

CUSTOMER CONTRACT REQUIREMENTS
Continuous Lower Energy, Emissions, and Noise (CLEEN) Technology Development
CUSTOMER CONTRACT DTFAWA-10-C-00030

CUSTOMER CONTRACT REQUIREMENTS

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

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

3.10.2-6 Subcontracts for Commercial Items and Commercial Components (APR 1996). I. Definition.

(a) "Commercial item," as used in this clause, means:

(1) Any item, other than real property, that is of a type customarily used for nongovernmental purposes and that--

(A) Has been sold, leased, or licensed to the general public; or

(B) Has been offered for sale, lease, or license to the general public;

(2) Any item that evolved from an item described in paragraph I(a)(1) of this clause through advances in technology or performance and that is not yet available in the commercial marketplace, but will be available in the commercial marketplace in time to satisfy the delivery requirements under a pending Government contract;

(3) Any item that would satisfy a criterion expressed in paragraphs I(a)(1) or (a)(2) of this clause, but for--

(A) Modifications of a type customarily available in the commercial marketplace; or

(B) 'Minor' modifications of a type not customarily available in the commercial marketplace made to meet Federal Government requirements. 'Minor' modifications means modifications that do not significantly alter the nongovernmental function or essential physical characteristics of an item or component, or change the purpose of a process. Factors to be considered in determining whether a modification is minor include the value and size of the modification and the comparative value and size of the final product. Dollar values and percentages may be used as guideposts, but are not conclusive evidence that a modification is minor.

(4) Any combination of items meeting the requirements of paragraphs I(a)(1), (2), (3), or (5) of this clause that are of a type customarily combined and sold in combination to the general public;

(5) Installation services, maintenance, services, repair services, training services, and other services if such services are procured for support of an item referred to in paragraphs I(a)(1), (2), (3), or (4) of this clause, and if the source of such services--

(A) Offers such services to the general public and the Federal Government contemporaneously and under similar terms and conditions; and

(B) Offers to use the same work force for providing the Federal Government with such services as the source uses for providing such services to the general public;

(6) Services of a type offered and sold competitively in substantial quantities in the commercial marketplace based on established catalog or market prices for specific tasks performed, under standard commercial terms and conditions. This does not include services that are sold based on hourly rates without an established catalog or market price for a specific service performed;

(7) Any item, combination of items, or service referred to in subparagraphs I(a)(1) through (a)(6), notwithstanding the fact that the item, combination of items, or service is transferred between or among separate divisions, subsidiaries, or affiliates of a Contractor; or

(8) A nondevelopmental item, if the procuring agency determines the item was developed exclusively at private expense and sold in substantial quantities, on a competitive basis, to multiple State and local Governments.

(b) "Subcontract," as used in this clause, includes a transfer of commercial items between divisions, subsidiaries, or affiliates of the Contractor or subcontractor at any tier.

II. To the maximum extent practicable, the Contractor shall incorporate, and require its subcontractors at all tiers to incorporate, commercial items or nondevelopmental items as components of items to be supplied under this contract.

III. Notwithstanding any other clause of this contract, the Contractor is not required to include any FAA Acquisition Management System provision or clause, other than those listed below to the extent they are applicable and as may be required to establish the reasonableness of prices, in a subcontract at any tier for commercial items or commercial components:

(i) Equal Opportunity (E.O. 11246);

(ii) Affirmative Action for Special Disabled and Vietnam Era Veterans (38 U.S.C. 4212(a));

(iii) Affirmative Action for Handicapped Workers (29 U.S.C. 793); and

(iv) Preference for Privately Owned U.S.-Flagged Commercial Vessels (46 U.S.C. 1241) (flow down not required for subcontracts awarded beginning May 1, 1996).

IV. The Contractor shall include the terms of this clause, including this paragraph IV, in subcontracts awarded under this contract.

(End of clause)

3.10.2-6 Subcontracts for Commercial Items and Commercial Components (APR 1996). I. Definition.

(a) "Commercial item," as used in this clause, means:

(1) Any item, other than real property, that is of a type customarily used for nongovernmental purposes and that--

(A) Has been sold, leased, or licensed to the general public; or

(B) Has been offered for sale, lease, or license to the general public;

(2) Any item that evolved from an item described in paragraph I(a)(1) of this clause through advances in technology or performance and that is not yet available in the commercial marketplace, but will be available in the commercial marketplace in time to satisfy the delivery requirements under a pending Government contract;

(3) Any item that would satisfy a criterion expressed in paragraphs I(a)(1) or (a)(2) of this clause, but for--

(A) Modifications of a type customarily available in the commercial marketplace; or

(B) 'Minor' modifications of a type not customarily available in the commercial marketplace made to meet Federal Government requirements. 'Minor' modifications means modifications that do not significantly alter the nongovernmental function or essential physical characteristics of an item or component, or change the purpose of a process. Factors to be considered in determining whether a modification is minor include the value and size of the modification and the comparative value and size of the final product. Dollar values and percentages may be used as guideposts, but are not conclusive evidence that a modification is minor.

(4) Any combination of items meeting the requirements of paragraphs I(a)(1), (2), (3), or (5) of this clause that are of a type customarily combined and sold in combination to the general public;

(5) Installation services, maintenance, services, repair services, training services, and other services if such services are procured for support of an item referred to in paragraphs I(a)(1), (2), (3), or (4) of this clause, and if the source of such services--

(A) Offers such services to the general public and the Federal Government contemporaneously and under similar terms and conditions; and

(B) Offers to use the same work force for providing the Federal Government with such services as the source uses for providing such services to the general public;

(6) Services of a type offered and sold competitively in substantial quantities in the commercial marketplace based on established catalog or market prices for specific tasks performed, under standard commercial terms and conditions. This does not include services that are sold based on hourly rates without an established catalog or market price for a specific service performed;

(7) Any item, combination of items, or service referred to in subparagraphs I(a)(1) through (a)(6), notwithstanding the fact that the item, combination of items, or service is transferred between or among separate divisions, subsidiaries, or affiliates of a Contractor; or

(8) A nondevelopmental item, if the procuring agency determines the item was developed exclusively at private expense and sold in substantial quantities, on a competitive basis, to multiple State and local Governments.

(b) "Subcontract," as used in this clause, includes a transfer of commercial items between divisions, subsidiaries, or affiliates of the Contractor or subcontractor at any tier.

II. To the maximum extent practicable, the Contractor shall incorporate, and require its subcontractors at all tiers to incorporate, commercial items or nondevelopmental items as components of items to be supplied under this contract.

III. Notwithstanding any other clause of this contract, the Contractor is not required to include any FAA Acquisition Management System provision or clause, other than those listed below to the extent they are applicable and as may be required to establish the reasonableness of prices, in a subcontract at any tier for commercial items or commercial components:

(i) Equal Opportunity (E.O. 11246);

(ii) Affirmative Action for Special Disabled and Vietnam Era Veterans (38 U.S.C. 4212(a));

(iii) Affirmative Action for Handicapped Workers (29 U.S.C. 793); and

(iv) Preference for Privately Owned U.S.-Flagged Commercial Vessels (46 U.S.C. 1241) (flow down not required for subcontracts awarded beginning May 1, 1996).

IV. The Contractor shall include the terms of this clause, including this paragraph IV, in subcontracts awarded under this contract.

(End of clause)

3.2.2.3-8 Audit and Records (JUL 2010). (a) As used in this clause, 'records' includes books, documents, accounting procedures and practices, and other data, regardless of type and form.

(b) Examination of costs. If this is a cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeterminable contract, or any combination of these, the Contractor (you) must maintain, and the Contracting Officer (CO) must be able to examine and audit, all records and other evidence that reflect costs you claim or anticipate incurring directly or indirectly in performing this contract. The CO must be able to inspect during normal business hours the parts of your plants where you are performing work under this contract.

(c) Cost or pricing data. If you submitted cost or pricing data for this contract, the CO may examine and audit all of your records, including computations and projections, to evaluate the accuracy, completeness, and currency of your cost or pricing data. This includes information related to--

(1) The proposal for the contract, subcontract, or modification;

- (2) Communicating about the proposal(s), including negotiating;
 - (3) Pricing the contract, subcontract, or modification; or
 - (4) Performing the contract, subcontract or modification.
- (d) The Comptroller General of the United States, or an authorized representative, may examine any of your records involving transactions related to this contract or any subcontract. This does not mean you or your subcontractors must create or maintain records other than those you maintain in the ordinary course of business or required by law.
- (e) Reports. If you must provide cost, funding, or performance reports, the CO may examine and audit the supporting records and materials, to evaluate:
- (1) The effectiveness of how you produce data for these reports; and
 - (2) The data reported.
- (f) Availability of Records. You must make records, materials and other evidence described in paragraphs (a), (b), (c), (d), and (e) available at your office during normal business hours until 3 years after final payment under this contract, or for any longer period required by statute or by other clauses of this contract. We must be able to examine, audit, or reproduce this information. In addition, you must make available to us--
- (1) The records relating to any contract that is completely or partially terminated for three years after any final termination settlement; and
 - (2) Any records relating to appeals under the "Contract Disputes" clause, to litigation, or to the settlement of contract disputes relating to this contract until any appeals, litigation, or contract disputes are finally resolved.
- (g) You must include all the terms of this clause in all subcontracts under this contract that exceed \$1,000,000, and
- (1) That are cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeterminable or any combination of these;
 - (2) For which the FAA requires cost or pricing data; or
 - (3) That require the subcontractor to provide reports as described in paragraph (e).
- (h) Neither party may change this clause except to properly identify the contracting parties.
- (End of clause)

3.2.2.3-37 Notification of Ownership Changes (JUL 2004). (a) The Contractor (you) must notify FAA in writing within 30 days when you become aware that a change in ownership has occurred or will occur and that the change could affect the value of your capitalized assets in the accounting records, asset valuations, or cause any other cost changes.

(b) You must:

- (1) Maintain current, accurate, and complete inventory records of assets and their costs;
- (2) Provide the Contracting Officer (CO) access to the records on request;
- (3) Ensure that all individual and grouped assets, their capitalized values, accumulated depreciation or amortization, and remaining useful lives are identified accurately before and after each of your ownership changes; and
- (4) Retain and maintain depreciation and amortization schedules based on the asset records maintained before each ownership change.

(c) You must include the substance of this clause in all subcontracts under this contract with a value exceeding \$1,000,000 and that require cost and price data.

(End of clause)

3.2.4-34 Option to Extend Services (APR 1996). The Government may require continued performance of any services within the limits and at the rates specified in the contract. These rates may be adjusted only as a result of revisions to prevailing labor rates provided by the Secretary of Labor. The option provision may be exercised more than once, but the total extension of performance hereunder shall not exceed 6 months. The Contracting Officer may exercise the option by written notice to the Contractor within the period specified in the Schedule.

(End of clause)

3.2.5-1 Officials Not to Benefit (APR 1996). No member of or delegate to Congress, or resident commissioner, shall be admitted to any share or part of this contract, or to any benefit arising from it. However, this clause does not apply to this contract to the extent that this contract is made with a corporation for the corporation's general benefit.

(End of clause)

3.2.5-3 Gratuities or Gifts (JAN 1999). (a) The FAA may terminate this contract for default if, after notice and a hearing, the FAA Office of Dispute Resolution for Acquisition determines that the Contractor, the contractor's agent, or other representative:

(1) Offered or gave a gratuity or gift to an employee of the FAA; and

(2) Intended, by the gratuity or gift to obtain a contract or favorable treatment under a contract.

(b) If this contract is terminated under paragraph (a) of this clause, the FAA is entitled to pursue the same remedies as in a breach of contract.

The rights and remedies of the FAA provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

(End of clause)

3.2.5-4 Contingent Fees (OCT 1996). (a) The Contractor warrants that no person or selling agency has been employed or retained to solicit or obtain this contract for a commission, percentage, brokerage, or contingent fee, except bona fide employees or bonafide, established commercial or selling agencies employed by the contractor for the purpose of obtaining business.

(b) For breach or violation of this warranty, the Government has the right to annul this contract without liability or to deduct from the contract price or otherwise recover, the full amount of the contingent fee.

(c) Definitions.

(1) "Bona fide agency," as used in this clause, means an established commercial or selling agency, maintained by a contractor for the purpose of securing business, that neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds itself out as being able to obtain any Government contract or contracts through improper influence.

(2) "Bona fide employee," as used in this clause, means a person, employed by a contractor and subject to the contractor's supervision and control as to time, place, and manner of performance, who neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds out as being able to obtain any Government contract or contracts through improper influence.

(3) "Contingent fee," as used in this clause, means any commission, percentage brokerage, or other fee that is contingent upon the success that a person or concern has in securing a Government contract.

(4) "Improper influence," as used in this clause, means any influence that induces or tends to induce a Government employee or officer to give consideration or to act regarding a Government contract on any basis other than the merits of the matter.

(End of clause)

3.2.5-5 Anti-Kickback Procedures (OCT 2010). (a) Definitions.

(1) 'Kickback,' as used in this clause, means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind which is provided, directly or indirectly, to any prime Contractor, prime Contractor employee, subcontractor, or subcontractor employee for the purpose of improperly obtaining or rewarding favorable treatment in connection with a prime contract or in connection with a subcontract relating to a prime contract.

(2) 'Person,' as used in this clause, means a corporation, partnership, business association of any kind, trust, joint-stock company, or individual.

(3) 'Prime contract,' as used in this clause, means a contract or contractual action entered into by the United States for the purpose of obtaining supplies, materials, equipment, or services of any kind.

(4) 'Prime Contractor,' as used in this clause, means a person who has entered into a prime contract with the United States.

(5) 'Prime Contractor employee,' as used in this clause, means any officer, partner, employee, or agent of a prime Contractor.

(6) 'Subcontract,' as used in this clause, means a contract or contractual action entered into by a prime Contractor or subcontractor for the purpose of obtaining supplies, materials, equipment, or services of any kind under a prime contract.

(7) 'Subcontractor,' as used in this clause, (1) means any person, other than the prime Contractor, who offers to furnish or furnishes any supplies, materials, equipment, or services of any kind under a prime contract or a subcontract entered into in connection with such prime contract and (2) includes any person who offers to furnish or furnishes general supplies to the prime Contractor or a higher tier subcontractor.

(8) 'Subcontractor employee,' as used in this clause, means any officer, partner, employee, or agent of a subcontractor.

(b) The contractor warrants that it has not and will not be:

(1) Providing or attempting to provide or offering to provide any kickback;

(2) Soliciting, accepting, or attempting to accept any kickback; or

(3) Including, directly or indirectly, the amount of any kickback in the contract price charged by a prime Contractor to the United States or in the contract price charged by a subcontractor to a prime Contractor or higher tier subcontractor.

(c)

(1) The Contractor shall have in place and follow reasonable procedures designed to prevent and detect possible violations described in paragraph (b) of this clause in its own operations and direct business relationships.

(2) When the Contractor has reasonable grounds to believe that a violation described in paragraph (b) of this clause may have occurred, the Contractor shall promptly report in writing the possible violation. Such reports shall be made to the Inspector General of the Department of Transportation or the Department of Justice.

(3) The Contractor shall cooperate fully with any Federal agency investigating a possible violation described in paragraph (b) of this clause.

(4) The Contracting Officer may

(i) offset the amount of the kickback against any moneys owed by the United States under the prime contract and/or

(ii) direct that the Prime Contractor withhold from sums owed a subcontractor under the prime contract the amount of the kickback. The Contracting Officer may order that moneys withheld under subdivision (c)(4)(ii) of this clause be paid over to the Government unless the Government has already offset those moneys under subdivision (c)(4)(i) of this clause. In either case, the Prime Contractor shall notify the Contracting Officer when the moneys are withheld.

(5) The Contractor agrees to incorporate the substance of this clause, including subparagraph (c)(5) but excepting subparagraph (c)(1), in all subcontracts which exceed \$150,000.

(End of clause)

3.2.5-7 Disclosure Regarding Payments to Influence Certain Federal Transactions (OCT 2010). (a) Definitions.

(1) "The Act," as used in this clause, means section 1352, title 31, United States Code.

(2) "Agency," as used in this clause, means executive agency, within the meaning of 5 U.S.C. 101, 102, and 104(I), and any wholly owned Government corporation within the meaning of 31 U.S.C. 9101..

(3) "Covered Federal action," as used in this clause, means any of the following Federal actions:

(i) The awarding of any Federal contract.

(ii) The making of any Federal grant.

(iii) The making of any Federal loan.

(iv) The entering into of any cooperative agreement.

(v) The extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(4) "Indian tribe" and "tribal organization," as used in this clause, have the meaning provided in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450B) and include Alaskan Natives.

(5) "Influencing or attempting to influence," as used in this clause, means making, with the intent to influence, any communication to or appearance before an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal action.

(6) "Local government," as used in this clause, means a unit of government in a State and, if chartered, established, or otherwise recognized by a State for the performance of a governmental duty, including a local public authority, a special district, an intrastate district, a council of governments, a sponsor group representative organization, and any other instrumentality of a local government.

(7) "Officer or employee of an agency," as used in this clause, includes the following individuals who are employed by an agency:

(i) An individual who is appointed to a position in the Government under title 5, United States Code, including a position under a temporary appointment.

(ii) A member of the uniformed services, as defined in subsection 101(3), title 37, United States Code.

(iii) A special Government employee, as defined in section 202, title 18, United States Code.

(iv) An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, title 5, United

States Code, appendix 2.

(8) 'Person,' as used in this clause, means an individual, corporation, company, association, authority, firm, partnership, society, State, and local government, regardless of whether such entity is operated for profit, or not for profit. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

(9) 'Reasonable compensation,' as used in this clause, means, with respect to a regularly employed officer or employee of any person, compensation that is consistent with the normal compensation for such officer or employee for work that is not furnished to, not funded by, or not furnished in cooperation with the Federal Government.

(10) 'Reasonable payment,' as used in this clause, means, with respect to professional and other technical services, a payment in an amount that is consistent with the amount normally paid for such services in the private sector.

(11) 'Recipient,' as used in this clause, includes the Contractor and all subcontractors. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

(12) 'Regularly employed,' as used in this clause, means, with respect to an officer or employee of a person requesting or receiving a Federal contract, an officer or employee who is employed by such person for at least 130 working days within 1 year immediately preceding the date of the submission that initiates agency consideration of such person for receipt of such contract. An officer or employee who is employed by such person for less than 130 working days within 1 year immediately preceding the date of the submission that initiates agency consideration of such person shall be considered to be regularly employed as soon as he or she is employed by such person for 130 working days.

(13) 'State,' as used in this clause, means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, an agency or instrumentality of a State, and multi-State, regional, or interstate entity having governmental duties and powers.

(b) Prohibitions. The offeror, by signing its offer, hereby certifies to the best of his or her knowledge and belief that:

(1) No Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan, or cooperative agreement;

(2) If any funds other than Federal appropriated funds (including profit or fee received under a covered Federal action) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with the screening information request (SIR), the offeror shall complete and submit, with its offer, OMB Standard Form LLL, Disclosure of Lobbying Activities, to the Contracting Officer; and

(3) He or she will include the language of this clause in all subcontract awards at any tier and require that all recipients of subcontract awards in excess of \$150,000 shall disclose accordingly.

(4) This certification and disclosure is a prerequisite for making or entering into this contract imposed by the Act. Any person who makes a prohibited expenditure or fails to file or amend a disclosure form, shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000, for each such failure.

(c) The prohibitions of the Act do not apply under the following conditions:

(1) Agency and legislative liaison by own employees.

(i) The prohibition on the use of appropriated funds, in subparagraph (b)(1) of this clause, does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action if the payment is for agency and legislative liaison activities not directly related to a covered Federal action.

(ii) For purposes of subdivision (c)(1)(i) of this clause, providing any information specifically requested by an agency or Congress is

permitted at any time.

(iii) The following agency and legislative liaison activities are permitted at any time where they are not related to a specific solicitation for any covered Federal action:

(A) Discussing with an agency the qualities and characteristics (including individual demonstrations) of the person's products or services, conditions or terms of sale, and service capabilities.

(B) Technical discussions and other activities regarding the application or adaptation of the person's products or services for an agency's use.

(iv) The following agency and legislative liaison activities are permitted where they are prior to Screening Information Request (SIR) of any covered Federal action:

(A) Providing any information not specifically requested but necessary for an agency to make an informed decision about initiation of a covered Federal action;

(B) Technical discussions regarding the preparation of an unsolicited proposal prior to its official submission; and

(C) Capability presentations by persons seeking awards from an agency pursuant to the provisions of a law authorizing such actions;

(v) Only those services expressly authorized by subdivision (c)(1)(i) of this clause are permitted under this clause.

(2) Professional and technical services.

(i) The prohibition on the use of appropriated funds, in subparagraph (b)(1) of this clause, does not apply in the case of:

(A) A payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action, if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of submittal/offer or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action.

(B) Any reasonable payment to a person, other than an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action if the payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any submittal/offer or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action. Persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade associations.

(ii) For purposes of subdivision (c)(2)(i) of this clause, 'professional and technical services' shall be limited to advice and analysis directly applying any professional or technical discipline. For example, drafting of a legal document accompanying a submittal/offer by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this section unless they provide advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission or negotiation of a covered Federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her client's submittal/offer, but generally advocate one proposal over another are not allowable under this section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a submittal/offer are not allowable under this section since the engineer is providing technical services but not directly in the preparation, submission or negotiation of a covered Federal action.

(iii) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation and any other requirements in the actual award documents.

(iv) Only those services expressly authorized by subdivisions (c)(2)(i) and (ii) of this clause are permitted under this clause.

(v) The reporting requirements herein shall not apply with respect to payments of reasonable compensation made to regularly employed officers or employees of a person.

(d) Disclosure.

(1) The Contractor who requests or receives from an agency a Federal contract shall file with that agency a disclosure form, OMB Standard Form LLL, Disclosure of Lobbying Activities, if such person has made or has agreed to make any payment using nonappropriated funds (to include profits from any covered Federal action), which would be prohibited under subparagraph (b)(1) of this clause, if paid for with appropriated funds.

(2) The Contractor shall file a disclosure form at the end of each calendar quarter in which there occurs any event that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under subparagraph (e)(1) of this clause. An event that materially affects the accuracy of the information reported includes:

(i) A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or

(ii) A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or

(iii) A change in the officer(s), employee(s), or Member(s) contacted to influence or attempt to influence a covered Federal action.

(3) The Contractor shall require the certification, and if required, a disclosure form by any person who requests or receives any subcontractor exceeding \$150,000 under the Federal contract.

(4) All subcontractor disclosure forms shall be forwarded from tier to tier until received by the prime Contractor. The prime Contractor shall submit all disclosures to the Contracting Officer at the end of the calendar quarter in which the disclosure form is submitted by the subcontractor.

(e) Agreement. The Contractor agrees not to make any payment prohibited by this clause.

(f) Penalties.

(1) Any person who makes an expenditure prohibited under paragraph (b) of this clause or fails to file or amend the disclosure form to be filed or amended by paragraph (b) shall be subject to civil penalties as provided for by 31 U.S.C. 1352. An imposition of a civil penalty does not prevent the Government from seeking any other remedy that may be applicable.

(2) Contractors may rely without liability on the representations made by their subcontractors in the certification and in the disclosure form.

(g) Cost allowability. Nothing in this clause makes allowable or reasonable any costs which would otherwise be unallowable or unreasonable. Conversely, costs made specifically unallowable by the requirements in this clause will not be made allowable under any other provision.

(End of clause)

3.3.1-14 Limitation of Funds (APR 1996). (a) The parties estimate that performance of this contract will not cost the FAA more than:

(1) the estimated cost specified in the "Schedule" or,

(2) if this is a cost-sharing contract, the FAA 's share of the estimated cost specified in the "Schedule".

The Contractor agrees to use its best efforts to perform the work specified in the "Schedule" and all obligations under this contract within the estimated cost, which, if this is a cost-sharing contract, includes both the FAA 's and the Contractor's share of the cost.

(b) The "Schedule" specifies the amount presently available for payment by the FAA and allotted to this contract, the items covered, the FAA's share of the cost if this is a cost-sharing contract, and the period of performance it is estimated the allotted amount will cover. The parties contemplate that the FAA will allot additional funds incrementally to the contract up to the full estimated cost to the FAA specified in the "Schedule", exclusive of any fee. The Contractor agrees to perform, or have performed, work on the contract up to the point at which the total amount paid and payable by the FAA under the contract approximates but does not exceed the total amount actually allotted by the FAA to the contract.

(c) The Contractor shall notify the Contracting Officer in writing whenever it has reason to believe that the costs it expects to incur under this contract in the next 60 days, when added to all costs previously incurred, will exceed 75 percent of:

(1) the total amount so far allotted to the contract by the FAA or,

(2) if this is a cost-sharing contract, the amount then allotted to the contract by the FAA plus the Contractor's corresponding share. The notice shall state the estimated amount of additional funds required to continue performance for the period specified in the "Schedule".

(d) Sixty days before the end of the period specified in the "Schedule", the Contractor shall notify the Contracting Officer in writing of the estimated amount of additional funds, if any, required to continue timely performance under the contract or for any further period specified in the "Schedule" or otherwise agreed upon, and when the funds will be required.

(e) If, after notification, additional funds are not allotted by the end of the period specified in the "Schedule" or another agreed-upon date, upon the Contractor's written request the Contracting Officer will terminate this contract on that date in accordance with the provisions of the "Termination" clause of this contract. If the Contractor estimates that the funds available will allow it to continue to discharge its obligations beyond that date, it may specify a later date in its request, and the Contracting Officer may terminate this contract on that later date.

(f) Except as required by other provisions of this contract, specifically citing and stated to be an exception to this clause--

(1) The FAA is not obligated to reimburse the Contractor for costs incurred in excess of the total amount allotted by the FAA to this contract; and

(2) The Contractor is not obligated to continue performance under this contract (including actions under the "Termination" clause of this contract) or otherwise incur costs in excess of (i) the amount then allotted to the contract by the FAA or, (ii) if this is a cost-sharing contract, the amount then allotted by the FAA to the contract plus the Contractor's corresponding share, until the Contracting Officer notifies the Contractor in writing that the amount allotted by the FAA has been increased and specifies an increased amount, which shall then constitute the total amount allotted by the FAA to this contract.

(g) The estimated cost shall be increased to the extent that:

(1) the amount allotted by the FAA or,

(2) if this is a cost-sharing contract, the amount then allotted by the FAA to the contract plus the Contractor's corresponding share, exceeds the estimated cost specified in the "Schedule."

If this is a cost-sharing contract, the increase shall be allocated in accordance with the formula specified in the "Schedule."

(h) No notice, communication, or representation in any form other than that specified in subparagraph (f)(2) above, or from any person other than the Contracting Officer, shall affect the amount allotted by the FAA to this contract. In the absence of the specified notice, the FAA is not obligated to reimburse the Contractor for any costs in excess of the total amount allotted by the FAA to this contract, whether incurred during the course of the contract or as a result of termination.

(i) When and to the extent that the amount allotted by the FAA to the contract is increased, any costs the Contractor incurs before the increase that are in excess of

(1) the amount previously allotted by the FAA or,

(2) if this is a cost-sharing contract, the amount previously allotted by the FAA to the contract plus the Contractor's corresponding

share, shall be allowable to the same extent as if incurred afterward, unless the Contracting Officer issues a termination or other notice and directs that the increase is solely to cover termination or other specified expenses.

(j) Change orders shall not be considered an authorization to exceed the amount allotted by the FAA specified in the "Schedule", unless they contain a statement increasing the amount allotted.

(k) Nothing in this clause shall affect the right of the FAA to terminate this contract. If this contract is terminated, the FAA and the Contractor shall negotiate an equitable distribution of all property produced or purchased under the contract, based upon the share of costs incurred by each.

(l) If the FAA does not allot sufficient funds to allow completion of the work, the Contractor is entitled to a percentage of the fee specified in the "Schedule" equaling the percentage of completion of the work contemplated by this contract.

(End of clause)

3.5-1 Authorization and Consent (JAN 2009). (a) The Government authorizes and consents to all use and manufacture, in performing this contract or any subcontract at any tier, of any invention described in and covered by a United States patent -

(1) Embodied in the structure or composition of any article the delivery of which is accepted by the Government under this contract; or,

(2) Used in machinery, tools, or methods whose use necessarily results from compliance by the Contractor or a subcontractor with

(i) Specifications or written provisions forming a part of this contract or

(ii) Specific written instructions given by the Contracting Officer directing the manner of performance.

The entire liability to the Government for infringement of a United States patent must be determined solely by the provisions of the Indemnity clause, if any, included in this contract or any subcontract hereunder (including any lower-tier subcontract), and the Government assumes liability for all other infringement to the extent of the authorization and consent hereinabove granted.

(b) The Contractor must include the substance of this clause, including this paragraph (b), in all subcontracts that are expected to exceed \$100,000.00. However, omission of this clause, including those from any subcontract, including those at or below \$100,000.00, does not affect this authorization and consent.

(End of clause)

3.5-2 Notice and Assistance Regarding Patent and Copyright Infringement (JAN 2009). (a) The Contractor must report to the Contracting Officer, 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.

(b) In the event of any claim or suit against the Government on account of any alleged patent or copyright infringement arising out of the performance of this contract or out of the use of any supplies furnished or work or services performed under this contract, the Contractor must furnish to the Government, when requested by the Contracting Officer, all evidence and information in the contractor's possession pertaining to such claim or suit. Such evidence and information must be furnished at the expense of the Government except where the Contractor has agreed to indemnify the Government.

(c) The Contractor must include the substance of this clause, including this paragraph (c), in all subcontracts that are exceeded to exceed the simplified purchasing threshold.

(End of clause)

3.5-10 Patent Rights - Ownership by the Contractor (JAN 2009). (a) Definitions. As used in this clause -

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

"Made" means -

- (1) When used in relation to any invention other than a plant variety, the conception or first actual reduction to practice of the invention; or
- (2) When used in relation to a plant variety, that the Contractor has at least tentatively determined that the variety has been reproduced with recognized characteristics.

"Nonprofit organization" means a university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)) and exempt from taxation under section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a)) or any nonprofit scientific or educational organization qualified under a State nonprofit organization statute.

"Practical application" means to manufacture, in the case of a composition of product; to practice, in the case of a process or method; or to operate, in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.

"Subject invention" means any invention of the Contractor made in the performance of work under this contract.

(b) Contractor's rights

(1) Ownership.

The Contractor may retain ownership of each subject invention throughout the world in accordance with the provisions of this clause.

(2) License.

(i) The Contractor must retain a nonexclusive royalty-free license throughout the world in each subject invention to which the Government obtains title, unless the Contractor fails to disclose the invention within the times specified in paragraph (c) of this clause. The Contractor's license extends to any domestic subsidiaries and affiliates, within the corporate structure of which the Contractor is a part, and includes the right to grant sublicenses to the extent the Contractor was legally obligated to do so at contract award. The license is transferable only with the written approval of the agency, except when transferred to the successor of that part of the Contractor's business to which the invention pertains.

(ii) The Contractor's license may be revoked or modified by the agency to the extent necessary to achieve expeditious practical application of subject invention in a particular country, in accordance with procedures at 37 CFR Part 404.

(c) Contractor's obligations.

(1) The Contractor must disclose in writing each subject invention to the Contracting Officer within 2 months after the inventor discloses it in writing to Contractor personnel responsible for patent matters. The disclosure must identify the inventor(s) and this contract under which the invention was made. It must be sufficiently complete in technical detail to convey a clear understanding of the subject invention. The disclosure must also identify any publication, on sale (i.e. sale or offer for sale), or public use of the subject invention or whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication. In addition, after disclosure to the agency, the Contractor must promptly notify the Contracting Officer of the acceptance of any manuscript describing the invention for publication, and any on sale or public use.

(2) The Contractor must elect in writing whether or not to retain ownership of any subject invention by notifying the Contracting Officer within 2 years of disclosure to the agency. However, in any case where publication, on sale, or public use has initiated the 1-year statutory period during which valid patent protection can be obtained in the United States, the period for election of title may be shortened by the agency to a date that is no more than 60 days prior to the end of the statutory period.

(3) The Contractor must file either a provisional or nonprovisional patent application or a Plant Variety Protection Application on an elected subject invention within 1 year after election. However, in any case where a publication, sale, or public use has initiated the 1-year statutory period during which valid patent protection can be obtained in the United States, the Contractor must file the application prior to the end of the statutory period. If the Contractor files a provisional application, it must file a nonprovisional application within

10 months of the filing of the provisional application. The Contractor must file patent applications in additional countries or international patent offices within either 10 months of the first filed patent application (whether provisional or nonprovisional) or 6 months from the date permission is granted by the Commissioner of Patents to file foreign patent applications where such filing has been prohibited by a Secrecy Order.

(4) The Contractor may request extensions of the time for disclosure, election, or filing under subparagraphs (c) (1), (c)(2), and (c)(3) of this clause.

(d) Government rights - (1) Ownership. The Contractor must assign to the agency, upon written request, title to any subject invention-

(i) If the Contractor fails to disclose or elect ownership to the subject invention within the times specified in paragraph (c) of this clause, or elects not to retain ownership; provided, that the agency may request title only within 60 days after learning of the Contractor's failure to disclose or elect within the specified times.

(ii) In those countries in which the Contractor fails to file patent applications within the times specified in paragraph (c) of this clause; provided, however, that if the Contractor has filed a patent application in a country after the times specified in paragraph (c) of this clause, but prior to its receipt of the written request of the agency, the Contractor must continue to retain ownership in that country.

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

(2) License. If the Contractor retains ownership of any subject invention, the Government must have a nonexclusive, nontransferable, irrevocable, paid-up license to practice, or have practiced for or on its behalf, the subject invention throughout the world.

(e) Contractor action to protect the Government's interest.

(1) The Contractor must execute or to have executed and promptly deliver to the agency all instruments necessary to -

(i) Establish or confirm the rights the Government has throughout the world in those subject inventions in which the Contractor elects to retain ownership; and

(ii) Assign title to the agency when requested under paragraph (d) of this clause and to enable the Government to obtain patent protection and plant variety protection for that subject invention in any country.

(2) The Contractor must require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in the Contractor's format, each subject invention in order that the Contractor can comply with the disclosure provisions of paragraph (c) of this clause, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions. The disclosure format should require, as a minimum, the information required by subparagraph (c)(1) of this clause. The Contractor must instruct such employees, through employee agreements or other suitable educational programs, as to 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 must notify the Contracting Officer of any decisions not to file a nonprovisional patent application, continue the prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceeding on a patent, in any country, not less than 30 days before the expiration of the response or filing period required by the relevant patent office.

(4) The Contractor must include, within the specification of any United States nonprovisional patent or plant variety protection application and any patent or plant variety protection certificate issuing thereon covering a subject invention, the following statement, "The invention was made with Government support under (identify the contract) awarded by (identify the agency). The Government has certain rights in the invention."

(f) Reporting on utilization of subject inventions.

The Contractor must submit, on request, periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining utilization of the subject invention that are being made by the Contractor or its licensees or assignees. The reports must include information regarding the status of development, date of first commercial sale or use, gross royalties received by the Contractor, and such other data and information as the agency may reasonably specify. The Contractor also must provide additional reports as may be requested by the agency in connection with any march-in proceeding undertaken by the agency in accordance with paragraph (h) of this clause. The Contractor must also mark any utilization report as confidential/proprietary to help prevent inadvertent release outside the Government. As required by 35 U.S.C. 202(c)(5), the agency will not disclose such information to

persons outside the Government without the Contractor's permission.

(g) Preference for United States industry.

Notwithstanding any other provision of this clause, neither the Contractor nor any assignee must grant to any person the exclusive right to use or sell any subject invention in the United States unless such person agrees that any products embodying the subject invention or produced through the use of the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement for an agreement may be waived by the agency upon a showing by the Contractor or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States, or that under the circumstances domestic manufacture is not commercially feasible.

(h) March-in rights.

The Contractor acknowledges that, with respect to any subject invention in which it has retained ownership, the agency has the right to require licensing pursuant to 35 U.S.C. 203 and 210(c), and in accordance with the procedures in 37 CFR 401.6 and any supplemental regulations of the agency in effect on the date of contract award.

(i) Special provisions for contracts with nonprofit organizations.

If the Contractor is a nonprofit organization, it must -

(1) Not assign rights to a subject invention in the United States without the written approval of the agency, except where an assignment is made to an organization that has as one of its primary functions the management of inventions, provided, that the assignee will be subject to the same provisions as the Contractor;

(2) Share royalties collected on a subject invention with the inventor, including Federal employee co-inventors (but through their agency if the agency deems it appropriate) when the subject invention is assigned in accordance with 35 U.S.C. 202(e) and 37 CFR 401.10;

(3) Use the balance of any royalties or income earned by the Contractor with respect to subject inventions, after payment of expenses (including payments to inventors) incidental to the administration of subject inventions for the support of scientific research or education; and,

(4) Make efforts that are reasonable under the circumstances to attract licensees of subject inventions that are small business concerns, and give a preference to a small business concern when licensing a subject invention if the Contractor determines that the small business concern has a plan or proposal for marketing the invention which, if executed, is equally as likely to bring the invention to practical application as any plans or proposals from applicants that are not small business concerns; provided, that the Contractor is also satisfied that the small business concern has the capability and resources to carry out its plan or proposal. The decision whether to give a preference in any specific case will be at the discretion of the Contractor.

(5) Allow the Secretary of Commerce to review the Contractor's licensing program and decisions regarding small business applicants, and the negotiate changes to its licensing policies, procedures, or practices with the Secretary of Commerce when the Secretary's review discloses that the Contractor could take reasonable steps to more effectively implement the requirements of paragraph (i)(4) of this clause.

(j) Communications. [Complete according to agency instructions]

(k) Subcontracts.

(1) The Contractor must include the substance of this clause, including this paragraph (k), in all subcontracts for experimental, developmental, or research work to be performed by a small business concern or nonprofit organization.

(2) The Contractor must include in all other subcontracts for experimental, developmental, or research work the substance of the patent rights clause required to adequately protect the Government's interests consistent with section 3.5 of the FAA Acquisition Management System.

(3) At all tiers, the patent rights clause must be modified to identify the parties as follows: references to the Government are not changed, and the subcontractor has all rights and obligations of the Contractor in the clause. The Contractor must not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions.

(4) In subcontracts, at any tier, the agency, subcontractor, and the Contractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and the agency with respect to the matters covered by the clause; provided, however, that nothing in this paragraph is intended to confer any jurisdiction under the FAA disputes resolution process, or any board or judicial proceeding, in connection with proceedings under paragraph (h) of this clause, dealing with march-in rights.

(End of clause)

3.5-15 Additional Data Requirements (JAN 2009). (a) In addition to the data (as defined in the "Rights in Data-General" clause, or other equivalent included in this contract) specified elsewhere in this contract to be delivered, the Contracting Officer may, at any time during contract performance or within a period of 3 years after acceptance of all items to be delivered under this contract, order any data first produced or specifically used in the performance of this contract.

(b) The "Rights in Data - General" clause or other equivalent included in this contract is applicable to all data ordered under this "Additional Data Requirements" clause. Nothing contained in this clause must require the Contractor to deliver any data the withholding of which is authorized by the "Rights in Data - General" or other equivalent clause of this contract, or data which are specifically identified in this contract as not subject to this clause.

(c) When data are to be delivered under this clause, the Contractor will be compensated for converting the data into the prescribed form, for reproduction, and for delivery.

(d) The Contracting Officer may release the Contractor from the requirements of this clause for specifically identified data items at any time during the 3-year period set forth in paragraph (a) of this clause.

3.5-13 RIGHTS IN DATA – GENERAL (MODIFIED) ALTERNATE II AND V .

(a) Definitions. As used in this clause -

"Commercial Computer Software" is Computer Software that meets the criteria of a "Commercial Item" defined in clause 3.10.2-6

"Computer database" or "database means" a collection of recorded information in a form capable of, and for the purpose of, being stored in, processed, and operated on by a computer. The term does not include computer software.

"Computer Software" means -

(i) Computer programs that comprise a series of instructions, rules ,routines, or statements, regardless of the media in which they are recorded, that allow or cause a computer to perform a specific operation or series of operation, and

(ii) Recorded information comprising source code listings, design details, algorithms, processes, flow charts, formulas, and related material that would enable the computer program to be produced, created or compiled. Computer software does not include computer databases 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 explains the capabilities of the computer software or provide instructions for using the software.

"Data" means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. The term does not include information incidental to OTA administration, such as financial, administrative, cost or pricing, or management information.

"Form, fit, and function data" means data relating to items, components, or processes that are sufficient to enable physical and functional interchangeability, and data identifying source, size, configuration, mating, and attachment characteristics, functional characteristics, and performance requirements. For computer software it means data identifying source, functional characteristics, and performance requirements but specifically excludes the source code, algorithms, processes, formulae, and flow charts of the software.

"Limited Rights" means the rights of the Government in Limited Rights Data to use, modify, reproduce, release, perform, display, or

disclose technical data, in whole or in part, within the Government. The Government may not, without the written permission of the party asserting limited rights, release or disclose the technical data outside the Government, use the technical data for manufacture, or authorize the technical data to be used by another party, except that the Government may reproduce, release or disclose such data or authorize the use or reproduction of the data by persons outside the Government if reproduction, release, disclosure, or use is—

- (i) Necessary for emergency repair and overhaul; and
- (ii) Subject to a prohibition on the further reproduction, release, disclosure, or use of the technical data; and
- (iii) The contractor or subcontractor asserting the restriction is notified of such reproduction, release, disclosure, or use.

"Limited Rights Data" means data, other than computer software or Boeing Proprietary Information, that embody trade secrets or are commercial or financial and confidential or privileged, to the extent that such data pertain to items, components, or processes developed at private expense, including minor modifications, or as otherwise identified as Limited Rights Data.

"Boeing Proprietary Information" or "Subcontractor Proprietary Information" is:

any business, financial, or specific program (including plans or strategies, resources, and budgets), and technical information (in the form of designs, concepts, requirements, specifications, software, interfaces, components, processes, or the like), or any combination thereof, that is:

owned by the Company or Subcontractor;

was not first produced during the performance of this OTA; and

the FAA or US Government does not already have limited license rights or other rights to such information,

considered competition sensitive, and as such, release of such data to 3rd parties presents a significant risk or possible harm to Company. No rights or license to use such information is provided to the FAA or US Government or any agency herein;

not subject to 3.5-15 Additional Data Requirements.

The Company, at its discretion, may choose to provide such information on a temporary, short term access basis either visually or in writing, for the benefit of the OTA. In the event that the Company shares such information with the FAA, the FAA agrees to protect such information and not distribute to any 3rd party and may only provide to FAA or other Government employees in direct support of this OTA with a need to know.

Within 30 days of receipt of a written request by the Company, the FAA agrees to return or destroy any written or electronic form Boeing Proprietary Information. The FAA may request, in writing to the Company, to release such information to a 3rd party for the benefit of the OTA. The Company, at its option, may choose to enter into a non-disclosure agreement with such 3rd party and provide such information with restrictions. The Company and its subcontractor are required to mark all such information with the legend "Boeing Proprietary Information" or "Subcontractor Proprietary Information". In the event Company fails to mark such data, the Company and FAA shall utilize part (f) of this clause.

"Restricted Computer Software," means computer software developed at private expense and that is a trade secret, Commercial Computer Software, or financial, confidential or privileged, or is copyrighted computer software, including minor modifications of the computer software.

"Restricted Rights" means the rights of the Government in Restricted Computer Software, as set forth in a Restricted Rights Notice of subparagraph (g) if included in this clause, or as otherwise may be provided in a collateral agreement incorporated in and made part of this OTA, including minor modifications of such computer software.

"Technical Data" means recorded information (regardless of the form or method of the recording) of a scientific or technical nature (including computer databases and computer software documentation). This term

does not include Computer Software or financial, administrative, cost or pricing, or management data or other information incidental to OTA administration. The term includes recorded information of a scientific or technical nature that is included in computer databases.

"Unlimited Rights" means the rights of the Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, in any manner and for any purpose, and to have or permit others to do so.

(b) Allocations of Rights.

(1) Except as provided in paragraph (c) of this clause, and in the case of Boeing Proprietary Information and the Limited Rights Data specifically identified in Section I.4 of this agreement^[1], the Government must have unlimited rights in-

(i) Data first produced in the performance of this OTA;

(ii) Form, fit, and function data first produced under this OTA;

(iii) Data delivered under this OTA (except for Restricted Computer Software) that constitute manuals or instructional and training material for installation, operation, or routine maintenance and repair of items, components, or processes delivered or furnished for use under this OTA; and

(iv) All other data delivered under this OTA unless provided otherwise for by the Contractor with Boeing Proprietary Information or Limited Rights Data or Restricted Computer Software in accordance with paragraph (g) of this clause.

(2) The Company may -

(i) Assert copyright in data first produced in performance of this OTA to the extent provided in paragraph (c)(1) of this clause;

(ii) Use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Company in the performance of this OTA, unless provided otherwise in paragraph (d) of this clause;

(iii) Substantiate use of, add or correct limited rights, restricted rights, or copyright notices and to take other appropriate action, in accordance with paragraphs (e) and (f) of this clause; and

(iv) Protect from unauthorized disclosure and use those data which are Boeing Proprietary Information or Limited Rights Data as specifically identified in Section I.4 or restricted computer software to the extent provided in paragraph (g) of this clause;

(c) Copyright.

(1) Data first produced in the performance of this OTA.

(i) Unless provided otherwise in paragraph (d) of this clause, the Company may, without prior approval of the Contracting Officer, assert copyright in scientific and technical articles based on or containing data first produced in the performance of this OTA and publish in academic, technical or professional journals, symposia proceedings or similar works.

(ii) The Company must affix the applicable copyright notices of 17 U.S.C. 401 or 402 and acknowledgment of Government sponsorship (including OTA number).

(iii) For data other than computer software not containing Boeing Proprietary Information or Limited Rights Data as specifically identified in Section I.4, the Company grants to the Government and others acting on its

behalf, a paid-up, nonexclusive, irrevocable worldwide license in such copyrighted data to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government. For computer software not containing Boeing Proprietary Software or Restricted Computer Software, the Company grants to the Government and others acting in its behalf, a paid-up nonexclusive, irrevocable worldwide license in such copyrighted computer software to reproduce, prepare derivative works, and perform publicly and display publicly (but not to distribute copies to the public) by or on behalf of the Government.

(2) Reserved

(3) Removal of copyright notices. The Government will not remove any copyright notices placed on data pursuant to this paragraph (c), and will include such notices on all reproductions of the data.

(d) Release, Publication and Use of data. The Company has the right to use, release to others, reproduce, distribute, or publish all data first produced or specifically used by the Company in the performance of this OTA, except as prohibited by Federal law or regulation (e.g., export control or national security laws or regulations). or as expressly set forth in this OTA, e.g. Section H.1 of this Agreement.

(e) Unauthorized marking of data.

(1) Notwithstanding any other provisions of this OTA concerning inspection or acceptance, if any data delivered under this OTA are marked with the notices specified in paragraph (g)(3) or (g)(4) if included in this clause, or if the data bears any other restrictive or limiting markings not authorized by this OTA, the Contracting Officer shall return the data to the Company. While the FAA is not subject to the requirements of 41 U.S.C. 253d, nor to the procedures of the Contract Disputes Act at 41 U.S.C. 601-613, the following procedures apply.

(i) The Contracting Officer must make written inquiry to the Company affording the Company 60 days from receipt of the inquiry to provide written justification to substantiate the propriety of the markings;

(ii) If the Company fails to respond or fails to provide written justification to substantiate the propriety of the markings within the 60-day period (or a longer time approved in writing by the Contracting Officer for good cause shown), the Government must have the right to cancel or ignore the markings at any time after said period and the data will no longer be made subject to any disclosure prohibitions.

(iii) If the Company provides written justification to substantiate the propriety of the markings within the period set in paragraph (e)(1)(i) of this clause, the Contracting Officer will consider such written justification and determine whether or not the markings are to be canceled or ignored. If the Contracting Officer determines that the markings are authorized, the Company will be so notified in writing. If the Contracting Officer determines, with concurrence of the Chief of the Contracting Office COCO, that the markings are not authorized, the Contracting Officer must provide a written determination to the Company. If the Company disagrees with the Contracting Officer determination, the Company may seek adjudication of that determination under AMS 3.9.1-1 "Contract Dispute." The decision of the Office of Dispute Resolution [ODRA] must be final regarding the appropriateness of the markings unless the Company files an appeal pursuant to 49 U.S.C. 46110 in a court of competent jurisdiction within 90 days of receipt of the ODRA decision. This is the Company's sole remedy to an adverse decision of the ODRA.

The Government must continue to abide by the markings under this paragraph (e)(1)(iii) until final resolution of the matter either by ODRA (in which instance the Government will thereafter have the right to cancel or ignore the markings at any time and the data will no longer be made subject to any disclosure prohibitions), or

by final disposition of the matter by court decision if the ODRA's decision is appealed.

(2) The time limits in the procedures set forth in paragraph (e)(1) of this clause may be modified in accordance with agency regulations implementing the Freedom of Information Act (5 U.S.C. 552) if necessary to respond to a request therein.

(f) Omitted or incorrect markings.

(1) Data delivered to the Government without any restrictive markings must be deemed to have been furnished with unlimited rights. The Government is not liable for the disclosure, use, or reproduction of such data.

(2) The Company may request, within 6 months (or a longer time approved by the Contracting Officer for good cause shown) after delivery of such data, permission to have authorized notices placed on the data at the Company's expense. The Contracting Officer may agree to do so if the Company-

(i) Identifies the data to which the omitted notice is to be applied;

(ii) Demonstrates that the omission of the notice was inadvertent; and,

(iii) Establishes that the use of the proposed notice is authorized;

(iv) Acknowledges that the Government has no liability for the disclosure, use, or reproduction of any such data made prior to the addition of the notice or resulting from the omission of the notice.

(3) If data has been marked with an incorrect notice, the Contracting Officer may -

(i) Permit correction of the notice at the Company's expense if the Company identifies the data and demonstrates that the correct notice is authorized, or

(ii) Correct any incorrect notices.

(g) Protection of Limited Rights Data and Restricted Computer Software.

(1) Limited Rights Data that are formatted as a computer data base for delivery to the Government are to be treated as Limited Rights Data and not Restricted Computer Software.

(2) This OTA specifies that Boeing may deliver Boeing Proprietary Information or Limited Rights Data. If delivery of such data is required, the Company must affix the appropriate Rights Notice to the data and the Government will treat the data, subject to the provisions of paragraphs (e) and (f) of this clause, in accordance with the notice:

LIMITED RIGHTS NOTICE (January 2009) (Modified)

(i) These Limited Rights Data or Restricted Computer Software data are submitted with Limited Rights under Government OTA No. DTFAWA-10-C-00030.. These data may be reproduced and used by the Government with the express limitation that they will not, without written permission of the Company, be used for purposes of manufacture nor disclosed outside the Government;

(ii) This Notice must be marked on any reproduction of these data, in whole or in part.

(h) Subcontracting. The Company must obtain from its subcontractors all data and rights therein necessary to fulfill the Company's obligations to the Government under this OTA. If a subcontractor refuses to accept terms affording the Government those rights, the Company must promptly notify the Contracting Officer of the refusal and must not proceed with subcontract award without authorization in writing from the Contracting Officer.

(i) Relationship to patents or other rights. Nothing contained in this clause imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government.

L4 GOVERNMENT AND COMPANY AGREEMENT ON DATA RIGHTS

For the purposes of this Agreement, Unlimited Rights “Non-Proprietary” data identified in the table below will include, where appropriate, normalized data for tests, systems performance and analyses, and general hardware design descriptions.

During the conduct of activities under this OTA, additional Limited Rights Data may be developed and/or identified by Boeing. The Parties agree to work together in good faith to address Boeing’s concerns by identifying and protecting such additional data elements as Limited Rights Data and, wherever possible, finding ways to generate alternative data which would be suitable for public release and treatment as Unlimited Rights data.

Technical Data to be Furnished	Basis for Assertion	Asserted Rights/ Applicable Time Period	Entity Making Assertion
<p><u>4.3.1.a. UNLIMITED RIGHTS DATA:</u></p> <p><u>4.3.1.a. Non-Proprietary Oxide/Oxide CMC Technology reports, presentations, & communications to consortium & FAA :</u></p> <p>Responsive to FAA requirements for intended system level modeling, Boeing will deliver to FAA and consortium members in <u>Non-Proprietary</u> reports, presentations, and communications, information describing:</p> <p><u>FOREGROUND IP :</u></p> <p>a. Non-proprietary Oxide/Oxide CMC exhaust washed nozzle and test specimen technology demonstrator flight and ground test <u>systems level modeling data.</u></p>	<p>Technical data to be generated, developed, & delivered with mixed Boeing & FAA funds, & based upon technology developed & generated at private expense</p>	<p>Unlimited rights,</p> <p>Non-Proprietary Volume</p> <p>Indefinite</p>	<p>Boeing / ATK-COIC, Albany Eng. Comp.</p>
<p><u>4.3.1.a. UNLIMITED RIGHTS DATA:</u></p> <p>§ Preliminary Design Review § Photos of Model, Solid Model Screen Captures, non-dimensional</p> <p>§ Critical Design Review § Photos of Model, Solid Model Screen Captures, non-dimensional</p> <p>§ Test Demonstration and Instrumentation Plan § Description of Test, objective and performance data sought</p> <p>§ Informal test Demonstration Data Analysis and Report § Description of test, objectives and performance (in terms of Satisfactory or Unsatisfactory)</p> <p>§ Final Test Demonstration Data Analysis and Report § Description of Test, objectives and performance in terms of satisfactory or unsatisfactory</p> <p>§ CLEEN Consortium § Overall objective of technology and project, over view of progress to date and planned next steps</p> <p>§ Final Report § Non-proprietary systems level modeling discussion of overall objective of technology and project, discussion of design and analysis activities</p>			

<p><u>4.3.1.b. LIMITED RIGHTS DATA:</u></p> <p><u>4.3.1.b. Limited Rights Oxide/Oxide CMC Technology reports, presentations, & communications to FAA :</u></p> <p>Responsive to FAA requirements for intended system level modeling, Boeing will deliver to FAA in <u>Proprietary</u> reports, presentations, and communications, information describing:</p> <p><u>FOREGROUND IP :</u></p> <p>a. Proprietary Oxide/Oxide CMC exhaust washed nozzle and test specimen technology demonstrator flight and ground test <u>detailed technical data</u> that includes detailed aircraft subsystem modifications, detailed systems & benefits analysis, and detailed design characteristics and operating limits.</p>	<p>Technical data developed & first generated under CLEEN with mixed Boeing & FAA funds & that insegregably includes Boeing Proprietary Data</p>	<p>Limited Rights</p> <p>Proprietary Volume</p> <p>Indefinite</p>	<p>Boeing, ATK-COIC, & A.E.C.</p>
<p><u>4.3.1.b. LIMITED RIGHTS DATA :</u></p> <p>§ Preliminary Design Review § Design drawings, structural analysis, material performance data, test experimental methodology, requirements, TPMs vs Requirements</p> <p>§ Critical Design Review § Pictures of the exhaust model, design drawings of exhaust system with attachment, structural and dynamic analysis, test and experimental methodology, overall assessment of risks & continuing resolutions</p> <p>§ Test Demonstration and Instrumentation Plan § Test Objective, Configuration and Methodology, Test Specimen geometry and configuration, Test Setup, Instrumentation, Detailed Test Sequence</p> <p>§ Informal test Demonstration Data Analysis and Report § Overview of raw data captured, test conditions and conformance to test plan. Discussion of any deviations from plan, Initial assessment of performance including noise & weight</p> <p>§ Final Test Demonstration Data Analysis and Report § Discussion of data, data quality, test execution relative to plan, interpretation of data relative to goals of FAA CLEEN and overall assessment of data relative to prediction.</p> <p>§ CLEEN Consortium (Government-only session) § Overall objective of technology and project, overview of progress to date including levels of fidelity in design and analysis, status on the fabrication of test articles, outbrief of testing accomplished to date, experimental methods, and performance data obtained from testing, and planned next steps. Discussion of risk and opportunity status and ongoing mitigation activities for issues</p> <p>§ Final Report § Overall objective of technology and project, discussion of design and analysis activities</p>			
<p><u>4.3.1.c. BOEING PROPRIETARY DATA:</u></p> <p><u>4.3.1.c. Boeing Proprietary Oxide/Oxide CMC Technology reports, presentations, & communications to FAA :</u></p> <p>Boeing will not deliver to FAA Boeing Proprietary Information except upon request, and then only marked as “Boeing Proprietary” and for uses limited to review only by USG FAA CLEEN personnel.</p>	<p>Technical data developed & generated entirely at private expense & without using Boeing or FAA funds expended under CLEEN</p>	<p>Boeing Proprietary Data</p> <p>Proprietary Volume</p> <p>Indefinite</p>	<p>Boeing, ATK-COIC, & A.E.C.</p>

4.3.1.c. BOEING PROPRIETARY DATA :

§ Preliminary Design Review

§ Laminate, core, sandwich fabrication process details, material formulations, attachment designs, and related CMC analysis tools and methods established as Boeing background IP rights and entirely privately funded

§ Critical Design Review

§ Laminate, core, sandwich fabrication process details, material formulations, attachment designs, and related CMC analysis tools and methods established as Boeing background IP rights and entirely privately funded

§ Test Demonstration and Instrumentation Plan

§ Not applicable

§ Informal test Demonstration Data Analysis and Report

§ Not Applicable

§ Final Test Demonstration Data Analysis and Report

§ Not Applicable

§ CLEEN Consortium

§ Not Applicable

§ Final Report

§ Laminate, core, sandwich fabrication process details, material formulations, attachment designs, and related CMC analysis tools and methods established as Boeing background IP rights and entirely privately funded

4.4.1.a. UNLIMITED RIGHTS DATA:

4.4.1.a. Non-Proprietary SMA ATE Technology reports, presentations, & communications to consortium & FAA :

Responsive to FAA requirements for intended system level modeling. Boeing will deliver to FAA and consortium members in Non-Proprietary reports, presentations, and communications, information describing:

FOREGROUND IP :

a. Non-Proprietary flight and ground test ATE technology demonstrator and specimen systems level modeling data.

Technical data to be generated, developed, & delivered with mixed Boeing & FAA funds, & based upon technology developed & generated at private expense

Unlimited rights,

Non-Proprietary Volume

Indefinite

Boeing

4.4.1.a. UNLIMITED RIGHTS DATA :

§ Preliminary Design Review

§ Description of flight test plan, pictures of test configurations, adaptive trailing edge system performance specifications

§ Critical Design Review

§ Description of flight test plan, test configurations, adaptive trailing edge system performance specifications

§ Test Demonstration and Instrumentation Plan

§ Description of flight test, objectives, and desired performance data

§ Informal test Demonstration Data Analysis and Report

§ Description of test, objectives, and initial performance analysis in terms of satisfactory or unsatisfactory status.

§ Final Test Demonstration Data Analysis and Report

§ Description of test, objectives, pictures from test, and performance analysis in terms of satisfactory or unsatisfactory status

§ CLEEN Consortium

§ Overall objective of technology and project, overview of progress to date and planned next steps

§ Final Report

§ Non-proprietary systems level evaluation of overall objective of technology and project, pictures and overview of trailing edge configurations, discussion of design and analysis activities

<p><u>4.4.1.b. LIMITED RIGHTS DATA :</u></p> <p><u>4.4.1.b. Limited Rights SMA ATE Technology reports, presentations, and communications to FAA :</u></p> <p>Responsive to FAA requirements for intended system level modeling, Boeing will deliver to FAA in <u>Proprietary</u> reports, presentations, and communications, information describing:</p> <p><u>FOREGROUND IP :</u></p> <p>a. Flight and ground test ATE technology demonstrator and specimen <u>detailed technical data</u> that includes detailed aircraft subsystem modifications, detailed systems & benefits analysis, and detailed characteristics and operating limits.</p>	<p>Technical data developed & first generated under CLEEN with mixed Boeing & FAA funds & that insegregably includes Boeing Proprietary Data</p>	<p>Limited Rights</p> <p>Proprietary Volume</p> <p>Indefinite</p>	<p>Boeing</p>
<p><u>4.4.1.b. LIMITED RIGHTS DATA :</u></p> <p>§ Preliminary Design Review</p> <p>§ Actuation system specifications, system requirements, implementation issues, CFD analysis of configurations, relative performance of wing sectional aerodynamics, configuration wind tunnel test data, benefits analysis, projected performance change relative to baseline configuration for generic aircraft</p> <p>§ Critical Design Review</p> <p>§ Tool design, component design and specifications, Adaptive Trailing Edge system specifications, final assembly design</p> <p>§ Test Demonstration and Instrumentation Plan</p> <p>§ Flight test plan, objectives, instrumentation suite, and desired performance data</p> <p>§ Informal test Demonstration Data Analysis and Report</p> <p>§ Flight test overview, configuration description, pictures, preliminary performance evaluation relative to baseline</p> <p>§ Final Test Demonstration Data Analysis and Report</p> <p>§ Flight test overview, configuration and system description and pictures, configuration noise and aero performance analysis relative to baseline</p> <p>§ CLEEN Consortium (Government-only session)</p> <p>§ Overall objective of technology and project, overview of progress to date including status of design, analysis, fabrication of test articles, test reports, experimental methods, and performance data obtained from testing, and planned next steps. Discussion of risk and opportunity status and ongoing mitigation activities.</p> <p>§ Final Report</p> <p>§ Adaptive Trailing Edge system overview, flight test overview, relative comparison of CFD, wind tunnel, and flight test aero and noise data, benefits analysis of sectional and projected performance for narrow and wide body aircraft</p>			
<p><u>4.4.1.c. BOEING PROPRIETARY RIGHTS DATA :</u></p> <p><u>4.4.1.c. Boeing Proprietary SMA ATE Technology reports, presentations, and communications to FAA :</u></p> <p>Boeing will not deliver to FAA Boeing Proprietary Information except upon request, and then only marked as “Boeing Proprietary” and for uses limited to review only by USG FAA CLEEN personnel.</p>	<p>Technical data developed & generated entirely at private expense & without using Boeing or FAA funds expended under CLEEN</p>	<p>Boeing Proprietary Data</p> <p>Proprietary Volume</p> <p>Indefinite</p>	<p>Boeing</p>

4.4.1.c. BOEING PROPRIETARY RIGHTS DATA :

§ Preliminary Design Review

§ Actuation component design, modeling, and implementation details, aircraft system analysis, stress and load analysis of components, established as Boeing background IP rights and privately funded.

§ Critical Design Review

§ Actuation component details, aircraft system design, aircraft integration details, stress and load analysis of components, established as Boeing background IP rights and privately funded.

§ Test Demonstration and Instrumentation Plan

§ Not Applicable

§ Informal test Demonstration Data Analysis and Report

§ Not Applicable

§ Final Test Demonstration Data Analysis and Report

§ Not Applicable

§ CLEEN Consortium

§ Not Applicable

§ Final Report

§ Actuation component design, modeling, and implementation details, established as Boeing background IP rights and privately funded

4.6.1.a. UNLIMITED RIGHTS DATA :

4.6.1a. Alternative Fuels Technology - Aromatics & Materials Laboratory Testing :

Responsive to FAA requirements for intended system level modeling, Boeing will deliver in non-proprietary reports, presentations, and communications to FAA and consortium members, information describing:

FOREGROUND IP :

a. Assessments of fuels used in 2008-2009 flights & their performance, & will describe contributions of each of the major class fractions, as well as the relative importance of specific fuel components, all to illustrate the types of hydrocarbons useful in improving material compatibility of SPK-based fuels, & a summary of the overall effort including experiment setup, & results & analyses.

b. Laboratory tests of fuels, materials, and aromatics to enable higher fuel blend percentages.

Technical data to be generated, developed, & delivered with mixed Boeing & FAA funding, & based upon technology developed & generated at private expense

Unlimited Rights, Non-Proprietary Volume

Indefinite

Boeing

4.6.1.a. UNLIMITED RIGHTS DATA :

§ Test Demonstration and Instrumentation Plan

§ List of materials being tested, Summary of the various fuels being tested (i.e. aromatic content)

§ Informal test Demonstration Data Analysis and Report

§ List of materials being tested, Key properties of the materials, regarding solubility parameters, Summary and key properties of the various fuels being tested for both neat and 50% blends, Key properties of SPK blended with aromatics, Hansen solubility parameters for various fuel components, Volume swell for neat, 50% blends as a function of time (line plots only, Volume swell as a function of aromatic content for the various materials, including 90% prediction intervals

§ Final Test Demonstration Data Analysis and Report

§ List of materials being tested, Key properties of the materials, regarding solubility parameters, Summary and key properties of the various fuels being tested for both neat and 50% blends, Key properties of SPK blended with aromatics, Hansen solubility parameters for various fuel components, Volume swell for neat, 50% blends as a function of time (line plots only, Volume swell as a function of aromatic content for the various materials, including 90% prediction intervals

§ Data Required for ASTM Qualification

§ List of materials being tested, Key properties of the materials, regarding solubility parameters, Summary and key properties of the various fuels being tested for both neat and 50% blends, Key properties of SPK blended with aromatics, Hansen solubility parameters for various fuel components, Volume swell for neat, 50% blends as a function of time (line plots only, Volume swell as a function of aromatic content for the various materials, including 90% prediction intervals

§ CLEEN Consortium

§ List of materials being tested, Key properties of the materials, regarding solubility parameters, Summary and key properties of the various fuels being tested for both neat and 50% blends, Key properties of SPK blended with aromatics, Hansen solubility parameters for various fuel components, Volume swell for neat, 50% blends as a function of time (line plots only, Volume swell as a function of aromatic content for the various materials, including 90% prediction intervals

§ Final Report

§ List of materials being tested, Key properties of the materials, regarding solubility parameters, Summary and key properties of the various fuels being tested for both neat and 50% blends, Key properties of SPK blended with aromatics, Hansen solubility parameters for various fuel components, Volume swell for neat, 50% blends as a function of time (line plots only, Volume swell as a function of aromatic content for the various materials, including 90% prediction intervals

<p><u>4.6.1.b. LIMITED RIGHTS DATA :</u></p> <p><u>4.6.1.b. Alternative Fuels Technology - Aromatics & Materials Laboratory Testing :</u></p> <p>Not Applicable: All technical data under this statement of work will be delivered with unlimited rights under § 4.6.1.a.</p>	<p>Technical data developed & first generated under CLEEN with mixed Boeing & FAA funds & that insegregably includes Boeing Proprietary Data</p>	<p>Limited Rights</p> <p>Proprietary Volume</p> <p>Indefinite</p>	<p>Boeing</p>
<p><u>4.6.1.c. BOEING PROPRIETARY RIGHTS DATA :</u></p> <p><u>4.6.1.c. Alternative Fuels Technology - Aromatics & Materials Laboratory Testing :</u></p> <p>Not Applicable: All technical data under this statement of work will be delivered with unlimited rights under § 4.6.1.a.</p>	<p>Technical data developed & generated entirely at private expense & without using Boeing or FAA funds expended under CLEEN</p>	<p>Boeing Proprietary Data</p> <p>Proprietary Volume</p> <p>Indefinite</p>	<p>Boeing</p>

[\[1\]](#) The reference to Section I.5 represents a deviation from the standard version of FAA AMS Clause 3.5-13 and has been inserted per agreement of the Parties.

3.6.2-39 Trafficking in Persons (JAN 2008). (a) Definitions:

"Coercion," as used in this clause, means:

- (i) Threats of serious harm to or physical restraint against any person;
- (ii) Any Scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or
- (iii) The abuse or threatened abuse of the legal process.

"Commercial sex Act," as used in this clause, means any sex act on account of which anything of value is given to or received by any person.

"Debt bondage," as used in this clause, means the status or condition of a debtor arising from a pledge by the debtor of his or her personal services or those of a person under his or her control as a security for debt, if the value of those services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined.

"Employee," as used in this clause, means an employee of a contractor or subcontractor directly engaged in the performance of work under a FAA contract.

"Involuntary servitude," as used in this clause, means a condition of servitude induced by means of:

- (i) Any scheme, plan, or pattern intended to cause a person to believe that if the person did not enter into or continue in such conditions, that person or another person would suffer harm or physical restraint; or
- (ii) The abuse or threatened abuse of the legal process.

"Severe trafficking of persons," as used in this clause, means:

- (i) Sex trafficking in which a commercial sex act is induced by force, fraud, coercion, or in which the person induced has not attained 18 years of age; or
- (ii) The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services through force, fraud, or coercion for the purpose of involuntary servitude, peonage, debt bondage, or slavery.

"Sex trafficking," as used in this clause, means the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act.

(b) The contractor will establish policies and procedures for ensuring that its employees do not engage in or support severe forms of trafficking of persons, procurement of sexual acts, or use forced labor in the performance of this contract.

(c) The contractor will take action to ensure that all contractor and subcontractor employees are aware of laws, regulations, and policies, to include actions taken by the contractor if violated, regarding severe forms of trafficking of persons, procurement of sexual acts, or use of forced labor.

(d) The contractor must notify the contracting officer of:

- (1) Any information it receives that alleges an employee or subcontractor employee has engaged in conduct that violates this policy; and
- (2) Any actions taken against the employee or subcontractor employee.

(e) In addition to other remedies available to the FAA, the contractor's failure to comply with the requirements of this clause may render the contractor subject to:

- (1) Required removal of a contractor or subcontractor employee from the performance of the contract;
- (2) Suspension of contract payments;
- (3) Loss of award fee for the period of noncompliance;
- (4) Termination for default; or

(5) Suspension or debarment.

(f) The contractor must include the substance of this clause in all subcontracts for performance of work under a FAA contract.

(End of Clause)

3.6.4-10 Restrictions on Certain Foreign Purchases (JAN 2010). (a) Except as authorized by the Office of Foreign Assets Control (OFAC) in the Department of the Treasury, the Contractor must not acquire, for use in the performance of this contract, any supplies or services if any proclamation, Executive order, or statute administered by OFAC, or if OFAC's implementing regulations at 31 CFR Chapter V, would prohibit such transaction by a person subject to the jurisdiction of the United States.

(b) Except as authorized by OFAC, most transactions involving Cuba, Iran, and Sudan are prohibited, as are most imports from North Korea, into the United States or its outlying areas. Lists of entities and individuals subject to economic sanctions are included in OFAC's List of Specially Designated Nationals and Blocked Persons at <http://www.treas.gov/offices/enforcement/ofac/sdn>. More information about these restrictions, as well as updates is available in the OFAC's regulations at 31 CFR Chapter V and/or on OFAC's website at <http://www.treas.gov/offices/enforcement/ofac>.

(c) The Contractor must insert this clause, including this paragraph (c), in all subcontracts.

(End of clause)

3.9.1-1 Contract Disputes (SEP 2009). (a) All contract disputes arising under or related to this contract shall be resolved through the Federal Aviation Administration (FAA) dispute resolution system at the Office of Dispute Resolution for Acquisition (ODRA) and shall be governed by the procedures set forth in 14 C.F.R. Parts 14 and 17, which are hereby incorporated by reference. Judicial review, where available, will be in accordance with 49 U.S.C. 46110 and shall apply only to final agency decisions. A contractor may seek review of a final FAA decision only after its administrative remedies have been exhausted.

(b) The filing of a contract dispute with the ODRA may be accomplished by mail, overnight delivery, hand delivery, or by facsimile. A contract dispute is considered to be filed on the date it is received by the ODRA.

(c) Contract disputes are to be in writing and shall contain:

(1) The contractor's name, address, telephone and fax numbers and the name, address, telephone and fax numbers of the contractor's legal representative(s) (if any) for the contract dispute;

(2) The contract number and the name of the Contracting Officer;

(3) A detailed chronological statement of the facts and of the legal grounds for the contractor's positions regarding each element or count of the contract dispute (i.e., broken down by individual claim item), citing to relevant contract provisions and documents and attaching copies of those provisions and documents;

(4) All information establishing that the contract dispute was timely filed;

(5) A request for a specific remedy, and if a monetary remedy is requested, a sum certain must be specified and pertinent cost information and documentation (e.g., invoices and cancelled checks) attached, broken down by individual claim item and summarized; and

(6) The signature of a duly authorized representative of the initiating party.

(d) Contract disputes shall be filed at the following address:

(1) Office of Dispute Resolution for Acquisition, AGC-70,
Federal Aviation Administration,
800 Independence Ave, S.W., Room 323,
Washington, DC 20591,

Telephone: (202) 267-3290,
Facsimile: (202) 267-3720; or

(2) other address as specified in 14 CFR Part 17.

(e) A contract dispute against the FAA shall be filed with the ODRA within two (2) years of the accrual of the contract claim involved. A contract dispute by the FAA against a contractor (excluding contract disputes alleging warranty issues, fraud or latent defects) likewise shall be filed within two (2) years after the accrual of the contract claim. If an underlying contract entered into prior to the effective date of this part provides for time limitations for filing of contract disputes with the ODRA which differ from the aforesaid two (2) year period, the limitation periods in the contract shall control over the limitation period of this section. In no event will either party be permitted to file with the ODRA a contract dispute seeking an equitable adjustment or other damages after the contractor has accepted final contract payment, with the exception of FAA claims related to warranty issues, gross mistakes amounting to fraud or latent defects. FAA claims against the contractor based on warranty issues must be filed within the time specified under applicable contract warranty provisions. Any FAA claims against the contractor based on gross mistakes amounting to fraud or latent defects shall be filed with the ODRA within two (2) years of the date on which the FAA knew or should have known of the presence of the fraud or latent defect.

(f) A party shall serve a copy of the contract dispute upon the other party, by means reasonably calculated to be received on the same day as the filing is to be received by the ODRA.

(g) After filing the contract dispute, the contractor should seek informal resolution with the Contracting Officer.

(h) The FAA requires continued performance with respect to contract disputes arising under this contract, in accordance with the provisions of the contract, pending a final FAA decision.

(i) The FAA will pay interest on the amount found due and unpaid from (1) the date the Contracting Officer receives the contract dispute, or (2) the date payment otherwise would be due, if that date is later, until the date of payment. Simple interest on contract disputes shall be paid at the rate fixed by the Secretary of the Treasury that is applicable on the date the Contracting Officer receives the contract dispute and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary until payment is made. Interest will not accrue for more than one year.

(j) Additional information and guidance about the ODRA dispute resolution process for contract disputes can be found on the ODRA Website at <http://www.faa.gov>.

(End of clause)