

Release No. 1, dated 7/5/2021

Flowdown Attachment
FDA-2021.0412

Contract No.: C5-21-2001C

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

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.

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SPECIAL CONTRACT REQUIREMENTS:

Definitions:

"Agreements Officer (AO)" is the ACC-NJ warranted Agreements Officer authorized to sign and modify this Agreement, as well as, execute bilateral modifications authorizing Projects on behalf of the Government.

"Agreements Officer Representative (AOR)" is the individual designated by the Government on a per-Project basis to monitor all technical aspects and assist in administration of the specific Project.

"C5" means the Consortium for Command, Control and Communications in Cyberspace that represents industry and academia brought together to enhance the Warfighter's lethality and survivability by leveraging the national industrial and academia research and development bases to advance and expand the nation's military technological superiority in the critical fields of Command, Control and Communications in Cyberspace.

"C5 Member Entity" means the Non-traditional and Traditional Defense Contractors, including small and large businesses, for profit and nonprofit entities, and academic research institutions that are or become signatories to the Consortium Membership Agreement.

"Consortium Management Group, Inc. (CMG)" is the nonprofit, tax-exempt contracting entity engaged to manage and administer the C5 consortium on behalf of C5 member entities.

"OALO" means the OTA and Acquisition Liaison Office, located at the Armaments Research, Development and Engineering Center (ARDEC), created to oversee a consolidation of all Prototype Projects, concentrate on establishing definitive Command, Control and Communications in Cyberspace capabilities, and pursue critical technology to satisfy capability needs. The OALO is also the Program Management Office for this overall effort.

"Other Transaction for Prototype Projects" refers to this type of Other Transaction Agreement (OTA). This type of OTA is authorized by 10 U.S.C. 2371b for prototype projects directly relevant to enhancing the mission effectiveness of military personnel and the supporting platforms, systems, components, or materials proposed to be acquired or developed by the DoD, or to improvement of platforms, systems, components, or materials in use by the armed forces. This type of OTA is treated by DoD as an acquisition instrument, commonly referred to as an "other transaction" for a research prototype project or a Section 2371b "other transaction".

"Project Agreement Holder (PAH)" means the C5 Member Entity(ies) issued a Project Agreement by CMG for the Government-selected Prototype Project to be funded under this Agreement.

ARTICLE VIII: CONFIDENTIAL AND/OR PROPRIETARY INFORMATION

A. Definitions

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“Disclosing Party” means CMG, C5 PAH(s), C5’s Member Entity(ies), or the Government who discloses Confidential and/or Proprietary Information as contemplated by the subsequent paragraphs.

“Receiving Party” means CMG, C5 PAH(s), C5’s Member Entity(ies), or the 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 Paragraph.

“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:

(1) The owner thereof has taken reasonable measures to keep such information secret; and

(2) 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.

B. Exchange of Information: The Government may from time to time disclose Government Confidential and/or Proprietary Information to CMG for use by C5 Member Entity(ies) or C5 PAH(s) in connection with particular Prototype Projects, and CMG, C5’s Member Entity(ies) or C5’s PAH(s) may from time to time disclose information that is Confidential and/or Proprietary Information to the Government in connection with a White Paper, Project Proposal, TDL, Project Agreement or performance thereunder.

C. 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 specified Project efforts and the licenses granted in Article X - Patent Rights, and Article XI - Data Rights and Copyrights. However, the duty to protect such Confidential and/or Proprietary Information shall not extend to materials or information that:

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

(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.

D. Return of Confidential and/or Proprietary Information: Upon the request of CMG, the Government shall promptly return all copies and other tangible manifestations of the Confidential and/or Proprietary Information disclosed to the Government by CMG or C5 PAHs or C5 Member Entities. Upon request by the Government, CMG shall promptly return all copies and other tangible manifestations of the Confidential and/or Proprietary Information disclosed by the Government to CMG or C5 PAHs or C5 Member Entities. 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.

E. Term: The obligations of the Receiving Party under this Article shall continue for a period of three (3) years after the expiration or termination of this Agreement.

F. The Government and CMG shall flow down the requirements of this Article to their respective personnel, C5 Member Entities, agents and C5 PAH(s) (including employees and subcontractors) at all levels, receiving such Confidential and/or Proprietary Information under this OTA.

ARTICLE IX: PUBLICATION AND ACADEMIC RIGHTS

A. Use of Information

Subject to the provisions of Article VIII - Confidential and/or Proprietary Information, and this Article, CMG, C5 PAH(s), and the Government shall have the right to publish or otherwise disclose

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information and/or data developed by the Government and/or the respective C5 PAH(s) under the Prototype Projects. The Parties 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 Agreement. Notwithstanding the above, the Parties shall not be deemed authorized by this paragraph alone to disclose any Confidential and/or Proprietary Information of the Government, CMG, C5 PAH(s), or C5 Member Entities.

B. Publication or Public Disclosure of Information

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

(a) At least forty-five (45) days prior to the scheduled release date, CMG (on behalf of C5 PAH(s)) shall submit to the OALO two (2) copies of the information to be released, using ARDEC Form 3002f – Clearance of Technical Information for Public Release.

The OALO and Picatinny Arsenal Public Affairs Office are hereby designated as the approval authorities for the AO for such releases.

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

“Effort sponsored by the U.S. Government under Other Transaction number W15QKN-17-9-5555 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.”

(c) The 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 U.S. Government.”

CMG shall flow down these requirements to C5’s PAH(s), at all tiers.

(2) Notices

To avoid disclosure of Confidential and/or Proprietary Information belonging to C5 Member Entity(ies) or C5 PAH(s) and/or the Government and the loss of patent rights as a result of premature public disclosure of patentable information, CMG agrees to require that any C5 PAH that is proposing to publish or disclose such information shall provide advance notice to CMG and identify such other parties that may have an interest in such Confidential and/or Proprietary Information. If the Government is proposing to publish or disclose such information, the Government shall provide notice to CMG at least fifty-five (55) calendar days prior to publication or disclosure, identifying such other parties that may have an interest in the information. CMG shall notify such parties at least forty-five (45) calendar days prior to C5 PAH submission for publication or

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disclosure by the publishing party, together with any and all materials intended for publication or disclosure relating to technical reports, data, or information developed during the term of and pursuant to this Agreement. The notified parties must advise CMG of any objection to disclosure within this forty-five (45) day period, or else the C5 PAH publishing party shall be deemed authorized to make such disclosure, as long as the publishing party has complied with the other provisions of this Article as well as Article VIII - Confidential and/or Proprietary Information.

(3) Filing of Patent Applications

During the course of the forty-five (45) calendar day period discussed above, CMG, on behalf of any C5 Member Entity to whom such Confidential and/or Proprietary Information belongs, shall provide notice to the AO as to whether the Member Entity desires that a patent application be filed on any invention disclosed in such materials. In the event that a C5 Member Entity to whom such Confidential and/or Proprietary Information belongs desires that such a patent application be filed, CMG (and through it, C5 PAH(s)) or the Government proposing to publish or disclose such materials agrees to withhold publication and disclosure of such materials until the occurrence of the first of the following:

(a) Filing of a patent application covering such invention, or

(b) Written agreement, from the AO and CMG (on behalf of C5 Member Entity to whom such Confidential and/or Proprietary Information belongs) that no patentable invention is disclosed in such materials.

Further, during the course of any such forty-five (45) calendar day period, CMG shall notify the AO if there is any C5 Member Entity that 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 Government and CMG, on behalf of C5 PAH proposing the publication or disclosure of such materials, agree to remove from the proposed publication or disclosure all such Confidential and/or Proprietary Information so identified by CMG.

(4) Public Announcements

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

ARTICLE X: PATENT RIGHTS

A. 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.

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"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 of a C5 PAH conceived or first actually reduced to practice in the performance of work under project Agreement.

"Background Invention" means any invention made by a C5 Member Entity(ies) or C5 PAH(s) (or their subcontractors of any tier) prior to performance of the project Agreement or outside the scope of work performed under the project Agreement.

B. Allocation of Principal Rights

The C5 PAH(s) shall retain the entire right, title and interest throughout the world to each subject invention consistent with the provisions of this Article, and 35 U.S.C § 202. With respect to any subject invention in which C5 PAH(s) retains title, the 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. C5 PAH(s) may elect to provide full or partial rights that it has retained to other parties.

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

1. CMG, on behalf of C5 PAH(s), shall disclose each subject invention to the Government within four (4) months after the inventor discloses it in writing to his company personnel responsible for patent matters. The disclosure to the Government shall be in the form of a written report and shall identify the project 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.

2. If the C5 PAH determines that it does not intend to retain title to any such invention, CMG shall notify the AO, in writing, within nine (9) months of disclosure to ACC-NJ. 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 ACC-NJ to a date that is no more than six (6) months prior to the end of the Project.

3. CMG shall require C5 PAH(s) to 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. C5 PAH(s) may elect to file patent applications in additional

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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 CMG on behalf of C5 PAH(s), a request for extension of the time for disclosure election and filing under Paragraph C of this Article, may be approved by ACC-NJ, and ACCNJ's approval shall not be unreasonably withheld.

D. Conditions When the Government May Obtain Title

Upon the AO's written request, CMG shall obtain from the C5 PAH(s) and convey to the Government title to any subject invention under any of the following conditions:

1. If the C5 PAH fails to disclose or elects not to retain title to the subject invention within the times specified in Paragraph C of this Article; provided, that the Government may only request title within three (3) years after learning of the failure of the C5 PAH to disclose or elect within the specified times.

2. In those countries in which the C5 PAH fails to file patent applications within the times specified in Paragraph C of this Article; provided, that if the C5 PAH has filed a patent application in a country after the times specified in Paragraph C of this Article, but prior to its receipt of the written request by the Government through CMG, the C5 PAH shall continue to retain title in that country; or

3. In any country in which the C5 PAH 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.

E. Minimum Rights to the C5 PAH(s) and Protection of the C5 PAH(s) Right to File

The Parties agree that:

1. The C5 PAH shall retain a non-exclusive, royalty-free license throughout the world in each subject invention to which the Government obtains title. The C5 PAH's license extends to the domestic (including Canada) subsidiaries and affiliates, if any, of the C5 PAH and includes the right to grant licenses of the same scope to the extent that the C5 PAH was legally obligated to do so at the time the Project under the Agreement was funded. The license is transferable only with the approval of the Government, except when transferred to the successor of that part of the C5 PAH's business to which the invention pertains. Government approval for license transfer shall not be unreasonably withheld.

2. The C5 PAH's domestic license may be revoked or modified by the Government to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted consistent with appropriate provisions at 37 CFR Part 404. The C5 PAH's license shall not be revoked or modified in that field of use or in the geographical

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areas in which the C5 PAH has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The C5 PAH's license in any foreign country may be revoked or modified at the discretion of the Government to the extent the C5 PAH, its licensees, or its subsidiaries or affiliates have failed to achieve practical application in that foreign country.

3. Before revocation or modification of the C5 PAH's license, the Government shall furnish CMG, and CMG shall forward to the C5 PAH, a written notice of the Government's intention to revoke or modify the license, and CMG, on behalf of the C5 PAH, shall be allowed thirty (30) calendar days (or such other time as may be authorized for good cause shown) after the notice to show cause why the license should not be revoked or modified.

F. Action to Protect the Government's Interest

1. CMG agrees to require inventing C5 PAH(s) to execute or have executed and promptly deliver to the Government all instruments necessary to (i) establish or confirm the rights the Government has throughout the world in those subject inventions to which the C5 PAH elects to retain title, and (ii) convey title to the Government when requested under Paragraph D of this Article, and to enable the Government to obtain patent protection throughout the world in that subject invention.

2. CMG agrees to require, by written agreement, that employees of the C5 PAH(s) working on 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 CMG, each subject invention made under this Agreement in order that CMG, on behalf of the C5 PAH, can comply with the disclosure provisions of Paragraph C of this Article, execute all papers necessary to file the patent applications on the subject invention, and establish the Government's rights in the subject invention. CMG shall direct the C5 PAH(s) to 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. CMG shall notify the Government of any C5 PAH's 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 C5 PAH 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. W15QKN-17-9-5555 awarded by the ACC-NJ to the Consortium Management Group, Inc. The Government has certain rights in the invention."

G. Lower-Tier Agreements

CMG shall include this Article X - Patent Rights, suitably modified to identify the parties, in all Project Agreements or lower-tier agreements, regardless of tier, for experimental, development or research work.

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H. Reporting on Utilization of Subject Inventions

CMG agrees to submit, during the term of this Agreement, 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 C5 PAH(s) 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 C5 PAH(s) and such other data and information as the Government may reasonably specify. CMG also agrees to provide additional reports as may be requested by the Government in connection with any march-in proceedings undertaken by the Government in accordance with Paragraph J of this Article. Consistent with 35 U.S.C. § 205, the Government agrees it shall not disclose such information to persons outside the Government without the permission of CMG, on behalf of the C5 PAH(s).

I. Preference for American Industry

Notwithstanding any other provision of this Article, CMG agrees that it shall require C5 PAHs 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 Government upon a showing by CMG, on behalf of C5 PAH, 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.

J. March-in Rights

CMG agrees that, with respect to any subject invention in which the C5 PAH has retained title, the Government has the right to require C5 PAH (through CMG) to obtain and grant a non-exclusive license to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if C5 PAH (through CMG) refuses such a request, the Government has the right to grant such a license itself if the Government determines that:

1. Such action is necessary because the C5 PAH, 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 C5 PAH, assignee, or their licensees;
3. Such action is necessary to meet requirements for public use and such requirements are not reasonably satisfied by the C5 PAH, assignee, or licensees; or
4. Such action is necessary because the agreement required by Paragraph (I) of this Article, 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 the breach of such agreement.

The Government shall notify CMG as soon as practicable, but no later than five (5) calendar days following the exercise of any rights under this Paragraph J.

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K. Opportunity to Cure

Certain provisions of this Article provide that the Government may gain title or a license to a subject invention by reason of CMG's action, or failure to act, within the times required by this Article. Prior to claiming such rights (including any rights under Paragraph J of this Article), the Government will give written notice to CMG of the Government's intent, and afford CMG, on behalf of C5 PAH, 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. CMG, on behalf of C5 PAH, 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.

L. Background Inventions

In no event shall the provisions set forth in this Article apply to any Background Inventions or Patents. C5 Member Entities, C5 PAHs or their subcontractors shall retain the entire right, title, and interest throughout the world to each such Background Invention and Patent that each Party has brought through CMG to the Project issued under this Agreement, and the Government shall not have any rights under this Agreement to such Background Inventions and Patents. Projects to be funded under this Agreement 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.

M. Survival Rights

Provisions of this Article shall survive termination of this Agreement under Article II - Term.

ARTICLE XI: DATA RIGHTS AND COPYRIGHTS

A. Definitions

1. "Commercial Computer Software" as used in the Article is defined in DFARS 252-227-7014(a)(1) (Jun 1995).
2. "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.
3. "Computer Data Base" as used in this Agreement/PA, means a collection of data recorded in a form capable of being processed by a computer. The term does not include computer software.
4. "Computer program" as used in this Agreement/PA, 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.
5. "Computer software" as used in this Agreement/PA, means computer programs, source code, source code listings, object code listings, design details, algorithms, processes, flow charts, formulae

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and related material that would enable the software to be reproduced, recreated or recompiled. Computer software does not include computer data bases or computer software documentation.

6. "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.

7. "Data" as used in this Article of this Agreement/PA, means computer software, computer software documentation, form, fit and function data, and technical data as defined in this Article.

8. "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.

9. "Government purpose rights" means the rights to use, modify, duplicate or disclose the "Data" licensed with such rights under this Agreement 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.

10. "Limited rights" as used in this Article of this Agreement/PA, is as defined in DFARS 252.227-7013(a)(14).

11. "Restricted rights" as used in this Article of this Agreement/PA, is as defined in DFARS 252.227-7014(a)(15).

12. "Specially Negotiated License Rights" are those rights to Data that have been specifically negotiated between the Government and the PAH.

13. "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.

14. "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 PAH products. The PAH retains all rights to Category A Data.

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2. Category B is any Data developed under this Agreement, using Government funds, which cannot be disclosed without compromising the Category A data.

3. Category C is any PAH developed Data, excluding Category A and B data, developed during the performance of work under this Agreement.

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

Any Data developed outside of this Agreement/PA 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 Agreement/PA.

C. Allocation of Principal Rights

1. The parties agree that in consideration for the Government's funding, and in lieu of any Government rights to Category A, B or D data (except as contained in paragraph 4 below), the PAH intends to reduce to practical application materials and processes developed under this Agreement/PA.

2. No deliveries to the Government of Category A and B data are contemplated or required under this Agreement. 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 PP.

3. The 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 PA.

4. The PAH 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 PP, with such rights as it is able to negotiate with the software vendor. The PAH 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 PP.

5. Data that will be delivered, furnished, or otherwise provided to the Government under this Agreement/PA, in which the Government has previously obtained rights, shall be delivered, furnished, or provided with the preexisting 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.

Notwithstanding the terms in this Article, differing rights in data may be negotiated among the Parties to each individual PA on a case-by-case basis.

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D. Identification of Principal Rights. The allocation of principal rights shall be identified in each PP, using the categories list format provided below:

TYPE-PROPERTY NUMBER-RIGHTS ASSERTION

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: Any Data delivered under this Agreement/PA shall be marked with the following legend:

“This data is being delivered as Category (insert category) Data, as defined in Agreement W15QKN-17-9-5555. Use, duplication, or disclosure is subject to the restrictions as stated in Agreement W15QKN-17-9-5555 between the (insert PAH name) and the Government.”

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

F. Prior Technology

1. In the event it is necessary for the PAH to furnish the Government with Data which existed prior to, or was produced outside of this Agreement/PA, 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 Agreement/PA. Data protection will include proprietary markings and handling, and the signing of nondisclosure agreements by such Government Contractors or contract employees. The PAH shall not be obligated to provide Data that existed prior to, or was developed outside of this Agreement/PA to the Government. Upon completion of activities under this Agreement/PA, such Data will be disposed of as requested by the PAH.

2. Oral and Visual Information: If information which the PAH 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 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, PAH shall provide additional detail at the Government's request, subject to restrictions on use and disclosure.

3. Disclaimer of Liability: Notwithstanding the above, the Government shall not be restricted in, nor incur any liability for, the disclosure and use of:

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(a) Data not identified with a suitable notice or legend as set forth in this Article; nor

(b) 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 Government or is generated by the Government independent of carrying out responsibilities under this Agreement/PA, is rightfully received from a third party without restriction, or is included in Data which the PAH has furnished, or is required to furnish to the Government without restriction on disclosure and use.

Notwithstanding F.3.(a) of this Article above, if the PAH 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 F.3(b) of this Article above.

G. Copyright

The PAH reserves the right to protect by copyright works developed under this Agreement/PA. All such copyrights will be in the name of the PAH or the author, as determined by PAH policies. The PAH 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 Agreement/PA to which it owns the copyright, and to authorize others to do so.

H. Lower Tier Agreements

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

I. Survival Rights

Provisions of this Article shall survive termination of this Agreement/PA.

ARTICLE XII: EXPORT CONTROL

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.

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B. Flowdown

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

ARTICLE XV: OPSEC & SECURITY

A. Security Requirements

1. The security level for this agreement is UNCLASSIFIED. CMG provides administrative services only. CMG is the Consortium Management firm for C5 on the OTA. CMG does not receive, generate or store any classified information or material at their location.

2. Work performed by a PAH under a Project Agreement 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 PAH and their employees who work on such Project Agreements shall comply with (1) the Security Agreement (DD Form 441), including the National Industrial Security Program Operation Manual (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 agreement, the parties may determine that information developed by the PAH and/or the Government pursuant to this agreement shall be treated as classified. Such information shall be classified in accordance with DOD 5220.22M.

3. Each Project Agreement Scope of Work will be provided by the Agreement Officer Representative (AOR) to the AOR industrial security office prior to award. The AOR industrial security office will provide the Security Classification Specification (DD form 254) for the Project Agreement. US Army ARDEC Intelligence and Technology Protection Office (I&TPO) will review Project Agreements where ARDEC is the AOR prior to award and will issue a Security Classification Specification (DD form 254).

4. Any PAH performing on a classified agreement shall obtain and maintain a Facility Clearance from the Defense Security Service for the life of the AGREEMENT. The PAH 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 PAH shall issue all subcontract Security Classification Specifications (DD Form 254) to lower tier awards.

6. Any PAH performing on a classified agreement shall have a Non-Disclosure Agreement (SF 312) signed by all PAH employees working under this agreement and returned to the AOR. The contractor shall not release any information or data without the approval of the Government.

7. PAH personnel shall have the appropriate level of investigation and/or security clearance for each Project Agreement. The PAH shall observe and comply with all security provisions in effect at each selected site. Only U.S. Citizens are authorized to work classified agreements. All PAH

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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 this AGREEMENT. The PAH shall notify the AOR 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. Research and Development under these Project Agreements will be in accordance with the Other Transaction Agreement (OTA) between the United States Army Contracting Command – New Jersey (ACC-NJ) and C5 in care of its consortium management firm, Consortium Management Group, Inc. (CMG.) Within the Project Agreements, sharing of classified information shall be on a need-to-know basis, as required by the Project Agreement.

9. The AO will make the decision and/or final determination as to the disposition of any classified information and/or material held by the contractor at the completion of the agreement. Upon completion or termination, the PAH shall:

- a. Return ALL classified material received or generated under the Project Agreement;
- b. Destroy all classified material; or
- c. Request retention for a specific period of time

10. If a Project Agreement 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 Agreement. Throughout the life of the Project Agreement, 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.

- a. DoDM 5200.01 DoD Information Security Program, 24 Feb 12
- b. DoD 5200.2-R Personnel Security Regulation, Jan 87
- c. DoD 5220.22-M National Industrial Security Program, 28 Feb 06
- d. DoDI 5200.01, Information Security Program and Protection of Sensitive Compartmented Information, 21 Apr 2016
- e. DoDM 5400.7-R, DOD Freedom of Information Act Program, 25 Jan 2017
- f. DoDI 2000.12, Antiterrorism Program, 1 Mar 12
- g. DODD 5205.02E, DOD Operations Security (OPSEC) Program, 20 Jun 2012
- h. DODI 5200.39, Critical Program Information (CPI) Identification and Protection Within Research, Development, Test, and Evaluation (RDT&E), 28 May 2015
- i. AR 380-5, Department of the Army Information Security, 29 Sep 2000
- j. AR 380-49, Industrial Security Program, 20 Mar 2013
- k. AR 530-1, Operations Security, 26 Sep 2014
- l. ARDEC Clause 68, Identification and Access Eligibility Requirements of Contractor Employees (requirement is only applicable to contractor employees working on Picatinny Arsenal)

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- m. ARDEC Clause 18, Physical Security Standards for Sensitive Items (Required when AA&E apply)
- n. ARDEC Clause 70, (FOUO) Release of Information Research and Development (reference FAR 2.101)
- o. FAR Clause 4.402, Safeguarding Classified Information Within Industry
- p. FAR Clause 52.204-2, Security Requirements, Aug 1996
- q. SECURITY CLASSIFICATION GUIDES will be identified per each Individual Project Agreement and supplied to the PAH by the AOR as needed.

11. For all Project Agreements, the following statement shall be flowed to the C5 PAHs unless otherwise stated within the Project Agreements:

a. Anti-Terrorism Level I Training. This provision is for PAH employees with an area of performance within an Army controlled installation, facility or area. All PAH 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 the Project, whichever is applicable. PAH(s) shall submit certificates of completion for each affected employee and PAH employee to the AOR or to the AO. 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 PAH employees with an area of performance within a DoD controlled installation, facility or area. PAH employees shall comply with applicable installation, facility and area commander installation/facility access and local security policies and procedures (provided by government representative). The PAH 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 PAH 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 Government may require changes in PAH security matters or processes.

c. Anti-Terrorism Awareness Training for PAH Personnel Traveling Overseas. This standard language text requires U.S.-based PAH 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 Antiterrorism Officer (ATO) being the local point of contact.

d. iWATCH Training. This standard language text is for PAH employees with an area of performance within a DoD controlled installation, facility or area. PAH(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 a Project Agreement award and within forty five (45) calendar days of new employees' commencing performance with the results reported to the AOR NLT thirty (30) calendar days after Project completion.

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e. Impact on PAH 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: PAH 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 PAH personnel requiring CAC: Before CAC issuance, the PAH personnel requires, at a minimum, a favorably adjudicated National Agency Check with Inquiries (NACI) or an equivalent or higher investigation in accordance with Army Directive 2014-05. The PAH 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 PAH personnel that do not require CAC, but require access to a DoD facility or installation: PAH 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 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 contract start date or effective date of incorporation of this requirement into the contract, whichever applies, and then annually thereafter. The contractor shall submit documentation of completion for each affected contractor employee and subcontractor employee to the AOR within fourteen (14) calendar days after completion of training by all employees and subcontractor personnel." Training can be executed by a local CI agent, online 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. PAH Employees Who Require Access to Government Information Systems: All PAH 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 PAH shall develop an OPSEC Standing Operating Procedure (SOP)/Plan within ninety (90) calendar days of Project award to be reviewed and approved by the responsible Government OPSEC officer, per AR

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530-1, Operations Security. This plan will be submitted by CMG on behalf of the PAH(s) to the AO 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, PAH shall identify an individual who will be an OPSEC Coordinator. The PAH 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 PAH employees assigned by the PAH(s) to perform under a C5 Project Agreement must complete Level I OPSEC awareness training within thirty (30) calendar days of starting work under the Project. All PAH 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/>.

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 a contractor will undergo a Government OPSEC review prior to release.

n. Information assurance (IA)/information technology (IT) training: All PAH employees must complete the DoD IA awareness training before issuance of network access and annually thereafter. All PAH(s) working IA/IT functions 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 PAH employees supporting IA/IT functions shall be appropriately certified upon Project Agreement award. The baseline certification as stipulated in DoD 8570.01-M must be completed upon Project Agreement award.

p. For PAH 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 PAH 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, predeployment 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 PAH personnel to comply with theater clearance requirements and allows the combatant commander to exercise oversight to ensure the PAH's compliance with combatant commander and subordinate task force commander policies and directives.

r. For Projects requiring the PAH to obtain U.S. Government Common Access Cards (CACs), installation badges, and/or access passes: The PAH shall return all issued U.S. Government CACs,

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installation badges, and/or access passes to the AOR when the project is completed or when the PAH employee no longer requires access to the installation or facility.

s. For Projects That Require Handling or Access to Classified Information: PAH personnel shall comply with FAR 52.204-2, Security Requirements. This clause applies if the Project may require access to information classified "Confidential," "Secret," or "Top Secret," and requires PAHs 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 PAH.

t. For Projects that require access to Potential Critical Program Information (PCPI) / Critical Program Information (CPI): The PAH shall comply with the associated Interim Program Protection Plan (IPPP) / Program Protection Plan (PPP) / or Technology Protection Plan (TPP). The PAH 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.

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): PAH 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 PAH personnel performing classified work under this Project Agreement are required to have valid JPAS visit requests submitted to the Security Management Office (SMO) by their Facility Security Officer (FSO) for each Government location where work is being performed.

12. Flow down for Security Requirements: CMG shall include the aspects of this Article as they pertain to each Project Agreement. Each Project Agreement will include specific security requirements within each SOW and RPP. The requirements delineated within each Project Agreement, in turn, shall be included in all sub-tier subcontracts or other forms of lower-tier agreements, regardless of tier.

B. Safeguarding Covered Defense Information and Cyber Incident Reporting

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(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.

“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

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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 Governmentwide 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 adware.

“Media” means physical devices or writing surfaces including, but is not limited to, magnetic tapes, optical disks, magnetic disks, large-scale integration memory chips, and printouts onto which 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 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.

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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://dx.doi.org/10.6028/NIST.SP.800-171> 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, 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—

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(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 system(s) 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>.

(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

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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

(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.

(j) 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

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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.
