

Customer Contract Requirements

Customer Contract N0003920D0058

FARs:

52.204-4 Printed or Copied Double-Sided on Postconsumer Fiber Content Paper (MAY 2011)

52.204-13 System for Award Management Maintenance (OCT 2018)

52.204-18 Commercial and Government Entity Code Maintenance (JULY 2016)

52.204-24 Representaton Regarding Certain Telecommunications and Video Surveillance Services or Equipment (AUG 2020)

52.204-25 Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment (JULY 2020)

52.209-9 Updates of Publicly Available Information Regarding Responsibility Matters (OCT 2018)

52.209-10 Prohibition on Contracting With Inverted Domestic Corporations (NOV 2015)

52.210-1 Market Research (APR 2011)

52.211-5 Material Requirements (AUG 2000)

52.215-8 Order of Precedence--Uniform Contract Format (OCT 1997)

52.215-12 (Dev) Subcontractor Certified Cost or Pricing Data (Deviation 2018-O0015)

52.217-7 Option For Increased Quantity-Separately Priced Line Item (MAR 1989)

52.219-4 (Dev) Notice of Price Evaluation Preference for HUBZone Small Business Concerns (DEVIATION 2019-O0003)

52.222-3 Convict Labor (JUNE 2003)

52.222-19 Child Labor -- Cooperation with Authorities and Remedies (JAN 2018)

52.222-20 Contracts for Materials, Supplies, Articles, and Equipment Exceeding \$15,000 (MAY 2014)

52.227-3 Patent Indemnity (APR 1984)

52.228-7 Insurance--Liability To Third Persons (MAR 1996)

52.229-3 Federal, State And Local Taxes (FEB 2013)

52.232-1 Payments (APR 1984)

52.232-8 Discounts For Prompt Payment (FEB 2002)

52.232-9 Limitation On Withholding Of Payments (APR 1984)

52.232-11 Extras (APR 1984)

52.232-16 Progress Payments (APR 2012)

52.232-16 (Dev) Progress Payments (DEVIATION 2020-O0010) (MAR 2020)

52.232-16 Alt III Progress Payments (Apr 2012) - Alternate III (APR 2003)

52.232-17 Interest (MAY 2014)

52.232-23 Assignment Of Claims (MAY 2014)

52.232-25 Prompt Payment JAN 2017

52.232-25 Alt I Prompt Payment (Jan 2017) Alternate I FEB 2002

52.232-33 Payment by Electronic Funds Transfer--System for Award Management (OCT 2018)

52.232-39 Unenforceability of Unauthorized Obligations (JUNE 2013)

52.233-1 Disputes (MAY 2014)

52.233-1 Alt I Disputes (May 2014) - Alternate I (DEC 1991)

52.233-3 Protest After Award (AUG 1996)

52.233-3 Alt I Protest After Award (Aug 1996) - Alternate I (JUN 1985)

52.242-1 Notice of Intent to Disallow Costs (APR 1984)

52.242-4 Certification of Final Indirect Costs (JAN 1997)

52.242-5 Payments to Small Business Subcontractors (JAN 2017)

52.242-13 Bankruptcy (JULY 1995)

52.243-1 Changes--Fixed Price (AUG 1987)

52.243-2 Changes--Cost-Reimbursement (AUG 1987)

52.243-2 Alt II Changes--Cost Reimbursement (Aug 1987) - Alternate II (APR 1984)

52.244-5 Competition In Subcontracting (DEC 1996)

52.246-4 Inspection of Services – Fixed Prices (AUG 1996)

52.246-15 Certificate of Conformance (APR 1984)

52.246-23 Limitation Of Liability (FEB 1997)

52.246-24 Alt I Limitation Of Liability--High Value Items (Feb 1997) - Alternate I (APR 1984)

52.246-25 Limitation Of Liability--Services (FEB 1997)

52.249-14 Excusable Delays (APR 1984)

52.253-1 Computer Generated Forms (JAN 1991)

DFARS:

252.203-7000 Requirements Relating to Compensation of Former DoD Officials (SEP 2011)

252.204-7002 Payment For Subline Items Not Separately Priced (DEC 1991)

252.204-7004 Antiterrorism Awareness Training for Contractors. (FEB 2019)

252.205-7000 Provision Of Information To Cooperative Agreement Holders (DEC 1991)

252.211-7008 Use of Government-Assigned Serial Numbers (SEP 2010)

252.215-7014 Exception from Certified Cost or Pricing Data Requirements for Foreign Military Sales Indirect Offsets. (JUN 2018)

252.217-7028 Over And Above Work (DEC 1991)

252.223-7004 Drug Free Work Force (SEP 1988)

252.225-7004 Report of Intended Performance Outside the United States and Canada--Submission after Award (MAY 2019)

252.225-7005 Identification Of Expenditures In The United States (JUNE 2005)

252.225-7041 Correspondence in English (JUNE 1997)

252.232-7002 Progress Payments for Foreign Military Sales Acquisitions (DEC 1991)

252.232-7004 (Dev) DoD Progress Payment Rates (DEVIATION 2020-O0010) (MAR 2020)

252.234-7002 (Dev) Earned Value Management System (Deviation 2015-O0017) (SEP 2015)

252.239-7001 Information Assurance Contractor Training and Certification (JAN 2008)

252.239-7018 (Dev) Supply Chain Risk (DEVIATION 2018-O0020). (FEB 2019)

252.242-7004 Material Management And Accounting System (MAY 2011)

252.242-7005 Contractor Business Systems (FEB 2012)

252.242-7006 Accounting System Administration (FEB 2012)

252.243-7002 Requests for Equitable Adjustment (DEC 2012)

252.245-7002 (Dev) Reporting Loss of Government Property (DEVIATION 2020-O0004) (FEB 2020)

252.245-7004 (Dev) Reporting, Reutilization, and Disposal (DEVIATION 2022 – NOV 2021 O0006)

252.246-7006 Warranty Tracking of Serialized Items (MAR 2016)

FARs and DFARS in Full Text:

52.209-3 FIRST ARTICLE APPROVAL--CONTRACTOR TESTING (SEP 1989)

[Contracting Officer shall insert details]

(a) The Contractor shall test * unit(s) of Lot/Item * as specified in this contract. At least * calendar days before the beginning of first article tests, the Contractor shall notify the Contracting Officer, in writing, of the time and location of the testing so that the Government may witness the tests.

(b) The Contractor shall submit the first article test report within __*__ calendar days from the date of this contract to _____ [insert address of the Government activity to receive the report] marked "FIRST ARTICLE TEST REPORT: Contract No. * , Lot/Item No. * " Within * calendar days after the Government receives the test report, the Contracting Officer shall notify the Contractor, in writing, of the conditional approval, approval, or disapproval of the first article. The notice of conditional approval or approval shall not relieve the Contractor from complying with all requirements of the specifications and all other terms and conditions of this contract. A notice of conditional approval shall state any further action required of the Contractor. A notice of disapproval shall cite reasons for the disapproval.

(c) If the first article is disapproved, the Contractor, upon Government request, shall repeat any or all first article tests. After each request for additional tests, the Contractor shall make any necessary changes, modifications, or repairs to the first article or select another first article for testing. All costs related to these tests are to be borne by the Contractor, including any and all costs for additional tests following a disapproval. The Contractor shall then conduct the tests and deliver another report to the Government under the terms and conditions and within the time specified by the Government. The Government shall take action on this report within the time specified in paragraph (b) above. The Government reserves the right to require an equitable adjustment of the contract price for any extension of the delivery schedule, or for any additional costs to the Government related to these tests.

(d) If the Contractor fails to deliver any first article report on time, or the Contracting Officer disapproves any first article, the Contractor shall be deemed to have failed to make delivery within the meaning of the Default clause of this contract.

(e) Unless otherwise provided in the contract, and if the approved first article is not consumed or destroyed in testing, the Contractor may deliver the approved first article as part of the contract quantity if it meets all contract requirements for acceptance.

(f) If the Government does not act within the time specified in paragraph (b) or (c) above, the Contracting Officer shall, upon timely written request from the Contractor, equitably adjust under the changes clause of this contract the delivery or performance dates and/or the contract price, and any other contractual term affected by the delay.

(g) Before first article approval, the acquisition of materials or components for, or the commencement of production of, the balance of the contract quantity is at the sole risk of the Contractor. Before first article approval, the costs thereof shall not be allocable to this contract for (1) progress payments, or (2) termination settlements if the contract is terminated for the convenience of the Government.

(h) The Government may waive the requirement for first article approval test where supplies identical or similar to those called for in the schedule have been previously furnished by the offeror/contractor and have been accepted by the Government. The offeror/contractor may request a waiver.

*These elements will be completed in individual orders.

(End of clause)

52.216-19 ORDER LIMITATIONS (OCT 1995)

(a) Minimum order. When the Government requires supplies or services covered by this contract in an amount of less than **\$1,000**, the Government is not obligated to purchase, nor is the Contractor obligated to furnish, those supplies or services under the contract.

(b) Maximum order. The Contractor is not obligated to honor -

(1) Any order for a single item in excess of **\$100M**;

(2) Any order for a combination of items in excess of **\$500M**; or

(3) A series of orders from the same ordering office within **10** days that together call for quantities exceeding the limitation in paragraph (b) (1) or (2) of this section.

(c) If this is a requirements contract (i.e., includes the Requirements clause at subsection 52.216-21 of the Federal Acquisition Regulation (FAR)), the Government is not required to order a part of any one requirement from the Contractor if that requirement exceeds the maximum-order limitations in paragraph (b) of this section.

(d) Notwithstanding paragraphs (b) and (c) of this section, the Contractor shall honor any order exceeding the maximum order limitations in paragraph (b), unless that order (or orders) is returned to the ordering office within **5** days after issuance, with written notice stating the Contractor's intent not to ship the item (or items) called for and the reasons. Upon receiving this notice, the Government may acquire the supplies or services from another source.

(End of clause)

52.216-22 INDEFINITE QUANTITY. (OCT 1995)

(a) This is an indefinite-quantity contract for the supplies or services specified, and effective for the period stated, in the Schedule. The quantities of supplies and services specified in the Schedule are estimates only and are not purchased by this contract.

(b) Delivery or performance shall be made only as authorized by orders issued in accordance with the Ordering clause. The Contractor shall furnish to the Government, when and if ordered, the supplies or services specified in the Schedule up to and including the quantity designated in the Schedule as the "maximum". The Government shall order at least the quantity of supplies or services designated in the Schedule as the "minimum".

(c) Except for any limitations on quantities in the Order Limitations clause or in the Schedule, there is no limit on the number of orders that may be issued. The Government may issue orders requiring delivery to multiple destinations or performance at multiple locations.

(d) Any order issued during the effective period of this contract and not completed within that period shall be completed by the Contractor within the time specified in the order. The contract shall govern the Contractor's and Government's rights and obligations with respect to that order to the same extent as if the order were completed during the contract's effective period; provided, that the Contractor shall not be required to make any deliveries under this contract after completion of the final delivery order.

(End of clause)

52.217-8 OPTION TO EXTEND SERVICES (NOV 1999)

The Government may require continued performance of any services within the limits and at the rates specified in the contract. These rates may be adjusted only as a result of revisions to prevailing labor rates provided by the Secretary of Labor. The option provision may be exercised more than once, but the total extension of performance hereunder shall not exceed 6 months.

The Contracting Officer may exercise the option by written notice to the Contractor within **prior to the expiration of the contract period of performance, including any option execution.**

(End of clause)

52.217-9 OPTION TO EXTEND THE TERM OF THE CONTRACT (MAR 2000)

(a) The Government may extend the term of this contract by written notice to the Contractor within ** provided that the Government gives the Contractor a preliminary written notice of its intent to extend at least 1 day before the contract expires. The preliminary notice does not commit the Government to an extension.

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

(c) The total duration of this contract, including the exercise of any options under this clause, shall not exceed **.

* This clause will be included in delivery orders, as required.

** This will be completed in individual Delivery Orders.

(End of clause)

52.219-28 POST-AWARD SMALL BUSINESS PROGRAM REREPRESENTATION (JULY 2013)

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

Long-term contract means a contract of more than five years in duration, including options. However, the term does not include contracts that exceed five years in duration because the period of performance has been extended for a cumulative period not to exceed six months under the clause at 52.217-8, Option to Extend Services, or other appropriate authority.

Small business concern means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the criteria in 13 CFR part 121 and the size standard in paragraph (c) of this clause. Such a concern is "not dominant in its field of operation" when it does not exercise a controlling or major influence on a national basis in a kind of business activity in which a number of business concerns are primarily engaged. In determining whether dominance exists, consideration shall be given to all appropriate factors, including volume of business, number of employees, financial resources, competitive status or position, ownership or control of materials, processes, patents, license agreements, facilities, sales territory, and nature of business activity.

(b) If the Contractor represented that it was a small business concern prior to award of this contract, the Contractor shall rerepresent its size status according to paragraph (e) of this clause or, if applicable, paragraph (g) of this clause, upon the occurrence of any of the following:

(1) Within 30 days after execution of a novation agreement or within 30 days after modification of the contract to include this clause, if the novation agreement was executed prior to inclusion of this clause in the contract.

(2) Within 30 days after a merger or acquisition that does not require a novation or within 30 days after modification of the contract to include this clause, if the merger or acquisition occurred prior to inclusion of this clause in the contract.

(3) For long-term contracts--

(i) Within 60 to 120 days prior to the end of the fifth year of the contract; and

(ii) Within 60 to 120 days prior to the date specified in the contract for exercising any option thereafter.

(c) The Contractor shall rerepresent its size status in accordance with the size standard in effect at the time of this rerepresentation that corresponds to the North American Industry Classification System (NAICS) code assigned to this contract. The small business size standard corresponding

to this NAICS code can be found at <http://www.sba.gov/content/table-small-business-size-standards>.

(d) The small business size standard for a Contractor providing a product which it does not manufacture itself, for a contract other than a construction or service contract, is 500 employees.

(e) Except as provided in paragraph (g) of this clause, the Contractor shall make the representation required by paragraph (b) of this clause by validating or updating all its representations in the Representations and Certifications section of the System for Award Management (SAM) and its other data in SAM, as necessary, to ensure that they reflect the Contractor's current status. The Contractor shall notify the contracting office in writing within the timeframes specified in paragraph (b) of this clause that the data have been validated or updated, and provide the date of the validation or update.

(f) If the Contractor represented that it was other than a small business concern prior to award of this contract, the Contractor may, but is not required to, take the actions required by paragraphs (e) or (g) of this clause.

(g) If the Contractor does not have representations and certifications in SAM, or does not have a representation in SAM for the NAICS code applicable to this contract, the Contractor is required to complete the following rerepresentation and submit it to the contracting office, along with the contract number and the date on which the rerepresentation was completed:

The Contractor represents that it () is, (X) is not a small business concern under NAICS Code 334220- assigned to contract number N0003920D0058. (Contractor to sign and date and insert authorized signer's name and title).

(End of clause)

52.222-2 PAYMENT FOR OVERTIME PREMIUMS (JUL 1990)

(a) The use of overtime is authorized under this contract if the overtime premium cost does not exceed **zero (0)** or the overtime premium is paid for work --

(1) Necessary to cope with emergencies such as those resulting from accidents, natural disasters, breakdowns of production equipment, or occasional production bottlenecks of a sporadic nature;

(2) By indirect-labor employees such as those performing duties in connection with administration, protection, transportation, maintenance, standby plant protection, operation of utilities, or accounting;

(3) To perform tests, industrial processes, laboratory procedures, loading or unloading of transportation conveyances, and operations in flight or afloat that are continuous in nature and cannot reasonably be interrupted or completed otherwise; or

(4) That will result in lower overall costs to the Government.

(b) Any request for estimated overtime premiums that exceeds the amount specified above shall include all estimated overtime for contract completion and shall--

(1) Identify the work unit; e.g., department or section in which the requested overtime will be used, together with present workload, staffing, and other data of the affected unit sufficient to permit the Contracting Officer to evaluate the necessity for the overtime;

(2) Demonstrate the effect that denial of the request will have on the contract delivery or performance schedule;

(3) Identify the extent to which approval of overtime would affect the performance or payments in connection with other Government contracts, together with identification of each affected contract; and

(4) Provide reasons why the required work cannot be performed by using multishift operations or by employing additional personnel. * Insert either "zero" or the dollar amount agreed to during negotiations. The inserted figure does not apply to the exceptions in paragraph (a)(1) through (a)(4) of the clause.

(End of clause)

52.243-7 NOTIFICATION OF CHANGES (JAN 2017)

(a) Definitions.

"Contracting Officer," as used in this clause, does not include any representative of the Contracting Officer.

"Specifically authorized representative (SAR)," as used in this clause, means any person the Contracting Officer has so designated by written notice (a copy of which shall be provided to the Contractor) which shall refer to this subparagraph and shall be issued to the designated representative before the SAR exercises such authority.

(b) Notice. The primary purpose of this clause is to obtain prompt reporting of Government conduct that the Contractor considers to constitute a change to this contract. Except for changes identified as such in writing and signed by the Contracting Officer, the Contractor shall notify the Administrative Contracting Officer in writing, within 15 calendar days from the date that the Contractor identifies any Government conduct (including actions, inactions, and written or oral communications) that the Contractor regards as a change to the contract terms and Conditions. On the basis of the most accurate information available to the Contractor, the notice shall state--

- (1) The date, nature, and circumstances of the conduct regarded as a change;
- (2) The name, function, and activity of each Government individual and Contractor official or employee involved in or knowledgeable about such conduct;
- (3) The identification of any documents and the substance of any oral communication involved in such conduct;
- (4) In the instance of alleged acceleration of scheduled performance or delivery, the basis upon which it arose;
- (5) The particular elements of contract performance for which the Contractor may seek an equitable adjustment under this clause, including--
 - (i) What line items have been or may be affected by the alleged change;
 - (ii) What labor or materials or both have been or may be added, deleted, or wasted by the alleged change;
 - (iii) To the extent practicable, what delay and disruption in the manner and sequence of performance and effect on continued performance have been or may be caused by the alleged change;
 - (iv) What adjustments to contract price, delivery schedule, and other provisions affected by the alleged change are estimated; and
- (6) The Contractor's estimate of the time by which the Government must respond to the Contractor's notice to minimize cost, delay or disruption of performance.

(c) Continued performance. Following submission of the notice required by (b) above, the Contractor shall diligently continue performance of this contract to the maximum extent possible in accordance with its terms and conditions as construed by the Contractor, unless the notice reports a direction of the Contracting Officer or a communication from a SAR of the Contracting Officer, in either of which events the Contractor shall continue performance; provided, however, that if the Contractor regards the direction or communication as a change as described in (b) above, notice shall be given in the manner provided. All directions, communications, interpretations, orders and similar actions of the SAR shall be reduced to writing and copies furnished to the Contractor and to the Contracting Officer. The Contracting Officer shall countermand any action which exceeds the authority of the SAR.

(d) Government response. The Contracting Officer shall promptly, within 15 calendar days after receipt of notice, respond to the notice in writing. In responding, the Contracting Officer shall either--

- (1) Confirm that the conduct of which the Contractor gave notice constitutes a change and when necessary direct the mode of further performance;
- (2) Countermand any communication regarded as a change;
- (3) Deny that the conduct of which the Contractor gave notice constitutes a change and when necessary direct the mode of further performance; or
- (4) In the event the Contractor's notice information is inadequate to make a decision under (1), (2), or (3) above, advise the Contractor what additional information is required, and establish the date by which it should be furnished and the date thereafter by which the Government will respond.

(e) Equitable adjustments.

- (1) If the Contracting Officer confirms that Government conduct effected a change as alleged by the Contractor, and the conduct causes an increase or decrease in the Contractor's cost of, or the

time required for, performance of any part of the work under this contract, whether changed or not changed by such conduct, an equitable adjustment shall be made--

(i) In the contract price or delivery schedule or both; and

(ii) In such other provisions of the contract as may be affected.

(2) The contract shall be modified in writing accordingly. In the case of drawings, designs or specifications which are defective and for which the Government is responsible, the equitable adjustment shall include the cost and time extension for delay reasonably incurred by the Contractor in attempting to comply with the defective drawings, designs or specifications before the Contractor identified, or reasonably should have identified, such defect. When the cost of property made obsolete or excess as a result of a change confirmed by the Contracting Officer under this clause is included in the equitable adjustment, the Contracting Officer shall have the right to prescribe the manner of disposition of the property. The equitable adjustment shall not include increased costs or time extensions for delay resulting from the Contractor's failure to provide notice or to continue performance as provided, respectively, in (b) and (c) above.

Note: The phrases "contract price" and "cost" wherever they appear in the clause, may be appropriately modified to apply to cost-reimbursement or incentive contracts, or to combinations thereof.

(End of clause)

52.252-2 CLAUSES INCORPORATED BY REFERENCE (FEB 1998)

This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically at this/these address(es):

<https://www.acquisition.gov/content/regulations>

(End of clause)

52.252-6 AUTHORIZED DEVIATIONS IN CLAUSES (APR 1984)

(a) The use in this solicitation or contract of any Federal Acquisition Regulation (48 CFR Chapter 1) clause with an authorized deviation is indicated by the addition of "(DEVIATION)" after the date of the clause.

(b) The use in this solicitation or contract of any **Defense Federal Acquisition Regulation Supplement** (48 CFR **2**) clause with an authorized deviation is indicated by the addition of "(DEVIATION)" after the name of the regulation.

(End of clause)

252.216-7006 ORDERING (MAY 2011)

(a) Any supplies and services to be furnished under this contract shall be ordered by issuance of delivery orders or task orders by the individuals or activities designated in the contract schedule. Such orders may be issued from date of award through five (5) years thereafter.

(b) All delivery orders or task orders are subject to the terms and conditions of this contract. In the event of conflict between a delivery order or task order and this contract, the contract shall control.

(c)(1) If issued electronically, the order is considered "issued" when a copy has been posted to the Electronic Document Access system, and notice has been sent to the Contractor.

(2) If mailed or transmitted by facsimile, a delivery order or task order is considered "issued" when the Government deposits the order in the mail or transmits by facsimile. Mailing includes transmittal by U.S. mail or private delivery services.

(3) Orders may be issued orally only if authorized in the schedule.

(End of Clause)

252.225-7027 RESTRICTION ON CONTINGENT FEES FOR FOREIGN MILITARY SALES (APR 2003)

(a) Except as provided in paragraph (b) of this clause, contingent fees, as defined in the Covenant Against Contingent Fees clause of this contract, are generally an allowable cost, provided the fees are paid to--

- (1) A bona fide employee of the Contractor; or
 - (2) A bona fide established commercial or selling agency maintained by the Contractor for the purpose of securing business.
 - (b) For foreign military sales, unless the contingent fees have been identified and payment approved in writing by the foreign customer before contract award, the following contingent fees are unallowable under this contract:
 - (1) For sales to the Government(s) of **to be specified in individual Delivery Orders**, contingent fees in any amount.
 - (2) For sales to Governments not listed in paragraph (b)(1) of this clause, contingent fees exceeding \$50,000 per foreign military sale case.
- (End of Clause)

Special Clauses:

H-2: MIDS JTRS THIRD PARTY TRANSACTIONS

(a) Definitions. For the purposes of this clause:

"Foreground Information" is defined as any information generated under the Program.

"Information" is defined as any information, knowledge, or data, regardless of form or characteristics including: that of a scientific or technical nature, threat, experimental and test data, designs, semiconductor mask works and topography, improvements, photographs, reports, manuals, specifications, processes, techniques, inventions, technical writings, computer software, sound recordings, pictorial reproductions, drawings and other graphical representations; whether on magnetic tape, in computer memory or in whatever form presented, and whether or not subject to copyright or other legal protection.

"MIDS JTRS Equipment" is defined as program equipment, including hardware and software that is produced or supported through contracts managed by the PMA/PMW 101 MIDS Program Office. MIDSJTRS Equipment may be an end item, a system, or a component. MIDS JTRS Equipment includes all MIDSJTRS Terminal configurations. MIDS JTRS Equipment excludes special tooling and test equipment.

"Third Party" is defined as any entity that desires to obtain MIDS JTRS Equipment and Foreground Information outside of this contract, i.e., not through an order placed under this contract.

"Procuring Contracting Officer" is defined in Section G, Clause G-5 "Designation of Procurement Contracting Officer and Appointment of Ordering Officer(s)" of this contract.

(b) Restriction. The contractor, and all of its subcontractors, are prohibited from selling, entering into a contract to sell, transferring title of, or disclosing or transferring possession of, any MIDS JTRS Equipment or Foreground Information, exclusive of any MIDS JTRS Equipment or Foreground Information that has been approved for public release, to any Third Party without the express written approval by the Procuring Contracting Officer (PCO).

(c) Procedures

(1) If at any time the contractor desires to engage in a transaction restricted by paragraph (b) above, the contractor must submit a formal written request to that effect to the PCO prior to the earlier of (a) forwarding an offer to sell, entering into a contract to sell, or transferring MIDS JTRS Equipment or Foreground Information to a Third Party, or, (b) submittal of a request to the United States Department of State for an export license, if

necessary, for such a proposed transaction. The request shall include at a minimum the following information:

- (i) A description of the defense equipment or information to be transferred, including quantity, number of units, unit price, and total value of proposed sale,
- (ii) The identity of the Ministry of Defense of the new recipient (if applicable).
- (iii) The anticipated purpose, end use, and end user of the defense equipment or information.

If the contractor deems its request to be proprietary, the following paragraph shall be included in its request: This request for sale or transfer of MIDS JTRS Equipment or Foreground Information includes data that shall not be disclosed outside of the United States Government and shall not be duplicated, used, or disclosed -- in whole or in part -- for any purpose other than to evaluate this request. This restriction does not limit the rights of the United States Government to use information contained in this data if it is obtained from another source without restriction.

(2) Upon receipt of a request submitted pursuant to (c)(1), the PCO will forward the request to the U.S. Government representative for consideration and action. The PCO will notify the contractor when the U.S. Government representative decides to approve or disapprove the requested transaction. The contractor may enter into the transaction as specifically requested pursuant to paragraph (c)(1) only upon receipt of PCO notification that the requested transaction has been approved.

(d) For all transactions involving Third Parties, the contractor shall take appropriate measures to ensure that the Third Party does not re-transfer or use the MIDS JTRS Equipment or Foreground Information provided to that Third Party in any manner inconsistent with the purposes approved by the U.S. Government.

(e) The Contracting Officer's written notification of the approval of a transaction restricted by paragraph (b) involving a particular Third Party shall not constitute an approval by the U.S. Government of any desired future transaction restricted by paragraph (b) with either that Third Party or another Third Party. Viasat must receive written notification of approval on behalf of Seller.

(f) Seller acknowledges and agrees that this clause is a material requirement of the subcontract, and that its failure to follow any term of this clause entitles Viasat to terminate the subcontract for default.

H-4: WAIVER AND RELEASE OF DEFECTIVE LINK 16 WAVEFORM SOFTWARE CLAIMS

(a) Delivery Order (DO) 0041 (DLS) and DO 0045 (Viasat) issued under contracts N00039-00-D-2100 and N00039-00-D-2101, respectively, and DOs issued under contract N66001-11-D-0057 required the Contractor to develop, maintain, upgrade and enhance the Link 16 Waveform software for use in MIDS JTRS. The Government anticipates that it will issue delivery orders under this contract that will require the Contractor to use this Link 16 Waveform software in performing these delivery orders. Accordingly, the Contractor agrees that it, its subcontractors, successors, and assignees shall not be entitled to an equitable adjustment of the price, delivery schedule, or any other provisions of delivery orders under this contract or any other relief for any nonconformity, unsuitability, or defects of any kind contained in the Link 16 Waveform software delivered to the Government under the aforementioned contracts.

(b) Further, the Contractor for itself, its successors, and assignees, hereby remises, releases, and forever discharges the Government, its officers, agents, and employees from any and all entitlement of the Contractor under this contract and any follow-on acquisitions to changes to the price, delivery schedule, or both, arising out of or relating to any alleged defects, errors, omissions, or nonconformities in Link 16 Waveform software delivered to the Government under the aforementioned contracts. This release covers all costs that may be incurred by the Contractor as a result of such alleged defects, errors, omissions, or nonconformities (including but not limited to labor, material, overhead, General and Administrative (G&A), profit, interest, and proposal preparation expenses) whether or not such costs are known or unknown or foreseeable or unforeseeable to either the Contractor or the Government, without regard to whether such costs were, or are, incurred before or after the date of said events, actions or omissions, and whether or not such costs have been discussed with, or for any reason reserved for future discussion with the Government or made the basis for other assertion of claims. This release by the Contractor includes but is not limited to, any and all delay (direct and cumulative) and the costs thereof, all costs of dislocations, disruptions (local and cumulative), accelerations (direct and cumulative), proposal preparation and efficiencies in performance, and all overhead costs (including but not limited to unabsorbed overhead) regardless of whether any such costs are or were caused directly by, indirectly by, cumulatively by or in consequence of the impact of alleged defects, errors, omissions, or nonconformities in Link 16 Waveform software.

(c) The rights granted to the Government under this clause are in addition to, and do not affect its rights under any other provisions of this contract, including but not limited to DFARS § 252.246-7001 (Warranty of Data)(DEC 1991).

H-6: LIMITED RELEASE OF CONTRACTOR CONFIDENTIAL BUSINESS INFORMATION (APRIL 2010) [modified]

(a) Definition.

“Confidential Business Information,” (Information) as used in this clause, is defined as all forms and types of financial, business, economic or other type of information other than technical data or computer software/computer software documentation, whether tangible or intangible, and whether or how stored, compiled, or memorialized physically, electronically, graphically, photographically, or in writing if -- (1) the owner thereof has taken reasonable measures to keep such Information secret, and (2) the Information derives independent economic value, actual or potential from not being generally known to, and not being readily ascertainable through proper means by, the public. Information does not include technical data, as that term is defined in DFARS 252.227-7013(a)(14), 252.227-7015(a)(4), and 252.227-7018(a)(19). Similarly, Information does not include computer software/computer, software documentation, as those terms are defined in DFARS 252.227-7014(a)(4) and 252.227-7018(a)(4).

(b) The Naval Information Warfare Systems Command (NAVWAR) may release to individuals employed by NAVWAR support contractors and their subcontractors Information submitted by Viasat or its subcontractors (including Seller). Information that would ordinarily be entitled to confidential treatment may be included in the Information released to these individuals. Accordingly, by submission of a proposal or execution of

this subcontract, Viasat and its subcontractors (including Seller) consent to a limited release of its Information, but only for purposes as described in paragraph (c) of this clause.

(c) Circumstances where NAVWAR may release Viasat's or subcontractors' (including Seller's) Information include the following:

(1) To other NAVWAR contractors and subcontractors, and their employees tasked with assisting NAVWAR in handling and processing Information and documents in the administration of NAVWAR contracts, such as file room management and contract closeout; and,

(2) To NAVWAR contractors and subcontractors, and their employees tasked with assisting NAVWAR in accounting support services, including access to cost-reimbursement vouchers.

(d) NAVWAR recognizes its obligation to protect Viasat and its subcontractors (including Seller) from competitive harm that could result from the release of such Information. NAVWAR will permit the limited release of Information under paragraphs (c)(1) and (c)(2) only under the following conditions:

(1) NAVWAR determines that access is required by other NAVWAR contractors and their subcontractors to perform the tasks described in paragraphs (c)(1) and (c)(2);

(2) Access to Information is restricted to individuals with a bona fide need to possess;

(3) Contractors and their subcontractors having access to Information have agreed under their contract or a separate corporate non-disclosure agreement to provide the same level of protection to the Information that would be provided by NAVWAR employees. Such contract terms or separate corporate non-disclosure agreement shall require the contractors and subcontractors to train their employees on how to properly handle the Information to which they will have access, and to have their employees sign company non-disclosure agreements certifying that they understand the sensitive nature of the Information and that unauthorized use of the Information could expose their company to significant liability. Copies of such employee non-disclosure agreements shall be provided to the Government;

(4) NAVWAR contractors and their subcontractors performing the tasks described in paragraphs (c)(1) or (c)(2) have agreed under their contract or a separate non-disclosure agreement to not use the Information for any purpose other than performing the tasks described in paragraphs (c)(1) and (c)(2); and,

(5) Before releasing the Information to a non-Government person to perform the tasks described in paragraphs (c)(1) and (c)(2), NAVWAR shall provide Viasat with a list of the company names to which access is being granted, along with a Point of Contact for those entities.

(e) NAVWAR's responsibilities under the Freedom of Information Act are not affected by this clause.

(f) Viasat and its subcontractors (including Seller) agrees to include, and require inclusion of, this clause in all subcontracts at any tier that requires the furnishing of Information.