

Flowdown Attachment
FDA-2019.282

Prime Contract Number: FA8750-16-9-9000

Contract No.: RIK-OTA-19-ACIP

DPAS Rating: None

SAS DUNS number: 799855812

The following customer contract requirements apply to this Purchase Order to the extent indicated below and are hereby incorporated into the Purchase Order by reference:

In all clauses listed herein terms shall be revised to suitably identify the party to establish Seller's obligations to Buyer and to the Government; and to enable Buyer to meet its obligations under its prime contract. Without limiting the generality of the foregoing, and except where further clarified or modified below, the term "Government" and equivalent phrases shall mean "Buyer", the term "Contracting Officer" shall mean "Buyer's Purchasing Representative", the term "Contractor" or "Offeror" shall mean "Seller", "Subcontractor" shall mean "Seller's Subcontractor" under this Purchase Order, and the term "Contract" shall mean this "Purchase Order". For the avoidance of doubt, the words "Government" and "Contracting Officer" do not change: (1) when a right, act, authorization or obligation can be granted or performed only by the Government or the prime contract Contracting Officer or duly authorized representative, such as in FAR 52.227-1 and FAR 52.227-2 and (2) when title to property is to be transferred directly to the Government. Seller shall incorporate into each lower tier contract issued in support of this Purchase Order all applicable FAR and DFARS clauses in accordance with the flow down requirements specified in such clauses.

The following clauses apply to all Purchase Orders, including those for "Commercial Item(s)", as defined in FAR 2.101:

None identified.

In addition to the clauses listed above, the following clauses apply to all Purchase Orders for goods or services not meeting the definition of a "Commercial Item" in FAR 2.101:

None identified.

COMPTROLLER GENERAL ACCESS TO RECORDS (MAY 2015)

(a) The Comptroller General of the United States, in the discretion of the Comptroller General, shall have access to and the right to examine records of any party to this Agreement or any entity that participates in the performance of this Agreement that directly pertain to, and involve transactions relating to, this Agreement.

(b) Excepted from the Comptroller General access requirement is any party to this Agreement or any entity that participates in the performance of this Agreement, or any subordinate element of such party or entity, that, in the year prior to the date of this Agreement, has not entered into any other contract, grant, cooperative agreement, or "other transaction" agreement that provides for audit access to its records by a Government entity.

(c)(1) The right provided to the Comptroller General is limited as provided in subparagraph (b) in the case of a party to this Agreement, any entity that participates in the performance of this Agreement, or a subordinate element of that party or entity if the only cooperative agreements or "other transactions" that the party, entity, or subordinate element entered into with Government entities in the year prior to the date of that agreement are cooperative agreements or transactions that were entered into under 10 U.S.C. 2371, Section 845 of Pub.L. 103-160 (10 U.S.C. 2371 note), or Section 815 of Pub. L. 114-92.

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

(d) This article shall not be construed to require any party or entity, or any subordinate element of such party or entity that participates in the performance of this Agreement, to create or maintain any record that is not otherwise maintained in the ordinary course of business or pursuant to a provision of law.

(e) The Comptroller General shall have access to the records described in this article until three years after the date the final payment is made by the United States under this Agreement.

(f) The Recipient shall flow down this article to any entity that participates in the performance of this Agreement.

EXPORT CONTROL (MAY 2015)

(a) Access to the technology developed under this Agreement by foreign firms, institutions or individuals shall be controlled by the Recipient and the PLP(s) under applicable U.S. export control laws.

(b) Export Control. 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 require an approval, authorization, or license under EO 12470 or the Arms Export Control Act. 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 shall 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., and Sec 2751, et seq.) or the Export Administration Act of 1979, as amended, Title 50, U.S.C., App. 2401 et seq. Violations of these export laws are subject to severe criminal penalties. Disseminate in accordance with provision of DOD Directive 5230.25.

(c) Flow down. The Recipient shall include this Article, suitably modified to identify all parties, in all Project-Level Agreements or lower-tier agreements. This Article shall, in turn, be included in all forms of lower-tier agreements, regardless of tier.

FOREIGN ACCESS TO TECHNOLOGY (MAY 2015)

(a) Definitions

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

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

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

(b) General. The Parties agree that research findings and technology developments arising under this Agreement may constitute a significant enhancement to the national defense, and to the economic vitality of the United States. Nothing contained in this article is intended to change or supersede the provisions of the International Traffic in Arms Regulation (22 CFR pt. 120 et seq), the DOD Industrial Security Regulation (DOD 5220.22-R) and the Department of Commerce Export Regulation (15 CFR pt. 730 et seq). In this context, the interests of the United States Government are served by both acquiring commercial technology produced by commercial means in a global economy by having Government employees and Government contractors apply data and technology developed under this Agreement strictly for Government purposes.

(c) Restrictions on Sale or Transfer of Technology to Foreign Firms or Institutions.

(1) In order to promote the national security interests of the United States and to effectuate the policies that underlie the regulations cited above, the procedures stated in subparagraphs (c)(2), (c)(3) and (c)(4) below shall apply to any transfer of Technology. For purposes of this paragraph, a transfer includes a sale of the company, and sales or licensing of Technology. Transfers do not include: (i) sales of products or components, or (ii) licenses of software or documentation related to sales of products or components, or (iii) transfer to foreign subsidiaries of the Recipient (Recipient participants) for purposes related to this Agreement, or (iv) transfer which provides access to Technology to a foreign firm or institution which is an approved source of supply or source for the conduct of research under this Agreement, provided that such transfer shall be limited to that necessary to allow the firm or institution to perform its approved role under this Agreement.

(2) The Recipient shall provide timely notice to the Government of any proposed transfer from the Recipient, Subrecipients, Recipient member entity, or PLPs of Technology developed under this Agreement to foreign firms or institutions. If the Government determines that the transfer may have adverse consequences to the national security interests of the United States, the Recipient, Project-Level Performers, and the Government shall jointly endeavor to find alternatives to the proposed transfer which obviate or mitigate potential adverse consequences of the transfer but which provide substantially equivalent benefits to the Recipient.

(3) In any event, the Recipient shall provide written notice to the Agreements Officer (AO) and AFRL AOTR of any proposed transfer to a foreign firm or institution at least 60 days prior to the proposed date of transfer. Such notice shall cite this article and shall state specifically what is to be transferred and the general terms of the transfer. Within 30 days of receipt of the Recipient's written notification, the Agreements Officer shall advise the Recipient whether it consents to the proposed transfer. In cases where the Government does not concur or, if 60 days after receipt the Government has provided no decision, the Recipient may utilize the procedures under Article 5.010, Claims, Disputes and Appeals. No transfer shall take place until a decision is rendered.

(4) Except as provided in subparagraph (c)(1) above and in the event the transfer of Technology to foreign firms or institutions is not approved by the Government, but the transfer is made nonetheless, the Recipient shall (a) refund to the Government the funds paid for the development of the technology and (b) the Government shall have a non-exclusive, nontransferable, irrevocable, paid-up license to practice or have practiced on behalf of the United States the Technology throughout the world for Government and any and all other purposes, particularly to effectuate the intent of this Agreement. Upon request of the Government, the Recipient shall provide written confirmation of such licenses.

(d) Lower Tier Agreements. The Recipient shall include this Article, suitably modified to identify the parties, in all Sub-agreements, or lower tier agreements, regardless of tier, for experimental, development, or research work.

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

INTELLECTUAL PROPERTY (DEC 2015)

(a) Definitions. As used in this Article-

"Background Invention" means any invention that is not a Foreground Invention.

"Foreground Invention" means any invention that was conceived or first actually reduced to practice in the performance of this OTP or a Project-Level Agreement.

"Form, fit, and function data" means information related to items, components, or processes (including software) that are sufficient to enable physical and functional interchangeability, to include information identifying source, size, configuration, mating and attachment characteristics, functional characteristics (including interfaces), performance requirements, and qualification requirements.

"Derivative Works" means any work, including, but not limited to, Software (whether in Source or Object form), that is based on (or derived from) the Work and for which the editorial revisions, annotations, elaborations, or other modifications represent, as a whole, an original work of authorship. For the purposes of this Agreement, Derivative Works shall not include works that remain separable from, or merely link (or bind by name) to the interfaces of, the Work and Derivative Works thereof.

"Government Purpose" means any activity in which the United States Government is a party, including cooperative agreements with international or multinational defense organizations, or sales or transfers by the Government to foreign governments or international organizations, and includes competitive procurements and the activities of third parties carried out on the Government's behalf. Government Purpose includes additional Other Purposes when negotiated by the Parties and memorialized in writing as part of a Project-Level Agreement.

"Improvements" means all developments or modifications, to include derivative works, made in the performance of a Project-Level Agreement to any , , Intellectual Property ,whether registered or unregistered, existing at any time prior to execution of this OTP or, for R&D Stage work, prior to execution of the relevant Project-Level Agreement and any associated subcontract. Improvements may be patentable or unpatentable, and if patentable, need not be patented; improvements may also be subject to protection under copyright, mask work, trade secret, unfair competition or other legal principles.

"Intellectual Property" or "IP" means all rights and related priority rights, whether protected, created or arising under the laws of the United States or any other jurisdiction or international convention, arising from or in respect to the following: (a) patents (including utility, design, and plant patents), utility model patents, and patent applications, whether published or unpublished, including all continuations, divisional, continuations-inpart, and provisionals and patents issuing on any of the foregoing, and all reissues, reexaminations, substitutions, renewals and extensions of any of the foregoing ("Patents"); (b) trademarks, service marks, trade names, trade dress, logos, corporate names and other source or business identifiers, together with the goodwill associated with any of the foregoing, and all applications, registrations, renewals and extensions of any of the foregoing ("Marks"); (c) copyrights, works of authorship, and moral rights, and all registrations, applications, renewals, extensions and reversions of any of the foregoing ("Copyrights"); (d) mask works, mask sets, layouts, topographies and other design features with respect to integrated circuits ("ICs" or, singular, "IC"), and all applications and registrations of any of the foregoing ("Mask Works"); (e) confidential and proprietary information, to include trade secrets and non-public discoveries, concepts, ideas, research and development, technology, know-how, formulae, inventions, compositions, processes, techniques, technical data and information, procedures, semiconductor device structures, circuit block libraries, designs (including circuit designs and layouts), drawings, proposals, and specifications, in each case excluding any rights of the foregoing that comprise or are protected by Patents ("Trade Secrets"); and (f) other intellectual property rights arising from or relating to the performance of a Project-Level Agreement, including the right to file for patent protection of any kind on any invention disclosed in an Invention Disclosure.

"Invention" means any invention or discovery that is or may be patentable or otherwise protectable under title 35 of the U.S. Code.

"Object" means any form of Software resulting from mechanical transformation or translation of Source form, including, but not limited to, compiled object code, generated documentation, and conversions to other media types.

"Other Purposes" means any authorized activity agreed to by the Government and the Project-Level Performer as part of the Project-Level Agreement.

"Pre-existing Software and Other Copyrighted Works" means Software and any other copyrighted Work, whether registered or unregistered, subsisting at any time prior to execution of this OTP or, for R&D Stage work, prior to execution of the relevant Project-Level Agreement and any associated subcontract.

"Software" means computer code of any length, intended for any purpose, and in any form, whether source or binary, including documentation and configuration files, any machine readable materials

(including, but not limited to, libraries, source files, header files, and data files), any associated updates or error corrections, and any associated user manuals, programming guides and other documentation.

"Source" means the preferred form for creating Software or making modifications to Software, including but not limited to software source code (whether or not human-readable), documentation source, and configuration files.

"Work" means a work of authorship, including, but not limited to, Software (whether in Source or Object form) made available under license, usually indicated by a copyright notice that is included in or attached to the Work.

(b) Methodology for Allocating Rights in Intellectual Property. All IP furnished, exchanged, invented, used, or otherwise created under this OTP or any Project-Level Agreement shall be subject to all but paragraph (d) below. For any Project-Level Agreement having Research and Development as part of its purpose, paragraph (d) shall also apply. The Parties may negotiate additional terms governing the rights in IP associated with this OTP or a Project-Level Agreement, but such terms shall include, at a minimum, the terms provided by all but paragraphs (d) and (f) of this Article. Project-Level Agreements shall expressly state whether Research and Development is a part of their purpose.

(c) General Terms.

(1) Background Inventions. Each Party to this OTP retains all ownership right, title, and interest in its Background Inventions. Each Party hereby grants to the remaining Parties a non-exclusive, non-transferable, royalty-free, worldwide license to practice or have practiced for or on its behalf any Background Inventions necessary for the performance of this OTP and any Project-Level Agreement solely for the purposes of said performance. Unless expressly agreed to in writing, the Government neither authorizes nor consents to the infringement of any third party Background Inventions for the performance of this OTP or any Project-Level Agreement.

(2) Pre-existing Software and Other Copyrighted Works. Each Party to this OTP retains all copyright ownership right, title, and interest in its Pre-existing Software and Other Copyrighted Works. Each party hereby grants to the remaining Parties a non-exclusive, non-transferable, royalty-free, worldwide license to reproduce, distribute, and create derivative works from said Pre-existing Software, in both Source and Object forms, and Other Copyrighted Works, necessary for the performance of this OTP and any Project-Level Agreement and solely for the purposes of said performance.

(3) Specified Data and Other Itemized Information. The Parties shall have the unrestricted right to disclose, reproduce, distribute, modify, publicly perform and display, and permit others to do so, any data or other information that is: (A) Publicly available or provided by the Parties without restriction; (B) Form, fit, and function data; and (C) Generated or used by the Parties in the performance of this OTP or any Project-Level Agreement unless expressly agreed otherwise in writing and so long as the information is not restricted by federal law.

(4) Third-Party Intellectual Property. Unless expressly agreed to in writing, the Government neither authorizes nor consents to the infringement of any third party intellectual property for the performance of this OTP or any Project-Level Agreement. Recipient and Project-Level Performers agree that they have or timely will obtain for themselves, the Government, and other necessary Parties, sufficient legal rights (and sub-licensing rights, if needed) to any Intellectual Property owned by a Third-Party and necessary for the performance of this OTP or any Project-Level Agreement.

(d) Additional Terms Associated with Research and Development.

(1) Foreground Inventions. Ownership to Foreground Inventions shall be determined by U.S. patent law.

(A) License in Foreground Inventions. Recipient and Project-Level Performer, whichever the case may be, hereby grant, to the Government, a nonexclusive, nontransferable, irrevocable, paid-up license to practice, or have practiced on its behalf, all Foreground Inventions throughout the world.

Performer further agree:

(i) Reporting of Foreground Inventions. Recipient and Project-Level

(a) To report any Foreground Inventions to the Government within a reasonable time of them becoming known (e.g., generally within 60 days) via written submission to the Office of the Staff Judge Advocate, AFRL/RIJ, 26 Electronic Parkway, Rome, NY 13441, AFRL.RIJ@us.af.mil; 315.330.2087, with a courtesy copy to the cognizant AFRL AOTR for the Agreements Officer;

(b) To cooperate and execute all documents that are necessary for securing and recording the Government's interests therein; and

(c) To notify the Government of whether the Recipient and/or Project-Level Performer will retain ownership of the same.

(ii) Report Contents. Foreground Invention reports shall include, at a minimum, the following information:

(a) The inventor(s) names and the Project-Level Agreement under which the invention was made; invention; and (b) Sufficient technical detail to convey a clear understanding of the (c) Any publication, on sale (i.e., sale or offer for 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.

(iii) Dealings with Employees. Recipient and Project-Level Performer agree to take all steps necessary to effectuate the Government's rights under this Article in dealings with employees, to include requiring employees to report Foreground Inventions and to execute all papers for filing patent applications and establishing the Government's rights in Foreground Inventions.

(B) Agreement to Assign. Recipient and Project-Level Performer(s) agree to assign to the Government all rights in a Foreground Invention when the Recipient and all Project-Level Performer(s) decide: (i) Not to elect ownership, (ii) Not to prosecute, or (iii) To discontinue prosecution of a Foreground Invention and to cooperate and execute all documents that are necessary for the filing, prosecution and maintenance of patent applications for any Foreground Inventions. In all such assignments, the assignor shall retain a nonexclusive, nontransferable, irrevocable, paid-up license to practice, or have practiced on its behalf, all Foreground Inventions throughout the world.

(2) Software and Other Copyrighted Works. Ownership to Software and Other Copyrighted Works created in the performance of this OTP or any Project-Level Agreement shall be determined by U.S. copyright law. Recipient and Project-Level Performer(s), whichever the case may be, hereby grant, to the Government, a non-exclusive, non-transferable, royalty-free, worldwide license to reproduce, distribute, and create derivative works from any Software and Other Copyrighted Works created in the performance of this OTP and any Project-Level Agreement and for any Government Purpose. The Parties hereby agree and shall deliver to each of the other Parties of a Project-Level Agreement a copy of all such Software and Other Copyrighted Works (including in Source and Object forms for Software) in one or more formats and at a time to be mutually agreed upon but no later than final payment.

(3) Improvements. Ownership to Improvements shall be determined by U.S. federal law. Recipient and Project-Level Performer(s), whichever the case may be, shall keep the Government informed about all Improvements arising from the performance of a Project-Level Agreement. Recipient and Project-Level Performer(s), whichever the case may be, hereby grant, to the Government an unrestricted right to use, disclose, reproduce, distribute, modify, publicly perform and display, and permit others to do so, any Improvements for any Government Purpose and agree to deliver, in one or more formats and at a time to be mutually agreed upon but no later than final payment, such Improvements when requested by the Government.

(4) Subcontracts. Recipient and Project-Level Performer(s) agree to take all steps necessary to effectuate the Government's rights under this Article, to include incorporating the substance of this Article, in any subcontract for Research and Development purposes and regardless of tier.

(e) Rights in Project-Level Proposals. Rights in Project-Level Proposals shall be governed by the Consortium Management Agreement unless and until said proposals become a part of this OTP or a Project-Level Agreement. In such instances, the terms of this OTP and associated Project-Level Agreement shall control. The Consortium Management Agreement shall dictate how all Project-Level Proposals are to be marked and handled by the Recipient and its members. The Consortium Management Agreement shall also provide for the Government's evaluation of the Proposal and for the Government's rejection of any Proposal not marked in accordance with the Consortium Management Agreement. The Consortium Management Agreement shall allow for the Government to use, duplicate, and disclose a Project-Level Proposal for evaluation purposes and to return or otherwise dispose of the Proposal, in coordination with the Recipient, when evaluations are complete.

(f) Warranty. The Parties hereby agree that all Intellectual Property is provided on an "AS IS" BASIS, WITHOUT WARRANTIES OR CONDITIONS OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OR CONDITIONS OF TITLE, NONINFRINGEMENT,

MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE. Each Party-to include the Government, the Recipient, and all Project-Level Performers-is solely responsible for determining the appropriateness of using, disclosing, reproducing, or redistributing any Intellectual Property and assumes all risk associated therewith, including validity and scope of applicable licenses.

(g) Survival. Any confidentiality provisions associated with this Article shall survive termination or expiration of this OTP and any relevant Project-Level Agreement for a period of five years following the completion of this OTP, without regard to any provision to the contrary elsewhere in this Agreement or associated therewith.

(h) Markings. Recipient and Project Level Performer(s) agree to mark all Intellectual Property with a notice or legend that is acceptable to the Agreements Officer, suitable for the subject matter, and consistent with the rights afforded herein.

P U B L I C A T I O N A N D A C A D E M I C R I G H T S (MAY 2015)

(a) Use of Information. Subject to the provisions of Article 6.050, Disclosure of Information, and Article 6.060, Confidential and/or Proprietary Information, and this Article, the Recipient, Subrecipients, the PLP(s), and the Government shall have the right to publish or otherwise disclose information and/or data developed by the Government and/or the respective PLP(s) under this Agreement and PLAs. The Recipient, the PLP(s), and the Government (and its employees) shall include an appropriate acknowledgement of the sponsorship of the project by the Government and the PLP(s) in such publication or disclosure. The Parties shall have only the right to use, disclose and exploit any such data and Confidential Information or Trade Secrets in accordance with the rights held by them pursuant to this Agreement. Notwithstanding the above, the Parties shall not be deemed authorized by this paragraph alone to disclose any Confidential Information or Trade Secrets of the Government or the Recipient or the PLP(s) or the Recipient's member entities.

(b) Acknowledgement. Parties to this Agreement are responsible for assuring that an acknowledgment of Government support shall appear in any publication of any material based on or developed under this Agreement, whether copyrighted or not, using the following acknowledgement terms: "This material is based on an effort sponsored by the U.S. Government under Other Transaction number FA8750-15-9-0164 between the (insert name of Recipient) and the Government. The U.S. Government is authorized to reproduce and distribute reprints for Governmental purposes notwithstanding any copyright notation thereon."

(c) Disclaimer. Parties to this Agreement 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 Air Force Research Laboratory or the U.S. Government."

(d) Flow Down. The Recipient shall flow down these requirements to the PLP(s) and Subrecipients, at all tiers.

(e) Public Announcements. Any public announcements (including press releases, website postings or other public statements) by any party regarding this Agreement or Project-Level Agreements awarded thereunder shall follow the procedures set forth in this Article.

S E C U R I T Y R E Q U I R E M E N T S (MAY 2015)

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

(b) In the event that a project under this Agreement requires the Recipient or Subrecipient to have access to, or generate, classified information, the Government will generate a Department of Defense Security Classification Specification (DD Form 254) and attach it to this Agreement.

(c) The Recipient shall comply with the DD Form 254, and with - (1) The Security Agreement (DD Form 441), including the National Industrial Security Program Operating Manual (DoD 5220.22-M); and (2) Any revisions to that manual, notice of which has been furnished to the Recipient.

(d) The Recipient agrees to insert terms that conform substantially to the language of this article, including this paragraph (d), in all Subagreements under this Agreement that involve access to classified information.

COMBATING TRAFFICKING IN PERSONS (MAR 2015)

(a) Definitions. As used in this article-

"Agent" means any individual, including a director, an officer, an employee, or an independent contractor, authorized to act on behalf of the organization.

"Coercion" means- (1) Threats of serious harm to or physical restraint against any person; (2) Any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or (3) The abuse or threatened abuse of the legal process.

"Commercial sex act" means any sex act on account of which anything of value is given to or received by any person.

"Commercially available off-the-shelf (COTS) item" means-- (1) Any item of supply (including construction material) that is- (i) A commercial item (defined as "any item, other than real property, that is of a type customarily used by the general public or by non-governmental entities for purposes other than governmental purposes, and-- (A) Has been sold, leased, or licensed to the general public; or, (B) has been offered for sale, lease, or license to the general public"); (ii) Sold in substantial quantities in the commercial marketplace; and (iii) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and (2) Does not include bulk cargo, as defined in 46 U.S.C. 40102(4), such as agricultural products and petroleum products.

"Debt bondage" means the status or condition of a debtor arising from a pledge by the debtor of his or her personal services or of those of a person under his or her control as a security for debt, if the value of those services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined.

"Employee" means either: (1) An individual employed by the Recipient or a Subrecipient who is engaged in the performance of the project or program under this Agreement; or (2) Another person engaged in the performance of the project or program under this Agreement and not compensated by the Recipient including, but not limited to, a volunteer or individual whose services are contributed by a third party as an in-kind contribution toward cost sharing or matching requirements.

"Forced labor" means knowingly providing or obtaining the labor or services of a person; (1) By threats of serious harm to, or physical restraint against, that person or another (2) By means of any scheme, plan, or pattern intended to cause the person to believe that, if the person did not perform such labor or services, that person or another person would suffer serious harm or physical restraint; or (3) By means of the abuse or threatened abuse of law or the legal process.

"Involuntary servitude" includes a condition of servitude induced by means of (1) Any scheme, plan, or pattern intended to cause a person to believe that, if the person did not enter into or continue in such conditions, that person or another person would suffer serious harm or physical restraint; or (2) The abuse or threatened abuse of the legal process.

"Private entity": (1) Means any entity other than a State, local government, Indian tribe, or foreign public entity, as those terms are defined in 2 CFR 175.25. (2) Includes: (i) A nonprofit organization, including any nonprofit institution of higher education, hospital, or tribal organization other than one included in the definition of Indian tribe at 2 CFR 175.25(b).

(ii) A for-profit organization.

"Severe forms of trafficking in persons" means- (1) Sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or (2) The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

"Sex trafficking" means the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act.

"Subagreement" means any agreement entered into by a subrecipient to furnish supplies or services for performance of a prime agreement or a subagreement.

"Subrecipient" means any supplier, distributor, vendor, or firm that furnishes supplies or services to or for a prime recipient or another subrecipient.

"United States" means the 50 States, the District of Columbia, and outlying areas.

(b) Policy. The United States Government has adopted a policy prohibiting trafficking in persons including the trafficking-related activities of this article.

(c) Requirements applicable to a Recipient that is a private entity. The Recipient, the Recipient's employees, Subrecipients, Subrecipients' employees, and their agents under this Agreement, shall not-- this Agreement; (1) Engage in severe forms of trafficking in persons during the period of performance of (2) Procure commercial sex acts during the period of performance of this Agreement; or (3) Use forced labor in the performance of this Agreement or any Subagreements. (4) Destroy, conceal, confiscate, or otherwise deny access by an employee to the employee's identity or immigration documents, such as passports or drivers' licenses, regardless of issuing authority; (5) (i) Use misleading or fraudulent practices during the recruitment of employees or offering of employment, such as failing to disclose, in a format and language accessible to the worker, basic information or making material misrepresentations during the recruitment of employees regarding the key terms and conditions of employment, including wages and fringe benefits, the location of work, the living conditions, housing and associated costs (if employer or agent provided or arranged), any significant cost to be charged to the employee, and, if applicable, the hazardous nature of the work; (ii) Use recruiters that do not comply with local labor laws of the country in which the recruiting takes place; (6) Charge employees recruitment fees; (7) (i) Fail to provide return transportation or pay for the cost of return transportation upon the end of employment-- (A) For an employee who is not a national of the country in which the work is taking place and who was brought into that country for the purpose of working on a U.S. Government agreement, subagreement, contract or subcontract (for portions of agreements or contracts performed outside the United States); or (B) For an employee who is not a United States national and who was brought into the United States for the purpose of working on a U.S. Government agreement, subagreement, contract or subcontract, if the payment of such costs is required under existing temporary worker programs or pursuant to a written agreement with the employee (for portions of agreements or contracts performed inside the United States); except that--employee who is-- (ii) The requirements of paragraphs (c)(7)(i) of this article shall not apply to an chooses to do so; or (A) Legally permitted to remain in the country of employment and who (B) Exempted by an authorized official of the contracting agency from the requirement to provide return transportation or pay for the cost of return transportation; (iii) The requirements of paragraph (c)(7)(i) of this article are modified for a victim of trafficking in persons who is seeking victim services or legal redress in the country of employment, or for a witness in an enforcement action related to trafficking in persons. The Recipient shall provide the return transportation or pay the cost of return transportation in a way that does not obstruct the victim services, legal redress, or witness activity. For example, the Recipient shall not only offer return transportation to a witness at a time when the witness is still needed to testify. This paragraph does not apply when the exemptions at paragraph (c)(7)(ii) of this article apply standards; or (8) Provide or arrange housing that fails to meet the host country housing and safety (9) If required by law, agreement or contract, fail to provide an employment contract, recruitment agreement, or other required work document in writing. Such written work document shall be in a language the employee understands. If the employee must relocate to perform the work, the work document shall be provided to the employee at least five days prior to the employee relocating. The employee's work document shall include, but is not limited to, details about work description, wages, prohibition on charging recruitment fees, work location(s), living accommodations and associated costs, time off, roundtrip transportation arrangements, grievance process, and the content of applicable laws and regulations that prohibit trafficking in persons.

(d) Requirements applicable to a Recipient other than a private entity. The Federal awarding agency may unilaterally terminate this Agreement, without penalty, if a Subrecipient that is a private entity--article; or (1) Is determined to have violated an applicable prohibition in paragraph (c) of this (2) Has an employee who is determined by the agency official authorized to terminate this Agreement to have violated an applicable prohibition in paragraph (c) of this article through conduct that is either-- (i) Associated with performance under this Agreement; or (ii) Imputed to the Subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, "OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," as implemented by 2 CFR 1125.

(e) Requirements applicable to any type of Recipient. (1) The Recipient must inform the Agreements Officer immediately of any information the Recipient receives from any source alleging a violation of a

prohibition in paragraph (c) of this article (f) of this article: (2) The Government's right to terminate unilaterally that is described in paragraphs (d) or (i) Implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. 7104(g)), and (ii) Is in addition to all other remedies for noncompliance that are available to the Government under this Agreement. (3) The Recipient must include the requirements of paragraph (c) of this article in any Subagreement made to a private entity.

(f) The Federal awarding agency may unilaterally terminate this Agreement, without penalty, if the Recipient or a Subrecipient that is a private entity -- (i) Is determined to have violated a prohibition in paragraph (c) of this article; or (ii) Has an employee who is determined by the agency official authorized to terminate the award to have violated a prohibition in paragraph (c) of this article through conduct that is either-- (A) Associated with performance under this Agreement; or (B) Imputed to the Recipient or the Subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, "OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," as implemented by 2 CFR 1125.

(g) Recipient requirements. The Recipient shall- (1) Notify its employees of- (i) The United States Government's policy prohibiting trafficking in persons, described in paragraphs (b) and (c) of this article; and (ii) The actions that will be taken against employees or agents for violations of this policy. Such actions for employees may include, but are not limited to, removal from performance of this Agreement, reduction in benefits, or termination of employment; and (2) Take appropriate action, up to and including termination, against employees, agents, or subrecipients that violate the policy in paragraphs (b), (c) and (d) of this article.

(h) Notification. immediately of- (1) The Recipient shall inform the Agreements Officer and the agency Inspector General (i) Any credible information it receives from any source (including host country law enforcement) that alleges a Recipient employee, Subrecipient, Subrecipient employee, or their agent has engaged in conduct that violates the policy in paragraphs (b), (c) and (d) of this article (see also 18 U.S.C. 1351, Fraud in Foreign Labor Contracting)); and (ii) Any actions taken against a Recipient employee, Subrecipient, Subrecipient employee, or their agent pursuant to this article. (2) If the allegation may be associated with more than one agreement or contract, the Recipient shall inform the Agreements Officer for the agreement or contract with the highest dollar value.

(i) Remedies. In addition to other remedies available to the Government, the Recipient's failure to (ii) comply with the requirements of paragraphs (g), (h), (k), (l), or (m) of this article may result in- (1) Requiring the Recipient to remove a Recipient employee or employees from the performance of the Agreement; (2) Requiring the Recipient to terminate a Subagreement; (3) Suspension of payments under this Agreement until the Recipient has taken appropriate remedial action; Agreement; or (4) Termination of the Agreement, in accordance with the Termination article of this (5) Suspension or debarment.

(j) Mitigating and aggravating factors. When determining remedies, the Agreements Officer may consider the following: (1) Mitigating factors. The Recipient had a Trafficking in Persons compliance plan or an awareness program at the time of the violation, was in compliance with the plan, and has taken appropriate remedial actions for the violation, that may include reparation to victims for such violations.

(2) Aggravating factors. The Recipient failed to abate an alleged violation or enforce the requirements of a compliance plan, when directed by the Agreements Officer to do so.

(k) Full cooperation.

(1) The Recipient shall, at a minimum- (i) Disclose to the agency Inspector General information sufficient to identify the nature and extent of an offense and the individuals responsible for the conduct; (ii) Provide timely and complete responses to Government auditors' and investigators' requests for documents; (iii) Cooperate fully in providing reasonable access to its facilities and staff (both inside and outside the U.S.) to allow contracting agencies and other responsible Federal agencies to conduct audits, investigations, or other actions to ascertain compliance with the Trafficking Victims Protection Act of 2000 (22 U.S.C. chapter 78), E.O. 13627, or any other applicable law or regulation establishing restrictions on trafficking in persons, the procurement of commercial sex acts, or the use of forced labor; and (iv) Protect all employees suspected of being victims of or witnesses to prohibited activities, prior to returning to the country from which the employee was recruited, and shall not prevent or hinder the ability of these employees from cooperating fully with Government authorities.

(2) The requirement for full cooperation does not foreclose any Recipient rights arising in law or the terms of the Agreement. It does not- (i) Require the Recipient to waive its attorney-client privilege or the protections afforded by the attorney work product doctrine; (ii) Require any officer, director, owner, employee, or agent of the Recipient, including a sole proprietor, to waive his or her attorney client privilege or Fifth Amendment rights; or (iii) Restrict the Recipient from- (A) Conducting an internal investigation; or (B) Defending a proceeding or dispute arising under this Agreement or related to a potential or disclosed violation.

(l) Compliance plan.

(1) This paragraph (l) applies to any portion of this Agreement that- (i) Is for supplies, other than commercially available off-the-shelf items, acquired outside the United States, or services to be performed outside the United States; and (ii) Has an estimated value that exceeds \$500,000.

(2) The Recipient shall maintain a compliance plan during the performance of this Agreement that is appropriate- (i) To the size and complexity of this Agreement; and (ii) To the nature and scope of the activities to be performed for the Government, including the number of non-United States citizens expected to be employed and the risk that this Agreement or Subagreement will involve services or supplies susceptible to trafficking in persons following:

(3) Minimum requirements. The compliance plan must include, at a minimum, the (i) An awareness program to inform Recipient employees about the Government's policy prohibiting trafficking-related activities described in paragraphs (b) and (c) of this article, the activities prohibited, and the actions that will be taken against the employee for violations. Additional information about Trafficking in Persons and examples of awareness programs can be found at the Web site for the Department of State's Office to Monitor and Combat Trafficking in Persons at <<http://www.state.gov/j/tip/>>.

(ii) A process for employees to report, without fear of retaliation, activity inconsistent with the policy prohibiting trafficking in persons, including a means to make available to all employees the hotline phone number of the Global Human Trafficking Hotline at 1-844-888-FREE and its email address at help@befree.org <<mailto:help@befree.org>>.

(iii) A recruitment and wage plan that only permits the use of recruitment companies with trained employees, prohibits charging recruitment fees to the employee, and ensures that wages meet applicable host-country legal requirements or explains any variance.

(iv) A housing plan, if the Recipient or Subrecipient intends to provide or arrange housing that ensures that the housing meets host-country housing and safety standards.

(v) Procedures to prevent agents and Subrecipients at any tier and at any dollar value from engaging in trafficking in persons (including activities in paragraphs (b) and (c) of this article) and to monitor, detect, and terminate any agents, subcontracts, or subcontractor employees that have engaged in such activities.

(4) Posting.

(i) The Recipient shall post the relevant contents of the compliance plan, no later than the initiation of performance of this Agreement, at the workplace (unless the work is to be performed in the field or not in a fixed location) and on the Recipient's Web site (if one is maintained). If posting at the workplace or on the Web site is impracticable, the Recipient shall provide the relevant contents of the compliance plan to each worker in writing upon request.

(ii) The Recipient shall provide the compliance plan to the Agreement's Officer (5) Certification. Annually after receiving an award, the Recipient shall submit a certification to the Agreement's Officer that- (i) It has implemented a compliance plan to prevent any prohibited activities identified at paragraph (c) of this article and to monitor, detect, and terminate any agent, Subagreement or Subrecipient employee engaging in prohibited activities; and (ii) After having conducted due diligence, either- (A) To the best of the Recipient's knowledge and belief, neither it nor any of its agents, Subrecipients, or their agents is engaged in any such activities; or (B) If abuses relating to any of the prohibited activities identified in paragraph (c) of this article have been found, the Recipient or Subrecipient has taken the appropriate remedial and referral actions.

(m) Subagreements.

(1) The Recipient shall include the substance of this article, including this paragraph (m), in all Subagreements and in all agreements with agents. The requirements in paragraph (l) of this article apply

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only to any portion of the Subagreement that (A) Is for supplies, other than commercially available off-the-shelf items, acquired outside the United States, or services to be performed outside the United States; and (B) Has an estimated value that exceeds \$500,000. (2) If any Subrecipient is required by this article to submit a certification, the Recipient shall require submission prior to the award of the Subagreement and annually thereafter. The certification shall cover the items in paragraph (l)(5) of this article.