

**CUSTOMER CONTRACT REQUIREMENTS**  
**Kestrel**  
**CUSTOMER CONTRACT MSS-21-0013**

CUSTOMER CONTRACT REQUIREMENTS

The following customer contract requirements apply to this Contract to the extent indicated below. If this Contract is for the procurement of commercial products and/or commercial services under a Government prime contract, as defined in FAR Part 2.101, Section 3 replaces the requirements of Sections 1 and 2 below. Please note, the requirements below are developed in accordance with Buyer's prime contract and are not modified by Buyer for each individual Seller or statement of work. Seller will remain at all times responsible for providing to any government agency, Buyer, or Buyer's customer, evidence of compliance with the requirements herein or that such requirements are not applicable to the extent satisfactory to the requesting party.

**1. FAR Clauses** The following contract clauses are incorporated by reference from the Federal Acquisition Regulation and apply to the extent indicated. In all of the following clauses, "Contractor" and "Offeror" mean Seller.

**52.204-21 Basic Safeguarding of Covered Information Systems** (JUN 2016).

**52.204-25 Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment** (AUG 2020). Paragraph (b) is deleted and replaced with the following: Seller is prohibited from providing Buyer with covered telecommunications equipment or services, or with any equipment, systems, or services that use covered equipment or services regardless of whether that use is in performance of work under a U.S. Government contract. Paragraph (c) is deleted in its entirety. Paragraph (d)(1) is deleted and replaced with the following: "In the event Seller identifies covered telecommunications equipment or services provided to Buyer during contract performance, or Seller is notified of such by a subcontractor at any tier or any other source, Seller shall report the information in paragraph (d)(2) of this clause via email to Buyer's Authorized Procurement Representative, with the required information in the body of the email.

**52.245-1 Government Property** (JAN 2017). This clause applies if Government property is acquired or furnished for contract performance. "Government" shall mean Government throughout except the first time it appears in paragraph (g)(1) when "Government" shall mean the Government or the Buyer.

**2. DoD FAR Supplement Clauses** DoD Contracts. The following contract clauses are incorporated by reference from the Department of Defense Federal Acquisition Regulation Supplement and apply to the extent indicated. In all of the following clauses, "Contractor" and "Offeror" mean Seller except as otherwise noted.

**252.204-7009 Limitations on the Use or Disclosure of Third-Party Contractor Reported Cyber Incident Information** (OCT 2016). This clause applies to contracts for services that include support for the Government's activities related to safeguarding covered defense information and cyber incident reporting, including contracts for commercial items.

**252.227-7013 Rights In Technical Data -- Noncommercial Items** (FEB 2014). This clause applies when technical data for noncommercial items, or for commercial items developed in any part at Government expense, is to be obtained from Seller or Seller's subcontractors for delivery to the Government.

**252.227-7014 Rights In Noncommercial Computer Software And Noncommercial Computer Software Documentation** (FEB 2014). This clause applies when noncommercial computer software or computer software documentation is to be obtained from Seller or Seller's subcontractors for delivery to the Government.

**252.227-7018 Rights in Noncommercial Technical Data and Computer Software -- Small Business Innovative Research (SBIR) Program** (FEB 2014). This clause applies only if the delivery of noncommercial technical data or computer software to the Government is required under Buyer's prime contract.

**252.227-7025 Limitations on the Use or Disclosure of Government-Furnished Information Marked**

**With Restrictive Legends** (MAY 2013). In paragraph (c)(1), the term "Government" shall mean "Government and Buyer".

**3. Prime Contract Special Provisions** The following prime contract special provisions apply to this purchase order

**MSS-21-0013 Special Provisions .**

A. Comptroller General Access to Information for Records Examination in support of Audits

1. Comptroller General Access to Information for Records Examination in support of Audits

The Government officer or representative and the Comptroller General of the United States, in its discretion, 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, the Agreement for a period of three (3) years after final payment is made. This requirement shall not apply with respect to any party to this Agreement or any entity that participates in the performance of the Agreement, or any subordinate element of such party or entity, that, in the year prior to the date of the Agreement, has not entered into any other contract, grant, cooperative agreement, or "Other Transaction" agreement that provides for audit access to its records by a government entity in the year prior to the date of this Agreement. This paragraph only applies to any record that is created or maintained in the ordinary course of business or pursuant to a provision of law. The terms of this paragraph shall be included in all sub- agreements/contracts to this Agreement.

B. Applicable Laws to this Agreement

1. The SELLER represents and warrants that the SELLER is made aware of and will comply with these statutes below as applicable law for performance under any Federally funded activity. These statutes below are specifically enumerated to clearly state to all Parties which laws fully apply to all performers and their sub-performers.

Laws applicable to receive Federal Funds

- a. Title V, Whistleblower Protection Act of 1989
- b. Environmental, Safety, and Health Responsibility: The SELLER shall comply with all applicable Federal, State, and local environmental, safety, and health laws and regulations. The SELLER is responsible for assuring all Government Facilities procedures are followed and necessary permits for performing contracts under this Agreement are in place before performing activities requiring such permits. Any cost resulting from the failure of the SELLER to perform this duty shall be borne by the SELLER.

Laws Restricting Certain Activities

- c. 22 U.S.C. Chapter 78, Combating Trafficking in Persons
- d. 48 CFR 52.204-25, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment (Aug 2020)
- e. 49 U.S.C. § 41102 & 49 U.S.C. § 40118, Government-financed air transportation
- f. 42 U.S.C. §2000-d, Civil Rights Act of 1969
- g. 41 U.S.C Chapter 21, Procurement Ethics
- h. U.S. Antitrust Laws

C. Cybersecurity and Information Protection

1. The SELLER shall provide adequate security on all covered contractor information systems. To provide adequate security, the SELLER shall implement, at a minimum, the following safeguarding and information security protections as outlined in 48 CFR 52.204-21 "Basic Safeguarding of Covered Contractor Information Systems:
  1. Limit information access to authorized users, processes acting on behalf of authorized users, or devices (including other information systems).
  2. Limit information system access to the types of transactions and functions that authorized

users are permitted to execute.

3. Verify and control/limit connections to and use of external information systems.
4. Control information posted or processed on publicly accessible information systems
5. Identify information system users, processes acting on behalf of users, and devices
6. Authenticate (or verify) the identities of those users, processes, and devices, as a prerequisite to allowing access to organizational information systems.
7. Sanitize or destroy information system media containing Federal Contract Information before disposal or release for reuse
8. Limit physical access to organizational information systems, equipment, and the respective operating environments to authorized individuals.
9. Escort visitors and monitor visitor activity; maintain audit logs or physical access; and control and manage physical access devices.
10. Monitor, control, and protect organizational communications (i.e., information transmitted or received by organizational information systems) at the external boundaries and key internal boundaries of the information systems.
11. Implement subnetworks for publicly accessible system components that are physically or logically separated from internal networks.
12. Identify, report, and correct information and information system flaws in a timely manner.
13. Provide protection from malicious code at appropriate locations within organizational information systems.
14. Update malicious code protection mechanisms when new releases are available.
15. Perform periodic scans of the information system and real-time scans of files from external sources as files are downloaded, opened, or executed.

i. The covered SELLER information system shall be subject to the security requirements in National Institute of Standards and Technology (NIST) Special Publication (SP) 800-171, "Protecting Controlled Unclassified Information in Nonfederal Information Systems and Organizations" (available via the internet at <<http://dx.doi.org/10.6028/NIST.SP.800-171>) within 30 days of agreement award, of any security requirements specified by NIST SP 800-171 not implemented at the time of agreement award.

ii. Apply additional information systems security measures when the SELLER reasonably determines that information systems security measures may be required to provide adequate security in a dynamic environment or to accommodate special circumstances (e.g., medical devices) and any individual, isolated, or temporary deficiencies based on an assessed risk or vulnerability.

iii. The SELLER shall notify the BUYER via email within 30 days of agreement award of any security requirements specified by NIST SP 800-171 not implemented at the time of agreement award. The Buyer may then notify Buyer's customer, and the DoD Chief Information Officer (CIO). within 30 days of agreement award of any security requirements specified by NIST SP 800-171 not implemented at the time of agreement award.

1. The SELLER shall submit requests to vary from NIST SP 800-171 in writing to the BUYER, for submission to and consideration by the DoD CIO. The SELLER need not implement any security requirement adjudicated by an authorized representative of the DoD CIO to be nonapplicable or to have an alternative, but equally effective, security measure that may be implemented in its place.
2. If the DoD CIO has previously adjudicated the SELLER's requests indicating that a requirement is not applicable or that an alternative security measure is equally effective, a copy of that approval shall be provided to the BUYER for submission to the Government when requesting its recognition under this agreement.
3. If the SELLER intends to use an external cloud service provider to store, process, or transmit any covered defense information in performance

of this agreement, the SELLER shall require and ensure that the cloud service provider meets security requirements equivalent to those established by the Government for the Federal Risk and Authorization Management Program (FedRAMP) Moderate baseline and that the cloud service provider complies with requirements of this Article for cyber incident reporting, malicious software, media preservation and protection, access to additional information and equipment necessary for forensic analysis, and cyber incident damage assessment.

iv. If the SELLER proposes to use cloud computing services in the performance of the agreement at any level, the SELLER shall obtain approval from the BUYER (via the Government) prior to utilizing cloud computing services.

v. When the SELLER discovers incident that affects a covered contractor information system (including internal or external cloud computing services) or the covered defense information residing therein, or that affects the SELLER's ability to perform the requirements of the agreement that are designated as operationally critical support and identified in the agreement, the SELLER shall-

1. 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 SELLER'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 SELLER's ability to provide operationally critical support; and
2. Rapidly report cyber incidents to DoD at <http://dibnet.dod.mil/>. 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](http://dibnet.dod.mil/). In order to report cyber incidents in accordance with this article, the SELLER or subperformer shall have or acquire a DoD-approved medium assurance certificate to report cyber incidents.
3. For information on obtaining a DoD-approved medium assurance certificate, see <http://iase.disa.mil/pki/eca/Pages/index.aspx>

vi. When the SELLER (or their vendors or subcontractors) discovers and isolate malicious software in connection with a reported cyber incident, submit the malicious software to DoD Cyber Crime Center (DC3) in accordance with instructions provided by DC3 or the BUYER (via the Government). Do not send the malicious software to the BUYER or the Government.

vii. When a SELLER discovers a cyber incident has occurred, the SELLER shall preserve and protect images of all known affected information systems 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.

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

ix. If DoD elects to conduct a damage assessment, the Government will request that the SELLER provide all of the damage assessment information gathered in accordance with paragraph (1.c.) of this clause.

x. The Government shall protect against the unauthorized use or release of information obtained from the SELLER (or derived from information obtained from the SELLER) under this Article that includes SELLER attributional/Proprietary Information. To the maximum extent practicable, the SELLER shall identify and mark attributional/Proprietary Information. In making an authorized release of such information, the Government will implement appropriate procedures to minimize the SELLER 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.

xi. Information that is obtained from the SELLER (or derived from information obtained from the SELLER) under this article 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 contract ("recipient") that is directly supporting Government activities under a contract that includes the clause at DFARS 252.204-7009.

xii. Information that is obtained from the SELLER (or derived from information obtained from the SELLER) under this clause that is created by or for DoD (including the information submitted pursuant to paragraph (f) of this clause) is authorized to be used and released outside of DoD for purposes and activities authorized by paragraph (l) 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.

xiii. The SELLER shall conduct activities under this article in accordance with applicable laws and regulations on the interception, monitoring, access, use, and disclosure of electronic communications and data.

xiv. The safeguarding and cyber incident reporting required by this article in no way abrogates the SELLER's responsibility for other safeguarding or cyber incident reporting pertaining to its unclassified information systems as required by other applicable articles of this agreement, or as a result of other applicable U.S. Government statutory or regulatory requirements.

xv. The SELLER shall include this Article, in subagreements, or agreements for which subperformer performance will involve covered defense information, including subagreements for commercial items, without alteration, except to identify the parties. The SELLER shall determine if the information required for subperformer performance retains its identity as covered defense information and will require protection under this article, and, if necessary, consult with the Government; and require subperformers to notify the prime SELLER (or next higher-tier subperformer) when submitting a request to vary from a NIST SP 800-171 security requirement to the Government, in accordance with paragraph (c)(2) of this clause; and provide the incident report number, automatically assigned by DoD, to the prime SELLER (or next higher-tier subperformer) as soon as practicable, when reporting a cyber incident to DoD as required in paragraph (f) of this Article.

## D. Export Control and Foreign Access to Technology

### 1. General

a. BUYER and SELLER agree that research findings and technology developments arising under this Agreement may constitute a significant enhancement to the national defense, and to the economic vitality of the United States. Accordingly, access to important technology developments under this Agreement by Foreign Firms or Institutions must be carefully controlled.

b. When applicable, the SELLER shall comply with the International Traffic in Arms

Regulation (22 CFR pt. 121 et seq.) the DoD Industrial Security Regulation (DoD 5220.22-R) and the Department of Commerce Export Regulation (15 CFR pt. 770 et seq.).

- c. The Government may require a higher CMMC level determination on a project-by-project basis.
  2. In addition to meeting NISPOM reporting requirements to report changed conditions impacting Facility Security Clearance (FCL) that may result in Foreign Ownership, Control or Influence (FOCI), in the event of such a changed condition the SELLER must also promptly report that information to the BUYER.
  3. This article shall be included in all lower tier agreements with the respective parties suitably identified.
- E. Enabling Support Contractors
  1. The Government has or may enter into contracts with one or more of the following companies, or successor(s), to provide Advisory and Assistance Services (A&AS) or Systems Engineering and Technical Assistance (SETA), or Systems Engineering and Integration (SE&I), under this agreement. Non-Disclosure Agreements (NDAs) shall be executed within thirty (30) days after signature of the Agreement or the award of a contract to a successor of the contractor listed below:
    - a. Tecolote Research, Inc.
  2. During the performance of this Agreement, the SELLER agrees to cooperate with the companies listed above (hereafter referred to as A&AS/SETA/SE&I). Cooperation includes allowing observation of technical activities by appropriate A&AS/SETA/SE&I technical personnel, discussing technical matters related to this Agreement; delivering Data as specified in the Agreement, providing access to SELLER facilities utilized in the performance of this Agreement, responding to invitations from authorized A&AS/SETA/SE&I personnel to attend meetings, and providing access to technical and development planning data. The SELLER shall provide A&AS/SETA/SE&I personnel access to data such as, but not limited to, design and development analyses; test data and results; equipment and process specifications; test and test equipment specifications; procedures, parts and quality control procedures; records and data; manufacturing and assembly procedures; and schedule and milestone data, needed by such personnel in order to perform their required Agreement related support activities.
  3. The SELLER agrees to include in all subagreements (executed with vendors, suppliers, subcontractors) a clause requiring compliance by the subagreement holder and supplier and succeeding levels of subagreement holders and suppliers with the response and access and disclosure provisions of paragraph (2) above, subject to coordination with the BUYER, except for subagreements or subcontracts for commercial items or commercial services.
4. Enabling Aerospace Support
  - a. Under this section "Cost data" is defined as information associated with the programmatic elements of life cycle (concept, development, production, operations, and retirement) of the system/program. As defined, cost data differs from "financial" data, which is defined as information associated with the internal workings of a company or contractor that is not specific to a project or program. The Government has entered into a contract with The Aerospace Corporation, a California nonprofit corporation operating a Federally Funded Research and Development Center (FFRDC), for the services of a technical group that will support the DoD/U.S. Government program office by performing General Systems Engineering and Integration, Technical Review, and/or Technical Support including informing the commander or director of the various Department of Defense ("DoD") organizations it supports and any U.S. Government program office of product or process defects and other relevant information, which, if not disclosed to the U.S. Government, could have adverse effects on the reliability and mission success of a U.S. Government program.
  - b. In the performance of this Agreement, the SELLER agrees to cooperate with The Aerospace Corporation by 1) responding to invitations from authorized U. S. Government personnel to attend meetings; 2) by providing access to technical information and research, development planning data such as, but not limited to, design and development analyses, test data and results, equipment and process specifications, test and test equipment specifications and procedures, parts and quality control procedures, records and data, manufacturing and assembly procedures, and schedule and milestone data, all in their original form or reproduced form and including top-level life cycle cost data, where available; 3) by delivering data as specified in the Contract Data Requirements List; 4) by discussing technical matters relating to this program; 5) by providing access to performer facilities utilized in the performance of this agreement; 6) and by allowing observation of technical activities by appropriate technical personnel of The Aerospace Corporation. The

Aerospace Corporation personnel engaged in GSE&I, TR, and/or TS efforts: (i) are authorized access to all such technical information (including proprietary information) pertaining to this agreement and may discuss and disclose it to the applicable DoD personnel in a program office; (ii) are authorized to discuss and disclose such technical information (including proprietary information) to the commander or director of the various DoD organizations it supports and any U.S. Government personnel in a program office which, if not disclosed to the U.S. Government, could have adverse effects on the reliability and mission success of a U.S. Government program; and (iii) Aerospace shall make the technical information (including proprietary information) available only to its Trustees, officers, employees, contract labor, consultants, and attorneys who have a need to know.

- c. The SELLER further agrees to include in all subagreements (executed with vendors, suppliers, subcontractors) a clause requiring compliance by performers and supplier and succeeding levels of performers and suppliers with the response and access and disclosure provisions, except for commercial items or commercial services.

#### F. Government Furnished Property

SELLER shall incorporate 48 CFR 52.245-1, or the Alternate Government Property Procedures listed below but not both.

SELLERS who have implemented government property procedures that have been reviewed and accepted by a federal contract administration office official may choose the terms of 48 CFR 52.245 that are in affect at the time of Award or use the below Alternate Government Property Procedures.

##### Alternate Government Property Procedures

- a. All Government Furnished Property (GFP) proposed and/or required and shall have documentation that the proposed Government property usage has been approved by the cognizant Administrative Contracting Officer.
- b. The party in possession of GFP shall assume the risk of and be responsible for any loss or destruction of, or damage to, any Government Furnished Property while in its possession or control, with the exception of reasonable wear and tear or reasonable and proper consumption. Unless as otherwise specified, all property shall be returned at the end of the agreement in as good as condition as when received, with the exception of reasonable wear and tear. BUYER, as appropriate, shall obtain explicit written authorization from the Government for any transfer or disposition of Government Furnished Property.
- c. Agreements negotiated on a cost basis may include additional, specific terms regarding title to any/all property acquired by the BUYER.
- d. Unless waived or tailored in writing by the Government Officer, and excepting those items provided to the Government in whole or in part as a deliverable under the terms of the Agreement, title to any item of property valued \$10,000 or less that is acquired by the SELLER under an Award in performance of work under this Agreement shall vest in the SELLER upon acquisition with no further obligation of the Parties unless otherwise determined by the Government Officer.
- e. For the acquisition of any item of property with a value greater than \$10,000 that was not included in the original proposal, prior written approval by the Government shall be required. The SELLER, in concert with the BUYER, must initiate the request for prior written approval from the Government. Title to this property shall also vest in the SELLER upon acquisition. The SELLER shall be responsible for the maintenance, repair, protection, and preservation of all such property at its own expense.
- f. Property acquired pursuant to this clause shall not be considered as in exchange for services in performance of the Agreement but shall be considered a Government contribution to the Agreement.

#### RIGHTS IN DATA, INTELLECTUAL PROPERTY

##### A. Definitions

“Government Purpose Rights” defined as the rights to use, modify, reproduce, release, perform, display or disclose technical data within the Government without restriction; and release or disclose technical data outside the Government and authorize persons to whom release or disclosure has been made to use, modify, reproduce, release, perform, display or disclose that data for United States Government purposes.

“Limited Rights” defined as DFARS 252.227-7013(a)(14) (Feb 2014)

“Restricted Rights” defined as DFARS 252.227-7014(a)(15) (Feb 2014)

“SBIR Data Rights” defined as DFARS 252.227-7018(a)(19) (Feb 2014)

## B. Data Categories

1. Category X (A) is the Data developed and paid for totally by private funds, or the IR&D funds of performer, or its subcontractor. A performer (or its subcontractor) retains all rights to Category X (A) Data. Category X (A) Data shall include, but not be limited to:
  - a. Data or other material provided by the SELLER under this Agreement which was not developed in the performance of work under that agreement, and for which the SELLER retains all rights.
  - b. Any initial Data or technical, marketing, or financial Data provided at the onset of the project by any of the performers. Such Data shall be marked "Category X" ("Category A") and any rights to be provided to the Government for such Data under a specific Agreement shall be as identified in the proposal submitted to the BUYER.
2. Category Y (B) is any Data developed under this Agreement with mixed funding, i.e., development was accomplished partially with costs charged to SELLER's indirect cost pools and/or costs not allocated to SELLER under this Agreement, and partially with Government funding under this Agreement. Any Data developed outside of this Agreement whether or not developed with any 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.
3. Category Z (C) is any Data developed exclusively with Government funds under this Agreement. Research and Development performed was not accomplished exclusively or partially at private expense. Under this category--
  - a. The Government will have Government Purpose Rights in Data developed exclusively with Government funds under an Agreement funded by the Government that is:
    - i. Data pertaining to an item, component, or process which has been or will be developed exclusively with Government funds;
    - ii. Studies, analyses, test data, or similar data produced for this contract, when the study, analysis, test, or similar work was specified as an element of performance;
    - iii. Data created in the performance of this Agreement that does not require the development, manufacture, construction, or production of items, components, or processes;
    - iv. Form, fit, and function data;
    - v. Data necessary for installation, operation, maintenance, or training purposes (other than detailed manufacturing or process data);
    - vi. Corrections or changes to technical data furnished to the Contractor by the Government;
  - b. The Government shall have unlimited rights in Data that is:
    - i. Otherwise publicly available or that has been released or disclosed by SELLER without restrictions on further use, release or disclosure, other than a release or disclosure resulting from the sale, transfer, or other assignment of interest in the Data to another party or the sale or transfer of some or all of a business entity or its assets to another party;
    - ii. Data in which the Government has obtained unlimited rights under another Government contract or as a result of negotiations; or
    - iii. Data furnished to the Government, under this Agreement or any other Government contract or subcontract thereunder, with-
      - A. Government Purpose Rights or limited rights and the restrictive condition(s) has/have expired; or
      - B. Government purpose rights and the SELLER's exclusive right to use such Data for commercial purposes under such contract or subcontract has expired.
  - c. However, any Data developed outside of this Agreement whether or not developed with any 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.
    - i. Exception: Where a traditional defense contractor SELLER in a cost-sharing relationship with



the Government has identified and used new or concurrent IR&D funds on the conduct of an agreement, that contractor grants the Government the same level of Data Rights as negotiated under such agreement, even if those rights are additional to, or greater than those rights normally attributed to works funded by IR&D.

- d. Further, the Government's rights to Commercial Computer Software and Data licensed under a Commercial Computer Software License under this Agreement, and the treatment of Data relating thereto, shall be as set forth in the Commercial Computer Software License.
4. The parties to this Agreement understand and agree that SELLER will stamp all documents in accordance with this Article and that the Freedom of Information Act (FOIA) and Trade Secrets Act (TSA) apply to Data.

#### C. Allocation of Principal Rights

1. The Government shall have no rights to Category X (A) Data
2. The Government shall have immediate Government Purpose Rights to Category Y (B) or C (Z) Data upon delivery or project or Agreement completion (whichever is earlier), except that—
  - a. BUYER at the request of a small business SELLER, may request on such SELLER's behalf a delay of the start of Government Purpose Rights in Category Y (B) or C (Z) Data for a period not to exceed five (5) years from project completion. Such requests will only be made in those cases where BUYER has provided information from the affected actual SELLER demonstrating the need for this additional restriction on Government use and shall be submitted to the Government Officer for approval, which approval shall not be unreasonably withheld. In the event of any dispute regarding approval of this request, the parties agree to treat this as a dispute and shall follow the provisions of Article 24, Disputes and Liability.

i. For Category Z (C) Data, the Government shall have only the rights established under prior agreements, unless it falls under the exception in which case the Government shall have the same level of Data Rights as negotiated under the Agreement Modification.

ii. For Category Z (C) Data, the Government shall only have the rights set forth in the Commercial Computer Software Data license agreement.

#### D. Marking of Data

Except for Data delivered with unlimited rights, Data to be delivered under this Agreement subject to restrictions on use, duplication or disclosure shall be marked with the following legend:

Category X (A) use company proprietary statement.

Category Y (B) and C (Z) use legend at DFARS 252.227-7013 (f)(2).

In the event commercial computer software and Data is licensed under a commercial computer software license under this Agreement, a Special License rights marking legend shall be used as agreed to by the parties.

The Government shall have unlimited rights in all unmarked Data. In the event that the SELLER learns of a release to the Government of its unmarked Data that should have contained a restricted legend, BUYER, in coordination with the SELLER, will have the opportunity to cure such omission going forward by providing written notice to the Government within three (3) months of the erroneous release.

#### E. Copyright

The SELLERs reserve the right to protect by copyright original works developed under this Agreement. All such copyrights will be in the name of the individual SELLER. For copyrighted materials other than Data delivered with Category X (A), B (Y) or C (Z) rights as specified above, the SELLER hereby grants to the U.S. Government a non-exclusive, non-transferable, royalty-free, fully paid-up license to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, for governmental purposes, any copyrighted materials developed under this agreement, and to authorize others to do so.

For copyrighted materials other than Data delivered with Category X (A), B (Y) or C (Z) rights as specified above, in the event

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

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

The SELLER is responsible for affixing appropriate markings indicating the rights of the Government on all Data delivered under this Agreement. The Government agrees not to remove any copyright notices placed on Data and to include such notices on all reproductions of the Data.

#### F. Data First Produced by the Government

As to Data first produced by the Government in carrying out the Government's responsibilities under this project and which Data is privileged or confidential if obtained from the SELLER, such Data will, to the extent permitted by law, be appropriately marked with a suitable notice or legend and maintained in confidence by the SELLER to whom disclosed for three (3) years after the development of the information, with the express understanding that during the aforesaid period such Data may be disclosed and used by the SELLER, including its respective employees or subcontractors of any tier, (under suitable protective conditions) by or on behalf of the Government for Government purposes only.

#### G. Prior Technology

1. Government Prior Technology: In the event it is necessary for the Government to furnish the SELLER, including their respective employees or their subcontractors of any tier, with Data which existed prior to, or was produced outside of this Agreement, and such Data is so identified with a suitable notice or legend, the Data will be maintained in confidence and disclosed and used only for the purpose of carrying out their responsibilities under this Agreement. Data protection will include proprietary markings and handling, and the signing of non-disclosure agreements by the SELLER and SELLER subcontractors of any tier and their respective employees to whom such Data is provided for use under this Agreement Upon completion of activities under this Agreement, such Data will be disposed of as requested by the Government.
2. Prior Technology: In the event it is necessary for the SELLER to furnish the Government with Data which existed prior to, or was produced outside of this Agreement, 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 the project. Data protection will include proprietary markings and handling, and the signing of nondisclosure agreements by such Government Contractors or contract employees. Neither BUYER nor SELLER shall be obligated to provide Data that existed prior to or was developed outside of this Agreement to the Government. Upon completion of activities under this Agreement, such Data will be disposed of as requested by the SELLER.
3. Oral and Visual Information: If information which the SELLERS, their subcontractors of any tier and their respective employees 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. Upon Government request, additional detailed information about the exchange will be provided subject to restrictions on use and disclosure.
4. Disclaimer of Liability: Notwithstanding the above, the Government shall not be restricted in, nor incur any liability for, the disclosure and use of:
  - i. Data identified with a suitable notice or legend as set forth in this Article; nor
  - ii. Information contained in any Data for which disclosure and use is restricted under the Proprietary Information Article in the Performer's Agreement, 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, is rightfully received from a third party without restriction, or is included in Data which the SELLER has furnished, or is required to furnish to the Government without restriction on disclosure and use.

5. Marking of Data: Any Data delivered under this Agreement shall be marked with a suitable notice or legend.
- H. Notwithstanding the Paragraphs in this Article, differing rights in Data may be negotiated among the Parties to each individual project on a case-by-case basis.
- I. Lower Tier Agreements: The SELLER shall include this Article, suitably modified to identify the parties, in all subcontracts or lower tier agreements, regardless of tier, or experimental, developmental, or research work.
- J. Ordering of Data: The Government can only order such Data as is developed under the project where the order request is made within one (1) year following project completion or for an alternate duration specified in the prototype award. In the event the Government orders such Data, it shall pay the reasonable costs for in the prototype award. In the event the Government orders such Data, it shall pay the reasonable costs for all efforts to deliver such requested Data, including but not limited to costs of locating such Data, formatting, reproducing, shipping, and associated administrative costs.
- K. Government Purpose Rights – Duration: Under this Agreement, the period of a Government Purpose Rights license shall be no less than five (5) years. In the event that the Data subject to this Government Purpose Rights license is used to perform an additional Agreement during this five (5) year period, the Government Purpose Rights license shall be extended an additional five (5) years starting from completion of the additional Agreement.

## PATENTS & INVENTIONS

### Definitions:

“Patent” is a property right granted by the US Government, which gives the holder the exclusive right to exclude others from the manufacture, use and sale of the subject invention in the United States for a defined period of time. As property, the patent may be sold or assigned, pledged, mortgaged, licensed, willed, or donated, and the subject of contracts and agreements.

“Subject Invention” means those inventions conceived or first actually reduced to practice under this contract.

“Prototype Project” is as follows: a prototype project addresses a proof of concept, model, reverse engineering to address obsolescence, pilot, novel application of commercial technologies for defense purposes, agile development activity, creation, design, development, demonstration of technical or operational utility, or combinations of the foregoing. A process, including a business process, may be the subject of a prototype project.

### Introduction:

The Seller agrees to be bound by the following rights and responsibilities with respect to any Subject Invention (i.e. any Invention made in the performance of the Statement of Work) or Prototype which is the principal objective of the Prototype Project executed under the contract.

#### A. Allocation of principal rights

1. The Seller shall retain ownership throughout the world to each Subject Invention consistent with the provisions of this section and 35 U.S.C. § 202, provided the Seller has timely pursued a patent application and maintained any awarded patent and has not notified the Government (in accordance subclause (B) below the Seller does not intend to retain title.
2. The Seller shall retain ownership throughout the world to background inventions. Any invention related to, conceived of, or first reduced to practice in support of a Seller’s internal development milestone shall be a background invention of the Seller and shall not be classified as a Subject Invention, provided that an invention conceived of in support of an internal development milestone that is first reduced to practice under this contract in support of other than internal development milestones shall be considered a Subject Invention.
3. The Government is granted a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the Subject Invention throughout the world.

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

1. The Seller shall disclose each Subject Invention to the Agreements Officer, via the Buyer, on a DD Form 882

within eight (8) months after the inventor discloses in writing to the Seller's personnel responsible for patent matters.

2. If the Seller determines that it does not intend to retain title to any Subject Invention, the Seller shall notify the Agreements Officer via the Buyer, in writing, within eight (8) months of disclosure to the Government.

However, in any case where publication, sale, or public use has initiated the one (1)-year statutory period wherein valid patent protection can still be obtained in the United States, the period for such notice is shortened to at least sixty (60) calendar days prior to the end of the statutory period.

C. Conditions When the Government May Obtain Title

Upon the Buyer or USG Agreements Officer's written request, the Seller shall convey title to any Subject Invention to the Government under any of the following conditions:

1. If the Seller fails to disclose or elects not to retain title to the Subject Invention within the times specified in paragraph (b); provided, that the Government may only request title within sixty (60) calendar days after learning of the failure of the Seller to disclose or elect within the specified times.
2. In those countries in which the Seller fails to file patent applications within the times specified within paragraph (b); provided, that if the Seller has filed a patent application in a country after the times specified in this paragraph (b) of this Article, but prior to its receipt of the written request by the Government, the Seller shall continue to retain title in that country; or;
3. In any country in which the Seller decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in reexamination or opposition proceedings on, a patent on a Subject Invention.

D. Minimum Rights to the Seller and protection of the Seller's right to file.

1. The Seller shall retain a nonexclusive, royalty-free license throughout the world in each Subject Invention to which the Government obtains title, except if the Seller fails to disclose the Subject Invention within the times specified within this Article. The Seller's license extends to the U.S. (including Canada) subsidiaries and affiliates, if any, within the corporate structure of which the Seller is a party and includes the right to grant licenses of the same scope to the extent that the Seller was legally obligated to do so at the time the prototype project was awarded. The license is transferable only with the approval of the Government, except when transferred to a successor of that part of the business to which the Subject Invention pertains. The Government's approval for license transfer shall not be unreasonably withheld.
2. The Seller's license, as immediately described above in (D)(1), may be revoked or modified by the Government to the extent necessary to achieve expeditious practical application of the Subject Invention pursuant to an application for an exclusive license submitted consistent with appropriate provisions at 37 C.F.R. Part 404. However, the license shall not be revoked in that field of use or the geographical areas in which the Seller has achieved practical application and continues to make the benefits of the Subject Invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of the Government to the extent the Seller, its licensees, or its subsidiaries or affiliates have failed to achieve practical application in that foreign country.
3. Before revocation or modification of the license, the Agreements Officer or Buyer shall furnish the Seller a written notice of its intention to revoke or modify the license, and the Seller 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.
4. Action to protect the Government's interest
  - a. The Seller agrees to execute or to have executed and promptly deliver to the Buyer or Agreements Officer all instruments necessary to (1) establish or confirm the rights the Government has throughout the world in those Subject Inventions to which the Seller elects to retain title, and (2) convey title to the Government when requested, and to enable the Government to obtain patent protection throughout the world in that Subject Invention.

The Seller agrees to require, by written agreement, its employees, other than clerical and non-technical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the Seller each Subject Invention made under this Agreement in order that the Seller can comply with the disclosure provisions of paragraph (b) of this Article. The Seller shall instruct employees, through employee agreements or

other suitable educational programs, on the importance of reporting Subject Inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.

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

"This Invention was made with Government support under Agreement No. FA8814-21-9-0001, awarded by SMC/PKT. The Government has certain rights in the Invention."

#### March in Rights

The Seller agrees that, with respect to any Subject Invention in which it has retained title, the Government has the right to require the Prototype Inventor, an assignee, or exclusive licensee of a Subject Invention to grant a non-exclusive license to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the Seller, assignee, or exclusive licensee refuses such a request, the Government has the right to grant such a license itself if the Agreements Officer determines that:

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

Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the Seller, assignee, or their licenses; or

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

#### Authorization and Consent

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

#### Notice and Issuance

The Seller shall report to the Buyer and Agreements Officer, promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this Agreement of which the Seller has knowledge.

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

#### Lower Tier Agreements

The Seller 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.

#### Survival Rights

The obligations of the Government, Buyer's customer, Buyer, and the Seller under this Article shall survive after the expiration or termination of this Agreement.