

Revision No. 1, dated May 19, 2022

## **Flowdown Attachment**

### **RIS FDA-2022.0093**

**Customer Contract No.:** C5-20-2007 Phase 2

**Prime Contract No.:** W15QKN-17-9-5555

**DPAS Rating:** None

*The following customer contract requirements apply to this Order or Purchase Order to the extent indicated below and are hereby incorporated into the Order or Purchase Order by full text or by reference with the same force and effect as if they were given in full text. Upon Supplier's or Seller's request, Buyer's Purchasing Representative will make their full text available. Also, the full text of a FAR or DFARS provision or clause may be accessed electronically at these addresses: <https://www.acquisition.gov/dfars/part-252-solicitation-provisions-and-contract-clauses> or <https://www.acquisition.gov/far/>:*

Whenever necessary to make the context of the Clauses applicable to the Order or Purchase Order, the term "Contractor" or "Offeror" shall mean "Supplier" or "Seller", "Subcontractor" shall mean "Seller's Subcontractor", the term "Contract" shall mean the Order or Purchase Order, and the term "Government", "Contracting Officer" and equivalent phrases shall mean Buyer, except the terms "Government" and "Contracting Officer" do not change: (a) in the phrases, "Government Property", "Government-Furnished Property", and "Government-Owned Property", (b) in the patent Clauses if incorporated herein, (c) when a right, act, authorization, or obligation can be granted or performed only by the Government or the Contracting Officer or a duly authorized representative, such as in FAR 52.227-1 and FAR 52.227-2, (d) when title to property is to be transferred directly to the Government, (e) when access to Proprietary Information is required, except as specifically otherwise provided herein, and (f) where specifically modified herein. Supplier or Seller shall incorporate into each lower-tier subcontract placed in support of the Order or Purchase Order all applicable Clauses in accordance with the flowdown requirements specified in each such Clause. If any of the following clauses do not apply to this Order or Purchase Order, such clauses are considered to be self-deleting.

#### **SPECIAL CONTRACT REQUIREMENTS:**

##### **ARTICLE 1. PROGRAM PROTECTION PLAN (PPP)**

(Applicable to all Purchase Orders.)

The contractor shall assist and support the United States Government (USG) in performing a Critical Functional Analysis (CFA) and Critical Program Information (CPI) Assessment on the system during Phase 1 in order to identify Critical Components and CPI. The USG will provide the contractor with written guidance reference implementation of countermeasures to protect CPI. Additionally, the contractor shall implement USG specified Supply Chain Risk Management Countermeasures to safeguard USG identified Critical Components. The contractor shall provide a plan and periodic updates with the RMF documentation deliveries in a Program Protection Implementation Plan per DI-MGMT-80004A.

The contractor shall provide technical support for the USG Program Protection Plan process performed IAW Department of Defense Instruction (DoDI) 5000.02, DoDI 5200.39, DoDI 5200.44, Defense Acquisition

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Guidebook, Chapter 9, Program Protection Plan, and Key Practices and Implementation Guide for the DoD Comprehensive National Cyber Security Initiative 11 Supply Chain Risk Management.

The contractor shall demonstrate the company has visibility into the supply chain for Critical Components, understands how supply chain risk can be introduced through those Critical Components, and has implemented or plans to implement countermeasures to mitigate such risks. This requirement shall flow down to all subcontractors.

The contractor shall develop, document and update the software assurance countermeasures table after the USG identifies Critical Program Information and Critical Components.

## **ARTICLE 2. 3RD PARTY SOFTWARE APPLICATION INTEGRATION**

(Applicable to all Purchase Orders.)

The contractor shall integrate a 3rd party software application with their software solution and demonstrate its functionality. This shall be demonstrated as part of the final full software maturation technology demonstration event. The Government will specify which software application to be integrated. The contractor shall provide open APIs to the Government and the 3rd party vendor to enable the proper integration and allow for transparency. This effort is intended to facilitate the contractor's demonstration of the ease of integration of new/3rd party software capabilities within the TITAN open architecture software framework.

## **ARTICLE 3. SYSTEM DATA**

(Applicable to all Purchase Orders.)

Notwithstanding other provisions in this SOW, the contractor shall provide to the Government all commercial or non-commercial outputted data (which is defined as and should include; 1. resulted target data calculated from inputting Government-provided operational-intelligence data or associated annotated training data; and/or 2. learned, modified or trained hyper-parameters/model-weights, and data sets) resulting from all Artificial Intelligence/Machine Learning (AI/ML) algorithm training performed under this OTA with Government Purpose Rights (GPR) as defined in DFARS 252.227-7014 (a)(12) for non-commercial outputted data and OTA W15QKN-17-9-5555, Data Rights and Copyrights, for commercial outputted data. The outputted data does not include contractor's pre-existing AI/ML algorithms or models that were privately developed. The contractor shall copy and deliver to the Government the said outputted data in a Government-specified industry standard format at the request of the Government. The contractor shall also copy and provide to the Government all of the existing data in the TITAN system to the extent such data was furnished by the Government and resulted from all AI/ML algorithm training performed under this OTA on the said Government-furnished data with GPR in a readable and usable format at the conclusion of this OTA. The outputted data shall be delivered to the Government via D-01 of the Data Deliverables Table attached in this SOW.

**ARTICLE 4. ARMY INTEROPERABILITY CERTIFICATION (AIC)**

(Applicable to all Purchase Orders.)

The contractor shall provide support to the AIC certification process and test activities. The contractor shall provide system software and hardware as required (on a temporary basis), system operator support, and cybersecurity support, on-site for a duration not to exceed twelve (12) weeks for the AIC test event at the Central Technical Support Facility (CTSF) located at Fort Hood, TX (or alternate location). Activities for this event may include, but are not limited to, risk reduction activities, system set-up, test operator training, test plan review and coordination, incident report mitigation, IA scans, the Network Vulnerability Assessment (NVA), the cyber threat activity, and vulnerability and penetration assessments. Government will coordinate the event. Contractor shall support test-fix-test activities to prepare for follow-on AIC test events, as required. Once AIC is achieved, the contractor shall maintain the software in a manner that the software updates won't directly impact the AIC status.

**ARTICLE 5. ASSURANCE WARRANTIES**

(Applicable to all Purchase Orders for Phases 2, 3, 4.)

The contractor shall be responsible for the repair of any software defects and software problems discovered with the contractor's solution (not due to external software changes). Software defects are issues related to system performance in relation to the system specifications and have no work around capability. The contractor shall make corrections to these defects at no cost to the government. Software defects and problems may be identified and tracked as software problem reports (SPRs). Software patches correcting defects or problems, and applicable documentation, shall be provided consistent with the data rights assertions and the End User License Agreement (EULA) for the underlying software irrespective of whether the Government provided the contractor feedback concerning functionality and performance of the software.

The Government and contractor shall communicate and track all SPRs through an SPR Tracker (as proposed by the contractor) via this warranty. The SPR Tracker shall include, at a minimum, information outlined in DA PAM 73-1 Figure Q-30. The contractor shall update existing SPRs periodically with information including, but not limited to, resolution assessments, SPR resolution status, and target deliveries. All SPRs shall be made available to the Government.

**ARTICLE 6. WARRANTY PATCH/RELEASE DELIVERY**

(Applicable to all Purchase Orders for Phases 2, 3, 4.)

The Government will conduct an Acceptance Test to verify the warranty repaired software operates without error, and that the DevSecOps pipeline or installation documents provide accurate and complete instructions to install the patch/release at the user level, and that the installation does not adversely impact the functionality of the system. The Government will produce a subsequent test report detailing the results and identifying any SPRs found. If any Priority 1, Priority 2, or Priority 3 SPRs are found during the Acceptance Test, the contractor shall adjudicate and re-submit the warranty patch/release to the Government with all updated installation procedures and applicable documentation at a mutually agreed schedule.

**ARTICLE 7. CONFIDENTIAL AND/OR PROPRIETARY INFORMATION**

(Applicable to all Purchase Orders.)

(a) The following provisions pertaining to the parties obligations of confidentiality of confidential and/or proprietary information exchanged hereunder shall apply if the parties have not entered into a separate confidentiality, non-disclosure or proprietary information agreement.

(b) Definitions.

"Disclosing Party" means a party or the U.S. Government who discloses Confidential and/or Proprietary Information as contemplated by the subsequent paragraphs.

"Receiving Party" means a party or the U.S. Government who receives Confidential and/or Proprietary Information disclosed by a Disclosing Party.

"Confidential and/or Proprietary Information" means information and materials of a Disclosing Party which are designated as confidential and/or proprietary or as a Trade Secret in writing by such Disclosing Party, whether by letter or by use of an appropriate stamp or legend, prior to or at the same time any such information or materials are disclosed by such Disclosing Party to the Receiving Party. Notwithstanding the foregoing, materials and other information which are orally, visually, or electronically disclosed by a Disclosing Party, or are disclosed in writing without an appropriate letter, stamp, or legend, shall constitute Confidential and/or Proprietary Information or a Trade Secret if such Disclosing Party, within thirty (30) calendar days after such disclosure, delivers to the Receiving Party a written document or documents describing the material or information and indicating that it is confidential and/or proprietary or a Trade Secret, provided that any disclosure of information by the Receiving Party prior to receipt of such notice shall not constitute a breach by the Receiving Party of its obligations under this Section.

"Trade Secret" means all forms and types of financial, business, scientific, technical, economic or engineering or otherwise proprietary information, including, but not limited to, patterns, plans, compilations, program devices, formulas, designs, prototypes, methods, techniques, processes, procedures, programs or codes, whether tangible or intangible, and whether or how stored, compiled, or memorialized physically, electronically, graphically, photographically, or in writing if:

- (i) The owner thereof has taken reasonable measures to keep such information secret; and
- (ii) The information derives independent economic value, actual or potential, from not being generally known to and not being readily ascertainable through proper means, by the public.

"Government" means the U.S. Government.

(c) Exchange of Information. The Buyer or the Government may from time to time disclose Buyer or Government Confidential and/or Proprietary Information to the Seller in connection with particular work performed hereunder, and the Seller may from time to time disclose information that is Confidential and/or Proprietary Information to the Buyer or the Government in connection with work performed hereunder.

(d) Confidentiality and Authorized Disclosure: The Receiving Party agrees, to the extent permitted by law, that Confidential and/or Proprietary Information shall remain the property of the Disclosing Party, and that, unless otherwise agreed to by the Disclosing Party, Confidential and/or Proprietary Information shall not be disclosed, divulged or otherwise communicated by it to third parties or used by it for any purposes other than in connection with work performed hereunder and the licenses granted herein. However, the duty to protect such Confidential and/or Proprietary Information shall not extend to materials or information that:

- (1) Are received or become available without restriction to the Receiving Party under a proper, separate agreement,

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(2) Are not identified with a suitable notice or legend (subject to the cure procedures described in the definition of "Confidential and/or Proprietary Information" above),

(3) Are lawfully in possession of the Receiving Party without such restriction to the Receiving Party at the time of disclosure thereof as demonstrated by prior written records,

(4) Are or later become part of the public domain through no fault of the Receiving Party,

(5) Are received by the Receiving Party from a third party having no obligation of confidentiality to the Disclosing Party that made the disclosure,

(6) Are developed independently by the Receiving Party without use of Confidential and/or Proprietary Information as evidenced by written records,

(7) Are required by law or regulation to be disclosed; provided, however, that the Receiving Party has provided written notice to the Disclosing Party promptly so as to enable such Disclosing Party to seek a protective order or otherwise prevent disclosure of such information.

(e) Return of Confidential and/or Proprietary Information. Upon the request of Seller, the Buyer of the Government shall promptly return all copies and other tangible manifestations of the Confidential and/or Proprietary Information disclosed to the Government by the Seller. Upon request by the Buyer or the Government, the Seller shall promptly return all copies and other tangible manifestations of the Confidential and/or Proprietary Information disclosed by the Buyer or the Government to Seller. As used in this Section, tangible manifestations include human readable media as well as magnetic and digital storage media. In the event that return of all tangible manifestations is not practicable, the Party may propose an alternative process to ensure the verifiable destruction of such tangible manifestations. Such alternative process must be agreed upon in writing by both Parties prior to implementation.

(f) Term. The obligations of the Receiving Party under this Section shall continue for a period of three (3) years after the expiration or termination of this Purchase Order.

(g) The Seller shall flow down the requirements of this Section to their lower-tier suppliers and subcontractors at all levels receiving such Confidential and/or Proprietary Information under this Purchase Order.

## **ARTICLE 8. PUBLICATION AND ACADEMIC RIGHTS**

(Applicable to all Purchase Orders.)

(a) Use of Information. Subject to the provisions of the Section titled Confidential and/or Proprietary Information, and this Section, Buyer, Seller, other Titan program contractors and subcontractors, and the U.S. Government shall have the right to publish or otherwise disclose information and/or data developed by the Buyer, Seller, the U.S. Government and/or other Titan contractors or subcontractors. The Buyer and Seller shall have only the right to use, disclose and exploit any such information or data in accordance with the rights held by them pursuant to this Purchase Order. Notwithstanding the above, the Parties shall not be deemed authorized by this paragraph alone to disclose any Confidential and/or Proprietary Information of the Buyer, Seller, the U.S. Government and/or other Titan contractors or subcontractors.

(b) Publication or Public Disclosure of Information.

(1) Review or Approval of Information and Data for Public Release.

(i) At least forty-five (45) days prior to the scheduled release date, Seller shall submit to Buyer for approval two (2) copies of the information to be released, using ARDEC Form 3002f- Clearance of Technical Information for Public Release (available from Buyer's Purchasing Representative upon request).

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(ii) The U.S. Government is hereby designated as the approval authority for the Buyer for such releases.

(2) The parties to this Purchase Order are responsible for assuring that an acknowledgment of Government support will appear in any publication of any material based on or developed under this Purchase Order, using the following language:

"Effort sponsored by the U.S. Government under Other Transaction number W15QKN-I 7-9-5555 between the Consortium Management Group, Inc., and the Government. The U.S. Government is authorized to reproduce and distribute reprints for Governmental purposes notwithstanding any copyright notation thereon."

(3) The parties to this Purchase Order are also responsible for assuring that every publication of material based on or developed under this Agreement contains the following disclaimer:

"The views and conclusions contained herein are those of the authors and should not be interpreted as necessarily representing the official policies or endorsements, either expressed or implied, of the U.S. Government."

(4) Seller shall flow down these requirements to its suppliers and subcontractors at all tiers.

(c) Notices.

(1) To avoid disclosure of Confidential and/or Proprietary Information belonging to Buyer, other Titan program contractors or subcontractors, and/or the U.S. Government and the loss of patent rights as a result of premature public disclosure of patentable information, if Seller, or its lower-tier suppliers or subcontractors, propose to publish or disclose such information, it shall provide advance notice to Buyer and identify such other parties that may have an interest in such Confidential and/or Proprietary Information. If the U.S. Government is proposing to publish or disclose such information, the Buyer shall provide notice to Seller at least fifty-five (55) calendar days prior to publication or disclosure, identifying other parties, including Seller or its suppliers or subcontractors, that may have an interest in the information. Seller shall notify its suppliers or subcontractors that have an interest in the information at least forty-five (45) calendar days prior to such submission of information for publication or disclosure, and include any and all materials intended for publication or disclosure relating to technical reports, data, or information developed during the term of the Titan program. The Buyer must advise Seller of any objection to disclosure within this forty-five (45) day period, or else the party intending to publish the information shall be deemed authorized to make such disclosure.

(d) Filing of Patent Applications

(1) During the course of the forty-five (45) calendar day period discussed above, Seller shall provide notice to the Buyer as to whether the Seller, or a lower-tier supplier or subcontractor, desires that a patent application be filed on any invention disclosed in such materials. In the event that Seller, or lower-tier suppliers or subcontractor, to whom such Confidential and/or Proprietary Information belongs desires that such a patent application be filed, Buyer, other Titan contractors or subcontractors, or the U.S. Government proposing to publish or disclose such materials agree to withhold publication and disclosure of such materials until the

occurrence of the first of the following:

- (i) Filing of a patent application covering such invention, or
- (ii) Written agreement between the Buyer and Seller that no patentable invention is disclosed in such materials.

(2) Further, during the course of any such forty-five (45) calendar day period, Seller shall notify the Buyer if Seller, or a lower-tier supplier or subcontractor, believes any of its Confidential and/or Proprietary Information has been included in the proposed publication or disclosure and shall identify the specific Confidential and/or Proprietary Information that needs to be removed from such proposed publication. The U.S. Government and Buyer, on behalf of the party proposing the publication or disclosure of such materials,

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agree to remove from the proposed publication or disclosure all such Confidential and/or Proprietary Information so identified by Seller.

(e) Public Announcements. Any public announcements (including press releases, website postings or other public statements) by any party regarding this Purchase Order, or purchase orders or subcontracts awarded hereunder, shall follow the procedures set forth in this Section.

#### **ARTICLE 9. PATENT RIGHTS**

(Applicable only If Seller is performing experimental, development or research work hereunder. The rights and obligations of the parties defined in the Raytheon terms and conditions Proprietary Information Section are subsidiary to more specific rights and obligations of the parties defined in this section and the Data Rights and Copyrights section herein.)

(a) The rights and obligations of this Section shall apply to intellectual property of the Seller to be provided by Buyer to the U.S. Government.

(b) Definitions.

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

"Made" when used in relation to any invention means the conception or first actual reduction to practice of such invention.

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

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

"Background Invention" means any invention made prior to performance of this Purchase Order outside the scope of work performed under this order.

(c) Allocation of Principal Rights. The Seller shall retain the entire right, title and interest throughout the world to each subject invention consistent with the provisions of this Section, and 35 U.S.C § 202. With respect to any subject invention in which Seller retains title, the U.S. Government shall have a non-exclusive, nontransferable, irrevocable, paid-up license to practice or have practiced on behalf of the United States the subject invention throughout the world. Seller may elect to provide full or partial rights that it has retained to other parties.

(d) Invention Disclosure, Election of Title, and Filing of Patent Application.

(1) Seller shall disclose each subject invention to the Buyer for disclosure to the U.S. Government within four (4) months after the inventor discloses it in writing to his company personnel responsible for patent matters. The disclosure to Buyer shall be in the form of a written report and shall identify the agreement 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 the 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 for publication and, if so, whether it has been accepted for publication at the time of disclosure.



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(2) If the Seller determines that it does not intend to retain title to any such invention, Seller shall notify the Buyer, in writing, within nine (9) months of Buyer's disclosure to the U.S. Government. However, in any case where publication, sale or public use has initiated the one (1)-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 six (6) months prior to the end of the Titan program.

(3) Seller 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. Seller may elect to file patent applications in additional countries (including with the European Patent Office and under 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 of Patents and Trademarks to file foreign patent applications, where such filing has been prohibited by a Secrecy Order.

(4) After considering the position of Buyer on behalf of Seller, a request for extension of the time for disclosure election and filing under paragraph (d) above, may be approved by the U.S. Government, and the government's approval shall not be unreasonably withheld.

(e) Conditions When the Government May Obtain Title. Upon Buyer's written request, Seller convey to the U.S. Government title to any subject invention under any of the following conditions:

(1) If the Seller fails to disclose or elects not to retain title to the subject invention within the times specified in paragraph (d) above; provided, that the Government may only request title within three (3) years after learning of the failure of the Seller to disclose or elect within the specified times.

(2) In those countries in which the Seller fails to file patent applications within the times specified in paragraph (d) above; provided, that if the Seller has filed a patent application in a country after the times specified in paragraph (d) above, but prior to its receipt of the written request by the Government through Buyer, the Seller shall continue to retain title in that country; or

(3) In any country in which the Seller 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.

(f) Minimum Rights to the Seller and Protection of the Seller's Right to File The Parties agree that:

(1) The Seller shall retain a non-exclusive, royalty-free license throughout the world in each subject invention to which the U.S. Government obtains title. The Seller's license extends to the domestic (including Canada) subsidiaries and affiliates, if any, of the Seller and includes the right to grant licenses of the same scope to the extent that the Seller was legally obligated to do so at the time the Titan program was funded by the U.S. Government. The license is transferable only with the approval of the U.S. Government, except when transferred to the successor of that part of the Seller's business to which the invention pertains. Government approval for license transfer shall not be unreasonably withheld.

(2) The Seller's domestic license may be revoked or modified by the U.S. 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 CFR Part 404. The Seller's license shall not be revoked or modified in that field of use or in the geographical areas in which the Seller has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The Seller's license in any foreign country may be revoked or modified at the discretion of the Government to the extent the Seller, its licensees, or its subsidiaries or affiliates have failed to achieve practical application in that foreign country.

(3) Before revocation or modification of the Seller's license, the Government shall furnish Buyer, and Buyer shall forward to the Seller, a written notice of the Government's intention to revoke or modify the license, and Buyer, on behalf of the Seller, shall be allowed thirty (30) calendar days (or such other time as



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may be authorized for good cause shown) after the notice to show cause why the license should not be revoked or modified.

(g) Action to Protect the Government's Interest.

(1) Seller shall execute or have executed and promptly deliver to the Buyer for delivery to the U.S. Government all instruments necessary to (i) establish or confirm the rights the Government has throughout the world in those subject inventions to which the Seller elects to retain title, and (ii) convey title to the Government when requested under paragraph (e) above, and to enable the Government to obtain patent protection throughout the world in that subject invention.

(2) Seller shall require employees working on Titan program projects, other than clerical and non-technical employees, agree to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format acceptable to Buyer, each subject invention made under this Purchase Order in order that Buyer, on behalf of the Seller, can comply with the disclosure provisions of paragraph (d) above, execute all papers necessary to file the patent applications on the subject invention, and establish the U.S. Government's rights in the subject invention. Seller shall instruct its employees through employee agreements or other suitable educational programs, on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.

(3) Seller shall notify the Buyer of any decision not to continue the prosecution of a patent application, pay maintenance fees or defend in a reexamination or opposition proceeding on a patent, in any country, not less than thirty (30) days before the expiration of the response period required by the relevant patent office.

(4) The Seller 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 U.S. Government support under Agreement No. WISQKN-I 7-9-SSSS awarded by ACC-NJ to Consortium Management Group, Inc. The Government has certain rights in the invention."

(h) Lower-Tier Agreements. Seller shall include this Patent Rights Section, suitably modified to identify the parties, in all lower-tier agreements, regardless of tier, for experimental, development or research work.

(i) Reporting on Utilization of Subject Inventions. Seller agrees to submit, during the term of this Purchase Order, periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining such utilization that are being made by the Seller or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the Seller and such other data and information as the Buyer may reasonably specify. Seller also agrees to provide additional reports as may be requested by the Buyer in connection with any march-in proceedings undertaken by the U.S. Government in accordance with paragraph (k) below. Consistent with 35 U.S.C. § 205, the U.S. Government agrees it shall not disclose such information to persons outside the Government without the permission of Seller.

(j) Preference for American Industry. Notwithstanding any other provision of this Purchase Order, Seller shall not to grant to any person the exclusive right to use or sell any subject invention in the United States or Canada 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 or Canada. However, in individual cases, the requirements for such an agreement may be waived by the Buyer upon a showing by Seller 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.

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(k) March-in Rights. Seller agrees that, with respect to any subject invention in which the Seller has retained title, the U.S. Government has the right to require the Seller (through Buyer) to obtain and grant a non-exclusive license to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if Seller (through Buyer) refuses such a request, the U.S. Government has the right to grant such a license itself if the Government determines that:

(1) Such action is necessary because the Seller, assignee or licensees have 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 Seller, assignee, or their licensees;

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

(4) Such action is necessary because the agreement required by paragraph (j) above, has not been obtained or waived or because a licensee who has the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.

The U.S. Government shall notify Seller (through Buyer) as soon as practicable, but no later than five (5) calendar days following the exercise of any rights under this paragraph (k).

(l) Opportunity to Cure.

(1) Certain provisions of this Section provide that the U.S. Government may gain title or a license to a subject invention by reason of Seller's action, or failure to act, within the times required by this Section. Prior to claiming such rights (including any rights under paragraph (k) above), the Government will give written notice to Seller (through Buyer) of the Government's intent, and afford Seller a reasonable time to cure such action or failure to act. The length of the cure period will depend on the circumstances, but in no event will be more than sixty (60) days.

(2) Seller may also use the cure period to show good cause why the claiming of such title or right would be inconsistent with the intent of this Agreement in light of the appropriate timing for introduction of the technology in question, the relative funding and participation of the parties in the development of the invention, and other factors.

(m) Background Inventions. In no event shall the provisions set forth in this Section apply to any Background Inventions or Patents. Seller, and its subcontractors or suppliers, shall retain the entire right, title, and interest throughout the world to each such Background Invention and Patent that each party has brought through to the Titan program, and the U.S. Government shall not have any rights under this Purchase Order to such Background Inventions and Patents. Projects to be funded under this Purchase Order will list Background Inventions and Patents anticipated to be used on the project; such listing may be amended by the parties as appropriate to reflect changes in such plans.

(n) Survival Rights. Provisions of this Section shall survive termination of this Purchase Order.

## **ARTICLE 10. DATA RIGHTS AND COPYRIGHTS**

(Applicable only If Seller is performing experimental, development or research work hereunder.)

(a) Definitions.

"Commercial Computer Software" as used in this Section is defined in DFARS 252-227-7014(a)(l) (Jun 1995).

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"Commercial Computer Software License" means the license terms under which Commercial Computer Software is sold or offered for sale, lease or license to the general public.

"Computer Data Base" as used in this Purchase Order, means a collection of data recorded in a form capable of being processed by a computer. The term does not include computer software.

"Computer program" as used in this Purchase Order, means a set of instructions, rules, or routines in a form that is capable of causing a computer to perform a specific operation or series of operations.

"Computer software" as used in this Purchase Order, means computer programs, source code, source code listings, object code listings, design details, algorithms, processes, flow charts, formulae and related material that would enable the software to be reproduced, recreated or recompiled. Computer software does not include computer databases or computer software documentation.

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

"Data" as used in this Section of this Purchase Order, means computer software, computer software documentation, form, fit and function data, and technical data as defined in this Section.

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

"Government purpose rights" means the rights to use, modify, duplicate or disclose the "Data" licensed with such rights under this Purchase Order within the Government for United States Government purposes only; and to release or disclose data outside the Government to any authorized persons pursuant to an executed non-disclosure agreement for such persons' use, modification, or reproduction for United States Government purposes only. United States Government purposes include Foreign Military Sales purposes and competitive re-procurement.

"Limited rights" as used in this Section of this Purchase Order, is as defined in DFARS 252.227-7013(a)(14).

"Restricted rights" as used in this Section of this Purchase Order, is as defined in DFARS 252.227-7014(a)(15).

"Specially Negotiated License Rights" are those rights to Data that have been specifically negotiated between the Government and the Seller (through Buyer).

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

"Unlimited rights" means the rights to use, modify, duplicate, release, or disclose Data, in whole or in part, in any manner, and for any purpose whatsoever, and to have or authorize others to do so.

**(b) Data Categories.**

(1) Category A is Data developed and paid for totally by non-governmental funds, whether pre-existing or concurrently developed proprietary data, trade secret data, or data related to Seller's products. The Seller retains all rights to Category A Data.

(2) Category B is any Data developed under this Purchase Order, using U.S. Government funds, which cannot be disclosed without compromising the Category A data.

(3) Category C is any Seller-developed Data, excluding Category A and B data, developed during the performance of work under this Purchase Order.

(4) Category D is third-party proprietary data used in performance of work under this Purchase Order, including but not limited to, technical data, software, trade secrets and mask works.

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(5) Any Data developed outside of this Purchase Order with Government funding in whole or in part under a Government agreement, contract or subcontract shall have the rights negotiated under such prior agreement, contract or subcontract; the Government shall get no additional rights in such Data under this Purchase Order.

(c) Allocation of Principal Rights.

(1) The parties agree that in consideration for the U.S. Government's funding, and in lieu of any Government rights to Category A, B or D data (except as contained in subparagraph 4 below), the Seller intends to reduce to practical application materials and processes developed under this Purchase Order.

(2) No deliveries to the U.S. Government of Category A and B data are contemplated or required under this Purchase Order. The Government reserves the right to negotiate certain rights in Category A and B data with the owner of the data. The existence and use of Category A or B data will be disclosed in each prototype project or project performed hereunder.

(3) The U.S. Government shall have immediate and irrevocable Government Purpose Rights to all Category C Data, except for lesser Government rights as may be specified in the Statement of Work for the individual project agreement or project statement of work.

(4) The Seller shall deliver third-party computer software, Category D data, as required for the performance or operation of other computer software required to be delivered in the prototype project or project, with such rights as it is able to negotiate with the software vendor. The Seller shall use reasonable efforts in such negotiations to obtain rights adequate for the Government's purposes and shall provide to the Government the details as part of the prototype project or project.

(5) Data that will be delivered, furnished, or otherwise provided to the U.S. Government under this Purchase Order, in which the Government has previously obtained rights, shall be delivered, furnished, or provided with the pre-existing rights, unless (a) the parties have agreed otherwise, or (b) any restrictions on the Government's rights to use, modify, reproduce, release, perform, display, or disclose the data have expired or no longer apply.

(6) Notwithstanding the terms in this Section, differing rights in data may be negotiated between the parties for each individual project agreement or project statement of work issued hereunder on a case-by-case basis.

(d) Identification of Principal Rights. The allocation of principal rights shall be identified in each prototype project or project, using the categories list format provided below:

TYPE1-PROPERTY NUMBER2-RIGHTS ASSERTION3

1. Application: provide date and type of application/title with brief description
2. Patent: provide patent no. and/or entity identifier/number
3. Rights: provide the type/category of right asserted

(e) Marking of Data.

(1) Any Data delivered under this Purchase Order shall be marked with the following legend:  
"This data is being delivered as Category (insert category) Data, as defined in Agreement WISQKN-17-9-5555. Use, duplication, or disclosure is subject to the restrictions as stated in Agreement WISQKN-17-9-5555 between Consortium Management Group, Inc. and the Government."

(2) In the event that the Seller learns of a release to the U.S. Government of its unmarked Data that should have contained a restricted legend, the Seller will have the opportunity to cure such omission going forward by providing written notice to the Buyer within six (6) months of the erroneous release.

(f) Prior Technology.

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(1) In the event it is necessary for the Seller to furnish the U.S. Government with Data which existed prior to, or was produced outside of this Purchase Order, and such Data embodies trade secrets or comprises commercial or financial information which is privileged or confidential, and such Data is so identified with a suitable notice or legend, the Data will be maintained in confidence and disclosed and used by the Government and such Government Contractors or contract employees that the Government may hire on a temporary or periodic basis only for the purpose of carrying out the Government's responsibilities under this Purchase Order. Data protection will include proprietary markings and handling, and the signing of non-disclosure agreements by such Government Contractors or contract employees. The Seller shall not be obligated to provide Data that existed prior to, or was developed outside of this Purchase Order to the Government. Upon completion of activities under this Purchase Order, such Data will be disposed of as requested by the Seller.

(2) Oral and Visual Information : If information which the Seller considers to embody trade secrets or to comprise commercial or financial information which is privileged or confidential is expressly disclosed orally or visually directly to the U.S. Government, the exchange of such information must be memorialized in tangible, recorded form and marked with a suitable notice or legend, and furnished to the Government within thirty (30) calendar days after such oral or visual disclosure, or the Government shall have no duty to limit or restrict, and shall not incur any liability for any disclosure and use of such information. If the Government reasonably determines that the memorialization of the exchange is insufficiently detailed to enable it to identify the privileged or confidential information, Seller shall provide additional detail at the Government's request, subject to restrictions on use and disclosure.

(3) Disclaimer of Liability: Notwithstanding the above, neither Buyer or the U.S. Government shall be restricted in, nor incur any liability for, the disclosure and use of:

- (i) Data not identified with a suitable notice or legend as set forth in this Section; nor
- (ii) Information contained in any Data for which disclosure and use is restricted, if such information is or becomes generally known without breach of the above, is properly known to the U.S. Government or is generated by the Government independent of carrying out responsibilities under this Purchase Order, is rightfully received from a third party without restriction, or is included in Data which the Seller has furnished, or is required to furnish to the Government without restriction on disclosure and use.

Notwithstanding subparagraph f(3)(i) above, if the Seller cures the omission of the suitable notice or legend, the restrictions, and related liability for disclosure and use of such information shall apply after cure unless it is then unrestricted under subparagraph f(3)(ii) above.

(g) Copyright. The Seller reserves the right to protect by copyright works developed under this Purchase Order. All such copyrights will be in the name of the Seller or the author, as determined by Seller's policies. The Seller hereby grants to the U.S. Government a non-exclusive, non-transferable, royalty-free, fully paid-up license to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, for governmental purposes, any copyrighted materials developed (excluding Data) under this Purchase Order to which it owns the copyright, and to authorize others to do so.

(h) Lower-Tier Agreements. The Seller shall include this Section, suitably modified to identify the parties in all subcontracts or lower-tier agreements, regardless of tier, for experimental, developmental, or research work.

(i) Survival Rights. Provisions of this Section shall survive termination of this Purchase Order.

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## **ARTICLE 11. INFORMATION SUBJECT TO EXPORT CONTROL LAWS/INTERNATIONAL TRAFFIC IN ARMS REGULATION (ITAR)**

(Applicable to all Purchase Orders.)

### **Export Control**

#### **A. Information subject to Export Control Laws/International Traffic in Arms Regulation (ITAR):**

Public Law 90-629, the Arms Export Control Act, as amended (22 U.S.C. 2751 et. seq.) requires that unclassified technical data with military application may not be exported lawfully without an approval, authorization, or license. For purposes of making this determination, the Military Critical Techniques List (MCTL) shall be used as general guidance. All documents determined to contain export controlled technical data will be marked with the following notice:

**WARNING:** This document contains technical data, export of which is restricted by the Arms Export Control Act (22 U.S.C. 2751, et seq.) or the Export Administration Act of 1979, as amended, 50 U.S.C. App. 2401 et seq. Violations of these export laws are subject to severe criminal penalties.

#### **B. Flowdown**

SELLER shall include this Article, suitably modified to identify all parties, in all Project Agreements or lower tier agreements. This Article shall, in turn, be included in all sub-tier subcontracts or other forms of lower tier agreements, regardless of tier.

## **ARTICLE 12. TITLE AND DISPOSITION OF PROPERTY**

(Applicable to all Purchase Orders.)

### **A. Definitions**

In this Article, "property" means any tangible personal property other than property actually consumed during the execution of work under this Agreement.

### **B. Title to Property**

No significant items of property are expected to be acquired under this Agreement by SELLER. Title to any item of property valued at \$50,000 or less that is acquired by a SELLER pursuant to a Project Agreement with the Government shall vest in the Seller upon acquisition with no further obligation of the Parties unless otherwise determined by the AO. Should any item of property with an acquisition value greater than \$50,000 be required, SELLER, at the request of the Seller and on its behalf, shall obtain prior written approval of the AO. Upon written approval of the AO, title to this property also shall vest in the Seller upon acquisition. The Seller shall be responsible for the maintenance, repair, protection and preservation of all such property at its own expense. Property acquired pursuant to this clause shall not be considered as in exchange for services in performance of the Project, but shall be considered a Government contribution to the Project.

### **C. Government Furnished Property**

The Government may provide Seller, or the SELLER Government Furnished Property (GFP) to facilitate the performance of individual Prototype Projects. Such GFP will be specifically identified to a particular Project via a modification to the OTA and subsequently incorporated into a resulting Project Agreement. The GFP shall be utilized only for the performance of that individual Project unless a specific exception is made in writing by the AO.



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All property shall be returned at the end of the Project Agreement in as good as condition as when received with the exception of said reasonable wear and tear or in accordance with the provisions of the Project Agreement regarding its use. The SELLER shall obtain explicit written authorization for any transfer or disposition of Government Furnished Property.

All GFP transfer and disposition instructions will be made for each specific Project award by way of the associated Technical Direction Letter for that Project award. Each GFP modification action will result in the inclusion of a revised attachment to the TDL titled "Government Furnished Property," listing pertinent information for the applicable Project GFP.

#### **ARTICLE 13. SAFETY**

(Applicable to all Purchase Orders.)

A Safety Survey will be conducted by the Government prior to the handling of explosives, production of any hardware or free testing under any Prototype Project.

If a Project involves Arms, Ammunition and Explosives (AA&E) or other Hazardous Material, the following clauses MUST be reviewed for applicability to the Project and incorporated into the Project award if applicable.

- DFARS 252.223-7001 - Hazard Warning Labels
- DFARS 252.223-7002 - Safety Precautions for Ammunition and Explosives
- DFARS 252.223-7003 - Change in Place of Performance - Ammunition and Explosives
- DFARS 252.223-7006 - Prohibition on Storage, Treatment, and Disposal of Toxic or Hazardous Materials
- DFARS 252.223-7007 - Safeguarding Sensitive Conventional Arms, Ammunition and Explosives
- FAR 52.223-3 - Hazardous Material Identification and Material Safety Data
- FAR 52.247-29 - F.O.B. Origin
- ARDEC 18 - Physical Security Standards for Sensitive Items
- ARDEC 169 - Explosive Material Handling
- ARDEC 66 - Safety Requirements for Hazardous Items
- ARDEC 77 - Material Safety Data Sheets
- ARDEC 153 - Security Screening of Contractor Employees
- ARDEC 172 - Demilitarization

Seller shall adhere to all local, state and Federal rules and regulations required in order to maintain a safe and non-hazardous occupational environment throughout the duration of the Project Agreements.

#### **Environmental Requirements**

All Prototype Projects awarded and funded under this Agreement shall adhere to the following:

**Pollution Prevention:** Consideration should be given to alternative materials and processes in order to eliminate, reduce or minimize hazardous waste being generated. This is to be accomplished while minimizing item cost and risk to item performance.

**Environmental Compliance:** All activities must be in compliance with Federal, state, and local environmental laws and regulations, as well as Executive orders, treaties, and international agreements. The

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Seller shall evaluate the environmental consequences and identify the specific types and amounts of hazardous waste being generated during activities undertaken to perform under a Project.

Hazardous Waste Report: The Seller shall submit a Hazardous Waste Report IAW DI-MGMT-80899, as applicable on a Project-by-Project basis.

Disposal Instructions for Residual/Scrap Materials: The Seller shall dispose of all residual and scrap materials generated during performance of a Project, including high explosives. The Seller shall notify the AOR of the anticipated quantities, methods of disposal and disposal costs.

#### **ARTICLE 14. OPSEC & SECURITY**

(Applicable to all Purchase Orders.)

(a) Security Requirements.

(1) The security level for this agreement is **TS**.

(2) Work performed by the Seller hereunder may involve access to Controlled Unclassified Information (CUI) as well as information classified as CONFIDENTIAL, SECRET, or TOP SECRET (pending facility clearance approval by Defense Security Services.). The Seller and its employees who work on projects hereunder involving access to and use of controller or classified information, or work within classified facilities, shall comply with (1) the Security Agreement (DD Form 441), including the National Industrial Security Program Operation Manual (NISPOM, DOD 5220.22M), Security Classification Specification (DD Form 254), and (2) any revisions to that manual that may be issued. During the course of this Purchase Order, the parties may determine that information developed by the Buyer, Seller and/or the U.S. Government pursuant to this Purchase Order shall be treated as classified. Such information shall be classified in accordance with DOD 5220.22M.

(3) Each project statement of work will be provided by Buyer to the U.S. Government for review by the Government's Titan program industrial security office prior to award. The industrial security office will provide the Security Classification Specification (DD form 254) for the project. US Army ARDEC Intelligence and Technology Protection Office (I&TPO) will review project statements of work where ARDEC is the U.S. Government Titan program representative prior to award of project work and will issue a Security Classification Specification (DD form 254).

(4) If Seller will be performing on a classified project at its facilities, it shall obtain and maintain a Facility Clearance from the Defense Security Service for the life of the project. The Seller shall receive classified material at the actual performance location(s) only as identified in block 8a of the DD254 issued for the Agreement.

(5) The Seller shall issue all subcontract Security Classification Specifications (DD Form 254) to lower-tier awards.

(6) If Seller will be performing classified project work, it shall have a Non-Disclosure Agreement (SF 312) signed by all Seller employees working under the project and returned to the Buyer. The Seller shall not release any information or data without the approval of the U.S. Government.

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(7) Seller personnel performing classified project work shall have the appropriate level of investigation and/or security clearance. The Seller shall observe and comply with all security provisions in effect at each selected site. Only U.S. Citizens are authorized to work classified Titan program projects. All Seller personnel that require access to classified information and/or material will be required to have the appropriate level clearance and must maintain the level of security clearance for the life of their project work. The Seller shall notify the Buyer the same day as an employee receives notice that they will be released, have been fired, or have had their security clearance revoked or suspended.

(8) Sharing of classified information by Seller with other parties shall be on a need- to-know basis, as required by the project statement of work.

(9) The U.S. Government will make the decision and/or final determination as to the disposition of any classified information and/or material held by the Seller at the completion of a project. Upon completion or termination, the Seller shall:

- (i) Return ALL classified material received or generated under a project ;
- (ii) Destroy all classified material; or
- (iii) Request retention for a specific period of time.

(10) If a project performed hereunder involves a classified effort or a Controlled Unclassified Information (CUI) effort, the below listed Department of Defense Directives, Federal Acquisition Regulation (FAR) and the Defense Federal Acquisition Regulation Supplement (DFARS), and ARDEC clauses shall be incorporated into this agreement by reference with the same force and effect as if they were given in full text. Full text versions shall be made available upon request. Specific applicable security classification guides, policies, instructions, and regulations will be identified in each project statement of work. Throughout the life of a project performed hereunder, if any policy, instruction, or regulation is replaced or superseded, the replacement or superseding version shall apply. The following is a snapshot of key regulatory documents, policies, regulations, etc. applicable at time of award.

- (i) DoDM 5200.01 DoD Information Security Program, 24 Feb 12
- (ii) DoD 5200.2-R Personnel Security Regulation, Jan 87
- (iii) DoD 5220.22-M National Industrial Security Program, 28 Feb 06
- (iv) DoDI 5200.01, Information Security Program and Protection of Sensitive Compartmented Information, 21 Apr 2016
- (v) DoDM 5400.7-R, DOD Freedom of Information Act Program, 25 Jan 2017
- (vi) DoDI 2000.12, Antiterrorism Program, 1 Mar 12
- (vii) DODD 5205.02E, DOD Operations Security (OPSEC) Program, 20 Jun 2012
- (viii) DODI 5200.39, Critical Program Information (CPI) Identification and Protection Within Research, Development, Test, and Evaluation (RDT&E), 28 May 2015
- (ix) AR 380-5, Department of the Army Information Security, 29 Sep 2000
- (x) AR 380-49, Industrial Security Program, 20 Mar 2013
- (xi) AR 530-1, Operations Security, 26 Sep 2014
- (xii) ARDEC Clause 68, Identification and Access Eligibility Requirements of Contractor Employees (requirement is only applicable to contractor employees working on Picatinny Arsenal)
- (xiii) ARDEC Clause 18, Physical Security Standards for Sensitive Items (Required when AA&E apply)
- (xiv) ARDEC Clause 70, (FOUO) Release of Information Research and Development (reference FAR 2.101)
- (xv) FAR Clause 4.402, Safeguarding Classified Information Within Industry
- (xvi) FAR Clause 52.204-2, Security Requirements, Aug 1996

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(xvii) SECURITY CLASSIFICATION GUIDES will be identified per each project statement of work and supplied to the Seller by the Buyer as needed.

(11) The following shall apply for all projects performed hereunder:

(A) Anti-Terrorism Level I Training. This provision is for Seller employees with an area of performance within an Army controlled installation, facility or area. All Seller employees requiring access to Army installations, facilities and controlled access areas shall complete AT Level I awareness training within forty-five (45) calendar days after project start date or effective date of incorporation of this requirement into a project statement of work to be performed hereunder, whichever is applicable. Seller shall submit certificates of completion for each affected employee to the Buyer. AT level I awareness training is available at the following website: <http://jko.jten.mil/>

(B) Access and General Protection/Security Policy and Procedures. This standard language text is for Seller employees with an area of performance within a DoD controlled installation, facility or area. Seller employees shall comply with applicable installation, facility and area commander installation/facility access and local security policies and procedures (provided by government representative). The Seller also shall provide all information required for background checks to meet installation access requirements to be accomplished by installation Provost Marshal Office, Director of Emergency Services or Security Office. The Seller's workforce must comply with all personal identity verification requirements as directed by DoD, HQDA and/or local policy. Should the Force Protection Condition (FPCON) at any individual facility or installation change, the Buyer or U.S. Government may require changes in Seller security matters or processes.

(C) Anti-Terrorism Awareness Training for Seller Personnel Traveling Overseas. This standard language text requires U.S.-based Seller employees to receive Government provided area of responsibility specific AT awareness training as directed by AR 525-13. Specific area of responsibility training content is directed by the combatant commander with the unit Anti- terrorism Officer (ATO) being the local point of contact.

(D) iWATCH Training. This standard language text is for Seller employees with an area of performance within a DoD controlled installation, facility or area. Seller(s) shall brief all employees on the local iWATCH program (training standards provided by the requiring activity ATO). This local developed training will be used to inform employees of the types of behavior to watch for and instruct employees to report suspicious activity to the AOR. This training shall be completed within forty-five (45) calendar days of an award of a project performed hereunder and within forty- five (45) calendar days of new employees' commencing performance with the results reported to the AOR no later than thirty (30) calendar days after training completion.

(E) Impact on Seller performance during increased FPCON during periods of increased threat. During FPCONs Charlie and Delta, services may be discontinued/postponed due to higher threat. Services will resume when FPCON level is reduced to Bravo or lower.

(F) Random Antiterrorism Measures Program (RAMP) participation. Seller personnel working on a DoD installation are subject to participation in the Installation RAMP security program (e.g., vehicle searches, wearing of ID badges, etc.)

(G) For Seller personnel requiring a U.S. Government Common Access Card (CAC). Before CAC issuance, the Seller personnel requires, at a minimum, a favorably adjudicated National Agency Check with

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Inquiries (NACI) or an equivalent or higher investigation in accordance with Army Directive 2014-05. The Seller employee will be issued a CAC only if duties involve one of the following: (1) both physical access to a DoD facility and access, via logon, to DoD networks on-site or remotely; (2) remote access, via logon, to a DoD network using DoD-approved remote access procedures; or (3) physical access to multiple DoD facilities or multiple non-DoD federally controlled facilities on behalf of the DoD on a recurring basis for a period of six (6) months or more. At the discretion of the sponsoring activity, an initial CAC may be issued based on a favorable review of the FBI fingerprint check and a successfully scheduled National Awareness Check with Inquiries (NACI) at the Office of Personnel Management.

(H) For Seller personnel that do not require a CAC, but require access to a DoD facility or installation: Seller employees and all associated subcontracted employees shall comply with adjudication standards and procedures using the National Crime Information Center Interstate Identification Index (NCIC-III) and Terrorist Screening Database (Army Directive 2014-05/AR 190-13); applicable installation, facility and area commander installation and facility access and local security policies and procedures (provided by a U.S. Government representative); or, at OCONUS locations, in accordance with status-of-forces agreements and other theater regulations.

(I) TARP Training: Per AR 381-12 Threat Awareness and Reporting Program (TARP), contractor employees must receive annual TARP training by a CI agent or other trainer as specified in AR 381-12. This training shall be completed within twelve (12) months after Purchase Order or project start date or effective date of incorporation of this requirement into this Purchase Order, whichever applies, and then annually thereafter. Seller contractor shall submit documentation of completion for each affected Seller employee and subcontractor employee to the Buyer within fourteen (14) calendar days after completion of training by all employees and subcontractor personnel. Training can be executed by a local CI agent, on line via the Army Learning Management System at <https://www.lms.army.mil> (and search for TARP), or by contacting the 902nd military intelligence unit.

(J) Seller Employees Who Require Access to Government Information Systems: All Seller employees with access to a Government information systems must be registered in the ATCTS (Army Training Certification Tracking System) at commencement of services, and must successfully complete the DoD Information Assurance Awareness training prior to accessing the IS and then annually thereafter.

(K) For Projects that Require an OPSEC Standing Operating Procedure/Plan: The Seller shall develop an OPSEC Standing Operating Procedure (SOP)/Plan within ninety (90) calendar days of a project award hereunder to be reviewed and approved by the Buyer and responsible U.S. Government OPSEC officer, per AR 530-1, Operations Security. This plan will be submitted by Buyer to the Government on behalf of the Seller for coordination of approvals. This SOP/Plan will include the Government's critical information, why it needs to be protected, where it is located, who is responsible for it and how to protect it. In addition, Seller shall identify an individual who will be an OPSEC Coordinator. The Seller will ensure this individual becomes OPSEC Level II certified per AR 530-1.

(L) For Projects that Require OPSEC Training: Per AR 530-1, Operations Security, new Seller employees assigned by the Seller to perform under a project award hereunder must complete Level I OPSEC awareness training within thirty (30) calendar days of starting work under the project. All Seller employees performing under an OPSEC-designated prototype project must complete annual Level I OPSEC awareness training. Level I OPSEC awareness training is available at the following website: <http://cdsetrain.dtic.mil/opsec/>.

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(M) For Contracts that Involve the Public Release of Information: Per AR 530-1, Operations Security, an OPSEC review is required prior to all public releases. All government information intended for public release by the Seller will undergo a Government OPSEC review prior to release.

(N) Information assurance (IA)/information technology (IT) training: All Seller employees must complete the DoD IA awareness training before issuance of network access and annually thereafter. If Seller will be performing IA/IT functions Seller must comply with DoD and Army training requirements in DoDD 8570.01, DoD 8570.01-M and AR 25-2 within six (6) months of employment.

(O) Information assurance (IA)/information technology (IT) certification: Per DoD 8570.01-M, DFARS 252.239-7001 and AR 25-2, all Seller employees supporting IA/IT functions shall be appropriately certified upon award of a project hereunder. The baseline certification as stipulated in DoD 8570.01-M must be completed upon Project Agreement award.

(P) For Seller personnel Authorized to Accompany the Force: DFARS Clause 252.225-7040, Contractor Personnel Supporting U.S. Armed Forces Deployed Outside the United States, shall be used in projects that authorize Seller personnel to accompany U.S. Armed Forces deployed outside the U.S. in contingency operations; humanitarian or peacekeeping operations; or other military operations or exercises, when designated by the combatant commander. The clause discusses the following AT/OPSEC related topics: required compliance with laws and regulations, pre- deployment requirements, required training (per combatant command guidance) and personnel data required.

(Q) For Projects Requiring Performance or Delivery in a Foreign Country: DFARS Clause 252.225-7043, Antiterrorism /Force Protection Policy for Defense Contractors Outside the U.S., shall be used in projects that require performance or delivery in a foreign country. This clause applies to both contingencies and non-contingency support. The key AT requirement is for non-local national Seller personnel to comply with theater clearance requirements and allows the combatant commander to exercise oversight to ensure the Seller's compliance with combatant commander and subordinate task force commander policies and directives.

(R) For Projects requiring the Seller to obtain U.S. Government Common Access Cards (CACs), installation badges, and/or access passes: The Seller shall return all issued U.S. Government CACs, installation badges, and/or access passes to the Buyer or a U.S. Government representative, upon their request, when the project is completed or when the Seller employee no longer requires access to the installation or facility.

(S) For Projects That Require Handling or Access to Classified Information: Seller personnel shall comply with FAR 52.204-2, Security Requirements. This clause applies to any work performed hereunder requires access to information classified "Confidential," "Secret," or "Top Secret" information, and requires Seller to comply with the Security Agreement (DD Form 441), Security Classification Specification (DD Form 254), National Industrial Security Program Operating Manual (DoD 5220.22-M) and any revisions to DOD 5220.22-M, notice of which will be furnished to the Seller.

(T) For Projects that require access to Potential Critical Program Information (PCPI)/Critical Program Information (CPI): The Seller shall comply with the associated Interim Program Protection Plan (IPPP) / Program Protection Plan (PPP) / or Technology Protection Plan (TPP). The Seller shall comply with DoD, DA and AMC technology protection requirements in DODI 5200.39, AR 70-1, DA PAM 70-3 and AMC-R-380-13.



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(U) Information Subject to Export Control Laws/International Traffic in Arms Regulation (ITAR): Public Law 90-629, "Arms Export Control Act," as amended (22 U.S.C 2751 et. Seq.) requires that all unclassified technical data with military application may not be exported lawfully without an approval, authorization, or license under EO 12470 or the Arms Export Control Act and that such data required an approval, authorization, or license for export under EO 12470 or Arms Export Control Act. For purposes of making this determination, the Militarily Critical Technologies List (MCTL) shall be used as general guidance. All documents determined to contain export controlled technical data will be marked with the following notice:

WARNING: - This document contains technical data whose export is restricted by the Arms Export Control Act (Title 22, U.S.C., App. 2401 et seq.) Violations of these export laws are subject to severe criminal penalties. Disseminate in accordance with provisions of DoD Directive 5230.25."

(V) For Official Use Only Information(FOUO) and Controlled Unclassified Information (CUI): Seller personnel shall be capable of accessing, handling, receiving, and storing UNCLASSIFIED documents, equipment, hardware, and test items, using the applicable standards. All Controlled Unclassified Information (documents designated as FOR OFFICIAL USE ONLY and/or LIMITED DISTRIBUTION) shall be transmitted electronically using DoD-approved encryption standards.

(W) All Seller personnel performing classified work under this Purchase Order are required to have valid JPAS visit requests submitted to the Security Management Office (SMO) by their Facility Security Officer (FSO) for each U.S. Government location where work is being performed.

(b) Flow down for Security Requirements: Seller shall include the aspects of this Section as they pertain to each lower-tier subcontract or purchase order at any tier. Each lower-tier procurement agreement will include specific security requirements within each their respective statements of work.

#### **ARTICLE 15. SAFEGUARDING COVERED DEFENSE INFORMATION AND CYBER INCIDENT REPORTING**

(Applicable only if Seller work scope will provide operationally critical support, or for which subcontract performance will involve a covered contractor information system, hereunder as these terms are defined below.)

(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.

"Contractor attributional/proprietary information" means information that identifies the contractor(s), whether directly or indirectly, by the grouping of information that can be traced back to the contractor(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.

"Contractor information system" means an information system belonging to, or operated by or for, the Contractor.

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"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 contractor information system" means an information system that is owned, or operated by or for, a contractor and that processes, stores, or transmits covered defense information.

"Covered defense information" means unclassified information that-

(i) Is:

(A) Provided to the contractor by or on behalf of DoD in connection with the performance of the contract; or

(B) Collected, developed, received, transmitted, used, or stored by or on behalf of the contractor in support of the performance of the contract; and

(ii) Falls in any of the following categories:

(A) Controlled technical information.

(B) Critical information (operations security). Specific facts identified through the Operations Security process about friendly intentions, capabilities, and activities vitally needed by adversaries for them to plan and act effectively so as to guarantee failure or unacceptable consequences for friendly mission accomplishment (part of Operations Security process).

(C) Export control. Unclassified information concerning certain items, commodities, technology, software, or other information whose export could reasonably be expected to adversely affect the United States national security and nonproliferation objectives. To include dual use items; items identified in export administration regulations, international traffic in arms regulations and munitions list; license applications; and sensitive nuclear technology information.

(D) Any other information, marked or otherwise identified in the contract, that requires safeguarding or dissemination controls pursuant to and consistent with law, regulations, and Government-wide policies (e.g., privacy, proprietary business information).

"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.

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

"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 information is recorded, stored, or printed within an information system.

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

"Rapid(ly) report(ing)" means within 72 hours of discovery of any cyber incident.

"Technical information" means technical data or computer software, as those terms are defined in the clause at DFARS 252.227-7013, Rights in Technical Data-Non Commercial Items, regardless of whether or not the clause is incorporated in this solicitation or contract. Examples of technical information include research

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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 Contractor shall provide adequate security for all covered defense information on all covered contractor information systems that support the performance of work under this contract. To provide adequate security, the Contractor shall-

(1) Implement information systems security protections on all covered contractor information systems including, at a minimum-

(i) For covered contractor information systems that are part of an Information Technology (IT) service or system operated on behalf of the Government-

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

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

(ii) For covered contractor 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)(i) of this clause-

(A) 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," <http://nvlpubs.nist.gov/nistpubs/SpecialPublications/NIST.SP.800-171r1.pdf> that is in effect at the time the solicitation is issued or as authorized by the Contracting Officer, as soon as practical, but not later than December 31, 2017.

The Contractor shall notify the DoD CIO, via email at [osd.dibcsia@mail.mil](mailto:osd.dibcsia@mail.mil), within 30 days of contract award, of any security requirements specified by NIST SP 800-171 not implemented at the time of contract award; or

(B) Alternative but equally effective security measures used to compensate for the inability to satisfy a particular requirement and achieve equivalent protection accepted in writing by an authorized representative of the DoD CIO; and

(2) Apply other information systems security measures when the Contractor reasonably determines that information systems security measures, in addition to those identified in paragraph (b)(1) of this clause, may be required to provide adequate security in a dynamic environment based on an assessed risk or vulnerability.

(c) Cyber incident reporting requirement.

(1) When the Contractor discovers a cyber incident that affects a covered contractor information system or the covered defense information residing therein, or that affects the contractor's ability to perform the requirements of the contract that are designated as operationally critical support, the Contractor 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 contractor information systems that were part of the cyber incident, as well as other information systems on the Contractor'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 Contractor's ability to provide operationally critical support; and

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

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(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 <http://dibnet.dod.mil>.

(3) Medium assurance certificate requirement. In order to report cyber incidents in accordance with this clause, the Contractor or subcontractor shall have or acquire a DoD-approved medium assurance certificate to report cyber incidents. For information on obtaining a DoD-approved medium assurance certificate, see <http://iase.disa.mil/pki/eca/Pages/index.aspx>.

(d) Malicious software.

The Contractor or subcontractors that discover and isolate malicious software in connection with a reported cyber incident shall submit the malicious software in accordance with instructions provided by the Contracting Officer.

(e) Media preservation and protection.

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

(f) Access to additional information or equipment necessary for forensic analysis.

Upon request by DoD, the Contractor shall provide DoD with access to additional information or equipment that is necessary to conduct a forensic analysis.

(g) Cyber incident damage assessment activities.

If DoD elects to conduct a damage assessment, the Contracting Officer will request that the Contractor provide all of the damage assessment information gathered in accordance with paragraph (e) of this clause.

(h) DoD safeguarding and use of contractor attributional/proprietary information.

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

Information that is obtained from the contractor (or derived from information obtained from the contractor) under this clause that is not created by or for DoD is authorized to be released outside of DoD-

- (1) To entities with missions that may be affected by such information;
- (2) To entities that may be called upon to assist in the diagnosis, detection, or mitigation of cyber incidents;
- (3) To Government entities that conduct counterintelligence or law enforcement investigations;
- (4) For national security purposes, including cyber situational awareness and defense purposes (including with Defense Industrial Base (DIB) participants in the program at 32 CFR part 236); or

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

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

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

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

(m) Subcontracts. The Contractor shall-

(1) Include this clause, including this paragraph (m), in subcontracts, or similar contractual instruments, for operationally critical support, or for which subcontract performance will involve a covered contractor information system, including subcontracts for commercial items, without alteration, except to identify the parties; and

(2) When this clause is included in a subcontract, require subcontractors to rapidly report cyber incidents directly to DoD at <http://dibnet.dod.mil> and the prime Contractor. This includes providing the incident report number, automatically assigned by DoD, to the prime Contractor (or next higher-tier subcontractor) as soon as practicable.

#### **ARTICLE 16. CIVIL RIGHTS ACT**

(Applicable to all Purchase Orders.)

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

#### **ARTICLE 17. ANTITRUST**

(Applicable to all Purchase Orders.)

In Seller's Agreement, members agree to comply with all applicable U.S. laws, including U.S. antitrust laws. Seller's organizational structure is authorized under the National Cooperative Research and Production Act of 1993.

**ARTICLE 18. LIABILITY OF THE PARTIES**

(Applicable to all Purchase Orders.)

**A. Waiver of Liability**

With regard to the activities undertaken pursuant to this Agreement, no Party shall make any claim against the other, employees of the other, the other's Member Entities, Seller, contractors, or subcontractors, or employees of the other's Member Entities, Seller, contractors, or subcontractors for any injury to or death of its own employees or employees of its Member Entities, SELLERS, contractors, or subcontractors, or for damage to or loss of its own property or that of its Member Entities, SELLERS, contractors or subcontractors, whether such injury, death, damage or loss arises through negligence or otherwise, except in the case of willful misconduct.

**B. Damages**

The Parties shall not be liable to each other for consequential, punitive, special and incidental damages or other indirect damages, whether arising in contract (including warranty), tort (whether or not arising from the negligence of a Party) or otherwise, except to the extent such damages are caused by a Party's willful misconduct.

Notwithstanding the foregoing, claims for contribution toward third-party injury, damage, or loss are not limited, waived, released, or disclaimed.

**C. Extension of Waiver of Liability**

Seller agrees to extend the waiver of liability set forth above to SELLERS at any tier under a Project Agreement by requiring them, by contract or otherwise, to agree to waive all claims described above against the Parties to this Agreement. Seller also agrees to flow down the damages limitation set forth above to Member Entities and Seller's at any tier.

**D. Applicability**

Notwithstanding the other provisions of this Article, this Waiver of Liability shall not be applicable to:

- (1) Claims between SELLER (or Seller Member Entities) and the Government regarding breach, noncompliance, or nonpayment of funds;
- (2) Claims for damage caused by willful misconduct; and
- (3) Intellectual property claims.

**E. Limitation of Liability**

In no event shall the liability of the Government, Seller, or any other entity performing research activities under a Project Agreement exceed the amount obligated by the Government for that Project. If cost-sharing occurs, the liability of the Seller or Member Entity under a specific Project is limited to the amount committed as a Cash Contribution or In-kind Contribution by the Seller or Member Entity.

Nothing in this Article shall be construed to create the basis of a claim or suit where none would otherwise exist.

The Government does not contemplate any unusually hazardous risks being associated with the awarded Projects, however, the Government will consider going forward with a request for special indemnification or the inclusion of specially negotiated liability provisions where a Project, as identified by the Government or by SELLER, on behalf of a SELLER(s) or proposing Member Entity(ies), may pose a risk of such nature.



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#### **ARTICLE 19. ASSIGNMENT OF AGENCY**

(Applicable to all Purchase Orders.)

A. Assignment. Neither this Agreement nor any rights or obligations of any Party hereunder shall be assigned or otherwise transferred by either Party without the prior written consent of the other Party except that it is agreed that SELLER may assign this Agreement to its affiliates or to the successors or assignees of a substantial portion of SELLER's business interests to which this Agreement directly pertains without prior written consent.

#### **ARTICLE 20. PROPRIETARY RIGHTS**

(Applicable to all Purchase Orders.)

(a) The rights and obligations of the parties defined in this Section are subsidiary to more specific rights and obligations of the parties defined in the Patent Rights, Data Rights and Copyrights, and other sections of this agreement.

(b) Unless otherwise expressly set forth in this Purchase Order, all specifications, information, data, drawings and other items supplied to Buyer by Seller shall be disclosed to Buyer on a non-proprietary basis and may be used and/or disclosed by Buyer without restriction.

(c) All specifications, information, data, drawings, and other items which are (i) supplied to Seller by Buyer or (ii) obtained or developed by Seller in the performance of this Purchase Order or paid for by Buyer shall be proprietary to Buyer, shall be used only for purposes of providing services to Buyer pursuant to this Purchase Order, and shall not be disclosed to any third party without Buyer's express written consent. All such items supplied by Buyer or obtained by Seller in performance of this Purchase Order or paid for by Buyer shall be promptly provided to Buyer on request or upon completion of this Purchase Order.

(d) Any invention or intellectual property first made or conceived by Seller in the performance of this Purchase Order or which is derived from or based on the use of information supplied by Buyer (collectively, the "Foreground IP") shall be considered to be the property of Buyer. Seller hereby assigns its rights in the Foreground IP to Buyer and shall execute such documents necessary to perfect Buyer's title thereto. Unless otherwise expressly agreed in a contemporaneous or subsequent writing to the contrary or otherwise expressly set forth in this Purchase Order, any work performed pursuant to this Purchase Order which includes any copyright interest shall be considered a "work made for hire". To the extent any of such works do not qualify as a "work made for hire", Seller hereby assigns to Buyer all its intellectual property rights, including its copyright rights, in such works effective immediately upon creation of such works, including when they are first fixed in a tangible medium.

(e) Seller grants to Buyer the right to use, disclose, transfer, copy, modify, combine, integrate or make derivative works of any such noncommercial technical data delivered under this Purchase Order, to the extent necessary, and for such period as is required, for Buyer to complete its performance under Buyer's U.S. Government programs.

**ARTICLE 21. INFORMATION TECHNOLOGY ASSURANCE**

(Applicable to all Purchase Orders.)

Seller shall maintain data protection processes and systems sufficient to adequately protect specifications, information, data, drawings, software, and other items which are (i) supplied to Seller by Buyer, or (ii) obtained or developed by Seller in the performance of this Purchase Order or paid for by Buyer (collectively, "Buyer Data"), and to comply with any law or regulation applicable to such data. If an event occurs whereby Seller knows, or reasonably believes, that Buyer Data has been actually or potentially disclosed to, or accessed or acquired by, an unauthorized individual or individuals ("Security Incident"), Seller shall (i) use commercially reasonable efforts to investigate, contain, and remediate the Security Incident, and (ii) notify Buyer in writing promptly, but not later than seventy-two (72) hours after discovering the Security Incident. Seller's notification to Buyer of a Security Incident shall include sending an email to [supplier\\_cybersecurity@raytheon.com](mailto:supplier_cybersecurity@raytheon.com), and Seller shall encrypt emails to Buyer containing details of a Security Incident using industry standard encryption methods. The obligations contained in this Section are in addition to, and do not alter, Seller's obligations under applicable U.S. Government Procurement Regulations.

**ARTICLE 22. BUYER'S CARRIERS**

(Applicable to all Purchase Orders.)

Seller shall comply with the Raytheon Company approved carrier guide at the url: [https://www.raytheon.com/suppliers/supplier\\_resources/](https://www.raytheon.com/suppliers/supplier_resources/) in the event that seller uses an unauthorized freight forwarder or carrier to ship defense articles in violation of the International Traffic in Arms Regulations ("ITAR") and Buyer incurs costs in investigating and submitting a voluntary disclosure to the U.S. Department of State, Directorate of Defense Trade Controls ("DDTC") as a result, Seller shall provide Buyer with a payment of either fifty thousand dollars (\$50,000.00) or an amount which represents the purchase price under this Purchase Order, whichever is less, as liquidated damages and not as a penalty, within 10 days of the date of issuance of Buyer's notice of submission of Buyer's voluntary disclosure. Seller's payment under this clause shall not reduce any cap or limits on damages recoverable by Buyer and Buyer's acceptance of such payment shall not be deemed to be a waiver by buyer to exercise any right or remedy that it may have under this Purchase Order, at law or in equity, or waive any claims for other costs or damages under this Purchase Order.

**ARTICLE 23. CONFLICT MINERALS**

(Applicable to all Purchase Orders.)

If Seller is providing goods to Buyer under this Purchase Order, Seller shall use commercially reasonable efforts to:

(a) identify whether such goods contain tantalum, tin, tungsten or gold;

(b) conduct a reasonable country of origin inquiry regarding the origin of such minerals in such goods to determine whether such minerals originated in covered countries, as defined in Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act; and

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(c) conduct due diligence on the chain of custody of the source of any minerals originating in covered countries to identify the smelter of said minerals; and

(d) assist Buyer in conducting reasonable due diligence concerning the smelters of such minerals. Seller shall include the substance of this Section in any agreement between Seller and its lower tier suppliers. Seller shall provide buyer with reasonable documentation of Seller's and its lower tier suppliers' due diligence efforts, in a format prescribed by Buyer, when requested by Buyer to enable disclosure to the securities and exchange commission.

#### **ARTICLE 24. NON-DEBARMENT**

(Applicable to all Purchase Orders.)

By acknowledging this Purchase Order you (seller) hereby certify that you and / or any of your principals - are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any federal agency.

#### **ARTICLE 25. TERMINATION FOR CONVENIENCE**

(Applicable to all Purchase Orders. This language shall apply in addition to the Termination for Convenience language located in the Raytheon terms and conditions Termination for Convenience section. If any of the language is conflicting, this language shall control.)

- (a) The Buyer will allow full credit for the Buyer's share of the obligations under this Purchase Order properly incurred by the Seller. Costs incurred by the Seller during a suspension or after termination of work performed hereunder are not allowable unless the Buyer's Purchasing Representative expressly authorizes them in either the notices or suspension or termination, or in a subsequent notice. Other Seller costs incurred during a suspension or termination which are necessary and not reasonably avoidable are allowable if:
  - (i) The costs resulted from obligations which were properly incurred by the Seller before the effective date of the suspension or termination, were not in anticipation of the suspension or termination, and are non-cancellable; and
  - (ii) The costs would be allowable if the work were not suspended or if performance expired normally at the end of any applicable funding period described herein during which the suspension or termination takes effect.
- (b) Upon termination, Seller shall:
  - (i) Stop work as specified in the notice;
  - (ii) Direct all lower-tier suppliers or subcontractors to stop work as specified in the notice;
  - (iii) Place no further subcontracts or purchase orders (collectively referred to as "orders" in this clause) for materials, services, or facilities, except as necessary to complete the non-terminated portion balance of work under the Purchase Order;
  - (iv) Terminate all lower-tier purchase orders or subcontracts placed prior to date of notification of termination to the extent they related to the work terminated;
  - (v) With approval or ratification to the extent required by the Buyer, settle all outstanding liabilities and termination settlement proposals arising from the termination of lower-tier purchase orders or subcontracts; the approval or ratification will be final for purposes of this clause;

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- (vi) As directed by the Buyer's Purchasing Representative, transfer title to the following, and obtain from lower-tier suppliers and subcontractors under the terminated portion of this Purchase Order or project a transfer of title, where applicable, and deliver to the Buyer:
  - (A) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated, and
  - (B) completed or partially completed plans, drawings, information, and other property. This requirement applies only to items that, if the order had been completed, would have been required to be furnished to the Buyer;
- (vii) Complete performance of any work not terminated, if applicable;
- (viii) Take any action that may be necessary, or that the Buyer's Purchasing Representative may direct, for the protection and preservation of the property related to the project that is in its possession, or the possession of lower-tier suppliers or subcontractors, in which Buyer or the U.S. Government has or may acquire an interest; and
- (ix) Use its best efforts to sell, as directed or authorized by the Buyer's Purchasing Representative, any property of the types referred to in paragraph (b)(vi) above; provided, however, that Seller:
  - (A) is not required to extend credit to any purchaser,
  - (B) may arrange for other contractors or subcontractors on the Titan program who were performing the terminated work to acquire the property under the conditions prescribed by, and at prices approved by the Buyer's Purchasing Representative, and
  - (C) will in no event be required to continue with such efforts for more than three (3) months after notice by the Buyer's Purchasing Representative to sell or dispose of such property.The proceeds of any transfer or disposition of property as described above will be applied to reduce any payments to be made by the Buyer.

#### **ARTICLE 26. MATERIAL BREACH**

(Applicable to all purchase orders.)

(a) If Seller materially fails to comply with the provisions of this Purchase Order, Buyer may, at its sole option, either terminate this Purchase Order as described in Section 4 above or in paragraph 5(b) below, or, issue a cure notice, and, after allowing a reasonable time (no shorter than fifteen (15) days) for Seller to address the noncompliance take one or more of the following actions:

- (i) Temporarily withhold payments pending correction of the deficiency by the Seller;
- (ii) Disallow all or part of the price of the activity or action not in compliance;
- (iii) Wholly or partly suspend or terminate the project as described in the Raytheon terms and conditions Termination for Convenience or Termination for Default sections;
- (iv) Withhold further funding for work performed hereunder; or,
- (v) Take any other legally available remedies.

#### **ARTICLE 27. TITLE TO PROPERTY; GOVERNMENT-FURNISHED PROPERTY**

(Applicable to all Purchase Orders.)

- (a) Title to Property. No significant items of property are expected to be acquired under this Purchase Order by Seller. Title to any item of property valued at \$50,000 or less that is acquired by Seller using U.S. Government funds shall vest in the Seller upon acquisition with no further obligation of the parties unless otherwise determined by the Buyer's Purchasing Representative. Should any item of property with an acquisition value greater than \$50,000 be required using U.S. Government funds,

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Seller shall obtain prior written approval of the Buyer. Upon written approval of the Buyer, title to this property also shall vest in the Seller upon acquisition. The Seller shall be responsible for the maintenance, repair, protection and preservation of all such property at its own expense. Property acquired pursuant to this clause shall not be considered as in exchange for services in performance of the work hereunder, but shall be considered a U.S. Government contribution to the Titan project.

(b) Government Furnished Property.

- (1) The U.S. Government (through Buyer) may provide Seller government-furnished property (GFP) to facilitate the performance of individual prototype projects. Such GFP will be specifically identified to a particular project via a modification to this Purchase Order. The GFP shall be utilized only for the performance of that individual project unless a specific exception is made in writing by the Buyer.
- (2) All property shall be returned at the end of this Purchase Order in as good as condition as when received with the exception of said reasonable wear and tear or in accordance with the provisions of any statement of work regarding its use. Seller shall obtain explicit written authorization for any transfer or disposition of GFP.
- (3) All GFP transfer and disposition instructions will be made for each specific project award by way of the associated statement of work. Each GFP modification action will result in the inclusion of a revised attachment to the project statement of work titled "Government Furnished Property," listing pertinent information for the applicable project GFP.

#### ARTICLE 28. WARRANTY

(Applicable to all Purchase Orders. ***Note: The terms used in this section shall not change to align with the language at the top of the Flowdown Attachment document.***)

Seller represents and warrants that (1) it is free to enter into this Purchase Order; (2) in so doing, it will not violate any other agreement to which it is a party; and (3) it has taken all action(s) necessary to authorize the execution and delivery of this Purchase Order and the performance of its obligations under this Purchase Order.

#### ARTICLE 30. OBLIGATION AND PAYMENT

(Applicable to all Purchase Orders.)

Except as specified in the Section entitled Liability of the Parties, the Seller's liability to make payments to Buyer is limited only to those funds obligated under this Purchase Order or by modification to this Purchase Order. Buyer may incrementally fund work hereunder at discretion of the Buyer's Purchasing Representative. If modification becomes necessary in performance of work hereunder, the parties shall establish and execute a revised payment schedule, if appropriate.

#### ARTICLE 31. ACCOUNTING SYSTEM REQUIREMENTS

(Applicable to all Purchase Orders.)

Prior to the submission of invoices, Seller shall maintain an accounting system that records funding and payments by the Buyer. Seller shall ensure that appropriate arrangements have been made for receiving,

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distributing and accounting for funds received under this Purchase Order. Consistent with this stipulation, an acceptable accounting system will be one in which all cash receipts and disbursements are controlled and documented properly.

#### ARTICLE 32. NO SMALL BUSINESS AFFILIATION

(Applicable to all Purchase Orders. ***Note: The terms used in this section shall not change to align with the language at the top of the Flowdown Attachment document.***)

Seller acknowledges that this Purchase Order is issued under the Consortium for Command, Control, and Communications in Cyberspace (Consortium) constituted by the U.S. Army under federal Other Transaction Authority (OTA) and formed to develop and execute planned Command, Control, and Communications in Cyberspace efforts involving industry, academia and the U.S. Government. Every member in this consortium, including Buyer and Seller is independent of the other businesses and entities in the Consortium, and there is no affiliation between members within the definition of 13 C.F.R. § 121.103 of the Federal small business regulations and no such affiliation is intended either by the formation or implementation of the Consortium. Small businesses are merely members with no ownership rights in the Consortium.

#### ARTICLE 33. NON-DISCRIMINATION

(Applicable to all Purchase Orders.)

Seller shall abide by the requirements of 41 CFR 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, protected veteran status or disability. Also, to the extent applicable, the employee notice requirements set forth in 29 CFR, Part 471, Appendix A to subpart A, are hereby incorporated by reference into this agreement, subcontract or purchase order.

#### FAR AND DFARS CLAUSES INCORPORATED BY REFERENCE:

Clause Number	Title	Applicability (Reference to "Purchase Orders" includes underlying Solicitations)	Applies to Commercial (C) and/or Non-Commercial (NC) procurements	
			C	NC
52.204-2	Security Requirements (Aug 1996)	Applicable to all Purchase Orders that involve access to classified information. Any reference to the Changes clause is excluded.	X	X
252.223-7001	Hazard Warning Labels (Dec 1991)	Applicable to all Purchase Orders for goods that require submission of hazardous material data sheets. (See FAR 23.302(c))	X	X



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Clause Number	Title	Applicability (Reference to "Purchase Orders" includes underlying Solicitations)	Applies to Commercial (C) and/or Non-Commercial (NC) procurements	
			C	NC
252.223-7002	Safety Precautions for Ammunition and Explosives (May 1994)	Applicable to all Purchase Orders that involve ammunition or explosives.	X	X
252.223-7003	Change in Place of Performance – Ammunition and Explosives (Dec 1991)	Applicable to all Purchase Orders that involve ammunition or explosives.	X	X
252.223-7006	Prohibition on Storage and Disposal of Toxic and Hazardous Materials (Sep 2014)	Applicable to all Purchase Orders that require, may require, or permit a Seller or its lower tier subcontractors access to a DoD installation.	X	X

#### **SPECIAL AGENCY CLAUSES INCORPORATED BY REFERENCE:**

Clause Number	Title	Applicability (Reference to "Purchase Orders" includes underlying Solicitations)
ARDEC 68	Identification and Access Eligibility Requirements of Contractor Employees	Applicable to contractor employees working on Picatinny Arsenal.
ARDEC 70	Release of Information Research and Development (reference FAR 2.101)	Applicable to all Purchase Orders.
ARDEC 153	Security Screening of Contractor Employees	Applicable to all Purchase Orders.
ARDEC 172	Demilitarization	Applicable to all Purchase Orders.

#### **U.S. ARMY ARMAMENT, RESEARCH, DEVELOPMENT AND ENGINEERING CENTER (ARDEC) CLAUSES:**

##### **ARDEC 18 PHYSICAL SECURITY STANDARDS FOR SENSITIVE ITEMS**

##### **52.223-4000 PHYSICAL SECURITY STANDARDS FOR SENSITIVE ITEMS OCT/2010**

1. When the contract contains sensitive conventional Arms, Ammunition and Explosives (AA&E) the contractor will be required to provide proper storage and accountability. These standards are set forth in Department of Defense (DOD) 5100.76-M, dated August, 2000, entitled "Physical Security of Sensitive Conventional Arms, Ammunition and Explosives".

2. Prior to any contract being awarded, the contractor facility must first have a pre award Physical Security Inspection of their facility conducted by the Defense Security Service (DSS). See DOD 5100.76-M, Appendix 2, Attachment 1, for a listing of DSS regions. Contractor facilities, including any subcontractors, that

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do not meet all of the security requirements of DOD 5100.76-M will not be awarded a contract until such time as they correct all deficiencies noted in the DSS inspection.

3. When the contract requires transportation of Sensitive Conventional AA&E, the standards set forth in Defense Transportation Regulation 4500.9-R., Defense Traffic Management, shall be followed.

4. The following website is provided to obtain the publications identified above: <http://www.dla.mil/J-6/DLSMO/elibrary/Manuals/regulations/asp>

#### **ARDEC 66 SAFETY REQUIREMENTS FOR HAZARDOUS ITEMS**

##### **52.223-4002 SAFETY REQUIREMENTS FOR HAZARDOUS ITEMS OCT/2010**

a. The contractor shall use the safety data provided in the Hazardous Component Safety Data Sheets (HCSDS) to insure the safe handling of the energetic material. The HCSDS are in Section J of the contract.

b. The contractor shall comply with Paragraph F, Chapter 1 of DOD 4146.26M, DOD Contractor's Safety Manual for Ammunition and Explosives. This requires the contractor to submit all site and construction plans through the local Defense Contract Management District Safety Office to the Contracting Officer for approval. The contractor must also submit changes for approval. Contractors will assure that their subcontractors follow the same procedures.

c. Whenever the contractor uses a government facility, he shall comply with the local safety requirements of that facility.

d. The contractor must obtain written approval from the Contracting Officer before the award of a subcontract involving explosives, propellants or pyrotechnic materials. When the contractor requests the Contracting Officer's approval, the Contracting Officer will arrange a Defense Logistics Agency preaward safety survey for each subcontractor.

e. The contractor is responsible for decontaminating all facilities/equipment at the end of the contract unless the contractor intends to continue using the facilities/equipment for similar purposes. Any associated costs must be included as part of the contractor's proposal. The contractor must provide the Contracting Officer with a certification that all contaminated facilities/equipment have been decontaminated.

f. The contractor is responsible for properly disposing of hazardous materials during this contract. If disposal is done on the subcontractor's site, the contractor must note this in his site plan per paragraph b, above. The Contracting Officer must approve a subcontractor prior to him performing disposal per paragraph d, above.

g. The contractor will provide reports of accidents/incidents as required by Data Item DI-SAFT-81563. The government reserves the right to investigate any accident/incident under Chapter 2, Paragraphs F and G of DOD 4145.26M, DOD Contractor's Safety Manual for Ammunition and Explosives.

#### **ARDEC 77 MATERIAL SAFETY DATA SHEETS**

##### **52.223-4003 MATERIAL SAFETY DATA SHEETS (MSDS) OCT/2010**

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1. The contractor shall send the Material Safety Data Sheets (MSDS) prior to award to the Contracting Officer and a copy with the first delivery of supplies to Commander, U.S. Army ARDEC, ATTN: Safety Division, IMPI-SO, Bldg. 351 S., Picatinny Arsenal, NJ 07806-5000, required by FAR 52.223-3, Hazardous Material Identification and Material Safety Data.

2. Deliveries of any hazardous chemicals/materials will not be accepted when:

- a. The applicable MSDS is not delivered with the first delivery of the supplies; and/or
- b. The container label on the supplies is inadequate, unreadable, missing, or does not agree with the accompanying MSDS.

#### **ARDEC 169 EXPLOSIVE MATERIAL HANDLING**

52.223-4005 EXPLOSIVE MATERIAL HANDLING OCT/2010

The Contractor shall comply with the requirements of the Department of the Army Pamphlet 385-64, Safety, Ammunition and Explosives Safety Program, in effect on the date of the solicitation for this contract.

#### **FAR, DFARS AND SPECIAL AGENCY CLAUSES INCORPORATED BY FULL TEXT:**

##### **252.223-7007 SAFEGUARDING SENSITIVE CONVENTIONAL ARMS, AMMUNITION, AND EXPLOSIVES (SEP 1999)**

(Applicable to all Purchase Orders for (i) the development, production, manufacture, or purchase of arms, ammunition, and explosives (AA&E), or (ii) when AA&E will be provided to the Seller as Government-furnished property. Applies to ☒ Commercial ☒ Non-Commercial procurements.)

(a) Definition. "Arms, ammunition, and explosives (AA&E)," as used in this clause, means those items within the scope (chapter 1, paragraph B) of DoD 5100.76-M, Physical Security of Sensitive Conventional Arms, Ammunition, and Explosives.

(b) The requirements of DoD 5100.76-M apply to the following items of AA&E being developed, produced, manufactured, or purchased for the Government, or provided to the Contractor as Government-furnished property under this contract:

<b>Nomenclature</b>	<b>National stock number</b>	<b>Sensitivity category</b>

(c) The Contractor shall comply with the requirements of DoD 5100.76-M, as specified in the statement of work. The edition of DoD 5100.76-M in effect on the date of issuance of the solicitation for this contract shall apply.

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(d) The Contractor shall allow representatives of the Defense Security Service (DSS), and representatives of other appropriate offices of the Government, access at all reasonable times into its facilities and those of its subcontractors, for the purpose of performing surveys, inspections, and investigations necessary to review compliance with the physical security standards applicable to this contract.

(e) The Contractor shall notify the cognizant DSS field office of any subcontract involving AA&E within 10 days after award of the subcontract.

(f) The Contractor shall ensure that the requirements of this clause are included in all subcontracts, at every tier -

(1) For the development, production, manufacture, or purchase of AA&E; or

(2) When AA&E will be provided to the subcontractor as Government-furnished property.

(g) Nothing in this clause shall relieve the Contractor of its responsibility for complying with applicable Federal, state, and local laws, ordinances, codes, and regulations (including requirements for obtaining licenses and permits) in connection with the performance of this contract.

(End of clause)