

PRIME CONTRACT REQUIREMENTS

1. COMPTROLLER GENERAL REVIEW

ULA or 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 Contract or any entity that participates in the performance of this Contract that directly pertain to, and involve transactions relating to, the Contract for a period of three (3) years after final payment is made. This requirement shall not apply with respect to any party to this Contract or any entity that participates in the performance of the Contract, or any subordinate element of such party or entity, that, in the year prior to the date of the Contract, 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 Contract. 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 Contract.

2. GOVERNMENT CONTROLLED UNCLASSIFIED INFORMATION AND PROPRIETARY INFORMATION

A. Protection of Government Controlled Unclassified Information

ULA or the Government may from time to time disclose Government Controlled Unclassified Information to CONTRACTOR and CONTRACTOR may from time to time disclose Proprietary Information to the Government in connection with the Contract. Neither the Government nor CONTRACTOR shall be obligated to transfer Controlled Unclassified Information or Proprietary Information independently developed by either party to any Party to this Contract unless required as a part of a deliverable, or to otherwise satisfy the terms and conditions of this Contract.

B. Treatment of Proprietary Information and Authorized Disclosure:

The Government agrees, to the extent permitted by law, that Proprietary Information shall remain the property of CONTRACTOR. Unless otherwise agreed to in writing by the CONTRACTOR, the Government shall not use Proprietary Information for any purposes other than in connection with this Contract or as otherwise specified in Patent Rights and, Data Rights clauses. "Proprietary Information" shall not extend to materials or information that:

1. Are received or become available without restriction to the Government under this Contract or a proper, separate Contract,
2. Are not identified with a suitable notice or legend,
3. Are lawfully in possession of the Government without restriction at the time of disclosure thereof as demonstrated by prior written records,
4. Are or later become part of the public domain through no fault of the Government,
5. Are received by the Government from a third party having no obligation of confidentiality to the CONTRACTOR,
6. Are developed independently by the Government without use of Proprietary Information as evidenced by written records, or
7. Are required by law or regulation to be disclosed; provided, however, that the Government shall provide written notice to CONTRACTOR promptly so as to enable CONTRACTOR to seek a protective order or otherwise prevent disclosure of such information.

C. Third Party Support

The Government anticipates third-party support from Covered Government Support Contractors on this Contract. Interactions with Covered Government Support Contractors are subject to Enabling Aerospace Support and Enabling Support Contractors clauses. If the CONTRACTOR requires a Confidentiality Agreement with Support Contractors (other than The Aerospace Corporation) or seeks to limit distribution of Data to Government personnel only, the CONTRACTOR must submit this request in writing to ULA immediately after award of the Contract.

D. Survival Rights

The obligations of the Receiving Party under this clause shall survive after the expiration or termination of this Contract.

E. Flow-down

The CONTRACTOR shall flow down the requirements of this clause, Government Sensitive Information, to its respective personnel, sub-tier contractor, and agents receiving such Government Sensitive Information under this Contract.

3. PATENT RIGHTS

A. Allocation of Principle Rights

1. The CONTRACTOR shall retain the entire right, title, and interest throughout the world to each Subject Invention consistent with the provisions of this clause and 35 U.S.C. § 202, provided the CONTRACTOR has timely 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.
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 Agreements Officer with a copy to ULA within eight (8) months after the inventor discloses it in writing to CONTRACTOR personnel responsible for patent matters.

2. If the CONTRACTOR determines that it does not intend to retain title to any such Invention, the CONTRACTOR shall notify the Government Agreements Officer, in writing, within eight (8) months of disclosure to the Government and provide a copy to ULA. 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 the Government to a date that is no more than sixty (60) calendar days prior to the end of the statutory period.

C. Conditions When the Government May Obtain Title

Upon the Government 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 Clause; provided, that the Government may only request title within sixty (60) calendar days after learning of the failure of the 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 Clause; provided, that if the CONTRACTOR has filed a patent application in a country after the times specified in paragraph B of this Clause, 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 the CONTRACTOR and Protection of the 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 Invention within the times specified in paragraph B of this Clause. 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 licenses of the same scope to the extent that the CONTRACTOR was legally obligated to do so at the time the Contract 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 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 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 Government 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 Agreements Officer with a copy to ULA 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 Clause and to enable the Government to obtain patent protection throughout the world in that Subject Invention.
2. The CONTRACTOR agrees to require, by written Contract, 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 Contract in order that the CONTRACTOR can comply with the disclosure provisions of paragraph B of this clause. The CONTRACTOR shall instruct employees, through employee contracts or other suitable educational programs, on the importance of reporting Inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.
3. The CONTRACTOR shall notify the Government Agreements Officer 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 Contract No. FA8811-15-9-0001, awarded by SMC/LR. The Government has certain rights in the Invention."

F. Lower Tier Contracts

The CONTRACTOR shall include this Clause, suitably modified, to identify the Parties, in all sub-tier contractors for experimental, developmental, or research work.

G. 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 Government 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 Contract, 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;
3. Such action is necessary to meet requirements for public use and such requirements are not reasonably satisfied by the CONTRACTOR, assignee, or licensees; or
4. Such action is necessary because the Contract required by paragraph A of this clause 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 contract.

H. Authorization and Consent

The Government authorizes and consents to all use and manufacture of any invention described in and covered by a United States patent in the performance of this Contract.

I. Notice and Assistance

CONTRACTOR shall report to the Procurement Representative, promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this Contract of which the CONTRACTOR has knowledge.

In the event of any claim or suit against the Government and ULA on account of any alleged patent or copyright infringement arising out of the performance of this Contract or out of the use of any supplies furnished or work or services performed under this Contract CONTRACTOR shall furnish to the Government and ULA, when requested by the Procurement Representative, 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 and ULA except where the CONTRACTOR has agreed to indemnify the Government and ULA.

J. Survival Rights

The obligations of this Clause shall survive termination of this Contract.

4. DATA RIGHTS

A. Allocation of Principal Rights

1. The Government shall have Limited Rights in Data delivered Under this Contract, except as otherwise provided in this Clause.
2. The Government shall have Unlimited Rights in Data for the following:
 - (a) Form, fit, and function Data;
 - (b) Corrections or changes to Data furnished to the CONTRACTOR by or from the Government;
 - (c) Data otherwise publicly available or have been released or disclosed by the CONTRACTOR or sub-tier 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 technical data to another party or the sale or transfer of some or all of a business entity or its assets to another party;
 - (d) Data necessary for operation, maintenance, installation, or training; and
 - (e) Computer software documentation required to be delivered under this Contract.
3. Data that will be delivered, furnished, or otherwise provided to the Government under this Contract, in which the Government has previously obtained rights, shall be delivered, furnished, or provided with the pre-existing rights, unless the parties have agreed otherwise, or any restrictions on the Governments rights to use, modify, reproduce, display or disclose the data have expired or no longer apply.

B. Disclosure of Limited Rights Data

CONTRACTOR acknowledges that Limited Rights Data are authorized to be released or disclosed to Covered Government Support Contractors in accordance with Enabling Aerospace Support and Enabling Support Contractors clauses.

C. Purchase of Additional Rights

CONTRACTOR, its sub-tier contractors are not required to provide the Government additional rights to use, modify, reproduce, release, perform, display, or disclose Data furnished to the Government with limited rights. However, if the Government desires to obtain additional rights in Data in which it has limited rights, CONTRACTOR agrees to promptly enter into negotiations with the Government Agreements Officer to determine whether there are acceptable terms for transferring such rights. All Data in which the CONTRACTOR has granted the Government additional rights shall be listed or described in a license agreement made part of the Contract. The license shall enumerate the additional rights granted the Government in such Data.

D. Marking of Data

1. Except for Data covered under paragraph D.2., and Data delivered with unlimited rights, Data to be delivered under this Contract subject to restrictions on use, duplication or disclosure shall be marked with one of the following legends:

“Government Purpose Rights Data: Use, duplication, or disclosure is subject to the restrictions as stated in the Agreement between the U.S. Government and United Launch Services, Agreement No. FA8811-16-9-0004.”

“Limited Rights Data: Use, duplication, or disclosure is subject to the restrictions as stated in the Agreement between the U.S. Government and United Launch Services, Agreement No. FA8811-16-9-0004.”

2. Pre-existing and Other Data markings: If the terms of another prior contract or license permitted the CONTRACTOR to restrict the Government's rights to use, modify, reproduce, release, perform, display, or disclose Data deliverable under this Contract, and those restrictions are still applicable, the CONTRACTOR may mark such Data with the appropriate restrictive legend for which the Data qualified under the prior contract or license. Background Data may also be marked with in accordance CONTRACTOR's with standard business practice. CONTRACTOR may also include other markings to include “ULA Proprietary Information”, “Export Controlled” and “Competition Sensitive”.
3. The Government shall have unlimited rights in all unmarked delivered Data. In the event that the CONTRACTOR learns of a release to the Government of its unmarked Data that should have contained a restricted legend, the CONTRACTOR will have the opportunity to cure such omission going forward by providing written notice to ULA within one (1) year of the erroneous release.
4. 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 clause; nor,
 - (b) Information contained in any Data for which disclosure and use is restricted under Proprietary and Controlled Unclassified Information clause above, 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 Contract, is rightfully received from a third party without restriction, or is included in Data which the CONTRACTOR is required to furnish to the Government without restriction on disclosure and use.

E. Validation of Restrictive Markings

1. The DFARS clause 252.227-7037 Validation of Restrictive Markings on Technical Data excluding (b)(1) and (b)(2) is incorporated into this Contract.
2. Unjustified Data markings: The rights and obligations of the parties regarding the validation of restrictive markings on Data furnished or to be furnished under this Contract are contained in the Validation of Restrictive Markings on Technical Data provision of this Contract. Notwithstanding any provision of this Contract concerning inspection and acceptance, the Government may ignore or, at the CONTRACTOR's expense, correct or strike a marking if, in accordance with the procedures in the Validation of Restrictive Markings on Technical Data provision of this Contract, a restrictive marking is determined to be unjustified.

3. Nonconforming Data markings: A nonconforming marking is a marking placed on Data delivered or otherwise furnished to the Government under this Contract that is not in the format authorized by this Contract. Correction of nonconforming markings is not subject to the Validation of Restrictive Markings on Technical Data provision of this Contract. If the Government Agreements Officer notifies the CONTRACTOR of a nonconforming marking and the CONTRACTOR fails to remove or correct such marking within sixty (60) days, the Government may ignore or, at the CONTRACTOR's expense, remove or correct any nonconforming marking.

F. Marking Procedures and Records

Throughout performance of this Contract, the CONTRACTOR and its sub-tier contractors that will deliver Data with other than unlimited rights, shall—

1. Have, maintain, and follow written procedures sufficient to assure that restrictive markings are used only when authorized by the terms of this clause; and
2. Maintain records sufficient to justify the validity of any restrictive markings on Data delivered under this Contract.

G. Copyright

1. The CONTRACTOR reserves the right to protect by copyright original works developed under this Contract. All such copyrights will be in the name of the CONTRACTOR. The CONTRACTOR hereby grants to the U.S. Government a non-exclusive, non-transferable, royalty-free, fully paid-up license to reproduce, and prepare derivative works, distribute copies to the public, and perform publicly and display publicly for Governmental purposes, any copyrighted materials developed under this Contract, and to authorize others to do so, subject to the limitations on disclosure under clauses 2 and 4 of this Contract.

2. 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 Contract, the Party receiving the Data and others acting on its behalf may reproduce, distribute, and prepare derivative works for the sole purpose of carrying out that Party's responsibilities under this Contract with the written permission of the Copyright holder.

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

4. The CONTRACTOR is responsible for affixing appropriate markings indicating the rights of the Government on all Data delivered under this Contract.

5. The Government agrees not to remove any copyright notices placed on Data and to include such notices on all reproductions of the Data.

H. Deferred Ordering of Data

In addition to Data specified in this Contract to be delivered hereunder, the Government may, at any time during the performance of this Contract or within a period of three (3) years after acceptance of all items (other than Data) to be delivered under this Contract or the termination of this Contract, order any Data generated in the performance of this Contract or any subcontract hereunder. When the Data is ordered, the CONTRACTOR shall be compensated for converting the Data into the prescribed form, for reproduction and delivery. The obligation to deliver the data of a sub-tier contractor and pertaining to an item obtained from the subcontractor shall expire three (3) years after the date the CONTRACTOR accepts the last delivery of that item from that sub-tier contractor under this Contract. The Government's rights to use said Data shall be pursuant to Clause 4 of this Contract.

I. Rights in computer software, derivative computer software or computer software documentation

The Government shall retain its rights in the unchanged portions of any computer software or computer software documentation delivered under this Contract that the Contractor uses to prepare, or includes in, derivative computer software or computer software documentation.

J. Lower Tier Contracts

The CONTRACTOR shall include this Clause, suitably modified to identify the parties, in all sub-tier contracts, for experimental, developmental, or research work.

K. Survival Rights

The obligations of this Clause shall survive termination of this Contract.

5. FOREIGN ACCESS TO TECHNOLOGY

A. General

1. The Parties agree that research findings and technology developments arising under this Contract may constitute a significant enhancement to the national defense, and to the economic vitality of the United States. Accordingly, access to important technology developments under this Contract by Foreign Firms or Institutions must be carefully controlled.

2. The 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.).

B. Lower Tier Contracts

The CONTRACTOR shall include this Clause, suitably modified, to identify the Parties, in all sub-tier contracts for developmental prototype work.

C. Survival Rights

The obligations of this Clause shall survive termination of this Contract.

6. CIVIL RIGHTS ACT

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

7. WHISTLEBLOWER PROTECTION ACT

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

8. ENVIRONMENTAL, SAFETY, AND HEALTH RESPONSIBILITY

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

9. AVAILABILITY OF ROCKET PROPULSION SYSTEM

A. CONTRACTOR shall not impose any restrictions, limitations or conditions on ULA's or an engine manufacturer's ability to sell the final rocket propulsion system, including any related data or services.

B. CONTRACTOR shall reimburse the Government the entire amount of Government investment, but not to exceed the final price of this Contract, in the event CONTRACTOR fails to comply with the terms of paragraph A.

C. The provisions of this clause shall survive after the expiration or termination of this Contract.

10. COMMUNICATION WITH ULA CUSTOMER

ULA shall be solely responsible for all liaison and coordination with ULA's customer unless explicitly required in another clause, including the U. S. Government, as it affects the applicable prime contract, this Contract, and any related contract. If another clause requires direct communication with ULA's customer, CONTRACTOR shall notify ULA immediately and provide ULA a copy of the communication.

11. ENABLING AEROSPACE SUPPORT

A. This Contract is under the general program management of the Air Force Space and Missile Systems Center (SMC). The Air Force has entered into a contract with The Aerospace Corporation, a California nonprofit corporation operating a Federally Funded Research and Development Center (FFRDC), for the services of a technical group that will support the DoD/U.S. Government program office by performing General Systems Engineering and Integration, Technical Review, 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 technical performance through meetings with contractors and subcontractors, 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 or Project Officer as an independent technical assessment for consideration for modifying the program or redirecting 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 through meetings, exchanging information on progress and problems, reviewing reports, evaluating presentations, reviewing hardware and software, witnessing and evaluating tests, analyzing plans for future work, evaluating efforts relative to Contract 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 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 Contract, the CONTRACTOR agrees to cooperate with The Aerospace Corporation by 1) responding to invitations 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; 4) by discussing technical matters relating to this program; 5) by providing access to CONTRACTOR facilities utilized in the performance of this Contract; 6) and by allowing observation of technical activities by appropriate technical personnel of The Aerospace Corporation. The Aerospace Corporation personnel engaged in GSE&I, TR, or TS efforts: (i) are authorized access to all such technical information (including Proprietary Information) pertaining to this Contract 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.

C. The CONTRACTOR further agrees to include in all sub-tier contracts a clause requiring compliance by sub-tier contractors with the response and access and disclosure provisions of this Enabling Clause, subject to coordination with the CONTRACTOR, except for subcontracts for commercial items or commercial services. This Contract does not relieve the CONTRACTOR of its responsibility to manage the subcontracts effectively and efficiently nor is it intended to establish privity of contract between the Government or The Aerospace Corporation and such sub-tier contractors, except as indicated in paragraph (d) below.

D. The Aerospace Corporation shall protect the proprietary information of the CONTRACTOR and its sub-tier contractors in accordance with the Nondisclosure Agreement The Aerospace Corporation entered into with the Air Force, a copy of which is available upon request. This Nondisclosure Agreement satisfies the Nondisclosure Agreement requirements set forth in 10 U.S.C. §2320 (f)(2)(B), and provides that the CONTRACTOR and its sub-tier contractors are intended third-party beneficiaries under the Nondisclosure Agreement and shall have the full rights to enforce the terms and conditions of the Nondisclosure Agreement directly against The Aerospace Corporation, as if they had been signatory party hereto. The CONTRACTOR, and each of its sub-tier contractors, hereby waives any requirement for The Aerospace Corporation to enter into any separate company-to-company confidentiality or other nondisclosure agreements.

E. Aerospace 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 Aerospace shall maintain between itself and the foregoing binding agreements of general application as may be necessary to fulfill their obligations under the Nondisclosure Agreement referred to herein, and Aerospace agrees that it will inform the CONTRACTOR and its sub-tier contractors if it plans to use consultants, or contract labor personnel and, upon the request, to have its consultants and contract labor personnel execute nondisclosure agreements directly therewith.

F. The Aerospace Corporation personnel are not authorized to direct the CONTRACTOR in any manner. CONTRACTOR personnel are not authorized to direct The Aerospace Corporation.

* 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.

12. ENABLING SUPPORT CONTRACTORS

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

1. ManTech International Corp (SE&I)
2. Booz Allen Hamilton (BAH)
3. TASC
4. Millennium Engineering and Integration Company (MEI)
5. Integrity Application, Inc.
6. ASRC Aerospace Corporation
7. Stellar Solutions, Inc.
8. Tecolote Research, Inc.
9. Scitor Corporation
10. Aleut Management Services
11. Integrated Data Services
12. Wallender and Associates
13. Kinsey Technical Services
14. Element Consulting Group (ECG)

B. In the performance of this Contract, the 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 Contract; delivering Data as specified in the Contract, providing access to CONTRACTOR facilities utilized in the performance of this Contract, responding to invitations from authorized A&AS/SETA/SE&I personnel to attend meetings, and providing access to technical and development planning data. The 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 Contract related support activities.

C. The CONTRACTOR further agrees to include in all sub-tier contracts a clause requiring compliance by the sub-tier contractors with the response and access and disclosure provisions of paragraph (b) above, subject to coordination with the CONTRACTOR, except for subcontracts for commercial items or commercial services. This Contract does not relieve the CONTRACTOR of its responsibility to manage the subcontracts effectively and efficiently nor is it intended to establish privity of contract between the Government or A&AS/SETA/SE&I and such sub-tier contractors.

D. A&AS/SETA/SE&I personnel are not authorized to direct the 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 the CONTRACTOR and its sub-tier contractors if it plans to use consultants, or contract labor personnel and, upon the request, to have its consultants and contract labor personnel execute nondisclosure agreements directly therewith.

13. Definitions

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

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

"Controlled Unclassified Information" means any unclassified information that law, regulation, or government-wide policy requires to have safeguarding or disseminating controls. (See DD254 Contract Security Classification Specification)

"Data," means recorded information, regardless of form or method of recording, which includes but is not limited to, technical data, computer software, computer software documentation, and mask works. The term does not include financial, administrative, cost, pricing or management information and does not include subject inventions included in the Patent Rights clause.

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

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

"Government Purpose Rights," means the rights to—

- (a) Use, modify, reproduce, release, perform, display, or disclose Data within the Government without restriction; and
- (b) Release or disclose 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.

"In-Kind" means reasonable value of equipment, materials or other property used in performance of the proposed RPS prototype development effort.

“Invention,” as used in this Contract, means any innovation or discovery that is or may be patentable or otherwise protectable under title 35 of the United States Code (U.S.C.).

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

(i) The reproduction, release, disclosure, or use is—

(A) Necessary for emergency repair and overhaul; or

(B) A release or disclosure to—

(1) A Covered Government Support Contractor in performance of its covered Government support contract for use, modification, reproduction, performance, display, or release or disclosure to a person authorized to receive Limited Rights Data; or

(2) A foreign government, of Data other than detailed manufacturing or process data, when use of such data by the foreign government is in the interest of the Government and is required for evaluational or informational purposes;

(ii) The recipient of the Data is subject to a prohibition on the further reproduction, release, disclosure, or use of the Data; and

(iii) The CONTRACTOR or subcontractor asserting the restriction is notified of such reproduction, release, disclosure, or use.

“Practical application,” as used in this Contract, means to manufacture, in the case of a composition or product; to practice, in the case of a process or method; or to operate, in case of a machine or system; and, in each case, under such conditions as to establish that the Invention, software, or related Data is being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public or to the Federal Government on reasonable terms.

“Proprietary Information” means information and materials which are designated as proprietary in writing by the CONTRACTOR, whether by letter or by use of an appropriate stamp or legend, prior to or at the same time any such information or materials are disclosed to the Government. Notwithstanding the foregoing, materials and other information which are orally, visually, or electronically disclosed, or are disclosed in writing without an appropriate letter, stamp, or legend, shall constitute Proprietary Information if the CONTRACTOR, within thirty (30) calendar days after such disclosure, delivers to the Government a written document or documents describing the material or information and indicating that it is proprietary, provided that any disclosure of information by the Government prior to receipt of such notice shall not constitute a breach by the Government of its obligations to protect Proprietary Information.

“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.

“Subject Invention” means those inventions conceived or first actually reduced to practice under this Contract.

“Unlimited rights,” means rights to use, modify, reproduce, perform, display, release, or disclose Data in whole or in part, in any manner, and for any purpose whatsoever, and to have or authorize others to do so.