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**SECTION I: GENERAL PROVISIONS**

**1. ACCEPTANCE OF CONTRACT/TERMS AND CONDITIONS**

- (a) This Contract integrates, merges, and supersedes any prior offers, negotiations, and agreements concerning the subject matter hereof (including but not limited to any terms and conditions within or referenced within SELLER’s quotes, proposals, and future invoices), and they constitute the entire agreement between the parties.
- (b) SELLER’s signature on, or written acknowledgment of, Contract (including email acknowledgment), commencement of performance, or acceptance of payment from **SCIENTIFIC RESEARCH CORPORATION** shall constitute SELLER's unqualified acceptance of this Contract and its terms and conditions including Section 1 (a), (b), and (c) herein.
- (c) Additional or differing terms or conditions proposed by SELLER, included in SELLER's quote, proposal, order acknowledgment, invoice, website or other means are hereby objected to by BUYER and have no effect unless accepted in writing by SCIENTIFIC RESEARCH CORPORATION. Issuing of a Contract, purchase order or other notice to SELLER, signed or unsigned, by SCIENTIFIC RESEARCH CORPORATION to SELLER does not signify SCIENTIFIC RESEARCH CORPORATION’s acceptance of SELLER’s differing terms and conditions from those herein however proposed or required by SELLER, including but not limited to SELLER's quote, proposal, order acknowledgment, website, and invoice.

**2. APPLICABLE LAWS**

- (a) This Contract shall be governed by and construed in accordance with the laws of the State of Georgia, excluding its choice of laws rules, except that any provision in this Contract that is (i) incorporated in full text or by reference from the Federal Acquisition Regulations (FAR) or (ii) incorporated in full text or by reference from any agency regulation that implements or supplements the FAR or (iii) that is substantially based on any such agency regulation or FAR provision, shall be construed and interpreted according to the federal common law of Government contracts as enunciated and applied by federal judicial bodies, boards of contracts appeals, and quasi-judicial agencies of the federal Government.
- (b) The United Nations Convention on Contracts for the International Sale of Goods (CISG) is expressly excluded from this Contract, and shall have no force or effect on this Contract.
- (c) (1) SELLER agrees to comply with all applicable laws, orders, rules, regulations, and ordinances.  
 (2) If: (i) SCIENTIFIC RESEARCH CORPORATION's contract cost or fee is reduced; (ii) SCIENTIFIC RESEARCH CORPORATION's costs are determined to be unallowable; (iii) any fines, penalties or interest are assessed on SCIENTIFIC RESEARCH CORPORATION; or (iv) SCIENTIFIC RESEARCH CORPORATION incurs any other costs or damages; as a result of any violation of applicable laws, orders, rules, regulations, or ordinances by SELLER, its officers, employees, agents, suppliers, or subcontractors at any tier, SCIENTIFIC RESEARCH CORPORATION may proceed as provided for in (4) below.  
 (3) Where submission of cost or pricing data is required or requested at any time prior to or during performance of this Contract, if SELLER or its lower-tier

subcontractors: (i) submit and/or certify cost or pricing data that are defective; (ii) with notice of applicable cutoff dates and upon SCIENTIFIC RESEARCH CORPORATION's request to provide cost or pricing data, submit cost or pricing data, whether certified or not certified at the time of submission, as a prospective subcontractor, and any such data are defective as of the applicable cutoff date on SCIENTIFIC RESEARCH CORPORATION's Certificate of Current Cost or Pricing Data; (iii) claim an exception to a requirement to submit cost or pricing data and such exception is invalid; or (iv) furnish data of any description that is inaccurate or, if the U.S. Government alleges any of the foregoing, and, as a result, (1) SCIENTIFIC RESEARCH CORPORATION's contract price or fee is reduced; (2) SCIENTIFIC RESEARCH CORPORATION's costs are determined to be unallowable; (3) any fines, penalties or interest are assessed on SCIENTIFIC RESEARCH CORPORATION; or (4) SCIENTIFIC RESEARCH CORPORATION incurs any other costs or damages; SCIENTIFIC RESEARCH CORPORATION may proceed as provided for in (4) below.

(4) Upon the occurrence of any of the circumstances identified in (2) and (3) above, SCIENTIFIC RESEARCH CORPORATION may make a reduction of corresponding amounts (in whole or in part) in the price, or in the costs and fee, of this Contract or any other contract with SELLER, and/or may demand payment (in whole or in part) of the corresponding amounts. SELLER shall promptly pay amounts so demanded.

(d) SELLER represents that each chemical substance constituting or contained in Work sold or otherwise transferred to SCIENTIFIC RESEARCH CORPORATION hereunder is on the list of chemical substances compiled and published by the Administrator of the Environmental Protection Administration pursuant to the Toxic Substances Control Act (15 U.S.C. Sec. 2601 et seq.) as amended.

(e) SELLER shall provide to SCIENTIFIC RESEARCH CORPORATION with each delivery any Material Safety Data Sheet applicable to the Work in conformance with and containing such information as required by the Occupational Safety and Health Act of 1970 and regulations promulgated thereunder, or its state approved counterpart.

### 3. ASSIGNMENT

Any assignment of SELLER's contract rights or delegation of duties shall be void, unless prior written consent is given by SCIENTIFIC RESEARCH CORPORATION. However, SELLER may assign rights to be paid amounts due, or to become due, to a financing institution if SCIENTIFIC RESEARCH CORPORATION is promptly furnished a signed copy of such assignment reasonably in advance of the due date for payment of any such amounts and SELLER signs a SCIENTIFIC RESEARCH CORPORATION Assumption

of Payments Agreement. Amounts assigned to an assignee shall be subject to setoffs or recoupment for any present or future claims of SCIENTIFIC RESEARCH CORPORATION against SELLER. SCIENTIFIC RESEARCH CORPORATION shall have the right to make settlements and/or adjustments in the estimated cost and fee without notice to the assignee.

### 4. COMMUNICATION WITH SCIENTIFIC RESEARCH CORPORATION CUSTOMER

SCIENTIFIC RESEARCH CORPORATION shall be solely responsible for all liaison and coordination with the SCIENTIFIC RESEARCH CORPORATION customer, including the U.S. Government, as it affects the applicable Prime Contract, this Contract, and any related contract.

### 5. CONTRACT DIRECTION

(a) Only the SCIENTIFIC RESEARCH CORPORATION Procurement Representative has authority to make changes in or amendments to this Contract. Such amendments must be in writing.

(b) SCIENTIFIC RESEARCH CORPORATION engineering and technical personnel may from time to time render assistance or give technical advice or discuss or affect an exchange of information with SELLER's personnel concerning the Work hereunder. Such actions shall not be deemed to be a change under the "Changes" clause of this Contract and shall not be the basis for equitable adjustment.

(c) Except as otherwise provided herein, all notices to be furnished by the SELLER shall be sent to the SCIENTIFIC RESEARCH CORPORATION Procurement Representative.

### 6. DEFINITIONS

The following terms shall have the meanings set forth below:

(a) "BUYER" means Scientific Research Corporation.

(b) Reserved.

(c) "Contract" means the instrument of contracting, such as "PO", "Purchase Order", or other such type designation, including all referenced documents, exhibits and attachments. If these terms and conditions are incorporated into a "master" agreement that provides for releases, (in the form of a purchase order or other such document) the term "Contract" shall also mean the release document for the Work to be performed.

(d) "FAR" means the Federal Acquisition Regulation, issued as Chapter 1 of Title 48, Code of Federal Regulations.

(e) "Government" refers to the United States Government.

(f) "PO" or "Purchase Order" as used in any document constituting a part of this Contract shall mean this "Contract."

(g) "SCIENTIFIC RESEARCH CORPORATION", means SCIENTIFIC RESEARCH CORPORATION, acting through its companies or business sites as identified on the face of the Contract. If a subsidiary or affiliate of SCIENTIFIC RESEARCH CORPORATION is identified on the face of this Contract then "SCIENTIFIC RESEARCH CORPORATION" means that subsidiary or affiliate.



## Flow Down Provisions for MSTIC Purchase Orders

- (h) Reserved.
- (i) "Procurement Representative" means the person authorized by SCIENTIFIC RESEARCH CORPORATION's cognizant procurement organization to administer and/or execute this Contract.
- (j) Reserved.
- (k) "SELLER" means the party identified on the face of the Contract with whom SCIENTIFIC RESEARCH CORPORATION is contracting.
- (l) "Work" means all required articles, materials, supplies, goods and services constituting the subject matter of this Contract.

### 7. DISPUTES

All disputes under this Contract which are not disposed of by mutual agreement may be decided by recourse to an action at law or in equity. Until final resolution of any dispute hereunder, SELLER shall diligently proceed with the performance of this Contract as directed by SCIENTIFIC RESEARCH CORPORATION. Except as may be expressly set forth in this terms and condition document with the Government Contracting Officer's express consent, the SELLER shall not acquire any direct claim or direct course of action against the U.S. Government when this Contract is issued pursuant to a Government contract.

### 8. EXPORT CONTROLLED ITEMS

- (a) SELLER shall comply with all applicable laws and regulations regarding export-controlled items, including, but not limited to, the requirement for suppliers to register with the Department of State in accordance with the International Traffic in Arms Regulations (ITAR). SELLER shall consult with the Department of State regarding any questions relating to compliance with the ITAR and shall consult with the Department of Commerce regarding any questions relating to compliance with the Export Administration Regulations (EAR). SELLER's responsibility to comply with all applicable laws and regulations regarding export-controlled items exists independent of, and is not established or limited by, the information provided by this Contract. Nothing in the terms of this Contract adds, changes, supersedes, or waives any of the requirements of applicable Federal laws, Executive orders, and regulations, including but not limited to: (1) The Export Administration Act of 1979, as amended (50 U.S.C. App.2401, *et seq.*); (2) The Arms Export Control Act (22 U.S.C. 2751, *et seq.*); (3) The International Emergency Economic Powers Act (50 U.S.C. 1701, *et seq.*); (4) The Export Administration Regulations (15 CFR Parts 730-774); (5) The International Traffic in Arms Regulations (22 CFR Parts 120-130); and (6) Executive Order 13222, as extended.
- (b) SELLER shall immediately notify the SCIENTIFIC RESEARCH CORPORATION Contract Representative if SELLER is listed in any Denied Parties List or if SELLER's export privileges are otherwise denied, suspended or revoked in whole or in part by any U. S. Government entity or agency.

- (c) *Definition.* "Export-controlled items," as used in this clause, means items subject to the Export Administration Regulations (EAR) (15 CFR Parts 730-774) or the International Traffic in Arms Regulations (ITAR) (22 CFR Parts 120-130). The term includes: (1) "Defense items," defined in the Arms Export Control Act, 22 U.S.C. 2778(j) (4) (A), as defense articles, defense services, and related technical data, and further defined in the ITAR, 22 CFR Part 120. and (2) "Items," defined in the EAR as "commodities", "software", and "technology," terms that are also defined in the EAR, 15 CFR 772.1.

### 9. EXTRAS

Work shall not be supplied in excess of quantities specified in the Contract. SELLER shall be liable for handling charges and return shipment costs for any excess quantities.

### 10. FURNISHED PROPERTY

- (a) SCIENTIFIC RESEARCH CORPORATION may provide to SELLER property owned by either SCIENTIFIC RESEARCH CORPORATION or its customer (Furnished Property). Furnished Property shall be used only for the performance of this Contract.
- (b) Title to Furnished Property shall remain in SCIENTIFIC RESEARCH CORPORATION or its customer. SELLER shall clearly mark (if not so marked) all Furnished Property to show its ownership.
- (c) Except for reasonable wear and tear, SELLER shall be responsible for, and shall promptly notify SCIENTIFIC RESEARCH CORPORATION of any loss or damage. SELLER shall manage, maintain, and preserve Furnished Property in accordance with good commercial practice.
- (d) At SCIENTIFIC RESEARCH CORPORATION's request, and/or upon completion of this Contract the SELLER shall submit, in an acceptable form, inventory lists of Furnished Property and shall deliver or make such other disposal as may be directed by SCIENTIFIC RESEARCH CORPORATION.
- (e) The Government Property Clause FAR 52.245-1 shall apply in addition to paragraphs (a) through (d) above with respect to Government-furnished property.

### 11. GRATUITIES/KICKBACKS/ETHICS

- (a) No gratuities (in the form of entertainment, gifts or otherwise) or kickbacks shall be offered or given by SELLER, to any employee of SCIENTIFIC RESEARCH CORPORATION with a view toward securing favorable treatment as a supplier.
- (b) By accepting this Contract, SELLER certifies and represents that it has not made or solicited and will not make or solicit kickbacks in violation of FAR 52.203-7 or the Anti-Kickback Act of 1986 (41 USC 51-58), both of which are incorporated herein by this specific reference.
- (c) SRC values contractual relationships founded in common commitment to ethics and high standards of professional business conduct. Sellers are encouraged to develop and implement ethics programs and business codes of conduct. Both SRC and Sellers are expected to conduct business to the highest ethical standards in accordance with the terms of the

Contract and applicable laws and regulations. If you have any questions or request assistance in developing a business code of conduct for your company, please contact the SRC Procurement Representative.

**12. INDEPENDENT SELLER RELATIONSHIP**

- (a) SELLER is an independent contractor in all its operations and activities hereunder. The employees used by SELLER to perform Work under this Contract shall be SELLER's employees exclusively without any relation whatsoever to SCIENTIFIC RESEARCH CORPORATION.
- (b) SELLER shall be responsible for all losses, costs, claims, causes of action, damages, liabilities, and expenses, including attorneys' fees, all expenses of litigation and/or settlement, and court costs, arising from any act or omission of SELLER, its officers, employees, agents, suppliers, or subcontractors at any tier, in the performance of any of its obligations under this Contract.

**13. INFORMATION OF SCIENTIFIC RESEARCH CORPORATION**

Information provided by SCIENTIFIC RESEARCH CORPORATION to SELLER remains the property of SCIENTIFIC RESEARCH CORPORATION. SELLER agrees to comply with the terms of any Proprietary Information or Non-Disclosure Agreement with SCIENTIFIC RESEARCH CORPORATION and to comply with all proprietary information markings and restrictive legends applied by SCIENTIFIC RESEARCH CORPORATION to anything provided hereunder to SELLER. SELLER agrees not to use any SCIENTIFIC RESEARCH CORPORATION provided information for any purpose except to perform this Contract and agrees not to disclose such information to third parties without the prior written consent of SCIENTIFIC RESEARCH CORPORATION.

**14. INFORMATION OF SELLER**

SELLER shall not provide any proprietary information to SCIENTIFIC RESEARCH CORPORATION without prior execution by SCIENTIFIC RESEARCH CORPORATION of either a Proprietary Information or Non-Disclosure Agreement.

**15. INSURANCE/ENTRY ON SCIENTIFIC RESEARCH CORPORATION PROPERTY**

In the event that SELLER, its employees, agents, or subcontractors enter the site(s) of SCIENTIFIC RESEARCH CORPORATION or its customers for any reason in connection with this Contract, then SELLER and its subcontractors shall procure and maintain worker's compensation, comprehensive general liability, bodily injury and property damage insurance in reasonable amounts, and such other insurance as SCIENTIFIC RESEARCH CORPORATION may require. In addition, SELLER and its subcontractors shall comply with all site requirements. SELLER shall indemnify and hold harmless SCIENTIFIC RESEARCH CORPORATION, its officers, employees, and agents from any losses, costs, claims, causes of action,

damages, liabilities, and expenses, including attorneys' fees, all expenses of litigation and/or settlement, and court costs, by reason of property damage or loss or personal injury to any person caused in whole or in part by the actions or omissions of SELLER, its officers, employees, agents, suppliers, or subcontractors. SELLER shall provide SCIENTIFIC RESEARCH CORPORATION thirty (30) days advance written notice prior to the effective date of any cancellation or change in the term or coverage of any of SELLER's required insurance. If requested, SELLER shall send a "Certificate of Insurance" showing SELLER's compliance with these requirements. SELLER shall name SCIENTIFIC RESEARCH CORPORATION as an additional insured for the duration of this Contract. Insurance maintained pursuant to this clause shall be considered primary as respects the interest of SCIENTIFIC RESEARCH CORPORATION and is not contributory with any insurance which SCIENTIFIC RESEARCH CORPORATION may carry. "Subcontractor" as used in this clause shall include SELLER's subcontractors at any tier.

**16. INTELLECTUAL PROPERTY INFRINGEMENT**

SELLER warrants that the Work performed and delivered under this Contract will not infringe or otherwise violate the intellectual property rights of any third party. SELLER agrees to defend, indemnify and hold harmless SCIENTIFIC RESEARCH CORPORATION and its customers from and against any claims, damages, losses, costs and expenses, including reasonable attorney's fees, arising out of any action by a third party that is based upon a claim that the Work performed or delivered under this Contract infringes or otherwise violates the intellectual property rights of any person or entity. This indemnity and hold harmless shall not be considered an allowable cost under any provisions of this Contract except with regard to allowable insurance costs.

**17. OFFSET CREDIT/COOPERATION**

All offset or countertrade credit value resulting from this Contract shall accrue solely to the benefit of SCIENTIFIC RESEARCH CORPORATION. SELLER agrees to cooperate with SCIENTIFIC RESEARCH CORPORATION in the fulfillment of any foreign offset/countertrade obligations.

**18. PACKING AND SHIPMENT**

- (a) Unless otherwise specified, all Work is to be packed by SELLER in accordance with good commercial practice so as to prevent damage during shipping to destination whether the shipment is FOB Origin or FOB Destination. No charge shall be made to BUYER for boxing, packing, or crating unless separately itemized on the face of SELLER's Quote and on the face of this Contract or purchase order.
- (b) A complete packing list shall be enclosed with all shipments. SELLER shall mark containers or packages with necessary lifting, loading, and shipping information, including the BUYER Contract number, item number, dates of shipment, and the names and addresses of consignor and consignee. Bills of lading shall include this Contract number. The Contract Number must also be shown on the SELLER's invoice and all correspondence to BUYER.
- (c) Regardless of packing and shipping terms, all risk that the Work may be undamaged by shipment shall be presumed to

be upon SELLER until goods have been actually received, inspected, and accepted by SCIENTIFIC RESEARCH CORPORATION. SCIENTIFIC RESEARCH CORPORATION shall not be responsible to pay for deliveries received unless inspected, receipted, and accepted by BUYER. SELLER shall be liable to BUYER for any loss or damage due to SELLER's failure to provide adequate protective packaging during shipment. Additional expenses, charges or claims incurred as a result of deviation from these terms, other shipping instructions, or improper or incomplete description in shipping documents, shall be assumed by SELLER unless BUYER determines that SELLER should not be held liable at BUYER's sole discretion. SCIENTIFIC RESEARCH CORPORATION shall have the right to specify FOB Origin or Destination and to route all shipments. Unless otherwise specified by SCIENTIFIC RESEARCH CORPORATION, delivery shall be FOB Destination. If FOB Destination, SELLER shall comply with the shipping requirements of responsible reliable common carriers so as to obtain the lowest transportation cost to meet Contract delivery schedule.

- (d) BUYER shall have the right to specify FOB Origin or FOB Destination and to route all shipments. Unless otherwise specified by BUYER, delivery shall be FOB Destination. If FOB Destination, SELLER shall ensure and comply with the shipping requirements of responsible reliable common carriers so as to obtain the lowest transportation cost to meet Contract delivery schedule and ensure safe, undamaged delivery to BUYER. SCIENTIFIC RESEARCH CORPORATION reserves the right to withhold payment amounts for damaged goods until SCIENTIFIC RESEARCH CORPORATION determines liability of SELLER for the amount of damage.
- (e) BUYER reserves the right to withhold payment amounts for receipt of damaged goods until BUYER at its sole discretion determines liability of SELLER for the amount of damage.

## **19. NEW MATERIALS AND PARTS OBSOLESCENCE**

- (a) Seller shall deliver only new materials, not used, or reconditioned, remanufactured, or of such age as to impair its usefulness or safety to SCIENTIFIC RESEARCH CORPORATION in end item deliverables or subparts within deliverable end items. "New material" means composed of previously unused components, whether manufactured from virgin material, recovered material in the form of raw material, or materials and by-products generated from, and reused within, an original manufacturing process; *provided* that the supplies meet contract requirements, including but not limited to, performance, reliability, and life expectancy.
- (b) SCIENTIFIC RESEARCH CORPORATION may desire to place additional orders for items purchased hereunder. SELLER shall provide SCIENTIFIC RESEARCH CORPORATION with a "Last Time Buy Notice" at least

twelve (12) months prior to any action to discontinue any item purchased under this Contract.

## **20. ELECTRONIC PARTS**

- (a) SELLER shall deliver only authorized electronic parts to SCIENTIFIC RESEARCH CORPORATION whether end items or components or subcomponents within deliverable end items. An "authorized electronic part" means an authentic, unmodified electronic part from the original manufacturer or a source with the express written authority of the original manufacturer or current design activity including an authorized aftermarket manufacturer. An electronic part includes, but is not limited to, an integrated circuit, a discrete electronic component (including, but not limited to, a transistor, capacitor, resistor, or diode), a circuit assembly, or embedded software or firmware.
- (b) SELLER shall promptly report the delivery of any electronic part that is not an "authorized electronic part" upon discovery to SCIENTIFIC RESEARCH CORPORATION. SCIENTIFIC RESEARCH CORPORATION shall determine whether such non-authorized electronic part is acceptable for use by SCIENTIFIC RESEARCH CORPORATION, and SELLER shall be subject to replacing such non-authorized electronic parts, providing an equitable price adjustment, and/or other contractual remedies resulting from delivery or use of such non-authorized electronic parts. When requested by SCIENTIFIC RESEARCH CORPORATION, SELLER shall provide traceability documentation and/or certifications that meet Government and industry standards to trace delivered electronic parts back to the original manufacturing source, cooperate fully with SCIENTIFIC RESEARCH CORPORATION in investigating and tracing any non-authorized or suspect non-authorized electronic parts, and flow down the requirements of this clause as necessary to ensure SELLER'S ability to comply.

## **21. PAYMENTS, TAXES, AND DUTIES**

- (a) Unless otherwise specified in a note on the face of the BUYER purchase order, terms of payment shall be net 30 days from the latest of the following dates: (i) SCIENTIFIC RESEARCH CORPORATION's receipt of the SELLER's proper invoice; (ii) Scheduled delivery date of the Work; or (iii) Actual acceptance of conforming Work by BUYER following receipt and inspection. SCIENTIFIC RESEARCH CORPORATION shall have a right of setoff against payments due or at issue under this Contract or any other contract between the parties.
- (b) Payment shall be deemed to have been made as of the date of mailing SCIENTIFIC RESEARCH CORPORATION's payment or electronic funds transfer.
- (c) Unless otherwise specified, estimated costs include all applicable federal, state and local taxes, duties, tariffs, and similar fees imposed by any government, all of which shall be listed separately on the invoice.
- (d) Seller agrees by acceptance or fulfillment of Purchase Order that Purchase Order shall be closed out with no further Seller obligations after a period of 60 days following Buyer final

invoice payment to Seller for contracted received deliveries of supplies or services.

adjustment as an alternative to SELLER's rework, repair, or replacement.

- (d) SELLER shall flow down through the supply chain the applicable Contract specification and quality requirements including customer requirements.
- (e) Records of all quality control testing and inspection work by SELLER shall be kept complete and available to SCIENTIFIC RESEARCH CORPORATION and its customers upon request for a period of 7 years after the year of final payment received by SELLER unless a longer period is specified in this contract or law or regulation.

**22. PRECEDENCE**

Any inconsistencies in this Contract shall be resolved in accordance with the following descending order of precedence: (1) Contract (which shall include continuation sheets), Release Document, or Face of the Purchase Order, as applicable, including any Special Provisions; (2) these General Provisions; (3) Attachments to the Contract, (4) Any master-type agreement (such as corporate, or basic ordering agreements). (FAR or DFARS clauses supersede all other provisions where the prime contract is awarded to SRC by the U. S. Government.

**25. RELEASE OF INFORMATION**

Except as required by law, no public release of any information, or confirmation or denial of same, with respect to this Contract or the subject matter hereof, will be made by SELLER without the prior written approval of SCIENTIFIC RESEARCH CORPORATION.

**23. PRIORITY RATING**

If so identified, this Contract is a "rated order" certified for national defense use, and the SELLER shall follow all the requirements of the Defense Priorities and Allocation System Regulation (15 CFR Part 700).

**26. SEVERABILITY**

Each paragraph and provision of this Contract is severable, and if one or more paragraphs or provisions are declared invalid, the remaining provisions of this Contract will remain in full force and effect.

**24. QUALITY CONTROL SYSTEM**

- (a) SELLER shall provide and maintain a quality control system to an industry recognized Quality Standard and in compliance with any other specific quality requirements identified in this Contract.
- (b) SELLER shall deliver only conforming products and services that meet all specifications, design, test, quality, and inspection requirements. Nonconforming products or services are not acceptable, and if delivered, SELLER shall not be paid. BUYER reserves the right to return nonconforming Work to SELLER at SELLER's expense for replacement or repair at SELLER's expense (including costs of packaging, shipment, insurance, replacement, repair, restocking and other costs). SELLER shall replace nonconforming Work with new, non-repaired or refurbished goods unless BUYER consents otherwise. The decision whether nonconforming Work is to be replaced or repaired is at the sole discretion of BUYER. If BUYER determines that repair or replacement of nonconforming Work is not necessary for the intended purpose and use, BUYER, at its sole determination, may agree to an equitable price adjustment as an alternative to SELLER's repair, or replacement.
- (c) SELLER shall immediately notify BUYER if SELLER discovers after delivery: (1) that delivered Work products or services are nonconforming, or (2) that conformity of delivered Work products or services has become suspect due to discovery of deficiencies in SELLER's purchasing, manufacturing, quality, testing, or inspection processes. SELLER shall rework, repair, or replace any such nonconforming Work at its own expense. If BUYER determines that rework, repair, or replacement of such latent defect in Work or process is not necessary for the intended purpose and use, BUYER, at its sole determination, may agree to an equitable price

**27. SURVIVABILITY**

If this Contract expires, is completed or terminated, SELLER shall not be relieved of those obligations contained in the following provisions:

- (a) Allowable Cost and Payment
  - Applicable Laws
  - Electronic Parts
  - Export Control
  - Independent Contractor Relationship
  - Information of SCIENTIFIC RESEARCH CORPORATION
  - Insurance/Entry on SCIENTIFIC RESEARCH CORPORATION Property
  - Intellectual Property Infringement
  - Record Retention
  - Release of Information
  - Warranty
- (b) Those U. S. Government flowdown provisions that by their nature should survive.

**28. FORCE MAJEURE**

SCIENTIFIC RESEARCH CORPORATION shall not be liable for delay to perform obligations under this Contract due to cause or causes beyond its control, including without limitation, acts of God or public enemy, fire, storms, earthquakes, riots, strikes, war, and restraints or shutdown of government provided that such failure or omission resulting from one of above causes is cured as soon as is practicable.

**29. TIMELY PERFORMANCE**

- (a) SELLER's timely performance is a critical element of this Contract.
- (b) Unless advance shipment has been authorized in writing by SCIENTIFIC RESEARCH CORPORATION, SCIENTIFIC



## Flow Down Provisions for MSTIC Purchase Orders

RESEARCH CORPORATION may store at SELLER's expense, or return, shipping charges collect, all Work received in advance of the scheduled delivery date.

- (c) If SELLER becomes aware of difficulty in performing the Work, SELLER shall timely notify SCIENTIFIC RESEARCH CORPORATION, in writing, giving pertinent details. This notification shall not change any delivery schedule.
- d) In the event of a termination or change, no claim will be allowed for any manufacture or procurement in advance of SELLER's normal flow time unless there has been prior written consent by SCIENTIFIC RESEARCH CORPORATION.
- e) (SCIENTIFIC RESEARCH CORPORATION reserves the right to cancel all or any parts of the Contract if SELLER does not make deliveries as specified, time being of the essence.

### 30. WAIVER, APPROVAL AND REMEDIES

- (a) Failure by SCIENTIFIC RESEARCH CORPORATION to enforce any provision(s) of this Contract shall not be construed as a waiver of the requirement(s) of such provision(s), or as a waiver of the right of SCIENTIFIC RESEARCH CORPORATION thereafter to enforce each and every such provision(s).
- (b) SCIENTIFIC RESEARCH CORPORATION's approval of documents shall not relieve SELLER from complying with any requirements of this Contract.
- (c) The rights and remedies of SCIENTIFIC RESEARCH CORPORATION in this Contract are in addition to any other rights and remedies provided by law or in equity.

### 31. WARRANTY

SELLER warrants that all Work furnished pursuant to this Contract shall strictly conform to applicable specifications, drawings, samples, and descriptions, and other requirements of this Contract and be free from defects in design, material and workmanship. The warranty shall begin upon final acceptance and extend for a period of (i) the manufacturer's warranty period or six months (whichever is longer) if SELLER is not the manufacturer and has not modified the Work: or (ii) one year or the manufacturer's warranty period (whichever is longer) if the SELLER is the manufacturer of the Work or has modified it. If any non-conformity with Work appears within that time, SELLER shall promptly repair, replace, or re-perform the Work. Transportation of replacement Work or return of nonconforming Work and repeat performance of Work shall be at SELLER's expense. If repair or replacement or re-performance of Work is not timely, Scientific Research Corporation may elect to return the nonconforming Work or repair or replace Work or re-procure the Work at SELLER's expense. All warranties shall run to SCIENTIFIC RESEARCH CORPORATION and its customer(s).

### 32. ORDERING FROM GOVERNMENT SUPPLY SOURCES

(This paragraph only applies when SCIENTIFIC RESEARCH CORPORATION orders and SELLER offers terms under

Federal Supply Schedules) Such purchases shall follow the terms of the applicable schedule and SCIENTIFIC RESEARCH CORPORATION shall provide a copy of an authorization letter upon request of SELLER or otherwise shall assume that SELLER has previously received a copy of the authorization, and the following statement is placed in this Contract: "This order is placed under written authorization from (See Contract) dated (See Contract). In the event of any inconsistency between the terms and conditions of this order and those of your Federal Supply Schedule contract, the latter will govern."

### 33. MISCELLANEOUS

- (a) Site Visitation. SRC reserves the right to visit areas of facilities at any level of the supply chain where contractual SRC work is being performed with reasonable advance notice and access to non-financial records applicable to such work and in compliance with laws, regulations, and contractual authorities. Seller agrees, upon request of SRC, to allow SRC's customer representatives to visit such facilities for the same purpose as described above. This requirement shall be flowed down through all tiers of the supply chain supporting this contract. Suppliers may impose escort requirements. All visitors shall comply with ITAR, security, and safety rules of Seller and lower tier suppliers.
- (b) Electronic Documents. If technical or contractual documents are transmitted electronically between the parties, neither party shall contest their validity, or any acknowledgment thereof, on the basis that the document or acknowledgment contains an electronic signature.
- (c) Record Retention. SELLER shall retain all records related to this contract for seven (7) years after the year of final payment received by SELLER unless a longer period is specified in this Contract or by law or regulation. Records include financial, proposal, procurement, specifications, production, inspection, test, shipping and export, and certification records. Upon request, SELLER shall provide timely access to such records to SRC and its customer including the U.S. Government at no additional cost. SRC access does not expect access to SELLER's proprietary financial records to which a U.S. Government representative may have regulatory access.
- (d) Direct Labor Due diligence. (This paragraph only applies if Contract includes direct labor line items that are to be billed to BUYER by the hour. SELLER shall conduct continual Direct Labor Due Diligence over any and all labor hours billed by the hour as cost-reimbursable, incentive, time-and-materials, labor-hour, price-redeterminable, or fixed price line items in the Contract. Direct Labor Due Diligence is defined as, and includes all of, the following: (1) ensuring that billed direct labor resources meet the minimum requirements of any applicable contractual labor category descriptions, (2) that resumes of key personnel are submitted with proposals when required by SRC, (3) that any contractually flowed down direct labor category titles and descriptions are utilized for proposals and billing, (4) that any hourly direct labor rate ceilings are not exceeded in accordance with Contract requirements, (5) that Seller will cooperate in providing supporting information when requested by SRC regarding qualifications of billed direct labor resources, and (6) that any exceptions to the above will be reported immediately to the SRC Procurement Representative. SELLER's submission of each invoice and subsequent acceptance of payment for such direct labor hours

billed by the hour shall serve as SELLER's certification that Direct Labor Due Diligence has been completed.

(e) Ethics/Gratuities/Kickbacks. SRC values contractual relationships founded in common commitment to ethics and high standards of professional business conduct. All sellers are encouraged to develop and implement ethics programs and business codes of conduct. Both SRC and sellers are expected to conduct business to the highest ethical standards in accordance with the terms of the contract and applicable laws and regulations. If you have any questions or request assistance in developing a business code of conduct for your company, please contact the SRC Procurement Representative. SELLER shall not offer or give kickback or gratuity (in the form of entertainment, gifts, or otherwise) for the purpose of obtaining or rewarding favorable treatment as an SRC supplier. By accepting any Contract, SELLER certifies and represents that it has not made or solicited and will not make or solicit kickbacks in violation of FAR 52.203-7 or the Anti-Kickback Act of 1986 (41 U.S.C. Sec 51-48) both of which are incorporated herein by reference except that paragraph (c)(1) of FAR 52.203-7 shall not apply.

(f) Green Procurement Program. For Contract deliverables, SELLER agrees to exercise Green Procurement Program preferences in the purchasing of products and services that result in minimal adverse environmental impacts such as the use of recovered materials or bio-based products to the maximum extent practicable unless otherwise contractually prohibited. Due consideration should be given to Environmental Protection Agency (EPA) and USDA designated products referenced on the internet at <http://www.epa.gov/cpg/products.htm>, as appropriate. SELLER shall also comply with any specific applicable contractually flowed down Federal Acquisition Regulation clauses and other provisions pertaining to recovered materials, bio-based products, and environmental sustainment practices within the Contract.

(g) Prevention of Counterfeit Parts. SELLER shall not deliver counterfeit parts to SCIENTIFIC RESEARCH CORPORATION (SRC). After delivery, SELLER shall promptly notify SRC if SELLER discovers that counterfeit parts have been furnished. "Counterfeit part" means an unlawful or unauthorized reproduction, substitution, or alteration that has been knowingly mislabeled, misidentified, or otherwise misrepresented to be an authentic, unmodified part from the original manufacturer, or a source with the express written authority of the original manufacturer or current design activity, including an authorized aftermarket manufacturer. Unlawful or unauthorized substitution includes used parts represented as new, or the false identification of grade, serial number, lot number, date code, or performance characteristics. If counterfeit parts are furnished under this Contract, such items will be impounded by SRC. Seller shall promptly replace such counterfeit parts with parts that are acceptable to SRC and shall be liable for costs relating to the removal and replacement of said parts. Seller is encouraged to implement appropriate counterfeit part prevention processes that consider: (1) training of appropriate persons in the awareness and prevention of electronic parts; (2) application of a parts obsolescence monitoring program; (3) controls for acquiring externally provided product from original or authorized manufacturers, authorized distributors, or other approved suppliers; (4) verification and test methodologies to detect counterfeit parts; (5) monitoring of counterfeit parts reporting from external sources; and (6) quarantine and reporting of suspect or detected counterfeit parts.

(h) Stop Work Order

BUYER may, at any time, by written order to SELLER, require the SELLER to stop all, or any part, of the work called for under this Contract. Upon receipt of the Stop Work Order, SELLER shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the stop work order during the period of work stoppage. Within the period of ninety (90) calendar days after the stop work order is delivered to SELLER, or within any extension of that period to which the parties have agreed, BUYER will either:

1. Cancel the stop work order, or
2. Terminate, in whole or in part, the work covered by the Contract.

If a Stop Work Order issued under this clause is canceled, SELLER shall resume work under the Contract. SRC reserves the right to make an equitable adjustment in the delivery schedule or cost or price, or both that result from the stoppage of work. SELLER shall assert its right to an equitable adjustment as a result of the stop work order within thirty (30) calendar days after the end of the period of work stoppage.

(i) Termination For Convenience. BUYER's Procurement Representative may terminate the Contract for BUYER's convenience, in whole or in part, by written notice to SELLER. Such termination shall be effective in the manner specified in the notice and shall be without prejudice to any claims that BUYER may have against SELLER. On the date of such termination or cancellation stated in said notice, SELLER will discontinue all Services pertaining to the Contract, place no additional orders, and preserve and protect materials on hand purchased for or committed to the Contract, work in progress and completed work both in SELLER's own and SELLER's suppliers' plants pending BUYER's instructions, and dispose of same in accordance with BUYER's instructions. BUYER reserves the right to direct SELLER to assign to BUYER any of SELLER's subcontracts, orders, or commitments. Cancellation payments to SELLER or refund to BUYER, if any, will be based on that portion of services satisfactorily performed or goods delivered to BUYER to the date of termination. Seller shall not be entitled to prospective or anticipatory profits or damages because of such termination or cancellation. In the event of an Acquisition of or merger with SELLER by another entity, BUYER shall have the right to terminate contract for Convenience.

(j) Termination For Default. (1) BUYER's Procurement Representative may, by notice in writing, terminate Contract in whole or in part at any time for (i) breach of any one or more of its terms, (ii) failure to deliver goods or services within the time specified by this Contract or SELLER quote or any written extension granted by BUYER's Procurement Representative, (iii) failure to deliver goods or services that do not meet specifications or other requirements or reasonable professional quality standards of workmanship or service, or (iv) SELLER does not cure any of the following causes for Termination for Default within a period of ten (10) business days after receipt of written notice from BUYER's Procurement Representative specifying such cause: (A) BUYER has reason to believe that SELLER will be unable to deliver the Goods or to complete the Services, (B) SELLER has repudiated, either orally or in writing, its obligation to deliver Goods or complete the Services pursuant to the terms of the Contract, or (C) SELLER has failed to make reasonable progress so as to endanger performance of this Contract, or has otherwise failed to comply with any provisions of the Contract. (2) BUYER's Procurement Representative may also terminate Contract in whole or in part in the event of SELLER's suspension of business, insolvency, appointment of a receiver for SELLER's property or business, or any





## Flow Down Provisions for MSTIC Purchase Orders

assignment, reorganization or arrangement by SELLER for the benefit of its creditors. In the event of partial termination, SELLER is not excused from performance of the non-terminated balance of work un Contract. (3) In the event of SELLER's default, BUYER may exercise any or all rights and remedies accruing to it, both at law, including without limitation, those set forth in Article 2 of the Uniform Commercial Code, or in equity, including but not limited to, SELLER's liability for BUYER's excess re-procurement costs for goods or services. (4) If Contract is terminated for default, BUYER may require SELLER to transfer title to, and deliver to BUYER, as directed by BUYER, any (i) completed supplies, and (ii) partially completed supplies and materials, parts, and other manufacturing materials that SELLER has specifically produced or acquired for the terminated portion of the Contract. Upon direction of BUYER's Procurement Representative, SELLER shall also protect and preserve property and manufacturing materials. (5) SELLER shall not be entitled to further payments under Contract, except for payment of SELLER's unpaid costs of items that BUYER has elected to take possession of and remove, or asked SELLER to deliver, and SELLER shall be liable to BUYER for all costs in excess of the purchase price incurred in completing the Services or deliver of items elsewhere, provided, however, that SELLER shall not be liable for excess costs when delay of SELLER in making deliveries or performing services is due to causes beyond SELLER's control, or such delay is without fault or negligence on the part of SELLER. (6) Following a Termination for Default, should it be judicially determined that SELLER was not in default, such termination shall be deemed a termination made pursuant to Termination for Convenience.

### SECTION II: MSTIC AND FAR FLOWDOWN PROVISIONS

- A. INCORPORATION OF MSTIC CLAUSES** The items or services furnished are for use in a U. S. Government Other Transaction Authority (OTA) "Maritime Sustainment Technology and Innovation Consortium (MSTIC) Agreement" In addition to the provisions of Section I, the following provisions shall apply as required by the terms of the MSTIC Consortium Agreement or by operation of law or regulation. Buyer is flowing down to Seller certain provisions and clauses of the MSTIC Consortium Agreement. Sellers shall include the appropriate flow down clauses in each lower-tier subcontract.

The MSTIC Consortium Agreement includes a few clauses from the Federal Acquisition Regulations (FAR) or FAR supplements, and these clauses specifically listed herein, are included in the terms of this Contract. Some FAR Clauses may be included as full text or may be identified by clause number and Title such as "52".XXX.XX TITLE" Any listed FAR supplements are identified as such, e.g.: Defense FAR Supplement: "DFARS 252.2XX-7XXX TITLE". Alternates of clauses shall apply when applicable. The FAR system clauses identified by clause number and title are incorporated herein by reference, with the same force and effect as if they were given in full text, and are applicable, including any notes following the clause citation, during the performance of this Contract. FAR clauses inapplicable to the performance of this Contract under Buyer's Government contract are self-deleting. The date and substance of the clauses are those in effect as flowed down to Buyer in the Buyer's Government contract. If the date or substance of any of the clauses listed below is different than the date or substance of the clause actually

incorporated in the Prime Contract referenced by number herein, the date or substance of the clause incorporated by said Prime Contract shall apply instead.

### **B. DEFINITIONS**

Definitions of terms used in the MSTIC clauses and FAR clauses are identified as to their source as "MSTIC", "FAR", or "SRC". FAR clauses shall be as defined in FAR 2.101, definitions specified within a clause itself, or the FAR Part prescribing a clause. In addition, the following terms shall have the meaning as defined below in this Contract:

"Contract" or "Subcontract" means this Contract. (SRC)

"Contractor" means the SELLER, as defined herein, acting as the immediate (first-tier) subcontractor to SCIENTIFIC RESEARCH CORPORATION. (SRC)

"Cost Accounting Standard Threshold" means \$2,000,000.00. (FAR)

"Cost or Pricing Data Threshold" means \$750,000.00 for Federal Contracts awarded before July 1, 2018; and \$2,000,000.00 for Federal Contracts awarded on, or after, July 1, 2018. (FAR)

"Cost Sharing" means cash or in-kind resources expended during a prototype award by the Consortium Member or lower tier Subcontractors that are necessary and reasonable for accomplishment of the project. (MSTIC)

"DoD" means U.S. Department of Defense (FAR)

"Micro Purchase Threshold" means \$10,000.00 with the exceptions that it shall mean \$2,000.00 for acquisitions of construction subject to 40 U.S.C. chapter 31, subchapter IV, Wage Rate Requirements (Construction), and that it shall mean \$2,500.00 for acquisitions of services subject to 41 U.S.C. chapter 67, Service Contract Labor Standards. (FAR)

"Other Transaction Agreement (OTA)" means the Other Transaction Agreement between the Government and the MSTIC by its Consortium Manager, Advanced Technology International, Agreement No. N65236-18-9-0001. (MSTIC)

*Parties* means when used within the context of the consortium and its functions, the Consortium Management Firm and SRC where collectively identified. *Parties* used in context between SRC and SELLER within MSTIC wording context means SRC and SELLER.

"Performer" means the same definition as SELLER.

"Prime Contract" means the contract between SCIENTIFIC RESEARCH CORPORATION and the U.S. Government or between SCIENTIFIC RESEARCH CORPORATION and its higher-tier contractor who has a prime contract with the U.S. Government. (SRC)

"Property" means any tangible personal property other than property actually consumed during the execution of work under any Prototype Project. (MSTIC)

"Prototype" means a physical or virtual model used to evaluate the technical or manufacturing feasibility or military utility of a technology, process, concept, end item, or system. (MSTIC)



## Flow Down Provisions for MSTIC Purchase Orders

“Prototype Project” means any work that is performed in connection with the MSTIC Consortium Agreement under the authority of 10 U.S.C. § 4022 or any work that is performed by SELLER under the authority of this Contract.

“Prototype Project Order (PPO)” means any individual OT Prototype Project awarded to SELLER through purchase order Contracts placed in accordance with the MSTIC OTA. (MSTIC)

“Simplified Acquisition Threshold” means \$250,000.00. (FAR)

“Small Business Subcontracting Plan Threshold” means \$700,000.00 (or \$1.5 Million for construction contracts). (FAR)

“SRC” means SCIENTIFIC RESEARCH CORPORATION. (SRC)

“Subcontract” means any contract placed by the SELLER or lower-tier subcontractors under this Contract. (SRC)

### C. NOTES

1. Substitute "SCIENTIFIC RESEARCH CORPORATION" for "Government" or "United States" as applicable throughout a FAR clause except for functions that only the Government can perform.
2. Substitute "SCIENTIFIC RESEARCH CORPORATION Procurement Representative" for "Contracting Officer", "Contracting Officer Representative", "Administrative Contracting Officer", and "ACO" throughout a FAR clause except for functions that only the Government can perform.
3. Communication/notification required under FAR clauses from/to the SELLER to/from the Contracting Officer shall be through SCIENTIFIC RESEARCH CORPORATION.

Notwithstanding the NOTES above, the terms "Government" and "Contracting Officer" do not change: (a) in the phrases "Government Property", "Government Furnished Property", or "Government Owned Property"; (b) in the Data Rights clauses incorporated herein, if any; (c) when a right, act, authorization, or obligation can be granted or performed only by the Government or a Contracting Officer or his/her duly-authorized representative; (d) when title to property is to be transferred directly to the Government; (e) when access to proprietary financial information or other proprietary data is required except as otherwise provided in this Contract; and (f) where specifically modified in this Contract.

### D. AMENDMENTS REQUIRED BY PRIME CONTRACT

CONTRACTOR agrees that upon the request of SCIENTIFIC RESEARCH CORPORATION it will negotiate in good faith with SCIENTIFIC RESEARCH CORPORATION relative to amendments to this Contract to incorporate additional provisions herein or to change provisions hereof, as SCIENTIFIC RESEARCH CORPORATION may reasonably deem necessary in order to comply with the provisions of the applicable Prime Contract or with the provisions of amendments to such Prime Contract. If any such amendment to this Contract causes an increase or decrease in the estimated cost of, or the time required for, performance of any part of the work under this Contract, an equitable adjustment shall be made pursuant to the “Changes” Clause of this Contract.

### E. PRESERVATION OF THE GOVERNMENT’S RIGHTS

If SCIENTIFIC RESEARCH CORPORATION furnishes designs, drawings, special tooling, equipment, engineering data or other technical or proprietary information (Furnished Items) to which the U. S. Government owns or has the right to authorize the use of, nothing herein shall be construed to mean that SCIENTIFIC RESEARCH CORPORATION, acting on its own behalf, may modify or limit any rights the Government may have to authorize the CONTRACTOR’s use of such Furnished Items in support of other U. S. Government prime contracts.

### F. FLOWDOWN PROVISIONS FROM MSTIC CONSORTIUM AGREEMENT

(These clause numbers refer to numbers in the MSTIC Consortium Agreement for cross reference; therefore the following numbers will be chronological, but not consecutive.)

#### MSTIC ARTICLE V – INTELLECTUAL PROPERTY

*(This clause only applies if SRC is purchasing Technical Data, Computer Software, or Computer Software Documentation as a deliverable line item from Seller. If this clause applies, SRC does not assert rights to Seller’s software for resale. SRC is serving as a purchasing agent for the Government. Data rights sold and licensed by Seller to Government, if any, are between Seller and Government.)*

1. Data Rights. *Subcontractor is subject to the following clause of the SRC Consortium Agreement that is incorporated into this Contract (below). SRC will assist SELLER, but cannot be held liable to enforce any actions of the U.S. Government. In the following clause, “Agreement” and “subagreement” shall mean “Contract”. “Subcontractor” shall mean “SELLER”.*

#### a. *Definitions*

*Background Invention* means any invention made by a Consortium Member(s) or Prototype Project Performer(s) prior to performance or outside of the Scope of Work of a Prototype Project.

*Commercial computer software* means software developed or regularly used for non-governmental purposes which (i) has been sold, leased, or licensed to the public; (ii) has been offered for sale, lease, or license to the public; (iii) has not been offered, sold, leased, or licensed to the public but will be available for commercial sale, lease, or license in time to satisfy the delivery requirements of this contract; or (iv) satisfies (i), (ii), or (iii) above and would require only minor modification to meet the requirements of this Agreement.

*Computer database* means a collection of data recorded in a form capable of being processed by a computer. The term does not include computer software.

*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.

*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 databases or computer software documentation.

*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.

*Covered Government support contractor* means a contractor 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 prime contractor or a first-tier subcontractor on the program or effort, or with any direct competitor of such prime contractor or any such first-tier subcontractor 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 DFARS 252.227-7025.

*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.

*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. "Developed" means that (i) a computer program has been successfully operated in a computer and tested to the extent sufficient to demonstrate to reasonable persons skilled in the art that the program can reasonably be expected to perform its intended purpose; (ii) computer software, other than computer programs, has been tested or analyzed to the extent sufficient to demonstrate to reasonable persons skilled in the art that the software can reasonably be expected to perform its intended purpose; and (iii) computer software documentation required to be delivered under a contract has been written, in any medium, in sufficient detail to comply with requirements under that contract.

*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. "Developed exclusively with government funds" means development was not accomplished exclusively or partially at private expense. "Developed with mixed funding" means

development was accomplished partially with costs charged to indirect cost pools and/or costs not allocated to a government contract, and partially with costs charged directly to a government contract.

*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.

*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.

*Government purpose rights* means the rights to—

Use, modify, reproduce, release, perform, display, or disclose technical data, computer software, or computer software documentation within the Government without restriction; and

Release or disclose technical data, computer software, or computer software documentation outside the Government and authorize persons to whom release or disclosure has been made to use, modify, reproduce, release, perform, display, or disclose that data for United States government purposes.

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

*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 it is necessary for emergency repair and overhaul; or if the release or disclosure is to a covered Government support contractor in performance of its covered Government support contract, or to 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. When such release outside the Government occurs, the recipient of the technical data shall be made subject to a prohibition on the further reproduction, release, disclosure, or use of the technical data; and the Consortium Member asserting the restriction shall be notified thereof.

*Made* with respect to an invention means the conception or first actual reduction to practice of the invention.

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

*Noncommercial computer software* means software that does not qualify as commercial computer software.

*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; under such conditions as to establish that the invention is being utilized, and the benefits of the invention **are, to the extent** permitted by law or Government regulations, available to the public on reasonable terms.

*Restricted rights* apply only to noncommercial computer software and mean the Government's rights to—

- (i) Use a computer program with one computer at one time, unless otherwise agreed;
- (ii) Transfer a computer program to another Government agency without the further permission of the Contractor if the transferor destroys all copies of the program and related computer software documentation in its possession and notifies the licensor of the transfer. Transferred programs remain subject to the provisions of this clause;
- (iii) Make the minimum number of copies of the computer software required for safekeeping (archive), backup, or modification purposes;
- (iv) Modify computer software provided that the Government may use the modified software only as provided in paragraphs (i) and (iii) of this clause, and not release or disclose the modified software except as provided in paragraphs (ii), (v), (vi) and (vii) of this clause;
- (v) Permit contractors or subcontractors performing service contracts (see 37.101 of the Federal Acquisition Regulation) in support of this or a related contract to use computer software to diagnose and correct deficiencies in a computer program, to modify computer software to enable a computer program to be combined with, adapted to, or merged with other computer programs or when necessary to respond to urgent tactical situations, provided that—
  - A. The Government notifies the party that has granted

restricted rights that a release or disclosure to particular contractors or subcontractors was made;

- A. Such contractors or subcontractors are subject to the use and non-disclosure agreement at 227.7103-7 of the Defense Federal Acquisition Regulation Supplement (DFARS) or are Government contractors receiving access to the software for performance of a Government contract that contains the clause at DFARS 252.227-7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends;
- B. The Government shall not permit the recipient to decompile, disassemble, or reverse engineer the software, or use software decompiled, disassembled, or reverse engineered by the Government pursuant to paragraph (a)(15)(iv) of this clause, for any other purpose; and
- C. Such use is subject to the limitations in paragraphs (a)(15)(i) through (iii) of this clause;

(vi) Permit contractors or subcontractors performing emergency repairs or overhaul of items or components of items procured under this or a related contract to use the computer software when necessary to perform the repairs or overhaul, or to modify the computer software to reflect the repairs or overhaul made, provided that—

- A. The intended recipient is subject to the use and non-disclosure agreement at DFARS 227.7103-7 or is a Government contractor receiving access to the software for performance of a Government contract that contains the clause at DFARS 252.227-7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends;
- B. The Government shall not permit the recipient to decompile, disassemble, or reverse engineer the software, or use software decompiled, disassembled, or reverse engineered by the Government pursuant to paragraph (a)(15)(iv) of this clause, for any other purpose; and

C. Such use is subject to the limitations in paragraphs (a)(15)(i) through (iii) of this clause; and

(vii) Permit covered Government support contractors in the performance of covered Government support contracts that contain the clause at 252.227-7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends, to use, modify, reproduce, perform, display, or release or disclose the computer software to a person authorized to receive restricted rights computer software, provided that—

- A. The Government shall not permit the covered Government support contractor to decompile, disassemble, or reverse engineer the software, or use software decompiled, disassembled, or reverse engineered by the Government pursuant to paragraph (a)(15)(iv) of this clause, for any other purpose; and
- B. Such use is subject to the limitations in paragraphs (a)(15)(i) through (iv) of this clause.

*Subject invention* means any invention of a Performer made in the performance of a Project pursuant to this Agreement.

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

*Unlimited rights* means rights to use, modify, reproduce, perform, display, release, or disclose technical data, computer software, or computer software documentation, 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 data. The Performer grants or shall obtain for the Government the following royalty free, world-wide, nonexclusive, irrevocable license rights in technical data, computer software, and computer software documentation:

- (1) The Government shall have Government Purpose Rights (GPR) in technical data developed under this Agreement, unless otherwise specified in this Article or in the Prototype Project Orders. The Government shall have Unlimited Rights in: (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 contract, 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 Contractor by the Government; (vii) Otherwise publicly available or have been released or disclosed by the Contractor or subcontractor 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 or any other Government contract or subcontract thereunder, with Government purpose license rights or limited rights and the restrictive condition(s) has/have expired, or Government purpose rights, and the Performer's exclusive right to use such data for commercial purposes has expired.

- (2) The Government shall have Government Purpose Rights for Computer Software developed under this Agreement unless otherwise specified in the Article or in the Prototype Project Orders. The Government shall have Unlimited rights in: (i) Computer software developed exclusively with Government funds; (ii) Computer software documentation required to be delivered under this contract; (iii) Corrections or changes to computer software or computer software documentation furnished to the Contractor by the Government; (iv) Computer software or computer software documentation that is otherwise publicly available or has been released or disclosed by the Contractor or subcontractor without restriction on further use, release or disclosure, other than a release or disclosure resulting from the sale, transfer, or other assignment of interest in the software to another party or the sale or transfer of some or all of a business entity or its assets to another party; (v) Computer software or computer software documentation obtained with unlimited rights under another Government contract or as a result of negotiations; or (vi) Computer software or computer software documentation furnished to the Government, under this or any other Government contract or subcontract thereunder with restricted rights in computer software, limited rights in technical data, or government purpose license rights and the restrictive conditions have expired; or Government purpose rights, and the Performer's exclusive right to use such software or documentation for commercial purposes has expired.

- (3) The Government shall have Government purpose rights for a five-year period, or such other period as may be negotiated, in computer software developed with mixed funding, and in technical data that (A) pertain to items, components, or processes developed with mixed funding except when the Government is entitled to unlimited rights, or (B) was 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. The five-year period,

or such other period as may have been negotiated, shall commence upon the Project Order. Upon expiration of the five-year or other negotiated period, the Government shall have Unlimited rights in the technical data and computer software. The Government shall not release or disclose technical data or computer software in which it has government purpose rights unless (A) prior to release or disclosure, the intended recipient is subject to the non-disclosure agreement at DFARS 227.7103-7; or (B) the recipient is a Government contractor receiving access to the data for performance of a Government contract that contains the clause at DFARS 252.227-7025, Limitations on the Use or Disclosure of Government- Furnished Information Marked with Restrictive Legends. 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 government purpose rights five year (or other negotiated) time period.

(4) Limited rights.

(i) Except as provided in paragraphs (b)(1)(ii) and (b)(1)(iv) through (b)(1)(ix) of this clause, 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 clause; 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 Contractor that the data have been destroyed.

(iii) The Contractor, its subcontractors, 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 Contractor agrees to promptly enter into negotiations with the Contracting Officer to determine whether there are acceptable terms for transferring such rights. All technical data in which the Contractor 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 Contractor acknowledges that—

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

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

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

(5) Restricted rights.

(i) The Government shall have restricted rights in noncommercial computer software required to be delivered or otherwise provided to the Government under this contract that were developed exclusively at private expense.

(ii) The Contractor, its subcontractors, or suppliers are not required to provide the Government additional rights in noncommercial computer software delivered or otherwise provided to the Government with restricted rights. However, if the Government desires to obtain additional rights in such software, the Contractor agrees to promptly enter into negotiations with the Contracting Officer to determine whether there are acceptable terms for transferring such rights. All noncommercial computer software in which the Contractor has granted the Government additional rights shall be listed or described in a license agreement made part of the contract (see paragraph (b)(4) of this clause). The license shall enumerate the additional rights granted the Government.

(iii) The Contractor acknowledges that—

(A) Restricted rights computer software is authorized to be released or disclosed to covered Government support contractors;

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

(C) The Contractor (or the party asserting restrictions, as identified in the restricted rights legend) may require each such covered Government support contractor to enter into a non-disclosure agreement directly with the Contractor (or the party asserting

restrictions) regarding the covered Government support contractor's use of such software, or alternatively, that the Contractor (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 contractor's use of the restricted rights software 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.
- (6) Specifically negotiated license rights. The license rights granted to the Government under this Article may be modified by mutual agreement to provide such rights as the parties consider appropriate but shall not provide the Government lesser rights than Limited Rights or Restricted Rights. Any rights so negotiated shall be identified in a license agreement made part of this contract.
- (7) 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 the parties have agreed otherwise, or any restrictions on the Government's rights have expired or no longer apply.
- (8) Release from liability. The Performer agrees to release the Government from liability for any release or disclosure of technical data made in accordance with this Article.
- (c) All rights not granted to the Government are retained by the Performer.
- (d) The Performer shall not, without the written approval of the AO, 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 clause, 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)** Proposals submitted in response to a Request for White Paper or RPP shall identify the technical data or computer software that the Consortium Members, its subcontractors or suppliers, or potential subcontractors or suppliers, assert should be furnished to the Government with other than Unlimited rights. Technical data and computer software that a Performer asserts should be furnished to the Government with restrictions on use, release, or disclosure shall be identified in an attachment to the white paper or Project Order. If a Project Order is awarded, the assertions identified in the proposal shall be listed as an attachment to the Project Order. The Performer shall not deliver any data with restrictive markings unless the data are listed on such attachment. 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 source selection decision. Such identification and assertion shall be submitted to the AO as soon as practicable prior to the scheduled date for delivery of the data. Performers making a data rights assertion shall list in the attachment the technical data or computer software to be furnished with restrictions, the basis for assertion, and the asserted rights category.
- (f) The Performer may only assert restrictions on the Government's rights to use, modify, reproduce, release, perform, display, or disclose technical data or computer software to be delivered by marking the deliverable data subject to restriction in accordance with this Article as covered by Government purpose rights, Limited rights, or Restricted rights. The Government shall have Unlimited rights in all unmarked Data. A Performer that will deliver technical data or computer software with other than unlimited rights, shall have, maintain, and follow written procedures sufficient to assure that restrictive marking are used only when authorized; and maintain records sufficient to justify the validity of any restrictive markings on technical data or computer software delivered under this contract.
- (g) The Government may ignore or, at the Performer's expense, correct, or strike a marking if, in accordance with this Article, a restrictive marking is determined to be unjustified. If the AO 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.
- (h) The Government has rights in certain Designations, including the mark "MSTIC" and others, which may arise during the course of performance of this Agreement. For purposes of this Agreement Designation also means internet domain names, website registrations, and logos associated with the Consortium Management Firm's activities under this Agreement. ATI shall not seek to register the Designations as trademarks in any jurisdiction, and they shall not assert any claim, in any jurisdiction, including but not limited to trademark infringement, based on rights they believe they have in such Designations against the Government or others authorized by the Government to use the Designations. The Government is providing the Designations to ATI and the Consortium Members for use in connection with the activities relating to this Agreement. Notwithstanding the foregoing ATI may use any Designation to promote its role and experience as a Consortium Manager, and Members may use any Designation to promote their role and experience in performing under this Agreement. ATI shall not use the Designations for any other purpose without the prior written permission of the AO. ATI acknowledges that these obligations with respect to the Designations shall survive the

expiration, completion, closeout, or termination of this contract.

2. Subject Inventions – Ownership and Licenses

*Subcontractor is subject to the following clause of the SRC Base Consortium Agreement that is incorporated into this OBOA verbatim (below). SRC will assist Subcontractor, but cannot be held liable to enforce any actions of the U.S. Government. In the following clause, the terms “Agreement” and “subagreement” shall mean “OBOA”. “Subcontractor” shall mean “Subcontractor”. Subcontractor shall keep SRC informed of asserting, planning, or filing for patent rights, and progress in the Patents process.*

(a) The Performer shall disclose each Subject invention to the AO on a DD882 form within 6 months after the Performer first becomes aware that a Subject invention has been made. The disclosure shall contain sufficient technical detail to convey a clear understanding of the invention, and describe any publication or submission for publication, sale, offer for sale, or public use of the invention.

(b) The Performer shall elect in writing whether or not to retain ownership of any Subject invention by notifying the AO within 6 months of the disclosure as to those countries (including the United States) in which the Performer will retain ownership. However, in any case where publication, on sale, or public use has initiated the 1-year statutory period during which valid patent protection can be obtained in the United States, the Government may shorten the period of election of title to a date that is no more than 60 days prior to the end of the statutory period. The Performer shall file either a provisional or a nonprovisional patent application on such an elected Subject invention within 1 year after election, provided that in all cases the application shall be filed 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; file a nonprovisional application within 10 months of the filing of any provisional application; and file patent applications in additional countries or international patent offices within either 10 months of the first filed patent application (whether provisional or nonprovisional) or 6 months from the date the Commissioner of Patents grants permission to file foreign patent applications where such filing has been prohibited by a Secrecy Order. The Performer shall include, within the specification of any United States nonprovisional patent application 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 the United States Navy. The Government has certain rights in this invention.” The Performer may request extensions of time for disclosure, election, or filing under this paragraph, and the AO will normally grant the extension unless there is reason to believe the extension would prejudice the Government’s interests

(c) If the Performer elects to retain ownership of a Subject invention, the 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. The Performer acknowledges that, with respect to any Subject invention in which it has retained ownership, the Government has the right to require licensing pursuant to 35 U.S.C. 203 and 210(c), 37 CFR 401.6,

and any supplemental regulations in effect on the date of the Project award.

(d) The Performer shall assign to the Government, upon written request, title to any Subject invention for which the Performer (i) elects not to retain title; (ii) fails to elect to retain title within the time period set forth in paragraph (2); (iii) in any country fails to file a patent application within the time set forth in paragraph (2); and, in any country in which the Performer decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in reexamination or opposition proceeding on, a patent on a subject invention. The Performer shall notify the AO of any decisions not to file a nonprovisional patent application, not to continue the prosecution of a patent application, not to pay maintenance fees, or not to defend in a reexamination or opposition proceeding on a patent, in any country, not less than 30 days before the expiration of the response or filing period required by the relevant patent office.

(e) The Performer shall retain a nonexclusive royalty-free license throughout the world in each Subject invention to which the Government obtains title, unless the Performer fails to disclose the invention within the times specified in paragraph (2). The Performer’s license (i) extends to any domestic subsidiaries and affiliates within the corporate structure of which the Performer is a part; (ii) includes the right to grant sublicenses to the extent the Performer was legally obligated to do so at the time of Project award; and (iii) is transferable only with the approval of the Government, except when transferred to the successor of that part of the Performer’s business to which the invention pertains. NSWCPD may revoke or modify the Performer’s domestic license 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 37 CFR Part 404 and agency licensing regulations. NSWCPD will not revoke the license in that field of use or the geographical areas in which the Performer has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. NSWCPD may revoke or modify the license in any foreign country to the extent the Contractor, its licensees, or the domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country. Before revoking or modifying the license, NSWCPD will furnish the Performer a written notice of its intention to revoke or modify the license; and will allow the Performer 30 days after the notice to show cause why the license should not be revoked or modified. The Performer has the right to appeal, in accordance with 37 CFR Part 404 and agency regulations, concerning the licensing of Government-owned inventions, any decision concerning the revocation or modification of the license.

(f) The Performer shall execute or have executed and promptly deliver to NSWCPD all instruments necessary to establish or confirm the rights the Government has throughout the world in those Subject inventions in which the Performer elects to retain ownership; and assign title to NSWCPD when requested under paragraph (4) and execute all papers necessary to enable the Government to obtain patent protection for the Subject invention in any country. The Performer shall provide to the AO, for any Subject invention for which the Performer has retained ownership, information with respect to the filing of patent applications including: filing date; serial no.; a copy of the application; patent number; grant or issue date; and upon request an irrevocable power to inspect and make copies of any patent application file.



**(3) Confidential Information**

(a) "Confidential Information" includes information and materials of a disclosing party which are confidential, proprietary, or a Trade Secret as defined in the Uniform Trade Secrets Act §1.4. The disclosing party shall designate any such disclosure as Confidential Information upon disclosure to the receiving party. Materials and other information which are orally, visually, or electronically disclosed by a disclosing party, or are disclosed in writing without such a designation, shall constitute Confidential Information if the disclosing party, within thirty (30) days after such disclosure, delivers to the receiving party a written notice describing the material or information and indicating that it is Confidential Information, provided that any disclosure of information by the receiving party prior to receipt of such notice shall not constitute a breach by the receiving party of its obligations under this paragraph.

(b) Confidential Information shall remain the property of the disclosing party. Unless otherwise agreed to by the disclosing party, Confidential Information shall not be disclosed, divulged, or otherwise communicated by the receiving party to third parties, or used by the receiving party for any purposes other than in connection with specified Project efforts and the licenses granted in this Article. However, the duty to protect such Confidential Information shall not extend to materials or information that:

- (i) Are received or become available without restriction to the receiving party under a proper, separate agreement;
- (ii) Are not designated "Confidential Information" in accordance with this Article;
- (iii) Are lawfully in possession of the receiving party without restriction to the receiving party at the time of disclosure thereof as demonstrated by prior written records;
- (iv) Are or later become part of the public domain through no fault of the receiving party;
- (v) Are received by the receiving party from a third party having no obligation of confidentiality to the disclosing party;
- (vi) Are developed independently by the receiving party without use of the Confidential Information as evidenced by written records; or
- (vii) Are required by law or regulation to be disclosed; provided, however, that the receiving party shall provide written notice to the disclosing party promptly to enable the disclosing party to seek a protective order or otherwise prevent disclosure of such information.

**MSTIC ARTICLE VII: GENERAL PROVISIONS**

**3. Retention and Access to Records**

(a) Subcontractor shall retain and permit the Government access to financial records, supporting documents, statistical records, and all other records pertinent to Prototype Projects or this OBOA for a period not to exceed three (3) years after expiration of the term of each individual Prototype Projects awarded under this OBOA or final acceptance of the last prototype award delivered under individual Prototype Projects, whichever occurs later, unless one of the exceptions in (b) of this Section applies.

**(b) Exceptions:**

i. If any litigation, claim, or audit starts before the expiration of the 3-year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken.

ii. Records for real property and equipment acquired with Federal funds shall be retained for 3 years after final disposition.

iii. When records are transferred to or maintained by the DoD Component that made the award, the 3-year retention requirement is not applicable to the Consortium or Consortium Member(s).

(c) If the information described in this section is maintained on a computer, Subcontractor shall retain the computer data on a reliable medium for the time period prescribed. Subcontractor may transfer computer data in machine-readable form from one reliable computer medium to another. Subcontractor computer data retention and transfer procedures shall maintain the integrity, reliability, and security of the original computer data. Subcontractor shall also maintain an audit trail describing the data transfer.

**4. Comptroller General Access to Information**

(a) In accordance with 10 U.S.C. § 4022, this OBOA and each PPO issued pursuant to this OBOA that provides for payments in excess of \$5,000,000 to Subcontractor shall provide for the Comptroller General, at the discretion of the Comptroller General, the right to examine the records of any party to the OBOA or any entity that participates in the performance of the Prototype Project.

This requirement shall not apply with respect to a party or entity, or a subordinate element of a party or entity that has not entered into any other agreement/contract that provides for audit access by a Government entity in the year prior to the date of the applicable Prototype Project.

(b) The right provided to the Comptroller General in a clause of an agreement under paragraph (a) is limited as provided in subparagraph (b) in the case of a party to the agreement, an entity that participates in the performance of the agreement, or a subordinate element of that party or entity if the only agreements or other transactions that the party, entity, or subordinate element entered into with Government entities in the year prior to the date of that agreement are cooperative agreements or transactions that were entered into under 10 U.S.C. § 4022.

(c) The only records of a party, other entity, or subordinate element referred to in paragraph (a) that the Comptroller General may examine in the exercise of the right referred to in that paragraph, are records of the same type as the records that the Government has had the right to examine under the audit access sections of the previous agreements or transactions referred to in such paragraph that were entered into by that particular party, entity, or subordinate element.

(d) The Comptroller General may not examine records pursuant to a section included in a Prototype Project under paragraph (a) more than three years after the final payment is made by the United States under the Agreement.

**5. Title and Disposition of Property**

**(a) Definitions**

Property, as used in this Article, means any tangible personal property other than property consumed during the execution of work under a prototype project.

Government-furnished property means property in the possession of, or directly acquired by, the Government and subsequently furnished to the



## Flow Down Provisions for MSTIC Purchase Orders

contractor for performance of a contract. Government- furnished property includes, but is not limited to, spares and property furnished for repair, maintenance, overhaul, or modification.

Contractor-acquired property means property acquired, fabricated, or otherwise provided by the contractor for performing a contract and to which the Government has title.

(a) The Government may provide Government Furnished Property (GFP) to facilitate performance of a Prototype Project. The Government will identify in the Request for White Papers and or RPPs whether GFP is anticipated to be provided. The GFP shall be utilized only for the performance of that individual Prototype Project order unless a specific exception is made in writing by the AO. Subcontractor shall have a system of internal controls to manage (control, use, preserve, protect, repair, and maintain) Government property in its possession.

(b) The Performer shall assume the risk of and be responsible for any loss or destruction of, or damage to, any GFP while in its possession or control, with the exception of reasonable wear and tear or reasonable and proper consumption. All property shall be returned at the end of the project in as good as condition as when received with the exception of said reasonable wear and tear or in accordance with the provisions of the project regarding its use. Subcontractor shall obtain explicit written authorization by the AO for any transfer or disposition of GFP.

(c) Title to any item of property valued at \$5,000 or less or property with a proposed value greater than \$5,000 that was included in the final proposal selected by the Government and that is acquired by a Subcontractor pursuant to performance under a Prototype Project shall remain with the Subcontractor or SRC upon acquisition with no further obligation of the Parties unless otherwise determined by the AO. If an item of property with an acquisition value greater than \$5,000 is required after issuance of an order, Subcontractor shall obtain prior written approval, if not included in the final proposal selected by the Government, from the AO through SRC prior to acquisition. Title to this property shall remain with the Government unless the AO grants title to the Subcontractor prior to acquisition.

(d) Disposition of Property. At the completion of a Prototype Project and with written authorization from the AO through SRC, items of property with an acquisition value greater than \$5,000 shall be disposed of in the following manner:

1) Purchased by SRC or the Subcontractor at an agreed-upon price, the price to represent fair market value, with the proceeds of the sale being returned to NSWCPD; or

2) Transferred to a Government research facility with title and ownership being transferred to the Government; or

3) Any other NSWCPD approved disposition procedure.

(e) Prototype Project Property Documentation Requirements.

a. Each Prototype Project awarded under this OBOA shall include the following as it pertains to both acquired property in excess of \$5,000 if not included in final proposal and Government furnished property:

1) A list of property to which the Government has or will obtain title;

2) What guarantees, if any, the Government makes regarding the property's suitability for its intended use, the condition in which the property should be returned, and any limitations on how or the time the property may be used.

(f) ATI, in conjunction with the Government, shall maintain a Master List of all GFP provided, transferred, and dispositioned throughout the life of this Agreement.

### 6. Reserved

### 7. Compliance with Laws Unique to Government Procurement

SELLER agrees and is required to comply with, 31 U.S.C. § 1352 relating to limitations on the use of appropriated funds to influence certain Federal contracts; 18 U.S.C. § 431 relating to officials not to benefit; 41 U.S.C. chapter 87, Kickbacks; 41 U.S.C. § 4712 and 10

U.S.C. § 2409 relating to whistleblower protections; 41 U.S.C. chapter 21 relating to procurement integrity; and 22 U.S.C. Chapter 78 relating to Combating Trafficking in Persons.

### 8. Disclosure of Information

(a) Subcontractor shall not release to anyone outside Subcontractor's organization, SRC's organization, the Government, the CMF, or sub-agreement holders any unclassified information, regardless of medium (e.g., film, tape, document), pertaining to any part of any Prototype Project or any program related to a Prototype Project, unless—

(1) The AO through SRC has given prior written approval;

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

(3) The information results from, or arises during the performance of, a project that involves no covered defense information and has been scoped and negotiated by the contracting activity with the Consortium Member awarded a Prototype Project and research performer and determined in writing by the AO through SRC to be fundamental research (which by definition cannot involve any covered defense information). Fundamental research is defined by the National Security Decision Directive 189, National Policy on the Transfer of Scientific, Technical and Engineering Information, in effect on the date of contract award, the Under Secretary of Defense (Acquisition, Technology, and Logistics) memoranda on Fundamental Research, dated May 24, 2010, and Contracted Fundamental Research, dated June 26, 2008 (available at DFARS PGI 204.4).

(b) Requests for approval under paragraph (a)(1) above shall be submitted through SRC and shall identify the specific information to be released, the medium to be used, and the purpose for the release. The Subcontractor shall submit a request through SRC for public release to the AO via the CMF at least 30 business days before the proposed date for release.

(c) Subcontractor agrees to include a similar requirement, including this paragraph (c), in each sub-agreement under any Prototype Project. Sub-agreement holders shall submit requests for authorization to release through SRC to the AO via ATI.

### 9. Security Requirements

(a) In the event that a Prototype Project under this OBOA requires Subcontractor to have access to, or generate, classified information, the Government will generate a Department of Defense Security Classification Specification (DD Form 254) through SRC. Each Prototype Project involving classified or controlled information will have a separate DD 254, which will only be applicable to the specified prototype award.

(b) Subcontractor agrees to insert terms that conform substantially to the language of this section in all agreements for Prototype Projects executed under this OBOA that involve access to classified information.



## Flow Down Provisions for MSTIC Purchase Orders

### 10. Safety

(a) Subcontractor shall adhere to all local, state, and federal rules and regulations required in order to maintain a safe and non-hazardous occupational environment throughout the duration of this OBOA or PPOs issued pursuant to this OBOA.

(b) During the course of performance of a Prototype Project, report to SRC any major accident/incident (including fire) resulting in any one or more of the following:

1. Causing one or more fatalities or one or more disabling injuries;
2. Damage of Government property exceeding \$10,000;
3. Affecting program planning or production schedules;
4. Degrading the safety of equipment under agreement, such as personnel injury or property damage;
5. Identifying a potential hazard requiring corrective action.

### 11. Environmental Requirements

(a) Subcontractor shall comply with all Federal, State, and local environmental laws and regulations, Executive orders, treaties, and Agreements when executing Prototype Projects under this Agreement. Subcontractor shall ensure the Performer of a Prototype Project awarded under this OBOA has evaluated the environmental consequences and identified the specific types and amounts of hazardous waste that may be generated during the performance of a Prototype Project.

(b) Subcontractor shall give consideration to alternative materials and processes in order to eliminate, reduce, or minimize hazardous waste being generated.

(c) Subcontractor shall not use Class 1 Ozone Depleting Chemicals in executing Prototype Projects under this Agreement.

### 12. Export Control

Subcontractor shall comply with all applicable laws and regulations regarding export-controlled items, including, but not limited to, the requirement for subcontractors to register with the Department of State in accordance with the International Traffic in Arms Regulations (ITAR). Subcontractor shall consult with the Department of State regarding any questions relating to compliance with the ITAR and shall consult with the Department of Commerce regarding any questions relating to compliance with the Export Administration Regulations (EAR). Subcontractor's responsibility to comply with all applicable laws and regulations regarding export-controlled items exists independent of, and is not established or limited by, the information provided by this subcontract. Nothing in the terms of this subcontract adds, changes, supersedes, or waives any of the requirements of applicable Federal laws, Executive orders, and regulations, including but not limited to: (1) The Export Administration Act of 1979, as amended (50 U.S.C. App.2401, et seq.); (2) The Arms Export Control Act (22 U.S.C. 2751, et seq.); (3) The International Emergency Economic Powers Act (50 U.S.C. 1701, et seq.); (4) The Export Administration Regulations (15 CFR Parts 730-774); (5) The International Traffic in Arms Regulations (22 CFR Parts 120-130); and (6) Executive Order 13222, as extended. Subcontractor shall comply with the International Traffic in Arms Regulation/Munitions List (22 CFR pt. 120 et seq.), the DoD

Industrial Security Regulation (DoD 5220.22-R) and the Department of Commerce Export Regulation (15 CFR pt. 770 et seq.).

Subcontractor shall immediately notify the SRC Contractual Point of Contact if Subcontractor is listed in any Denied Parties List or if Subcontractor's export privileges are otherwise denied, suspended or revoked in whole or in part by any U. S. Government entity or agency.

Definition. "Export-controlled items," as used in this clause, means items subject to the Export Administration Regulations (EAR) (15 CFR Parts 730-774) or the International Traffic in Arms Regulations (ITAR) (22 CFR Parts 120-130). The term includes: (1) "Defense items," defined in the Arms Export Control Act, 22 U.S.C. 2778(j)(4)(A), as defense articles, defense services, and related technical data, and further defined in the ITAR, 22 CFR Part 120. and (2) "Items," defined in the EAR as "commodities", "software", and "technology," terms that are also defined in the EAR, 15 CFR 772.1.

Subcontractor shall include this Article, suitably modified to identify the parties, in all subcontracts or lower tier agreements, regardless of tier, for developmental prototype work.

Subcontractor shall include and enforce inclusion of Export Control requirements as indicated in this paragraph, suitably modified to identify the appropriate parties, in all sub-agreements, regardless of tier, for developmental prototype work.

### 13. Civil Rights Act

Contract is subject to the compliance requirements of Title VI of the Civil Rights Act of 1964 as amended (42 U.S.C. 2000d et seq.) relating to nondiscrimination in Federally assisted programs.

### 14. Organizational Conflicts of Interest

(a) Subcontractor shall immediately report all potential conflicts of interest to SRC who will report to the CMF. All white papers and proposals will address potential conflicts of interest and any proposed mitigation. Subcontractor agrees to include in all sub-agreements a section requiring subcontractors to report all potential or real Organizational Conflict of Interests to SRC who will report to the Consortium and NSWCPD.

(b) NSWCPD and SRC have the right to limit Subcontractor's involvement under this OBOA or any PPOs issued pursuant to this OBOA or other action to mitigate Organizational Conflicts of Interest. In the event SRC believes that the OCI can be mitigated, SRC, through ATI, shall submit to the AO an OCI mitigation plan.

### 15. Safeguarding Covered Defense Information and Cyber Incident Reporting

The protection of Controlled Unclassified Information (CUI) while residing in nonfederal information systems and organizations is of paramount importance to federal agencies and can directly impact the ability of the federal government to successfully carry out its designated missions and business operations.

National Institute of Standards & Technology (NIST) Special Publication (SP) 800-171 provides federal agencies with recommended requirements for protecting the confidentiality of CUI: (i) when the CUI is resident in nonfederal information systems and organizations; (ii) when the information systems where the CUI resides are not used or operated by contractors of federal agencies or other organizations on behalf of those agencies; and (iii) where there are no specific safeguarding requirements for protecting the confidentiality of CUI prescribed by the authorizing law, regulation, or government-wide policy for the CUI category or subcategory listed in the CUI Registry. The requirements apply to all components of nonfederal information systems and organizations that



## Flow Down Provisions for MSTIC Purchase Orders

process, store, or transmit CUI, or provide security protection for such components. The CUI requirements are intended for use by federal agencies in contractual vehicles or other agreements established between those agencies and nonfederal organizations.

The Department of Defense (DOD) utilizes 48 CFR 252.204-7012 to direct the safeguarding of information and reporting of cybersecurity incidents for the DOD. Therefore, the guidance and requirements of 48 CFR 252.204-7012 as prescribed by 48 CFR 204.7304(c) are incorporated into this OBOA and shall flow-down to all Project Orders for non-COTS items, with all mention of Contractor understood to mean both Subcontractor and Subcontractor's subcontractors awarded a Prototype Project, and all mention of Contracting Officer understood to mean Agreements Officer through the SRC Contractual Point of Contact. 48 CFR 252.204-7012 shall not apply to COTS items. Each Project Order will identify the information that requires safeguarding and dissemination control.

### 16. Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment

Replace "Contractor" with "SELLER".

(a) Definitions. As used in this clause—

*Backhaul* means intermediate links between the core network, or backbone network, and the small subnetworks at the edge of the network (e.g., connecting cell phones/towers to the core telephone network). Backhaul can be wireless (e.g., microwave) or wired (e.g., fiber optic, coaxial cable, Ethernet).

*Covered foreign country* means The People's Republic of China.

*Covered telecommunications equipment or services* means—

(1) Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities);

(2) For the purpose of public safety, security of Government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities);

(3) Telecommunications or video surveillance services provided by such entities or using such equipment; or

(4) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

*Critical technology* means—

(1) Defense articles or defense services included on the United States Munitions List set forth in the International Traffic in Arms Regulations under subchapter M of chapter I of title 22, Code of Federal Regulations;

(2) Items included on the Commerce Control List set forth in Supplement No. 1 to part 774 of the Export Administration Regulations under subchapter C of chapter VII of title 15, Code of Federal Regulations, and controlled-

(i) Pursuant to multilateral regimes, including for reasons relating to national security, chemical and biological weapons proliferation, nuclear nonproliferation, or missile technology; or

(ii) For reasons relating to regional stability or surreptitious listening;

(3) Specially designed and prepared nuclear equipment, parts and components, materials, software, and technology covered by part 810 of title 10, Code of Federal Regulations (relating to assistance to foreign atomic energy activities);

(4) Nuclear facilities, equipment, and material covered by part 110 of title 10, Code of Federal Regulations (relating to export and import of nuclear equipment and material);

(5) Select agents and toxins covered by part 331 of title 7, Code of Federal Regulations, part 121 of title 9 of such Code, or part 73 of title 42 of such Code; or

(6) Emerging and foundational technologies controlled pursuant to section 1758 of the Export Control Reform Act of 2018 (50 U.S.C. 4817).

*Interconnection arrangements* means arrangements governing the physical connection of two or more networks to allow the use of another's network to hand off traffic where it is ultimately delivered (e.g., connection of a customer of telephone provider A to a customer of telephone company B) or sharing data and other information resources.

*Reasonable inquiry* means an inquiry designed to uncover any information in the entity's possession about the identity of the producer or provider of covered telecommunications equipment or services used by the entity that excludes the need to include an internal or third-party audit.

*Roaming* means cellular communications services (e.g., voice, video, data) received from a visited network when unable to connect to the facilities of the home network either because signal coverage is too weak or because traffic is too high.

*Substantial or essential component* means any component necessary for the proper function or performance of a piece of equipment, system, or service.

(b) Prohibition.

(1) Section 889(a)(1)(A) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits the head of an executive agency on or after August 13, 2019, from procuring or obtaining, or extending or renewing a contract to procure or obtain, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. The Contractor is prohibited from providing to the Government any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, unless an exception at paragraph (c) of this clause applies or the covered telecommunication equipment or services are covered by a waiver described in FAR 4.2104.

(2) Section 889(a)(1)(B) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits the head of an executive agency on or after August 13, 2020, from entering into a contract, or extending or renewing a contract, with an entity that uses any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system,

unless an exception at paragraph (c) of this clause applies or the covered telecommunication equipment or services are covered by a waiver described in FAR 4.2104. This prohibition applies to the use of covered telecommunications equipment or services, regardless of whether that use is in performance of work under a Federal contract.

(c) Exceptions. This clause does not prohibit contractors from providing—

(1) A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or

(2) Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(d) Reporting requirement.

(1) In the event the Contractor identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or the Contractor is notified of such by a subcontractor at any tier or by any other source, the Contractor shall report the information in paragraph (d)(2) of this clause to the Contracting Officer, unless elsewhere in this contract are established procedures for reporting the information; in the case of the Department of Defense, the Contractor shall report to the website at <https://dibnet.dod.mil>. For indefinite delivery contracts, the Contractor shall report to the Contracting Officer for the indefinite delivery contract and the Contracting Officer(s) for any affected order or, in the case of the Department of Defense, identify both the indefinite delivery contract and any affected orders in the report provided at <https://dibnet.dod.mil>.

(2) The Contractor shall report the following information pursuant to paragraph (d)(1) of this clause

(i) Within one business day from the date of such identification or notification: the contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.

(ii) Within 10 business days of submitting the information in paragraph (d)(2)(i) of this clause: any further available information about mitigation actions undertaken or recommended. In addition, the Contractor shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.

(e) Contractor shall insert the substance of this clause, including this paragraph (e) and excluding paragraph (b)(2), in all subcontracts and other contractual instruments, including subcontracts for the acquisition of commercial items.