

Document No. THAAD035, Rev. 0

Flow-Downs for HQ0853-25-D-0001, THAAD FOLLOW-ON DEVELOPMENT CONTRACT

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

Full-Text Clauses

H-08 PUBLIC RELEASE OF INFORMATION (MAR 2020)

a. In addition to the requirements of National Industrial Security Program Operations Manual (DoD 5220.22-M), all foreign and domestic contractor(s) and its subcontractors are required to comply with the following:

1) Any official MDA information/materials that a contractor/subcontractor intends to release to the public that pertains to any work under performance of this contract, the Missile Defense Agency (MDA) will perform a pre-publication review prior to authorizing any release of information/materials.

2) At a minimum, these information/materials may be technical papers, presentations, articles for publication, key messages, talking points, speeches, and social media or digital media, such as press releases, photographs, fact sheets, advertising, posters, videos, etc.

b. Subcontractor public information/materials must be submitted for approval through the prime contractor to MDA.

c. Upon request to the MDA Procuring Contracting Officer (PCO), contractors shall be provided the Request for Industry Media Engagement form (or any superseding MDA form).

d. At least 45 calendar days prior to the desired release date, the contractor must submit the required form and information/materials to be reviewed for public release to MDAPressOperations@mda.mil, and simultaneously provide courtesy copy to the appropriate PCO. (Additional distribution emails can be added by the Program Office to ensure proper internal coordination and tracking of PR requests.)

e. All information/materials submitted for MDA review must be an exact copy of the intended item(s) to be released, must be of high quality and are free of tracked changes and/or comments. Photographs must have captions, and videos must have the intended narration included. All items must be marked with the applicable month, day, and year.

f. No documents or media shall be publicly released by the Contractor without MDA Public Release approval.

g. Once information has been cleared for public release, it resides in the public domain and must always be used in its originally cleared context and format. Information previously cleared for public release but containing new, modified or further developed information must be re-submitted.

H-09 ORGANIZATIONAL CONFLICT OF INTEREST (APR 2020)

a. Purpose: The purpose of this clause is to ensure that:

(1) the Contractor is rendering impartial assistance and advice to the Government at all times under this contract and related Government contracts;

(2) the Contractors objectivity in performing work under this contract or related Government contracts is not impaired; and

(3) the Contractor does not obtain an unfair competitive advantage by virtue of its access to non-public Government information, or by virtue of its access to proprietary information belonging to others.

b. Scope: The Organizational Conflict of Interest (OCI) rules, procedures and responsibilities described in FAR 9.5 Organizational and Consultant Conflicts of Interest, FAR 3.101-1 Standards of Conduct General, DFARS 209.5 Organizational and Consultant Conflicts of Interest, and in this clause are applicable to the prime Contractor (including any affiliates and successors-in-interest), as well as any co-sponsor, joint-venture partner, consultant, subcontractor or other entity participating in the performance of this contract. The Contractor shall flow this clause down to all subcontracts, consulting agreements, teaming agreements, or other such arrangements which have OCI concerns, while modifying the terms "contract", "Contractor", and "Contracting Officer" as appropriate to preserve the Government's rights.

c. Access to and Use of Nonpublic Information: If in performance of this contract the contractor obtains access to nonpublic information such as plans, policies, reports, studies, financial plans, or data which has not been released or otherwise made available to the public, the Contractor agrees it shall not use such information for any private purpose or release such information without prior written approval from the Contracting Officer.

d. Access to and Protection of Proprietary Information: The Contractor agrees to exercise due diligence to protect proprietary information from misuse or unauthorized disclosure in accordance with FAR 9.505-4. The Contractor may be requested to enter into a written non-disclosure agreement with a third party asserting proprietary restrictions, if required in the performance of the contract.

e. In accordance with FAR 3.101-1, the Contractor shall also take all appropriate measures to prevent the existence of conflicting roles that might bias the Contractors judgement, give the Contractor an unfair competitive advantage, and deprive MDA of objective advice or assistance that can result from hiring former Government employees. (See Health Net Fed. Svcs, B-401652.3).

f. Restrictions on Participating in Other Government Contract Efforts. NONE.

g. OCI Disclosures: The Contractor shall disclose to the Contracting Officer all facts relevant to the existence of an actual or potential OCI, using an OCI Analysis/Disclosure Form which the Contracting Officer will provide upon request. This disclosure shall include a description of the action the Contractor has taken or plans to take to avoid, neutralize or mitigate the OCI.

h. Remedies and Waiver:

(1) If the contractor fails to comply with any requirements of FAR 9.5, FAR 3.101-1, DFARS 209.5, or this clause, the Government may terminate this contract for default, disqualify the Contractor from subsequent related contractual efforts if necessary to neutralize a resulting organizational conflict of interest, and/or pursue other remedies permitted by law or this contract. If the Contractor discovers and promptly reports an actual or potential OCI subsequent to contract award, the Contracting Officer may terminate this contract for convenience if such termination is deemed to be in the best interest of the Government, or take other appropriate actions.

(2) The parties recognize that the requirements of this clause may continue to impact the contractor after contract performance is completed, and that it is impossible to foresee all future impacts. Accordingly, the Contractor may at any time seek an OCI waiver from the Director, MDA by submitting a written waiver request to the Contracting Officer. Any such request shall include a full description of the OCI and detailed rationale for the OCI waiver.

H-10 ENABLING CLAUSE FOR BMD INTERFACE SUPPORT (APR 2009)

a. It is anticipated that, during the performance of this contract, the Contractor will be required to support Technical Interface/Integration Meetings (TIMS) with other Ballistic Missile Defense (BMD) Contractors and other Government agencies. Appropriate organizational conflicts of interest clauses and additional costs, if any, will be negotiated as needed to protect the rights of the Contractor and the Government.

b. Interface support deals with activities associated with the integration of the requirements of this contract into BMD system plans and the support of key Missile Defense Agency (MDA) program reviews.

c. The Contractor agrees to cooperate with BMD Contractors by providing access to technical matters, provided, however, the Contractor will not be required to provide proprietary information to non-Government entities or personnel in the absence of a non-disclosure agreement between the Contractor and such entities.

d. The Contractor further agrees to include a clause in each subcontract requiring compliance with paragraph c. above, subject to coordination with the Contractor. This agreement does not relieve the Contractor of its responsibility to manage its subcontracts effectively, nor is it intended to establish privity of contract between the Government and such subcontractors.

e. Personnel from BMD Contractors or other Government agencies or Contractors are not authorized to direct the Contractor in any manner.

f. This clause shall not prejudice the Contractor or its subcontractors from negotiating separate organizational conflict of interest agreements with BMD Contractors; however, these agreements shall not restrict any of the Government's rights established pursuant to this clause or any other contract.

H-27 FOREIGN PERSONS (JUN 2010)

1. "Foreign National" (also known as Foreign Persons) as used in this clause means any person who is NOT:

- a. a citizen or national of the United States; or
- b. a lawful permanent resident; or
- c. a protected individual as defined by 8 U.S.C.1324b(a)(3).

"Lawful permanent resident" is a person having the status of having been lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws and such status not having changed.

"Protected individual" is an alien who is lawfully admitted for permanent residence, is granted the status of an alien lawfully admitted for temporary residence under 8 U.S.C.1160(a) or 8 U.S.C.1255a(a)(1), is admitted as a refugee under 8 U.S.C.1157, or is granted asylum under section 8 U.S.C.1158; but does not include (i) an alien who fails to apply for naturalization within six months of the date the alien first becomes eligible (by virtue of period of lawful permanent residence) to apply for naturalization or, if later, within six months after November 6, 1986, and (ii) an alien who has applied on a timely basis, but has not been naturalized as a citizen within 2 years after the date of the application, unless the alien can establish that the alien is actively pursuing naturalization, except that time consumed in the Service's processing the application shall not be counted toward the 2-year period.

2. Prior to contract award, the contractor shall identify any lawful U.S. permanent residents and foreign nationals expected to be involved on this project as a direct employee, subcontractor or consultant. For these individuals, in addition to resumes, please specify their country of origin, the type of visa or work permit under which they are performing and an explanation of their anticipated level of involvement on this project. You may be asked to provide additional information during negotiations in order to verify the foreign citizens eligibility to participate on a contract. Supplemental information provided in response to this clause will be protected in accordance with Privacy Act (5 U.S.C. 552a), if applicable, and the Freedom of Information Act (5 U.S.C. 552(b)(6)). After award of the contract, the Contractor shall promptly notify the Contracting Officer and Contracting Officer's Representative with the information above prior to making any personnel changes involving foreign persons. No changes involving foreign persons will be allowed without prior approval from the Contracting Officer. This clause does not remove any liability from the contractor to comply with applicable ITAR and EAR export control obligations and restrictions. This clause shall be included in any subcontract."

H-28 DISTRIBUTION CONTROL OF TECHNICAL INFORMATION (AUG 2014)

a. The following terms applicable to this clause are defined as follows:

1. DoD Official. Serves in DoD in one of the following positions: Program Director, Deputy Program Director, Program Manager, Deputy Program Manager, Procuring Contracting Officer, Administrative Contracting Officer, or Contracting Officers Representative.
2. Technical Document. Any recorded information (including software) that conveys scientific and technical information or technical data.
3. Scientific and Technical Information. Communicable knowledge or information resulting from or pertaining to the conduct or management of effort under this contract. (Includes programmatic information).
4. Technical Data. As defined in DFARS 252.227-7013.

b. Except as otherwise set forth in the Contract Data Requirements List (CDRL), DD Form 1423 the distribution of any technical documents prepared under this contract, in any stage of development or completion, is prohibited outside of the contractor and applicable subcontractors under this contract unless authorized by the Contracting Officer in writing. However, distribution of technical data is permissible to DOD officials having a need to know in connection with this contract or any other MDA contract provided that the technical data is properly marked according to the terms and conditions of this contract. When there is any doubt as to need to know for purposes of this paragraph, the Contracting Officer or the Contracting Officers Representative will provide direction. Authorization to distribute technical data by the Contracting Officer or the Contracting Officers Representative does not constitute a warranty of the technical data as it pertains to its accuracy, completeness, or adequacy. The contractor shall distribute this technical data relying on its own corporate best practices and the terms and conditions of this contract. Consequently, the Government assumes no responsibility for the distribution of such technical data nor will the Government have any liability, including third party liability, for such technical data should it be inaccurate, incomplete, improperly marked or otherwise defective. Therefore, such a distribution shall not violate 18 United States Code 1905.

c. All technical documents prepared under this contract shall be marked with the following distribution statement, warning, and destruction notice identified in sub-paragraphs 1, 2, and 3 below. When it is technically not feasible to use the entire WARNING statement, an abbreviated marking may be used, and a copy of the full statement added to the "Notice To Accompany Release of Export Controlled Data" required by DoD Directive 5230.25.

1. DISTRIBUTION STATEMENT D - Distribution authorized to Department of Defense and U.S. DoD contractors only due to Export Control as of August 7, 2019. Other requests for this document shall be referred to
THAAD Project Office, Building 5224, Martin Road, Redstone Arsenal, AL 35898.
2. WARNING - This document contains technical data whose export is restricted by the Arms Export Control Act (Title 22, U.S.C., Sec 2751, et seq.) or the Export Administration Act of 1979 (Title 50, U.S.C., App. 2401 et seq), as amended. Violations of these export laws are subject to severe criminal penalties. Disseminate in accordance with provisions of DoD Directive 5230.25.

3. DESTRUCTION NOTICE - For classified documents follow the procedures in DOD 5220.22-M, National Industrial Security Program Operating Manual, February 2006, Incorporating Change 1, March 28, 2013, Chapter 5, Section 7, or DoDM 5200.01-Volume 3, DoD Information Security Program: Protection of Classified Information, Enclosure 3, Section 17. For controlled unclassified information follow the procedures in DoDM 5200.01-Volume 4, Information Security Program: Controlled Unclassified Information.

d. The Contractor shall insert the substance of this clause, including this paragraph, in all subcontracts.

H-35 INCORPORATING COMMERCIAL AND OPEN SOURCE SOFTWARE (AUG 2012)

a. DFARS 252.227-7014(d) requires the written approval of the PCO before the Contractor may incorporate any copyrighted computer software in the software to be delivered under this contract.

b. A request for approval to incorporate Commercial Computer Software should be accompanied by a license that conforms with the requirements of the Commercial Computer Software Licenses clause of this contract.

c. A request for approval to incorporate Open Source Software must be accompanied by the applicable license, a detailed description of the source of the software and how it has been or will be used, and an explanation of the restrictions imposed and potential risks and liabilities.

d. Nothing in this clause shall take precedence over any other clause or provision of this contract. Government concurrence, as defined in paragraph a above, does not in any way affect the Government's technical data rights as established by the terms and conditions of this contract.

H-36 CONTRACTOR IDENTIFICATION AND ASSERTION OF RESTRICTIONS ON THE GOVERNMENT'S USE, RELEASE, OR DISCLOSURE OF NON-COMMERCIAL (DEC 2011)

a. The contractor and its subcontractors shall provide a completed Attachment in accordance with DFARS 252.227-7017 entitled "Identification and Assertion of Restrictions on the Government's Use, Release, or Disclosure of Technical Data or Computer Software" that is signed and dated by a responsible official of the Contractor. This Attachment is incorporated herein by reference as if fully set forth. The Attachment identifies and provides information pertaining to technical data (including computer software documentation) and computer software that the contractor and subcontractors claim to qualify for delivery with less than Unlimited Rights. The contractor agrees not to withhold delivery of the technical data or software based on its claims. The Government shall investigate the validity of the contractor's claims and therefore reserves all its rights regarding the technical data/software in question, to include those rights set forth in: DFARS 252.227-7013, Rights in Technical Data - Noncommercial Items; DFARS 252.227-7014, Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation; DFARS 252.227-7019, Validation of Asserted Restrictions-- Computer Software; DFARS 252.227-7028, Technical Data or Computer Software Previously Delivered To the Government; and, DFAR 252.227-7037, Validation Of Restrictive Markings On Technical Data clauses until a determination is made.

b. The contractor shall have, maintain, and follow written procedures sufficient to assure that restrictive markings/legends are used only when authorized by the terms of this contract and shall maintain records sufficient to justify the validity of any restrictive markings/legends on any technical data or computer software or computer software documentation delivered under this contract. The Contractor agrees that the Government has Unlimited Rights as defined by DFARS 252.227-7013 and 252.227-7014 in any deliverable technical data or computer software or computer software documentation not listed in the Attachment and that such data or software will not be subject to any restrictive markings or legends.

H-37 INSERTION OF LIMITED OR RESTRICTED RIGHTS (DEC 2010)

a. Hardware items which are subject to Limited Rights in their associated technical data as defined in DFARS 252.227-7013 and software items which are subject to Restricted Rights as defined in DFARS 252.227-7014 shall not be incorporated into the design of any systems, or models/simulations thereof under this contract without the prior written authorization of the PCO. The Contractors request shall include a rough order of magnitude (ROM) estimate to perform development if the data or software cannot be used as requested. If the PCO does not provide a decision within 30 days of the request, the request is considered denied. In the event the PCO authorizes inclusion of the Limited Rights technical data and/or Restricted software, such data or software will be added as an attachment within Section J.

b. Using Government assets in an Independent Research and Development (IRAD) project may be authorized on a case by case basis. The Contractors request shall include an offer of consideration for use of such Government assets. The Government will evaluate the request, including the Contractors offer of consideration, and either approve, deny, or offer an alternative form of consideration. Any such consideration will be mutually agreed to by the parties prior to use of Government assets. Consideration should include, at a minimum, specially negotiated rights granting the Government a license for Government Purpose Rights IAW DFARS 252.227-7013 and 252.227-7014 in the subject IRAD project. When the Contractor requests the use of Government assets for an IRAD project, the request shall include the purpose of the IRAD project and the potential benefit to the Government. The Contractor will be required to execute a bailment agreement prior to the transfer or use of Government assets.

H-38 FEE/PROFIT LIMITATIONS (OCT 2024)

Fee/Profit Base. Separate cost reimbursement CLINs are established for Travel and therefore no fee/profit will be allowed on travel costs and associated burden.

FAR Clauses

52.203-15 WHISTLEBLOWER PROTECTIONS UNDER THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 (JUN 2010) (Applies to all subcontracts funded in whole or in part with Recovery Act funds.)

52.203-16 PREVENTING PERSONAL CONFLICTS OF INTEREST (JUN 2020) (Applies to all subcontracts that exceed the simplified acquisition threshold in FAR 2.101; and in which subcontractor employees will perform acquisition functions closely associated with inherently governmental functions (i.e., instead of performance only by a self-employed individual).)

52.203-17 CONTRACTOR EMPLOYEE WHISTLEBLOWER RIGHTS AND REQUIREMENT TO INFORM EMPLOYEES OF WHISTLEBLOWER RIGHTS (APR 2014) (Applies in lieu of Nov 2023)

52.204-23 PROHIBITION ON CONTRACTING FOR HARDWARE, SOFTWARE, AND SERVICES DEVELOPED OR PROVIDED BY KASPERSKY LAB COVERED ENTITIES (NOV 2021) (Applies in lieu of Dec 2023)

52.215-12 SUBCONTRACTOR CERTIFIED COST OR PRICING DATA, ALT I (AUG 2020)

52.215-12 (SUBCONTRACTOR CERTIFIED COST OR PRICING DATA (DEVIATION 2022-00001)) (OCT 2021)

52.215-13 SUBCONTRACTOR CERTIFIED COST OR PRICING DATA - MODIFICATIONS (DEVIATION 2022-00001) (OCT 2021)

52.215-23 LIMITATIONS ON PASS-THROUGH CHARGES, ALT I (OCT 2009)

52.219-8 UTILIZATION OF SMALL BUSINESS CONCERNS (OCT 2022) (Applies in lieu of Sep 2023)

52.219-9 SMALL BUSINESS SUBCONTRACTING PLAN (OCT 2022) (Applies in lieu of Sep 2023)

52.224-1 PRIVACY ACT NOTIFICATION (APR 1984) (Applies to any subcontract where the subcontractor will be required to design, develop, or operate a system of records on individuals required to accomplish an agency function.)

52.224-2 PRIVACY ACT (APR1984) (applies to all subcontracts which require the design, development, or operation of such a system of records.)

52.227-1 AUTHORIZATION AND CONSENT, ALT I (APR 1984) (Applies to all subcontracts for research and development work.)

52.227-21 TECHNICAL DATA DECLARATION, REVISION, AND WITHHOLDING OF PAYMENT--MAJOR SYSTEMS (MAY 2014) (Applies to any subcontract which requires the delivery of technical data.)

52.229-8 TAXES -- FOREIGN COST-REIMBURSEMENT CONTRACTS (MAR 1990)

52.232-39 Unenforceability of Unauthorized Obligations (Jun 2013) (Applies to subcontracts where software or services will be retransferred to the Government.)

52.234-4 EARNED VALUE MANAGEMENT SYSTEM (NOV 2016) (Applies to all subcontracts identified by name in the clause. Paragraph (g) should be deleted if earned value requirements will not apply to lower tier subcontracts.)

52.243-2 CHANGES -- COST-REIMBURSEMENT, ALT II (AUG 1984) (Applies to any subcontract for services and supplies are to be furnished.)

52.244-6 SUBCONTRACTS FOR COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES (JUN 2023) (Applies in lieu of Dec 2023)

52.245-9 USE AND CHARGES (APR 2012) (Applies if the subcontract will involve the use of government property subject to this clause.)

DFARS Clauses

252.203-7002 REQUIREMENT TO INFORM EMPLOYEES OF WHISTLEBLOWER RIGHTS (DEC 2022) (Applies in lieu of Sep 2013 for all cost type subcontracts.)

252.204-7004 ANTITERRORISM AWARENESS TRAINING FOR CONTRACTORS (JAN 2023) (Applies to all subcontracts where performance requires routine physical access to a Federally-controlled facility or military installation.)

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) (Applies to all subcontracts that are subject to the provisions of the U.S.-International Atomic Energy Agency Additional Protocol. Include the information required by the blank in the clause.)

252.209-7009 ORGANIZATIONAL CONFLICT OF INTEREST--MAJOR DEFENSE ACQUISITION PROGRAM (MAY 2019) (Applies to all subcontracts with major subcontractors or other subcontractors that may present organizational conflict of interest issues.)

252.217-7028 OVER AND ABOVE WORK (DEC 1991) (Applies to all subcontracts where over and above work may be required and no more specific arrangement for handling such work is specified in the subcontract.)

252.219-7004 SMALL BUSINESS SUBCONTRACTING PLAN (TEST PROGRAM) (DEC 2022)

252.223-7002 SAFETY PRECAUTIONS FOR AMMUNITION AND EXPLOSIVES (MAY 1994) (Applies in lieu of Nov 2023)

252.223-7007 SAFEGUARDING SENSITIVE CONVENTIONAL ARMS, AMMUNITION, AND EXPLOSIVES (SEP 1999) (Applies in lieu of Nov 2023)

252.225-7013 DUTY-FREE ENTRY (DEC 2022) (Applies in lieu of Nov 2023)

252.225-7040 CONTRACTOR PERSONNEL SUPPORTING U.S. ARMED FORCES DEPLOYED OUTSIDE THE UNITED STATES (OCT 2023) (Applies to all subcontracts that require subcontractor personnel to be available to deploy with or otherwise provide support in the theater of operations to U.S. military forces deployed outside the United States in (1) Contingency operations; (2) Humanitarian or peacekeeping operations; or (3) Other military operations or exercises designated by the Combatant Commander.)

252.227-7017 IDENTIFICATION AND ASSERTION OF USE, RELEASE, OR DISCLOSURE RESTRICTIONS (JAN 2023)

252.239-7001 INFORMATION ASSURANCE CONTRACTOR TRAINING AND CERTIFICATION (JAN 2008) (Applies to all subcontracts where subcontractor personnel will be accessing DoD information systems.)

252.239-7010 CLOUD COMPUTING RESOURCES (OCT 2016) (Applies to all subcontracts that involve or may involve cloud services, including subcontracts for commercial items.)

252.243-7002 REQUESTS FOR EQUITABLE ADJUSTMENT (DEC 2022) (Applies to subcontracts over \$150,000 since Lockheed Martin will be required to certify claim elements originating from subcontractors.)

252.244-7000 SUBCONTRACTS FOR COMMERCIAL PRODUCTS OR COMMERCIAL SERVICES (JAN 2023) (Applies in lieu of Nov 2023)

252.251-7001 USE OF INTERAGENCY FLEET MANAGEMENT SYSTEM (IFMS) VEHICLES AND RELATED SERVICES (DEC 1991) (Applies to all subcontracts where the Contracting Officer has authorized use of IFMS vehicles by the subcontractor.)