

**CUSTOMER CONTRACT REQUIREMENTS
AMERICA MAKES-SUBRECIPIENT AGREEMENT 03
CUSTOMER CONTRACT AMERICA MAKES-SUBRECIPIENT AGREEMENT 03**

CUSTOMER CONTRACT REQUIREMENTS

The following customer contract requirements apply to this Contract to the extent indicated below. If this Contract is for the procurement of commercial items under a Government prime contract, as defined in FAR Part 2.101, Section 3 replaces the requirements of Sections 1 and 2 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. Prime Contract Special Provisions The following prime contract special provisions apply to this purchase order

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1. DEFINITIONS

1.1.1 **"Affiliate"** means, with respect to any person or entity, any other person or entity directly or indirectly controlling, controlled by, or under common control with, such first person or entity. For purposes of this definition, the term "control" (including the correlative meanings of the terms "controlled by" and "under common control with"), as used with respect to any person or entity, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such person or entity, whether through the ownership of voting securities or by agreement or otherwise.

1.1.3 **"Exploit"** means to make, have made, import, use, sell, offer for sale or otherwise dispose of, including any research, development, registration, modification, enhancement, improvement, manufacture, storage, formulation, optimization, export, transport, distribution, promotion or marketing related thereto.

1.1.6 **"Invention"** means any discovery, improvement, process, formula, invention, know-how, trade secret, procedure, device, or other intellectual property, whether or not patentable.

1.1.7 **"Materials"** means the equipment and materials supplied to Seller by or on behalf of, or purchased at the expense of, Buyer or Buyer's customer(s), reasonably necessary for Seller to perform activities, solely as set forth in the statement of work (SOW).

1.1.10 **"Consortium Research"** means research supported or funded at by this contract. Consortium Research does not include:

1.1.10.1 Research carried out under separate contract unless specified therein,
or

1.1.10.2 Research fully funded by a Seller and/or without using any of the funds specified in 1.1.10 above, or

1.1.10.3 Research carried out independently by a Seller

1.1.11 **"Consortium Developed Intellectual Property"** or "CDIP" means individually and collectively all Intellectual Property which are conceived or made solely or jointly by Buyer or Seller during the performance of this contract under Consortium Research.

1.1.12 **"Background Intellectual Property"** means technical know-how, inventions, technical data, discoveries, materials, samples, software, software programs, whether

patentable or not, copyrightable programs, documentation and reports whether in existence at the time of this agreement or coming into existence subsequent to this agreement, which were not developed in the course of performance this contract.

1.1.13 "**Intellectual Property**" means technical know-how, inventions, technical data, discoveries, materials samples, software, software programs, documentation, reports, any and all other copyrightable materials, and/or invention or discovery that is or may be patentable or otherwise protectable under title 35 of the U.S. Code.

1.1.14 "Proprietary Information" means any information disclosed to a receiving Party which is declared by the disclosing Party to be Proprietary and marked in accordance with the procedures set forth in Section 6.1. However, Proprietary Information shall not include any information which:

- (1) Is already known to the receiving Party at the time of disclosure as evidenced by written documents;
- (2) Is generally available to the public or becomes publicly known through no wrongful act of the receiving Party;
- (3) Is generally known in the relevant trade or industry when first received from the disclosing Party; or
- (4) Is received by the receiving Party from a third party who had a legal right to provide it; or
- (5) Is developed independently of knowledge of Proprietary Information received by the receiving Party from the disclosing Party; or the disclosing Party fails to designate as Proprietary Information

2. RECORDS RETENTION AND AUDIT

Records Retention. Seller shall keep or cause to be kept accurate records or books of account in accordance with applicable generally accepted accounting principles that, in reasonable detail, fairly reflect the invoiced Fees and Expenses. Such books and records shall be maintained by Seller for at least three (3) years following the end of the calendar year to which they pertain.

Audit. Upon the written request of the United States Government, Buyer, or Buyer's customer, Seller shall permit the U.S. Government and its duly authorized representatives to audit the Seller's records and books necessary to verify invoices related to Expenses and Cost Share.

3. REPRESENTATIONS, WARRANTIES AND COVENANTS

Neither Seller nor any of its principal officers or employees has been debarred or suspended by any governmental entity from conducting any Activities or is subject to any such debarment and Seller will not use in any capacity, in connection with its obligations under this contract, including via any permitted Seller, any person who has been so debarred.

Seller (for itself and each Facility) have and at all times during the conduct of the Activities shall have, all appropriate licenses, approvals, authorizations, registrations, permits, and certifications necessary to safely, adequately and lawfully perform the Activities. Seller shall provide copies of all such licenses, approvals, authorizations, registrations, permits or certifications upon Buyer's request.

Seller shall advise Buyer immediately if any of the foregoing in this Article 3 ceases to be true and correct.

4. INTELLECTUAL PROPERTY

Background Intellectual Property. Each Party shall retain all rights to its Background Intellectual Property; and the decision to make available any such Background Intellectual Property for use shall be at the sole discretion of each Party and in accordance with DOD regulations with respect to identification of all such Background Intellectual Property. No license or rights are granted to a Party's Background Intellectual Property under this contract.

4.1.1 In the event that one Buyer or Buyer's customer(s) may require use of Seller's Background Intellectual Property that has been disclosed by Seller as part of the Consortium Research in order to successfully commercialize any CDIP then the Buyer, Seller, and/or Buyer's customer(s) agree to discuss potential licensing terms and conditions in a separate legally binding agreement between the Parties, separate from this contract. Seller is not required to license any such originating Seller Background Intellectual Property.

Consortium Developed IP shall be owned by the respective inventing or creating organizations, subject to any government rights and/or any pre-existing rights of any third party and subject to the following conditions:

4.2.1 If a Party solely or jointly creates CDIP, the Party must disclose the creation of such CDIP to its technology transfer office, licensing office or other similar department ("Party's TechTransfer Office"). A non-confidential summary of the CDIP disclosed to the Party's TechTransfer Office shall be sent to Buyer and Buyer's customer as soon as practicable so that Buyer's customer can maintain a list of CDIP. Seller's owning CDIP shall grant upon request to Buyer, Buyer's customer(s), and affiliates at the time of creation a limited, non-exclusive, royalty-free license to use the CDIP for the internal procedures, research or development purposes (but not to make, use, or sell products or external processes for commercial purposes, with the exception of licenses granted pursuant to Section 4.2.3). Such licenses shall be granted to interested parties upon request in a separate legally binding mutually agreeable license agreement between the Parties. Payment of patent expenses may be required of Parties granted non-exclusive, royalty-free commercial licenses by universities and other non-profit institutions. Such licenses for Parties shall be without the right to grant sublicenses to third parties, except for any Party-designated agents, contractors and non-employee students ("Permitted Third Parties") performing work for the benefit of such Party. Under these circumstances the Party is responsible for having any and all appropriate written agreements with such Permitted Third Parties to enable Party's compliance with this contract and is responsible for such parties' use of the CDIP in the same manner the Party is responsible for its own use of such CDIP (e.g., violation of the license parameters set forth in this section by a Party's Permitted Third Parties shall be considered a breach of this contract).

4.2.2 Protection of a Seller's solely developed CDIP shall be done at Seller's own expense and through use of their respective Party's TechTransfer Office. Each Seller agrees to notify in writing Buyer's customer(s), via Buyer, in a timely manner of all such actions in which legal protection is or has been sought so that Buyer and/or Buyer's customer(s) can enter such information in its invention disclosure database. With respect to jointly developed CDIP the relevant Parties agree to negotiate a separate legally binding agreement encompassing those terms and conditions to be used to govern the manner in which jointly developed CDIP will be owned, administered, protected, and licensed. Buyer's customer, via Buyer, will be notified in writing in a timely manner of the existence of these agreements between Seller and Parties, and Buyer's customer(s) and/or Buyer shall maintain pertinent information in

its invention disclosure database. In the event that a single Seller for solely developed CDIP, or all Parties with an ownership right for jointly developed CDIP choose not to seek legal protection and thereby elect not to file a patent application on any CDIP, then Parties agree to notify Buyer's customer, via Buyer, in writing of its intent and must report any pending publication or presentation to Buyer's customer, via Buyer, at the time of this notification. Buyer's customer(s) and/or Buyer may negotiate to obtain such protection at its own expense where Parties choose not to seek legal protection. Ownership of CDIP shall remain with the originating Parties.

4.2.3 It is anticipated that one of the outcomes of an active IP licensing and commercialization plan is the generation of royalty income by a respective Parties. It is acknowledged that Parties of academic, government, and industry sectors will manage the disposition and reporting requirements of all royalties received in accordance with their institution's existing policies, through their Party's TechTransfer Office. To the extent it may legally do so, Sellers owning CDIP shall grant Buyer's customer(s), Buyer, and Buyer's Affiliates a limited, non-exclusive, royalty-free license to use the CDIP for commercial purposes. Such licenses shall be granted to interested Parties upon request in a separate legally binding mutually agreeable agreement between the Parties. Such licenses for Parties shall be without the right to grant sublicenses to third parties, except for any Party's-designated agents, contractors and non-employee students performing work for the benefit of such Party, provided, however, the Party is responsible for having any and all appropriate written agreements with such parties to enable Party's compliance with this contract and is responsible for such parties' use of the CDIP in the same manner Party is responsible for its own use of such CDIP (e.g., violation of the license parameters set forth in this section by a Party's contractor shall be considered a breach of this contract by the Party). In addition, sublicensing shall be permitted to the licensee's direct customers. Licenses granted under this Section 7 shall be subject to these additional terms:

It is understood that the United States Government (through any of its agencies or otherwise) may provide use of its facilities or equipment and / or may provide funds for Consortium Research. As a result this Agreement, any and all rights and obligations of the Parties to any CDIP resulting from use of any United States Government's facilities, equipment or funds are subject to any and all applicable rights of the United States Government.

Notwithstanding anything to the contrary in this contract, certain laws, regulations and/or policies may prevent and/or limit certain Parties' ability to offer royalty-bearing licenses to CDIP that has previously been licensed by such Parties on a royalty-free basis. Therefore, the ability to charge royalties to is subject to the granting Parties' ability to do so in light of then-existing contractual obligations, legal and regulatory requirements, and policies of the granting Party.

5. PUBLICATIONS

5.1 Nothing will be done which could bar the availability of patent protection with respect to CDIP or which would disclose Proprietary Information or disclose information in violation of the applicable U.S. laws and regulations (e.g., the International Traffic in Arms Regulations ("ITAR") and the Export Administration Regulations ("EAR") that govern the export of specific technical data and technologies, including software, prototypes and other intellectual property, to foreign countries and foreign nationals ("Export Control Laws").

5.1.1 Seller will not make a public disclosure without a review of the full text of the proposed publication, presentation or other form of public disclosure by the Buyer and Buyer's customer(s) as described below. The Buyer shall be provided a copy of the proposed public disclosure at least seventy-five (75) days in advance of the submission of such proposed public disclosure and shall have two (2) weeks after receipt of said proposed disclosure to respond in writing to the Seller to identify Proprietary

Information and/or to identify any potentially patentable CDIP and/or to identify any CDIP in which the Seller does not have an ownership interest. Seller agrees to remove any identified Proprietary Information, potentially patentable CDIP and/or CDIP in which the Seller does not have an ownership prior to public disclosure (or, for potentially patentable CDIP in which the Seller does have an ownership interest, delay public disclosure for a period of sixty (60) days from the date of the response).

5.1.2 Notwithstanding anything to the contrary above, student theses and dissertations shall be subject to a separate review and comment process wherein the student shall submit such student thesis or dissertation in draft form at least sixty (60) days in advance of the date of their final defense in order to afford an opportunity to identify Proprietary Information and/or identify any potentially patentable CDIP and/or any CDIP in which the Seller's student does not have an ownership interest.

5.1.3 Reserved.

5.1.4 An acknowledgment of funding and a disclaimer shall appear in the publication of any material, whether copyrighted or not. The acknowledgement shall read:

"This material is based on research sponsored by Air Force Research Laboratory under agreement number FA8650-20-2-5700. The U.S. Government is authorized to reproduce and distribute reprints for Governmental purposes notwithstanding any copyright notation thereon."

The disclaimer shall read:

"The views and conclusions contained herein are those of the authors and should not be interpreted as necessarily representing the official policies or endorsements, either expressed or implied, of Air Force Research Laboratory or the U.S. Government."

6. MISCELLANEOUS

No Commercialization. Seller agrees that it shall not commercialize or, except as expressly permitted under the terms of this contract, otherwise Exploit any Materials, Information or Inventions owned by or licensed to NCDM

Publication. Seller, including its Affiliates and any permitted subcontractors and its or their respective employees or agents, has no right to publish the Buyer or Buyer's customer's name or logo, except as expressly consented to in writing by the Buyer.

APPLICABLE FEDERAL REGULATION AND PRIME AGREEMENT FLOW-DOWN**1.01 Trafficking in Persons (March 2015)**

This contract is subject to the requirements of section 106 (g) of the Trafficking Victims Protection Act of 2000 (22 U.S.C. 7104, as implemented by 2 CFR 175). Seller and seller employees may not—

- (a) Engage in severe forms of trafficking in persons during the period of time that the contract is in effect; or
- (ii) Procure a commercial sex act during the period of time that the award is in effect; or
- (iii) Use forced labor in the performance of the contract or subcontracts under the contract.

1.02 Title to Property – Identified in Budget (March 2015)

Reserved.

1.03 Property System (March 2015)

Seller's property system shall meet the standards as set forth in 2 CFR 200 Section 310-316.

1.04 Cost Principles (March 2015)

Seller shall comply with the cost principles as contained in 2 CFR 200, Subpart E, Cost Principles. Cost principles for determining allowability of costs applicable to lower tier, cost type contracts or awards under this agreement shall be determined by type of entity receiving the award.

1.05 Standards for Financial Management (March 2015)

Seller's financial management system shall comply with the standards identified in 2 CFR 200 Section 302.

1.06 Audit Requirements/Retention and Access to Records (March 2015)

Seller shall comply with the audit requirements of 2 CFR 200, Subpart F Audit Requirements and shall comply with the requirements appropriate for the type of entity receiving the award. Seller's financial records, supporting documents, statistical records, and all other records pertinent to an award shall be retained and access to them permitted in accordance with 2 CFR 200 Section 336.

1.07 Cost Sharing (August 2001)

Reserved.

1.08 Export Control (March 2015) (TAILORED)

(a) Access to the technology developed under this contract by foreign firms, institutions or individuals shall be controlled by the Seller under applicable U.S. export control laws.

(b) The Seller shall receive Buyer's customer approval before assigning or granting access to any work, equipment, or technical data generated or delivered under this agreement to foreign persons or their representatives. The notification shall include the name and country of origin of the foreign person or representative, the specific work, equipment, or data to which the person will have access.

1.09 Inventions (March 2015)

(a) The clause entitled Patent Rights (Small Business Firms and Nonprofit Organizations, (37

CFR 401.14(a)) is hereby incorporated by reference and is modified as follows: replace the word "contractor" with "Seller"; replace the words "agency," "Federal Agency" and "funding Federal Agency" with "U.S. Department of Defense"; replace the word "contract" with "contract"; delete paragraphs (g)(2), (g)(3) and the words "to be performed by a small business firm or domestic nonprofit organization" from paragraph (g)(1). Paragraph (1), Communications, point of contact on matters relating to this clause will be the servicing Staff Judge Advocate's office. Seller will provide the appropriate invention report to the Government with a summary to Buyer each year as required.

1.10 Data Rights (March 2015)

(a) Reserved

(b) The Seller hereby grants to the U.S. Government a royalty free, world-wide, nonexclusive, irrevocable license to use, modify, reproduce, release, perform, display or disclose any CDIP data for Government purposes.

- "Government purpose includes competitive procurement, but not the rights to use, modify, reproduce, release, perform, display, or disclose technical data for commercial purposes or authorize others to do so"

(c) The Seller is responsible for affixing appropriate markings indicating rights on all data delivered under the agreement. The Government will have unlimited rights in all data delivered without markings.

(d) The Seller shall include this article, suitably modified to identify the parties, in all lower tier contracts and awards, regardless of tier, for experimental, developmental, or research work.

1.11 Publishing Project Results (March 2015)

(a) Publications. Seller might at some point publish or otherwise make publicly available the results of the work conducted under this contract. This publication or publishing shall be subject to the restrictions outlined in the General Provisions (GP). Additionally, one copy of all publications resulting from the project shall be forwarded to the Buyer, for sharing with the end-customer, as it becomes available.

(b) An acknowledgment of awarding agency's support shall appear in the publication of any material, whether copyrighted or not. The acknowledgement shall read:

"This material is based on research sponsored by Air Force Research Laboratory under agreement number FA8650-20-2-5700. The U.S. Government is authorized to reproduce and distribute reprints for Governmental purposes notwithstanding any copyright notation thereon."

(c) The Sub-recipient is responsible for assuring that every publication of material based on or developed under this project contains the following disclaimer:

"The views and conclusions contained herein are those of the authors and should not be interpreted as necessarily representing the official policies or endorsements, either expressed or implied, of Air Force Research Laboratory or the U.S. Government."

1.12 Reporting Subawards and Executive Compensation (March 2015)

Reserved.

1.13 Disclosure or Information (March 2015) (Tailored)

(a) The Seller shall not release to anyone outside the Seller's organization any unclassified information, regardless of medium (e.g., film, tape, document, media announcements, etc.), pertaining to U.S. Government Agency-Driven Projects unless-

- (1) The Buyer's customer, via the Buyer, has given prior written approval; or
- (2) The information is otherwise in the public domain before the date of release.

(b) Requests for approval shall identify the specific information to be released, the medium to be used, and the purpose for the release. The Seller shall submit its request to the Buyer's end-customer, via the Buyer, at least 90 days before the proposed date for release through Buyer's end-customer.

(c) The Seller agrees to include a similar requirement in each subcontract under this contract. Seller shall submit requests for authorization to release through the Buyer to the Buyer's end-customer.

1.14 Procurement System (March 2015)

Reserved.

1.15 Military Recruiting on Campus (March 2015)

Reserved.

1.16 Assurances (March 2015)

(a) Seller assures that it will comply with applicable provisions of the following National policies on: (1) Prohibiting discrimination:

- (i) On the basis of race, color, or national origin, in Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d, et seq.), as implemented by DoD regulations at 32 CFR part 195;
- (ii) On the basis of age, in the Age Discrimination Act of 1975 (42 U.S.C. 6101, et seq.) as implemented by Department of Health and Human Services regulations at 45 CFR part 90;
- (iii) On the basis of handicap, in Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), as implemented by Department of Justice regulations at 28 CFR part 41 and DoD regulations at 32 CFR part 56;
- (iv) On the basis of sex or blindness, in Title IX of the Educational Amendments of 1972 (20 U.S.C. 1681, et. seq.).

(2) The Clean Air Act (42 U.S.C. 7401, et seq.) and Clean Water Act (33 U.S.C. 1251, et seq.), as implemented by Executive Order 11738 (3 CFR, 1971-1975 Comp., p. 799).

The Seller shall obtain assurances of compliance for all subcontracts under this effort

1.17 Prohibition on Using Funds under Grants and Cooperative Agreement with Entities that Require Certain Internal Confidentiality Agreements (June 2015)

(a) The Seller may not require its employees, contractors, or subcontractors seeking to report fraud, waste, or abuse to sign or comply with internal confidentiality agreements or statements prohibiting or otherwise restricting them from lawfully reporting that waste, fraud, or abuse to a designated investigative or law enforcement representative of a Federal department or agency authorized to receive such information.

(b) The Seller must notify its employees, contractors, or subcontractors that the prohibitions and restrictions of any internal confidentiality agreements inconsistent with paragraph (a) of this award provision are no longer in effect.

(c) The prohibition in paragraph (a) of this award provision does not Contravene requirements applicable to Standard Form 312, Form 4414, or any other form issued by a Federal department or agency governing the nondisclosure of classified information.