Agreement No. R18-04

ATTACHMENT D
PATENTS AND RIGHTS IN DATA

A. **Rights in Data** - Contractor acknowledges that the following requirements apply to this Agreement concerning experimental, developmental or research work:

(1) The term "subject data" used in this clause means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under this Agreement. The term includes graphic or pictorial delineation in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to: computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term "subject data" does not include financial reports, cost analyses, and similar information incidental to contract administration.

(2) The following restrictions apply to all subject data first produced in the performance of this Agreement to which this Attachment has been added:

(a) Except for its own internal use, Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may Contractor authorize others to do so, without the written consent of the Authority, until such time as the Authority may have either released or approved the release of such data to the public; this restriction on publication, however, does not apply to any contract with an academic institution.

(b) Unless prohibited by state law, upon request by the Authority, Contractor agrees to indemnify, save, and hold harmless the Authority, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. Contractor shall be required to indemnify the Authority for any such liability arising out of the wrongful act of any employee, official, or agents of the Authority.

(c) Nothing contained in this clause on rights in data shall imply a license to the Authority under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Authority under any patent.

(d) Data developed by Contractor and financed entirely without using Federal assistance provided by the Authority that has been incorporated into work required by the underlying contract to which this Attachment has been added is exempt from the

requirements of subsections (b) of this clause, provided that Contractor identifies that data in writing at the time of delivery of the contract work.

(e) Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed.

(3) Unless the Authority later makes a contrary determination in writing, irrespective of Contractor's status (i.e. , a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual, etc.), the Purchaser and Contractor agree to take the necessary actions to provide, those rights in that invention due the Authority as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R., Part 401.

B. **Patent Rights** - The following requirements apply to each contract involving experimental, developmental, or research work:

(1) General - If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under the contract to which this Attachment has been added, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the Purchaser and Contractor agree to take actions necessary to provide immediate notice and a detailed report to the party at a higher tier.

(2) Contractor also agrees to include the requirements of this clause in each subcontract for experimental, developmental, or research work.