

CUSTOMER CONTRACT REQUIREMENTS
Proprietary
CUSTOMER CONTRACT Hayden

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:

DEFINITIONS

- Data: Recorded information, regardless of form or method of recording, which includes but is not limited to, technical data, software, mask works, and trade secrets. The term does not include financial, administrative, cost, pricing, or management information and does not include subject inventions, included in ARTICLE FOR INVENTIONS AND PATENTS.
- Days: Calendar days unless stated otherwise.
- Foreign Firm or Institution: A firm or institution organized or existing under the laws of a country other than the United States, its territories, or possessions. The term includes, for purposes of this Agreement, any agency or instrumentality of a foreign government; and firms, institutions or business organizations which are owned or substantially controlled by foreign governments, firms, institutions, or individuals.
- Government: The government of The United States of America.
- Government Purpose Rights: The rights to use, modify, reproduce, release, perform, display, or disclose technical data within the Government without restriction; and 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.
- Invention: Any invention or discovery, which is or may be patentable or otherwise protectable under Title 35 of the United States Code.
- Know-How: All information including, but not limited to discoveries, formulas, materials, inventions, processes, ideas, approaches, concepts, techniques, methods, software, programs, documentations, procedures, firmware, hardware, technical data, specifications, devices, apparatus and machines.
- Made: When used in relation to any invention means the conception or first actual reduction to practice of such invention.
- Practical Application: To manufacture, in the case of a composition of product; to practice, in the case of a process or method, or to operate, in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is capable of being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.
- Property: Any tangible physical property, whether real or personal, other than property actually consumed during the execution of work under this Contract. For purposes of this Contract, "property" does not include the deliverable prototype, which is the high-level and source code implementation of the advanced algorithm(s).
- Prototype: A physical or virtual model used to evaluate the technical or manufacturing feasibility or military utility of a technology, process, concept, end item or system.
- Prototype Complete: Successful completion of the Hayden prototype project occurs upon the written determination of the appropriate approving official that efforts conducted under the Hayden Prototype OTA: (1) met the key technical goals of the project; (2) satisfied success metrics and/or milestones incorporated into the prototype OTA; or (3) accomplished a particularly favorable or unexpected results that justifies the prototype transition to production. Furthermore, successful completion can occur prior to the conclusion of the Hayden prototype project to allow the Government to transition to any aspect of the prototype project

determined to provide utility into production while other aspects of the prototype project have yet to be completed.

- Small Business: A small business concern as defined under section 3 of the Small Business Act (15 U.S.C. § 632).
- Subject Invention: Any invention conceived or first actually reduced to practice in performance of work under this Contract.
- Technical Direction: A directive to Seller from Buyer that approves, disapproves, or directs changes in prioritization, technical approaches, solutions, designs, or refinements; fills in details or otherwise completes the general description of work or documentation items; directs compliance with, or exception to, reference documents; shifts emphasis and/or priorities among work areas or tasks; or furnishes similar instruction to Seller. Technical direction includes requiring studies, risk reducing activities, and pursuit of certain lines of inquiry regarding matters within the general technical scope, and requirement outlined in the technical requirements of the Contract.
- Technology: Discoveries, innovations, how-how and inventions, whether patentable or not, including computer software, recognized under U.S. law as intellectual creations to which rights of ownership accrue, including, but not limited to patents, trade secrets, mask works and copyrights developed under this Contract.
- Unlimited Rights: Rights to use, duplicate, release, or disclose Data in whole or in part, in any manner and for any purposes whatsoever, and to have to permit others to do so.

COMPLIANCE WITH LAWS OF GENERAL APPLICABILITY

The term “Contractor” shall mean “Seller”.

Contractor shall comply with the following laws:

- (a) Title VI of the Civil Rights Act of 1964 as amended, 42 U.S.C. Sections 2000-d, et seq.
- (b) Procurement Integrity Act, Chapter 21 of Title 41, 41 USC 2101, et seq.
- (c) Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment, including
 - (1) Prohibitions of Section 889(a)(1)(A) and (B) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub L. 115-232);
 - (2) The Contractor is not prohibited from providing—
 - (i) A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or
 - (ii) Telecommunications equipment that cannot route, redirect user data traffic, or permit visibility into any user data or packets that such equipment transmits or otherwise handles;
 - (3) Reporting. In the event the Contractor identifies covered communications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during Contract performance, or the Contractor is notified of such by a subcontractor at any tier or by any other source, the Contractor shall report the following information to Buyer:
 - (A) Within one business day from the date of such identification or notification: the contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brank; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.
 - (B) Within 8 business days of submitting the information in paragraph (3)(A) of this article; any further available information about mitigation actions undertaken or recommended. In addition, the Contractor shall describe the efforts it undertook to prevent use or submission of covered communications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.
 - (4) Subcontracts. The Contractor shall insert the substance of this article, including this paragraph, in all subcontracts and other contractual instruments, including subcontracts for the acquisition of commercial items.

PROTECTION OF NON-PUBLIC INFORMATION

The term “Performer” shall mean “Seller”.

(a) Definitions. As used in this clause -

Confidential Information: All material, non-public, business-related information, written or oral, whether or not it is marked as such, that is disclosed or made available to the receiving party, directly or indirectly, through any means of communication or observation.

Disclosing Party: The Performer, to include their subcontractors or suppliers, or the Government who discloses Non-Public Information as contemplated by the subsequent paragraphs.

Receiving Party: The Performer, to include their subcontractors or suppliers, or the Government who receives Non-Public Information disclosed by a Disclosing Party.

Non-Public Information: Information and materials of a Disclosing Party which are designated as Confidential Information or as a Trade Secret, in writing, by such Disclosing Party, whether by letter or by use of an appropriate stamp or legend, prior to or at the same time any such information or materials are disclosed by such Disclosing Party to the Receiving Party. "Non-Public Information" includes any information and materials considered a Trade Secret by the Performer on its own behalf or on behalf of their subcontractors or suppliers.

Trade Secret: All forms and types of financial, business, scientific, technical, economic, engineering or otherwise proprietary information, including, but not limited to, patterns, plans, compilations, program devices, formulas, designs, prototypes, methods, techniques, processes, procedures, programs, or codes, whether tangible or intangible, and whether or how stored, compiled, or memorialized physically, electronically, graphically, photographically, or in writing if (a) The owner thereof has taken reasonable measures to keep such information secret; and (b) The information derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable through proper means by, the public.

(b) Exchange of Information. The Government and/or Buyer may, from time to time, disclose Government Non-Public Information to the Performer and its subcontractors or suppliers, in connection with a particular project, and the Performer and its subcontractors or suppliers, may from time to time disclose information that is a Trade Secret or Confidential Information to the Government and/or Buyer in connection with the Agreement or performance thereunder. Neither the Government and/or Buyer nor the Performer or their subcontractors or suppliers shall be obligated to transfer Non-Public Information independently developed by the Parties, absent an express written Agreement between the Parties providing the terms and conditions for such disclosure.

Notwithstanding the foregoing, materials and other information which are orally, visually, or electronically disclosed by a Disclosing Party, or are disclosed in writing without an appropriate letter, stamp, or legend, shall constitute Non-Public Information if such Disclosing Party, within thirty (30) calendar days after such disclosure, delivers to the Receiving Party a written document or documents describing the material or information and indicating that it is Non-Public Information, provided that any disclosure of information by the Receiving Party prior to receipt of such notice shall not constitute a breach by the Receiving Party of its obligations under this Article.

(c) Confidentiality and Authorized Disclosure. The Receiving Party agrees, to the extent permitted by law, that Non-Public Information shall remain the intellectual property of the Disclosing Party (no one shall disclose unless they have the right to do so), and that, unless otherwise agreed to by the Disclosing Party, Non-Public Information and Trade Secrets shall not be disclosed, divulged, or otherwise communicated by it to third parties or used by it for any purposes other than in connection with specified project efforts and the licenses granted in ARTICLES FOR INVENTIONS AND PATENTS, and DATA RIGHTS provided that the duty to protect such "Non-Public Information" and "Trade Secrets" shall not extend to materials or information that: (1) Are received or become available without restriction to the Receiving Party under a proper, separate Agreement; (2) Are not identified with a suitable notice or legend per Article entitled "Non-Public Information" herein; (3) Are lawfully in possession of the Receiving Party without such restriction to the Receiving Party at the time of disclosure thereof, as demonstrated by prior written records; (4) Are or later become part of the public domain through no fault of the Receiving Party; (5) Are received by the Receiving Party from a third party having no obligation of confidentiality to the Disclosing Party that made the disclosure; (6) Are developed independently by the Receiving Party without use of Confidential Information or Trade Secrets, as evidenced by written records; and/or (7) Are required by law or regulation to be disclosed; provided, however, that the Receiving Party has provided written notice to the Disclosing Party promptly to enable such Disclosing Party to seek a protective order or otherwise prevent disclosure of such information.

(d) Return of Proprietary Information. Upon the request of the Performer, the Government and/or Buyer shall promptly return all copies and other tangible manifestations of the Non-Public Information or Trade Secrets

disclosed. Upon request by the Government and/or Buyer, Performer shall promptly return all copies and other tangible manifestations of the Non-Public Information disclosed by the Government and/or Buyer. As used in this section, tangible manifestations include human readable media as well as magnetic and digital storage media. In the event the return of all tangible manifestations is not practicable, a Party may propose an alternative process to ensure the verifiable destruction of such tangible manifestations. Both Parties must agree upon such alternative process, in writing, prior to implementation.

(e) Protection of Certain Information from Disclosure. Disclosure by the Government of the following information is not required and may not be compelled under 5 U.S.C. § 552 (commonly known as the Freedom of Information Act (FOIA)) for five (5) years after the date on which the information is received by the Government. Such information is a proposal, proposal abstract, and supporting documents; a business plan submitted on a confidential basis; or technical information submitted on a confidential basis. In any case, this provision applies to information that is in the records of the Government if the information was submitted by Performer in a competitive or noncompetitive process having the potential for resulting in an award authorized under 10 U.S.C. § 4022.

(f) Term. Except to the extent covered by and subject to other provisions of this Agreement or the specific Project Agreement, the obligations of the Receiving Party under this Article shall continue for a period of five (5) years after the expiration or termination of this Agreement. The Government and/or Buyer and the Performer shall flow down the requirements of this Article to their respective personnel, agents, partners, team members, subcontractors, and suppliers receiving such Non-Public Information under this Agreement.

INVENTIONS AND PATENTS

(a) Allocation of Principal Rights

The Seller shall retain ownership throughout the world to each Subject Invention consistent with the provisions of this Article and 35 U.S.C. § 202, provided the Seller has timely pursued a patent application and maintained any awarded patent and has not notified the Government (in accordance with paragraph (b) below) that the Seller does not intend to retain title.

The Seller shall retain ownership throughout the world to background inventions. Any invention conceived of or first actually reduced to practice in support of a Seller's internal development milestone outside the funded effort shall be a background invention of the Seller and shall not be classified as a Subject Invention, provided that an invention conceived of in support of an internal development milestone that is first actually reduced to practice under this Contract in support of other than internal development milestones shall be considered a Subject Invention.

The Government is granted a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for, or on behalf of the United States, the Subject Invention throughout the world.

(b) Invention Disclosure, Election of Title, and Filing of Patent Application

The Seller shall disclose each Subject Invention to the Buyer on a DD Form 882 within two (2) months after the inventor discloses it in writing to the Prototype Inventor's personnel responsible for patent matters.

If the Seller determines that it does not intend to retain title to any Subject Invention, the Seller shall notify the Buyer in writing, within eight (8) months of disclosure to the Government. However, in any case where publication, sale, or public use has initiated the one (1)-year statutory period, wherein valid patent protection can still be obtained in the United States, the period for such notice is shortened to at least sixty (60) calendar days prior to the end of the statutory period.

(c) Conditions When the Government May Obtain Title

Upon written request by the Buyer, the Seller shall convey title to any Subject Invention to the Government under any of the following conditions:

- (1) If the Seller fails to disclose or elects not to retain title to the Subject Invention within the times specified in paragraph (b) of this Article; provided, that the Government may only request title within sixty (60) calendar days after learning of the failure of the Seller to disclose or elect within the specified times.

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

(3) In any country in which the Seller decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in reexamination or opposition proceedings on, a patent on a Subject Invention.

(d) Minimum Rights to the Seller and Protection of the Seller's Right to File

The Seller shall retain a nonexclusive, royalty-free license throughout the world in each Subject Invention to which the Government obtains title, except if the Seller fails to disclose the Subject Invention within the times specified in paragraph (b) of this Article. The Seller's license extends to the domestic (including Canada) subsidiaries and affiliates, if any, within the corporate structure of which the Seller is a party and includes the right to grant sublicenses of the same scope to the extent that the Seller was legally obligated to do so at the time the Prototype Award was made. The license is transferable only with the approval of the Government, except when transferred to the successor of that part of the business to which the Subject Invention pertains. The Government's approval for license transfer shall not be unreasonably withheld.

The Seller's domestic license, as described above, may be revoked or modified by the Government to the extent necessary to achieve expeditious practical application of the Subject Invention pursuant to an application for an exclusive license submitted consistent with appropriate provisions at 37 CFR Part 404. This license shall not be revoked in that field of use or the geographical areas in which the Seller has achieved practical application and continues to make the benefits of the Subject Invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of the Government to the extent the Seller, its licensees, or the subsidiaries or affiliates have failed to achieve practical application in that foreign country.

Before revocation or modification of the license, the Buyer shall furnish the Seller a written notice of its intention to revoke or modify the license, and the Seller shall be allowed thirty (30) calendar days (or such other time as may be authorized for good cause shown) after the notice to show cause why the license should not be revoked or modified.

(e) Action to Protect the Government's Interest

The Seller agrees to execute or to have executed and promptly deliver to the Buyer all instruments necessary to (i) establish or confirm the rights the Government has throughout the world in those Subject Inventions to which the Seller elects to retain title, and (ii) convey title to the Government when requested under paragraph (c) of this Article and to enable the Government to obtain patent protection throughout the world in that Subject Invention.

The Seller agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the Seller each Subject Invention made under this Subcontract in order that the Seller can comply with the disclosure provisions of paragraph (b) of this Article. The Seller shall instruct employees, through employee Subcontracts or other suitable educational programs, on the importance of reporting Subject Inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.

The Seller shall notify the Buyer of any decisions not to continue the prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceedings on a patent, in any country, not less than thirty (30) calendar days before the expiration of the response period required by the relevant patent office.

The Seller shall include, within the specification of any U.S. patent application and any patent issuing thereon covering a Subject Invention, the following statement: "This Invention was made with Government support under Agreement No. [Insert Agreement Number Here], awarded by the Government. The Government has certain rights in the Invention."

(f) March-in Rights

The Seller agrees that, with respect to any Subject Invention in which it has retained title, the Government has the right to require the Prototype Inventor, an assignee, or exclusive licensee of a Subject Invention to grant a non-exclusive license to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the Seller, assignee, or exclusive licensee refuses such a request, the Government has the right to grant such a license itself if the Buyer determines that:

- (1) Such action is necessary because the Seller or assignee has not taken effective steps, consistent with the intent of this Contract, to achieve practical application of the Subject Invention;
- (2) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the Seller, assignee, or their licensees; or
- (3) Such action is necessary to meet requirements for public use and such requirements are not reasonably satisfied by the Seller, assignee, or licensees.

(g) Authorization and Consent

The Government authorizes and consents to all use and manufacture of any invention described in and covered by a U.S. patent in the performance of this Contract.

(h) Notice and Assistance

The Seller shall report to Buyer, promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this Contract of which the Seller has knowledge.

In the event of any claim or suit against the Government on account of any alleged patent or copyright infringement arising out of the performance of this Contract or out of the use of any supplies furnished or work or services performed under this Contract, the Seller shall furnish to the Government, when requested by the Buyer, all evidence and information in the Seller's possession pertaining to such claim or suit. Such evidence and information shall be furnished at the expense of the Government except where the Seller has agreed to indemnify the Government.

(i) Lower Tier Agreements

The Seller shall include this Article, suitably modified, to identify the Parties, in all subcontracts or lower tier Agreements, regardless of tier, for experimental, developmental, or research work.

(j) Survival Rights

The obligations of the Government and the Seller under this Article shall survive after the expiration or termination of this Contract.

DATA RIGHTS**(a) Definitions. As used in this Article-**

Business Data: Recorded information, regardless of the form or method of the recording, including specific business data contained in a computer database, of a financial, administrative, cost or pricing, or management nature, or other information incidental to Contract administration or protected from disclosure under FOIA, 5 U.S.C. § 552(b)(4).

Commercial Computer Software License: The license terms under which commercial computer software is sold or offered for sale, lease, or license to the general public.

Computer Database: A collection of data recorded in a form capable of being processed and operated by a computer. The term does not include computer software.

Computer Program: A set of instructions, rules, or routines, recorded in a form that is capable of causing a computer to perform a specific operation or series of operations.

Computer Software: Computer programs, source code, source code listings, object code listings, design details, algorithms, processes, flow charts, formulae, and related material that would enable the software to be reproduced, recreated, or recompiled. The term does not include computer databases or computer software documentation.

Computer Software Documentation: Owner's manuals, users' manuals, installation instructions, operating instructions, and other similar items, regardless of storage medium, that explain the capabilities of computer software or provide instructions for using or maintaining the computer software.

Form, Fit, and Function Data: For Technical Data, it means information that describes the required overall physical, functional, and performance characteristics (along with the qualification requirements, if applicable) of an item, component, or process to the extent necessary to permit identification of physically and functionally interchangeable items. For computer software, it means information identifying source, functional characteristics, and performance requirements, but specifically excludes the source code, algorithms, processes, formulas, and flow charts of the software.

Government Purpose: Any activity in which the USG is a party, including cooperative Agreements with international or multi-national defense organizations, or sales or transfers by the USG to foreign Governments or international organizations. Government Purposes include providing Technical Data and Computer Software for use in competitive procurements and/or other transaction Agreements, but do not include the rights to use, modify, reproduce, release, perform, display, or disclose Technical Data and Computer Software for commercial purposes or the authorization of others to do so.

Government Purpose Rights: The rights of the USG to (a) use, modify, reproduce, release, perform, display, or disclose Technical Data or computer software within the Government without restriction; and (b) release or disclose Technical Data or computer software outside the Government, and to authorize persons to whom release has been made to use, modify, reproduce, perform, or display that technical data or computer software, provided that the recipient exercises such rights for Government purposes only.

Limited Rights: The rights of the USG to use, modify, reproduce, release, perform, display, or disclose Technical Data, in whole or in part, within the Government.

Restricted Rights: The rights of the United States Government to use non-commercial Computer Software within the Government.

Specially Negotiated License Rights: Rights to Data that have been specifically negotiated between the Buyer, Government and the Seller on behalf of the Seller whose proposal is part of the proposal selected by the Government under a call for proposals issued under the Buyer's OTA with the Government.

Technical Data: Recorded information (regardless of the form or method of the recording, including computer databases) of a scientific or technical nature (including computer software documentation). The term includes recorded information of a scientific or technical nature that is included in computer databases (See 41 U.S.C. § 403(8)). This term does not include Computer Software or Business Data.

Unlimited Rights: Rights to use, duplicate, release, or disclose, Data in whole or in part, in any manner and for any purposes whatsoever, and to have or permit others to do so.

(b) Data Category Definitions

Category A: Data developed and paid for totally by private funds, or the IR&D Funds of the Seller, or its subcontractor(s). Category A Data shall include, but not be limited to:

- (1) Data or other material provided by the Seller used in performance of this Subcontract which was not developed in the performance of work under that project, and for which the Seller retains all rights.
- (2) Any initial Data or technical, marketing, or financial Data provided at the onset of the project by the Seller that was used in preparation of proposals or other items prior to Contract award, including the proposal itself.

Category B: Data developed under this Contract that was accomplished partially with funding attributable to the USG under this Contract as well as other private sources (mixed funding). This does not include any Data developed under a previous Government Agreement, contract, or subcontract, in whole or in part.

Category C: Data developed exclusively with Government funds under this Contract.

Category D: Data that is otherwise publicly available or that has been released or disclosed by the Seller without restrictions on further use, release or disclosure, other than a release or disclosure resulting from the sale, transfer, or other assignment of interest in the Data to another party or the sale or transfer of some or all of a business entity or its assets to another party. This also includes Data in which the Government has obtained unlimited rights under another Government contract or Agreement or as a result of negotiations.

The parties to this Contract understand and agree that the Seller shall stamp all documents in accordance with this Article and that the FOIA and Trade Secrets Act (TSA) apply to such Data.

(c) Allocation of Principal Rights

Any Data developed outside of this Contract whether or not developed with any Government funding, in whole or in part, under a Government Agreement, contract, or subcontract shall have the rights negotiated under such prior Agreement, contract, or subcontract; the Government shall get no additional rights in such Data under this Contract.

The Seller grants the Government no rights to Category A Data, unless rights are specifically negotiated into this Subcontract on a per-item basis, such as a commercial computer software license, and set forth therein.

The Seller grants the Government a Government Purpose Rights license to all Category B and C Data that is also:

- (1) Technical Data pertaining to an item, component, or process;
- (2) Computer Software developed for direct performance of the Subcontract that is required to be delivered under this Subcontract;
- (3) Studies, analyses, test data, or similar data produced for this Subcontract, when the study, analysis, test, or similar work was specified as an element of performance;
- (4) Technical Data created in the performance of the Subcontract that does not require the development, manufacture, construction, or production of items, components, or processes;
- (5) Form, fit, and function data;
- (6) Data necessary for installation, operation, maintenance, or training purposes (other than detailed manufacturing or process data);
- (7) Computer software documentation required to be delivered under this Subcontract;
- (8) Corrections or changes to technical data furnished to the Seller by the Government;

The Seller grants the Government an Unlimited Rights license to all Category C and D Data.

The Government's rights to Category B, C, and D Data vest upon provision of the data item or project/Subcontract completion (whichever is earlier), except that the Seller may request a delay of the start of Government Purpose Rights in Category B Data for a period not to exceed five (5) years from project or Subcontract completion (whichever is earlier). Such requests will only be made in those cases where the Seller has provided information from the affected actual or prospective Seller demonstrating the need for this additional restriction on Government use and shall be submitted to the Buyer for approval, as applicable, which approval shall not be unreasonably withheld. In the event of any dispute regarding approval of this request, the parties agree to treat this as a dispute.

Under this Contract, the period of a Government Purpose Rights license shall be no less than five (5) years. In the event that the Data subject to this Government Purpose Rights license is used to perform an additional Contract during this five (5) year period, the Government Purpose Rights license shall be extended an additional five (5) years, starting from completion of the subsequent project.

Data that will be delivered, furnished, or otherwise provided to the Government as specified in a specific project award funded under this Contract, in which the Government has previously obtained rights, shall be delivered, furnished, or provided with the pre-existing rights, unless (a) the Parties have agreed otherwise, or (b) any restrictions on the Government's rights to use, modify, reproduce, release, perform, display, or disclose the data have expired or no longer apply.

The Seller shall maintain a list of the Category A, B, and C developed under this Contract and shall regularly update the list to identify any additional or previously unidentified Data if such Data will be used or generated in the performance of the funded work. Rights in such Data shall be as established under the terms of this Contract, unless otherwise asserted in a supplemental listing and agreed to by the Government.

(d) Marking of Data

The parties to this Contract understand and agree that the Seller shall stamp all documents in accordance with this Article and that the FOIA and TSA apply to such Data. Data provided under this Contract shall be marked in accordance with the following legends:

- (1) Category A Data: The Seller must use a company proprietary statement for items where the Government has no rights. For items where rights have been negotiated, the Seller shall use Special License markings as specifically negotiated between the parties in lieu of a company proprietary statement.
- (2) Category B and C Data: The Seller must use the following mark: "This data item is provided to the Government under the Government Purpose Rights license as stated in Agreement [Insert Agreement#] with the Government. The Government's rights to use, modify, reproduce, release, perform, display, or disclose this data is restricted to Government Purpose as defined in this Contract's Data Rights Article. Any reproduction of this data item, or portions thereof, must also reproduce this marking in whole."
- (3) Category D Data: The Seller shall leave all data in this category unmarked. Unmarked also means that the data item is devoid of any marking that may resemble markings appropriate for Category A, B, and C data.

The Government shall presume that all unmarked Data provided to the Government by the Seller during performance is Category D Data. In the event that a Seller learns of a release to the Government of its unmarked Data that should have contained a restricted legend, the Seller will have the opportunity to cure such omission going forward by providing written notice to the Government within three (3) months of the erroneous release.

(e) Copyright

The Seller reserves the right to protect by copyright original works developed under this Contract. All such copyrights will be in the name of the individual Seller. Subject to the Allocation of Rights above, Seller hereby grants to the U.S. Government a non-exclusive, non-transferable, royalty-free, fully paid-up license to reproduce, prepare derivative works, distribute copies to the public, and perform and/or display publicly, for Governmental purposes, any copyrighted materials developed under this Contract, and to authorize others to do so.

In the event Data is exchanged with a notice indicating that the Data is protected under copyright as a published, copyrighted work, and it is also indicated on the Data that such Data existed prior to, or was produced outside of this Contract, the Party receiving the Data, and others acting on its behalf, may reproduce, distribute, and prepare derivative works for the sole purpose of carrying out that Party's responsibilities under this Contract with the written permission of the Copyright holder.

Copyrighted Data that existed or was produced outside of this Contract and is unpublished – having only been provided under licensing Contract with restrictions on its use and disclosure - and is provided under this Contract shall be marked as unpublished copyright in addition to the appropriate license rights legend restricting its use and treated in accordance with such license rights legend markings restricting its use.

The Seller is responsible for affixing appropriate markings indicating the rights of the Government on all Data provided under this Contract.

The Government agrees not to remove any copyright notices placed on Data and to include such notices on all reproductions of the Data.

(f) Data First Produced by the Government:

As to Data first produced by the Government in carrying out the Government's responsibilities under this Contract and which Data is privileged or confidential if obtained from the Seller, such Data will, to the extent permitted by law, be appropriately marked with a suitable notice or legend and maintained in confidence by the Seller to whom disclosed for three (3) years after the development of the information, with the express understanding that during the aforesaid period such Data may be disclosed and used by Seller, including its respective employees or subcontractors of any tier, (under suitable protective conditions) by or on behalf of the Government for Government purposes only.

(g) Prior Technology

In the event it is necessary for the Government to furnish the Seller, including their respective employees or their subcontractors of any tier, with Data which existed prior to, or was produced outside of this Contract, and such Data is so identified with a suitable notice or legend, the Data will be maintained in confidence and disclosed and used only for the purpose of carrying out their responsibilities under this Contract. Data protection will include proprietary markings and handling, and the signing of Non-Disclosure Agreements (NDAs) by the Seller and the Seller's subcontractors of any tier and their respective employees) to whom such Data is provided for use under the Contract. Upon completion of activities under this Contract, such Data will be disposed of as requested by the Government.

In the event it is necessary for the Seller to furnish the Government with Data which existed prior to, or was produced outside of this Contract, and such Data embodies trade secrets or comprises commercial or financial information which is privileged or confidential, and such Data is so identified with a suitable notice or legend, the Data will be maintained in confidence and disclosed and used by the Government and such Government Contractors or contract employees that the Government may hire on a temporary or periodic basis will include proprietary markings and handling, and the signing of NDAs by such Government Contractors or contract employees. The Seller shall not be obligated to provide Data that existed prior to, or was developed outside of this Contract to the Government. Upon completion of activities under this Contract, such Data will be disposed of as requested by the Seller.

Oral and Visual Information: If information which the Seller (or their subcontractors of any tier and their respective employees) considers to embody trade secrets or to comprise commercial or financial information which is privileged or confidential is expressly disclosed orally or visually directly to the Government, the exchange of such information must be memorialized in tangible, recorded form and marked with a suitable notice or legend and furnished to the Government within twenty (20) calendar days after such oral or visual disclosure, or the Government shall have no duty to limit or restrict, and shall not incur any liability for any disclosure and use of such information. Upon Government request, additional detailed information about the exchange will be provided subject to restrictions on use and disclosure.

(h) Disclaimer of Liability

Notwithstanding the above, the Government shall not be restricted in, nor incur any liability for, the disclosure and use of:

- (1) Data not identified with a suitable notice or legend as set forth in this Article; nor
- (2) Information contained in any Data for which disclosure and use is restricted under ARTICLE FOR PROTECTION OF NON-PUBLIC INFORMATION, if such information is or becomes generally known without breach of the above, is properly known to the Government or is generated by the Government independent of and without reliance on Seller's Data or independent of carrying out responsibilities under this Contract, is rightfully received from a third party without restriction, or is included in Data which the Seller has furnished, or is required to furnish to the Government without restriction on disclosure and use.

(i) Ordering of Additional Data Beyond Contract Completion

The Government may require the delivery of Data first produced under this Contract where the request is made within two (2) years following the Contract completion date. In the event the Government orders such Data, it shall pay the Seller the reasonable costs for all efforts to deliver such requested Data, including but not limited to costs of locating such Data, formatting, reproducing, shipping, and associated administrative costs.

(j) Lower Tier Agreements

The Seller shall include this Article, suitably modified to identify the Parties, in all subcontracts or lower tier Agreements, regardless of tier or work type.

(k) Survival Rights

The obligations of the Government and the Seller under this Article shall survive after the expiration or termination of this Contract.

FOREIGN OWNERSHIP, CONTROL, INFLUENCE, ACCESS TO TECHNOLOGY & EXPORT CONTROL**(a) Definitions.** As used in this Article-

Effectively Owned or Controlled: A foreign Government or any entity controlled by a foreign Government has the power, either directly or indirectly, whether exercised or exercisable, to control the election, appointment, or tenure of the Seller's officers or a majority of the Seller's board of directors by any means, e.g., ownership, contract, or operation of law (or equivalent power for unincorporated organizations).

Entity Controlled by a Foreign Government: Any domestic or foreign organization or corporation that is effectively owned or controlled by a foreign Government, or any individual acting on behalf of a foreign Government. It does not include an organization or corporation that is owned, but is not controlled, directly or indirectly, by a foreign Government if the ownership of that organization or corporation by that foreign Government was effective before 23 October 1992.

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

Foreign Government: The state and the Government of any country (other than the United States and its outlying areas) as well as any political subdivision, agency, or instrumentality thereof.

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

Proscribed Information:

- (1) Top Secret (TS) information;
- (2) Communications Security (COMSEC) material, excluding controlled cryptographic items when unkeyed or utilized with unclassified keys;
- (3) Restricted Data as defined in the U.S. Atomic Energy Act of 1954, as amended;
- (4) Special Access Program (SAP) information; or
- (5) Sensitive Compartmented Information (SCI).

Technology: Discoveries, innovations, Know-How and inventions, whether patentable or not, including computer software, recognized under U.S. Law as intellectual creations to which rights of ownership accrue, including, but not limited to, patents, trade secrets, mask works, and copyrights developed under this Contract.

(b) General

The Parties agree that research findings and technology developments arising under this Contract may constitute a significant enhancement to the national defense, and to the economic vitality of the U.S. Accordingly, access to important technology developments under this Contract by Foreign Firms or Institutions must be carefully controlled. The controls contemplated in this Article are in addition to, and are not intended to change or supersede, the provisions of the International Traffic in Arms Regulation (ITAR) (22 CFR Part 121 et seq.), the Department of Commerce Export Regulation (15 CFR Part 770 et seq., and ARTICLE FOR SECURITY REQUIREMENTS of this Contract.

If this Contract requires access to proscribed information to perform the Contract, the Seller shall disclose any interests a foreign Government has in itself, its immediate parent, intermediate parent, and any ultimate parent corporation to the Buyer. This Contract shall not be performed by entities controlled by a foreign Government, unless the Government has waived application of 10 U.S.C. §2536(a).

(c) Disclosure of Foreign Government Control

The Seller shall disclose any interest a foreign Government has in the Seller when that Interest constitutes control by a foreign Government as defined in this Article. If the Seller is a subsidiary, it shall also disclose any reportable interest a foreign Government has in any entity that owns or controls the subsidiary, including reportable interest concerning the Seller's immediate parent, intermediate parent, and the ultimate parent.

The Seller shall submit a current SF 328, Certificate Pertaining to Foreign Interests to the Buyer, prior to Contract award. The SF 328 must include the following information:

- (1) Seller's point of contact for questions about disclosure (name and phone number with country code, city code, and area code, as applicable);
- (2) Name and address of Seller;
- (3) Name and address of entity controlled by a foreign government; and
- (4) Description of interest, ownership percentage, and identification of foreign government.

If during performance of the Contract, foreign Government ownership or control status of the Seller changes, the Seller shall submit an updated SF 328 to the Buyer, within one (1) week of the change.

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

In order to promote the national security interests of the U.S. and to effectuate the policies that underlie the regulations cited above, the procedures stated in paragraphs (d)(2), (d)(3), and (d)(4) below shall apply to any transfer of technology. For purposes of this paragraph, a transfer includes a sale of the company, and sales or licensing of technology. Transfers do not include:

- (1) Sales of products or components, or
- (2) Licenses of software or documentation related to sales of products or components, or
- (3) Transfer to foreign subsidiaries of the Seller member entities for purposes related to this Contract, or
- (4) Transfer which provides access to technology to a Foreign Firm or Institution which is an approved source of supply or source for the conduct of research under this Subcontract if such transfer shall be limited to that necessary to allow the firm or institution to perform its approved role under this Subcontract, or
- (5) Publication or Publicity

The Seller shall provide timely notice to the Government, via the Buyer, of any proposed transfers of technology developed under this Contract to foreign firms or institutions. If the Government determines that the transfer may have adverse consequences to the national security interests of the U.S., the Seller and the Government shall jointly endeavor to find alternatives to the proposed transfer which obviate or mitigate potential adverse consequences of the transfer but which provide substantially equivalent benefits to the Seller.

In any event, the Seller shall provide written notice to the Government, via the Buyer, of any proposed transfer to a foreign firm or institution at least fifty (50) calendar days prior to the proposed date of transfer. Such notice shall cite this Article and shall state specifically what is to be transferred and the general terms of the transfer. Within thirty (30) calendar days of receipt of the Seller's written notification, the Buyer shall advise the Seller whether it consents to the proposed transfer. In cases where Buyer does not concur or if within sixty (60) calendar days after its receipt Buyer has provided no decision, Seller may utilize the Disputes clause of the Buyer's General Provisions. No transfer shall take place until a decision is rendered.

In the event a transfer of technology to foreign firms or institutions which is NOT approved by the Government takes place, the Seller shall:

- (1) Refund to the Government, via the Buyer, those funds paid under this Contract for the development of the technology; and
- (2) Provide to the Government a non-exclusive, nontransferable, irrevocable, paid-up license to practice or have practiced on behalf of the U.S. the technology throughout the world for Government and any and all other purposes, particularly to effectuate the intent of this Contract.

Upon request of the Government, the Seller shall obtain and provide written confirmation of such licenses described in paragraph (d).

(e) Export Compliance

Information subject to the Arms Export Control Act, 22 U.S.C. §§ 2751, et seq., the ITAR, 22 C.F.R. §§ 120, et seq., and the Export Administration Act, 50 U.S.C. app. §§ 2401, et seq., requires that all unclassified technical data with military application may not be exported lawfully without an approval, authorization, or license under Executive

Order (E.O.) 12470 or the Arms Export Control Act, and that such data requires an approval, authorization, or license under E.O. 12470 or the Arms Export Control Act. The Seller shall not export, directly or indirectly, any products and/or technology, confidential information, trade secrets, or classified and unclassified technical data in violation of any U.S. export laws or regulations. All documents determined to contain export-controlled technical data shall be marked with the following notice:

WARNING - this document contains technical data whose export is restricted by the Arms Export Control Act (Title 22, U.S.C., and Sec 275 1, et seq.) or the Export Administration Act of 1979, as amended, Title 50, U.S.C., App. 2401 et seq. Violations of these export laws are subject to severe criminal penalties. Disseminate in accordance with provision of DOD Directive 5230.25.

(f) Lower Tier Agreements

The Seller shall include this Article, suitably modified to identify all Parties, in all lower tier Agreements. This Article shall, in turn, be included in all sub-tier subcontracts or other forms of lower tier Agreements, regardless of tier.

SECURITY REQUIREMENTS

(a) Applicability

This Article applies to the extent that this Contract involves access to national security information, up to and including Sensitive Compartmented Information (SCI).

(b) Requirements

Security requirements are a material condition of this Contract. Failure of the Seller to maintain and administer a security program compliant with the security requirements of this Contract constitutes grounds for termination.

The Seller shall maintain a comprehensive security program in accordance with the requirements of:

- (1) Government Security Manual
- (2) National Industrial Security Program Operating Manual (NISPOM);
- (3) Government Personnel Security Instruction (PSI);
- (4) Intelligence Community Directive (ICD) 704, Personnel Security;
- (5) Committee for National Security Systems (CNSS) Directive 504, Directive on Protection of National Security Systems from Insider Threat;
- (6) For agreements requiring SCI access, NISPOM Supplement 1 (NISPOMSUP); DCID 1/21. DCID 6/9 (adhering to guidance prescribed by NOTIP 2025-08 and/or relevant POAMs), and/or ICD 705, Sensitive Compartmented Information Facilities (SCIF); ICD 710, Classification and Control Markings System; and the Integrated Government Classification Guide;
- (7) Additional IC and Government directives, instructions, policy guidance, standards, and SAP classification and program security guides as specified in any DD Form 254 incorporated by reference or attachment to this Contract; and
- (8) The latest revision to each document listed above, notice of which has been furnished to the Seller, by the Seller.

If, subsequent to the award of this Contract, the security classification or security requirements of this Contract are changed by the Buyer's Customer, and if the changes cause an increase or decrease in security costs or otherwise affect any other term or condition of this contract, the changes will be subject to the Changes clause of the Buyer's General Provisions.

The Seller shall submit a Standard Operating Procedures (SOP) document to the cognizant Government Program Security Officer (PSO), via the Buyer, within thirty (30) days of Contract award unless otherwise specified in the Contract. The SOP must be prepared in accordance with the NSM, NISPOM, and the requirements specified in any DD Form 254 incorporated by reference or attachment to this Contract and the IT-IA-IM CRD.

The Seller shall report security and compliance status to the Buyer.

Classification levels of the association, work, hardware, and reports under this Contract and associated security requirements are set forth in any DD Form 254 incorporated by reference in or as an attachment to this Contract. The Seller shall maintain all modified and/or fabricated hardware at the proper classification level(s) and physical security environment(s).

The Seller agrees to permit the necessary polygraph interview of Seller and subcontractor personnel requiring access to SCI information. It is understood that the polygraph interview will be limited to counter-intelligence (CI) issues.

The Government shall be afforded full, free, and uninhibited access to all facilities, installations, technical capabilities, operations, documentation, records, and databases for the purpose of assessing the efficacy and efficiency of the Seller's safeguards against threats and hazards to the availability, integrity, and confidentiality of Government information.

The Seller is responsible for providing security oversight and ensuring an effective security program for all subcontractor relationships that are formed as the result of this Contract. The Seller shall include provisions in all subcontracts that substantially conform to the requirements of this Article.

If any provision of the Contract conflicts with the security instructions, the Seller shall notify the Buyer, who will resolve the conflicts. When security regulations are in conflict, the Seller shall follow the most restrictive guidance and immediately refer the matter to the Buyer for resolution.

The Seller shall not disseminate, in any manner, technology or other program information prior to Government evaluation and determination of appropriate security classification and control. Dissemination of classified program information to other Government agencies or to Seller's personnel other than those specifically assigned to this Contract is prohibited unless approved in writing by the Buyer.

If a change in security requirements results in a change in the security classification of this Contract or any of its elements from an unclassified status or a lower classification to a higher classification, or in more restrictive area controls than previously required, the Seller shall exert every reasonable effort compatible with the Seller's established policies to continue the performance of work under the Contract in compliance with the change in security classification or requirements.

If, despite reasonable efforts, the Seller determines that the continuation of work under this Contract is not practicable because of the change in security classification or requirements, the Seller shall notify the Buyer in writing. Until the Buyer resolves the problem, the Seller shall continue safeguarding all classified material as required by this Contract. After receiving the written notification, the Buyer shall analyze the circumstances surrounding the proposed change in security classification or requirements and shall endeavor to work out a mutually satisfactory method whereby the Seller can continue performance of the work under this Subcontract. If, fifteen (15) days after receipt by the Buyer of the notification of the Seller's stated inability to proceed, the application to this Contract of the change in security classification or requirements has not been withdrawn, or a mutually satisfactory method for continuing performance of work under this Contract has not been agreed upon, the Buyer may terminate the Contract, in part or in whole.

The Seller agrees to insert this clause in any subcontracts.

(c) Term and Survival Rights

Obligations to protect classified information continue indefinitely after the term of the Contract is completed. Provisions of the "Security Requirements" shall survive termination of this Contract.

PROPERTY

(a) Definitions. **Property:** Any tangible personal property other than property actually consumed during the execution of work under this Contract.

(b) Title to Property. No significant items of tangible property are expected to be acquired or produced under this Contract by Seller. Title to any item of property valued \$10,000 or less that is acquired by Seller in performance of this Contract shall remain with the Seller with no further obligation of the Parties unless otherwise determined by Buyer. Should any item of property with an acquisition value greater than \$10,000 be required, the Seller shall obtain prior written approval of Buyer. Title to this property shall also remain with Seller. Seller shall be responsible for the maintenance, repair, protection, and preservation of all such property at its own expense. Property acquired pursuant to this article shall not be considered as an exchange for services in performance of the project, but shall be considered a Government contribution to the project. Seller's deliverable prototype, if applicable, shall not be classified as property.

GOVERNMENT FURNISHED PROPERTY

Buyer will provide Seller with the Government Furnished Property (GFP) listed in the technical requirements and/or referenced in a GFP list that may be incorporated as an attachment to this Contract to facilitate the performance of this Contract. The Government shall retain title to all GFP, and title shall not be affected by its incorporation into or attachment to any property not owned by the Government, nor shall GFP become a fixture or lose its identity as personal property by being attached to any real property.

Seller shall assume the risk of and be responsible for any loss or destruction of, or damage to, the GFP while it is in Seller's possession or control, with the exception of reasonable wear and tear or reasonable and proper consumption. The GFP shall be returned at the end of the Contract period of performance in a condition that is as good as when it was received with the exception of said reasonable wear and tear, or in accordance with the provisions of the Contract regarding its use. Seller shall obtain explicit written authorization of any transfer or disposition of the GFP.

INFORMATION TECHNOLOGY, ASSURANCE, AND MANAGEMENT REQUIREMENTS

(a) Definitions. The terms used in this Article are defined in Committee on National Security Systems Instruction (CNSSI) 4009, Committee on National Security Systems Glossary.

(b) Applicability

This Article shall apply to any aspect of this Contract involving access to or processing of national security information, up to and including SCI.

(c) Requirements

The Seller shall comply with the requirements of:

- (1) Government Information Technology-Information Assurance-Information Management Contract Requirements Document (CRD) which is incorporated in the Government OTSD;
- (2) For Contract involving Information Technology system development and production, and/or requiring access to classified Government networks, ICD 503, Intelligence Community Information Technology Systems Security Risk Management, and CNSSI 1253, Security Categorization and Control Selection for National Security Systems;
- (3) SAP classification and program security guidance specified in the Contract; and
- (4) The latest revision to each document listed above, notice of which has been furnished to the Seller by the Government.

The Seller is responsible for providing CRD oversight for all subcontractor relationships that are formed as the result of this Contract. The Seller shall include provisions in all subcontracts that substantially conform to the requirements of this Article.

If any provision of the Contract conflicts with instructions issued by the Buyer, the Seller shall notify the Buyer who will resolve the conflict. When CRD regulations are in conflict, the Seller shall follow the most restrictive guidance and immediately refer the matter to the Buyer for resolution.

The Seller shall report security and compliance status and reconfigure national security systems as directed by the Government.

The requirements specified in this clause are a material condition of this Contract. Failure of the Seller to maintain and administer a security program compliant with the security requirements constitutes grounds for termination.

NOTICE OF LITIGATION

With respect to litigation to which the Seller is a party relating to this Contract:

(1) The Seller shall, within five (5) business days, notify the Buyer of any litigation filed by a third party (including individuals, organizations, and federal, state, or local Governmental entities) or subpoena involving or in any way relating to this Contract and/or related subcontracts. Said notice shall include a copy of all documents filed with the court in connection with the litigation or subpoena to the extent such documents are not covered by a court-ordered seal or protective order.

(2) The Buyer shall have the right to examine any pertinent documents filed with the court during the conduct of the litigation and any documents and records provided to the third party in response to the subpoena. The Buyer shall be given an opportunity to review any filing contemplated by Seller in advance to such filing, to include any coordination that might be required to accomplish a security review before filing.

The Seller agrees to insert this clause in any subcontract under this Contract.

DISCLOSURE OF GOVERNMENT ASSOCIATION

(a) Acknowledgement and Approval

The Government requires that all Agreements or Contracts with educational institutions, to include Federally Funded Research and Development Centers (FFRDCs) and University Affiliated Research Centers (UARCs) managed by an educational institution, require written acknowledgement and approval by a responsible official (e.g., president, chancellor, provost, director, or equivalent senior official) authorized to approve such Agreement or Contract on behalf of the educational institution. This Contract shall acknowledge the involvement of the Government or IC with the educational institution and approve the proposed Contract relationship.

(b) Requirements

If the Seller is of a type described in paragraph (a) of this Article, then the Seller shall submit a signed letter to the Buyer prior to execution of this Contract. The signed letter shall be addressed to the Buyer and include at least the following required language:

"Pursuant to Executive Order 12333, this letter acknowledges that I am an official of [name of educational institution] authorized to approve any contract/subcontract issued by [name of Seller] in support of the Government. I further acknowledge that I am aware that the Government will be involved in any resulting contract/subcontract and do hereby, on behalf of [name of educational institution], approve such a contractual relationship."

(c) Subcontracts

Prior to execution of any subcontracts or sub-Agreements from third parties that are described in paragraph (a), the Seller shall obtain a signed letter from the prospective third party and submit it to the Buyer prior to the execution of the sub-agreement or subcontract. The signed letter shall be addressed to the Buyer and include at least the following required language:

"Pursuant to Executive Order 12333, this letter acknowledges that I am an official of [name of educational institution] authorized to approve any agreement or subcontract issued by [name of Seller] in support of the Government. I further acknowledge that I am aware that the Government will be involved in any resulting agreement or subcontract and do hereby, on behalf of [name of educational institution], approve such a contractual relationship."

The Seller agrees to flow down the requirements set forth in this Article to any partner entities.

ENABLING PRIME AND SUPPORT CONTRACTOR RELATIONSHIPS

The term "support contractor" retains its original meaning. The term "contractor" shall mean "Seller".

(a) The Government currently has, or may enter into, contracts with one or more companies, the primary purpose of which is to furnish independent and impartial advice or technical assistance directly to the Government in support of the Government's management and oversight of a program or effort. These companies (hereafter referred to as support contractors), are obligated to safeguard the sensitive and proprietary information of other contractors, subcontractors, suppliers, and vendors to which they have access. Contact Buyer for the list of support contractors.

(b) In the performance of this contract, the contractor agrees to cooperate with companies as directed by Buyer. Cooperation includes, but is not limited to, allowing the listed support contractors to attend meetings; observe technical activities; discuss with the contractor technical matters related to this program at meetings or otherwise; and access contractor integrated data environments and facilities used in the performance of the contract.

(c) The contractor must provide the support contractors access to data such as, but not limited to, design and development analyses; test data, procedures, and results; research, development, and planning data; parts, equipment, and process specifications; testing and test equipment specifications; quality control procedures; manufacturing and assembly procedures; schedule and milestone data; and other contract data. To fulfill contractual requirements to the Government, support contractors engaged in general systems engineering and integration efforts and technical support are normally authorized access to information pertaining to this contract. Exceptions, such as when the contractor seeks to restrict access to contractor trade secrets, will be handled on a case-by-case basis. If the contractor seeks to limit distribution of data to Government personnel only, the contractor must submit this request in writing to the Contracting Officer through Buyer.

(d) The contractor further agrees to include in all subcontracts, except for those to provide only commercial and/or non-developmental items, a clause requiring the subcontractor and succeeding levels of subcontractors to comply with the response and access provisions of paragraph (b) above, subject to coordination with the contractor. This clause does not relieve the contractor of the responsibility to manage its teammates effectively and efficiently, nor is it intended to establish privity of contract between the Government or support contractors and such subcontractors.

(e) The contractor and its subcontractors are not required to take contractual direction from support contractors.

(f) Support contractors are required to protect data and software related to this contract, and are prohibited from using such data for any purpose other than performance of the support contract.

(g) Support contractors shall protect the proprietary information of disclosing contractors and its teammates, suppliers, and vendors. Because such entities are intended to be third-party beneficiaries, all such disclosing parties agree that these terms satisfy the non-disclosure agreement requirements set forth in 10 U.S.C. §2320(f)(2)(B). Accordingly, the contractor may only enter into a separate non-disclosure, confidentiality, proprietary information, or similar agreement with a disclosing party on an exception basis, and only after notifying the Contracting Officer through the Buyer. The Government and the disclosing contractors, subcontractors, suppliers, and vendors agree to cooperate to ensure that the execution of any non-disclosure agreement does not delay or inhibit performance of this contract, and the Government shall require support contractors to do the same. Such agreements shall not otherwise restrict any rights due the Government or Buyer under this contract. Separate non-disclosure agreements may be executed only in the following exceptional circumstances:

(1) The support contractor is a direct competitor of the disclosing party in furnishing end items or services of the type developed or produced for the program or effort;
(2) The support contractor will require access to extremely sensitive business data; or
(3) Other unique business situations exist in which the disclosing party can clearly demonstrate that this Article does not adequately protect their competitive interests.

(h) Any proprietary information furnished to support contractors shall be:

(1) Disclosed in writing and clearly marked "proprietary" or with other words of similar meaning; or
(2) Disclosed orally or visually for instance, during a plant tour, briefing, or demonstration) and identified as proprietary information at the time of the oral or visual disclosure by the Government or a disclosing party. The support contractors shall treat all such information as proprietary unless within fifteen (15) days the support

contractor coordinates with Buyer or disclosing party to obtain a written version of the proprietary information and determine the extent of the proprietary claims; or

(3) Disclosed by electronic transmission (e.g., facsimile, electronic mail, etc.) in either human readable form or machine readable form, and the contractor marks it electronically as proprietary within the electronic transmissions, such marking to be displayed in human readable form along with any display of the proprietary information; or
(4) Disclosed by delivery of an electronic storage medium or memory device, and the contractor marks the storage medium or memory device itself as containing proprietary information and electronically marks the stored information as proprietary, such marking to be displayed in human readable form along with any display of the proprietary information.

(i) The contractor agrees not to hold the support contractor liable for unauthorized disclosure of proprietary information if it can be demonstrated in written documentation or other competent evidence that the information was:

(1) Already known to the support contractor without restriction on its use or disclosure at the time of its disclosure by the disclosing party;
(2) In the public domain or becomes publicly known through no wrongful act of the support contractor;
(3) Proprietary information disclosed by the support contractor with the contractor's prior written permission;
(4) Independently developed by the support contractor, subsequent to its receipt, without the use of any proprietary information;
(5) Disclosed to the support contractor by a third party who was legally entitled to disclose the same and who did not acquire the proprietary information from the disclosing party;
(6) Specifically provided in writing by the U.S. Government to the support contractor with an unlimited rights license; or
(7) Disclosed by the support contractor as required by law, regulatory or legislative authority, including subpoenas, criminal or civil investigative demands, or similar processes, provided the support contractor provides the disclosing party that originated the proprietary information with prompt written notice so that the disclosing party may seek a protective order or other appropriate remedy, and provided that, in the absence of a timely protective order, the support contractor furnishes only that minimum portion of the proprietary information that is legally required.

(j) Any notice to the support contractor(s) required or contemplated under the provisions of this article shall be in writing and shall be deemed to have been given on:

(1) The date received if delivered personally or by overnight courier;
(2) The third day after being deposited in the U.S. mail, postage prepaid; or
(3) The date sent if sent by facsimile transmission or e-mail with a digital copy.

(k) Buyer and contractor agree to cooperate in resolving any unauthorized disclosure or misuse of proprietary information by a support contractor. This shall not be construed as requiring the contractor to conduct an inquiry into an unauthorized disclosure or misuse, or as authorizing the allocation of costs for such an inquiry directly to this contract. Any costs incurred by the contractor in said fact-finding efforts may be allowable and allocable upon determination of Buyer after adjudicating the circumstances related to any unauthorized disclosures or misuse.

SUPPLY CHAIN RISK MANAGEMENT

(a) Definitions. As used in this article-

Covered System means all DoD critical information systems and weapons systems, which includes major systems as defined by 10 U.S.C. 3041; national security systems as defined by 44 U.S.C. 3542; and all DoD information systems, categorized as Mission Assurance Category (MAC) I, and select DoD information systems categorized as MAC II, in accordance with DoDI.

Criticality Analysis and Assessment (CAA) means an end-to-end functional decomposition performed by systems engineers to identify mission critical functions and components. CAA includes identification of system missions, decomposition into the functions to perform those missions, and traceability to the hardware, software, and firmware components that implement those functions. The criticality assessment determines the potential harm; i.e., mission loss or degradation, caused by the probable loss, damage, or compromise of a product, material (hardware, software or firmware components) or service.

Critical Component means hardware, software, and firmware, whether custom, commercial, or otherwise developed, which delivers or protects mission critical functionality of a system or which, because of the system's design, may introduce vulnerability to the mission critical functions of an applicable system.

Critical Program Information (CPI) means a U.S. information capability element that contributes to the warfighters' unique technical advantage when employed in its operational environment, which if compromised, undermines U.S. military or intelligence community capabilities, by degradation in mission effectiveness; shortens the expected effective life of the system; reduces technological advantage; significantly alters program direction; or enables an adversary to defeat, counter, copy, or reverse engineer the technology or capability. U.S. information capability elements may include, but are not limited to, software algorithms and specific hardware residing on the system, its training equipment, or maintenance support equipment.

Due Diligence means reasonable steps taken to gather publicly or commercially available information about a prospective supplier and comprehensively evaluate said supplier within the twelve risk areas described in the DoD Supply Chain Risk Management Taxonomy- Version 1.0, dated 28 November 2022.

Enterprise Products List (EPL) means the single source at the Government for approved information technology (IT) Products.

Information and Communications Technology (ICT) means the IT integration of telecommunications and computers, software, or firmware that enable users to access, store, transmit, and process information.

Original Component Manufacturer (OCM) means an organization that designs and/or engineers an item and is entitled to any intellectual property rights to that item, or for the purposes of this article, an OCM authorized reseller or distributor.

Original Equipment Manufacturer (OEM) means a company that manufactures products that it has designed from purchased components and sells those products under the company's brand name, or for the purposes of this article, an OEM authorized reseller or distributor.

Program Protection Plan (PPP) means a risk-based, comprehensive, living plan to guide efforts for managing the risks to CPI and mission-critical functions, components and technologies associated with a research, development, and acquisition program. The layering and integration of the selected protection requirements documented in a PPP provide for the integration and synchronization of CPI protection activities.

Software Bill of Materials (SBOM) means a formal record containing the products used to assemble the software capability to include open source and commercial software components. The minimum elements for an SBOM are identified in Executive Order 14028, Improving the Nation's Cybersecurity, 12 July 2021.

Supply Chain Risk is any risk that has the potential to-

- (1) Jeopardize the integrity of products, services, people, and technologies;
- (2) Compromise intellectual property;
- (3) Disrupt the flow of product, material, information, and finances needed for continued SCRM process; or
- (4) Drive material cost increases to the program.

Risk categories include-

- (1) Compliance;
- (2) Environmental;
- (3) Infrastructure;
- (4) Economics;
- (5) Financial;
- (6) Foreign Ownership Control or Influence (FOCI);
- (7) Foreign Dependence;
- (8) Human Capital;
- (9) Manufacturing & Supply;
- (10) Transportation & Distribution;
- (11) Political & Regulatory;
- (12) Product Quality & Design; and
- (13) Technology & Cybersecurity.

Supply Chain Risk Assessment (SCRA) means the collective results of the criticality analysis and assessment, supply chain threat analysis, supply chain vulnerability assessment, and culmination of the supply chain risk mitigation strategies applicable to the covered system.

Supply Chain Risk Management (SCRM) means a systematic process for managing supply chain risk by identifying susceptibilities, vulnerabilities and threats to covered acquisitions, CCs or systems throughout a program's or agreement's supply chain, and developing mitigation strategies to combat or address those threats whether presented by the supplier, the supplied product and its subcomponents, or any other place within the supply chain (e.g., initial production, packaging, handling, storage, transport, mission operation, and disposal).

Supply Chain Risk Management System (SCRMS) means a corporate set of tools, processes, policies, practices, procedures, programs and IT infrastructure integrated together to prevent the purchase of any item, or use of any service provider within its supply chain, that poses a potential product availability or integrity risk, including those with national security consequence, and provides for conformance with the requirements specified in paragraph (b) below.

Supply Chain Threat Assessment is the government's evaluation and characterization of threats to the availability, integrity, trustworthiness, and authenticity of the acquisition item.

Technology Readiness Level (TRL) is a method for estimating the maturity of technologies during the acquisition phase of a program. TRLs enable consistent and uniform discussions of technical maturity across different types of technology.

Vulnerability means an attribute or characteristic that may be inherent or introduced into a system's components (i.e., system, component, hardware, software, firmware), or service's design, implementation, or operation and management that could be exploited by an adversary at any stage of the acquisition lifecycle.

Vulnerability Assessment is the government process of formally and systematically evaluating and documenting information on vulnerabilities of a critical component applicable to the acquisition item throughout the item's lifecycle, from design to disposal.

(b) Compliance Requirements.

(1) The Contractor shall procure, to the maximum extent practicable, products, systems and critical components of those systems, which are OEM/OCM and competitively sourced. Procurement of products, systems and critical components must be compliant with the Buy American Act and Government Information Technology (IT) procurement policies.

(2) The Government may waive or tailor SCRM requirements for Advanced Research and Development projects involving experimental or demonstration projects that meet any of the following-

(i) Projects/systems in Technology Readiness Level 1-3 with limited domestic-only supply chain exposure or without utilization of Government networks or supply chain exposure.

(ii) Projects/systems that will have no physical or virtual connection with operational mission systems.

(iii) Projects/systems without identified Critical Components or Information and Communications Technology (ICT).

(c) Supply Chain Risk Management Plan.

(1) The Contractor shall submit a comprehensive Supply Chain Risk Management Plan to the Government through Buyer in accordance with the definition of Supply Chain Risk Management.

(2) Contents of the plan shall include at a minimum-

(i) A complete Supply Chain List (SCL) of ICT components and of subcontractors, hardware and software component suppliers, and vendors (including delivery, packaging, and warehousing vendors) used for the performance of the agreement. The SCL shall be updated and accessible to the Government. This list shall be maintained as current throughout the acquisition lifecycle.

(ii) Contractor's confirmation of compliance with the Government's policy requirements for purchases, components, CPI, ICT, materials, instruments, hardware, software or firmware regarding-

(A) OEM/OCMs;

(B) US-made, US-only Suppliers/Vendors;

(C) Trade Agreement Act (TAA) compliance for parent level IT, (e.g., Router, Switch, Server, Desktop);

(Note: Component level IT does not require TAA compliance (e.g., Motherboards, RAM, internal hard drives, video card); and

(D) Competitively-awarded suppliers.

(iii) All information available (e.g., Supplier Name, Address, Mission Assurance (MA) Points-of-Contact (POCs), Program and Agreements POCs, Contact Information, CAGE Code, Website Address, etc.) on suppliers the

Contractor has already purchased from and/or used under this agreement, together with rationale for purchasing from sources, that are-

- (A) Non-OEM/OCM;
- (B) Foreign-owned, operated, and/or controlled;
- (C) Unknown, or first-time use; and/or
- (D) Sole source.

- (iv) A complete description of its Supply Chain Risk Management System (SCRMS) as defined herein.
- (v) A description of the Contractor's purchasing process or system, including security and vetting controls used in the selection and award of subcontractors, vendors and suppliers to comply with paragraphs (c)(2)(ii) - (iv).
- (vii) The status of purchasing system review conducted by the Defense Agreement Management Agency (DCMA) or other Government agency, to include Government POCs, dates of assessments and any outstanding corrective actions.
- (viii) Subcontractor purchasing systems shall be compliant with the Contractor's SCRM.

(d) SCRMS Requirements.

- (1) The Contractor shall establish and maintain an acceptable SCRMS. Failure to maintain an acceptable SCRMS, as defined in this article, may result in: disapproval of the Contractor's purchasing system; Agreements Officer determination of Non-Responsibility; negative past performance assessment; and/or termination of this agreement.
- (2) The Contractor's SCRMS shall comply with the following-
 - (i) The Contractor shall have adequate systems in place to contribute to supply chain threat assessments to support its SCRMS in documenting, assessing, and dispositioning vulnerabilities in its supply chain, and that enable data exchange with the private and public sector. Contractors will share data collected with Program Managers in accordance with section 2(ii), including the Government-Industry Data Exchange Program (GIDEP).
 - (ii) The Contractor shall provide input to the Government SCRA and component assessments – Criticality Analysis, Supply Chain Threat Assessment, and Vulnerability Assessment – including due diligence research performed in selecting a supplier. Contractor shall propose risk mitigation strategies for Government consideration.
 - (iii) The Contractor shall provide a description of its Supply Chain Risk, defined in section (a), of process or system, addressing how risks are identified and mitigated to the supply chain relative to products, systems and/or critical components of those systems, or otherwise, to service providers to all levels in the supply chain of the agreement.
 - (iv) The Contractor shall receive and ship all equipment, software and hardware assets for final delivery using DoD approved carriers in accordance with the Defense Transportation Regulation (DTR).
 - (v) The Contractor shall track property from date of procurement or date of Government Furnished Equipment (GFE) transfer to disposal (if applicable) and shall make available, at the Government's request, an audit trail of such purchases and transfers. The Contractor shall obtain and track Destruction Certificates for serial numbered items when permanently removed from service.
 - (vi) The Contractor shall provide notification to the Government through Buyer, within 72 hours, if any items are already purchased, and reflected in the Contractor's Supply Chain List (SCL) that are: not OEM/OCM; not US-made; not known suppliers (Government SCRA is nonexistent or older than 2 years), or sole source suppliers, including full information available to the Contractor (Supplier Name, Address, POCs, Contact Info, CAGE Code, Website Address, etc.) regarding the items purchased and their source.
 - (vii) The Contractor shall notify the Government through Buyer within 72 hours of the Contractor's knowledge of any changes to the Contractor's supply chain, or to information on the SCL that was initially provided to the government and reflected in its Supply Chain Surveillance Plan (SCSP), under this agreement.
 - (viii) The Contractor shall notify the COTR and the Contracting Officer through Buyer within 72 hours, when discovering a supply chain compromise or anomaly, whether verified or suspected, and anomalies associated with NIST SP 800-53 compliance. The Contractor shall conduct a comprehensive investigation of the compromise and keep the Government through Buyer informed throughout the process.
 - (ix) The Contractor shall select all parts, materials and process for use in Space Systems (qualification, proto-qualification and/or acceptance tested) to meet the program's Statement of Work.
 - (x) The Contractor shall develop and deliver its "Software Bill of Materials" or "SBOM." The SBOM will be used to perform vulnerability or license analysis, both of which can be used to evaluate risk in the developed software

capability. The SBOM shall be delivered in one of the data formats conformant to Software Package Data eXchange (SPDX), CycloneDX, Software Identification (SWID) tags (ISO 19770-2) is acceptable.

(xi) The Contractor shall identify CPI and document CPI measures in support of the PPP to address supply chain risks.

(e) Subcontracts. The Contractor shall insert the substance of this article, including this paragraph (e), into all agreements/subcontracts except for Commercial Services and Commercial Off-the-Shelf (COTS) items that are not on the Contractor's government approved Critical Component List.

(f) Government sources. The Contractor and its subcontractors are required to comply with the requirements of this article, as applicable, even when: purchasing item(s) from the Federal Supply Schedule; purchasing electronic parts from suppliers accredited by the Defense Microelectronics Activity; or requisitioning electronic parts from Government inventory/stock under the authority of FAR Clause 52.251-1, Government Supply Sources.

(g) Reporting Requirements. The reporting requirements of this article shall be effective at the point in time when the Contractor has identified Critical Components on its Critical Component List through the end of agreement performance.

(h) Exceptions. The requirements of this article do not apply to Commercial Services and Commercial Off-the-Shelf (COTS) items, that are not on the Contractor's government-approved Critical Component List.