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 BSCIENTIFIC 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.

(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 52.245-1shall 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 COPPORATION. SCIENTIFIC RESEARCH CORPPORATION 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 to right to withhold payment amounts for damaged goods until SCIENTIFIC RESEARCH CORPORATION determines liability of SELLER for the amount of damage.

(e) BUYER reserves to 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. Products shall be new in their original box, and SELLER certifies that SELLER is an authentic manufacturer or authentic manufacturer's authorized reseller and/or distributor through legal distribution channels.

(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.

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.

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).

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 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.

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.

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.

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 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-reimbursement, incentive, time-and-materials, labor-hour, price-redeteminable, 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 mismarked, 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 Contact, 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 sati 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 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: OTA AND FAR FLOWDOWN PROVISIONS

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

The "Other Transaction for Production 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 OTA clauses and FAR clauses are identified as to their source as "OTA", "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)

"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. (OTA)

"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 computer program to be reproduced, recreated, or recompiled. (OTA)

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

"Foreign Firm or Institution" means a firm or institution organized or existing under the laws of a country other than the United States, its territories, or possessions. The term includes, for purposes of this Agreement, any agency or instrumentality of a foreign government; and firms, institutions or business organizations which are owned or substantially controlled by foreign governments, firms, institutions, or individuals. (OTA)

"Government" means the United States of America, as represented by NIWC Atlantic. (OTA)

"Government Purpose Rights" means the rights to use, duplicate, or disclose technical data and computer software, in whole or in part and in any manner, for Government purposes only, and to have or permit others to do so for Government purposes only. (OTA)

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

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

"Made" means in relation to an invention, means the conception or first actual reduction to practice of such invention. (OTA)

"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 for Production Agreement between the Government and Scientific Research Corporation. (SRC)

"Practical application" means to manufacture, in the case of a composition of product; to practice, in the case of a process or method, or to operate, in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is capable of being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms. (OTA)

"Performer" means SELLER, but Performer has no privity of contract with the Government and any submissions or notifications of patent rights or data rights funded under this Contract shall be submitted to the Government through Scientific Research Corporation. (SRC)

"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)

"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)

"Subject Invention" means those inventions conceived or first actually reduced to practice under this Contract. (OTA)

"Technical data" means recorded information (regardless of the form or method of the recording) of a scientific or technical nature (including computer databases, maskworks, trade secrets, and computer software documentation). (OTA)

"Technology" means discoveries, innovations, Know-How and inventions, whether patentable or not, including computer software, recognized under U.S. law as intellectual creations to which rights of ownership accrue, including, but not limited to, patents, trade secrets, maskworks and copyrights developed under this Agreement. (OTA)

"Unlimited Rights" means rights to use, duplicate, release, or disclose, technical data or computer software in whole or in part, in any manner and for any purposes whatsoever, and to have or permit others to do so. (OTA)

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 OTA

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

ARTICLE VII: PATENT RIGHTS (Applicable to cost-based Contract to develop a product that has not been patented by SELLER

A. Allocation of Principal Rights

1. Unless the Performer shall have notified NIWC Atlantic, in accordance with subparagraph B.2 below, that the Performer does not intend to retain title, the Performer shall retain the entire right, title, and interest throughout the world to each Subject Invention consistent with the provisions of this Article.

2. With respect to any Subject Invention in which the Performer retains title, NIWC Atlantic shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced on behalf of the United States the Subject Invention throughout the world.

B. Invention Disclosure, Election of Title, and Filing of Patent Application

1. The Performer shall disclose each Subject Invention to NIWC Atlantic within four (4) months after the inventor discloses it in writing to his company personnel responsible for patent matters. The disclosure to NIWC Atlantic shall be in the form of a written report and shall identify the Agreement and circumstances under which the Subject Invention was made and the identity of the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding, to the extent known at the time of the disclosure, of the nature, purpose, operation, and the physical, chemical, biological, or electrical characteristics of the Subject Invention. The disclosure shall also identify any publication, sale, or public use of the Subject Invention and whether a manuscript describing the Subject Invention has been submitted and/or accepted for publication at the time of disclosure.

2. If the Performer determines that it does not intend to retain title to any such Subject Invention, the Performer shall notify NIWC Atlantic, in writing, within eight (8) months of disclosure to NIWC Atlantic. However, in any case where publication, sale, or public use has initiated the one-year statutory period wherein valid patent protection can still be obtained in the United States, the period for such notice may be shortened by NIWC Atlantic to a date that is no more than sixty (60) calendar days prior to the end of the statutory period.

3. The Performer shall file its initial patent application on a Subject Invention to which it elects to retain title within one (1) year after election of title or, if earlier, prior to the end of the statutory period wherein valid patent protection can be obtained in the United States after a publication, or sale, or public use. The Performer may elect to file patent applications in additional countries, including the European Patent Office and the Patent Cooperation Treaty, within either ten (10) months of the corresponding initial patent application or six (6) months after the date permission is granted by the Commissioner for Patents to file foreign patent applications, where such filing had previously been prohibited by a Secrecy Order.

4. With respect to Subject Inventions, the Performer shall notify NIWC Atlantic of any decisions not to continue the prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceedings on a patent, in any country, not less than thirty (30) calendar days before the expiration of the response period required by the relevant patent office.

5. Requests for extension of the time for disclosure election, and filing under Article VII, may be granted at NIWC Atlantic's discretion after considering the circumstances of the Performer and the overall effect of the extension.

6. The Performer shall submit to NIWC Atlantic annual listings of Subject Inventions. At the completion of the Agreement, the Performer shall submit a comprehensive listing of all Subject Inventions identified during the course of the Agreement and the current status of each.

7. The Performer shall submit its annual and final listings of Subject Inventions on DD Form 882 "Report of Inventions and Subcontract," and shall deliver copies of such reports to the AO and the AAO.

C. Conditions When the Government May Obtain Title

Upon NIWC Atlantic's written request, the Performer shall convey title to any Subject Invention to NIWC Atlantic under any of the following conditions:

1. If the Performer fails to disclose or elects not to retain title to the Subject Invention within the times specified in Paragraph B of this Article; however, NIWC Atlantic may only request title within sixty (60) calendar days after learning of the failure of the Performer to disclose or elect within the specified times;

2. In those countries in which the Performer fails to file patent applications within the times specified in Paragraph B of this Article; however, if the Performer has filed a patent application in a country after the times specified in Paragraph B of this Article, but prior to its receipt of the written request by NIWC Atlantic, the Performer shall continue to retain title in that country; or

3. 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 proceedings on, a patent on a Subject Invention.

D. Minimum Rights to the Performer and Protection of the Performer's Right to File

1. The Performer shall retain a nonexclusive, royalty-free license throughout the world in each Subject Invention to which the Government obtains title, except if the Performer fails to disclose the Subject Invention within the times specified in Paragraph B of this Article. The Performer's license extends to its domestic subsidiaries and affiliates, including Canada, if any, and includes the right to grant licenses of the same scope to the extent that the Performer was legally obligated to do so at the time the Agreement was awarded. The license is transferable only with the approval of NIWC ATLANTIC, except when transferred to the successor of that part of the business to which the Subject Invention pertains. NIWC Atlantic approval for license transfer shall not be unreasonably withheld.

2. The Performer's domestic license may be revoked or modified by NIWC Atlantic to the extent necessary to achieve expeditious practical application of the Subject Invention pursuant to an application for an exclusive license submitted consistent with appropriate provisions at 37 C.F.R. Part 404. This license shall not be revoked 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 Subject Invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of NIWC Atlantic to the extent the Performer, its licensees, or the subsidiaries or affiliates have failed to achieve practical application in that foreign country.

3. Before revocation or modification of the license, NIWC Atlantic shall furnish the Performer a written notice of its intention to revoke or modify the license, and the Performer shall be allowed thirty (30) calendar

days (or such other time as may be authorized for good cause shown) after the notice to show cause why the license should not be revoked or modified.

E. Action to Protect the Government's Interest

1. The Performer agrees to execute or to have executed and promptly deliver to NIWC Atlantic all instruments necessary to: (i) establish or confirm the rights the Government has throughout the world in those Subject Inventions to which the Performer elects to retain title; and (ii) convey title to NIWC Atlantic when requested under Paragraph C of this Article and to enable the Government to obtain patent protection throughout the world in that Subject Invention.

2. The Performer agrees to require by written agreement with its employees, other than clerical and non-technical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the Performer each Subject Invention made under this Agreement in order that the Performer can comply with the disclosure provisions of Paragraph B of this Article. The Performer shall instruct employees, through employee agreements or other suitable educational programs, on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to United States or foreign statutory bars.

3. The Performer shall include, within the specification of any United States patent application and any patent issuing thereon covering a Subject Invention, the following statement:

This invention was made with Government support under Agreement No. N62356-23-9-0001, awarded by NIWC Atlantic. The Government has certain rights in the invention.

F. Lower Tier Agreements

The Performer shall include this Article, suitably modified, in all subcontracts or lower tier agreements, regardless of tier, for experimental, developmental, or research work.

G. Reporting on Utilization of Subject Inventions

1. The Performer agrees to submit, during the term of the Agreement, an annual report on the utilization of a Subject Invention or on efforts at obtaining such utilization that are being made by the Performer or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the Performer, and such other data and information as the agency may reasonably specify. The Performer also agrees to provide additional reports as may be requested by NIWC Atlantic in connection with any march-in proceedings undertaken by NIWC Atlantic in accordance with Paragraph I of this Article. The Performer shall also mark any utilization report as confidential/proprietary to help prevent inadvertent release outside the Government. As required by 35 U.S.C. 202(c)(5), NIWC Atlantic will not disclose that information to persons outside the Government without the Performer's permission.
2. All required reporting shall be provided to the AO and the AAO, where one is appointed.

H. Preference for American Industry

Notwithstanding any other provision of this clause, the Performer agrees that it shall not grant to any person the exclusive right to use or sell any Subject Invention in the United States unless such person agrees that any product embodying the Subject Invention or produced through the use of the subject invention shall be manufactured substantially in the United States. However, in individual cases, the requirements for such an agreement may be waived by NIWC Atlantic upon a showing by the Performer that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that, under the circumstances, domestic manufacture is not commercially feasible.

I. March-in Rights

The Performer agrees that, with respect to any Subject Invention in which it has retained title, NIWC Atlantic has the right to require the Performer, an assignee, or exclusive licensee of a Subject Invention to grant a non-exclusive license to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the

Performer, assignee, or exclusive licensee refuses such a request, NIWC Atlantic has the right to grant such a license itself if NIWC Atlantic determines that:

1. Such action is necessary because the Performer or assignee has not taken effective steps, consistent with the intent of this Agreement, to achieve practical application of the Subject Invention;

2. Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the Performer, assignee, or their licensees;

3. Such action is necessary to meet requirements for public use and such requirements are not reasonably satisfied by the Performer, assignee, or licensees; or

4. Such action is necessary because the agreement required by Paragraph H of this Article has not been obtained or waived or because a licensee of the exclusive right to use or sell any Subject Invention in the United States is in breach of such Agreement.

J. Inspection

The Government has the right to inspect and evaluate the work performed or being performed under the Agreement, and the premises where the work is being performed, at all reasonable times and in a manner that will not unduly delay the work. If the Government performs inspection or evaluation on the premises of the Performer or a subcontractor, the Performer shall furnish and shall require subcontractors to furnish all reasonable facilities and assistance for the safe and convenient performance of these duties.

K. Authorization and Consent

The Government authorizes and consents to all use and manufacture of any invention described in and covered by a United States patent in the performance of this Agreement.

L. Notice and Assistance

a. The Performer shall report to the AO promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance under this Agreement of which the Performer has knowledge.

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

M. Patent Indemnity

a. If applicable, this agreement will include a list of commercial items to be manufactured and delivered to which this indemnification (Article 17, paragraph 11) applies.
b. For such identified items, the Performer shall indemnify the Government and its officers, agents, and employees against liability, including costs, for infringement of any United States patent (except a patent issued upon an application that is now or may hereafter be withheld from issue pursuant to a Secrecy Order under 35 U.S.C. 181) arising out of the manufacture or delivery of such commercial items.
c. This indemnity shall not apply unless the Performer shall have been informed as soon as practicable by the Government of the suit or action alleging such infringement and shall have been given such opportunity as is afforded by applicable laws, rules, or regulations to participate in its defense. Further, this indemnity shall not apply to –

i. An infringement resulting from compliance with specific written instructions of the AO directing a change in the supplies to be delivered or in the materials or equipment to be used, or directing a manner of performance of this agreement not normally used by the Performer;
ii. An infringement resulting from addition to or change in supplies or components furnished or construction work performed that was made subsequent to delivery or performance; or
iii. A claimed infringement that is unreasonably settled without the consent of the Performer, unless required by final decree of a court of competent jurisdiction.

ARTICLE VIII: DATA RIGHTS
(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. Software shall be licensed to Government as the original licensee authorized to use the software. Data rights sold and licensed by Seller to Government, if any, are between Seller and Government.)

A. Allocation of Principal Rights

1. The Parties agree that in consideration for Government funding, the Performer intends to develop technical data and/or computer software pertaining to items, components and processes developed under this Agreement. For purposes of this ARTICLE, "developed" means that the item, component, or process exists and is workable, and that workability will be 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.

2. With respect to technical data or computer software developed or generated under this Agreement, except as provided in subparagraphs a, b, and c below the Government shall receive Government Purpose Rights, as defined in Article I, Paragraph B.

a. The Government shall have Unlimited Rights in technical data for the following:
i. Form, fit, and function data;
ii. Corrections or changes to technical data furnished to the Performer by the Government;
iii. Technical data otherwise publicly available or have been released or disclosed by the Performer, or subagreement holder 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; and
iv. Technical data necessary for operation, maintenance, installation, or training.

b. Performer shall attach to any offer submitted under this Agreement a list of all documents or other media incorporating technical data or computer software it intends to deliver with less than Government Purpose Rights. The list shall identify the technical data or computer software to be furnished with restrictions, the basis for asserting less than Government Purpose Rights for each listing, the degree of restriction asserted for each listing, the duration of the restriction, and the name of the person or company asserting the restriction.

c. Technical data or computer software that will be delivered, furnished, or otherwise provided to the Government under this Agreement, 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 Governments rights to use, modify, reproduce, display or disclose the technical data or computer software have expired or no longer apply.

3. With respect to technical data or computer software delivered pursuant to Attachment 2 under the Agreement that is testing or form, fit and function data, the Government shall receive Government Purpose Rights. Notwithstanding the provision in A.4, the performer agrees, with respect to technical data or computer software generated or developed under this Agreement, the Government may, within one year after completion or termination of this Agreement, require delivery of such technical data or computer software and with Government Purpose Rights.

4. March-In Rights

(a) In the event the Government chooses to exercise its March-in Rights, as defined in Article VII, Section I of this Agreement, the Performer agrees, upon written request from the Government, to deliver at no additional cost to the Government, all technical data or computer software necessary to achieve practical application within sixty (60) calendar days from the date of the written request. The Government shall retain Limited Rights that convert to Government Purpose Rights five years after completion of the agreement, as defined in Article I, Section B of this Agreement, to this delivered technical data or computer software.

(b) To facilitate any potential deliveries, the Performer agrees to retain and maintain in good condition until five years after completion or termination of this Agreement, all technical data or computer software necessary to achieve practical application of any Subject Invention as defined in Article I, Section B of this Agreement.

5. Commercial Computer Software

(a) The Government shall have only the rights specified in the license under which the commercial computer software or commercial computer software documentation was obtained provided the specified license rights meet the Government's needs and are consistent with federal procurement law.

(b) If the Government has a need for rights not conveyed under the license customarily provided to the public, the Government must negotiate with the performer to determine if there are acceptable terms for transferring such rights. The specific rights granted to the Government shall be enumerated in the contract license agreement or an addendum thereto.

B. Marking of Technical Data and Computer Software

1. Pursuant to Paragraph A above, any technical data or computer software delivered under this Agreement shall be marked with the following legend:

GOVERNMENT PURPOSE RIGHTS

The Government's rights to use, modify, reproduce, release, perform, display, or disclose these technical data or computer software are restricted by Agreement N65236-23-9-0001 between the Government and the Performer. No restrictions apply after the expiration date shown above. Any reproduction of technical data, computer software, or portions thereof marked with this legend must also reproduce the markings.
(End of Legend)

2. The Government shall have Unlimited Rights in all unmarked technical data. In the event that the Performer learns of a release to the Government of its unmarked technical data that should have contained a restricted legend, the Performer will have the opportunity to cure such omission going forward by providing written notice to the AO within one (1) year of the erroneous release.

3. Validation of Restrictive Markings

a. An unjustified marking is a restrictive marking placed on technical data or computer software delivered or otherwise furnished to the Government under this Agreement where the restriction is not justified. The Government may ignore or, at the Performer's expense, correct or strike a marking if a restrictive marking is determined to be unjustified. A restrictive marking will be determined to be unjustified if:

i. after sixty (60) days from receiving a request for marking justification information from the AO, the Performer fails to respond to such request, or
ii. the Performer provides information in response to a request for marking justification information from the AO that, in the opinion of the AO, fails to justify the level of restriction. If the Performer disagrees with the opinion of the AO, the disagreement shall be settled in accordance with the Article VI, Disputes.

b. A nonconforming marking is a marking placed on technical data delivered or otherwise furnished to the Government under this Agreement that is not in the format authorized by this Agreement. Correction of nonconforming markings is not subject to the procedures outlined above for unjustified markings. If the AO notifies the Performer awarded a prototype project agreement 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.

4. Copyrights

a. The Performer reserves the right to protect by copyright original works developed under this Agreement. All such copyrights will be in the name of the Performer. The Performer hereby grants to the U.S. Government a non-exclusive, non-transferable, royalty-free, fully paid-up license to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, for Governmental purposes, any copyrighted materials developed under this Agreement, and to authorize others to do so, subject to the limitations on disclosure contained in this Agreement.

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

c. The Performer shall not, without the written approval of the AO, incorporate any copyrighted data, including open-source software, in the technical data or computer software to be delivered under this Agreement 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 technical data or computer software of the appropriate scope set forth in 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.

d. Except that copyrighted technical data or computer software that existed or was produced outside of this Agreement and is unpublished - having only been provided under licensing agreement with restrictions on its use and disclosure - and is provided under this Agreement shall be marked as unpublished copyright in addition to the appropriate license rights legend restricting its use, and treated in accordance with such license rights legend markings restricting its use.

e. The Performer is responsible for affixing appropriate markings indicating the rights of the Government on all technical data or computer software delivered under this Agreement. The Government agrees not to remove any copyright notices placed on technical data and to include such notices on all reproductions of the technical data.

C. Lower Tier Agreements

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

ARTICLE IX: FOREIGN ACCESS TO TECHNOLOGY
(Note this clause only applies to Contracts issued to Seller for research and technology development.)

This Article shall remain in effect during the term of the Agreement and for two years thereafter.

A. General

The Parties agree that research findings and technology developments arising under this Agreement may constitute a significant enhancement to the national defense, and to the economic vitality of the United States. Accordingly, access to important technology developments under this Agreement by Foreign Firms or Institutions must be carefully controlled. The controls contemplated in this Article are in addition to, and are not intended to change or supersede, the provisions of the International Traffic in Arms Regulations (22 C.F.R. Part 120, et seq.), the National Security Program Operating Manual (NISPOM) (DoD 5220.22-M), and the Department of Commerce's Export Administration Regulations (15 C.F.R. Part 730, et seq.).

B. Restrictions on Sale or Transfer of Technology to Foreign Firms or Institutions

1. In order to promote the national security interests of the United States and to effectuate the policies that underlie the regulations cited above, the procedures stated in subparagraphs B.2, B.3, and B.4 below shall apply to any transfer of Technology. For purposes of this paragraph, a transfer includes a sale of the company, and sales or licensing of Technology. Transfers do not include:

a. Sales of products or components; or

b. Licenses of software or documentation related to sales of products or components; or

c. Transfer to foreign affiliates or any other business combination of the Performer for purposes related to this Agreement; or

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

2. The Performer shall provide timely notice to NIWC Atlantic of any proposed transfers from the Performer of Technology developed under this Agreement to Foreign Firms or Institutions. If NIWC Atlantic determines that the transfer may have adverse consequences to the national security interests of the United States, the Performer, its vendors, and NIWC Atlantic shall jointly endeavor to find alternatives to the proposed transfer which obviate or mitigate potential adverse consequences of the transfer but which provide substantially equivalent benefits to the Performer.

3. In any event, the Performer shall provide written notice to the NIWC Atlantic AOR and the NIWC Atlantic AO of any proposed transfer to a Foreign Firm or Institution at least sixty (60) calendar days prior to the proposed date of transfer. Such notice shall cite this Article and shall state specifically what is to be transferred and the general terms of the transfer. Within thirty (30) calendar days of receipt of the Performer's written notification, the NIWC Atlantic AO shall advise the Performer whether it consents to the proposed transfer. In cases where NIWC Atlantic does not concur or sixty (60) calendar days after receipt and NIWC Atlantic provides no decision, the Performer may utilize the procedures under Article VI, Disputes. No transfer shall take place until a decision is rendered.

4. In the event a transfer of Technology to Foreign Firms or Institutions which is NOT approved by NIWC Atlantic takes place, the Performer shall: (a) refund to NIWC Atlantic funds paid for the development of the Technology: and (b) the Government shall have a non-exclusive, nontransferable, irrevocable, paid-up license to practice, or to have practiced on behalf of the United States, the Technology throughout the world for Government and any and all other purposes, particularly to effectuate the intent of this Agreement. Upon request of the Government the Performer shall provide written confirmation of such licenses.

C. Lower Tier Agreements

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

D. Export Control

(a) The Recipient shall comply with the International Traffic in Arms Regulation (ITAR)/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.).

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

ARTICLE XI: CIVIL RIGHTS ACT

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

ARTICLE XIII: PUBLIC RELEASE OR DISSEMINATION OF INFORMATION (1) There shall be no dissemination or publication, except within and between the Performer and any subcontractors or affiliates (assuming there is no foreign control problem with the Performer and any subcontractors as discussed in Article IX), of information developed under this Agreement or contained in the reports to be furnished pursuant to this Agreement without prior written approval of the AOR. All technical reports will be given proper review by appropriate authority to determine which Distribution Statement is to be applied prior to the initial distribution of these reports by the Performer. Unclassified patent related documents are exempt from prepublication controls and this review requirement. There shall be no dissemination or publication, except within and between the Performer and any subcontractor(s), of information developed under this effort without first obtaining approval for public release from the NIWC Atlantic Public Affairs Office. Papers prepared in response to academic requirements which are not intended for public release outside the academic institution are exempt from prepublication controls.

(2) The Performer shall submit all proposed public releases for review and approval to the NIWC Atlantic AO. Public releases include press releases, specific publicity or advertisement, and publication or presentation, but exclude those relating to the open sourcing or licensing, sales or other commercial exploitation of products, services or technologies. In addition, articles for publication or presentation will contain a statement on the title page worded substantially as follows:

This research was, in part, funded by the U.S. Government. The views and conclusions contained in this document are those of the authors and should not be interpreted as representing the official policies, either expressed or implied, of the
U.S. Government.

(3) Disclosure of Information

(a) The Recipient shall not disclose any information under this Agreement outside of the company unless –
(1) prior to the written approval of the Agreements Officer has been granted;
(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 (as defined in the clause at Defense Federal Acquisition Regulation Supplement (DFARS) 252.204-7012) and has been scoped and negotiated by the contracting activity with the contractor and research performer and determined in writing by the contracting officer to be fundamental research (which by definition cannot involve any covered defense information), in accordance with National Security Decision Directive 189, National Policy on the Transfer of Scientific, Technical and Engineering Information, in effect on the date of contract award and the Under Secretary of Defense (Acquisition, Technology, and Logistics) memoranda on Fundamental Research, dated May 24, 2010, and on Contracted Fundamental Research, dated June 26, 2008 (available at DFARS Procedures, Guidance & Information (PGI) 204.4).
(b) Requests for approval under paragraph (a)(l) shall identify the specific information to be released, the medium to be used, and the purpose for the release. The Recipient shall submit its request to the Agreements Officer at least 10 business days before the proposed date for release.
(c) Recipient agree to include a similar requirement, including this paragraph (c), in each subagreement under any project agreement. Subagreement holders shall submit requests for authorization to release to the Agreements Officer.

ARTICLE XIX: SAFEGUARDING COVERED DEFENSE INFORMATION AND CYBER INCIDENT REPORTING (DFARS Clause 252.204-7012)
(a) Definitions. As used in this clause—

“Adequate security” means protective measures that are commensurate with the consequences and probability of loss, misuse, or unauthorized access to, or modification of information.

“Compromise” means disclosure of information to unauthorized persons, or a violation of the security policy of a system, in which unauthorized intentional or unintentional disclosure, modification, destruction, or loss of an object, or the copying of information to unauthorized media may have occurred.

“Performer attributional/proprietary information” means information that identifies the performer(s), whether directly or indirectly, by the grouping of information that can be traced back to the performer(s) (e.g., program description, facility locations), personally identifiable information, as well as trade secrets, commercial or financial information, or other commercially sensitive information that is not customarily shared outside of the company.

“Controlled technical information” means technical information with military or space application that is subject to controls on the access, use, reproduction, modification, performance, display, release, disclosure, or dissemination. Controlled technical information would meet the criteria, if disseminated, for distribution statements B through F using the criteria set forth in DoD Instruction 5230.24, Distribution Statements on Technical Documents. The term does not include information that is lawfully publicly available without restrictions.

“Covered performer information system” means an unclassified information system that is owned, or operated by or for, a performer and that processes, stores, or transmits covered defense information.

“Covered defense information” means unclassified controlled technical information or other information, as described in the Controlled Unclassified Information (CUI) Registry at http://www.archives.gov/cui/registry/category-list.html, that requires safeguarding or dissemination controls pursuant to and consistent with law, regulations, and Government-wide policies, and is—

(1) Marked or otherwise identified in the contract, task order, or delivery order and provided to the performer by or on behalf of DoD in support of the performance of the contract; or

(2) Collected, developed, received, transmitted, used, or stored by or on behalf of the performer in support of the performance of the contract.

“Cyber incident” means actions taken through the use of computer networks that result in a compromise or an actual or potentially adverse effect on an information system and/or the information residing therein.

“Forensic analysis” means the practice of gathering, retaining, and analyzing computer-related data for investigative purposes in a manner that maintains the integrity of the data.

“Information system” means a discrete set of information resources organized for the collection, processing, maintenance, use, sharing, dissemination, or disposition of information.

“Malicious software” means computer software or firmware intended to perform an unauthorized process that will have adverse impact on the confidentiality, integrity, or availability of an information system. This definition includes a virus, worm, Trojan horse, or other code-based entity that infects a host, as well as spyware and some forms of adware.

“Media” means physical devices or writing surfaces including, but is not limited to, magnetic tapes, optical disks, magnetic disks, large-scale integration memory chips, and printouts onto which covered defense information is recorded, stored, or printed within a covered performer information system.

‘‘Operationally critical support’’ means supplies or services designated by the Government as critical for airlift, sealift, intermodal transportation services, or logistical support that is essential to the mobilization, deployment, or sustainment of the Armed Forces in a contingency operation.

“Rapidly report” means within 72 hours of discovery of any cyber incident.

"Technical information" means technical data or computer software, as those terms are defined in the clause at DFARS 252.227-7013, Rights in Technical Data—Noncommercial Items, regardless of whether or not the clause is incorporated in this solicitation or contract. Examples of technical information include research and engineering data, engineering drawings, and associated lists, specifications, standards, process sheets, manuals, technical reports, technical orders, catalog-item identifications, data sets, studies and analyses and related information, and computer software executable code and source code.

(b) Adequate security. The Performer shall provide adequate security on all covered performer information systems. To provide adequate security, the Performer shall implement, at a minimum, the following information security protections:

(1) For covered performer information systems that are part of an Information Technology (IT) service or system operated on behalf of the Government, the following security requirements apply:

(i) Cloud computing services shall be subject to the security requirements specified in the clause 252.239-7010, Cloud Computing Services, of this contract.

(ii) Any other such IT service or system (i.e., other than cloud computing) shall be subject to the security requirements specified elsewhere in this contract.

(2) For covered performer information systems that are not part of an IT service or system operated on behalf of the Government and therefore are not subject to the security requirement specified at paragraph (b)(1) of this clause, the following security requirements apply:

(i) Except as provided in paragraph (b)(2)(ii) of this clause, the covered performer information system shall be subject to the security requirements in National Institute of Standards and Technology (NIST) Special Publication (SP) 800- 171, "Protecting Controlled Unclassified Information in Nonfederal Information Systems and Organizations" (available via the internet at http://dx.doi.org/10.6028/NIST.SP.800-171) in effect at the time the solicitation is issued or as authorized by the AO.

(ii)(A) The Performer shall implement NIST SP 800-171, as soon as practical, but not later than December 31, 2017. For all contracts awarded prior to October 1, 2017, the Performer shall notify the DoD Chief Information Officer (CIO), via email at osd.dibcsia@mail.mil, within 30 days of contract award, of any security requirements specified by NIST SP 800-171 not implemented at the time of contract award.

(B) The Performer shall submit requests to vary from NIST SP 800-171 in writing to the AO, for consideration by the DoD CIO. The Performer need not implement any security requirement adjudicated by an authorized representative of the DoD CIO to be nonapplicable or to have an alternative, but equally effective, security measure that may be implemented in its place.

(C) If the DoD CIO has previously adjudicated the performer's requests indicating that a requirement is not applicable or that an alternative security measure is equally effective, a copy of that approval shall be provided to the AO when requesting its recognition under this contract.

(D) If the Performer intends to use an external cloud service provider to store, process, or transmit any covered defense information in performance of this contract, the Performer shall require and ensure that the cloud service provider meets security requirements equivalent to those established by the Government for the Federal Risk and Authorization Management Program (FedRAMP) Moderate baseline (https://www.fedramp.gov/resources/documents/) and that the cloud service provider complies with requirements in paragraphs (c) through (g) of this clause for cyber incident reporting, malicious software, media preservation and protection, access to additional information and equipment necessary for forensic analysis, and cyber incident damage assessment.

(3) Apply other information systems security measures when the Performer reasonably determines that information systems security measures, in addition to those identified in paragraphs (b)(1) and (2) of this clause, may be required to provide adequate security in a dynamic environment or to accommodate special circumstances (e.g., medical devices) and any individual, isolated, or temporary deficiencies based on an assessed risk or vulnerability. These measures may be addressed in a system security plan.

(c) Cyber incident reporting requirement.

(1) When the Performer discovers a cyber incident that affects a covered performer information system or the covered defense information residing therein, or that affects the performer's ability to perform the requirements of the contract that are designated as operationally critical support and identified in the contract, the Performer shall—

(i) Conduct a review for evidence of compromise of covered defense information, including, but not limited to, identifying compromised computers, servers, specific data, and user accounts. This review shall also include analyzing covered performer information system(s) that were part of the cyber incident, as well as other information systems on the Performer's network(s), that may have been accessed as a result of the incident in order to identify compromised covered defense information, or that affect the Performer's ability to provide operationally critical support; and

(ii) Rapidly report cyber incidents to DoD at https://dibnet.dod.mil.

(2) Cyber incident report. The cyber incident report shall be treated as information created by or for DoD and shall include, at a minimum, the required elements at https://dibnet.dod.mil.

(3) Medium assurance certificate requirement. In order to report cyber incidents in accordance with this clause, the Performer or subcontractor shall have or acquire a DoD-approved medium assurance certificate to report cyber incidents. For information on obtaining a DoD-approved medium assurance certificate, see https://public.cyber.mil/eca/.

(d) Malicious software. When the Performer or subcontractors discover and isolate malicious software in connection with a reported cyber incident, submit the malicious software to DoD Cyber Crime Center (DC3) in accordance with instructions provided by DC3 or the AO. Do not send the malicious software to the AO.

(e) Media preservation and protection. When a Performer discovers a cyber incident has occurred, the Performer shall preserve and protect images of all known affected information systems identified in paragraph (c)(1)(i) of this clause and all relevant monitoring/packet capture data for at least 90 days from the submission of the cyber incident report to allow DoD to request the media or decline interest.

(f) Access to additional information or equipment necessary for forensic analysis. Upon request by DoD, the Performer shall provide DoD with access to additional information or equipment that is necessary to conduct a forensic analysis.

(g) Cyber incident damage assessment activities. If DoD elects to conduct a damage assessment, the AO will request that the Performer provide all of the damage assessment information gathered in accordance with paragraph (e) of this clause.

(h) DoD safeguarding and use of performer attributional/proprietary information. The Government shall protect against the unauthorized use or release of information obtained from the performer (or derived from information obtained from the performer) under this clause that includes performer attributional/proprietary information, including such information submitted in accordance with paragraph (c). To the maximum extent practicable, the Performer shall identify and mark attributional/proprietary information. In making an authorized release of such information, the Government will implement appropriate procedures to minimize the performer attributional/proprietary information that is included in such authorized release, seeking to include only that information that is necessary for the authorized purpose(s) for which the information is being released.

(i) Use and release of performer attributional/proprietary information not created by or for DoD. Information that is obtained from the performer (or derived from information obtained from the performer) under this clause that is not created by or for DoD is authorized to be released outside of DoD—

(1) To entities with missions that may be affected by such information;

(2) To entities that may be called upon to assist in the diagnosis, detection, or mitigation of cyber incidents;

(3) To Government entities that conduct counterintelligence or law enforcement investigations;

(4) For national security purposes, including cyber situational awareness and defense purposes (including with Defense Industrial Base (DIB) participants in the program at 32 CFR part 236); or

(5) To a support services performer (“recipient”) that is directly supporting Government activities under a contract that includes the clause at 252.204-7009, Limitations on the Use or Disclosure of Third-Party Performer Reported Cyber Incident Information.

(j) Use and release of performer attributional/proprietary information created by or for DoD. Information that is obtained from the performer (or derived from information obtained from the performer) under this clause that is created by or for DoD (including the information submitted pursuant to paragraph (c) of this clause) is authorized to be used and released outside of DoD for purposes and activities authorized by paragraph (i) of this clause, and for any other lawful Government purpose or activity, subject to all applicable statutory, regulatory, and policy based restrictions on the Government’s use and release of such information.

(k) The Performer shall conduct activities under this clause in accordance with applicable laws and regulations on the interception, monitoring, access, use, and disclosure of electronic communications and data.

(l) Other safeguarding or reporting requirements. The safeguarding and cyber incident reporting required by this clause in no way abrogates the Performer’s responsibility for other safeguarding or cyber incident reporting pertaining to its unclassified information systems as required by other applicable clauses of this contract, or as a result of other applicable U.S. Government statutory or regulatory requirements.

(m) Subcontracts. The Performer shall—

(1) Include this clause, including this paragraph (m), in subcontracts, or similar contractual instruments, for operationally critical support, or for which subcontract performance will involve covered defense information, including subcontracts for commercial items, without alteration, except to identify the parties. The Performer shall determine if the information required for subcontractor performance retains its identity as covered defense information and will require protection under this clause, and, if necessary, consult with the AO; and

(2) Require subcontractors to—

(i) Notify the prime Performer (or next higher-tier subcontractor) when submitting a request to vary from a NIST SP 800-171 security requirement to the AO, in accordance with paragraph (b)(2)(ii)(B) of this clause; and

(ii) Provide the incident report number, automatically assigned by DoD, to the prime Performer (or next higher- tier subcontractor) as soon as practicable, when reporting a cyber incident to DoD as required in paragraph (c) of this clause.

(End of clause)

ARTICLE XX 52.204-25 PROHIBITION ON CONTRACTING FOR CERTAIN TELECOMMUNCATIONS AND VIDEO SURVEILLANCE SERVICES OR EWQUIPMENT (NOV 2020)

(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) Subcontracts. The 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 products or commercial services.

(End of clause)

ARTICLE XXI: 252.227-7025 LIMITATIONS ON THE USE OR DISCLOSURE OF GOVERNMENT-FURNISHED INFORMATION MARKED WITH RESTRICTIVE LEGENDS. (MAY 2013)

(See note of applicability at Article VIII.)

(a)(1) For contracts in which the Government will furnish the Contractor with technical data, the terms "covered Government support contractor," "limited rights," and "Government purpose rights" are defined in the clause at 252.227-7013 , Rights in Technical Data–Noncommercial Items.

(2) For contracts in which the Government will furnish the Contractor with computer software or computer software documentation, the terms "covered Government support contractor," "government purpose rights," and "restricted rights" are defined in the clause at 252.227-7014 , Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation.

(3) For Small Business Innovation Research program contracts, the terms "covered Government support contractor," “limited rights,” “restricted rights,” and “SBIR data rights” are defined in the clause at 252.227-7018 , Rights in Noncommercial Technical Data and Computer Software—Small Business Innovation Research (SBIR) Program.

(b) Technical data or computer software provided to the Contractor as Government-furnished information (GFI) under this contract may be subject to restrictions on use, modification, reproduction, release, performance, display, or further disclosure.

(1) GFI marked with limited rights, restricted rights, or SBIR data rights legends.

(i) The Contractor shall use, modify, reproduce, perform, or display technical data received from the Government with limited rights legends, computer software received with restricted rights legends, or SBIR technical data or computer software received with SBIR data rights legends (during the SBIR data protection period) only in the performance of this contract. The Contractor shall not, without the express written permission of the party whose name appears in the legend, release or disclose such data or software to any unauthorized person.

(ii) If the Contractor is a covered Government support contractor, the Contractor is also subject to the additional terms and conditions at paragraph (b)(5) of this clause.

(2) GFI marked with government purpose rights legends. The Contractor shall use technical data or computer software received from the Government with government purpose rights legends for government purposes only. The Contractor shall not, without the express written permission of the party whose name appears in the restrictive legend, use, modify, reproduce, release, perform, or display such data or software for any commercial purpose or disclose such data or software to a person other than its subcontractors, suppliers, or prospective subcontractors or suppliers, who require the data or software to submit offers for, or perform, contracts under this contract. Prior to disclosing the data or software, the Contractor shall require the persons to whom disclosure will be made to complete and sign the non-disclosure agreement at 227.7103-7 .

(3) GFI marked with specially negotiated license rights legends.

(i) The Contractor shall use, modify, reproduce, release, perform, or display technical data or computer software received from the Government with specially negotiated license legends only as permitted in the license. Such data or software may not be released or disclosed to other persons unless permitted by the license and, prior to release or disclosure, the intended recipient has completed the non-disclosure agreement at 227.7103-7 . The Contractor shall modify paragraph (1)(c) of the non-disclosure agreement to reflect the recipient's obligations regarding use, modification, reproduction, release, performance, display, and disclosure of the data or software.

(ii) If the Contractor is a covered Government support contractor, the Contractor may also be subject to some or all of the additional terms and conditions at paragraph (b)(5) of this clause, to the extent such terms and conditions are required by the specially negotiated license.

(4) GFI technical data marked with commercial restrictive legends.

(i) The Contractor shall use, modify, reproduce, perform, or display technical data that is or pertains to a commercial item and is received from the Government with a commercial restrictive legend (i.e., marked to indicate that such data are subject to use, modification, reproduction, release, performance, display, or disclosure restrictions) only in the performance of this contract. The Contractor shall not, without the express written permission of the party whose name appears in the legend, use the technical data to manufacture additional quantities of the commercial items, or release or disclose such data to any unauthorized person.

(ii) If the Contractor is a covered Government support contractor, the Contractor is also subject to the additional terms and conditions at paragraph (b)(5) of this clause.

(5) Covered Government support contractors. If the Contractor is a covered Government support contractor receiving technical data or computer software marked with restrictive legends pursuant to paragraphs (b)(1)(ii), (b)(3)(ii), or (b)(4)(ii), the Contractor further agrees and acknowledges that—

(i) The technical data or computer software will be accessed and used for the sole purpose of furnishing independent and impartial advice or technical assistance directly to the Government in support of the Government’s management and oversight of the program or effort to which such technical data or computer software relates, as stated in this contract, and shall not be used to compete for any Government or non-Government contract;

(ii) The Contractor will take all reasonable steps to protect the technical data or computer software against any unauthorized release or disclosure;

(iii) The Contractor will ensure that the party whose name appears in the legend is notified of the access or use within thirty (30) days of the Contractor's access or use of such data or software;

(iv) The Contractor will enter into a non-disclosure agreement with the party whose name appears in the legend, if required to do so by that party, and that any such non-disclosure agreement will implement the restrictions on the Contractor's use of such data or software as set forth in this clause. The non-disclosure agreement shall not include any additional terms and conditions unless mutually agreed to by the parties to the non-disclosure agreement; and
(v) That a breach of these obligations or restrictions may subject the Contractor to—
(A) Criminal, civil, administrative, and contractual actions in law and equity for penalties, damages, and other appropriate remedies by the United States; and
(B) Civil actions for damages and other appropriate remedies by the party whose name appears in the legend.
(c) Indemnification and creation of third party beneficiary rights. The Contractor agrees—
(1) To indemnify and hold harmless the Government, its agents, and employees from every claim or liability, including attorneys fees, court costs, and expenses, arising out of, or in any way related to, the misuse or unauthorized modification, reproduction, release, performance, display, or disclosure of technical data or computer software received from the Government with restrictive legends by the Contractor or any person to whom the Contractor has released or disclosed such data or software; and
(2) That the party whose name appears on the restrictive legend, in addition to any other rights it may have, is a third party beneficiary who has the right of direct action against the Contractor, or any person to whom the Contractor has released or disclosed such data or software, for the unauthorized duplication, release, or disclosure of technical data or computer software subject to restrictive legends.
(d) The Contractor shall ensure that its employees are subject to use and non-disclosure obligations consistent with this clause prior to the employees being provided access to or use of any GFI covered by this clause.
(End of clause)

52.204-27 PROHIBITION ON A BYTEDANCE COVERED APPLICATION (Applies to all Contracts and prohibits contractor from having or using the social networking service TikTok or any successor application service developed or provided b ByteDance Limited or an entity owned by ByteDance Limited in information technology equipment if the use of that equipment in performance of the Contract or delivery to the Government of the product, but does not include any equipment acquired by a Contractor incidental to a Federal contract (FAR 52.204-27 (3) (3)).

(52.204-27 clause incorporated by reference.)

52.244-6 SUBCONTRACTS FOR COMMERCIAL ITEMS (NOV 2020)
(a) Definitions. As used in this clause—

Commercial item and commercially available off-the-shelf item have the meanings contained in Federal Acquisition Regulation (FAR) 2.101.

Subcontract includes a transfer of commercial items between divisions, subsidiaries, or affiliates of the Contractor or subcontractor at any tier.

(b) To the maximum extent practicable, the Contractor shall incorporate, and require its subcontractors at all tiers to incorporate, commercial items or non-developmental items as components of items to be supplied under this contract.

(c)

(1) The Contractor shall insert the following clauses in subcontracts for commercial items:

(i) 52.203-13, Contractor Code of Business Ethics and Conduct (Jun 2020) (41 U.S.C. 3509), if the subcontract exceeds the threshold specified in FAR 3.1004(a) on the date of

subcontract award, and has a performance period of more than 120 days. In altering this clause to identify the appropriate parties, all disclosures of violation of the civil False Claims Act or of Federal criminal law shall be directed to the agency Office of the Inspector General, with a copy to the Contracting Officer.

(ii) 52.203-15, Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009 (Jun 2010) (Section 1553 of Pub. L. 111-5), if the subcontract is funded under the Recovery Act.

(iii) 52.203-19, Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements (Jan 2017).

(iv) 52.204-21, Basic Safeguarding of Covered Contractor Information Systems (Jun 2016), other than subcontracts for commercially available off-the-shelf items, if flow down is required in accordance with paragraph (c) of FAR clause 52.204-21.

(v) 52.204-23, Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities (Jul 2018) (Section 1634 of Pub. L. 115-91).

(vi) 52.204-25, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment. (Aug 2020) (Section 889(a)(1)(A) of Pub. L. 115-232).

(vii) 52.219-8, Utilization of Small Business Concerns (Oct 2018) (15 U.S.C.637(d)(2) and (3)), if the subcontract offers further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds the applicable threshold specified in FAR 19.702(a) on the date of subcontract award, the subcontractor must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities.

(viii) 52.222-21, Prohibition of Segregated Facilities (Apr 2015).

(ix) 52.222-26, Equal Opportunity (Sept 2015) (E.O.11246).

(x) 52.222-35, Equal Opportunity for Veterans (Jun 2020) (38 U.S.C.4212(a));

(xi) 52.222-36, Equal Opportunity for Workers with Disabilities (Jun 2020) (29 U.S.C.793).

(xii) 52.222-37, Employment Reports on Veterans (Jun 2020) (38 U.S.C.4212).

(xiii) 52.222-40, Notification of Employee Rights Under the National Labor Relations Act (Dec 2010) (E.O. 13496), if flow down is required in accordance with paragraph (f) of FAR clause 52.222-40.

(xiv)

(A) 52.222-50, Combating Trafficking in Persons (Oct 2020) (22 U.S.C. chapter 78 and E.O. 13627).

(B) Alternate I (Mar 2015) of 52.222-50(22 U.S.C. chapter 78 and E.O. 13627).

(xv) 52.222-55, Minimum Wages under Executive Order 13658 (NOV 2020), if flow down is required in accordance with paragraph (k) of FAR clause 52.222-55.

(xvi) 52.222-62, Paid Sick Leave Under Executive Order 13706 (Jan 2017) (E.O. 13706), if flow down is required in accordance with paragraph (m) of FAR clause 52.222-62.

(xvii)

(A) 52.224-3, Privacy Training (Jan 2017) (5 U.S.C. 552a) if flow down is required in accordance with 52.224-3(f).

(B) Alternate I (Jan 2017) of 52.224-3, if flow down is required in accordance with 52.224-3(f) and the agency specifies that only its agency-provided training is acceptable).

(xviii) 52.225-26, Contractors Performing Private Security Functions Outside the United States (Oct 2016) (Section 862, as amended, of the National Defense Authorization Act for Fiscal Year 2008; 10 U.S.C. 2302 Note).

(xix) 52.232-40, Providing Accelerated Payments to Small Business Subcontractors (Dec 2013), if flow down is required in accordance with paragraph (c) of FAR clause 52.232-40.

(xx) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (Feb 2006) (46 U.S.C. App.1241 and 10 U.S.C.2631), if flow down is required in accordance with paragraph (d) of FAR clause 52.247-64).

(2) While not required, the Contractor may flow down to subcontracts for commercial items a minimal number of additional clauses necessary to satisfy its contractual obligations.

(d) The Contractor shall include the terms of this clause, including this paragraph (d), in subcontracts awarded under this contract.

(End of clause)

252.204-7018 PROHIBITION ON THE ACQUISITION OF COVERED DEFENSE TELECOMMUNICATIONS EQUIPMENT OR SERVICES (Applies to purchases of telecommunications equipment or services for DoD. Details are within clause.)

(DFARS Clause 252.204-7018 incorporated by reference.)

252.204-7020 NIST SP 800-171 DOD ASSESSMENT REQUIREMENTS.

[The following DFARS clause is required to be flowed down in full text from the Prototype Project Agreement under the IWRP Consortium Agreement. Even though it must be flowed down, this clause is not applicable if Seller does not require access to Controlled Defense Information (CDI) in order to deliver the items ordered.]

NIST SP 800-171 DOD ASSESSMENT REQUIREMENTS (NOV 2020)

(a) *Definitions*.

Basic Assessment" means a contractor's self-assessment of the contractor's implementation of NIST SP 800-171 that—

(1) Is based on the Contractor's review of their system security plan(s) associated with covered contractor information system(s);

(2) Is conducted in accordance with the NIST SP 800-171 DoD Assessment Methodology; and

(3) Results in a confidence level of "Low" in the resulting score, because it is a self-generated score.

"Covered contractor information system" has the meaning given in the clause 252.204-7012, Safeguarding Covered Defense Information and Cyber Incident Reporting, of this contract.

"High Assessment" means an assessment that is conducted by Government personnel using NIST SP 800-171A, Assessing Security Requirements for Controlled Unclassified Information that—

(1) Consists of—

(i) A review of a contractor's Basic Assessment;

(ii) A thorough document review;

(iii) Verification, examination, and demonstration of a Contractor's system security plan to validate that NIST SP 800-171 security requirements have been implemented as described in the contractor's system security plan; and

(iv) Discussions with the contractor to obtain additional information or clarification, as needed; and

(2) Results in a confidence level of "High" in the resulting score.

"Medium Assessment" means an assessment conducted by the Government that—

(1) Consists of—

(i) A review of a contractor's Basic Assessment;

(ii) A thorough document review; and

(iii) Discussions with the contractor to obtain additional information or clarification, as needed; and

(2) Results in a confidence level of "Medium" in the resulting score.

(b) *Applicability*. This clause applies to covered contractor information systems that are required to comply with the National Institute of Standards and Technology (NIST) Special Publication (SP) 800-171, in accordance with Defense Federal Acquisition Regulation System (DFARS) clause at 252.204-7012, Safeguarding Covered Defense Information and Cyber Incident Reporting, of this contract.

(c) *Requirements*. The Contractor shall provide access to its facilities, systems, and personnel necessary for the Government to conduct a Medium or High NIST SP 800-171 DoD Assessment, as described in NIST SP 800-171 DoD Assessment Methodology at https://www.acq.osd.mil/dpap/pdi/cyber/strategically_assessing_contractor_implementation_of_NIST_SP_800-171.html, if necessary.

(d) *Procedures*. Summary level scores for all assessments will be posted in the Supplier Performance Risk System (SPRS) (https://www.sprs.csd.disa.mil/) to provide DoD Components visibility into the summary level scores of strategic assessments.

(1) *Basic Assessments*. A contractor may submit, via encrypted email, summary level scores of Basic Assessments conducted in

accordance with the NIST SP 800-171 DoD Assessment Methodology to mailto:webptsmh@navy.mil for posting to SPRS.

(i) The email shall include the following information:

(A) Version of NIST SP 800-171 against which the assessment was conducted.

(B) Organization conducting the assessment (e.g., Contractor self-assessment).

(C) For each system security plan (security requirement 3.12.4) supporting the performance of a DoD contract—

(*1*) All industry Commercial and Government Entity (CAGE) code(s) associated with the information system(s) addressed by the system security plan; and

(*2*) A brief description of the system security plan architecture, if more than one plan exists.

(D) Date the assessment was completed.

(E) Summary level score (e.g., 95 out of 110, NOT the individual value for each requirement).

(F) Date that all requirements are expected to be implemented (i.e., a score of 110 is expected to be achieved) based on information gathered from associated plan(s) of action developed in accordance with NIST SP 800-171.

(ii) If multiple system security plans are addressed in the email described at paragraph (b)(1)(i) of this section, the Contractor shall use the following format for the report:

System Security Plan	CAGE Codes supported by this plan	Brief description of the plan architecture	Date of assessment	Total Score	Date score of 110 will achieved

(2) Medium and High Assessments. DoD will post the following Medium and/or High Assessment summary level scores to SPRS for each system security plan assessed:

(i) The standard assessed (e.g., NIST SP 800-171 Rev 1).

(ii) Organization conducting the assessment, e.g., DCMA, or a specific organization (identified by Department of Defense Activity Address Code (DoDAAC)).

(iii) All industry CAGE code(s) associated with the information system(s) addressed by the system security plan.

(iv) A brief description of the system security plan architecture, if more than one system security plan exists.

(v) Date and level of the assessment, i.e., medium or high.

(vi) Summary level score (e.g., 105 out of 110, not the individual value assigned for each requirement).

(vii) Date that all requirements are expected to be implemented (i.e., a score of 110 is expected to be achieved) based on information gathered from associated plan(s) of action developed in accordance with NIST SP 800-171.

(e) *Rebuttals*.

(1) DoD will provide Medium and High Assessment summary level scores to the Contractor and offer the opportunity for rebuttal and adjudication of assessment summary level scores prior to posting the summary level scores to SPRS (see SPRS User's Guide https://www.sprs.csd.disa.mil/pdf/SPRS_Awardee.pdf).

(2) Upon completion of each assessment, the contractor has 14 business days to provide additional information to demonstrate that they meet any security requirements not observed by the assessment team or to rebut the findings that may be of question.

(f) *Accessibility*.

(1) Assessment summary level scores posted in SPRS are available to DoD personnel, and are protected, in accordance with the standards set forth in DoD Instruction 5000.79, Defense-wide Sharing and Use of Supplier and Product Performance Information (PI).

(2) Authorized representatives of the Contractor for which the assessment was conducted may access SPRS to view their own summary level scores, in accordance with the SPRS Software User's Guide for Awardees/Contractors available at https://www.sprs.csd.disa.mil/pdf/SPRS_Awardee.pdf.

(3) A High NIST SP 800-171 DoD Assessment may result in documentation in addition to that listed in this clause. DoD will retain and protect any such documentation as "Controlled Unclassified Information (CUI)" and intended for internal DoD use only. The information will be protected against unauthorized use and release, including through the exercise of applicable exemptions under the Freedom of Information Act (e.g., Exemption 4 covers trade secrets and commercial or financial information obtained from a contractor that is privileged or confidential).

(g) Subcontracts.

(1) The Contractor shall insert the substance of this clause, including this paragraph (g), in all subcontracts and other contractual instruments, including subcontracts for the acquisition of commercial items (excluding COTS items).

(2) The Contractor shall not award a subcontract or other contractual instrument, that is subject to the implementation of NIST SP 800-171 security requirements, in accordance with DFARS clause 252.204-7012 of this contract, unless the subcontractor has completed, within the last 3 years, at least a Basic NIST SP 800-171 DoD Assessment, as described in https://www.acq.osd.mil/dpap/pdi/cyber/strategically_assessing_contractor_implementation_of_NIST_SP_800-171.html, for all covered contractor information systems relevant to its offer that are not part of an information technology service or system operated on behalf of the Government.

(3) If a subcontractor does not have summary level scores of a current NIST SP 800-171 DoD Assessment (i.e., not more than 3 years old unless a lesser time is specified in the solicitation) posted in SPRS, the subcontractor may conduct and submit a Basic Assessment, in accordance with the NIST SP 800-171 DoD Assessment Methodology, to mailto:webptsmh@navy.mil for posting to SPRS along with the information required by paragraph (d) of this clause.

(End of clause)