

**CUSTOMER CONTRACT REQUIREMENTS**  
**SMART - Standards for Metrology Aided Robot Technology**  
**CUSTOMER CONTRACT MxD-2020-01**

## CUSTOMER CONTRACT REQUIREMENTS

The following customer contract requirements apply to this contract to the extent indicated below.

**1. 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** (OCT 2016). 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 paragraph (b)(2), the applicable security standard that applies to this Contract is NIST SP 800-171, Revision 1. 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, Revision 1. Reporting to Buyer in accordance with (m)(2)(ii) shall be accomplished via [abuse@Boeing.com](mailto: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, Revision 1 to the US Government Contracting Office and that Seller's request for such variance was approved by an authorized representative of the DoD CIO.

**252.227-7013 Rights In Technical Data -- Noncommercial Items** (FEB 2014). This clause applies when technical data for noncommercial items, or for commercial items developed in any part at Government expense, is to be obtained from Seller or Seller's subcontractors for delivery to the Government.

**252.227-7014 Rights In Noncommercial Computer Software And Noncommercial Computer Software Documentation** (FEB 2014). This clause applies when noncommercial computer software or computer software documentation is to be obtained from Seller or Seller's subcontractors for delivery to the Government.

**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".

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

**MxD-20-01 Additional Terms .**

### **Title to Property and Equipment.**

All equipment being purchased under on this contract will be listed as exempt property with conditional title throughout the performance of this contract. Exempt property is defined as tangible personal property acquired in whole or in part with Federal funds, where the Government has statutory authority to vest title in the Seller without further obligation to the Government. If the Buyer or Government does not elect to retain title, 2 CFR 200.313

“Equipment” will apply. The Government will not elect to retain title to equipment under this contract that the Seller has shown will continue to contribute toward the sustainability of the Buyer’s customer prime contract.

#### **Equipment Priority of Use.**

1. The Seller shall not use equipment acquired with Federal funds to provide services to non-Federal entities that are not performing under this contract, for a fee that is less than private companies charge for equivalent services, unless specifically authorized by Federal statute, for as long as the federal government retains an interest in the equipment.
2. The Seller shall use the equipment in the project or program for which it was acquired as long as needed, whether or not the project or program continues to be supported by Federal funds and shall not encumber the property without approval of the Buyer or Government.
3. When no longer needed for the original project or program, the Seller shall use the equipment in the following order of priority:
  - a. First, activities sponsored by the Government that funded the original project;
  - b. Second, activities sponsored by other Governments;
  - c. Third, activities sponsored by other Government agencies; and
  - d. Fourth, other activities that promote Buyer’s end customer’s sustainability goals.
4. Project Participant Acquired Property.
  - a. In this article “property” means any tangible nonexpendable personal property charged directly to this agreement having a useful life of more than one year and an acquisition cost of \$5,000.00 or more per unit, and defined as “equipment” in DGARS 34.2.
  - b. The Seller may purchase real property or equipment in whole or in part with Federal funds in whole or in part with recipient funding under an award only with the prior approval of the Government, via the Buyer (except that additional approval is not required for such items included in the proposed/negotiated budget at the time of award of Buyer’s contract with Buyer’s end-customer).
  - c. Property Management - The Seller’s property management system shall comply with DGARS 34.23 or the Recipient’s Defense Contract Management Agency (DCMA) approved Government Property Management System.
  - d. Title - Title to, management of, and disposition of tangible property. Use DGARS 37.685 through 37.700.
    - i. Title. Title to such real property or equipment shall conditionally vest in the Seller upon acquisition. The Seller shall:
      1. Use the real property or equipment for the authorized purposes of the project until funding for the project ceases, or until the property is no longer needed for the purposes of the project;
      2. Not encumber the property without approval of the Buyer or Government; and
      3. Use the property in accordance with DGARS paragraph 34.21(d).
    - ii. If the Seller purchases real property (other than land) or equipment with its own funding, and designates the real property or equipment as recipient cost share, the Government will have a financial interest in the real property or equipment. The financial interest of the Government is determined by the Federal participation in the project.
  - e. Disposition of Property - At the completion of the term of this contract, items of property acquired under this contract shall be disposed of in accordance with DGARS paragraph 34.21(e).

#### **Purchasing System.**

The Seller’s purchasing system is subject to 32 CFR 37.705 and shall flow down to its

## subcontractors.

### **Cost Principles.**

2 CFR 200, Subpart E, Cost Principles will apply and describes the cost principles for determining allowability of costs applicable to lower tier performing, cost type contracts or awards under this contract.

### **Audit Requirements.**

1. The Seller will comply with the audit requirements of 2 CFR 200, Subpart F Audit Requirements. The Seller's relevant financial records are subject to examination or audit by the Government for a period not to exceed three (3) years after payment of the final invoice. In the event the Government audit is required, as applicable to this contract, the Seller will make available to the Government and its duly authorized representatives, this contract and all pertinent books, documents, and records necessary to fulfill the purposes of the audit in regard to the nature and extent of the costs of goods and services provided to Buyer under this Agreement. Such audit, examination, or access will be performed during business hours on business days upon prior written notice and shall be subject to the security requirements of the audited party.
2. Subcontractor(s) will comply with the audit requirements appropriate for the type of entity receiving the award as required:
  - a. For-profit entities will grant access to its records to the DCAA or other Government auditors and will provide standard access-to records requirements at 2 CFR 200, Subpart F Audit Requirements; grant the Government direct access to their records and/or allow the Government to examine independent auditor's audit report and working papers for three (3) years after final payment.
  - b. Non-profit sub-awardees will comply with the audit requirements of 2 CFR 200, Subpart F Audit Requirements.

### **Record Retention and Access.**

Financial records, supporting documents, statistical records, and all other records pertinent to this contract will be retained and access to them permitted in accordance with 2 CFR 200.333-337. The Seller shall flow down this requirement to its subcontractors

### **SAFEGUARDING COVERED DEFENSE INFORMATION AND CYBER INCIDENT REPORTING.**

The Seller will develop and implement policies and procedures for accepting information and data covered by DFARS clause 252.204-7012 that complies with such clause. The policy will, at a minimum, provide that the Seller will report cyber incidents in accordance with the following instructions:

- Do not shut off the workstation;
- Disconnect from the network;
- Do not alter or change anything on the system;
- Do not remotely connect to the system;
- Notify Buyer immediately and await further instructions;
- At no time should malicious software be sent over the network; if requested for a copy of the malicious software, it should be burnt to a disc and physically mailed or carried.

The Seller shall flow down this requirement to its subcontractors.

### **OPSEC.**

As applicable, the following OPSEC security applies.

#### **A. AT LEVEL 1 TRAINING:**

This provision/contract text is for Seller employees with an area of performance within an Army controlled installation, facility or area. All Seller employees, to include subcontractor employees, requiring access to government installations, facilities and controlled access areas shall complete AT Level I awareness training within 30 calendar days after contract start date or effective date of incorporation of this requirement into the contract, whichever is applicable. The Seller shall submit certificates of completion for each affected contractor employee and subcontractor employee, to the COR or to the contracting officer, if a COR is not assigned, via the Buyer within 30 calendar days after completion of training by all Seller employees and subcontractor personnel. AT level I awareness training is

available at the following website: <https://jkodirect.jten.mil>

**B. iWATCH TRAINING:**

This standard language is for Seller employees with an area of performance within an Army controlled installation, facility or area. The Seller and all associated sub-contractors shall brief all employees on the local iWATCH program (training standards provided by the requiring activity ATO). This locally developed training will be used to inform employees of the types of behavior to watch for and instruct employees to report suspicious activity to the COR via the Buyer. This training shall be completed within 30 calendar days of contract award and within 30 calendar days of new employees commencing performance with the results reported to the COR NLT 30 calendar days after contract award.

**C. THREAT AWARENESS REPORTING PROGRAM TRAINING:** For all DoD Sellers with active security clearances. Per AR 381-12 Threat Awareness and Reporting Program (TARP), Seller employees must receive annual TARP training presented by a Counterintelligence Special Agent. Contact the Redstone Arsenal MI Detachment at 256-313-5186 for scheduling.

**D. SELLERS THAT DO NOT REQUIRE CAC, BUT REQUIRE ACCESS TO A DOD FACILITY OR INSTALLATION:** Seller and all associated sub- contractors employees shall comply with adjudication standards and procedures using the National Crime Information Center Interstate Identification Index (NCIC-III) and Terrorist Screening Database (TSDB) (Army Directive 2014-05/AR 190-13), applicable installation, facility and area commander installation/facility access and local security policies and procedures (provided by government representative), or, at OCONUS locations, in accordance with status of forces agreements and other theater regulations.

**E. OPSEC SOP / PLAN REQUIREMENTS:** The provision/contract text is for Seller employees with an area of performance within an Army controlled installation, facility or area. The Seller shall develop an OPSEC Standing Operating Procedure (SOP)/Plan within 90 calendar days of contract award, to be reviewed and approved by the responsible Government OPSEC officer, per AR 530-1, Operations Security. This SOP/Plan will include the government's critical information, why it needs to be protected, where it is located, who is responsible for it, and how to protect it.

**F. OPSEC TRAINING:** The provision/contract text is for Seller employees with an area of performance within an Army controlled installation, facility or area. Level I OPSEC Awareness Training: Per AR 530-1, Operations Security, Seller employees, to include subcontractor employees shall complete Level I OPSEC Awareness Training within 30 calendar days of their reporting for duty. Sellers and subcontractors shall take the Level 1 OPSEC Awareness Training located at the below website and print the certificates demonstrating completion. The Seller shall submit certificates of completion for each affected seller employee and subcontractor employee, to the COR via the Buyer, within 10 calendar days after completion of training by all Seller employees and subcontractor personnel. OPSEC awareness training is available at the following website:

<https://securityawareness.usalearning.gov/opsec/index.htm>

**G. ACCESS AND GENERAL PROTECTION / SECURITY POLICY AND PROCEDURES:**

This standard language text is for Seller employees with an area of performance within an Army controlled installation, facility or area. All Seller employees, to include associated sub-contractors employees shall comply with applicable installation, facility and area Commander Installation and facility access and local security policies and procedures (provided by the Government representative). The Seller shall also provide all information required for background checks to meet installation access requirements to be accomplished by installation Provost Marshal Office, Director of Emergency Services or Security Office. The Seller workforce shall comply with all personal identity verification requirements as directed by DoD, Department of the Army Headquarters, and/or local policy. In addition to the changes otherwise authorized by the changes clause of this contract, should the Force Protection Condition at any individual facility or installation change, the Government may require changes in contractor security matters or processes. The Seller contractor Human Resources/Security Officer is responsible for the collection of all Redstone Badges and CAC

cards issued to their employees. The Human Resources/Security Officer will then turn over these credentials to the COR. This applies when the contract expires; as well as, when a Seller resigns or is terminated. After accounting for all badges/CACs, the COR will turn in the credentials at the One Stop Badging Office or CAC Office (MILPO). All Seller employees, including subcontractor employees who are not in possession of the appropriate security clearance or access privileges, will be escorted in areas where they may be exposed to classified and/or sensitive materials and/or sensitive or restricted areas.

## CONFLICT OF INTEREST

Seller must disclose in writing any potential conflict of interest to Buyer and will maintain an appropriate written and enforced policy on conflict of interest in accordance with the following:

An institutional conflict of interest policy should require that each investigator disclose to a responsible representative of the institution all significant financial interests of the investigator (including those of the investigator's spouse and dependent children) (i) that would reasonably appear to be affected by the research or educational activities funded or proposed for funding under this contract; or (ii) in entities whose financial interests would reasonably appear to be affected by such activities.

### Terms:

(a) The term "investigator" means the principal investigator, co-principal investigators, and any other person at the institution who is responsible for the design, conduct, or reporting of research or educational activities funded or proposed for funding under this contract. The term "significant financial interest" means anything of monetary value, including, but not limited to, salary or other payments for services (e.g., consulting fees or honoraria); equity interest (e.g., stocks, stock options or other ownership interests); and intellectual property rights (e.g., patents, copyrights and royalties from such rights). The term does not include:

- (i) Salary, royalties or other remuneration from the institution proposing or conducting research or educational activities funded or proposed for funding under this contract;
- (ii) Any ownership interests in the institution, if the institution is an applicant under the Small Business Innovation Research Program or Small Business Technology Transfer Program;
- (iii) Income from seminars, lectures, or teaching engagements sponsored by public or nonprofit entities;
- (iv) Income from service on advisory committees or review panels for public or nonprofit entities;
- (v) An equity interest that, when aggregated for the investigator and the investigator's spouse and dependent children, meets both of the following tests: does not exceed \$10,000 in value as determined through reference to public prices or other reasonable measures of fair market value, and does not represent more than a 5% ownership interest in any single entity; or
- (vi) Salary, royalties or other payments that, when aggregated for the investigator and the investigator's spouse and dependent children, are not expected to exceed \$10,000 during the twelve (12) month period.

The institutional policy must include adequate enforcement mechanisms, and provide for sanctions where appropriate.

The institutional policy must include arrangements for keeping Buyer appropriately informed if the institution finds that it is unable to satisfactorily manage a conflict of interest.

Seller must maintain records of all financial disclosures and of all actions taken to resolve conflicts of interest for at least three years beyond the termination or completion of this contract to which they relate, or until the resolution of any Buyer or Government action involving those records, whichever is longer.

The Seller shall flow down this requirement to its subcontractors or subagreement awardees.

## SUPPLEMENTAL TERMS AND CONDITIONS

**Officials Not to Benefit.** No member of or delegate to Congress, or resident commissioner, will be admitted to any share or part of this contract, or to any benefit arising from it, in accordance with 41 U.S.C. 22.

**Resource Conservation and Recovery Act.** In accordance with the Resource Conservation and Recovery Act (section 6002, Pub. L94-580, 42 U.S.C. 6962), State and local institutions of higher education, hospitals, and non-profit organizations that receive

Government awards or other federal funds will give preference in their procurement programs funded with Federal funds to the purchase of recycled products pursuant to the guidelines developed by the Environmental Protection Agency.

**Cargo Preference.** Seller agrees that it will comply with the Cargo Preference Act of 1954 (46 U.S.C. 1241), as implemented by Department of Transportation regulations at 46 CFR 381.7, which requires that at least 50 percent of equipment, materials or commodities procured or otherwise obtained with Government funds under this contract, and which may be transported by ocean vessel, will be transported on privately owned U.S.-flag commercial vessels, if available.

**Preference for U.S. Flag Air Carriers.** Travel supported by Government funds under this contract will use U.S. flag air carriers (air carriers holding certificates under 49 U.S.C. 41102) for international air transportation of people and property to the extent that such service is available, in accordance with the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118) and the interpretative guidelines issued by the Comptroller General of the United States in the March 31, 1981 amendment to the Comptroller General's Decision B-138942. Such Act and guidelines are incorporated in this contract by reference.

## II. PARTICIPANT CERTIFICATIONS.

**1. Lobbying and Taxes.** The following Certifications and Representations are hereby incorporated herein by reference: (1) Certification Regarding Lobbying, Appendix A to 32 CFR Part 28 and (2) Representation Regarding an Unpaid Delinquent Tax Liability or Felony Conviction under any Federal Law – DoD Appropriations.

**2. Drug Free Workplace.** By accepting this contract and/or funds under this contract, Seller agrees to comply with the "Government-Wide Drug-Free Workplace (Grants)" requirements specified by DoDGARs Part 26, Subpart B (or Subpart C, if the Seller is an individual) of 32 CFR Part 26 (2004), which implements sec. 5151-5160 of Drug-Free Workplace Act of 1988 (41 USC 701, et seq.).

**3. No Discrimination.** By accepting this contract and/or funds under this contract, Seller assures that it will comply with applicable provisions of the following U.S. national policies prohibiting discrimination:

(a) 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.

(b) On the basis of race, color, religion, sex, or national origin, in Executive Order 11246 (3 CFR, 1964-1965 Comp. p. 339), as implemented by Department of Labor regulations at 41 CFR part 60.

(c) On the basis of sex or blindness, in Title IX of the Education Amendments of 1972 (20 U.S.C. 1681, et seq.)

(d) 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.

(e) 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.

**4. Clean Air Act.** By accepting this contract and/or accepting funds under this contract, Seller agrees that it will comply with applicable provisions of the Clean Air Act (42 U.S.C. 7401 et seq.), as amended and the Clean Water Act (33 U.S.C. 1251 et seq.), as implemented by Executive Order No. 11738 (3 CFR, 1971-1975 Comp. P. 799), and the related regulations of the Environmental Protection Agency (EPA) (40 CFR part 15). Said regulations, Executive Order, and Acts are incorporated in this contract by reference.

**5. EPA Violating Facilities List.** By accepting this contract and/or accepting funds under this contract, Seller assures that it will not use any facility on the EPA's List of Violating Facilities in performing any award that is nonexempt under 40 CFR 15.5, as long as the facility remains on the list. If, in performing this contract, Seller intends to use a facility that is on the List of Violating Facilities or that the Seller knows has been recommended to be placed on the List of Violating Facilities, the Seller will notify Buyer.

**6. No Human Trafficking.** By accepting this contract and/or accepting funds under this contract, Seller assures that it will comply with section 106 (g) of the Trafficking Victims Protection Act of 2000 (22 U.S.C. 7104). If Seller (i) engages in trafficking in persons or has procured a commercial sex act during the period of time this contract is in effect or (ii) uses forced labor in the performance of this contract, the Buyer and Government shall be authorized to terminate this contract without penalty.

**ARTICLE: Confidential Information**

For a period of five years following the initial date of the disclosure by Buyer or Buyer's customer ("**Disclosing Party**"), Seller and Seller's subcontractors ("**Receiving Party**") will not publish or disclose to others without the Disclosing Party's prior written approval, any information that it learns from, or that is disclosed to it by reason of its work and that is confidential to that Disclosing Party. However, a Receiving Party may disclose Confidential Information of a Disclosing Party to its subcontractors without the need for such written permission where strictly necessary to fulfill the Purpose, as defined in this Article, in which case it will inform its subcontractor of the provisions of this Article and ensure the Confidential Information is protected in accordance with such provisions. All acts or omissions of a Receiving Party's subcontractor will be treated as if they were the acts or omissions of the Receiving Party itself.

Confidential information ("**Confidential Information**") means information disclosed by a Disclosing Party to a Receiving Party including, information regarding existing and future technical, business and marketing plans and product strategies; cost and pricing information; employees' names, titles, job descriptions and salaries; business practices, policies, methodologies and procedures; undisclosed proprietary data, data models, product designs, capabilities, specifications, program code, and software systems and processes; samples and devices; demonstrations; and/or other competition sensitive information and that is identified as "confidential" or is described with a similar designation, in writing at the time of disclosure; or when disclosed orally, is identified as "confidential" or is described with a similar designation at the time of disclosure and is confirmed in writing as confidential within 30 days of that disclosure. Confidential Information also includes the identity of and the confidential information of Buyer or Buyer's customer's subsidiaries, affiliated companies, business partners, customers, potential customers and suppliers.

The Receiving Party agrees to: **(1)** use Confidential Information of the Disclosing Party only for the purpose of performing Receiving Party's obligations under this contract (the "Purpose"), and for no other purpose; **(2)** to exercise the same care and safeguards with respect to Confidential Information disclosed by the Disclosing Party as used to maintain the confidentiality of its own information of like character, but in no event less than a reasonable degree of care; **(3)** not make copies, summaries or transcripts of Confidential Information unless it is reasonably necessary for the Purpose; **(4)** not export Confidential Information of the Disclosing Party, or permit it to be exported, in breach of any relevant export regulations; **(5)** notify the Disclosing Party immediately if it becomes aware that any of Disclosing Party's Confidential Information has been disclosed to, or is in the possession of an unauthorized person; **(6)** upon request, to immediately return all of Disclosing Party's Confidential Information to the Disclosing Party or destroy it if so directed by the Disclosing Party. The Receiving Party may retain Confidential Information for archival purposes only as required by law or regulatory requirement or that may be reasonably impractical to delete from its electronic back-up systems and the provisions of this contract will continue to apply to any retained Confidential Information; **(7)** only disclose the Confidential Information to its employees and advisors where reasonably necessary for the Purpose; and **(8)** inform its employees and advisors of the confidentiality and nondisclosure provisions of this contract and take all steps

necessary to procure their compliance with them.

The obligation of confidentiality and nondisclosure will not apply to any item of such information that:

- (a) was available to the public by publication or otherwise, or was a part of the public domain at the time such information became known to the Receiving Party other than by breach of this contract; or
- (b) becomes available to the public by publication or otherwise or becomes a part of the public domain through no fault of the Receiving Party after such information becomes known to the Receiving Party; or
- (c) is or has been obtained from a third party without restriction who is free to disclose it; or
- (d) was lawfully known to the Receiving Party independently from the Disclosing Party at the time it was disclosed to Receiving Party; or
- (e) is developed by the Receiving Party independently of and without reference to any Confidential Information received from the Disclosing Party; or
- (f) is disclosed by the Receiving Party as the result of a lawful government judicial, legislative or executive subpoena, order or decree properly issued and served on Receiving Party by an authority having jurisdiction thereof, or pursuant to a statutory mandate. In the event of such service, or notice thereof, Receiving Party will, to the extent permitted by law, promptly notify the affected Disclosing Party and will afford such Disclosing Party, at its expense, all reasonable cooperation to the end that the proprietary and confidential nature of the Confidential Information may be protected in the event of such service or legal requirement (including using reasonable efforts to obtain the written assurance from the applicable authority that it will afford the Confidential Information a reasonable level of protection) ; or
- (g) is a publication or other public disclosure of the results from a project or contract as set forth in the Publications Article, if permission is granted by the applicable Buyer or Buyer's customer to include that party's Confidential Information.

Notwithstanding the foregoing, Receiving Party, unless otherwise set forth in the applicable contract, may disclose Confidential Information to third parties, including contractors or suppliers (collectively, "**Representatives**") so that Representatives are permitted to assist the Receiving Party in the performance of its obligations under this contract, provided that Receiving Party will require such Representatives to agree to nondisclosure restrictions at least as protective as those in this contract and, subject to the following sentence, will remain liable for any breach by such Representatives of the confidentiality provisions of this contract. All acts or omissions of a Receiving Member's Representatives will be treated as if they were the acts or omissions of the Receiving Member itself if those Representatives are authorized and acting within the course and scope of their duties for the Receiving Party. Notwithstanding any other term in this contract, to the extent required by law, State Government parties and Academic Institutions which are State entities are permitted to comply with the open records laws to which they are subject, provided to the extent allowed by law, that they provide advance notice to the Disclosing Party of the disclosure and cooperate with efforts to protect Confidential Information. This Article will also apply to Confidential Information exchanged between a Disclosing Party and a Receiving Party in preparing a proposal.

This Article will survive any termination or expiration of the contract.



## ARTICLE: Intellectual Property

Except and to the extent specifically set forth in this Article, nothing in this contract will be construed as conferring by implication, estoppel or otherwise any grant of title, ownership, license or right in or to any Intellectual Property or Confidential Information of Buyer, Seller, or Buyer's customer.

### 1. Treatment of Confidential Information

1.1 Confidentiality. Buyer and Seller will be subject to the confidentiality terms set forth in Confidential Information Article.

### 2. IP Rights

#### 2.1. Grant of License to Project IP.

2.1.1 *Enterprise Projects* For Enterprise Projects under Buyer's contract with Buyer's customer, the Seller hereby grants Buyer, Buyer's customer, and other members to Buyer's customer's contract, a worldwide, irrevocable, nonexclusive, non-transferable, royalty-free, perpetual right to make, use, have made, reproduce, and create derivative works of Seller IP used in this contract for Internal Business Use and for Internal Research Use. Buyer, Buyer's customer, or other members of Buyer's customer contract may sublicense such IP to its affiliates at its discretion. But no license is given under this Section 2.2.1 to sell products which would infringe the IP rights of Seller. The license granted under this Section 2.2.1 includes the right to sublicense to licensee's subcontractors solely for use on behalf of and for the licensee. The confidentiality terms of such sublicense agreements will be as stringent as the obligations set forth in the Confidential Information Article. Those subcontractors will only be permitted to use that Seller IP to assist the licensee in exploiting its Internal Business Use license, its Internal Research Use license, or both, as applicable. Notwithstanding the foregoing, if the Seller IP is software IP governed by licensing terms and conditions, e.g., it is derivative of in-kind software or other software subject to licensing terms and conditions, use of that software Seller IP will be governed solely by the licensing terms and conditions it is subject to and any further use and the terms and conditions thereof are at the discretion of the software Seller IP owner.

2.1.3 *Demonstration, Training Licenses*. Seller will grant each State and Local Government member of Buyer's contract with Buyer's customer, and Buyer's customer a worldwide, irrevocable, non-exclusive, non-transferable, royalty-free, perpetual right to demonstrate Seller IP used in this contract to third parties for education purposes. Seller will grant each State and Local Government member of Buyer's contract with Buyer's customer, and Buyer's customer a worldwide, irrevocable, non-exclusive, non-transferable, royalty-free, perpetual right to train third parties if those third parties have a license to this pursuant to this Buyer's contract with Buyer's customer or otherwise. But those licenses are subject to State and Local Government member of Buyer's contract with Buyer's customer, and Buyer's customer having first established confidentiality terms with such third parties at least as stringent as the provisions of in the Confidential Information Article and which provide that the Seller may claim against the third party as third party beneficiary if there is a breach of the confidentiality agreement affecting the Seller. Nothing in this section grants any third party any right to make, use, have

made, reproduce, or create derivative works of Seller IP.

## Foreign Access

A Seller may transfer information, technical data, technical know-how, products, goods or related services that are identified on any U.S. export control list ("**Controlled Items**") developed with U.S. Government funding and to which it is entitled under this contract to a Foreign Person as defined under Section 120.16 of ITAR only after the Member **(i)** advises Buyer; **(ii)** obtains the approval of the Buyer's U.S. Government's Agreement Officer via the Buyer; and **(iii)** complies with applicable Export Control Regulations.

In the event of any willful, intentional or otherwise deliberate transfer of Controlled Items developed with U.S. Government funding by Seller to: (i) foreign persons (as defined in the ITAR), or to persons and affiliated entities of foreign governments, foreign government agencies or foreign organizations, in violation of the AECA, ITAR or EAR; or (ii) any person or affiliated entity of a person or entity named on the U.S. Department of Treasury Specially Designated Nationals List, the U. S. Department of Commerce Denied Parties List, Entity List and Unverified List, U. S. Department of State's Debarred Parties List, or any other U.S. government list of persons or entities to which dissemination of Controlled Items may not be made, which is **not** approved by the government takes place, Seller shall be fully liable to Buyer if Buyer is required to refund to the Government those funds paid under the applicable Contracting Vehicle for the development of the Controlled Items. Seller agrees, if required by the Government, to provide to the Government a non-exclusive, nontransferable, irrevocable, paid-up license to practice or have practiced on behalf of the United States the Controlled Items throughout the world for Government and any and all other purposes, particularly to effectuate the intent of the Contracting Vehicle. Upon request of the Government via the Buyer, the Seller shall obtain and provide written confirmation of such licenses.

## Publications

Prior to submitting a manuscript for publication or before any other public disclosure of the results from an effort, Seller will offer the Buyer and Buyer's customer a reasonable opportunity to review such proposed publication or disclosure to submit objections, and to file application for letters patent in a timely manner. Buyer and Buyer's customer will have up to ninety (90) days to submit objections on the basis that if the publication would disclose Confidential Information or violate Intellectual Property rights and to file applications for letters patent. Seller wishing to publish or disclose the results of work under this contract will not do so until the text subject to a valid objection is removed, or that ninety (90) day period has elapsed without a valid objection or until the Buyer indicates they have no objections, if earlier. For clarity, no Confidential Information will be published without the prior written permission of the owning party and all proposed disclosures of Confidential Information will be subject to Confidential Information Article.

Subject always to the foregoing and the Confidential Information Article, publication of results in appropriate professional journals is encouraged as an important method of recording and reporting scientific information. One copy of each paper planned for publication will be

submitted by the Seller planning to publish those results to Buyer who in turn will submit the paper to the Buyer's customer, and the Government Program Manager, or other appropriate government personnel, simultaneously with its submission for publication.

For the purpose of this Article, "publications" includes news releases, articles, manuscripts, brochures, advertisements, still and motion pictures, speeches, trade association proceedings and symposia. Nothing in the foregoing will affect compliance with security requirements, confidentiality provisions or export provisions under this contract.

Nothing in the foregoing will be interpreted to permit Buyer, Seller, or Buyer's customer to use the name or logo of another party without its prior written consent.

Sellers are responsible for assuring that an acknowledgment of government support will appear in any publication of any material based on or developed under this contract, using the following acknowledgement terms:

"Effort sponsored by the U.S. Government under Agreement number W15QKN19-3-0003 between the MXD USA and the Government. The U.S. Government is authorized to reproduce and distribute reprints for Governmental purposes notwithstanding any copyright notation thereon."

Sellers are also responsible for assuring that every publication of material based on or developed under this contract 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 the U.S. Government."

An acknowledgment of awarding agency's support will appear in the publication. The acknowledgement will read: "This material is based on research sponsored by Office of the Under Secretary of Defense for Research and Engineering, Strategic Technology Protection and Exploitation, Defense Manufacturing Science and Technology Program under agreement number (add the agreement W15QKN-19-3-0003). The U.S. Government is authorized to reproduce and distribute reprints for governmental purposes."

Sellers shall flow down these requirements of this Article to its subcontractors.

## **EXHIBIT A: Flow-Through Requirements**

### **ARTICLE A. RIGHTS IN TECHNICAL DATA AND COMPUTER SOFTWARE**

#### **A.1. Definitions Related to Rights in Technical Data.**

The following definitions apply only to this Exhibit A. Capitalized terms used below which are not defined below will have the meaning assigned to them in the definitions section of this contract.

- a. "**Commercial Computer Software**" means software developed or regularly used for nongovernmental purposes which has been sold, leased, or licensed to the public or has been offered to the public or will be offered in time to satisfy the delivery requirements or requires minor modification to meet the requirements of this contract.
- b. "**Commercial Item**" includes all Items developed or regularly used for non- governmental purposes which has been sold, leased, or licensed to the public or has been offered to the public or will be offered in time to satisfy the delivery requirements but does not include commercial computer software.
- c. "**Computer Program**" means a set of instructions, rules or routines recorded in a form that is capable of causing a computer to perform a specific operation or series of operations.
- d. "**Computer Software**" 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.
- e. "**Computer Software Documentation**" means owner's manuals, user's manuals, installation instructions, operating instructions, and other similar items, regardless of storage medium, that explain the capabilities of the Computer Software or provide instructions for using the software.
- f. "**Developed**" means that an item, component, or process exists and is workable. The item or component must have been constructed or the process practiced. Workability is generally established when the item, component, or process has been analyzed or tested sufficiently to demonstrate to reasonable people skilled in the applicable art that there is a high probability that it will operate as intended. To be considered "Developed", the item, component, or process need not be at the stage where it could be offered for sale or sold on the commercial market, nor must the item, component, or process be actually reduced to practice within the meaning of Title 35 of the United States Code.
- g. "**Developed Exclusively at Private Expense**" means development was accomplished entirely with private funds from Seller and not with Buyer or Government funding.
- h. "**Developed Exclusively with Government Funds**" means development was accomplished exclusively by Government funds.
- i. "**Development with Mixed Funding**" means the development was accomplished at partial expense by the Seller and partially funded by government funds.
- j. "**Form, Fit and Function Data**" means Technical Data that describes the required overall physical, functional, and performance characteristics of an item, component or process to the extent necessary to permit identification of physically and functionally interchangeable items.
- k. "**Government Purpose**" means any activity in which the United States Government is a party. Government purposes include competitive procurement, but do not include the rights to use, modify, reproduce, release, perform, display, or disclose Technical Data for commercial

purposes or authorize others to do so.

l. "**Government Purpose Rights**" means the rights to: 1) use, modify, reproduce, release, perform, display, or disclose Technical Data, Computer Software and/or Computer Software Documentation within the Government without restriction; and 2) release or disclose Technical Data, Computer Software and/or Computer Software Documentation outside the Government and authorize persons to whom release or disclosure has been made to use, modify, reproduce, release, perform, display, or disclose that Technical Data, Computer Software and/or Computer Software Documentation for United States Government purposes.

m. "**Item**" means items, components or processes.

n. "**Limited Rights**" means the rights to use, modify, reproduce, release, perform, display, or disclose Technical Data, in whole or in part, within the Government. Technical Data in which the Government has Limited Rights may be transferred or disclosed outside the Government for the purposes of emergency repair or overhaul

o. "**Minor Modification**" means a modification that does not significantly alter the nongovernmental function or purpose of the software or is of the type customarily provided in the commercial marketplace.

p. "**Noncommercial Computer Software**" means software that does not qualify as Commercial Computer Software.

q. "**Restricted Rights**" applies only to Noncommercial Computer Software and means the Government's right to use a Computer Program with one computer at one time, transfer the program to another agency if all copies are destroyed and the licensor is notified, make copies for archival or modification purposes, modify the software, permit contractors and subcontractors to use or modify the Computer Software when performing service contracts in support of the applicable Contracting Vehicle, or related agreements or contracts, and permit contractors or subcontractors to use or modify the Computer Software when performing emergency repairs or overhaul.

r. "**Technical Data**" means recorded information, regardless of the form or method of the recording, of a scientific or technical nature (including Computer Software Documentation but not Computer Software). The term does not include Computer Software or data incidental to agreement administration, such as financial and/or management information.

s. "**Unlimited Rights**" means rights to use, modify, reproduce, perform, display, release, or disclose Technical Data in whole or in part, in any manner, and for any purpose whatsoever, and to have or authorize others to do so.

**A.2** Each Seller IP Owner that Develops the Technical Data, Computer Software Documentation, and Computer Software hereby grants or will obtain for the Government the following royalty-free, worldwide, nonexclusive, irrevocable license rights in Technical Data, Computer Software Documentation, and Computer Software. The Seller IP Owner retains all rights not granted to the Government.

a. **Unlimited Rights.** The Government will have Unlimited Rights in Technical Data that are 1) data pertaining to an Item Developed Exclusively with Government Funds; 2) studies, analysis or similar data produced as an element of performance Developed Exclusively with Government Funds; 3) Form, Fit and Function Data; 4) necessary for installation, operation, maintenance, or training purposes; 5) corrections or changes to Government-furnished data; 6) publicly available or available to the Government with Unlimited Rights; 7) data with expired Government-Purpose Rights. The Government will have Unlimited Rights in i) Computer Software Developed Exclusively with Government Funds; ii) Computer Software Documentation Developed Exclusively with Government Funds required to be delivered; iii) corrections or changes to Computer Software and Computer Software Documentation furnished by the Government; iv) Computer Software publicly available or available to the Government with Unlimited Rights; and v) Computer Software or Computer Software Documentation with expired restricted or Government Purpose Rights.

b. **Government Purpose Rights.** The Government will have Government Purpose Rights for a period of fifteen years from the execution of the Buyer's customer's contract or modification pertaining to the Technical Data or Noncommercial Computer Software, or such other period as may be negotiated, in Noncommercial Computer Software, or Technical Data that pertains to Items Developed with Mixed Funding, unless (i) the Government has Unlimited Rights in the data in accordance with subparagraph a. or (ii) the Government has negotiated Unlimited Rights notwithstanding the fact that the data pertains to Items, that were Developed with Mixed Funding. The Government will not release or disclose Noncommercial Computer Software or Technical Data with Government Purpose Rights unless the disclosure is made subject to a nondisclosure agreement between the data recipient and Government or the data recipient is a Government contractor performing under a contract with the DFARS clause 252.227-7025. The Seller IP Owner has the exclusive right, including the right to license others, to use the Technical Data for any purpose during the period in which the Government has Government Purpose Rights and the non-exclusive right to do so thereafter. Upon expiration of the period for Government Purpose Rights, the Government will have Unlimited Rights as set forth in paragraph a. above.

c. **Limited Rights.** The Government will have Limited Rights in Technical Data that pertain to Items Developed Exclusively at Private Expense and are so marked unless the Government has Unlimited Rights in accordance with subparagraph a. If Technical Data in which the Government has these rights are transferred or disclosed outside the Government for the purposes of emergency repair or overhaul, the Government will require the Technical Data recipient to destroy the Technical Data and all copies upon completion of work and to notify the Project IP Owner of the destruction. Technical Data pertaining to Commercial Items are assumed to be Developed Exclusively at Private Expense.

d. **Restricted Rights.** The Government will have Restricted Rights in Noncommercial Computer Software required to be delivered or otherwise provided that was Developed Exclusively at Private Expense.

e. **Specifically Negotiated License Rights.** The above standard license rights 1 (a. – d.), including the period of Government Purpose Rights, may be modified by mutual agreement with Buyer and Seller but may not provide the Government with lesser rights than Limited Rights or Restricted Rights. The Seller IP Owner is not required to provide the Government with greater rights, but the Seller IP Owner agrees to enter into negotiations with Buyer after a

request to negotiate for greater rights. All Technical Data and Noncommercial Computer Software in which the Seller IP Owner has granted greater rights will be listed in a license that enumerates or describes the greater rights and noted in the contract.

**f. License Rights in Commercial Computer Software.** The Government will have the rights provided in the usual license agreement of the supplier of the Computer Software.

**A.3** The Government may, at any time during the performance of this contract, and for two years after termination or completion of performance of this contract, whichever is later, order from the Seller IP Owner any Technical Data, Computer Software (excluding Commercial Computer Software source code), or Computer Software Documentation generated in the performance of this contract. The Government's rights to use said data or Computer Software will be pursuant to the rights defined in 2(a.-d.). The provisions of this Section A.3 will survive any termination or expiration of the contract.

**A.4** The Seller IP Owner will not, without written approval of the Buyer, incorporate or deliver any copyrighted data, Computer Software or Computer Software Documentation in which necessary license rights have not been obtained.

**A.5** The Government will retain its rights in the unchanged portions of any delivered Computer Software or Computer Software Documentation that the Seller IP Owner uses to prepare, or includes in, derivative Computer Software or Computer Software Documentation.

**A.6** Seller proposal must include an attachment which identifies all data, Computer Software, and Computer Software Documentation included as Background IP with restrictions on use, release, or disclosure. Throughout the performance of the contract, the Seller that will deliver Technical Data, Computer Software, or Computer Software Documentation with less than Unlimited Rights must have, maintain, and follow written procedures to assure that the restrictive markings are justified and keep records of the procedures. The Government may ignore or, at the owner of the Technical Data, Computer Software, or Computer Software Documentation's expense, correct or strike if a marking is determined to be unjustified or nonconforming. This paragraph does not apply to restrictions based solely on copyright.

## **ARTICLE B. PATENT RIGHTS**

Applicable to purchase contracts and subcontracts over \$100,000.00.

### **B.1** Definitions.

a. **"Invention"** means any invention or discovery which is or may be patentable or otherwise protected under title 35 of the United States Code.

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

c. **"Practical Application"** means to manufacture, in the case of a composition of 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.

d. **“Subject Invention”** means any invention of a Seller conceived or first actually reduced to practice in the performance of work under a this contract.

## **B.2 Allocation of Rights.**

a. The Seller IP Owner may retain the entire right, title, and interest throughout the world to each Subject Invention subject to the provisions of this clause and 35 U.S.C. § 203. With respect to any Subject Invention in which the Seller IP Owner retains title, the Government will have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States for Government purposes the Subject Invention throughout the world.

b. The Seller IP Owner will convey to the Government, upon written request by the Government directly or via Buyer, title to any Subject Invention if the Seller IP Owner fails to disclose or elect title to the Subject Invention within the times specified in section 3 of this article, or elects not to retain title.

c. The Seller IP Owner will convey to the Government, upon written request of the Government directly or via Buyer, title to any Subject Invention in any country where the Seller IP Owner decides not to file a patent application or continue the prosecution of any patent application.

d. The Seller IP Owner will retain a nonexclusive, royalty-free, sub-licensable, license throughout the world in each Subject Invention to which the Government obtains title, except if the Seller IP Owner fails to disclose the Subject Invention within the times specified in section 3 of this article. The Seller IP Owner’s license extends to its domestic and non-domestic affiliates, if any, within the corporate structure of which the Seller IP Owner is a party and includes the right to grant sublicenses of the same scope to the extent the Seller IP Owner was legally obligated to do so at the time of signature of the contract. The license may be revoked or modified by the Government to the extent necessary to achieve expeditious practical application of the Subject Invention.

## **B.3 Invention Disclosure, Election of Title and Filing of Patent Application.**

a. The Seller IP Owner will disclose each Subject Invention to the Buyer and the Government within two months after the inventor discloses it in writing to the Seller IP Owner’s personnel responsible for patent matters. The disclosure will be in the form of a written report and will identify the contract under which the Subject Invention was made and the inventor(s). It will 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, optical, chemical, biological or electrical characteristics of the Subject Invention. The disclosure will also identify any publication, sale or public use of the Subject Invention and whether a manuscript describing the Subject Invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure or other bar under 35 U.S.C. § 102(b), as well as anticipated bars. This obligation is a continuing obligation.



b. The Seller IP Owner will notify Buyer and the Government in writing of its election to retain title within one year of its disclosure to the Government. The period for election of title may be shortened by the Government to no more than sixty days prior to the loss of the right to obtain patent protection in the United States.

c. The Seller IP Owner will file its initial patent application on a Subject Invention within one year after the election to retain title. However, in any case where a publication, or sale, or public use has initiated the 1-year statutory period which valid patent protection can be obtained in the United States, the Seller IP Owner will file the application prior to the end of the statutory period. The Seller IP Owner may elect to file patent applications in additional countries or international patent offices within 10 months of the corresponding initial U.S. patent application or six (6) months from the date permission is granted by the Commissioner of Patents and Trademarks to file foreign patent applications.

d. Requests for extension of time for disclosure, election and filing under this section may be granted at the discretion of the Government and after considering the position of the Seller IP Owner.

#### **B.4 Seller IP Owner Actions to Protect the Government's Interest.**

a. The Seller IP Owner agrees to execute or to have executed and promptly deliver to the Government all instruments necessary to confirm or establish the rights or title of the U.S. Government throughout the world in a Subject Invention to which the Seller IP Owner elects to convey title to the Government when requested and to enable the Government to obtain patent protection throughout the world in that Subject Invention.

b. The Seller IP Owner agrees to require, by written agreement, its employees, other than clerical and nontechnical employees to send promptly, but not later than three months after the Subject Invention is Made, a written description of the Subject Invention to its personnel who are responsible for the administration of patent matters.

c. The Seller IP Owner will notify the Government of any decision 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.

d. The Seller IP Owner agrees to 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. W31P4Q-14-2-0001 for the Digital Manufacturing and Design Innovation Institute. The Government has certain rights in the invention."

#### **B.5 Subcontracts.**

Sellers will include this Exhibit, suitably modified to identify the parties, in all subcontracts supporting this contract. The subcontracts will set out ownership and rights to all Subject Inventions created under this contract.

**B.6 Reporting on Utilization of Subject Inventions.**

The Seller IP Owner agrees to submit, on request, periodic reports no less frequently than annually on the utilization of a Subject Invention or on the efforts at obtaining such utilization by the Seller IP Owner or its licensee or assignees. The report will include data and information that the Government may reasonably specify.

**B.7 Preference for United States Industry.**

The Seller IP Owner agrees that neither it nor any licensee or 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 IP Owner 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.

**B.8 March-in-Rights.**

The Seller IP Owner agrees that, with respect to any Subject Invention in which it has acquired title, the Government has the right to require the Seller IP Owner, an assignee or an exclusive licensee of the 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. If the Seller IP Owner, assignee, or exclusive licensee refuses such request, the Government has the right to grant such a license itself if the Government determines that such action is necessary to:

- a. Achieve practical application of the Subject Invention; or
- b. Alleviate health or safety needs that are not being reasonably satisfied; or
- c. Meet requirements for public use that are not being reasonably met; or
- d. Meet the requirements of section 7 of this Article.

**B.9 Patent Infringement.**

The Government does not give its authorization and consent under 28 U.S.C. 1498 for the use or manufacture of any Subject Invention described in and covered by a patent of the United States or for the infringement of a copyright in any work protected under the copyright laws of the United States.

**B.10 Notice and Assistance Regarding Patent and Copyright Infringement.**

- a. The Project IP Owner will report to Buyer and the Government, promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of a contract of which the Seller IP Owner has knowledge.
- b. In the event of any claim or lawsuit against the Government on account of any alleged patent or copyright infringement arising out of the performance of a project, contract or out of the use

of any supplies furnished or work or services performed under a this contract, the Seller IP Owner will furnish to the Government, when requested by the Government or Buyer, all evidence and information in the possession of the Seller IP Owner pertaining to such law suit or claim.

## **EXHIBIT B: Flow-Through Requirements from the Technology Investment Agreement**

### Article I.

#### 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.
2. "Made" when used in relation to any invention means the conception or first actual reduction to practice of such invention.
3. "Practical application" means to manufacture, in the case of a composition of 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 capable of being utilized and that its benefits are, to the extent permitted by law or government regulations, available to the public on reasonable terms.
4. "Subject invention" means any invention conceived or first actually reduced to practice in the performance of work under the TIA.
5. "Background Invention" means any invention made by the Seller IP Owner (or their subawardees or subcontractors of any tier) at their own expense prior to performance under this contract.

B. Allocation of Principal Rights – The Seller IP Owner shall retain the entire right, title, and interest throughout the world to each subject invention consistent with the provisions of this Article, and

35 U.S.C § 202. With respect to any subject invention in which the Seller IP Owner retains title, the government shall have a non-exclusive, nontransferable, irrevocable, paid-up license to practice or have practiced on behalf of the United States the subject invention throughout the world. The Seller IP Owner may elect to provide full or partial rights that it has retained to other parties.

#### C. Invention Disclosure, Election of Title, and Filing of Patent Application

1. The Seller IP Owner shall disclose each subject invention to the government within two (2) months after the inventor discloses it in writing to their institution or company 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 identity of 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, 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. The Seller IP Owner shall also submit to Buyer and the government an annual listing of subject inventions.
2. If the Seller IP Owner determines that it does not intend to retain title to any such invention,

the Seller IP Owner shall notify Buyer and the government, in writing, within two (2) years 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 may be shortened by the government to a date that is no more than (60) calendar days prior to the end of the statutory period.

3. The Seller IP Owner shall file its initial patent application on a subject invention to which it elects to retain title within one (1) year after election of title or, if earlier, prior to the end of the statutory period wherein valid patent protection can be obtained in the United States after a publication, or sale, or public use. The Seller IP Owner may elect to file patent applications in additional countries (including the European Patent Office and the Patent Cooperation Treaty) within either ten (10) months of the corresponding initial patent application or six (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 paragraph C.2 of this Article, may at the discretion of the Buyer's customer contract, USG Agreement Officer ("AO"), in consultation with the GPM, as those roles are defined under the Buyer's customer's contract, and after considering the position of the Seller IP Owner, be granted. Grants of such requests for extension of time shall not be unreasonably withheld or delayed.

D. Conditions When the Government May Obtain Title: Upon the government's written request, the Seller IP Owner shall convey title to any subject invention to the government under any of the following conditions:

1. If the Seller IP Owner fails to disclose (and does not remedy such failure in accordance with paragraph K of this Article) or elects not to retain title to the subject invention within the times specified in paragraph C of this Article; provided, that the government may only request title within (60) calendar days after learning of the failure of the Seller IP Owner to disclose or elect within the specified times.

2. In those countries in which the Seller IP Owner fails to file patent applications within the times specified in paragraph C.3 of this Article; provided, that if the Seller IP Owner has filed a patent application in a country after times specified in paragraph C.3 of this Article, but prior to its receipt of the written request by the government, the Seller IP Owner shall continue to retain title in that country; or

3. In any country in which the Seller IP Owner 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.

E. Minimum Rights to the Seller IP Owner and Protection of the Seller IP Owner's Right to File – The Parties agree that:

1. The Seller IP Owner shall retain a non-exclusive, royalty-free license throughout the world in each subject invention to which the government obtains title. The Seller IP Owner's license extends to the domestic (including Canada) subsidiaries and affiliates, if any, of the Seller IP Owner within the corporate structure of which the Seller IP Owner is a party and includes the right to grant licenses of the same scope to the extent that the Seller IP Owner 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 invention pertains.

Government approval for license transfer shall not be unreasonably withheld.

2. The Seller IP Owner'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 consistent with appropriate provisions at 37 CFR Part 404.

This license shall not be revoked in that field of use or the geographical areas in which the Seller IP Owner 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 IP Owner, its licensees, or the subsidiaries or affiliates have failed to achieve practical application in that foreign country.

3. Before revocation or modification of the license, the government shall furnish the Seller IP Owner a written notice of the government's intention to revoke or modify the license, and the Seller IP Owner 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.

#### F. Action to Protect the Government's Interest:

1. The Seller IP Owner agrees to execute or 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 Seller IP Owner elects to retain title, and (ii) convey title to the government when requested under this Article, and to enable the government to obtain patent protection throughout the world in that subject invention.

2. The Seller IP Owner 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 awardee, each subject invention made under this contract in order that the Seller IP Owner can comply with disclosure provisions of this Article, and to execute all papers necessary to file the patent applications on the subject invention and to establish the government's rights in the subject invention. The Seller IP Owner shall instruct its 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 IP Owner shall notify the government of any decision not to continue the prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceedings on a patent, in any country, not less than 30 days before the expiration of the response period required by the relevant patent office.

4. The Seller IP Owner 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 U.S. Government support under Agreement No. W15QKN-19-3-0003, awarded by U.S. Army Contracting Command-New Jersey (ACC-NJ).

The government has certain rights in the invention.”

G. 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, development, or research work.

H. Reporting on Utilization of Subject Inventions: The Seller IP Owner agrees to submit, during the term of the contract, an annual report on the utilization of a subject invention or on efforts at obtaining such utilization that are being made by the Seller IP Owner 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 IP Owner, and such other data and information as the agency may reasonably specify. The Seller IP Owner also agrees to provide additional reports as may be requested by the government in connection with any march-in proceedings undertaken by the government in accordance with paragraph J of this Article. Consistent with 35 U.S.C. § 202(c)(5), the government agrees it shall not disclose such information to persons outside the government without permission of the Seller IP Owner.

I. Preference for American Industry: Notwithstanding any other provision of this Article, the Seller IP Owner agrees that it shall not grant to any person the exclusive right to use or sell any subject invention in the United States or Canada unless such person agrees that any product embodying the subject invention or produced through the use of the subject invention shall be manufactured substantially in the United States or Canada. However, in individual cases, the requirements for such an agreement may be waived by the government upon a showing by the Seller IP Owner 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.

J. March-in Rights: The Seller IP Owner agrees that, with respect to any subject invention in which the Seller IP Owner has retained title, the government has the right to require the Seller IP Owner, an assignee, or exclusive licensee of a subject invention, to grant a nonexclusive license to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the Seller IP Owner refuses such a request, the government has the right to grant such a licensee itself if the government determines that:

1. Such action is necessary because the Seller IP Owner or assignee has not taken effective steps, consistent with the intent of this contract, to achieve practical application of the subject invention;
2. Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the Seller IP Owner, assignee, or their licensees;
3. Such action is necessary to meet requirements for public use and such requirements are not reasonably satisfied by the Seller IP Owner, 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 who has the exclusive right to use or sell any subject invention in the United States is in the breach of such Agreement.

K. Opportunity to Remedy: Certain provisions of this Article, provide that the government may gain title or license to a subject invention by reason of the Seller IP Owner's action, or failure to act, within the times required by this Article. Prior to claiming such rights (including any rights

under Paragraph J of this Article, March-In Rights), the government will give written notice to the Seller IP Owner of the government's intent, and afford the Seller IP Owner a reasonable time to remedy such action or failure to act. The length of the remedy period will depend on the circumstances, but in no event will be less than 30 or more than 60 days. The Seller IP Owner may request an extension to the 60 day maximum period to the AO via the Buyer, and an extension may be granted after mutual agreement between the parties and a final determination of allowability by the AO. The Awardee may also use the remedy period to show good cause why the claiming of such title or right would be inconsistent with the intent of this contract in light of the appropriate timing for introduction of the technology in question, the relative funding and participation of the parties in the development, and other factors.

L. Background Information: In no event shall the provisions set forth in this Article apply to any Background Inventions or Patents.

M. Survival Rights Provisions of this Article shall survive termination of this contract. Sellers shall flow down the requirements of this Article to subcontractors.

## ARTICLE – DATA RIGHTS

### A. Definitions:

1. "Commercial Computer Software" as used in the Article is defined in DFARS 252-227-7014(a)(1) (Jun 1995).
2. "Commercial Computer Software License" means the license terms under which Commercial Computer Software is sold or offered for sale, lease or license to the general public.
3. "Computer Data Base" as used in this contract, means a collection of data recorded in a form capable of being processed by a computer. The term does not include computer software.
4. "Computer program" as used in this contract means a set of instructions, rules, or routines in a form that is capable of causing a computer to perform a specific operation or series of operations.
5. "Computer software" as used in this contract 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.
6. "Computer software documentation" means owner's manuals, user's manuals, installation instructions, operating instructions, and other similar items, regardless of storage medium, that explain the capabilities of the computer software or provide instructions for using the software.
7. "Data" as used in this Article of this contract, means computer software, computer software documentation, form, fit and function data, and technical data as defined in this Article.
8. "Form, fit and function data" means technical 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.
9. "Government purpose rights" means the rights to use, modify, duplicate or disclose the "Data" licensed with such rights under this contract within the government for U.S. Government purposes only; and to release or disclose data outside the government to any authorized

persons pursuant to an executed nondisclosure agreement for such persons' use, modification, or reproduction for U.S.

Government purposes only. U.S. Government purposes Include Foreign Military Sales purposes and competitive re-procurement.

10. "Limited rights" as used in this Article is as defined in DFARS 252.227-7013(a)(14).

11. "Restricted rights" as used in this Article is as defined in DFARS 252.227-7014(a)(15).

12. "Specifically Negotiated License Rights" Are those rights to Data that have been specifically negotiated between the government and the Seller IP Owner.

13. "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 contract administration, such as financial and/or management information.

#### B. Data Categories:

1. Category A is Data developed and paid for totally by non-governmental funds, whether preexisting or concurrently developed proprietary data, trade secret data, or data related to Seller IP Owner products. The Seller IP Owner retains all rights to Category A Data.

2. Category B is any Data developed under this contract, using government funds, which cannot be disclosed without compromising the Category A data.

3. Category C is any Seller IP Owner developed Data, excluding Category A and B data, developed during the performance of work under this Agreement.

4. Category D is third party proprietary data used in performance of work under this contract, including but not limited to, technical data, software, trade secrets and mask works.

5. Any Data developed outside of this contract with government funding in whole or in part under a government agreement, contract or subcontract shall have the rights negotiated under such prior agreement, contract or subcontract; the government shall get no additional rights in such Data under this contract.

#### C. Allocation of Principal Rights:

1. The parties agree that in consideration for the government's funding, and in lieu of any government rights to Category A, B or D data (except as contained in paragraph 4 below), the Seller IP Owner intends to reduce to practical application materials and processes developed under this contract.

2. No deliveries to the government of Category A and B data are contemplated or required under this contract. The government reserves the right to negotiate certain rights in Category A and B data with the owner of the data. The existence and use of Category A or B data will be disclosed proposal and contract.

3. The government shall have immediate and irrevocable Government Purpose Rights to all Category C Data.

4. The Seller IP Owner shall deliver third-party computer software, Category D data, as required for the performance or operation of other computer software required to be delivered, with such rights as it is able to negotiate with the software vendor. The Seller IP Owner shall use reasonable efforts in such negotiations to obtain rights adequate for the government's purposes and shall provide to the Buyer and government the details as part of contract.

5. Data 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 (a) the parties have agreed otherwise, or (b) any



restrictions on the government's rights to use, modify, reproduce, release, perform, display, or disclose the data have expired or no longer apply.

D. Identification of Principal Rights. The allocation of principal rights shall be identified in each contract and proposal, using the categories list format provided below:

#### TYPE-PROPERTY NUMBER-RIGHTS ASSERTION

1. Application: provide date and type of application/title with brief description;
2. Patent: provide patent no. and/or entity's identifier/number; and
3. Rights: provide the type/category of right asserted.

E. Marking of Data:

1. Any Data delivered under this contract shall be marked with the following legend: "This data is being delivered as Category (insert category) Data, as defined in Agreement No. W15QKN-19-3-0003. Use, duplication, or disclosure is subject to the restrictions as stated in Agreement between the MXD USA and the Government."
2. In the event that the Seller IP Owner learns of a release to the government of its unmarked Data that should have contained a restricted legend, the Seller IP Owner will have the opportunity to remedy such omission going forward by providing written notice to Buyer and the Buyer's customer, and their customer within six (6) months of the erroneous release.

F. Prior Technology

1. The Awardee shall not be obligated to provide Data that existed prior to, or was developed outside of this contract to the government. Upon completion of activities under this contract, such Data possessed by the Government will be disposed of as requested by the Seller IP Owner. In the event the Seller IP Owner furnishes the government with Data which existed prior to, or was produced outside of this contract, and such Data embodies trade secrets or comprises commercial or financial information which is privileged or confidential, and such Data is so identified with a suitable notice or legend, the Data will be maintained in confidence and disclosed and used by the government and such government contractors or contract employees that the government may hire on a temporary or periodic basis only for the purpose of carrying out the government's responsibilities under this contract. Data protection will include proprietary markings and handling, and the signing of nondisclosure agreements by such government contractors or contract employees.
2. Oral and Visual Information: If information which the Seller IP Owner considers to embody trade secrets or to comprise commercial or financial information which is privileged or confidential is expressly disclosed orally or visually directly to the government, the exchange of such information must be memorialized in tangible, recorded form and marked with a suitable notice or legend, and furnished to the government within thirty (30) calendar days after such oral or visual disclosure, or the government shall have no duty to limit or restrict, and shall not incur any liability for any disclosure and use of such information. If the government reasonably determines that the memorialization of the exchange is insufficiently detailed to enable it to identify the privileged or confidential information, Seller IP Owner shall provide additional detail at the government's request, subject to restrictions on use and disclosure.
3. Disclaimer of Liability: Notwithstanding the above, the government shall not be restricted in,

nor incur any liability for, the disclosure and use of: a. Data not identified with a suitable notice or legend as set forth in this Article; nor b. Information contained in any Data for which disclosure and use is restricted, if such information is or becomes generally known without breach of the above, is properly known to the government or is generated by the government independent of carrying out responsibilities under this contract, is rightfully received from a third party without restriction, or is included in Data which the Seller IP Owner has furnished, or is required to furnish to the government without restriction on disclosure and use. Notwithstanding F.3.a. of this Article above, if the Seller IP Owner cures the omission of the suitable notice or legend, the restrictions, and related liability for disclosure and use of such information shall apply after cure unless it is then unrestricted under this paragraph.

G. Copyright: The Seller IP Owner reserves the right to protect by copyright works developed under this contract. All such copyrights will be in the name of the Seller IP Owner or the author, as determined by Seller IP Owners policies. The Seller IP Owner hereby grants to the U.S. Government a nonexclusive, non-transferable, royalty-free, fully paid-up license to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, for governmental purposes, any copyrighted materials developed (excluding Data) under this contract to which it owns the copyright, and to authorize others to do so.

H. 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, or experimental, developmental, or research work.

I. Projects that contain proprietary processes and/or trade secrets: The government recognizes that the Seller may have developed certain proprietary technology that may be proposed to be used for research purposes under this agreement. The government reserves the right to negotiate rights with the owner of the intellectual property rights in the proprietary technology. As a result of these negotiations, if the government determines justification is sufficient to allow the proprietary technology to be used for research purposes under this agreement, inventions first conceived or first actually reduced to practice during performance under this Agreement pertaining to such proprietary technology may be deemed not to be subject inventions.

J. Survival Rights: Provisions of this Article shall survive termination of this contract. The Seller shall flow down the requirements of this Article to its subcontractors.