

**CUSTOMER CONTRACT REQUIREMENTS**  
**H-Stabs Batch #101 Edge Materials**  
**CUSTOMER CONTRACT R54933**

**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

**R54933 Special Provisions .**

**Attachment 1 - Terms And Conditions Of Purchases Services And Goods**

**16. SELLER'S REPRESENTATIONS**

16.7 As required by Section 889(a)(1)(B) of the National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232), Seller has conducted a reasonable inquiry to determine whether any Goods or Services provided by Seller to Buyer use "covered telecommunications equipment or services" as defined in Federal Acquisition Regulation (FAR) clause 52.204-25(a) as a substantial or essential component of any system, or as critical technology as part of any system. To date, Seller has not identified that any Goods or Services provided by Seller to Buyer use "covered telecommunications equipment or services." Seller shall notify Buyer within one (1) business day of any change to Seller's certification hereunder.

**24. CONFIDENTIAL INFORMATION AND SENSITIVE DATA**

24.1 In the performance of this Contract, Buyer or Seller may receive information that is confidential ("Confidential Information") to the other Party. The receiving Party acknowledges that all Confidential Information is and shall remain the sole property of the disclosing Party (or applicable third-party owner). Each Party further agrees to maintain the confidentiality of such Confidential Information for a period of five (5) years following expiration or termination of this Contract. The receiving Party agrees that it: (a) will not use, disclose, or grant use of such Confidential Information except as required to perform under this Contract; (b) shall only disclose Confidential Information to its employees, advisors, agents, and contract labor who have a need-to-know the Confidential Information for the purposes of performing the receiving Party's obligations under this Contract; and (c) shall not disclose Confidential Information to third parties unless it obtains the disclosing Party's prior written consent unless otherwise permitted under this Contract. The receiving Party agrees to promptly notify the disclosing Party upon discovery of any unauthorized use or disclosure of the Confidential Information. "Confidential Information" shall include, but is not limited to specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts or rebates, whether disclosed or accessed orally, in writing, electronically, or in some other form or media, and regardless of whether marked, designated, or otherwise identified as confidential.

24.2 The receiving Party shall, at the disclosing Party's written request, return to the disclosing Party all such Confidential Information of the disclosing Party when no longer needed for completion of this Contract, or shall, at the disclosing Party's option, destroy all such information and certify to such destruction to the disclosing Party.

24.3 Notwithstanding the restrictions set forth in Section 24.1, receiving Party may disclose Confidential Information of the disclosing Party to a subcontractor if such disclosure is necessary for the subcontractor to perform a subcontract, on the condition that the subcontractor agrees that such Confidential Information will be used solely for the purposes of such subcontract and provided that the subcontractor and its employees, agents, advisors, contractor labor, any anyone else who may have access to the disclosing Party's Confidential Information are subject to written obligations of

confidentiality no less stringent than those set forth in this Section 24 .

24.4 Neither party's obligations under this Section 24 apply to any information that: (a) the receiving Party knew and held without restriction as to further disclosure when the disclosing Party disclosed the information under this Contract; (b) is publicly available from a source other than the disclosing Party other than as a result of the receiving Party's breach of its obligations under this Article; (c) is or becomes known to the receiving Party without use of the information to the disclosing Party (d) is independently developed by the receiving Party without use of the information to the disclosing Party; an/or (e) required to be disclosed pursuant to Applicable Law, subpoena, or proper governmental or judicial process, or order.

24.5 The receiving Party will protect the disclosing Party's Confidential Information using those practices the receiving Party normally uses to restrict disclosure and use of its own information of like importance but in no event less than reasonable care.

24.6 The Parties acknowledge that the disclosing Party may suffer irreparable harm if the receiving Party fails to comply with its nondisclosure obligations set forth herein, and the monetary damages in that event would be inadequate to compensate the disclosing Party. Consequently, the disclosing Party shall be entitled, in addition to any monetary relief as may be recoverable by law, to any temporary, preliminary or permanent injunctive relief as may be necessary to restrain any continuing or further breach by the receiving Party, without showing or proving any actual damages sustained by the disclosing Party and without the necessity of posting any bond or, if required, a bond of minimal value.

**Attachment 4 - Flow-Down Clauses Applicable To Purchase Orders Or Agreements Involving Funds From A Federal Grant Or Cooperative Agreement****SECTION A: ADMINISTRATIVE REQUIREMENTS**

**5. Audit; Access to Records.** Seller shall comply with the audit requirements of 2 CFR 200, Subpart F Audit Requirements and shall comply with the requirements appropriate for the type of entity receiving the award. To the extent that the Order exceeds the simplified acquisition threshold, Seller shall allow Buyer, Buyer's customer, the Department of Defense (including its Inspector General), and the Comptroller General of the United States, or any of their duly authorized representatives, access to any books, documents, papers, and records of Seller that are directly pertinent to a specific program, for the purpose of making audits, examinations, excerpts, and transcriptions. To the extent that this Order involves audit services for the performance of any audit required by the Single Audit Act, as implemented by OMB in Subpart F of 2 CFR part 200, Seller shall provide for the access to audit documentation described in 2 CFR 200.517(b).

**6. Records Retention.** Seller shall preserve and make available all of its books, documents, papers, records, and other evidence involving transactions related to this Order for a period of three (3) years from the date of the expiration or termination of this Order. Matters involving litigation shall be kept for one (1) year following the termination of litigation, including all appeals, if the litigation exceeds three (3) years. To the extent that this Order involves audit services for the performance of any audit required by the Single Audit Act, as implemented by OMB in Subpart F of 2 CFR part 200, Seller shall retain records in accordance with 2 CFR 200.517(a).

**SECTION B: NATIONAL POLICY REQUIREMENTS.**

**7. Equal Employment Opportunity.** If this Order involves a federally assisted construction contract, as that term is defined in 41 CFR 60-1.3, then during the term of this Order, Seller agrees as follows:

a. Seller will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. Seller will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Seller agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

b. Seller will, in all solicitations or advertisements for employees placed by or on behalf of Seller, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

c. Seller will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with Seller's legal duty to furnish information.

d. Seller will send to each labor union or representative of workers with which Seller has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of Seller's commitments under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

e. Seller will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

f. Seller will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will

permit access to Seller's books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

g. In the event of Seller's noncompliance with the nondiscrimination clauses of this Order or with any of the said rules, regulations, or orders, this Order may be canceled, terminated, or suspended in whole or in part and Seller may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

h. Seller will include the portion of the sentence immediately preceding section (a) and the provisions of sections (a) through (g) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. Seller will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event Seller becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, Seller may request the United States to enter into such litigation to protect the interests of the United States.

i. Seller further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work; provided that if Seller so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

j. Seller agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

k. Seller further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, Seller agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: cancel, terminate, or suspend in whole or in part this Order (contract, loan, insurance, guarantee); refrain from extending any further assistance to Seller under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from Seller; and refer the case to the Department of Justice for appropriate legal proceedings.

**8. Wage Rate Requirements (Construction), formerly the Davis-Bacon Act.** When required by Federal program legislation, Seller must take the following actions with respect to each construction contract for more than \$2,000 to be awarded using funding provided under this Order: a) place in the solicitation under which the contract will be awarded a copy of the current prevailing wage determination issued by the Department of Labor; b) condition the decision to award the contract upon Seller's acceptance of the prevailing wage determination; c) include in the contract the clauses specified at 29 CFR 5.5(a) in Department of Labor regulations (29 CFR part 5 "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction") to require Seller's compliance with the Wage Rate Requirements (Construction), as amended (40 U.S.C 3141-44, 3146, and 3147); and d) report all suspected or reported violations to the Awarding Agency.

**9. Copeland "Anti-Kickback" Act (40 U.S.C. 3145).** If this Order is in excess of \$2,000 and pertains to construction or repair, Seller shall comply with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "WSUs and Sellers on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that Seller shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which the employee is otherwise entitled. Seller shall report all suspected or reported violations to Buyer and the responsible Awarding Agency.

**10. Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708).** If the Order is in excess of \$100,000 and involves construction and/or other purposes that involve the employment of mechanics or laborers, Seller shall comply with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, Seller shall be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than 1½ times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

**11. Intellectual Property Rights.** Seller represents and warrants that the scope of works/services to be performed by Seller underneath the Contract **will not** result in the creation or further development of technical data, computer software, copyright materials, and/or inventions. Accordingly, the provisions in Exhibit A-1 below are reserved. To the extent that the Contract results in the creation (or further development) of technical data, computer software, copyrightable materials, and/or inventions, the provisions in Exhibit A-1 shall apply.

**12. Clean Air Act (42 U.S.C. 7401–7671q) and the Federal Water Pollution Control Act (33 U.S.C. 1251– 1387), as amended.** If the Order is in excess of \$150,000, Seller shall comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401–7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251–1387). Violations shall be reported to the Federal Awarding Agency and the Regional Office of the Environmental Protection Agency (EPA).

**13. Debarment and Suspension (E.O. 12549 and 12689).** Seller represents and warrants that it is not listed on the governmentwide Excluded Parties List System in the System for Award Management (SAM) in accordance with OMB guidelines at 2 CFR Part 180 that implement E.O.s 12549 and 12689, "Debarment and Suspension." This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory or regulatory authority other than E.O. 12549. Seller must comply with 2 CFR Part 180, Subpart C and must include a requirement to comply with this regulation in any lower tier covered transaction it enters into. Seller shall have an ongoing duty during the term of this Order to disclose to Buyer on an ongoing basis any occurrence that would prevent Seller from making the certifications contained in this section. Such disclosure shall be made in writing to Buyer within five (5) business days of when Seller discovers or reasonably believes there is a likelihood of such occurrence. This certification is a material representation of fact relied upon by Buyer. If it is later determined that Seller did not comply with 2 CFR Part 180, Subpart C, in addition to remedies available to Buyer, the Federal government may pursue available remedies, including but not limited to suspension and/or debarment.

**14. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352, as implemented by the DoD at 32 CFR part 28).** If the Order is for \$100,000 or more, Seller and its subcontractors shall file the certification required by this statute and associated regulations. Seller certifies to Buyer that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Seller shall disclose to Buyer any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier.

**15. Procurement of recovered materials.** A non-federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. If applicable, Seller shall comply with the requirements of Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

**16. Domestic preferences for procurements (2 CFR 200.322).** As appropriate and to the extent consistent with law, Seller should, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this Section must be included in all subawards including all contracts and purchase orders for work or products under this Order. For purposes of this section: (a) "Produced in the United States" means, for iron and steel products, that all manufacturing processes from the initial melting stage through the application of coatings, occurred in the United States; and (b) "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

**17. Prohibition on certain telecommunications and video surveillance services or equipment (2 CFR 200.216).** Seller must comply with 2 C.F.R. § 200.216, which implements Section 889 of the Fiscal Year (FY) 2019 NDAA (Pub. L. 115-232) and forbids Federal award recipients from using government funds to enter into contracts (or extend or renew them) with entities utilizing covered telecommunications equipment or services. 2 CFR 200.216 prohibits federal award recipients from using government funds to enter into contracts (or extend or renew contracts) with entities that use "covered telecommunications equipment or services," even if the contract is not for the purchase of such equipment or services. Covered telecommunications equipment or services is defined as telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

**18. Fly America Requirements.** If this Order involves international air travel or transportation for people or property, Seller must:

a. Comply with the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118, also known as the "Fly America" Act), as implemented by the General Services Administration at 41 CFR 301-10.131 through 301-10.143, which provides that U.S. Government financed international air travel and transportation of personal effects or property must use a U.S. Flag air carrier or be performed under a cost sharing arrangement with a U.S. carrier, if such service is available; and  
b. Include the requirements of the Fly America Act in all subcontracts that might involve international air transportation.

**19. Cargo preference for United States flag vessels.** If this Order involves equipment, material, or commodities being shipped by oceangoing vessels, Seller agrees: (a) to utilize privately owned United States-flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to this Order, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels; (b) to furnish within 20 days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, 'on-board' commercial ocean bill-of-lading in English for each shipment of cargo described in subsection (a) of this section to Buyer and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590; and (c) to insert the substance of the provisions of this paragraph in all subcontracts issued pursuant to this Order.

**EXHIBIT A-1 INTELLECTUAL PROPERTY RIGHTS**

*This section applies to contracts for experimental, developmental or research work to be performed by a Seller or Seller's subcontractors.*

**1. Inventions developed under this award.**

**a. Definitions.** Unless otherwise provided herein, the following terms shall have the following means, regardless of capitalization. i. Invention means any invention or discovery which is or may be patentable or otherwise protectable under Title 35 of the United States Code, or any novel variety of plant which is or may be protected under the Plant Variety Protection Act (7 U.S.C. 2321 et seq.). ii. Subject invention means any invention of the Seller conceived or first actually reduced to practice in the performance of work under this contract, provided that in the case of a variety of plant, the date of determination (as defined in section 41(d) of the Plant Variety Protection Act, 7 U.S.C. 2401(d)) must also occur during the period of contract performance. iii. Practical Application means to manufacture in the case of a composition or product, to practice in the case of a process or method, or to operate in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or government regulations, available to the public on reasonable terms. iv. Made when used in relation to any invention means the conception or first actual reduction to practice of such invention. v. Small Business Firm means a small business concern as defined at section 2 of Pub. L. 85-536 (15 U.S.C. 632) and implementing regulations of the Administrator of the Small Business Administration. For the purpose of this clause, the size standards for small business concerns involved in government procurement and subcontracting at 13 CFR 121.3-8 and 13 CFR 121.3-12, respectively, will be used. vi. Nonprofit Organization means a university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c) and exempt from taxation under section 501(a) of the Internal Revenue Code (25 U.S.C. 501(a)) or any nonprofit scientific or educational organization qualified under a state nonprofit organization statute. vii. The term statutory period means the one-year period before the effective filing date of a claimed invention during which exceptions to prior art exist per 35 U.S.C. 102(b) as amended by the Leahy-Smith America Invents Act, Public Law 112-29. viii. The term Seller means any person, small business firm or nonprofit organization, or, as set forth in section 1, paragraph (b)(4) of Executive Order 12591, as amended, any business firm regardless of size, which is a party to a funding agreement.

**b. Allocation of Principal Rights.** The Seller may retain the entire right, title, and interest throughout the world to each subject invention subject to the provisions of this clause and 35 U.S.C. 203. With respect to any subject invention in which the Seller retains title, the Federal government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the subject invention throughout the world.

**c. Invention Disclosure, Election of Title and Filing of Patent Application by Seller.** i. The Seller will disclose each subject invention to the Awarding Agency through Buyer within two months after the inventor discloses it in writing to Seller personnel responsible for patent matters. The disclosure to the agency shall be in the form of a written report and shall identify the contract under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding to the extent known at the time of the disclosure, of the nature, purpose, operation, and the physical, chemical, biological or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to the agency, the Seller will promptly notify the agency through Buyer of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by the Seller. ii. The Seller will elect in writing whether or not to retain title to any such invention by notifying the Awarding Agency through Buyer within two years of disclosure to the Awarding Agency. However, in any case where a patent, a printed publication, public use, sale, or other availability to the public has initiated the one year statutory period wherein valid patent protection can still be obtained in the United States, the period for election of title may be shortened by the agency to a date that is no more than 60 days prior to the end of the statutory period. iii. The Seller will file its initial patent application on a subject invention to which it elects to retain title within one year after election of title or, if earlier, prior to the end of any statutory period wherein valid patent protection can be obtained in the United States after a publication, on sale, or public use. If the Seller files a provisional application as its initial patent application, it shall file a non-provisional application within 10 months of the filing of the provisional application. The Seller will file patent applications in additional countries or international patent offices within either ten months of the first

filed patent application or six months from the date permission is granted by the Commissioner of Patents to file foreign patent applications where such filing has been prohibited by a Secrecy Order. iv. For any subject invention with Awarding Agency and Seller co-inventors, where the Awarding Agency employing such co-inventor determines that it would be in the interest of the government, pursuant to 35 U.S.C. 207(a)(3), to file an initial patent application on the subject invention, the Awarding Agency employing such co-inventor, at its discretion and in consultation with the Seller, may file such application at its own expense, provided that the Seller retains the ability to elect title pursuant to 35 U.S.C. 202(a).

v. Requests for extension of the time for disclosure, election, and filing under paragraphs (1), (2), and (3) of this clause may, at the discretion of the Awarding Agency, be granted. When a Seller has requested an extension for filing a non-provisional application after filing a provisional application, a one-year extension will be granted unless the Awarding Agency notifies the Seller within 60 days of receiving the request.

**d. Conditions When the Government May Obtain Title.** The Seller will convey to the Awarding Agency, upon written request, title to any subject invention – i. If the Seller fails to disclose or elect title to the subject invention within the times specified in paragraph (c) of this clause, or elects not to retain title. ii. In those countries in which the Seller fails to file patent applications within the times specified in paragraph (c) of this clause; provided, however, that if the Seller has filed a patent application in a country after the times specified in paragraph (c) of this clause, but prior to its receipt of the written request of the Awarding Agency, the Seller shall continue to retain title in that country. iii. In any country in which the Seller decides not to continue the prosecution of any non-provisional patent application for, to pay a maintenance, annuity or renewal fee on, or to defend in a reexamination or opposition proceeding on, a patent on a subject invention.

**e. Minimum Rights to Seller and Protection of the Seller Right to File.** i. The Seller will retain a nonexclusive royalty-free license throughout the world in each subject invention to which the Government obtains title, except if the Seller fails to disclose the invention within the times specified in (c), above. The Seller's license extends to its domestic subsidiary and affiliates, if any, within the corporate structure of which the Seller is a party and includes the right to grant sublicenses of the same scope to the extent the Seller was legally obligated to do so at the time the contract was awarded. The license is transferable only with the approval of the Awarding Agency except when transferred to the successor of that party of the Seller's business to which the invention pertains. ii. The Seller's domestic license may be revoked or modified by the funding Awarding Agency to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions at 37 CFR part 404 and agency licensing regulations (if any). This license will not be revoked in that field of use or the geographical areas in which the Seller has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of the funding Awarding Agency to the extent the Seller, its licensees, or the domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country. iii. Before revocation or modification of the license, the funding Awarding Agency will furnish the Seller a written notice of its intention to revoke or modify the license, and the Seller will be allowed thirty days (or such other time as may be authorized by the funding Awarding Agency for good cause shown by the Seller) after the notice to show cause why the license should not be revoked or modified. The Seller has the right to appeal, in accordance with applicable regulations in 37 CFR part 404 and agency regulations (if any) concerning the licensing of Government-owned inventions, any decision concerning the revocation or modification of the license.

**f. Seller Action to Protect the Government's Interest.** i. The Seller agrees to execute or to have executed and promptly deliver to the Awarding Agency 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 Awarding Agency when requested under paragraph (d) above and to enable the government to obtain patent protection throughout the world in that subject invention. ii. 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 contract in order that the Seller can comply with the disclosure provisions of paragraph (c) of this clause, to assign to the Seller the entire right, title and interest in and to each subject invention made under contract, and to execute all papers necessary to file patent applications on subject inventions and to establish the government's rights in the subject inventions. This disclosure format should require, as a minimum, the information required by paragraph (c)(1) of this clause. The Seller shall

instruct such employees through employee agreements or other suitable educational programs on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars. iii. For each subject invention, the Seller will, no less than 60 days prior to the expiration of the statutory deadline, notify the Awarding Agency of any decision: Not to continue the prosecution of a non-provisional patent application; not to pay a maintenance, annuity or renewal fee; not to defend in a reexamination or opposition proceeding on a patent, in any country; to request, be a party to, or take action in a trial proceeding before the Patent Trial and Appeals Board of the U.S. Patent and Trademark Office, including but not limited to post-grant review, review of a business method patent, inter partes review, and derivation proceeding; or to request, be a party to, or take action in a non-trial submission of art or information at the U.S. Patent and Trademark Office, including but not limited to a pre-issuance submission, a post-issuance submission, and supplemental examination.

iv. The Seller agrees to include, within the specification of any United States patent applications and any patent issuing thereon covering a subject invention, the following statement, "This invention was made with government support under (identify the contract) awarded by (identify the Awarding Agency). The government has certain rights in the invention."

v. The Seller must submit a final report listing all subject inventions made under the award or stating that there were none. The final report is due 90 calendar days after the end date of the period of performance unless you request, and the Awarding Agency grants, an extension of the due date.

**g. Orders.** i. The Seller will include this clause, suitably modified to identify the parties, in all subcontracts, regardless of tier, for experimental, developmental or research work to be performed by a sub-subcontractor. The sub-subcontractor will retain all rights provided for the Seller in this clause, and the Seller will not, as part of the consideration for awarding the subcontract, obtain rights in the sub-subcontractor's subject inventions.

ii. The Seller will include in all other subcontracts, regardless of tier, for experimental developmental or research work the patent rights clause required by (cite section of agency implementing regulations or FAR).

iii. In the case of subcontracts, at any tier, when the prime award with the Awarding Agency was a contract (but not a grant or cooperative agreement), the agency, sub-subcontractor, and the Seller agree that the mutual obligations of the parties created by this clause constitute a contract between the sub-contractor and the Awarding Agency with respect to the matters covered by the clause; provided, however, that nothing in this paragraph is intended to confer any jurisdiction under the Contract Disputes Act in connection with proceedings under paragraph (j) of this clause.

**h. Reporting on Utilization of Subject Inventions.** The Seller agrees to submit on request periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining such utilization that are being made by the Seller or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the Seller, and such other data and information as the agency may reasonably specify. The Seller also agrees to provide additional reports as may be requested by the agency in connection with any march-in proceeding undertaken by the agency in accordance with paragraph (j) of this clause. As required by 35 U.S.C. 202(c)(5), the agency agrees it will not disclose such information to persons outside the government without permission of the Seller.

**i. Preference for United States Industry.** Notwithstanding any other provision of this clause, the Seller agrees that neither it nor any assignee will grant to any person the exclusive right to use or sell any subject inventions in the United States unless such person agrees that any products embodying the subject invention or produced through the use of the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement for such an agreement may be waived by the Awarding Agency upon a showing by the Seller or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

**j. March-in Rights.** The Seller agrees that with respect to any subject invention in which it has acquired title, the Awarding Agency has the right in accordance with the procedures in 37 CFR 401.6 and any supplemental regulations of the agency to require the Seller, an assignee or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the Seller, assignee, or exclusive licensee refuses such a request the Awarding Agency has the right to grant such a license itself if the Awarding Agency determines that: i. Such action is necessary because the Seller or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of

use.

- ii. Such action is necessary to alleviate health or safety needs which are not reasonably
- iii. satisfied by the Seller, assignee or their licensees;
- iv. Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the Seller, assignee or licensees; or
- v. Such action is necessary because the agreement required by paragraph (i) of this clause has not been obtained or waived or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.

k. **RESERVED**

**2. Assertion of copyright.**

- a. Seller may assert copyright in any work that is eligible for copyright protection if Seller acquires ownership of it under this award, either by developing it or otherwise.
- b. With respect any work, developed by Seller or otherwise acquired by Seller under this award, the Awarding Agency reserves a royalty-free, nonexclusive and irrevocable license to: i. Reproduce, publish, or otherwise use the work for Federal Government purposes; and
- ii. Authorize others to reproduce, publish, or otherwise use the work for Federal Government purposes.

**3. Data produced under the subcontract.**

- a. **Data in General.** The Federal Government has the right to: i. Obtain, reproduce, publish, or otherwise use the data produced under this award; and
- ii. Authorize others to receive, reproduce, publish, or otherwise use the data produced under this award for Federal Government purposes.

**b. Research data requested under the Freedom of Information Act (FOIA).** i. If the Awarding Agency or Federal Government receives a request under the FOIA for "research data" that are related to "published research findings" produced under this award and that were "used by the Federal Government in developing an agency action that has the force and effect of law," Seller must provide the data to the Awarding Agency or Federal Government within a reasonable time after it is requested so that the data can be made available to the public through procedures established under the FOIA.

ii. For purposes of this requirement under Section 3(b) of this section, 2 CFR 200.315(e) provides definitions of the phrases "published research findings," "used by the Federal Government in developing an agency action that has the force and effect of law," and "research data."

**4. Use and disposition of intangible property acquired, but not developed or produced, under the award.**

- a. **Applicability.** This section applies to a patent, patent application, copyright, or other intangible property acquired, but not developed or produced, under this award.
- b. **Use.** Seller: i. Must use the intangible property for the authorized purpose under this award until the intangible property is no longer needed for that purpose, whether or not that purpose is still being supported by this award.
- ii. May not encumber the intangible property without the prior written approval of the administration office from the Awarding Agency.
- c. **Disposition.** When the intangible property is no longer needed for the originally authorized purpose, Seller must contact the administration office of the Awarding Agency to arrange for disposition in accordance with the procedures specified for disposition of equipment in either Section 1 or 4 of this Attachment, as applicable.