

Other Transaction (OT) Authority Agreement

between

The United States Of America
SPACE & MISSILE SYSTEMS CENTER
483 N. AVIATION BLVD.
EL SEGUNDO, CA 90245-2808

and

[Participating Company]
[Address]
[City, ST, Zip]
[Phone (xxx) xxx-xxxx]

CAGE:

Concerning

Evolved Expendable Launch Vehicle (EELV) Launch Services Investment

Agreement No.: FA8811-17-9-00XX

Total Amount of the Agreement: \$.00

Government share: \$.00

Recipient share: \$.00

Authority: 10 U.S.C. § 2371b

Effective Date:

Catalog of Federal Domestic Assistance number: 12.114

Notice: Solicitation Number: FA8811-17-9-0001

For [Participating Company]

For the United States of America

Name:

Title:

DAVID SHARP

Agreements Officer

This Agreement is entered into between the United States of America, hereinafter called the Government, represented by the Space and Missile Systems Center Launch Systems Enterprise Directorate (SMC/LE), and [Participant Company Name] (hereinafter the Participant) (each a Party and collectively the Parties) pursuant to and under United States (U.S.) Federal law.

ARTICLE I: AUTHORITY

This Agreement is an “Other Transaction” pursuant to 10 United States Code (U.S.C.) § 2371b. This Agreement is not a procurement contract, cooperative agreement, or grant agreement for purposes of Federal Acquisition Regulations (FAR) Subsection 31.205-18 or any other purpose. The provisions of the FAR, Department of Defense Federal Acquisition Regulations Supplement (DFARS), and Air Force Federal Acquisition Regulations Supplement do not apply, unless explicitly included in this Agreement.

ARTICLE II: SCOPE OF THE AGREEMENT

A. Background

1. The mission of the Evolved Expendable Launch Vehicle (EELV) program is to deliver healthy National Security Space (NSS) satellites with high reliability into their intended orbits, on schedule, at a reasonable price. EELV launch systems must provide proven quality system performance to the required orbit while at the same time meeting designated thresholds and striving to meet the stated objectives for each mission. The United States Government needs the capability to routinely deploy payloads and replenish satellites on-orbit to meet peace and wartime requirements in a very predictable timeframe. The EELV program obtains this capability by purchasing launch services that meet NSS requirements. This Launch Service Other Transaction Agreement will continue existing Rocket Propulsion System (RPS) development efforts, as appropriate, and expand investment to develop a launch system prototype capable of meeting all requirements. This will enable Government investment in industry’s commercial launch system(s) through launch system development and certification.
2. A Launch System Prototype “Other Transaction” agreement has been chosen as the most appropriate vehicle to execute the relevant sections of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2015, 2016, and 2017.

B. Scope

1. The purpose of this Agreement is to establish a partnership with the Participant through cost-sharing to develop a launch system prototype that is a commercial domestically produced EELV-class launch system capable of meeting the EELV launch service requirements. The launch system development effort shall be performed in accordance with the Statement of Work (SOW) provided in Attachment 1.
2. This is a fixed price Agreement. The Participant shall be paid a fixed amount for each successfully completed and payable milestone accomplished in accordance with the Milestone Payment Plan set forth in Attachment 2 and the procedures of Article VI, Obligation and Payment Schedule.
3. The intended cost share of the Government for the [Name] Prototype development effort is xx.x% of the total [Name] effort on this Agreement.
4. Regardless of the intended Government cost share percentage, Government investment will be a fixed dollar amount, not a percentage of costs incurred. Additionally, the Government

requires that at least one-third of the total cost of the prototype project be paid out of funds provided by parties to the project other than the Federal Government.

5. SMC/LE and the Participant are bound to each other by this Agreement and by a duty of good faith and best efforts in performance of the efforts of this Agreement.

C. Objectives

1. The Air Force is seeking to enable, through cost-sharing with industry partners, the development of two domestic launch service providers, each meeting the full spectrum of EELV requirements, as soon as possible. In support of this Air Force objective, the goal of this Agreement is the development of a prototype Launch System that is capable of lifting EELV-class payloads to the proper orbits (as defined in the SPRD Rev B).
2. The Government will have continuous involvement with the Participant in accordance with the attached Statement of Work. To accomplish this objective, the Government will obtain access to project results, delivered in accordance with the Statement of Work and Milestone Payment Plan, and rights in patents and data pursuant to Articles XI, Patent Rights, and XII, Data Rights.

D. Definitions

“Agreement” means the body of this Agreement and its Attachments, which are expressly incorporated in and made a part of the Agreement.

“Background Data” means Data that is not generated under this Agreement.

“Background Data Rights” means the rights to use, modify, reproduce, release, perform, display, or disclose Data, in whole or in part, within the Government for the purposes of the EELV program or successor program(s). The Government may not, without the written permission of the party asserting Background Data Rights, release or disclose the Data outside the Government, use the Data for manufacture, or authorize the Data to be used by another party, except that the Government may reproduce, release, or disclose such Data or authorize the use or reproduction of the Data by persons outside the Government if:

1. The reproduction, release, disclosure, or use is necessary for a release or disclosure to a Covered Government Support Contractor in performance of its covered Government support contract in support of the EELV program or successor program(s) for use, modification, reproduction, performance, display, or release or disclosure to a person authorized to receive Background Data Rights Data; and
2. The recipient of the Data is subject to a prohibition on the further reproduction, release, disclosure, or use of the Data.

“Cash” means outlays of funds to perform the proposed launch system prototype development effort; this includes labor, materials, new equipment, and relevant subcontractor efforts. Sources include, but are not limited to, new research and development (R&D) funds, profit or fee from another contract, overhead, or capital equipment expense pool.

“Computer database” means a collection of recorded data in a form capable of being processed by a computer. The term does not include computer software.

“Computer software” as used in this 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 databases or computer software documentation.

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

“Controlled Unclassified Information” means any unclassified information that law, regulation, or government-wide policy requires to have safeguarding or disseminating controls. (See Attachment 3, DD254 Contract Security Classification Specification)

“Covered Government Support Contractors” means contractors covered under Article XVII, Enabling Aerospace Support, and Article XVIII, 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 databases, computer software documentation, and mask works. The term does not include financial, administrative, cost, pricing, or management information, and does not include subject inventions included in Article XI, Patent Rights.

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

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

“Government Purpose Rights,” means the rights to:

1. Use, modify, reproduce, release, perform, display, or disclose Data within the Government without restriction; and
2. Release or disclose Data outside the Government and authorize persons to whom release or disclosure has been made to use, modify, reproduce, release, perform, display, or disclose that Data for United States Government Purposes.

“In-Kind” means reasonable value of equipment, materials, or other property used in performance of the proposed launch system prototype development effort.

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

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

1. The reproduction, release, disclosure, or use is:
 - a. Necessary for emergency repair and overhaul; or
 - b. A release or disclosure to:
 - i. A Covered Government Support Contractor in performance of its covered

Government support contract for use, modification, reproduction, performance, display, or release or disclosure to a person authorized to receive Limited Rights Data; or

- ii. A foreign government, of Data other than detailed manufacturing or process data, when use of such data by the foreign government is in the interest of the Government and is required for evaluation or informational purposes;
2. The recipient of the Data is subject to a prohibition on the further reproduction, release, disclosure, or use of the Data; and
3. The Participant or subcontractor asserting the restriction is notified of such reproduction, release, disclosure, or use.

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

“Made in the United States” means manufactured in the United States with the cost of domestic components exceeding 50% of the cost of all the components. For the purposes of determining whether or not a prototype is Made in the United States, refer to FAR 25.003 for further definitions.

“Participant,” means [Company Name]

“Practical application,” as used in this 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, computer software, or related Data is being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public or to the Federal Government on reasonable terms.

“Proprietary Information,” as used in this agreement only, means information that has to be protected from unauthorized use and disclosure to prevent the compromise of property rights or economic interest or avoid jeopardizing Participants’ commercial position. Such information must be designated as proprietary in writing by the Participant, whether by letter or by use of an appropriate stamp or legend, prior to or at the same time any such information or materials are disclosed to the Government. Notwithstanding the foregoing, materials and other information which are orally, visually, or electronically disclosed, or are disclosed in writing without an appropriate letter, stamp, or legend, shall constitute Proprietary Information if the Participant, within 30 calendar days after such disclosure, delivers to the Government a written document or documents describing the material or information and indicating that it is proprietary, provided that any disclosure of information by the Government prior to receipt of such notice shall not constitute a breach by the Government of its obligations to protect Proprietary Information.

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

“Technical data” means recorded information, regardless of the form or method of the recording, of a scientific or technical nature (including computer software documentation). The term does not include computer software or data incidental to Agreement administration, such as financial and/or management information.

“Under this Agreement” means within the scope of work to be performed as described in the Statement of Work and Milestone Payment Plan.

“Unlimited Rights,” means rights to use, modify, reproduce, perform, display, release, or disclose

Data in whole or in part, in any manner, and for any purpose whatsoever, and to have or authorize others to do so.

ARTICLE III: APPLICABLE LAW AND SEVERABILITY

A. Applicable Law

U.S. Federal law governs this Agreement for all purposes, including, but not limited to, determining the validity of this Agreement, the meaning of its provisions, and the rights, obligations, and remedies of the Parties.

B. Severability

If any portion of this Agreement is held invalid by a court of competent jurisdiction, the Parties agree that such invalidity shall not affect the validity of the remaining portions of this Agreement, unless applying such remaining portions would frustrate the purpose of this Agreement.

ARTICLE IV: TERM

A. Term of this Agreement

1. The launch system prototype development effort consists of development and certification effort being performed in accordance with the SOW and Milestone Payment Plan. The effort commences upon the date of the last signature hereon and continues until [date].
2. Provisions of this Agreement, which, by their express terms or by necessary implication, apply for periods of time other than specified herein, shall be given effect, notwithstanding this Article.

B. Termination Provisions

1. The Government may terminate this Agreement for any reason by written notice to the Participant. The Participant may terminate this Agreement by written notice to the Government if the Participant determines that the expected commercial value of the prototype technology does not justify continued investment or the Government fails to provide funding in accordance with the Agreement.
2. The notices in paragraph B(1) shall occur at least 15 days prior to Agreement termination.
3. In the event of a termination of the Agreement, the Government shall have paid-up rights in Data as described in Article XII Data Rights.
4. In the event of a termination, the Participant shall cover all termination costs, including but not limited to, severances, cancellations of long lead items and materials, and program shutdown costs. The Government shall not be held liable for any termination costs. The Participant shall promptly repay the Government for any amount paid by the Government that exceeds two-thirds of the total cost of the prototype, to include the Participant's termination costs, as it is an overpayment.
5. The Agreements Officer may, at any time, issue a Stop Work Order. This order will not require the Participant to stop work that is entirely funded by the Participant; however, the Government will not be obligated to pay for work performed after the issuance of the Stop Work Order. The Agreements Officer has 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 Agreement. If the Stop Work Order is canceled or the period of the Stop Work Order or any extension thereof expires, the Participant shall resume work. As limited by Article VII, Disputes and Liability, and Article VI Paragraph A.3, any adjustments resulting

from the issuance of a Stop Work Order shall be subject to negotiation.

C. Extending the Term

The Parties may extend by written mutual agreement the period of performance of this Agreement if prototype development opportunities exist within the scope and objectives set forth in Article IIB and IIC and are reasonably warranted.

ARTICLE V: MANAGEMENT OF THE PROJECT

A. Management and Project Structure

The Participant shall be responsible for the overall technical management, project management, and execution of the launch system prototype development project in accordance with the Statement of Work. The review and verification of the completed milestones shall be accomplished in accordance with Attachment 2, Milestone Payment Plan.

B. Modifications

1. All 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 Agreement corrections (e.g., changes in the paying office or appropriation data, changes to Government or the Participant personnel identified in the Agreement, or changes in funding) may be made unilaterally by the Government.
2. Recommendations for modifications by the Participant, including justifications to support any changes to the SOW and Milestone Payment Plan (Attachment 2), will be documented in a letter and submitted to the Agreements Officer. This documentation letter will detail the technical, schedule, and financial impact of the proposed modification to the prototype project.
3. The Government will be responsible for effecting all modifications to this Agreement. No modification shall be binding and effective until incorporated through formal written modification to the Agreement by the Agreements Officer.

ARTICLE VI: OBLIGATION PAYMENT AND SCHEDULE

A. Obligation

1. This Agreement is incrementally funded. The sum of [\$] of the total amount of [\$] of Government funding to develop the launch system prototype, excluding RPS components (as defined by the FY15 NDAA, as amended), is presently available for payment and obligated to this Agreement. The sum of [\$] of the total amount of [\$] of Government funding to develop RPS components is presently available for payment and obligated to this Agreement. The Agreement is funded through TBD.
2. Agreed to values are listed in the table below: TBD
3. The Government's liability to make payments to the Participant is limited to only those funds obligated under the Agreement or by modification to the Agreement. The Participant amounts in Paragraph 2 are estimates; the exact amounts may vary within the parameters set forth in Attachment 2, Milestone Payment Plan. If the Participant chooses to continue to work on the prototype beyond the funds obligated it will be doing so at its own risk, and the Government will not be required to pay any amount associated with such work. Furthermore,

the Government is not liable for any costs incurred on incomplete milestones, including but not limited to, the purchase of any long-lead items.

4. Accounting Information [Note: The funding for RPS activities needs to be explicitly separated to facilitate Government compliance with Section 1604 of the FY15 NDAA, as amended.]

ACRN AA **TBD**

Purchase Request **TBD**

B. Basis of Payment

1. The Parties agree that fixed payments will be made for the completion of Milestones.
2. The basis of payment for this effort shall be a series of Milestones scheduled throughout the period of performance of this Agreement in accordance with Attachment 2, Milestone Payment Plan.

C. Basis of Cost Share

1. The total investment from Non-Government sources must be at least one-third of the total cost of the prototype. The Participant shall contribute Cash or In-Kind investment, which must be clearly and convincingly demonstrated by the Participant. No In-Kind investment will be considered for items designed or manufactured in the Russian Federation.
2. The Participant shall not include the following in their investment: sunk costs or costs incurred before Agreement award, unless notified by the Agreement Officer that such costs are allowable; foregone fees or profits; foregone general and administrative (G&A) or cost of money applied to a base of R&D; bid and proposal costs; value claimed for intellectual property of prior or parallel research or investment; or off-budget resources (e.g., goodwill).
3. Termination liability costs are included as part of the participant's investment share amount, per Article IV(B)(4). These costs are explicitly recorded on a per milestone basis in Attachment 2, Milestone Payment Plan.
4. Independent Research and Development (IR&D) funds included as part of the Participant's investment shall be documented and approved by the cognizant Divisional Administrative Contracting Officer.

D. Payable Milestones

See Attachment 2 for details of the Milestone Payment Plan, to include the description, payment amounts, expenditures, and payment dates.

E. Use of Funds

All funds, to include Government cost share and Non-Government cost share, are to be used only for costs that a reasonable and prudent person would incur in carrying out the prototype project.

F. Wide Area Workflow

Payments will be made by the Defense Finance and Accounting Services (DFAS) office, as indicated below, within 30 calendar days of an accepted invoice in Wide Area Workflow (WAWF).

The Participant is required to utilize the WAWF system when processing invoices and receiving reports under this Agreement. The Participant shall (i) ensure an Electronic Business Point of Contact is designated in System for Award Management at <http://www.sam.gov> and (ii) register to use WAWF at the <https://wawf.eb.mil> site, within 10 calendar days after award of this Agreement.

Step by Step procedures to register are available at the <https://wawf.eb.mil> site. The Participant is directed to use the “Grant Voucher” format when processing invoices. The Participant should submit a copy of the Agreements Officer's Representative (AOR) approval of the milestone, as well as a copy of the milestone report, with each invoice.

1. For the Issue By Department of Defense Activity Address Code (DoDAAC), enter FA8811.
2. For the Admin DoDAAC, enter XXXXXX.
3. For the Grant Approver fields, enter XXXXXX.
4. The following guidance is provided for invoicing processed under this Agreement through WAWF:
 - a. The AOR shall formally inspect and accept the deliverables/payable milestones. To the maximum extent practicable, the AOR shall review the deliverable(s)/payable milestone report(s) and either: (1) provide a written notice of rejection to the Participant which includes feedback regarding deficiencies requiring correction, or (2) provide a written notice of acceptance to the SMC/LE Program Manager and Agreements Officer.
 - b. Acceptance within the WAWF system shall be performed by the AOR upon receipt of a confirmation email, or other form of transmittal, from the AOR.
 - c. The Participant shall send an email notice to the AOR and upload the AOR approval as an attachment upon submission of an invoice in WAWF (this can be done from within WAWF).
 - d. Payments shall be made by DFAS-Columbus, West Entitlement Operations:
DFAS-Columbus
West Entitlement Operations
P.O. Box 182381
Columbus, OH 43218-2381
Code: HQ0339
 - e. The Participant agrees, when entering invoices in WAWF, to include reference to the associated milestone number along with other necessary descriptive information. The Participant agrees that the Government may reject invoices not submitted in accordance with this provision.

Note for DFAS: The request for payment will include billing instructions specifying which ACRN to bill for what amount.

5. Payee Information: As identified at the System for Award Management.

Cage Code:

DUNS:

TIN:

6. Payments shall be made in the amounts set forth in Attachment 2, provided the AOR has verified the completion of the Milestones.

ARTICLE VII: ACCOUNTING AND AUDIT ADMINISTRATION

A. Audits

The Agreements Officer, or an authorized representative, such as the Defense Contract Audit Agency (DCAA), shall have the right to examine or audit the awardee records during the period of the agreement and for 3 years after final payment, unless notified otherwise by the Agreements Officer at least 90 days prior to the expiration of the 3-year period for an extension of no greater than 1 year. The Agreements Officer, or an authorized representative, such as DCAA, shall have direct access only to sufficient records to ensure full accountability for all Government funding or to verify statutorily required cost share under this Agreement. Such examination or access shall occur during business hours upon prior written notice.

B. Comptroller General Review

The Comptroller General of the United States, in its discretion, shall have access to and the right to examine records of any party to the Agreement or any entity that participates in the performance of this Agreement that directly pertain to, and involve transactions relating to, the Agreement for a period of 3 years after final payment is made. This requirement shall not apply with respect to any party to this Agreement or any entity that participates in the performance of the Agreement, or any subordinate element of such party or entity, that, in the year prior to the date of the Agreement, has not entered into any other contract, grant, cooperative agreement, or “Other Transaction” agreement that provides for audit access to its records by a government entity in the year prior to the date of this Agreement.

C. Accounting System Requirements

The Participant shall ensure that appropriate arrangements have been made for receiving, distributing, and accounting for Federal funds under this Agreement. Consistent with this stipulation, an acceptable accounting system will be one in which all cash receipts and disbursements are controlled and documented properly and which is capable of generating a cost element summary.

D. Flow-down

The Participant shall flow down the requirements of this Article to any subcontractors that are contributing to the Industry Cost Share.

ARTICLE VIII: DISPUTES AND LIABILITY

A. General

The Parties shall communicate with one another in good faith and in a timely and cooperative manner when raising issues under this Article.

B. Dispute Resolution Procedures

1. Any dispute between the Government and Participant concerning questions of fact or law arising from or in connection with this Agreement, and, whether or not involving an alleged breach of this Agreement, may only be raised under this Article.
2. 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 B.3 of this article shall not be made earlier than 30 days from when the dispute arose. In no event shall a dispute that arose more than 180 calendar days prior to the notification made under subparagraph B.3 of this article constitute the basis for relief under this article unless the Agreements Officer waives this requirement in writing.

3. Failing resolution by mutual agreement, the aggrieved Party shall notify the other Party (through the Agreements Officer) in writing of the relevant facts, identifying unresolved issues, and specifying the clarification or remedy sought. The dispute will then be referred to the Director of the Launch Systems Enterprise and an executive of Participant, who shall meet in good faith to resolve the dispute.
4. If the Director of the Launch Systems Enterprise and an executive of Participant are not able to resolve the dispute within 30 calendar days of the date the notice under subparagraph B.3 is received, the dispute will be referred to the Air Force Program Executive Officer for Space (AFPEO/SP) and an executive of Participant, who shall meet in good faith to resolve the dispute.
5. If the AFPEO/SP and an executive of Participant are not able to resolve the dispute within 60 calendar days of the date the notice under subparagraph B.3 is received, then either Party may pursue any remedy under the law.
6. 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 IV, Term.
7. Any modification to the Agreement resulting from the dispute resolution process will be made by the Agreements Officer. No modification shall be binding and effective until incorporated through formal written modification to the Agreement by the Agreements Officer.

C. Limitations of Damages

Claims by the Government for damages of any nature whatsoever pursued under this Agreement shall be limited to direct damages only up to the aggregate amount of Government funding for launch system prototype development disbursed, pursuant to this Agreement as of the time the dispute arises. Claims by the Participant for damages of any nature whatsoever pursued under this Agreement shall be limited to direct damages only up to the aggregate amount of Government funding for launch system prototype development obligated to this Agreement and unspent as of the time the dispute arises. In no event shall either 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 willful misconduct.

ARTICLE IX: UNALLOWABLE COSTS

- A. Government-funded portions of the following cost items are expressly unallowable charges on any current or future Government contract:
 1. Depreciation Expense Charges – If this Agreement results in equipment or other tangible capital assets that can be depreciated, then the Government-provided funding must be excluded from the value of the asset being depreciated. The amount funded by the Government shall not be in any indirect cost pool or any direct cost calculation on any future Government contract.
 2. IR&D – The amount funded by the Government shall not be in any indirect cost pool or any direct cost calculation, as part of the Participant's IR&D expense calculation, and will not be billable on any current or future Government contract.

- B. Non-Duplication of Research:** No research and development costs paid for by the Government on other contracts or agreements shall be included in either the Government or Industry cost share, in accordance with 10 U.S.C. § 2371(e)(1)(A).

ARTICLE X: PROPRIETARY AND CONTROLLED UNCLASSIFIED INFORMATION

A. Applicability

This article, except for paragraph D, applies to information other than Data, which is addressed in Article XII Data Rights. Paragraph D applies to all Controlled Unclassified information.

B. Exchange of Information

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

C. Treatment of Proprietary Information and Authorized Disclosure

The Government will use any Proprietary Information received consistent with its obligations under federal law or as otherwise specified in Article XI, Patent Rights, and Article XII, Data Rights. “Proprietary Information” shall not extend to materials or information that:

1. Are received or become available without restriction to the Government under this Agreement or a proper, separate agreement or contract
2. Are not identified with a suitable notice or legend per the definition of Proprietary Information
3. Are lawfully in possession of the Government without restriction at the time of disclosure thereof as demonstrated by prior written records
4. Are or later become part of the public domain through no fault of the Government
5. Are received by the Government from a third party having no obligation of confidentiality to the Participant
6. Are developed independently by the Government without use of Proprietary Information as evidenced by written records or
7. Consist solely of Government funding or expenditure information regarding execution of this agreement

D. Treatment of Controlled Unclassified Information

The Participant is required to treat Controlled Unclassified Information in accordance with Attachment 3, DD 254 Contract Security Classification Specification.

E. Improper Use of Proprietary Markings

In the event that there is a disagreement regarding the application of a proprietary marking, the Agreements Officer may challenge its validity in writing.

F. Third-Party Support

The Government anticipates third-party support from Covered Government Support Contractors on

this Agreement. Interactions with Covered Government Support Contractors and their access to Proprietary Information are subject to Article XVII, Enabling Aerospace Support, and Article XVIII, Enabling Support Contractors.

G. Survival Rights

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

H. Flow-down

The Participant shall flow down the requirements of this Article to its respective personnel, subcontractors, and agents receiving such Controlled Unclassified Information under this Agreement.

ARTICLE XI: PATENT RIGHTS

A. Allocation of Principal Rights

1. The Participant 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 Participant has either timely pursued a patent application and maintained any awarded patent, or established trade secret protection, and has not notified the Government (in accordance with the paragraph .B below) that the Participant does not intend to retain title.
2. This Agreement does not provide to the Government any rights to any invention that is not 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 Participant shall disclose each Subject Invention to the Agreements Officer on a DD Form 882 within 8 months after the inventor discloses it in writing to the Participant's personnel responsible for patent matters. Upon submitting the disclosure, the Participant shall notify the Agreements Officer whether the Participant intends to retain title to such Subject Invention, and whether it will either maintain such Subject Invention as a trade secret or file for patent protection.
2. If the Participant initially chooses to maintain such Subject Invention as a trade secret, the Participant may subsequently choose to file for patent protection after notice to the Agreements Officer. If the Participant initially chooses to file for patent protection, but prior to the publication of such application chooses to abandon the application and instead rely on trade secret protection, Participant shall notify the Agreements Officer.
3. If at any time the Participant does not elect to both retain title and maintain a Subject Invention as a trade secret or fails to keep the Subject Invention a trade secret, paragraphs XI.B.4 through XI.E of this Article shall apply to the Subject Invention.
4. If the Participant determines that it does not intend to retain title to any such Subject Invention, the Participant shall notify the Agreements Officer, in writing, within 8 months of disclosure to the Government. However, in any such case where publication, sale, or public use has initiated the 1-year statutory period wherein valid patent protection can still be obtained in the United States, the period for such notice may be shortened by the Government

to a date that is no more than 60 calendar days prior to the end of the statutory period.

C. Conditions When the Government May Obtain Title

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

1. If the Participant 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 60 calendar days after learning of the failure of the Participant to disclose or elect within the specified times.
2. If patent protection is pursued, in those countries in which the Participant fails to file patent applications within the times specified in paragraph B of this Article, provided that, if the Participant 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 Participant shall continue to retain title in that country.
3. In any country in which the Participant 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, provided that Participant does not notify the Agreements Officer that trade secret protection is being sought instead

D. Minimum Rights to the Participant and Protection of the Participant's Right to File

1. The Participant shall retain a nonexclusive, royalty-free license throughout the world in each Subject Invention to which the Government obtains title, except if the Participant fails to disclose the Invention within the times specified in paragraph B of this Article. The Participant's license extends to the domestic (including Canada) subsidiaries and affiliates, if any, within the corporate structure of which the Participant is a party and includes the right to grant licenses of the same scope to the extent that the Participant was legally obligated to do so at the time the Agreement was awarded. The license is transferable only with the approval of the Government, except when transferred to the successor of that part of the business to which the Invention pertains. The Government's approval for license transfer shall not be unreasonably withheld.
2. The Participant'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 Code of Federal Regulations (CFR) Part 404. This license shall not be revoked in that field of use or the geographical areas in which the Participant has achieved practical application and continues to make the benefits of the Invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of the Government to the extent the Participant, 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 Participant a written notice of its intention to revoke or modify the license, and the Participant shall be allowed 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 Participant agrees to execute or to have executed and promptly deliver to the Agreements Officer all instruments necessary to (i) establish or confirm the rights the Government has

throughout the world in those Subject Inventions to which the Participant 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 Participant 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 Participant each Subject Invention in order that the Participant can comply with the disclosure provisions of paragraph .B of this Article. The Participant shall instruct employees, through employee agreements or other suitable educational programs, on the importance of reporting Inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.
3. The Participant shall notify the Agreements Officer of any decisions not to continue the prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceedings on a patent, in any country, not less than 30 calendar days before the expiration of the response period required by the relevant patent office.
4. The Participant 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. FA8811-17-9-00XX, awarded by SMC/LE. The Government has certain rights in the Invention."

F. Lower-Tier Agreements

The Participant 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.

G. March-in Rights

The Participant agrees that, with respect to any Subject Invention in which it has retained title, the Government has the right to require the Participant, 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 Participant, 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 Participant or assignee has not taken effective steps, consistent with the intent of this 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 Participant, assignee, or their licensees
3. Such action is necessary to meet requirements for public use, and such requirements are not reasonably satisfied by the Participant, assignee, or licensees

H. Authorization and Consent

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

I. Notice and Assistance

1. The Participant shall report to the Agreements Officer, promptly and in reasonable written

detail, each notice or claim of patent or copyright infringement based on the performance of this Agreement of which the Participant has knowledge.

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

J. Patent Infringement Indemnification

In the case where the Participant elects to use trade secret protection for a subject invention, the following applies:

1. The Participant shall indemnify the Government and its officers, agents, and employees against liability, including costs, for infringement of any United States patent arising out of the manufacture or delivery of supplies, the performance of services, or the construction, alteration, modification, or repair of real property (hereinafter referred to as “construction work”) under this agreement, or out of the use or disposal by or for the account of the Government of such supplies or construction work.
2. This indemnity shall not apply unless the Participant shall have been informed as soon as practicable by the Government of the suit or action alleging such infringement and shall have been given such opportunity as is afforded by applicable laws, rules, or regulations to participate in its defense.

K. Survival Rights

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

ARTICLE XII: DATA RIGHTS

A. Allocation of Principal Rights

1. The Government shall have <Participant to insert level of rights, not less than Limited Rights> in Data generated Under this Agreement, except as provided in paragraph A.2, A.3, and A.4.
2. The Government shall have Unlimited Rights in Data for the following:
 - a. Form, fit, and function Data that are generated Under this Agreement
 - b. Corrections or changes to Data furnished to the Participant by the Government
 - c. Data otherwise publicly available or that have been released or disclosed by the Participant or subcontractor 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
 - d. Data necessary for operation, maintenance, installation, or training, if applicable, and
 - e. Computer software documentation that are required to be delivered Under this Agreement
3. Data that will be delivered, furnished, or otherwise provided to the Government under this

Agreement, in which the Government has previously obtained rights, shall be delivered, furnished, or provided with either the pre-existing rights or the rights specified in this Agreement, whichever is greater, or unlimited rights in the case where any restrictions on the Government's rights to use, modify, reproduce, display, or disclose the data have expired or no longer apply.

4. The Government shall have Background Data Rights to Background Data.

B. Disclosure of Data to Covered Government Support Contractors

The Participant acknowledges that data, including but not limited to Data and Background Data, with other than Unlimited Data Rights are authorized to be released or disclosed to Covered Government Support Contractors in accordance with Article XVII, Enabling Aerospace Support, and Article XVIII, Enabling Support Contractors.

C. Purchase of Additional Rights

Except as otherwise provided in this Agreement, the Participant, its subcontractors, and suppliers are not required to provide the Government additional rights to use, modify, reproduce, release, perform, display, or disclose Data furnished to the Government with other than Unlimited Rights. However, if the Government desires to obtain additional rights in Data furnished under this Agreement, the Participant agrees to promptly enter into negotiations with the Agreements Officer to determine whether there are acceptable terms for transferring such rights. All Data in which the Participant has granted the Government additional rights shall be listed or described in a license agreement made part of the Agreement. The license shall enumerate the additional rights granted the Government in such Data.

D. Marking of Data

1. Except for Data covered under paragraph XII.D.2, and Data delivered with unlimited rights, Data to be delivered under this Agreement subject to restrictions on use, duplication, or disclosure shall be marked with the following legend, as applicable:

“<Offeror to insert level of rights, not less than Limited Rights> Data: Use, duplication, or disclosure is subject to the restriction as stated in the Agreement between the U.S. Government and [Participant Company], Agreement No. FA8811-17-9-000x.” or

“Background Data: Use, duplication, or disclosure is subject to the restriction stated in the Agreement between the U.S. Government and [Participant Company], Agreement No. FA8811-17-9-000x.”
2. Pre-existing Data markings: If the terms of a prior contract or license permitted the Participant to restrict the Government's rights to use, modify, reproduce, release, perform, display, or disclose Data deliverable under this Agreement, and those restrictions are still applicable, the Participant may mark such Data with the appropriate restrictive legend for which the Data qualified under the prior contract or license unless such Data is granted a higher level of rights by this Agreement.
3. The Government shall have unlimited rights in all unmarked Data. In the event that the Participant learns of a release to the Government of its unmarked Data that should have contained a restricted legend, the Participant will have the opportunity to cure such omission by providing written notice to the Agreements Officer within 1 year of the erroneous release, and the Government will be held harmless for any sharing of unmarked data prior to the Participant's cure action.

4. Disclaimer of Liability: Notwithstanding the above, the Government shall not be restricted in, nor incur any liability for, the disclosure and use of:
 - a. Data not identified with a suitable notice or legend as set forth in this article
 - b. Information contained in any Data for which disclosure and use is restricted under Article X, Proprietary and Controlled Unclassified Information, if such information is or becomes generally known without breach of the above, is properly known to the Government or is generated by the Government independent of carrying out responsibilities under this Agreement, is rightfully received from a third party without restriction, or is included in Data which the Participant is required to furnish to the Government without restriction on disclosure and use.

E. Validation of Restrictive Markings

1. The Government and the Participant agree to use the process outlined in DFARS clause 252.227-7037 (Sep 2016), Validation of Restrictive Markings on Technical Data, for validation of restrictive markings on all data, including but not limited to all Data and Proprietary Information, with all mention of Contractor understood to mean the Participant and all mention of Contracting Officer understood to mean Agreements Officer.
2. Unjustified Data markings: The rights and obligations of the parties regarding the validation of restrictive markings on Data furnished or to be furnished under this Agreement are contained in the Validation of Restrictive Markings on Technical Data provision of this Agreement. Notwithstanding any provision of this Agreement concerning inspection and acceptance, the Government may ignore or, at the Participant's expense, correct or strike a marking if, in accordance with the procedures in the Validation of Restrictive Markings provision of this Agreement, a restrictive marking is determined to be unjustified.
3. Nonconforming Data markings: A nonconforming marking is a marking placed on Data or Proprietary Information delivered or otherwise furnished to the Government under this Agreement that is not in the format authorized by this Agreement. Correction of nonconforming markings is not subject to the Validation of Restrictive Markings provision of this Agreement. If the Agreements Officer notifies the Participant of a nonconforming marking and the Participant fails to remove or correct such marking within 60 days, the Government may ignore or, at the Participant's expense, remove or correct any nonconforming marking.

F. Marking Procedures and Records

Throughout performance of this Agreement, the Participant and its subcontractors or suppliers that will deliver Data with other than unlimited rights, shall:

1. Have, maintain, and follow written procedures sufficient to assure that restrictive markings are used only when authorized by the terms of this Agreement
2. Maintain records sufficient to justify the validity of any restrictive markings on Data or Proprietary Information delivered or otherwise furnished to the Government under this Agreement.

G. Copyright

1. The Participant reserves the right to protect by copyright original works developed under this Agreement. All such copyrights will be in the name of the Participant. The Participant hereby grants to the U.S. Government a non-exclusive, nontransferable, 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. The Government's license is co-extensive with the other rights and licenses under Article X and Article XII.

2. In the event Data is exchanged with a notice indicating that the Data is protected under copyright as a published, copyrighted work and it is also indicated on the Data that such Data existed prior to, or was produced outside of this Agreement, the Party receiving the Data and others acting on its behalf may reproduce, distribute, and prepare derivative works for the sole purpose of carrying out that Party's responsibilities under this Agreement with the written permission of the Copyright holder.
3. Third-party copyrighted Data: The Participant shall not, without the written approval of the Agreements Officer, incorporate any copyrighted data in the Data to be delivered under this Agreement unless the Participant is the copyright owner or has obtained for the Government the license rights necessary to perfect a license or licenses in the deliverable Data of the appropriate scope set forth in this Article, and has affixed a statement of the license or licenses obtained on behalf of the Government and other persons to the data transmittal document.
4. Except that copyrighted Data that existed or was produced outside of this Agreement and is unpublished—having only been provided under licensing agreement with restrictions on its use and disclosure—and is provided under this Agreement shall be marked as unpublished copyright in addition to the appropriate license rights legend restricting its use, and treated in accordance with such license rights legend markings restricting its use.
5. The Participant is responsible for affixing appropriate markings indicating the licenses of the Government on all Data delivered under this Agreement. The Government agrees not to remove any copyright notices placed on Data and to include such notices on all reproductions of the Data.

H. Deferred Ordering of Data

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

I. Rights in derivative computer software or computer software documentation

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

J. Lower-Tier Agreements

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

K. Survival Rights

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

ARTICLE XIII: FOREIGN ACCESS TO TECHNOLOGY

A. General

1. The Parties agree that research findings and technology developments arising under this Agreement may constitute a significant enhancement to the national defense, and to the economic vitality of the United States. Accordingly, access to important technology developments under this Agreement by Foreign Firms or Institutions must be carefully controlled.
2. The Participant shall comply with the International Traffic in Arms Regulation (22 CFR part 121 et seq.), the Department of Defense (DoD) Industrial Security Regulation (DoD 5220.22-R) and the Department of Commerce Export Administration Regulation (15 CFR part 770 et seq.).

B. Lower-Tier Agreements

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

C. Survival Rights

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

ARTICLE XIV: PROPERTY AND EQUIPMENT

- A. Title to property acquired (e.g., purchased, fabricated, manufactured) by the Participant in the performance of this Agreement that is personal property (examples include, but are not limited to: severable support equipment, special test equipment, special tooling, handling equipment, fixtures, airborne component prototypes, flight hardware, plant equipment, etc.) shall remain the property of the Participant.
- B. The Participant shall identify all Government Property used in the Agreement to the Agreements Officer. Government Property shall be utilized only for the performance of this Agreement unless a specific exception is made in writing by the Agreements Officer.
- C. Government Property under this Agreement is identified in Attachment 6, Government Property, and must be approved for use by the cognizant Administrative Contracting Officer.
- D. Participant shall assume the risk of and be responsible for any maintenance (e.g., corrosion control, Government Property documentation listings and management), loss or destruction of, or damage to, any Government Property during its use under this Agreement, with the exception of reasonable wear and tear or reasonable and proper consumption. All Government Property shall be returned at the end of its use to the owning program in as good as condition as when received with the exception of said reasonable wear and tear or in accordance with the provisions of the Agreement regarding its use.

ARTICLE XV: OTHER APPLICABLE LAWS AND REGULATIONS

A. Civil Rights Act

This Agreement is subject to the compliance requirements of Title VI of the Civil Rights Act of 1964

as amended (42 U.S.C. § 2000-d) relating to nondiscrimination in Federally assisted programs. The Participant agrees to comply with the provisions of the Act.

B. Whistleblower Protection Act

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

C. Environmental, Safety, and Health Responsibility

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

D. U.S. Flag Air Carriers

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

E. Combating Trafficking in Persons

1. In accordance with 22 U.S.C. Chapter 78, the United States Government has adopted a policy prohibiting trafficking in persons.
2. In accordance with this statute, this agreement, or any prototype award under this agreement, may be terminated by the Government, without penalty, if the Participant engages in, or uses labor recruiters, brokers, or other agents who engage in:
 - a. severe forms of trafficking in persons
 - b. the procurement of a commercial sex act during the period of time that the grant, contract, or cooperative agreement is in effect
 - c. the use of forced labor in the performance of the grant, contract, or cooperative agreement or
 - d. acts that directly support or advance trafficking in persons, including the following acts:
 - i. Destroying, concealing, removing, confiscating, or otherwise denying an employee access to that employee's identity or immigration documents.
 - ii. 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.

- iii. 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.
- iv. 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.
- v. Providing or arranging housing that fails to meet the host country housing and safety standards.

F. Federal Funding Accountability and Transparency Act of 2006

1. The Federal Funding Accountability and Transparency Act of 2006 (Pub. L. No. 109-282), as amended by section 6202 of the Government Funding Transparency Act of 2008 (Pub. L. 110-252), requires certain information regarding the Participant and the Agreement be made public.
2. Nothing in this clause requires the disclosure of classified information.

G. Procurement Ethics Requirements

For the purposes of 41 U.S.C. Chapter 21 only, this agreement shall be treated as a Federal agency procurement.

H. Lower-Tier Agreements

The Participant 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 XVI: ORDER OF PRECEDENCE

In the event of any inconsistency between the terms of this Agreement and language set forth in the Attachments, the inconsistency shall be resolved by giving precedence in the following order: (1) The Agreement; (2) Attachment 2, Milestone Payment Plan; and (3) all other Attachments to the Agreement.

ARTICLE XVII: ENABLING AEROSPACE SUPPORT

- A. This Agreement is under the general program management of the Air Force Space and Missile Systems Center (SMC). The Air Force has entered into a contract with The Aerospace Corporation, a California nonprofit corporation operating a Federally Funded Research and Development Center, for the services of a technical group that will support the DoD/U.S. Government program office by performing General Systems Engineering and Integration, Technical Review, or Technical Support, including informing the commander or director of the various DoD organizations it supports and any U.S. Government program office of product or process defects and other relevant information, which, if not disclosed to the U.S. Government, could have adverse effects on the reliability and mission success of a U.S. Government program.
 1. General Systems Engineering and Integration (GSE&I) deals with overall system definition; integration both within the system and with associated systems; analysis of system segment and subsystem design; design compromises and tradeoffs; definition of interfaces; review of hardware and software, including manufacturing and quality control; observation, review, and evaluation of tests and test data; support of launch, flight test, and orbital operations; appraisal of technical performance through meetings with contractors and subcontractors, exchange and analysis of information on progress and problems; review of plans for future work; developing solutions to problems; technical alternatives for reduced program risk;

providing comments and recommendations in writing to the applicable DoD System Program Manager or Project Officer as an independent technical assessment for consideration for modifying the program or redirecting efforts; all to the extent necessary to assure timely and economical accomplishment of program objectives consistent with mission requirements.

2. Technical Review (TR) includes the process of appraising the technical performance of the Participant 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 Agreement technical objectives, and providing comments and recommendations in writing to the applicable Air Force Program Manager as an independent technical assessment for consideration for modifying the program or redirecting efforts to assure timely and economical accomplishment of program objectives.
3. Technical Support (TS) deals with broad areas of specialized needs of customers for planning, system architecting, research and development, horizontal engineering, or analytical activities for which The Aerospace Corporation is uniquely qualified by virtue of its specially qualified personnel, facilities, or corporate memory. The categories of TS tasks are Selected Research, Development, Test and Evaluation; Plans and System Architecture; Multi-Program Systems Enhancement; International Technology Assessment; and Acquisition Support.

- B.** In the performance of this Agreement, the Participant agrees to cooperate with The Aerospace Corporation by (1) responding to invitations to attend meetings; (2) 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) delivering Data as specified in the Agreement; (4) discussing technical matters relating to this program; (5) providing access to Participant facilities utilized in the performance of this Agreement; (6) and allowing observation of technical activities by appropriate technical personnel of The Aerospace Corporation. The Aerospace Corporation personnel engaged in GSE&I, TR, or TS efforts: (i) are authorized access to all such technical information (including Proprietary Information) pertaining to this 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) The Aerospace Corporation 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 Participant further agrees to include in all subcontracts a clause requiring compliance by subcontractor and supplier and succeeding levels of subcontractors and suppliers with the response and access and disclosure provisions of this Enabling Clause, subject to coordination with the Participant, except for subcontracts for commercial items or commercial services. This Agreement does not relieve the Participant of its responsibility to manage the subcontracts effectively and efficiently, nor is it intended to establish privity of contract between the Government or The Aerospace Corporation and such subcontractors or suppliers, except as

indicated in paragraph (D) below.

- D.** The Aerospace Corporation shall protect the Proprietary Information of the Participant and its subcontractors and suppliers in accordance with the Nondisclosure Agreement The Aerospace Corporation entered into with the Air Force, a copy of which is available upon request. This Nondisclosure Agreement satisfies the Nondisclosure Agreement requirements set forth in 10 U.S.C. §2320 (f)(2)(B), and provides that the Participant and its subcontractors and suppliers are intended third-party beneficiaries under the Nondisclosure Agreement and shall have the full rights to enforce the terms and conditions of the Nondisclosure Agreement directly against The Aerospace Corporation, as if they had been signatory party hereto. The Participant, and each of its subcontractors and suppliers, hereby waives any requirement for The Aerospace Corporation to enter into any separate company-to-company confidentiality or other nondisclosure agreements.
- E.** The Aerospace Corporation shall make the technical information (including Proprietary Information) available only to its Trustees, officers, employees, contractor labor, consultants, and attorneys who have a need to know, and Aerospace shall maintain between itself and the foregoing binding agreements of general application as may be necessary to fulfill their obligations under the Nondisclosure Agreement referred to herein, and Aerospace agrees that it will inform contractors, subcontractors, and suppliers if it plans to use consultants, or contract labor personnel and, upon the request of such contractor, subcontractor, or supplier, to have its consultants and contract labor personnel execute nondisclosure agreements directly therewith.
- F.** The Aerospace Corporation personnel are not authorized to direct the Participant in any manner. Participant personnel are not authorized to direct The Aerospace Corporation.

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

ARTICLE XVIII: ENABLING SUPPORT CONTRACTORS

- A.** This Agreement is under the general program management of the Air Force 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), Launch Service Integrating Contractor (LSIC) or Systems Engineering and Integration (SE&I). Non-Disclosure Agreements shall be executed within 30 days (unless already existing with the Participant) after signature of the Agreement or the award of a contract to a successor of the contractors listed below:
 - 1. ManTech International Corp
 - 2. Booz Allen Hamilton (BAH)
 - 3. TASC
 - 4. Millennium Engineering and Integration Company (MEI)
 - 5. Integrity Application, Inc.
 - 6. ASRC Aerospace Corporation
 - 7. Stellar Solutions, Inc.
 - 8. Tecolote Research, Inc.

9. Aleut Management Services
10. Integrated Data Services
11. Wallender and Associates
12. Kinsey Technical Services
13. Element Consulting Group (ECG)
14. Science Applications International Corporation (SAIC)
15. Sigmatech

NOTE: See Classified Addendum to Model Agreement for complete list.

- B.** In the performance of this Agreement, the Participant agrees to cooperate with the companies listed above (hereafter referred to as A&AS/SETA/SE&I/LSIC). Cooperation includes allowing observation of technical activities by appropriate A&AS/SETA/SE&I/LSIC technical personnel, discussing technical matters related to this Agreement; delivering Data as specified in the Agreement, providing access to Participant facilities utilized in the performance of this Agreement, responding to invitations from authorized A&AS/SETA/SE&I/LSIC personnel to attend meetings, and providing access to technical and development planning data. The Participant shall provide A&AS/SETA/SE&I/LSIC 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 Participant further agrees to include in all subcontracts a clause requiring compliance by the subcontractor and supplier and succeeding levels of subcontractors and suppliers with the response and access and disclosure provisions of paragraph (b) above, subject to coordination with the Participant, except for subcontracts for commercial items or commercial services. This Agreement does not relieve the Participant of its responsibility to manage the subcontracts effectively and efficiently, nor is it intended to establish privity of contract between the Government or A&AS/SETA/SE&I/LSIC and such subcontractors or suppliers.
- D.** A&AS/SETA/SE&I/LSIC personnel are not authorized to direct the Participant in any manner. Participant personnel are not authorized to direct A&AS/SETA/SE&I/LSIC personnel.
- E.** A&AS/SETA/SE&I/LSIC 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. A&AS/SETA/SE&I/LSIC 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/LSIC agree that it will inform the participant and its contractors, subcontractors, and suppliers if it plans to use consultants or contract labor personnel and, upon the request of the Participant or such contractor, subcontractor, or supplier, to have its consultants and contract labor personnel execute nondisclosure agreements directly therewith.

ARTICLE XIX: AVAILABILITY OF ROCKET PROPULSION SYSTEM FOR SALE

- A.** The Participant agrees that any Rocket Propulsion System as defined by Section 1604 of the FY15 NDAA, as amended, being developed under this Agreement as a subsystem to the prototype

under this agreement and subsequently fully developed and qualified for use in launch vehicles shall be made available for purchase to all space launch providers of the United States for a commercially reasonable price. Additionally, any such RPS must be developed by 2019.

- B.** In the event the Participant restricts sales to less than all interested United States space launch providers for a commercially reasonable price, the Participant shall reimburse the Government the entire Government investment provided under this Agreement for the relevant RPS(s).
- C.** The provisions of this Article shall survive after the expiration or termination of this Agreement.

ARTICLE XX: DOMESTIC PRODUCTION

- A.** Any Rocket Propulsion System, as defined by Section 1604 of the FY15 NDAA, as amended, utilized in any launch system prototype under this agreement shall be Made in the United States.
- B.** The launch system prototype under this agreement shall be Made in the United States.

ARTICLE XXI: AVAILABILITY OF LAUNCH SERVICES

- A.** The Participant agrees that any Launch System prototype being developed under this Agreement and subsequently fully developed shall be made available for sale to the Government for all EELV Phase 2 launch services missions. The Participant shall make such Launch System available for sale to the Government by submitting a good faith, reasonably priced, firm offer that is valid for at least 180 days for each competitive and applicable sole source FAR 12 EELV Phase 2 launch services procurement, including for each mission of such procurement, in the 2020 through 2026 timeframe.
- B.** The Participant shall reimburse the Government \$38.5M per mission as agreed to liquidated damages should the Participant fail to comply with Article XXI(A). The maximum amount that the Participant shall reimburse the Government as agreed to liquidated damages shall not exceed the total Government investment in the Launch System described in Article XXI(A).
- C.** The Participant agrees that the liquidated damages will be used to compensate the Government for probable damages, are a reasonable forecast of just compensation for the harm caused by failure to comply with Article XXI(A), are not punitive, and are not negative performance incentives.
- D.** The provisions of this Article shall survive after the expiration or termination of this Agreement.

ARTICLE XXII: ASSURED ACCESS TO SPACE RIGHTS

- A.** The Parties recognize that the Government is making a significant investment in the Participant's prototype and may come to rely on the prototype or a functionally equivalent system to achieve assured access to space. To protect the Government's interests, the parties agree to the following:
 - 1.** In the event that the Government reasonably determines that the Participant has gone out of business, through bankruptcy or otherwise, that the Participant has otherwise exited the NSS launch industry; or that the Participant has otherwise made the prototype under this agreement, or a functionally equivalent system, unavailable to the Government:
 - a.** The Government shall receive the following irrevocable, nonexclusive, royalty-free, paid-up, worldwide license rights: The Government shall have Government Purpose Rights, for a five year period, to all data relating to the prototype under this Agreement, including but not limited to all Data. Upon expiration of the five year period, the Government shall have Unlimited Rights in such data. If the Government has previously

obtained Unlimited Rights to any such data, the Government shall continue to have Unlimited Rights to such data.

- b. The Government shall have the right to order any such data from the Participant, including but not limited to any such Data and Background Data, for a period of three years from the date that the Government determines the Participant has gone out of business, through bankruptcy or otherwise, that the Participant has otherwise exited the NSS launch industry; or that the Participant has otherwise made the prototype under this agreement, or a functionally equivalent system, unavailable to the Government. When such data is ordered, the Participant shall be compensated only for the cost of converting the data into the prescribed form for reproduction and delivery. The obligation to deliver the data of a subcontractor pertaining to an item obtained from the subcontractor shall expire three years after the date the Government determines the Participant has gone out of business, through bankruptcy or otherwise, that the Participant has otherwise exited the NSS launch industry; or that the Participant has otherwise made the prototype under this agreement, or a functionally equivalent system, unavailable to the Government.
 - c. The Government shall receive an irrevocable, nonexclusive, royalty-free, paid-up, worldwide license to practice or have practiced for or on behalf of the United States any invention relating to the prototype.
 - d. The Government shall receive an irrevocable, nonexclusive, royalty-free, paid-up, worldwide license to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, and to authorize others to do so, any copyrighted materials relating to the prototype.
 - e. In the event the Participant offers the tooling and equipment associated with the prototype developed under this Agreement for sale to any third party in the 3-year period following the date the Government determines that the Participant has gone out of business, through bankruptcy or otherwise, that the Participant has otherwise exited the NSS launch industry; or that the Participant has otherwise made the prototype under this agreement, or a functionally equivalent system, unavailable to the Government; the Government shall have the right of first refusal to purchase the tooling and equipment on the same terms and conditions of such offer less the amount of Government funding that was previously used to purchase the tooling or equipment.
2. In the event the Participant enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the Participant agrees to furnish, by certified mail, written notification of the bankruptcy to the Agreements Officer. This notification shall be furnished within five days of the initiation of the proceedings relating to bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and a listing of Government contract numbers and contracting offices for all Government contracts against which final payment has not been made.

B. The provisions of this Article shall survive after the expiration or termination of this Agreement. The Government's right to make the determination described in this Article will expire on September 30, 2030, notwithstanding the earlier expiration or termination of this Agreement. The Participant shall flow down this Article to all major subcontractors.

ARTICLE XXIII: ARTICLE EXECUTION

This 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 Agreement may be revised only by written consent of the Participant Representative and the Agreements Officer as described in Article V “Management of the Project.” This 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.