

**CUSTOMER CONTRACT REQUIREMENTS**  
**Restricted**  
**CUSTOMER CONTRACT 2018-687-004**

**CUSTOMER CONTRACT REQUIREMENTS**

The following customer contract requirements apply to this contract to the extent indicated below. If this contract is for the procurement of commercial items under a Government prime contract, as defined in FAR Part 2.101, see Section 3 below.

**1. Prime Contract Special Provisions** The following prime contract special provisions apply to this purchase order

**A. Government Property**

The Government, Buyer, and Seller shall follow and be subject to the terms and conditions of FAR 52.245-1 in affect at the time of Contract. Liability related to Government property furnished or acquired under this agreement shall be governed by this Article, notwithstanding the liability provisions covered in Article D., Limitation of Damages.

**B. Standards for Financial Management Systems-Commercial**

1. Seller shall maintain adequate records to account for the control and expenditure of Government funds received for any Contract.
2. Seller shall establish and maintain accounting systems that:
  - a. Comply with Generally Accepted Accounting Principles
  - b. Control and properly document all cash receipts and disbursements.

**C. Retention and Access to Records**

This clause applies in addition to the Financial Records and Audit article of the General Provisions.

1. Seller financial records, supporting documents, statistical records, and all other records pertinent to the Contract issued hereunder shall be retained and access to them permitted for a period not to exceed three (3) years after expiration of the term of the Base Agreement or final acceptance of the last Prototype Award, whichever occurs later, unless one of the following applies:
  - a. If any litigation, claim, or audit is started before the expiration of the three (3)-year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved and final action taken.
  - b. Records for real property and equipment acquired with Federal funds, and into which title will vest with the Government in accordance with Article A, Government Property, shall be retained for 3 years after final disposition.
  - c. When records are transferred to or maintained by the DoD Component (the SMC program office executing the modification) that made the prime award, the three (3)-year retention requirement is not applicable to Seller.
2. If the information described is maintained on a computer, Seller shall retain the computer data on a reliable medium for the time period prescribed. Seller may transfer computer data in machine readable form from one reliable computer medium to another. The Seller computer data retention and transfer procedures shall maintain the integrity, reliability, and security of the original computer data. Seller shall also maintain an audit trail describing the data transfer.
3. The Agreements Officer may request, through Buyer, that Seller transfer certain records to DoD component custody when he or she determines that the records possess long term retention value. Seller shall comply with the request unless it can state why such records should not be transferred. Disputes shall be handled in accordance with the Disputes article of the General Provisions.

**D. Waiver of Liability**

1. With regard to the activities undertaken pursuant to this Contract, neither Buyer, Seller, the Government, nor the CM shall make any claim against the others, employees of the others, the others' related entities (e.g., contractors, subcontractors, etc.), or employees of the others' related entities for any injury to or death of its own employees or employees of its related entities, or for damage to or loss of its own property or that of its related entities, whether such injury, death, damage or loss arises through negligence or otherwise, except in the case of willful misconduct or gross negligence.

Notwithstanding the foregoing, claims for contribution toward third-party injury, damage, or loss are not limited, waived, released, or disclaimed.

2. Seller agrees to extend the waiver of liability as set forth above, in all lower-tier subcontracts.

#### **E. Administrative and Managerial Standards**

1. Seller shall comply with and flow down to lower-tier Subcontractors the federal statutes, executive orders, regulations, and other legal requirements applicable to the Contract.

2. The Federal Acquisition Regulations (FAR) and its supplements shall not apply to this Contract except as specifically referenced.

#### **F. Comptroller General Access to Records**

This clause applies in addition to the Financial Records and Audit article of the General Provisions.

The Agreements Officer or representative, and the Comptroller General of the United States, in its discretion, shall have access to and the right to examine records of any party to the Contract or any entity that participates in the performance of this Contract that directly pertain to, and involve transactions relating to, the Contract for a period of three (3) years after final payment of the prime Base Agreement is made. This requirement shall not apply with respect to any party to this Contract or any entity that participates in the performance of the Contract, or any subordinate element of such party or entity, that, in the year prior to the date of the prime Base Agreement, has not entered into any other contract, grant, cooperative agreement, or "Other Transaction" agreement that provides for audit access to its records by a government entity in the year prior to the date of the prime Base Agreement. This paragraph only applies to any record that is created or maintained in the ordinary course of business or pursuant to a provision of law. The terms of this paragraph shall be included in all sub-agreements/contracts issued under the Contract.

#### **G. Data Rights**

For the purposes of this Article, "Parties" means Seller and the Government where collectively identified and "Party" where each entity is individually identified. This is a Data Rights Clause specifically tailored for the prime Base Agreement to address respective rights of the Government and Offeror/Seller to such Data as is owned, developed, to be developed or used by an actual or prospective Seller.

##### **1. Definitions**

- a. "Commercial Computer Software" as used in the Article is defined in DFARS 252- 227-7014(a)(1) (Jun 1995).
- b. "Commercial Computer Software License" means the license terms under which commercial computer software and Data (as defined in this OTA) is sold or offered for sale, lease or license to the general public.
- c. "Computer Data Base" as used in this Contract, means a collection of data recorded in a form capable of being processed by a computer. The term does not include computer software.
- d. "Computer program" as used in this Contract means a set of instructions, rules, or routines in a form that is capable of causing a computer to perform a specific operation or series of operations.
- e. "Computer software" as used in this Contract means computer programs, source code, source code listings, object code listings, design details, algorithms, processes, flow charts, formulae and related material that would enable the software to be reproduced, recreated or recompiled. Computer software does not include computer data bases or computer software documentation.
- f. "Computer software documentation" means owner's manuals, user's manuals, installation instructions, operating instructions, and other similar items, regardless of storage medium, that explain the capabilities of the computer software or provide instructions for using the software.
- g. "Form, fit and function data" means technical data that describes the required overall physical, functional and performance characteristics (along with the qualification requirements, if applicable) of an item, component, or process to the extent necessary to permit identification of physically and functionally interchangeable items.
- h. "Government purpose" means any activity in which the United States Government is a party, including cooperative agreements with international or multi-national defense organizations, or sales or transfers by the United States Government to foreign governments or international organizations. Government purposes include competitive procurement, but do not include the rights to use, modify, reproduce, release, perform, display, or disclose technical data for commercial purposes or authorize others to do so
- i. "Government purpose rights" means the rights to
  1. Use, modify, reproduce, release, perform, display, or disclose technical data within the Government without restriction; and
  2. Release or disclose technical data outside the Government and authorize persons to whom release or disclosure has been made to use, modify, reproduce, release, perform, display, or disclose that data for United States government purposes.

Under the prime Base Agreement, the period of a Government Purpose Rights license shall be no less

than five (5) years. In the event that the Data subject to this Government Purpose Rights license is used to perform an additional Prototype Project during this five (5) year period, the Government Purpose Rights license shall be extended an additional five (5) years starting from completion of the additional Prototype Project.

j. "Limited rights" as used in this Article is as defined in DFARS 252.227-7013(a)(14) (Feb 2014).

k. "Restricted rights" as used in this Article is as defined in DFARS 252.227-7014(a)(15) (Feb 2014).

l. "Specially Negotiated License Rights" are those rights to Data that have been specifically negotiated between the Government and the CM on behalf of the Consortium Member or Buyer whose proposal is selected by the Government under a Request for Prototype Proposals issued under the OT Agreement.

m. "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.

n. "Unlimited rights" means rights to use, modify, reproduce, perform, display, release, or disclose technical data in whole or in part, in any manner, and for any purpose whatsoever, and to have or authorize others to do so.

## 2. Data Categories

a. Category A is the Data developed and paid for totally by private funds, Seller's (or its subcontractor's) IR&D funds and it is Data to which Seller (or its subcontractor) retains all rights. Category A Data shall include, but not be limited to,

1. Data or other material provided by Seller (or its subcontractors) for a Contract under the prime Base Agreement which was not developed in the performance of work under the Contract, and for which Seller (or its subcontractors) retains all rights.

2. Any initial Data or technical, marketing, or financial Data provided at the onset of the project by Seller. Such Data shall be marked "Category A" and any rights to be provided to the Government for such Data under a specific Contract shall be as identified in the proposal submitted to Buyer and included into the Contract.

b. Category B is any Data developed under this prime Base Agreement with mixed funding, i.e. development was accomplished partially with costs charged to Seller (or its subcontractors) indirect cost pools and/or costs not allocated to a Seller Contract under the prime Base Agreement, and partially with Government funding under the OT Agreement.

c. Category C is any Data developed exclusively with Government funds under the prime Base Agreement. Research and Development performed was not accomplished exclusively or partially at private expense. Under this category,

1. the Government will have Government Purpose Rights in Data developed exclusively with Government funds under the Contract under the prime Base Agreement that is:

i. Data pertaining to an item, component, or process which has been or will be developed exclusively with Government funds;

ii. Studies, analyses, test data, or similar data produced for this contract, when the study, analysis, test, or similar work was specified as an element of performance;

iii. Data created in the performance of the Contract that does not require the development, manufacture, construction, or production of items, components, or processes;

iv. Form, fit, and function data;

v. Data necessary for installation, operation, maintenance, or training purposes (other than detailed manufacturing or process data);

vi. Corrections or changes to technical data furnished to Seller by the Government;

The Government can only order such Data as is developed under the Contract where the order request is made within one (1) year following prime Prototype Project completion or for an alternate duration specified in the Contract. In the event the Government orders such Data, it shall pay Seller, through Buyer, the reasonable costs for all efforts to deliver such requested Data, including but not limited to costs of locating such Data, formatting, reproducing, shipping, and associated administrative costs.

2. The Government shall have unlimited rights in Data that is:

i. Otherwise publicly available or that has been released or disclosed by Seller without restrictions on further use, release or disclosure, other than a release or disclosure resulting from the sale, transfer, or other assignment of interest in the Data to another party or the sale or transfer of some or all of a business entity or its assets to another party;

ii. Data in which the Government has obtained unlimited rights under another Government contract or as a result of negotiations; or

iii. Data furnished to the Government, under this prime Base Agreement or any other Government contract or subcontract thereunder, with-

- a. Government Purpose Rights or limited rights and the restrictive condition(s) has/ have expired; or
- b. Government purpose rights and Seller's exclusive right to use such Data for commercial purposes under such contract or subcontract has expired.

3. However, any Data developed outside of this prime Base Agreement whether or not developed with any Government funding in whole or in part under a Government agreement, contract or subcontract shall have the rights negotiated under such prior agreement, contract or subcontract; the Government shall get no additional rights in such Data.

4. Further, the Government's rights to Commercial Computer Software and Data licensed under a Commercial Computer Software License under the OTA, and the treatment of Data relating thereto, shall be as set forth in the Commercial Computer Software License.

d. Seller shall stamp all documents in accordance with this Article and that the Freedom of Information Act (FOIA) and Trade Secrets Act (TSA) apply to Data.

### 3. Allocation of Principal Rights

a. The Government shall have no rights to Category A Data.

b. The Government shall have immediate Government Purpose Rights to Category B or C Data upon delivery or prime Prototype Project completion (whichever is earlier), except that

1. Buyer and he CM, at the request of small business or any other than small business Seller, may request on such Seller's behalf a delay of the start of Government Purpose Rights in Category B or C Data for a period not to exceed five (5) years from prime Prototype Project completion. Such requests will only be made in those cases where Seller, through Buyer and the CM has provided information from the affected actual or prospective Seller demonstrating the need for this additional restriction on Government use and shall be submitted to the SMC/AD AO for approval, which approval shall not be unreasonably withheld. In the event of any dispute regarding approval of this request, the parties agree to treat this as a dispute and shall follow the Disputes article of the General Provisions.

2. for Article G. 2.c.3. Category C Data, the Government shall have only the rights established under prior agreements.

3. for Article G. 2.c.4. Category C Data, the Government shall only have the rights set forth in the Commercial Computer Software Data license agreement.

c. Data that will be delivered, furnished, or otherwise provided to the Government as specified in the Contract funded under the prime Base Agreement, in which the Government has previously obtained rights, shall be delivered, furnished, or provided with the pre-existing rights, unless (a) the Parties have agreed otherwise, or (b) any restrictions on the Government's rights to use, modify, reproduce, release, perform, display, or disclose the data have expired or no longer apply.

d. Each Proposal submitted by Offeror/Seller shall include a list of the Category A, B and C Data to be used or developed under the Contract if awarded. Any proposal that includes information to be provided with Limited Rights, Restricted Rights, or Specially Negotiated License Rights shall include supporting detail and rationale. Rights in such Data shall be as established under the terms of this Contract, unless otherwise asserted in the proposal and agreed to by the Government. Buyer will incorporate the list of Category A, B and C Data and the identified rights therefor in the Contract.

Following issuance of the Contract to Seller, Seller shall update the list to identify any additional, previously unidentified, Data if such Data will be used or generated in the performance of the funded work. Rights in such Data shall be as established under the terms of this Contract, unless otherwise asserted in a supplemental listing and agreed to by the Government.

### 4. Marking of Data

Except for Data delivered with unlimited rights, Data to be delivered under this Contract, subject to restrictions on use, duplication or disclosure shall be marked with the following legends:

Category A use company proprietary statement.

Category B and C use legend at DFARS 252.227-7013 (f)(2).

It is not anticipated that any Category A Data will be delivered to the Government under this Contract.

In the event commercial computer software and Data is licensed under a commercial computer software license under this Contract, a Special License rights marking legend shall be used as agreed to by the parties.

The Government shall have unlimited rights in all unmarked Data. In the event that Seller learns of a release to the

Government of its unmarked Data that should have contained a restricted legend, Buyer and the CM, on behalf of Seller, will have the opportunity to cure such omission going forward by providing written notice to the AO within three (3) months of the erroneous release.

## 5. Copyright

Seller reserves the right to protect by copyright original works developed under this Contract. All such copyrights will be in the name of the individual Seller. Seller hereby grants to the U.S. Government a non-exclusive, non-transferable, royalty-free, fully paid-up license to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, for governmental purposes, any copyrighted materials developed under this agreement, and to authorize others to do so.

In the event Data is exchanged with a notice indicating that the Data is protected under copyright as a published, copyrighted work and it is also indicated on the Data that such Data existed prior to, or was produced outside of this Contract, the Party receiving the Data and others acting on its behalf may reproduce, distribute, and prepare derivative works for the sole purpose of carrying out that Party's responsibilities under the prime Base Agreement or Contract with the written permission of the Copyright holder.

Copyrighted Data that existed or was produced outside of the Contract and is unpublished - having only been provided under licensing agreement with restrictions on its use and disclosure - and is provided under the Contract shall be marked as unpublished copyright in addition to the appropriate license rights legend restricting its use, and treated in accordance with such license rights legend markings restricting its use.

Seller is responsible for affixing appropriate markings indicating the rights of the Government on all Data delivered under the Contract.

The Government agrees not to remove any copyright notices placed on Data and to include such notices on all reproductions of the Data.

## 6. Data First Produced by the Government:

As to Data first produced by the Government in carrying out the Government's responsibilities under the prime Base Agreement and which Data is privileged or confidential if obtained from the SpEC on behalf of any Consortium Member, PLP, Buyer or Seller, such Data will, to the extent permitted by law, be appropriately marked with a suitable notice or legend and maintained in confidence by the SpEC and any Consortium Member, Buyer, or Seller to whom disclosed for three (3) years after the development of the information, with the express understanding that during the aforesaid period such Data may be disclosed and used by the SpEC or any Consortium Member, Buyer or Seller, including its respective employees or subcontractors of any tier, (under suitable protective conditions) by or on behalf of the Government for Government purposes only.

## 7. Prior Technology

a. Government Prior Technology: In the event it is necessary for the Government to furnish the SpEC or any SpEC Consortium Member, Buyer, or Seller, including their respective employees or their subcontractors of any tier, with Data which existed prior to, or was produced outside of the OT Agreement, and such Data is so identified with a suitable notice or legend, the Data will be maintained in confidence and disclosed and used only for the purpose of carrying out their responsibilities under the prime Base Agreement. Data protection will include proprietary markings and handling, compliance with Article R, Proprietary Information, and the signing of non-disclosure agreements by SpEC (their Sellers, Seller's subcontractors of any tier and their respective employees) to whom such Data is provided for use under the prime Base Agreement. Upon completion of activities under the prime Base Agreement, such Data will be disposed of as requested by the Government.

b. SpEC and Consortium Member Prior Technology: In the event it is necessary for the SpEC or any Consortium Member, Buyer, or Seller to furnish the Government with Data which existed prior to, or was produced outside of the OT Agreement, and such Data embodies trade secrets or comprises commercial or financial information which is privileged or confidential, and such Data is so identified with a suitable notice or legend, the Data will be maintained in confidence and disclosed and used by the Government and such Government Contractors or contract employees that the Government may hire on a temporary or periodic basis only for the purpose of carrying out the Government's responsibilities under the OT Agreement. Data protection will include proprietary markings and handling, and the signing of nondisclosure agreements by such Government Contractors or contract employees. Neither the SpEC nor any Consortium Member, Buyer or Seller, shall be obligated to provide Data that existed prior to, or was developed outside of the prime Base Agreement to the Government. Upon completion of activities under the prime Base Agreement, such Data will be disposed of as requested by the SpEC on behalf of itself or Consortium Member Buyer, or Seller.

c. Oral and Visual Information: If information which the SpEC (including Consortium Member, Buyer, Seller, and their subcontractors of any tier and their respective employees) considers to embody trade secrets or to comprise commercial or financial information which is privileged or confidential is expressly disclosed orally or visually directly to the Government, the exchange of such information must be memorialized in tangible, recorded form and marked with a suitable notice or legend, and furnished to the Government within thirty (30) calendar days after such oral or visual disclosure, or the Government shall have no duty to limit or restrict, and shall not incur any liability for any disclosure and use of such information. Upon Government request, additional detailed information about the exchange will be provided subject to restrictions on use and disclosure.

d. Disclaimer of Liability: Notwithstanding the above, the Government shall not be restricted in, nor incur any

liability for, the disclosure and use of:

1. Data not identified with a suitable notice or legend as set forth in this Article; nor
2. Information contained in any Data for which disclosure and use is restricted under Article R, entitled "Proprietary Information", if such information is or becomes generally known without breach of the above, is properly known to the Government or is generated by the Government independent of carrying out responsibilities under the OT Agreement, is rightfully received from a third party without restriction, or is included in Data which the SpEC or any Consortium Member, Buyer, or Seller has furnished, or is required to furnish to the Government without restriction on disclosure and use.

e. Marking of Data: Any Data delivered under this Contract shall be marked with a suitable notice or legend.

8. Notwithstanding the Paragraphs in this Article, differing rights in Data may be negotiated among the Parties to each individual project on a case-by-case basis.

#### 9. Lower Tier Agreements

Seller shall include this Article, suitably modified to identify the parties, in all subcontracts or lower tier agreements, regardless of tier, or experimental, developmental, or research work.

#### 10. Survival Rights

Provisions of this Article shall survive termination of the prime Base Agreement and Contract.

### **H. Inventions and Patents**

#### 1. Allocation of Principal Rights

a. Seller shall retain ownership throughout the world to each Subject Invention consistent with the provisions of this Article and 35 U.S.C. § 202, provided Seller has timely pursued a patent application and maintained any awarded patent and has not notified the Government (in accordance with the subparagraph (b) below) that Seller does not intend to retain title.

b. Seller shall retain ownership throughout the world to background inventions. Any invention related to, conceived of, or first reduced to practice in support of Seller's internal development milestone shall be a background invention of Seller and shall not be classified as a Subject Invention, provided that an invention conceived of in support of an internal development milestone that is first reduced to practice under the Contract awarded under the prime Base Agreement in support of other than internal development milestones shall be considered a Subject Invention.

c. The Government is granted a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the Subject Invention throughout the world.

#### 2. Invention Disclosure, Election of Title, and Filing of Patent Application

a. Seller shall disclose each Subject Invention through the CM to the Government on a DD Form 882 within eight (8) months after the inventor discloses it in writing to the Prototype Inventor's personnel responsible for patent matters.

b. If Seller determines that it does not intend to retain title to any Subject Invention, Seller shall notify the Government through the CM, in writing, within eight (8) months of disclosure to the Government. However, in any case where publication, sale, or public use has initiated the one (1)-year statutory period wherein valid patent protection can still be obtained in the United States, the period for such notice is shortened to at least sixty (60) calendar days prior to the end of the statutory period.

#### 3. Conditions When the Government May Obtain Title

Upon the Agreements Officer's written request through the CM and Buyer, Seller shall convey title to any Subject Invention to the Government under any of the following conditions:

a. If Seller fails to disclose or elects not to retain title to the Subject Invention within the times specified in paragraph 2 of this Article; provided, that the Government may only request title within sixty (60) calendar days after learning of the failure of the Consortium to disclose or elect within the specified times.

b. In those countries in which Seller fails to file patent applications within the times specified in paragraph 2 of this Article; provided, that if Seller has filed a patent application in a country after the times specified in paragraph 2 of this Article, but prior to its receipt of the written request by the Government Seller shall continue to retain title in that country; or

c. In any country in which Seller decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in reexamination or opposition proceedings on, a patent on a Subject Invention.

#### 4. Minimum Rights to the Consortium and/or Seller and Protection of the Consortium and/or Seller's Right to File

a. Seller shall retain a nonexclusive, royalty-free license throughout the world in each Subject Invention to which the Government obtains title, except if Seller fails to disclose the Subject Invention within the times specified in

paragraph 2 of this Article. Seller's license extends to the domestic (including Canada) subsidiaries and affiliates, if any, within the corporate structure of which Seller is a party and includes the right to grant sublicenses of the same scope to the extent that Seller was legally obligated to do so at the time the Contract was awarded. The license is transferable only with the approval of the Government, except when transferred to the successor of that part of the business to which the Subject Invention pertains. The Government's approval for license transfer shall not be unreasonably withheld.

b. Seller's domestic license, as described above, may be revoked or modified by the Government to the extent necessary to achieve expeditious practical application of the Subject Invention pursuant to an application for an exclusive license submitted consistent with appropriate provisions at 37 CFR Part 404. This license shall not be revoked in that field of use or the geographical areas in which Seller has achieved practical application and continues to make the benefits of the Subject Invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of the Government to the extent Seller, its licensees, or the subsidiaries or affiliates have failed to achieve practical application in that foreign country.

c. Before revocation or modification of the license, the Agreements Officer shall furnish Seller a written notice of its intention to revoke or modify the license, and Seller shall be allowed thirty (30) calendar days (or such other time as may be authorized for good cause shown) after the notice to show cause why the license should not be revoked or modified.

#### 5. Action to Protect the Government's Interest

a. Seller agrees to execute or to have executed and promptly deliver through the CM to the Government all instruments necessary to (i) establish or confirm the rights the Government has throughout the world in those Subject Inventions to which Seller elects to retain title, and (ii) convey title to the Government when requested under paragraph 3 of this Article and to enable the Government to obtain patent protection throughout the world in that Subject Invention.

b. Seller agrees to require, by written agreement, its employees, other than clerical and non-technical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by Seller each Subject Invention made under this Agreement in order that Seller can comply with the disclosure provisions of paragraph 2 of this Article. Seller shall instruct employees, through employee agreements or other suitable educational programs, on the importance of reporting Subject Inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.

c. Seller shall notify the Government through the CM of any decisions not to continue the prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceedings on a patent, in any country, not less than thirty (30) calendar days before the expiration of the response period required by the relevant patent office.

d. Seller shall include, within the specification of any United States patent application and any patent issuing thereon covering a Subject Invention, the following statement: "This Invention was made with Government support under Agreement No. FA8814-17-9-0001, awarded by SMC/AD. The Government has certain rights in the Invention."

#### 6. March-in Rights

Seller agrees that, with respect to any Subject Invention in which it has retained title, the Government has the right to require the Prototype Inventor, an assignee, or exclusive licensee of a Subject Invention to grant a non-exclusive license to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if Seller, assignee, or exclusive licensee refuses such a request, the Government has the right to grant such a license itself if the Agreements Officer determines that:

a. Such action is necessary because Seller or assignee has not taken effective steps, consistent with the intent of this Contract, to achieve practical application of the Subject Invention;

b. Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by Seller, assignee, or their licensees; or

c. Such action is necessary to meet requirements for public use and such requirements are not reasonably satisfied by Seller, assignee, or licensees.

#### 7. Authorization and Consent

The Government authorizes and consents to all use and manufacture of any invention described in and covered by a United States patent in the performance of this Contract.

#### 8. Notice and Assistance

a. Seller shall report to the Government through Buyer and the CM, promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this Contract of which Seller has knowledge.

b. In the event of any claim or suit against the Government and/or Buyer on account of any alleged patent or copyright infringement arising out of the performance of this Contract or out of the use of any supplies furnished or work or services performed under this Contract, Seller shall furnish to the Government, through Buyer, when

requested by the Agreements Officer through the CM, all evidence and information in Seller's possession pertaining to such claim or suit. Such evidence and information shall be furnished at the expense of the Government except where Seller has agreed to indemnify the Government.

#### 9. Lower Tier Agreements

Seller shall include this Article, suitably modified, to identify the Parties, in all subcontracts or lower tier agreements, regardless of tier, for experimental, developmental, or research work.

#### 10. Survival Rights

The obligations of the Government and Seller under this Article shall survive after the expiration or termination of the prime Base Agreement.

### I. Security Requirements

1. This Article applies to the extent that the Contract involves access to information classified that may fall within one (or more) of the following levels:

- a. "Confidential,"
- b. "Secret,"
- c. "Top Secret,"
- d. "Top Secret/Sensitive Compartmented Information (TS/SCI)"
- e. "Special Access Program (SAP)"

2. In the event that the Contract requires Seller to have access to, or generate, classified information, the Government will generate a Department of Defense Security Classification Specification (DD Form 254), which will be incorporated into the Contract. Each Prototype involving classified or controlled information will have a separate DD 254, which will only be applicable to the specific Contract.

3. Seller shall comply with the DD Form 254 attached to the Contract at the time of award, and with –

- a. The Security Agreement (DD Form 441), including the National Industrial Security Program Operating Manual (DoD 5220.22-M); and
- b. Any revisions to that manual, notice of which has been furnished to Seller.

4. Seller agrees to insert terms that conform substantially to the language of this article, including this paragraph 4, in all subcontracts that involve access to classified information.

### J. Cybersecurity and Information Protection

1. Definitions applicable to this Article

"Adequate security" means protective measures that are commensurate with the consequences and probability of loss, misuse, or unauthorized access to, or modification of information.

"Cloud computing," means a model for enabling ubiquitous, convenient, on-demand network access to a shared pool of configurable computing resources (e.g., networks, servers, storage, applications, and services) that can be rapidly provisioned and released with minimal management effort or service provider interaction. This includes other commercial terms, such as on-demand self-service, broad network access, resource pooling, rapid elasticity, and measured service. It also includes commercial offerings for software- as-a-service, infrastructure-as-a-service, and platform-as-a-service.

"Compromise" means disclosure of information to unauthorized persons, or a violation of the security policy of a system, in which unauthorized intentional or unintentional disclosure, modification, destruction, or loss of an object, or the copying of information to unauthorized media may have occurred.

"Seller attributional/proprietary information" means information that identifies the Seller(s), whether directly or indirectly, by the grouping of information that can be traced back to the Seller(s) (e.g., program description, facility locations), personally identifiable information, as well as trade secrets, commercial or financial information, or other commercially sensitive information that is not customarily shared outside of the company.

"Controlled technical information" means technical information with military or space application that is subject to control on the access, use, reproduction, modification, performance, display, release, disclosure, or dissemination. Controlled technical information would meet the criteria, if disseminated, for distribution statements B through F using the criteria set forth in DoD Instruction 5230.24, Distribution Statements on Technical Documents. The term does not include information that is lawfully publicly available without restrictions.

"Covered contractor information system" means an unclassified information system that is owned, or operated by or for, a contractor and that processes, stores, or transmits covered defense information.

"Covered defense information" means unclassified controlled technical information or other information, as described in the Controlled Unclassified Information (CUI) Registry at



<http://www.archives.gov/cui/registry/category-list.html>, that requires safeguarding or dissemination controls pursuant to and consistent with law, regulations, and Government wide policies, and is-

- a. Marked or otherwise identified in the Contract and provided to Seller by or on behalf of DoD in support of the performance of the Contract; or
- b. Collected, developed, received, transmitted, used, or stored by or on behalf of Seller in support of the performance of the Contract.

"Cyber incident" means actions taken through the use of computer networks that result in a compromise or an actual or potentially adverse effect on an information system and/or the information residing therein.

"Forensic analysis" means the practice of gathering, retaining, and analyzing computer-related data for investigative purposes in a manner that maintains the integrity of the data.

"Information system" means a discrete set of information resources organized for the collection, processing, maintenance, use, sharing, dissemination, or disposition of information.

"Malicious software" means computer software or firmware intended to perform an unauthorized process that will have adverse impact on the confidentiality, integrity, or availability of an information system.

This definition includes a virus, worm, Trojan horse, or other code-based entity that infects a host, as well as spyware and some forms of adware.

"Media" means physical devices or writing surfaces including, but is not limited to, magnetic tapes, optical disks, magnetic disks, large-scale integration memory chips, and printouts onto which covered defense information is recorded, stored, or printed within a covered contractor information system.

"Operationally critical support" means supplies or services designated by the Government as critical for airlift, sealift, intermodal transportation services, or logistical support that is essential to the mobilization, deployment, or sustainment of the Armed Forces in a contingency operation.

"Rapidly report" means within 72 hours of discovery of any cyber incident.

"Safeguarding" means measures or controls that are prescribed to protect information systems.

"Technical information" means technical data or computer software, as those terms are defined in the clause at DFARS 252.227-7013 <http://www.acq.osd.mil/dpap/dars/dfars/html/current/252227.htm>, Rights in Technical Data-Noncommercial Items. Examples of technical information include research and engineering data, engineering drawings, associated lists, specifications, standards, process sheets, manuals, technical reports, technical orders, catalog-item identifications, data sets, studies and analyses and related information, and computer software executable code and source code.

2. Compliance with this Article is only required when the Contract explicitly requires compliance. The Government will clearly mark solicitations where the resulting Prototype is anticipated to include covered defense information. In such instances, Offeror/Seller will confirm in their Proposal either compliance or requirement to comply prior to award.

3. This article applies to the extent that this Contract involves a covered contractor information system that processes, stores or transmits Covered Defense Information (CDI) as determined by the AO.

- a. By submission of an offer, the Offeror/Seller represents that it will implement the security requirements specified by National Institute of Standards and Technology (NIST) Special Publication (SP) 800-171 "Protecting Controlled Unclassified Information in Nonfederal Information Systems and Organizations" (see <http://dx.doi.org/10.6028/NIST.SP.800-171>), Revision 1.

- b. If the Offeror/Seller proposes to vary from any of the security requirements specified by NIST SP 800-171, Revision 1 that are in effect at the time the solicitation is issued or as authorized by the AO, the Offeror/Seller shall submit to the AO through the Buyer and CM, for consideration by the DoD Chief Information Officer (CIO), a written explanation of why a particular security requirement is not applicable; or how an alternative but equally effective, security measure is used to compensate for the inability to satisfy a particular requirement and achieve equivalent protection. An authorized representative of the DoD CIO will adjudicate offeror requests to vary from NIST SP 800-171, Revision 1 requirements in writing prior to Contract Award. Any accepted variance from NIST SP 800-171, Revision 1 shall be incorporated into the resulting Contract.

- c. The Offeror/Seller shall indicate in its proposal whether the use of cloud computing is anticipated at any level under the Contract. After the award of the Contract, if Seller proposes to use cloud computing services in the performance of the Contract at any level, Seller shall obtain approval from the AO, through Buyer, prior to utilizing cloud computing services.

4. Seller shall provide adequate security on all covered contractor information systems. To provide adequate security, Seller shall implement, at a minimum, the following safeguarding and information security protections:

- a. Seller shall apply the following basic safeguarding requirements and procedures:

1. Limit information system access to authorized users, processes acting on behalf of authorized users, or devices (including other information systems).
2. Limit information system access to the types of transactions and functions that authorized users are permitted to execute.
3. Verify and control/limit connections to and use of external information systems.
4. Control information posted or processed on publicly accessible information systems.
5. Identify information system users, processes acting on behalf of users, and devices.
6. Authenticate (or verify) the identities of those users, processes, and devices, as a prerequisite to allowing access to organizational information systems.
7. Sanitize or destroy information system media containing Federal Contract Information before disposal or release for reuse.
8. Limit physical access to organizational information systems, equipment, and the respective operating environments to authorized individuals.
9. Escort visitors and monitor visitor activity; maintain audit logs of physical access; and control and manage physical access devices.
10. Monitor, control, and protect organizational communications (i.e., information transmitted or received by organizational information systems) at the external boundaries and key internal boundaries of the information systems.
11. Implement subnetworks for publicly accessible system components that are physically or logically separated from internal networks.
12. Identify, report, and correct information and information system flaws in a timely manner.
13. Provide protection from malicious code at appropriate locations within organizational information systems.
14. Update malicious code protection mechanisms when new releases are available.
15. Perform periodic scans of the information system and real-time scans of files from external sources as files are downloaded, opened, or executed.

b. The covered contractor information system shall be subject to the security requirements in National Institute of Standards and Technology (NIST) Special Publication (SP) 800-171, "Protecting Controlled Unclassified Information in Nonfederal Information Systems and Organizations" (available via the internet at <http://dx.doi.org/10.6028/NIST.SP.800-171>), within 30 days of agreement award, of any security requirements specified by NIST SP 800-171, Revision 1 not implemented at the time of Contract.

c. Apply additional information systems security measures when Seller reasonably determines that information systems security measures may be required to provide adequate security in a dynamic environment or to accommodate special circumstances (e.g. medical devices) and any individual, isolated, or temporary deficiencies based on an assessed risk or vulnerability.

5. Seller shall notify the DoD Chief Information Officer (CIO), via email at [osd.dibcsja@mail.mil](mailto:osd.dibcsja@mail.mil), within thirty (30) days of Contract, of any security requirements specified by NIST SP 800-171, Revision 1 not implemented at the time of Contract.

a. Seller shall submit requests to vary from NIST SP 800-171, Revision 1 in writing through the Buyer and CM to the AO, for consideration by the DoD CIO. Seller need not implement any security requirement adjudicated by an authorized representative of the DoD CIO to be non-applicable or to have an alternative, but equally effective, security measure that may be implemented in its place.

b. If the DoD CIO has previously adjudicated Seller's requests indicating that a requirement is not applicable or that an alternative security measure is equally effective, a copy of that approval shall be provided through the Buyer and CM to the AO when requesting its recognition under this agreement.

c. If Seller intends to use an external cloud service provider to store, process, or transmit any covered defense information in performance of this agreement, Seller shall require and ensure that the cloud service provider meets security requirements equivalent to those established by the Government for the Federal Risk and Authorization Management Program (FedRAMP) Moderate baseline (<<http://www.fedramp.gov/resources/documents/><[>>](http://www.fedramp.gov/resources/documents/)) and that the cloud service provider complies with requirements of this Article for cyber incident reporting, malicious software, media preservation and protection, access to additional information and equipment necessary for forensic analysis, and cyber incident damage assessment.

6. When Seller discovers a cyber incident that affects a covered contractor information system (including internal or external cloud computing services) or the covered defense information residing therein, or that affects Seller's ability to perform the requirements of the agreement that are designated as operationally critical support and identified in the agreement, Seller shall-

- a. Conduct a review for evidence of compromise of covered defense information, including, but not limited to, identifying compromised computers, servers, specific data, and user accounts. This review shall also include analyzing covered contractor information system(s) that were part of the cyber incident, as well as other information systems on Seller's network(s), that may have been accessed as a result of the incident in order to identify compromised covered defense information, or that affect Seller's ability to provide operationally critical support; and
  - b. Rapidly report cyber incidents to DoD at <http://dibnet.dod.mil/>. The cyber incident report shall be treated as information created by or for DoD and shall include, at a minimum, the required elements at <http://dibnet.dod.mil/>. In order to report cyber incidents in accordance with this article, Seller or Seller's subcontractor, shall have or acquire a DoD-approved medium assurance certificate to report cyber incidents. For information on obtaining a DoD-approved medium assurance certificate, see <http://iase.disa.mil/pki/eca/Pages/index.aspx>.
7. When Seller or Seller's subcontractors discover and isolate malicious software in connection with a reported cyber incident, submit the malicious software to DoD Cyber Crime Center (DC3) in accordance with instructions provided by DC3 or the AO. Do not send the malicious software to the AO.
  8. When Seller discovers a cyber incident has occurred, Seller shall preserve and protect images of all known affected information systems identified in paragraph 4.a. of this article and all relevant monitoring/packet capture data for at least 90 days from the submission of the cyber incident report to allow DoD to request the media or decline interest.
  9. Upon request by DoD, Seller shall provide DoD with access to additional information or equipment that is necessary to conduct a forensic analysis.
  10. If DoD elects to conduct a damage assessment, the AO will request that Seller provide all of the damage assessment information gathered in accordance with paragraph 6. of this clause.
  11. The Government shall protect against the unauthorized use or release of information obtained from Seller (or derived from information obtained from Seller) under this Article that includes Seller attributional/proprietary information, including such information submitted in accordance with paragraph 6. To the maximum extent practicable, Seller shall identify and mark attributional/proprietary information. In making an authorized release of such information, the Government will implement appropriate procedures to minimize the Seller attributional/proprietary information that is included in such authorized release, seeking to include only that information that is necessary for the authorized purpose(s) for which the information is being released.
  12. Information that is obtained from the Seller (or derived from information obtained from Seller) under this article that is not created by or for DoD is authorized to be released outside of DoD-
    - a. To entities with missions that may be affected by such information;
    - b. To entities that may be called upon to assist in the diagnosis, detection, or mitigation of cyber incidents;
    - c. To Government entities that conduct counterintelligence or law enforcement investigations;
    - d. For national security purposes, including cyber situational awareness and defense purposes (including with Defense Industrial Base (DIB) participants in the program at 32 CFR part 236); or
    - e. To a support services contract ("recipient") that is directly supporting Government activities under a contract that includes the clause at DFARS 252.204-7009 <http://www.acq.osd.mil/dpap/dars/dfars/html/current/252204.htm>, Limitations on the Use or Disclosure of Third- Party PLP Reported Cyber Incident Information.
  13. Information that is obtained from Seller (or derived from information obtained from Seller) under this clause that is created by or for DoD (including the information submitted pursuant to paragraph 6. of this clause) is authorized to be used and released outside of DoD for purposes and activities authorized by paragraph 12 of this clause, and for any other lawful Government purpose or activity, subject to all applicable statutory, regulatory, and policy based restrictions on the Government's use and release of such information.
  14. Seller shall conduct activities under this Article in accordance with applicable laws and regulations on the interception, monitoring, access, use, and disclosure of electronic communications and data.
  15. The safeguarding and cyber incident reporting required by this article in no way abrogates Seller's responsibility for other safeguarding or cyber incident reporting pertaining to its unclassified information systems as required by other applicable articles of this Contract, or as a result of other applicable U.S. Government statutory or regulatory requirements.
  16. Seller shall include this Article, including this paragraph 16, in subcontract for which subcontractor performance will involve covered defense information, including subcontracts for commercial items, without alteration, except to identify the parties. Seller shall determine if the information required for subcontractor performance retains its identity as covered defense information and will require protection under this article, and, if necessary, consult with the AO through the CM; and require subcontractors to notify Seller (or next higher-tier contractor) when submitting a request to vary from a NIST SP 800-171 security requirement to the AO, in accordance with paragraph 3.b. of this clause; and provide the incident

report number, automatically assigned by DoD, to Seller (or next higher-tier contractor) as soon as practicable, when reporting a cyber incident to DoD as required in paragraph 6. of this Article.

## **K. Export Control and Foreign Access to Technology**

### 1. General

- a. The Parties agree that research findings and technology developments arising under this Contract may constitute a significant enhancement to the national defense, and to the economic vitality of the United States. Accordingly, access to important technology developments under the Contract by Foreign Firms or Institutions must be carefully controlled.
- b. Seller shall comply with the International Traffic in Arms Regulation (22 CFR pt. 121 et seq.), the DoD Industrial Security Regulation (DoD 5220.22-R) and the Department of Commerce Export Regulation (15 CFR pt. 770 et seq.).
- c. The Government anticipates work under this Contract may be restricted by the International Traffic in Arms Regulation (ITAR).

### 2. Lower Tier Agreements

Seller shall include this Article, suitably modified to identify the parties, in all subcontracts or lower tier agreements, regardless of tier, for developmental prototype work.

## **L. Disclosure of Information**

1. This Contract may require Government approval prior to the dissemination, public disclosure of information, or publication of information, except within and between the Consortium and any PLP, Buyer or Seller, developed under the Contract or contained in the reports to be furnished pursuant to the Contract, if applicable.

2. Review or Approval of Information and Data for Public Release. At least fifty (50) days prior to the scheduled release date, Seller shall submit to the CM, through Buyer, a copy of the information to be released. The CM will request approval from the AOTR who is designated as the approval authority for the AO for such releases. When submitting material for written approval for open publication, Seller must submit a request for public release to the CM, through Buyer, and include the following information:

- a. Document Information: title, author, short plain-language description of technology discussed in the material (approximately 30 words), number of pages (or minutes of video) and document type (briefing, report, abstract, article, or paper);
- b. Event Information: type (conference, technical meeting, article or paper), date and desired date for SMC or AOTR's approval;
- c. Seller's information: POC name, email and telephone.

3. Seller shall not release to anyone outside Seller's organization any unclassified information, regardless of medium (e.g., film, tape, document), pertaining to any part of the Contract, unless the Government has given prior written approval; the information is otherwise in the public domain before the date of release; or the information results from or arises during the performance of a project that involves no covered defense information and has been scoped and negotiated by the contracting activity with Seller and research performer and determined in writing by the AO to be fundamental research (which by definition cannot involve any covered defense information), in accordance with National Security Decision Directive 189, National Policy on the Transfer of Scientific, Technical and Engineering Information, in effect on the date of the Contract and the Under Secretary of Defense (Acquisition, Technology, and Logistics) memoranda on Fundamental Research, dated May 24, 2010, and on Contracted Fundamental Research, dated June 26, 2008 (available at DFARS PGI 204.4 <[http://www.acq.osd.mil/dpap/dars/pgi/pgi\\_hfm/PGI204\\_4.htm](http://www.acq.osd.mil/dpap/dars/pgi/pgi_hfm/PGI204_4.htm)>.acq.osd.mil/dpap/dars/pgi/pgi\_hfm/PGI204\_4.htm <[http://www.acq.osd.mil/dpap/dars/pgi/pgi\\_hfm/PGI204\\_4.htm](http://www.acq.osd.mil/dpap/dars/pgi/pgi_hfm/PGI204_4.htm)>> (DFARS/PGIview <[http://www.acq.osd.mil/dpap/dars/pgi/frameset.htm?dfarsno=204\\_4&pgino=PGI204\\_4&dfarsanchor=204\\_4](http://www.acq.osd.mil/dpap/dars/pgi/frameset.htm?dfarsno=204_4&pgino=PGI204_4&dfarsanchor=204_4)>.acq.osd.mil/dpap/dars/pgi/frameset.htm?dfarsno=204\_4&pgino=PGI204\_4&dfarsanchor=204\_4 <[http://www.acq.osd.mil/dpap/dars/pgi/frameset.htm?dfarsno=204\\_4&pgino=PGI204\\_4&dfarsanchor=204\\_4](http://www.acq.osd.mil/dpap/dars/pgi/frameset.htm?dfarsno=204_4&pgino=PGI204_4&dfarsanchor=204_4)>> (DFARS/PGIview 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under the prime Base Agreement.

#### **N. Enabling Aerospace Support**

1. The OT Agreement covers space prototypes, some of which may be under the general program management of the Air Force Space and Missile Systems Center (SMC). The Air Force has entered into a contract with The Aerospace Corporation, a California nonprofit corporation operating a Federally Funded Research and Development Center (FFRDC), for the services of a technical group that will support the DoD/U.S. Government program office by performing General Systems Engineering and Integration, Technical Review, and/or Technical Support including informing the commander or director of the various Department of Defense ("DoD") organizations it supports and any U.S. Government program office of product or process defects and other relevant information, which, if not disclosed to the U.S. Government, could have adverse effects on the reliability and mission success of a U.S. Government program.

a. General Systems Engineering and Integration (GSE&I) deals with overall system definition; integration both within the system and with associated systems; analysis of system segment and subsystem design; design compromises and tradeoffs; definition of interfaces; review of hardware and software, including manufacturing and quality control; observation, review and evaluation of tests and test data; support of launch, flight test, and orbital operations; appraisal of the consortium and/or prototype-level performers' technical performance through meetings with consortium and/or prototype-level performers, exchange and analysis of information on progress and problems; review of plans for future work; developing solutions to problems; technical alternatives for reduced program risk; providing comments and recommendations in writing to the applicable DoD System Program Manager and/or Project Officer as an independent technical assessment for consideration for modifying the program or redirecting the consortium and/or prototype-level performer's efforts; all to the extent necessary to assure timely and economical accomplishment of program objectives consistent with mission requirements.

b. Technical Review (TR) includes the process of appraising the technical performance of the consortium and/or prototype-level performer through meetings, exchanging information on progress and problems, reviewing reports, evaluating presentations, reviewing hardware and software, witnessing and evaluating tests, analyzing plans for future work, evaluating efforts relative to prototype technical objectives, and providing comments and recommendations in writing to the applicable Air Force Program Manager as an independent technical assessment for consideration for modifying the program or redirecting the consortium and/or prototype-level performer's efforts to assure timely and economical accomplishment of program objectives.

c. Technical Support (TS) deals with broad areas of specialized needs of customers for planning, system architecting, research and development, horizontal engineering, or analytical activities for which The Aerospace Corporation is uniquely qualified by virtue of its specially qualified personnel, facilities, or corporate memory. The categories of TS tasks are: Selected Research, Development, Test and Evaluation; Plans and System Architecture; Multi-Program Systems Enhancement; International Technology Assessment; and Acquisition Support.

2. In the performance of this Contract, Seller agrees to cooperate with The Aerospace Corporation by 1) responding to invitations from authorized U. S. Government personnel to attend meetings; 2) by providing access to technical information and research, development planning data such as, but not limited to, design and development analyses, test data and results, equipment and process specifications, test and test equipment specifications and procedures, parts and quality control procedures, records and data, manufacturing and assembly procedures, and schedule and milestone data, all in their original form or reproduced form and including top-level life cycle cost\* data, where available; 3) by delivering data as specified in the Contract Data Requirements List in the PA; 4) by discussing technical matters relating to this program; 5) by providing access to consortium and/or prototype-level performer facilities utilized in the performance of this agreement; 6) and by allowing observation of technical activities by appropriate technical personnel of The Aerospace Corporation. The Aerospace Corporation personnel engaged in GSE&I, TR, and/or TS efforts: (i) are authorized access to all such technical information (including proprietary information) pertaining to this agreement and may discuss and disclose it to the applicable DoD personnel in a program office; (ii) are authorized to discuss and disclose such technical information (including proprietary information) to the commander or director of the various DoD organizations it supports and any U.S. Government personnel in a program office which, if not disclosed to the U.S. Government, could have adverse effects on the reliability and mission success of a U.S. Government program; and (iii) Aerospace shall make the technical information (including proprietary information) available only to its Trustees, officers, employees, contract labor, consultants, and attorneys who have a need to know.

3. Seller further agrees to include in all subcontracts a clause requiring compliance by performers and supplier and succeeding levels of performers and suppliers with the response and access and disclosure provisions of this Enabling Clause, except for commercial items or commercial services. This Contract does not relieve Seller of its responsibility to manage the subcontracts effectively and efficiently nor is it intended to establish privity of contract between the Government or The Aerospace Corporation and such subcontractors or suppliers, except as indicated in paragraph 4 below.

4. The Aerospace Corporation shall protect the proprietary information of consortium and/or prototype-level performers, Seller, and suppliers in accordance with the Master Non-disclosure Agreement The Aerospace Corporation entered into with the Air Force, a copy of which is available upon request. This Master Non-disclosure Agreement satisfies the Nondisclosure Agreement requirements set forth in 10 U.S.C. §2320 (f)(2)(B), and provides that such consortium and/or prototype-level performers, Seller, and suppliers are intended third-party beneficiaries under the Master Non-disclosure Agreement and shall have the full rights to enforce the terms and conditions of the Master Non-disclosure Agreement directly against The Aerospace Corporation, as if they had been signatory party hereto. Each such consortium and/or prototype-level performer, Seller, or supplier hereby waives any requirement for The Aerospace Corporation to enter into any separate company-to-company confidentiality or other non-disclosure agreements.

5. Aerospace shall make the technical information (including proprietary information) available only to its Trustees, officers, employees, contract labor, consultants, and attorneys who have a need to know, and Aerospace shall maintain between itself and the foregoing binding agreements of general application as may be necessary to fulfill their obligations under the Master Non-disclosure Agreement referred to herein, and Aerospace agrees that it will inform consortium and/or prototype-level performer, Seller, and suppliers if it plans to use consultants, or contract labor personnel and, upon the request of such consortium and/or prototype-level performer, Seller, or supplier, to have its consultants and contract labor personnel execute non-disclosure agreements directly therewith.

6. The Aerospace Corporation personnel are not authorized to direct Seller in any manner. Seller agrees to accept technical direction as follows:

- a. Technical direction under this Contract will be given to Seller by the Government or Buyer.
- b. Whenever it becomes necessary to modify the Contract and redirect the effort, it will be in accordance with the Changes clause of the General Provisions.

\* Cost data is defined as information associated with the programmatic elements of life cycle (concept, development, production, operations, and retirement) of the system/program. As defined, cost data differs from "financial" data, which is defined as information associated with the internal workings of a company or contractor that is not specific to a project or program."

### **O. Enabling Support Contractors**

1. The OT Agreement is under the general program management of the Air Force Space and Missile Systems Center (SMC). The Air Force has or may enter into contracts with one or more of the following companies, or successor(s), to provide Advisory and Assistance Services (A&AS) or Systems Engineering and Technical Assistance (SETA), or Systems Engineering and Integration (SE&I). Non-Disclosure Agreements (NDAs) shall be executed within thirty (30) days after signature of the Agreement or the award of a contract to a successor of the contractors listed below:

LinQuest Corporation

Tecolote Research, Inc.

2. In the performance of this Contract, Seller agrees to cooperate with the companies listed above (hereafter referred to as A&AS/SETA/SE&I). Cooperation includes allowing observation of technical activities by appropriate A&AS/SETA/SE&I technical personnel, discussing technical matters related to this Contract; delivering Data as specified in the Contract, providing access to Seller facilities utilized in the performance of the Contract, responding to invitations from authorized A&AS/SETA/SE&I personnel to attend meetings, and providing access to technical and development planning data. Seller shall provide A&AS/SETA/SE&I personnel access to data such as, but not limited to, design and development analyses; test data and results; equipment and process specifications; test and test equipment specifications; procedures, parts and quality control procedures; records and data; manufacturing and assembly procedures; and schedule and milestone data, needed by such personnel in order to perform their required Agreement related support activities.

3. Seller further agrees to include in all subcontracts a clause requiring compliance by the subcontractor and supplier and succeeding levels of subcontracts and suppliers with the response and access and disclosure provisions of paragraph 2 above, subject to coordination with Seller, except for subcontracts for commercial items or commercial services. This Contract does not relieve Seller of its responsibility to manage the performers under the Contract effectively and efficiently nor is it intended to establish privity of contract or agreement between the Government or A&AS/SETA/SE&I and Seller such subcontractors or suppliers.

4. A&AS/SETA/SE&I personnel are not authorized to direct Seller or Seller's subcontractors in any manner. Seller or Seller's subcontractor personnel are not authorized to direct A&AS/SETA/SE&I personnel.

5. A&AS/SETA/SE&I shall make the technical information (including Proprietary Information) available only to its trustees, officers, employees, contractor labor, consultants, and attorneys who have a need to know, and A&AS/SETA/SE&I shall maintain between itself and the foregoing binding agreements of general application as may be necessary to fulfill their obligations under the Non-Disclosure Agreement established under paragraph 1 above, and A&AS/SETA/SE&I agree that it will inform the Seller, Seller's subcontractors, and suppliers if it plans to use consultants, or contract labor personnel and, upon the request of Seller, Seller's subcontractor, or supplier, to have its consultants and contract labor personnel execute nondisclosure agreements directly therewith.

### **P. Antitrust**

Seller shall agree to comply with all applicable U.S. laws, including U.S. antitrust laws.

### **Q. Other Applicable Laws and Regulations**

#### 1. Civil Rights Act

This Contract is subject to the compliance requirements of Title VI of the Civil Rights Act of 1964 as amended (42 U.S.C. § 2000-d) relating to nondiscrimination in Federally assisted programs. Seller agrees to comply with the nondiscriminatory provisions of the Act.

#### 2. Whistleblower Protection Act

This Contract is subject to the compliance with Title V of the Whistleblower Protection Act of 1989 relating to the

protections available to Federal employees against prohibited personnel practices, and for other purposes. Seller agrees to comply with the provisions of the Act.

### 3. Environmental, Safety, And Health Responsibility

Seller shall comply with all applicable Federal, State, and local environmental, safety, and health laws and regulations. The Consortium is responsible for assuring all Government Facilities procedures are followed and necessary permits for performing projects under this Contract are in place before performing activities requiring such permits. Any cost resulting from the failure of Seller to perform this duty shall be borne by Seller.

### 4. US Flag Air Carriers

Travel supported by U.S. Government funds under the Contract shall use U.S.-flag air carriers (air carriers holding certificates under 49 U.S.C. 41102) for international air transportation of people and property to the extent that such service is available, in accordance with the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118) and the interpretative guidelines issued by the Comptroller General of the United States in the March 31, 1981, amendment to Comptroller General Decision B138942. (See General Services Administration amendment to the Federal Travel Regulations, Federal Register (63 FR 63417- 63421.))

### 5. Combating Trafficking in Persons

a. Policy. In accordance with 22 U.S.C. Chapter 78, the United States Government has adopted a policy prohibiting trafficking in persons.

b. In accordance with this statute, the prime Base Agreement, or any PA under the Base Agreement, may be terminated by the Government, without penalty, if Seller, engages in, or uses labor recruiters, brokers, or other agents who engage in-

1. severe forms of trafficking in persons;
2. the procurement of a commercial sex act during the period of time that the grant, contract, or cooperative agreement is in effect;
3. the use of forced labor in the performance of the grant, contract, or cooperative agreement; or
4. acts that directly support or advance trafficking in persons, including the following acts:
  - i. Destroying, concealing, removing, confiscating, or otherwise denying an employee access to that employee's identity or immigration documents.
  - ii. Failing to provide return transportation or pay for return transportation costs to an employee from a country outside the United States to the country from which the employee was recruited upon the end of employment if requested by the employee, unless-
    - (a) exempted from the requirement to provide or pay for such return transportation by the Federal department or agency providing or entering into the grant, contract, or cooperative agreement; or
    - (b) the employee is a victim of human trafficking seeking victim services or legal redress in the country of employment or a witness in a human trafficking enforcement action.
  - iii. Soliciting a person for the purpose of employment, or offering employment, by means of materially false or fraudulent pretenses, representations, or promises regarding that employment.
  - iv. Charging recruited employees unreasonable placement or recruitment fees, such as fees equal to or greater than the employee's monthly salary, or recruitment fees that violate the laws of the country from which an employee is recruited.
  - v. Providing or arranging housing that fails to meet the host country housing and safety standards.

### 6. Procurement Ethics Requirements

For the purposes of 41 USC Chapter 21 only, this Contract shall be treated as a Federal agency procurement.

#### **R. Proprietary Information**

This clause applies in addition to the Confidential, Proprietary, and Trade Secret Information and Materials article in the General Provisions.

#### Definitions

1. "Disclosing Party" means the party who discloses Proprietary Information as contemplated by the subsequent Paragraphs.
2. "Receiving Party" means the party who receives Proprietary Information disclosed by a Disclosing Party.

3. "Proprietary Information" means information and materials of a Disclosing Party which are designated as confidential or as a Trade Secret in writing by such Disclosing Party, whether by letter or by use of an appropriate stamp or legend, prior to or at the same time any such information or materials are disclosed by such Disclosing Party to the Receiving Party. Notwithstanding the foregoing, materials and other information which are orally, visually or electronically disclosed by a Disclosing Party, or are disclosed in writing without an appropriate letter, stamp, or legend, shall constitute Proprietary Information or a Trade Secret if such Disclosing Party, within thirty (30) calendar days after such disclosure, delivers to the Receiving Party a written document or documents describing the material or information and indicating that it is confidential or a Trade Secret, provided that any disclosure of information by the Receiving Party prior to receipt of such notice shall not constitute a breach by the Receiving Party of its obligations under this Paragraph. "Proprietary Information" includes any information and materials considered a Trade Secret by the Consortium or Consortium Members. "Trade Secret" means all forms and types of financial, business, scientific, technical, economic, or engineering information, including patterns, plans, compilations, program devices, formulas, designs, prototypes, methods, techniques, processes, procedures, programs, or codes, whether tangible or intangible, and whether or how stored, compiled, or memorialized physically, electronically, graphically, photographically, or in writing if -

- a. The owner thereof has taken reasonable measures to keep such information secret; and
- b. 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.

#### Exchange of Information

The Government may from time to time disclose Government Proprietary Information to a Consortium Member Organization or organizations in connection with the SpEC prototypes and a Consortium Member Organization or organizations may from time to time disclose Consortium Member Organization Trade Secrets to the Government in connection with the SpEC prototypes. Neither the Government nor any Consortium Member Organization shall be obligated to transfer Proprietary Information or Trade Secrets independently developed to any Party to the OT Agreement.

#### Proprietary and Authorized Disclosure

The Receiving Party agrees, to the extent permitted by law, that Proprietary Information and Trade Secrets shall remain the property of the Disclosing Party (no one shall disclose unless they have the right to do so), and that, unless otherwise agreed to by the Disclosing Party, Proprietary Information and Trade Secrets shall not be disclosed, divulged or otherwise communicated by it to third parties (including without limitation, other Consortium Member Organizations) or used by it for any purposes other than in connection with the SpEC prototypes and the licenses granted in Article G, Data Rights, and Article H, Inventions and Patents, but shall exclude materials or information that:

- a. Are received or become available without restriction to the Receiving Party under separate agreement,
- b. Are not identified with a suitable notice or legend per Paragraph (c) herein,
- c. Are in possession of the Receiving Party without restriction at the time of disclosure thereof as demonstrated by prior written records,
- d. Are or later become part of the public domain through no fault of the Receiving Party,
- e. Are received by the Receiving Party from a third party without restriction and having no obligation of confidentiality to the Disclosing Party that made the disclosure,
- f. Are developed independently by the Receiving Party without use of Proprietary Information or Trade Secrets as evidenced by written records,
- g. Are required by law or regulation to be disclosed; provided, however, that the Receiving Party has provided written notice to the Disclosing Party promptly so as to enable such Disclosing Party to seek a protective order or otherwise prevent disclosure of such information.

#### Return of Proprietary Information

Upon request by a Disclosing Party that made a disclosure of Trade Secrets to the Government, the Government shall promptly return all copies and other tangible manifestations of the Trade Secrets disclosed. Upon request by the Government, a Receiving Party shall promptly return all copies and other tangible manifestations of the Proprietary Information disclosed by the Government. As used in this section, tangible manifestations include human readable media as well as magnetic and digital storage media.

#### Term

The obligations of the Receiving Party under this Article shall continue for a period of seven (7) years after the expiration or termination of the prime Base Agreement; provided, however, that in the case of a Consortium Member Organization that withdraws, or is deemed to have withdrawn from the consortia or a PA, the Receiving Party's obligations with respect to such Consortium Member Organizations' Trade Secrets shall continue only for a period of seven (7) years after the effective date of such Consortium Member Organizations' withdrawal.

#### S. Definitions



"Agreements Officer (AO)" means the Space and Missile Systems Center warranted Agreements Officer authorized to sign, modify the OT Agreement, and execute associated projects under the OT Agreement on behalf of the Government.

"Agreements Officer's Technical Representative (AOTR)" means an individual designated and authorized in writing by the Agreements Officer to perform specific technical or administrative functions on behalf of the Government. At the Government's discretion, multiple AOTRs may be designated in writing at either the Base Agreement level or on a per-project basis.

"Base Agreement" and "Agreement" means the agreement between the SpEC Consortium Manager (CM) and Buyer that serves as the baseline agreement for all future funded Prototype Awards (PA). The Base Agreement incorporates the applicable terms and conditions from the OT Agreement between the Government and SpEC members who are PLPs. The Base Agreement is subject to the review and approval of the Government. The Government hereby recognizes its responsibilities and obligations under the SpEC OT Agreement to the consortium as a whole and to specific SpEC members who are PLPs through the Base Agreement.

"Consortium" means the "Space Enterprise Consortium" also known as "SpEC", which is the organization whose member will be selected to perform prototype projects under the OT Agreement and is represented by the Consortium Manager that was awarded the OT Agreement.

"Consortium Manager (CM)" means the legal entity that was awarded the OT Agreement to act on behalf of the SpEC to execute and administer the efforts under the OT Agreement, Advanced Technology International (ATI).

"Consortium Member" or "Consortium Member Organization" each mean the Traditional and Nontraditional Defense Contractors, including small and large businesses, for profit and not for profit entities, and Academic Research Institutions that are or become signatories to the SpEC Consortium Membership Agreement.

"Consortium Membership Agreement (CMA)" means the agreement governing the rights and obligations of the Consortium Member entities.

"Covered Government Support Contractors" means contactors covered under Article N, Enabling Aerospace Support and Article O, Enabling Support Contractors.

"Data," means recorded information, regardless of form or method of recording, which includes but is not limited to, technical data, computer software, computer software documentation, and mask works. The term does not include financial, administrative, cost, pricing or management information and does not include Subject Inventions.

"Days" means calendar days unless stated otherwise.

"Government" means the United States of America, as represented by an SMC Agreements Officer.

"Invention," as used in this Contract, means any innovation or discovery that is or may be patentable or otherwise protectable under title 35 of the United States Code.

"Made," as used in this Contract in relation to any Invention, means the conception or first actual reduction to practice of such Invention.

"Milestone" means a scheduled, previously negotiated event signifying the completion of a major deliverable or a set of related deliverables, with clearly defined success criteria.

"Non-traditional defense contractor" means, per 10 U.S.C. §2302(9), "an entity that is not currently performing and has not performed, for at least the one-year period preceding the solicitation of sources by DoD for the procurement or transaction, any contract or subcontract for DoD that is subject to full coverage under the cost accounting standards prescribed pursuant to 41 U.S.C. § 1502 and the regulations implementing such section."

"OT Agreement" refers to the Other Transaction Agreement between the Government and the Space Enterprise Consortium (SpEC) by its Consortium Manager, Advanced Technology International, Agreement No. FA8814-18-9-0002.

"Prototype" means a physical or virtual model used to evaluate the technical or manufacturing feasibility or military utility of a technology, process, concept, end item, or system.

"Prototype Award (PA)," means the agreement between the CM and Buyer, establishing the scope of work, terms and conditions for the Consortium Member entity performance and payment under the Government funded Prototype Modification.

"Prototype-Level Performer (PLP)" means the Consortium's member entity issued a Prototype Award by the Consortium Manager for a Government-selected prototype project to be funded under the prime Base Agreement, which is Buyer.

"Prototype Modification" (PM) means the modification to the OT Agreement that will be used as the Prototype-Level Performer selection decision and authorize execution of prototype requirements.

"Prototype Project" means a research activity proposed by the Prototype-Level Performer and selected by the Government for a Prototype Award under the OT Agreement which will be executed via a PM.

"Practical application," as used in this Contract, means to manufacture, in the case of a composition or product; to practice, in the case of a process or method; or to operate, in case of a machine or system; and, in each case, under such conditions as to establish that the Invention, software, or related Data is being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public or to the Government on reasonable terms.

"Subject Invention" means those inventions conceived or first actually reduced to practice under this Contract.