

CUSTOMER CONTRACT REQUIREMENTS
FRP2-FRP3 Option
CUSTOMER CONTRACT 4202353607

CUSTOMER CONTRACT REQUIREMENTS

The following customer contract requirements apply to this Contract to the extent indicated below. Please note, the requirements below are developed in accordance with Buyer's prime contract and are not modified by Buyer for each individual Seller or statement of work. Seller will remain at all times responsible for providing to any government agency, Buyer, or Buyer's customer, evidence of compliance with the requirements herein or that such requirements are not applicable to the extent satisfactory to the requesting party.

1. DoD FAR Supplement Clauses DoD Contracts. The following contract clauses are incorporated by reference from the Department of Defense Federal Acquisition Regulation Supplement and apply to the extent indicated. In all of the following clauses, "Contractor" and "Offeror" mean Seller except as otherwise noted.

252.204-7012 Safeguarding Covered Defense Information and Cyber Incident Reporting (OCT 2016). This clause applies if the Contract is for operationally critical support or where performance will involve a covered contractor information system. The term "contractor" retains its original meaning wherever the word is not capitalized. In the terms "Contractor attributional/proprietary information," "Contractor information system" and "covered contractor information system," the term "contractor" also retains its original meaning. In paragraphs (d) and (g), "Contracting Officer" shall mean "Contracting Officer or Buyer." In paragraph (m)(2), the term "prime Contractor" retains its original meaning. In accordance with paragraph (m)(2)(i), Seller shall notify Buyer when submitting a request to the Contracting Officer to vary from NIST SP 800-171. Reporting to Buyer in accordance with (m)(2)(ii) shall be accomplished via abuse@Boeing.com with a copy to the Buyer's Authorized Procurement Representative. The Boeing 1st tier subcontractor promptly shall report lower tier subcontractor information it receives.

Seller represents and warrants that (i) it is in compliance with the requirements of DFARS Clause 252.204-7012 as modified by the preceding paragraph, or (ii) that, pursuant to paragraph (b)(2)(ii)(B), it has submitted a request applicable to this Contract for a variance from the requirements of NIST SP 800-171 to the US Government Contracting Office and that Seller's request for such variance was approved by an authorized representative of the DoD CIO.

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

A. LIABILITY OF THE PARTIES

1. Waiver of Liability

With regard to the activities undertaken pursuant to this Contract, no party shall make any claim against the other, employees of the other, 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 other provisions of this Article, this Waiver of Liability shall not be applicable to (1) actions pursued between Buyer and Seller regarding a material breach of contract or nonpayment of funds; (2) actions for damages caused by willful misconduct or gross negligence; and (3) intellectual property claims related to the misuse of unauthorized disclosure of intellectual property.

Under no circumstances will the above enumerated exceptions to the Waiver of Liability be interpreted to apply the Contract Disputes Act to this Contract or in any way cause the this Contract to be subject to any terms of or regulations related to the Contract Disputes Act.

2. Extension of Waiver of Liability

Seller agrees to extend the waiver of liability as set forth above to lower-tier subcontractors, by requiring them, by contract or otherwise, to agree to waive all claims against the Parties to this contract. Seller further agrees, in any event to indemnify and hold the Government harmless from any such claim or cause of action brought by its lower-tier subcontractors.

B. COMPTROLLER GENERAL ACCESS TO RECORDS

This clause is applicable to records created or maintained in the ordinary course of business or pursuant to a provision of law.

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 Seller that directly pertain to, and involve transactions relating to, the purchase order for a period of three (3) years after final payment is made.

The terms of this paragraph shall be included in all sub-agreements/contracts issued under this contract.

C. DATA RIGHTS

For the purposes of this Article, "Parties" means the Buyer, Seller and Government where collectively identified and "Party" where each entity is individually identified. This is a Data Rights Clause specifically tailored for this Purchase Order to address respective rights of the Government, Buyer and Seller to such Data as is owned, developed, to be developed or used by an actual or prospective member of the consortium that Buyer participates in ("Consortium")

1. Definitions

"Commercial Computer Software" as used in this article is defined in DFARS 252.227-7014(a)(1)(JUN 1995).

"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.

"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.

"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.

"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.

"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.

"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 included in the Inventions and Patents Article of this CCR.

"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.

“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 transfer 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.

“Government Purpose Rights” means the right to use, modify, reproduce, release, perform, display, or disclose technical data within the Government without restriction; and to 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 Government purposes. Under this contract, the period of a Government Purpose Rights license shall be no less than five 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 year period, the Government Purpose Rights license shall be extended an additional five years starting from completion of the additional Prototype Project.

“Limited Rights” as used in this article is as defined in DFARS 252.227-7013(a)(14)(FEB 2014).

“Restricted Rights” as used in this article is as defined in DFARS 252.227-7014(a)(15)(FEB 2014).

“Specifically Negotiated License Rights” are those rights to Data that have been specifically negotiated between the Government and Buyer’s Customer.

“Technical Data” means recorded information, regardless of the form or method of 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 or management information.

“Unlimited Rights” means the right 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, by Seller or Buyer (or their subcontractor's) IR&D funds and it is Data to which the Buyer or Seller (or their subcontractor) retains all rights. Category A Data shall include, but not be limited to:

i. Data as defined in this Article and any designs or other material provided by the Buyer or Seller for a project under this contract which was not developed in the performance of work under that project, and for which the Buyer or Seller retains all rights.

ii. Any initial Data or technical, marketing, or financial Data provided at the onset of the project by any of the Buyer or Seller. Such Data shall be marked "Category A" and any rights to be provided to the Government for such Data under this Purchase Order.

b. Category B is any Data developed under this contract with mixed funding, i.e. development was accomplished partially with costs charged to the Buyer or Seller indirect cost pools and/or costs not allocated this contract, and partially with Government funding under the OT Agreement. Any Data developed outside of this contract, 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.

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

i. the Government will have Government Purpose Rights in Data developed exclusively with Government funds under a project funded by the Buyer or Seller under this contract that is:

1. Data pertaining to an item, component, or process which has been or will be developed exclusively with Government funds;
2. 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;
3. Data created in the performance of the contract that does not require the development, manufacture, construction, or production of items, components, or processes;
4. Form, fit, and function data;
5. Data necessary for installation, operation, maintenance, or training purposes (other than detailed manufacturing or process data);
6. Corrections or changes to technical data furnished to the Buyer or Seller by the Government;
7. The Government can only order such Data as is developed under this contract where the order request is made within one (1) year following contract completion or for an alternate duration specified in this contract. In the event the Government orders such Data, it shall pay Buyer or Seller 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.

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

1. Otherwise publicly available or that has been released or disclosed by the 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;
2. Data in which the Government has obtained unlimited rights under another Government contract or as a result of negotiations; or
3. Data furnished to the Government, under this contract 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 the Buyer or Seller's exclusive right to use such Data for commercial purposes under such contract or subcontract has expired.

iii. However, any Data developed outside of this contract 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.

iv. Further, the Government's rights to Commercial Computer Software and Data licensed under a Commercial Computer Software License under this 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 Principle Rights

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

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

i. The CM, at the request of small business or any other than small business, Seller may request on behalf of a small business or other than small business 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 Prototype Project completion. Such requests will only be made in those cases where the Seller has provided information from the affected actual or prospective small business demonstrating the need for this additional restriction on Government use and shall be submitted to the Buyer for 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.

ii. For Article C (2)(c)(iii) Category C Data, the Government shall have only the rights established under prior agreements. For Article C.(2)(c)(iv) 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 this contract, 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 the Seller shall include a list of the Category A, B and C Data to be used or developed under the proposal if selected. 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 in the Prototype Award. The CM will incorporate the list of Category A, B and C Data and the identified rights therefor in the Prototype Award. Following issuance of a contract, 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 legend:

Use, duplication, or disclosure is subject to the restrictions as stated in the OT Agreement between the U.S. Government and the SpEC, Agreement No. FA8814-18-9-0002, Project Title and the SpEC Prototype Award with Raytheon Company No. FA8814-18-9-0002.

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 the Buyer or Seller learns of a release to the Government of its unmarked Data that should have contained a restricted legend, the Buyer or 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. Copyrights

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 Government and Buyer 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 contract and to authorize others to do so.

In the event that 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 this contract with the written permission of the Copyright holder. Copyrighted Data that existed or was produced outside of this contract and is unpublished - having only been provided under licensing agreement with restrictions on its use and disclosure - and is provided under this 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 this contract. The Government and Buyer agree 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 this contract and which Data would embody trade secrets or would comprise commercial or financial information that is privileged or confidential if obtained from the Buyer, Seller or any Consortium member, such Data will, to the extent permitted by law, be appropriately marked with a suitable notice or legend and maintained in confidence by the Buyer, Seller and any Consortium member 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 Buyer, Seller and any Consortium member, including its respective employees or subcontractors of any tier, (under suitable protective conditions) by or on behalf of the Government or for Government purposes only.

7. Prior Technology

a. Government Prior Technology: In the event it is necessary for the Government to furnish the Buyer, Seller and any Consortium member, including their respective employees or their subcontractors of any tier, with Data which existed prior to, or was produced outside of the contract, and such Data 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 this contract. Data protection will include proprietary markings and handling, and the signing of non-disclosure agreements by Buyer or Seller (their subcontractors of any tier and their respective employees) to whom such Data is provided for use under the contract. Upon completion of activities under this contract, such Data will be disposed of as requested by the Government.

b. Buyer, Seller and any Consortium member's Prior Technology: In the event it is necessary for the Buyer, Seller and any Consortium member to furnish the Government with Data which existed prior to, or was produced outside of the Purchase Order, 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 Buyer, Seller nor any Consortium member shall be obligated to provide Data that existed prior to, or was developed outside of this Purchase Order to the Government. Upon completion of activities under this Purchase Order, such Data will be disposed of as requested by the Buyer on behalf of itself or Seller and any Consortium member.

c. Oral and Visual Information: If information which Buyer or Seller (including Buyer, Seller and any Consortium member, 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 the Government, the exchange of such information must be reduced to a tangible, recorded form and marked with a suitable notice or legend, and furnished to the Government within ten (10) 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:

- i. Data or software not identified with a suitable notice or legend as set forth in this Article; nor
- ii. Information contained in any Data for which disclosure and use is restricted under the Proprietary Information Article, if such information is or becomes generally known without breach of the above, is or becomes generally 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 Buyer, Seller, and any Consortium Member has furnished to the Government without restriction on disclosure and use.

e. Marking of Data

Marking of Data: Any Data delivered under this Purchase Order 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, for subcontracts awarded pursuant to this Contract.

10. Survival Rights: The provisions of this Article shall survive termination of this Agreement.

Notwithstanding the terms of this in this Article, differing rights in data may be negotiated among the Parties to each individual Prototype Award on a case-by-case basis.

D. 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 USC Section 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 2 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 a 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 this contract 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 Buyer 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, t Seller shall notify the Government through the Buyer, 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 Buyer, the Seller shall convey title to any Subject Invention to the Government under any of the following conditions:

- a. If the 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 the Seller fails to file patent applications within the times specified in paragraph 2. of this Article; provided, that if the 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, the receipt of the written request by the Government, the Seller shall continue to retain title in that country; or shall continue to retain title in that country; or
- c. In any country in which the 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 Buyer, Seller, or Consortium Member and Protection of the Buyer, Seller, and Consortium Member's Rights 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 the 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 licenses of the same scope to the extent that Seller was legally obligated to do so at the time Seller 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 the 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 the 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 the Seller a written notice of its intention to revoke or modify the license, and the 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 Buyer 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 the 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 contract in order that the 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 Buyer 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 Purchase Order, 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 the Buyer, promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of a Prototype Award under this Purchase Order of which the Seller has knowledge.
- b. In the event of any claim or suit against the Government on account of any alleged patent or copyright infringement arising out of the performance under 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, when requested by the Agreements Officer through the Buyer, 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, Seller and Buyer under this Article shall survive after the expiration or termination of this contract.

E. Security Requirements

1. This article applies to the extent that any 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 a Prototype Award requires Seller to have access to, or generate, classified information, the Government will generate a Department of Defense Security Classification Specification (DD Form 254) and shall be provided by Buyer. Purchase Order involving classified or controlled information will have a separate DD 254, which will only be applicable to the specified Purchase Order.

3. Seller shall comply with the DD Form 254 attached to the Purchase Order 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 Sub agreements under this Purchase Order that involve access to classified information.

F. 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 controls 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-

<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 Purchase Order and provided to the Seller by or on behalf of DoD in support of the Purchase Order; or

b. Collected, developed, received, transmitted, used, or stored by or on behalf of the Seller in support of the performance of the Prototype Award.

"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, regardless of whether or not the clause is incorporated in the Request for Prototype Proposal or Purchase Order. Examples of technical information include research and engineering data, engineering drawings, and 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 Seller is anticipated to include covered defense information.

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, 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>) that are in effect at the time the solicitation is issued or as authorized by the Agreements Officer (AO).

b. If Seller proposes to vary from any of the security requirements specified by NIST SP 800-171 that are in

effect at the time the solicitation is issued or as authorized by the AO, Seller shall submit to the AO through the Buyer, 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 Seller requests to vary from NIST SP 800-171 requirements in writing prior to Prototype Award. Any accepted variance from NIST SP 800-171 shall be incorporated into the resulting contract.

c. Seller shall indicate in its proposal whether the use of cloud computing is anticipated at any level under the resultant contract. After the award of a 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 the Buyer prior to utilizing cloud computing services.

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

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

- (i) Limit information system access to authorized users, processes acting on behalf of authorized users, or devices (including other information systems).
- (ii) Limit information system access to the types of transactions and functions that authorized users are permitted to execute.
- (iii) Verify and control/limit connections to and use of external information systems.
- (iv) Control information posted or processed on publicly accessible information systems.
- (v) Identify information system users, processes acting on behalf of users, and devices.
- (vi) Authenticate (or verify) the identities of those users, processes, and devices, as a prerequisite to allowing access to organizational information systems.
- (vii) Sanitize or destroy information system media containing Federal Contract Information before disposal or release for reuse.
- (viii) Limit physical access to organizational information systems, equipment, and the respective operating environments to authorized individuals.
- (ix) Escort visitors and monitor visitor activity; maintain audit logs of physical access; and control and manage physical access devices.
- (x) 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.
- (xi) Implement subnetworks for publicly accessible system components that are physically or logically separated from internal networks.
- (xii) Identify, report, and correct information and information system flaws in a timely manner.
- (xiii) Provide protection from malicious code at appropriate locations within organizational information systems.
- (xiv) Update malicious code protection mechanisms when new releases are available.
- (xv) 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 within 30 days of agreement award, of any security requirements specified by NIST SP 800-171 not implemented at the time of Prototype Award.

c. Seller shall submit requests to vary from NIST SP 800-171 in writing through the Buyer 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.

d. 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 to the AO when requesting its recognition under this agreement.

e. 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 (<<https://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.

5. 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 the 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, the SELLER or subperformer 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>.

6. 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.

7. Upon request by DoD, Seller shall provide DoD with access to additional information or equipment that is necessary to conduct a forensic analysis.

8. 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 (f) of this clause.

9. The Government shall protect against the unauthorized use or release of information obtained from the Seller (or derived from information obtained from the 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.

10. Information that is obtained from the Seller (or derived from information obtained from the 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>

<http://www.acq.osd.mil/dpap/dars/dfars/html/current/252204.htm>>>, Limitations on the Use or Disclosure of Third-Party Seller Reported Cyber Incident Information.

11. Information that is obtained from the Seller (or derived from information obtained from the 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 10. 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.

12. 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.

13. The safeguarding and cyber incident reporting required by this article in no way abrogates the 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.

14. Limitations on the Use or Disclosure of Third-Party Contractor Reported Cyber Incident Information - Seller agrees that the following conditions apply to any information it receives or creates in the performance of this agreement that is information obtained from a third-party's reporting of a cyber incident pursuant to this article (or derived from such information obtained under that clause):

- a. Seller shall access and use the information only for the purpose of furnishing advice or technical assistance directly to the Government in support of the Government's activities related to this article, and shall not be used for any other purpose.
- b. Seller shall protect the information against unauthorized release or disclosure.
- c. Seller shall ensure that its employees are subject to use and non-disclosure obligations consistent with this clause prior to the employees being provided access to or use of the information.
- d. The third-party Seller that reported the cyber incident is a third-party beneficiary of the non-disclosure agreement between the Government and Seller, as required by this article.

15. Seller shall not release to anyone outside the Seller's organization any unclassified information, regardless of medium (e.g., film, tape, document), pertaining to any part of a Prototype Award, 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 agreement award 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_htm/PGI204_4.htm>.acq.osd.m il/dpap/dars/pgi/pgi_htm/PGI204_4.htm <http://www.acq.osd.mil/dpap/dars/pgi/pgi_htm/PGI204_4.htm>>(DFARS/P GIview <http://www.acq.osd.mil/dpap/dars/pgi/frameset.htm?dfarsno=204_4&pgino=PGI204_4&dfarsanchor=204>.acq.osd.mil/dpap/dars/pgi/frameset.htm?dfarsno= 204_4&pgino=PGI204_4&dfarsanchor=20 <http://www.acq.osd.mil/dpap/dars/pgi/frameset.htm?dfarsno=204_4&pgino=PGI204_4&dfarsanchor=204>_4&pgianchor=204_4>)).

16. Seller shall include this article, including this paragraph (p), in sub agreements, or agreements for which subperformer performance will involve covered defense information, including subagreements for commercial items, without alteration, except to identify the parties. Seller shall determine if the information required for subperformer 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 subperformers to notify the prime Seller (or next higher-tier subperformer) when submitting a request to vary from a NIST SP 800-171 security requirement to the AO through the Buyer, in accordance with paragraph 3.a. of this clause; and provide the incident report number, automatically assigned by DoD, to the prime Seller (or next higher-tier subperformer) as soon as practicable, when reporting a cyber incident to DoD as required in paragraph 4. of this article.

G. 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 this 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 Prototype Awards under this Base Agreement may be restricted by the International Traffic in Arms Regulation (ITAR).

2. Prototype Awards or Lower Tier Agreements

a. 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.

H. Organizational Conflict of Interest

1. The Government is concerned with avoiding potential real or perceived conflicts of interest as described in FAR Part 9.5. Throughout performance, Seller shall monitor all potential conflicts of interest.

2. Seller shall ensure performance under this contract does not conflict with system development or enhancement being performed under other agreements or contracts.

3. Seller shall immediately report all potential conflicts of interest to the Buyer. Seller agrees to include in all subagreements an article requiring subagreement holds to report all potential or real Organizational Conflict of Interests to the Buyer and Government.

I. Enabling Aerospace Support

1. The contract involves 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 Buyer, Seller and sub tier's technical performance through meetings with Buyer, Seller and sub tiers, 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 Buyer, Seller and sub tier'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; 4) by discussing technical matters relating to this program; 5) by providing access to Seller's and their sub tier's facilities utilized in the performance of this contract; 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 subagreements 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 Purchase Orders does not relieve the Seller of its responsibility to manage the subagreements 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 Buyer, Seller and sub tier's 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 Buyer, Seller and sub tiers 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. Seller and their sub tiers 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 the Buyer, Seller and their sub tier's if it plans to use consultants, or contract labor personnel and, upon the request of such consortium and/or prototype-level performer 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 agreement will be given to the Seller solely by Seller or the Government prototype end user.

b. Whenever it becomes necessary to modify the Base Agreement or Prototype Award and redirect the effort, a modification signed by the Seller and Buyer will be issued.

* 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."

J. Enabling Support Contractors (Does not apply to contracts for commercial items or commercial services)

1. The contract 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 30 days after signature of the Agreement or the award of a contract to a successor of the contractors listed below:

a. LinQuest Corporation

b. 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 Prototype Awards, providing access to Seller facilities utilized in the performance of contract, responding to invitations from authorized A&AS/SETA/SE&I personnel to attend meetings, and providing access to technical and development planning data. The 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 sub agreements a clause requiring compliance by the sub agreement holder and supplier and succeeding levels of sub agreement holders and suppliers with the response and access and disclosure provisions of paragraph 2. above, subject to coordination with the Seller, except for sub agreements or subcontracts for commercial items or commercial services. This contract does not relieve Seller of its responsibility to manage the performers under agreement Prototype Award effectively and efficiently nor is it intended to establish privity of contract or agreement between the Government or A&AS/SETA/SE&I and such Seller's, sub agreement holders, subcontractors or suppliers.

4. A&AS/SETA/SE&I personnel are not authorized to direct Seller's personnel in any manner. Seller 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 Seller's, sub agreement holders, subcontractors, and suppliers if it plans to use consultants, or contract labor personnel and, upon the request of Seller, sub agreement holder, subcontractor, or supplier, to have its consultants and contract labor personnel execute nondisclosure agreements directly therewith.

K. 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. The PLP 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. The PLP 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 Prototype Awards 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, this contract, Seller may be terminated by the Government, without penalty, if Seller, engages in, or uses labor recruiters, brokers, or other agents who engage in-

- i. severe forms of trafficking in persons;
- ii. the procurement of a commercial sex act during the period of time that the grant, contract, or cooperative agreement is in effect;
- iii. the use of forced labor in the performance of the grant, contract, or cooperative agreement;
- or
- iv. acts that directly support or advance trafficking in persons, including the following acts:

A. Destroying, concealing, removing, confiscating, or otherwise denying an employee access to that employee's identity or immigration documents.

B. 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-

- (aa) 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
- (bb) 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.

C. 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.

D. 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.

E. Providing or arranging housing that fails to meet the host country housing and safety standards.

F. Procurement Ethics Requirements-For the purposes of 41 USC Chapter 21 only, this contract shall be treated as a Federal agency procurement.