

GENERAL PROVISIONS

Fixed Price Supplies and Services – Foreign

For the Pacific Northwest National Laboratory
Operated by Battelle Memorial Institute

Battelle Memorial Institute has executed and is engaged in the performance of Prime Contract DE-AC05-76RL01830 with the United States Department of Energy (DOE), for the management, operation, and maintenance of the Pacific Northwest National Laboratory (PNNL) in Richland, Washington. This contract is entered into in furtherance of the performance of the work provided in the Prime Contract, and is subject to the following general provisions:

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Definitions (*cl. 301 – Oct 2008*)

- A. The terms “Battelle,” “Pacific Northwest National Laboratory,” “PNNL,” and “Laboratory” mean Battelle Memorial Institute, Pacific Northwest Division.
- B. The term “Government” means the Government of the United States of America.

- C. The term “DOE” means the U.S. Department of Energy.
- D. “Battelle Contracts Representative” means an employee of Battelle Memorial Institute, Pacific Northwest Division, acting within the limits of a written authorization to execute legally binding commitments on behalf of Battelle.

- E. Except as otherwise provided in this Contract, the term "Contract" includes this purchase order or subcontract and the term "Subcontract" refers to lower-tier subcontracts.

Acceptance of Contract Terms and Conditions (cl. 302 - Oct 2008)

The Contractor, by signing this Contract or performing the services and/or delivering the supplies identified herein, agrees to comply with all the terms and conditions and all specifications and other documents that this Contract incorporates by reference or attachment. Battelle hereby objects to any terms and conditions contained in any acknowledgment of this Contract that are different from or in addition to those mentioned in this document. Failure of Battelle to enforce any of the provisions of this Contract shall not be construed as evidence to interpret the requirements of this Contract, nor a waiver of any requirements, nor of the right of Battelle to enforce each and every provision. All rights and obligations shall survive final performance of this Contract.

Order of Precedence (cl. 309 - Feb 2009)

Any inconsistency in this solicitation or contract shall be resolved by giving precedence in the following order:

- A. The Schedule (excluding the specifications or statement of work)
- B. Representations and other instructions
- C. Contract clauses
- D. Other documents, exhibits, and attachments
- E. The specifications or statement of work

Inconsistencies Due to Translation into another Language (cl. F-701 - Feb 2004)

In the event of inconsistency between any terms of this Contract and any translation thereof into another language, the English language meaning shall control.

Liability (cl. F-702 - Feb 2004)

The Government of the United States is not a party to this Contract; therefore, this Contract, or any action in connection with this Contract, shall not provide the basis for any claims in any forum against the Government of the United States.

Dispute Resolution and Arbitration (cl. F-703 - May 2012)

In the event of any dispute, claim or disagreement arising out of or relating to this contract or the breach of this contract, the parties shall use their best efforts to settle such disputes, claims or disagreements. Upon the written request of either party, the parties shall consult and negotiate with each other in good faith in an attempt to reach a just and equitable solution satisfactory to both parties. If, however, the parties do not reach such a solution within ninety (90) days after the request, either party shall have the right to submit the dispute to binding arbitration. The arbitration shall be conducted pursuant to the Rules of Conciliation and Arbitration of the International Chamber of Commerce ("Rules") by one or more arbitrators appointed in accordance with these Rules. The governing law of this contract shall be the substantive law of the State of Washington, United States of America. All arbitration proceedings shall occur in Vancouver, British Columbia, Canada and shall be conducted in English. Costs shall be mutually shared by

the Contractor and Battelle and it is agreed that there shall be no pre-decisional interest costs, and each party shall bear its discretionary costs. The arbitration award shall be final and binding on both parties. Judgment upon the award rendered may be entered in any court having jurisdiction.

In the event of a dispute, there shall be no interruption in the performance of the work, and the Contractor shall proceed diligently with the performance of this contract pending final resolution of any dispute arising under this contract between the parties hereto or between the Contractor and its sub-tier subcontractors.

Assignment (cl. 357 - Jan 2003)

Battelle may assign this contract to the U.S. Department of Energy (DOE) or a designee of DOE. Upon receipt by the Contractor of written notice that DOE or its designee has been assigned this contract, Battelle shall be relieved of all responsibility hereunder, and the Contractor shall thereafter look solely to the assignee for performance of Battelle's obligations.

The Contractor shall not assign this contract or any interest therein, nor claims thereunder without the prior written consent of Battelle or Battelle's assignee. Any assignment, by operation of law or otherwise, without prior written consent of Battelle or Battelle's assignee shall be void.

Bankruptcy (cl. 318 - Nov 2008)

If the Contractor enters into any proceeding related to bankruptcy, it shall give written notice to the Battelle Contracts Representative via certified mail within five days of initiation of the proceeding. The notification shall include the date on which the proceeding was filed, the identity and location of the court, and a listing of the Battelle purchase orders, contracts, or agreements affected.

Pacific Northwest National Laboratory or Battelle Name (cl. 374 - Oct 2008)

The Contractor agrees not to use Pacific Northwest National Laboratory's or Battelle's name or identifying characteristics for advertising, sales promotion, raising of capital, recommending investments or other publicity purposes that implies endorsement by the Pacific Northwest National Laboratory or Battelle without the prior written consent of Battelle. This clause shall survive the termination or expiration of this contract.

Force Majeure (cl. 310 - Dec 2009)

Neither Battelle nor Contractor shall be liable in any way for failure to perform any provision of this Contract (except for payment of monetary obligations) if such failure is caused by any law, rule, or regulation, or any cause beyond the control of the party in default. Should such acts or events occur, Contractor and/or Battelle shall use commercially reasonable efforts to overcome all difficulties and to resume work as soon as reasonably possible.

Permits and Responsibilities (cl. 358 - Nov 1991)

The Contractor is an independent contractor, not an agent or employee of Battelle. The Contractor shall, without additional expense to Battelle or the Government, be responsible for obtaining any necessary licenses and

permits, and for complying with any Federal, State, and municipal laws, codes, and regulations applicable to the performance of the work. The Contractor shall also be responsible for all damages to persons or property that occur as a result of the Contractor's fault or negligence.

Competition in Subcontracting *(cl. F-708- Dec 1996)*

The Contractor shall select Subcontractors (including suppliers) on a competitive basis to the maximum practical extent consistent with the objectives and requirements of the contract.

Changes – Fixed Price *(cl. F-746b – Jan 2010)*

The Battelle Contracts Representative may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this Contract in any one or more of the following:

- A. Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for Battelle in accordance with the drawings, designs, or specifications.
- B. Method of shipment or packing.
- C. Place of delivery.

If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of the work under this Contract, whether or not changed by the order, the Battelle Contracts Representative shall make an equitable adjustment in the contract price, the delivery schedule, or both, and shall modify the Contract.

The Contractor must assert its right to an adjustment under this clause within 30 days from the date of receipt of the written order. However, if the Battelle Contracts Representative decides that the facts justify it, the Battelle Contracts Representative may receive and act upon a proposal submitted before final payment of the Contract.

If the Contractor's proposal includes the cost of property made obsolete or excess by the change, the Battelle Contracts Representative shall have the right to prescribe the manner of the disposition of the property.

Failure to agree to any adjustment shall be resolved in accordance with the Conflict Resolution and Arbitration Clause of this Contract. However, nothing in this clause shall excuse the Contractor from proceeding with the Contract as changed.

Payment *(cl. F-710 – Sept 2009)*

Contractor shall submit its invoice at the time of final shipment or final completion of the services, unless otherwise provided in the Contract Schedule or Purchase Order. Invoices shall reference the Battelle Purchase Order number and include a complete description of the ordered items, prices, ship dates, and other documentation as required by the Contract Schedule or Purchase Order. Whenever possible, invoices should be sent electronically to ap.invoices@pnnl.gov. Failure to comply with any of these requirements may result in a delay in payment of the invoices.

Payment shall be made for items delivered to the specified delivery destination, and for services completed and accepted by Battelle. Unless otherwise provided in the Contract Schedule or Purchase Order, the terms of

payment shall be 30 days after receipt of the Contractor's properly submitted invoice. Any offered discount shall be taken if payment is made within the discount period indicated by the Contractor. Payments may be made by check or by electronic funds transfer, at the option of Battelle. Payment shall be deemed to have been made as of the date of mailing or the date on which an electronic funds transfer was made.

Contract Administration *(cl. 384 - Feb 2015)*

- A. The Contractor's progress and compliance with the technical requirements of this contract may be monitored for Battelle by a Technical Oversight Representative. The name of the Technical Oversight Representative, if one is designated, will be furnished the Contractor by the Battelle Contracts Representative.
- B. The Battelle Technical Oversight Representative is authorized to receive information, conduct inspections of work in process and witness Contractor tests. He/she has no authority to (1) change or waive any provision of this contract, including but not limited to statements of work, drawings, specifications and standards, whether attached or incorporated by reference; (2) provide interpretations of any provision or requirement of this contract; (3) direct, advise, or recommend any particular course of conduct on the part of the Contractor; or (4) create any legally binding commitment on behalf of Battelle.
- C. The Contractor is solely responsible for strict compliance with all requirements of this contract. No notice, communication or representation in any form or from any person other than a Battelle Contracts Representative shall be effective to relieve the Contractor of such obligation or to stop Battelle from enforcing the contract exactly according to its written terms.

Title *(cl. cl-70 – Sept 2007)*

Unless specified elsewhere in this Contract, title to items furnished under this Contract shall pass to the Government upon acceptance by Battelle, regardless of when or where Battelle takes physical possession.

Risk of Loss *(cl. cl-63 - Feb 2007)*

Unless the Contract specifically provides otherwise, risk of loss or damage to the supplies provided under this contract shall remain with the Contractor until, and shall pass to Battelle upon:

- A. Delivery of the supplies to a carrier, if transportation is f.o.b. origin; or
- B. Delivery of the supplies to Battelle at the destination specified in the contract, if transportation is f.o.b. destination.

Inspection of Supplies – Fixed Price *(cl. 379c - Aug 1996)*

- A. Definition. "Supplies," as used in this clause, includes but is not limited to raw materials, components, intermediate assemblies, end products, and lots of supplies.
- B. The Contractor shall provide and maintain an inspection system acceptable to Battelle covering supplies under this contract and shall tender to Battelle for acceptance only supplies that have been

inspected in accordance with the inspection system and have been found by the Contractor to be in conformity with contract requirements. As part of the system, the Contractor shall prepare records evidencing all inspections made under the system and the outcome. These records shall be kept complete and made available to Battelle during contract performance and for as long afterwards as the contract requires. Battelle may perform reviews and evaluations as reasonably necessary to ascertain compliance with this paragraph. These reviews and evaluations shall be conducted in a manner that will not unduly delay the contract work. The right of review, whether exercised or not, does not relieve the Contractor of the obligations under the contract.

- C. Battelle has the right to inspect and test all supplies called for by the contract, to the extent practicable, at all places and times, including the period of manufacture, and in any event before acceptance. Battelle shall perform inspections and tests in a manner that will not unduly delay the work. Battelle assumes no contractual obligation to perform any inspection and test for the benefit of the Contractor unless specifically set forth elsewhere in this contract.
- D. If Battelle performs inspection or test on the premises of the Contractor or a subcontractor, the Contractor shall furnish, and shall require subcontractors to furnish, at no increase in contract price, all reasonable facilities and assistance for the safe and convenient performance of these duties. Except as otherwise provided in the contract, Battelle shall bear the expense of inspections or tests made at other than the Contractor's or subcontractor's premises; provided, that in case of rejection, Battelle shall not be liable for any reduction in the value of inspection or test samples.
- E.
 - 1. When supplies are not ready at the time specified by the Contractor for inspection or test, the Battelle Contracts Representative may charge to the Contractor the additional cost of inspection or test.
 - 2. The Battelle Contracts Representative may also charge the Contractor for any additional cost of inspection or test when prior rejection makes re-inspection or retest necessary.
- F. Battelle has the right either to reject or to require correction of nonconforming supplies. Supplies are nonconforming when they are defective in material or workmanship or are otherwise not in conformity with contract requirements. Battelle may reject nonconforming supplies with or without disposition instructions.
- G. The Contractor shall remove supplies rejected or required to be corrected. However, the Battelle Contracts Representative may require or permit correction in place, promptly after notice, by and at the expense of the Contractor. The Contractor shall not tender for acceptance corrected or rejected supplies without disclosing the former rejection or requirement for correction, and, when required, shall disclose the corrective action taken.
- H. If the Contractor fails to promptly remove, replace, or correct rejected supplies that are required to be removed or to be replaced or corrected, Battelle may either (1) by contract or otherwise, remove, replace, or correct the supplies and charge the cost to the Contractor or (2) terminate the contract for default.

Unless the Contractor corrects or replaces the supplies within the delivery schedule, the Battelle Contracts Representative may require their delivery and make an equitable price reduction. Failure to agree to a price reduction shall be a dispute.

- I.
 - 1. If this contract provides for the performance of Battelle quality assurance at source and if requested by Battelle, the Contractor shall furnish advance notification of the time—
 - a. When Contractor inspection or tests will be performed in accordance with the terms and conditions of the contract; and
 - b. When the supplies will be ready for Battelle inspection.
 - 2. Battelle's request shall specify the period and method of the advance notification and the Battelle representative to whom it shall be furnished. Requests shall not require more than 2 workdays of advance notification if the Battelle representative is in residence in the Contractor's plant, nor more than 7 workdays in other instances.
- J. Battelle shall accept or reject supplies as promptly as practicable after delivery, unless otherwise provided in the contract. Battelle's failure to inspect and accept or reject the supplies shall not relieve the Contractor from responsibility, nor impose liability on Battelle, for nonconforming supplies.
- K. Inspections and tests by Battelle do not relieve the Contractor of responsibility for defects or other failures to meet contract requirements discovered before acceptance. Acceptance shall be conclusive, except for latent defects, fraud, gross mistakes amounting to fraud, or as otherwise provided in the contract.
- L. If acceptance is not conclusive for any of the reasons in Paragraph K hereof, Battelle, in addition to any other rights and remedies provided by law, or under other provisions of this contract, shall have the right to require the Contractor—
 - 1. At no increase in contract price, to correct or replace the defective or nonconforming supplies at the original point of delivery or at the Contractor's plant at Battelle's election, and in accordance with a reasonable delivery schedule as may be agreed upon between the Contractor and the Battelle Contracts Representative; provided, that the Battelle Contracts Representative may require a reduction in contract price if the Contractor fails to meet such delivery schedule, or
 - 2. Within a reasonable time after receipt by the Contractor of notice of defects or nonconformance, to repay such portion of the contract as is equitable under the circumstances if Battelle elects not to require correction or replacement.
- M. When supplies are returned to the Contractor, the Contractor shall bear the transportation cost from the original point of delivery to the Contractor's plant and return to the original point when that point is not the Contractor's plant. If the Contractor fails to perform or act as required in Paragraph L.1. or L.2. of this clause and does not cure such failure within a period of 10 days (or such longer period as the Battelle

Contracts Representative may authorize in writing) after receipt of notice from Battelle specifying such failure, Battelle shall have the right by contract or otherwise to replace or correct such supplies and charge to the Contractor the cost occasioned Battelle thereby.

Inspection of Services – Fixed Price (cl. 379b - Aug 1996)

- A. Definition. "Services," as used in this clause, includes services performed, workmanship, and material furnished or utilized in the performance of services.
- B. The Contractor shall provide and maintain an inspection system acceptable to Battelle covering the services under this contract. Complete records of all inspection work performed by the Contractor shall be maintained and made available to Battelle during contract performance and for as long afterwards as the contract requires.
- C. Battelle has the right to inspect and test all services called for by the contract, to the extent practicable at all times and places during the term of the contract. Battelle shall perform inspections and tests in a manner that will not unduly delay the work.
- D. If Battelle performs inspections or tests on the premises of the Contractor or a subcontractor, the Contractor shall furnish, and shall require subcontractors to furnish, at no increase in contract price, all reasonable facilities and assistance for the safe and convenient performance of these duties.
- E. If any of the services do not conform to contract requirements, Battelle may require the Contractor to perform the services again in conformity with contract requirements, at no increase in contract amount. When the defects in services cannot be corrected by reperformance, Battelle may—
 - 1. Require the Contractor to take necessary action to ensure that future performance conforms to contract requirements; and
 - 2. Reduce the contract price to reflect the reduced value of the services performed.
- F. If the Contractor fails to promptly perform the services again or to take the necessary action to ensure future performance in conformity with contract requirements, Battelle may—
 - 1. By contract or otherwise, perform the services and charge to the Contractor any cost incurred by the Government that is directly related to the performance of such service; or
 - 2. Terminate the contract for default.

Termination (cl. F-706 - May 1995)

It is the intention of the parties to complete the effort outlined in the Statement of Work. In the event that this is not feasible, either Battelle or the Contractor may terminate the Task, in whole or in part, by providing written notice to the other at least thirty (30) days prior to the effective date. The parties shall enter into negotiation to determine the amount of money to be paid as a result of a termination which, in any event, shall not exceed the amount authorized. If Battelle and the Contractor fail to agree within a reasonable time, the provisions of the clause entitled Conflict Resolution and Arbitration contained in this contract shall apply.

Stop Work (cl. 380C - Aug 2009)

Battelle may at any time, by written order, require the Contractor to stop all, or any part, of the work. Upon receipt of such an order the Contractor shall take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Battelle shall either (i) cancel the stop-work order, or (ii) terminate the work covered by such order.

Warranty (cl. 383 -Jan 2010)

The Contractor warrants that the supplies delivered under this contract shall be new, unless otherwise specified in the contract schedule, free from defects in material and workmanship, of the most suitable grade of their respective kinds for the purpose, and comply with all requirements set forth in this Contract until 365 days after acceptance by Battelle. If a defect is discovered in any item covered in this Contract, the Contractor shall correct, at its expense, such defects as are reported within the Contractor's applicable warranty period for the items.

Contractor further warrants that services provided shall reflect the highest standards of professional knowledge and judgment, shall be free from defects in workmanship, and shall be in compliance with all requirements of this Contract until 365 days from the completion of the services. Contractor shall correct any nonconformity with this warranty at its expense, as directed by Battelle, by promptly re-performing the nonconforming services or (2) paying Battelle a portion of the Contract price as Battelle determines is equitable under the circumstances.

If Contractor fails to perform its obligations promptly under this clause, Battelle may perform, or have performed, such obligations, and Contractor shall pay Battelle all charges occasioned thereby.

The rights and remedies provided by such warranties shall be in addition to and shall not limit any rights afforded to Battelle by any other provision of this Contract.

Upon expiration of the applicable warranty period, all such liability shall terminate except for fraud, or such gross mistakes as amount to fraud, latent defects, or specific failure to comply with the terms of this Contract.

Restrictions on Certain Foreign Purchases (cl. F-709 - June 2008)

- A. Except as authorized by the Office of Foreign Assets Control (OFAC) in the Department of the Treasury, the Contractor shall not acquire, for use in the performance of this contract, any supplies or services if any proclamation, Executive order, or statute administered by OFAC, or if OFAC's implementing regulations at 31 CFR Chapter V, would prohibit such a transaction by a person subject to the jurisdiction of the United States.
- B. Except as authorized by OFAC, most transactions involving Cuba, Iran, and Sudan are prohibited, as are most imports from Burma or North Korea, into the United States or its outlying areas. Lists of entities and individuals subject to economic sanctions are included in OFAC's List of Specially Designated Nationals and Blocked Persons at <http://www.treas.gov/offices/enforcement/ofac/sdn>. More information about these restrictions, as well as updates, is available in the OFAC's regulations at 31

CFR Chapter V and/or on OFAC's website at <http://www.treas.gov/offices/enforcement/ofac>.

- C. The Contractor shall insert this clause, including this Paragraph C, in all subcontracts.

Contractor Publication and Release of Information (cl. 3701 - May 2007)

Contractor agrees to allow Battelle to review a copy of any Contractor manuscript that will be submitted for publication or any scientific or technical information generated under this Contract. This review will be facilitated by the Contractor submitting the manuscript to the Battelle Contracts Representative no less than thirty (30) days prior to Contractor's manuscript submission for publication or release of scientific or technical information outside of Contractor's control. Battelle shall review Contractor's manuscript or scientific and technical information consistent with Battelle's information release policies then in effect and may submit any of Contractor's scientific and technical information to the U.S. Department of Energy's (DOE) Office of Scientific and Technical Information (OSTI) as required by Battelle's contract for the management and operation of the Pacific Northwest National Laboratory or any DOE Order made applicable to Battelle thereunder. Battelle's review and submission of Contractor's manuscripts or scientific and technical information does not absolve Contractor's duties to comply with any information or data review, reporting, or disclosure requirements made applicable to Contractor under this Contract.

Contractor agrees to amend any manuscript or scientific and technical information release to remove any information that Battelle identifies which is necessary to protect—(1) Battelle's or the U.S. Government's rights in patentable subject matter conceived or first reduced to practice by Battelle; or (2) proprietary information provided to Contractor under this Contract.

Classified Inventions (cl. 372 - Aug 2002)

- A. Approval for filing a foreign patent application. The Contractor shall not file, or cause to be filed, an application or registration for a patent disclosing a subject invention related to classified subject matter in any country other than the United States without first obtaining the written approval of the DOE Contracting Officer.
- B. Transmission of classified subject matter. If in accordance with this clause the Contractor files a patent application in the United States disclosing a subject invention that is classified for reasons of security, the Contractor shall observe all applicable security regulations covering the transmission of classified subject matter. If the Contractor transmits a patent application disclosing a classified subject invention to the United States Patent and Trademark Office (USPTO), the Contractor shall submit a separate letter to the USPTO identifying the contract or contracts by agency and agreement number that require security classification markings to be placed on the patent application.
- C. Inclusion of clause in subcontracts. The Contractor agrees to include the substance of this clause in subcontracts at any tier that cover or are likely to cover subject matter classified for reasons of security.

Environment, Safety, and Health Requirements -

Offsite (cl. 3113e - May 2012)

- A. In performing work under this contract at its own facilities or any other location that is not a DOE-owned or leased facility, the Contractor shall comply with all applicable federal, state, and local environment, safety, and health laws and regulations. The Contractor shall also perform work safely, in a manner that ensures adequate protection for employees, the public, and the environment, and shall be accountable for the safe performance of work. The Contractor shall exercise a degree of care commensurate with the work and the associated hazards. The Contractor shall ensure that management of environment, safety, and health functions and activities becomes an integral but visible part of the Contractor's work planning and execution processes.
- B. The Contractor is responsible for its subcontractors' compliance with the environment, safety, and health requirements of this contract.

Compliance with Internet Protocol Version 6 (IPv6) in Acquiring Information Technology (cl. 3750 - Aug 2011)

This clause applies when information technology (e.g., Ethernet cards, network switches, routers, printers, related software, and commercial services for connectivity) will be delivered as a part of this contract.

- A. This contract involves the acquisition of Information Technology (IT) that uses Internet Protocol (IP) technology. The contractor agrees that—
1. all deliverables that involve IT that uses IP (products, services, software, etc.) will comply with IPv6 standards and interoperate with both IPv6 and IPv4 systems and products
 2. it has IPv6 technical support for development and implementation and fielded product management available.
- B. If the contractor plans to offer a deliverable that involves IT that is not initially compliant, the contractor agrees to—
1. obtain the Battelle Contracts Representative's approval before starting work on the deliverable
 2. provide a migration path and firm commitment to upgrade to IPv6 for all application and product features
 3. have IPv6 technical support for development and implementation and fielded product management available.
- C. Should the contractor find that the statement of work or specifications of this contract do not conform to the IPv6 standard, it must notify the Battelle Contracts Representative of such nonconformance and act in accordance with instructions of the Battelle Contracts Representative.

Foreign Travel (cl. 366 - March 2013)

- A. Foreign travel means approved travel (whether wholly or partly on official business) from the United States (including Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands, and the territories and possessions of the United States) to a foreign country and return, travel between foreign countries, by persons, including foreign

nationals, whose salaries or travel expenses or both will ultimately be funded in whole or in part by DOE or NNSA from its appropriations. Official foreign travel also includes travel funded by non-DOE or non-NNSA sources for which the traveler represents the Department or NNSA or conducts business on behalf of the U.S. Government.

- B. Foreign travel in connection with the performance of this contract shall be subject to the prior approval of DOE and shall be conducted pursuant to the requirements contained in DOE Order 551.1, Official Foreign Travel, or any subsequent version of the order in effect at the time of award.
- C. Requests for approval of each separate trip shall be submitted to the Battelle Contracts Representative no less than sixty days prior to a planned departure date. The Contractor will not incur any travel costs until after it receives notice of Advanced Travel Request approval from the Battelle Contracts Representative.
- D. For any foreign travel in connection with conferences, Contractor shall ensure that information for conference attendance, including but not limited to agenda and presentation, is submitted to the Battelle Contracts Representative with the initial travel request.
- E. Personal leave in conjunction with Contractor's authorized foreign travel may be granted on a two business days to one personal day (2:1) ratio. Travel days to and from business location will be considered business days. All expenses associated with Contractor's personal leave while on foreign travel shall be borne by Contractor and are not reimbursable by Battelle.

U. S. Federal and State Tax Withholding and Reporting, and Foreign Tax Credits *(cl. 355 - 6)*

Contractor agrees to cooperate fully with Battelle in providing any tax documentation that is required in support of any U.S. federal or state tax withholding or reporting responsibility, including but not limited to IRS Forms W-9, 8233, W-8BEN, W-8IMY, W-8EXP, or W-8ECI as applicable, and any required state tax forms including, but not limited to California Forms 590 or 587. It is understood that tax certification forms are required even where tax withholding will take place; however where a lesser amount of tax withholding, or exemption from tax withholding is allowed through the submission of the form, Battelle will make all commercially reasonable efforts where legally possible to honor the claim. Completion of the required tax forms is a condition of this contract, and any such forms must be completed prior to any payment taking effect. Battelle will act in compliance with U.S. federal and state tax withholding and reporting laws and will deduct any and all applicable U.S. federal or state withholding taxes from payments to Contractor wherever required by law. Contractor acknowledges that such withholding by Battelle does not relieve Contractor of liability to pay taxes in the event that any taxing authority should determine that the amount of withholding is inadequate.

Further, if this is a cost reimbursement contract and Contractor obtains a foreign tax credit that reduces its

U.S. Federal income tax liability because of the payment of any tax or duty that was reimbursed under this contract, the amount of the reduction shall be paid or credited at the time of such offset to Battelle.

Export Control *(cl. 398 - July 2012)*

The parties understand that materials and information resulting from the performance of this contract may be subject to export control laws and that each party is responsible for its own compliance with such laws.

Prohibition on Participation in Foreign Government Talent Recruitment Programs *(cl.312 - September 2019)*

Applies to research & development (R&D) or demonstration contracts performed on or at a DOE/NNSA site/facility, including DOE/NNSA/Battelle leased space.

- A. Contractor shall utilize due diligence to ensure that neither it nor any of its employees, applicable subcontractor employees or joint appointees, working at any level, participate in a foreign government talent recruitment program of a foreign country of risk while performing work under this contract. A "foreign government talent recruitment program" means any foreign-state-sponsored attempt to acquire U.S. scientific-funded research or technology through foreign government-run or funded recruitment programs that target scientists, engineers, academics, researchers, and entrepreneurs of all nationalities working or educated in the United States.
- B. Contractor shall file reports with Battelle on a quarterly basis stating whether it or any such employees or joint appointees are participants in a foreign government talent recruitment program of a foreign country of risk, or whether the Contractor has a reasonable basis to report such employees or joint appointees as a participant in a foreign government talent recruitment program of a foreign country of risk.
- C. Contractor shall notify Battelle and the U.S. Department of Energy (DOE) Office of Intelligence and Counterintelligence within five (5) business days upon, at any time during the term of the contract, including options and extensions, learning that it or any of its employees, applicable subcontractor employees, or joint appointees are or are believed to be participants in a foreign government talent recruitment program of a foreign country of risk.
- D. Upon filing quarterly reports in accordance with paragraph B., or providing notifications in accordance with paragraph C., the Contractor will be notified by Battelle's Contracts Representative whether it or any of its employees, applicable subcontractor employees or joint appointees, are participants in a foreign government talent recruitment program of a foreign country of risk covered by this clause. Following notification by the Battelle Contracts Representative, the Contractor shall take appropriate action to ensure that, within thirty (30) days of notification, neither it nor any such employees or joint appointees are participants in a foreign government talent recruitment program of a foreign country of risk while performing work under this contract.

- E. Failure by the Contractor to reasonably ensure that neither it nor any of its employees participate in a foreign government talent recruitment program of a foreign country of risk may result in Battelle exercising contractual remedies in accordance with federal regulations and the terms of the contract, up to and including termination of this contract.
- F. The Contractor is responsible for flowing down the requirements of this clause to R&D or demonstration subcontracts at any tier to the extent necessary to ensure Contractor's compliance with the requirements, where the lower tier subcontractor's work under this contract is performed on or at a DOE/NNSA site/facility, including DOE/NNSA/Battelle leased space.
- G. Battelle reserves the right to direct Contractor to remove the employee(s) participating in a foreign government talent recruitment program from performing any work under this contract on or at any facility of the Pacific Northwest National Laboratory (PNNL) or from any other DOE/NNSA site/facility (including DOE/NNSA/Battelle leased facilities). To the extent Battelle requires the Contractor employee(s) participating in the foreign government talent recruitment program to be removed from performing any further work under this contract, Contractor shall do so unless such employee(s) agree to discontinue his/her/their participation in the foreign government talent recruitment program. Contractor is not entitled to any claim for equitable adjustment against Battelle as a result of direction provided under this subparagraph.

Information Technology (cl. 399 – Nov 2012)

All information technology software, systems, and services delivered under this contract shall include the use of common security configurations available from the National Institute of Standards and Technology's Computer Security Resource Center website at <http://csrc.nist.gov/>, unless otherwise specified by Battelle in the Statement of Work or technical specifications.

Suspect Material (cl. QA-179 – Aug 2011)

The Contractor shall assure that all products delivered on this contract do not contain suspect/counterfeit parts as indicated in the S/CI Awareness Training Manual (PDF) http://energy.gov/sites/prod/files/2014/06/f16/SCI_Training_Manual.pdf. If suspect/counterfeit parts are discovered, this may be cause for rejection of the entire shipment and will be reported to the U.S. Department of Energy, Office of Inspector General for possible investigation. The discrepant product(s) will be returned at the Contractor's expense. In addition, the contract may be terminated for default.

Ethics (cl. 310 - Sept 2017)

Battelle demands the highest standard of ethics, integrity, and conduct in its operations. The Contractor must not pay bribes or engage in corrupt practices to advance any interests associated with Battelle. This includes directly or indirectly offering, paying, promising to pay, or authorizing the payment or provision of money or anything of value to government officials (including foreign officials), political parties, or candidates for political office for the purpose of influencing their acts or

decisions in their official capacity to secure any improper advantage in order to assist in obtaining or retaining business for or with, or directing business to, the Contractor or Battelle. The Contractor must never engage in illegal activities, including, but not limited to, money laundering or actions related to terrorism, or do business with parties or persons upon whom sanctions have been imposed by the U.S. Government. Failure to comply with this provision is considered a material breach of contract and cause for termination

FAR/DEAR Clauses (cl. 3001-F – (Jun) 2017)

The following additional Federal Acquisition Regulation (FAR) and Department of Energy Acquisition Regulation (DEAR) clauses, which may be located in Chapters 1 and 9, respectively, of Title 48 of the Code of Federal Regulations, are incorporated by this reference as a part of the Contract and as prescribed below. This Contract is between Battelle and Contractor, and does not constitute a contract with DOE or the Government. Battelle is a prime contractor for DOE and is not a Government agency or an agent of the Government. In addition, Battelle's Contracts Representatives are not Government Contracting Officers. However, solely for purposes of flowing down the appropriate FAR and DEAR clauses to this Contract, the term "Government", as referenced in the clauses, shall be interpreted to mean Battelle and the term "Contracting Officer", as referenced in the clauses, shall be interpreted to mean the Battelle Contracts Representative for this Contract.

The Contractor shall include these clauses in its subcontracts at any tier to the extent applicable.

FAR 52.203-7 Anti-Kickback Procedures (Oct 2010)

This clause applies if the contract value exceeds \$150,000.

(a) Definitions.

"Kickback," as used in this clause, means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind which is provided, directly or indirectly, to any prime Contractor, prime Contractor employee, subcontractor, or subcontractor employee for the purpose of improperly obtaining or rewarding favorable treatment in connection with a prime contractor in connection with a subcontract relating to a prime contract.

"Person," as used in this clause, means a corporation, partnership, business association of any kind, trust, joint-stock company, or individual.

"Prime contract," as used in this clause, means a contract or contractual action entered into by the United States for the purpose of obtaining supplies, materials, equipment, or services of any kind.

"Prime Contractor" as used in this clause, means a person who has entered into a prime contract with the United States.

"Prime Contractor employee," as used in this clause, means any officer, partner, employee, or agent of a prime Contractor.

"Subcontract," as used in this clause, means a contract or contractual action entered into by a prime Contractor or subcontractor for the purpose of obtaining

supplies, materials, equipment, or services of any kind under a prime contract.

"Subcontractor," as used in this clause, (1) means any person, other than the prime Contractor, who offers to furnish or furnishes any supplies, materials, equipment, or services of any kind under a prime contract or a subcontract entered into in connection with such prime contract, and (2) includes any person who offers to furnish or furnishes general supplies to the prime Contractor or a higher tier subcontractor.

"Subcontractor employee," as used in this clause, means any officer, partner, employee, or agent of a subcontractor.

(b) The Anti-Kickback Act of 1986 ([41 U.S.C. 51-58](#)) (the Act), prohibits any person from—

(1) Providing or attempting to provide or offering to provide any kickback;

(2) Soliciting, accepting, or attempting to accept any kickback; or

(3) Including, directly or indirectly, the amount of any kickback in the contract price charged by a prime Contractor to the United States or in the contract price charged by a subcontractor to a prime Contractor or higher tier subcontractor.

(c)(1) The Contractor shall have in place and follow reasonable procedures designed to prevent and detect possible violations described in paragraph (b) of this clause in its own operations and direct business relationships.

(2) When the Contractor has reasonable grounds to believe that a violation described in paragraph (b) of this clause may have occurred, the Contractor shall promptly report in writing the possible violation. Such reports shall be made to the inspector general of the contracting agency, the head of the contracting agency if the agency does not have an inspector general, or the Department of Justice.

(3) The Contractor shall cooperate fully with any Federal agency investigating a possible violation described in paragraph (b) of this clause.

(4) The Contracting Officer may (i) offset the amount of the kickback against any monies owed by the United States under the prime contract and/or (ii) direct that the Prime Contractor withhold from sums owed a subcontractor under the prime contract the amount of the kickback. The Contracting Officer may order that monies withheld under subdivision (c)(4)(ii) of this clause be paid over to the Government unless the Government has already offset those monies under subdivision (c)(4)(i) of this clause. In either case, the Prime Contractor shall notify the Contracting Officer when the monies are withheld.

(5) The Contractor agrees to incorporate the substance of this clause, including paragraph (c)(5) but excepting paragraph (c)(1), in all subcontracts under this contract which exceed \$150,000.

FAR 52.227-14 Right in Data – General (May 2014)

modified in accordance with **DEAR 927.409(a)** and including Alternate V

This clause applies to this Contract if (a) technical data or computer software is expected to be produced, or (b) if the Contract is for supplies that contain a requirement for production or deliver of data.

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

"Computer database" or "database means" a collection of recorded information in a form capable of, and for the purpose of, being stored in, processed, and operated on by a computer. The term does not include computer software.

"Computer software"—

(1) Means

(i) Computer programs that comprise a series of instructions, rules, routines, or statements, regardless of the media in which recorded, that allow or cause a computer to perform a specific operation or series of operations; and

(ii) Recorded information comprising source code listings, design details, algorithms, processes, flow charts, formulas, and related material that would enable the computer program to be produced, created, or compiled.

(2) Does not include computer databases or computer software documentation.

"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.

"Data" means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. The term does not include information incidental to contract administration, such as financial, administrative, cost or pricing, or management information.

"Form, fit, and function data" means data relating to items, components, or processes that are sufficient to enable physical and functional interchangeability, and data identifying source, size, configuration, mating and attachment characteristics, functional characteristics, and performance requirements. For computer software it means data identifying source, functional characteristics, and performance requirements but specifically excludes the source code, algorithms, processes, formulas, and flow charts of the software.

"Limited rights" means the rights of the Government in limited rights data as set forth in the Limited Rights Notice of paragraph (g)(3) if included in this clause.

"Limited rights data" means data, other than computer software, that embody trade secrets or are commercial or financial and confidential or privileged, to the extent that such data pertain to items, components, or processes developed at private expense, including minor modifications.

"Restricted computer software" means computer software developed at private expense and that is a trade secret, is commercial or financial and confidential or privileged, or is copyrighted computer software, including minor modifications of the computer software.

"Restricted rights," as used in this clause, means the rights of the Government in restricted computer software, as set forth in a Restricted Rights Notice of paragraph (g) if included in this clause, or as otherwise may be provided in a collateral agreement incorporated in and made part of this contract, including minor modifications of such computer software.

"Technical data" means recorded information (regardless of the form or method of the recording) of a scientific or technical nature (including computer

databases and computer software documentation). This term does not include computer software or financial, administrative, cost or pricing, or management data or other information incidental to contract administration. The term includes recorded information of a scientific or technical nature that is included in computer databases (See [41 U.S.C. 116](#)).

"Unlimited rights" means the rights of the Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, in any manner and for any purpose, and to have or permit others to do so.

(b) Allocation of rights.

(1) Except as provided in paragraph (c) of this clause, the Government shall have unlimited rights in—

(i) Data first produced in the performance of this contract;

(ii) Form, fit, and function data delivered under this contract;

(iii) Data delivered under this contract (except for restricted computer software) that constitute manuals or instructional and training material for installation, operation, or routine maintenance and repair of items, components, or processes delivered or furnished for use under this contract; and

(iv) All other data delivered under this contract unless provided otherwise for limited rights data or restricted computer software in accordance with paragraph (g) of this clause.

(2) The Contractor shall have the right to—

(i) Assert copyright in data first produced in the performance of this contract to the extent provided in paragraph (c)(1) of this clause;

(ii) Use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Contractor in the performance of this contract, unless provided otherwise in paragraph (d) of this clause;

(iii) Substantiate the use of, add, or correct limited rights, restricted rights, or copyright notices and to take other appropriate action, in accordance with paragraphs (e) and (f) of this clause; and

(iv) Protect from unauthorized disclosure and use those data that are limited rights data or restricted computer software to the extent provided in paragraph (g) of this clause.

(c) Copyright—

(1) Data first produced in the performance of this contract.

(i) Unless provided otherwise in paragraph (d) of this clause, the Contractor may, without prior approval of the Contracting Officer, assert copyright in scientific and technical articles based on or containing data first produced in the performance of this contract and published in academic, technical or professional journals, symposia proceedings, or similar works. The prior, express written permission of the Contracting Officer is required to assert copyright in all other data first produced in the performance of this contract.

(ii) When authorized to assert copyright to the data, the Contractor shall affix the applicable copyright notices of [17 U.S.C. 401 or 402](#), and an acknowledgment of Government sponsorship (including contract number).

(iii) For data other than computer software, the Contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable, worldwide license in such copyrighted data to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly by or on behalf of the Government. For computer software, the Contractor

grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable, worldwide license in such copyrighted computer software to reproduce, prepare derivative works, and perform publicly and display publicly (but not to distribute copies to the public) by or on behalf of the Government.

(2) *Data not first produced in the performance of this contract.* The Contractor shall not, without the prior written permission of the Contracting Officer, incorporate in data delivered under this contract any data not first produced in the performance of this contract unless the Contractor—

(i) Identifies the data; and

(ii) Grants to the Government, or acquires on its behalf, a license of the same scope as set forth in paragraph (c)(1) of this clause or, if such data are restricted computer software, the Government shall acquire a copyright license as set forth in paragraph (g)(4) of this clause (if included in this contract) or as otherwise provided in a collateral agreement incorporated in or made part of this contract.

(3) *Removal of copyright notices.* The Government will not remove any authorized copyright notices placed on data pursuant to this paragraph (c), and will include such notices on all reproductions of the data.

(d) *Release, publication, and use of data.* The Contractor shall have the right to use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Contractor in the performance of this contract, except—

(1) As prohibited by Federal law or regulation (e.g., export control or national security laws or regulations);

(2) As expressly set forth in this contract; or

(3) If the Contractor receives or is given access to data necessary for the performance of this contract that contain restrictive markings, the Contractor shall treat the data in accordance with such markings unless specifically authorized otherwise in writing by the Contracting Officer.

(e) Unauthorized marking of data.

(1) Notwithstanding any other provisions of this contract concerning inspection or acceptance, if any data delivered under this contract are marked with the notices specified in paragraph (g)(3) or (g) (4) if included in this clause, and use of the notices is not authorized by this clause, or if the data bears any other restrictive or limiting markings not authorized by this contract, the Contracting Officer may at any time either return the data to the Contractor, or cancel or ignore the markings. However, pursuant to [41 U.S.C. 4703](#), the following procedures shall apply prior to canceling or ignoring the markings.

(i) The Contracting Officer will make written inquiry to the Contractor affording the Contractor 60 days from receipt of the inquiry to provide written justification to substantiate the propriety of the markings;

(ii) If the Contractor fails to respond or fails to provide written justification to substantiate the propriety of the markings within the 60-day period (or a longer time approved in writing by the Contracting Officer for good cause shown), the Government shall have the right to cancel or ignore the markings at any time after said period and the data will no longer be made subject to any disclosure prohibitions.

(iii) If the Contractor provides written justification to substantiate the propriety of the markings within the period set in paragraph (e)(1)(i) of this clause, the Contracting Officer will consider such written justification and determine whether or not the markings are to be cancelled or ignored. If the Contracting Officer determines that the markings are authorized, the Contractor will be so

notified in writing. If the Contracting Officer determines, with concurrence of the head of the contracting activity, that the markings are not authorized, the Contracting Officer will furnish the Contractor a written determination, which determination will become the final agency decision regarding the appropriateness of the markings unless the Contractor files suit in a court of competent jurisdiction within 90 days of receipt of the Contracting Officer's decision. The Government will continue to abide by the markings under this paragraph (e)(1)(iii) until final resolution of the matter either by the Contracting Officer's determination becoming final (in which instance the Government will thereafter have the right to cancel or ignore the markings at any time and the data will no longer be made subject to any disclosure prohibitions), or by final disposition of the matter by court decision if suit is filed.

(2) The time limits in the procedures set forth in paragraph (e)(1) of this clause may be modified in accordance with agency regulations implementing the Freedom of Information Act (5 U.S.C. 552) if necessary to respond to a request thereunder.

(3) Except to the extent the Government's action occurs as the result of final disposition of the matter by a court of competent jurisdiction, the Contractor is not precluded by paragraph (e) of the clause from bringing a claim, in accordance with the Disputes clause of this contract, that may arise as the result of the Government removing or ignoring authorized markings on data delivered under this contract.

(f) Omitted or incorrect markings.

(1) Data delivered to the Government without any restrictive markings shall be deemed to have been furnished with unlimited rights. The Government is not liable for the disclosure, use, or reproduction of such data.

(2) If the unmarked data has not been disclosed without restriction outside the Government, the Contractor may request, within 6 months (or a longer time approved by the Contracting Officer in writing for good cause shown) after delivery of the data, permission to have authorized notices placed on the data at the Contractor's expense. The Contracting Officer may agree to do so if the Contractor—

(i) Identifies the data to which the omitted notice is to be applied;

(ii) Demonstrates that the omission of the notice was inadvertent;

(iii) Establishes that the proposed notice is authorized; and

(iv) Acknowledges that the Government has no liability for the disclosure, use, or reproduction of any data made prior to the addition of the notice or resulting from the omission of the notice.

(3) If data has been marked with an incorrect notice, the Contracting Officer may—

(i) Permit correction of the notice at the Contractor's expense if the Contractor identifies the data and demonstrates that the correct notice is authorized; or

(ii) Correct any incorrect notices.

(g) Protection of limited rights data and restricted computer software.

(1) The Contractor may withhold from delivery qualifying limited rights data or restricted computer software that are not data identified in paragraphs (b)(1)(i), (ii), and (iii) of this clause. As a condition to this withholding, the Contractor shall—

(i) Identify the data being withheld; and

(ii) Furnish form, fit, and function data instead.

(2) Limited rights data that are formatted as a computer database for delivery to the Government shall be treated as limited rights data and not restricted computer software.

(3) [Reserved]

(h) *Subcontracting*. The Contractor shall obtain from its subcontractors all data and rights therein necessary to fulfill the Contractor's obligations to the Government under this contract. If a subcontractor refuses to accept terms affording the Government those rights, the Contractor shall promptly notify the Contracting Officer of the refusal and shall not proceed with the subcontract award without authorization in writing from the Contracting Officer.

(i) *Relationship to patents or other rights*. 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.

(End of Clause)

Alternate V (Dec 2007). Add the following paragraph (j) to the basic clause:

(j) The Contractor agrees, except as may be otherwise specified in this contract for specific data deliverables listed as not subject to this paragraph, that the Contracting Officer may, up to three years after acceptance of all deliverables under this contract, inspect at the Contractor's facility any data withheld pursuant to paragraph (g)(1) of this clause, for purposes of verifying the Contractor's assertion of limited rights or restricted rights status of the data or for evaluating work performance. When the Contractor whose data are to be inspected demonstrates to the Contracting Officer that there would be a possible conflict of interest if a particular representative made the inspection, the Contracting Officer shall designate an alternate inspector.

Alternate II (Dec 2007). Insert the following paragraph (g)(3) in the basic clause if the delivery of Limited Rights Data is required under the Contract. The following five purposes shall be included at the end of Alternate II, Paragraph (a):

1. *Use (except for manufacture) by other contractors.*
2. *Evaluation by non-government evaluators.*
3. *Use (except for manufacture) by other contractors participating in the Government's program of which the specific contract is a part, for information and use in connection with the work performed under each contract.*
4. *Emergency repair or overhaul work.*
5. *Release to a foreign government, or instrumentality thereof, as the interest of the United States Government may require for information or evaluation, or for emergency repair or overhaul work by such government.*

(g)(3) Notwithstanding paragraph (g)(1) of this clause, the contract may identify and specify the delivery of limited rights data, or the Contracting Officer may require by written request the delivery of limited rights data that has been withheld or would otherwise be entitled to be withheld. If delivery of that data is required, the Contractor shall affix the following "Limited Rights Notice" to the data and the Government will treat the data, subject to the provisions of paragraphs (e) and (f) of this clause, in accordance with the notice:

LIMITED RIGHTS NOTICE (DEC 2007)

(a) These data are submitted with limited rights under Government Contract No. _____ (and subcontract _____, if appropriate). These data may be reproduced and used by the Government with the express limitation that they will not, without written permission of the Contractor, be used for purposes of manufacture nor disclosed outside the Government; except that the Government may disclose these data outside the Government for the following purposes, if any; provided that the Government makes such disclosure subject to prohibition against further use and disclosure: [Agencies may list additional purposes as set forth in 27.404-2(c)(1) or if none, so state.]

(b) This notice shall be marked on any reproduction of these data, in whole or in part.

(End of notice)

Alternate III (Dec 2007). Insert the following paragraph (g)(4) in the basic clause if delivery of Restricted Computer Software is required under this Contract:

(g)(4)(i) Notwithstanding paragraph (g)(1) of this clause, the contract may identify and specify the delivery of restricted computer software, or the Contracting Officer may require by written request the delivery of restricted computer software that has been withheld or would otherwise be entitled to be withheld. If delivery of that computer software is required, the Contractor shall affix the following "Restricted Rights Notice" to the computer software and the Government will treat the computer software, subject to paragraphs (e) and (f) of this clause, in accordance with the notice:

Restricted Rights Notice (Dec 2007)

(a) This computer software is submitted with restricted rights under Government Contract No. _____ (and subcontract _____, if appropriate). It may not be used, reproduced, or disclosed by the Government except as provided in paragraph (b) of this notice or as otherwise expressly stated in the contract.

(b) This computer software may be—

(1) Used or copied for use with the computer(s) for which it was acquired, including use at any Government installation to which the computer(s) may be transferred;

(2) Used or copied for use with a backup computer if any computer for which it was acquired is inoperative;

(3) Reproduced for safekeeping (archives) or backup purposes;

(4) Modified, adapted, or combined with other computer software, *provided* that the modified, adapted, or combined portions of the derivative software incorporating any of the delivered, restricted computer software shall be subject to the same restricted rights;

(5) Disclosed to and reproduced for use by support service Contractors or their subcontractors in accordance with paragraphs (b)(1) through (4) of this notice; and

(6) Used or copied for use with a replacement computer.

(c) Notwithstanding the foregoing, if this computer software is copyrighted computer software, it is licensed to the Government with the minimum rights set forth in paragraph (b) of this notice.

(d) Any other rights or limitations regarding the use, duplication, or disclosure of this computer software are to be expressly stated in, or incorporated in, the contract.

(e) This notice shall be marked on any reproduction of this computer software, in whole or in part.

(End of notice)

(ii) Where it is impractical to include the Restricted Rights Notice on restricted computer software, the following short-form notice may be used instead:

Restricted Rights Notice Short Form (Jun 1987)

Use, reproduction, or disclosure is subject to restrictions set forth in Contract No. _____ (and subcontract, if appropriate) with _____ (name of Contractor and subcontractor).

(End of notice)

(iii) If restricted computer software is delivered with the copyright notice of 17 U.S.C. 401, it will be presumed to be licensed to the Government without disclosure prohibitions, with the minimum rights set forth in paragraph (b) of this clause.

Alternate IV (Dec 2007). Substitute the following paragraph (c)(1) for paragraph (c)(1) of the basic clause if this Contract is awarded for basic or applied research (other than a contract for the management or operation of Government facilities or where international agreements require otherwise), to be performed solely by universities and colleges:

(c) Copyright—(1) *Data first produced in the performance of the contract.* Except as otherwise specifically provided in this contract, the Contractor may assert copyright in any data first produced in the performance of this contract. When asserting copyright, the Contractor shall affix the applicable copyright notice of 17 U.S.C. 401 or 402, and an acknowledgment of Government sponsorship (including contract number), to the data when such data are delivered to the Government, as well as when the data are published or deposited for registration as a published work in the U.S. Copyright Office. For data other than computer software, the Contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable, worldwide license for all such data to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government. For computer software, the Contractor grants to the Government and others acting on its behalf, a paid-up, nonexclusive, irrevocable, worldwide license for all such computer software to reproduce, prepare derivative works, and perform publicly and display publicly (but not to distribute copies to the public), by or on behalf of the Government.

DEAR 927.409(a)

(a) Definitions.

(1) Computer data bases, as used in this clause, means a collection of data in a form capable of, and for the purpose of, being stored in, processed, and operated on by a computer. The term does not include computer software.

(2) Computer software, as used in this clause, means (i) computer programs which are data comprising a series of instructions, rules, routines, or statements, regardless of the media in which recorded, that allow or cause a computer to perform a specific operation or series of operations and (ii) data comprising source code listings, design details, algorithms, processes, flow charts, formulae, and related material that would enable the computer program to be produced, created, or compiled. The term does not include computer data bases.

(3) Data, as used in this clause, means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data

and computer software. For the purposes of this clause, the term does not include data incidental to the administration of this contract, such as financial, administrative, cost and pricing, or management information.

(4) Form, fit, and function data, as used in this clause, means data relating to items, components, or processes that are sufficient to enable physical and functional interchangeability, as well as data identifying source, size, configuration, mating, and attachment characteristics, functional characteristics, and performance requirements; except that for computer software it means data identifying source, functional characteristics, and performance requirements but specifically excludes the source code, algorithm, process, formulae, and flow charts of the software.

(5) Limited rights data, as used in this clause, means data, other than computer software, developed at private expense that embody trade secrets or are commercial or financial and confidential or privileged. The Government's rights to use, duplicate, or disclose limited rights data are as set forth in the Limited Rights Notice of sub [paragraph \(g\)\(2\)](#) of this section if included in this clause.

(6) Restricted computer software, as used in this clause, means computer software developed at private expense and that is a trade secret; is commercial or financial and is confidential or privileged; or is published copyrighted computer software, including minor modifications of any such computer software. The Government's rights to use, duplicate, or disclose restricted computer software are as set forth in the Restricted Rights Notice of sub [paragraph \(g\)\(3\)](#) of this section if included in this clause.

(7) Technical data, as used in this clause, means recorded data, regardless of form or characteristic, that are of a scientific or technical nature. Technical data does not include computer software, but does include manuals and instructional materials and technical data formatted as a computer data base.

(8) Unlimited rights, as used in this clause, means the rights of the Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, including by electronic means, and perform publicly and display publicly, in any manner, including by electronic means, and for any purpose whatsoever, and to have or permit others to do so.

FAR 52.247-63 Preference for U.S.-Flag Air Carriers (June 2003)

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

“International air transportation” means transportation by air between a place in the United States and a place outside the United States or between two places both of which are outside the United States.

“United States” means the 50 States, the District of Columbia, and outlying areas.

“U.S.-flag air carrier” means an air carrier holding a certificate under [49 U.S.C. Chapter 411](#).

(b) Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 ([49 U.S.C. 40118](#)) (Fly America Act) requires that all Federal agencies and Government contractors and subcontractors use U.S.-flag air carriers for U.S. Government-financed international air

transportation of personnel (and their personal effects) or property, to the extent that service by those carriers is available. It requires the Comptroller General of the United States, in the absence of satisfactory proof of the necessity for foreign-flag air transportation, to disallow expenditures from funds, appropriated or otherwise established for the account of the United States, for international air transportation secured aboard a foreign-flag air carrier if a U.S.-flag air carrier is available to provide such services.

(c) If available, the Contractor, in performing work under this contract, shall use U.S.-flag carriers for international air transportation of personnel (and their personal effects) or property.

(d) In the event that the Contractor selects a carrier other than a U.S.-flag air carrier for international air transportation, the Contractor shall include a statement on vouchers involving such transportation essentially as follows:

STATEMENT OF UNAVAILABILITY OF U.S.-FLAG AIR CARRIERS

International air transportation of persons (and their personal effects) or property by U.S.-flag air carrier was not available or it was necessary to use foreign-flag air carrier service for the following reasons (see section [47.403](#) of the Federal Acquisition Regulation): [*State reasons*]:

(End of statement)

(e) The Contractor shall include the substance of this clause, including this paragraph (e), in each subcontract or purchase under this contract that may involve international air transportation.

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

(a) Except as provided in paragraph (e) of this clause, the Cargo Preference Act of 1954 ([46 U.S.C. App. 1241\(b\)](#)) requires that Federal departments and agencies shall transport in privately owned U.S.-flag commercial vessels at least 50 percent of the gross tonnage of equipment, materials, or commodities that may be transported in ocean vessels (computed separately for dry bulk carriers, dry cargo liners, and tankers). Such transportation shall be accomplished when any equipment, materials, or commodities, located within or outside the United States, that may be transported by ocean vessel are—

(1) Acquired for a U.S. Government agency account;

(2) Furnished to, or for the account of, any foreign nation without provision for reimbursement;

(3) Furnished for the account of a foreign nation in connection with which the United States advances funds or credits, or guarantees the convertibility of foreign currencies; or

(4) Acquired with advance of funds, loans, or guaranties made by or on behalf of the United States.

(b) The Contractor shall use privately owned U.S.-flag commercial vessels to ship at least 50 percent of the gross tonnage involved under this contract (computed separately for dry bulk carriers, dry cargo liners, and tankers) whenever shipping any equipment, materials, or commodities under the conditions set forth in paragraph (a) of this clause, to the extent that such

vessels are available at rates that are fair and reasonable for privately owned U.S.-flag commercial vessels.

(c)(1) The Contractor shall submit one legible copy of a rated on-board ocean bill of lading for each shipment to both—

(i) The Contracting Officer, and

(ii) The:

Office of Cargo Preference
Maritime Administration (MAR-590)
400 Seventh Street, SW
Washington DC 20590.

Subcontractor bills of lading shall be submitted through the Prime Contractor.

(2) The Contractor shall furnish these bill of lading copies (i) within 20 working days of the date of loading for shipments originating in the United States, or (ii) within 30 working days for shipments originating outside the United States. Each bill of lading copy shall contain the following information:

- (A) Sponsoring U.S. Government agency.
- (B) Name of vessel.
- (C) Vessel flag of registry.
- (D) Date of loading.
- (E) Port of loading.
- (F) Port of final discharge.
- (G) Description of commodity.
- (H) Gross weight in pounds and cubic feet if

available.

(I) Total ocean freight revenue in U.S. dollars.

(d) The Contractor shall insert the substance of this clause, including this paragraph (d), in all subcontracts or purchase orders under this contract, except those described in paragraph (e)(4).

(e) The requirement in paragraph (a) does not apply to—

(1) Cargoes carried in vessels as required or authorized by law or treaty;

(2) Ocean transportation between foreign countries of supplies purchased with foreign currencies made available, or derived from funds that are made available, under the Foreign Assistance Act of 1961 ([22 U.S.C. 2353](#));

(3) Shipments of classified supplies when the classification prohibits the use of non-Government vessels; and

(4) Subcontracts or purchase orders for the acquisition of commercial items unless—

(i) This contract is—

(A) A contract or agreement for ocean transportation services; or

(B) A construction contract; or

(ii) The supplies being transported are—

(A) Items the Contractor is reselling or distributing to the Government without adding value. (Generally, the Contractor does not add value to the items when it subcontracts items for f.o.b. destination shipment); or

(B) Shipped in direct support of U.S. military—

(1) Contingency operations;

(2) Exercises; or

(3) Forces deployed in connection with United Nations or North Atlantic Treaty Organization humanitarian or peacekeeping operations.

(f) Guidance regarding fair and reasonable rates for privately owned U.S.-flag commercial vessels may be obtained from the:

Office of Costs and Rates
Maritime Administration
400 Seventh Street, SW
Washington DC 20590
Phone: (202) 366-4610.

DEAR 952.204-71 Sensitive Foreign Nations Controls (March 2011)

(a) In connection with any activities in the performance of this contract, the Contractor agrees to comply with the "Sensitive Foreign Nations Controls" requirements attached to this contract, relating to those countries, which may from time to time, be identified to the Contractor by written notice as sensitive foreign nations. The Contractor shall have the right to terminate its performance under this contract upon at least 60 days' prior written notice to the Contracting Officer if the Contractor determines that it is unable, without substantially interfering with its policies or without adversely impacting its performance to continue performance of the work under this contract as a result of such notification. If the Contractor elects to terminate performance, the provisions of this contract regarding termination for the convenience of the Government shall apply.

(b) The provisions of this clause shall be included in any subcontracts which may involve making unclassified information about nuclear technology available to sensitive foreign nations.

DEAR 952.209-72 Organizational Conflicts of Interest (Aug 2009)

This clause applies if the contract value exceeds \$150,000 and if this contract involves the performance of advisory and assistance services as defined by FAR 37.201.

(a) Purpose. The purpose of this clause is to ensure that the Contractor (1) is not biased because of its financial, contractual, organizational, or other interests which relate to the work under this contract, and (2) does not obtain any unfair competitive advantage over other parties by virtue of its performance of this contract.

(b) Scope. The restrictions described herein shall apply to performance or participation by the Contractor and any of its affiliates or their successors in interest (hereinafter collectively referred to as "Contractor") in the activities covered by this clause as a prime Contractor, subcontractor, cosponsor, joint venturer, consultant, or in any similar capacity. For the purpose of this clause, affiliation occurs when a business concern is controlled by or has the power to control another or when a third party has the power to control both.

(1) Use of Contractor's Work Product.

(i) The Contractor shall be ineligible to participate in any capacity in Department contracts, subcontracts, or proposals therefore (solicited and unsolicited) which stem directly from the Contractor's performance of work under

this contract for a period of (Contracting Officer see 48 CFR 909.507-2 and enter specific term) years after the completion of this contract. Furthermore, unless so directed in writing by the Contracting Officer, the Contractor shall not perform any advisory and assistance services work under this contract on any of its products or services or the products or services of another firm if the Contractor is or has been substantially involved in their development or marketing. Nothing in this subparagraph shall preclude the Contractor from competing for follow-on contracts for advisory and assistance services.

(ii) If, under this contract, the Contractor prepares a complete or essentially complete statement of work or specifications to be used in competitive acquisitions, the Contractor shall be ineligible to perform or participate in any capacity in any contractual effort which is based on such statement of work or specifications. The Contractor shall not incorporate its products or services in such statement of work or specifications unless so directed in writing by the Contracting Officer, in which case the restriction in this subparagraph shall not apply.

(iii) Nothing in this paragraph shall preclude the Contractor from offering or selling its standard and commercial items to the Government.

(2) Access to and use of information.

(i) If the Contractor, in the performance of this contract, obtains access to information, such as Department plans, policies, reports, studies, financial plans, internal data protected by the Privacy Act of 1974 (5 U.S.C. 552a), or data which has not been released or otherwise made available to the public, the Contractor agrees that without prior written approval of the Contracting Officer it shall not—

(A) use such information for any private purpose unless the information has been released or otherwise made available to the public;

(B) compete for work for the Department based on such information for a period of six (6) months after either the completion of this contract or until such information is released or otherwise made available to the public, whichever is first;

(C) submit an unsolicited proposal to the Government which is

based on such information until one year after such information is released or otherwise made available to the public; and

(D) release such information unless such information has previously been released or otherwise made available to the public by the Department.

(ii) In addition, the Contractor agrees that to the extent it receives or is given access to proprietary data, data protected by the Privacy Act of 1974 (5 U.S.C. 552a), or other confidential or privileged technical, business, or financial information under this contract, it shall treat such information in accordance with any restrictions imposed on such information.

(iii) The Contractor may use technical data it first produces under this contract for its private purposes consistent with paragraphs (b)(2)(i) (A) and (D) of this

clause and the patent, rights in data, and security provisions of this contract.

(c) Disclosure after award.

(1) The Contractor agrees that, if changes, including additions, to the facts disclosed by it prior to award of this contract, occur during the performance of this contract, it shall make an immediate and full disclosure of such changes in writing to the Contracting Officer. Such disclosure may include a description of any action which the Contractor has taken or proposes to take to avoid, neutralize, or mitigate any resulting conflict of interest. The Department may, however, terminate the contract for convenience if it deems such termination to be in the best interest of the Government.

(2) In the event that the Contractor was aware of facts required to be disclosed or the existence of an actual or potential organizational conflict of interest and did not disclose such facts or such conflict of interest to the Contracting Officer, DOE may terminate this contract for default.

(d) Remedies. For breach of any of the above restrictions or for nondisclosure or misrepresentation of any facts required to be disclosed concerning this contract, including the existence of an actual or potential organizational conflict of interest at the time of or after award, the Government may terminate the contract for default, disqualify the Contractor from subsequent related contractual efforts, and pursue such other remedies as may be permitted by law or this contract.

(e) Waiver. Requests for waiver under this clause shall be directed in writing to the Contracting Officer and shall include a full description of the requested waiver and the reasons in support thereof. If it is determined to be in the best interests of the Government, the Contracting Officer may grant such a waiver in writing.

FAR 52.222-50 Combating Trafficking in Persons
(Mar 2015) including Alternate I

This clause applies if the contract value exceeds \$500,000. Alternate I applies when work will be performed outside the United States and when specific U.S. directives or notices regarding combating trafficking in persons apply to contractor employees at the contract place of performance.

(a) Definitions. As used in this clause—

“Agent” means any individual, including a director, an officer, an employee, or an independent contractor, authorized to act on behalf of the organization.

“Coercion” means—

(1) Threats of serious harm to or physical restraint against any person;

(2) Any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or

(3) The abuse or threatened abuse of the legal process.

"Commercial sex act" means any sex act on account of which anything of value is given to or received by any person.

"Commercially available off-the-shelf (COTS) item" means-

(1) Any item of supply (including construction material that is -

(i) A commercial item (as defined in paragraph (1) of the definition at FAR 2.101);

(ii) Sold in substantial quantities in the commercial marketplace; and

(iii) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and

(2) Does not include bulk cargo, as defined in 46 U.S.C. 40102(4), such as agricultural products and petroleum products.

"Debt bondage" means the status or condition of a debtor arising from a pledge by the debtor of his or her personal services or of those of a person under his or her control as a security for debt, if the value of those services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined.

"Employee" means an employee of the Contractor directly engaged in the performance of work under the contract who has other than a minimal impact or involvement in contract performance.

"Forced labor" means knowingly providing or obtaining the labor or services of a person—

(1) By threats of serious harm to, or physical restraint against, that person or another person;

(2) By means of any scheme, plan, or pattern intended to cause the person to believe that, if the person did not perform such labor or services, that person or another person would suffer serious harm or physical restraint; or

(3) By means of the abuse or threatened abuse of law or the legal process.

"Involuntary servitude" includes a condition of servitude induced by means of—

(1) Any scheme, plan, or pattern intended to cause a person to believe that, if the person did not enter into or continue in such conditions, that person or another person would suffer serious harm or physical restraint; or

(2) The abuse or threatened abuse of the legal process.

"Severe forms of trafficking in persons" means—

(1) Sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or

(2) The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

"Sex trafficking" means the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act.

"Subcontract" means any contract entered into by a subcontractor to furnish supplies or services for performance of a prime contract or a subcontract.

"Subcontractor" means any supplier, distributor, vendor, or firm that furnishes supplies or services to or for a prime contractor or another subcontractor.

"United States" means the 50 States, the District of Columbia, and outlying areas.

(b) Policy. The United States Government has adopted a policy prohibiting trafficking in persons including the trafficking-related activities of this clause. Contractors, contractor employees, and their agents shall not—

(1) Engage in severe forms of trafficking in persons during the period of performance of the contract;

(2) Procure commercial sex acts during the period of performance of the contract;

(3) Use forced labor in the performance of the contract;

(4) Destroy, conceal, confiscate, or otherwise deny access by an employee to the employee's identity or immigration documents, such as passports or drivers' licenses, regardless of issuing authority;

(5)

(i) Use misleading or fraudulent practices during the recruitment of employees or offering of employment, such as failing to disclose, in a format and language accessible to the worker, basic information or making material misrepresentations during the recruitment of employees regarding the key terms and conditions of employment, including wages and fringe benefits, the location of work, the living conditions, housing and associated costs (if employer or agent provided or arranged), any significant cost to be charged to the employee, and, if applicable, the hazardous nature of the work;

(6) Charge employees recruitment fees;

(7)

(i) Fail to provide return transportation or pay for the cost of return transportation upon the end of employment—

(A) For an employee who is not a national of the country in which the work is taking place and who was brought into that country for the purpose of working on a U.S. Government contract or subcontract (for portions of contracts performed outside the United States); or

(B) For an employee who is not a United States national and who was brought into the United States for the purpose of working on a U.S. Government contract or subcontract, if the payment of such costs is required under existing temporary worker programs or pursuant to a written agreement with the employee (for portions of contracts performed inside the United States); except that—

(ii) The requirements of paragraphs (b)(7)(i) of this clause shall not apply to an employee who is—

(A) Legally permitted to remain in the country of employment and who chooses to do so; or

(B) Exempted by an authorized official of the contracting agency from the requirement to provide return transportation or pay for the cost of return transportation;

(iii) The requirements of paragraph (b)(7)(i) of this clause are modified for a victim of trafficking in persons who is seeking victim services or legal redress in the country of employment, or for a witness in an enforcement action related to trafficking in persons. The contractor shall provide the return transportation or pay the cost of return transportation in a way that does not obstruct the victim services, legal redress, or witness activity. For example, the contractor shall not only offer return transportation to a witness at a time when the witness is still needed to testify. This paragraph does not apply when the exemptions at paragraph (b)(7)(ii) of this clause apply.

(8) Provide or arrange housing that fails to meet the host country housing and safety standards; or

(9) If required by law or contract, fail to provide an employment contract, recruitment agreement, or other required work document in writing. Such written work document shall be in a language the employee understands. If the employee must relocate to perform the work, the work document shall be provided to the employee at least five days prior to the employee relocating. The employee's work document shall include, but is not limited to, details about work description, wages, prohibition on charging recruitment fees, work location(s), living accommodations and associated costs, time off, roundtrip transportation arrangements, grievance process, and the content of applicable laws and regulations that prohibit trafficking in persons.

(c) Contractor requirements. The Contractor shall—

(1) Notify its employees of—

(i) The United States Government's policy prohibiting trafficking in persons, described in paragraph (b) of this clause; and

(ii) The actions that will be taken against employees or agents for violations of this policy. Such actions for employees may include, but are not limited to, removal from the contract, reduction in benefits, or termination of employment; and

(2) Take appropriate action, up to and including termination, against employees, agents, or subcontractors that violate the policy in paragraph (b) of this clause.

(d) Notification.

(1) The Contractor shall inform the Contracting Officer and the agency Inspector General immediately of—

(i) Any credible information it receives from any source (including host country law enforcement) that alleges a Contractor employee, subcontractor, subcontractor employee, or their agent has engaged in conduct that violates the policy in paragraph (b) of this clause (see also 18 U.S.C. 1351, Fraud in Foreign Labor Contracting, and 52.203-13(b)(3)(i)(A), if that clause is included in the solicitation or contract, which requires disclosure to the agency Office of the Inspector General when the Contractor has credible evidence of fraud); and

(ii) Any actions taken against a Contractor employee, subcontractor, subcontractor employee, or their agent pursuant to this clause.

(2) If the allegations may be associated with more than one contract, the Contractor shall

inform the contracting officer for the contract with the highest dollar value.

(e) Remedies. In addition to other remedies available to the Government, the Contractor's failure to comply with the requirements of paragraphs (c), (d), (g), (h), or (i) of this clause may result in—

- (1) Requiring the Contractor to remove a Contractor employee or employees from the performance of the contract;
- (2) Requiring the Contractor to terminate a subcontract;
- (3) Suspension of contract payments until the Contractor has taken appropriate remedial action;
- (4) Loss of award fee, consistent with the award fee plan, for the performance period in which the Government determined Contractor non-compliance;
- (5) Declining to exercise available options under the contract;
- (6) Termination of the contract for default or cause, in accordance with the termination clause of this contract; or
- (7) Suspension or debarment.

(f) Mitigating and aggravating factors. When determining remedies, the Contracting Officer may consider the following:

- (1) Mitigating factors. The Contractor had a Trafficking in Persons compliance plan or an awareness program at the time of the violation, was in compliance with the plan, and has taken appropriate remedial actions for the violation, that may include reparation to victims for such violations.
- (2) Aggravating factors. The Contractor failed to abate an alleged violation or enforce the requirements of a compliance plan, when directed by the Contracting Officer to do so.

(g) Full cooperation.

- (1) The Contractor shall, at a minimum-
 - (i) Disclose to the agency Inspector General information sufficient to identify the nature and extent of an offense and the individuals responsible for the conduct;
 - (ii) Provide timely and complete responses to Government auditors' and investigators' requests for documents;
 - (iii) Cooperate fully in providing reasonable access to its facilities and staff (both inside and outside the U.S.) to allow contracting agencies and other responsible Federal agencies to conduct audits, investigations, or other actions

to ascertain compliance with the Trafficking Victims Protection Act of 2000 (22 U.S.C. chapter 78), E.O. 13627, or any other applicable law or regulation establishing restrictions on trafficking in persons, the procurement of commercial sex acts, or the use of forced labor; and

(iv) Protect all employees suspected of being victims of or witnesses to prohibited activities, prior to returning to the country from which the employee was recruited, and shall not prevent or hinder the ability of these employees from cooperating fully with Government authorities.

(2) The requirement for full cooperation does not foreclose any Contractor rights arising in law, the FAR, or the terms of the contract. It does not-

- (i) Require the Contractor to waive its attorney-client privilege or the protections afforded by the attorney work product doctrine;
- (ii) Require any officer, director, owner, employee, or agent of the Contractor, including a sole proprietor, to waive his or her attorney-client privilege or Fifth Amendment rights; or
- (iii) Restrict the Contractor from-

(A) Conducting an internal investigation; or

(B) Defending a proceeding or dispute arising under the contract or related to a potential or disclosed violation.

(h) Compliance plan.

(1) This paragraph (h) applies to any portion of the contract that-

(i) Is for supplies, other than commercially available off-the-shelf items, acquired outside the United States, or services to be performed outside the United States; and

(ii) Has an estimated value that exceeds \$500,000.

(2) The Contractor shall maintain a compliance plan during the performance of the contract that is appropriate-

(i) To the size and complexity of the contract; and

(ii) To the nature and scope of the activities to be performed for the Government, including the number of non-United States citizens expected to be employed and the risk that the contract or subcontract will involve

services or supplies susceptible to trafficking in persons.

(3) Minimum requirements. The compliance plan must include, at a minimum, the following:

(i) An awareness program to inform contractor employees about the Government's policy prohibiting trafficking-related activities described in paragraph (b) of this clause, the activities prohibited, and the actions that will be taken against the employee for violations. Additional information about Trafficking in Persons and examples of awareness programs can be found at the Website for the Department of State's Office to Monitor and Combat Trafficking in Persons at <http://www.state.gov/j/tip/>.

(ii) A process for employees to report, without fear of retaliation, activity inconsistent with the policy prohibiting trafficking in persons, including a means to make available to all employees the hotline phone number of the Global Human Trafficking Hotline at 1-844-888-FREE and its email address at help@befree.org.

(iii) A recruitment and wage plan that only permits the use of recruitment companies with trained employees, prohibits charging recruitment fees to the employee, and ensures that wages meet applicable host-country legal requirements or explains any variance.

(iv) A housing plan, if the Contractor or subcontractor intends to provide or arrange housing, that ensures that the housing meets host-country housing and safety standards.

(v) Procedures to prevent agents and subcontractors at any tier and at any dollar value from engaging in trafficking in persons (including activities in paragraph (b) of this clause) and to monitor, detect, and terminate any agents, subcontracts, or subcontractor employees that have engaged in such activities.

(4) Posting.

(i) The Contractor shall post the relevant contents of the compliance plan, no later than the initiation of contract performance, at the workplace (unless the work is to be performed in the field or not in a fixed location) and on the Contractor's Website (if one is maintained). If posting at the workplace or on the Website is impracticable, the Contractor shall provide the relevant contents of the compliance plan to each working in writing.

(ii) The Contractor shall provide the compliance plan to the Contracting Officer upon request.

(5) Certification. Annually after receiving an award, the Contractor shall submit a certification to the Contracting Officer that-

(i) It has implemented a compliance plan to prevent any prohibited activities identified at paragraph (b) of this clause and to monitor, detect, and terminate any agent, subcontract or subcontractor employee engaging in prohibited activities; and

(ii) After having conducted due diligence, either-

(A) To the best of the Contractor's knowledge and belief, neither it nor any of its agents, subcontractors, or their agents is engaged in any such activities; or

(B) If abuses relating to any of the prohibited activities identified in paragraph (b) of this clause have been found, the Contractor or subcontractor has taken the appropriate remedial and referral actions.

(i) Subcontracts.

(1) The Contractor shall include the substance of this clause, including this paragraph (i), in all subcontracts and in all contracts with agents. The requirements in paragraph (h) of this clause apply only to any portion of the subcontract that -

(A) Is for supplies, other than commercially available off-the-shelf items, acquired outside the United States, or services to be performed outside the United States; and

(B) Has an estimated value that exceeds \$500,000.

(2) If any subcontractor is required by this clause to submit a certification, the Contractor shall require submission prior to the award of the subcontract and annually thereafter. The certification shall cover the items in paragraph (h)(5) of this clause.

(End of Clause)

Alternate I (Mar 2015). As prescribed in 22.1705(a)(2), substitute the following paragraph in place of paragraph (c)(1)(i) of the basic clause:

(i)

(A) The United States Government's policy prohibiting

trafficking in persons described in paragraph (b) of this clause; and

(B) The following directive(s) or notice(s) applicable to employees performing work at the contract place(s) of performance as indicated below:

Document Title:

Document may be obtained from:

Applies to Performance in/at:

[Contracting Officer shall insert title of directive/notice; indicate the document is attached or provide source (such as website link) for obtaining document; and, indicate the contract performance location outside the United States to which the document applies.]

FAR 52.232-39 Unenforceability of Unauthorized Obligations (Jun 2013)

(a) Except as stated in paragraph (b) of this clause, when any supply or service acquired under this contract is subject to any End User License Agreement (EULA), Terms of Service (TOS), or similar legal instrument or agreement, that includes any clause requiring the Government to indemnify the Contractor or any person or entity for damages, costs, fees, or any other loss or liability that would create an Anti-Deficiency Act violation (31 U.S.C. 1341), the following shall govern:

(1) Any such clause is unenforceable against the Government.

(2) Neither the Government nor any Government authorized end user shall be deemed to have agreed to such clause by virtue of it appearing in the EULA, TOS, or similar legal instrument or agreement. If the EULA, TOS, or similar legal instrument or agreement is invoked through an "I agree" click box or other comparable mechanism (e.g., "click-wrap" or "browse-wrap" agreements), execution does not bind the Government or any Government authorized end user to such clause.

(3) Any such clause is deemed to be stricken from the EULA, TOS, or similar legal instrument or agreement.

(b) Paragraph (a) of this clause does not apply to indemnification by the Government that is expressly authorized by statute and specifically authorized under applicable agency regulation and procedures.

Applies if the contract value exceeds \$5,500,000 and the performance period is more than 120 days:

FAR 52.203-13 Contractor Code of Business Ethics and Conduct (Apr 2010)

The Following Clauses Apply if the Contract Indicates it is for Experimental, Developmental, Research, or Demonstration Work

FAR 52.246-7 Inspection of Research and Development – Fixed Price

DEAR 952.227-11 Patent Rights – Retention by the Contractor (Short Form) (Mar 1995) – *applies if the Contractor is a small business firm or domestic nonprofit organization as defined by 35 USC 201 unless subject to exceptional circumstances as defined in 35 USC 202 and the Prime Contract.*

DEAR 952.227-13 Patent Rights – Acquisition by the Government (Sep 1997) – *applies if the Contractor is **not** a small business firm or domestic nonprofit organization as defined by 35 USC 201. DOE Patent Counsel shall determine the Patent Rights if this Contract is subject to exceptional circumstances as defined in 35 USC 202 and the Prime Contract.*

DEAR 952.227-84 Notice of Right to Request Patent Waiver (Feb 1998) – *applies when DEAR 952.227-13 above applies.*

DEAR 952.235-71 Research Misconduct (Jul 2005) – *applies if contract involves research*

DEAR 970.5227-4 Authorization and Consent (Aug 2003), paragraph (a) only – *applies if the contract value exceeds \$100,000*