

CUSTOMER CONTRACT REQUIREMENTS
Continuous Lower Energy, Emissions and Noise (CLEEN) III Aircraft Technology and Alternate Jet Fuel
Development
CUSTOMER CONTRACT 693KA9-21-T-00001

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

693KA9-21-T-00001 Special Provisions .
DATA RIGHTS

a. Rights in Data

(a) Definitions. As used in this clause –

"Commercial Computer Software" is Computer Software that meets the criteria of a Commercial Item.

"Commercial item" means:

- (1) Any item, other than real property, that is of a type customarily used for nongovernmental purposes and that—
 - (i) Has been sold, leased, or licensed to the general public; or
 - (ii) Has been offered for sale, lease, or license to the general public;
- (2) Any item that evolved from an item described in paragraph (1)(i) of this definition through advances in technology or performance and that is not yet available in the commercial marketplace, but will be available in the commercial marketplace in time to satisfy the delivery requirements under a pending Government contract;
- (3) Any item that would satisfy a criterion expressed in paragraphs (1)(i) or (1)(ii) of this definition, but for—
 - (i) Modifications of a type customarily available in the commercial marketplace; or
 - (ii) 'Minor' modifications of a type not customarily available in the commercial marketplace made to meet Federal Government requirements. 'Minor' modifications means modifications that do not significantly alter the nongovernmental function or essential physical characteristics of an item or component, or change the purpose of a process. Factors to be considered in determining whether a modification is minor include the value and size of the modification and the comparative value and size of the final product. Dollar values and percentages may be used as guideposts, but are not conclusive evidence that a modification is minor.
- (4) Any combination of items meeting the requirements of paragraphs (1), (2), (3), or (5) of this definition that are of a type customarily combined and sold in combination to the general public;
- (5) Installation services, maintenance, services, repair services, training services, and other services if such services are procured for support of an item referred to in paragraphs (1), (2), (3), or (4) of this definition, and if the source of such services—
 - (i) Offers such services to the general public and the Federal Government contemporaneously and under similar terms and conditions; and
 - (ii) Offers to use the same work force for providing the Federal Government with such services as the source uses for providing such services to the general public;
- (6) Services of a type offered and sold competitively in substantial quantities in the commercial marketplace based on established catalog or market prices for specific tasks performed, under standard commercial terms and conditions. This does not include services that are sold based on hourly rates without an established catalog or market price for a specific service performed;
- (7) Any item, combination of items, or service referred to in paragraphs (1) through (6) of this definition, notwithstanding the fact that the item, combination of items, or service is transferred between or among separate divisions, subsidiaries, or affiliates of a Contractor; or

(8) A nondevelopmental item, if the procuring agency determines the item was developed exclusively at private expense and sold in substantial quantities, on a competitive basis, to multiple State and local Governments.

"Computer database" or "database" means a collection of recorded information in a form capable of, and for the purpose of, being stored in, processed, and operated on by a computer. The term does not include computer software.

"Computer Software" means –

- (1) Computer programs that comprise a series of instructions, rules, routines, or statements, regardless of the media in which they are recorded, that allow or cause a computer to perform a specific operation or series of operation, and
- (2) Recorded information comprising source code listings, design details, algorithms, processes, flow charts, formulas, and related material that would enable the computer program to be produced, created or compiled; but
- (3) Computer software does not include computer databases 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 explains the capabilities of the computer software or provide instructions for using the software.

"Data" means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. The term does not include information incidental to Agreement administration, such as financial, administrative, cost or pricing, or management information.

"Form, Fit, and Function Data" means data relating to items, components, or processes that are sufficient to enable physical and functional interchangeability, and data identifying source, size, configuration, mating, and attachment characteristics, functional characteristics, and performance requirements. For Computer Software it means data identifying source, functional characteristics, and performance requirements but specifically excludes the source code, algorithms, processes, formulae, and flow charts of the software.

"Limited Rights" means the rights of the Government in Limited Rights Data to use, modify, reproduce, release, perform, display, or disclose technical data, in whole or in part, within the Government. The Government may not, without the written permission of the party asserting limited rights, release or disclose the technical data outside the Government, use the technical data for manufacture, or authorize the technical data to be used by another party, except that the Government may reproduce, release or disclose such data or authorize the use or reproduction of the data by persons outside the Government if reproduction, release, disclosure, or use is—

- (1) Necessary for emergency repair and overhaul; and
- (2) Subject to a prohibition on the further reproduction, release, disclosure, or use of the technical data; and
- (3) The contractor or subcontractor asserting the restriction is notified of such reproduction, release, disclosure, or use.

"Limited Rights Data" means Technical Data, other than Computer Software, Proprietary Information, that embody trade secrets or are commercial or financial and confidential or privileged, to the extent that such data pertain to items, components, or processes developed at private expense, including minor modifications, or as otherwise identified as Limited Rights Data.

"Non-Deliverable, Technical Proprietary Information" means any Proprietary Information that is Technical Data or Computer Software.

"Non-Technical Proprietary Information" means any Proprietary Information other than Technical Data or Computer Software.

"Proprietary Information" is: any business, financial, or specific program information (including plans or strategies, resources, and budgets), Computer Software, Technical Data, or any combination thereof, that:

- (1) is owned by Boeing or Seller;
- (2) the FAA or US Government does not already have greater license rights to such information;
- (3) is considered competition sensitive; and
- (4) as such, release of such data to third parties presents a significant risk or possible harm to Boeing or Seller.

"Proprietary Software" means any Computer Software that is Proprietary Information.

"Restricted Computer Software," means computer software developed at private expense and that is a trade secret, Commercial Computer Software, or financial, confidential or privileged, or is copyrighted computer software, including minor modifications of the computer software.

"Restricted Rights" means the rights of the Government in Restricted Computer Software, as set forth in a Restricted Rights Notice of subparagraph (g) if included in this clause, or as otherwise may be provided in a collateral agreement incorporated in and made part of this Agreement, including minor modifications of such computer software.

"Technical Data" means recorded information (regardless of the form or method of the recording) of a scientific or technical nature (including computer databases and computer software documentation). This term does not include Computer Software or financial, administrative, cost or pricing, or management data or other information incidental to Agreement administration. The term includes recorded information of a scientific or technical nature that is included in computer databases.

"Unlimited Rights" means the rights of the Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, in any manner and for any purpose, and to have or permit others to do so.

(b) Allocations of Rights.

(1) Except as provided in paragraph (c) of this clause; and in the case of Non-Technical Proprietary Information; and in the case of Non-Deliverable, Technical Proprietary Information, Restricted Computer Software, Limited Rights Data, specifically identified in Attachment E; or as modified/updated through the life of this agreement; the Government must have:

(i) Unlimited Rights in-

(A) All other data first produced in the performance of this Agreement either exclusively or partially at Government expense;

(B) Form, Fit, and Function Data first produced under this Agreement;

(C) Data delivered under this Agreement (except for Restricted Computer Software) that constitute manuals or instructional and training material for installation, operation, or routine maintenance and repair of items, components, or processes delivered or furnished for use under this Agreement; and

(D) All other data delivered under this Agreement unless provided otherwise for Nondeliverable, Technical Proprietary Information, Limited Rights Data, or Restricted Computer Software in accordance with paragraph (g) of this clause;

(ii) Limited Rights in data first produced in the performance of this Agreement exclusively at private expense; and

(iii) Restricted Rights in computer software first produced in the performance of this Agreement exclusively at private expense.

(2) Reserved.

(c) Copyright.

(1) Data first produced in the performance of this Agreement.

(i) For data other than computer software, not containing Proprietary Information or Limited Rights Data as specifically identified in Attachment E, Seller grants to Buyer, the Government and others acting on its behalf, a paid-up, nonexclusive, irrevocable worldwide license in such copyrighted data to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government. For computer software not containing Proprietary Software or Restricted Computer Software as specifically identified in Attachment E, Seller grants to Buyer, the Government and others acting in its behalf, a paid-up nonexclusive, irrevocable worldwide license in such copyrighted computer software to reproduce, prepare derivative works, and perform publicly and display publicly (but not to distribute copies to the public) by or on behalf of the Government.

(2) Reserved.

(3) Removal of copyright notices. The Government will not remove any copyright notices placed on data pursuant to this paragraph (c), and will include such notices on all reproductions of the data.

(d) Reserved.

(e) Unauthorized Marking of Data.

Reserved

(f) Omitted or Incorrect Markings.

(1) Data delivered to the Buyer or the Government without any restrictive markings must be deemed to have been furnished with unlimited rights. The Government is not liable for the disclosure, use, or reproduction of such data.

(2) Seller may request, within 6 months (or a longer time approved by the Contracting Officer, through Buyer, for good cause shown) after delivery of such data, permission to have authorized notices placed on the data at Seller's expense. The Contracting Officer, through the Buyer, may agree to do so if Seller -

- (i) Identifies the data to which the omitted notice is to be applied;
- (ii) Demonstrates that the omission of the notice was inadvertent; and,
- (iii) Establishes that the use of the proposed notice is authorized;
- (iv) Acknowledges that the Government has no liability for the disclosure, use, or reproduction of any such data made prior to the addition of the notice or resulting from the omission of the notice.

(3) If data has been marked with an incorrect notice, the Contracting Officer, through the Buyer may -

- (i) Permit correction of the notice at Seller's expense if Seller identifies the data and demonstrates that the correct notice is authorized, or
- (ii) Correct any incorrect notices.

(g) Protection of Limited Rights Data, Restricted Computer Software, and Non-Deliverable, Technical Proprietary Information.

(1) Limited Rights Data that are formatted as a computer data base for delivery to the Government are to be treated as Limited Rights Data and not Restricted Computer Software.

(2) This Agreement specifies that Seller may deliver Limited Rights Data. If delivery of such data is required, Seller must affix the appropriate Rights Notice to the data and the Government will treat the data, subject to the provisions of paragraphs (e) and (f) of this clause, in accordance with the notice:

LIMITED RIGHTS NOTICE (January 2009) (Modified)

(i) These Limited Rights Data are submitted with Limited Rights under Government Contract No. 693KA9-21-T-00004 (and subcontract N/A, if appropriate). The Government may use, modify, reproduce, release, perform, display or disclose these data within the Government without restriction; however, these data will not, without written permission of the Company, be used for purposes of manufacture nor disclosed outside the Government; except that the Government may disclose these data outside the Government for the following purposes; provided that the Government makes such disclosure subject to prohibition against further use and disclosure:

(1) Further study of the data for independent assessment by a Government Support Contractor as defined in paragraph (ii) below, subject to Seller approval of said Contractor and under provisions of a properly executed non-disclosure agreement between said Contractor and Seller, where the provisions of this non-disclosure agreement would extend to works and products derived from the original limited rights data.

(ii) A Government Support Contractor is a contractor, educational institution, or a non-profit institution, under a contract, the primary purpose of which is to furnish independent and impartial advice or technical assistance directly to the Government in support of the Government's management and oversight of a program or effort (rather than to directly furnish an end item or service to accomplish a program or effort), provided that the contractor: (1) is not affiliated with the prime contractor or a first-tier subcontractor on the program or effort, or with any direct competitor of such prime contractor or any such first-tier subcontractor in furnishing end items or services of the type developed or produced on the program or effort; and (2) receives access to technical data or computer software under performance of a Government contract that contains the following clauses: AMS 3.13-15, Confidentiality of Data and Information, AMS 3.1.7-1, Exclusion from Future Agency Contracts, and AMS 3.1.7-4, Organizational Conflicts of Interest - Mitigation Plan Required.

(iii) This Notice must be marked on any reproduction of these data, in whole or in part.

(End of Notice)

(3) This Agreement specifies that Seller may deliver Restricted Rights Computer Software. If delivery of such software is required, Seller must affix the appropriate Rights Notice to the software and the FAA will treat the software, subject to the provisions of paragraphs (e) and (f) of this clause, in accordance with the notice:

RESTRICTED RIGHTS NOTICE (January 2009) (Modified)

(i) This computer software is submitted with restricted rights under Government Contract No. 693KA9-21-T-00004 (and subcontract N/A, if appropriate). It may not be used, reproduced, or disclosed by the Government except as provided in paragraph (b) of this Notice or as otherwise expressly stated in the contract.

(ii) This computer software may be: (1) Used or copied for use with the computer or computers for which it was acquired, including use at any Government installation to which the computer or computers may be transferred; (2) Used or copied for use with a backup computer if any computer for which it was acquired is inoperative; (3) Reproduced for safekeeping (archives) or backup purposes; (4) Modified, adapted, or combined with other computer software, provided that the modified, adapted, or combined portions of the derivative software incorporating restricted computer software shall be subject to the same restricted rights; (5) Disclosed to and reproduced for use by support service Contractors or their subcontractors in accordance with paragraphs (ii)(1) through (4) of this notice; and (6) Used or copied for use with a replacement computer.

(iii) Notwithstanding the foregoing, if this computer software is copyrighted computer software, it is licensed to the Government with the minimum rights set forth in paragraph (b) of this notice.

(iv) Any other rights or limitations regarding the use, duplication, or disclosure of this computer software are to be expressly stated in, or incorporated in, the contract.

(v) This notice shall be marked on any reproduction of this computer software, in whole or in part.

(End of Notice)

(4) This Agreement specifies that Seller may provide Non-deliverable, Technical Proprietary Information.

(i) If off Seller site access of such data is required, Seller must affix at least the appropriate Rights Notice to the data and the Government will treat the data, subject to the provisions of paragraphs (e) and (f) of this clause, in accordance with the notice and the terms in the following paragraphs:

[COMPANY AND/OR SUBCONTRACTOR] NON-DELIVERABLE, TECHNICAL PROPRIETARY INFORMATION

This [Company and/or Subcontractor] Proprietary data is provided as a convenience, not a deliverable, to the Government in confidence and solely for the benefit of Government Contract No. 693KA9-21-T-00004. This information is protected under the Trade Secrets Act (18 U.S.C. 1905), the Economic Espionage Act (18 U.S.C. 1891-39), the Freedom of Information Act (5 U.S.C. 552(b)), and Executive Order 12600. This data and any derivative works may not be used for purposes of manufacture or disclosed outside the Government team directly supporting the Agreement without the prior written permission of the [Company/Companies]. This Notice must be marked on any reproduction of these data, in whole or in part.

(End of Notice)

(ii) No rights or license to use such information is provided to the FAA or US Government or any agency herein.

(iii) Seller, at its discretion, may choose to provide such information on a temporary, short term access basis either visually or in writing, for the benefit of the Agreement. In the event that Seller shares such information with the FAA, the FAA agrees to protect such information and not distribute to any third party and may only provide to FAA employees or other Government employees in direct support of this Agreement with a need to know.

(iv) Within 30 days of receipt of a written request by Seller, via Buyer, the FAA agrees to return or destroy any written or electronic form Non-deliverable, Technical Proprietary

Information.

(v) The FAA may request, in writing to Seller, via the Buyer, to release such information to a third party for the benefit of the Agreement. Seller, at its option, may choose to enter into a non-disclosure agreement with such third party and provide such information with restrictions.

(vi) Seller and its subcontractors are required to mark all such information with the legend in paragraph (g)(4)(i). In the event Seller fails to mark such data, Seller and FAA shall utilize part (f) of this clause.

(h) Subcontracting. Seller must obtain from its subcontractors all data and rights therein necessary to fulfill Seller's obligations to the Buyer and the Government under this Agreement. If a Seller subcontractor refuses to accept terms affording the Government those rights, Seller must promptly notify the Contracting Officer, via the Buyer, of the refusal.

(i) Relationship to Patents or Other Rights. Nothing contained in this clause imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government.

(j) 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 agreement or any sub-agreement at any tier.

INTELLECTUAL PROPERTY

b. Rights in Inventions

(a) Definitions. As used in this clause –

"Invention" means any invention or discovery that is or may be patentable or otherwise protectable under title 35 of the United States Code, or any variety of plant that is or may be protectable under the Plant Variety Protection Act (7 U.S.C. 2321, et seq.).

"Made" means –

- (1) When used in relation to any invention other than a plant variety, the conception or first actual reduction to practice of the invention; or
- (2) When used in relation to a plant variety, that Seller has at least tentatively determined that the variety has been reproduced with recognized characteristics.

"Nonprofit organization" means a university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)) and exempt from taxation under section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a)) or any nonprofit scientific or educational organization qualified under a State nonprofit organization statute.

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

"Subject Invention" means any invention of Seller made in the performance of work under this contract.

(b) Contractor's Rights

(1) Ownership. Seller may retain ownership of each Subject Invention throughout the world in accordance with the provisions of this clause.

(2) License.

(i) Seller must retain a nonexclusive royalty-free license throughout the world in each Subject Invention to which the Government obtains title, unless Seller fails to disclose the invention within the times specified in paragraph (c) of this clause. Seller's license extends to any domestic subsidiaries and affiliates, within the corporate structure of which Seller is a part, and includes the right to grant sublicenses to the extent Seller was legally obligated to do so at contract award. The license is transferable only with the written approval of the agency, except when transferred to the successor of that part of Seller's business to which the invention pertains.

(ii) Seller's license may be revoked or modified by the agency to the extent necessary to achieve expeditious practical application of Subject Invention in a particular country, in

accordance with procedures at 37 CFR Part 404.

(c) Contractor's Obligations.

(1) Seller must disclose in writing each Subject Invention to the Contracting Officer, via the Buyer, within 2 months after the inventor discloses it in writing to Seller personnel responsible for patent matters. The disclosure must identify the inventor(s) and this contract under which the invention was made. It must be sufficiently complete in technical detail to convey a clear understanding of the Subject Invention. The disclosure must also identify any publication, on sale (i.e. sale or offer for sale), or public use of the Subject Invention or whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication. In addition, after disclosure to the agency, Seller must promptly notify the Contracting Officer, via the Buyer, of the acceptance of any manuscript describing the invention for publication, and any on sale or public use.

(2) Seller must elect in writing whether or not to retain ownership of any Subject Invention by notifying the Contracting Officer, through the Buyer, within 2 years of disclosure to the agency. However, in any case where publication, on sale, or public use has initiated the 1-year statutory period during which valid patent protection can be obtained in the United States, the period for election of title may be shortened by the agency to a date that is no more than 60 days prior to the end of the statutory period.

(3) Seller must file either a provisional or nonprovisional patent application or a Plant Variety Protection Application on an elected Subject Invention within 1 year after election unless Seller elects to maintain as a trade secret. However, in any case where a publication, sale, or public use has initiated the 1-year statutory period during which valid patent protection can be obtained in the United States, Seller must file the application prior to the end of the statutory period. If Seller files a provisional application, it must file a nonprovisional application within 10 months of the filing of the provisional application. Seller must file patent applications in additional countries or international patent offices within either 10 months of the first filed patent application (whether provisional or nonprovisional) or 6 months from the date permission is granted by the Commissioner of Patents to file foreign patent applications where such filing has been prohibited by a Secrecy Order.

(4) Seller may request extensions of the time for disclosure, election, or filing under subparagraphs (c) (1), (c)(2), and (c)(3) of this clause.

(d) Government Rights –

(1) Ownership. Seller must assign to the agency, upon written request, title to any Subject Invention

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(i) If Seller fails to disclose or elect ownership to the Subject Invention within the times specified in paragraph (c) of this clause, or elects not to retain ownership; provided, that the agency may request title only within 60 days after learning of Seller's failure to disclose or elect within the specified times.

(ii) In those countries in which Seller fails to file patent applications within the times and manner specified in paragraph (c) of this clause; provided, however, that if Seller has filed a patent application in a country after the times specified in paragraph (c) of this clause, but prior to its receipt of the written request of the agency, Seller must continue to retain ownership in that country.

(iii) 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 proceeding on, a patent on a Subject Invention.

(2) License. If Seller retains ownership of any Subject Invention, the Government must have a nonexclusive, nontransferable, irrevocable, paid-up license to practice, or have practiced for or on its behalf, the Subject Invention throughout the world.

(e) Contractor Action to Protect the Government's Interest.

(1) Seller must execute or to have executed and promptly deliver to the agency all instruments necessary to –

(i) Establish or confirm the rights the Government has throughout the world in those Subject Inventions in which Seller elects to retain ownership; and

(ii) Assign title to the agency when requested under paragraph (d) of this clause and to enable the Government to obtain patent protection and plant variety protection for that Subject Invention in any country.

(2) Seller must require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in the contractor's format, each Subject Invention in order that Seller can comply with the disclosure provisions of paragraph (c) of this clause, and to execute all papers necessary to file patent applications on Subject Inventions and to establish the Government's rights in the Subject Inventions. The disclosure format should require, as a minimum, the information required by subparagraph (c)(1) of this clause. Seller must instruct such employees, through employee agreements or other suitable educational programs, as to the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.

(3) Seller must notify the Contracting Officer, through the Buyer, of any decisions not to file a nonprovisional patent application, continue the prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceeding on a patent, in any country, not less than 30 days before the expiration of the response or filing period required by the relevant patent office.

(4) Seller must include, within the specification of any United States nonprovisional patent or plant variety protection application and any patent or plant variety protection certificate issuing thereon covering a Subject Invention, the following statement, "The invention was made with Government support under (identify the contract) awarded by (identify the agency). The Government has certain rights in the invention."

(f) Reporting on Utilization of Subject Inventions. Seller must submit, on request, periodic reports no more frequently than annually on the utilization of a Subject Invention or on efforts at obtaining utilization of the Subject Invention that are being made by Boeing or its licensees or assignees. The reports must include information regarding the status of development, date of first commercial sale or use, gross royalties received by Seller, and such other data and information as the agency may reasonably specify. Seller also must provide additional reports as may be requested by the agency in connection with any march-in proceeding undertaken by the agency in accordance with paragraph (h) of this clause. Seller must also mark any utilization report as confidential/proprietary to help prevent inadvertent release outside the Government. As required by 35 U.S.C. 202(c)(5), the agency will not disclose such information to persons outside the Government without Seller's permission.

(g) Preference for United States Industry. Notwithstanding any other provision of this clause, neither Seller nor any assignee must grant to any person the exclusive right to use or sell any Subject Invention in the United States unless such person agrees that any products embodying the Subject Invention or produced through the use of the Subject Invention will be manufactured substantially in the United States. However, in individual cases, the requirement for an agreement may be waived by the agency upon a showing by Seller or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States, or that under the circumstances domestic manufacture is not commercially feasible.

(h) March-in Rights. Seller acknowledges that, with respect to any Subject Invention in which it has retained ownership and does not elect to maintain as a trade secret, the agency has the right to require licensing pursuant to 35 U.S.C. 203 and 210(c), and in accordance with the procedures in 37 CFR 401.6 and any supplemental regulations of the agency in effect on the date of contract award.

(i) Reserved.

(j) Communications. [Complete according to agency instructions]

(k) Applicability.

(1) The substance of this clause, including this paragraph (k), allies to all contracts and subcontracts for experimental, developmental, or research work to be performed by a small business concern or nonprofit organization.

(2) For all other contracts for experimental, developmental, or research work, the substance of the patent rights clause required to adequately protect the Government's interests consistent with section 3.5 of the FAA Acquisition Management System, applies.

(3) At all tiers, the patent rights clause must be modified to identify the parties as follows: references to the Government are not changed, and the Seller subcontractor has all rights and obligations of Seller in the clause. Seller must not, as part of the consideration for awarding the

subcontract, obtain rights in the subcontractor's Subject Inventions.

(4) In subcontracts, at any tier, the agency, Seller subcontractor, and Seller agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and the agency with respect to the matters covered by the clause; provided, however, that nothing in this paragraph is intended to confer any jurisdiction under the FAA disputes resolution process, or any board or judicial proceeding, in connection with proceedings under paragraph (h) of this clause, dealing with march-in rights.

AUDITS

Seller will provide access to records to the Defense Contract Audit Agency (DCAA) or Defense Contract Management Agency (DCMA) for CLEEN Phase III for data other than Commercial Item data and any CLEEN Phase III data provided by or belonging to Boeing's Commercial Aircraft group.

The General Accounting Office, the Department of Transportation, and the FAA or any applicable Government agency will have the right to review and audit the books and records of Seller and cognizant subcontractors (see pass-down requirement below) to the extent necessary to verify the allowability of costs under this Agreement/contract and as otherwise required by law.

Seller must maintain for the term of this Agreement and three (3) complete calendar years thereafter, such books and records as are reasonably necessary to accurately reflect its operations under this Agreement/contract. The periods of access and examination must continue, however, for the time necessary to dispose of appeals, litigation, claims, disputes, or exceptions arising from performance or costs/expenses incurred under this Agreement.

Seller must include in contracts and agreements with other parties for the purpose of effectuating the intent of this Agreement/contract, a provision granting the U.S. Government access to subcontractor or agreement party records for the same purposes in this subparagraph concerning audits. The provisions of this subparagraph must survive termination or expiration of this Agreement/contract.

Notwithstanding the above, any Audit authorized or provided under this agreement will not be applicable to the Commercial portion of the Boeing Company.

CIVIL RIGHTS ACT

Seller must comply with Title VI of the Civil Rights Act of 1964 relating to nondiscrimination in federally assisted programs and provide a certification to that effect.

GOVERNMENT'S INTENT TO PUBLISH

This section pertains to publicly releasing information or data and provides a process in which the parties, their affiliates, subcontractors or supporting organizations to this Agreement/contract can publish releasable, uncoupled test data and associated releasable analyses of the test data results first produced in the course of this Agreement/contract. Publication of releasable data by the Parties is subject to following conditions:

- (1) the publication of information or data is strictly within the purpose of this Agreement/contract and the CLEEN program;
- (2) the disclosed information or data bears the appropriate copyright markings permitted by the applicable government regulations; and
- (3) the publishing party obtains written approval or consent from the non-publishing party, and as applicable its impacted affiliates, subcontractors or supporting organizations, prior to publication.

Neither party, nor its affiliates or supporting entities shall publish, permit to be published, or distribute for public consumption any information, oral or written, concerning the results or conclusions made pursuant to the performance of this Agreement/contract, without first submitting a draft to the to the non-publishing party for review and comment, identification of Limited Rights Data, Restricted Computer Software, or Proprietary Information for removal or uncoupling (e.g. disassociation, normalization of data, removal of axis indices), and to afford an opportunity to the non-publishing party to file applications for letters patent in a timely manner as applicable. Publications include seminars, professional society meeting/conferences and meetings with foreign dignitaries both government and from the private sector. The publishing party must obtain prior written consent of the non-publishing

party's authorized representative for any information regarding the non-publishing party's involvement with this Agreement.

Notwithstanding the above, FAA retains the right to disseminate information in the normal course of business for which it possesses Unlimited Rights or Limited Rights provided that such dissemination is in accordance with the rest of this Agreement.

The following schedule is established as a guideline when requesting review and comment (business days):

- Written information – 20 business days
- Oral information – 20 business days
- Congressional information – 10 business days.

INSURANCE

Seller must arrange by insurance or otherwise for the full protection of Seller from and against all liability to third parties arising out of, or related to, its performance of this Agreement/contract. Seller agrees to hold the United States and Boeing harmless against any claim by third persons for injury, death or property damage arising out of or in connection with its performance under this Agreement/contract to the extent any claims are caused by Seller's negligence or willful misconduct. The FAA assumes no liability under this Agreement/contract for any losses arising out of any action or inaction by Seller, its employees, or contractors, or any third party acting on its behalf.

APPLICABLE LAW AND FORUM

This Agreement/contract shall be governed in accordance with applicable Federal laws and regulations, directives, and circulars.

REFERENCED CLAUSES AND PROVISION

The below AMS Clauses and Provisions are incorporated by reference into this agreement:

AMS Clauses:

- 3.2.5-1 Officials Not to Benefit (October 2019)
- 3.2.5-7 Disclosure Regarding Payments to Influence Certain Federal Transactions (October 2019)
- 3.3.1-12 Limitation of Cost (July 2018)
- 3.3.2-1 FAA Cost Principles (October 2019)
- 3.3.2-2 Reimbursement for Travel and Subsistence (April 2010)
- 3.2.4-34 Option to Extend Services (October 2019)
- 3.2.4-35 Option to Extend the Term of the Contract (October 2019)
- 3.6.4-22 Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment (January 2020)
- 3.6.4-23 (INTERIM) Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment (October 2019)
- 3.13-15 Confidentiality of Data and Information (November 2016)

The below must flow down in any subcontract at any tier for commercial items or commercial components:

- (i) Equal Opportunity (E.O. 11246);
- (ii) Affirmative Action for Special Disabled and Vietnam Era Veterans (38 U.S.C. 4212(a));
- (iii) Affirmative Action for Handicapped Workers (29 U.S.C. 793); and
- (iv) Preference for Privately Owned U.S.-Flagged Commercial Vessels (46 U.S.C. 1241) (flow down not required for subcontracts awarded beginning May 1, 1996).