

CUSTOMER CONTRACT REQUIREMENTS
Proprietary
CUSTOMER CONTRACT PROJECT MRFISH4

CUSTOMER CONTRACT REQUIREMENTS

The following customer contract requirements apply to this Contract to the extent indicated below. If this Contract is for the procurement of commercial products and/or commercial services under a Government prime contract, as defined in FAR Part 2.101, Section 3 replaces the requirements of Sections 1 and 2 below. Please note, the requirements below are developed in accordance with Buyer's prime contract and are not modified by Buyer for each individual Seller or statement of work. Seller will remain at all times responsible for providing to any government agency, Buyer, or Buyer's customer, evidence of compliance with the requirements herein or that such requirements are not applicable to the extent satisfactory to the requesting party.

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

SAERFISH ARTICLE 14 - RETENTION AND ACCESS TO RECORDS .
ARTICLE 14 - RETENTION AND ACCESS TO RECORDS

- a) The Performer's financial records, supporting documents, statistical records, and all other records pertinent to this Agreement shall be retained, and access to them permitted for a period not to exceed six (6) years after expiration of the term of this Agreement or final acceptance of the last Order Agreement, whichever occurs later, unless one of the following applies:
 - 1) If any litigation, claim, or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved and final action taken.
 - b) Records for real property and equipment acquired with Federal funds, and into which title will vest with the Government in accordance with Article 13, Government Property, shall be retained for three (3) years after final disposition.
 - c) When records are transferred to or maintained by the DoD Component that made the award, the six (6) year retention requirement is not applicable to the Performer.
 - d) If the Information described is maintained on a computer, the Performer shall retain the computer data on a reliable medium for the time period prescribed. The Performer may transfer computer data in Machine Readable form from one reliable computer medium to another. The Performer's computer data retention and transfer procedures shall maintain the integrity, reliability, and security of the original computer data. The Performer shall also maintain an audit trail describing the data transfer.
 - e) The Agreements Officer shall request that the Performer transfer certain records to DoD component custody when they determine that the records possess long term retention value. The Performer shall comply with the request unless it can state why such records should not be transferred. Disputes shall be handled in accordance with Article 19, Disputes and Liabilities.

SAERFISH ARTICLE 15 - DISPUTES AND LIABILITY .
ARTICLE 15 - DISPUTES AND LIABILITY

- a) General
 - 1) The Parties shall communicate with one another in good faith and in a timely and cooperative manner when raising issues under this Article.
- i) Dispute Resolution Procedures

- 2) Any dispute between the Government and Performer concerning questions of fact or law arising from or in connection with this Agreement, and, whether or not involving an alleged breach of this Agreement, may only be raised under this Article.
- i) Whenever disputes, disagreements, or misunderstandings arise, the Parties shall attempt to resolve the issue(s) involved by discussion and mutual agreement as soon as practicable. In no event shall a dispute, disagreement or misunderstanding which arose more than three (3) months prior to the notification made under subparagraph 8.3 of this article constitute the basis for relief under this article unless the Head of the contracting Activity (HCA) (or designee), in the interests of justice, waives this requirement.

- ii) Failing resolution by mutual agreement, the aggrieved Party shall document the dispute, disagreement, or misunderstanding by notifying the other Party in writing of the relevant facts, identify unresolved issues, and specify the clarification or remedy sought. Within five (5) working days after providing notice to the other Party, the aggrieved Party may, in writing, request a joint decision by the HCA (or designee) and senior executive, no lower than (Please contact the Government Special Security Office (GSSO) to arrange discussions) level, appointed by the Performer. The other Party shall submit a written position on the matter(s) in dispute within thirty (30) calendar days after being notified that a decision has been requested. The HCA (or designee) and the Performer's appointed senior executive shall conduct a review of the matter(s) in dispute and render a decision in writing within thirty (30) calendar days of receipt of such written position. Any such joint decision is final and binding.
 - iii) In the absence of a joint decision, upon written request to the (Please contact the Government Special Security Office (GSSO) to arrange discussions), made within thirty (30) calendar days of the expiration of the time for a decision under subparagraph B.3 above, the dispute shall be further reviewed. The individual identified by the GSSO may elect to conduct this review personally or through a designee or jointly with a senior executive, no lower than (Please contact the Government Special Security Office (GSSO) to arrange discussions) level, appointed by the Performer. Following the review, the (INSERT POSITION IDENTIFIED ABOVE) or designee will resolve the issue(s) and notify the Parties in writing. Such resolution is not subject to further administrative review and, to the extent permitted by law shall be final and binding.
- 3) Limitations of Damages
- i) Claims for damages of any nature whatsoever pursued under this Agreement shall be limited to direct damages only up to the aggregate amount of Government funding disbursed as of the time the dispute arises. In no event shall the Government be liable for claims for consequential, punitive, special and incidental damages, claims for lost profits, or other indirect damages.

SAERFISH ARTICLE 21 - COMPTROLLER GENERAL ACCESS TO RECORDS .
ARTICLE 21 - COMPTROLLER GENERAL ACCESS TO RECORDS

The Agreements Officer or representative, and the Comptroller General of the United States, in its discretion, shall have access to and the right to examine records of any Party to the Agreement or any entity that participates in the performance of this Agreement that directly pertain to, and involve transactions relating to, the Agreement for a period of three (3) years after final payment is made. This requirement shall not apply with respect to any Party to this Agreement or any entity that participates in the performance of the Agreement, or any subordinate element of such Party or entity, that, in the year prior to the date of the Agreement, has not entered into any other contract, grant, cooperative agreement, or "Other Transaction" agreement that provides for audit access to its records by a government entity in the year prior to the date of this Agreement. This paragraph only applies to any record that is created or maintained in the ordinary course of business or pursuant to a provision of law. The terms of this paragraph shall be included in all sub- agreements/contracts to the Agreement.

SAERFISH ARTICLE 22 - DATA RIGHTS .
ARTICLE 22 - DATA RIGHTS

(a) Definitions. As used in this article --

(1) "Computer data base" means a collection of data recorded in a form capable of being processed by a computer. The term does not include computer software.

(2) "Computer program" means a set of instructions, rules, or routines recorded in a form that is capable of causing a computer to perform a specific operation or series of operations.

(3) "Computer software" means computer programs, source code, source code listings, object code listings, design details, algorithms, processes, flow charts, formulae and related material that would enable the software to be reproduced, recreated, or recompiled. Computer software does not include computer data bases or computer software documentation.

(4) "Computer software documentation" means owner's manuals, user's manuals, installation instructions, operating instructions, and other similar items, regardless of storage medium, that explain the capabilities of the computer software or provide instructions for using the software.

(5) "Covered Government support Contractor" means a Contractor (other than a litigation support contractor covered by 252.204-7014) under a contract, 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 (rather than to directly furnish an end item or service to accomplish a program or effort), provided that the contractor-

(i) Is not affiliated with the Performer or a first-tier subcontractor on the program or effort, or with any direct competitor of such prime Performer or any such first-tier subPerformer in furnishing end items or services of the type developed or produced on the program or effort; and

(ii) Receives access to technical data or computer software for performance of a Government contract that contains the clause at 252.227-7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends.

(6) "Detailed manufacturing or process data" means technical data that describe the steps, sequences, and conditions of manufacturing, processing or assembly used by the manufacturer to produce an item or component or to perform a process.

(7) "Developed" means that an item, component, or process exists and is workable. Thus, the item or component must have been constructed or the process practiced. Workability is generally established when the item, component, or process has been analyzed or tested sufficiently to demonstrate to reasonable people skilled in the applicable art that there is a high probability that it will operate as intended. Whether, how much, and what type of analysis or testing is required to establish workability depends on the nature of the item, component, or process, and the state of the art. To be considered "developed," the item, component, or process need not be at the stage where it could be offered for sale or sold on the commercial market, nor must the item, component, or process be actually reduced to practice within the meaning of Title 35 of the United States Code.

(8) "Developed exclusively at private expense" means development was accomplished entirely with costs charged to indirect cost pools, costs not allocated to a government contract, or any combination thereof.

(i) Private expense determinations should be made at the lowest practicable level.

(ii) Under fixed-price agreements, when total costs are greater than the firm-fixed price or ceiling price of the agreement, the additional development costs necessary to complete development shall not be considered when determining whether development was at government, private, or mixed expense.

(9) "Developed exclusively with government funds" means development was not accomplished exclusively or partially at private expense.

(10) "Developed with mixed funding" means development was accomplished partially with costs charged to indirect cost pools and/or

costs not allocated to a government agreement, and partially with costs charged directly to a government agreement.

(11) "Form, fit, and function data" means technical data that describes the required overall physical, functional, and performance characteristics (along with the qualification requirements, if applicable) of an item, component, or process to the extent necessary to permit identification of physically and functionally interchangeable items.

(12) "Government purpose" means any activity in which the United States Government is a party, including cooperative agreements with international or multi-national defense organizations, or sales or transfers by the United States Government to foreign governments or international organizations. Government purposes include competitive procurement, but do not include the rights to use, modify, reproduce, release, perform, display, or disclose technical data for commercial purposes or authorize others to do so.

(13) "Government purpose rights" means the rights to--

(i) Use, modify, reproduce, release, perform, display, or disclose technical data within the Government without restriction; and

(ii) 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.

(14) "Limited rights" means the rights to use, modify, reproduce, release, perform, display, or disclose technical data, in whole or in part, within the Government. The Government may not, without the written permission of the party asserting limited rights, release or disclose the technical data outside the Government, use the technical data for manufacture, or authorize the technical data to be used by another party, except that the Government may reproduce, release or disclose such data or authorize the use or reproduction of the data by persons outside the Government if--

(i) The reproduction, release, disclosure, or use is--

(A) Necessary for emergency repair and overhaul; or

(B) A release or disclosure to--

(1) A covered Government support Performer in performance of its covered Government support contract for use, modification, reproduction, performance, display, or release or disclosure to a person authorized to receive limited rights technical data; or

(2) 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 informational purposes;

(ii) The recipient of the technical data is subject to a prohibition on the further reproduction, release, disclosure, or use of the technical data; and

(iii) The Performer or subPerformer asserting the restriction is notified of such reproduction, release, disclosure, or use.

(15) "Technical data" means recorded information, regardless of the form or method of the recording, of a scientific or technical nature (including computer software documentation). The term does not include computer software or data incidental to agreement administration, such as financial and/or management information.

(16) "Unlimited rights" means rights to use, modify, reproduce, perform, display, release, or disclose technical data in whole or in part, in any manner, and for any purpose whatsoever, and to have or

authorize others to do so.

(b) Rights in technical data. The Performer grants or shall obtain for the Government the following royalty free, world-wide, nonexclusive, irrevocable license rights in technical data other than computer software documentation (see the Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation clause of this agreement for rights in computer software documentation):

(1) Unlimited rights. The Government shall have unlimited rights in technical data that are--

(i) Data pertaining to an item, component, or process which has been or will be developed exclusively with Government funds;

(ii) Studies, analyses, test data, or similar data produced for this agreement, when the study, analysis, test, or similar work was specified as an element of performance;

(iii) Created exclusively with Government funds in the performance of a contract that does not require the development, manufacture, construction, or production of items, components, or processes;

(iv) Form, fit, and function data;

(v) Necessary for installation, operation, maintenance, or training purposes (other than detailed manufacturing or process data);

(vi) Corrections or changes to technical data furnished to the Government by the Performer;

(vii) Otherwise publicly available or have been released or disclosed by the Performer or subperformer 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 technical data to another party or the sale or transfer of some or all of a business entity or its assets to another party;

(viii) Data in which the Government has obtained unlimited rights under another Government contract or as a result of negotiations; or

(ix) Data furnished to the Government, under this Agreement or any other Government contract or subcontract thereunder, with--

(A) Government purpose license rights or limited rights and the restrictive condition(s) has/have expired; or

(B) Government purpose rights and the Performer's exclusive right to use such data for commercial purposes has expired.

(2) Government purpose rights.

(i) The Government shall have government purpose rights for a five-year period, or such other period as may be negotiated, in technical data--

(A) That pertain to items, components, or processes developed with mixed funding except when the Government is entitled to unlimited rights in such data as provided in paragraphs (b)(1)(ii) and

(b)(I)(iv) through (b)(I)(ix) of this article; or
 (B) Created with mixed funding in the performance of a contract that does not require the development, manufacture, construction, or production of items, components, or processes.

(ii) The five-year period, or such other period as may have been negotiated, shall commence upon execution of the contract, subcontract, letter contract (or similar contractual instrument), contract modification, or option exercise that required development of the items, components, or processes or creation of the data described in paragraph (b)(2)(i)(B) of this article. Upon expiration of the five-year or other negotiated period, the Government shall have unlimited rights in the technical data.

(iii) The Government shall not release or disclose technical data in which it has government purpose rights unless--

(A) Prior to release or disclosure, the intended recipient is subject to the nondisclosure agreement at 227.7103-7 of the Defense Federal Acquisition Regulation Supplement (DFARS); or

(B) The recipient is a Government Performer receiving access to the data for performance of a Government contract that contains the article at DFARS 252.227-7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends.

(iv) The Performer has the exclusive right, including the right to license others, to use technical data in which the Government has obtained government purpose rights under this contract for any commercial purpose during the time period specified in the government purpose rights legend prescribed in paragraph (f)(2) of this article.

(3) Limited rights.

(i) Except as provided in paragraphs (b)(I)(ii) and (b)(I)(iv) through (b)(I)(ix) of this article, the Government shall have limited rights in technical data—

(A) Pertaining to items, components, or processes developed exclusively at private expense and marked with the limited rights legend prescribed in paragraph (f) of this article; or

(B) Created exclusively at private expense in the performance of a contract that does not require the development, manufacture, construction, or production of items, components, or processes.

(ii) The Government shall require a recipient of limited rights data for emergency repair or overhaul to destroy the data and all copies in its possession promptly following completion of the emergency repair/overhaul and to notify the Performer that the data have been destroyed.

(iii) The Performer, its subPerformers, and suppliers are not required to provide the Government additional rights to use, modify, reproduce, release, perform, display, or disclose technical data furnished to the Government with limited rights. However, if the Government desires to obtain additional rights in technical data in which it has limited rights, the Performer agrees to promptly enter into negotiations with the Agreements Officer to determine whether there are acceptable terms for transferring such rights. All technical data in which the Performer has granted the Government additional rights shall be listed or described in a license agreement made part of the contract. The license shall enumerate the additional rights granted the Government in such data.

(iv) The Performer acknowledges that-

(A) Limited rights data are authorized to be released or disclosed to covered Government support Performers;

(B) The Performer will be notified of such release or disclosure;

(C) The Performer (or the party asserting restrictions as identified in the limited rights legend) may require each such covered Government support Performer to enter into a non disclosure agreement directly with the Performer (or the party asserting restrictions) regarding the covered Government support Performer's use of such data, or alternatively, that the Performer (or party asserting restrictions) may waive in writing the requirement for a non-disclosure agreement; and

(d) Any such non-disclosure agreement shall address the restrictions on the covered Government support Performer's use of the limited rights data as set forth in the clause at 252.227- 7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends. The non-disclosure agreement shall not include any additional terms and conditions unless mutually agreed to by the parties to the non-disclosure agreement.

(4) Specifically negotiated license rights. The standard license rights granted to the Government under paragraphs (b)(1) through (b)(3) of this article, including the period during which the Government shall have government purpose rights in technical data, may be modified by mutual agreement to provide such rights as the parties consider appropriate but shall not provide the Government lesser rights than are enumerated in paragraph (a)(14) of this article. Any rights so negotiated shall be identified in a license agreement made part of this contract.

(5) Prior government rights. Technical data that will be delivered, furnished, or otherwise provided to the Government under this contract, in which the Government has previously obtained rights shall be delivered, furnished, or provided with the pre-existing rights, unless--

(i) The parties have agreed otherwise; or

(ii) Any restrictions on the Government's rights to use, modify, reproduce, release, perform, display, or disclose the data have expired or no longer apply.

(6) Release from liability. The Performer agrees to release the Government from liability for any release or disclosure of technical data made in accordance with paragraph (a)(14) or (b)(2)(iii) of this article, in accordance with the terms of a license negotiated under paragraph (b)(4) of this article, or by others to whom the recipient has released or disclosed the data and to seek relief solely from the party who has improperly used, modified, reproduced, released, performed, displayed, or disclosed Performer data marked with restrictive legends.

(c) Performer rights in technical data. All rights not granted to the Government are retained by the Performer.

(d) Third party copyrighted data. The Performer shall not, without the written approval of the Agreements Officer, incorporate any copyrighted data in the technical data to be delivered under this contract unless the Performer is the copyright owner or has obtained for the Government the license rights necessary to perfect a license or licenses in the deliverable data of the appropriate scope set forth in paragraph (b) of this article, and has affixed a statement of the license or licenses obtained on behalf of the Government and other persons to the data transmittal document.

(e) Identification and delivery of data to be furnished with restrictions on use, release, or disclosure.

(1) This paragraph does not apply to restrictions based solely on copyright.

(2) Except as provided in paragraph (e)(3) of this article, technical data that the Performer asserts should be furnished to the Government with restrictions on use, release, or disclosure are identified in an attachment to this contract (the Attachment). The Performer shall not deliver any data with restrictive markings unless the data are listed on the Attachment.

(3) In addition to the assertions made in the Attachment, other assertions may be identified after award when based on new information or inadvertent omissions unless the inadvertent omissions would have materially affected the Agreement process. Such identification and assertion shall be submitted to the Agreements Officer as soon as practicable prior to the scheduled date for delivery of the data, in the following format, and signed by an official authorized to obligate the Performer:

Identification and Assertion of Restrictions on the Government's Use, Release, or Disclosure of Technical Data.

The Performer asserts for itself, or the persons identified below, that the Government's rights to use, release, or disclose the following technical data should be restricted:

Technical data
to be Furnished Restrictions* Assertion**
(LIST)

Basis for Category*** (LIST)

Name of Person Asserted Rights (LIST)	Asserting Restrictions**** (LIST)
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With

*If the assertion is applicable to items, components or processes developed at private expense, identify both the data and each such item, component, or process.

**Generally, the development of an item, component, or process at private expense, either exclusively or partially, is the only basis for asserting restrictions on the Government's rights to use, release, or disclose technical data pertaining to such items, components, or processes. Indicate whether development was exclusively or partially at private expense. If development was not at private expense, enter the specific reason for asserting that the Government's rights should be restricted.

***Enter asserted rights category (e.g., government purpose license rights from a prior contract, rights in SBIR data generated under another contract, limited or government purpose rights under this or a prior contract, or specifically negotiated licenses).

****Corporation, individual, or other person, as appropriate.

Date

Printed Name and Title Signature
(End of identification and assertion)

(4) When requested by the Agreements Officer, the Performer shall provide sufficient information to enable the Agreements Officer to evaluate the Performer's assertions. The Agreements Officer reserves the right to add the Performer's assertions to the Attachment and validate any listed assertion, at a later date.

(f) Marking requirements. The Performer, and its subperformers or

suppliers, may only assert restrictions on the Government's rights to use, modify, reproduce, release, perform, display, or disclose technical data to be delivered under this agreement by marking the deliverable data subject to restriction. Except as provided in paragraph (f)(S) of this article, only the following legends are authorized under this agreement: the government purpose rights legend at paragraph (f)(2) of this article; the limited rights legend at paragraph (f)(3) of this article; or the special license rights legend at paragraph (f)(4) of this article; and/or a notice of copyright as prescribed under 17 U.S.C. 401 or 402.

(1) General marking instructions. The Performer, or its subperformers or suppliers, shall conspicuously and legibly mark the appropriate legend on all technical data that qualify for such markings. The authorized legends shall be placed on the transmittal document or storage container and, for printed material, each page of the printed material containing technical data for which restrictions are asserted. When only portions of a page of printed material are subject to the asserted restrictions, such portions shall be identified by circling, underscoring, with a note, or other appropriate identifier. Technical data transmitted directly from one computer or computer terminal to another shall contain a notice of asserted restrictions. Reproductions of technical data or any portions thereof subject to asserted restrictions shall also reproduce the asserted restrictions.

(2) Government purpose rights markings. Data delivered or otherwise furnished to the Government with government purpose rights shall be marked as follows:

GOVERNMENT PURPOSE RIGHTS

Agreement No. Performer
Name Performer Address

Expiration Date

The Government's rights to use, modify, reproduce, release, perform, display, or disclose these technical data are restricted by paragraph (b)(2) of this article contained in the above identified agreement. No restrictions apply after the expiration date shown above. Any reproduction of technical data or portions thereof marked with this legend must also reproduce the markings.

(End of legend)

(3) Limited rights markings. Data delivered or otherwise furnished to the Government with limited rights shall be marked with the following legend:

LIMITED RIGHTS

Agreement No. Performer
Name Performer Address

The Government's rights to use, modify, reproduce, release, perform, display, or disclose these technical data are restricted by paragraph (b)(3) of this article contained in the above identified agreement. Any reproduction of technical data or portions thereof marked with this legend must also reproduce the markings. Any person, other than the Government, who has been provided access to such data must promptly notify the above-named Performer.

(End of legend)

(4) Special license rights markings.

(i) Data in which the Government's rights stem from a specifically negotiated license shall be marked with the following legend:

SPECIAL LICENSE RIGHTS

The Government's rights to use, modify, reproduce, release, perform, display, or disclose these data are restricted by Agreement No. __
(Insert contract number), License No. __ (Insert license identifier). Any reproduction of technical data or portions thereof marked with this legend must also reproduce the markings.

(End of legend)

(ii) For purposes of this article, special licenses do not include government purpose license rights acquired under a prior contract (see paragraph (b)(5) of this article).

(5) Pre-existing data markings. If the terms of a prior contract or license permitted the Performer to restrict the Government's rights to use, modify, reproduce, release, perform, display, or disclose technical data deliverable under this agreement, and those restrictions are still applicable, the Performer may mark such data with the appropriate restrictive legend for which the data qualified under the prior contract or license. The marking procedures in paragraph (f)(1) of this article shall be followed.

- (g) Performer procedures and records. Throughout performance of this contract, the Performer and its subperformers or suppliers that will deliver technical data with other than unlimited rights, shall--
- (1) Have, maintain, and follow written procedures sufficient to assure that restrictive markings are used only when authorized by the terms of this article; and
 - (2) Maintain records sufficient to justify the validity of any restrictive markings on technical data delivered under this contract.
- (h) Removal of unjustified and nonconforming markings.
- (1) Unjustified technical data markings. Notwithstanding any provision of this agreement concerning inspection and acceptance, the Government may ignore or, at the Performer's expense, correct or strike a marking if, a restrictive marking is determined to be unjustified.
 - (2) Nonconforming technical data markings. A nonconforming marking is a marking placed on technical data delivered or otherwise furnished to the Government under this agreement that is not in the format authorized by this agreement. If the Agreements Officer notifies the Performer of a nonconforming marking and the Performer fails to remove or correct such marking within sixty (60) days, the Government may ignore or, at the Performer's expense, remove or correct any nonconforming marking.
- (i) Relation to patents. Nothing contained in this article shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government under any patent.
- (j) Limitation on charges for rights in technical data.
- (1) The Performer shall not charge to this agreement any cost, including, but not limited to, license fees, royalties, or similar charges, for rights in technical data to be delivered under this agreement when--
 - (i) The Government has acquired, by any means, the same or greater rights in the data; or
 - (ii) The data are available to the public without restrictions.
 - (2) The limitation in paragraph (j)(1) of this article--
 - (i) Includes costs charged by a subperformer or supplier, at any tier, or costs incurred by the Performer to acquire rights in subperformer or supplier technical data, if the subperformer or supplier has been paid for such rights under any other Government contract or under a license conveying the rights to the Government; and
 - (ii) Does not include the reasonable costs of reproducing, handling, or mailing the documents or other media in which the technical data will be delivered.
- (k) Applicability to subperformers or suppliers.

- (1) The Performer shall ensure that the rights afforded its subperformers and suppliers under 10 U.S.C. 2320, 10 U.S.C. 2321, and the identification, assertion, and delivery processes of paragraph (e) of this article are recognized and protected.
- (2) Whenever any technical data for noncommercial items, or for commercial items developed in any part at Government expense, is to be obtained from a subperformer or supplier for delivery to the Government under this contract, the Performer shall use this same article in the subcontract or other contractual instrument, including subcontracts or other contractual instruments for commercial items, and require its subperformers or suppliers to do so, without alteration, except to identify the parties. This article will govern the technical data pertaining to noncommercial items or to any portion of a commercial item that was developed in any part at Government expense.

(3) Technical data required to be delivered by a subperformer or supplier shall normally be delivered to the next higher-tier Performer, subperformer, or supplier. However, when there is a requirement in the prime contract for data which may be submitted with other than unlimited rights by a subperformer or supplier, then said subperformer or supplier may fulfill its requirement by submitting such data directly to the Government, rather than through a higher-tier Performer, subperformer, or supplier.

(4) The Performer and higher-tier subperformers or suppliers shall not use their power to award contracts as economic leverage to obtain rights in technical data from their subperformers or suppliers.

(5) In no event shall the Performer use its obligation to recognize and protect subperformer or supplier rights in technical data as an excuse for failing to satisfy its contractual obligations to the Government.

SAERFISH ARTICLE 24 - SECURITY REQUIREMENTS .
ARTICLE 24 - SECURITY REQUIREMENTS

(a) This Article applies to the extent that this OT Agreement involves access to information that falls into one (or more) of the following classification levels:

- (1) "Confidential,"
 - (2) "Secret,"
 - (3) "Top Secret,"
 - (4) "Top Secret/Sensitive Compartmented Information (TS/SCI)"
 - (5) "Special Access Program (SAP)"
- (b) The Performer shall comply with the Department of Defense Security Classification Specification (DD Form 254) attached to the Agreement at the time of award (Attachment X), and with
- (1) The Security Agreement (DD Form 441), including the National Industrial Security Program Operating Manual (DoD 5220.22-M); and any revisions to that manual

(c) In the event that the Performer is required to have access to, or generate, classified information that is substantially different to the information outlined in the attached DD Form 254, the Government will generate a separate DD Form 254 for the OA that it is applicable to. Otherwise the DD 254 attached to this Agreement shall cover all OA's awarded under this agreement.

(d) The Performer agrees to insert terms that conform substantially to the language of this article, including this paragraph (d), in all Subcontracts or Subagreements under this OT Agreement that involve access to classified information.

SAERFISH ARTICLE 25 - EXPORT CONTROL AND FOREIGN ACCESS TO TECHNOLOGY .
ARTICLE 25 - EXPORT CONTROL AND FOREIGN ACCESS TO

TECHNOLOGY

(a) General

The Parties agree that research findings and technology developments arising under this Agreement may constitute a significant enhancement to the national defense, and to the economic vitality of the United States. Accordingly, access to important technology developments under this Agreement by Foreign Finns 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 Regulations (22 C.F.R. Part 120, et seq.), the National Security Program Operating Manual (NISPOM) (DoD 5220.22-M), and the Department of Commerce's Export Administration Regulations (15 C.F.R. Part 730, et seq.). The Performer shall comply with the International Traffic in Arms Regulation (22 CFR pt. 121 et seq.), the DoD Industrial Security Regulation (DoD 5220.22-R) and the Department of Commerce Export Regulation (15 CFR pt. 770 et seq.).

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

- 1) In order to promote the national security interests of the United States and to effectuate the policies that underlie the regulations cited above, the procedures stated in subparagraphs B.2, B.3, and B.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:

Sales of products or components; or

Licenses of software or documentation related to sales of products or components; or Transfer to foreign subsidiaries

of the Performer for purposes related to this Agreement; or

Transfer which provides access to Technology to a Foreign Firm or Institution which is an approved source of supply or source for the conduct of research under this Agreement provided that such transfer shall be limited to that necessary to allow the firm or institution to perform its approved role under this Agreement.

- 2) The Performer shall provide timely notice to the Government of any proposed transfers from the Performer of Technology developed under this Agreement to Foreign Firms or Institutions. If the Government determines that the transfer may have adverse consequences to the national security interests of the United States, the Performer, its vendors, and the Government shall jointly endeavor to find alternatives to the proposed transfer which obviate or mitigate potential adverse consequences of the transfer but which provide substantially equivalent benefits to the Performer.
- 3) In any event, the Performer shall provide written notice to the AOR and the AO of any proposed transfer to a Foreign Firm or Institution at least sixty (60) 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 Performer's written notification, the AO shall advise the Performer whether it consents to the proposed transfer. In cases where the Government does not concur or sixty (60) calendar days after receipt and the Government provides no decision, the Performer may utilize the procedures under Article VI, Disputes. No transfer shall take place until a decision is rendered.
- 4) In the event a transfer of Technology to Foreign Firms or Institutions which is NOT approved by the Government takes place, the Performer shall (a) refund to the Government funds paid for the development of the Technology and (b) the Government shall have a non-exclusive, nontransferable, irrevocable, paid-up license to practice, or to have practiced on behalf of the United States, the Technology throughout the world for Government and any and all other purposes, particularly to effectuate the intent of this Agreement. Upon request of the Government, the Performer shall provide written confirmation of such licenses.

(c) Lower Tier Agreements

The Performer 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.

(a) Civil Rights Act

This OT Agreement is subject to the compliance requirements of Title VI of the Civil Rights Act of 1964 as amended (42 U.S.C. § 2000-d) relating to nondiscrimination in Federally assisted programs. The Consortium Manager agrees to comply with the nondiscriminatory provisions of the Act.

(b) Whistleblower Protection Act

This OT Agreement is subject to the compliance with Title V of the Whistleblower Protection Act of 1989 relating to the protections available to Federal employees against prohibited personnel practices, and for other purposes. The Performer agrees to comply with the provisions of the Act.

(c) Environmental, Safety, And Health Responsibility

The Performer shall comply with all applicable Federal, State, and local environmental, safety, and health laws and regulations. The Performer is responsible for assuring all Government Facilities procedures are followed and necessary permits for performing projects under this OT Agreement are in place before performing activities requiring such permits. Any cost resulting from the failure of the Performer to perform this duty shall be borne by the Consortium Manager.

(d) US Flag Air Carriers

Travel supported by U.S. Government funds under this 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 (63 FR63417- 63421.))

(a) Combating Trafficking in Persons,

- (1) Policy. In accordance with 22 U.S.C. Chapter 78, the United States Government has adopted a policy prohibiting trafficking in persons.

In accordance with this statute, this agreement, or any OA under this agreement, may be terminated by the Government, without penalty, if the Performer engages in, or uses labor recruiters, brokers, or other agents who engage in-

- (i) severe forms of trafficking in persons;

(ii) the procurement of a commercial sex act during the period of time that the grant, contract, or cooperative agreement is in effect;

- (iii) the use of forced labor in the performance of the grant, contract, or cooperative agreement; or

- (iv) acts that directly support or advance trafficking in persons, including the following acts:

(A) Destroying, concealing, removing, confiscating, or otherwise denying an employee access to that employee's identity or immigration documents.

(B) Failing to provide return transportation or pay for return transportation costs to an employee from a country outside the United States to the country from which the employee was recruited upon the end of employment if requested by the employee, unless-

- (aa) exempted from the requirement to provide or pay for such return transportation by the Federal department or agency providing or entering into the grant, contract, or cooperative agreement; or

- (bb) the employee is a victim of human trafficking seeking victim services

or legal redress in the country of employment or a witness in a human trafficking enforcement action.

- (C) Soliciting a person for the purpose of employment, or offering employment, by means of materially false or fraudulent pretenses, representations, or promises regarding that employment.
- (D) Charging recruited employees unreasonable placement or recruitment fees, such as fees equal to or greater than the employee's monthly salary, or recruitment fees that violate the laws of the country from which an employee is recruited.

(E) Providing or arranging housing that fails to meet the host country housing and safety standards.

(b) Procurement Ethics Requirements

For the purposes of 41 USC Chapter 21 only, this OT Agreement shall be treated as a Federal agency procurement.