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ARTICLE 1: INTRODUCTION AND GENERAL DEFINITIONS

1.1 Introduction

This Other Transaction Agreement for Experimentation, hereinafter referred to as the "OT" or the "Agreement," is awarded pursuant to 10 U.S.C. §XXXX. This Agreement is entered into by XXXX referred to as the "Awardee" and the United States Air Force, Air Force Materiel Command (AFMC), Air Force Research Laboratory (AFRL), hereinafter referred to as the "Government" pursuant to and under U.S. Federal Law.

1.2 General Definitions

When used in this Agreement, the following terms, whether used in the singular or plural, shall have the meanings set forth herein.

"Agreement" means the body of this Agreement and Attachments, which are expressly incorporated in and made a part of the Agreement.

"Agreements Administrator" (AA) means the person identified by the Government in this Agreement authorized to administer this Agreement, and in coordination with the Agreements Officer, make determination and findings related to delegated administration functions.

"Agreements Officer" (AO) means the person identified by the Government in this Agreement authorized to enter into, administer, modify, or terminate this Agreement.

"Agreements Specialist" means the person identified by the Government to assist the Agreements Officer.

"Administrative Change" means a unilateral Agreement change, in writing, that does not affect the substantive rights of the parties (examples of Administrative Changes include a change in named personnel or Agreement administrative information).

"Awardee" means the direct recipient of this Agreement.

"Awardee Program Manager" (APM) means the person identified by the Awardee charged with the Awardee's overall technical responsibility of managing the Agreement.

"Data" means recorded information, regardless of form or method of recording, which includes but is not limited to, technical data, computer software, computer software documentation, and mask works. The term does not include financial, administrative, cost, pricing or management information.

"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.

"Government Purpose Rights" means the rights to--

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

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

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

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

"Made" means relates to any invention means the conception or first actual reduction to practice of such invention.

"Parties" mean the Government (represented by AFRL), or the Awardee, or both.

"Payable Milestones" means a structured schedule of observable achievements on the critical path to experiment success with a fixed amount to be paid to the Awardee at the start of each milestone, assuming milestone entry criteria has been met. The schedule of Payable Milestones for this Agreement is included as Attachment 3.

"Program Manager" (PM) means the person identified by the Government charged with the overall technical responsibility of managing the Agreement, to include approving Milestone Entry Criteria and acceptance of Agreement deliverables. The PM does not have authority to enter into, administer, modify or terminate this Agreement like the Agreements Officer.

"Prototype" means a prototype project addresses a proof of concept, model, reverse engineering to address obsolescence, pilot, novel application of commercial technologies for defense purposes, agile development activity, creation, design, development, demonstration of technical or operational utility, or combinations of

the foregoing. A process, including a business process, may be the subject of a prototype project.

"Subject Invention" means any invention conceived or first actually reduced to practice in the performance of work under this Agreement.

"Technical Data - Commercial Items" See Article 7

"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, and copyrights developed under this Agreement.

"Transferability" means the property of a system or subsystem component to be hosted on more than one type of vehicle platform with limited redesign of the system/subsystem.

ARTICLE 2: SCOPE OF AGREEMENT

2.1 Background:

The Government intends to enter into this Agreement under the authority of 10 U.S.C. § XXXX - Other Transaction for Prototype in accordance with the Open Two-Step Broad Area Announcement (BAA), FAXXX. The objective of this program is to XXXX.

2.2 Scope:

This prototype project will XXXX. XXXX will complete the following items. A more detailed description of the scope is found in the Statement of Work (Attachment 2).

ARTICLE 3: TERM OF THE AGREEMENT AND TERMINATION

3.1 Term of the Agreement:

The term of the Agreement from the time of award is X months, X months for technical performance and X additional months for preparation and review of the final report.

3.2 Termination Provisions:

Either party may unilaterally terminate this Agreement by written notice to the other party upon a finding that the other Party has failed to comply with the material provisions of this Agreement, provided that (a) such written notice is provided no less than (30) thirty calendar days prior to the planned termination date following consultation between the Parties, and (b) the noncompliant party failed to (1) remedy its noncompliance, or (2) provide a written plan outlining its path to return to full compliance, within 60 days of receipt of written notice of noncompliance from the other party.

3.3 Termination for Convenience:

With a minimum of thirty (30) days' written notice, the Agreements Officer may also unilaterally terminate performance of work under this Agreement, or a project funded under this Agreement, in whole or in part, based on a reasonable determination that the Agreement will not produce beneficial results commensurate with the expenditure of resources. The Government may terminate this Agreement, in whole or in part, if the AO determines that a termination is in the Government's interest. The AO shall terminate by delivering to the Awardee a Notice of Termination specifying the extent of termination and the effective date.

3.4 Termination Cost:

The Parties will negotiate in good faith a fair and equitable reimbursement for work performed prior to termination, including a reasonable fee or profit. The Government will allow full credit for the agreement obligations, to include any work in progress, associated engineering costs, raw materials, agreement related services procured, and including title transfer, properly incurred by the Awardee prior to termination. Costs incurred by the Awardee during a suspension or after termination notification are not allowable unless the Agreements Officer expressly authorizes them in writing. Other costs incurred during a suspension or after termination which are necessary and reasonably unavoidable are allowable if the costs result from obligations which were properly incurred by the Awardee before the effective date of the suspension or

termination, are not in anticipation of it, and in the case of a termination, are non-cancellable. Other costs incurred as a result of the termination which are necessary and reasonably unavoidable are allowable if the costs are within the minimum thirty (30) day notification period. Failure of the Parties to agree to a reasonable adjustment will be resolved pursuant to Article 14, Dispute Resolution. The Government and the Awardee shall negotiate in good faith a reasonable and timely adjustment of all issues between the Parties as a result of termination.

3.5 Extending the Term:

The Parties may extend by mutual written Agreement the term of this Agreement if opportunities within the scope set forth in Article 2 reasonably warrant, subject to the availability of funding. Any extension shall be formalized through written modification of the Agreement, signed by the Agreements Officer and the duly authorized representative of the Awardee.

*The dates are subject to changes based on each individual solicitation.

ARTICLE 4: MANAGEMENT & ADMINISTRATION OF THE AGREEMENT

Unless otherwise provided in this Agreement, approvals permitted or required to be made by the Government may be made only by the Government AO. Administrative and contractual matters under this Agreement shall be referred to the following representative of the parties:

4.1 Government Point of Contact (POC):

Program Manager (PM):
XXXX
XXX
XXX

Agreements Officer (AO): XXXX

4.2 Agreements Administrator:
XXXX

4.3 Payment Office:
XXXX

4.4 Awardee Points of Contact: Awardee Technical POC:
XXXX

Awardee Contractual POC:
XXXX

Each party may change its representatives named in this Article by written notification to the other party. The Government will affect the change as stated in Article 5, Changes/Modifications below.

ARTICLE 5: CHANGES/MODIFICATIONS

5.1 Changes/Modifications to this Agreement:

Recommendations for modifications, including justifications to support any changes to the SOW (Attachment 2) shall be documented in a letter and submitted by the Awardee to the PM and the AO. This documentation will detail the technical, chronological, and financial impact of the proposed modification to the program. All modifications, except for administrative modifications, shall be made by mutual Agreement of the parties.

The AO shall be responsible for the review and verification of any recommendations to modify the SOW or other proposed changes to the terms and conditions of this Agreement. If additional terms and conditions are required to be included to address work that may be required under this Agreement, they will be included by formal

bilateral modification to this Agreement.

For minor or administrative Agreement modifications (e.g. changes in the paying office or appropriation data, changes to Government or the Awardee's personnel identified in the Agreement, etc.) no signature is required by the Awardee. Administrative modifications may be unilaterally executed by the AO.

The AO will be responsible for instituting all modifications to this Agreement.

ARTICLE 6: OBLIGATION AND PAYMENT

6.1 Obligation:

This Fixed Price (FP) Agreement is funded in the amount of **$XX.XX** In no case shall the Government's financial obligation for performance exceed the amount obligated on the Agreement or by amendment to this Agreement. The Government is not obligated to reimburse the Awardee for expenditures in excess of the amount of obligated funds allotted by the Government.

Or

This Cost Reimbursement Plus Fixed Fee Agreement is incrementally funded in the amount of **$XX.XX**. In no case shall the Government's financial obligation for performance exceed the amount obligated on the Agreement or by amendment to this Agreement. The Total Amount/Price of this Agreement is **$XX.XX**. The Government is not obligated to reimburse the Awardee for expenditures in excess of the amount of obligated funds allotted by the Government.

6.2 Payment:

The Awardee will be paid when the PM validates the accomplishment of the elements as delineated in the Schedule of Payable Milestones included at Attachment 3 to this Agreement. The PM will accept or reject the Agreement deliverables within five (5) calendar days after submittal to the PM. Payment requests are to be submitted via Wide Area Workflow in accordance with the instructions below:

Or

The Awardee agrees to maintain an established accounting system, which complies with Generally Accepted Accounting Principles and the requirements of this Agreement and shall ensure that appropriate arrangements have been made for receiving, distributing and accounting for Federal funds. An acceptable accounting system is one in which all cash receipts and disbursements are controlled and documented properly.

The Government will make payments to the Awardee when requested as work progresses, but (except for small business concerns) not more often than once every 2 weeks, in amounts determined to be llowable by the Agreements Officer in effect on the date of this Agreement and the terms of this Agreement. The Awardee may submit to an authorized representative of the Agreements Officer, in such form and reasonable detail as the representative may require, an invoice or voucher supported by a statement of the claimed allowable cost for performing this Agreement. The FAR clause 52.216-7 “Allowable Cost and Payment” shall be used as a guide for submission and approval of payments in addition to Article 32, Fixed Fee.

The estimated expense and fee for this Agreement are shown below. The applicable fixed fee set forth below may be increased or decreased only by negotiation and modification of the Agreement for added or deleted work. As determined by the Agreements Officer, it shall be paid as it accrues, in regular installments based upon the percentage of completion of work.

Base Award:
Estimated Cost: **$XX.XX**
Fixed Fee*: **$XX.XX**
Total: **$XX.XX**

*Cost of Money NOT included in Fixed Fee Calculation
The Awardee shall submit invoices reflecting a cost-based approach, which reimburse the Awardee for actual costs incurred from work on the project, plus a pro rata percentage of the Fixed Fee. After Agreement completion, the Awardee may submit additional invoices for closeout and to bill trailing costs, indirect rate variances, and remaining fixed fee.

6.3 Wide Area Workflow Payment Instructions:

WAWF access - To access WAWF, the Awardee shall be registered to use WAWF at https://wawf.eb.mil/ following the step-by-step procedures for self-registration available at this Web site.

WAWF training - The Awardee should follow the training instructions of the WAWF Web-Based Training Course and use the Practice Training Site before submitting payment requests through WAWF. Both can be accessed by selecting the "Web Based Training" link on the WAWF home page at https://wawf.eb.mil/.

WAWF payment instructions - The Awardee must use the following information when submitting payment requests and receiving reports in WAWF for this Agreement:

1) Document type. The Awardee shall use the following document type(s).

Grant Voucher

2) Inspection/acceptance location. The Awardee shall select the following inspection/acceptance location(s) in WAWF, as specified by the Agreements Officer.

XXXXX

3) Document routing. The Awardee shall use the information in the Routing Data Table below only to fill in applicable fields in WAWF when creating payment requests and receiving reports in the system.

Routing Data Table*

Field Name in WAWF	Data to be entered in WAWF
Pay Official DoDAAC	XXXX
Issue By DoDAAC	XXXX
Admin DoDAAC	XXXX
Inspect By DoDAAC	XXXX
Ship To Code	XXXX
Ship From Code	XXXX
Mark For Code	
Service Approver (DoDAAC)	XXXX
Service Acceptor (DoDAAC)	XXXX
Accept at Other DoDAAC	*NIA*
LPODoDAAC	*NIA*
DCAA Auditor DoDAAC	
Other DoDAAC(s)	

4) Payment request and supporting documentation. The Awardee shall ensure a payment request includes an appropriate line item and subline item descriptions of the work performed or supplies delivered, unit price/cost per unit, fee (if applicable), and all relevant back-up documentation, (e.g. timesheets) in support of each payment request.

5) WAWF email notifications. The Awardee shall enter the email address identified below in the "Send Additional Email Notifications" field of WAWF once a document is submitted in the system.

Program Manager: XXXX
Agreements Officer: XXXX

6) The Awardee may obtain clarification regarding invoicing in WAWF from the following Agreement activity's administrative WAWF point of contact. - See Article 4 - Agreements Administrator information above.

For technical WAWF help, contact the WAWF helpdesk at 866-618-5988.

ARTICLE 7: DATA RIGHTS & INTELLECTUAL PROPERTY

7.1 Technical Data for Commercial Items shall be governed by the following:

7.1.1 (a) ***Definitions.***

(1) **"Commercial item"** does not include commercial computer software.
(2) **"Covered Government support Awardee"** means an Awardee under an agreement, the primary purpose of which is to furnish independent and impartial advice or technical assistance directly to the Government in support of the Government's management and oversight of a program or effort (rather than to directly furnish an end item or service to accomplish a program or effort), provided that the Awardee-

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

(ii) Receives access to technical data or computer software for performance of a Government award that contains a clause limiting the use or disclosure of Government-furnished information marked with restrictive legends.

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

(4) The term **"item"** includes components or processes.

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

7.1.2 (b) ***License.***

(1) For this agreement, The Government shall have the right to use, reproduce, release, perform, display, or disclose technical data, and to permit in accordance with the Government purpose rights to do so, that-

(i) Have been provided to the Government or others without restrictions on use, modification, reproduction, release, or further 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;

(ii) Are form, fit, and function data;

(iii) Are a correction or change to technical data furnished to the Awardee by the Government;

(iv) Are necessary for operation, maintenance, installation, or training (other than detailed manufacturing or process data); or

(v) Have been provided to the Government under a prior contract/Agreement or licensing agreement through which the Government has acquired the rights to use, modify, reproduce, release, perform, display, or disclose the data without restrictions.

(2) Except as provided in paragraph (b)(l) of this article, the Government may use, modify, release, perform, display, or disclose technical data within the Government only. The Government shall not-

(i) Use the technical data to manufacture additional quantities of the commercial items; or

(ii) Release, perform, display, disclose, or authorize use of the technical data outside the Government without the Awardee's written permission unless a release, disclosure, or permitted use is necessary for emergency repair or overhaul of the commercial items furnished under this contract, or for performance of work by covered Government support Awardees.

(3) The Awardee acknowledges that-

(i) Technical data covered by paragraph (b)(2) of this article is authorized to be released or disclosed to cover Government support Awardees.

(ii) The Awardee will be notified of such release or disclosure.

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

(iv) Any such non-disclosure agreement shall address the restrictions on the covered Government support Awardee's use of the data. The non-disclosure agreement shall not include any additional terms and conditions unless mutually agreed to by the parties to the non-disclosure agreement.

(c) Additional license rights. The Awardee, its sub-Awardees, and suppliers are not required to provide the Government with additional rights to use, modify, reproduce, release, perform, display, or disclose technical data. However, if the Government desires to obtain additional rights in technical data, the Awardee agrees to promptly enter into negotiations with the Agreements Officer to determine whether there are acceptable terms for transferring such rights. All technical data in which the Awardee has granted the Government additional rights shall be listed or described in a special license agreement made part of this Agreement. The license shall enumerate the additional rights granted by the Government in such data.

(d) *Release from liability.* The Awardee agrees that the Government, shall have no liability for any release or disclosure of technical data that are not marked to indicate that such data are

licensed data subject to use, modification, reproduction, release, performance, display, or disclosure restrictions.

(e) *Applicability to sub-Awardees or suppliers.*

(1) The Awardee shall recognize and protect the rights afforded its sub-Awardees and suppliers under 10 U.S.C. 3771-3775 and 10 U.S.C. 3781-3786.

(2) Whenever any technical data related to commercial items developed in any part at private expense will be obtained from a sub-Awardee or supplier for delivery to the Government under Agreement, the Awardee shall use this same clause in the subcontract/Sub-Agreement or other contractual instrument, including subcontract/Sub- Agreements and other contractual instruments for commercial items, and require its sub- Awardees or suppliers to do so, without alteration, except to identify the parties. This article will govern the technical data pertaining to any portion of a commercial item that was developed exclusively at private expense, and Article 7.1 will govern the technical data pertaining to any portion of a commercial item that was developed in any part at Government expense.

ARTICLE 8: PROPRIETARY DATA

In the event the Awardee provides data or software as a courtesy to the Government to facilitate this effort, said data or software shall bear Awardee's proprietary legend and shall be protected by the Parties from unauthorized disclosure in accordance with 18 USC§ 1905.

ARTICLE 9: PATENT RIGHTS

9.1 Allocation of Principal Rights

Unless the Awardee shall have notified the Government, in accordance with subparagraph 9.2(2) below, that the Awardee does not intend to retain title, the Awardee shall retain the entire right, title, and interest throughout the world to each Subject Invention consistent with the provisions of this Article.

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

9.2 Invention Disclosure, Election of Title, and Filing of Patent Application

The Awardee shall disclose each Subject Invention to the Government within six (6) months

after the inventor discloses it in writing to his company personnel responsible for patent matters. The disclosure to the Government shall be in the form of a written report and shall identify the Agreement and circumstances under which the 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 nature, purpose, operation, and the physical, chemical, biological, or electrical characteristics of the Invention. The disclosure shall also identify any publication, sale, or public use of the invention and whether a manuscript describing the invention has been submitted and/or accepted for publication at the time of disclosure.

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

The Awardee 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 Awardee 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 from the date permission is granted by the Commissioner for Patents to file foreign patent applications, where such filing has been prohibited by a Secrecy Order.

The Awardee shall notify the Government 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.

Requests for extension of the time for disclosure election, and filing, may be granted at the Government's discretion after considering the circumstances of the Awardee and the overall effect of the extension.

The Awardee shall submit to the Government annual listings of subject inventions. At the completion of the Agreement, the Awardee shall submit a comprehensive listing of all subject inventions identified during the course of the Agreement and the current status of each.

9.3 Conditions When the Government May Obtain Title

Upon the Government's written request, the Awardee shall convey title to any subject invention to the Government under any of the following conditions:

1) If the Awardee fails to disclose or elects not to retain title to the subject invention within the times specified in Paragraph B of this Article; however, the Government may only request title within sixty (60) calendar days after learning of the failure of the Awardee to disclose or elect within the specified times.
2) In those countries in which the Awardee fails to file patent applications within the times specified in Paragraph B of this Article; however, if the Awardee has filed a patent application in a country after the times specified in paragraph B of this Article, but prior to its receipt of the written request by the Government, the Awardee shall continue to retain title in that country; or
3) In any country in which the Awardee 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.

9.4 Minimum Rights to the Awardee and Protection of the Awardee's Right to File

The Awardee shall retain a nonexclusive, royalty-free license throughout the world in each Subject Invention to which the Government obtains title, except if the Awardee fails to disclose the subject invention within the times specified in paragraph 9.2 of this Article. The Awardee'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 Awardee was legally obligated to do so at the time the Agreement was awarded. The license is transferable only with the approval of the Government, except when transferred to the successor of that part of the business to which the subject invention pertains. The Government approval for license transfer shall not be unreasonably withheld.

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

Before revocation or modification of the license, the Government shall furnish the Awardee a written notice of its intention to revoke or modify the license, and the Awardee 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.

9.5 Action to Protect the Government's Interest

The Awardee agrees to execute or to have executed and promptly deliver to the Government all instruments necessary to (i) establish or confirm the rights the Government has throughout the world in those subject inventions to which the Awardee elects to retain title, and (ii) convey title to the Government when requested under Paragraph 9.3 of this Article and to enable the Government to obtain patent protection throughout the world in that subject invention.

The Awardee 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 Awardee each subject invention made under this Agreement in order that the Awardee can comply with the disclosure provisions of Paragraph B of this Article. The Awardee 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.

The Awardee 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. XXXX, awarded by the Government. The Government has certain rights in the invention.

9.6 Lower Tier Agreements

The Awardee shall include this Article, suitably modified, in all subcontract/Sub-Agreements or lower-tired agreements, regardless of tier, for experimental, developmental, or research work. The Awardee may modify this clause to consolidate subAwardee intellectual property rights in the Awardee when flowing this clause down in lower-tier agreements if the Awardee retains the Government's rights as between the Government and the subAwardee.

9.7 Reporting on Utilization of Subject Inventions

The Awardee 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 Awardee 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 Awardee, and such other data and information as the agency may reasonably specify. The Awardee also agrees to provide additional reports as may be requested by the Government in connection with any march-in proceedings undertaken by the Government in accordance with of this Article. The Government agrees it shall not disclose such information to people outside the Government without permission of the Awardee, unless required by law.

All required reporting shall be accomplished, to the extent possible, reporting to AFRL via email to afmclo.jaz@us.af.mil with the standard DD Form 882 "Report oflnventions and Subcontract/Sub- Agreements". To the extent such reporting cannot be carried out to AFRL Patents office, reports and communication shall be submitted to the PM and the AO.

9.8 Preference for American Industry

Notwithstanding any other provision of this article, the Awardee 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 the Government upon a showing by the Awardee 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.

9.9 March-in Rights

The Awardee agrees that, with respect to any subject invention in which it has retained title, the Government has the right to require the Awardee, 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 Awardee, assignee, or exclusive licensee refuses such a request, the Government has the right to grant such a license itself if the Government determines that:

1) Such action is necessary because the Awardee 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 Awardee, assignee, or their licensees.

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

4) Such action is necessary because the agreement required by Article 9 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.

ARTICLE 10: SECURITY REQUIREMENTS

This article applies to the extent that this Agreement involves access to information classified "Confidential," "Secret," or "Top Secret."

The subject effort is classified at the **XXXX**

level. The Awardee shall comply with --

1) The Security Agreement (DD Form 441), including the National Industrial Security Program Operating Manual (DoD 5220.22-M); and

2) Any revisions to that manual, notice of which has been furnished to the Awardee.

If, subsequent to the date of this Agreement, the security classification or security requirements under this Agreement are changed by the Government and if the changes cause an increase or decrease in security costs or otherwise affect any other term or condition of this Agreement, the Agreement shall be subject to an equitable adjustment as if the changes were directed under the Changes/Modifications article of this Agreement.

The Awardee agrees to insert terms that conform substantially to the language of this article, including this paragraph (d) but excluding any reference to the Changes/Modifications article of this Agreement, in all subcontract/Sub-Agreements under this Agreement involve access to classified information. The DD Form 254, if applicable, (Contract Security Classification Specification) governs the handling and storage of all classified information regarding this Agreement.

General Operations Security (OPSEC) procedures, policies and awareness are required in an effort to reduce program vulnerability from successful adversary collection and exploitation of critical information. OPSEC will be applied throughout the life cycle of the contract. The Critical Information List (CIL) will be provided upon request by RXOS Information Protection Office. While working on the government installation, OPSEC guidance will be provided by the RXOS Information Protection Office.

Communications Security (COMSEC) Monitoring - All communications with DoD organizations are subject to Communications Security (COMSEC) review. Awardee personnel will be aware that telecommunications networks are continually subject to interception by unfriendly intelligence organizations. The DoD has authorized the military departments to conduct COMSEC monitoring and recording of telephone calls originating from or terminating at DoD organizations. Therefore, civilian contractor personnel are advised that any time they place a call to or receive a call from a USAF

organization they are subject to COMSEC procedures. The Awardee will assume the responsibility for ensuring wide and frequent dissemination of the above information to all employees dealing with official DoD information.

ARTICLE 11: PUBLIC RELEASE OR DISSEMINATION OF INFORMATION

11.1 There shall be no dissemination or publication, except within and between the Awardee and any subAwardees, of information developed under this Agreement or contained in the reports to be furnished pursuant to this Agreement without prior written approval of the AO. However, the Government reserves the right to disseminate information within the Government entities without Awardee approval. 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 either party. 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 Awardee and any subAwardee(s), of information developed under this effort without first obtaining approval for public release from the Agreements Officer and/or Program Manager who will obtain Air Force Office of Public Affairs approval. Papers prepared in response to academic requirements which are not intended for public release outside the academic institution are exempt from prepublication controls.

11.2 The Awardee shall submit all proposed public releases for review and approval as instructed by the Agreements Officer and/or Program Manager who will obtain Air Force Office of Public Affairs approval at least 45 business days prior to the scheduled release date. The submission will be reviewed, and if approved, sent to the Air Force Office of Public Affairs for release. 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.

11.3 The Government shall submit all proposed public releases which identify the Awardee or the subject of this Agreement to the Awardee for review and comment when the Government becomes aware of such planned release or no later than 10 days prior to release, whichever is later. 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.

ARTICLE 12: STATUTORY AUTHORITY

12.1 This Agreement is not a Federal procurement contract, grant or cooperative agreement. Nothing in this Agreement will be construed as incorporating by reference or implication any provision of Federal acquisition law or regulation not specifically mentioned in this Agreement. The Awardee shall comply with Title VI of the Civil Rights Act of 1964 as amended (42 U.S.C. § 2000d) relating to nondiscrimination in federally assisted programs and shall provide a certification to that effect. Additionally, this Agreement is subject to the Trafficking Victims Protection Act of 2000, as amended (22 U.S.C. chapter 78), Executive Order 13627, Strengthening Protections Against Trafficking in Persons in Federal Contracts, 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), the Department of Commerce's Export Administration Regulations (15 C.F.R. Part 730, et seq.), and the Federal Property and Administrative Services Act (40 U.S.C. chapter 5), to the extent applicable to the activities to be conducted under this Agreement. In addition, the Procurement Integrity Act (41 U.S.C. §2101-2107) shall apply to this Agreement.

ARTICLE 13: COMPTROLLER GENERAL ACCESS

13.1 The Comptroller General of the United States, or an authorized representative of the Comptroller General, shall have access to and right to examine any of the Awardee's directly pertinent records involving transactions related to this Agreement. The Comptroller General of the United States, or an authorized representative of the Comptroller General, at its discretion, shall have access to and the right to examine records of any party to the Agreement or any entity that participates in the performance of this Agreement that directly pertain to, and involve transactions relating to, the Agreement for a period of three (3) years after final payment is made. If this Agreement is completely or partially terminated, the records relating to the work terminated shall be made available for 3 years after any resulting final termination settlement. Records relating to appeals under the disputes article or to litigation or the settlement of claims arising under or relating to this Agreement shall be made available until such appeals, litigation, or claims are finally resolved.

13.2 This requirement shall not apply with respect to any party to this Agreement or any entity that participates in the performance of the Agreement, or any subordinate element of such party or entity, that, in the year prior to the date of the Agreement, has not entered into any other contract, grant, cooperative Agreement, or "Other Transaction" Agreement that provides for audit access to its records by a government entity in the year prior to the date of this Agreement. As used in this article, records include books, documents, accounting procedures and practices, and other data, regardless of type and regardless of form. This does not require the Awardee to create or maintain any record that the Awardee does not maintain in the ordinary course of business or pursuant to a provision of law. The

terms of this paragraph shall be included in all sub-agreements/contracts to the Agreement.

ARTICLE 14: DISPUTES RESOLUTION

14.1 General:

The Parties shall communicate with one another in good faith and in a timely and cooperative manner when raising issues pertaining to this Agreement under this article, with the objective of resolving any misunderstanding, disagreement, claims, or disputes by mutual agreement.

14.2 Dispute Resolution Procedures:

14.2.1 Any disagreement, claim or dispute between the Government and the Awardee concerning questions of fact or law arising from or in connection with this Agreement, and, whether or not involving an alleged breach of this Agreement, may only be raised under thisarticle.

14.2.2 Whenever disputes, disagreements, or misunderstandings arise, the Parties shall attempt to resolve the issue(s) involved by discussion and mutual agreement as soon as practicable, with the goal of settlement within three (3) months of identification of the issue. Every reasonable attempt will be made to resolve all issues at the Agreements Officer's level. Alternative Dispute Resolution (ADR) procedures to include, but not limited to settlement negotiations, mediation and fact-finding, will be used to the maximum extent practicable. Whenever the Awardee submits, in writing, a claim or issue to the Government, the Agreements Officer shall consider the claim or issue and, within 60 calendar days of receipt of the claim or issue in dispute, either:

1) Prepare and transmit a written decision to the Awardee, which shall include the basis for the decision, and accordingly document the Agreement file or;

2) Notify the Awardee of a specific date when the Agreements Officer will render a decision if more time is needed for response. The notice will inform the Awardee of the reason for delaying the decision.

14.2.3 In the event the Awardee decides to appeal the decision, the Agreements Officer shall make every effort to encourage the Awardee to enter into ADR procedures with the Agreements Officer. The ADR procedure applicable to this Agreement expressed in subparagraphs below:

Failing resolution by mutual agreement, the Awardee shall document the dispute, disagreement, or misunderstanding and notify the Government, through the Agreements Officer or Awardee Administrator (as the case may be) in writing of the relevant facts, identify unresolved issues, and specify the clarifications or remedy sought. Within five (5) business days after providing notice, the Awardee may, in writing, consult an ombudsman. An ombudsman has been appointed to hear and facilitate the resolution of concerns from offerors, potential offerors, and others for this acquisition. When requested, the ombudsman will maintain strict confidentiality as to the source of concern. The existence of the ombudsman does not affect the authority of the program manager, Agreements Officer, or source selection official.

Further, the ombudsman does not participate in the evaluation of proposals, the source selection process, or the adjudication of protests or formal contract/Agreement disputes. The ombudsman may refer the interested party to another official who can resolve the concern. If a resolution cannot be made by the Agreements Officer, the interested party may contact the ombudsman. Concerns, issues, disagreements, and recommendations that cannot be resolved at the Center/MAJCOM/DRU/SMC ombudsman level, may be brought by the interested party for further consideration to the Air Force ombudsman, Associate Deputy Assistant Secretary (ADAS) (Contracting), SAF/AQC, 1060 Air Force Pentagon, Washington DC 20330-1060, phone number (571) 256-2395, facsimile number (571) 256-2431. The ombudsman has no authority to render a decision that binds the agency. If the Awardee chooses not to participate in the Dispute Resolution Procedure or does not accept the results of the Dispute Resolution Procedure, the Awardee may bring a formal claim as authorized by 28 U.S.C. 1491 or other applicable statutes and pursue any right and remedy in a court of competent jurisdiction without being subject to an administrative exhaustion requirement under this agreement. The Parties' attempt to resolve issues through settlement, negotiations, mediation and fact-finding pursuant to Article 14 shall be non-binding and without prejudice to either Party.

14.3 Limitation of Damages:

Claims for damages of any nature whatsoever pursued under this Agreement against either Party shall be limited to direct damages only up to the aggregate amount of the Government funding appropriated as of the time the dispute arises. In no event shall either Party be liable for claims for consequential, punitive, special and incidental damages, claims of lost profits, or other indirect damages whatsoever whether arising in tort, contract or any theory of liability.

ARTICLE 15: NON-ASSIGNMENT

This Agreement may not be assigned by any Party except by operation of law resulting from the merger of a Party into or with another corporate entity.

ARTICLE 16: FORCE MAJEURE

Neither Party shall be in breach of this Agreement for any failure of performance caused by any event beyond its reasonable control and not caused by the fault or negligence of that Party. If such a force majeure event occurs, the Party unable to perform shall promptly notify the other Party and shall in good faith maintain such partial performance as is reasonably possible and shall resume full performance as soon as is reasonably possible.

ARTICLE 17: ORDER OF PRECEDENCE

In the event of any inconsistency between the terms of this Agreement, the language set forth in the Attachments, and the Awardee's proposal, the inconsistency shall be resolved by giving precedence in the following order: (1) The Agreement, (2) all Attachments to the Agreement, and (3) Awardee's proposal.

ARTICLE 18: EXECUTION

This Agreement constitutes the entire agreement of the Parties and supersedes all prior and contemporaneous agreements, understandings, negotiations, and discussions among the Parties, whether oral or written, with respect to the subject matter hereof. This Agreement may be revised only by written consent of the Awardee and the Agreements Officer, except for administrative modifications which may be executed unilaterally in section 5.1 of this document. This Agreement, or modifications thereto, may be executed in counterparts each of which shall be deemed as original, but all of which taken together shall constitute one and the same instrument.

ARTICLE 19: LIMITATION OF GOVERNMENT'S OBLIGATION

(a) This agreement is incrementally funded. Total contract obligation is $XXXX. For this agreement, the sum of $XXXX of the total price is presently available for payment and allotted to this agreement.

(b) The Awardee agrees to perform up to the point at which the total amount payable by the Government, including reimbursement in the event of termination of this agreement, approximates the total amount currently allotted to the agreement. The Awardee is not authorized to continue work on this agreement beyond that point. The Government will not be obligated in any event to reimburse the Awardee in excess of the amount allotted to the agreement regardless of anything to the contrary in Article 3.2. As used in this article, the total amount payable by the Government in the event of termination at the request of the Government includes costs, profit, and estimated termination settlement costs for those item(s).

(c) Notwithstanding the dates specified in the allotment schedule in paragraph (j) of this article, the Awardee will notify the Agreements Officer in writing at least ninety (90) days prior to the date when, in the Awardee's best judgment, the work will reach the point at which the total amount

payable by the Government, including any cost for termination at the request of theGovernment, will approximate 85 percent of the total amount then allotted to the Agreement for performance of the applicable item(s). The notification will state (1) the estimated date when that point will be reached and (2) an estimate of additional funding, if any, needed to continue performance up to the next scheduled date for the allotment of funds identified in paragraph (j) of this article, or to a mutually agreed upon substitute date. The notification will also advise the Agreements Officer of the estimated amount of additional funds that will be required for the timely performance of the milestones funded pursuant to this article, for a subsequent period as may be specified in the allotment schedule in paragraph (j) of this article or otherwise agreed to by the parties. If after such notification additional funds are not allotted by the date identified in the Awardee's notification, or by an agreed substitute date, the Agreements Officer will terminate any item(s) for which additional funds have not been allotted, pursuant to Article 3.2.

(d) When additional funds are allotted for continued performance of the milestones identified in Attachment X of this Agreement, the parties will agree as to the period of Agreement performance which will be covered by the funds. The provisions of paragraphs (b) through (d) of this Article will apply in like manner to the additional allotted funds and agreed substitute date, and the Agreement will be modified accordingly.

ARTICLE 20: GOVERNMENT FURNISHED PROPERTY & TITLE TO AND DISPOSITION OF PROPERTY

20.1 Government Furnished Property/Equipment -

"Government Furnished Property" ("GFP") means property, information, or facilities identified herein.

"Government property" means all property owned or leased by the Government. Government property includes both Government-furnished and Contractor-acquired property. Government property includes material, equipment, special tooling, special test equipment, and real property. Government property does not include intellectual property and software.

(a) The Government will provide the Awardee the following GFP:

1) Government Furnished Material/Equipment: Listed below: N/A

2) Government Furnished Facilities: N/A

(b) The Awardee is authorized to use the Government Furnished Information identified herein for purposes solely in support of the Attachment #X- Statement of Work.

(c) Title to GFP will remain with the Government.

(d) Should this property not be provided in a suitable condition for use, or by the date specified, an equitable modification to the agreement will be made to include schedule and/or cost.

(e) The Awardee shall cease using the GFP upon completion or termination of this Agreement. The Agreements officer will provide disposition instructions.

20.2 Awardee Liability for Government Property-

(a) Unless otherwise provided for in the award, the Awardee shall not be liable for loss of Government property furnished or acquired under this award, except when any one of the following applies-

!) The risk is covered by insurance, or the Awardee is otherwise reimbursed (to the extent of such insurance or reimbursement).

2) Loss of Government property that is the result of willful misconduct or lack of good faith on the part of the Awardee's managerial personnel.

3) The Agreements Officer has, in writing, revoked the Government's assumption of risk for loss of Government property due to a determination that the Awardee's

property management practices are inadequate, and/or present an undue risk to the Government, and the Awardee failed to take timely corrective action. If the Awardee can establish by clear and convincing evidence that the loss of Government property occurred while the Awardee had adequate property management practices or the loss did not result from the Awardee's failure to maintain adequate property management practices, the Awardee shall not be held liable.

(b) The Awardee shall take all reasonable actions necessary to protect the property from further loss. The Awardee shall separate the damaged and undamaged property, place all the affected property in the best possible order, and take such other action as the Property Administrator directs.

(c) The Awardee shall do nothing to prejudice the Government's rights to recover against third parties for any loss of Government property.

(d) The Awardee shall reimburse the Government for loss of Government property, to the extent that the Awardee is financially liable for such loss, as directed by the Agreement Officer.

(e) Upon the request of the Agreements Officer, the Awardee shall, at the Government's expense, furnish to the Government all reasonable assistance and cooperation, including the prosecution of suit and the execution of instruments of assignment in favor of the Government in obtaining recovery.

20.3 Title to Property -

(a) Title to all property purchased by the Awardee for which the Awardee is entitled to be reimbursed as a direct item of cost under this contract shall pass to and vest in the Government upon the vendor's delivery of such property.

(b) Title to all other property, the cost of which is reimbursable to the Awardee, shall pass to and vest **in** the Government upon-

a. Issuance of the property for use in contract performance.

b. Commencement of processing of the property for use in contract performance; or

c. Reimbursement of the cost of the property by the Government, whichever occurs first.

20.4 Disposition of Property -

At the completion of the term of this Agreement, items of property with an acquisition value greater than $5,000 shall be disposed of in the following manner:

Purchased by the Awardee at an agreed-upon price, the price to represent fair market value, with the proceeds of the sale being returned to the Government; or

Transferred to a Government research facility with title and ownership being transferred to the Government; or donated to a mutually agreed University or technical learning center forresearch purposes; or any other Government approved disposition procedure.

20.5 Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends -

Technical data or computer software provided to the Awardee as Government-furnished information (GFI) under this agreement may be subject to restrictions on use, modification, reproduction, release, performance, display, or further disclosure, in accordance with DFARS 252.227-7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends.

ARTICLE 21: VALIDATION OF RESTRICTIVE MARKINGS ON TECHNICAL DATA

(a) Definitions. The terms used in this Article are defined as Article 1 of this Agreement.

(b) Presumption regarding development exclusively at private expense.

1) Commercial items.

i. Except as provided in paragraph (b)(2) of this clause, the Agreement's Officer will presume that the Awardee's or a sub-awardee's asserted use or release restrictions with respect to a commercial item is justified on the basis that the item was developed exclusively at private expense.

i. The Agreements Officer will not challenge such assertions unless the Agreements Officer has information that demonstrates that the commercial item was not developed exclusively at private expense.

2) Major weapon systems. In the case of a challenge to a use or release restriction that is asserted with respect to data of the Awardee or a sub-awardee for a major weapon system or a subsystem or component thereof on the basis that the major weapon system, subsystem, or component was developed exclusively at private expense-

i. The presumption in paragraph (b)(1) of this article applies to-

A. A commercial subsystem or component of a major weapon system, if the major weapon system was acquired as a commercial item in accordance with 10 U.S.C. 3455(a).

B. A component of a subsystem, if the subsystem was acquired as a commercial item in accordance with 10 U.S.C. 3455(b); and

C. Any other component, if the component is a commercially available off-the-shelf item or a commercially available off-the-shelf item with modifications of a type customarily available in the commercial marketplace or minor modifications made to meet Federal Government requirements; and

ii. In all other cases, the challenge to the use or release restriction will be sustained unless information provided by the Awardee or a sub-awardee demonstrates that the item or process was developed exclusively at private expense.

(c) Justification. The Awardee or a sub-awardee at any tier is responsible for maintaining records sufficiently to justify the validity of its markings that impose restrictions on the Government and others to use, duplicate, or disclose technical data delivered or required to be delivered under the agreement or sub-agreement. Except as provided in paragraph (b)(1) of this article, the Awardee or a sub-awardee shall be prepared to furnish to the Agreements Officer a written justification for such restrictive markings in response to a challenge under paragraph (e) of this clause.

(d) Prechallenge request for information.

1) The Agreements Officer may request the Awardee or a sub-awardee to furnish a written explanation for any restriction asserted by the Awardee or a sub-awardee on the right of the United States or others to use technical data. If, upon review of the explanation submitted, the Agreements Officer remains unable to ascertain the basis of the restrictive marking, the Agreements Officer may further request the Awardee or a sub-awardee to furnish additional information in the records of, or otherwise in the possession of or reasonably available to, the Awardee or a sub-awardee to justify the validity of any restrictive marking on technical data delivered or to be delivered under the agreement or sub-agreement (e.g., a statement of facts accompanied with supporting documentation). The Awardee or a sub-awardee shall submit such written data as requested by the Agreements Officer within the time required or such a longer period as may be mutually agreed.

2) If the Agreements Officer, after reviewing the written data furnished pursuant to paragraph (d)(l) of this clause, or any other available information pertaining to the validity of a restrictive marking, determines that reasonable grounds exist to question the current validity of the marking and that continued adherence to the marking would make impracticable the subsequent competitive acquisition of the item, component, or process to which the technical data relates, the Agreements Officer shall follow the procedures in paragraph (e) of this clause.

3) If the Awardee or a sub-awardee fails to respond to the Agreements Officer's request for information under paragraph (d)(l) of this clause, and the Agreements Officer determines that continued adherence to the marking would make impracticable the

subsequent competitive acquisition of the item, component, or process to which the technical data relates, the Agreements Officer may challenge the validity of the marking as described in paragraph (e) of this clause.

(e) Challenge.

1) Notwithstanding any provision of this Agreement concerning inspection and acceptance, if the Agreements Officer determines that a challenge to the restrictive marking is warranted, the Agreements Officer shall send a written challenge notice to the Awardee or a sub-awardee asserting the restrictive markings. Such a challenge shall-

i. State the specific grounds for challenging the asserted restriction.

ii. Require a response within sixty (60) days justifying and providing sufficient evidence as to the current validity of the asserted restriction.

iii. State that a DoD Agreements Officer's final decision, issued pursuant to paragraph (g) of this clause, sustaining the validity of a restrictive marking identical to the asserted restriction, within the three-year period preceding the challenge, shall serve as justification for the asserted restriction if the validated restriction was asserted by the same Awardee or a sub-awardee (or any licensee of such Awardee or a sub-awardee) to which such notice is being provided; and

iv. State that failure to respond to the challenge notice may result in issuance of a final decision pursuant to paragraph (f) of this clause.

2) The Agreements Officer shall extend the time for response as appropriate if the Awardee or a sub-awardee submits a written request showing the need for additional time to prepare a response.

3) The Awardee's or a sub-awardee's written response shall be considered a claim within the meaning of 41 U.S.C. 7101, Contract Disputes.

4) An Awardee or a sub-awardee receiving challenges to the same restrictive markings from more than one Contracting/ Agreements Officer shall notify each Contracting/ Agreements Officer of the existence of more than one challenge. The notice shall also state which Contracting/ Agreements Officer initiated the first-in-time unanswered challenge. The Contracting/ Agreements Officer initiating the first in time unanswered challenge after consultation with the Awardee or a sub-awardee and the other Contracting/ Agreements Officers, shall formulate and distribute a schedule for responding to each of the challenge notices to all interested parties. The schedule shall afford the Awardee or a sub-awardee an opportunity to respond to each challenge notice. All parties will be bound by this schedule.

(f) Final decision when an Awardee or a sub-awardee fails to respond. Upon failure of an Awardee or a sub-awardee to submit any response to the challenge notice the Agreements Officer will issue a final decision to the Awardee or a sub-awardee in accordance with

paragraph (b) of this article and the Disputes article of this agreement pertaining to the validity of the asserted restriction. This final decision shall be issued as soon as possible after the expiration of the time period of paragraph (e)(1)(ii) or (e)(2) of this article. Following issuance of the final decision, the Agreements Officer will comply with the procedures in paragraphs (g)(2)(ii) through (iv) of this article.

(g) Final decision when Awardee or a sub-awardee responds.

1) If the Agreements Officer determines whether the Awardee or a sub-awardee has justified the validity of the restrictive marking, the Agreements Officer shall issue a final decision to the Awardee or a sub-awardee sustaining the validity of the restrictive marking and stating that the Government will continue to be bound by the restrictive marking. This final decision shall be issued within sixty (60) days after receipt of the Awardee or a sub-awardee response to the challenge notice, or within such longer period that the Agreements Officer has notified the Awardee or a sub-awardee that the Government will require. The notification of a longer period for issuance of a final decision will be made within sixty (60) days after receiving receipt of the response to the challenge notice.

i. If the Agreements Officer determines that the validity of the restrictive marking is not justified, the Agreement Officer shall issue a final decision to the Awardee or a sub-awardee in accordance with the Disputes article of this agreement. Notwithstanding paragraph (e) of the Disputes article, the final decision shall be issued within sixty (60) days after receipt of the Awardee or a sub-awardee response to the challenge notice, or within such a longer period that the Agreements Officer has notified the Awardee or a sub-awardee of the longer period that the Government will require. The notification of a longer period for issuance of a final decision will be made within sixty (60) days after receiving receipt of the response to the challenge notice.

ii. The Government agrees that it will continue to be bound by the restrictive marking for a period of ninety (90) days from the issuance of the Agreements Officer's final decision under paragraph (g)(2)(i) of this clause. The Awardee or a sub-awardee agrees that, if it intends to file suit in the United States Claims Court it will provide a notice of intent to file suit to the Agreements Officer within ninety (90) days from the issuance of the Agreements Officer's final decision under paragraph (g)(2)(i) of this clause. If the Awardee or a sub-awardee fails to appeal, file a suit, or provide a notice of intent to file suit to the Agreements Officer within the ninety (90)-day period, the Government may cancel or ignore the restrictive markings, and the failure of the Awardee or a sub-awardee to take the required action constitutes agreement with such Government action.

iii. The Government agrees that it will continue to be bound by the restrictive marking where a notice of intent to file suit in the United States Claims Court is provided to the Agreements Officer within ninety (90) days from the issuance of

the final decision under paragraph (g)(2)(i) of this clause. The Government will no longer be bound, and the Awardee or a sub-awardee agrees that the Government may strike or ignore the restrictive markings, if the Awardee or a sub-awardee fails to file its suit within one (1) year after issuance of the final decision. Notwithstanding the foregoing, where the head of an agency determines, on a nondelegable basis, that urgent or compelling circumstances will not permit waiting for the filing of a suit in the United States Claims Court, the Awardee or a sub-awardee agrees that the agencymay, following notice to the Awardee or a sub-awardee, authorize release or disclosure of the technical data. Such agency determination may be made at any time after issuance of the final decision and will not affect the Awardee or a sub-awardee right to damages against the United States where its restrictive markings are ultimately upheld or to pursue other relief, if any, as may be provided by law.

iv. The Government agrees that it will be bound by the restrictive marking where an appeal or suit is filed pursuant to the Contract Disputes statute until final disposition by an agency Board of Contract Appeals or the United States Claims Court. Notwithstanding the foregoing, where the head of an agency determines, on a nondelegable basis, following notice to the Awardee that urgent or compelling circumstances will not permit awaiting the decision by such Board of Contract Appeals or the United States Claims Court, the Awardee or a sub-awardee agrees that the agency may authorize release or disclosure of the technical data. Such agency determination may be made at any time after issuance of the final decision and will not affect the Awardee or a sub-awardee right to damages against the United States where its restrictive markings are ultimately upheld or to pursue other relief, if any, as may be provided by law.

(h) Final disposition of appeal or suit.

1) If the Awardee or a sub-awardee appeals or files suit and if, upon final disposition of the appeal or suit, the Agreement Officer's decision is sustained-

i. The restrictive marking on the technical data shall be cancelled, corrected or ignored; and

ii. If the restrictive marking is found not to be substantially justified, the Awardee or a sub-awardee, as appropriate, shall be liable to the Government for payment of the cost to the Government of reviewing the restrictive marking and the fees and other expenses (as defined in 28 U.S.C. 2412(d)(2)(A)) incurred by the Government in challenging the marking, unless special circumstances would make such payment unjust.

2) If the Awardee or a sub-awardee appeals or files suit and if, upon final disposition of the appeal or suit, the Agreement Officer's decision is not sustained-

i. The Government shall continue to be bound by the restrictive marking; and

ii. The Government shall be liable to the Awardee or a sub-awardee for payment of fees and other expenses (as defined in 28 U.S.C. 2412(d)(2)(A)) incurred by the Awardee or a sub-awardee in defending the marking, if the challenge by the Government is found not to have been made in good faith.

(i) Duration of right to challenge. The Government may review the validity of any restriction on technical data delivered or to be delivered under a contract, asserted by the Awardee or a sub-awardee. During the period within three (3) years of final payment on a contract or within three (3) years of delivery of the technical data to the Government, whichever is later, the Agreements Officer may review and make a written determination to challenge the restriction. The Government may, however, challenge a restriction on the release, disclosure or use of technical data at any time if such technical data-

1) Is publicly available;

2) Has been furnished to the United States without restriction; or

3) Has been otherwise made available without restriction. Only the Agreements Officer's final decision resolving a formal challenge by sustaining the validity of a restrictive marking constitutes "validation" as addressed in 10 U.S.C. 2321.

(j) Decision not to challenge. A decision by the Government, or a determination by the Agreement Officer, to not challenge the restrictive marking or asserted restriction shall not constitute "validation."

(k) Privity of contract. The Awardee or a sub-awardee agrees that the Agreements Officer may transact matters under this clause directly with subcontractors at any tier that assert restrictive markings. However, this clause neither creates nor implies privity of contract between the Government and subawardees.

(l) Flowdown. The Awardee or a sub-awardee agrees to insert this clause into contractual instruments, including subcontracts and other contractual instruments for commercial items, with its subcontractors or suppliers at any tier requiring the delivery of technical data.

ARTICLE 22: SEVERABILITY

In the event that any provision of this Agreement becomes or is declared by a court of competent jurisdiction to be illegal, unenforceable or void, this Agreement shall continue in full force and effect without said provision, provided that no such severability shall be effective if the result of such action materially changes the economic benefit of this Agreement to the Parties.

ARTICLE 23: PROHIBITION ON CONTRACTING FOR CERTAIN

TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT

(a) *De_finitions.* As used in this article-

"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 oflnvestigation, 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)(l)(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)(l)(B) of the John S. McCain National Defense Authorization Act for Fiscal Year (2) Section 889(a)(l)(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 Agreement Officer, unless elsewhere in this Agreement 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 Agreement Officer for the indefinite delivery contract and the Agreement 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)(l) 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 items.

ARTICLE 24: FOREIGN ACCESS TO TECHNOLOGY

This Article shall remain in effect during the term of the Agreement and for five (5) years thereafter.

24.1 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.).

24.2 Restrictions on Sale or Transfer of Technology to Foreign Firms or Institutions

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 26.2.2, 26.2.3, and 26.2.4 below shall apply to any transfer of Technology. For purposes of this paragraph, a transfer includes a sale of the company, and sales or licensing of Technology. Transfers do not include:

1) Sales of products or components; or

2) Licenses of software or documentation related to sales of products or components; or

3) Transfer to foreign subsidiaries of the Performer for purposes related to this Agreement; or

4) Transfer which provides access to Technology to a Foreign Firm or Institution which is an approved source of supply or source for the conduct of research under this 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.

The Performer shall provide timely notice to the Government of any proposed transfers from the Performer of

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

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

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

24.3 Lower Tier Agreements

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

ARTICLE 25: COUNTERFEIT ELECTRONIC PART DETECTION AND AVOIDANCE SYSTEM

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

"Authorized aftermarket manufacturer" means an organization that fabricates a part under a contract/Agreement with, or with the express written authority of, the original component manufacturer based on the original component manufacturer's designs, formulas, and/or specifications.

"Authorized supplier" means a supplier, distributor, or an aftermarket manufacturer with a contractual arrangement with, or the express written authority of, the original manufacturer or current design activity to buy, stock, repackage, sell, or distribute the part.

"Contract manufacturer" means a company that produces goods under contract/Agreement for another company under the label or brand name of that company.
"Awardee-approved supplier" means a supplier that does not have a contractual agreement with the original component manufacturer for a transaction, but has been identified as trustworthy by a Awardee or subAwardee.

"Counterfeit electronic part" means an unlawful or unauthorized reproduction, substitution,

or alteration that has been knowingly mismarked, misidentified, or otherwise misrepresented to be 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. Unlawful or unauthorized substitution includes used electronic parts represented as new, or the false identification of grade, serial number, lot number, date code, or performance characteristics.

"Electronic part" means an integrated circuit, a discrete electronic component (including, but not limited to, a transistor, capacitor, resistor, or diode), or a circuit assembly (section 818(±)(2) of Pub. L. 112-81).

"Obsolete electronic part" means an electronic part that is no longer available from the original manufacturer or an authorized aftermarket manufacturer.

"Original component manufacturer" means an organization that designs and/or engineers a part and is entitled to any intellectual property rights to that part.

"Original equipment manufacturer" means a company that manufactures products that it has designed from purchased components and sells those products under the company's brand name.

"Original manufacturer" means the original component manufacturer, the original equipment manufacturer, or the Agreement manufacturer.

"Suspect counterfeit electronic part" means an electronic part for which credible evidence (including, but not limited to, visual inspection or testing) provides reasonable doubt that the electronic part is authentic.

(b) System criteria. A counterfeit electronic part detection and avoidance system shall include risk- based policies and procedures that address, at a minimum, the following areas:

1) The inspection and testing of electronic parts, including criteria for acceptance and rejection. Tests and inspections shall be performed in accordance with accepted Government- and industry-recognized techniques. Selection of tests and inspections shall be based on minimizing risk to the Government. Determination of risk shall be based on the assessed probability of receiving a counterfeit electronic part; the probability that the inspection or test selected will detect a counterfeit electronic part; and the potential negative consequences of a counterfeit electronic part being installed (e.g., human safety, mission success) where such consequences are made known to the Awardee.

2) Risk-based processes that enable tracking of electronic parts from the original manufacturer to product acceptance by the Government, whether the electronic parts are supplied as discrete electronic parts or are contained in assemblies, in accordance with paragraph (b) of the clause at 252.246-7008. If the Awardee cannot establish this traceability from the original manufacturer for a specific electronic

part, be responsible for inspection, testing, and authentication, in accordance with existing applicable industry standards.

3) Use of suppliers in accordance with the clause at DFARS 252.246-7008.

(c) The Awardee shall include the substance of this article in sub awardees, including sub awardees for commercial items, for electronic parts or assemblies containing electronic parts.

ARTICLE 26: EXPORT CONTROLLED ITEMS

(a) Definition. "Export-controlled items," as used in this agreement, 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.

(2) "Items," defined in the EAR as "commodities", "software", and "technology," terms that are also defined in the EAR, 15 CFR 772.1.

(b) The Contractor shall comply with all applicable laws and regulations regarding export-controlled items, including, but not limited to, the requirement for awardees to register with the Department of State in accordance with the ITAR. The Awardee 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 EAR.

(c) The Awardee'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 clause.

(d) Nothing in the terms of this Agreement 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.

(e) The Awardee shall include the substance of this clause, including this paragraph (e), in all subcontracts.

ARTICLE 27 : INSURANCE-LIABILITY TO THIRD PERSONS

(a) Except as provided in paragraph (a)(l) of this clause, the Awardee shall provide and maintain workers' compensation, employer's liability, comprehensive general liability (bodily injury), comprehensive automobile liability (bodily injury and property damage) insurance, and such other insurance as the Agreements Officer may require under this Agreement.

1) The Awardee may, with the approval of the Agreements Officer, maintain a self-insurance program, provided that, with respect to workers' compensation, the Awardee is qualified pursuant to statutory authority.

2) All insurance required by this paragraph shall be in a form and amount for those periods as the Agreements Officer may require or approve and with insurers approved by the Agreements Officer.

(b) The Awardee agrees to submit for the Agreements Officer's approval, to the extent and in the manner required by the Agreements Officer, any other insurance that is maintained by the Awardee in connection with the performance of this Agreement and for which the Awardee seeks reimbursement.

(c) The Awardee shall be reimbursed-

1) For that portion-

i. Of the reasonable cost of insurance allocable to this Agreement; and

ii. Required or approved under this clause; and

2) For certain liabilities (and expenses incidental to such liabilities) to third persons not compensated by insurance or otherwise without regard to and as an exception to the limitation of cost or the limitation offunds clause of this Agreement. These liabilities must arise out of the performance of this Agreement, whether caused by the negligence of the Awardee or of the Awardee's agents, servants, or employees, and must be represented by final judgments or settlements approved in writing by the Government. These liabilities are for-

i. Loss of or damage to property (other than property owned, occupied, or used by the Awardee, rented to the Awardee, or in the care, custody, or control of

the Awardee); or

ii. Death or bodily injury.

(d) The Government's liability under paragraph (c) of this clause is subject to the availability of appropriated funds at the time a contingency occurs. Nothing in this Agreement shall be construed as implying that the Congress will, at a later date, appropriate funds sufficient to meet deficiencies.

(e) The Awardee shall not be reimbursed for liabilities (and expenses incidental to such liabilities)

1) For which the Awardee is otherwise responsible under the express terms of any clause specified in the Schedule or elsewhere in the Agreement.

2) For which the Awardee has failed to insure or to maintain insurance as required by the Agreements Officer; or

3) That results from willful misconduct or lack of good faith on the part of any of the Awardee's directors, officers, managers, superintendents, or other representatives who have supervision or direction of-

i. All or substantially all of the Awardee's business.

ii. All or substantially all of the Awardee's operations at any one plant or separate location in which this Agreement is being performed: or

iii. A separate and complete major industrial operation in connection with the performance of this Agreement.

(f) The provisions of paragraph (e) of this clause shall not restrict the right of the Awardee to be reimbursed for the cost of insurance maintained by the Awardee in connection with the performance of this Agreement, other than the insurance required in accordance with this
clause: *provided,* that such cost is allowable under the Allowable Cost and Payment clause of this Agreement.

(g) If any suit or action is filed or any claim is made against the Awardee, the cost and expense of which may be reimbursable to the Awardee under this Agreement, and the risk of which is then uninsured or is insured for less than the amount claimed, the Awardee shall-

1) Immediately notify the Agreements Officer and promptly furnish copies of alI pertinent papers received.

2) Authorize Government representatives to collaborate with counsel for the insurance carrier in settling or defending the claim when the amount of the liability claimed

exceeds the amount of coverage; and

3) Authorize Government representatives to settle or defend the claim and to represent the Awardee in or to take charge of any litigation, if required by the Government, when the liability is not insured or covered by bond. The Awardee may, at its own expense, be associated with the Government representatives in any such claim or litigation.

ARTICLE 28: SAFEGUARDING COVERED DEFENSE INFORMATION AND CYBER INCIDENT REPORTING

(a) Definitions. As used in this article -

"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.

"Awardee attributional/proprietary information" means information that identifies the Awardee(s), whether directly or indirectly, by the grouping of information that can be traced back to the Awardee(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 Awardee information system" means an unclassified information system that is owned, or operated by or for, an Awardee 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/Agreement, task order, or delivery

order and provided to the Awardee by or on behalf of DoD in support of the performance of the contract/Agreement; or

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

"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 infonnation 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 Awardee 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 Anned 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. 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 Awardee shall provide adequate security on all covered Awardee information systems. To provide adequate security, the Awardee shall implement, at a minimum, the following information security protections:

1) For covered Awardee 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 DFARS 252.239-7010, Cloud Computing Services.

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 Agreement.

2) For covered Awardee 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 article, the following security requirements apply:

i. Except as provided in paragraph (b)(2)(ii) of this article, the covered Awardee 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/l 0.6028/NIST.SP.800- 171) in effect at the time the solicitation is issued or as authorized by the Agreements officer.

ii.

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

B. The Awardee shall submit requests to vary from NIST SP 800-171 in writing to the Agreements officer, for consideration by the DoD CIO. The Awardee 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 Awardee'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

Agreements officer when requesting its recognition under this Agreement.

D. If the Awardee intends to use an external cloud service provider to store, process, or transmit any covered defense information in performance of this Agreement, the
Awardee 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 article 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 Awardee reasonably determines that information systems security measures, in addition to those identified in paragraphs (b)(1) and (2) of this article, 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 Awardee discovers a cyber-incident that affects a covered Awardee information system or the covered defense information residing therein, or that affects the Awardee's ability to perform the requirements of the contract/ Agreement that are designated as operationally critical support and identified in the contract/ Agreement, the Awardee 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 Awardee information system(s) that were part of the cyber incident, as well as other information systems on the Awardee'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 Awardee's ability to provide operationally critical support; and

11. 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 article, the Awardee or subAwardee 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/ec a/

(d) Malicious software. When the Awardee or subAwardees 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 Agreements officer. Do not send the malicious software to the Agreements officer.

(e) Media preservation and protection. When a Awardee discovers a cyber-incident has occurred, the Awardee shall preserve and protect images of all known affected information systems identified in paragraph (c)(l)(i) of this article 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 Awardee shall provide DoD with access to additional information or equipment that is necessary to conduct a forensic analysis.

(g) Cyber incident damage assessment activities. IfDoD elects to conduct a damage assessment, the Agreements officer will request that the Awardee provide all of the damage assessment information gathered in accordance with paragraph (e) of this article.

(h) DoD safeguarding and use of Awardee attributional/proprietary information. The Government shall protect against the unauthorized use or release of information obtained from the Awardee (or derived from information obtained from the Awardee) under this article that includes Awardee attributional/proprietary information, including such information submitted in accordance with paragraph (c). To the maximum extent practicable, the Awardee shall identify and mark attributional/proprietary information. In making an authorized release of such information, the Government will implement appropriate procedures to minimize the Awardee 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 Awardee attributional/proprietary information not created by or for DoD. Information that is obtained from the Awardee (or derived from information

obtained from the Awardee) under this article that is not created by or for DoD is authorized to be released outside ofDoD-

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 Awardee ("recipient") that is directly supporting Government activities under a contract/Agreement that includes DFARS 252.204-7009, Limitations on the Use or Disclosure of Third-Party Awardee Reported Cyber Incident Information.

(j) Use and release of Awardee attributional/proprietary information created by or for DoD. Information that is obtained from the Awardee (or derived from information obtained from the Awardee) under this article that is created by or for DoD (including the information submitted pursuant to paragraph (c) of this article) is authorized to be used and released outside ofDoD for purposes and activities authorized by paragraph (i) of this article, 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 Awardee shall conduct activities under this article in accordance with applicable laws and regulations on the interception, monitoring, access, use, and disclosure of electronic communications and data.

(I) Other safeguarding or reporting requirements. Safeguarding and cyber incident reporting required by this article in no way abrogates the Awardee's responsibility for other safeguarding or cyber incident reporting pertaining to its unclassified information systems as required by other applicable articles of this Agreement, or as a result of other applicable U.S. Government statutory or regulatory requirements.

(m) Subcontract/Sub-Agreements. The Awardee shall -

1) Include this article, including this paragraph (m), in subcontracts/sub-awards, 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 Awardee shall determine if the information required for subAwardee performance retains its identity as covered defense information and will require protection under this article, and, if necessary, consult with the Agreements officer; and

2) Require Sub-Awardees to -

1. Notify the prime Awardee (or next higher tier subAwardee) when submitting a request to vary from a NIST SP 800-171 security requirement to the Agreements officer, in accordance with paragraph (b)(2)(ii)(B) of this article; and

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

ARTICLE 29: STOP-WORK ORDER

(a) The Agreements Officer may, at any time, by written order to the Awardee, require the Awardee to stop all, or any part, of the work called for by this Agreement for a period of 60 days (no more than twice consecutively) after the order is delivered to the Awardee, and for any further period to which the parties may agree. The order shall be specifically identified as a stop-work order issued under this article. Upon receipt of the order, the Awardee shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within a period of 60 days after a stop-work is delivered to the Awardee, or within any extension of that period to which the parties shall have agreed, the Agreements Officer shall either-

1) Cancel the stop-work order; or

2) Terminate the work covered by the order as provided in Article 3 of this Agreement.

(b) If a stop-work order issued under this article is canceled or the period of the order or any extension thereof expires, the Awardee shall resume work within three (3) business days after receiving the cancellation. The Agreements Officer shall make an equitable adjustment in the delivery schedule or agreement price, or both, and the agreement shall be modified, in writing, accordingly, if-

1) The stop-work order results in an increase in the time required for, or in the Awardee's cost properly allocable to, the performance of any part of this agreement; and

2) The Awardee asserts its right to adjustment within 45 days after the end of the

period at, if the Agreement Officer decides the facts justify the action, the Agreement Officer may receive and act upon the claim submitted at any time before final payment under this agreement.

(c) If a stop-work order is not canceled and the work covered by the order is terminated for the convenience of the Government, the Agreement Officer shall allow reasonable costs and reasonable profit resulting from the stop-work order in arriving at the termination settlement.

(d) If a stop-work order is not canceled and the work covered by the order is terminated for default, the Agreement Officer shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.

*The dates are subject to changes based on each individual solicitation.

ARTICLE 30: AIR FORCE RESEARCH LABORATORY WRIGHT RESEARCH SITE SECURITY REQUIREMENTS

(a) Definitions. As used in this article -

"Air Force Research Laboratory (AFRL)-managed facilities" means -

1) AFRL buildings, areas, test facilities, and laboratories located at the AFRL Wright Research Site, Wright-Patterson Air Force Base (WPAFB), Ohio.

2) Buildings owned or facility space leased by the AFRL Wright Research Site, whether for single or multi-tenant occupancy, and its grounds and approaches, all or any portion of which is under the jurisdiction, custody, or control of the AFRL Wright Research Site.

3) Commercial space managed by the AFRL Wright Research Site that is shared with non- government tenants. For example, if the AFRL Wright Research Site leased the 10th floor of a commercial building, the directive applies to the 10th floor only.

4) Awardee-operated facilities owned by the AFRL Wright Research Site, including laboratories engaged in national defense research and production activities.

"Augmented reality (AR) device" means a device that is capable of, or assists in, augmented reality by enhancing or creating digital overlays. AR is used to enhance natural environments or situations and offers perceptually enriched and interactive experiences achieved through digital visual elements, sounds, and other sensory stimuli via holographic technology. Examples include, but are not limited to, hardware components such as display sensors,

computers, projectors, input devices, mobile devices, eyewear, wireless communication devices, and cameras.

"Data storage device" means computer hardware used to remember/store data. Examples include, but are not limited to, remote or autonomous drones, CDs, DVDs, Blue-Rays, USB flash drives, jump/stick/pen drives, external hard drives, solid state drives, cloud storage, mainframes, laptops, desktops, and flop disks.

"Formal investigation" means the process of investigation ordered by a competent U.S. Government authority that involves the questioning of involved parties and gathering of data with the intent to determine if classified or controlled unclassified information (CUI) was lost, compromised, suspected to be compromised, or not compromised at all.

"Personal" means items that are owned by an individual, person, or private entity and not provided for use under this grant or agreement by the U.S. Government.

"Physical computer network" means interconnected computing devices of any kind that can exchange data and share resources or communicate with other types of devices to execute operations or store information of any kind.

"Security Incident Investigation (Sil)" means a formal investigation that occurs when there is a known or suspected loss of national security information (NSI) or CUI. U.S. Government security personnel conduct Slls to (1) determine the circumstances surrounding an actual or potential compromise ofNSI or CUI; (2) ascertain individual responsibility; (3) notify outside stakeholders, when necessary; and (4) make recommendations to prevent similar occurrences in the future.

"Virtual device" means a device with no associated hardware. A virtual device mimics a physical hardware device when, **in** fact, it exists only in software form. Therefore, the device makes the system believe that a particular hardware exists when in reality it does not. Examples include, but are not limited to, a computer, tablet, or smartphone that is simulated in a computer.

(b) Prohibition. The following is prohibited within AFRL-managed facilities, except when explicitly authorized by a U.S. Government grant or agreement:

1) Prohibited activities -
   a. Photography
   b. Videography
   c. Live Streaming

d. Recordings of any kind (e.g., audio)

2) Prohibited personal networks and devices -
   a. AR devices
   b. Virtual devices
   c. Wi-Fi networks
   d. Physical computer networks
   e. Data storage devices

(c) Waivers. A request for a waiver to the prohibitions outlined in paragraph (b) shall be submitted in writing to the Government Program Manager for internal Government coordination and approval. If a waiver request is granted, written approval shall be provided by the cognizant AFRL Operations Security (OPSEC) coordinator and Security Chief. The specific format for a waiver request will be provided upon request to the Government Program Manager.

(d) Incident Reporting Requirement. If the awardee discovers a prohibited activity identified in paragraph (b)(l) has occurred within an AFRL-managed facility and/or a prohibited personal network or device identified in paragraph (b)(2) has been brought into an AFRL-managed facility without a valid waiver, as specified in paragraph (c), the incident shall be immediately reported in
writing to the Government Program Manager with a courtesy copy to the Grant/Agreement Officer.

(e) Violations. If a violation of this article occurs or is suspected to have occurred, the cognizant AFRL security organization will lead and conduct a formal investigation. If a violation or suspected violation may involve classified material, the cognizant AFRL security organization will lead and conduct a Security Incident Investigation (SIi). Depending on the outcome of the investigation and the information involved, penalties for violations can range from a written warning to removal from the AFRL-managed facility and/or installation. Violations and potential penalties will be governed by the applicable articles(s), law(s), or regulation(s).

(f) *Subawards/Subcontracts.* The awardee shall include this article in all subawards/subcontracts or similar contractual instruments/agreements relating to work performed under this grant or agreement.

(End of article)

ARTICLE 31: PROHIBITION ON A BYTEDANCE COVERED APPLICATION

(a) Definitions. As used in this article-

"Covered application" means the social networking service TikTok or any successor application or service developed or provided by ByteDance Limited or an entity owned by ByteDance Limited.

Information technology, as defined in 40 U.S.C. 11101(6}-

1) Means any equipment or interconnected system or subsystem of equipment, used **in** the automatic acquisition, storage, analysis, evaluation, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information by the executive agency, if the equipment is used by the executive agency directly or is used by an awardee under an award with the executive agency that requires the use-
   1. Of that equipment; or

   11. Of that equipment to a significant extent in the performance of a service or the furnishing of a product.

2) Includes computers, ancillary equipment (including imaging peripherals, input, output, and storage devices necessary for security and surveillance), peripheral equipment designed to be controlled by the central processing unit of a computer, software, firmware and similar procedures, services (including support services), and related resources; but

3) Does not include any equipment acquired by a Federal awardee incidental to a Federal award.

(b) Prohibition. Section 102 of Division R of the Consolidated Appropriations Act, 2023 (Pub. L. 117-328), the No TikTok on Government Devices Act, and its implementing guidance under Office of Management and Budget (0MB) Memorandum M-23-13, dated February 27, 2023,
"No TikTok on Government Devices" Implementation Guidance, collectively prohibit the presence or use of a covered application on executive agency information technology, including certain equipment used by Federal awardee(s). The Awardee is prohibited from having or using a covered application on any information technology owned or managed by the Government, or on any information technology used or provided by the Awardee under this award, including equipment provided by the Awardee's employees; however, this prohibition does not apply if the Grants Office/Agreements Officer provides written notification to the Awardee that an exception has been granted in accordance with 0MB Memorandum M-23-13.

(c) *Subcontracts/Subrecipients.* The Awardee shall insert the substance of this article, including this paragraph (c), in all subawards, including subawards for the acquisition of commercial
products or commercial services.

(End of article)

ARTICLE 32: FIXED FEE

The Government shall pay the Awardee for performing this Agreement the fixed fee specified in the schedule.

Payment of the fixed fee shall be made as specified in the Schedule; provided that the Agreements Officer withholds a reserve not to exceed 5% percent of the total fixed fee or $XXXX, whichever is less, to protect the Government's interest. The Agreements Officer shall release (75) percent of all fees withholds under this Agreement after receipt of an adequate certified final indirect cost rate proposal covering the year of physical completion of this Agreement, provided the Awardee has satisfied all other Agreement terms and conditions, including the submission of the final patent and royalty reports, and is not delinquent in submitting final vouchers on prior years' settlements. The Agreements Officer may release up to (90) percent of the fee withholds under this Agreement based on the Awardee's past performance related to the submission and settlement of final indirect cost rate proposals.

ARTICLE 33: LIMITATION OF FUNDS AND LIMITATION OF COST

33.1 Limitation of Funds

(a) The parties estimate that performance of this contract will not cost the Government more than the estimated cost specified in this agreement. The Awardee agrees to use its best efforts to perform the work specified in the agreement and all obligations under this contract within the estimated cost.

(b) The agreement specifies the amount presently available for payment by the Government and allotted to this agreement and the period of performance it is estimated the allotted amount will cover. The parties contemplate that the Government will allot additional funds incrementally to the contract up to the full estimated cost to the Government specified in the Agreement, exclusive of any fee. The Awardee agrees to perform, or have performed, work on the agreement up to the point at which the total amount paid and payable by the Government under the agreement approximates but does not exceed the total amount actually allotted by the Government to the agreement.

(c) The Awardee shall notify the Agreements Officer in writing whenever it has reason to believe that the costs it expects to incur under this contract in the next 60 days, when added to all costs previously incurred, will exceed 75 percent of the total amount so far allotted to the agreement by the Government. The notice shall state the estimated amount of additional funds required to continue performance for the period specified in the Schedule.

(d) Sixty days before the end of the period specified in the agreement, the Awardee shall notify the Agreements Officer in writing of the estimated amount of additional funds, if any, required to continue timely performance under the agreement or for any further period specified in the agreement or otherwise agreed upon, and when the funds will be required.

(e) If, after notification, additional funds are not allotted by the end of the period specified in the agreement or another agreed-upon date, upon the Awardee's written request the Agreements Officer will terminate this agreement on that date in accordance with the provisions of the termination procedures in Article 3 of this agreement. If the Awardee estimates that the funds available will allow it to continue to discharge its obligations beyond that date, it may specify a later date in its request, and the Agreements Officer may terminate this contract on that later date.

(f) Except as required by other provisions of this agreement, specifically citing and stated to be an exception to this article-

(1) The Government is not obligated to reimburse the Awardee for costs incurred in excess of the total amount allotted by the Government to this agreement; and

(2) The Awardee is not obligated to continue performance under this agreement (including actions under the termination article of this contract) or otherwise incur costs in excess of the amount the allotted to the agreement by the Government.

(g) The estimated cost shall be increased to the extent that the amount allotted by the Government exceeds the estimated cost specified in the agreement.

(h) No notice, communication, or representation in any form other than that specified in paragraph (f)(2) of this clause, or from any person other than the Agreements Officer, shall affect the amount allotted by the Government to this agreement. In the absence of the specified notice, the Government is not obligated to reimburse the Awardee for any costs in excess of the total amount allotted by the Government to this agreement, whether incurred during the course of the agreement or as a result of termination.

(i) When and to the extent that the amount allotted by the Government to the agreement is increased, any costs the Awardee incurs before the increase that are in excess of the amount previously allotted by the Government shall be allowable to the same extent as if incurred afterward, unless the Agreements Officer issues a termination or other notice and directs that the increase is solely to cover termination or other specified expenses.

(j) Change orders shall not be considered an authorization to exceed the amount allotted by the Government specified in the agreement, unless they contain a statement increasing the amount allotted.

(k) Nothing in this article shall affect the right of the Government to terminate this agreement. If this agreement is terminated, the Government and the Awardee shall negotiate an equitable distribution of all property produced or purchased under the contract, based upon the share of costs incurred by each.

(l) If the Government does not allot sufficient funds to allow completion of the work, the Awardee is entitled to a percentage of the fee specified in the agreement equaling the percentage of completion of the work contemplated by this agreement.

33.2 Limitation of Cost

(a) The parties estimate that performance of this Agreement, exclusive of any fee, will not cost the Government more than the estimated cost specified in the Agreement. The Awardee agrees to use its best efforts to perform the work specified in the SOW and all obligations under this Agreement within the estimated cost.

(b) The Awardee shall notify the Agreements Officer in writing whenever it has reason to believe that --

(1) The costs the Awardee expects to incur under this Agreement in the next 60 days, when added to all costs previously incurred, will exceed 75 percent of the estimated cost specified in the Schedule; or

(2) The total cost for the performance of this Agreement, exclusive of any fee, will be either greater or substantially less than had been previously estimated.

(c) As part of the notification, the Awardee shall provide the Agreements Officer a revised estimate of the total cost of performing this Agreement.

(d) Except as required by other provisions of this Agreement, specifically citing and stated to be an exception to this article--

(1) The Government is not obligated to reimburse the Awardee for costs incurred in excess of the estimated cost specified in the Schedule.

(2) The Awardee is not obligated to continue performance under this Agreement (including actions under the Termination article of this Agreement) or otherwise incur costs in excess of the estimated cost specified in the Schedule, until the Agreements Officer

(i) Notifies the Awardee in writing that the estimated cost has been increased, and

(ii) Provides a revised estimated total cost of performing this Agreement.

(e) No notice, communication, or representation in any form other than that specified in subparagraph (d)(2) above, or from any person other than the Agreements Officer, shall affect this Agreement's estimated cost to the Government. In the absence of the specified notice, the Government is not obligated to reimburse the Awardee for any costs in excess of the estimated cost or, if this is a cost- sharing Agreement, for any costs in excess of the estimated cost to the Government specified in the Schedule, whether those excess costs were incurred during the course of the Agreement or as a result of termination.

(f) If the estimated cost specified in the Schedule is increased, any costs the Awardee incurs before the increase that are in excess of the previously estimated cost shall be allowable to the same extent as if incurred afterward, unless the Agreements Officer issues a termination or other notice directing that the increase is solely to cover termination or other specified expenses.

(g) Change orders shall not be considered an authorization to exceed the estimated cost to the Government specified in the Schedule, unless they contain a statement increasing the estimated cost.

(h) If this Agreement is terminated or the estimated cost is not increased, the Government and the Awardee shall negotiate an equitable distribution of all property produced or purchased under the Agreement, based upon the share of costs incurred by each.