

BASE AGREEMENT

Between

ADVANCED TECHNOLOGY INTERNATIONAL (ATI),

SpEC Consortium Manager
315 SIGMA DRIVE
SUMMERVILLE SC 29486-7790

and

SPEC MEMBER NAME
SPEC MEMBER ADDRESS

SPACE ENTERPRISE CONSORTIUM (SpEC) BASE AGREEMENT No.: 20XX-XXX

Authority: SpEC Other Transaction Agreement (OTA) No. FA8814-18-9-0002 and pursuant to 10 U.S.C. § 2371b.

This Agreement is entered into between the Advanced Technology International, hereinafter referred to as the "Consortium Manager," and the Company Name, hereinafter referred to as the "Prototype Level Performer." This Agreement constitutes the entire understanding and agreement between the parties with respect to the subject matter hereof and supersedes all prior representations and agreements. It shall not be varied except by an instrument in writing of subsequent date duly executed by an authorized representative of each of the parties. The validity, construction, scope and performance of this Agreement shall be governed by the laws of the state of New York, excluding its choice of laws rules.

This Agreement is not a procurement contract, cooperative agreement or grant agreement for purposes of FAR Subsection 31.205-18 or for any other purpose. The provisions of the Federal Acquisition Regulations (FAR), Department of Defense Federal Acquisition Regulations Supplement (DFARS) and Air Force Federal Acquisition Regulations Supplement (AFFARS) do not apply, unless explicitly included in this agreement.

ADVANCED TECHNOLOGY INTERNATIONAL

FOR THE SPEC MEMBER
NAME OF SPEC MEMBER

(Name & Title)

(Name & Title)

(Signature)

(Signature)

(Date)

(Date)

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EXECUTIVE SUMMARY

Through the Other Transaction Agreement the Space and Missile Systems Center (SMC) seeks collaboration with the Space Enterprise Consortium (SpEC) to 1) minimize barriers to entry for small businesses and non-traditional vendors to work with the U.S. Government and to identify and realize teaming opportunities among entities to promote integrated research and prototyping efficiencies, and 2) reducing the cost of prototype development.

Constant innovation and rapid technology advances are occurring throughout the space industry, especially in "New Space" companies with agile development and deployment processes. Partnerships with commercial industry, the civil space sector, and others will be used to leverage these approaches and increase flexibility and agility, reduce cost, improve technology and capability insertion, and decrease program development cycles. Collaboration and prototype development under the OT Agreement will reduce risk and increase constellation refresh rates to improve the availability of new technology on-orbit. This will improve system responsiveness and survivability. Launch will evolve to a paradigm with more frequent, regularly scheduled launches to each orbit regime and will be complemented by spacecraft designed to fit on standardized launchers with standardized interfaces for faster, more predictable access to space.

The following objectives will be pursued through the execution of the OT Agreement:

- 1) Building membership in the SpEC by attracting, retaining, and mentoring members to prepare them to compete for forthcoming space-related prototype projects;
- 2) Minimizing barriers to entry for small businesses and non-traditional vendors to work with the U.S. Government and to identify and realize teaming opportunities among entities to promote integrated research and prototyping efficiencies;
- 3) Leveraging partnerships with commercial industry, the civil space sector, and others to increase flexibility and agility, reduce cost, improve technology and capability insertion, and decrease program development cycles; and
- 4) Enabling the integrated employment of force enhancement, space control, command and control, and situational awareness capabilities.

ARTICLE 1 - DEFINITIONS

"Agreements Officer (AO)" means the Space and Missile Systems Center warranted Agreements Officer authorized to sign, modify the OT Agreement, and execute associated projects under the OT Agreement on behalf of the Government.

"Agreements Officer's Technical Representative (AOTR)" means an individual designated and authorized in writing by the Agreements Officer to perform specific technical or administrative functions on behalf of the Government. At the Government's discretion, multiple AOTRs may be designated in writing at either the Base Agreement level or on a per-project basis.

"Base Agreement" and "Agreement" means this agreement between the SpEC Consortium Manager (CM) and the SpEC consortium member that serves as the baseline agreement for all future funded Prototype Awards (PA). The Base Agreement incorporates the applicable terms and conditions from the OT Agreement between the Government and SpEC members who are PLPs. The Base Agreement is subject to the review and approval of the Government. The Government hereby recognizes its' responsibilities and obligations under the SpEC OT Agreement to the consortium as a whole and to specific SpEC members who are PLPs through the Base Agreement.

"Cash Contribution" means a PLP's financial resources expended to conduct a PA under this Agreement. The cash contribution can be derived from PLP's funds or outside sources or may also come from non-federal contract or grant revenues or from profit or fee on a federal procurement contract. A PLP's own source of funds may include corporate

retained earnings, current or prospective Independent Research and Development (IR&D) funds or any other indirect cost pool allocation. New or concurrent IR&D funds can be utilized as a cash contribution provided those funds identified by the PLP are to be spent on the conduct of a Prototype Award Statement of Work. Cash contributions include the funds a PLP will spend for labor (including benefits and direct overhead), materials, new equipment (prorated if appropriate), and subcontractor efforts expended on PA. For PAs that require cost sharing, the non-Federal amounts counted towards the PLPs contribution may not include costs that were incurred before the date on which the PA becomes effective. Costs incurred for a prototype after the start of negotiations, but prior to award of the subject PA, may be counted towards the non-Federal contribution if the AO determines the PLP incurred the costs in anticipation of entering into the PA and it was appropriate for the PLP to incur the costs prior to the PA. The AO will not consider the cost of Government funded research, prior IR&D, or indirect costs that are not allocable to the PA as part of the cost sharing contribution.

"Consortium" means the "Space Enterprise Consortium" also known as "SpEC", which is the organization whose members will be selected to perform prototype projects under the OT Agreement and is represented by the Consortium Manager that was awarded the OT Agreement.

"Consortium Manager (CM)" means the legal entity that was awarded the OT Agreement to act on behalf of the SpEC to execute and administer the efforts under the OT Agreement.

"Consortium Member" or "Consortium Member Organization" each mean the Traditional and Nontraditional Defense Contractors, including small and large businesses, for profit and not for profit entities, and Academic Research Institutions that are or become signatories to the SpEC Consortium Membership Agreement.

"Consortium Membership Agreement (CMA)" means the agreement governing the rights and obligations of the Consortium Member entities.

"Cost Share" means resources expended by the PLP on the proposed Prototype Project SOW and subject to the direction of the AOTR. There are two kinds of cost share: cash contribution and in-kind contribution. Cost Share may only be proposed and collected on cost-reimbursement type agreements.

"Covered Government Support Contractors" means contactors covered under Article 38, Enabling Aerospace Support and Article 39, Enabling Support Contractors.

"Data," means recorded information, regardless of form or method of recording, which includes but is not limited to, technical data, computer software, computer software documentation, and mask works. The term does not include financial, administrative, cost, pricing or management information and does not include Subject Inventions.

"Days" means calendar days unless stated otherwise.

"Effective Date" means the date of last signature reflected on the award/cover page.

"Equitable adjustment" means relief in terms of cost, schedule or contract terms.

"Government" means the United States of America, as represented by an SMC Agreements Officer.

"In Kind Contribution" means the PLP's nonfinancial resources expended by the PLP to conduct a PA, such as wear and tear on in-place capital assets like machinery or the prorated value of space used for the conduct of a PA, and the reasonable fair market value (appropriately prorated) of equipment, materials, and other property used in the conduct of PA.

"Invention," as used in this Base Agreement, means any innovation or discovery that is or may be patentable or otherwise protectable under title 35 of the United States Code.

"Made," as used in this Base Agreement in relation to any Invention, means the conception or first actual reduction to practice of such Invention.

"Milestone" means a scheduled, previously negotiated event signifying the completion of a major deliverable or a set of related deliverables, with clearly defined success criteria.

"Non-traditional defense contractor" means, per 10 U.S.C. §2302(9), "an entity that is not currently performing and has not performed, for at least the one-year period preceding the solicitation of sources by DoD for the procurement or transaction, any contract or subcontract for DoD that is subject to full coverage under the cost accounting standards prescribed pursuant to 41 U.S.C. § 1502 and the regulations implementing such section."

"OT Agreement" refers to the Other Transaction Agreement between the Government and the Space Enterprise Consortium (SpEC) by its Consortium Manager, Advanced Technology International, Agreement No. FA8814-18-9-0002.

"Parties" means the Consortium Manager and the Prototype Level Performer where collectively identified and "Party" where each entity is individually identified.

"Prototype" means a physical or virtual model used to evaluate the technical or manufacturing feasibility or military utility of a technology, process, concept, end item, or system.

"Prototype Award (PA)," means the agreement between the CM and Consortium Member entity whose proposal is evaluated and competitively selected by the Government for funding, establishing the scope of work, terms and conditions for the Consortium Member entity performance and payment under the Government funded Prototype Modification. Prototype Awards shall comply with all provisions contained within this Base Agreement, and any other supporting documents referenced therein. The Prototype Award is initiated by the CM based on the PM sent by the Government to the CM.

"Prototype-Level Performer (PLP)" means the Consortium's member entity issued a Prototype Award by the Consortium Manager for a Government-selected prototype project to be funded under this Base Agreement.

"Prototype Modification" (PM) means the modification to the OT Agreement that will be used as the Prototype-Level Performer selection decision and authorize execution of prototype requirements. Each PM will include a Statement of Work (SOW), milestone payment schedule, security and data rights requirements, award value, award type, current funding, specific key Prototype Project considerations, designated AOTR, and any other prototype unique specifications as required.

"Prototype Project" means a research activity proposed by the Prototype-Level Performer and selected by the Government for a Prototype Award under the OT Agreement which will be executed via a PM.

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

"Proposal" means a proposal from a Consortium Member Organization in response to a Request for Prototype Proposal issued by the Consortium Manger and evaluated by the Government for award.

"Request for Prototype Proposal" means the Government's request for proposals issued by the CM to Consortium Members based on requirements determined by the Government. Such request will include the technical, management, and cost factors as appropriate that will be used as the Government's basis for award selection.

"Subject Invention" means those inventions conceived or first actually reduced to practice under this Base Agreement.

ARTICLE 2 - SCOPE AND MANAGEMENT OF THE AGREEMENT

(a) The Government, the CM, and SpEC are bound to each other by a duty of good faith and best effort to achieve the objectives of this Agreement. This Agreement is not intended to be, nor shall it be construed as, by implication or otherwise, a partnership, a corporation, or other business organization.

(b) The CM shall accomplish the overall management, including programmatic, reporting, financial and administrative matters, of the coordinated prototype program established under the OT Agreement. The CM shall be responsible for the overall day-to-day management of Government-selected projects and all PA issued to the PLP under this Base Agreement. The CM and appropriate Government AOTR will work together to resolve any identified requirements for change, as applicable. Changes to this Base Agreement that would result in (1) a change in the scope or the objective of the Prototype Award or the Base Agreement, or (2) a need for additional Government funding, which must be approved by the Agreements Officer, and the OT Agreement and/or appropriate PA under the OT Agreement must be modified in accordance with Article 10, Modifications, if necessary.

(c) The Government in conjunction with the Consortium shall perform a coordinated research and development program to identify and realize teaming opportunities among entities to promote integrated research and prototyping efficiencies.

The Government will determine which endeavors to pursue and Prototype Projects to fund. At any time throughout the term of the OT Agreement, the Government may address the needs for the desired objective areas or other related Government needs as they arise. The Government will also allow other organizations and agencies within the U.S. Government to participate in the collaborative activities.

(d) Request for Prototype Proposal (RPP) Process: Once the Government identifies a need under the scope of the OT Agreement, the CM, on behalf of the Government, will issue a Request for Prototype Proposal (RPP). The RPP may include a Request for White Papers (RWP), a Request for Solutions Paper, and/or a Request for Full Prototype Proposal Submission (RPPS) to the CM. Due dates will be indicated for each. The CM shall in turn issue a similar request to SpEC Member entities, for which the Government will review and evaluate all responses. The Government will be solely responsible for evaluation of the white papers and/or full proposal submissions, as applicable. If the RPP includes a RWP, only members submitting white papers will be permitted to submit full proposal submissions. The Government will down select based on the evaluations of white papers and through the CM invite specific Consortium Members to submit full proposals.

Consortium Member white papers and proposals shall be submitted to the CM in accordance with the RPP instructions which will include evaluation criteria and a Statement of Work (SOW) template on the due date indicated in the RPP. The CM will review white paper and proposal submissions for completeness and format compliance. The CM shall in turn prepare and transmit Consortium Member's white papers and proposals to the Government for evaluation. The Government will be responsible for technical and cost evaluation and selection of the Prototype Projects from the proposals submitted. The CM may assist the Government in assessing the reasonableness and completeness of the cost estimates and then provide a formal assessment to the Government. All Prototype Proposals will be subject to discussions/negotiations and proposal updates, as appropriate, prior to Prototype Award execution. The Government Agreement Officer may review this assessment and make the final determination regarding whether the negotiated prototype cost is fair and reasonable.

Once all steps are complete, the Government will issue a PM which will include the funding for the negotiated and agreed-upon Prototype. After review and execution of the PM, the CM shall enter into a Prototype Award with the Consortium member whose proposal was selected. SpEC CM shall administer the Prototype Award. The Government's designated Agreements Officer Technical Representative (AOTR) for the specific prototype will supervise the technical work performed by the Prototype Level Performer in execution of the Prototype Award.

(e) Placement in the Electronic "Basket File": Qualifying proposals, not eligible for current funding, may be entered into an electronic basket and subject to award for up to thirty-six (36) months. The RPP will contain the available ratings and their definitions to be assigned to proposals as a result of the technical evaluation as well as which specific ratings will qualify a proposal for inclusion in the Basket. The Government reserves the right to determine which, if any, proposals are to be selected according to the published criteria. Once in the Basket, a proposal may be identified for award by the Government based on Government need and availability of funding. The Government reserves the right to 1) request that

the Consortium Member who submitted the identified proposal, scale or otherwise adjust the original proposal, and to 2) fund all or part of the identified proposal. The Consortium Member will have an opportunity to update its proposal, as applicable, if selected from the Basket. The Government will review any updated information provided by the Consortium Member and/or CM. Upon the Government's decision to fund such a proposal from the Basket, the CM will receive notification of the award decision through a PM whereupon the CM will enter into a Base Agreement with the indicated Consortium Member as required. A selected proposal will reside in the Basket for thirty-six (36) months from the date the corresponding RPP is closed unless funded or the submitting Consortium Member requests in writing beforehand to have it removed. Prototype Proposals are selected for the Basket as a function of the prototype competition process and, if subsequently awarded and successfully developed, they are eligible for follow-on production.

(f) As established in PMs under the OT Agreement, the Government AOTR and/or other designated AOTR(s) will fully participate in all program technical meetings of their choosing held by the Consortium.

ARTICLE 3 - ADMINISTRATIVE INFORMATION AND ORDER OF PRECEDENCE

(a) In the event of any conflict or inconsistency between the terms of this Base Agreement, Prototype Award (PAs), and the language set forth in any Attachments, the conflict or inconsistency shall be resolved by giving precedence in the following order:

- (1) The PAs and supporting documentation;
- (2) The articles in this Base Agreement;
- (3) The attachments to this Base Agreement.

(b) Each PA under this Base Agreement will include line items for specific prototypes and the associated funding for that Prototype Project. All Prototype Awards awarded under this Base Agreement will specify whether the Prototype Project is agreed to on a firm-fixed-price or cost reimbursable basis and will include prototype specific payment terms.

ARTICLE 4 - AGREEMENTS OFFICER TECHNICAL REPRESENTATIVE

(a) Performance of the work on PAs is subject to the technical direction of the AOTR designated in the PA. For the purposes of this clause, technical direction includes the following:

- a. Direction to the PLP, which shifts work emphasis between work areas or tasks, requires pursuit of certain lines of inquiry, fills in details or otherwise serves to accomplish the objectives described in the statement of work;
- b. Guidelines to the PLP that assist in the interpretation of drawings, specifications or technical portions of work description.
- c. Review and, where required by the PA, approval of technical reports, drawings, specifications, or technical information to be delivered by the PLP under the PA.

The AOTR shall monitor the PLP's performance with respect to compliance with the technical requirements of the PA.

(b) Technical direction must be within the general scope of work stated in the Prototype Award. Technical direction may not be used to

- a. Assign additional work under the PA;
- b. Increase or decrease the estimated PA cost, fee (if any), or the time required for the PA performance;
- c. Change any of the terms, conditions or specifications of the PA; or

d. Accept non-conforming work.

As such, no verbal or written request, notice, authorization, direction or order received by the PLP shall be binding upon the SpEC, CM or Government, or serve as the basis for a change in the PA cost or any other provision of the PA, unless issued (or confirmed) in writing by the CM Contractual Representative designated in the PA.

- (c) The PLP shall immediately notify the CM Contractual Representative whenever a verbal or written change notification has been received from anyone other than the CM Contractual Representative, which would affect any of the terms, conditions, cost, schedules, etc. of the PA, and the PLP is to perform no work or make any changes in response to any such notification or make any claim on the SpEC through its CM or Government, unless the CM Contractual Representative directs the PLP, in writing, to implement such change notification.

ARTICLE 5 - GENERAL PROVISIONS

(a) Compensation. It is understood that the CM is responsible for executing and administering awarded Prototype Projects under the OT Agreement, which have been selected and funded by the Government. Any fee or profit proposed by a Prototype-Level Performer will be part of the negotiation of each PA. The PA compensation shall be negotiated on an individual, project-by-project basis and shall be incorporated into each individual PA subject to the applicable PM.

(b) Waiver. No waiver of any rights shall be effective unless assented to in writing by the other Party. The waiver of any breach or default shall not constitute a waiver of any subsequent breach or default, whether or not related to the original breach or default.

(c) Headings. The headings and subheadings used in this Base Agreement are intended for convenience or reference only and are not intended to be a part of, or to affect the meaning or interpretation of, this Base Agreement.

(d) Severability. In the event that any provision of this Base Agreement becomes or is declared by a court of competent jurisdiction to be illegal, unenforceable or void, this Base Agreement shall continue in full force and effect without said provision, unless applying such remaining portions would frustrate the purpose of this Base Agreement.

(e) Force Majeure. No failure or omission by the Consortium Member in the performance of any obligation of this Base Agreement shall be deemed a breach of this Base Agreement or create any liability if the failure or omission arises from a cause beyond the control of the Parties, including, but not limited to the following: acts of God; acts of the Government in either its sovereign or contractual capacity; changes to any rules, regulations or orders issued by any Governmental authority or by any officer, department, and agency or instrumentality thereof, unless affected by modification to the Agreement; fire; storm; flood; earthquake; accident; war; rebellion; insurrection; riot; and invasion, provided that such failure or omission resulting from one of the above causes is cured as soon as is practicable.

(f) Right to Develop Independently. Nothing in this Base Agreement will impair the Government or any PLP's right to independently acquire, license, develop or have developed, utilize or otherwise exploit information and technology with the same or similar uses or functions as the information or technology that is the subject to any PA issued pursuant to this Base Agreement but subject to the any confidentiality obligations or intellectual property restrictions between the Parties.

(g) The Agreements Officer will only issue PAs for projects determined to be within the scope of the OT Agreement. Prototype Projects awarded under this Base Agreement must also:

(1) be directly relevant to

- (i) enhancing mission effectiveness of military personnel and the supporting platforms, systems, components, or materials proposed to be acquired or developed by the Department of Defense, or
- (ii) improvement of platforms, systems, components, or materials in use by the Armed Forces;

(2) may be used only/ when one of the following conditions is met:

(i) be performed by at least one (1) non-traditional defense contractor or nonprofit research institution participating to a significant extent,

(A) "Significant contribution" is defined as supplying a new key technology or product, accomplishing a significant amount of the effort, causing a material reduction in the cost or schedule, and/or causing an increase in the performance, as determined by the Agreements Officer.

(ii) or all significant Prototype Level Performers other than the Federal Government are small businesses (including small businesses participating in a program described under section 9 of the Small Business Act (15 U.S.C. 638)) or nontraditional defense contractors;

(iii) At least one third of the total cost of the Prototype Project is to be paid out of funds provided by sources other than the Federal Government

(3) and be for Prototypes as defined in Article 1, Definitions.

ARTICLE 6 - RESERVED

ARTICLE 7 - TERM OF AGREEMENT

The term of this Base Agreement is from the effective date, which is the date of last signature, reflected on the award/cover page to October 31, 2022. Prototype Awards (PAs) may be awarded at any time prior to the end of this term. For Prototype Awards that are incrementally funded in accordance with Article 23, Incremental Funding, if all funds are expended prior to the end of the term (including PLP contributions, both cash and in-kind), the Parties have no obligation to continue and may elect to cease performance at that point on that Prototype Project.

Articles in this Base Agreement (e.g., Article 16, Retention and Access to Records) which, by their express terms, apply for periods of time other than as specified in this Article shall be given effect, notwithstanding this article. Any PA issued during the term of this Base Agreement and not completed within such term shall be completed within the timeframe specified in the PA and the terms of this Base Agreement and other applicable terms shall continue to apply with regard to performance of that specific PA.

ARTICLE 8 - TERMINATION PROVISIONS

(a) For the purposes of this Article, "Parties" means the PLP, the CM, and the Government. The Government may, for any reason, terminate any PAs issued by the CM under this Base Agreement by written notice to the CM. The PLP, through the CM, may request termination of any PAs by giving the Government thirty (30) days written notification of its intent to do so. If the PLP decides to request termination of the PA, the Government may, at its discretion, agree to terminate. The PLP shall provide the CM and Government a termination settlement agreement within thirty (30) days. The Government and PLP through the CM should negotiate in good faith a reasonable and timely adjustment of all outstanding issues between the Parties as a result of termination, which may include non-cancelable commitments made prior to the request, outstanding invoices, work performed prior to termination including fee, etc. The total amount of this adjustment plus the amounts previously paid if any, shall not exceed the total amount obligated to the Prototype Award. Failure of the Parties to agree to termination costs and an equitable adjustment shall be resolved pursuant to Article 17, Disputes and Liability.

(b) Data Rights in the event of termination: In the event of a termination of the OT Agreement, the Government shall have Rights in Data as described in each PA.

(c) The Agreements Officer, through the CM, may at any time issue a Stop Work Order, either with or without a termination notice. Stop Work Orders will be issued in writing by the Agreements Officer. This order will not require the PLP to stop work that is not funded by the PA; however, the Government shall not be obligated to pay the PLP for any work performed, any materials purchased, or any obligations incurred after the issuance of the Stop Work Order. The Agreements Officer, through the CM, has ninety (90) days from the issuance of the Stop Work Order, or for any further period to which the Parties may agree, to cancel the Stop Work order or terminate the PA. If the Agreements Office does not cancel the Stop Work order or terminate the Agreement within 90-days, the PA is automatically terminated and the Parties shall negotiate a

termination settlement as noted above. If the Stop Work Order is canceled the PLP shall resume work. Any adjustments resulting from the issuance of a Stop Work Order shall entitle the PLP to an equitable adjustment to be negotiated.

(d) **Material Breach by a Consortium Member.** If a PLP materially fails to comply with the provisions of a Prototype Award, the AO, after issuance of a cure notice, may, through the CM, take one or more of the following actions as appropriate:

1. Temporarily withhold payments pending correction of the deficiency by the Consortium Member,
2. Disallow all or part of the cost of the activity or action not in compliance,
3. Wholly or partly terminate the current Prototype Award if not corrected ten (10) days after issuance of a cure notice,
4. Withhold further funding for the Prototype Award,
5. Take any other legally available remedies if not corrected ten (10) days after issuance of a cure notice.

(e) **Termination Costs.** The Government and Consortium through its Consortium Manager will negotiate in good faith an equitable reimbursement for work performed toward accomplishment of the task or tasks of individual Prototype Awards. The Government will allow full credit for the Government share of the obligations properly incurred by a PLP or the Consortium Manager prior to termination. The termination proposal preparation costs incurred by a PLP are allowable for termination made by subparagraph (a) of this Article. Costs incurred by an PLP or the Consortium Manager during a Stop Work or after termination of an Prototype Award are not allowable unless the Agreements Officer expressly authorizes them in either the Stop Work notice, termination, or subsequently. Other PLP's costs incurred during a Stop Work or after termination which are necessary and not reasonably avoidable are allowable if:

1. The costs result from obligations which were properly incurred by the PLP or the Consortium Manager before the effective date of the suspension or termination, are not in anticipation of it, and in the case of a termination, are non-cancellable; and
2. The costs would be allowable if the Prototype Award was not suspended or the award expired normally at the end of the funding period in which the termination takes effect.

ARTICLE 9 - EXTENDING THE TERMS

The term of this Base Agreement may be extended by written mutual agreement of the Parties. The period of performance for PAs issued under this Base Agreement may be extended if the Parties mutually agree. Any extension shall be formalized through issuance of a modification to the Base Agreement.

ARTICLE 10 - MODIFICATIONS

(a) All Base Agreement modifications, except for minor or administrative corrections, shall be made by mutual agreement of the parties and be subject to negotiations. Minor or administrative Base Agreement corrections (i.e. changes to Government, CM, or the Consortium Member personnel identified in the Base Agreement) may be made unilaterally by the CM.

(b) **Modifications to the Term and Conditions of the Base Agreement:** The CM will be responsible for effecting all modifications to this Base Agreement. There is no modification unless there is a formal written modification to the Base Agreement by the CM.

(c) **Modifications to the Prototype Awards:** Prototype Award modifications including incremental funding and changes to CM, PLP, and AOTR personnel changes may be made unilaterally by the CM. Recommendations for modifications by the Consortium Member, specifically to support any changes to Prototype Award SOW(s) and payment schedule(s) will be documented in a letter and submitted to the CM. This documentation letter will detail the technical, schedule, and financial impact of the proposed modification to the Prototype Project. The CM will review any requested changes with the Government and approve via a modification to a PA with applicable funding and schedule adjustments if any. The CM is not obligated to pay for additional or revised efforts, and the PLP is not obligated to perform such additional or revised efforts, until the modification is issued and funding provided via modification as applicable.

ARTICLE 11 - GOVERNMENT PROPERTY

Commented [FE1]: Consortium members who have implemented Government property procedures that have been reviewed and accepted by a federal contract administration office official may choose the terms of the FAR clause 52.245-1 in affect at the time of Prototype Award rather than the Government Property terms in paragraph (b). The CM will incorporate either FAR 52.245-1 or paragraph (b) into Consortium member Base Agreements, but not both. Either (a) or (b) will be marked Reserved.

(a) The PLP shall follow the terms and conditions of FAR 52.245-1 in affect at the time of Prototype Award. Liability related to Government property furnished or acquired under this agreement shall be governed by this Article, notwithstanding the liability provisions covered in Article 17, Disputes and Liability.

(b) Alternate Government Property Procedures

(1) Definitions

In this article, "property" means any tangible personal property other than property actually consumed during the execution of work under this Base Agreement.

(2) In the event that GFP is determined to be in the best interest of the Government, it may be utilized for PAs. Each proposed Prototype white paper and/or Proposal shall clearly identify any and all GFP proposed and/or required and shall provide documentation that the proposed Government property usage has been approved by the cognizant Administrative Contracting Officer.

(3) The PLP shall assume the risk of and be responsible for any loss or destruction of, or damage to, any Government Furnished Property while in its possession or control, with the exception of reasonable wear and tear or reasonable and proper consumption. All property shall be returned at the end of the Prototype Project in as good as condition as when received with the exception of said reasonable wear and tear or in accordance with the provisions of PA regarding its use. The PLP shall obtain explicit written authorization for any transfer or disposition of Government Furnished Property.

(4) Any Prototype Award negotiated on a cost basis will include specific terms regarding title to any/all property acquired by the PLP. Unless waived or tailored in writing by the Agreements Officer, title to any item of property valued \$25,000 or less that is acquired by the PLP under a Prototype Award in performance of work under this Base Agreement shall vest in the PLP upon acquisition with no further obligation of the Parties unless otherwise determined by the AO. Should any item of property with an acquisition value greater than \$25,000 be required, the Consortium Manager at the request of the PLP shall obtain prior written approval of the AO if not included in the Proposal selected by the Government. Title to this property shall also vest in the PLP upon acquisition. That PLP shall be responsible for the maintenance, repair, protection, and preservation of all such property at its own expense. Property acquired pursuant to this clause shall not be considered as an exchange for services in performance of the Prototype, but shall be considered a Government contribution to a Prototype.

ARTICLE 12 - INSPECTION AND ACCEPTANCE OF PROTOTYPE DEVELOPMENT

(a) The Government has the right to inspect and evaluate the work performed or being performed for any Prototype Award under this Base Agreement, and the premises where the work is being performed, at all reasonable times and in a manner that will not unduly delay the work. If the Government performs inspection or evaluation on the premises of the PLP, the PLP shall furnish all reasonable facilities and assistance for the safe and convenient performance of these duties.

(b) Inspection and acceptance criteria for prototype(s) will be specified in PAs. The Government will provide inspection and acceptance of deliverable items under a PA at destination, unless otherwise specified in a PA.

ARTICLE 13 - CONSORTIUM ADMINISTRATION

(a) In accordance with the Consortium Membership Agreement (CMA), or any other administration agreement between the Consortium, its members, and its Consortium Manager of record, the Consortium Manager will act on behalf of the Consortium in executing this Base Agreement, and any future modifications to it. All financial transactions between the Government and the Consortium, including payment to PLPs, will be made via the Consortium Manager.

ARTICLE 14 - ASSIGNMENT OF AGENCY

Assignment. This Agreement may not be assigned or transferred by any Party hereto without the prior written consent of the other Party; provided, however, that the Consortium Manager or a PLP may assign its rights and delegate its obligations to a purchaser of all or substantially all of the business of the Consortium Manager or such PLP to which this Agreement relates by merger, sale of assets, or otherwise. Internal transfer of assets, consolidations, or name changes by the PLP shall not be considered an assignment for purposes of this Base Agreement.

ARTICLE 15 - STANDARDS FOR FINANCIAL MANAGEMENT SYSTEMS - COMMERCIAL

- (a) The PLP shall maintain adequate records to account for the control and expenditure of Government funds received for any Prototype Award under this Base Agreement.
- (b) The PLP shall establish and maintain accounting systems that:
 - (1) Comply with Generally Accepted Accounting Principles
 - (2) Control and properly document all cash receipts and disbursements.

ARTICLE 16 - RETENTION AND ACCESS TO RECORDS

- (a) The PLP financial records, supporting documents, statistical records, and all other records pertinent to this Base Agreement and any Prototype Award issued hereunder shall be retained and access to them permitted for a period not to exceed three (3) years after expiration of the term of this Base Agreement or final acceptance of the last Prototype Award, whichever occurs later, unless one of the following applies:
 - (1) If any litigation, claim, or audit is started before the expiration of the three (3)-year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved and final action taken.
 - (2) Records for real property and equipment acquired with Federal funds, and into which title will vest with the Government in accordance with Article 11, Government Property, shall be retained for 3 years after final disposition.
 - (3) When records are transferred to or maintained by the DoD Component (the SMC program office executing the modification) that made the award, the three (3)-year retention requirement is not applicable to the Consortium or PLP(s).
- (b) If the information described is maintained on a computer, the PLP shall retain the computer data on a reliable medium for the time period prescribed. The PLP may transfer computer data in machine readable form from one reliable computer medium to another. The PLP computer data retention and transfer procedures shall maintain the integrity, reliability, and security of the original computer data. The PLP shall also maintain an audit trail describing the data transfer.
- (c) The Agreements Officer shall request that the PLP transfer certain records to DoD component custody when he or she determines that the records possess long term retention value. The PLP shall comply with the request unless it can state why such records should not be transferred. Disputes shall be handled in accordance with Article 17, Disputes and Liabilities.

ARTICLE 17 - DISPUTES AND LIABILITY

- (a) For the purposes of this Article, "Parties" means the CM, the PLP, and the Government where collectively identified and "Party" where each entity is individually identified. The Parties shall communicate with one another in good faith and in a timely and cooperative manner when resolving issues under this Article.
 - (1) Dispute Resolution Procedures
 - (i) Any dispute between the Parties concerning questions of fact or law arising from or in connection with this Base Agreement and any Prototype Awards issued hereunder, and, whether or not involving an alleged breach of this Base Agreement, may only be raised under this Article.

(ii) Whenever disputes arise, the Parties shall attempt to resolve the issue(s) involved by discussion and mutual agreement as soon as practicable. The Parties agree that the notification under subparagraph (iii) of this Article shall not be made earlier than thirty (30) days from when the known dispute arose. In no event shall a dispute that arose more than one hundred and eighty (180) calendar days prior to the notification made under subparagraph (iii) of this Article constitute the basis for relief under this article unless the Agreements Officer waives this requirement in writing.

(iii) Failing resolution by mutual agreement, the aggrieved Party shall document the dispute, disagreement, or misunderstanding by notifying the other Parties (through the Consortium Manager to the Agreements Officer) in writing of the relevant facts, identifying unresolved issues, specifying the clarification or remedy sought, and documenting the rationale as to why the clarification/remedy is appropriate. Within ten (10) working days after providing notice to the other Party, the aggrieved Party may, in writing, request a decision by the Director of the Advanced Systems and Development Directorate (or equivalent for prototype end user) and an executive of the Consortium. The other Party shall submit a written position on the matter(s) in dispute within thirty (30) calendar days after being notified that a decision has been requested. The dispute will then be referred to the Director of the Advanced Systems and Development Directorate (or equivalent for prototype end user) and an executive of the Consortium who is not an employee of the CM and does not have an perceived Organizational Conflict of Interest in the dispute, who shall meet in good faith to resolve the dispute and will conduct a review of the matter(s) in dispute and render a decision in writing within thirty (30) calendar days of receipt of such a position. Any such decision is final and binding, unless a Party shall, within thirty (30) calendar days request further review as provided by this Article.

(iv) If the Director of the Advanced Systems and Development Directorate (or equivalent for prototype end user) and an executive of Consortium are not able to resolve the dispute within thirty (30) calendar days of the date the position under subparagraph (iii) is received, the dispute will be referred to the Air Force Program Executive Officer for Space (AFPEO/SP) or (SMC/CA) and an executive of Consortium, who shall meet in good faith to resolve the dispute.

(v) If the AFPEO/SP (or SMC/CA) and an executive of the Consortium are not able to resolve the dispute within sixty (60) calendar days of the date of referral of the dispute under subparagraph (iii) is received, then either Party may pursue any remedy under the law against any of the Parties, and this Disputes and Liability clause shall in no matter extinguish or waive any statute of limitations and/or ability of a party to pursue any remedy under the law.

(vi) Pending resolution of any such dispute by settlement or by final judgment, the Parties shall each proceed diligently with performance, unless otherwise mutually agreed, or the Agreements Officer issues a Stop Work Order, pursuant to Article 8, Termination Provisions.

(2) Limitations of Damages

(i) Claims by a Party for damages of any nature whatsoever against another Party pursued under this Base Agreement shall be limited to direct damages only up to the unpaid balance of the aggregate amount of Government funding the specific Prototype Award project, under this Base Agreement, which the dispute arises, unless such dispute resulted from a negotiated settlement of a request for equitable adjustment relating to a change in the performance or scope of the Agreement or for termination settlement expenses.

(ii) In no event shall a Party be liable to any other Party for consequential, punitive, special and incidental damages or other indirect damages, whether arising in contract (including warranty), tort (whether or not arising from the negligence of a Party) or otherwise except to the extent such damages are caused by a Party's material breach, willful misconduct, or gross negligence; provided, however, that liability for misuse or unauthorized disclosure of intellectual property shall be excluded for the limitation set forth in this subparagraph (ii).

(iii) With regard to the activities undertaken pursuant to this Base Agreement, no Party shall make any claim against the others, employees of the others, the others' related entities (e.g., contractors, subcontractors, etc.), or employees of the others' related entities for any injury to or death of its own employees or employees of its related entities, or for damage to or loss of its own property or that of its related entities, whether such injury, death,

damage or loss arises through negligence or otherwise, except in the case of willful misconduct or gross negligence.

(iv) All responsibility, financial and otherwise, for a particular Prototype Award project shall be limited to the PLP.

(v) Under no circumstances will the above enumerated exceptions to the Limitation of Damages be interpreted to apply the Contract Disputes Act to this Base Agreement or in any way cause this Base Agreement to be subject to any terms of or regulations related to the Contract Disputes Act.

(vi) Extension of Limitations of Damages. The PLP agrees to extend the limit damages, as set forth above, in all lower-tier subcontractors and/or subagreements.

ARTICLE 18 - REPORTS

(a) The PLP shall maintain records of the activities performed and funding received under the PAs and the results of any analyses, tests and other investigations conducted during the performance of these Prototype Projects. Any deliverables will be included in Prototype Award Statement of Works.

(b) All of the reports required by Prototype Awards can be in the PLP's format unless otherwise specified; however a format compatible with the Microsoft Office suite is preferred.

(c) Submission of the reports required by Prototype Award Statement of Works, will be identified in Prototype Awards.

ARTICLE 19 - DELIVERABLES

(a) Deliverables under this Base Agreement shall be specified in each individual PA and are anticipated to include any or all of the following:

(1) Prototype tools, hardware, software and code;

(2) Identification of all reports required for individual Prototypes will be included in the specific prototype solicitation, as appropriate;

(3) Documentation required for integration and Assessment & Authorization prior to fielding of prototypes, such as Interface Control Documents, Test Plans, Test Reports, User/Admin Guide, and others as identified by the Government.

(b) All hardware should be packaged in accordance with the PLP's commercial best practice to ensure undamaged arrival at destination. Individual shipments exceeding 150 pounds shall be pre-coordinated with the receiving organization prior to shipping. At the time of delivery, the PLP shall prepare and furnish to the designated office in the Prototype Award a receiving report.

(c) All deliveries shall be FOB Destination, unless otherwise stated in a Prototype Award.

ARTICLE 20 - ADMINISTRATIVE AND MANAGERIAL STANDARDS

(a) The Consortium shall not restrict access or membership in the Consortium (either current or prospective Consortium Members),

(b) The PLP shall comply with and flow down to lower-tier Subcontractors the federal statutes, executive orders, regulations, and other legal requirements applicable to Prototype Awards entered into under this Base Agreement.

(c) The Federal Acquisition Regulations (FAR) and its supplements shall not apply to this Base Agreement nor to any PAs

entered into under this Base Agreement except as specifically referenced.

ARTICLE 21- OBLIGATION AND PAYMENT

(a) Payments. The CM will compensate the PLP to perform Prototype Awards awarded under this Base Agreement. The PLP shall segregate and track all individual Prototype Project costs separately and shall document the accomplishments of each Milestone under each Project Award. A payable Milestones report shall be detailed on a PA basis and submitted with each request to the AOTR or designee for approval. Prototype Awards will be issued as either a fixed price milestone payment method or a monthly cost reimbursement milestone payment method as described below.

(1) Fixed Price Milestone Payment Method: Payments shall be made in accordance with the Milestone Schedule of each Prototype Award, provided the designated AOTR has verified compliance with the Statement of Work and accomplishment of the milestone(s). The Milestone Schedule may be revised as appropriate and deemed necessary by issuance of a bilateral modification to the Prototype Award. Quarterly reviews by the AOTR and the CM will assess the need for revisions to the Milestone Schedule. An acceptable invoice for fixed price milestone payments is one that (on the invoice or on the Milestone Report):

- i. contains the date of invoice and the Base Agreement number and Prototype Award number;
- ii. identifies any associated milestones that are complete ; and
- iii. lists the milestone amount negotiated and contained in each Prototype Award.

(2) *Cost Reimbursable Milestone Payment Method (estimated cost ceiling)*: Payment is contingent upon satisfactory progress toward completion of milestones as delineated in Prototype Award. Payment shall be made based on actual costs incurred in completing milestones up to the maximum amount allowable under the applicable Prototype Award, provided the designated AOTR has verified compliance with the Statement of Work and accomplishment of the stated effort. Per (ii) below, either a Status Report identifying any associated technical tasks and the progress toward completion of each milestone, a Deliverable Report, or a Milestone Report is required concurrent with the invoice. An acceptable invoice for reimbursable payment is one that (on the invoice or on the attached Status, Deliverable, or Milestone Report in accordance with each Prototype Award):

- i. contains the date of invoice and the Base Agreement number and Prototype Award number;
- ii. identifies any associated technical milestones and the progress toward completion of each milestone;
- iii. includes a current period description of supplies and services, labor costs, subcontractor costs, material costs, travel costs, other direct costs, and extended totals;
- iv. indicates the current period and cumulative man-hours and costs incurred through the period indicated on the invoice; and
- v. contains the following certification statement:
"I certify that the amounts invoiced are for costs incurred in accordance with the agreement, the work reflected has been performed, and prior payment has not been received."
Authorized Signature _____

(3) *Cost Plus Fixed Fee Milestone Payment Method (estimated cost ceiling)*: Payment is contingent upon satisfactory progress toward completion of milestones as delineated in Prototype Award. Payment shall be made based on actual costs incurred in completing milestones and any applicable fee up to the maximum amount allowable under the applicable Prototype Award, provided the designated AOTR has verified compliance with the Statement of Work and accomplishment of the stated effort. Either a Status Report identifying any associated technical tasks and the progress toward completion of each milestone, a Deliverable Report, or a Milestone Report is required concurrent with the invoice. An acceptable invoice for reimbursable payment is one that (on the invoice or on the attached Status, Deliverable, or Milestone Report in accordance with each Prototype Award):

- i. contains the date of invoice and the Base Agreement number and Prototype Award number;
- ii. identifies any associated technical milestones and the progress toward completion of each milestone;
- iii. includes a current period description of supplies and services, labor costs, subcontractor costs, material costs, travel costs, other direct costs, fixed fee and extended totals;
- iv. indicates the current period and cumulative man-hours and costs incurred through the period indicated on the invoice; and
- v. contains the following certification statement:
"I certify that the amounts invoiced are for costs incurred in accordance with the agreement, the work

reflected has been performed, and prior payment has not been received.”
Authorized Signature _____

(4) *Cost Reimbursable, Cost Sharing Milestone Payment Method (with not to exceed ceiling)*: Payment is contingent upon satisfactory progress toward completion of milestones as delineated in Prototype Award and acceptable cost share. Payment shall be made based on actual costs incurred in completing milestones up to the maximum amount allowable under the applicable Prototype Award, provided the designated AOR has verified compliance with the Statement of Work and accomplishment of the stated effort. Per (ii) below, either a Status Report identifying any associated technical tasks and the progress toward completion of each milestone, a Deliverable Report, or a Milestone Report is required concurrent with the invoice. An acceptable invoice for reimbursable payment is one that (on the invoice or on the attached Status, Deliverable, or Milestone Report in accordance with each Prototype Award):

- i. contains the date of invoice and the Base Agreement number and Prototype Award number;
- ii. identifies any associated technical milestones and the progress toward completion of each milestone;
- iii. includes a report of the cost share expended towards the accomplishment of the SOW tasks and/or milestones. This cost share report may be attached to the invoice if contractor practices make inclusion of such information on the invoice itself impractical. If the cost share report is separate from the invoice, it must be signed by an authorized representative. This cost share report must contain a breakout of the cost share by cost element similar to the level of detail required on the invoice and any in-kind contributions. The preferred method of reporting cost share is to provide an invoice for actual cost incurred with a value for the cost shared amount and the value to be reimbursed by the Government through the CM;
- iv. includes a current period description of supplies and services, labor costs, subcontractor costs, material costs, travel costs, other direct costs, and extended totals;
- v. indicates the current period and cumulative man-hours and costs incurred through the period indicated on the invoice; and
- vi. contains the following certification statement:
“I certify that the amounts invoiced are for costs incurred in accordance with the agreement, the work reflected has been performed, and prior payment has not been received.”
Authorized Signature _____

(b) **Limitation of Funds.** Except as set forth in Article 17, Disputes and Liability, the Government's and CM's financial liability will not exceed the amount obligated and available for payment for any Prototype Award under this Base Agreement.

(c) **Submission of Invoices:** Invoices may be submitted no more frequently than monthly. The PLP shall submit invoices and any necessary supporting documentation via email to SpEC.Invoices@ati.org. For the Cost type Prototype Awards, the PLP's final invoice (completion invoice) will be clearly indicated as such and shall indicate the cumulative amounts incurred and billed to completion, and a written certification of the total hours expended. Actual project costs incurred and cost share performance, if applicable, of each Prototype Award shall be reported and reviewed each quarter.

(d) **Payment Terms:** Payment terms are NET 30 days after CM's receipt of an acceptable invoice. An acceptable invoice is one that meets the conditions described in Article 21 Paragraph (a) Payment.

ARTICLE 22 - NONTRADITIONAL DEFENSE CONTRACTOR/COST SHARE

(a) Each Prototype proposed by a traditional Defense Contractor shall document the cost sharing proposed. For instances where the traditional Defense Contractor believes a non-Traditional Defense Contractor is participating to a significant extent, the proposal shall include detailed explanation of the non-traditional Defense Contractors involvement as well as justification for its assertion that this involvement constitutes participating to a significant extent. The Government shall retain sole authority to determine if the non-traditional Defense Contractors involvement meets the statutory requirements for avoiding cost sharing.

(b) For PAs that require cost sharing, the non-Federal amounts counted towards the PLPs contribution may not include costs that were incurred before the date on which the PA becomes effective. Costs incurred for a prototype after the start of negotiations, but prior to award of the subject PA, may be counted towards the non-Federal contribution if the AO

determines the PLP incurred the costs in anticipation of entering into the PA and it was appropriate for the PLP to incur the costs prior to the PA. The AO will not consider the cost of Government funded research, prior IR&D, or indirect costs that are not allocable to the PA as part of the cost sharing contribution.

(c) Throughout the period of performance of any PA, the AOTR and Consortium Manager will actively monitor non-traditional defense contractor participation and/or cost sharing to ensure compliance with this provision. PLPs will be given the opportunity to become compliant with the requirements should they be found non-compliant. Failure to comply may result in termination.

ARTICLE 23 - INCREMENTAL FUNDING

(a) Each PA will include the associated funding. In instances where a Prototype Project is not fully funded at the time of award, the CM's obligation will at all times be limited to the amount obligated for each Prototype Award. The CM will have no obligation to reimburse the PLP or other vendor for any expenditures in excess of the total funds allotted to each PA.

(b) Funds allotted for a specific PA cannot be used for any purpose other than the expressly stated purpose of that specific PA.

(c) The Parties agree that if PAs are not fully funded then they may be terminated by either Party. Consistent with any negotiated cost sharing arrangement, the PLP is not obligated to continue performance or otherwise incur costs in excess of the amount allotted by the CM to each Prototype Award under this Base Agreement, to include the PLP's corresponding compensation, until the CM notifies the PLP in writing that the amount allotted by the CM has been increased and specifies an increased amount, which shall then constitute the total amount allotted by the CM to a Prototype Award under this Base Agreement. When and to the extent that the amount allotted by the CM to a Prototype Award under this Base Agreement is increased, any costs the PLP incurs before the increase that are in excess of the amount previously allotted by the CM to a Prototype Award under this Base Agreement plus the PLP's corresponding share(s), shall be allowable to the same extent as if incurred afterward, unless the Agreements Officer issues a termination or other notice and directs that the increase is solely to cover termination or other specified expenses.

ARTICLE 24 - RESERVED

ARTICLE 25 - SYSTEM FOR AWARD MANAGEMENT AND DATA UNIVERSAL NUMBERING SYSTEM REQUIREMENTS

(a) Requirement for System for Award Management (SAM): Unless exempted from this requirement under 2 CFR 25.110, the PLP must maintain the currency of information in the SAM until the PLP submits the final financial report required under a Prototype Award issued under this Base Agreement or receives the final payment, whichever is later. This requires that the PLP review and update the information at least annually after the initial registration, and more frequently if required by changes in information or another article.

(b) Requirement for Data Universal Numbering System (DUNS) Numbers: The PLP:

- (1) Must have a DUNS number to receive a Prototype Award.
- (2) No commitments will be made to a PLP entity unless the entity has provided its DUNS number to the CM.

ARTICLE 26 - RESERVED

ARTICLE 27 - COMPTROLLER GENERAL ACCESS TO RECORDS

The Agreements Officer or representative, and the Comptroller General of the United States, in its discretion, shall have

access to and the right to examine records of any party to the Base Agreement or any entity that participates in the performance of this Base Agreement that directly pertain to, and involve transactions relating to, the Base Agreement for a period of three (3) years after final payment is made. This requirement shall not apply with respect to any party to this Base Agreement or any entity that participates in the performance of the Base Agreement, or any subordinate element of such party or entity, that, in the year prior to the date of the Base Agreement, has not entered into any other contract, grant, cooperative agreement, or "Other Transaction" agreement that provides for audit access to its records by a government entity in the year prior to the date of this Base Agreement. This paragraph only applies to any record that is created or maintained in the ordinary course of business or pursuant to a provision of law. The terms of this paragraph shall be included in all sub-agreements/contracts issued under any Prototype Award to the Base Agreement.

ARTICLE 28 - DATA RIGHTS

(a) For the purposes of this Article, "Parties" means the PLP and the Government where collectively identified and "Party" where each entity is individually identified. This is a Data Rights Clause specifically tailored for this Base Agreement to address respective rights of the Government and PLP's on behalf of its actual or prospective PLP to such Data as is owned, developed, to be developed or used by an actual or prospective Consortium Member entity PLP (1) as identified in a Consortium Member entity proposal submitted to the Government through the Consortium Manager in response to a competitive Government Request for Prototype Proposals, and (2) when such proposal is selected by the Government for funded performance and the PA is issued by the CM to that Consortium Member entity for performance of such Government Prototype Project.

(1) Definitions

- (i) "Commercial Computer Software" as used in the Article is defined in DFARS 252- 227-7014(a)(1) (Jun 1995).
- (ii) "Commercial Computer Software License" means the license terms under which commercial computer software and Data (as defined in this OTA) is sold or offered for sale, lease or license to the general public.
- (iii) "Computer Data Base" as used in this Base Agreement, means a collection of data recorded in a form capable of being processed by a computer. The term does not include computer software.
- (iv) "Computer program" as used in this Base Agreement means a set of instructions, rules, or routines in a form that is capable of causing a computer to perform a specific operation or series of operations.
- (v) "Computer software" as used in this Base Agreement means computer programs, source code, source code listings, object code listings, design details, algorithms, processes, flow charts, formulae and related material that would enable the software to be reproduced, recreated or recompiled. Computer software does not include computer data bases or computer software documentation.
- (vi) "Computer software documentation" means owner's manuals, user's manuals, installation instructions, operating instructions, and other similar items, regardless of storage medium, that explain the capabilities of the computer software or provide instructions for using the software.
- (vii) Reserved.
- (viii) "Form, fit and function data" means technical data that describes the required overall physical, functional and performance characteristics (along with the qualification requirements, if applicable) of an item, component, or process to the extent necessary to permit identification of physically and functionally interchangeable items.
- (ix) "Government purpose" means any activity in which the United States Government is a party, including cooperative agreements with international or multi-national defense organizations, or sales or transfers by the United States Government to foreign governments or international organizations. Government purposes include competitive procurement, but do not include the rights to use, modify, reproduce, release, perform, display, or disclose technical data for commercial purposes or authorize others to do so

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

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

(ii) Release or disclose technical data outside the Government and authorize persons to whom release or disclosure has been made to use, modify, reproduce, release, perform, display, or disclose that data for United States government purposes.

Under this Base Agreement, the period of a Government Purpose Rights license shall be no less than five (5) years. In the event that the Data subject to this Government Purpose Rights license is used to perform an additional Prototype Project during this five (5) year period, the Government Purpose Rights license shall be extended an additional five (5) years starting from completion of the additional Prototype Project.

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

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

(xiii) "Specially Negotiated License Rights" are those rights to Data that have been specifically negotiated between the Government and the CM on behalf of the Consortium Member or PLP whose proposal is selected by the Government under a Request for Prototype Proposals issued under the OT Agreement.

(xiv) "Technical data" means recorded information, regardless of the form or method of the recording, of a scientific or technical nature (including computer software documentation). The term does not include computer software.

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

(2). Data Categories

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

(A) Data or other material provided by the Consortium Member or PLP for a Prototype Project under this Base Agreement which was not developed in the performance of work under that project, and for which the Consortium Member or PLP retains all rights.

(B) Any initial Data or technical, marketing, or financial Data provided at the onset of the project by any of the Consortium Members or PLPs. Such Data shall be marked "Category A" and any rights to be provided to the Government for such Data under a specific Prototype Project shall be as identified in the proposal submitted to the Government and included into the CM issued Prototype Awards.

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

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

(A) the Government will have Government Purpose Rights in Data developed exclusively with Government funds under a Prototype Project funded by the CM under this Base Agreement that is:

(i) Data pertaining to an item, component, or process which has been or will be developed exclusively with Government funds;

(ii) Studies, analyses, test data, or similar data produced for this contract, when the study, analysis, test, or similar work was specified as an element of performance;

(iii) Data created in the performance of the Base Agreement that does not require the development, manufacture, construction, or production of items, components, or processes;

(iv) Form, fit, and function data;

(v) Data necessary for installation, operation, maintenance, or training purposes (other than detailed manufacturing or process data);

(vi) Corrections or changes to technical data furnished to the PLP by the Government;

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

(B) The Government shall have unlimited rights in Data that is:

(i) Otherwise publicly available or that has been released or disclosed by the PLP without restrictions on further use, release or disclosure, other than a release or disclosure resulting from the sale, transfer, or other assignment of interest in the Data to another party or the sale or transfer of some or all of a business entity or its assets to another party;

(ii) Data in which the Government has obtained unlimited rights under another Government contract or as a result of negotiations; or

(iii) Data furnished to the Government, under this Base Agreement or any other Government contract or subcontract thereunder, with-

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

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

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

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

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

(3). Allocation of Principal Rights

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

(ii) The Government shall have immediate Government Purpose Rights to Category B or C Data upon delivery or Prototype Project completion (whichever is earlier), except that

(A) The CM, at the request of small business or any other than small business PLP, may request on such PLP's behalf a delay of the start of Government Purpose Rights in Category B or C Data for a period not to exceed five (5) years from Prototype Project completion. Such requests will only be made in those cases where the PLP through the CM has provided information from the affected actual or prospective PLP demonstrating the need for this additional restriction on Government use and shall be submitted to the SMC/AD AO for approval, which approval shall not be unreasonably withheld. In the event of any dispute regarding approval

of this request, the parties agree to treat this as a dispute and shall follow the provisions of Article 17, Disputes and Liability.

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

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

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

(iv) Each Proposal submitted by the Consortium Member in response to a Government call for proposals under the OT Agreement shall include a list of the Category A, B and C Data to be used or developed under the PA if selected. Any proposal that includes information to be provided with Limited Rights, Restricted Rights, or Specially Negotiated License Rights shall include supporting detail and rationale. Rights in such Data shall be as established under the terms of this Base Agreement, unless otherwise asserted in the proposal and agreed to by the Government in the Prototype Award. The CM will incorporate the list of Category A, B and C Data and the identified rights therefor in the Prototype Award.

Following issuance of a PM and subsequent CM issuance of the Prototype Award to the Government selected PLP, the PLP shall update the list to identify any additional, previously unidentified, Data if such Data will be used or generated in the performance of the funded work. Rights in such Data shall be as established under the terms of this Base Agreement, unless otherwise asserted in a supplemental listing and agreed to by the Government.

(4). Marking of Data

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

Category A use company proprietary statement.

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

It is not anticipated that any Category A Data will be delivered to the Government under this Base Agreement. In the event commercial computer software and Data is licensed under a commercial computer software license under this Base Agreement a Special License rights marking legend shall be used as agreed to by the parties.

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

(5). Copyright

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

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

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

The PLP is responsible for affixing appropriate markings indicating the rights of the Government on all Data delivered under this Base Agreement.

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

(6). Data First Produced by the Government:

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

(7). Prior Technology

(i) Government Prior Technology: In the event it is necessary for the Government to furnish the SpEC or any SpEC Consortium Member or PLP, including their respective employees or their subcontractors of any tier, with Data which existed prior to, or was produced outside of the OT Agreement, and such Data is so identified with a suitable notice or legend, the Data will be maintained in confidence and disclosed and used only for the purpose of carrying out their responsibilities under this Base Agreement. Data protection will include proprietary markings and handling, compliance with Article 29, Proprietary Information, and the signing of non-disclosure agreements by SpEC (their PLPs, PLP subcontractors of any tier and their respective employees) to whom such Data is provided for use under the Base Agreement. Upon completion of activities under this Base Agreement, such Data will be disposed of as requested by the Government.

(ii) SpEC and Consortium Member Prior Technology: In the event it is necessary for the SpEC or any Consortium Member or PLP to furnish the Government with Data which existed prior to, or was produced outside of the OT Agreement, and such Data embodies trade secrets or comprises commercial or financial information which is privileged or confidential, and such Data is so identified with a suitable notice or legend, the Data will be maintained in confidence and disclosed and used by the Government and such Government Contractors or contract employees that the Government may hire on a temporary or periodic basis only for the purpose of carrying out the Government's responsibilities under the OT Agreement. Data protection will include proprietary markings and handling, and the signing of nondisclosure agreements by such Government Contractors or contract employees. Neither the SpEC nor any Consortium Member nor PLP shall be obligated to provide Data that existed prior to, or was developed outside of this Base Agreement to the Government. Upon completion of activities under this Base Agreement, such Data will be disposed of as requested by the SpEC on behalf of itself or Consortium Member or PLPs.

(iii) Oral and Visual Information: If information which the SpEC (including Consortium Member, PLPs, their subcontractors of any tier and their respective employees) considers to embody trade secrets or to comprise commercial or financial information which is privileged or confidential is expressly disclosed orally or visually

directly to the Government, the exchange of such information must be memorialized in tangible, recorded form and marked with a suitable notice or legend, and furnished to the Government within thirty (30) calendar days after such oral or visual disclosure, or the Government shall have no duty to limit or restrict, and shall not incur any liability for any disclosure and use of such information. Upon Government request, additional detailed information about the exchange will be provided subject to restrictions on use and disclosure.

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

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

(B) Information contained in any Data for which disclosure and use is restricted under Article 29 entitled "Proprietary Information", if such information is or becomes generally known without breach of the above, is properly known to the Government or is generated by the Government independent of carrying out responsibilities under the OT Agreement, is rightfully received from a third party without restriction, or is included in Data which the SpEC or any Consortium Member of PLP has furnished, or is required to furnish to the Government without restriction on disclosure and use.

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

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

(9). Lower Tier Agreements

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

(10). Survival Rights

Provisions of this Article shall survive termination of this Base Agreement under Article 7, Term of Agreement.

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

ARTICLE 29 - PROPRIETARY INFORMATION

Definitions

- (a) "Disclosing Party" means the party who discloses Proprietary Information as contemplated by the subsequent Paragraphs.
- (b) "Receiving Party" means the party who receives Proprietary Information disclosed by a Disclosing Party.
- (c) "Proprietary Information" means information and materials of a Disclosing Party which are designated as confidential or as a Trade Secret in writing by such Disclosing Party, whether by letter or by use of an appropriate stamp or legend, prior to or at the same time any such information or materials are disclosed by such Disclosing Party to the Receiving Party. Notwithstanding the foregoing, materials and other information which are orally, visually or electronically disclosed by a Disclosing Party, or are disclosed in writing without an appropriate letter, stamp, or legend, shall constitute Proprietary Information or a Trade Secret if such Disclosing Party, within thirty (30) calendar days after such disclosure, delivers to the Receiving Party a written document or documents describing the material or information and indicating that it is confidential or a Trade Secret, provided that any disclosure of information by the Receiving Party prior to receipt of such notice shall not constitute a breach by the Receiving Party of its obligations under this Paragraph. "Proprietary Information" includes any information and materials considered a Trade Secret by the Consortium or Consortium Members. "Trade Secret" means all forms and types of financial, business, scientific, technical, economic, or engineering information, including patterns, plans, compilations, program devices, formulas,

designs, prototypes, methods, techniques, processes, procedures, programs, or codes, whether tangible or intangible, and whether or how stored, compiled, or memorialized physically, electronically, graphically, photographically, or in writing if -

- (i) The owner thereof has taken reasonable measures to keep such information secret; and
- (ii) The information derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable through proper means by, the public.

Exchange of Information

The Government may from time to time disclose Government Proprietary Information to a Consortium Member Organization or organizations in connection with the SpEC prototypes and a Consortium Member Organization or organizations may from time to time disclose Consortium Member Organization Trade Secrets to the Government in connection with the SpEC prototypes. Neither the Government nor any Consortium Member Organization shall be obligated to transfer Proprietary Information or Trade Secrets independently developed to any Party to the OT Agreement.

Proprietary and Authorized Disclosure

The Receiving Party agrees, to the extent permitted by law, that Proprietary Information and Trade Secrets shall remain the property of the Disclosing Party (no one shall disclose unless they have the right to do so), and that, unless otherwise agreed to by the Disclosing Party, Proprietary Information and Trade Secrets shall not be disclosed, divulged or otherwise communicated by it to third parties (including without limitation, other Consortium Member Organizations) or used by it for any purposes other than in connection with the SpEC prototypes and the licenses granted in Article 28, Data Rights, and Article 30, Inventions and Patent, but shall exclude materials or information that:

- (a) Are received or become available without restriction to the Receiving Party under separate agreement,
- (b) Are not identified with a suitable notice or legend per Paragraph (c) herein,
- (c) Are in possession of the Receiving Party without restriction at the time of disclosure thereof as demonstrated by prior written records,
- (d) Are or later become part of the public domain through no fault of the Receiving Party,
- (e) Are received by the Receiving Party from a third party without restriction and having no obligation of confidentiality to the Disclosing Party that made the disclosure,
- (f) Are developed independently by the Receiving Party without use of Proprietary Information or Trade Secrets as evidenced by written records,
- (g) Are required by law or regulation to be disclosed; provided, however, that the Receiving Party has provided written notice to the Disclosing Party promptly so as to enable such Disclosing Party to seek a protective order or otherwise prevent disclosure of such information.

Return of Proprietary Information

Upon request by a Disclosing Party that made a disclosure of Trade Secrets to the Government, the Government shall promptly return all copies and other tangible manifestations of the Trade Secrets disclosed. Upon request by the Government, a Receiving Party shall promptly return all copies and other tangible manifestations of the Proprietary Information disclosed by the Government. As used in this section, tangible manifestations include human readable media as well as magnetic and digital storage media.

Term

The obligations of the Receiving Party under this Article shall continue for a period of seven (7) years after the expiration or termination of this Base Agreement; provided, however, that in the case of a Consortium Member Organization that

withdraws, or is deemed to have withdrawn from the consortia or a PA, the Receiving Party's obligations with respect to such Consortium Member Organizations' Trade Secrets shall continue only for a period of seven (7) years after the effective date of such Consortium Member Organizations' withdrawal.

ARTICLE 30 - INVENTIONS AND PATENTS

(a) Allocation of Principal Rights

1. The Prototype Level Performer ("PLP") shall retain ownership throughout the world to each Subject Invention consistent with the provisions of this Article and 35 U.S.C. § 202, provided the PLP has timely pursued a patent application and maintained any awarded patent and has not notified the Government (in accordance with the subparagraph (b) below) that the PLP does not intend to retain title.
2. The PLP shall retain ownership throughout the world to background inventions. Any invention related to, conceived of, or first reduced to practice in support of a PLP's internal development milestone shall be a background invention of PLP and shall not be classified as a Subject Invention, provided that an invention conceived of in support of an internal development milestone that is first reduced to practice under a Prototype Award awarded under this Base Agreement in support of other than internal development milestones shall be considered a Subject Invention.
3. The Government is granted a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the Subject Invention throughout the world.

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

1. The PLP shall disclose each Subject Invention through the CM to the Government on a DD Form 882 within eight (8) months after the inventor discloses it in writing to the Prototype Inventor's personnel responsible for patent matters.
2. If the PLP determines that it does not intend to retain title to any Subject Invention, the PLP shall notify the Government through the CM, in writing, within eight (8) months of disclosure to the Government. However, in any case where publication, sale, or public use has initiated the one (1)-year statutory period wherein valid patent protection can still be obtained in the United States, the period for such notice is shortened to at least sixty (60) calendar days prior to the end of the statutory period.

(c) Conditions When the Government May Obtain Title

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

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

(d) Minimum Rights to the Consortium and/or PLP and Protection of the Consortium and/or PLP's Right to File

1. The PLP shall retain a nonexclusive, royalty-free license throughout the world in each Subject Invention to which the Government obtains title, except if the PLP fails to disclose the Subject Invention within the times specified in paragraph (b) of this Article. The PLP's license extends to the domestic (including Canada) subsidiaries and affiliates, if

any, within the corporate structure of which the PLP is a party and includes the right to grant sublicenses of the same scope to the extent that the PLP was legally obligated to do so at the time the PA was awarded. The license is transferable only with the approval of the Government, except when transferred to the successor of that part of the business to which the Subject Invention pertains. The Government's approval for license transfer shall not be unreasonably withheld.

2. The PLP's domestic license, as described above, may be revoked or modified by the Government to the extent necessary to achieve expeditious practical application of the Subject Invention pursuant to an application for an exclusive license submitted consistent with appropriate provisions at 37 CFR Part 404. This license shall not be revoked in that field of use or the geographical areas in which the PLP has achieved practical application and continues to make the benefits of the Subject Invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of the Government to the extent the PLP, its licensees, or the subsidiaries or affiliates have failed to achieve practical application in that foreign country.

3. Before revocation or modification of the license, the Agreements Officer shall furnish the PLP a written notice of its intention to revoke or modify the license, and the PLP shall be allowed thirty (30) calendar days (or such other time as may be authorized for good cause shown) after the notice to show cause why the license should not be revoked or modified.

(e) Action to Protect the Government's Interest

1. The PLP agrees to execute or to have executed and promptly deliver through the CM to the Government all instruments necessary to (i) establish or confirm the rights the Government has throughout the world in those Subject Inventions to which the PLP elects to retain title, and (ii) convey title to the Government when requested under paragraph (c) of this Article and to enable the Government to obtain patent protection throughout the world in that Subject Invention.

2. The PLP agrees to require, by written agreement, its employees, other than clerical and non-technical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the PLP each Subject Invention made under this Agreement in order that the PLP can comply with the disclosure provisions of paragraph (b) of this Article. The PLP shall instruct employees, through employee agreements or other suitable educational programs, on the importance of reporting Subject Inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.

3. The PLP shall notify the Government through the CM of any decisions not to continue the prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceedings on a patent, in any country, not less than thirty (30) calendar days before the expiration of the response period required by the relevant patent office.

4. The PLP shall include, within the specification of any United States patent application and any patent issuing thereon covering a Subject Invention, the following statement: "This Invention was made with Government support under Agreement No. FA8814-17-9-0001, awarded by SMC/AD. The Government has certain rights in the Invention."

(f) March-in Rights

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

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

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

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

(g) Authorization and Consent

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

(h) Notice and Assistance

1. The PLP shall report to the Government through the CM, promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of a Prototype Award under this Base Agreement of which the PLP has knowledge.

2. In the event of any claim or suit against the Government on account of any alleged patent or copyright infringement arising out of the performance of a Prototype Award under this Base Agreement or out of the use of any supplies furnished or work or services performed under a Prototype Award under this Base Agreement, the PLP shall furnish to the Government, when requested by the Agreements Officer through the CM, all evidence and information in the PLP's possession pertaining to such claim or suit. Such evidence and information shall be furnished at the expense of the Government except where the PLP has agreed to indemnify the Government.

(i) Lower Tier Agreements

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

(j) Survival Rights

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

ARTICLE 31 - SECURITY REQUIREMENTS

(a) This Article applies to the extent that any Prototype Award involves access to information classified that may fall within one (or more) of the following levels:

- (1) "Confidential,"
- (2) "Secret,"
- (3) "Top Secret,"
- (4) "Top Secret/Sensitive Compartmented Information (TS/SCI)"
- (5) "Special Access Program (SAP)"

(b) In the event that a Prototype Award requires the PLP to have access to, or generate, classified information, the Government will generate a Department of Defense Security Classification Specification (DD Form 254) and attach it to the PA. Each Prototype involving classified or controlled information will have a separate DD 254, which will only be applicable to the specified Prototype Award.

(c) The PLP shall comply with the DD Form 254 attached to the Prototype Award at the time of award, and with -

- (1) The Security Agreement (DD Form 441), including the National Industrial Security Program Operating Manual (DoD 5220.22-M); and
- (2) Any revisions to that manual, notice of which has been furnished to the PLP.

(d) The PLP agrees to insert terms that conform substantially to the language of this article, including this paragraph (d), in all Subagreements under Prototype Award that involve access to classified information.

ARTICLE 32 - CYBERSECURITY AND INFORMATION PROTECTION

(a) Definitions applicable to this Article

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

"Cloud computing," means a model for enabling ubiquitous, convenient, on-demand network access to a shared pool of configurable computing resources (e.g., networks, servers, storage, applications, and services) that can be rapidly provisioned and released with minimal management effort or service provider interaction. This includes other commercial terms, such as on-demand self-service, broad network access, resource pooling, rapid elasticity, and measured service. It also includes commercial offerings for software-as-a-service, infrastructure-as-a-service, and platform-as-a-service.

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

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

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

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

"Covered defense information" means unclassified controlled technical information or other information, as described in the Controlled Unclassified Information (CUI) Registry at

<http://www.archives.gov/cui/registry/category-list.html>, that requires safeguarding or dissemination controls pursuant to and consistent with law, regulations, and Government wide policies, and is-

- (1) Marked or otherwise identified in the Prototype Award and provided to the PLP by or on behalf of DoD in support of the performance of the Prototype Award; or
- (2) Collected, developed, received, transmitted, used, or stored by or on behalf of the PLP in support of the performance of the Prototype Award.

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

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

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

"Malicious software" means computer software or firmware intended to perform an unauthorized process that will have adverse impact on the confidentiality, integrity, or availability of an information system. This definition includes a virus, worm, Trojan horse, or other code-based entity that infects a host, as well as spyware and

some forms of adware.

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

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

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

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

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

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

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

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

(2) If the Offeror proposes to vary from any of the security requirements specified by NIST SP 800- 171 that are in effect at the time the solicitation is issued or as authorized by the AO, the Offeror shall submit to the AO through the CM, for consideration by the DoD Chief Information Officer (CIO), a written explanation of why a particular security requirement is not applicable; or how an alternative but equally effective, security measure is used to compensate for the inability to satisfy a particular requirement and achieve equivalent protection. An authorized representative of the DoD CIO will adjudicate offeror requests to vary from NIST SP 800- 171 requirements in writing prior to Prototype Award . Any accepted variance from NIST SP 800-171 shall be incorporated into the resulting PA.

(3) The Offeror shall indicate in its proposal whether the use of cloud computing is anticipated at any level under the resultant PA. After the award of a PA, if the PLP proposes to use cloud computing services in the performance of the Prototype Award at any level, the PLP shall obtain approval from the AO prior to utilizing cloud computing services.

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

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

- (i) Limit information system access to authorized users, processes acting on behalf of authorized users, or devices (including other information systems).
 - (ii) Limit information system access to the types of transactions and functions that authorized users are permitted to execute.
 - (iii) Verify and control/limit connections to and use of external information systems.
 - (iv) Control information posted or processed on publicly accessible information systems.
 - (v) Identify information system users, processes acting on behalf of users, and devices.
 - (vi) Authenticate (or verify) the identities of those users, processes, and devices, as a prerequisite to allowing access to organizational information systems.
 - (vii) Sanitize or destroy information system media containing Federal Contract Information before disposal or release for reuse.
 - (viii) Limit physical access to organizational information systems, equipment, and the respective operating environments to authorized individuals.
 - (ix) Escort visitors and monitor visitor activity; maintain audit logs of physical access; and control and manage physical access devices.
 - (x) Monitor, control, and protect organizational communications (i.e., information transmitted or received by organizational information systems) at the external boundaries and key internal boundaries of the information systems.
 - (xi) Implement subnetworks for publicly accessible system components that are physically or logically separated from internal networks.
 - (xii) Identify, report, and correct information and information system flaws in a timely manner.
 - (xiii) Provide protection from malicious code at appropriate locations within organizational information systems.
 - (xiv) Update malicious code protection mechanisms when new releases are available.
 - (xv) Perform periodic scans of the information system and real-time scans of files from external sources as files are downloaded, opened, or executed.
- (2) The covered contractor information system shall be subject to the security requirements in National Institute of Standards and Technology (NIST) Special Publication (SP) 800-171, "Protecting Controlled Unclassified Information in Nonfederal Information Systems and Organizations" (available via the internet at <http://dx.doi.org/10.6028/NIST.SP.800-171>), within 30 days of agreement award, of any security requirements specified by NIST SP 800-171 not implemented at the time of Prototype Award.
- (3) Apply additional information systems security measures when the PLP reasonably determines that information systems security measures may be required to provide adequate security in a dynamic environment or to accommodate special circumstances (e.g. medical devices) and any individual, isolated, or temporary deficiencies based on an assessed risk or vulnerability.
- (e) The PLP shall notify the DoD Chief Information Officer (CIO), via email at osd.dibcsia@mail.mil, within thirty (30) days of Prototype Award, of any security requirements specified by NIST SP 800-171 not implemented at the time of Prototype Award.
- (1) The PLP shall submit requests to vary from NIST SP 800-171 in writing through the CM to the AO, for

consideration by the DoD CIO. The PLP need not implement any security requirement adjudicated by an authorized representative of the DoD CIO to be non-applicable or to have an alternative, but equally effective, security measure that may be implemented in its place.

- (2) If the DoD CIO has previously adjudicated the PLP's requests indicating that a requirement is not applicable or that an alternative security measure is equally effective, a copy of that approval shall be provided through the CM to the AO when requesting its recognition under this agreement.
 - (3) If the PLP intends to use an external cloud service provider to store, process, or transmit any covered defense information in performance of this agreement, the PLP shall require and ensure that the cloud service provider meets security requirements equivalent to those established by the Government for the Federal Risk and Authorization Management Program (FedRAMP) Moderate baseline (<<https://www.fedramp.gov/resources/documents/><<https://www.fedramp.gov/resources/documents/>>>) and that the cloud service provider complies with requirements of this Article for cyber incident reporting, malicious software, media preservation and protection, access to additional information and equipment necessary for forensic analysis, and cyber incident damage assessment.
- (f) When the PLP discovers a cyber incident that affects a covered contractor information system (including internal or external cloud computing services) or the covered defense information residing therein, or that affects the PLP's ability to perform the requirements of the agreement that are designated as operationally critical support and identified in the agreement, the PLP shall-
- (1) Conduct a review for evidence of compromise of covered defense information, including, but not limited to, identifying compromised computers, servers, specific data, and user accounts. This review shall also include analyzing covered contractor information system(s) that were part of the cyber incident, as well as other information systems on the PLP's network(s), that may have been accessed as a result of the incident in order to identify compromised covered defense information, or that affect the PLP's ability to provide operationally critical support; and
 - (2) Rapidly report cyber incidents to DoD at <<http://dib><<http://dibnet.dod.mil>>[net.dod.mil](http://dibnet.dod.mil)>. <<http://dibnet.dod.mil>> The cyber incident report shall be treated as information created by or for DoD and shall include, at a minimum, the required elements at <http://dibnet.dod.mil>. In order to report cyber incidents in accordance with this article, the PLP or subperformer shall have or acquire a DoD-approved medium assurance certificate to report cyber incidents. For information on obtaining a DoD-approved medium assurance certificate, see <<http://iase>. <<http://iase.disa.mil/pki/eca/Pages/index.aspx>>[disa.mil/pki/eca/Pages/index.aspx](http://iase.disa.mil/pki/eca/Pages/index.aspx) <<http://iase.disa.mil/pki/eca/Pages/index.aspx>>>.
- (g) When the PLP or subperformers discover and isolate malicious software in connection with a reported cyber incident, submit the malicious software to DoD Cyber Crime Center (DC3) in accordance with instructions provided by DC3 or the AO. Do not send the malicious software to the AO.
- (h) When a PLP discovers a cyber incident has occurred, the PLP shall preserve and protect images of all known affected information systems identified in paragraph (d)(1) of this article and all relevant monitoring/packet capture data for at least 90 days from the submission of the cyber incident report to allow DoD to request the media or decline interest.
- (i) Upon request by DoD, the PLP shall provide DoD with access to additional information or equipment that is necessary to conduct a forensic analysis.
- (j) If DoD elects to conduct a damage assessment, the AO will request that the PLP provide all of the damage assessment information gathered in accordance with paragraph (f) of this clause.
- (k) The Government shall protect against the unauthorized use or release of information obtained from the PLP (or derived from information obtained from the PLP) under this Article that includes PLP attributional/proprietary information, including such information submitted in accordance with paragraph (f). To the maximum extent practicable, the PLP shall identify and mark attributional/proprietary information. In making an authorized release of such information, the Government will implement appropriate procedures to minimize the PLP attributional/proprietary information that is included in such

authorized release, seeking to include only that information that is necessary for the authorized purpose(s) for which the information is being released.

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

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

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

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

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

(p) Reserved

(q) Reserved

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

ARTICLE 33 - EXPORT CONTROL AND FOREIGN ACCESS TO TECHNOLOGY

(a) General

- (1) The Parties agree that research findings and technology developments arising under this Base Agreement may constitute a significant enhancement to the national defense, and to the economic vitality of the United States. Accordingly,

access to important technology developments under this Base Agreement by Foreign Firms or Institutions must be carefully controlled.

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

(3) The Government anticipates Prototype Awards under this Base Agreement may be restricted by the International Traffic in Arms Regulation (ITAR).

(b) Prototype Awards or Lower Tier Agreements

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

ARTICLE 34 - DISCLOSURE OF INFORMATION

(a) Some PAs may require Government approval prior to the dissemination, public disclosure of information, or publication of information, except within and between the Consortium and any PLP, developed under a PA or contained in the reports to be furnished pursuant to a PA. PA statements of work will identify if this article is applicable. If PA statements of work do not clearly state this Article is applicable, then prior approval for disclosure of information is not required.

(b) Review or Approval of Information and Data for Public Release. At least fifty (50) days prior to the scheduled release date, the PLP shall submit to the CM a copy of the information to be released. The CM will request approval from the AOTR who is designated as the approval authority for the AO for such releases. When submitting material for written approval for open publication, the PLP must submit a request for public release to the CM and include the following information:

(1) Document Information: title, author, short plain-language description of technology discussed in the material (approximately 30 words), number of pages (or minutes of video) and document type (briefing, report, abstract, article, or paper);

(2) Event Information: type (conference, technical meeting, article or paper), date and desired date for SMC or AOTR's approval;

(3) PLP's information: POC name, email and telephone.

(c) The PLP shall not release to anyone outside the PLP's organization any unclassified information, regardless of medium (e.g., film, tape, document), pertaining to any part of a Prototype Award, unless the Government has given prior written approval; the information is otherwise in the public domain before the date of release; or the information results from or arises during the performance of a project that involves no covered defense information and has been scoped and negotiated by the contracting activity with the PLP and research performer and determined in writing by the AO to be fundamental research (which by definition cannot involve any covered defense information), in accordance with National Security Decision Directive 189, National Policy on the Transfer of Scientific, Technical and Engineering Information, in effect on the date of Prototype Award and the Under Secretary of Defense (Acquisition, Technology, and Logistics) memoranda on Fundamental Research, dated May 24, 2010, and on Contracted Fundamental Research, dated June 26, 2008 (available at DFARS PGI 204.4 <http://www.acq.osd.mil/dpap/dars/pgi/pgi_htm/PGI204_4.htm>.acq.osd.mil/dpap/dars/pgi/pgi_htm/PGI204_4.htm <http://www.acq.osd.mil/dpap/dars/pgi/pgi_htm/PGI204_4.htm>>(DFARS/PGIview <http://www.acq.osd.mil/dpap/dars/pgi/frameset.htm?dfarsno=204_4&pgino=PGI204_4&dfarsanchor=204_4>.acq.osd.mil/dpap/dars/pgi/frameset.htm?dfarsno=204_4&pgino=PGI204_4&dfarsanchor=204_4 <http://www.acq.osd.mil/dpap/dars/pgi/frameset.htm?dfarsno=204_4&pgino=PGI204_4&dfarsanchor=204_4&pgianchor=204_4>)).

ARTICLE 35 - CLOSEOUT

- (a) The PLP shall, at least sixty (60) days prior to the expiration date of a Prototype Award, contact the CM to establish:
 - (1) All steps needed to close out the award;
 - (2) A schedule for completing those steps.
- (b) The following provisions shall apply to the closeout:
 - (1) The CM shall expedite completion of steps needed to close out awards and make prompt final payments to PLP.
 - (2) The PLP shall account for any real property and personal property acquired with Federal funds for which the Government retains title or received from the Federal Government in accordance with the terms of the Base Agreement and Prototype Award.
- (c) The closeout of a Prototype Award does not affect any of the following:
 - (1) Any specified audit requirements.
 - (2) Any specified property management requirements.
 - (3) Records retention as required by the agreement.

ARTICLE 36 - REPRESENTATIONS AND WARRANTIES

- (a) Representations and Warranties of All Parties. Each Party to this Base Agreement represents and warrants to the other Party that (1) it is free to enter into this Base Agreement; (2) in so doing, it will not violate any other agreement to which it is a party; and (3) it has taken all action(s) necessary to authorize the execution and delivery of this Base Agreement and, in the case of the CM, the performance of its obligations under the OT Agreement.
- (b) Limitations. Except as expressly provided herein, no Party to this Base Agreement makes any warranty, express or implied, either in fact or by operation of law, by statute or otherwise, relating to (1) any research conducted under this Base Agreement, or (2) any invention conceived and/or reduced to practice under this Base Agreement, or (3) any other intellectual property developed under this Base Agreement, and each Party to this Base Agreement specifically disclaims any implied warranty of merchantability or warranty of fitness for a particular purpose.
- (c) Incorporation by Reference of Representations and Certifications. The PLP's representations and certifications, including those completed electronically via the System for Award Management (SAM), are hereby incorporated by reference into this Base Agreement.

ARTICLE 37 - ORGANIZATIONAL CONFLICT OF INTEREST (OCI)

- (a) The Government is concerned with avoiding potential real or perceived conflicts of interest as described in FAR Part 9.5. Throughout performance, the PLP shall monitor all potential conflicts of interest.
- (b) The PLP shall ensure prototype-level performance does not conflict with system development or enhancement being performed under other agreements or contracts.
- (c) The PLP shall immediately report all potential conflicts of interest to the CM. All white papers and Proposals will address potential conflicts of interest and any proposed mitigation. The PLP agrees to include in all subagreements an article requiring subagreement to report all potential or real Organizational Conflict of Interests to the CM and Government.

(d) The Government has the right to limit Consortium Member Entity(ies)' involvement under this Base Agreement or other action to mitigate Organizational Conflicts of Interest. In the event the PLP believes that the OCI can be mitigated, the PLP shall submit to the CM an OCI mitigation plan for the AO's consideration. The Consortium Manager is not permitted to compete for a Prototype Award or participate in the development of an awarded Prototype Project under this Base Agreement.

ARTICLE 38 - ENABLING AEROSPACE SUPPORT

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

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

(2) Technical Review (TR) includes the process of appraising the technical performance of the consortium and/or prototype-level performer through meetings, exchanging information on progress and problems, reviewing reports, evaluating presentations, reviewing hardware and software, witnessing and evaluating tests, analyzing plans for future work, evaluating efforts relative to prototype technical objectives, and providing comments and recommendations in writing to the applicable Air Force Program Manager as an independent technical assessment for consideration for modifying the program or redirecting the consortium and/or prototype-level performer's efforts to assure timely and economical accomplishment of program objectives.

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

(b) In the performance of this Base Agreement, the PLP agrees to cooperate with The Aerospace Corporation by 1) responding to invitations from authorized U. S. Government personnel to attend meetings; 2) by providing access to technical information and research, development planning data such as, but not limited to, design and development analyses, test data and results, equipment and process specifications, test and test equipment specifications and procedures, parts and quality control procedures, records and data, manufacturing and assembly procedures, and schedule and milestone data, all in their original form or reproduced form and including top-level life cycle cost* data, where available; 3) by delivering data as specified in the Contract Data Requirements List in the PA; 4) by discussing technical matters relating to this program; 5) by providing access to consortium and/or prototype-level performer facilities utilized in the performance of this agreement; 6) and by allowing observation of technical activities by appropriate technical personnel of The Aerospace Corporation. The Aerospace Corporation personnel engaged in GSE&I, TR, and/or TS efforts: (i) are authorized access to all such technical information (including proprietary information) pertaining to this agreement and may discuss and disclose it to the applicable DoD personnel in a program office; (ii) are authorized to discuss and disclose such technical information (including

proprietary information) to the commander or director of the various DoD organizations it supports and any U.S. Government personnel in a program office which, if not disclosed to the U.S. Government, could have adverse effects on the reliability and mission success of a U.S. Government program; and (iii) Aerospace shall make the technical information (including proprietary information) available only to its Trustees, officers, employees, contract labor, consultants, and attorneys who have a need to know.

(c) The PLP further agrees to include in all subagreements a clause requiring compliance by performers and supplier and succeeding levels of performers and suppliers with the response and access and disclosure provisions of this Enabling Clause, except for commercial items or commercial services. This Base Agreement does not relieve the PLP of its responsibility to manage the subagreements effectively and efficiently nor is it intended to establish privity of contract between the Government or The Aerospace Corporation and such subcontractors or suppliers, except as indicated in paragraph (d) below.

(d) The Aerospace Corporation shall protect the proprietary information of consortium and/or prototype-level performers, and suppliers in accordance with the Master Non-disclosure Agreement The Aerospace Corporation entered into with the Air Force, a copy of which is available upon request. This Master Non-disclosure Agreement satisfies the Nondisclosure Agreement requirements set forth in 10 U.S.C. §2320 (f)(2)(B), and provides that such consortium and/or prototype-level performers, and suppliers are intended third-party beneficiaries under the Master Non-disclosure Agreement and shall have the full rights to enforce the terms and conditions of the Master Non-disclosure Agreement directly against The Aerospace Corporation, as if they had been signatory party hereto. Each such consortium and/or prototype-level performer or supplier hereby waives any requirement for The Aerospace Corporation to enter into any separate company-to-company confidentiality or other non-disclosure agreements.

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

(f) The Aerospace Corporation personnel are not authorized to direct the PLP in any manner. The PLP agrees to accept technical direction as follows:

(1) Technical direction under this Agreement will be given to the PLP solely by SMC or the Government Prototype end user.

(2) Whenever it becomes necessary to modify the Base Agreement or Prototype Award and redirect the effort, a modification signed by the CM and PLP will be issued.

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

ARTICLE 39 - ENABLING SUPPORT CONTRACTORS

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

- (1) LinQuest Corporation
- (2) Tecolote Research, Inc.

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

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

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

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

ARTICLE 40 - ANTITRUST

The PLP shall agree to comply with all applicable U.S. laws, including U.S. antitrust laws.

ARTICLE 41 - OTHER APPLICABLE LAWS AND REGULATIONS

(a) Civil Rights Act

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

(b) Whistleblower Protection Act

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

(c) Environmental, Safety, And Health Responsibility

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

(d) US Flag Air Carriers

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

(e) Combating Trafficking in Persons

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

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

- (i) severe forms of trafficking in persons;
- (ii) the procurement of a commercial sex act during the period of time that the grant, contract, or cooperative agreement is in effect;
- (iii) the use of forced labor in the performance of the grant, contract, or cooperative agreement; or
- (iv) acts that directly support or advance trafficking in persons, including the following acts:

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

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

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

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

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

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

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

(f) Procurement Ethics Requirements

For the purposes of 41 USC Chapter 21 only, this Base Agreement shall be treated as a Federal agency procurement.

ARTICLE 42: ENTIRE AGREEMENT

This Base Agreement constitutes the entire agreement of the Parties and supersedes all prior and contemporaneous agreements, understandings, negotiations and discussions among the Parties, whether oral or written, with respect to the subject matter hereof. This Base Agreement may be revised only by written consent of the CM Representative and the PLP as described in Article 10, "Modifications." This Base Agreement, or modifications thereto, may be executed in counterparts

each of which shall be deemed as original, but all of which taken together shall constitute one and the same instrument.

<u>ATTACHMENTS</u>	<u>PGS</u>	<u>DATE</u>	<u>TITLE</u>
ATTACHMENT 1			
ATTACHMENT 2			



