

**CUSTOMER CONTRACT REQUIREMENTS
(NATIONAL TEAM) [Through Mod. P00021]
CUSTOMER CONTRACT HQ0006-02-9-0001**

CUSTOMER CONTRACT REQUIREMENTS

If Form GP1 is applicable to this procurement, this Attachment constitutes the Government clauses contemplated by Article 29. If Form GP2 is applicable to this procurement, this Attachment constitutes the Government clauses contemplated by Article 28. If Form GP3 is applicable to this procurement, this Attachment constitutes the Government clauses contemplated by Article 41. If Form GP4 is applicable to this procurement, this Attachment constitutes the Government clauses contemplated by Article 31.

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

52.227-12 Patent Rights - Retention by the Contractor (Long Form) (JUN 1997). This clause only applies if this Contract is for experimental, developmental, or research work and Seller is other than a small business firm or nonprofit organization.

52.227-14 Rights in Data — General (JUN 1997). This clause applies only if data will be produced, furnished or acquired under this contract.

2. DoD Contracts. If this Contract is placed under a Department of Defense Contract, the following contract clauses are incorporated by reference from the Department of Defense Federal Acquisition Regulation Supplement and apply to the extent indicated. In all of the following clauses, “Contractor” and “Offeror” mean Seller except as otherwise noted. Unless otherwise provided, the clauses are those in effect as of the date of this contract.

252.226-7001 Utilization of Indian Organizations, Indian-Owned Economic Enterprises, and Native Hawaiian Small Business Concerns (OCT 2003). Applies only for supplies or services exceeding \$500,000.00.

252.227-7013 Rights in Technical Data - Noncommercial Items (NOV 1995). This clause applies only if the delivery of data is required for noncommercial items under this contract.

252.227-7014 Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation (JUN 1995). This clause applies only if the delivery of noncommercial computer software or noncommercial computer documentation may be originated, developed or delivered under this contract.

252.227-7015 Technical Data - Commercial Items (NOV 1995). This clause applies only if the delivery of data is required for commercial items under this contract.

252.227-7019 Validation of Asserted Restrictions - Computer Software (JUN 1995). This clause applies only if computer software may be originated, developed, or delivered under this contract.

252.227-7037 Validation of Restrictive Markings on Technical Data (SEP 1999). This clause applies only if the delivery of data is required by this contract.

3. The following special provisions apply to this purchase contract:

I. NOTIFICATION OF DEBARMENT/SUSPENSION STATUS

Seller shall provide immediate notice to Buyer in the event of being suspended, debarred or declared ineligible by any Department or other Federal Agency, or upon receipt of a notice of proposed debarment from any DoD Agency, during the performance of this Contract.

II. EXPORT CONTROLLED DATA RESTRICTIONS

A. For the purpose of this clause,

1. Foreign person is any person who is not a citizen of the U.S. or lawfully admitted to the U.S. for permanent residence under the Immigration and Nationality Act, and includes foreign corporations, foreign organizations, and foreign governments;
2. Foreign representative is anyone, regardless of nationality or citizenship, acting as an agent, representative, official, or employee of a foreign government, a foreign-owned or influenced firm, corporation, or person; and
3. Foreign sources are those sources (vendors, subcontractors, and suppliers) owned and controlled by a foreign person.

B. Seller shall place a clause in subcontracts containing appropriate export control restrictions, set forth in this clause.

C. Nothing in this clause waives any requirement imposed by any other U.S. Government agency with respect to employment of foreign nationals or export-controlled data and information.

D. Equipment and technical data generated or delivered in the performance of this contract are controlled by the International Traffic in Arms Regulation (ITAR), 22 CFR Sections 121 through 128. An export license is required before assigning any foreign source to perform work under this contract or before granting access to foreign persons to any equipment and technical data generated or delivered during performance (see 22 CFR Section 125). Seller shall notify Buyer and obtain the written approval of Buyer prior to assigning or granting access to any work, equipment, or technical data generated or delivered in the performance of this contract to foreign persons or their representatives. This notification shall include the name and country of origin of the foreign person or representative, the specific work, equipment, or data to which the person will have access, and whether the foreign person is cleared to have access to technical data (DoD 5220.22-M, National Industrial Security Program Operating Manual (NISPOM)).

III. DEFENSE PRIORITY RATING. If a defense priority rating is identified on the face of this subcontract, this is a rated order certified for national defense use and the Seller shall follow all the requirements of the Defense Priorities and Allocations Systems Regulation (15 CFR Part 700), including accepting or rejecting this subcontract in writing within fifteen (15) working days after receipt of DO rated or ten (10) days after receipt if DX rated. If rejected, the reason(s) for such rejection shall be included in the notice to the Buyer.

IV. STOP-WORK ORDER

A. The Buyer may, at any time, by written order to the Seller, require the Seller to stop all, or any part, of the work called for by this subcontract for a period of one hundred (100) days after the order is delivered to the Seller, and for any further period to which the parties may agree. The order shall be specifically identified as a stop-work order issued under this provision. Upon receipt of the order, the Seller shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within a period of one hundred (100) days after a stop-work is delivered to the Seller, or within any extension of that period to which the parties shall have agreed, the Buyer shall either --

1. Cancel the stop-work order; or
 2. Terminate the work covered by this subcontract as provided elsewhere in this subcontract.
- B. If a stop-work order issued under this provision is canceled or the period of the order or any extension thereof expires, the Seller shall resume work. The Buyer shall make an equitable adjustment in the delivery schedule, the estimated cost, the award fee, or a combination thereof, and in any other terms of the subcontract that may be affected, and the subcontract shall be modified, in writing, accordingly, if --
1. The stop-work order results in an increase in the time required for, or in the Seller's cost properly allocable to, the performance of any part of this subcontract; and
 2. The Seller asserts its right to the adjustment within 20 days after the end of the period of work stoppage; provided that, if the Buyer decides the facts justify the action, the Buyer may receive and act upon the claim submitted at any time before final payment under this subcontract.

C. If a stop-work order is not canceled and the work covered by the order is terminated, the Buyer may allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order. However, in no instance, if this subcontract is terminated shall the Buyer be beyond that entitled in accordance with the termination provisions of this subcontract.

V. ADDITIONAL TERMINATION REQUIREMENTS

A. The following is in addition to the termination clauses of this purchase contract:

The Buyer may terminate performance of work under this purchase contract in whole or, from time to time, in part, if—

- (1) The Buyer determines that a termination is in the Buyer's interest; or
- (2) The Seller defaults in performing this purchase contract and fails to cure the default within ten (10) days (unless extended by the Buyer) after receiving a notice specifying the default. "Default" includes failure to make progress in the work so as to endanger performance.

B. The Buyer shall terminate by delivering to the Seller a Notice of Termination specifying whether termination is for default of the Seller or convenience of the Buyer, the extent of termination, and the effective date. If, after termination for default, it is determined that the Seller was not in default or that the Seller's failure to perform or to make progress in performance is due to causes beyond the control and without fault or negligence of the Seller, the rights and obligations of the parties will be the same as if the termination was for the convenience of the Buyer.

C. After receipt of a Notice of Termination, and except as directed by the Buyer, the Seller shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this provision:

- (1) Stop work as specified in the notice.
- (2) Place no further subcontracts or order, except as necessary to complete the continued portion of the purchase contract.
- (3) Terminate all subcontracts to the extent they relate to the work terminated.
- (4) Assign to the Buyer, as directed by the Buyer, all right, title, and interest of the Seller under the subcontracts terminated, in which case the Buyer shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.
- (5) With approval or ratification to the extent required by the Buyer, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts, the cost of which would be reimbursable in whole or in part, under this purchase contract; approval or ratification will be final for purposes of this provision.
- (6) Transfer title (if not already transferred) and, as directed by the Buyer, deliver to the Buyer –
 - a. The fabricated or unfabricated parts, work in process, completed work, databases, supplies, and other material produced or acquired for the work terminated;
 - b. The completed or partially completed plans, drawings, information, and other property that, if the purchase contract had been completed, would be required to be furnished to the Government; and
- (7) Complete performance of the work not terminated.
- (8) Take any action that may be necessary, or that the Buyer may direct, for the protection and preservation of the property related to this purchase contract that is in the possession of the Seller and in which the Buyer has or may acquire an interest.
- (9) Use its best efforts to sell, as directed or authorized by the Buyer, any property of the types referred to in subparagraph (c)(6) of this provision; provided, however, that the Seller:
 - a. is not required to extend credit to any purchaser and
 - b. may acquire the property under the conditions prescribed by, and at prices approved by the Buyer.

The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the Buyer under this purchase contract, credited to the price or cost of work, or paid in any other manner directed by the Buyer.

D. The Seller shall submit complete termination inventory schedules no later than 120 days from the effective date of termination, unless extended in writing by the Buyer upon written request by the Seller within this 120-day period.

E. After expiration of the plant clearance period as defined in Subpart 45.6 of FAR, the Seller may submit to the Buyer a list, certified as to quantity and quality, of termination inventory not previously disposed of, excluding items authorized for disposition by the Buyer. The Seller may request the Buyer to remove those items or enter into an agreement for their storage. Within 15 days, the Buyer will accept the items and

remove them or enter into a storage agreement. The Buyer may verify the list upon removal of the items, or

if stored, within 45 days from submission of the list, and shall correct the list, as necessary, before final settlement.

F. After termination, the Seller shall submit a final termination settlement proposal to the Buyer in the form and with the certifications prescribed by the Buyer. The Seller shall submit the proposal promptly, but no later than one (1) year from the effective date of the termination, unless extended in writing by the Buyer upon written request of the Seller within this 1-year period. However, if the Buyer determines that the facts justify it, a termination settlement proposal may be received and acted on after 1-year or any extension. If the Seller fails to submit the proposal with the time allowed, the Buyer may determine, on the basis of information available, the amount, if any, due the Seller because of the termination and shall pay the amount determined.

G. Subject to paragraph (F.) of this provision, the Seller and the Buyer may agree on the whole or any part of the amount to be paid (including an allowance for fee, if applicable) because of the termination. The purchase contract shall be amended, and the Seller paid the agreed amount.

H. If the Seller and Buyer fail to agree in whole or in part on the amount of costs and/or fee to be paid because of the termination of work, the Buyer shall determine, on the basis of information available, the amount, if any, due the Seller, and shall pay that amount, which shall include the following:

- (1) All costs reimbursable under this purchase contract, not previously paid, for the performance of this contract before the effective date of the termination, and those costs that may continue for a reasonable time with the approval of or as directed by the Buyer; however, the Seller shall discontinue those costs as rapidly as practicable.
- (2) The cost of settling and paying termination settlement proposals under the terminated subcontracts that are properly chargeable to the terminated portion of the purchase contract if not included in subparagraph (h)(1) of this provision.
- (3) The reasonable costs of settlement of the work terminated, including –
 - (i) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;
 - (ii) The termination and settlement of subcontracts (excluding the amounts of such settlements); and
 - (iii) Storage, transportation, and other cost incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory. If the termination is for default, no amounts for the preparation of the Seller's termination settlement proposal may be included.

I. The cost principles and procedures in Part 31 of the FAR, in effect on the date of this purchase contract, shall govern all costs claimed, agreed to, or determined under this provision.

J. The Seller shall have the right to appeal in accordance with the "Disputes" clause of the applicable Boeing General Provision.

K. In arriving at the amount due the Seller under this provision, there shall be deducted –

- (1) All unliquidated advance or other payments to the Seller, under the terminated portion of this purchase contract.
- (2) Any claim which the Buyer has against the Seller under this purchase contract; and
- (3) The agreed price for, or the proceeds of sale of materials, supplies, or other things acquired by the Seller or sold under this provision and not recovered by or credited to the Buyer.

L. The Seller and the Buyer must agree to any equitable adjustment in fee, if any, for the continued portion of the purchase contract when there is a partial termination. The Buyer shall amend the purchase contract to reflect the adjustment.

M. (1) The Buyer may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the Seller for the terminated portion of the purchase contract, if the Buyer believes the total of these payments will not exceed the amount to which the Seller will be entitled.

(2) If the total payments exceed the amount finally determined to be due, the Seller shall repay the excess to the Buyer upon demand, together with interest computed at the rate established by the U.S. Secretary of the Treasury under 50 U.S.C. App. 1215(b)(2). Interest shall be computed for the period from

the date the excess payment is received by the Seller to the date the excess is repaid. Interest shall not be charged on any excess payment due to a reduction in the Seller's termination settlement proposal because of retention or other disposition of termination inventory until ten (10) days after the date of the retention or disposition, or a later date determined by the Buyer because of the circumstances.

N. These Additional Termination Requirements are meant to supplement the Termination For Convenience, Cancellation For Default and Termination/Cancellation provisions of the respective Boeing General Provision.

VI. FISCAL AND MANAGEMENT CONTROLS

(Only applicable to suppliers who will receive payments exceeding \$300,000.00)

If Seller currently has a Government approved accounting system, it shall maintain that system in accordance with the applicable Generally Accepted Accounting Principles. The applicable Government standards set forth in 48 CFR Part 31 shall be the basis for determining whether a particular cost is a direct cost or an indirect cost and 48 CFR Part 31 shall be the basis for determining indirect cost allocations and cost allowability.

VII. INVOICING AND PAYMENTS

The Seller shall pay to the Government, through the Buyer, any refunds, rebates, credits, or other amounts accruing to or received by the Seller to the extent that those amounts are properly allocable to costs for which the Seller has been reimbursed by the Buyer or the Government. Reasonable expenses incurred by the Seller for securing refunds, rebates, credits, or other amounts shall be allowable costs if approved by the Buyer and the Government.

Before final payment under this subcontract, the Seller shall execute and deliver an assignment to the Buyer or the Government, in form and substance satisfactory to the Buyer or the Government, of refunds, rebates, credits, or other amounts properly allocable to costs for which the Seller has been reimbursed by the Buyer or the Government under this subcontract.

Seller shall also execute and deliver a release discharging the Buyer and Government, including their officers, agents, and employees from all liabilities, obligations, and claims arising out of or under this subcontract.

VIII. AUDIT ACCESS FLOW-DOWN REQUIREMENTS

(Only applicable to suppliers who will receive payments exceeding \$300,000.00)

The Seller shall flow down the applicable audit access requirements, when subcontractors contribute towards cost share requirements or will receive total payments exceeding \$300,000 that are based on amounts generated from cost or financial records, and request audits of key subcontractors when the Buyer advises that audits are necessary. The flow-down audit access provisions and the applicable prescriptions are as follows:

A. In the event that a subcontractor has a contract, grant, or cooperative agreement subject to the Single Audit Act:

The subcontractor shall comply with all aspects of the Single Audit Act (Public Law 104-156, dated 5 July 1996).

B. Provision for subcontractors that are not subject to the Single Audit Act but have a contract or agreement subject to Cost Principles and/or Cost Accounting Standards:

The subcontractor shall maintain adequate records to account for all funding received from the Buyer under this subcontract. The subcontractor's relevant financial records are subject to examination or audit on behalf of the Government for a period not to exceed three (3) years after expiration of the term of this subcontract. The Buyer or authorized representative (to include the Comptroller General) shall have direct access to sufficient records and information of the subcontractors and its members to ensure full accountability for all Buyer provided funding and to verify required cost share under this subcontract. Such audit, examination, or access shall be performed during business hours on business days upon prior written notice, and shall be subject to the security requirements of the audited party.

C. Provision for subcontractors that are not subject to the Single Audit Act, do not have a procurement

contract subject to Cost Principles (48 CFR Part 31) and/or Cost Accounting Standards (48 CFR Part 99), and refuse to accept Government or Buyer access to their records:

The Buyer shall have the right to request an examination or audit of the subcontractor's records during the period of the agreement and for three (3) years after final payment, unless notified otherwise by the Buyer. The audits will be conducted by an Independent Public Accountant (IPA), subject to the following conditions:

1. The audit shall be performed in accordance with Generally Accepted Government Auditing Standards (GAGAS).
2. The Buyer's authorized representative shall have the right to examine the IPA's audit report and working papers for three (3) years after final payment, unless notified otherwise by the Buyer.
3. The IPA shall send copies of the audit report to the Buyer and the Assistant Inspector General (Audit Policy and Oversight) [AIG(APO)], 400 Army Navy Drive, Suite 737, Arlington, VA 22202.
4. The IPA shall report instances of suspected fraud directly to the DoDIG.
5. When the Buyer determines (subject to appeal under the disputes provision of this subcontract) that the audit has not been performed within twelve months of the date requested by the Buyer, or has not been performed in accordance with GAGAS or other pertinent provisions of this subcontract (if any), the Buyer shall have the right to require corrective action by the subcontractor. The subcontractor may take corrective action by having the IPA correct any deficiencies identified by the Buyer, by having another IPA perform the audit, or by electing to have the Government perform the audit. If corrective action is not taken, the Buyer shall have the right to take one or more of the following actions:
 - a. Withhold or disallow a percentage of costs until the audit is completed satisfactorily;
 - b. Suspend performance until the audit is completed satisfactorily; and/or
 - c. Terminate the subcontract.
6. If it is found that the subcontractor was performing a procurement contract subject to Cost Principles (48 CFR Part 31) and/or Cost Accounting Standards (48 CFR Part 99) at the time of the subcontract award, the Buyer, or an authorized representative, shall have the right to audit sufficient records of the subcontractor to ensure full accountability for all Buyer provided funding or to verify statutorily required cost share under this subcontract. The subcontractor shall retain such records for three (3) years after final payment, unless notified otherwise by the Buyer.
7. Unless otherwise permitted by the Buyer, the Seller shall alter the provisions only as necessary to identify properly the Seller and the Buyer. The Seller shall provide a statement to the Buyer when a business unit meets the conditions for use of an Independent Public Accountant (other than pursuant to the Single Audit Act) for any needed audits. The statement shall include the business unit's name, address, expected value of its award or expected work share, and state that the business unit is not currently performing on a procurement contract subject to the Cost Principles (48 CFR Part 31) and/or Cost Accounting Standards (48 CFR Part 99) and refuses to accept Government access to its records. Where the Seller and its subcontractors agree, the subcontractors may provide this statement directly to the Buyer.

IX. COMPTROLLER GENERAL ACCESS

- A. The Comptroller General of the United States, in the discretion of the Comptroller General, shall have access to and the right to examine records of any party to the subcontract or any entity that participates in the performance of this subcontract that directly pertain to, and involve transactions relating to, this subcontract.
- B. Excepted from the Comptroller General Access requirement is any party to this subcontract or any entity that participates in the performance of this subcontract, or any subordinate element of such party or entity, that has not entered into any other contract, grant, cooperative agreement, or "other transaction" agreement that provides for audit access by a government entity in the year prior to the date of this subcontract.
- C. This provision shall not be construed to require any party or entity, or any subordinate element of such party or entity that participates in the performance of this subcontract, to create or maintain any record that is not otherwise maintained in the ordinary course of business or pursuant to a provision of law.
- D. The Comptroller General shall have access to the records described in this provision until three (3) years after the date the final payment is made by the United States or the Buyer under this subcontract.

E. The recipient of this subcontract shall flow down this provision to any entity that participates in the performance of this subcontract.

X. LIMITATION OF COST

A. The parties estimate that performance of this subcontract, exclusive of any fee, will not cost the Buyer more than the estimated cost specified in the subcontract.

The Seller agrees to use its best efforts to perform the work specified in this subcontract and all obligations under this subcontract within the estimated cost

B. The Seller shall notify the Buyer in writing whenever it has reason to believe that --

1. The costs the Seller expects to incur under this subcontract in the next 60 days, when added to all costs previously incurred, will exceed 75 percent of the estimated cost specified in this subcontract; or

2. The total cost for the performance of this subcontract, exclusive of any fee, will be either greater or substantially less than had been previously estimated.

C. As part of the notification, the Seller shall provide the Buyer a revised estimate of the total cost of performing this subcontract.

D. Except as required by other provisions of this subcontract, specifically citing and stated to be an exception to this provision --

1. The Buyer is not obligated to reimburse the Seller for costs incurred in excess of the estimated cost specified in this subcontract; and

2. The Seller is not obligated to continue performance under this subcontract (including actions under any termination provision of this subcontract) or otherwise incur costs in excess of the estimated cost specified in the subcontract, until the Buyer:

a. notifies the Seller in writing that the estimated cost has been increased and;

b. provides a revised estimated total cost of performing this subcontract.

E. No notice, communication, or representation in any form other than that specified in subparagraph (D.)(2.) above, or from any person other than the Buyer, shall affect this subcontract's estimated cost to the Buyer. In the absence of the specified notice, the Buyer is not obligated to reimburse the Seller for any costs in excess of the estimated cost, whether those excess costs were incurred during the course of this subcontract or as a result of termination.

F. If the estimated cost specified in the subcontract is increased, any costs the Seller incurs before the increase that are in excess of the previously estimated cost shall be allowable to the same extent as if incurred afterward, unless the Buyer issues a termination or other notice directing that the increase is solely to cover termination or other specified expenses.

G. No change to this subcontract shall be considered an authorization to exceed the estimated cost to the Buyer specified in this subcontract, unless they contain a statement increasing the estimated cost.

XI. LIMITATION OF DAMAGES

Claims for damages of any nature whatsoever pursued under this subcontract shall be limited to direct damages only up to the aggregate amount of Buyer funding disbursed as of the time the dispute arises. In no event shall the Buyer be liable for claims for consequential, punitive, special and incidental damages, claims for lost profits, or other indirect damages.

XII. FOREIGN ACCESS TO TECHNOLOGY

This Article shall remain in effect during the term of this subcontract and for two (2) years thereafter.

A. Definitions

1. "Foreign Firm or Institution" means a firm or institution organized or existing under the laws of a country other than the United States, its territories, or possessions. The term includes, for purposes of this subcontract, any agency or instrumentality of a foreign government; and firms, institutions or business organizations which are owned or substantially controlled by foreign governments, firms, institutions, or individuals.
2. "Know-How" means all information including, but not limited to discoveries, formulas, materials, inventions, processes, ideas, approaches, concepts, techniques, methods, software, programs, documentation, procedures, firmware, hardware, technical data, specifications, devices, apparatus and machines.
3. "Technology" means Government-funded discoveries, innovations, know-how and inventions, whether patentable or not, including computer software, recognized under U.S. law as intellectual creations to which rights of ownership accrue, including, but not limited to, patents, trade secrets, maskworks, and copyrights developed under this subcontract

B. General

The Parties agree that Government/Buyer funded research findings and technology developments arising under this subcontract 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 subcontract by Foreign Firms or Institutions must be carefully controlled. The controls contemplated in this provision are in addition to, and are not intended to change or supersede, the provisions of the International Traffic in Arms Regulation (22 CFR pt. 120 et seq.), the DoD Industrial Security Regulation (DoD 5220.22-R) and the Department of Commerce Export Administration Regulations (15 CFR pt. 770 et seq).

C. Restrictions on Sale or Transfer of Technology to Foreign Firms or Institutions

1. In order to promote the national security interests of the United States and to effectuate the policies that underlie the regulations cited above, the procedures stated in subparagraphs C.2, C.3, and C.4 below shall apply to any transfer of Technology. For purposes of this paragraph, a transfer includes a sale of the company, and sales or licensing of Technology. Transfers do not include:
 - a. sales of products or components, or
 - b. licenses of software or documentation related to sales of products or components, or
 - c. transfer to foreign subsidiaries of the Seller or its subcontractors for purposes related to this subcontract, or
 - d. transfer which provides access to Technology to a Foreign Firm or Institution which is an approved source of supply or source for the conduct of research under this subcontract provided that such transfer shall be limited to that necessary to allow the firm or institution to perform its approved role under this subcontract.
2. The Seller and its subcontractors shall provide timely notice to the Government through the Buyer of any proposed transfers from the Seller and its subcontractors of Technology developed under this subcontract to Foreign Firms or Institutions. If the Government determines that the transfer may have adverse consequences to the national security interests of the United States, the Seller and its subcontractors, the Buyer and the Government shall jointly endeavor to find alternatives to the proposed transfer which obviate or mitigate potential adverse consequences of the transfer but which provide substantially equivalent benefits to the Seller and its subcontractors.
3. In any event, the Seller and its subcontractors shall provide written notice to the Government Program Manager and Agreements Officer through the Buyer of any proposed transfer to a foreign firm or institution at least seventy (70) calendar days prior to the proposed date of transfer. Such notice shall cite this provision and shall state specifically what is to be transferred and the general terms of the transfer. Within seventy (70) calendar days of receipt of the subcontractor's written notification, the Buyer shall advise the Seller and its subcontractors whether the proposed transfer has been consented to by the Government. In cases where the Government does not concur or seventy (70) calendar days after receipt and the Buyer has provided no decision from the Government, the Seller and its subcontractors may utilize the procedures contained in this subcontract titled "Disputes." No transfer shall take place until a decision is rendered.

4. Except as provided in subparagraph C.1 above and in the event the transfer of Technology to Foreign Firms or Institutions is approved by the Government, the Seller and its subcontractors shall (a) refund to the Government or Buyer funds paid for the development of the Technology and (b) negotiate a license with the Government or Buyer to the Technology under terms that are reasonable under the circumstances.

D. Lower Tier Agreements

The Seller and its subcontractors shall include this provision, suitably modified, to identify the Parties, in all subcontracts or lower tier agreements, regardless of tier, for experimental, developmental, or research work.

XIII. USE OF COMMERCIAL ITEMS AND SERVICES

The Seller should take advantage of the best industry practices available, to include the acquisition of commercial items and services, modified commercial items and services, and commercial items at the sub-system or component level, where appropriate. In making commercial acquisitions, the guidance of FAR Part 12 should be applied. Buyer acknowledges that it will not expect or require the Seller to provide detailed design data for commercial items. Further, the Seller should, where appropriate, create acquisition strategies that facilitate the introduction or incorporation of evolving commercial items in Defense systems.

XIV. GOVERNMENT PROPERTY

A. *Government Furnished Property*

1. The term "Seller managerial personnel," as used in paragraph G. of this provision, means any of the Seller's directors, officers, managers, superintendents, or equivalent representatives who have supervision or direction of--

- a. All or substantially all of the Seller's business;
- b. All or substantially all of the Seller's operation at any one plant, or separate location at which this subcontract is being performed; or
- c. A separate and complete major industrial operation connected with performing this subcontract.

2. The Government shall deliver to the Seller, for use in connection with and under the terms of this subcontract, the Government-furnished property described in this subcontract, together with such related data and information as the Seller may request and as may be reasonably required for the intended use of the property (hereinafter referred to as "Government-furnished property").

3. The delivery or performance dates for this subcontract are based upon the expectation that Government-furnished property suitable for use will be delivered to the Seller at the times stated in the subcontract or, if not so stated, in sufficient time to enable the Seller to meet the subcontract's delivery or performance dates.

4. If Government-furnished property is received by the Seller in a condition not suitable for the intended use, the Seller shall, upon receipt, notify the Buyer, detailing the facts, and, as directed by the Buyer and at Government expense, either effect repairs or modification or return or otherwise dispose of the property. After completing the directed action and upon written request of the Seller, the Buyer shall make an equitable adjustment as provided in paragraph H. of this provision.

5. If Government-furnished property is not delivered to the Seller by the required time or times, the Buyer shall, upon the Seller's timely written request, make a determination of the delay, if any, caused the Seller and shall make an equitable adjustment in accordance with paragraph H. of this provision.

B. *Changes in Government-furnished property*

1. The Buyer may, by written notice,
 - a. decrease the Government-furnished property provided or to be provided under this subcontract or
 - b. substitute other Government-furnished property for the property to be provided by the Government or to be acquired by the Seller for the Government under this subcontract.

The Seller shall promptly take such action as the Buyer may direct regarding the removal, shipment, or disposal of the property covered by this notice.

2. Upon the Seller's written request, the Buyer shall make an equitable adjustment to this subcontract in accordance with paragraph H. of this provision, if the Government has agreed to make such property available for performing this subcontract and there is any:
 - a. Decrease or substitution in this property pursuant to subparagraph B. 1.above; or
 - b. Withdrawal of authority to use property, if provided under any other agreement, contract or lease.

C. Title

1. The Government shall retain title to all Government-furnished property.
2. Title to all property purchased by the Seller for which the Seller is entitled to be reimbursed as a direct item of cost under this subcontract shall pass to and vest in the Government upon the vendor's delivery of such property.
3. Title to all other property, the cost of which is reimbursable to the Seller, shall pass to and vest in the Government upon--
 - a. Issuance of the property for use in subcontract performance;
 - b. Commencement of processing of the property for use in subcontract performance; or
 - c. Reimbursement of the cost of the property by the Government, whichever occurs first.
4. All Government-furnished property and all property acquired by the Seller, title to which vests in the Government under this paragraph (collectively referred to as "Government property"), are subject to the provisions of this provision. Title to Government property shall not be affected by its incorporation into or attachment to any property not owned by the Government, nor shall Government property become a fixture or lose its identity as personal property by being attached to any real property.

D. Use of Government property

The Government property shall be used only for performing this subcontract, unless otherwise provided in this subcontract or approved by the Buyer.

E. Property administration

1. The Seller shall be responsible and accountable for all Government property provided under this subcontract.
2. The Seller shall establish and maintain a program for the use, maintenance, repair, protection, and preservation of Government property in accordance with sound business practice.
3. If damage occurs to Government property, the risk of which has been assumed by the Government under this subcontract, the Government shall replace the items or the Seller shall make such repairs as the Government directs. However, if the Seller cannot affect such repairs within the time required, the Seller shall dispose of the property as directed by the Buyer. When any property for which the Government is responsible is replaced or repaired, the Buyer shall make an equitable adjustment in accordance with paragraph H. of this provision.

F. Access

The Government and all its designees shall have access at all reasonable times to the premises in which any Government property is located for the purpose of inspecting the Government property.

G. Limited risk of loss

1. The Seller shall not be liable for loss or destruction of, or damage to, the Government property provided under this subcontract or for expenses incidental to such loss, destruction, or damage, except as provided in subparagraphs 2. and 3. below.
2. The Seller shall be responsible for loss or destruction of, or damage to, the Government property provided under this subcontract (including expenses incidental to such loss, destruction, or damage)—
 - a. That results from a risk expressly required to be insured under this subcontract, but only to the extent of the insurance required to be purchased and maintained or to the extent of insurance actually purchased and maintained, whichever is greater;
 - b. That results from a risk that is in fact covered by insurance or for which the Seller is otherwise reimbursed, but only to the extent of such insurance or reimbursement;
 - c. For which the Seller is otherwise responsible under the express terms of this subcontract;
 - d. That results from willful misconduct or lack of good faith on the part of the Seller's managerial personnel; or
 - e. That results from a failure on the part of the Seller, due to willful misconduct or lack of good faith on the part of the Seller's managerial personnel, to establish and administer a program or system for the control, use, protection, preservation, maintenance, and repair of Government property as required by paragraph (e) of this provision.
3.
 - a. If the Seller fails to act as provided by subdivision G.2.e.above, after being notified (by certified mail addressed to one of the Seller's managerial personnel) of the Government's disapproval, withdrawal of approval, or nonacceptance of the system or program, it shall be conclusively presumed that such failure was due to willful misconduct or lack of good faith on the part of the Seller's managerial personnel.
 - b. In such event, any loss or destruction of, or damage to, the Government property shall be presumed to have resulted from such failure unless the Seller can establish by clear and convincing evidence that such loss, destruction, or damage—
 - (1) Did not result from the Seller's failure to maintain an approved program or system; or
 - (2) Occurred while an approved program or system was maintained by the Seller.
4. If the Seller transfers Government property to the possession and control of a subcontractor, the transfer shall not affect the liability of the Seller for loss or destruction of, or damage to, the property as set forth above. However, the Seller shall require the subcontractor to assume the risk of, and be responsible for, any loss or destruction of, or damage to, the property while in the subcontractor's possession or control, except to the extent that the subcontract, with the advance approval of the Buyer, relieves the Seller from such liability. In the absence of such approval, the subcontract shall contain appropriate provisions requiring the return of all Government property in as good condition as when received, except for reasonable wear and tear or for its use in accordance with the provisions of this subcontract.
5. The Seller shall notify the Buyer upon loss or destruction of, or damage to, Government property provided under this subcontract, with the exception of low value property for which loss, damage, or destruction is reported at subcontract termination, completion, or when needed for continued subcontract performance. The Seller shall take all reasonable action to protect the Government property from further damage, separate the damaged and undamaged Government property, put all the affected Government property in the best possible order, and furnish to the Buyer a statement of--
 - a. The lost, destroyed, or damaged Government property;
 - b. The time and origin of the loss, destruction, or damage;

- c. All known interests in commingled property of which the Government property is a part; and
 - d. The insurance, if any, covering any part of or interest in such commingled property.
6. The Seller shall repair, renovate, and take such other action with respect to damaged Government property as the Buyer directs. If the Government property is destroyed or damaged beyond practical repair, or is damaged and so commingled or combined with property of others (including the Seller's) that separation is impractical, the Seller may, with the approval of and subject to any conditions imposed by the Buyer, sell such property for the account of the Government. Such sales may be made in order to minimize the loss to the Government, to permit the resumption of business, or to accomplish a similar purpose. The Seller shall be entitled to an equitable adjustment in the subcontract price for the expenditures made in performing the obligations under this subparagraph G.6. in accordance with paragraph H. of this provision. However, the Government may directly reimburse the loss and salvage organization for any of their charges. The Buyer shall give due regard to the Seller's liability under this paragraph G. when making any such equitable adjustment.
7. The Seller shall not be reimbursed for, and shall not include as an item of overhead, the cost of insurance or of any reserve covering risk of loss or destruction of, or damage to, Government property, except to the extent that the Government or Buyer may have expressly required the Seller to carry such insurance under another provision of this subcontract.
8. In the event the Seller is reimbursed or otherwise compensated for any loss or destruction of, or damage to, Government property, the Seller shall use the proceeds to repair, renovate, or replace the lost, destroyed, or damaged Government property or shall otherwise credit the proceeds, or equitably reimburse, to the Government, as directed by the Buyer.
9. The Seller shall do nothing to prejudice the Government's rights to recover against third parties for any loss or destruction of, or damage to, Government property. Upon the request of the Buyer, the Seller shall, at the Government's expense, furnish to the Government all reasonable assistance and cooperation (including the prosecution of suit and the execution of instruments of assignment in favor of the Government) in obtaining recovery. In addition, where a Seller has not been relieved from liability for any loss or destruction of, or damage to, Government property, the Seller shall enforce for the benefit of the Government the liability of the Seller for such loss, destruction, or damage.

H. Equitable adjustment. When this provision specifies an equitable adjustment, it shall be made to any affected subcontract provision in accordance with the procedures of this provision. When appropriate, the Buyer may initiate an equitable adjustment in favor of the Government. The right to an equitable adjustment shall be the Seller's exclusive remedy. Neither the Government nor the Buyer shall not be liable to suit for breach of subcontract for--

1. Any delay in delivery of Government-furnished property;
2. Delivery of Government-furnished property in a condition not suitable for its intended use;
3. A decrease in or substitution of Government-furnished property; or
4. Failure to repair or replace Government property for which the Government is responsible.

I. Final accounting and disposition of Government property. Upon completing this subcontract, or at such earlier dates as may be fixed by the Buyer, the Seller shall submit, in a form acceptable to the Buyer, inventory schedules covering all items of Government property not consumed in performing this subcontract or delivered to the Government. The Seller shall prepare for shipment or dispose of the Government property as may be directed or authorized by the Buyer. The net proceeds of any such disposal shall be credited to the cost of the work covered by this subcontract or paid to the Government as directed by the Buyer. The foregoing provisions shall apply to scrap from Government property; provided, however, that the Buyer may authorize or direct the Seller to omit from such inventory schedules any scrap consisting of faulty castings or forgings or of cutting and processing waste, such as chips, cuttings, borings, turnings, short ends, circles, trimmings, clippings, and remnants, and to dispose of such scrap in accordance with the Seller's normal practice and account for it as a part of general overhead or other

reimbursable costs in accordance with the Seller's established accounting procedures.

J. Abandonment and restoration of the Seller's premises. Unless otherwise provided herein, the Government—

1. May abandon any Government property in place, at which time all obligations of the Government regarding such abandoned property shall cease; and
2. Has no obligation to restore or rehabilitate the Seller's premises under any circumstances (e.g., abandonment, disposition upon completion of need, or subcontract completion). However, if the Government-furnished property is withdrawn or is unsuitable for the intended use, or if other Government property is substituted, then the equitable adjustment under paragraph **H.** of this provision may properly include restoration or rehabilitation costs.

K. Communications. All communications under this provision shall be in writing.

L. Should any property with an acquisition value greater than \$25,000, which was not included in the Seller's negotiated proposal be required, the Seller shall obtain written approval of the Agreement's Officer through the Buyer.

XV. CIVIL RIGHTS ACT

This Agreement is subject to the requirements of Title VI of the Civil Rights Act of 1964 as amended (42 U.S.C. 2000-d) relating to nondiscrimination in federal programs.

XVI. SECURITY

This research and development shall be provided protection as required by the appropriate security requirements stated in the DD Form 254. The highest level of classification involved in the performance of this subcontract is expected to be TOP SECRET. The highest security classification of any item deliverable under this subcontract is expected to be TOP SECRET.

XVII. PUBLICITY & PUBLICATION

Any data release, news release, public announcement, advertisement, publication or publicity, released by Seller that concerns this subcontract, shall be subject to prior approval of the Government. The Seller agrees to provide the Government with an advance copy of any manuscript to be released in any publication or symposium presentation when the manuscript utilizes data derived from this subcontract. The copy shall be sent to Missile Defense Agency (MDA) External Affair (EA) through the Buyer sufficiently in advance, in no event less than thirty (30) days, to afford the Government time to review the manuscript and provide its concurrence before the manuscript is published or presented.

XVIII. CONFIDENTIAL DISCLOSURE FIREWALL AND CONFLICT OF INTEREST

In order to facilitate the free-flow of technology and ideas in furtherance of the stated purpose of the subcontract, and, to avoid or mitigate conflict situations within its team or between its team and other contractors for Ballistic Missile Defense System work, and to protect the information gathered from the system elements and any other proprietary source, the MDNT lead contractors, all Participating Companies (as defined in the Confidential Disclosure Agreement), SETA, FFRDC's, consultants and subcontractors will enter into a corporate Confidential Disclosure Agreement ("CDA"). The subcontractor will provide the Buyer with a copy of the signed CDA and all additional updates.

Buyer shall also require all individual Sellers assigned to work under this Agreement, to enter into an individual Limitation of Future Assignments ("Limitation Agreement") and an Individual Confidential Disclosure Agreement ("ICDA") developed by the Buyer.

The Limitation Agreement identifies the restrictions placed on personnel while inside and after leaving the firewall. The Individual Confidential Disclosure Agreements state restrictions on the use of Proprietary and Sensitive Information. The Buyer will prepare a consolidated Seller participant record which states the names of all Seller covered employees, the company with which they are employed, the forms signed, and the date the employee exited the firewall.

In addition to the CDA, an Organizational Conflict of Interest Mitigation Plan will also be developed and agreed upon by the Participating Companies, SETA and FFRDCs that will specify a notification procedure for actual and perceived conflict situations and continuing assessment after award with the added proviso that any conflict situation that cannot be fully disposed of by mitigation actions of the Seller or otherwise may, at the discretion of the Government, through the Buyer, be waived by the Director, MDA after submittal of a waiver request through the Buyer.

If the Seller in the performance of this Agreement, obtains access to information such as plans, policies, reports, studies, financial plans, or data or independently develops information, which has not been released or otherwise made available to the public, the Seller shall not: (a) use such information for any private purpose, in accordance with the individual confidential disclosure agreement, unless the information has been released otherwise made available to the public; (b) complete for work, other than a potential follow-on Agreement, based on such information after the completion of this Agreement, or until such information is released or otherwise made available to the public, whichever occurs first, and until the expiration of the restriction period of the Limitation of Future Assignments agreement; (c) submit an unsolicited proposal to the Government which is based on such information until after such information is released or otherwise made available to the public; or (d) release such information unless such information has previously been released or otherwise made available to the public by the Government.