CUSTOMER CONTRACT REQUIREMENTS
NextFlex Purchase Contract 8.5
CUSTOMER CONTRACT PC 8.5

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

PC 8.5 Special Provisions .

All deliveries, notifications, and/or communications from or to the Seller/Developer are to be handled via the Buyer as an intermediary.

1. DEFINITIONS

Unless otherwise provided herein, capitalized terms shall have the following meanings:

(a) "**Alternate Technical Representative**" means a qualified individual of the respective party who will have authority to act in place of such party's Technical Representative in case of absence or unavailability.

(b) "**Background IP**" has the same meaning set forth in the NextFlex IP Policy, namely Intellectual Property owned by a Participant or Developer whose creation and Development occurred *without* any Institute Funding.

(c) "**Cause**" means any failure by either party to perform a material obligation under this Development Agreement within the specified time.

(d) "**Component of a Developed Device**" means a functional unit of technology, physically separable from a Developed Device, a substantial portion of which consists of the development(s) and that can be separately manufactured or, in the case of software, developed and compiled, and subsequently integrated into a Developed Device.

(e) "**Contract Representative**" means a qualified individual of the respective party who will have all the authority necessary to bind such party to changes in any of the terms and conditions of this Development Agreement, including but not limited to the Development Work, the Project Schedule, the Financial Schedule, Key Person(s) and other resources furnished by one party to the other for the performance of this Development Agreement.

(f) "**Cost Share**" has the same meaning set forth in the NextFlex Participation Agreement, namely a contribution that is approved by NextFlex for the purpose of matching U.S. Government funding in the form of cash or In-Kind Contributions towards either, but not both with respect to a single contribution, of, (i) the Institute or (ii) Project(s).

(g) "**Data**" has the substantive meaning set forth in 48 C.F.R. 27.401, and specifically meaning recorded information, regardless of form or method of 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 that are included under those sections herein that implement 37 C.F.R.401.14.

(h) "**Deliverable**" means any tangible, electronic or otherwise physical or fixed item, including any documentation therefor or reports related thereto, that is required to be delivered by Developer to NextFlex or its designee, which may include one or more Developed Device.

(i) "**Developed Device**" means any device, equipment, component, prototype and/or materials, with substantially the same form, fit and function as a Deliverable under this Development Agreement, that embody the Developments and/or other IDIP generated hereunder.

(j) "**Developer Equipment**" means equipment and/or materials containing a commercial embodiment of Developer Pre-Existing Technology and/or Developer Private Expense Technology, but not the Development(s).

(k) "**Developer Pre-Existing Technology**" means any computer program or Data, trade secret, Invention, discovery, improvement, copyrightable material, process, manufacturing technique, formula or know-how, whether or not patentable, that is first conceived, and fixed or reduced to practice, by Developer prior to the Effective Date.

(l) "**Developer Private Expense Technology**" means any computer program or Data, trade secret, Invention, discovery, improvement, copyrightable material, process, manufacturing technique, formula or know-how, whether or not patentable, whose neither creation nor development is supported in any part by Institute Funding and that is first conceived, or fixed or reduced to practice, by Developer after the Effective Date.

(m) "**Development(s)**" means any Intellectual Property whose creation and/or development is supported in part or in whole by Institute Funding and (i) with respect to copyrightable material, is first fixed in a tangible medium of expression by Developer in the course of performing this Development Agreement, and (ii) with respect to Inventions, is conceived of or first reduced to practice by Developer in the course of performing this Development Agreement.

The defined term Development shall not include any Participant Background IP, Developer Pre- Existing Technology or Developer Private Expense Technology. All Developments qualify as IDIP under the NextFlex IP Policy.

(n) "**Development Work**" means any and all tasks or services to be performed by Developer pursuant to this Development Agreement.

(o) "**Financial Schedule**" means the schedule set forth in Exhibit B (Financial Schedule).

(p) "**Foreign Entity**" means an organization, institution or person that is not a U.S. Entity.

(q) **"Governing Council**" means a group of representatives of Participants and others designated to serve as a broad oversight and advisory body as specified in Section 6.1 of the NextFlex Participation Agreement.

(r) "**Government Purpose**" means any activity in which the United States Government is a party, including cooperative agreements with international or multinational defense organizations, or sales or transfer 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.

(s) "**Government Purpose Rights**" 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.

(t) "**Grants Officer"** or "**Agreements Officer**" means the AFRL officer serving as NextFlex's point of contact for any determinations to be made or actions to be taken by the U.S. Government with respect to this Development Agreement.

(u) "**In-Kind Contribution**" has the same meaning set forth in the NextFlex Participation Agreement, namely a contribution other than cash towards either, but not both with respect to a single contribution, of, (i) the Institute or (ii) Project(s), the content and value of which is approved by NextFlex.

(v) "**Institute**" means NextFlex, and such terms may be used interchangeably.

(w) "**Institute Developed Intellectual Property**" or "**IDIP**" has the same meaning set forth in the NextFlex IP Policy, namely Intellectual Property whose creation and/or development is supported in part or in whole by Institute Funding and (i) with respect to copyrightable material, is first fixed in a tangible medium of expression by an entity or individual in the course of its participation in NextFlex program activities or research, and (ii) with respect to Inventions, is conceived of or first reduced to practice by an entity or individual in the course of its participation in NextFlex program activities or research, such activities or research as conducted by the Institute or as specified in a written agreement with the Institute including but not limited to a Development Agreement.

(x) "**Institute Funding**" has the same meaning set forth in the NextFlex IP Policy, namely any and all forms of Institute cost-accounted financial or other support from any source, including but not limited to U.S. Government awarded funds, Participants' annual fees, In-Kind Contributions and/or Project Cost Share. Utilization of Institute equipment and/or facilities at full cost recovery rates shall not be deemed to have been supported by Institute Funding.

(y) "**Institute Furnished Resources**" means documentation or the personal services of the Institute or

Participant employees, facilities, materials, equipment, computer software or services, if any, set forth in Exhibit A (Statement of Work) furnished to Developer for Developer's use solely in the performance of this Development Agreement.

(z) "**Intellectual Property**" or "**IP**" has the same meaning set forth in the NextFlex IP Policy, namely software, hardware, firmware, tool, interface, platform, design, architecture, manufacturing technique, process, algorithm, formula, Data, Invention, documentation (both printed and electronic) or other copyrightable material, discovery and/or know-how, and any improvement, update or upgrade thereto, whether or not patentable, but excluding trademarks, service marks and trade names.

(aa) "**Invention**" means any invention or discovery that is or may be patentable or otherwise protectable under Title 35 of the United States Code.

(bb) "**IP Policy**" means NextFlex's Intellectual Property Policy as it exists as of the Effective Date, subject to change to which Developer does not object as set forth in Section 8.1 (Policy), and incorporated herein by reference.

(cc) "**Key Person(s)**" means Developer's personnel, if any, named in Exhibit A (Statement of Work) who are crucial to Developer's successful performance of this Development Agreement.

(dd) **"Limited Rights**" means the rights to use, modify, reproduce, release, perform, display, or disclose technical Data, in whole or in part, within the U.S. Government. The U.S. Government may not, without the written permission of the party asserting limited rights, release or disclose the technical Data outside the U.S. Government, use the technical Data for manufacture; or authorize the technical Data to be used by another party, except that the U.S. Government may reproduce, release, or disclose such Data or authorize the use of reproduction of the Data by persons outside the U.S. 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, for use, modification, reproduction, performance, display, or release or disclosure to authorized person(s) in performance of a Government contract; 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 Recipient of the technical Data is subject to a prohibition on the further reduction, release, disclosure, or use of the technical Data; and

(3) The contractor or subcontractor asserting the resection is notified of such reproduction, release, disclosure, or use. NextFlex acknowledges that the U.S. Government utilized the term "resection" in the prior sentence in NextFlex's Cooperative Agreement, and the parties to this Development Agreement acknowledge such term may reasonably be interpreted as "restriction" consistent with 48 C.F.R. 252.227-7013(a)(14), subject to differing instruction from the U.S. Government.

(ee) "**Localization**" means any modification, revision or other change to the Developments or a Developed Device so that the same will be in compliance with the technical, language, cultural and other requirements of

a local market so as to make the same marketable.

(ff) "**Made**," when used in relation to any Invention, means the conception or first actual reduction to practice of such Invention.

(gg) "**NextFlex**" means FlexTech Alliance, Inc., a Delaware not-for-profit corporation, as conducted through its flexible hybrid electronics manufacturing innovation institute known as NextFlex®. NextFlex is also known as the "**Institute**" herein.

(hh) "**Participant**" has the meaning set forth in NextFlex's Participation Agreement, namely an organization or entity that has entered into an agreement with FlexTech to participate in and support the Institute. Developer must be a Participant for at least the duration of this Development Agreement.

(ii) "**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 Development is being utilized and that its benefits are, to the extent permitted by law or U.S. Government regulations, available to the public on reasonable terms.

(jj) "**Project**" has the same meaning set forth in the NextFlex Participation Agreement, namely a research and development or manufacturing initiative sponsored by the Institute, including the activities subject to this Development Agreement.

(kk) "**Project Manager**" means a qualified individual made available by Developer who will have sufficient knowledge and capabilities to serve as the single point of contact on behalf of Developer and any subcontractors for all matters relating to any research and/or Development Work performed under this Development Agreement and all cost reporting, invoices, and technical or other reports delivered hereunder.

(ll) "**Project Schedule**" means the schedule set forth in Exhibit A (Statement of Work).

(mm) "**Subject Invention**" means any Invention conceived or first actually reduced to practice in the performance of Development Work under this Development Agreement. Such term does not include Participant Background IP, Developer Pre-Existing Technology or Developer Private Expense Technology.

(nn) "**Technical Representatives**" means a qualified individual made available by each of Developer and NextFlex who will: (1) have authority to act for and on behalf of the party represented to make technical decisions within the scope of this Development Agreement and to reduce such technical decisions to writing; (2) promptly review and approve or arrange prompt review and approval of any specification, designs, documentation, or draft documents; (3) provide access to appropriately qualified personnel to participate in the Development Work and to answer questions; and (4) arrange access to the party's facilities and equipment to fulfill the responsibilities of their respective party.

(oo) "**Third Party Confidential Material**" means the Institute Furnished Resources and/or other material, documentation, equipment or the like designated as confidential to a third party.

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

(qq) "**U.S. Entity**" means an organization, institution or person that: (i) one or more U.S. persons own directly or indirectly stock entitling such persons to fifty percent (50%) or more of the votes at a meeting of the shareholders, (ii) if voting stock has not been issued, then one or more U.S. persons own directly or indirectly ownership interests that together represent ownership of fifty percent (50%) or more; (iii) stock in the entity is publicly-traded on a recognized United States exchange and the entity has substantial research, development and/or manufacturing operations within the U.S.; (iv) is a United States-based college or university; or (v) is a United States citizen.

(rr) "**U.S. Government**" or "**USG**" has the same meaning set forth in the NextFlex Participation Agreement, namely the United States government inclusive of all federal departments, agencies and entities, but exclusive of those of any state or local governments regardless of whether existing within the United States.

(ss) "**Developer**" means Seller

(tt) "**Development Agreement**" contract between Buyer & Seller.

(uu) "**Effective Date**" award date of contract between Buyer & Seller

2. ENGAGEMENT OF SERVICES

2.6 Preference for United States Industry. Developer agrees that it shall use any and all Institute Funding only with respect to its own employees and U.S. Entities (e.g., subcontractors or suppliers) for performance within the United States of America, provided that Developer, and any state-funded institute of higher education that may be a subcontractor hereto provided it complies with the terms of this Subsection as applicable to such Developer, may utilize Institute Funding with respect to its student-employees (e.g., grad students, student interns) who are non-United States citizens and will be performing Development Work with respect to the Project that is the subject of this Development Agreement within the United States if and as each such Developer student-employee is identified on Exhibit E (Foreign Resources) or as Developer subsequently provides to NextFlex at least twenty-one (21) days' notice thereof accompanied by the information required and NextFlex is authorized to provide such information to the U.S. Government. For clarity, the foregoing notice is only required if the non-United States citizen employee of Developer is a student; no notice is required by this Subsection for non-student employees (e.g., professors, H-1B employees), provided Subsection 26.8 (Export Control) applies in all circumstances. Developer shall verify the United States employment eligibility of each Developer employee, including students, prior to such employee commencing work on the Project that is the subject of this Development Agreement. Per 37 C.F.R. 401.14(i), notwithstanding any other provision of this Development Agreement, Developer 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 U.S. Government upon a showing by the Developer 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. The requirements of this Subsection 2.6 are distinct from and in addition to any applicable requirements regarding Foreign Entities set forth in Section 11 (Foreign Transfer of Technology) and Subsection 26.8 (Export Control). Any and all licenses or rights to any Developments granted by Developer are at all times subject to Participants' access to non-exclusive licenses on reasonable and non-discriminatory terms as set forth in Section 4.4 (Availability of Commercial License) of the NextFlex IP Policy.

4. NEXTFLEX FURNISHED AND INSTITUTE FUNDED RESOURCES

4.2 Title and Disposition of Property.
(a) Acquisition with U.S. Government awarded funds. Title to personal property acquired with U.S. Government awarded funds under this Development Agreement shall vest in NextFlex upon acquisition, except that supplies shall be managed in accordance with 2 C.F.R. 200 § 314. Title to real property so acquired shall vest in NextFlex subject to conditions contained in 2 C.F.R. 200 § 311. NextFlex shall dispose of real property in accordance with Grants Officer instructions issued pursuant to 2 C.F.R. 200 § 311. Title to equipment acquired with U.S. Government awarded funds under this Development Agreement shall vest in NextFlex subject to conditions contained in 2 C.F.R. 200 § 313. NextFlex shall dispose of equipment in accordance with Grants Officer instructions issued pursuant to 2 C.F.R. 200 § 313. Upon completion, expiration or termination of this Development Agreement, the U.S. Government Program

Manager and AFRL will consult in good faith to determine the disposition of any such property and the apportionment of any costs associated with such disposition including transportation or destruction, and will communicate disposition instructions to NextFlex. Any and all individual units of Deliverables that are hardware or other physical items as delivered hereunder shall be deemed property subject to this Subsection 4.2(a), provided that Developer retains any rights it may have in and to any Intellectual Property therein (e.g., title to software embedded in the units does not transfer, even if such software exists in a fixed form such as written code). Title to any such an individual unit of a Deliverable that is hardware or other physical item and/or portion thereof in any stage of completion, excluding and subject to the underlying Intellectual Property rights, shall automatically vest in NextFlex upon the creation thereof, and Developer hereby irrevocably assigns, and agrees to assign if necessary, the same to NextFlex and agrees to execute any further documents necessary to effect such assignment; risk of loss of any Deliverable remains with Developer until Developer's delivery of the applicable Deliverable to NextFlex or its designee. In the event of termination of this Development Agreement for any reason, Developer shall deliver, as soon as reasonably practicable with Developer exercising good faith efforts but no later than thirty (30) calendar days, to NextFlex any and all existing Deliverables, in any stage of completion.

8. INTELLECTUAL PROPERTY RIGHTS

8.1 Policy. For administrative purposes, NextFlex received the U.S. Government funding for the Project that is the subject of this Development Agreement through NextFlex's established "Agency-Driven Project" process. However, the parties acknowledge that Developer's performance hereunder is not subject to any U.S. Government agency specifications nor agency-driven direction, but rather is the result of Developer's successful proposal in response to NextFlex's "Project Call" solicitation, and as such, shall be expressly subject to the NextFlex IP Policy in effect as of the Effective Date of this Development Agreement and incorporated herein by reference. Unless within ten (10) business days of notice thereof, Developer objects in writing to any change to the NextFlex IP Policy authorized by the Institute's Governing Council according to the procedure set forth therein, such change shall be incorporated by reference into this Development Agreement upon the expiration of such ten (10) day period. If Developer timely objects in writing, then the version of the IP Policy in effect as of the Effective Date will continue to govern this Development Agreement for the duration thereof.

8.2 Unavailability of Developed Device. If Developer manufactures a Developed Device in a production environment (e.g., not a prototype on an ad hoc basis), then this Subsection 8.2 will apply to such Developed Device, and subject to the triggering events set forth in this Subsection 8.2, Developer hereby grants NextFlex and each Participant a non-exclusive, royalty-free, worldwide license, including the right to sublicense through multiple tiers and transferable to a successor-in-interest of all or substantially all of the relevant part of the business of the Institute or such Participant, to make or have made any Developed Device or materials developed with technology (including, but not limited to, Inventions) resulting from this Development Agreement, but solely in order to meet the commercial needs of the Institute or such Participant, in the event (i) that the Developer ceases production of such Developed Device in the United States (subject to the exceptions and limitations set forth in Subsection 2.6 (Preference for United States Industry)) and fails to license or assign the right to make such Developed Device to a U.S. Entity that actually does continue such production; or (ii) the Institute Governing Council and/or U.S. Government concludes after a sixty (60) day submission of a plan for a cure that:

(a) total U.S.-based production of such Developed Device by the Developer and by any person or

entity (if any) to which the Developer has licensed or assigned the right to make such Developed Device is insufficient to meet the commercial needs of the Institute and Participants or is otherwise unavailable to the Institute and Participants; and

(b) the Developer and/or such assignee or licensee(s) (if any) are unable or unwilling to increase production of the Developed Device to a level sufficient to meet the Institute's or such Participant needs.

8.3 Government Rights. Developer also hereby grants the U.S. Government a limited right to use, duplicate or disclose within the U.S. Government, information concerning this Development Agreement, in whole or in part, by or for the U.S. Government solely for purposes of monitoring the use of Institute Funding under this Development Agreement.

9. PROVISIONS AND RIGHTS ON BEHALF OF THE U.S. GOVERNMENT FOR ALL INSTITUTE FUNDED DEVELOPMENT PROJECTS

9.1 Standard Patent Rights. The clause entitled Standard Patent Rights, (37 CFR 401.14) is hereby incorporated by reference and is modified as follows: replace the word "contractor" with "Developer"; replace the words "agency," "Federal Agency" and "funding Federal Agency" with "U.S. Government"; replace the word "contract" with "agreement"; delete paragraphs (g)(2), (g)(3) and revise paragraph (g)(1) first sentence to read "for experimental, developmental or research work to be performed by a subcontractor." Paragraph (l), Communications, point of contact on matters relating to this clause will be the servicing Staff Judge Advocate's office.

9.2 Disclosures and Notices. Reserved.

9.3 Patent Applications. Developer 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 U.S. Government support under an Agreement supported by an award by the Air Force Research Laboratory. The U.S. Government has certain rights in the Invention."

Developer shall provide the following information to the U.S. Government, via the U.S. Government Program Manager or by means specified by the U.S. Government Program Manager and communicated to Developer through NextFlex, for any Subject Invention for which Developer has retained ownership: (i) the filing date, (ii) serial number and title, (iii) a copy of the patent application, and (iv) patent number and issue date.

10. TECHNICAL DATA

10.1 Data Rights. All rights and title to Data generated by Developer under this Development Agreement shall vest in the Developer; provided however, that to the extent the parties agree to a different allocation of rights and title with respect Data.

10.2 Government Rights. Developer hereby grants to the U.S. Government a royalty free, world-wide,

nonexclusive, irrevocable license to use, modify, reproduce, release, perform, display or disclose any Data generated in the course of performing this Development Agreement for U.S. Government Purposes.

10.3 Data Marking. Developer is responsible for affixing appropriate markings indicating rights on all Data delivered under this Development Agreement. The U.S. Government will have Unlimited Rights in all Data delivered without markings.

10.4 Data Flow-Down. Developer shall include this Section 10 (Technical Data), suitably modified to identify the relevant entities, in all lower tier contracts and awards, regardless of tier, for experimental, developmental, or research work.

11. FOREIGN TRANSFER OF TECHNOLOGY

This Section 11 shall remain in effect for a period of three (3) years from the termination or expiration date of this Development Agreement.

11.1 General. The parties agree that research findings and technology developments in FHE technology may constitute a significant enhancement to the national defense and to the economic vitality of the United States. Accordingly, Transfers (as defined below) of Developments under this Development Agreement to a Foreign Entity must be carefully controlled. The controls contemplated in this Section 11 regarding Transfers are distinct from, are in addition to and are not intended to change or supersede, applicable provisions, if any, of the International Traffic in Arms Regulations (22 C.F.R. pt. 120 et seq.), the DoD Industrial Security Regulation (DoD 5220.22-R), the Department of Commerce Export Administration Regulations (15 C.F.R. pt. 730 et seq.) and the provisions set forth in Subsection 2.6 (Preference for United States Industry) or Subsection 26.8 (Export Control).

11.2 Restrictions on Sale or Transfer of Technology and Intellectual Property to Foreign Entities. (a) In order to promote the national security and economic interests of the United States and to effectuate the policies that underlie the regulations cited above, the following procedures shall apply to any Transfer of an Institute Funded Developed Device or Developments. For purposes of this Section 11, a "**Transfer**" includes the distribution or otherwise making available, by operation of law pursuant to a sale of an entity or by sales or licensing, of the underlying Intellectual Property, technology, know-how or other materials created or developed in whole or in part pursuant to Institute Funding hereunder including but not limited to Subject Inventions or other forms of Developments that are not excluded below. Transfers do not include: (1) sales or leases of one or more units of a Developed Device, Components of a Developed Device or other tangible products derived therefrom; or

12. CONFIDENTIAL INFORMATION USE AND PROTECTION

12.1 Standard of Care. Each party agrees that it will maintain all confidential information of the other party, as so described under the IP Policy, in confidence with at least the same degree of care that it uses to protect its own proprietary material and in no event with less than reasonable care to ensure that such confidential information is not disclosed or utilized in a manner other than as described in the IP Policy (or if Developer or Developer's subcontractor is an institute of higher education, as required for such Developer or Developer's subcontractor to comply with applicable state law provided that such subcontractor gives prompt notice to NextFlex of intended disclosure at least fifteen (15) days in advance unless such notice is

prohibited or rendered a shorter duration by the applicable). Each party will use the other party's confidential information solely to perform or to exercise its rights under this Development Agreement and will, under a written agreement only, disclose confidential information only to others with a need to know such information for those purposes only. Specifically, neither party will use, disclose, reproduce or transfer the other party's confidential information, directly or indirectly, for any other purposes. Each party will treat as confidential information any compilation, abstract, summary or copy of confidential information. Developer represents that it has written agreements, or similarly enforceable terms of engagement, with its employees, and subcontractors if any, that obligates them to comply with Developer's obligations under this Development Agreement. Developer understands and agrees that NextFlex may disclose this Development Agreement, including all exhibits and attachments, to the Institute Participants and may provide them with Developer's Technical Reports and other Deliverables (excluding Project Reports) as set forth and Developer's confidential information relating to this Development Agreement, including the technical, financial, schedule and business results of Developer's performance of this Development Agreement subject to the Participants' obligation under the IP Policy to maintain the confidentiality of such confidential information and not publicly use or disclose the same.

12.2 Third Party Confidential Information or Material. Developer and the Institute will not improperly use or disclose to each other any proprietary information of others. In addition to the obligations concerning each party's confidential information set forth above, to the extent that NextFlex provides the Institute Furnished Resources to Developer in connection with this Development Agreement designated as Third Party Confidential Material, Developer agrees not to disclose, exhibit, analyze, or have analyzed or permit any other entities to analyze or have analyzed any of the Third Party Confidential Material. The parties further agree to (1) use the Third Party Confidential Material to perform this Development Agreement only, and (2) account to the other party for all Third Party Confidential Material and any items incorporating such material. For any Third Party Confidential Material that is subject to U.S. Government laws or regulations regarding handling and disposition, the parties agree to (1) handle and dispose of all unused portions of the Third Party Confidential Material in accordance with such rules and regulations as well as any applicable state rules and regulations, and (2) only dispose of such material at a facility selected by the Institute with the concurrence of the entity designated as the owner of the proprietary rights in the Third Party Confidential Material.

12.3 Disclosure of Information.

(a) Developer shall not release to anyone outside Developer's organization any unclassified information, regardless of medium (e.g., film, tape, document, media announcements, etc.), pertaining to any part of this Development Agreement or any program related to this Development Agreement unless-

(1) The Agreements Officer has given prior written approval;

(2) The release is related to a pre-approved activity previously agreed upon by the Grants Officer, the Program Manager and Developer; the pre-approved activities will be maintained by the Program Manager and the Agreements Officer;

(3) The information is otherwise in the public domain before the date of release; or

(4) The information results from or arises during the performance of a project that involves no covered defense information (as defined in the clause at 48 CFR 252.204-7012) and has been scoped and negotiated by the contracting activity with the Developer and research performed and determined in writing by the Agreements Officer to be fundamental research (which by definition cannot involve any covered defense information), in accordance with National Security Decision Directive 189, National Policy on the Transfer of Scientific, Technical and Engineering Information, in effect on the date of the contract award and the Under Secretary of Defense (Acquisition,

Technology, and Logistics), memoranda on Fundamental Research, dated 24 May 2010, and on Contracted Fundamental Research, dated 26 June 2008. NextFlex represents that the U.S. Government Agreements Officer has made, and communicated in writing to NextFlex, such fundamental research determination with respect to the Project that is the subject of this Development Agreement. As such, the Development Work of such Project: 1) is excepted from the restrictions on disclosure of information imposed by DFARS 252.204-7000(a)(3) and information resulting from that work is not "covered defense information" as defined by DFARS 252.204-7012. Application of export controls is dictated by the Department of State and Department of Commerce.

(b) Requests for approval, if required, shall identify the specific information to be released, the medium to be used, and the purpose for the release. For requests under (a)(1), Developer shall submit, via NextFlex, its request to the Agreements Officer at least sixty-five (65) days before the proposed date of release. For requests under (a)(2), Developer shall submit its request to the Agreements Officer via NextFlex; NextFlex must make such submission at least two (2) days before the proposed date of release, and accordingly Developer shall transmit its request to NextFlex at least five (5) business days before the proposed date of release.

(c) The requirements of this Subsection 12.3 are distinct from and in addition to any applicable requirements regarding publications set forth in Section 20 (Publicity and Publication).

(d) Developer agrees to include a similar requirement in each sub-agreement under this Development Agreement. Subrecipients shall submit requests for authorization to release through the prime Recipient (NextFlex) to the Agreements Officer.

12.4 Internal Confidentiality Agreements. Developer may not require its employees, contractors or subrecipients seeking to report fraud, waste, or abuse to sign or comply with internal confidentiality agreements or statements prohibiting or otherwise restricting them
from lawfully reporting that waste, fraud, or abuse to a designated investigative or law enforcement representative of a Federal department or agency authorized to receive such information. Developer is hereby notified, and must notify its employees, contractors or subrecipients, that any prohibitions and restrictions of any internal confidentiality agreements inconsistent with this paragraph are of no effect. The prohibition in this paragraph 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.

14. PATENT, COPYRIGHT AND TRADE SECRET INDEMNITY

Developer agrees that upon notification by NextFlex, Developer will promptly assume full responsibility for defense of any claim, suit or proceeding that may be brought against NextFlex, the Participants (except to the extent as commercial licensees) or their directors, officers or employees, for alleged U.S. patent or copyright infringement or trade secret misappropriation with respect to the funding of or use of Developments or Deliverables for internal evaluation and research and development as provided for in the IP Policy and any other usage that may be expressly stated, if any, by NextFlex or the Participants and use thereof (provided that such claim, suit or proceeding is not solely based upon a design by NextFlex) as contemplated by this Development Agreement (e.g., use of Developments under the internal evaluation license). Developer further agrees to indemnify NextFlex, the Participants (except to the extent as

commercial licensees) and their directors, officers and employees against any and all damages, including court costs and attorneys' fees, finally resulting from any such infringement or misappropriation claim, suit or proceeding, including any settlement of such claim, suit or proceeding but Developer will not be responsible for any compromise made without its consent. To qualify for such defense and payment, the indemnified party must allow Developer to control and fully cooperate with Developer in the defense and all related settlement negotiations, although such party may, at its own expense, be represented by and actively participate through its own counsel in defense of any such claim, suit or proceeding if it so desires. In case a Development or Deliverable is held to constitute an infringement or misappropriation and the use of such Development or Deliverable, or any part of the same, is enjoined, Developer will, at Developer's option and Developer's expense, procure for NextFlex and its Participants (except to the extent as commercial licensees) and the United States Government the right to continue using the Development and/or Deliverable as contemplated under this Development Agreement, or modify the Development or Deliverable so that it becomes non-infringing or does not constitute misappropriation, or refund any amounts paid or reimbursed by NextFlex to Developer in connection with such Development or Deliverable. This Section 14 applies to Participants with respect only to their role as a participant in the Institute; to the extent a Participant enters into a commercial license with Developer, such Participant-licensee's and Developer's rights and obligations with respect to such commercial license will be set forth in the applicable commercial license agreement. For purposes of clarity, the foregoing Developer obligations and indemnification apply only to the funding of or use of Developments and Deliverables for internal evaluation and research and development as provided for in the IP Policy and any other usage that may be expressly stated, if any; such Developer obligations and indemnification do not apply to commercial licenses or commercial usage by NextFlex or Participants.
If Developer or Developer's subcontractor is an institute of higher education, the parties agree this Section 14 (Patent, Copyright, and Trade Secret Indemnity) shall be interpreted, as applied to such Developer or Developer's subcontractor, that such Developer or Developer's subcontractor represents that it shall not knowingly infringe upon or otherwise misappropriate the Intellectual Property rights (including, but not limited to, any right in a patent, copyright, industrial design, trade secret, or semiconductor mask work) of any third party in the performance of Development Work or provision of Deliverables under this Development Agreement.

18. COMPLIANCE WITH APPLICABLE LAWS

Developer certifies that all goods and services to be furnished under this Development Agreement will be manufactured or furnished by Developer in compliance with all applicable federal, state and local laws, ordinances, executive orders, rules and regulations, including, without limitation, the Fair Labor Standards Act, the Occupational Safety and Health Act (OSHA) and the Toxic Substances Control Act (TOSCA). By signing or accepting funds under this Development Agreement, Developer assures that it will comply with applicable provisions of the following National policies on 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 C.F.R. 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 C.F.R. 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 C.F.R. part 41 and DoD regulations at 32 C.F.R. part 56; and (iv) on the basis of sex or blindness, in Title IX of the Educational Amendments of 1972 (20 U.S.C. 1681, et. seq.). FlexTech Alliance, Inc. has acknowledged its compliance with certain laws as required for registration with SAM.gov, including but not limited to the nondiscriminatory provisions of the Civil Rights Act, and each Developer receiving funds shall so acknowledge via its

SAM.gov registration as required. Developer assures that it shall also comply with the applicable provisions of the Clean Air Act (42 U.S.C. 7401, et seq.) and the Clean Water Act (33 U.S.C. 1251, et seq.), as implemented by Executive Order 11738 (3 C.F.R., 1971-1975 Comp., p. 799). This Development Agreement is subject to the requirements of section 106 (g) of the Trafficking Victims Protection Act of 2000 (22 U.S.C. 7104, as implemented by 2 C.F.R. 175). If Developer, Developer's employees, subcontractors under this Development Agreement, or subcontractors' employees (i) engages in severe forms of trafficking in persons or has procured a commercial sex act during the period of time this Development Agreement is in effect or (ii) uses forced labor in the performance of this Development Agreement, NextFlex shall be authorized to unilaterally terminate this Development Agreement without penalty. No member of or delegate to Congress, or resident commissioner, shall be admitted to any share or part of this Development Agreement, or to any benefit arising from it, in accordance with 41 U.S.C. 6306. Developer, as contractor, and any subcontractor shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity, national origin, or for inquiring about, discussing, or disclosing information about compensation. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, protected veteran status or disability. Developer, as contractor agrees, and any subcontractor shall agree, to comply with all the provisions set forth in 29 CFR Part 471, Appendix A to Subpart A (Executive Order 13496). Developer shall obtain assurances of compliance with this Section 18 from subcontractors, if any.

20. PUBLICITY AND PUBLICATION

20.1 Publicity. The specific technical, commercial and legal provisions of this Development Agreement are confidential, subject to the processes and qualifications below. Developer will not issue press releases or engage in other types of publicity relating to this Development Agreement without first reviewing the proposed public statements with Buyer and obtaining Buyer's prior written approval. However, this provision is not intended to restrict publication rights of the Developer or restrict either party from disclosing the existence of this Development Agreement in the routine reporting of the party's activities. Additionally, this provision shall not restrict Developer from disclosing this Development Agreement to the extent Developer is required to do so, and only in the context thereof, pursuant to applicable Federal or state law or regulation or similar governing authority (e.g., by application of state "open records" laws to a state-sponsored institution of higher education), provided that Developer shall give prompt notice to NextFlex of intended disclosure at least fifteen (15) days in advance unless such notice is prohibited or rendered a shorter duration by the applicable authority.

20.2 Publication Rights and Procedure. Developer shall have the right to publish, present or otherwise disseminate or disclose (each, a "**Publication**") the results of any Development Work or research and development performed under this Development Agreement on which Developer has previously reported to the NextFlex Governing Council as part of a completed Deliverable or task, subject to Section 8 (Confidentiality) of the NextFlex IP Policy. Developer shall provide each of NextFlex's Technical Representative, Contract Representative and Executive Director, and per Section 8.2(a) (IDIP) of the IP Policy, any affected Participant, which for purposes of this Development Agreement and Development Work performed hereunder the parties agree shall mean any coauthor to such Publication and any

Participant who performed Development Work on the Project that is the subject of this Development Agreement, with a "Notice of Intended Publication" no less than thirty (30) days prior to Publication to facilitate identification and protection of NextFlex, U.S. Government and/or Participant proprietary information and NextFlex may further provide such Notice to the U.S. Government. Such Notice shall contain at a minimum: the proposed date of Publication, the name of the medium or forum in which Publication is to be made (e.g., name of scientific journal or trade meeting), the Institute research project implicated, the name of any Institute Participants whose Intellectual Property is implicated to the extent actually known, an abstract of the Publication content, if available the text of the proposed manuscript or oral presentation, and the deadline by which any affected Participant must notify Developer of any objection to such Publication, which deadline must be at least thirty (30) days after the date of the Notice of Intended Publication and which objection the Developer shall explain must be consistent with the purposes identified in the IP Policy to give any affected parties an opportunity to identify and resolve any inadvertent disclosure of confidential information, the timely filing for patent protection and any other material adverse effect. Upon objection from an affected Participant or upon instruction by NextFlex, Developer agrees to delay Publication up to sixty (60) additional days in order to accommodate a patent application filing or ameliorate a material adverse effect upon a Participant or NextFlex. In no event shall this delay exceed a total of ninety (90) calendar days from the date of Developer's Notice of Intended Publication without mutual written agreement by both parties. If Developer does not receive a written response from the affected Participant(s) or NextFlex within thirty (30) days of such Notice, Developer may proceed with Publication as proposed. NextFlex is expected to publish or otherwise make publicly available the results of the work conducted under its award from the U.S. Government. Developer shall provide one (1) copy of all Publications resulting from any Development Work as it becomes available, and NextFlex is authorized to forward the same to the U.S. Government.

20.3 U.S. Government Rights to Publications. With the approval of the U.S. Government Program Manager, the U.S. Government may reproduce and distribute, as U.S. Government technical reports, reprints of published articles regarding the Development Work, and such articles shall be deemed IDIP for purposes of Section 4.1 (United States Government) of the NextFlex IP Policy and such technical reports a Government Purpose. Except as set forth elsewhere in the agreement and in Section 11 (Foreign Access to Technology), nothing in this Development Agreement shall be deemed to give the U.S. Government any rights to limit publication or dissemination of any information by the Institute, the Institute Participants or Developers.

20.4 Marking Requirements. An acknowledgment of the United States Government awarding agency's support shall appear in the publication of any material, whether copyrighted or not, developed under this Development Agreement. The acknowledgement shall read:

> "This material is based on research sponsored by Air Force Research Laboratory under Agreement Number FA8650-20-2-5506. The U.S. Government is authorized to reproduce and distribute reprints for Governmental Purposes notwithstanding any copyright notation thereon."

Every publication of material based on or developed under this Development Agreement shall contain the following disclaimer:

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

20.5 Application. The requirements of this Section 20 (Publicity and Publication) are distinct from and in addition to any applicable requirements set forth in Section 12.3 (Disclosure of Information) and apply, but are not limited to:

(a) reports presented at scientific and technical meetings, conferences, workshops or other information exchange meetings;
(b) publication in scientific and technical journals or proceedings or information exchange meetings;
(c) news releases, newsletters and websites; and
(d) articles in trade publications.

21. WARRANTIES

Developer warrants that (and if Developer or Developer's subcontractor is an institute of higher education, such Developer or Developer's subcontractor shall represent that) upon request it will provide the Institute with current, complete and accurate copies of all records, documents, information, specifications, drawings, computer software and data, as reasonably available to Developer at the time of request, that are necessary to enable the Institute, the Institute Participants and other permitted or required licensees, to exercise fully their rights under Subsection 8.2 (Unavailability of Developed Device). With respect to any Developments or Deliverables that Developer is obligated to deliver to the Institute under this Development Agreement, Developer represents, warrants and covenants that (and if Developer or Developer's subcontractor is an institute of higher education, such Developer or Developer's subcontractor shall represent and covenant, to the extent permissible under applicable state law, that) such Developments and Deliverables will not infringe the copyrights or misappropriate the trade secrets of any third-party. For purposes of clarify, the foregoing representations, warranties and covenants, as applicable to Developer or Developer's subcontractor, apply only to the development and use of Developments or Deliverables for internal evaluation and research and development as provided for in the IP Policy and any other usage that may be expressly stated, if any; such representation, warranty and covenants, as applicable, do not apply to commercial licenses or commercial usage by NextFlex or Participants. None of the provisions of this Section 21 will be deemed to affect in any way the parties' rights and obligations under Section 14 (Patent, Copyright and Trade Secret Indemnity). EXCEPT FOR ANY EXPRESS WARRANTY SPECIFICALLY STATED IN THIS DEVELOPMENT AGREEMENT, THE DEVELOPER HEREBY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR PARTICULAR PURPOSE, WITH RESPECT TO ANY FACILITIES, INFORMATION, MATERIALS, EQUIPMENT, SOFTWARE OR SERVICES THAT ANOTHER PARTY PROVIDES TO OR PERFORMS FOR THE DEVELOPER UNDER THIS DEVELOPMENT AGREEMENT.

25. COST-SHARING AND IN-KIND CONTRIBUTIONS

25.1. Reserved

25.2 Administration and Accounting. This Development Agreement is governed by the guidance in 2 Code of Federal Regulations (C.F.R.) part 200, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards," as modified and supplemented by the Department of Defense's (DoD) interim implementation found at 2 C.F.R. part 1103, "Interim Grants and Cooperative Agreements Implementation of Guidance in 2 C.F.R. part 200" (79 F.R. 76047, December 19, 2014), all of which are incorporated herein by reference. Provisions of Chapter

I, Subchapter C of Title 32, C.F.R., "DoD Grant and Agreement Regulations," other than part 33, continue to be in effect and are incorporated herein by reference, with applicability as stated in those provisions. The cost principles applicable to this Development Agreement are contained in 2 C.F.R. 200, Subpart E, Cost Principles. 2 C.F.R. 200 describes the cost principles for determining allowability of costs applicable to this Development Agreement or lower tier, cost type contracts or awards under this Development Agreement that shall be determined by the type of entity entering into this Development Agreement or receiving the lower tier contract or award. Developer is at all times solely responsible for ensuring that its Cost Share complies with 2 C.F.R. 200, and by submitting proposed Cost Share information to NextFlex, Developer certifies that such information is applicable, reasonable, verifiable and allowable to the NextFlex Project to which this Development Agreement relates, and that it is not from or included in as contribution to any other federally-assisted project or effort. Notwithstanding the foregoing, no proposed Cost Share shall be applied to Developer pursuant to this Development Agreement without NextFlex's prior review and approval.

25.3 U.S. Flag Carriers. Travel supported by Institute Funding under this Development Agreement shall 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 Comptroller General Decision B138942. (See General Services Administration amendment to the Federal Travel Regulations, Federal Register (Vol 63, No. 219, 63417-63421)).

26. GENERAL PROVISIONS

26.8 Export Control. Seller will export or re-export, directly or indirectly, any Data, Development, Developed Device or Deliverable or any product utilizing the same to any country or Foreign Entity for which the U.S. Government or any agency of the U.S. Government at the time of export requires an export license or other government approval without first obtaining such license or approval. Seller understands that disclosing any Data, Development, Developed Device or Deliverable to a foreign national is an "export" even if the disclosure takes place within the United States. NextFlex has the authority to control access by Foreign Entities, including any foreign firms, institutions or individuals, to the technology developed under this Development Agreement under applicable U.S. export control laws, regulations and policies, but at all times it is Developer's sole responsibility to determine and adhere to applicable export control laws, regulations and policies with respect to Developer's direct and indirect exports or re-exports. If Developer's export or re-export of any Data, Development, Developed Device or Deliverable is restricted by export control laws without an available exemption under the law (e.g., ITAR-controlled), Developer shall, in addition to any other necessary license or approval, receive approval from the U.S. Government Grants/Agreements Officer) before assigning or granting access to any work, equipment, or technical Data generated or delivered under this
Development Agreement to Foreign Entities or their representatives. The notification shall include the name and country of origin of the Foreign Entity or representative, and the specific work, equipment, or Data to which the Foreign Entity will have access. Compliance with these export control provisions is distinct from and in addition to the requirements set forth in, and any approval received from NextFlex or the U.S. Government pursuant to, Subsection 2.6 Preference for United States Industry) or Section 11 (Foreign Transfer of Technology.

26.9 Operations Security. Developer, and its subcontractors if required, shall participate in all activities

associated with the disciplines of the U.S. Government's Industrial Security, Information Security, Personnel Security, Operations Security (OPSEC), Antiterrorism,
and Program Protection programs, following appropriate measures in each program as required for this particular Development Agreement as communicated by NextFlex to Developer. These are required in an effort to reduce program vulnerability from successful adversary collection, exploitation of critical information, and violations of export control requirements. Developer shall ensure that all sub-awardees, if required, conform to these requirements as required by the Developer. AFRL/RX Security can provide guidance as needed, via NextFlex's Executive Director.

26.10 Access to USAF Bases, AFRL Facilities and/or U.S. Government Information Technology Networks.
(a) Developer employees requiring access to USAF bases, AFRL facilities, and/or access to U.S. Government Information Technology networks in connection with the Development Work on this Development Agreement must be U.S. citizens. Possession of a permanent resident card ("Green Card") does not equate to U.S. citizenship. This requirement does not apply to foreign nationals approved by the U.S. Department of Defense or U.S. State Department under international personnel exchange agreements with foreign governments. Any waivers to this requirement must be granted in writing by the AFRL Grants Officer prior to providing access. The above requirements are in addition to any other agreement requirements related to obtaining a Common Access Card (CAC).
(b) For purposes of paragraph (a) above, if an IT network/system does not require AFRL to endorse a Developer's application to said network/system in order to gain access,
the organization operating the IT network/system is responsible for controlling access to its system. If an IT network/system requires an U.S. Government sponsor to endorse the application in order for access to the IT network/system; AFRL will only endorse the following types of applications; consistent with the requirements above:

1) Developer employees who are U.S. citizens performing work under this Development Agreement.
2) Developer employees who are non-U.S. citizens and who have been granted a waiver. Any additional access restrictions established by the IT network/system owner apply.

26.11 Prohibition on a ByteDance Covered Application.
(a) *Definitions.* As used in this Subsection-

Covered application means the social networking service TikTok or any successor application or service developed or provided by ByteDance Limited or an entity owned by ByteDance Limited.

Information technology, as defined in 40 U.S.C. 11101(6)-

(1) Means any equipment or interconnected system or subsystem of equipment, used in the automatic acquisition, storage, analysis, evaluation, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information by the executive agency, if the equipment is used by the executive agency directly or is used by an awardee under an award with the executive agency that requires the use-

(i) Of that equipment; or
(ii) Of that equipment to a significant extent in the performance of a service or the furnishing of a product;

(2) Includes computers, ancillary equipment (including imaging peripherals, input, output, and storage

devices necessary for security and surveillance), peripheral equipment designed to be controlled by the central processing unit of a computer, software, firmware and similar procedures, services (including support services), and related resources; but
(3) Does not include any equipment acquired by a Federal awardee incidental to a Federal award.

(b) *Prohibition*. Section 102 of Division R of the Consolidated Appropriations Act, 2023 (Pub. L. 117-328), the No TikTok on Government Devices Act, and its implementing guidance under Office of Management and Budget (OMB) Memorandum M-23-13, dated February 27, 2023, "No TikTok on Government Devices" Implementation Guidance, collectively prohibit the presence or use of a covered application on executive agency information technology, including certain equipment used by Federal awardee(s). The Developer is prohibited from having or using a covered application on any information technology owned or managed by the Government, or on any information technology used or provided by the Developer under this award, including equipment provided by the Developer's employees; however, this prohibition does not apply if the Grants Office/Agreements Officer provides written notification to the Sub-Recipient, via NextFlex, that an exception has been granted in accordance with OMB Memorandum M-23-13.

(c) *Subcontracts/Subrecipients*. The Developer shall insert the substance of this Subsection, including this paragraph (c), in all subawards, including subawards for the acquisition of commercial products or commercial services.

EXHIBIT C

NextFlex™

INTELLECTUAL PROPERTY POLICY

1. OVERVIEW

As part of its mission and collaborative structure, the flexible hybrid electronics manufacturing innovation institute known as NextFlex™ ("**Institute**") anticipates that certain intellectual property will be created and/or developed as a result of, and other existing intellectual property may be brought into or otherwise implicated by, the Institute's projects and/or other activities. This intellectual property policy ("**IPP**") is intended to provide a uniform framework to which all interested parties must agree in order to participate in these projects or activities. The overarching principle of this IPP is that ownership follows invention, while providing for Participants' reasonable access to intellectual property developed using Institute funds. The IPP intends to balance competing interests and proactively addresses common "flash points" such as blocking rights and joint ownership, thus reducing potential delays and high-resolution costs, while encouraging collaborative research and development. It establishes baseline provisions to address critical issues and provide parity among Participants, but preserves flexibility for interested parties to tailor them to project-specific needs.

2. KEY DEFINITIONS

Defined terms not provided herein shall have the meanings given to them in the Participation Agreement and Development Agreement. Defined terms are intended to have the same meaning in each Institute agreement. In case of conflict, the order of precedence for interpretation with respect to intellectual property shall be this IPP, the relevant Participation Agreement and then Development Agreement, unless such an agreement specifically references a modification to a defined term as agreed to by the interested parties.

"**Background IP**" means Intellectual Property owned by a Participant or Developer whose creation and development occurred *without* any Institute Funding.

"**Data**" has the meaning set forth in as defined in 48 CFR 27.401.

"**Developer**" means Seller

"**Development Agreement**" contract between Buyer & Seller.

"**Institute Developed Intellectual Property**" or "**IDIP**" means Intellectual Property whose creation and/or development is supported in part or in whole by Institute Funding and (i) with respect to copyrightable material, is first fixed in a tangible medium of expression by an entity or individual in the course of its participation in NextFlex™ Program activities or research, and (ii) with respect to Inventions, is conceived of or first reduced to practice by an entity or individual in the course of its participation in

NextFlex™ Program activities or research, such activities or research as conducted by the Institute or as specified in a written agreement with the Institute including but not limited to a Development Agreement.

"**Institute Funding**" means any and all forms of Institute cost-accounted financial or other support from any source, including but not limited to U.S. Government awarded funds, Participants' annual fees, In-Kind Contributions and/or Project cost share. Utilization of Institute equipment and/or facilities at full cost recovery rates shall not be deemed to have been supported by Institute Funding.

"**Intellectual Property**" or "**IP**" means software, hardware, firmware, tool, interface, platform, design, architecture, manufacturing technique, process, algorithm, formula, Data, Invention, documentation (both printed and electronic) or other copyrightable material, discovery and/or know-how, and any improvement, update or upgrade thereto, whether or not patentable, but excluding trademarks, service marks and trade names.

"**Invention**" means any invention or discovery that is or may be patentable or otherwise protectable under Title 35 of the United States Code.

"**Participant**" has the meaning set forth in NextFlex's™ Participation Agreement, namely an organization or entity that has entered into an agreement with FlexTech to participate in and support the Institute.

3. OWNERSHIP

3.1 Developers. Each Developer will have the right to retain full ownership rights in and to the portion of the IDIP such Developer creates and/or develops, and with respect to Inventions conceives of or first reduces to practice, in the course of performing under a Development Agreement, subject to the procedures and limitations set forth in 35 U.S.C. § 200 et seq. Each Developer will retain full ownership rights in and to its Background IP. Notwithstanding the foregoing, Developer is required to make, while retaining the right to profit from, certain licenses available to Participants with respect to such IDIP, and in certain limited contexts with respect to Background IP that would block use of such IDIP, as set forth in Section 4 (Licenses).

3.2 Participants. Each Participant will retain full ownership rights in and to its Background IP. If a Participant uses Institute facilities or equipment in the development of its Background IP, then provided that such use is at full cost recovery rates, such developments remain Participant's Background IP and the use of Institute facilities or equipment does not cause such developments to become IDIP. The Institute retains the discretion to establish different facility and equipment usage fees and other terms for non-Participants, but no more favorable than those offered to Participants.

3.3 Institute. To the extent the Institute, through one or more Institute employees within the scope of employment or through Institute independent contractors other than a Developer, creates or develops IP within the course of conducting its authorized functions, such IP shall qualify as IDIP and shall be available to Participants on terms no less favorable than for any other IDIP as provided for herein. The Institute will have the right to retain full ownership rights in and to any such portion of the IDIP that it so creates and/or

develops, and with respect to Inventions conceives of or first reduces to practice, subject to the procedures and limitations set forth in 35 U.S.C. § 200 et seq. To the extent the Institute creates or develops IP in the course of performing educational, training or other services for non-Participants (or for individual Participants upon request) and subject to applicable consulting fees to be approved by the Governing Council, the ownership of and any licensing rights to such IP shall be set forth in the applicable consulting agreement not inconsistent with this IPP.

3.4 Ownership Presumptions. There shall be a rebuttable presumption that whichever entity first presents or discloses a particular Intellectual Property in writing to the Institute is the owner of such Intellectual Property. It is contemplated that individual Developers may separately own identifiable portions of the IDIP. In the case where more than one Developer contributes to one indistinguishable portion of the IDIP, joint ownership shall apply, and absent an agreement signed by all owners in interest, equal ownership interests will be presumed. In situations where more than one Developer is working on an Institute Funded Project, or more than one Participant is working on a non-Institute Funded project but utilizing Institute facilities and/or equipment, the Institute encourages, and may require a "Project IP Plan" or the like such as in response to a Project Call whereby all entities involved negotiate and agree to, prior to the start of such project, the terms of ownership, licensing, continued maintenance, dispute resolution and any restrictions on publication of either jointly owned Intellectual Property or individually owned Intellectual Property the disclosure of which may impact another Developer's or Participant's Intellectual Property. Notwithstanding the foregoing which is set forth for convenience purposes, legal ownership in Intellectual Property shall at all times be determined by applicable United States law and regulation.

3.5 Data. Data generated pursuant to an Institute Funded Project ("**Institute Funded Data**") shall be owned by the Developer(s) that generated it, and interests therein shall be determined according to the same procedures as set forth in this Section 3 (Ownership), unless an agreement stating otherwise is mutually agreed upon by the Institute and other parties involved. The USG retains rights to Institute Funded Data consistent with the authorities of the Department of Defense and applicable published Office of Management and Budget guidance. Data generated *without* Institute Funding ("**Pre-Existing Data**") shall remain the property of the original owner. Institute Funded Data and Pre-Existing Data (provided the Pre-Existing Data is marked as confidential) shall be held in confidence according to the confidentiality provisions of this IPP, the Participation Agreement and any Development Agreement, unless with respect to Pre-Existing Data it is approved in writing or released for public disclosure by the owner(s) thereof. Protection and non-use of proprietary Data requires that all proprietary Data must be properly marked as proprietary. If any Institute Funded Data or Pre-Existing Data presented to the Institute or Participants is not marked as proprietary, then the Institute and all then-current Participants may use such Data internally for research and development purposes, but not commercialization, on a non-exclusive, royalty-free, non-transferable, non-sublicensable basis for, with respect to the Institute as long as it exists, and with respect to such Participant for the duration of its agreement with the Institute.

4. LICENSING

4.1 United States Government. The Institute and each Developer, hereby grant and will grant to the USG a non-exclusive, non-transferable, royalty-free, fully paid-up, worldwide perpetual and irrevocable license under all intellectual property rights the Institute or respective Developer has in and to the IDIP (excluding trademarks and services marks) to use, modify, reproduce, release, perform, display or disclose within the USG the IDIP, including any technical Data, non-commercial

software and non-commercial software documentation, for any government purpose, provided that should the IDIP contain any Commercial Computer Software Rights, the USG may procure such rights according to the applicable Developer's or the Institute's customary license, as such terms are defined by DFARS 252.227-7013 and 252.227-7014, and provided further that the USG will have unlimited rights in all Data delivered without proprietary markings.

4.2 Internal Evaluation License. Each Developer hereby grants and will grant to the Institute and each Participant, other than those in a designated "observer" tier, Tier 3 Academic and Non-Profit Participants and S&L Government, and the Institute hereby grants and will grant to the same, a non-exclusive, royalty-free, non-transferable, worldwide (to the extent it has such rights) license under all intellectual property rights (excluding trademarks and services marks) to make, practice, reproduce, modify, integrate, make derivative works from, display, perform and otherwise use the portion of the IDIP owned by such entity solely internally, without the right to sublicense, for the purposes of further evaluation and research and development, but not commercialization or other exploitation, for the duration of the Institute's existence with respect to it as a licensee, and for the duration of Participant's agreement with the Institute with respect to Participant as the licensee. Access to the IDIP will be made upon written request to the Institute and according to any procedures and protocols adopted by the Institute to provide documented evidence of access. This evaluation license does not provide a license to sell or distribute any product or process using or derived from the IDIP. Ownership of or any other rights in and to, including ability to file for legal protection for, any improvement, extension or derivative of the IDIP or any add-on or compatible IP created or developed pursuant to this evaluation license shall be determined according to applicable United States law and regulation, provided that to the extent an evaluation licensee is entitled to any such rights, it hereby agrees to make a license to such rights available on terms at least commensurate with those set forth in subsection 4.4 (Availability of Commercial License) to the owner(s) of the evaluated IDIP as well as to any then-current Participant that would be entitled to a license pursuant to subsection 4.4.

4.3 Internal Copyright License. If a Participant voluntarily chooses to provide any of its Background IP to an Institute discussion, Project or activity, such Participant by such action thereby grants and agrees it will grant to the Institute, each other Participant and each Developer a non-exclusive, royalty-free, non-transferable, worldwide (to the extent it has such rights) license under its copyrights to reproduce, create derivative works, distribute, display and perform such Participant Background IP solely internally, without the right to sublicense, and solely within the context of and for the duration of the Institute or its successor-in-interest's existence or such recipient entity's participation in or work on behalf of the Institute and solely for the purpose of such Institute discussion, Project or activity for which it was provided, subject to the provisions of confidentiality and disclaimers of warranties and liabilities set forth in this IPP. For example, if a Participant provides to the Institute a white paper, technical specification document, summary or abstract, the Institute shall have the right to internally distribute such document to its Participants without having to enter into a separate copyright license agreement. This grant shall not be construed as a waiver of any separate mutually agreed confidentiality obligation with respect to any such provided Participant Background IP. For the sake of clarity, this subsection does not mandate any access to Participant's Background IP or affect Participant's ownership or patent rights therein; its role is to streamline the legal technicalities of the foreseeable scenario wherein Participants choose to circulate Participant writings or documentation.

4.4 Availability of Commercial License. Each Developer and the Institute hereby agrees to grant to any then-current Corporate, Academic or Non-Profit Participant, other than those Participants in a designated "observer" tier or Tier 3 Academic or Non-Profit Participants, upon request and on commercially

reasonable and nondiscriminatory terms which may include a royalty or other compensation, a non-exclusive, transferable (at least to a successor-in-interest of all or substantially all of the relevant part of the business of such Participant), worldwide (to the extent it has such rights) license, including the right to sublicense through multiple tiers as reasonable to facilitate Participant's utilization of the license (e.g., to component manufacturers or subcontractors acting for or on behalf of Participant), under all intellectual property rights in and to the portion of the IDIP owned by such entity to practice, reproduce, integrate, display, perform and otherwise use such portion of the IDIP and to make, have made, offer to sell, and sell and otherwise distribute products that embody or are interoperable with such portion of the IDIP, or to otherwise externally exploit or monetize such IDIP (including but not limited to universities' incorporation of IDIP into coursework or curricula), provided that this obligation to license applies only to rights to IDIP arising subsequent to the licensee-Participant joining the Institute. Each Developer and the Institute separately retain the right to license pre-dated material at its discretion. In the event the Developer or Institute owns Background IP that would limit or prevent the contemplated use of the licensed IDIP as described herein ("**Blocking IP**"), provided such rights are available, then such entity's license to its portion of the IDIP must also include such Blocking IP, including but not limited to essential patents, but only in the limited context of and to the extent necessary to enable the licensee-Participant's use of the IDIP as contemplated in such license. For the sake of clarity, such license is not a "back-end" means for a licensee-Participant to gain access to Developer's or the Institute's background patent portfolio for general purpose use or in any other context. Any such commercial license will be subject to a separate agreement entered into by the relevant parties to be negotiated in good faith and may include a broader grant of rights (e.g., the right to modify or make derivative works) or more specific intellectual property terms, provided that it is not inconsistent with this IPP.

4.5 FHE Content Portal. The Institute will develop and manage an online archive of documents, videos and/or other FHE-related content ("**FHE Content Portal**"), which will be populated in part by FHE-related content created by the Institute, voluntarily provided by Participants as In-Kind Contributions or otherwise, or required to be provided by Developers pursuant to Development Agreements. Each such content submission to the Institute will be governed by a license agreement to be entered into by the relevant parties prior to submission, and shall not be subject to the IDIP licensing provisions in this IPP. Subject to the terms and conditions that shall be presented for acceptance prior to access to the FHE Content Portal, the Institute shall make access to and use of the FHE Content Portal available to Participants, provided such access shall be on a limited basis to any Participant in a designated "observer" tier, Tier 3 Academic or Non-Profit Participants or any S&L Government. Notwithstanding subsection 8.2 (External Disclosure / Publication), the Institute shall have the right to make the FHE Content Portal available to non-Participants on a fee-bearing basis or other terms no more favorable than those offered to Participants.

4.6 Developer Discretion. As part of solicited responses to a Project Call, the Institute may request a prospective-Developer to specify, that if selected for the Project, whether the Developer would grant a broader set of IP rights to Participants or the Institute with respect to such Project. Developer's response to such a request is within Developer's discretion, and no additional grant of rights is mandated by this IPP.

4.7 Other Licenses. Should a Participant desire to obtain broader rights than granted in or provided for in this IPP or the right to otherwise use another party's Background IP, Participant must enter into an agreement directly with the owner(s) of the relevant intellectual property. This IPP does not mandate nor restrict (a) the availability or terms of such other agreements or
(b) to whom an intellectual property owner may license its rights (e.g., to entities that do not

participate in the Institute). The licenses granted in this IPP apply only to rights to IDIP arising subsequent to the licensee-Participant joining the Institute. The Institute's Governing Council retains the right to approve the terms upon which a request may be granted to gain access to IDIP created prior to date of Participant's joining.

4.8 Export Control. Export control (International Traffic In Arms Regulation (ITAR) 22 CFR 120-131, or Export Administration Regulations (EAR) 15 CFR 710-774) do not apply to the overall Institute. However, export control may apply to individual applied research projects, depending on the nature of the research tasks. Under no circumstances may foreign entities (organizations, companies or persons) receive access to export controlled information unless proper export procedures have been satisfied. The Institute will address participation by foreign entities (organizations, companies or persons) on a case-by-case basis. Should any portion of the IDIP, contributed Background IP, Institute Funded Data or contributed Pre-Existing Data be subject to export control, any license to use such intellectual property or data internally, commercially or otherwise is and will be available to foreign Participants, and will be deemed to be valid, only to the extent applicable export control laws permit. A U.S. government export control license may be required in order to effect transfer of covered technology to foreign nationals, and while the Institute or Participant may endeavor to secure such licenses, no guarantee of issuance is made hereunder.

4.9 Trademarks. The Institute hereby grants to each Participant a non-exclusive, nontransferable, royalty-free, personal, worldwide license for the duration of Participant's agreement with the Institute to use any name, logo or design the Institute adopts (collectively, "**Institute Trademarks**") to identify Participant as participating in the Institute and to use them in association with a link to the Institute website, provided that Participant may not use the Institute Trademarks to state or imply that the Institute certifies, approves or endorses Participant's products or services. Each Participant hereby grants to the Institute a non-exclusive, nontransferable, royalty-free, personal, worldwide license for the duration of Participant's agreement with the Institute to use Participant's business name as stated on the such agreement and, if the Participant voluntarily provides any logo, design or other business name to the Institute (collectively with its business name, "**Participant's Trademarks**"), to use the same solely in connection with identifying Participant as participating in the Institute, provided that the Institute will give Participant reasonable advance notice to review and approve the Institute's proposed use of any logo or design, such approval not to be unreasonable withheld or delayed. Each party shall maintain the other party's Trademarks exactly as provided by the owner thereof and no party shall make any alteration of another party's Trademarks. Each party shall supply the other party with suitable specimens of its use of the other party's Trademark(s) upon reasonable
notice, and shall remedy any deficiencies in its use of any of the Trademark(s) within thirty (30) days' notice from the other party. Except as prohibited by law, each party agrees that it will do nothing inconsistent with the other party's ownership of the Trademark(s), either during the term of this IPP or afterwards, including but not limited to challenging any registration of the other party's Trademark(s) or filing any registration application for the same. Each party agrees that its use of the other party's Trademark(s) shall inure to the benefit of and be on behalf of the other party. Any goodwill arising out of a party's use of the other party's Trademark(s) shall inure solely to the benefit of the owner of such Trademark(s). Any use of a Participant's Trademark by another Participant, or any expanded use of a Trademark from that set forth above, is neither permitted nor mandated by this Agreement and such use would be authorized only if the relevant parties voluntarily enter into a separate agreement. Each Participant agrees not to use the name of another Participant in sales promotion work, advertising, or any other form of publicity without the prior written permission of the named Participant.

5. DISCLOSURE OF INTELLECTUAL PROPERTY RIGHTS

5.1 General Disclosure Standard. All individuals participating in any way in the Institute activities, including but not limited to Project teams, are strongly encouraged on an ongoing basis to disclose to the Institute intellectual property rights, including but not limited to patents or patent applications held by themselves, the entity they represent or third-parties where such patents or patent applications include essential claims that would potentially limit or block the contemplated use of the materials being created, developed, reviewed or revised by the Institute.
All disclosures pursuant to this subsection will be subject to this IPP's confidentiality provisions and will not constitute publication or external disclosure of the subject IP. Disclosure should include the most complete information possible concerning the preexisting intellectual property rights and a brief indication of how such rights may potentially limit or block the Institute's contemplated advancements.

5.2 Developer Disclosure. With respect to the IDIP, each Developer is strongly encouraged to identify in writing to the Institute any intellectual property rights owned by Developer, including but not limited to essential patents, or any third-party rights, any of which are actually known by the individual employees or representatives of Developer performing under a Development Agreement and would potentially limit or block a Participant's exploitation of the licenses contemplated hereunder. All disclosures pursuant to this subsection will be subject to this IPP's confidentiality provisions and will not constitute publication or external disclosure of the subject IP. Regardless of disclosure, Developer's obligation to license such rights that it owns is set forth in Section 4 (Licenses).

5.3 Participant Disclosure of Intent to License. Participant is under no obligation, nor is any license implied, by virtue of this IPP to license any Participant Background IP at all or subject to specified terms, except to the limited extent with respect to voluntarily contributed documentation as set forth in subsection 4.3 (Internal Copyright License) and Blocking IP for a Participant in its context as a Developer as set forth in subsection 4.4 (Availability of Commercial License). In the interest of the cooperative environment established by the Institute and to give the relevant Project team the opportunity to develop a solution that works around any potentially blocking right, Participant agrees that with respect to any Participant Background IP that it voluntarily contributes in writing to an Institute Project that is subject to the terms of a Development Agreement, Participant shall disclose in writing to the Institute at the time of such contribution, but in no event more than thirty (30) days thereafter, whether it will license such Participant Background IP at all, and if so, whether it will do so to all Participants and/or other third parties on reasonable and nondiscriminatory terms including but not limited to on a royalty-free or reasonable royalty basis. Participant shall simultaneously disclose any third-party rights actually known by Participant to exist in such Participant Background IP, to the extent that the Participant can do so without breaching a third-party confidence. Furthermore, Participant agrees that to the extent it becomes aware of its Participant Background IP that it did not contribute but is nonetheless incorporated or implicated in any Institute technical document circulated to all Participants, Participant shall disclose in writing to the Institute within thirty (30) days of such circulation the existence of such Participant Background IP and whether it will license such Participant Background IP at all, and if so, whether it will do so to all Participants and/or other third parties on reasonable and nondiscriminatory terms including but not limited to on a royalty-free or reasonable royalty basis. In case of a discrepancy about whether such technical document implicates any Participant Background IP that is set forth in an unpublished patent application, the Participant agrees, upon signing of a non-disclosure agreement, to provide the unpublished patent application to the relevant Institute project team for review. Disclosure under this subsection 5.3 (Participant Disclosure of Intent to License) is based on an individual

representative's own actual and personal knowledge, and no knowledge of the Participant on whose behalf the representative is acting (or its employees) nor requirement to review or search its patent or other intellectual property portfolios shall be imputed to such individual representative. Each Participant agrees that it will not intentionally isolate its representatives from potentially relevant patent information within the Participant organization so as to deliberately avoid the terms of this subsection. Breach of this subsection 5.3 (Participant Disclosure of Intent to License) shall be cause for the Institute at its election to terminate Participant's Participation Agreement. Notwithstanding the foregoing, if a Participant voluntarily contributes its Background IP for which it seeks credit applicable to its In-Kind Contribution obligations to the Institute and/or Project cost share, such credit shall be deemed Institute Funding, such Background IP shall be deemed to be IDIP, meaning that any provision of this IPP relating to a Developer's rights and obligations with respect to its IDIP (e.g., present granting of evaluation license, availability of commercialization license) shall be deemed to apply equally to such Participant with respect to such Background IP.

5.4 Transfer of Intellectual Property Rights

Each Developer and Participant agrees that it will not transfer to any affiliate, third party or other entity any patents, patent applications or other intellectual property rights for the purpose of circumventing the disclosure requirements of this IPP, and any such transfer shall be grounds for the Institute's termination of a Participant's participation agreement or a Developer's Development Agreement with the Institute. Upon written notice to the Institute, a Developer or Participant may transfer to a third party any intellectual property right it owns in and to the IDIP,provided that such transfer shall be expressly subject to the terms and conditions of this IPP including but not limited to the on-going obligation to license by the acquirer and any of its subsequent transferees. Upon the Institute's dissolution, any intellectual property rights owned by the Institute may be transferred in whole to a successor-in-interest who agrees to abide by the terms of this IPP and assume the Institute's rights and responsibilities; if no such successor-in-interest exists, then upon dissolution, the Institute thereby grants each then-current Participant, other than Participants in a designated "observer" tier, Tier 3 Academic or Non-Profit Participants and S&L Governments, a non-exclusive, royalty-free, perpetual, worldwide, non transferable (except to a successor-in-interest), non-sublicenseable (except to a subcontractor to the extent working on Participant's behalf), license to make any use of the Institute-owned intellectual property.

6. PARTICIPANT PRIORITY

If there is an insufficient supply of a Developer's, Participant's or the Institute's commercial embodiment of IDIP to meet demand, then other Participants that are current Institute Participants at such time may obtain such commercial products on a priority right-of-first-acceptance basis before such products are offered to non-Participants.

7. COOPERATIVE DISPUTE RESOLUTION

Developers and Participants agree to submit for non-binding cooperative mediation:
(a) to the Institute's Governing Council any disagreements regarding accessibility of the IDIP; and
(b) to the Technical Council any disagreements regarding ownership interests in the IDIP.
Such mediation is non-exclusive to, and in no way limits, the rights, remedies and procedures that may otherwise be available to any Developer, Participant or other party. Where non-binding mediation fails to provide a mutually agreeable result, the Participation Agreement provides for a dispute resolution procedure.

8. CONFIDENTIALITY

8.1 Internal Disclosures. All information disclosed as a part of the Institute's Program, Projects or other activities shall be deemed non-confidential within the Institute except as otherwise agreed to in a written agreement between individual Participants or as provided in the Participation Agreement; provided that, if a Participant voluntarily contributes Participant Background IP to a working group or other project team, then no other Participants shall disclose or exchange information about the same outside of such working group or project team prior to approval by such project team (which shall require the consent of the contributing Participant) or without the prior written approval by the Participant that made the contribution.

8.2 External Disclosures / Publications.
(a) IDIP. If a Participant or Developer desires to disclose through publication, technical paper or otherwise any IDIP to which it owns the rights, such Participant or Developer nonetheless agrees to provide at least thirty (30) days written notice of such intended disclosure to the Institute and any other affected Participant. Participant or Developer agrees to delete from such disclosure any confidential information as identified in writing by the Institute or other Participant or Developer. The Institute may delay such disclosure by a maximum of ninety (90) days from the date of such notice or as the affected parties may otherwise agree to accommodate a patent application filing or ameliorate a material adverse effect upon a Participant or the Institute. The purpose of this proactive disclosure is to give any affected parties an opportunity to identify and resolve any inadvertent disclosure of confidential information, the timely filing for patent protection and any other material adverse effect. Except as provided above in this subsection (a), Participants and Developers shall not, without prior notice to the Institute and the prior written authorization of the owner(s) of the subject IDIP, publicly disclose outside of the Institute any IDIP, except to the extent that it is already generally known or available to the public through no fault of the disclosing party or is clearly intended for public release, such as Institute-approved marketing and promotional materials (any approval to require the prior consent of the relevant IDIP owner(s)), or as otherwise provided in the Participation Agreement or a Development Agreement.
(b) Marked Materials. Each Participant agrees that it will maintain in confidence, with at least the same degree of care that it uses to protect its own proprietary material and in no event with less than reasonable care, and not disclose outside the Participants of the Institute any communication or information that has been marked "confidential" or orally designated as confidential followed by written confirmation within thirty (30) days of disclosure, by the discloser thereof. This obligation of confidentiality shall not apply to information that (a) was generally known and publicly available prior to disclosure;
(b) becomes generally known and publicly available after disclosure without breach of applicable confidentiality obligations;
(c) becomes generally known and publicly available by an authorized act of the Institute;
(d) is already in Participant's possession prior to disclosure as shown by Participant's files and records prior to the time of disclosure; (e) is obtained by the Participant from a third party without breach of applicable confidentiality obligations; (f) is independently developed by Participant without use of or reference to the marked confidential information, as shown by documents and other competent evidence in Participant's possession; and/or (g) Participant reasonably believes it is required to disclose in order to comply with any valid order of a court of competent jurisdiction provided Participant gives reasonable notice and disclosure to the affected party of the relevant court action.

8.3 Other Confidentiality Provisions. Further terms and conditions of confidentiality may apply to Participants and Developers respectively as set forth in the Participation Agreement and any Development

Agreement.

9. CYBERSECURITY

The Institute, each Participant and each Developer agree to utilize commercially reasonable measures to maintain the confidentiality and cybersecurity of the IDIP with respect to such party's equipment, networks, facilities and/or personnel. Such measure should be designed to detect and protect from unusual behavior and attempts to steal or alter IDIP or Institute Generated Data. The Institute encourages the use of best practices, as appropriate to Participant's or Developer's status, and refers Participants and Developers to cybersecurity measures developed by the Security and Exchange Commission's OCIE cybersecurity initiative guidelines available at https://www.sec.gov/ocie/announcement/Cybersecurity-Risk-Alert--Appendix---4.15.14.pdf

10. NO REPRESENTATIONS OR WARRANTIES

THE INSTITUTE AND PARTICIPANT PROVIDES IDIP OR PARTICIPANT BACKGROUND IP, IF ANY, "AS IS" AND "WITH ALL FAULTS". NEITHER THE INSTITUTE NOR ITS PARTICIPANTS MAKE ANY WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, REGARDING THE IDIP OR ANY PARTICIPANT BACKGROUND IP, OR USE THEREOF, INCLUDING BUT NOT LIMITED TO THE EXISTENCE OR CHARACTER OF ANY INTELLECTUAL PROPERTY RIGHTS CONTAINED THEREIN. ALL IMPLIED WARRANTIES AS TO SATISFACTORY QUALITY, PERFORMANCE, MECHANTABILITY, TITLE, FITNESS FOR PARTICULAR PURPOSE OR NONINFRINGEMENT ARE EXPRESSLY DISCLAIMED.

11. LIMITATION OF LIABILITY

IN NO EVENT SHALL THE INSTITUTE OR BUYER BE LIABLE TO ANY OTHER PARTICIPANT OR TO ANY OTHER THIRD PARTY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, CONSEQUENTIAL, EXEMPLARY OR ANY OTHER DAMAGES OF ANY KIND WITH RESPECT TO THE IDIP OR ANY PARTICIPANT BACKGROUND IP, RESPECTIVELY, INCLUDING BUT NOT LIMITED TO ANY LOST PROFITS, REVENUE, SAVINGS, BUSINESS, DATA OR GOODWILL, OR THE COST OF PROCURING SUBSTITUTE GOODS OR SERVICES, HOWEVER CAUSED, WHETHER FOR BREACH OR REPUDIATION OF CONTRACT, TORT, BREACH OF WARRANTY, NEGLIGENCE, OR OTHERWISE ON ANY THEORY OF LIABILITY, WHETHER OR NOT THE INSTITUTE OR PARTICPANT WAS ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGES.

12. BASIS OF BARGAIN

The parties acknowledge that the Institute has made the IDIP available in reliance upon the limitations of liability and the disclaimers of warranties and damages set forth herein, and in the event Participant voluntarily makes Participant Background IP available, it does so on the same reliance, and that the same form an essential basis of the bargain between the parties. The parties agree that the limitations and exclusions of liability and disclaimers specified in this IPP will survive and apply even if found to have failed of their essential purpose. Terms and conditions regarding a Developer's representations, warranties and liabilities will be set forth in the respective Development Agreement.

13. TERM

This IPP is incorporated by reference into any Participant Agreement and any Development Agreement and any other Institute agreement that expressly incorporates it by reference, and shall be effective as of and shall expire or terminate as of the dates set forth in such agreements. The following sections of this IPP shall survive its termination or expiration: 3 (Ownership), 4.1 (United States Government), 4.2 (Evaluation License, but only with respect to an evaluation licensee's potential obligation to make licenses available), 4.3 (Internal Copyright License), 4.4 (Commercial License), 5.4 (Transfer of Intellectual Property Rights regarding Institute's dissolution), 6 (Participant Priority), 8 (Confidentiality), 9 (Cybersecurity), 10 (No Representations and Warranties), 11 (Limitation of Liability), 12 (Basis of Bargain), 13 (Term), 14 (Revisions to IPP) and 15 (Miscellaneous). The termination or expiration of this IPP shall not affect any licenses granted pursuant to an agreement separate from this IPP, and the terms and conditions of such agreement shall control such grant.

13. REVISIONS TO IPP

Any revisions or other amendments to this IPP will become effective only upon approval by a simple majority vote of all occupied Institute Governing Council seats, and only after the Governing Council takes reasonable measures to notify all Participants and then-current Developers in writing (such as by e-mail) of such revisions; provided, however, that ministerial changes to this IPP (such as proofreading corrections or formatting changes) or changes that simply clarify and/or do not materially alter the meaning of a provision herein may be unilaterally implemented by the Institute's Executive Director and effective immediately, so long as the Executive Director takes reasonable measures to communicate all such changes to the Governing Council, all Participants and then-current Developers. If a Participant or Developer objects to a substantive revision or amendment to this IPP, such party may terminate its relevant agreement(s) in total with the Institute by delivering notice of resignation and termination to the Executive Director within thirty (30) days of the Institute's notice of changes to this IPP, in which case such Party's agreements shall continue in full force and effect until the end of each agreement's respective term and shall remain subject to the IPP provisions in effect immediately prior to the Institute's notice of change.

14. MISCELLANEOUS

If any part of this IPP is found invalid or unenforceable, that part will be enforced to the maximum extent permitted by law and the remainder of this IPP will remain in full force. In case of conflict between this IPP and the Participation Agreement or a Development Agreement, this IPP shall control. Nothing in this IPP shall be construed as creating any partnership, joint venture or agency relationship among or between any parties hereto.