

**CUSTOMER CONTRACT REQUIREMENTS
RESILIENT, VERSATILE SPACE PHOTOVOLTAIC FACTORY FOR CONTESTED SPACE
CUSTOMER CONTRACT FA8650-21-2-5503**

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

**FA8650-21-2-5503 Special Provisions .
2.000 TRAFFICKING IN PERSON (DEC 2007)**

(a) Provisions applicable to a recipient that is a private entity.

- (1) You as the Seller, your employees, subcontractors under this award, and subcontractor's employees may not-
- (i) Engage in severe forms of trafficking in persons during the period of time that the award is in effect;
 - (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.

(b) Definitions. For purposes of this clause:

- (1) **"Employee"** means either:
- (i) An individual employed by Seller or a seller subcontractor who is engaged in the performance of the project or program under this contract; or
 - (ii) Another person engaged in the performance of the project or program under this contract and not compensated by you including, but not limited to, a volunteer or individual whose services are contributed by a third party as an in-kind contribution toward cost sharing or matching requirements.
- (2) **"Forced Labor"** means labor obtained by any of the following methods: the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.
- (3) **"Private Entity"**:
- (i) Means any entity other than a State, local government, Indian tribe, or foreign public entity, as those terms are defined in 2 CFR 175.25.
 - (ii) Includes:
 - (A) A nonprofit organization, including any nonprofit institution of higher education, hospital, or tribal organization other than one included in the definition of Indian tribe. at 2 CFR 175.25(b).
 - (B) A for-profit organization.
- (4) **"Severe Forms of Trafficking In Persons,"** "commercial sex act," and "coercion" have the meanings given at section 103 of the TVPA, as amended (22 U.S.C. 7102).

4.01 RECIPIENT COUNTERFEIT ELECTRONIC PART DETECTION AND AVOIDANCE SYSTEM

(a) This article applies only to Sellers and contracts that are subject to Cost Accounting Standards as stated in 41 U.S.C §1502(c).

(b) Definitions. As used in this article-

"Authorized aftermarket manufacturer" means an organization that fabricates a part under a contract or agreement with, or with the express written authority of, the original component manufacturer based on the original component manufacturer's designs, formulas, and/or specifications.

"Authorized supplier" means a supplier, distributor, or an aftermarket manufacturer with a contractual arrangement with, or the express written authority of, the original manufacturer or current design activity to buy, stock, repackage, sell, or distribute the part.

"Contract manufacturer" means a company that produces goods under contract for another company under the label or brand name of that company.

"Contractor-approved supplier" means a supplier that does not have a contractual agreement with the original component manufacturer for a transaction, but has been identified as trustworthy by a contractor or subcontractor.

"Counterfeit electronic part" means an unlawful or unauthorized reproduction, substitution, or alteration that has been knowingly mismarked, misidentified, or otherwise misrepresented to be an authentic, unmodified electronic part from the original manufacturer, or a source with the express written authority of the original manufacturer or current design activity, including an authorized aftermarket manufacturer. Unlawful or unauthorized substitution includes used electronic parts represented as new, or the false identification of grade, serial number, lot number, date code, or performance characteristics.

"Electronic part" means an integrated circuit, a discrete electronic component (including, but not limited to, a transistor, capacitor, resistor, or diode), or a circuit assembly (section 818(f)(2) of Pub. L. 112-81).

"Obsolete electronic part" means an electronic part that is no longer available from the original manufacturer or an authorized aftermarket manufacturer.

"Original component manufacturer" means an organization that designs and/or engineers a part and is entitled to any intellectual property rights to that part.

"Original equipment manufacturer" means a company that manufactures products that it has designed from purchased components and sells those products under the company's brand name.

"Original manufacturer" means the original component manufacturer, the original equipment manufacturer, or the contract manufacturer.

"Suspect counterfeit electronic part" means an electronic part for which credible evidence (including, but not limited to, visual inspection or testing) provides reasonable doubt that the electronic part is authentic.

(c) Acceptable counterfeit electronic part detection and avoidance system. The Seller shall establish and maintain an acceptable counterfeit electronic part detection and avoidance system. Failure to maintain an acceptable counterfeit electronic part detection and avoidance system, as defined in this article, may result in disapproval of the purchasing system by the Agreements Officer or Buyer, and/or withholding of payments and affect the allowability of costs of counterfeit electronic parts or suspect counterfeit electronic parts and the cost of rework or corrective action that may be required to remedy the use or inclusion of such parts (see 48 CFR §231.205-71).

(d) System criteria. A counterfeit electronic part detection and avoidance system shall include risk-based policies and procedures that address, at a minimum, the following areas:

(1) The training of personnel.

(2) The inspection and testing of electronic parts, including criteria for acceptance and rejection. Tests and inspections shall be performed in accordance with accepted Government- and industry-recognized techniques. Selection of tests and inspections shall be based on minimizing risk to the Government. Determination of risk shall be based on the assessed

probability of receiving a counterfeit electronic part; the probability that the inspection or test selected will detect a counterfeit electronic part; and the potential negative consequences of a counterfeit electronic part being installed (e.g., human safety, mission success) where such consequences are made known to the Seller.

(3) Processes to abolish counterfeit parts proliferation.

(4) Risk-based processes that enable tracking of electronic parts from the original manufacturer to product acceptance by the Government, whether the electronic parts are supplied as discrete electronic parts or are contained in assemblies, in accordance with paragraph (c) of the clause at 252.246-7008, Sources of Electronic Parts (also see paragraph (c)(2) of this article).

(5) Use of suppliers in accordance with the clause at 48 CFR §252.246-7008.

(6) Reporting and quarantining of counterfeit electronic parts and suspect counterfeit electronic parts. Reporting is required to the Agreements Officer and to the Government-Industry Data Exchange Program (GIDEP) when the Seller becomes aware of, or has reason to suspect that, any electronic part or end item, component, part, or assembly containing electronic parts purchased by the DoD, or purchased by a Seller for delivery to, or on behalf of, the DoD, contains counterfeit electronic parts or suspect counterfeit electronic parts. Counterfeit electronic parts and suspect counterfeit electronic parts shall not be returned to the seller or otherwise returned to the supply chain until such time that the parts are determined to be authentic.

(7) Methodologies to identify suspect counterfeit parts and to rapidly determine if a suspect counterfeit part is, in fact, counterfeit.

(8) Design, operation, and maintenance of systems to detect and avoid counterfeit electronic parts and suspect counterfeit electronic parts. The Seller may elect to use current Government or industry-recognized standards to meet this requirement.

(9) Flow down of counterfeit detection and avoidance requirements, including applicable system criteria provided herein, to subcontractors/subrecipients at all levels in the supply chain that are responsible for buying or selling electronic parts or assemblies containing electronic parts, or for performing authentication testing.

(10) Process for keeping continually informed of current counterfeiting information and trends, including detection and avoidance techniques contained in appropriate industry standards, and using such information and techniques for continuously upgrading internal processes.

(11) Process for screening GIDEP reports and other credible sources of counterfeiting information to avoid the purchase or use of counterfeit electronic parts.

(12) Control of obsolete electronic parts in order to maximize the availability and use of authentic, originally designed, and qualified electronic parts throughout the product's life cycle.

(e) The Seller shall include the substance of this article in subcontracts and subrecipients, including subcontracts for commercial items, for electronic parts or assemblies containing electronic parts.

6.00 INVENTIONS (JUN 2001)

(a) Definitions:

(1) **"Invention"** means any invention or discovery which is or may be patentable or otherwise protectable under Title 35 of the United States Code, or any novel variety of plant which is or may be protected under the Plant Variety Protection Act (7 U.S.C. 2321 et seq.).

(2) **"Subject invention"** means any invention of the Seller conceived or first actually reduced to practice in the performance of work under this agreement, provided that in the case of a variety of plant, the date of determination (as defined in section 41(d) of the Plant Variety Protection Act, 7 U.S.C. 2401(d)) must also occur during the period of agreement performance.

(3) **"Practical Application"** 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 the case of a

machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or government regulations, available to the public on reasonable terms.

- (4) **"Made"** when used in relation to any invention means the conception or first actual reduction to practice of such invention.

(5) **"Small Business Firm"** means a small business concern as defined at section 2 of Pub. L. 85-536 (15 U.S.C. 632) and implementing regulations of the Administrator of the Small Business Administration. For the purpose of this article, the size standards for small business concerns involved in Government procurement and subcontracting at 13 CFR 121.3-8 and 13 CFR 121.3- 12, respectively, will be used.

- (6) **"Nonprofit Organization"** means a university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c) and exempt from taxation under section 501(a) of the Internal Revenue Code (25 U.S.C.501 (a)) or any nonprofit scientific or educational organization qualified under a state nonprofit organization statute.

(b) **Allocation of Principal Rights:**

(1) The Seller may retain the entire right, title, and interest throughout the world to each subject invention subject to the provisions of this article and 35 U.S.C. 203. With respect to any subject invention in which the Seller retains title, the Government shall have 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.

(c) **Invention Disclosure, Election of Title and Filing of Patent Application by Seller:**

(1) The Seller will disclose each subject invention to the Government, via the Buyer, within 2 months after the inventor discloses it in writing to Seller personnel responsible for patent matters. The disclosure to the Government shall be in the form of a written report and shall identify the agreement under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding to the extent known at the time of the disclosure, of the nature, purpose, operation, and the physical, chemical, biological or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to the Government, the Seller will promptly notify the Government, via the Buyer, of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by the Seller.

(2) The Seller will elect in writing whether or not to retain title to any such invention by notifying the Government within 2 years of disclosure to the Government. However, in any case where publication, on sale or public use has initiated the one year statutory period wherein valid patent protection can still be obtained in the United States, the period for election of title may be shortened by the Government to a date that is no more than 60 days prior to the end of the statutory period.

(3) The Seller will file its initial patent application on a subject invention to which it elects to retain title within 1 year after election of title or, if earlier, 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. The Seller will file patent applications in additional countries or international patent offices within either 10 months of the corresponding initial patent application or 6 months from the date permission is granted by the Commissioner of Patents and Trademarks to file foreign patent applications where such filing has been prohibited by a Secrecy Order.

- (4) Requests for extension of the time for disclosure, election, and filing under subparagraphs (1), (2), and (3) may, at the discretion of the Government, be granted.

(d) **Conditions When the Government May Obtain Title:** The Seller will convey to the Government, upon written request, title to any subject invention-

(1) If the Seller fails to disclose or elect title to the subject invention within the times specified in (c),* above, or elects not to retain title; provided that the Government may only request title within 60 days after learning of the failure of the recipient to disclose or elect within the specified times.

(2) In those countries in which the Seller fails to file patent applications within the times specified in (c) above; provided, however, that if the Seller has filed a patent application in a country after the times specified in (c) above, but prior to its receipt of the written request of the Government, the Seller shall continue to retain title in that

country.

- (3) 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 proceeding on, a patent on a subject invention.

(e) **Minimum Rights to Seller and Protection of the Seller Right to File:**

- (1) The Seller will 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 invention within the times specified in (c), above. The Seller's license extends to its domestic subsidiary and affiliates, if any, within the corporate structure of which the Seller is a party and includes the right to grant sublicenses of the same scope to the extent the recipient was legally obligated to do so at the time the agreement/contract was awarded. The license is transferable only with the approval of the Government except when transferred to the successor of that party of the Seller's business to which the invention pertains.
- (2) The Seller's domestic license 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 in accordance with applicable provisions at 37 CFR part 404 and Government licensing regulations (if any). This license will 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 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 domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.
- (3) Before revocation or modification of the license¹ the Government will furnish the Seller a written notice of its intention to revoke or modify the license, and the Seller will be allowed 30 days (or such other time as may be authorized by the Government for good cause shown by the Seller) after the notice to show cause why the license should not be revoked or modified. The Seller has the right to appeal, in accordance with applicable regulations in 37 CFR part 404 and Government regulations (if any) concerning the licensing of Government-owned inventions, any decision concerning the revocation or modification of the license.

(f) **Seller Action to Protect the Government's Interest:**

- (1) The Seller agrees to execute or to have executed and promptly deliver to the Government all instruments necessary to (i) establish or confirm the rights the Government has throughout the world in those subject inventions to which the recipient elects to retain title, and (ii) convey title to the Government when requested under paragraph (d) above and to enable the Government to obtain patent protection throughout the world in that subject invention.
- (2) The Seller agrees to require, by written agreement, its employees, other than clerical and nontechnical 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 an agreement in order that the Seller can comply with the disclosure provisions of paragraph (c), above, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions. This disclosure format should require, as a minimum, the information required by (c)(1), above. The Seller shall instruct such 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 Seller will notify the Government of any decisions not to continue the prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceeding on a patent, in any country, not less than 30 days before the expiration of the response period required by the relevant patent office.
- (4) The Seller agrees to include, within the specification of any United States patent applications and any patent issuing thereon covering a subject invention, the following statement, "This invention was made with Government support under (identify the agreement) awarded by (identify the Federal Agency). The Government has certain rights in the invention."

- (g) **Lower Tier Agreements:** The Seller will include this article, suitably modified to identify the parties, in all lower tier agreements, regardless of tier, for experimental, developmental or research work. Each subrecipient will retain all rights provided for the Seller in this article, and the Seller will not, as part of the consideration for awarding a subrecipient award, obtain

rights in a subrecipients' subject inventions.

- (h) **Reporting on Utilization of Subject Inventions:** The Seller agrees to submit on request periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining such utilization that are being made by the Seller or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the Seller, and such other data and information as the Government may reasonably specify. The Seller also agrees to provide additional reports as may be requested by the Government in connection with any march-in proceeding undertaken by the Government in accordance with paragraph U) of this article. As required by 35 U.S.C. 202(c)(5), the Government agrees it will not disclose such information to persons outside the Government without permission of the Seller.
- (i) **Preference for United States Industry:** Notwithstanding any other provision of this article, the Seller agrees that neither it nor any assignee will grant to any person the exclusive right to use or sell any subject inventions in the United States unless such person agrees that any products embodying the subject invention or produced through the use of the Subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement for such an agreement may be waived by the Government upon a showing by the Seller or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.
- U) **March-in Rights:** The Seller agrees that with respect to any subject invention in which it has acquired title, the Government has the right in accordance with the procedures in 37 CFR 401.6 and any supplemental regulations of the Government to require the Seller, an assignee or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use 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 Government determines that:
- (1) Such action is necessary because the Seller or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use.
 - (2) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the Seller, assignee or their licensees;
Such action is necessary to meet requirements for public use specified by Federal regulations
 - (3) and such requirements are not reasonably satisfied by the recipient, assignee or licensees; or
 - (4) Such action is necessary because the agreement required by paragraph (i) of this article has not been obtained or waived or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.
 - (5) Special Provisions for Agreements with Nonprofit Organizations
- (k) If Seller is a nonprofit organization, it agrees that:
the
- (1) Rights to a subject invention in the United States may not be assigned without the approval of the Government, except where such assignment is made to an organization which has as one of its primary functions the management of inventions, provided that such assignee will be subject to the same provisions as the Seller;
 - (2) The Seller will share royalties collected on a subject invention with the inventor, including Federal employee co-inventors (when the Government deems it appropriate) when the subject invention is assigned in accordance with 35 U.S.C. 202(e) and 37 CFR 401.10;
 - (3) The balance of any royalties or income earned by the recipient with respect to subject inventions, after payment of expenses (including payments to inventors) incidental to the administration of subject inventions, will be utilized for the support of scientific research or education; an

- (4) It will make efforts that are reasonable under the circumstances to attract licensees of subject invention that are small business firms and that it will give a preference to a small business firm when licensing a subject invention if the Seller determines that the small business firm has a plan or proposal for marketing the invention which, if executed, is equally as likely to bring the invention to practical application as any plans or proposals from applicants that are not small business firms; provided, that the Seller is also satisfied that the small business firm has the capability and resources to carry out its plan or proposal. The decision whether to give a preference in any specific case will be at the discretion of the Seller. However, the Seller agrees that the Secretary may review the Seller's licensing program and decisions regarding small business applicants, and the recipient will negotiate changes to its licensing policies, procedures, or practices with the Secretary when the Secretary's review discloses that the Seller could take reasonable steps to implement more effectively the requirements of this paragraph (k)(4).
- (I) **Communication:** The point of contact on matters relating to this article will be the servicing Staff Judge Advocate's office identified in the article entitled Administrative Responsibilities.

6.02 DATA RIGHTS (AUG 2001)

(a) Definitions:

"Government Purposes", as used in this article, means any activity in which the United States Government is a party, including cooperative agreements with international or multinational 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.

"Government Purpose Rights", as used in this article, means the right to -

- (1) Use, modify, reproduce, release, perform, display, or disclose technical data within the Government without restriction; and
- (2) Release or disclose technical data outside the Government and authorize persons to whom release or disclosure has been made to use, modify, reproduce, release, perform, display, or disclose that data for United States government purposes.

"Limited rights", means the rights to use, modify, reproduce, release, perform, display, or disclose technical 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 technical data outside the Government, use the technical data for manufacture; or authorize the technical data to be used by another party, except that the Government may reproduce, release, or disclose such data or authorize the use of 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 person authorized.
or
 - ii. A foreign government, of technical 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 information purposes;
- (2) The Seller of the technical data is subject to a prohibition on the further reproduction, release, disclosure, or use of the technical data; and
- (3) The contractor or subcontractor asserting the restriction is notified of such reproduction, release, disclosure, or use.

"Unlimited Rights", as used in this article, 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.

"Data", as used in this article, means recorded information, regardless of form or method or recording, which includes but is not limited to, technical data, software, trade secrets, and mask works. The term does not include financial, administrative, cost, pricing or management information and does not include subject inventions included under the article entitled Inventions.

"Practical Application", as used in this article, 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 the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or government regulations, available to the public on reasonable terms.

(b) Allocation of Principal Rights:

(1) Ownership rights to data generated under this agreement shall vest in the Seller. This agreement shall be performed with mixed Government and recipient funding and the parties agree that in consideration for Government funding, the Seller intends to reduce to practical application items, components and processes developed under this agreement.

(2) The Seller agrees to retain and maintain in good condition until 3 years after completion or termination of this agreement, all data necessary to achieve practical application of a subject invention. In the event of exercise of the Government's march-in rights as set forth under the Article entitled Inventions, the Seller agrees, upon

written request from the Government, to deliver at no additional cost to the Government:

- i. all data developed under this agreement necessary to achieve practical application of a subject invention within 60 days from the date of the written request. The Government shall have unlimited rights to this delivered data;
- ii. all limited rights data used under this agreement and necessary to achieve practical application of a subject invention within 60 days from the date of the written request. In conjunction with delivering the data, the Seller may submit data rights assertions for any such data. These assertions shall identify the "Technical data to be asserted with restrictions," the "Basis for Assertion," the "Rights Category" and the "Name of the Person asserting the Restrictions." The Agreements Officer agrees to add any validated data rights assertion to the agreement, and the Government shall have limited rights in such data.

(3) With respect to data delivered pursuant this agreement's, "Technical and Financial Reporting", the Government shall receive Government purpose rights.

(c) Marking of Data:

- a. Pursuant to subparagraph (b)(3) above, any data (other than limited rights, if any) delivered under this agreement shall be marked with the following legend:

Government Purpose Rights

Agreement No.:
Recipient's Name:
Recipient's Address:

The Government may use, modify, reproduce, release, perform, display or disclose these data within the Government without restriction, and may release or disclose outside the Government and authorize persons to whom such release or disclosure has been made to use, modify, reproduce, release, perform, display or disclose that data for United States Government purposes, including competitive procurement. •

- b. Any Limited Rights data, for which the parties have negotiated and attached a data rights assertion to this agreement, delivered under this agreement shall be marked with the following legend:

Limited Rights

Agreement No.:
Recipient's Name:
Recipient's Address:

The Government may use, modify, reproduce, release, perform, display, or disclosure data, only in accordance with the definition of "Limited Rights" found in Article 6.02 (AUG 2001), Data Rights, of Technology Investment Agreement FA8650-21-2-5503.

- c. Any trade secrets and commercial or financial information the recipient wishes to protect from release under Freedom of Information Act (FOIA) requirements must be marked with a legend identifying it as privileged or confidential information.

(d) Lower Tier Agreements: The Seller 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.

6.03 INVENTIONS/ PATENTS (NOV 2011) (TAILORED)

- (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 "recipient"; replace the words "agency," "Federal Agency" and "funding Federal Agency" with "Government"; replace the word "contract" with "agreement"; 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 (I), Communications, point of contact on matters relating to this clause will be the servicing Staff Judge Advocate's office.
- (b) Interim or final Invention Reports 1) listing subject invention(s) and stating that all subject inventions have been disclosed, or 2) stating that there are no such inventions, shall be sent to both the Administrative Grants Officer at the address located in the agreement and to the Grants Officer/ patent administrator at det1.af.1.pk.patents@wpafb.af.mil, with a courtesy copy (cc:) to the government Program Manager/Project Engineer. Please include in the subject line of the e-mail the contract number followed by the words "Invention Reporting." Also include in the body of the e-mail the names of the Government Project Engineer/Program Manager and his/her office symbol. The recipient shall file Invention (Patent) Reports on the DD Form 882, Report of Inventions and Subcontracts, as of the close of each performance year and at the end of the term for this agreement. Annual reports are due 90 days after the end of each year of performance and final reports are due 90 days after the expiration of the final performance period. Negative reports are also required annually.
- (c) The DD Form 882 may also be used for the notification of any subaward(s) for experimental, developmental or research work which contain a "Patent Rights" clause, with a cc: to the Government Program Manager/Project Engineer.
- (d) All other notifications (e.g., disclosure of each subject invention to the Grants Officer within 2 months after the inventor discloses it) shall also be sent to the e-mail address above, with a cc: to the Government Program Manager/Project Engineer.
- (e) This provision also constitutes the request for the following information for any subject invention for which the recipient has retained ownership: 1) the filing date, 2) serial number and title, 3) a copy of the patent application and 4) patent number and issue date. Submittal shall be to the Grants Officer/ patent administrator e-mail address listed above, with a cc: to the government Program Manager/Project Engineer.

6.04 FOREIGN ACCESS TO TECHNOLOGY (APR 2000)**(a) Definitions:**

"Foreign Firm or Institution" means a firm or institution organized or existing under the laws of a country other than the United States, its territories, or possessions. The term includes, for purposes of this agreement, any agency or instrumentality of a foreign government, and firms, institutions or business organizations which are owned or substantially controlled by foreign governments, firms, institutions, or individuals.

"Know-how" means all information including, but not limited to, discoveries, formulas, materials, inventions, processes, ideas, approaches, concepts, techniques, methods, software: programs, documentation, procedures, firmware, hardware, technical data, specifications, devices, apparatus and machines. •

"Technology" means discoveries, innovations, know-how and inventions, whether patentable or not,

- including computer software, recognized under U.S. law as intellectual creations to which rights of ownership accrue, including, but not limited to, patents, trade secrets, mask works, and copyrights developed under this agreement.

(b) General: The parties agree that research findings and technology developments in N-95 respirators technology 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. The controls contemplated in this article are in addition to, and are not intended to change or supersede, the provisions of the International Traffic in Arms Regulation (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

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(c) Restrictions on Sale or Transfer of Technology to Foreign Firms or Institutions.

- a. In order to promote the national security interests of the United States and to effectuate the policies that underlie the regulations cited above, the procedures stated in subparagraphs C.2, C.3, and C.4 below shall apply to any transfer of technology. For purposes of this paragraph, a transfer includes a sale of the company, and sales or licensing of technology. Transfers do not include:
 - (i) Sales of products or components, or
 - (ii) Licenses of software or documentation related to sales of products or components, or
 - (iii) Transfer to foreign subsidiaries of the recipient (recipient participants) for purposes related to this agreement, or •
 - (iv) Transfer which provides access to technology to a foreign firm or institution which is an approved source of supply or source for the conduct of research under this agreement provided that such transfer shall be limited to that necessary to allow the firm or institution to perform its approved role under this agreement.
- b. The Seller shall provide timely notice to the Government, via the Buyer, of any proposed transfer from the Seller of technology developed under this agreement to foreign firms or institutions. If the Government determines that the transfer may have adverse consequences to the national security interests of the United States, the recipient, its vendors, and the Government shall jointly endeavor to find alternatives to the proposed transfer which obviate or mitigate potential adverse consequences of the transfer but which provide substantially equivalent benefits to the recipient
- c. In any event, the Seller shall provide written notice to the Agreements Officer and Government program manager, via the Buyer, of any proposed transfer to a foreign firm or institution at least 60 days prior to the proposed date of transfer. Such notice shall cite this article and shall state specifically what is to be transferred and the general terms of the transfer. Within 30 days of receipt of the Seller's written notification, the Agreements Officer shall advise the Seller whether it consents to the proposed transfer. No transfer shall take place until a decision is rendered.
- d. Except as provided in subparagraph C.1 above and in the event the transfer of technology to foreign firms or institutions is not approved by the Government, but the transfer is made nonetheless, the Seller shall (a) refund to the Government the funds paid for the development of the technology and (b) negotiate a license with the Government to the technology under terms that are reasonable under the circumstances.

- (d) **Lower Tier Agreements:** The recipient shall include this article, suitably modified to identify the parties, in all subcontracts or lower tier agreements, regardless of tier, for experimental, development, or research work.
- (e) This article shall remain in effect during the term of the agreement and for 5 years thereafter.

6.05 EXPORT-CONTROLLED DATA RESTRICTIONS (AUG 2013)

(1) For the purpose of this article, Foreign person is any person who is not a citizen or national of the U.S. or lawfully admitted to the U.S. for permanent residence under the Immigration and Nationality Act, and includes foreign corporations, international organizations, and foreign governments;

(2) Foreign representative is anyone, regardless of nationality or citizenship, acting as an agent, representative, official, or employee of a foreign government, a foreign-owned or influence firm, corporation or person;

(3) Foreign sources are those sources (vendors, subcontractors, and suppliers) owned and controlled by a foreign person.

(b) The Seller shall place an article/clause in subawards/subcontracts containing appropriate export control restrictions, set forth in this article.

(c) Nothing in this article waives any requirement imposed by any other U.S. Government agency with respect to employment of foreign nationals or export controlled data and information.

(d) All information generated and delivered under this agreement is subject to the International Traffic in Arms Regulation (ITAR), 22 CFR Sections 121 through 128. An export license may be required before assigning any foreign source to perform work under this agreement or before granting access to foreign persons to any information generated or delivered during performance (see 22 CFR Section 125).

7.01 REPORTING SUBAWARDS AND EXECUTIVE COMPENSATION (OCT 2010) (TAILORED)**(a) Reporting:**

- (1) **Applicability.** Unless Seller is exempt as provided in paragraph d. of this award term, Seller must report each action that obligates \$25,000 or more in Federal funds that does not include Recovery funds (as defined in section 1512(a)(2) of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5) for a subaward to an entity (see definitions in paragraph e. of this award term).
- (2) **Where and When to Report:**
 - (i) Seller must report each obligating action described in paragraph (a)(1) of this award term to <http://www.fsrs.gov>.
 - (ii) For subaward information, report no later than the end of the month following the month in which the obligation was made. (For example, if the obligation was made on November 7, 2010, the obligation must be reported by no later than December 31, 2010.)
- (3) **What to Report.** Seller must report the information about each obligating action that the submission instructions posted at <http://www.fsrs.gov> specify.

(b) Reporting Total Compensation of Seller Executives:

- (1) **Applicability and What to Report.** Seller must report total compensation for each of Seller's 5 most highly compensated executives for the preceding completed fiscal year, if
 - (i) The total Federal funding authorized to date under this award is \$25,000 or more;
 - (ii) In the preceding fiscal year, you received-
 - (A) 80 percent or more of your annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and
 - (B) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and
 - (iii) The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/excomp.htm>.)
- (2) **Where and When to Report:** Seller must report executive total compensation described in paragraph (b)(1) of this award term:
 - (i) As part of Seller's registration profile at <http://www.ccr.gov>
 - (ii) By the end of the month following the month in which this award is made, and annually thereafter.

7.09 DISCLOSURE OF INFORMATION (MAY 2005)

(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 any part of this agreement or any program related to this agreement unless -

- (1) The Agreements Officer, 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 Agreements Officer, via the Buyer, at least 65 days before the proposed date for release.

(c) The Seller agrees to include a similar requirement in each sub-agreement under this contract.

9.00 ASSURANCES (FEB 2001)

- (a) By signing or accepting funds under the agreement, the 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;
 - (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).
- (b) The Seller shall obtain assurances of compliance from subcontractors and recipients at lower tiers.

9.01 U.S. FLAG AIR CARRIERS (NOV 1999)

Travel supported by U.S. Government funds under this agreement shall use US-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 (Vol 63, No. 219, 63417-63421.))

9.02 PROHIBITION ON USING FUNDS UNDER GRANTS AND COOPERATIVE AGREEMENTS WITH ENTITIES THAT REQUIRE CERTAIN INTERNAL CONFIDENTIALITY AGREEMENTS (JUN 2015)

- (a) The Seller may not require its employees, subcontractors, or subrecipients seeking to report fraud, waste, or abuse to sign or comply with internal confidentiality agreements or statements prohibiting investigative or law enforcement representative of a Federal department or agency authorized to receive such information.
- (b) The Seller must notify its employees, subcontractors, or subrecipients that the prohibitions and restrictions of any internal confidentiality agreements inconsistent with paragraph (a) of this award provisions 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.
- (d) If the Buyer or Government determines that the Seller is not in compliance with this award provision it:
- (1) Will prohibit the Seller's use of funds under this award, in accordance with section 743 of Division E of the Consolidated and Further Continuing Resolution Appropriations Act, 2015 (Pub. L. 113- 235) or any successor provision of law; and
 - (2) May pursue other remedies available for the recipient's material failure to comply with award terms and conditions.

9.03 SAFEGUARDING COVERED DEFENSE INFORMATION AND CYBER INCIDENT REPORTING (JULY 2020)

(a) Definitions. As used in this article -

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

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

Seller attributional/proprietary information means information that identifies the Seller(s), whether directly or indirectly, by the grouping of information that can be traced back to the recipient(s)

(e.g., program description, facility locations), personally identifiable information, as well as trade secrets, commercial or financial information, or other commercially sensitive information that is not customarily shared outside of the company.

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

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

Covered defense information means unclassified controlled technical information or other information, as described in the Controlled Unclassified Information (CUI) Registry at <http://www.archives.gov/cuilregistry/category-list.html>, that requires safeguarding or dissemination controls pursuant to and consistent with law, regulations, and Government wide policies, and is -

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

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

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

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

Malicious software means computer software or firmware intended to perform an unauthorized process that will have adverse impact on the confidentiality, integrity, or availability of an information system.

This definition includes a virus, worm, Trojan horse, or other code-based entity that infects a host, as well as spyware and some forms of adware.

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

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

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

Technical information means technical data or computer software. Examples of technical information include research and engineering data, engineering drawings, and associated lists, specifications, standards, process sheets, manuals, technical reports, technical orders, catalog-item identifications, data sets, studies and analyses and related

information, and computer software executable code and source code.

(b) Adequate security. The Seller shall provide adequate security on all covered Seller information systems. To provide adequate security, the Seller shall implement, at a minimum, the following information security protections:

(1) For covered Seller information systems that are part of an information technology (IT) service or system operated on behalf of the Government, the following security requirements apply:

(i) Cloud computing services shall be subject to the security requirements specified in the 48 CFR §252.239-7010, Cloud Computing Services.

(ii) Any other such IT service or system (*i.e.*, other than cloud computing) shall be subject to the security requirements specified elsewhere in this Agreement.

(2) For covered Seller information systems that are not part of an IT service or system operated on behalf of the Government and therefore are not subject to the security requirement specified at paragraph (b)(1) of this article, the following security requirements apply:

(i) Except as provided in paragraph (b)(2)(ii) of this article, the covered Seller information system shall be subject to the security requirements in National Institute of Standards and Technology (NIST) Special Publication (SP) 800-171, "Protecting Controlled Unclassified Information in Nonfederal Information Systems and Organizations" (available via the internet at <http://dx.doi.org/10.6028/NIST.SP.800-171>) in effect at the time the solicitation is issued or as authorized by the Agreements officer.

(ii)

(A) The Recipient shall implement NIST SP 800-171, as soon as practical, but not later than December 31, 2017. For all agreements awarded prior to October 1, 2017, the Seller shall notify the DoD Chief Information Officer (CIO), via email at osd.dibcsia@mail.mil, within 30 days of contract/agreement award, of any security requirements specified by NIST SP 800-171 not implemented at the time of contract or agreement award.

(B) The Seller shall submit requests to vary from NIST SP 800-171 in writing to the Agreements officer, for consideration by the DoD CIO. The Seller need not implement any security requirement adjudicated by an authorized representative of the DoD CIO to be nonapplicable or to have an alternative, but equally effective, security measure that may be implemented in its place.

(C) If the DoD CIO has previously adjudicated the Seller's requests indicating that a requirement is not applicable or that an alternative security measure is equally effective, a copy of that approval shall be provided to the Agreements officer when requesting its recognition under this agreement.

(D) If the Seller intends to use an external cloud service provider to store, process, or transmit any covered defense information in performance of this agreement, the Seller shall require and ensure that the cloud service provider meets security requirements equivalent to those established by the Government for the Federal Risk and Authorization Management Program (FedRAMP) Moderate baseline (<https://www.fedramp.gov/resources/documents/>) and that the cloud service provider complies with requirements in paragraphs (c) through (g) of this article for cyber incident reporting, malicious software, media preservation and protection, access to additional information and equipment necessary for forensic analysis, and cyber incident damage assessment.

(3) Apply other information systems security measures when the Seller reasonably determines that information systems security measures, in addition to those identified in paragraphs (b)(1) and (2) of this article, may be required to provide adequate security in a dynamic environment or to accommodate special circumstances (*e.g.*, medical devices) and any individual, isolated, or temporary deficiencies based on an assessed risk or vulnerability. These measures may be addressed in a system security plan.

(c) Cyber incident reporting requirement.

(1) When the Seller discovers a cyber incident that affects a covered Seller information system or the covered defense information residing therein, or that affects the Seller's ability to perform the requirements of the agreement that are designated as operationally critical support and identified in the agreement, the Seller shall -

(i) Conduct a review for evidence of compromise of covered defense information, including, but not limited to, identifying compromised computers, servers, specific data, and user accounts. This review shall also include analyzing covered Seller information system(s) that

were part of the cyber incident, as well as other information systems on the Seller's network(s), that may have been accessed as a result of the incident in order to identify compromised covered defense information, or that affect the Seller's ability to provide operationally critical support; and

(ii) Rapidly report cyber incidents to DoD at <https://ldibnet.dod.mil>.

(2) Cyber incident report. The cyber incident report shall be treated as information created by or for DoD and shall include, at a minimum, the required elements at <https://ldibnet.dod.mil>.

(3) Medium assurance certificate requirement. In order to report cyber incidents in accordance with this article, the Seller or Subrecipients/Subcontractors shall have or acquire a DoD-approved medium assurance certificate to report cyber incidents. For information on obtaining a DoD-approved medium assurance certificate, see <https://public.cyber.millecal>.

(d) Malicious software. When the Seller or subrecipients/subcontractors discover and isolate malicious software in connection with a reported cyber incident, submit the malicious software to DoD Cyber Crime Center (DC3) in accordance with instructions provided by DC3 or the Agreements officer. Do not send the malicious software to the Agreements officer.

(e) Media preservation and protection. When a Seller discovers a cyber incident has occurred, the Seller shall preserve and protect images of all known affected information systems identified in paragraph (c)(1)(i) of this article and all relevant monitoring/packet capture data for at least 90 days from the submission of the cyber incident report to allow DoD to request the media or decline interest.

(f) Access to additional information or equipment necessary for forensic analysis. Upon request by DoD, the Seller shall provide DoD with access to additional information or equipment that is necessary to conduct a forensic analysis.

(g) Cyber incident damage assessment activities. If DoD elects to conduct a damage assessment, the Agreements officer will request that the Seller provide all of the damage assessment information gathered in accordance with paragraph (e) of this article.

(h) DoD safeguarding and use of recipient attributional/proprietary information. The Government shall protect against the unauthorized use or release of information obtained from the Seller (or derived from information obtained from the Seller) under this article that includes Seller attributional/proprietary information, including such information submitted in accordance with paragraph

(c). To the maximum extent practicable, the Seller shall identify and mark attributional/proprietary information. In making an authorized release of such information, the Government will implement appropriate procedures to minimize the recipient attributional/proprietary information that is included in such authorized release, seeking to include only that information that is necessary for the authorized purpose(s) for which the information is being released.

(i) Use and release of Seller attributional/proprietary information not created by or for DoD. Information that is obtained from the Seller (or derived from information obtained from the

Seller) under this article that is not created by or for DoD is authorized to be released outside of DoD

(1) To entities with missions that may be affected by such information;

(2) To entities that may be called upon to assist in the diagnosis, detection, or mitigation of cyber incidents;

(3) To Government entities that conduct counterintelligence or law enforcement investigations;

(4) For national security purposes, including cyber situational awareness and defense purposes (including with Defense Industrial Base (DIB) participants in the program at 32 CFR part 236); or

(5) To a support services contractor ("Seller") that is directly supporting Government activities under a contract/agreement that includes 48 CFR §252.204-7009, Limitations on the Use or Disclosure of Third-Party Contractor Reported Cyber Incident Information.

(j) Use and release of recipient attributional/proprietary information created by or for DoD. Information that is obtained from the Seller (or derived from information obtained from the

Seller) under this article that is created by or for DoD (including the information submitted pursuant to paragraph (c) of this article) is authorized to be used and released outside of DoD for purposes and activities authorized by paragraph (i) of this article, and for any other lawful Government purpose or activity, subject to all applicable statutory, regulatory, and policy-based restrictions on the Government's use and release of such information.

(k) The Seller shall conduct activities under this article in accordance with applicable laws and

regulations on the interception, monitoring, access, use, and disclosure of electronic communications and data.

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

(m) Subrecipients/Subcontracts. The Seller shall -

(1) Include this article, including this paragraph (m), to subrecipient or subcontracts or similar contractual instruments, for operationally critical support, or for which subrecipient/subcontract performance will involve covered defense information, including subcontracts for commercial items, without alteration, except to identify the parties. The Recipient shall determine if the information required for subrecipient/subcontractor performance retains its identity as covered defense information and will require protection under this article, and, if necessary, consult with the Agreements Officer; and

(2) Require subrecipients/subcontractors to -

(i) Notify the prime Recipient or Seller (or next higher-tier subrecipient/subcontractor) when submitting a request to vary from a NIST SP 800-171 security requirement to the Agreements Officer, in accordance with paragraph (b)(2)(ii)(B) of this article; and

(ii) Provide the incident report number, automatically assigned by DoD, to the prime Recipient or Seller (or next higher-tier subrecipient/subcontractor) as soon as practicable, when reporting a cyber incident to DoD as required in paragraph (c) of this article.