

CUSTOMER CONTRACT REQUIREMENTS

F33615-03-92422

Endothermically Fueled Scramjet Engine Flight Demonstration

The following contract clauses are incorporated in this contract and apply to the extent indicated.

ARTICLE I: Cost Principles

The cost principles in 48 CFR 31 and 48 CFR 231 effective on December 12, 2003 apply to this contract.

ARTICLE II: DATA RIGHTS

(a) Definitions

"Government purposes", as used in this article, means any activity in which the United States Government is a party, including cooperative agreements with international or multinational defense organizations, or sales or transfers by the United States Government to foreign governments or international organizations. Government purposes include competitive procurement, but do not include the rights to use, modify, reproduce, release, perform, display, or disclose data for commercial purposes or authorize others to do so.

"Government purpose rights", as used in this article, means the right to -

(1) Use, modify, reproduce, release, perform, display, or disclose technical data and computer software or computer software documentation within the Government without restriction; and

(2) Release or disclose technical data and computer software or computer software documentation outside the Government and authorize persons to whom release or disclosure has been made to use, modify, reproduce, release, perform, display, or disclose that data for United States Government purposes.

"Unlimited rights", as used in this article, means rights to use, modify, reproduce, perform, display, release, or disclose data and computer software or computer software documentation in whole or in part, in any manner, and for any purpose whatsoever, and to have or authorize others to do so.

"Data", as used in this article, means recorded information, regardless of form or method or recording, which includes but is not limited to, technical data, software, trade secrets, and mask works. The term does not include financial, administrative, cost, pricing or management information and does not include subject inventions included under the article entitled Inventions.

"Practical application", as used in this article, means to manufacture in the case of a composition or product, to practice in the case of a process or method, or to operate in 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.

"Limited rights" as used herein means the rights 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:

- (i) Necessary for emergency repair and overhaul; or
- (ii) A release or disclosure of technical data (other than detailed manufacturing or process data) to, or use of such data by, a foreign government that is in the interest of the Government and is required for evaluational or informational purposes;
- (iii) Subject to a prohibition on the further reproduction, release, disclosure, or use of the technical data; and
- (iv) The contractor or subcontractor asserting the restriction is notified of such reproduction, release, disclosure, or use.

"Restricted rights" apply only to noncommercial computer software and mean the Government's rights to-

- (i) Use a computer program with one computer at one time. The program may not be accessed by more than one terminal or central processing unit or time shared unless otherwise permitted by this contract;
- (ii) Transfer a computer program to another Government agency without the further permission of the Contractor if the transferor destroys all copies of the program and related computer software documentation in its possession and notifies the licensor of the transfer. Transferred programs remain subject to the provisions of this clause;
- (iii) Make the minimum number of copies of the computer software required for safekeeping (archive), backup, or modification purposes;
- (iv) Modify computer software provided that the Government may-
 - (A) Use the modified software only as provided in paragraphs (i) and (iii) above and
 - (B) Not release or disclose the modified software except as provided in paragraphs (ii), (v) and (vi) of this definition;
- (v) Permit contractors or subcontractors performing contracts in support of this or a related contract to use computer software to diagnose and correct deficiencies in a computer program, to modify computer software to enable a computer program to be combined with, adapted to, or merged with other computer programs or when necessary to respond to urgent tactical situations, provided that-
 - (A) The Government notifies the Party, which has granted restricted rights that a release or disclosure to particular contractors or subcontractors was made;
 - (B) Such contractors or subcontractors are subject to an agreed to use and non-disclosure agreement, or are Government contractors receiving access to the software for performance of a Government contract.
 - (C) The Government shall not permit the recipient to decompile, disassemble, or reverse engineer the software, or use software

decompiled, disassembled, or reverse engineered by the Government pursuant to paragraph (iv) of this definition, for any other purpose; and

(D) Such use is subject to the limitation in paragraph (i) of this definition; and

(vi) Permit contractors or subcontractors performing emergency repairs or overhaul of items or components of items procured under this or a related contract to use the computer software when necessary to perform the repairs or overhaul, or to modify the computer software to reflect the repairs or overhaul made, provided that-

(A) The intended recipient is subject to a agreed to use and non-disclosure agreement, or is a Government contractor receiving access to the software for performance of a Government contract; and

(B) The Government shall not permit the recipient to decompile, disassemble, or reverse engineer the software, or use software decompiled, disassembled, or reverse engineered by the Government pursuant to paragraph (iv) of this definition, for any other purpose.

(b) Allocation of Principal Rights

(1) Ownership rights to data generated under this agreement shall vest in the Seller. The parties agree that Seller intends to reduce to practical application items, components and processes developed under this agreement. The Government shall have Government Purpose rights in all data generated under the EFSEFD, unless specifically set forth in paragraph (e) below, for a period of five (5) years after completion of this agreement, at which time the Government shall have Unlimited rights to all data generated under the EFSEFD.

(2) Seller agrees to retain and maintain in good condition until three (3) years after completion or termination of this agreement, all data necessary to achieve practical application. In the event of exercise of the Government's march-in rights as set forth under the article entitled Inventions, the Seller agrees, upon written request from Boeing, to deliver at no additional cost to Boeing, all data necessary to achieve practical application within 60 days from the date of the written request. Boeing shall have unlimited rights to this delivered data.

(3) With respect to data delivered pursuant to this agreement, Report Requirements, the Government shall receive Government purpose rights.

(d) Lower Tier Agreements. Seller shall include this article, suitably modified to identify the parties, in all subcontracts or lower tier agreements for experimental, developmental, or research work.

(e) Assertion of Limited/Restricted Rights.

(1) The parties assert that the following pre-existing proprietary data may be utilized in the performance of this agreement. The parties understand that the below listed data will not be delivered in the performance of this agreement and shall not be subject to deferred ordering. For the Pratt & Whitney data listed below, Pratt & Whitney may provide access to such data at its facilities for the purpose of verifying ownership assertion and for the evaluation of work performed under this agreement. The parties shall be responsible for appropriate marking all asserted data with appropriate protective marking in accordance with the definition for limited/restricted use identified above.

LIST DATA	BASIS of ASSERTION	OWNER OF RIGHTS
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Criteria addressing Coke mitigation/formation	Developed at Private Expense	Pratt & Whitney
Endothermic Technology: (a) Endothermic Development Plan (b) Potential Expansion of endothermic system to affect directly or indirectly the cooling of other non- engine components (c) Impact of technology on engine cycles (i.e., TSFC, weight, etc.) (d) Operating limits of endothermic coating	Developed at Private Expense	Pratt & Whitney
Reduced order static stability models	Developed at Private Expense	Pratt & Whitney
Flux ID in Executable binary format	Developed at Private Expense	Pratt & Whitney
HEATS in executable binary format	Developed at Private Expense	Pratt & Whitney
RASCAL in source code and executable binary format	Developed at Private Expense	Pratt & Whitney
Rad EQ in executable binary format	Developed at Private Expense	Pratt & Whitney
Steady state and transient propulsion system models in executable binary format	Developed at Private Expense	Pratt & Whitney
Source code for modeling the propulsion system and subsystems on a real-time verification bench	Developed at Private Expense	Pratt & Whitney
Designs & Drawings pertaining to SED-WR Fuselage Castings	Developed with Boeing's Discretionary Funding	Boeing
Designs & Drawings Pertaining to SED-WR C/Sic Fins	Developed with Boeing's Discretionary Funding	Boeing

Designs & Drawings
Pertaining to SED-WR
Piezoelectric Actuators

Developed with Boeing's
Discretionary Funding

Boeing

ARTICLE III: PATENT RIGHTS

(a) Definitions

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

(2) "Subject invention" means any invention of the Consortium conceived or first actually reduced to practice in the performance of work under this Agreement, provided that in the case of a variety of plant, the date of determination (as defined in section 41(d) of the Plant Variety Protection Act, 7 U.S.C. 2401(d)) must also occur during the period of Agreement performance.

(3) "Practical Application" means to manufacture in the case of a composition or product, to practice in the case of a process or method, or to operate in 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.

(4) "Made" when used in relation to any invention means the conception or first actual reduction to practice of such invention.

(5) "Small Business Firm" means a small business concern as defined at section 2 of Pub. L. 85-536 (15 U.S.C. 632) and implementing regulations of the Administrator of the Small Business Administration. For the purpose of this article, the size standards for small business concerns involved in Government procurement and subcontracting at 13 CFR 121.3-8 and 13 CFR 121.3-12, respectively, will be used.

(6) "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 (25 U.S.C. 501(a)) or any nonprofit scientific or educational organization qualified under a state nonprofit organization statute.

(b) Allocation of Principal Rights

(1) The Seller may retain the entire right, title, and interest throughout the world to each subject invention subject to the provisions of this article and 35 U.S.C. 203. With respect to any subject invention in which the Seller retains title, the Government through the Buyer shall have 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.

(c) Invention Disclosure, Election of Title and Filing of Patent Application by Seller

(1) The Seller will disclose each subject invention to the Buyer within two (2) months after the inventor discloses it in writing to Seller personnel responsible for patent matters. The disclosure to the Buyer shall be in the form of a written report and shall identify the agreement under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding to the extent known at the time of the disclosure, of the nature, purpose, operation, and the physical, chemical, biological or electrical characteristics of the invention. The disclosure shall also

identify any publication, offer for sale or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to the Buyer, the Seller will promptly notify the Buyer of the acceptance of any manuscript describing the invention for publication or of any offer for sale or public use planned by the Consortium.

(2) The Seller will elect in writing whether or not to retain title to any such invention by notifying the Buyer within two (2) years of disclosure to the Buyer. However, in any case where publication, offer for sale or public use has initiated the one year statutory period wherein valid patent protection can still be obtained in the United States, the period for election of title may be shortened by the Buyer to a date that is no less than 60 days prior to the end of the statutory period.

(3) The Seller will file its initial patent application on a subject invention to which it elects to retain title within one (1) year after election of title or, if earlier, prior to the end of any statutory period wherein valid patent protection can be obtained in the United States after a publication, offer for sale or public use. The Seller will file patent applications in additional countries or international patent offices within either ten (10) months of the corresponding initial patent application or six (6) months from the date permission is granted by the Commissioner of Patents and Trademarks to file foreign patent applications where such filing has been prohibited by a Secrecy Order.

(4) Requests for extension of the time for disclosure, election, and filing under subparagraphs (1), (2), and (3) may, at the discretion of the Buyer, be granted.

(d) Conditions When the Government May Obtain Title

The Seller will convey to the Government through Buyer, upon written request, title to any subject invention--

(1) If the Seller fails to disclose or elect title to the subject invention within the times specified in (c), above, or elects not to retain title; provided that the Government through Buyer may only request title within 60 days after learning of the failure of the Seller to disclose or elect within the specified times.

(2) In those countries in which the Seller fails to file patent applications within the times specified in (c) above; provided, however, that if the Seller has filed a patent application in a country after the times specified in (c) above, but prior to its receipt of the written request of the Government, the Seller shall continue to retain title in that country.

(3) 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 proceeding on, a patent on a subject invention.

(e) Minimum Rights to Seller and Protection of the Seller's Right to File

(1) The Seller will retain a nonexclusive royalty-free license throughout the world in each subject invention to which the Government obtains title through Buyer, except if the Seller fails to disclose the invention within the times specified in (c), above. The Seller's license extends to its parent corporations and domestic (U.S. and Canada) subsidiaries and affiliates, if any, within the corporate structure of which the Seller is a party and includes the right to grant sublicenses of the same scope to third parties. The license is transferable only with the approval of the Government except when transferred to the successor of that party of the Seller's business to which the invention pertains.

(2) The Seller's domestic license may be revoked or modified by the Government through Buyer to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions at 37 CFR part 404 and Government licensing regulations (if any), provided such revocation shall not occur less than five (5) years after this Agreement. This license will 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 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, parent corporations or the domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.

(3) Before revocation or modification of the license, the Government will furnish through Buyer the Seller a written notice of its intention to revoke or modify the license, and the Seller will be allowed 30 days (or such other time as may be authorized by the Buyer for good cause shown by the Seller) after the notice to show cause why the license should not be revoked or modified. The Seller has the right to appeal, in accordance with applicable regulations in 37 CFR part 404 and Government regulations (if any) concerning the licensing of Government-owned inventions, any decision concerning the revocation or modification of the license.

(f) Seller Action to Protect the Government's Interest

(1) The Seller agrees to execute or to have executed and promptly deliver 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 (d) above by Buyer and to enable the Government to obtain patent protection throughout the world in that subject invention.

(2) The 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 the Seller each subject invention made under an agreement in order that the Seller can comply with the disclosure provisions of paragraph (c), above, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions. This disclosure format should require, as a minimum, the information required by (c)(1), above. The Seller shall instruct such employees through employee agreements or other suitable educational programs on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.

(3) The Seller will notify the Buyer of any decisions not to 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 period required by the relevant patent office.

(4) The Seller agrees to include, within the specification of any United States patent applications and any patent issuing thereon covering a subject invention, the following statement, "This invention was made with Government support under Agreement F33615-03-9-2422 awarded by the Air Force Research Laboratory - Wright Patterson AFB, OH. The Government has certain rights in the invention."

(g) Lower Tier Agreements

The Seller will include this article, suitably modified to identify the Parties, in all lower tier agreements for experimental, developmental or research work. Each subawardee/key participant will retain all rights provided for the Seller in this article, and the Seller will not, as part of the consideration for awarding a subrecipient/key participant award, obtain rights in a subrecipient's/key participant's subject inventions.

(h) Reporting on Utilization of Subject Inventions

The Seller agrees to submit on request periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining such utilization that are being made by the Seller or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the Seller, and such other data and information as the Buyer may reasonably specify. The Seller also agrees to provide additional reports as may be requested by the Buyer in connection with any march-in proceeding undertaken by the Government in accordance with paragraph (j) of this article. As required by 35 U.S.C. 202(c)(5), the Buyer agrees it will not disclose such information to persons outside the Government without permission of the Seller.

(i) Preference for United States Industry

Notwithstanding any other provision of this article, the Seller agrees that neither it nor any assignee will grant to any person the exclusive right to use or sell any subject inventions 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 such an agreement may be waived by the Buyer upon a showing by the 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.

(j) March-in Rights

The Seller agrees that with respect to any subject invention in which it has acquired title, the Government through Buyer has the right in accordance with the procedures in 37 CFR 401.6 and any supplemental regulations of the Government to require the Seller, an assignee or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the Seller, assignee, or exclusive licensee refuses such a request the Government has the right to grant such a license itself if the Government determines that:

(1) Such action is necessary because the Seller or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use.

(2) Such action is necessary to alleviate health or safety needs that are not reasonably satisfied by the Seller, assignee or their licensees;

(3) Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the Seller, assignee or licensees; or

(4) Such action is necessary because the agreement required by paragraph (i) of this article has not been obtained or waived or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.

ARTICLE IV: FOREIGN ACCESS TO TECHNOLOGY

(a) Definitions

"Foreign firm or institution" means a firm or institution organized or existing under the laws of a country other than the United States, its territories, or possessions. The term includes, for purposes of this agreement, any agency or instrumentality of a foreign government, and firms, institutions or business organizations, which are owned or substantially controlled by foreign governments, firms, institutions, or individuals.

"Know-how" means all information including, but not limited to, discoveries, formulas, materials, inventions, processes, ideas, approaches, concepts, techniques, methods, software, programs, documentation, procedures, firmware, hardware, technical data, specifications, devices, apparatus and machines.

"Technology" means discoveries, innovations, know-how and inventions, whether patentable or not, including computer software, recognized under U.S. law as intellectual creations to which rights of ownership accrue, including, but not limited to, patents, trade secrets, mask works, and copyrights developed under this agreement.

(b) General. The Parties agree that research findings and technology developments in EFSEFD program 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 Agreement by foreign firms or institutions must be carefully controlled. The controls contemplated in this article are in addition to, and are not intended to change or supersede, the provisions of the International Traffic in Arms Regulation (22 CFR pt. 120 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) Restrictions on Sale or Transfer of Technology to Foreign Firms or Institutions.

(1) In order to promote the national security interests of the United States and to effectuate the policies that underlie the regulations cited above, the procedures stated in subparagraphs C.2, C.3, and C.4 below shall apply to any transfer of technology. For purposes of this paragraph, a transfer includes a sale of the company, and sales or licensing of technology. Transfers do not include:

- (i) sales of products or components, or
- (ii) licenses of software or documentation related to sales of products or components, or
- (iii) transfer to foreign parent, subsidiaries or affiliates of the recipient (recipient participants) for purposes related to this agreement, or
- (iv) transfer which provides access to technology to a foreign firm or institution which is an approved source of supply or source for the conduct of research under this agreement provided that such transfer shall be limited to that necessary to allow the firm or institution to perform its approved role under this Agreement.

(2) The Seller shall provide timely notice to the Buyer of any proposed transfer from the recipient of technology developed under this Agreement to foreign firms or institutions. If the Government determines that the transfer may have adverse consequences to the national security interests of the United States, the recipient, its vendors, and the Government shall jointly endeavor to find alternatives to the proposed transfer which obviate or mitigate potential adverse consequences of the transfer but which provide substantially equivalent benefits to the recipient.

(3) In any event, the Seller shall provide written notice to the Buyer of any proposed transfer to a foreign firm or institution at least 90 days prior to the proposed date of transfer. Such notice shall cite this article and shall state specifically what is to be transferred and the general terms of the transfer. Within 30 days of receipt of the Seller's written notification, the Buyer shall advise the Seller whether it consents to the proposed transfer. No transfer shall take place until a decision is rendered.

(4) Except as provided in subparagraph C.1 above and in the event the transfer of technology to foreign firms or institutions is not approved by the Buyer, but the transfer is made nonetheless, the Seller shall (a) refund to the Government the funds paid for the development of the technology and (b) negotiate a license with the Government through Buyer to the technology under terms that are reasonable under the circumstances.

(d) Lower Tier Agreements. The Seller shall include this article, suitably modified to identify the parties, in all subcontracts or lower tier agreements for experimental, development, or research work.

(e) This article shall remain in effect during the term of the Agreement and for one (1) years thereafter.

ARTICLE V: COST PRINCIPLES, COST ACCOUNTING STANDARDS, AND AUDIT

A. The cost principles in 48 CFR 31 and 48 CFR 231 effective on the date of this Agreement apply for federal funds for the Consortium members. Federal funds under this Agreement shall be used only for costs that a reasonable and prudent person would incur, in carrying out the project contemplated by this Agreement, and costs that are consistent with the purposes stated within this Agreement.

B. The Seller shall maintain adequate records to account for the control and expenditure of Federal funds received under this Agreement. DCAA will be used to perform any necessary audits if, at the time of Agreement award, the awardee, subawardee or key participant is a business unit that is performing a procurement contract subject to the Cost Principles (48 CFR Part 31) and/or Cost Accounting Standards (48 CFR Part 99) and is not subject to the Single Audit Act. DCAA, or a mutually acceptable qualified outside IPA, may be used for any necessary audits if, at the time of agreement award, the awardee, subawardee or key participant is a business unit that is not performing a procurement contract subject to the Cost Principles or Cost Accounting Standards, and is not subject to the Single Audit Act. The IPA will be paid by the awardee, subawardee or key participant, and those costs will be reimbursable under this Agreement based on the business unit's established accounting practices and subject to any limitations in the Agreement. The IPA must perform IPA audits in accordance with Generally Accepted Government Auditing Standards. The Buyer's authorized representative shall have the right to examine the IPA's audit report and working papers for a three years after final payment under this Agreement, unless notified otherwise by the Buyer. The IPA shall send copies of the audit report to the Buyer and the Assistant Inspector General (Audit Policy and Oversight) [AIG(APO)], 400 Army Navy Drive, Suite 737, Arlington, VA 22202. The IPA shall report instances of suspected fraud directly to the DoDIG.

1. When the Buyer determines that the audit has not been performed within twelve months of the date requested by the Buyer, the Buyer shall have the right to require corrective action by the awardee or key participant, and if warranted, at no additional cost to the Buyer. The awardee or key participant may take corrective action by having the IPA correct any deficiencies identified by the Buyer, by having another IPA perform the audit, or by electing to have a Government representative perform the audit. If corrective action is not taken, the Buyer shall have the right to take one or more of the following actions:

- (a) Withhold or disallow a percentage of costs until the audit is completed satisfactorily;
- (b) Suspend performance until the audit is completed satisfactorily; and/or
- (c) Terminate the Agreement.

2. If it is found that the Seller, subawardee or key participant was performing a procurement contract subject to Cost Principles (48 CFR Part 31) and/or Cost Accounting Standards (48 CFR Part 99) at the time of Agreement award, the Buyer, or an authorized representative, shall have the right to audit sufficient records of the Seller to ensure full. The Seller or key participant shall retain such records for a specified period of time (normally three years) after final payment, unless notified otherwise by the Buyer.

C. Financial Records and Reports. The Seller's relevant financial records and subcontractors at all levels are subject to examination or audit by the Government (DCAA), on behalf of AFRL, for a period not to exceed three (3) years after the final payment of this Agreement. The Seller shall provide the Buyer, or designee, direct access to sufficient records and information of the Seller to ensure full accountability for all funding under this Agreement. Such audit, examination, or access shall be performed during business hours on business days upon prior written notice and shall be subject to the security requirements of the audited part.

D. Comptroller General Access to Records.

- (1) The Comptroller General of the United States, in the discretion of the Comptroller General, shall have access to and the right to examine records of any party to the Agreement or any entity that participates in the performance of this agreement that directly pertain to, and involve transactions relating to, the Agreement.
- (2) Excepted from the Comptroller General access requirement is any party to this Agreement or any entity that participates in the performance of the Agreement, or any subordinate element of such party or entity, that, in the year prior to the date of the Agreement, has not entered into any other contract, grant, cooperative agreement, or "other transaction" agreement that provides for audit access to its records by a government entity.
- (3) The only records of a Party, other entity, or subordinate element referred to in subparagraph (A) that the Comptroller General may examine in the exercise of the right referred to in that subparagraph are records of the same type as the records that the government has had the right to examine under the audit access clauses of the previous agreements or transactions referred to in such subparagraph that were entered into by that particular party, entity, or subordinate element.
- (4) This clause shall not be construed to require any Party or entity, or any subordinate element of such party or entity, that participates in the performance of the Agreement, to create or maintain any record that is not otherwise maintained in the ordinary course of business or pursuant to a provision of law.
- (5) The Comptroller General shall have access to the records described in this clause until three years after the date the final payment is made by the United States under this Agreement.

ARTICLE VI: ASSURANCES

By signing or accepting funds under the Agreement, the Seller assures that it will:

- (1) Comply with applicable provisions of the following national policies prohibiting discrimination:
 - (a) On the basis of race, color, or national origin, in Title VI of the Civil Rights Act of 1964 as amended (42 U.S.C. 2000-d) as implemented by DoD regulations at 32 CFR part 195;

- (b) On the basis of age, in the Age Discrimination Act of 1975 (42 U.S.C. 6101, et seq.) as implemented by Department of Health and Human Services regulations at 45 CFR part 90;
 - (c) On the basis of handicap, in: Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), as implemented by Department of Justice regulations at 28 CFR part 41 and DoD regulations at 32 CFR part 56;
- (2) Comply with applicable provisions of the Clean Air Act (42U.S.C. 7401, et seq.) and Clean Water Act (33 U.S.C. 1251, et seq.), as implemented by Executive Order 11738 [3 CFR, 1971-1975 Comp., p. 799] and Environmental Protection Agency (EPA) rules at 40 CFR part 15. In accordance with the EPA rules, the Seller further agrees that it will:
- (a) Not use any facility on the EPA's List of Violating Facilities in performing any award that is nonexempt under 40 CFR 15.5, as long as the facility remains on the list.
 - (b) Notify the awarding agency if it intends to use a facility in performing this award that is on the List of Violating Facilities or that the Consortia knows has been recommended to be placed on the List of Violating Facilities.