



**SUPPLEMENTAL PROCUREMENT TERMS AND CONDITIONS
PRIME CONTRACT NUMBER W50RAJ-22-9-0001
PROGRAM Thermal Protection System (TPS) Prototype Project**

The terms and conditions set forth below are incorporated in and made part of this Order. Any conflict between any of the conditions contained in this supplement and those appearing on Northrop Grumman Purchase Order Terms and Conditions shall be resolved in accordance with the Order of Precedence and Disputes clause of this Order.

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The following clauses set forth in the FAR and FAR Supplements are incorporated herein by reference. The listed clauses are incorporated herein as if set forth in full text unless made inapplicable by its corresponding note, if any. Seller shall include the appropriate clauses as required in any lower-tier subcontract. Whenever said clauses include a requirement for the resolution of disputes between the Parties in accordance with the FAR “Disputes” clause, the dispute shall instead be disposed of in accordance with the clause entitled “Disputes” in these terms and conditions. Where necessary to derive proper meaning in a subcontract situation from these clauses, “Contractor” means “Seller,” “Contracting Officer” means “Buyer,” “Contract” means this Order and “Government” means “Buyer or the Government.” However, 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, (2) when title to property is to be transferred directly to the Government, and (3) in FAR 52.227-1, 52.227-2, and DFARS 252.227-7013 and 252.227-7014.

1. FAR CLAUSES

52.216-7	Allowable Cost and Payment. (AUG 2018)
52.227-1 ALT 1	Authorization and Consent. (JUN 2020) -- Alternate I (APR 1984)
52.245-1	Government Property. (SEP 2021)
52.246-3	Inspection of Supplies - Cost-Reimbursement. (MAY 2001)

2. DFARS CLAUSES

252.204-7012	Safeguarding covered defense information and cyber incident reporting. (DEC 2019)
252.246-7008	Sources of Electronic Parts. (OCT 2016)



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3. COMMERCIAL ITEMS

If goods or services being procured under this contract are commercial products and/or commercial services, and CTM-P-ST-002 is incorporated into the contract, the following FAR and FAR Supplement clauses are inserted in lieu of the clauses in Sections 1 and 2.

52.203-12	Limitation on Payments to Influence Certain Federal Transactions. (JUN 2020)
52.216-7	Allowable Cost and Payment. (AUG 2018)
52.245-1	Government Property. (SEP 2021)
252.204-7012	Safeguarding covered defense information and cyber incident reporting. (DEC 2019)
252.227-7027	Deferred Ordering of Technical Data or Computer Software. (APR 1988)
252.246-7008	Sources of Electronic Parts. (OCT 2016)

4. ADDITIONAL TERMS AND CONDITIONS

In the following clauses, unless the context of the clause requires otherwise, the term “Contractor” or “Performer” shall mean Seller, the term “Contract” shall mean this Agreement, and the terms “Government” “Contracting Officer” and equivalent phrases shall mean Buyer and Buyer's Subcontract Administrator, respectively. Buyer shall be responsible for all liaisons and communications with Buyer’s customer and Buyer’s other subcontractors for this Agreement. Seller shall not initiate communication with Buyer’s customers or Buyer’s other vendors/subcontractors regarding this Agreement, unless otherwise authorized in writing by Buyer.

1. COUNTERFEIT WORK

a. The following definitions apply to this clause:

- i. “Authorized aftermarket manufacturer” means an organization that fabricates a part under a contract with, or with the express written authority of, the original component manufacturer based on the original component manufacturer’s designs, formulas, and/or specifications.
- ii. “Authorized supplier” means a supplier, distributor, or an aftermarket manufacturer with a contractual arrangement with, or the express written authority of, the original manufacturer or current design activity to buy, stock, repackage, sell, or distribute the part.
- iii. “Contract manufacturer” means a company that produces goods under contract for another company under the label or brand name of that company.

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iv. "Contractor-approved supplier" means a supplier that does not have a contractual agreement with the original component manufacturer for a transaction, but has been identified as trustworthy by a contractor or subcontractor.

v. "Counterfeit electronic part" means an unlawful or unauthorized reproduction, substitution, or alteration that has been knowingly mismarked, misidentified, or otherwise misrepresented to be an authentic, unmodified electronic part from the original manufacturer, or a source with the express written authority of the original manufacturer or current design activity, including an authorized aftermarket manufacturer. Unlawful or unauthorized substitution includes used electronic parts represented as new, or the false identification of grade, serial number, lot number, date code, or performance characteristics.

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

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

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

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

x. "Original manufacturer" means the original component manufacturer, the original equipment manufacturer, or the contract manufacturer.

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

(b) Acceptable counterfeit electronic part detection and avoidance system. The Contractor shall establish and maintain an acceptable counterfeit electronic part detection and avoidance system. Failure to maintain an acceptable counterfeit electronic part detection and avoidance system, as defined in this clause, may result in disapproval of the purchasing system by the Contracting Officer and/or withholding of payments and affect the allowability of costs of counterfeit electronic parts or suspect counterfeit electronic parts and the cost of rework or corrective action that may be required to remedy the use or inclusion of such parts (see DFARS 231.205-71).

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

(1) The training of personnel.

(2) The inspection and testing of electronic parts, including criteria for acceptance and rejection. Tests and inspections shall be performed in accordance with accepted Government- and industry-recognized techniques. Selection of tests and inspections shall be based on minimizing risk to the Government. Determination of risk shall be based on the assessed probability of receiving a

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counterfeit electronic part; the probability that the inspection or test selected will detect a counterfeit electronic part; and the potential negative consequences of a counterfeit electronic part being installed (e.g., human safety, mission success) where such consequences are made known to the Contractor.

(3) Processes to abolish counterfeit parts proliferation.

(4) Risk-based processes that enable tracking of electronic parts from the original manufacturer to product acceptance by the Government, whether the electronic parts are supplied as discrete electronic parts or are contained in assemblies, in accordance with paragraph (c) of the clause at 252.246-7008 , Sources of Electronic Parts (also see paragraph (c)(2) of this clause).

(5) Use of suppliers in accordance with the clause at 252.246-7008 .

(6) Reporting and quarantining of counterfeit electronic parts and suspect counterfeit electronic parts. Reporting is required to the Contracting Officer through Buyer and to the Government-Industry Data Exchange Program (GIDEP) when the Contractor becomes aware of, or has reason to suspect that, any electronic part or end item, component, part, or assembly containing electronic parts purchased by the DoD, or purchased by a Contractor for delivery to, or on behalf of, the DoD, contains counterfeit electronic parts or suspect counterfeit electronic parts. Counterfeit electronic parts and suspect counterfeit electronic parts shall not be returned to the seller or otherwise returned to the supply chain until such time that the parts are determined to be authentic.

(7) Methodologies to identify suspect counterfeit parts and to rapidly determine if a suspect counterfeit part is, in fact, counterfeit.

(8) Design, operation, and maintenance of systems to detect and avoid counterfeit electronic parts and suspect counterfeit electronic parts. The Contractor may elect to use current Government- or industry-recognized standards to meet this requirement.

(9) Flow down of counterfeit detection and avoidance requirements, including applicable system criteria provided herein, to subcontractors at all levels in the supply chain that are responsible for buying or selling electronic parts or assemblies containing electronic parts, or for performing authentication testing.

(10) Process for keeping continually informed of current counterfeiting information and trends, including detection and avoidance techniques contained in appropriate industry standards, and using such information and techniques for continuously upgrading internal processes.

(11) Process for screening GIDEP reports and other credible sources of counterfeiting information to avoid the purchase or use of counterfeit electronic parts.

(12) Control of obsolete electronic parts in order to maximize the availability and use of authentic, originally designed, and qualified electronic parts throughout the product's life cycle.

(d) Government review and evaluation of the Contractor's policies and procedures will be accomplished as part of the evaluation of the Contractor's purchasing system in accordance with 252.244-7001 ,



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Contractor Purchasing System Administration—Basic, or Contractor Purchasing System Administration—Alternate I.

(e) The Contractor shall include the substance of this clause, excluding the introductory text and including only paragraphs (a) through (e), in subcontracts, including subcontracts for commercial items, for electronic parts or assemblies containing electronic parts."

2. CONFIDENTIAL AND/OR PROPRIETARY INFORMATION

This clause shall apply to the oral or written communication between the parties, including the Government, Performer, and Performers subcontractors; however, Data Rights and Copyrights shall control the rights in data for all data delivered and to be delivered in the performance of this Agreement.

Exchange of Information

The Government may from time to time disclose Government Confidential and/or Proprietary Information to the Performer for use by the Performer in connection this Agreement; and the Performer may from time to time disclose information that is Confidential and/or Proprietary Information to the Government in connection with this Agreement

Definitions

“Disclosing Party” means the Performer or the Government who discloses Confidential and/or Proprietary Information as contemplated by the subsequent paragraphs.

“Receiving Party” means the Performer, 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. “Confidential and/or Proprietary Information” does not mean data, software, or software documentation delivered and to be delivered in performance of this Agreement and each Project Agreement, which would be governed by Article 4, Data Rights and Copyrights as included in this Exhibit A.

“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,



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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.

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 this Agreement and the licenses granted in Article 3 , Patent Rights, and Article 4 , Data Rights and Copyrights as each are included in this Exhibit A. However, the duty to protect such Confidential and/or Proprietary Information shall not extend to materials or information that:

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

Return of Confidential and/or Proprietary Information

Upon the request of the Disclosing Party, the Receiving Party will promptly return all copies and other tangible manifestations of the Confidential and/or Proprietary Information. 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.

Term



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The obligations of the Receiving Party under this Article shall continue for a period of five (5) years after the expiration or termination of the Project Agreement under which the information was provided.

Flowdown

The Government and the Performer shall flow down the requirements of this Article to their respective personnel, agents, and subcontractors at all levels, receiving such Confidential and/or Proprietary Information under this Agreement.

3. PATENT RIGHTS

Definitions

“Invention” means any invention or discovery which is or may be patentable or otherwise protectable or eligible for protection under Title 35 of the United States Code.

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

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

“Subject Invention” means any invention of a Performer, or subcontractor of any tier, conceived or first actually reduced to practice in the performance of work under this Agreement.

“Background Invention” means any invention made by the Performer (or their subcontractors of any tier) prior to performance of this Agreement or outside the scope of work performed under this Agreement.”

Allocation of Principal Rights

1. Unless the Performer shall have notified Buyer, in accordance with subparagraph C.2 below, that the Performer does not intend to retain title, the Performer shall retain the entire right, title, and interest throughout the world to each Subject Invention consistent with the provisions of this Article.
2. With respect to any Subject Invention in which the Performer retains title, Buyer, Buyer’s Customer, and its Government Customer shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced on behalf of the United States the Subject Invention throughout the world.

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

1. The Performer shall disclose each Subject Invention to Buyer within two (2) months after the Subject Invention has been disclosed in writing to its company personnel responsible for patent matters. The disclosure to Buyer shall be in the form of a written report and shall identify the Agreement under which the Invention was made and the identity of the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding, to the extent known at the time of the disclosure, of the nature, purpose, operation, and the physical, chemical, biological, or electrical characteristics of the Invention.



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The disclosure shall also identify any publication, sale, or public use of the Invention and whether a manuscript describing the Invention has been submitted and/or accepted for publication at the time of disclosure.

2. If the Performer determines that it does not intend to retain title to any such Invention, the Performer shall notify Buyer, in writing, within six (6) months of disclosure of the Invention to Buyer. However, in any case where publication, sale, or public use has initiated the one-year statutory period wherein valid patent protection can still be obtained in the United States, the period for such notice may be shortened by Buyer to a date that is no more than forty-five (45) calendar days prior to the end of the statutory period.
3. The Performer shall file its initial patent application (whether provisional or non-provisional) on a Subject Invention to which it elects to retain title within one (1) year after election of title or, if earlier, prior to the end of the statutory period wherein valid patent protection can be obtained in the United States after a publication, or sale, or public use. The Performer may elect to file patent applications in additional countries, including the European Patent Office and under the Patent Cooperation Treaty, within either ten (10) months of the corresponding initial patent application (whether provisional or non-provisional) or six (6) months after the date permission is granted by the Commissioner of Patents and Trademarks to file foreign patent applications, where such filing had previously been prohibited by a Secrecy Order.
4. The Performer shall notify Buyer of any decisions not to initiate or continue the prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceedings on a patent, in any country, not less than twenty (20) calendar days before the expiration of the response period required by the relevant patent office.
5. Requests for extension of the time for disclosure election, and filing under this Article, may be granted at Buyer's discretion after considering the circumstances of the Performer and the overall effect of the extension. Approval shall not be unreasonably withheld.
6. The Performer shall submit to Buyer annual listings of Subject Inventions. At the completion of the Agreement, the Performer shall submit a comprehensive listing of all Subject inventions identified during the course of the Agreement and the current status of each.

Conditions When the Government May Obtain Title

Upon written request from the Government, the Performer shall convey title to any Subject Invention to the Government under any of the following conditions:

1. If the Performer fails to disclose or elects not to retain title to the Subject Invention within the times specified in Paragraph C of this Article; however, the Government may only request title within sixty (60) calendar days after learning of the failure of the Performer to disclose or elect within the specified times;
2. In those countries in which the Performer fails to file patent applications within the times specified in Paragraph C of this Article; however, if the Performer 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, the Performer shall continue to retain title in that country; or
3. In any country in which the Performer decides not to initiate or 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.



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Minimum Rights to the Performer and Protection of the Performer's Right to File

1. The Performer shall retain a nonexclusive, royalty-free license throughout the world in each Subject Invention to which the Government obtains title. The Performer's license extends to its domestic subsidiaries and affiliates, including Canada, if any, and includes the right to grant licenses of the same scope to the extent that the Performer was legally obligated to do so at the time the Agreement was awarded. The license is transferable only with the approval of the Government, except when transferred to the successor of that part of the Performer's business to which the Subject Invention pertains. Approval for license transfer shall not be unreasonably withheld.
2. The Performer's domestic license may be revoked or modified by the Government to the extent necessary to achieve expeditious Practical Application of the Subject Invention pursuant to an application for an exclusive license submitted consistent with appropriate provisions at 37 C.F.R. Part 404. This license shall not be revoked or modified in that field of use or in the geographical areas in which the Performer has achieved Practical Application and continues to make the benefits of the Subject Invention reasonably accessible to the public. The Performer's license in any foreign country may be revoked or modified at the discretion of the Government to the extent the Performer, its licensees, or its subsidiaries or affiliates have failed to achieve Practical Application in that foreign country.
3. Before revocation or modification of the Performer's license, the Government shall furnish the Performer a written notice of its intention to revoke or modify the license, and the Performer 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."

Action to Protect the Government's Interest

1. The Performer agrees to execute or to have executed and promptly deliver to the Government all instruments necessary to (i) establish or confirm the rights the Government has throughout the world in those Subject Inventions to which the Performer 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. The Performer agrees to require its employees working under this agreement, 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 Performer each Subject Invention made under this Agreement in order that the Performer can comply with the disclosure provisions of Paragraph C of this Article. The Performer shall instruct employees, through employee agreements or other suitable educational programs, on the importance of reporting Inventions in sufficient time to permit the filing of patent applications prior to United States or foreign statutory bars.
3. The Performer 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. W50RAJ2190036, awarded by ARMY RCCTO. The Government has certain rights in the invention.

Lower Tier Agreements

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The Performer shall include this Article, suitably modified, in all subcontracts or lower tier agreements, regardless of tier, for experimental, developmental, or research work

Reporting on Utilization of Subject Inventions

1. The Performer agrees to submit, during the term of this Agreement, an annual report on the utilization of a Subject Invention or on efforts at obtaining such utilization that are being made by the Performer 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 Performer, and such other data and information as the agency may reasonably specify. The Performer 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. The Government agrees it shall not disclose such information to persons outside the Government without permission of the Performer, unless required by law.
2. All required reporting shall be submitted to the Contracting Officer and Administrative Agreements Officer (AAO), through Buyer, where one is appointed.

Preference for American Industry

Notwithstanding any other provision of this clause, the Performer agrees that it shall not grant to any person the exclusive right to make, use or sell any Subject Invention in the United States unless such person agrees that any product or process embodying the Subject Invention or produced through the use of the Subject Invention shall be manufactured or performed substantially in the United States. However, in individual cases, the requirements for such an agreement may be waived upon a showing by the Performer 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.

March-in Rights

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

1. Such action is necessary because the Performer or assignee has not taken effective steps, consistent with the intent of this Agreement, to achieve Practical Application of the Subject Invention;
2. Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the Performer, assignee, or their licensees;
3. Such action is necessary to meet requirements for public use and such requirements are not reasonably satisfied by the Performer, 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 of the exclusive right to use or sell any Subject Invention in the United States is in breach of such Agreement."



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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 the Performer's action, or failure to act, within the times required by this Article. Prior to claiming such rights, the Government will give written notice to the performer of the Government's intent and afford the Performer 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. The Performer 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.

Background Inventions

In no event shall the provisions set forth in this Article apply to any Background Inventions or patents. The Performer or its subcontractors, shall retain the entire right, title, and interest throughout the world to each such Background Invention and patent that each Party has brought to the Project issued under this Agreement and the Government shall not have any other 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.

Survival Rights Provisions of this Article shall survive termination of this Agreement.

Patent Rights Clauses Rights in patents, including patents involving third parties, under this Agreement shall be determined in accordance with the following FAR Part 27 clauses and provisions:

FAR 52.227-1 Authorization and Consent – Alternate 1

FAR 52.227-2 Notice and Assistance Regarding Patent and Copyright Infringement

FAR 52.227-10 Filing of Patent Applications – Classified Subject Matter (DEC 2007)"

4. DATA RIGHTS AND COPYRIGHTS

This clause applies if this procurement is for experimental, development or research work.

General

Rights in technical data, computer software, and computer software documentation under this Agreement shall be determined in accordance with the following DFARS Part 227 clauses:

DFARS 252.227-7013 Rights in Technical Data – Noncommercial Items

DFARS 252.227-7014 Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation

DFARS 252.227-7015 Technical Data – Commercial Items

DFARS 252.227-7016 Rights in Bid or Proposal Information



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DFARS 252.227-7019 Validation of Asserted Restrictions – Computer Software

DFARS 252.227-7027 Deferred Ordering of Technical Data or Computer Software

DFARS 252.227-7030 Technical Data – Withholding of Payment

DFARS 252.227-7037 Validation of Restrictive Markings on Technical Data

The Performer reserves the right to protect by copyright original works developed under this Agreement. All such copyrights will be in the name of the Performer. The Performer grants to the Buyer, Buyer's Customer and U.S. Government a non-exclusive, non-transferable, royalty-free, fully paid-up, perpetual 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. However, notwithstanding the above, proprietary or otherwise protected information (including technical data and software) shall not be disclosed or released unless such release or disclosure is allowed under at least one of the above cited DFARS clauses or this Agreement.

In the event technical data are exchanged with a notice indicating that the data are 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, the relevant Project, the Party receiving the data and others acting on its behalf may only reproduce, distribute and prepare derivative works for the purpose of carrying out that Party's responsibilities under this Agreement. The Performer is responsible for affixing appropriate markings indicating the rights of the Government on all technical data delivered under this Agreement.

Nothing in this Agreement shall preclude any Performer from having status and data rights afforded under a Small Business and Innovation Research ("SBIR") funding agreement for SBIR work funded under this Agreement, if otherwise properly qualified, and provided that the work derives from, extends, or logically concludes effort(s) performed under prior SBIR funding agreements."

Data First Produced by the Government

To the extent that data first produced by the Government during the performance of Agreement is used by or on behalf of the Performer in the performance of any Project, the Government shall retain its preexisting rights in such data, including modifications or changes, made by either Government or Performer, to such data as part of the performance under the Project. Such data will, to the extent permitted by law, be appropriately marked with a suitable notice or legend and maintained in confidence by the Performer for a period of ten (10) years after the development of the information, with the express understanding that during the aforesaid period such data may be disclosed and used (under suitable protective conditions) by or on behalf of the Government for Government purposes only.

Prior Technology

In the event it is necessary for the Government to furnish the Performer 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 by the Performer only for the purpose of carrying out the responsibilities under this Agreement. Data protection will include proprietary markings and handling. Upon completion of activities under this Agreement, such data will be disposed of as requested by the Government.



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Project Agreement Holder's Prior Technology

In the event it is necessary for a Performer to furnish the Government with data, which is not technical data, computer software, or computer software documentation, and 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 this Agreement consistent with the provisions of this Agreement. Data protection will include proprietary markings and handling, and the signing of non-disclosure agreements by such Government Contractors or contract employees. The Performer furnishing data which existed prior to, or was produced outside of this Agreement, has the right to license such data to other entities not a party to this Agreement for a fee and/or royalty payments as determined by the Performer furnishing such data.

Allocation of Principal Rights

1. The Parties agree that in consideration for Government funding, the Performer intends to reduce to practical application items, components and processes developed under this Agreement.
2. Unless expressly agreed to otherwise herein, with respect to data developed, delivered, or generated under this Agreement, including data related to the TPS deliverable, the Government shall receive rights pursuant to the DFARS clauses set forth in Paragraph A of this Article.
3. Notwithstanding any other provision, the performer agrees, with respect to data generated or developed under this Agreement, the Government may, within three (3) years after completion or termination of this Agreement, require delivery of data pursuant to the DFARS clauses set forth in Paragraph A of this Article.
4. The incorporation of assertions of restrictions of the Performer into this Agreement constitutes the Government's acknowledgment of receipt of the assertions, but does not constitute the Government's agreement as to the validity of these assertions. The Government reserves the right to validate the assertions and associated restrictions in accordance with DFARS 252.227-7019 and DFARS 252.227-7037."

Marking of Data

Pursuant to Paragraph A above, any Data delivered under this Agreement shall be marked with the following legend:

Use, duplication, or disclosure is subject to the restrictions as stated in Agreement W50RAJ2190036 between the Government and the Performer.

Lower-Tier Agreements

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

Survival Rights



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Provisions of this Article shall survive termination of this Agreement.

5. EXPORT CONTROL

Export Compliance

Each Party agrees to comply with U.S. Export regulations including, but not limited to, the requirements of the Arms Export Control Act, as amended 22 U.S.C. § 2751-2794, including the International Traffic in Arms Regulation (ITAR), 22 C.F.R. § 120 et seq.; and the Export Administration Act of 1979, 50 U.S.C. app. § 2401-2420. Each party is responsible for obtaining from the Government export licenses or other authorizations/approvals, if required, for information or materials provided from one party to another under this Agreement.

Accordingly, the Performer, shall not export, directly, or indirectly, any products and/or technology, Confidential Information, Trade Secrets, or Classified and Unclassified Technical Data in violation of any U.S. Export laws or regulations.

Flowdown

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

6. FOREIGN ACCESS TO TECHNOLOGY

This Article shall remain in effect during the term of this Agreement.

General

The Parties agree that research findings and technology developments arising under this Agreement may constitute a significant enhancement to the national defense, and to the economic vitality of the United States. Accordingly, access to important technology developments under this Agreement by Foreign Firms or Institutions must be carefully controlled. The controls contemplated in this Article are in addition to, and are not intended to change or supersede, the provisions of the International Traffic in Arms Regulations (22 C.F.R. Part 120, et seq.), the National Security Program Operating Manual (NISPOM) (DoD 5220.22-M), and the Department of Commerce's Export Administration Regulations (15 C.F.R. Part 730, et seq.).

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

1. In order to promote the national security interests of the United States and to effectuate the policies that underlie the regulations cited above, the procedures stated in subparagraphs B.2 and B.3 below shall apply to any transfer of technology. For purposes of this paragraph, a transfer includes a sale of the company, and sales or licensing of technology. Transfers do not include:

- a. Sales of products or components; or

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- b. Licenses of software or documentation related to sales of products or components; or
- c. Transfer to foreign subsidiaries of the Performer for purposes related to this Agreement; or
- d. Transfer which provides access to technology to a foreign firm or institution which is an approved source of supply or source for the conduct of research under this Agreement provided that such transfer shall be limited to that necessary to allow the firm or institution to perform its approved role under this Agreement.

2. The Performer shall provide timely notice to Buyer of any proposed transfers from the Performer of technology developed under this Agreement to foreign firms or institutions. If it is determined that the transfer may have adverse consequences to the national security interests of the United States, the Performer, its vendors, Buyer, Buyer's Customer and the Government shall jointly endeavor to find alternatives to the proposed transfer which obviate or mitigate potential adverse consequences of the transfer, but which provide substantially equivalent benefits to the Performer.

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

Lower Tier Agreements

The Performer 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.

7. SAFEGUARDING CONTROLLED UNCLASSIFIED INFORMATION AND CONTROLLED TECHNICAL INFORMATION AND CYBER INCIDENT REPORTING

Background

Protection of Controlled Unclassified Information (CUI) and Controlled Technical Information (CTI) is of paramount importance and can directly impact the ability of the Government to successfully conduct its mission. Therefore, this Article requires the Performer to protect CUI and CTI that resides on the Performer's information systems. This article also requires the Performer to rapidly report any cyber incident involving CUI or CTI."

Safeguarding CUI and CTI

The Performer shall implement NIST Special Publication (SP) 800-171 Rev 1, Protecting Controlled Unclassified Information in Nonfederal Systems and Organizations (Dec. 2016), as revised, for CUI and CTI that resides on the Performer's information systems. Consistent with Chapter 2 of NIST SP 800-171 Rev 1, implementation may be tailored to facilitate equivalent safeguarding measures used in the Performer systems and organization. Any suspected loss or compromise of CUI or CTI that resides on the



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Performer's information systems shall be considered a cyber incident and require the Performer to rapidly report the incident in accordance with paragraph C below.

The following clauses are applicable and are incorporated into the Agreement:

DFARS 252.204-7009 - Limitations on the Use or Disclosure of Third-Party Contractor Reported Cyber Incident Information (OCT 2016)

DFARS 252.204-7012, Safeguarding Covered Defense Information and Cyber Incident Reporting (OCT 2016)

Cyber Incident Reporting

Upon discovery of a cyber-incident involving CUI or CTI, the Performer shall take immediate steps to mitigate any further loss or compromise. The Performer shall rapidly report the incident to Buyer and provide sufficient details of the event—including identification of detected and isolated malicious software—to enable Buyer and the Government to assess the situation and provide feedback to the Performer regarding further reporting and potential mitigation actions. The Performer shall preserve and protect images of all known affected information systems and all relevant monitoring/packet capture data for at least 90 days from reporting the cyber incident to enable Buyer and the Government to assess the cyber incident. The Performer agrees to rapidly implement security measures as recommended by Buyer and the Government and to provide to Buyer and the Government any additionally requested information to help the Parties resolve the cyber incident and to prevent future cyber incidents.

Lower Tier Agreements

The Performer shall include this Article in all subcontracts or lower tier agreements, regardless of tier, for work performed in support of this Agreement.

Definitions

Compromise: 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.

Controlled Technical Information (CTI): 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.

Controlled Unclassified Information (CUI): Unclassified information that requires safeguarding or dissemination controls, pursuant to and consistent with applicable law, regulations, and Government-wide policies. The most common type of CUI found in ARMY RCCTO programs is For Official Use Only (FOUO). The use, marking, dissemination, and storage of CUI can be found in DoD Manual 5200.01 Volume 4 "Controlled Unclassified Information".

Cyber Incident: 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.



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For Official Use Only (FOUO): A protective marking to be applied to controlled unclassified information when disclosure to the public of that particular record, or portion thereof, would reasonably be expected to cause a foreseeable harm to an interest protected by one or more provisions of the FOIA. This includes information that qualifies for protection pursuant to the provisions of the Privacy Act of 1974, as amended. See DoD Manual 5400.07 “DoD Freedom of Information Act (FOIA) Program” for detailed information on categories of information that may qualify for exemption from public release.

Information System: A discrete set of information resources organized for the collection, processing, maintenance, use, sharing, dissemination, or disposition of information.

Rapidly Report: Report to ARMY RCCTO, through Buyer, within 72 hours of discovery of any cyber incident.