

CUSTOMER CONTRACT REQUIREMENTS
Information Warfare Research Project (IWPR)
CUSTOMER CONTRACT 2021-525 (N65236-18-9-0001)

CUSTOMER CONTRACT REQUIREMENTS

The following customer contract requirements apply to this Contract to the extent indicated below. Please note, the requirements below are developed in accordance with Buyer's prime contract and are not modified by Buyer for each individual Seller or statement of work. Seller will remain at all times responsible for providing to any government agency, Buyer, or Buyer's customer, evidence of compliance with the requirements herein or that such requirements are not applicable to the extent satisfactory to the requesting party.

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

52.204-25 Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment (NOV 2021).

Paragraph (b)(2) is deleted. Paragraph (d)(1) is deleted and replaced with the following: "In the event Seller identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or Seller is notified of such by a subcontractor at any tier or any other source, Seller shall report the information in paragraph (d)(2) of this clause via email to Buyer's Authorized Procurement Representative, with the required information in the body of the email.

52.245-1 Government Property (SEP 2021). This clause applies if Government property is acquired or furnished for contract performance. "Government" shall mean Government throughout except the first time it appears in paragraph (g)(1) when "Government" shall mean the Government or the Buyer.

2. DoD FAR Supplement Clauses DoD Contracts. The following contract clauses are incorporated by reference from the Department of Defense Federal Acquisition Regulation Supplement and apply to the extent indicated. In all of the following clauses, "Contractor" and "Offeror" mean Seller except as otherwise noted.

252.204-7012 Safeguarding Covered Defense Information and Cyber Incident Reporting (DEC 2019). This clause applies if the Contract is for operationally critical support or where performance will involve a covered contractor information system. The term "contractor" retains its original meaning wherever the word is not capitalized. In the terms "Contractor attributional/proprietary information," "Contractor information system" and "covered contractor information system," the term "contractor" also retains its original meaning. In paragraphs (d) and (g), "Contracting Officer" shall mean "Contracting Officer or Buyer." In paragraph (m)(2), the term "prime Contractor" retains its original meaning. In accordance with paragraph (m)(2)(i), Seller shall notify Buyer when submitting a request to the Contracting Officer to vary from NIST SP 800-171. Reporting to Buyer in accordance with (m)(2)(ii) shall be accomplished via abuse@Boeing.com with a copy to the Buyer's Authorized Procurement Representative. The Boeing 1st tier subcontractor promptly shall report lower tier subcontractor information it receives.

Seller represents and warrants that (i) it is in compliance with the requirements of DFARS Clause 252.204-7012 as modified by the preceding paragraph, or (ii) that, pursuant to paragraph (b)(2)(ii)(B), it has submitted a request applicable to this Contract for a variance from the requirements of NIST SP 800-171, to the US Government Contracting Office and that Seller's request for such variance was approved by an authorized representative of the DoD CIO.

252.227-7025 Limitations on the Use or Disclosure of Government-Furnished Information Marked With Restrictive Legends (MAY 2013). In paragraph (c)(1), the term "Government" shall mean "Government and Buyer".

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

IWRP-RPP-21-PAC-0173 (PROP-21-58283) Special Provisions .

Definitions

“Agreement” or “Base Agreement” means the Base Agreement between the Information Warfare Research Project (IWRP) Consortium Consortium Manager (CM), Advanced Technology International (ATI), and the Consortium Member.

“Agreements Officer (AO)” means an individual with authority to enter into, administer, or terminate the IWRP OTA and instruct the CM to enter into, administer, or terminate any individual Prototype Project Agreements executed under this Agreement.

“Agreements Officers Representative (AOR)” 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 AORs may be designated in writing at either the OTA level or prototype project agreement level.

“Buyer” means Boeing.

“Commercial item” means --

1. Any item, other than real property, that is of a type customarily used by the general public or by non-governmental entities for purposes other than governmental purposes, and--
 - a. Has been sold, leased, or licensed to the general public; or,
 - b. Has been offered for sale, lease, or license to the general public;
2. Any item that evolved from an item described in paragraph (1) of this definition through advances in technology or performance and that is not yet available in the commercial marketplace, but will be available in the commercial marketplace in time to satisfy the delivery requirements under a Government solicitation;
3. Any item that would satisfy a criterion expressed in paragraphs (1) or (2) of this definition, but for:
 - a. Modifications of a type customarily available in the commercial marketplace; or
 - b. Minor modifications of a type not customarily available in the commercial marketplace made to meet Federal Government requirements. Minor modifications means modifications that do not significantly alter the nongovernmental function or essential physical characteristics of an item or component, or change the purpose of a process. Factors to be considered in determining whether a modification is minor include the value and size of the modification and the comparative value and size of the final product. Dollar values and percentages may be used as guideposts, but are not conclusive evidence that a modification is minor;
4. Any combination of items meeting the requirements of paragraphs (1), (2), (3), or (5) of this definition that are of a type customarily combined and sold in combination to the general public;
5. Installation services, maintenance services, repair services, training services, and other services if:
 - a. Such services are procured for support of an item referred to in paragraph (1), (2), (3), or (4) of this definition, regardless of whether such services are

- provided by the same source or at the same time as the item; and
- b. The source of such services provides similar services contemporaneously to the general public under terms and conditions similar to those offered to the Federal Government;
6. Services of a type offered and sold competitively in substantial quantities in the commercial marketplace based on established catalog or market prices for specific tasks performed or specific outcomes to be achieved and under standard commercial terms and conditions. For purposes of these services—
 - a. “Catalog price” means a price included in a catalog, price list, schedule, or other form that is regularly maintained by the manufacturer or vendor, is either published or otherwise available for inspection by customers, and states prices at which sales are currently, or were last, made to a significant number of buyers constituting the general public; and
 - b. “Market prices” means current prices that are established in the course of ordinary trade between buyers and sellers free to bargain and that can be substantiated through competition or from sources independent of the offerors.
 7. Any item, combination of items, or service referred to in paragraphs (1) through (6) of this definition, notwithstanding the fact that the item, combination of items, or service is transferred between or among separate divisions, subsidiaries, or affiliates of a contractor; or
 8. A nondevelopmental item, if the Agreements Officer determines the item was developed exclusively at private expense and sold in substantial quantities, on a competitive basis, to multiple State and local governments.

“Cost Sharing” means cash or in-kind resources expended during a prototype award by the Consortium Member or lower tier subcontractors that are necessary and reasonable for accomplishment of the project.

“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 data bases 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 provides instructions for installing and using the software.

“Covered Government support contractor” means a contractor under a contract, the primary purpose of which is to furnish independent and impartial advice or technical assistance directly to the Government in support of the Government’s management and oversight of a program or effort (rather than to directly furnish an end item or service to accomplish a program or effort), provided that the contractor—

1. Is not affiliated with the prime contractor or a on the program or effort, or with any direct competitor of such prime contractor or any such first-tier subcontractor in furnishing end items or services of the type developed or produced on the program or effort; and

2. Receives access to technical data or computer software for performance of a Government contract that contains the clause at Department of Defense Federal Acquisition Regulation Supplement (DFARS) 252.227-7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends.

"Consortium" means the Information Warfare Research Project (IWRP) Consortium that is composed of traditional and non-traditional contractors, as well as academia and non-profits, that is legally bound to operate in accordance with a Consortium Membership Agreement.

"Consortium Member" means the traditional and non-traditional contractors, as well as academia and non-profits that make up the membership of the Consortium.

"Consortium Manager (CM)" is the organization acting on behalf of the IWRP Consortium to execute and administer the efforts under the OTA. The CM is prohibited from performing prototype projects under the OTA.

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

"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.

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

"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 authorize others to do so.

Within a specific, agreed-upon timeframe "Government Purpose Rights" ("GPR") may evolve into "Unlimited Rights" (as defined later in this section). GPR 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.

“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 Consortium, prototype level performer, or prototype project agreement holder 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.

“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.”

“Other Transaction Agreement (OTA)” means the Other Transaction Agreement between the Government and the Information Warfare Research Project Consortium by its Consortium Manager, Advanced Technology International, Agreement No. N65236-18-9-0001.

“The Parties” means the CM and the Consortium Member, and Buyer where collectively identified and “Party” where each entity is individually identified, unless otherwise noted in a specific Article or Section of this Agreement.

“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, 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.

“Property” means any tangible personal property other than property actually consumed during the execution of work under this Agreement. For purposes of this Agreement, “property” does not include the deliverable prototype under any prototype project agreement.

“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 Project” means a research activity proposed by the prototype-level performer and selected by the Government for a Prototype Project Agreement under this Agreement.

“Prototype Project Agreement (PPA)” means any individual OTA prototype project agreement awarded to a Consortium Member through orders placed in accordance with the OTA.

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

“System for Award Management (SAM)” means the Federal repository into which an entity must provide information required for the conduct of business. Additional information about registration procedures may be found at the SAM Internet site (currently at <http://www.sam.gov>).

“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.

“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, for an unlimited time. As defined above, “Unlimited Rights” may evolve from “GPR” after a specified, agreed-upon date, however, “Unlimited Rights” may also be directly conferred by agreement.

Patents

1. Allocation of Principal Rights
 - a. 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.
2. Invention Disclosure, Election of Title, and Filing of Patent Application
 - a. The Seller shall disclose each Subject Invention to the Agreements Officer

- through the Buyer, on a DD Form 882 within eight (8) months after the inventor discloses it in writing to the Seller's personnel responsible for patent matters.
- b. If the Seller determines that it does not intend to retain title to any Subject Invention, the Seller shall notify the Agreements Officer, through the Buyer, 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. For every Subject Invention to which the Seller has elected to retain title, the Seller shall—
 - i. File either a provisional or a nonprovisional patent application on an elected subject invention within 1 year after election, provided that in all cases the application is filed prior to the end of any statutory period wherein valid patent protection can be obtained in the United States after a publication, on sale, or public use;
 - ii. File a nonprovisional application within ten (10) months of the filing of any provisional application; and
 - iii. File patent applications in additional countries or international patent offices, if desired by Seller, within either ten (10) months of the first filed patent application (whether provisional or nonprovisional) or six (6) months from the date the Commissioner of Patents grants permission to file foreign patent applications where such filing has been prohibited by a Secrecy Order.
3. Upon the Buyer's written request, the Seller shall convey title to any Subject Invention to the Government under any of the following conditions:
- a. If the Seller fails to disclose or elects not to retain title to the Subject Invention within the times specified in paragraph (2) of this clause; provided, that the Government may only request title within sixty (60) calendar days after learning of the failure of the Seller to disclose or elect within the specified times.
 - b. In those countries in which the Seller fails to file patent applications within the times specified in paragraph (2) of this clause; provided, that if the Seller has filed a patent application in a country after the times specified in paragraph (2) of this clause, but prior to its receipt of the written request by the Government, the receipt of the written request by the Government, the Seller shall continue to retain title in that country; or shall continue to retain title in that country; or
 - c. In any country in which the Seller 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.
4. Minimum Rights to the Seller and Protection of the Seller's Right to File
- a. The Seller shall retain a nonexclusive, royalty-free license throughout the world in each Subject Invention to which the Government obtains title, except if the Seller fails to disclose the Subject Invention within the times specified in paragraph (2) of this clause. The Seller's license extends to the domestic (including Canada) subsidiaries and affiliates, if any, within the

corporate structure of which the Seller is a party and includes the right to grant licenses of the same scope to the extent that the Seller was legally obligated to do so at the time the contract 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.

- b. The Seller'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 Seller 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 Seller, its licensees, or the subsidiaries or affiliates have failed to achieve application in that foreign country.
 - c. Before revocation or modification of the license, the Government shall furnish the Seller a written notice of its intention to revoke or modify the license, typically provided through the Buyer, and the Seller 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.
5. Action to Protect the Government's Interest
- a. The Seller agrees to execute or to have executed and promptly deliver to the Buyer all instruments necessary to (i) establish or confirm the rights the Government has throughout the world in those Subject Inventions to which the Seller elects to retain title, and (ii) convey title to the Government when requested under paragraph (3) of this clause and to enable the Government to obtain patent protection throughout the world in that Subject Invention.
 - b. The Seller 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 Seller each Subject Invention made under this contract in order that the Seller can comply with the disclosure provisions of paragraph (2) of this clause. The Seller 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.
 - c. The Seller shall notify the Agreements Officer, through the Buyer, 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.
 - d. The Seller 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. N65236-18-9-0001, awarded by SPAWARSYSCEN Atlantic. The Government has certain rights in the Invention.”

6. The Seller 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 Seller, 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:
 - a. Such action is necessary because the Seller or assignee has not taken effective steps, consistent with the intent of this contract, to achieve practical application of the Subject Invention;
 - b. Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the Seller, assignee, or their licensees; or
 - c. Such action is necessary to meet requirements for public use and such requirements are not reasonably satisfied by the Seller, assignee, or licensees.
7. 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.
8. Notice and Assistance
 - a. The Seller shall report to the Agreements Officer, through the Buyer, promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this contract of which the Seller has knowledge.
 - b. In the event of any claim or suit against the Government on account of any alleged patent or copyright infringement arising out of the performance of this contract or out of the use of any supplies furnished or work or services performed under this contract, the Seller shall furnish to the Government, through the Buyer, when requested by the Agreements Officer, all evidence and information in the Seller's possession pertaining to such claim or suit. Such evidence and information shall be furnished at the expense of the Government except where the Seller has agreed to indemnify the Government.
9. The Seller shall include this clause, suitably modified, to identify the parties, in all subagreements or lower tier agreements, regardless of tier, for experimental, developmental, or research work.
10. The obligations of the Government and the Seller under this clause shall survive after the expiration or termination of this contract.
11. Patent Indemnity
 - a. If applicable, the contract will include a list of Commercial Items to be manufactured and delivered to which this specific indemnification applies.
 - b. For such identified items, the Seller shall indemnify Buyer, the Government and its officers, agents, and employees against liability, including costs, for infringement of any United States patent (except a patent issued upon an

- application that is now or may hereafter be withheld from issue pursuant to a Secrecy Order under 35 U.S.C. 181) arising out of the manufacture or delivery of Commercial Items.
- c. This indemnity shall not apply unless the Seller 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. Further, this indemnity shall not apply to –
 - i. An infringement resulting from compliance with specific written instructions of the Agreements Officer directing a change in the supplies to be delivered or in the materials or equipment to be used, or directing a manner of performance of the contract not normally used by the Seller;
 - ii. An infringement resulting from addition to or change in supplies or components furnished or construction work performed that was made subsequent to delivery or performance; or
 - iii. A claimed infringement that is unreasonably settled without the consent of the Seller, unless required by final decree of a court of competent jurisdiction.

Rights in Technical Data

1. The Government shall have Government Purpose Rights (GPR) in Technical Data, Computer Software, and Computer Software Documentation delivered under this Agreement, except as provided in paragraphs 2, 3, and 4.
2. Unless otherwise specified in individual prototype projects, the Government shall have Unlimited Rights in Data for the following:
 - a. Form, fit, and function Data;
 - b. Corrections or changes to Data furnished to the Seller by the Government, through the Buyer;
 - c. Data otherwise publicly available or have been released or disclosed by the Seller, or subagreement holder 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. 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, excluding Seller's internal development milestones;
 - e. Data necessary for operation, maintenance, installation, or training; and
 - f. Computer software documentation required to be delivered under this contract.
3. Sellers shall attach to any offer submitted under this contract a list of all documents or other media incorporating technical data or computer software it intends to deliver with less than Government Purpose rights. The list shall identify the technical data or computer software to be furnished with restrictions, the basis for asserting less than Government Purpose Rights for each listing, the degree of restriction asserted for each listing, the duration of the restriction, and the name of the person or company asserting the restriction.
4. Data or Computer Software that will be delivered, furnished, or otherwise provided to the Government under this contract, in which the Government has

previously obtained rights, shall be delivered, furnished, or provided with the pre-existing rights, unless the parties have agreed otherwise in an individual prototype project, or any restrictions on the Government's rights to use, modify, reproduce, display or disclose the data have expired or no longer apply.

5. The Seller awarded a contract, their subagreement holders, 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 in which it has other than Unlimited Rights, the Seller agrees to promptly enter into negotiations with the Agreements Officer, through the Buyer, to determine whether there are acceptable terms for transferring such rights. All Data in which the Seller has granted the Government additional rights shall be listed or described in a license agreement made part of the contract. The license shall enumerate the additional rights granted the Government in such Data.
6. Except for Data covered under paragraph (7), 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:

"Government Purpose Rights" (or **Limited Rights** as the case may be)
Buyer's Prime Contract Number / Prototype Project Agreement No.
Buyer's Name
Seller's Name
Seller's Contact Information
Expiration Date
"The Government's rights to use, modify, reproduce, release, perform, display, or disclose these technical data are restricted by paragraph (3) of the Rights in Technical Data clause contained in the above identified agreement. No restrictions apply after the expiration date shown above. Any reproduction of technical data or portions thereof marked with this legend must also reproduce the markings."
7. Pre-existing Data markings: If the terms of a prior contract or license permitted the Seller to restrict the Government's rights to use, modify, reproduce, release, perform, display, or disclose Data deliverable under this contract, and those restrictions are still applicable, the Seller may mark such Data with the appropriate restrictive legend for which the Data qualified under the prior contract or license unless the Government receives such Data with less restrictions under this contract.
8. The Government shall have Unlimited Rights in all unmarked Data. In the event that the Seller learns of a release to the Government of its unmarked Data that should have contained a restricted legend, the Seller will have the opportunity to cure such omission going forward by providing written notice to the Agreements Officer, through the Buyer, within one (1) year of the erroneous release.
9. 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 clause;
 - or,

project agreement executed under this Agreement with the written permission of the Copyright holder.

14. The Seller awarded a prototype project agreement shall not, without the written approval of the Agreements Officer, through the Buyer, incorporate any copyrighted data, including open-source software, in the Data to be delivered under this contract unless the Seller 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 clause, and has affixed a statement of the license or licenses obtained on behalf of the Government and other persons to the data transmittal document.
15. Except that copyrighted Data that existed or was produced outside of this contract and is unpublished - having only been provided under licensing agreement with restrictions on its use and disclosure - and is provided under this contract 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.
16. The Seller is responsible for affixing appropriate markings indicating the rights of the Government on all Data delivered under this contract.
17. The Government agrees not to remove any copyright notices placed on Data and to include such notices on all reproductions of the Data.
18. In addition to Data specified in under this contract to be delivered hereunder, the Government may, at any time during the performance of the contract or within a period of three (3) years after acceptance of all items (other than Data) to be delivered under the contract or the termination of the contract, order any Data generated under the contract or any subagreement thereunder, except for Data related to the Seller's internal development milestones (as defined in the Statement of Work). When the Data is ordered, the Seller shall be compensated for converting the Data into the prescribed form, for reproduction and delivery. The obligation to deliver the Data of a subagreement holder and pertaining to an item obtained from the subcontractor shall expire three (3) years after the date the Seller accepts the last delivery of that item from that subagreement holder under the contract.
19. The Government shall retain its rights in the unchanged portions of any computer software or computer software documentation delivered under the prototype project agreement that the Seller uses to prepare, or includes in, derivative computer software or computer software documentation.
20. The Seller shall include this clause, suitably modified to identify the parties, in all subagreements or lower tier agreements, regardless of tier, for developmental prototype work.
21. The obligations of the Government and the Seller under this clause shall survive after the expiration or termination of this contract.

Inspection and Acceptance

The Government has the right to inspect and test all materials furnished and services performed under this contract, to the extent practicable at all places and times, including the period of performance, and in any event before acceptance. The Government may also inspect the plant or plants of any Seller or any subagreement holder supporting this contract. The Government will perform inspections and tests in a manner that will not unduly delay the work.

If the Government performs inspection or tests on the premises of the Seller or subagreement holder engaged, the Seller shall furnish and shall require subagreement holders to furnish all reasonable facilities and assistance for the safe and convenient performance of these duties.

Unless otherwise specified in prototype project agreements, the Government will accept or reject deliveries as promptly as practicable after delivery.

If the Seller fails to proceed with reasonable promptness to perform required replacement or correction, the Government or Buyer may terminate the contract.

This clause applies in the same manner and to the same extent to correct or replacement materials or services as to materials and services originally delivered under the prototype project agreement.

Retention and Access to Records for Sellers

1. The Seller's financial records, supporting documents, statistical records, and all other records pertinent to an other than fixed price contracts shall be retained and access to them permitted for a period not to exceed three years after expiration of the term of the applicable contract, unless one of the exceptions in (2) applies
2. Exceptions
 - a. If any litigation, claim, or audit is started before the expiration of the 6-year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved and final action taken.
 - b. Records for real property and equipment acquired with Federal funds shall be retained for 6 years after final disposition.
 - c. When records are transferred to or maintained by the DoD Component that made the prime contract award, the 6-year retention requirement is not applicable to the Seller.
3. If the information described is maintained on a computer, the Seller shall retain the computer data on a reliable medium for the time period prescribed. The Seller may transfer computer data in machine readable form from one reliable computer medium to another. The Seller's computer data retention and transfer procedures shall maintain the integrity, reliability, and security of the original computer data. The Seller shall also maintain an audit trail describing the data transfer.

Property

Contracts placed will identify any and all Government Furnished Property (GFP) for use with that contract.

Seller who have an adequate property management system as defined in FAR 52.245-

1 are subject to FAR clause 52.245-1, with all mention of Contractor understood to mean the Seller and all mention of Contracting Officer understood to mean Buyer.

Sellers who do not have an adequate property management system as defined in FAR 52.245-1 shall assume the risk of and be responsible for any loss or destruction of, or damage to, any GFP 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 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 the project regarding its use. The Seller shall obtain explicit written authorization by the Agreement Officer, through the Buyer, for any transfer or disposition of GFP.

For expenditure-based contracts, title to any item of property valued at \$5,000 or less or property with a proposed value greater than \$5,000 that was included in the final proposal selected by the Government and that is acquired by a Seller pursuant to performance under a prototype project agreement shall remain with the Seller upon acquisition with no further obligation of the Parties unless otherwise determined by the Agreements Officer. If an item of property with an acquisition value greater than \$5,000 is required after award, the Seller shall obtain prior written approval, , from the Agreements Officer, through the Buyer, prior to acquisition. Title to this property shall remain with the Government unless the Agreements Officer grants title to the Seller prior to acquisition.

Seller shall be responsible for the maintenance, repair, protection, and preservation of all property acquired under this contract at its own expense.

Disclosure of Information

1. The Seller shall not disclose any information under this contract unless –
 - a. prior written approval of the Agreements Officer, through the Buyer, has been granted;
 - b. the information is otherwise in the public domain before the date of release; or
 - c. the information results from or arises during the performance of a project that involves no covered defense information (as defined in the clause at DFARS 252.204-7012) and has been scoped and negotiated by the contracting activity with the contractor and research performer and determined in writing by the contracting officer 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 contract 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).

Safety

The Seller shall adhere to all local, state, and federal rules and regulations required in order to maintain a safe and non-hazardous occupational environment throughout the duration of this contract. The Seller, through the Buyer, shall report any major accident/incident (including fire) resulting in any one or more of the following: causing one or more fatalities or one or more disabling injuries; damage of Government

property exceeding \$10,000; affecting program planning or production schedules; degrading the safety of equipment under contract, such as personnel injury or property damage may be involved; identifying a potential hazard requiring corrective action.

Environmental Requirements

The Seller shall comply with all Federal, State, and local environmental laws and regulations, Executive orders, treaties and agreements when executing prototype projects under this contract. The recipient shall evaluate the environmental consequences and identify the specific types and amounts of hazardous waste being generated during the conduct of efforts undertaken under this Agreement.

The Seller should give consideration to alternative materials and processes in order to eliminate reduce or minimize hazardous waste being generated.

The Seller shall not use Class 1 Ozone Depleting Chemicals in work performed under this contract.

Export Control

The Seller shall comply with the International Traffic in Arms Regulation/Munitions List (22 CFR pt. 120 *et seq.*), the DoD Industrial Security Regulation (DoD 5220.22-R) and the Department of Commerce Export Regulation (15 CFR pt. 770 *et seq.*).

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

Organizational Conflicts of Interest

Throughout performance, the CM is required to monitor all potential conflicts of interest, to include conflicts between its members and the contractors currently developing for and operating the targeted prototype or information systems.

The Seller shall ensure contract performance does not conflict with system development or enhancement being performed under other agreements or contracts.

The Seller shall immediately report all potential or real conflicts of interest to the CM, through the Buyer, which will in turn report to the Government. All white papers and proposals will address potential conflicts of interest and any proposed mitigation.

The Government has the right to limit the Seller's involvement under this contract or other action to mitigate Organizational Conflicts of Interest. In the event the Seller believes that the OCI can be mitigated, the Seller shall submit to the Agreements Officer, through the Buyer, an OCI mitigation plan.

Safeguarding Covered Defense Information and Cyber Incident Reporting

DFARS Clause 252.204-7012 SAFEGUARDING COVERED DEFENSE INFORMATION AND CYBER INCIDENT REPORTING is hereby incorporated by reference in its entirety, with all mention of Contractor understood to mean any Seller, all mention of subcontractor understood to mean subagreement holder, and all mention of Contracting Officer understood to mean Agreements Officer.

Data Rights Assertions: The Seller's proposal will identify any intellectual property

involved in the effort and associated restrictions on the Buyer or Government's use of that intellectual property.

The Buyer or Government may request the Seller to provide additional information/detail to what was provided in the proposal to clarify data rights assertions. Include documentation proving Seller's ownership of or possession of appropriate licensing rights to all patented inventions (or inventions for which a patent application has been filed) that will be utilized under Seller's proposal for a system demonstration. If a patent application has been filed for an invention that Seller's proposal utilizes, but the application has not yet been made publicly available and contains proprietary information, Seller may provide only the patent number, inventor name(s), assignee names (if any), filing date, filing date of any related provisional application, and a summary of the patent title, together with either: (1) a representation that Seller owns the invention, or (2) proof of possession of appropriate licensing rights in the invention.

The Seller's proposal will provide a good faith representation that Seller either owns or possesses appropriate licensing rights to all other intellectual property that will be utilized under Seller's proposal.