

Revision No. 2, dated January 28, 2022

Flowdown Attachment

FDA-2021.0783

Contract No.: FA8814-22-9-0006

DPAS Rating: None

SAS DUNS number: 799855812

The following customer contract requirements apply to this Purchase Order to the extent indicated below and are hereby incorporated into the Purchase Order by reference:

In all clauses listed herein terms shall be revised to suitably identify the party to establish Seller's obligations to Buyer and to the Government; and to enable Buyer to meet its obligations under its prime contract. Without limiting the generality of the foregoing, and except where further clarified or modified below, the term "Government" and equivalent phrases shall mean "Buyer", the term "Contracting Officer" shall mean "Buyer's Purchasing Representative", the term "Contractor" or "Offeror" shall mean "Seller", "Subcontractor" shall mean "Seller's Subcontractor" under this Purchase Order, and the term "Contract" shall mean this "Purchase Order". For the avoidance of doubt, the words "Government" and "Contracting Officer" do not change: (1) when a right, act, authorization or obligation can be granted or performed only by the Government or the prime contract Contracting Officer or duly authorized representative, such as in FAR 52.227-1 and FAR 52.227-2 and (2) when title to property is to be transferred directly to the Government. Seller shall incorporate into each lower tier contract issued in support of this Purchase Order all applicable FAR and DFARS clauses in accordance with the flow down requirements specified in such clauses.

SPECIAL CONTRACT REQUIREMENTS:

ARTICLE 11 - RETENTION AND ACCESS TO RECORDS

(a) Contractor's financial records, supporting documents, statistical records, and all other records pertinent to this Agreement shall be retained and access to them permitted for a period not to exceed six (6) years after expiration of the term of this Agreement, unless one of the following applies:

(1) If any litigation, claim, or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved and final action taken.

(2) Records for real property and equipment acquired with Federal funds, and into which title will vest with the Government in accordance with Article 8, Government Property, shall be retained for six (6) years after final disposition.

(3) When records are transferred to or maintained by the DoD Component (the SSC program office executing the modification) that made the award, the six (6) year retention requirement is not applicable to Contractor.

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(b) If the information described is maintained on a computer, Contractor shall retain the computer data on a reliable medium for the time period prescribed. Contractor may transfer computer data in machine readable form from one reliable computer medium to another. Contractor's computer data retention and transfer procedures shall maintain the integrity, reliability, and security of the original computer data. Contractor shall also maintain an audit trail describing the data transfer.

(c) The Agreements Officer shall request that the Contractor transfer certain records to DoD component custody when he or she determines that the records possess long term retention value. Contractor shall comply with the request unless it can state why such records should not be transferred. Disputes shall be handled in accordance with Article 12, Disputes and Liabilities.

ARTICLE 19 - COMPTROLLER GENERAL ACCESS TO RECORDS

The Agreements Officer or representative, and the Comptroller General of the United States, in its discretion, shall have access to and the right to examine records of any party to the Agreement or any entity that participates in the performance of this Agreement that directly pertain to, and involve transactions relating to, the Agreement for a period of three (3) years after final payment is made. This requirement shall not apply with respect to 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 in the year prior to the date of this Agreement. This paragraph only applies to any record that is created or maintained in the ordinary course of business or pursuant to a provision of law. The terms of this paragraph shall be included in all sub-agreements/contracts to the Agreement.

ARTICLE 20 - DATA RIGHTS

The Government has Government Purpose Rights, in accordance with definitions set forth below.

(1) Definitions "Commercial Computer Software" as used in the Article is defined in DFARS 252- 227-7014(a)(1) (Jun 1995).

"Commercial Computer Software License" means the license terms under which commercial computer software and Data (as defined in this Agreement) is sold or offered for sale, lease or license to the general public.

"Computer Data Base" as used in this Agreement, means a collection of data recorded in a form capable of being processed by a computer. The term does not include computer software.

"Computer program" as used in this Agreement means a set of instructions, rules, or routines in a form that is capable of causing a computer to perform a specific operation or series of operations.

(i) "Computer software" as used in this Agreement means computer programs, source code, source code listings, object code listings, design details, algorithms, processes, flow charts formulated and related material that would enable the software to be reproduced, recreated or recompiled. Computer software does not include computer data bases or computer software documentation.

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(ii) "Computer software documentation" means owner's manuals, user's manuals, installation instructions, operating instructions, and other similar items, regardless of storage medium, that explain the capabilities of the computer software or provide instructions for using the software.

(iii) "Form, fit and function data" means technical data that describes the required overall physical, functional and performance characteristics (along with the qualification requirements, if applicable) of an item, component, or process to the extent necessary to permit identification of physically and functionally interchangeable items.

(iv) "Government purpose" means any activity in which the United States Government is a party, including cooperative agreements with international or multi-national defense organizations, or sales or transfers by the United States Government to foreign governments or international organizations. Government purposes include competitive procurement, but do not include the rights to use, modify, reproduce, release, perform, display, or disclose technical data for commercial purposes or authorize others to do so

(v) "Government purpose rights" means the rights to

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

(ii) Release or disclose technical data outside the Government and authorize persons to whom release or disclosure has been made to use, modify, reproduce, release, perform, display, or disclose that data for United States government purposes. Under this Agreement, the period of a Government Purpose Rights license shall be no less than five (5) years. In the event that the Data subject to this Government Purpose Rights license is used to perform an additional Prototype Project during this five (5) year period, the Government Purpose Rights license shall be extended an additional five (5) years starting from completion of the additional Prototype project.

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

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

(viii) "Specially Negotiated License Rights" are those rights to Data that have been specifically negotiated between the Government and the Contractor under this OT Agreement.

(ix) "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.

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

(2). Data Categories

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

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a. Data or other material provided by Contractor for a Prototype Project under this Agreement which was not developed in the performance of work under that project, and for which the Contractor retains all rights.

b. Any initial Data or technical, marketing, or financial Data provided at the onset of the project by the Contractor. Such Data shall be marked "Category A" and any rights to be provided to the Government for such Data shall be as identified in the proposal submitted to the Government and included into the Agreement.

(ii) Category B is any Data developed under this Agreement with mixed funding, i.e. development was accomplished partially with costs charged to Contractor indirect cost pools and/or costs not allocated to a Contractor Prototype Award under this Agreement, and partially with Government funding under the OT Agreement.

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

a. the Government will have Government Purpose Rights in Data developed exclusively with Government funds under a Prototype Project funded by the Government under this Agreement that is:

- i. Data pertaining to an item, component, or process which has been or will be developed exclusively with Government funds;
- ii. Studies, analyses, test data, or similar data produced for this contract, when the study, analysis, test, or similar work was specified as an element of performance;
- iii. Data created in the performance of the Agreement that does not require the development, manufacture, construction, or production of items, components, or processes;
- iv. Form, fit, and function data;
- v. Data necessary for installation, operation, maintenance, or training purposes (other than detailed manufacturing or process data);
- vi. Corrections or changes to technical data furnished to the Contractor by the Government;

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

- i. Otherwise publicly available or that has been released or disclosed by the Contractor without restrictions on further use, release or disclosure, other than a release or disclosure resulting from the sale, transfer, or other assignment of interest in the Data to another party or the sale or transfer of some or all of a business entity or its assets to another party;
- ii. Data in which the Government has obtained unlimited rights under another Government contract or as a result of negotiations; or
- iii. Data furnished to the Government, under this Agreement or any other Government contract or subcontract thereunder, with-

(1) Government Purpose Rights or limited rights and the restrictive condition(s) has/have expired; or

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(2) Government purpose rights and the Contractor's exclusive right to use such Data for commercial purposes under such contract or subcontract has expired.

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

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

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

(3). Allocation of Principal Rights

(i) The Government shall have no rights to Category A Data.

(ii) The Government shall have immediate Government Purpose Rights to Data upon delivery or project or Agreement completion (whichever is earlier), except that

(A) The Government, at the request of small business, may request on such Contractor's behalf a delay of the start of Government Purpose Rights for a period not to exceed five (5) years from project or Agreement completion (whichever is earlier). Such requests will only be made in those cases where the Government has provided information demonstrating the need for this additional restriction on Government use and shall be submitted to the SSC/DCI AO for approval, which approval shall not be unreasonably withheld. In the event of any dispute regarding approval of this request, the parties agree to treat this as a dispute and shall follow the provisions of Article 12, Disputes and Liability.

(B) for Article 28 (2)(iii)(C) Category C Data, the Government shall have only the rights established under prior agreements.

(C) for Article 28(2)(iii)(D) Category C Data, the Government shall only have the rights set forth in the Commercial Computer Software Data license agreement.

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

(iv) Each Proposal submitted by the Contractor in response to a Government call for proposals under this Agreement shall include a list of the Category A, B and C Data to be used or developed under the PA if selected. Any proposal that includes information to be provided with Limited Rights, Restricted Rights, or Specially Negotiated License Rights shall include supporting detail and rationale. Rights in such

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Data shall be as established under the terms of this Agreement, unless otherwise asserted in the proposal and agreed to by the Government in the Prototype modification. The AO will incorporate the list of Category A, B and C Data and the identified rights therefor in the award document. Following issuance of a modification and subsequent issuance of an Award to the Contractor, the Contractor shall update the list to identify any additional, previously unidentified, Data if such Data will be used or generated in the performance of the funded work. Rights in such Data shall be as established under the terms of this Agreement, unless otherwise asserted in a supplemental listing and agreed to by the Government.

(4). Marking of Data

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

Category A use company proprietary statement.

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

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

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

The Government shall have unlimited rights in all unmarked Data. In the event that Contractor learns of a release to the Government of its unmarked Data that should have contained a restricted legend, Contractor will have the opportunity to cure such omission going forward by providing written notice to the AO within three (3) months of the erroneous release.

(5) Copyright

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

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

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

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The Contractor is responsible for affixing appropriate markings indicating the rights of the Government on all Data delivered under this Agreement. The Government agrees not to remove any copyright notices placed on Data and to include such notices on all reproductions of the Data.

(6) Data First Produced by the Government:

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

(7) Prior Technology

(i) Government Prior Technology: In the event it is necessary for the Government to furnish the Contractor, including their respective employees or their subcontractors of any tier, with Data which existed prior to, or was produced outside of this Agreement, and such Data is so identified with a suitable notice or legend, the Data will be maintained in confidence and disclosed and used only for the purpose of carrying out their responsibilities under this Agreement. Data protection will include proprietary markings and handling, compliance with Article 21, Proprietary Information, and the signing of non-disclosure agreements by the Contractor, Contractor subcontractors of any tier and their respective employees to whom such Data is provided for use under the Agreement. Upon completion of activities under this Agreement, such Data will be disposed of as requested by the Government.

(ii) Contractor Entity Prior Technology: In the event it is necessary for the Contractor to furnish the Government with Data which existed prior to, or was produced outside of this Agreement, and such Data embodies trade secrets or comprises commercial or financial information which is privileged or confidential, and such Data is so identified with a suitable notice or legend, the Data will be maintained in confidence and disclosed and used by the Government and such Government Contractors or contract employees that the Government may hire on a temporary or periodic basis only for the purpose of carrying out the Government's responsibilities under this Agreement. Data protection will include proprietary markings and handling, and the signing of nondisclosure agreements by such Government Contractors or contract employees. The Contractor shall be obligated to provide Data that existed prior to, or was developed outside of this Agreement to the Government. Upon completion of activities under this Agreement, such Data will be disposed of as requested by the Contractor.

(iii) Oral and Visual Information: If information which the Contractor, their subcontractors of any tier and their respective employees considers to embody trade secrets or to comprise commercial or financial information which is privileged or confidential is expressly disclosed orally or visually directly to the Government, the exchange of such information must be memorialized in tangible, recorded form and marked with a suitable notice or legend, and furnished to the Government within thirty (30) calendar days after such oral or visual disclosure, or the Government shall have no duty to limit or

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restrict, and shall not incur any liability for any disclosure and use of such information. Upon Government request, additional detailed information about the exchange will be provided subject to restrictions on use and disclosure.

(iv) Disclaimer of Liability: Notwithstanding the above, the Government shall not be restricted in, nor incur any liability for, the disclosure and use of:

(A) Data not identified with a suitable notice or legend as set forth in this Article; nor

(B) Information contained in any Data for which disclosure and use is restricted under Article 21 entitled "Proprietary Information", if such information is or becomes generally known without breach of the above, is properly known to the Government or is generated by the Government independent of carrying out responsibilities under this Agreement, is rightfully received from a third party without restriction, or is included in Data which the Contractor has furnished, or is required to furnish to the Government without restriction on disclosure and use.

(v) Marking of Data: Any Data delivered under this Agreement shall be marked with a suitable notice or legend.

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

(9) Lower Tier Agreements

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

(10) Survival Rights

Provisions of this Article shall survive termination of this Agreement under Article 6, Term of the Agreement.

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

(11) Ordering of Data

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

ARTICLE 22- INVENTIONS AND PATENTS

(a) Allocation of Principal Rights

1. The Contractor shall retain ownership throughout the world to each Subject Invention consistent with the provisions of this Article and 35 U.S.C. § 202, provided the Contractor has timely

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pursued a patent application and maintained any awarded patent and has not notified the Government (in accordance with the subparagraph (b) below) that the Contractor does not intend to retain title.

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

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

(b) Invention Disclosure, Election of Title, and Filing of Patent Application

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

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

(c) Conditions When the Government May Obtain Title

Upon the Agreements Officer's written request, the Contractor shall convey title to any Subject Invention to the Government under any of the following conditions:

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

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

3. In any country in which the Contractor 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.

(d) Minimum Rights to Contractor and Protection of Contractor's Right to File

1. The Contractor shall retain a nonexclusive, royalty-free license throughout the world in each Subject Invention to which the Government obtains title, except if the Contractor fails to disclose the

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

2. The Contractor's domestic license, as described above, may be revoked or modified by the Government to the extent necessary to achieve expeditious practical application of the Subject Invention pursuant to an application for an exclusive license submitted consistent with appropriate provisions at 37 CFR Part 404. This license shall not be revoked in that field of use or the geographical areas in which the Contractor has achieved practical application and continues to make the benefits of the Subject Invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of the Government to the extent the Contractor, 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, the Agreements Officer shall furnish the Contractor a written notice of its intention to revoke or modify the license, and the Contractor shall be allowed thirty (30) calendar days (or such other time as may be authorized for good cause shown) after the notice to show cause why the license should not be revoked or modified.

(e) Action to Protect the Government's Interest

1. The Contractor 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 Contractor elects to retain title, and (ii) convey title to the Government when requested under paragraph (c) of this Article and to enable the Government to obtain patent protection throughout the world in that Subject Invention.

2. The Contractor 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 Contractor each Subject Invention made under this Agreement in order that the Contractor can comply with the disclosure provisions of paragraph (b) of this Article. The Contractor shall instruct employees, through employee agreements or other suitable educational programs, on the importance of reporting Subject Inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.

3. The Contractor shall notify 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. The Contractor shall include, within the specification of any United States patent application and any patent issuing thereon covering a Subject Invention, the following statement: "This Invention was made with Government support under Agreement No. FA8814-22-9-0006, awarded by SSC/DCI. The Government has certain rights in the Invention."

(f) 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.

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(g) Notice and Assistance

1. The Contractor shall report to the Government, promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this Agreement of which the Contractor has knowledge.

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

(h) Lower Tier Agreements

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

(i) Survival Rights

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

(j) March-in Rights

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

1. Such action is necessary because the Contractor or assignee has not taken effective steps, consistent with the intent of this Base Agreement, to achieve practical application of the Subject Invention;

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

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

ARTICLE 24 - CYBERSECURITY AND INFORMATION PROTECTION

(a) Definitions applicable to this Article

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

"Cloud computing," means a model for enabling ubiquitous, convenient, on-demand network access to a shared pool of configurable computing resources (e.g., networks, servers, storage, applications, and

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services) that can be rapidly provisioned and released with minimal management effort or service provider interaction. This includes other commercial terms, such as on-demand self-service, broad network access, resource pooling, rapid elasticity, and measured service. It also includes commercial offerings for software-as-a-service, infrastructure-as-a-service, and platform-as-a-service.

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

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

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

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

"Covered defense information" means unclassified controlled technical information or other information, as described in the Controlled Unclassified Information (CUI) Registry (<http://www.archives.gov/cui/registry/categorylist.html>), that requires safeguarding or dissemination controls pursuant to and consistent with law, regulations, and Government wide policies, and is-

(1) Marked or otherwise identified in the agreement and provided to the Contractor by or on behalf of DoD in support of the performance of the agreement; or

(2) Collected, developed, received, transmitted, used, or stored by or on behalf of the Contractor in support of the performance of the agreement.

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

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

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

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

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

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

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

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

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

"Technical information" means technical data or computer software, as those terms are defined in the clause at DFARS 252.227-7013 (w.acq.osd.mil/dpap/dars/dfars/html/current/252227.htm), Rights in Technical Data-Noncommercial Items, regardless of whether or not the clause is incorporated in this solicitation or agreement. Examples of technical information include research and engineering data, engineering drawings, and associated lists, specifications, standards, process sheets, manuals, technical reports, technical orders, catalog-item identifications, data sets, studies and analyses and related information, and computer software executable code and source code.

(b) Compliance with this Article is only required when the Agreement explicitly require compliance. The Government will clearly mark solicitations where the resulting Prototype is anticipated to include covered defense information. In such instances, Contractor will confirm in their Proposal either compliance or requirement to comply prior to award.

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

(1) The Contractor represents that it will implement the security requirements specified by National Institute of Standards and Technology (NIST) Special Publication (SP) 800-171 "Protecting Controlled Unclassified Information in Nonfederal Information Systems and Organizations" (see <http://dx.doi.org/10.6028/NIST.SP.800-171>) that are in effect at the time the Agreement is issued or as authorized by the Agreements Officer (AO).

(2) If the Contractor proposes to vary from any of the security requirements specified by NIST SP 800-171 that are in effect at the time the Agreement is issued or as authorized by the AO, the Contractor shall submit to the AO, for consideration by the DoD Chief Information Officer (CIO), a written explanation of why a particular security requirement is not applicable; or how an alternative but equally effective, security measure is used to compensate for the inability to satisfy a particular requirement and achieve equivalent protection. An authorized representative of the DoD CIO will

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adjudicate Contractor requests to vary from NIST SP 800- 171 requirements in writing prior to agreement award. Any accepted variance from NIST SP 800-171 shall be incorporated into this Agreement.

(3) The Contractor shall indicate in its proposal whether the use of cloud computing is anticipated at any level under this Agreement. After the award of this Agreement, if the Contractor proposes to use cloud computing services in the performance of the agreement at any level, the Contractor shall obtain approval from the AO prior to utilizing cloud computing services.

(d) The Contractor shall provide adequate security on all covered contractor information systems. To provide adequate security, the Contractor shall implement, at a minimum, the following safeguarding and information security protections:

(1) The Contractor shall apply the following basic safeguarding requirements and procedures:

(i) Limit information system access to authorized users, processes acting on behalf of authorized users, or devices (including other information systems).

(ii) Limit information system access to the types of transactions and functions that authorized users are permitted to execute.

(iii) Verify and control/limit connections to and use of external information systems.

(iv) Control information posted or processed on publicly accessible information systems.

(v) Identify information system users, processes acting on behalf of users, and devices.

(vi) Authenticate (or verify) the identities of those users, processes, and devices, as a prerequisite to allowing access to organizational information systems.

(vii) Sanitize or destroy information system media containing Federal Contract Information before disposal or release for reuse.

(viii) Limit physical access to organizational information systems, equipment, and the respective operating environments to authorized individuals.

(ix) Escort visitors and monitor visitor activity; maintain audit logs of physical access; and control and manage physical access devices.

(x) Monitor, control, and protect organizational communications (i.e., information transmitted or received by organizational information systems) at the external boundaries and key internal boundaries of the information systems.

(xi) Implement subnetworks for publicly accessible system components that are physically or logically separated from internal networks.

(xii) Identify, report, and correct information and information system flaws in a timely manner.

(xiii) Provide protection from malicious code at appropriate locations within organizational information systems.

(xiv) Update malicious code protection mechanisms when new releases are available.

(xv) Perform periodic scans of the information system and real-time scans of files from external sources as files are downloaded, opened, or executed.

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

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

(e) The Contractor shall notify the DoD Chief Information Officer (CIO), via email at osd.dibcsia@mail.mil within 30 days of Agreement award, of any security requirements specified by NIST SP 800-171 not implemented at the time of agreement award.

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

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

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

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

(1) Conduct a review for evidence of compromise of covered defense information, including, but not limited to, identifying compromised computers, servers, specific data, and user accounts. This review shall also include analyzing covered contractor information system(s) that were part of the cyber incident, as well as other information systems on the Contractor's network(s), that may have been accessed as a result of the incident in order to identify compromised covered defense information, or that affect the Contractor's ability to provide operationally critical support; and

(2) Rapidly report cyber incidents to DoD at (<http://dibnet.dod.mil/>net.dod.mil/>). The cyber incident report shall be treated as information created by or for DoD and shall include, at a minimum, the required elements at <http://dibnet.dod.mil>. In order to report cyber incidents in accordance with this article, the Contractor or sub-performer shall have or acquire a DoD-approved medium assurance certificate to report cyber incidents. For information on obtaining a DoD-approved medium assurance certificate, see (<http://disa.mil/pki/eca/Pages/index.aspx>).

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(g) When the Contractor or subperformers discover and isolate malicious software in connection with a reported cyber incident, submit the malicious software to DoD Cyber Crime Center (DC3) in accordance with instructions provided by DC3 or the AO. Do not send the malicious software to the AO.

(h) When a Contractor discovers a cyber incident has occurred, the Contractor shall preserve and protect images of all known affected information systems identified in paragraph (d)(1) of this article and all relevant monitoring/packet capture data for at least 90 days from the submission of the cyber incident report to allow DoD to request the media or decline interest.

(i) Upon request by DoD, the Contractor shall provide DoD with access to additional information or equipment that is necessary to conduct a forensic analysis.

(j) If DoD elects to conduct a damage assessment, the AO will request that the Contractor provide all of the damage assessment information gathered in accordance with paragraph (f) of this clause.

(k) The Government shall protect against the unauthorized use or release of information obtained from the Contractor (or derived from information obtained from the Contractor) under this Article that includes Contractor attributional/proprietary information, including such information submitted in accordance with paragraph (f). To the maximum extent practicable, the Contractor shall identify and mark attributional/proprietary information. In making an authorized release of such information, the Government will implement appropriate procedures to minimize the Contractor attributional/proprietary information that is included in such authorized release, seeking to include only that information that is necessary for the authorized purpose(s) for which the information is being released.

(l) Information that is obtained from the Contractor (or derived from information obtained from the Contractor) under this article that is not created by or for DoD is authorized to be released outside of DoD-

- (1) To entities with missions that may be affected by such information;
- (2) To entities that may be called upon to assist in the diagnosis, detection, or mitigation of cyber incidents;
- (3) To Government entities that conduct counterintelligence or law enforcement investigations;
- (4) For national security purposes, including cyber situational awareness and defense purposes (including with Defense Industrial Base (DIB) participants in the program at 32 CFR part 236); or
- (5) To a support services contract ("recipient") that is directly supporting Government activities under a contract that includes the clause at DFARS 252.204-7009, Limitations on the Use of Third-Party Contractor Reported Cyber Incident Information (<http://www.acq.osd.mil/dpap/dars/dfars/html/current/252204.htm>).

(m) Information that is obtained from the Contractor (or derived from information obtained from the Contractor) under this clause that is created by or for DoD (including the information submitted pursuant to paragraph (f) of this clause) is authorized to be used and released outside of DoD for purposes and activities authorized by paragraph (l) of this clause, and for any other lawful Government purpose or activity, subject to all applicable statutory, regulatory, and policy based restrictions on the Government's use and release of such information.

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(n) The Contractor shall conduct activities under this article in accordance with applicable laws and regulations on the interception, monitoring, access, use, and disclosure of electronic communications and data.

(o) The safeguarding and cyber incident reporting required by this article in no way abrogates the Contractor's responsibility for other safeguarding or cyber incident reporting pertaining to its unclassified information systems as required by other applicable articles of this Agreement, or as a result of other applicable U.S. Government statutory or regulatory requirements.

(p) Reserved

(q) Reserved

(r) The Contractor shall include this Article, including this paragraph (r), in sub-agreements, or agreements for which sub-performer performance will involve covered defense information, including sub-agreements for commercial items, without alteration, except to identify the parties. The Contractor shall determine if the information required for sub-performer performance retains its identity as covered defense information and will require protection under this article, and, if necessary, consult with the AO; and require sub-performers to notify the prime Contractor (or next higher-tier sub-performer) when submitting a request to vary from a NIST SP 800-171 security requirement to the AO, in accordance with paragraph (c)(2) of this clause; and provide the incident report number, automatically assigned by DoD, to the prime Contractor (or next higher-tier sub-performer) as soon as practicable, when reporting a cyber incident to DoD as required in paragraph (f) of this Article.

ARTICLE 25 - EXPORT CONTROL AND FOREIGN ACCESS TO TECHNOLOGY

(a) General

(1) The Parties agree that research findings and technology developments arising under this Agreement 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.

(2) Contractor shall comply with the International Traffic in Arms Regulation (22 CFR pt. 121 et seq.), the DoD Industrial Security Regulation (DoD 5220.22-R) and the Department of Commerce Export Regulation (15 CFR pt. 770 et seq.).

(3) The Government anticipates prototype awards under this agreement may be restricted by the International Traffic in Arms Regulation (ITAR).

(b) Prototype Awards or Lower Tier Agreements

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

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ARTICLE 29- ORGANIZATIONAL CONFLICT OF INTEREST (OCI)

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

(b) Contractor shall assure that performance of this agreement does not conflict with system development or enhancement being performed under other agreements or contracts.

(c) Contractor agrees to include in all sub-agreements to report all potential or actual Organizational Conflicts of Interests to Contractor.

(d) Contractor shall immediately report all potential or actual conflicts of interest to the Government.

ARTICLE 30 - ENABLING AEROSPACE SUPPORT

(Applicable to all Purchase Orders except for sub-agreements for commercial items or commercial services.)

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

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

(2) Technical Review (TR) includes the process of appraising the technical performance of Contractor and/or prototype-level performer through meetings, exchanging information on progress

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and problems, reviewing reports, evaluating presentations, reviewing hardware and software, witnessing and evaluating tests, analyzing plans for future work, evaluating efforts relative to prototype technical objectives, and providing comments and recommendations in writing to the applicable Air Force Program Manager as an independent technical assessment for consideration for modifying the program or redirecting Contractor and/or prototype-level performer's efforts to assure timely and economical accomplishment of program objectives.

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

(b) In the performance of this Agreement, Contractor and its Contractor membership agrees to cooperate with The Aerospace Corporation by 1) responding to invitations from authorized U. S. Government personnel to attend meetings; 2) by providing access to technical information and research, development planning data such as, but not limited to, design and development analyses, test data and results, equipment and process specifications, test and test equipment specifications and procedures, parts and quality control procedures, records and data, manufacturing and assembly procedures, and schedule and milestone data, all in their original form or reproduced form and including top-level life cycle cost* data, where available; 3) by delivering data as specified in the Contract Data Requirements List in the PA; 4) by discussing technical matters relating to this program; 5) by providing access to prototype level performer facilities utilized in the performance of this agreement; 6) and by allowing observation of technical activities by appropriate technical personnel of The Aerospace Corporation. The Aerospace Corporation personnel engaged in GSE&I, TR, and/or TS efforts: (i) are authorized access to all such technical information (including proprietary information) pertaining to this agreement and may discuss and disclose it to the applicable DoD personnel in a program office; (ii) are authorized to discuss and disclose such technical information (including proprietary information) to the commander or director of the various DoD organizations it supports and any U.S. Government personnel in a program office which, if not disclosed to the U.S. Government, could have adverse effects on the reliability and mission success of a U.S. Government program; and (iii) Aerospace shall make the technical information (including proprietary information) available only to its Trustees, officers, employees, contract labor, consultants, and attorneys who have a need to know. Contractor and its Contractor membership further agrees to include in all sub-agreements a clause requiring compliance by performers and supplier and succeeding levels of performers and suppliers with the response and access and disclosure provisions of this Enabling Clause except for commercial items or commercial services. This Agreement does not relieve Contractor and/or prototype-level performer of its responsibility to manage the sub-agreements effectively and efficiently nor is it intended to establish privity of contract between the Government or The Aerospace Corporation and such subcontractors or suppliers, except as indicated in paragraph (d) below.

(c) The Aerospace Corporation shall protect the proprietary information of Contractor, and suppliers in accordance with the Master Non-disclosure Agreement The Aerospace Corporation entered into with the Air Force, a copy of which is available upon request. This Master Non-disclosure Agreement satisfies the Nondisclosure Agreement requirements set forth in 10 U.S.C. §2320 (f)(2)(B), and provides that

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Contractor, and suppliers are intended third-party beneficiaries under the Master Non-disclosure Agreement and shall have the full rights to enforce the terms and conditions of the Master Non-disclosure Agreement directly against The Aerospace Corporation, as if they had been signatory party hereto. Contractor hereby waives any requirement for The Aerospace Corporation to enter into any separate company-to-company confidentiality or other non-disclosure agreements.

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

(e) The Aerospace Corporation personnel are not authorized to direct Contractor, its Manager, or prototype-level performers in any manner. Contractor, its Manager, and prototype-level performers agree to accept technical direction as follows:

(1) Technical direction under this Agreement will be given to Contractor, its Manager and/or prototype-level performer solely by SSC or the Government Prototype end user.

(2) Whenever it becomes necessary to modify the Agreement and redirect the effort, a modification signed by the Agreements Officer and Contractor will be issued.

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

ARTICLE 31 - ENABLING SUPPORT CONTRACTORS

(Applicable to all Purchase Orders except for sub-agreements or subcontracts for commercial items or commercial services.)

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

- (1) SAIC
- (2) Tecolote Research, Inc.
- (3) SAVI LLC
- (4) OMNI Consulting Solutions
- (5) Stellar Solutions

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

(c) Contractor further agrees to include in all sub-agreements a clause requiring compliance by the Contractor or sub-agreement holder and supplier and succeeding levels of sub-agreement holders and suppliers with the response and access and disclosure provisions of paragraph (b) above, subject to coordination with Contractor, except for sub-agreements or subcontracts for commercial items or commercial services. This Agreement does not relieve Contractor of its responsibility to manage the performers under this agreement effectively and efficiently nor is it intended to establish privity of contract or agreement between the Government or A&AS/SETA/SE&I and such Contractors, sub-agreement holders, subcontractors or suppliers.

(d) A&AS/SETA/SE&I personnel are not authorized to direct Contractor in any manner. Contractor personnel are not authorized to direct A&AS/SETA/SE&I personnel.

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

ARTICLE 33 - OTHER APPLICABLE LAWS AND REGULATIONS

(a) Civil Rights Act

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

(b) Whistleblower Protection Act

This Agreement is subject to the compliance with Title V of the Whistleblower Protection Act of 1989 relating to the protections available to Federal employees against prohibited personnel practices, and for other purposes. Contractor agrees to comply with the provisions of the Act.

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(c) Environmental, Safety, And Health Responsibility

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

(d) US Flag Air Carriers

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

(e) Combating Trafficking in Persons

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

(2) In accordance with this statute, this agreement, or any modification under this agreement, may be terminated by the Government, without penalty, if Contractor, engages in, or uses labor recruiters, brokers, or other agents who engage in-

(i) severe forms of trafficking in persons;

(ii) the procurement of a commercial sex act during the period of time that the grant, contract, or cooperative agreement is in effect;

(iii) the use of forced labor in the performance of the grant, contract, or cooperative agreement; or

(iv) acts that directly support or advance trafficking in persons, including the following acts:

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

(B) Failing to provide return transportation or pay for return transportation costs to an employee from a country outside the United States to the country from which the employee was recruited upon the end of employment if requested by the employee, unless-

(aa) exempted from the requirement to provide or pay for such return transportation by the Federal department or agency providing or entering into the grant, contract, or cooperative agreement; or

(bb) the employee is a victim of human trafficking seeking victim services or legal redress in the country of employment or a witness in a human trafficking enforcement action.

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(C) Soliciting a person for the purpose of employment, or offering employment, by means of materially false or fraudulent pretenses, representations, or promises regarding that employment.

(D) Charging recruited employees unreasonable placement or recruitment fees, such as fees equal to or greater than the employee's monthly salary, or recruitment fees that violate the laws of the country from which an employee is recruited.

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

(f) Procurement Ethics Requirements

FAR, DFARS AND SPECIAL AGENCY CLAUSES INCORPORATED BY FULL TEXT:

52.216-7 ALLOWABLE COST AND PAYMENT (AUG 2018)

(Applicable to Cost Reimbursement or Time & Material Purchase Orders. Seller must execute assignment documents in accordance with requirements in the clause)

(a) Invoicing.

(1) The Government will make payments to the Contractor when requested as work progresses, but (except for small business concerns) not more often than once every 2 weeks, in amounts determined to be allowable by the Contracting Officer in accordance with Federal Acquisition Regulation (FAR) subpart 31.2 in effect on the date of this contract and the terms of this contract. The Contractor may submit to an authorized representative of the Contracting Officer, in such form and reasonable detail as the representative may require, an invoice or voucher supported by a statement of the claimed allowable cost for performing this contract.

(2) Contract financing payments are not subject to the interest penalty provisions of the Prompt Payment Act. Interim payments made prior to the final payment under the contract are contract financing payments, except interim payments if this contract contains Alternate I to the clause at 52.232-25.

(3) The designated payment office will make interim payments for contract financing on the 30th day after the designated billing office receives a proper payment request.

In the event that the Government requires an audit or other review of a specific payment request to ensure compliance with the terms and conditions of the contract, the designated payment office is not compelled to make payment by the specified due date.

(b) Reimbursing costs.

(1) For the purpose of reimbursing allowable costs (except as provided in paragraph (b)(2) of the clause, with respect to pension, deferred profit sharing, and employee stock ownership plan contributions), the term costs includes only -

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(i) Those recorded costs that, at the time of the request for reimbursement, the Contractor has paid by cash, check, or other form of actual payment for items or services purchased directly for the contract;

(ii) When the Contractor is not delinquent in paying costs of contract performance in the ordinary course of business, costs incurred, but not necessarily paid, for -

(A) Supplies and services purchased directly for the contract and associated financing payments to subcontractors, provided payments determined due will be made -

(1) In accordance with the terms and conditions of a subcontract or invoice; and

(2) Ordinarily within 30 days of the submission of the Contractor's payment request to the Government;

(B) Materials issued from the Contractor's inventory and placed in the production process for use on the contract;

(C) Direct labor;

(D) Direct travel;

(E) Other direct in-house costs; and

(F) Properly allocable and allowable indirect costs, as shown in the records maintained by the Contractor for purposes of obtaining reimbursement under Government contracts; and

(iii) The amount of financing payments that have been paid by cash, check, or other forms of payment to subcontractors.

(2) Accrued costs of Contractor contributions under employee pension plans shall be excluded until actually paid unless -

(i) The Contractor's practice is to make contributions to the retirement fund quarterly or more frequently; and

(ii) The contribution does not remain unpaid 30 days after the end of the applicable quarter or shorter payment period (any contribution remaining unpaid shall be excluded from the Contractor's indirect costs for payment purposes).

(3) Notwithstanding the audit and adjustment of invoices or vouchers under paragraph (g) below, allowable indirect costs under this contract shall be obtained by applying indirect cost rates established in accordance with paragraph (d) below.

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(4) Any statements in specifications or other documents incorporated in this contract by reference designating performance of services or furnishing of materials at the Contractor's expense or at no cost to the Government shall be disregarded for purposes of cost-reimbursement under this clause.

(c) Small business concerns. A small business concern may receive more frequent payments than every 2 weeks.

(d) Final indirect cost rates.

(1) Final annual indirect cost rates and the appropriate bases shall be established in accordance with subpart 42.7 of the Federal Acquisition Regulation (FAR) in effect for the period covered by the indirect cost rate proposal.

(2)(i) The Contractor shall submit an adequate final indirect cost rate proposal to the Contracting Officer (or cognizant Federal agency official) and auditor within the 6-month period following the expiration of each of its fiscal years. Reasonable extensions, for exceptional circumstances only, may be requested in writing by the Contractor and granted in writing by the Contracting Officer. The Contractor shall support its proposal with adequate supporting data.

(ii) The proposed rates shall be based on the Contractor's actual cost experience for that period. The appropriate Government representative and the Contractor shall establish the final indirect cost rates as promptly as practical after receipt of the Contractor's proposal.

(iii) An adequate indirect cost rate proposal shall include the following data unless otherwise specified by the cognizant Federal agency official:

(A) Summary of all claimed indirect expense rates, including pool, base, and calculated indirect rate.

(B) General and Administrative expenses (final indirect cost pool). Schedule of claimed expenses by element of cost as identified in accounting records (Chart of Accounts).

(C) Overhead expenses (final indirect cost pool). Schedule of claimed expenses by element of cost as identified in accounting records (Chart of Accounts) for each final indirect cost pool.

(D) Occupancy expenses (intermediate indirect cost pool). Schedule of claimed expenses by element of cost as identified in accounting records (Chart of Accounts) and expense reallocation to final indirect cost pools.

(E) Claimed allocation bases, by element of cost, used to distribute indirect costs.

(F) Facilities capital cost of money factors computation.

(G) Reconciliation of books of account (i.e., General Ledger) and claimed direct costs by major cost element.

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(H) Schedule of direct costs by contract and subcontract and indirect expense applied at claimed rates, as well as a subsidiary schedule of Government participation percentages in each of the allocation base amounts.

(I) Schedule of cumulative direct and indirect costs claimed and billed by contract and subcontract.

(J) Subcontract information. Listing of subcontracts awarded to companies for which the contractor is the prime or upper-tier contractor (include prime and subcontract numbers; subcontract value and award type; amount claimed during the fiscal year; and the subcontractor name, address, and point of contact information).

(K) Summary of each time-and-materials and labor-hour contract information, including labor categories, labor rates, hours, and amounts; direct materials; other direct costs; and, indirect expense applied at claimed rates.

(L) Reconciliation of total payroll per IRS form 941 to total labor costs distribution.

(M) Listing of decisions/agreements/approvals and description of accounting/organizational changes.

(N) Certificate of final indirect costs (see 52.242-4, Certification of Final Indirect Costs).

(O) Contract closing information for contracts physically completed in this fiscal year (include contract number, period of performance, contract ceiling amounts, contract fee computations, level of effort, and indicate if the contract is ready to close).

(iv) The following supplemental information is not required to determine if a proposal is adequate, but may be required during the audit process:

(A) Comparative analysis of indirect expense pools detailed by account to prior fiscal year and budgetary data.

(B) General organizational information and limitation on allowability of compensation for certain contractor personnel. See 31.205-6(p). Additional salary reference information is available at <https://www.whitehouse.gov/wp-content/uploads/2017/11/ContractorCompensationCapContractsAwardedBeforeJune24.pdf> and <https://www.whitehouse.gov/wp-content/uploads/2017/11/ContractorCompensationCapContractsAwardedafterJune24.pdf>.

(C) Identification of prime contracts under which the contractor performs as a subcontractor.

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(D) Description of accounting system (excludes contractors required to submit a CAS Disclosure Statement or contractors where the description of the accounting system has not changed from the previous year's submission).

(E) Procedures for identifying and excluding unallowable costs from the costs claimed and billed (excludes contractors where the procedures have not changed from the previous year's submission).

(F) Certified financial statements and other financial data (e.g., trial balance, compilation, review, etc.).

(G) Management letter from outside CPAs concerning any internal control weaknesses.

(H) Actions that have been and/or will be implemented to correct the weaknesses described in the management letter from subparagraph (G) of this section.

(I) List of all internal audit reports issued since the last disclosure of internal audit reports to the Government.

(J) Annual internal audit plan of scheduled audits to be performed in the fiscal year when the final indirect cost rate submission is made.

(K) Federal and State income tax returns.

(L) Securities and Exchange Commission 10-K annual report.

(M) Minutes from board of directors meetings.

(N) Listing of delay claims and termination claims submitted which contain costs relating to the subject fiscal year.

(O) Contract briefings, which generally include a synopsis of all pertinent contract provisions, such as: Contract type, contract amount, product or service(s) to be provided, contract performance period, rate ceilings, advance approval requirements, pre-contract cost allowability limitations, and billing limitations.

(v) The Contractor shall update the billings on all contracts to reflect the final settled rates and update the schedule of cumulative direct and indirect costs claimed and billed, as required in paragraph (d)(2)(iii)(I) of this section, within 60 days after settlement of final indirect cost rates.

(3) The Contractor and the appropriate Government representative shall execute a written understanding setting forth the final indirect cost rates. The understanding shall specify (i) the agreed-upon final annual indirect cost rates, (ii) the bases to which the rates apply, (iii) the periods for which the rates apply, (iv) any specific indirect cost items treated as direct costs in the settlement, and (v) the affected contract and/or subcontract, identifying any with advance agreements or special terms and the applicable rates. The understanding shall not change any monetary ceiling, contract obligation, or

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specific cost allowance or disallowance provided for in this contract. The understanding is incorporated into this contract upon execution.

(4) Failure by the parties to agree on a final annual indirect cost rate shall be a dispute within the meaning of the Disputes clause.

(5) Within 120 days (or longer period if approved in writing by the Contracting Officer) after settlement of the final annual indirect cost rates for all years of a physically complete contract, the Contractor shall submit a completion invoice or voucher to reflect the settled amounts and rates. The completion invoice or voucher shall include settled subcontract amounts and rates. The prime contractor is responsible for settling subcontractor amounts and rates included in the completion invoice or voucher and providing status of subcontractor audits to the contracting officer upon request.

(6)(i) If the Contractor fails to submit a completion invoice or voucher within the time specified in paragraph (d)(5) of this clause, the Contracting Officer may -

(A) Determine the amounts due to the Contractor under the contract; and

(B) Record this determination in a unilateral modification to the contract.

(ii) This determination constitutes the final decision of the Contracting Officer in accordance with the Disputes clause.

(e) Billing rates. Until final annual indirect cost rates are established for any period, the Government shall reimburse the Contractor at billing rates established by the Contracting Officer or by an authorized representative (the cognizant auditor), subject to adjustment when the final rates are established. These billing rates -

(1) Shall be the anticipated final rates; and

(2) May be prospectively or retroactively revised by mutual agreement, at either party's request, to prevent substantial overpayment or underpayment.

(f) Quick-closeout procedures. Quick-closeout procedures are applicable when the conditions in FAR 42.708(a) are satisfied.

(g) Audit. At any time or times before final payment, the Contracting Officer may have the Contractor's invoices or vouchers and statements of cost audited. Any payment may be (1) reduced by amounts found by the Contracting Officer not to constitute allowable costs or (2) adjusted for prior overpayments or underpayments.

(h) Final payment.

(1) Upon approval of a completion invoice or voucher submitted by the Contractor in accordance with paragraph (d)(5) of this clause, and upon the Contractor's compliance with all terms of this contract, the

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Government shall promptly pay any balance of allowable costs and that part of the fee (if any) not previously paid.

(2) The Contractor shall pay to the Government any refunds, rebates, credits, or other amounts (including interest, if any) accruing to or received by the Contractor or any assignee under this contract, to the extent that those amounts are properly allocable to costs for which the Contractor has been reimbursed by the Government. Reasonable expenses incurred by the Contractor for securing refunds, rebates, credits, or other amounts shall be allowable costs if approved by the Contracting Officer. Before final payment under this contract, the Contractor and each assignee whose assignment is in effect at the time of final payment shall execute and deliver -

(i) An assignment to the Government, in form and substance satisfactory to the Contracting Officer, of refunds, rebates, credits, or other amounts (including interest, if any) properly allocable to costs for which the Contractor has been reimbursed by the Government under this contract; and

(ii) A release discharging the Government, its officers, agents, and employees from all liabilities, obligations, and claims arising out of or under this contract, except -

(A) Specified claims stated in exact amounts, or in estimated amounts when the exact amounts are not known;

(B) Claims (including reasonable incidental expenses) based upon liabilities of the Contractor to third parties arising out of the performance of this contract; provided, that the claims are not known to the Contractor on the date of the execution of the release, and that the Contractor gives notice of the claims in writing to the Contracting Officer within 6 years following the release date or notice of final payment date, whichever is earlier; and

(C) Claims for reimbursement of costs, including reasonable incidental expenses, incurred by the Contractor under the patent clauses of this contract, excluding, however, any expenses arising from the Contractor's indemnification of the Government against patent liability.

(End of clause)