

**BAEDOC USGOV – COMMERCIAL ONLY****FLOW DOWN CLAUSES AND PROVISIONS FOR SUBCONTRACT/PURCHASE ORDERS FOR COMMERCIAL GOODS AND/OR SERVICES UNDER A U.S. GOVERNMENT DEPARTMENT OF DEFENSE PRIME CONTRACT  
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The Federal Acquisition Regulation (FAR) and Defense Federal Acquisition Regulation Supplement (DFARS) clauses and provisions referenced below are incorporated herein by reference, with the same force and effect as if they were given in full text, and are applicable during the performance of this Contract, including any notes following the clause citation. Defined terms in the FAR and DFARS clauses herein have the same meaning as those terms as defined in FAR 2.101 and DFARS 202.101 which are in effect on the date of this Contract unless (i) a different definition is expressly set forth in this Contract; (ii) the part, subpart, or section of the FAR, DFARS or supplement where the clause is prescribed provides a different meaning; or (iii) the word or term is defined in FAR Part 12, for the acquisition of commercial products or commercial services. If the date or substance of any of the clauses listed below is different than the date or substance of the clause incorporated in the Prime Contract referenced by number herein, the date or substance of the clause incorporated by said Prime Contract shall apply instead. If applicable, class deviations found at [Class Deviations \(osd.mil\)](https://www.osd.mil/ClassDeviations) shall take precedence over the relevant flow down. If corresponding FAR and DFARS clauses are referenced, the DFARS clause takes precedence, but Supplier must comply with both to the extent possible. The Contracts Disputes Act of 1978, as amended, shall have no application to this Contract. Any reference to “Disputes” clause shall mean the “Disputes/Jury Waiver” provision in the General Clauses terms and conditions document incorporated into this Contract.

**A. GOVERNMENT SUBCONTRACT**

1. This Contract is entered into by BAE Systems and Supplier in support of a U.S. Government Contract.
2. “Commercial Product” means (1) A product, other than real property, that is of a type customarily used by the general public or by nongovernmental entities for purposes other than governmental purposes, and– (i) Has been sold, leased, or licensed to the general public; or (ii) Has been offered for sale, lease, or license to the general public; (2) A product that evolved from a product described in paragraph (1) of this definition through advances in technology or performance and that is not yet available in the commercial marketplace, but will be available in the commercial marketplace in time to satisfy the delivery requirements under a Government solicitation; (3) A product that would satisfy a criterion expressed in paragraph (1) or (2) of this definition, except for– (i) Modifications of a type customarily available in the commercial marketplace; or (ii) Minor modifications of a type not customarily available in the commercial marketplace made to meet Federal Government requirements. “Minor modifications” means modifications that do not significantly alter the nongovernmental function or essential physical characteristics of an item or component or change the purpose of a process. Factors to be considered in determining whether a modification is minor include the value and size of the modification and the comparative value and size of the final product. Dollar values and percentages may be used as guideposts, but are not conclusive evidence that a modification is minor; (4) Any combination of products meeting the requirements of paragraph (1), (2), or (3) of this definition that are of a type customarily combined and sold in combination to

the general public; (5) A product, or combination of products, referred to in paragraphs (1) through (4) of this definition, even though the product, or combination of products, is transferred between or among separate divisions, subsidiaries, or affiliates of a contractor; or (6) A non-developmental item, if the procuring agency determines the product was developed exclusively at private expense and sold in substantial quantities, on a competitive basis, to multiple State and local governments or to multiple foreign governments.

3. "Commercial service" means— (1) Installation services, maintenance services, repair services, training services, and other services if—(i) Such services are procured for support of a commercial product as defined in this section, regardless of whether such services are provided by the same source or at the same time as the commercial product; and (ii) The source of such services provides similar services contemporaneously to the general public under terms and conditions similar to those offered to the Federal Government; (2) Services of a type offered and sold competitively in substantial quantities in the commercial marketplace based on established catalog or market prices for specific tasks performed or specific outcomes to be achieved and under standard commercial terms and conditions. For purposes of these services— (i) Catalog price means a price included in a catalog, price list, schedule, or other form that is regularly maintained by the manufacturer or vendor, is either published or otherwise available for inspection by customers, and states prices at which sales are currently, or were last, made to a significant number of buyers constituting the general public; and (ii) Market prices means current prices that are established in the course of ordinary trade between buyers and sellers free to bargain and that can be substantiated through competition or from sources independent of the offerors; or (3) A service referred to in paragraph (1) or (2) of this definition, even though the service is transferred between or among separate divisions, subsidiaries, or affiliates of a contractor.
4. "Prime Contract" means the contract between BAE Systems and the U.S. Government or between BAE Systems and its higher-tier contractor in support of a contract with the U.S. Government.
5. "Subcontract" means any contract placed by Supplier or lower-tier subcontractors under this Contract.
6. Supplier shall incorporate all applicable FAR and DFARS regulations in accordance with the flow down requirements specified in such clauses, and shall require that each lower tier subcontractor or supplier supporting this Contract incorporate applicable flow down clauses through their sub-tier supply chain.

#### **B. AMENDMENTS REQUIRED BY PRIME CONTRACT**

At the request of BAE Systems, Supplier shall accept amendments to this Contract to incorporate additional clauses and provisions herein or to change clauses and provisions hereof, in accordance with law or regulation. If any such amendment to this Contract causes an increase or decrease in the price of, or the time required for, performance of any part of the Work under this Contract, Supplier may seek an equitable adjustment pursuant to the "Contract Direction/Changes" clause of this Contract.

#### **C. PRESERVATION OF THE GOVERNMENT'S RIGHTS**

If BAE Systems furnishes designs, drawings, special tooling, equipment, engineering data or other technical or proprietary information (Furnished Items) to which the U.S. Government owns or has the right to authorize the use of, nothing herein shall be construed to mean that BAE Systems, acting on its own behalf, may modify or limit any rights the Government may have to authorize the Supplier's use of such Furnished Items in support of other U.S. Government prime contracts.

#### **D. FAR FLOW DOWN CLAUSES**

In accordance with DFARS 252.244-7000, FAR 12.301(d), 52.212-5(e)(1), and 52.244-6(c)(1), the following clauses and provisions are incorporated by reference and apply to this Contract as if incorporated in full text. In all clauses listed herein, the terms "Government," "Contracting Officer" and "Contractor" shall be revised to suitably identify the contracting

parties herein and affect the proper intent of the clause or provision except where further clarified or modified herein. However, the words “Government” and “Contracting Officer” do not change when (A) a right, act, authorization, or obligation can be granted or performed only by the Government or prime contract Contracting Officer or duly authorized representative and/or when (B) title to property is to be transferred directly to the Government.

- 52.203-13 CONTRACTOR CODE OF BUSINESS ETHICS AND CONDUCT (NOV 2021)
- 52.203-15 WHISTLEBLOWER PROTECTIONS UNDER THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 (JUN 2010) (applies to contracts funded in whole or in part with Recovery Act funds)
- 52.203-17 CONTRACTOR EMPLOYEE WHISTLEBLOWER RIGHTS (NOV 2023)
- 52.203-19 PROHIBITION ON REQUIRING CERTAIN INTERNAL CONFIDENTIALITY AGREEMENTS OR STATEMENTS (JAN 2017)
- 52.204-7 SYSTEM FOR AWARD MANAGEMENT (OCT 2018)
- 52.204-13 SYSTEM FOR AWARD MANAGEMENT MAINTENANCE (OCT 2018)
- 52.240-16 COMMERCIAL AND GOVERNMENT ENTITY CODE REPORTING (AUG 2020)
- 52.204-18 COMMERCIAL AND GOVERNMENT ENTITY CODE MAINTENANCE (AUG 2020)
- 52.204-21 BASIC SAFEGUARDING OF COVERED CONTRACTOR INFORMATION SYSTEMS (NOV 2021)
- 52.204-23 PROHIBITION ON CONTRACTING FOR HARDWARE, SOFTWARE, AND SERVICES DEVELOPED OR PROVIDED BY KASPERSKY LAB AND OTHER COVERED ENTITIES (NOV 2021)
- 52.204-24 REPRESENTATION REGARDING CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OF EQUIPMENT (NOV 2021)
- 52.204-25 PROHIBITION ON CONTRACTING FOR CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT (NOV 2021)
- 52.204-27 PROHIBITION ON A BYTEDANCE COVERED APPLICATION (JUN 2023)
- 52.204-30 FEDERAL ACQUISITION SUPPLY CHAIN SECURITY ACT ORDERS – PROHIBITION (DEC 2023)
- 52.209-7 INFORMATION REGARDING RESPONSIBILITY MATTERS (OCT 2018)
- 52.209-12 CERTIFICATION REGARDING TAX MATTERS (OCT 2020)
- 52.212-3 OFFEROR REPRESENTATIONS AND CERTIFICATIONS – COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES (FEB 2024)
- 52.212-4 CONTRACT TERMS AND CONDITIONS—COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES (NOV 2023)
- 52.212-5 CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS – COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES (FEB 2024)

- 52.219-8 UTILIZATION OF SMALL BUSINESS CONCERNS (OCT 2022) (If this Contract, except contracts to small business concerns, exceeds \$250,000 the Contractor must include this clause in all lower tier subcontracts that offer subcontracting opportunities.)
- 52.222-21 PROHIBITION OF SEGREGATED FACILITIES (APR 2015)
- 52.222-26 EQUAL OPPORTUNITY (SEP 2016) (Only subparagraphs (c) (1)-(11) applies.)
- 52.222-35 EQUAL OPPORTUNITY FOR VETERANS (JUN 2020)
- 52.222-36 EQUAL OPPORTUNITY FOR WORKERS WITH DISABILITIES (JUN 2020)
- 52.222-37 EMPLOYMENT REPORTS ON VETERANS (JUN 2020)
- 52.222-40 NOTIFICATION OF EMPLOYEE RIGHTS UNDER THE NATIONAL LABOR RELATIONS ACT (DEC 2010)
- 52.222-41 SERVICE CONTRACT LABOR STANDARDS (AUGUST 2018)
- 52.222-50 COMBATING TRAFFICKING IN PERSONS (NOV 2021) (A requirement for a compliance plan and certification appropriate to the size and complexity of the contract is required if any portion of the contract (i) is for supplies, other than COTS items, acquired outside the United States, or services to be performed outside the United States, and (ii) has an estimated value that exceeds \$550,000.)
- 52.222-51 EXEMPTION FROM APPLICATION OF THE SERVICE CONTRACT LABOR STANDARDS TO CONTRACTS FOR MAINTENANCE, CALIBRATION, OR REPAIR OF CERTAIN EQUIPMENT REQUIREMENTS (MAY 2014) (applicable to contracts for exempt services under this contract)
- 52.222-54 EMPLOYMENT ELIGIBILITY VERIFICATION (MAY 2022)
- 52.222-53 EXEMPTION FROM APPLICATION OF THE SERVICE CONTRACT LABOR STANDARDS TO CONTRACTS FOR CERTAIN SERVICES - REQUIREMENTS (MAY 2014)
- 52.222-55 MINIMUM WAGES FOR CONTRACTOR WORKERS UNDER EXECUTIVE ORDER 14026 (JAN 2022)
- 52.222-56 CERTIFICATION REGARDING TRAFFICKING IN PERSONS COMPLIANCE PLAN (OCT 2020)
- 52.222-62 PAID SICK LEAVE UNDER EXECUTIVE ORDER 13706 (JAN 2022)
- 52.224-3 PRIVACY TRAINING (JAN 2017)
- 52.225-26 CONTRACTORS PERFORMING PRIVATE SECURITY FUNCTIONS OUTSIDE THE UNITED STATES (OCT 2016)
- 52.227-11 PATENT RIGHTS – OWNERSHIP BY THE CONTRACTOR (May 2014) (applicable to contracts for experimental, development, or research work to be performed by a small business concern or non-profit)
- 52.232-40 PROVIDING ACCELERATED PAYMENTS TO SMALL BUSINESS SUBCONTRACTORS (NOV 2021) (Applicable to small businesses only and only when BAE Systems is the Prime contractor)
- 52.244-6 SUBCONTRACTS FOR COMMERCIAL ITEMS (MAR 2023)
- 52.247-64 PREFERENCE FOR PRIVATELY OWNED U.S.-FLAG COMMERCIAL VESSELS (NOV 2021)

## **E. DFARS FLOW DOWN CLAUSES**

1. Where the Prime Contract is in support of the Department of Defense, in accordance with DFARS 252.244-7000, FAR 12.301(d), 52.212-5(e)(1), and 52.244-6(c)(1), the following clauses and provisions are incorporated by reference and apply to this Contract as if incorporated in full text. In all clauses listed herein, the terms “Government,” “Contracting Officer” and “Contractor” shall be revised to suitably identify the contracting parties herein and affect the proper intent of the clause or provision except where further clarified or modified herein. However, the words “Government” and “Contracting Officer” do not change when (A) a right, act, authorization, or obligation can be granted or performed only by the Government or prime contract Contracting Officer or duly authorized representative and/or when (B) title to property is to be transferred directly to the Government.

252.203-7002 REQUIREMENT TO INFORM EMPLOYEES OF WHISTLEBLOWER RIGHTS (DEC 2022)

252.203-7001 PROHIBITION ON PERSONS CONVICTED OF FRAUD OR OTHER DEFENSE CONTRACT-RELATED FELONIES (JAN2023) (In this clause, the terms “contract,” “contractor,” and “subcontract” shall not change in meaning in paragraphs (a) thru (d).)

252.204-7000 DISCLOSURE OF INFORMATION (OCT 2016)

252.204-7009 LIMITATIONS ON THE USE AND DISCLOSURE OF THIRD-PARTY CONTRACTOR REPORTED CYBER INCIDENT INFORMATION (JAN 2023)

252.204-7010 REQUIREMENT FOR CONTRACTOR TO NOTIFY DOD IF THE CONTRACTOR’S ACTIVITIES ARE SUBJECT TO REPORTING UNDER THE U.S.-INTERNATIONAL ATOMIC ENERGY AGENCY ADDITIONAL PROTOCOL (JAN 2009) (applicable to Contracts subject to the U.S. International Atomic Energy Agency Additional Protocol regulations)

252.204-7012 SAFEGUARDING COVERED DEFENSE INFORMATION AND CYBER INCIDENT REPORTING (JAN 2023)

252.204-7014 LIMITATIONS ON THE USE OR DISCLOSURE OF INFORMATION BY LITIGATION SUPPORT CONTRACTORS (JAN 2023)

252.204-7015 NOTICE OF AUTHORIZED DISCLOSURE OF INFORMATION FOR LITIGATION SUPPORT (JAN 2023)

252.204-7018 PROHIBITION ON THE ACQUISITION OF COVERED DEFENSE TELECOMMUNICATIONS EQUIPMENT OR SERVICES (JAN 2023)

252.204-7020 NIST SP 800-171 DOD ASSESSMENT REQUIREMENTS (NOV 2023) (not applicable to COTS items)

252.204-7021 CYBERSECURITY MATURITY MODEL CERTIFICATION REQUIREMENTS (JAN 2023) (not applicable to COTS items)

252.208-7000 INTENT TO FURNISH PRECIOUS METALS AS GOVERNMENT-FURNISHED MATERIAL (DEC 1991) (applies if any items being furnished contain precious metals)

252.211-7003 ITEM UNIQUE IDENTIFICATION AND VALUATION (JAN 2023) (applies to items for which item unique identification is required)

- 252.219-7003 SMALL BUSINESS SUBCONTRACTING PLAN (DoD Contracts) (DEC 2019) (applies to Contracts with Suppliers that participate in the Test Program described in DFARS 219.702-70 if the Contract is expected to exceed the threshold specified in FAR 19.702(a) and to have further subcontracting opportunities)
- 252.219-7004 SMALL BUSINESS SUBCONTRACTING PLAN (TEST PROGRAM) (DEC 2022) (applies to Contracts with Suppliers that participate in the Test Program described in DFARS 219.702-70)
- 252.222-7000 RESTRICTIONS ON EMPLOYMENT OF PERSONNEL (MAR 2000)
- 252.223-7002 SAFETY PRECAUTIONS FOR AMMUNITION AND EXPLOSIVES (MAY 1994) (applies to Contracts that involve ammunition or explosives)
- 252.223-7006 PROHIBITION ON STORAGE, TREATMENT, AND DISPOSAL OF TOXIC OR HAZARDOUS MATERIALS (SEP 2014) (applies to Contracts that require, may require, or permit a subcontractor access to a DoD installation, at any tier)
- 252.223-7007 SAFEGUARDING SENSITIVE CONVENTIONAL ARMS, AMMUNITION, AND EXPLOSIVES (SEP 1999) (applies to Contracts (1) for the development, production, manufacture, or purchase of AA&E; or (2) When AA&E will be provided to the subcontractor as Government-furnished property.)
- 252.223-7008 PROHIBITION OF HEXAVALENT CHROMIUM (JAN 2023)
- 252.225-7007 PROHIBITION ON ACQUISITION OF CERTAIN ITEMS FROM COMMUNIST CHINESE MILITARY COMPANIES (DEC 2018) (applies to Contracts for items covered by the United States Munitions List or the 600 series of the Commerce Control List)
- 252.225-7009 RESTRICTION ON ACQUISITION OF CERTAIN ARTICLES CONTAINING SPECIALTY METALS (JAN 2023) (paragraphs (d) and (e) (1) are deleted)
- 252.225-7013 DUTY-FREE ENTRY (DEC 2022) (applies to contracts for qualifying country components and non-qualifying country components for which the duty is estimated to exceed \$200 per unit)
- 252.225-7019 RESTRICTION ON ACQUISITION OF ANCHOR AND MOORING CHAIN (DEC 2009) (applies to Contracts for items containing welded shipboard anchor and mooring chain, four inches less in diameter)
- 252.225-7025 RESTRICTION ON ACQUISITION OF FORGINGS (DEC 2009) (applies to Contracts for forging items or other items that contain forging items)
- 252.225-7039 DEFENSE CONTRACTORS PERFORMING PRIVATE SECURITY FUNCTIONS OUTSIDE OF THE UNITED STATES (JAN 2023) (applies to Contracts when private security functions will be performed outside the United States in areas of— (1) Contingency operations; (2) Combat operations, as designated by the Secretary of Defense; (3) Other significant military operations (as defined in 32 CFR part 159), designated by the Secretary of Defense upon agreement of the Secretary of State; (4) Peace operations, consistent with Joint Publication 3-07.3; or (5) Other military operations or military exercises, when designated by the Combatant Commander.)
- 252.225-7048 EXPORT-CONTROLLED ITEMS (JUN 2013)
- 252.225-7052 RESTRICTION ON THE ACQUISITION OF CERTAIN MAGNETS, TANTALUM, AND TUNGSTEN (JAN 2023)
- 252.225-7054 PROHIBITION ON USE OF CERTAIN ENERGY SOURCED FROM INSIDE THE RUSSIAN FEDERATION (JAN 2023) (applies to Contracts for furnishing energy at a covered military installation)

- 252.225-7056 PROHIBITION REGARDING BUSINESS OPERATIONS WITH THE MADURO REGIME (JAN 2023)
- 252.225-7060 PROHIBITION ON CERTAIN PROCUREMENTS FROM THE XINJIANG UYGHUR AUTONOMOUS REGION (JUN 2023)
- 252.226-7001 UTILIZATION OF INDIAN ORGANIZATIONS, INDIAN-OWNED ECONOMIC ENTERPRISES, AND NATIVE HAWAIIAN SMALL BUSINESS CONCERNS (JAN 2023) (In e (1), “Contractor” shall mean BAE SYSTEMS.) (applies to Contracts exceeding \$500,000)
- 252.227-7013 RIGHTS IN TECHNICAL DATA - NON-COMMERCIAL ITEMS (MAR 2023) (Applicable in lieu of FAR 52.227-14) (governs the technical data pertaining to any portion of a commercial product or commercial service that was developed in any part at Government expense)
- 252.227-7014 RIGHTS IN NON-COMMERCIAL COMPUTER SOFTWARE AND NON-COMMERCIAL COMPUTER SOFTWARE DOCUMENTATION (MAR 2023) (govern the technical data pertaining to any portion of a commercial product or commercial service that was developed exclusively at private expense)
- 252.227-7014 RIGHTS IN OTHER THAN COMMERCIAL COMPUTER SOFTWARE AND OTHER THAN COMMERCIAL COMPUTER SOFTWARE DOCUMENTATION (MAR 2023) (applies when acquiring any other than commercial computer software or computer software documentation)
- 252.227-7015 TECHNICAL DATA – COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES
- 252.227-7016 RIGHTS IN BID OR PROPOSAL INFORMATION (JAN 2023)
- 252.227-7018 RIGHTS IN NONCOMMERCIAL TECHNICAL DATA AND COMPUTER SOFTWARE-SMALL BUSINESS INNOVATION RESEARCH (SBIR) PROGRAM (MAR 2023)
- 252.227-7019 VALIDATION OF ASSERTED RESTRICTIONS - COMPUTER SOFTWARE (JAN 2023) (Applies to Contracts for the furnishing of computer software)
- 252.227-7037 VALIDATION OF RESTRICTIVE MARKINGS ON TECHNICAL DATA (JAN 2023) (applies to Contracts requiring the delivery of technical data)
- 252.227-7038 PATENT RIGHTS - OWNERSHIP BY THE CONTRACTOR (LARGE BUSINESS) (JUN 2012)
- 252.228-7001 GROUND AND FLIGHT RISK (MAR 2023) (removing subparagraph (f))
- 252.228-7005 MISHAP REPORTING AND INVESTIGATION INVOLVING AIRCRAFT, MISSILES, AND SPACE LAUNCH VEHICLES (MAR 2023)
- 252.229-7011 REPORTING OF FOREIGN TAXES – U.S. ASSISTANCE PROGRAMS (SEP 2005)
- 252.235-7003 FREQUENCY AUTHORIZATION-BASIC (MAR 2014) (applies to Contracts requiring development, production, construction, testing, or operation of a device for which a radio frequency authorization is required)
- 252.237-7019 TRAINING FOR CONTRACTOR PERSONNEL INTERACTING WITH DETAINEES (JAN 2023) (applies to Contracts for commercial services that may require subcontractor personnel to interact with detainees in the course of their duties)

- 252.239-7010 CLOUD COMPUTING SERVICES (JAN 2023) (applies to Contracts that involve or may involve cloud services, including subcontracts for commercial services.)
- 252.239-7016 TELECOMMUNICATIONS SECURITY EQUIPMENT, DEVICES, TECHNIQUES, AND SERVICES (DEC 1991) (applies to Contracts securing telecommunications)
- 252.244-7000 SUBCONTRACTS FOR COMMERCIAL ITEMS (DoD CONTRACTS) (JAN 2023)
- 252.246-7003 NOTIFICATION OF POTENTIAL SAFETY ISSUES (JAN 2023) (applies to Contracts for (i) Parts identified as critical safety items; (ii) Systems and subsystems, assemblies, and subassemblies integral to a system; or (iii) Repair, maintenance, logistics support, or overhaul services for systems and subsystems, assemblies, subassemblies, and parts integral to a system.) (SUPPLIER shall provide notifications to BAE SYSTEMS and the ACO and PCO for the Prime Contract.)
- 252.246-7007 CONTRACTOR COUNTERFEIT ELECTRONIC PART DETECTION AND AVOIDANCE SYSTEM (JAN 2023) (applies to Contracts for the acquisition of electronic parts or assemblies containing electronic parts)
- 252.246-7008 SOURCES OF ELECTRONIC PARTS (JAN 2023) (applies to Contracts for the acquisition of electronic parts or assemblies, except where Supplier is the original manufacturer)
- 252.247-7023 TRANSPORTATION OF SUPPLIES BY SEA-BASIC (JAN 2023) (Applicable in lieu of FAR 52.247-64 in all Contracts for ocean transportation of supplies. In the first sentence of paragraph (g), insert a period after "Contractor" and delete the balance of the sentence. Paragraph (f) and (g) shall not apply if this Contract is at or below \$150,000.)