume that the Contractor’s or a subcontractor’s asserted use or release restrictions with respect to a commercial item is justified on the basis that the item was developed exclusively at private expense. The Contracting Officer will not challenge such assertions unless the Contracting Officer has information that demonstrates that the commercial item was not developed exclusively at private expense.

(2) *Justification*. The Contractor 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 or computer software delivered or required to be delivered under the contract or subcontract. Except as provided in paragraph (m)(1) of this clause, the Contractor or subcontractor shall be prepared to furnish to the Contracting Officer a written justification for such restrictive markings in response to a challenge under paragraph (m)(4) of this clause.

(3) *Prechallenge request for information*.

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

(ii) If the Contracting Officer, after reviewing the written data furnished pursuant to paragraph (m)(3)(i) of this clause, or any other available information pertaining to the validity of a restrictive marking, determines that reasonable grounds exist to question the current validity of the marking and that continued adherence to the marking would make impracticable the subsequent competitive acquisition of the item, component, or process to which the technical data or computer software relates, the Contracting Officer shall follow the procedures in paragraph (m)(4) of this clause.

(iii) If the Contractor or subcontractor fails to respond to the Contracting Officer's request for information under paragraph (m)(3)(i) of this clause, and the Contracting Officer determines that continued adherence to the marking would make impracticable the subsequent competitive acquisition of the item, component, or process to which the technical data or computer software relates, the Contracting Officer may challenge the validity of the marking as described in paragraph (m)(4) of this clause.

(4) *Challenge*.

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

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

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

(C) State that a Contracting Officer's final decision, issued pursuant to paragraph (m)(6) of this clause, sustaining the validity of a restrictive marking identical to the asserted restriction, within the three-year period preceding the challenge, shall serve as justification for the asserted restriction if the validated restriction was asserted by the same Contractor or subcontractor (or any licensee of such Contractor or subcontractor) to which such notice is being provided; and

(D) State that failure to respond to the challenge notice may result in issuance of a final decision pursuant to paragraph (m)(5) of this clause.

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

(iii) The Contractor's or subcontractor's written response shall be considered a claim within the meaning of 41 U.S.C. 7101, Contract Disputes, and shall be certified in the form prescribed at 33.207 of the Federal Acquisition Regulation, regardless of dollar amount.

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

(5) *Final decision when Contractor or subcontractor fails to respond*. Upon a failure of a Contractor or subcontractor to submit any response to the challenge notice the Contracting Officer will issue a final decision to the Contractor or subcontractor in accordance with this clause and the Disputes clause of this contract pertaining to the validity of the asserted restriction. This final decision shall be issued as soon as possible after the expiration of the applicable time period as specified in this clause. Following issuance of the final decision, the Contracting Officer will comply with the procedures in paragraphs (m)(6)(ii) through (v) of this clause.

(6) *Final decision when Contractor or subcontractor responds*.

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

(ii) If the Contracting Officer determines that the validity of the restrictive marking is not justified:

(A) The Contracting Officer shall issue a final decision to the Contractor or subcontractor in accordance with the Disputes clause of this contract. Notwithstanding the Disputes clause, the final decision shall be issued within sixty (60) days after receipt of the Contractor's or subcontractor's response to the challenge notice, or within such longer period that the Contracting Officer has notified the Contractor or subcontractor 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; and

(B) As applicable to computer software only, if the Contractor agrees that an asserted restriction is not valid, the Contracting Officer may strike or correct the unjustified marking at the Contractor's expense; or return the computer software to the Contractor for correction at the Contractor's expense. If the Contractor fails to correct or strike the unjustified restriction and return the corrected software to the Contracting Officer within sixty (60) days following receipt of the software, the Contracting Officer may correct or strike the markings at that Contractor's expense.

(iii) 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 Contracting Officer's final decision under paragraph (g)(2)(i) of this clause. The Contractor 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 Contracting Officer within ninety (90) days from the issuance of the Contracting Officer's final decision under paragraph (g)(2)(i) of this clause. If the Contractor or subcontractor fails to appeal, file suit, or provide a notice of intent to file suit to the Contracting Officer within the ninety (90)-day period, the Government may cancel or ignore the restrictive markings, and the failure of the Contractor or subcontractor to take the required action constitutes agreement with such Government action.

(iv) The Government agrees that it will continue to be bound by the restrictive marking where a notice of intent to file suit in the United States Claims Court is provided to the Contracting Officer within ninety (90) days from the issuance of the final decision under paragraph (g)(2)(i) of this clause. The Government will no longer be bound, and the Contractor or subcontractor agrees that the Government may strike or ignore the restrictive markings, if the Contractor 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 Contractor or subcontractor agrees that the agency may, following notice to the Contractor 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 Contractor'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.

(v) The Government agrees that it will be bound by the restrictive marking where an appeal or suit is filed pursuant to the Contract Disputes statute 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 Contractor that urgent or compelling circumstances will not permit awaiting the decision by such Board of Contract Appeals or the United States Claims Court, the Contractor 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 Contractor'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.

(7) *Final disposition of appeal or suit*.

(i) If the Contractor or subcontractor appeals or files suit and if, upon final disposition of the appeal or suit, the Contracting Officer's decision is sustained—

(A) The restrictive marking on the technical data shall be cancelled, corrected or ignored; and

(B) If the restrictive marking is found not to be substantially justified, the Contractor 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.

(ii) If the Contractor or subcontractor appeals or files suit and if, upon final disposition of the appeal or suit, the Contracting Officer's decision is not sustained—

(A) The Government shall continue to be bound by the restrictive marking; and

(B) The Government shall be liable to the Contractor or subcontractor for payment of fees and other expenses (as defined in 28 U.S.C. 2412(d)(2)(A)) incurred by the Contractor or subcontractor in defending the marking, if the challenge by the Government is found not to have been made in good faith.

(8) *Duration of right to challenge*. The Government may review the validity of any restriction on technical data, delivered or to be delivered under a contract, asserted by the Contractor or subcontractor. During the period within three (3) years of final payment on a contract or within three (3) years of delivery of the technical data to the Government, whichever is later, the Contracting 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—

(i) Is publicly available;

(ii) Has been furnished to the United States without restriction; or

(iii) Has been otherwise made available without restriction. Only the Contracting 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.

(9) *Decision not to challenge*. A decision by the Government, or a determination by the Contracting Officer, to not challenge the restrictive marking or asserted restriction shall not constitute “validation.”

(10) *Privity of contract*. The Contractor or subcontractor agrees that the Contracting Officer may transact matters under this clause directly with subcontractors or suppliers at any tier that assert restrictive markings or who assert restrictions on the Government's right to use, modify, reproduce, release, perform, display, or disclose computer software. However, neither this clause, nor any action taken by the Government under this clause, creates or implies privity of contract between the Government and the Contractor's subcontractors or suppliers.

(c) *Flow down to subcontractors and suppliers*.

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

(2) Whenever any technical data for noncommercial items, or for commercial items developed in any part at Government expense, is to be obtained from a subcontractor or supplier for delivery to the Government under this contract, the Contractor shall use this same clause in the subcontract or other contractual instrument, including subcontracts or other contractual instruments for commercial items, and require its subcontractors or suppliers to do so, without alteration, except to identify the parties.

(3) Whenever any noncommercial computer software or computer software documentation is to be obtained from a subcontractor or supplier for delivery to the Government under this contract, the Contractor shall use this same clause in its subcontracts or other contractual instruments, and require its subcontractors or suppliers to do so, without alteration, except to identify the parties.

(End of clause)

**LIMITATIONS ON THE USE OR DISCLOSURE OF GOVERNMENT-FURNISHED INFORMATION MARKED WITH RESTRICTIVE LEGENDS**

(a) *Definitions*. The definitions contained in FAR 52.227-14 Rights in Data – General (Deviated) as incorporated into this contract apply to this clause.

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

(1) GFI marked with government purpose rights, limited rights, restricted rights, or SBIR data rights legends.

(i) The Contractor shall use, modify, reproduce, perform, or display technical data or computer software received from the Government marked with limited rights legends, computer software received with restricted rights legends, or SBIR technical data or computer software received with SBIR data rights legends (during the SBIR data protection period) only in the performance of this contract. The Contractor shall not, without the express written permission of the party whose name appears in the legend, release or disclose such data or software to any unauthorized person.

(ii) If the Contractor is a covered Government support contractor, the Contractor is also subject to the additional terms and conditions at paragraph (b)(5) of this clause.

(2) GFI marked with government purpose rights legends. The Contractor shall use technical data or computer software received from the Government with government purpose rights legends for government purposes only. The Contractor shall not, without the express written permission of the party whose name appears in the restrictive legend, use, modify, reproduce, release, perform, or display such 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 contract. Prior to disclosing the data or software, the Contractor shall require the persons to whom disclosure will be made to complete and sign a non-disclosure agreement.

(3) GFI marked with specially negotiated license rights legends.

(i) The Contractor shall use, modify, reproduce, release, perform, or display technical data or computer software received from the Government with specially negotiated license legends only as permitted in the license. Such data or software may not be released or disclosed to other persons unless permitted by the license and, prior to release or disclosure, the intended recipient has completed a non-disclosure agreement. The Contractor 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.

(ii) If the Contractor is a covered Government support contractor, the Contractor may also be subject to some or all of the additional terms and conditions at paragraph (b)(5) of this clause, to the extent such terms and conditions are required by the specially negotiated license.

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

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

(ii) If the Contractor is a covered Government support contractor, the Contractor is also subject to the additional terms and conditions at paragraph (b)(5) of this clause.

(5) Covered Government support contractors. If the Contractor is a covered Government support contractor receiving technical data or computer software marked with restrictive legends, the Contractor further agrees and acknowledges that—

(i) The technical data or computer software will be accessed and used for the sole purpose of furnishing independent and impartial advice or technical assistance directly to the Government in support of the Government’s management and oversight of the program or effort to which such technical data or computer software relates, as stated in this contract, and shall not be used to compete for any Government or non-Government contract;

(ii) The Contractor will take all reasonable steps to protect the technical data or computer software against any unauthorized release or disclosure;

(iii) The Contractor will ensure that the party whose name appears in the legend is notified of the access or use within thirty (30) days of the Contractor's access or use of such data or software;

(iv) The Contractor will enter into a non-disclosure agreement with the party whose name appears in the legend, if required to do so by that party, and that any such non-disclosure agreement will implement the restrictions on the Contractor's use of such data or software as set forth in this clause. The non-disclosure agreement shall not include any additional terms and conditions unless mutually agreed to by the parties to the non-disclosure agreement; and

(v) That a breach of these obligations or restrictions may subject the Contractor to—

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

(B) Civil actions for damages and other appropriate remedies by the party whose name appears in the legend.

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

(1) To indemnify and hold harmless the Government, its agents, and employees from every claim or liability, including 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 Contractor or any person to whom the Contractor has released or disclosed such data or software; and

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

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

(End of clause)

**CONTRACTOR DISCLOSURE OF INFORMATION** (Communications with the Government under this clause shall be made through Lockheed Martin.)

(a) The Contractor shall not release to anyone outside the Contractor's organization any unclassified information, regardless of medium (e.g., film, tape, document), pertaining to any part of this contract or any program related to this contract, unless—

(1) The Contracting Officer has given prior written approval; or

(2) The information is otherwise in the public domain before the date of release.

(b) Requests for approval under paragraph (a)(1) shall identify the specific information to be released, the medium to be used, and the purpose for the release. The Contractor shall submit its request to the Contracting Officer at least 10 business days before the proposed date for release.

(c) The Contractor agrees to include a similar requirement, including this paragraph (c), in each subcontract under this contract. Subcontractors shall submit requests for authorization to release through the prime contractor to the Contracting Officer.

(End of clause)

**Section I – Contract Clauses:**

**52.227-14, Rights in Data - General (May 2014) (DEVIATED)** (The version of the clause in this Deviated version applies in lieu of the standard FAR version.)

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

(1) “Commercial computer software” means software developed or regularly used for non-governmental purposes which—

(i) Has been sold, leased, or licensed to the public;

(ii) Has been offered for sale, lease, or license to the public;

(iii) Has not been offered, sold, leased, or licensed to the public but will be available for commercial sale, lease, or license in time to satisfy the delivery requirements of this contract; or

(iv) Satisfies a criterion expressed in paragraph (a)(1)(i), (ii), or (iii) of this clause and would require only minor modification to meet the requirements of this contract.

(2) “Computer 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.

(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 data bases 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 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.

(7) “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.

(8) “Developed” means the following, as appropriate:

(i) 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;

(ii) 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;

(iii) 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

(iv) 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.

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

(i) Private expense determinations shall be made at the lowest practicable and segregable 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.

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

(11) “Developed with mixed funding” means development was accomplished partially with costs charged to indirect cost pools and/or costs not allocated to a government contract, and partially with costs charged directly to a government contract. In addition, technical data and computer software developed during collaboration as defined in Section H contract clause, “Use of Government Resources,” as well as technical data and computer software developed under work performed pursuant to a Government Task Agreement, are considered to be developed with mixed funding.

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

(13) “Government purpose” means any activity in which the United States Government is a party, including cooperative agreements with international or multi-national 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.

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

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

(ii) Release or disclose technical data, 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 that data for United States government purposes.

(15) “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—

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

(A) Necessary for emergency repair and overhaul; or

(B) A release or disclosure to—

(1) A covered Government support contractor or to entities outside the Government pursuant to agreements and contracts related to the Gateway or Artemis program for interface or integration purposes only; or

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

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

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

(16) “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.

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

(18) “Restricted rights” apply only to noncommercial computer software and mean the Government's rights to—

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

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

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

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

(A) Use the modified software only as provided in paragraphs (a)(18)(i) and (iii) of this clause; and

(B) Not release or disclose the modified software except as provided in paragraphs (a)(18)(ii), (v), (vi) and (vii) of this clause;

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

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

(B) 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)(18)(iv) of this clause, for any other purpose; and

(C) Such use is subject to the limitations in paragraphs (a)(18)(i) through (iii) of this clause;

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

(A) 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)(18)(iv) of this clause, for any other purpose; and

(B) Such use is subject to the limitations in paragraphs (a)(18)(i) through (iii) of this clause; and

(vii) Permit covered Government support contractors in the performance of covered Government support contracts 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)(18)(iv) of this clause, for any other purpose; and

(B) Such use is subject to the limitations in paragraphs (a)(18)(i) through (iv) of this clause.

(19) “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.

(20) “Unlimited rights” means rights to use, modify, reproduce, perform, display, release, or disclose technical data, 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) *License Rights*. The Contractor grants or shall obtain for the Government the following royalty free, world-wide, nonexclusive, irrevocable license rights:

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

(i) Technical data that are form, fit, and function data;

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

(iii) Technical data or computer software that are data in which the Government has obtained unlimited rights under another Government contract or as a result of negotiations; and

(iv) Technical data or computer software that are furnished to the Government, under this or any other Government contract or subcontract thereunder, with—

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

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

(v) Technical data that are necessary for installation, operation, maintenance, or training purposes (other than detailed manufacturing or process data).

(2) *Government purpose rights in technical data*.

(i) Except when the Government is entitled to unlimited rights in technical data as provided in section (b)(1) of this clause, the Government shall have government purpose rights in—

(A) Technical data that are developed exclusively with Government funds in the performance of this contract;

(B) Technical data that are developed with mixed funding in the performance of this contract;

(C) Technical data that are studies, analyses, test data, or similar data produced for this contract, when the study, analysis, test, or similar work was specified as an element of performance;

(D) Technical data that are corrections or changes to technical data furnished to the Contractor by the Government; and

(E) All other technical data required to be delivered under this contract, unless such data is delivered with limited rights in accordance with paragraph (b)(4) of this clause.

(ii) 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 a non-disclosure agreement; or

(B) The recipient is a Government contractor, grantee, or partner receiving access to the data for the performance of a Government contract, grant, or under the terms of an agreement executed pursuant to the Government’s other transactional authority.

(iii) The Contractor has the exclusive right, including the right to license others, to use for any commercial purpose technical data in which the Government has obtained government purpose rights under this contract.

(3) *Government purpose rights in computer software*.

(i) Except when the Government is entitled to unlimited rights in computer software as provided in section (b)(1) of this clause, the Government shall have government purpose rights in:

(A) Computer software developed exclusively with Government funds in the performance of this contract;

(B) Computer software developed with mixed funding in the performance of this contract;

(C) Corrections or changes to computer software furnished to the Contractor by the Government; and

(D) All other computer software required to be delivered under this contract, unless such computer software is delivered with limited rights in accordance with paragraph (b)(4) of this clause.

(ii) 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 a use and non-disclosure agreement; or

(B) The recipient is a Government contractor, grantee, or partner receiving access to the data for the performance of a Government contract, grant, or under the terms of an agreement executed pursuant to the Government’s other transactional authority.

(iii) The Contractor has the exclusive right, including the right to license others, to use for any commercial purpose computer software in which the Government has obtained government purpose rights under this contract.

(4) *Limited rights*.

(i) Except as provided in sections (b)(1) – (b)(3) of this clause, the Government shall have limited rights in technical data if such data is listed by the Contractor in the Assertion Notice in accordance with paragraph (f) of this clause and marked with the limited rights legend prescribed in paragraph (g) of this clause.

(ii) For all technical data delivered with limited rights under this contract, the Contractor shall furnish form, fit, and function data in addition.

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

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

(v) The Contractor acknowledges that—

(A) The Government is authorized to release or disclose limited rights data to covered Government support contractors and to entities outside the Government pursuant to agreements and contracts related to the Gateway or Artemis program for interface or integration purposes only;

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

(C) The Government makes such disclosure subject to prohibition against further use and disclosure.

(5) *Restricted rights*.

(i) The Government shall have restricted rights in noncommercial computer software required to be delivered or otherwise provided to the Government under this contract that was developed exclusively at private expense if such software is listed by the Contractor in the Assertion Notice in accordance with paragraph (f) of this clause and marked with the restricted rights legend prescribed in paragraph (g) of this clause.

(ii) For all computer software delivered with restricted rights under this contract, the Contractor shall furnish form, fit, and function data in addition.

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

(iv) The Contractor acknowledges that—

(A) The Government is authorized to release or disclose restricted rights computer software to covered Government support contractors and to entities outside the Government pursuant to agreements and contracts related to the Gateway or Artemis program for interface or integration purposes only;

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

(C) The Government makes such disclosure subject to prohibition against further use and disclosure.

(6) *Specifically negotiated license rights*. After contract award, the license rights granted to the Government under this clause may be modified by mutual agreement to provide such rights as the parties consider appropriate, but shall not provide the Government lesser rights than limited rights for technical data and computer software documentation, or lesser rights than restricted rights for computer software. Any rights so negotiated shall be identified in a license agreement and incorporated into this contract.

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

(i) The parties have agreed otherwise and attached that agreement to this contract; 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.

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

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

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

(e) *Third party copyrighted data*. The Contractor shall not, without the written approval of the Contracting Officer, incorporate any copyrighted data in the technical data to be delivered under this contract, or incorporate any copyrighted computer software or computer software documentation in the software or documentation to be delivered under this contract, unless the Contractor is the copyright owner or has obtained for the Government the license rights necessary to perfect a license or licenses in the deliverable data, software, or documentation of the appropriate scope as set forth in this clause, and: for technical data, has affixed a statement of the license or licenses obtained on behalf of the Government and other persons to the data transmittal document; for computer software, prior to delivery of such, has provided a statement of the license rights obtained in a form acceptable to the Contracting Officer; or, for computer software documentation, prior to delivery of such, has affixed to the transmittal document a statement of the license rights obtained.

(f) *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) In an attachment to their proposal, the Contractor shall identify all technical data and computer software that the Contractor asserts should be furnished to the Government with rights less than unlimited rights or government purpose rights (the Assertion Notice). During or after contract performance, the Contractor shall not deliver any technical data or software with restrictive markings unless the data or software is listed in the *Assertion Notice*.

(3) When requested by the Contracting Officer, the Contractor shall provide additional, sufficient information to enable the Contracting Officer to evaluate the Contractor's assertions. The Contracting Officer reserves the right to add the Contractor's assertions to the Assertions Notice and validate any listed assertion, at a later date, in accordance with the procedures specified in contract section H clause Validation and Challenge Procedures for Technical Data and Computer Software.

(4) In addition to the assertions made in the Assertion Notice, other assertions may be identified after award when based on new information. Such identification and assertion shall be submitted to the Contracting Officer as soon as practicable prior to the scheduled date for delivery of the data or software using the Assertion Notice format.

(5) *Assertion Notice*. The Contractor shall use the following Assertion Notice form to comply with the requirements of paragraphs (f)(2)-(4) of this clause. An official authorized to contractually obligate the Contractor shall sign each Assertion Notice submitted by the Contractor to the Government.

**Assertion Notice**

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

The Contractor asserts for itself, or the persons identified below, that the following technical data and computer software should be delivered to the Government with less than either unlimited rights or government purpose rights:

|  |  |  |  |
| --- | --- | --- | --- |
| Technical Data or Computer Software to be Furnished with Restrictions\* | Basis for Assertion \*\* | Asserted Rights Category\*\*\* | Name of Person Asserting Restrictions\*\*\*\* |
| (LIST) | (LIST) | (LIST) | (LIST) |
|  |  |  |  |

\* Assertions shall be made at lowest practicable and segregable level.

\*\* Enter the specific reason for asserting that the Government's rights should be restricted. Generally, the development of an item, component, or process exclusively at private expense is the only basis for asserting restrictions on the Government's rights to use, release, or disclose technical data or computer software under this contract. If the contractor’s Collaboration Plan proposes collaborative development of any technical data or computer software, or if the contractor proposes the use of one or more Government Task Agreements (GTA) for performance of this contract, the Contractor shall propose delivery of technical data and computer software created under those arrangements with no less than government purpose rights.

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

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

Date \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signature \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(End of identification and assertion)

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

(h) *Limitation on charges for rights in technical data or computer software*.

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

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

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

(2) This limitation—

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

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

(i) *Technical data or computer software previously delivered to the Government*.

(1) The Contractor shall attach to its offer an identification of all documents or other media incorporating technical data or computer software it intends to deliver under this contract with other than unlimited rights that are identical or substantially similar to documents or other media that the Offeror has produced for, delivered to, or is obligated to deliver to the Government under any contract or subcontract. The attachment shall identify—

(i) The contract number under which the data or software were produced;

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

(iii) Any limitations on the Government's rights to use or disclose the data or software, including, when applicable, identification of the earliest date the limitations expire.

(j) *Flow down to subcontractors and suppliers*.

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

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

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

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

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

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

(End of clause)

**52.249-9, Default (Fixed-Price Research and Development) (DEVIATED)** (The version of the clause in this Deviated version applies in lieu of the standard FAR version.)

(a) (1) The BUYER may, subject to paragraphs (c) and (d) below, by written Notice of Default to the SELLER. terminate this contract in whole or in part if the SELLER fails to -

(i) Perform the work under the contract within the time specified in this contract or any extension;

(ii) Prosecute the work so as to endanger performance of this contract (but see subparagraph (a)(2) below); or

(iii) Perform any of the other provisions of this contract (but see subparagraph (a)(2) below).

(2) The BUYER's right to terminate this contract under subdivisions (1)(ii) and (1)(iii) of this paragraph may be exercised if the SELLER does not cure such failure within 10 days (or more, if authorized in writing by the BUYER’s Procurement Representative) after receipt of the notice from the BUYER’s Procurement Representative specifying the failure.

(b) If the BUYER determinates this contract in whole or in part, it may acquire, under the terms and in the manner the BUYER’s Procurement Representative considers appropriate, work similar to the work terminated, and the SELLER will be liable to the BUYER for any excess costs for the similar work; however, the SELLER’s liability shall be limited to the amount of ten percent (10%) of the total value of the current Contract Line Item Numbers (CLINs) that the SELLER is performing when the liability arose. This limitation of liability will not apply if the event or events triggering default under this clause were the result of the SELLER’s willful misconduct or gross negligence. However, in all cases, the SELLER shall continue the work not terminated.

(c) Except for defaults of subcontractors at any tier, the SELLER shall not be liable for any excess costs if the failure to perform the contract arises from causes beyond the control and without the fault or negligence of the SELLER. Examples of such causes include (1) acts of God or of the public enemy, (2) acts of the Government in either its sovereign or contractual capacity, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions, (7) strikes, (8) freight embargoes, and (9) unusually severe weather. In each instance the failure to perform must be beyond the control and without the fault or negligence of the SELLER.

(d) If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is beyond the control of both the SELLER and subcontractor, and without the fault or negligence of either, the SELLER shall not be liable for any excess costs for failure to perform, unless the subcontracted supplies or services were obtainable from other sources in sufficient time for the SELLER to meet the required delivery schedule or other performance requirements.

(e) If this contract is terminated for default, the BUYER may require the SELLER to transfer title and deliver to the Government or Buyer, as directed by the BUYER’s Procurement Representative, any (1) completed or partially completed work not previously delivered to, and accepted by, the Government or BUYER, including, but not limited to, any partially completed draft technical data packages, computer software, and computer software documentation otherwise required as deliverables under this contract, and any hardware developed during the performance of this contract, regardless of whether the SELLER would have been required to deliver such hardware; and (2) other property, including contract rights, specifically produced or acquired for the terminated portion of this contract, including, but not limited to, and any long lead hardware or software items or components thereof procured under any CLIN of this contract. Upon direction of the BUYER’s Procurement Representative, the SELLER shall also protect and preserve property in its possession in which the BUYER has an interest.

(f) The BUYER shall pay the contract price, if separately stated, for completed work it has accepted and the amount agreed upon by the SELLER and the BUYER’s Procurement Representative for (1) completed work for which no separate price is stated, (2) partially completed work, (3) other property described above that it accepts, and (4) the protection and preservation of the property. Failure to agree will be a dispute under the Disputes clause. The BUYER may withhold from these amounts any sum the BUYER’s Procurement Representative determines to be necessary to protect the BUYER against loss from outstanding liens or claims of former lien holders.

(g) If, after termination, it is determined that the SELLER was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the BUYER.

(h) The rights and remedies of the BUYER in this clause are in addition to any other rights and remedies provided by law or under this contract.

(End of clause)

**Blue Origin Subcontract Clauses:**

**ARTICLE 12 – COMMERCIAL ITEMS**

Suppliers and lower tier subcontractors at all tiers shall use commercial items or non-developmental

items as components of Deliverables to the maximum extent practicable for this Subcontract.

**ARTICLE 14 – NOTICE OF DELAY / FORCE MAJEURE**

Whenever any actual or potential event is delaying or threatens to delay delivery of the Deliverables or performance of the Services under this Subcontract, Supplier shall give notice as soon as possible to both of Buyer's POC’s as identified on Page One. Neither Party shall be held liable for delay, nonperformance, loss or damage due to earthquake, hurricane, flood, fire, or other unusually severe acts of God, acts of a public enemy, wars, civil disturbances, sabotage, insurrections, blockades, embargoes, acts of terrorism, acts of any governmental body, failure or delay of third parties or governmental bodies from whom a party is obtaining or must obtain approvals, authorizations, licenses, franchises or permits (collectively, "Force Majeure"), except that Buyer has the right to terminate this Subcontract without liability if Supplier’s performance is so delayed by more than 90 days. Each Party shall use its reasonable efforts to minimize the duration and consequences of any failure of or delay in performance resulting from a Force Majeure event.

**ARTICLE 29 – RIGHTS IN AND OWNERSHIP OF INTELLECTUAL PROPERTY**

a. For purposes of this Subcontract:

“Intellectual Property Rights” means rights in Intellectual Property, consisting of copyrights and copyright rights (including all registrations, applications for registration and renewals of such copyrights), other design registrations, patents and patent rights (including all reissues, divisions, provisions, continuations and continuations-in-part, re-examinations, renewals, substitutions and extensions thereof), patent applications, trade secrets and any other governmental authority issued indicia of invention ownership (including inventor’s certificates, petty patents and patent utility models), recognized in any country or jurisdiction in the world, together with the goodwill connected with the use of and symbolized by, and all registrations, applications, and renewals for any of the foregoing.

b. The rights of the Parties set forth in this article shall be subject to any rights in the Parties’ respective Intellectual Property that the Government may currently have or in the future obtain as a result of its funding of all or some portion of the development of such Intellectual Property clauses referenced in Attachment B, Flowdown Clauses (the “IP Clauses”), as applicable, and the rights described in Attachment G, Data Rights Assertions, if any. In addition, Supplier shall be bound by all applicable IP Clauses.

c. Subject to any rights of the Government under the IP Clauses, each Party shall retain title to any and all Intellectual Property Rights in Intellectual Property first developed, authored, conceived, or reduced to practice during the performance of this Subcontract solely by that Party without use or reliance on the other Party's Intellectual Property (“Foreground IP”). In such event, no license, express or implied, to prepare copies and derivative tasks of such Foreground IP or to make, use, sell and export/import products or processes incorporating such Foreground IP, shall inure to the benefit of the other Party except as expressly provided herein or in any other written agreement between the Parties.

d. Subject to any rights of the Government under the IP Clauses, and only upon mutual agreement of the parties in advance, in the event Intellectual Property is developed and funded by one Party during the performance of this Subcontract that is derived from or is an improvement to Background Intellectual Property of the other Party (“Derivative IP”), such Derivative IP shall be the property of the other Party rather than the developing Party; provided, however, that the other Party shall and does hereby grant to the Developing Party a nonexclusive, worldwide, royalty-free, irrevocable right and license to make copies and derivative tasks of such Derivative IP.

e. Notwithstanding anything to the contrary in the foregoing, Supplier agrees that Buyer shall have a nonexclusive, world-wide, fully paid up, royalty-free license to use, sell, or offer for sale any Intellectual Property owned or developed hereunder by Supplier which is incorporated in the Products or Services delivered under the Subcontract solely for Buyer to perform the Prime Contract under which this Subcontract was awarded to Supplier. Except as provided herein, neither Party shall acquire, directly or by implication, any other rights in the Intellectual Property of the other. Further, to the extent Buyer discloses or otherwise makes available any Buyer Background Intellectual Property to Supplier, Buyer agrees that Supplier shall have a nonexclusive, world-wide, fully paid up, royalty-free license to use, copy, and modify such Buyer Background Intellectual Property for the purposes of Supplier performing its obligations under this Subcontract.

f. Intellectual Property Indemnification. Supplier's obligations under this Article shall not apply to the extent FAR 52.227-1 (DEC 2007) ALTERNATE 1 (APR 1984) "Authorization and Consent" applies to Buyer’s Prime Contract for infringement of a U.S. patent. Supplier shall indemnify, defend and hold harmless Buyer, and its agents and employees from and against any Loss resulting from any allegation, claim, threatened claim, assertion, regulatory actions, demands, action, liability, or suit (“Claim”) by a third party that the Products or Services delivered under this Agreement infringe or misappropriate the Intellectual Property Rights (as defined below) of any party, provided however, that this indemnification shall not apply to the extent any Claim: (a) is solely based on Intellectual Property provided to Supplier by Buyer in the Subcontract or written specifications , or (b) would not have occurred except for Buyer’s modification of the Products or Services delivered under this Agreement after acceptance by Buyer, or (c) based on a combination of the Products or Services delivered under this agreement with products, services or Intellectual Property not furnished by Supplier. Buyer and Supplier shall notify each other of any Claims against the other. If Buyer’s use of any Services provided hereunder are enjoined or otherwise restricted, Supplier shall, at its own expense and at Supplier’s option, obtain for Buyer the right to continue using the Products or Services delivered hereunder, modify the same to make non-infringing, or replace the same with Services that is non-infringing and acceptable to Buyer, or refund all amounts paid to Supplier for the Services that have not yet been provided, Foreground Intellectual Property and any related

services.

**FAR Clauses**

**52.227-1, Authorization and Consent (Dec 2007) and Alternate I (Apr 1984)** (Alternate I will also apply.)

**52.227-16, Additional Data Requirements (Jun 1987)** (Applicable if Seller will be providing technical data. "Contracting Officer" means "Lockheed Martin and the Contracting Officer.")

**52.243-1, Changes – Fixed Price (Aug 1987) and Alternate I (Apr 1984)**

**52.246-7, Inspection of Research and Development – Fixed-Price (Aug 1996)** (Applicable if Seller has a fixed price research and development contract. "Government" means "Lockheed Martin and the Government " in paragraphs (a), (b) and (c).  "Government" means "Lockheed Martin" in paragraphs (d), (e), and (f). "Contracting Officer" means "Lockheed Martin.")

**52.246-26, Reporting Nonconforming Items (Dec 2019)** (Applicable if this purchase order/subcontract is for the items listed in paragraph (g) of the clause. Copies of reports provided under this clause shall be provided to Lockheed Martin as well as the Contracting Officer. Seller shall notify Lockheed Martin when it issues a GIDEP report pursuant to this clause.)

**NASA FARS Clauses**

**1852.223-72, Safety and Health (Short Form) (Jul 2015)** (Applicable for all purchase orders/subcontracts.)