shall comply with damage assessment information requests. The requirement to share files and images exists unless there are legal restrictions that limit a company's ability to share digital media. The Contractor shall inform the Contracting Officer of the source, nature, and prescription of such limitations and the authority responsible.

(e) Protection of reported information. Except to the extent that such information is lawfully publicly available without restrictions, the Government will protect information reported or otherwise provided to DoD under this clause in accordance with applicable statutes, regulations, and policies. The Contractor shall identify and mark attribution information reported or otherwise provided to the DoD. The Government may use information, including attribution information and disclose it only to authorized persons for purposes and activities consistent with this clause.

(f) Nothing in this clause limits the Government's ability to conduct law enforcement or counterintelligence activities, or other lawful activities in the interest of homeland security and national security. The results of the activities described in this clause may be used to support an investigation and prosecution of any person or entity, including those attempting to infiltrate or compromise information on a contractor information system in violation of any statute.

(g) Subcontracts. The Contractor shall include the substance of this clause, including this paragraph (g), in all subcontracts, including subcontracts for commercial items.

Limitations on the Use or Disclosure of Information by Litigation Support Solicitation Offerors (FEB 2014)

(a) Definitions. As used in this provision:

- Computer software
- Litigation information
- Litigation support
- Sensitive information
- Technical data

(b) Limitations on use or disclosure of litigation information. Notwithstanding any other provision of this solicitation, by submission of its offer, the Offeror agrees and acknowledges—

1. That all litigation information will be accessed and used for the sole purpose of providing litigation support;

2. That the Offeror will take all precautions necessary to prevent unauthorized disclosure of litigation information; and

3. That litigation information shall not be used by the Offeror to compete against a third party for Government or nongovernment contracts.

(c) Indemnification and creation of third party beneficiary rights. By submission of its offer, the Offeror agrees—

1. To indemnify and hold harmless the Government, its agents, and employees from any claim or liability, including attorneys' fees, court costs, and expenses, arising out of, or in any way related to, the misuse or unauthorized modification, reproduction, release, performance, display, or disclosure of any litigation information; and

2. That any third party holding proprietary rights or any other legally protectable interest in any litigation information, in addition to any other rights it may have, is a third party beneficiary who shall have a right of direct action against the Offeror, and against any person to whom the Offeror has released or disclosed such data or software, for the unauthorized duplication, release, or disclosure of such information.

(d) Offeror employees. By submission of its offer, the Offeror agrees to ensure that its employees are subject to use and nondisclosure obligations consistent with this provision prior to the employees being provided access to or use of any litigation information covered by this provision.

(End of clause)

Limitations on the Use or Disclosure of Information by Litigation Support Solicitation Offerors (FEB 2014)

As prescribed in 204.7403(a), use the following provision. If the solicitation is a request for quotations, the terms “quotation” and “Quoter” may be substituted for “offer” and “Offeror”.

Limitations on the Use or Disclosure of Information by Litigation Support Solicitation Offerors (FEB 2014)

(a) Definitions. As used in this provision:

- Computer software
- Litigation information
- Litigation support
- Sensitive information
- Technical data

(b) Limitations on use or disclosure of litigation information. Notwithstanding any other provision of this solicitation, by submission of its offer, the Offeror agrees and acknowledges—

1. That all litigation information will be accessed and used for the sole purpose of providing litigation support;

2. That the Offeror will take all precautions necessary to prevent unauthorized disclosure of litigation information; and

3. That litigation information shall not be used by the Offeror to compete against a third party for Government or nongovernment contracts.

(c) Indemnification and creation of third party beneficiary rights. By submission of its offer, the Offeror agrees—

1. To indemnify and hold harmless the Government, its agents, and employees from any claim or liability, including attorneys' fees, court costs, and expenses, arising out of, or in any way related to, the misuse or unauthorized modification, reproduction, release, performance, display, or disclosure of any litigation information; and

2. That any third party holding proprietary rights or any other legally protectable interest in any litigation information, in addition to any other rights it may have, is a third party beneficiary who shall have a right of direct action against the Offeror, and against any person to whom the Offeror has released or disclosed such data or software, for the unauthorized duplication, release, or disclosure of such information.

(d) Offeror employees. By submission of its offer, the Offeror agrees to ensure that its employees are subject to use and nondisclosure obligations consistent with this provision prior to the employees being provided access to or use of any litigation information covered by this provision.

(End of clause)

As prescribed in 204.7403(c), use the following clause:

**DISCLOSURE OF INFORMATION TO LITIGATION SUPPORT CONTRACTORS (FEB 2014)**

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

- **Litigation support contractor** means a contractor (including an expert or technical consultant) providing litigation support under a contract with the Department of Defense that contains this clause.
- **Litigation information** means any information, including sensitive information, that is furnished to the contractor by or on behalf of the Government, or that is generated or obtained by the contractor in the performance of litigation support work under this contract.
- **Litigation support** means administrative, technical, or professional services provided in support of the Government during or in anticipation of litigation.
- **Technical data** means recorded information, regardless of the form or method of the recording, of a scientific or technical nature (including computer software documentation). The term does not include computer software or data incidental to contract administration, such as financial and/or management information.
- **Sensitivity** means confidential information of a commercial, financial, proprietary, or privileged nature. The term includes technical data and computer software, but does not include information that is lawfully, publicly available without restriction.

(b) **Limitations on use or disclosure of litigation information.** Notwithstanding any other provision of this contract, the Contractor agrees and acknowledges—

1. That all litigation information will be accessed and used for the sole purpose of providing litigation support;
2. That the Contractor will take all precautions necessary to prevent unauthorized disclosure of litigation information;
3. That litigation information shall not be used by the Contractor to compete against a third party for Government or nongovernment contracts; and
4. That violation of paragraph (b)(1), (b)(2), or (b)(3) of this section, is a basis for the Government to terminate this contract.

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

1. To indemnify and hold harmless the Government, its agents, and employees from any claim or liability, including attorneys' fees, court costs, and expenses, arising out of, or in any way related to, the misuse or unauthorized modification, reproduction, release, performance, display, or disclosure of any litigation information; and
2. That any third party holding proprietary rights or any other legally protectable interest in any litigation information, in addition to any other rights it may have, is a third party beneficiary under this contract who shall have a right of direct action against the Contractor, and against any person to whom the Contractor has released or disclosed such data or software, for the unauthorized duplication, release, or disclosure of such information.

(d) **Contractor employees.** The Contractor shall ensure that its employees are subject to use and nondisclosure obligations consistent with this clause prior to the employees being provided access to or use of any litigation information covered by this clause.

(e) **Flowdown.** Include the substance of this clause, including this paragraph (e), in all subcontracts, including subcontracts for commercial items.

(End of clause)

[79 FR 11340, Feb. 28, 2014]