

CUSTOMER CONTRACT REQUIREMENTS
Joint Multi-Role Technology Demonstrator (JMR TD) Joint Common Architecture Demonstration (JCA Demo)
CUSTOMER CONTRACT W911W6-14-2-0001

CUSTOMER CONTRACT REQUIREMENTS

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

1. FAR Clauses The following contract clauses are incorporated by reference from the Federal Acquisition Regulation and apply to the extent indicated. In all of the following clauses, "Contractor" and "Offeror" mean Seller.

52.245-1 Government Property (APR 2012). This clause applies if Government property is acquired or furnished for contract performance. "Government" shall mean Government throughout except the first time it appears in paragraph (g)(1) when "Government" shall mean the Government or the Buyer.

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

ARTICLE I: PATENT RIGHTS

A. Definitions.

1. All references to "Seller," as it applies to this Article, shall be deemed to be reference to Seller and any of Seller's subcontractors.
2. "Invention" means any invention or discovery, which is or may be patentable or otherwise protectable under Title 35 of the United States Code.
3. "Made" when used in relation to any invention means the conception and first actual reduction to practice of such invention. "Has made" and "will make" are tenses of the term "made."
4. "Practical application" means to manufacture, in the case of a composition of matter 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 capable of being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the Public on reasonable terms.
5. "Subject Invention" means any invention made or improvement to any invention conceived and first reduced to practice in the performance of work under this Contract.
6. "Background Invention" means any Invention, or improvements to any Invention, other than a Subject Invention, which the Seller has previously conceived, whether or not reduced to practice in the performance of work under this Contract, designed, developed and/or produced, or has concurrently designed, developed and/or produced outside this Contract.

B. Title, Invention Disclosure, Election of Title, and Filing of Patent Application.

1. Seller will disclose each Subject Invention to Buyer within five (5) months after the inventor discloses it in writing to his company personnel responsible for patent matters. The disclosure to Buyer will be in the form of a written report and will identify the AATD agreement number W911W6-14-2-0001 and this Contract under which the invention was made and the identity of the inventor(s). It will 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, optical, chemical, biological, or electrical characteristics of the invention. The disclosure will also identify any publication, 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 the event there are no Subject Inventions, Seller will submit to the Government a negative report as part of Contract closeout. Seller will provide Buyer with a copy of each disclosure and/or negative report.

2. For any Subject Invention, Seller hereby grants Buyer and the Government a non-exclusive, nontransferable, irrevocable, paid-up, worldwide license to practice or have practiced the Subject Invention for or on behalf of Buyer and the Government.
3. If Seller determines that it does not intend to retain title to any such invention, Seller will notify Buyer and the Government, in writing, within seven (7) months of disclosure to Buyer and 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 may be shortened by Buyer and the Government to a date that is no more than sixty (60) calendar days prior to the end of the statutory period.
4. 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 the statutory period wherein valid patent protection can be obtained in the United States after a publication, or sale, or public use. Seller may elect to file patent applications in additional countries (or regional Patent Office or pursuant to the Patent Cooperation Treaty) within either twelve (12) 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.
5. Any Subject Inventions, jointly made by employees of Buyer and Seller or employees of Seller and the Government or employees of Buyer, Seller and the Government, will be jointly owned by those parties. With respect to jointly owned Subject Inventions, the parties will agree, on a case-by-case basis, as to which party will file patent applications, if any. Each party will bear its own patent filing expenses in filing patent applications on joint Subject Inventions. Requests for extension of the time for disclosure, election, and filing under this paragraph C. may, at the discretion of Buyer and the Government, and after considering the position of Seller, be granted and will normally be granted unless Buyer or the Government Agreements Officer has reason to believe that a particular extension would prejudice the interests of Buyer or the Government.

C. Conditions When the Government May Obtain Title.

Upon Buyer's or the Government's written request, Seller will convey title to any Subject Invention to Buyer or the Government under any of the following conditions:

1. If Seller fails to disclose or elects not to retain title to the Subject Invention within the times specified in paragraph C of this Article, provided, that Buyer or the Government may only request title within sixty (60) days after learning of the failure of Seller to disclose or elect within the specified times.
2. In those countries in which Seller fails to file patent applications within the times specified in paragraph C of this Article, provided that, if Seller has filed a patent application in a country after the times specified in paragraph C of this Article, but prior to its receipt of the written request by Buyer or the Government, Seller will continue to retain title in that country; or
3. In any country in which Seller decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in reexamination or opposition proceedings on a patent on a Subject Invention, if Buyer or the Government, at its expense, is going to continue to retain title in that country.

D. Minimum Rights to Seller and Protection of Seller's Right to File.

1. Seller will retain a nonexclusive, royalty free sub-licensable license throughout the world in each Subject Invention to which Buyer or the Government obtains title, except if Seller fails to disclose the Subject Invention within the times specified in paragraph C of this Article. The Seller license extends to the domestic subsidiaries and affiliates, if any, of Seller 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 this Contract was awarded.

The license is transferable only with the approval of Buyer and the Government, except when transferred to the successor of that part of the business to which the invention pertains. Buyer and Government approval for license transfer will not be unreasonably withheld.

2. The Seller domestic license may be revoked or modified by Buyer or the Government to the extent necessary to achieve expeditious practical application of Subject Invention pursuant to an application for an exclusive license submitted consistent with appropriate provisions at 37 CFR Part 404, provided that such revocation or modification will not take place less than ten (10) years after the end of the term of this Contract. This license will not be revoked in that field of use or the geographical areas in which Seller has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign

country may be revoked or modified at the discretion of Buyer or the Government to the extent Seller, its licensees, or the subsidiaries or affiliates have failed to achieve practical application in that foreign country.

3. Before revocation or modification of the license, Buyer or the Government will furnish Seller a written notice of its intention to revoke or modify the license, and Seller will 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.

E. Action to Protect the Government's Interest.

1. Seller agrees to execute or to have executed and promptly provide to Buyer and the Government's Agreements Administrator all instruments necessary to: (a) establish or confirm the rights Buyer and the Government have throughout the world in those Subject Inventions to which Seller elects to retain title, and (b) convey title to Buyer and the Government when requested under paragraph D. of this Article and to enable Buyer and the Government to obtain patent protection throughout the world in that Subject Invention.

2. Seller agrees to require, by written agreement, that employees of Seller, other than clerical and non-technical employees, agree to disclose promptly in writing, to personnel identified as responsible for the administration of patent matters and in a format acceptable to Seller, each Subject Invention made under this Contract in order that Seller can comply with the disclosure provisions of paragraph C. of this Article. Seller will instruct 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. Seller will notify Buyer and the Government 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.

4. Seller will 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 The Boeing Company and Government support under Agreement No. W911W6-14-2-0001 for the Joint Multi-Role Technology Demonstrator (JMR TD) Joint Common Architecture Demonstration (JCA Demo) program. The Boeing Company and the Government have certain rights in the invention."

F. Lower Tier Agreements.

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

2. In the case of a lower tier agreement with a vendor, at any tier, Buyer, the Government, the vendor, and the Seller agree that the mutual obligations of the parties created by this Article flow down to the vendor and constitute an agreement between the vendor and Buyer and the Government with respect to such obligations.

3. The foregoing flow down requirements shall pertain only to the obligations created by this Article. For purposes of clarity, the Parties agree that the Seller has the right to freely negotiate the ownership and other allocation of intellectual property rights as between the Seller and its vendors.

G. Reporting on Utilization of Subject Inventions.

1. Seller agrees to submit to Buyer and the Government Agreement Administrator during the term of this Contract, 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 Seller or licensees or assignees of the inventor. Such reports will include information regarding the status of development, date of first commercial sale or use, gross royalties received by Seller's subcontractor(s), and such other data and information as the agency may reasonably specify.

2. Seller also agrees to provide additional reports as may be requested by Buyer or the Government in connection with any march-in proceedings undertaken by Buyer or the Government in accordance with paragraph J of this Article. Consistent with the confidentiality provisions of this Contract for Buyer, and 35 U.S.C. 202(c)(5) for the Government, Buyer and the Government each agrees it will not disclose such information to persons outside Buyer's organization or the Government, respectively, without permission of Seller.

H. Preference for American Industry.

Notwithstanding any other provision of this Article, Seller agrees that it will not grant to any person the exclusive right to use or sell

any Subject Invention in the United States unless such person agrees that any product 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 requirements for such an agreement may be waived by the Government upon a showing by Seller 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.

I. March-In Rights.

Seller agrees that, with respect to any Subject Invention in which it has retained title, Buyer and the Government each have the right to require Seller, an assignee, or exclusive licensee of a Subject Invention to grant a nonexclusive 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, Buyer and the Government each have the right to grant such a license itself if Buyer or the Government determine that:

1. Such action is necessary because Seller or assignee has not taken effective steps, or is not expected to take within a reasonable time, effective steps to achieve practical application of the Subject Invention, a reasonable time being no less than ten (10) years from the end of the term of this Contract;
2. Such action is necessary to alleviate health or safety needs, which are not reasonably satisfied by Seller, assignee, or their licensees;
3. Such action is necessary to meet requirements for public use; and such requirements are not reasonably satisfied by Seller, assignee, or licensees; or
4. Such action is necessary because the agreement required by paragraph (1) 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.

J. Opportunity to Cure.

Certain provisions of this Article provide that Buyer or the Government may gain title or license to a Subject Invention by reason of Seller's action or failure to act within the times required by this Article. Prior to claiming such rights (including any rights under paragraph J), Buyer and the Government will give written notice to Seller of Buyer's and the Government's intent and afford Seller a reasonable period of time to cure such action or failure to act. The length of the cure period will depend on the circumstances, but in no event will be less than sixty (60) days. Seller may also use the cure period to show good cause why the claiming of such title or right would be inconsistent with the intent of this Contract, in light of the appropriate timing for introduction of the technology in question, the relative funding and participation of the parties in the development and other factors.

K. Notification of Background Inventions, Disclosures or Patents.

In no event shall the provisions set forth in this Article apply to any Background Inventions or Patents obtained thereon by Seller. Seller shall retain the entire right, title, and interest throughout the world to each such invention and patents, and neither Buyer nor the Government shall acquire any rights to such Invention and Patents under this Contract except for Subject Inventions. The listing of Seller's Background Inventions, Disclosures, or Patents is subject to revision based upon new information or inadvertent omission, or otherwise by mutual agreement of the Parties, evidenced by a bi-lateral modification to this Contract.

ARTICLE II: OTHER INTELLECTUAL PROPERTY RIGHTS

A. Definitions. For the purposes of this Contract, the following terms have the meanings indicated:

1. "Background Data" means Technical Data produced by Seller at private expense prior to performance of or outside the scope of this Contract and is considered by Seller to be proprietary. Such Background Data may include any modifications, derivatives to previously conceived, designed, developed, and resultant revisions to software, processes, qualification data, and manufacturing plans.
2. "Background Software" means any Software developed by Seller prior to the performance of this Contract or outside the scope of work performed under this Contract and is considered by Seller to be proprietary.
3. "Computer Software" and "Computer Software Documentation" shall have the same definition as that contained in DFARS 252.227-7014, Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation. Computer Software Documentation also includes Computer Databases, as defined in DFAR 252.227-7014, including input and output files.
4. "Government Data" means Technical Data that has been delivered to the Government prior to or outside the terms of this Contract. The Government's pre-existing rights in that Technical Data govern disclosure and use of such Government Data.
5. "Government Purpose" means any activity in which the Government is a party, including cooperative agreements with international

or multinational defense organizations, or sales or transfers by the 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.

6. "Government Purpose Rights" means the rights to:

- a. Use, modify, reproduce, release, perform, display, or disclose technical data within the Government without restriction; and
- b. Release or disclose technical data outside the Government and authorize persons to whom release or disclosure has been made to use, modify, reproduce, release, perform, display, or disclose that data for United States government purposes.
- c. Upon expiration of any stated period for the duration of Government Purpose Rights, the Government shall obtain Unlimited Rights in such technical data or computer software.

7. "Limited Rights" shall have the same definition as that contained in (a)(14) of DFARS 252.227-7013, Rights in Technical Data-Noncommercial Items (MAY 2013).

8. "Proprietary Information" means information which embodies trade secrets or which is privileged or confidential technical, business or financial information provided that such information:

- a. is not generally known, or is not available from other sources without obligations concerning its confidentiality;
- b. has not been made available by the owners to others without obligation concerning its confidentiality;
- c. is not described in an issued patent or a published copyrighted work or is not otherwise available to the public without obligation concerning its confidentiality; or
- d. can be withheld from disclosure under 15 U.S.C. § 3710a(c)(7)(A) & (B) and the Freedom of Information Act, 5 U.S.C. § 552 et seq; and
- e. is identified as such by labels or markings designating the information as proprietary.

9. "Restricted Rights" shall have the same definition as that contained in DFARS 252.227-7014, Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation (FEB 2014).

10. "Subject Technical Data", "Subject Computer Software", and "Computer Software Documentation", as used in this article, means any Technical Data, Computer Software, or Computer Software Documentation first developed during performance of this Contract.

11. "Technical Data" means recorded information, regardless of the form or method of the recording, of a scientific or technical nature (including computer software documentation). The term does not include computer software or data incidental to contract administration, such as financial and/or management information.

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

B. Allocation of Principal Rights

This Contract shall be performed using funds that are at least partially Government funded. In consideration of Government funding, the Parties agree as follows:

1. Background Data provided to Buyer and the Government shall be limited to that information normally shared with commercial customers or that information specifically negotiated under this Contract and shall be subject to Limited Rights. The Seller retains all right, title, and interest in such Background Data. Certain deliverable reports/documentation may, by necessity, incorporate Background Data. If so, such report/documentation will be supplied with Limited Rights for Technical Data and Restricted Rights for noncommercial Computer Software and Computer Software Documentation. Furnishing of "Background Data" by incorporating it into a deliverable report/documentation shall not affect any preexisting Government Rights in such Technical Data and Software/Software Documentation.

In addition to the items identified in the 252.227-7017, other assertions meeting the definition of Background Data/Background Software may be identified after award. Such identification shall be submitted to Buyer as soon as practical, but in no case shall the additional Background Data be included in any data deliverable until the Government agrees with the addition and the Contract is bilaterally modified to reflect such addition.

2. To the extent that Government Data is used in the performance of this Contract, the Government shall retain its preexisting rights in such Data.

3. Buyer and the Government shall obtain Unlimited Rights in Subject Technical Data, Subject Computer Software and Computer Software Documentation.

C. Seller shall include the obligations of the Seller under this Article, suitably modified to identify the parties, in all Contracts or lower-tier Contracts, regardless of tier, for experimental, developmental, or research work.

D. Marking of Data

1. Pursuant to paragraph B above, Technical Data, Computer Software and Computer Software Documentation delivered under this

Contract with unlimited rights shall be marked with the following legend:

DISTRIBUTION STATEMENT C

Distribution authorized to U.S. Government agencies and their contractors, Software Documentation (insert date of report). Other requests for this document shall be referred to the Aviation Applied Technology Directorate, Attn: Security Office, 401 Lee Blvd., Fort Eustis, VA 23604-5577.

OR (as applicable)

Distribution authorized to U.S. Government agencies and their contractors, Critical Technology (insert date of report). Other requests for this document shall be referred to the Aviation Applied Technology Directorate, Attn: Security Office, 401 Lee Blvd., Fort Eustis, VA 23604-5577.

When applicable, the Technical Report and any attachment/appendix/addendum there to shall also bear the following notice:

WARNING

This document contains technical data whose export is restricted by the Arms Export Control Act (Title 22, U.S.C., Sec 2751, et. seq.) or the Export Administration Act of 1979, as amended, Title 50, U.S.C. App. 2401 et. seq. Violations of these export laws are subject to severe criminal penalties. Disseminate in accordance with provisions of DoD Directive 5230.25.

Destruction Notice: Destroy by any method that will prevent disclosure of contents or reconstruction of the document in accordance with the National Industrial Security Program Operating Manual (NISPOM).

2. Further, the deliverable proprietary non-technical data information (namely the Administrative/ Management Reports) not subject to Unlimited Rights, Government Purpose Rights or Limited Rights, shall be marked with the proprietary notice customarily used by Seller to identify data and information that is subject to restrictions regarding disclosure and/or use. The proprietary notice shall however, also include notation to AATD agreement number "W911W6-14-2-0001" and this Contract and a right for the Buyer and Government to use the report for purpose of administration of this Contract.

3. Except for Technical Data, Computer Software, Computer Software Documentation or Administrative/Management Reports delivered under this Contract, Seller agrees that Seller will appropriately advise Buyer regarding any limitation or restriction to Technical Data or Computer Software to which the Buyer or Government may have access. Limitations and restrictions will be subject to the appropriate Seller or third party markings and legends including a copyright notice to assure proper handling and shall bear notation to AATD agreement number W911W6-14-2-0001 and this Contract.

4. Seller shall conspicuously and legibly mark the appropriate legend on all Technical Data, Computer Software, Computer Software Documentation or Administrative/Management Reports that qualify for such marking. Buyer and the Government shall not be responsible for use, disclosure or transfer of Technical Data, Computer Software, Computer Software Documentation or Administrative/Management Reports that is not marked appropriately.

E. Disclosure to Government Support Contractors

Buyer and Seller understand and agree that Government support contractors will be collaborating during this effort. These contractors will be reviewing the results of the design activities, analyzing performance and capability claims, and providing general support to Government officials associated with any programmatic efforts associated with further development. The Seller authorizes Buyer and the Government to disclose Limited Rights Technical Data and proprietary non-Technical Data to Government support contractors provided that prior to release or disclosure the Government confirms that such contractors are subject to a nondisclosure agreement (either by virtue of the contract under which they are performing work containing DFARS 252.227-7025, Limitations on the Use or Disclosure of Government Furnished Information Marked with Restrictive Legends, or by separate execution of a non-disclosure agreement that is acceptable to Seller).

ARTICLE III: PUBLIC RELEASE OR DISSEMINATION OF INFORMATION

(In this article "Recipient" means Seller. Seller shall submit to Buyer requests for the Grants/Agreements Officer's approval to release information 40 days prior to the date it desires to release the information. In paragraph D, "Government Technical Agent" means Buyer.)

A. Notwithstanding the reporting requirements of this Agreement, Parties to this Agreement favor an open-publication policy to promote the commercial acceptance of the technology developed under this Agreement, but simultaneously recognize the necessity to protect proprietary, privileged, or confidential information of the Agreement because successful commercialization of aspects of the technology by Recipient may depend on the proprietary nature of the information.

B. Recipient is encouraged to publish results of the research projects, unless subject to export controls, in appropriate journals. One advance copy of each release of information to be publicized will be submitted to the Agreement Administrator who will staff request for release and provide a response within 30 days of receipt of the advanced copy. Approval by the Grants/Agreements Officer is required prior to any release. Submit request at least thirty (30) days prior to the anticipated release date. The Government reserves the right to deny approval of any publication submitted less than thirty (30) days prior to anticipated release date.

Publications include, but are not limited to—

reports presented at scientific and technical meetings, conferences, workshops, or other information exchange meetings;

publications in scientific and technical journals or proceedings of information exchange meetings;

news releases and newsletters; and articles in trade publications

C. Recipient shall assure that an acknowledgment of Government support will appear on each publication or presentation of any material based upon or developed under this Program. A statement shall appear on the title page worded substantially as follows:

“This research was partially funded by the Government under Agreement No. W911W6-14-2-0001. The U.S. Government is authorized to reproduce and distribute reprints for Government purposes notwithstanding any copyright notation thereon.”

Recipient is responsible for assuring that every publication of material based on or developed under this Program contains the following disclaimer:

“The views and conclusions contained in this document are those of the authors and should not be interpreted as representing the official policies, either expressed or implied, of the Aviation Applied Technology Directorate or the U.S. Government.”

D. Two (2) copies of all publications resulting from the project shall be forwarded to the Government Technical Agent upon release.

ARTICLE IV: 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.

ARTICLE V: NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT.

(In this article, “Recipient” means Seller, and “Grants/Agreements Officer” means Buyer. In paragraph C, “sub-agreements” means Seller’s subcontracts.)

A. Recipient shall report to the Grants/Agreements Officer, promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this agreement of which Recipient 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 of this Agreement or out of the use of any supplies furnished or work or services performed under this agreement, Recipient shall furnish to the Government when requested by the Grants/Agreements Officer, all evidence and information in possession of Recipient pertaining to such suit or claim. Such evidence and information shall be furnished at the expense of the Government except where Recipient has agreed to indemnify the Government.

C. Recipient agrees to include, and require inclusion of, this Article (suitably modified to identify the parties) in all sub-agreements at any tier.

ARTICLE VI: TRAFFICKING IN PERSONS

(For the purposes of this article, Seller is a “subrecipient.”)

A. Recipient, its employees, subrecipients under this Agreement, and subrecipients' employees shall not:

1. Engage in severe forms of trafficking in persons during the period of time that this Agreement is in effect;
2. Procure a commercial sex act during the period of time that this Agreement is in effect; or
3. Use forced labor in the performance of the Agreement or sub awards under this Agreement.

B. RESERVED

C. RESERVED

D. RESERVED

E. RESERVED

F. Definitions.

1. “Employee” means either:

- a. An individual employed by you or a subrecipient who is engaged in the performance of the project or program under this award; or
- b. Another person engaged in the performance of the project or program under this award and not compensated by you including, but not limited to, a volunteer or individual whose services are contributed by a third party as an in-kind contribution toward cost sharing or matching requirements.

2. “Forced labor” means labor obtained by any of the following methods: the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

3. “Private entity”:

a. Means any entity other than a State, local government, Indian tribe, or foreign public entity, as those terms are defined in 2 CFR 175.25.

b. Includes:

- (1) A nonprofit organization, including any nonprofit institution of higher education, hospital, or tribal organization other than one included in the definition of Indian tribe at 2 CFR 175.25(b).
- (2) A for-profit organization.

4. “Severe forms of trafficking in persons,” “commercial sex act,” and “coercion” have the meanings given at section 103 of the TVPA, as amended (22 U.S.C. 7102).

ARTICLE VII. OTHER CONTRACT PROVISIONS

In accordance with 32 CFR 37.705(a) and 34.31, the following provisions are applicable.

1. Equal Employment Opportunity - All contracts shall contain a provision requiring compliance with E.O. 11246 (3 CFR, 1964-1965 Comp., p. 339), "Equal Employment Opportunity," as amended by E.O. 11375 (3 CFR, 1966-1970 Comp., p. 684), "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and as supplemented by regulations at 41 CFR chapter 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

2. Copeland "Anti-Kickback" Act (18 U.S.C. 874 and 40 U.S.C. 276c) - All contracts and sub awards in excess of \$2000 for construction or repair awarded by recipients and sub recipients shall include a provision for compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874), as supplemented by Department of Labor regulations (29 CFR part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or sub recipient shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. The recipient shall report all suspected or reported violations to the responsible DoD Component.

3. Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333) – Where applicable, all contracts awarded by recipients in excess of \$100,000 for construction and other purposes that involve the employment of mechanics or laborers shall include a provision

for compliance with Sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333), as supplemented by Department of Labor regulations (29 CFR part 5). Under Section 102 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than 1 ½ times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

4. Rights to Inventions Made Under a Contract or Agreement -- Contracts or agreements for the performance of experimental, developmental, or research work shall provide for the rights of the Federal Government and the recipient in any resulting invention in accordance with 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

5. Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), as amended -- Contracts and sub awards of amounts in excess of \$100,000 shall contain a provision that requires the recipient to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 et seq.). Violations shall be reported to the responsible DoD Component and the Regional Office of the Environmental Protection Agency (EPA).

6. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352) - Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

7. Debarment and Suspension (E.O.s 12549 and 12689) -- Contract awards that exceed the simplified acquisition threshold and certain other contract awards shall not be made to parties listed on nonprocurement portion of the General Services Administration's Lists of Parties Excluded from Federal Procurement and Nonprocurement Programs in accordance with E.O.s 12549 (3 CFR, 1986 Comp., p. 189) and 12689 (3 CFR, 1989 Comp., p. 235), "Debarment and Suspension." This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory or regulatory authority other than E.O. 12549. Contractors with awards that exceed the small purchase threshold shall provide the required certification regarding its exclusion status and that of its principals.