



Attachment B - Addendum 1
Additional Contract Flowdowns

Seller Name:	
Other Transaction Agreement (OTA) Number:	2023CLASS0828

The clauses included in this Attachment B – Addendum 1 (“Addendum”) are in addition to the requirements in GA 1603 Terms and Conditions for Commercial Orders (Supplies and Services) (“Terms and Conditions”) and consist of the requirements specific to the General Atomics (“Buyer”) customer OTA referenced above. In the event of any inconsistencies between the requirements in the Terms and Conditions of the Order and this Addendum, the requirements of this Addendum shall take precedence.

The clauses incorporated in full text have been modified to identify the roles and responsibilities of the parties, and to ensure Seller’s obligations to Buyer and to the U.S. Government; and to enable Buyer to meet its obligations under its contracts funded by the U.S. Government. Seller shall flowdown the substance of the clauses contained within this Addendum to all its lower-tier subcontractors, as applicable.

During the execution of the OTA referenced above, Buyer’s customer may modify the requirements with additional terms; therefore, Buyer reserves the right to amend the Terms and Conditions, including this Addendum, as Buyer deems reasonably necessary to comply with the modified requirements.

Clauses in Full Text		Applicability
ARTICLE VI	COMPLIANCE WITH LAWS OF GENERAL APPLICABILITY	All Orders
	(a) Civil Rights Act This Order is subject to the compliance requirements of Title VI of the Civil Rights Act of 1964 as amended, 42 U.S.C. §§ 2000-d, et seq., relating to nondiscrimination in Federally assisted programs. By signing this Order, commencement of performance, or partial/full delivery the Seller assures its compliance with the nondiscriminatory provisions of the Act.	
	(b) Procurement Integrity Act This Order is subject to the compliance requirements of Chapter 21 of Title 41, 41 USC 2101, et seq. (i.e., the Procurement Integrity Act), relating to the prohibitions on obtaining and disclosing procurement information. By signing this Order, commencement of performance, or	

<p>partial/full delivery the Seller assures its compliance with the Act.</p> <p>(c) Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment</p> <p>(1) Definitions. As used in this clause-</p> <p>(i) Backhaul means intermediate links between the core network, or backbone network, and the small subnetworks at the edge of the network (e.g., connecting cell phones/towers to the core telephone network). Backhaul can be wireless (e.g., microwave) or wired (e.g., fiber optic, coaxial cable, Ethernet).</p> <p>(ii) Covered foreign country means The People's Republic of China.</p> <p>(iii) Covered telecommunications equipment or services means-</p> <p>(A) Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities);</p> <p>(B) For the purpose of public safety, security of Government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities);</p> <p>(C) Telecommunications or video surveillance services provided by such entities or using such equipment; or</p> <p>(D) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.</p> <p>(iv) Critical technology means-</p> <p>(A) Defense articles or defense services included on the United States Munitions List set forth in the International Traffic in Arms Regulations under subchapter M of chapter I of title 22, Code of Federal Regulations;</p> <p>(B) Items included on the Commerce Control List set forth in Supplement No. I to part 774 of the Export Administration Regulations under</p>

	<p>subchapter C of chapter VII of title 15, Code of Federal Regulations, and controlled-</p> <p>(C) Pursuant to multilateral regimes, including for reasons relating to national security, chemical and biological weapons proliferation, nuclear nonproliferation, or missile technology; or</p> <p>a. For reasons relating to regional stability or surreptitious listening;</p> <p>b. Specially designed and prepared nuclear equipment, parts and components, materials, software, and technology covered by part 810 of title 10, Code of Federal Regulations (relating to assistance to foreign atomic energy activities);</p> <p>(D) Nuclear facilities, equipment, and material covered by part 110 of title 10, Code of Federal Regulations (relating to export and import of nuclear equipment and material);</p> <p>(E) Select agents and toxins covered by part 331 of title 7, Code of Federal Regulations, part 121 of title 9 of such Code, or part 73 of title 42 of such Code; or</p> <p>(F) Emerging and foundational technologies controlled pursuant to section 1758 of the Export Control Reform Act of 2018 (50 U.S.C. 4817).</p> <p>(v) Interconnection arrangements means arrangements governing the physical connection of two or more networks to allow the use of another's network to hand off traffic where it is ultimately delivered (e.g., connection of a customer of telephone provider A to a customer of telephone company B) or sharing data and other information resources.</p> <p>(vi) Reasonable inquiry means an inquiry designed to uncover any information in the entity's possession about the identity of the producer or provider of covered telecommunications equipment or services used by the entity that excludes the need to include an internal or third party audit.</p> <p>(vii) Roaming means cellular communications services (e.g., voice, video, data) received from a visited network when unable to connect to the facilities of the home network either because signal coverage is too weak or because traffic is too high.</p> <p>(viii) Substantial or essential component means any component necessary for the proper function or performance of a piece of equipment, system, or service.</p> <p>(2) Prohibition. (I) Section 889(a)(1)(A) of the John S. McCain National</p>
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	<p>Defense Authorization Act for Fiscal Year 2019 (Pub.L. 115-232) prohibits the head of an executive agency on or after August 13, 2019, from procuring or obtaining, or extending or renewing an Agreement to procure or obtain, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. The Seller is prohibited from providing to the Government through the Buyer, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.</p> <p>(3) Section 889(a)(1)(B) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits the head of an executive agency on or after August 13, 2020, from entering into an Agreement, or extending or renewing an Agreement, with an entity that uses any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. This prohibition applies to the use of covered telecommunications equipment or services, regardless of whether that use is in performance of work under a Federal contract or Agreement.</p> <p>(4) Exceptions. This clause does not prohibit the Seller from providing-</p> <ul style="list-style-type: none">(i) A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or(ii) Telecommunications equipment that cannot route, redirect user data traffic, or permit visibility into any user data or packets that such equipment transmits or otherwise handles. <p>(5) Reporting requirement.</p> <ul style="list-style-type: none">(i) In the event the Seller identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during Order performance, or the Seller is notified of such by a subcontractor at any tier or by any other source, the Seller shall report the information to the Buyer.(ii) The Seller shall report the following information pursuant to this clause:<ul style="list-style-type: none">(A) Within one business day from the date of such identification or notification: the contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand;
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	<p>model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.</p> <p>(B) Within 10 business days of submitting the information in this clause: any further available information about mitigation actions undertaken or recommended. In addition, the Seller shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.</p> <p>(6) Subcontracts Orders. The Seller shall insert the substance of this clause, including this paragraph, in all subcontracts and other contractual instruments, including subcontracts for the acquisition of commercial items.</p>	
ARTICLE VIII	OBLIGATION AND PAYMENT	All Orders
	<p>(a) Access to Financial Records and Reports</p> <p>(1) To the extent that the total government payments under the Order exceed \$5,000,000, the Comptroller General of the United States, in its discretion, shall have access to and the right to examine records of any party to the Order or any entity that participates in the performance of this Order that directly pertain to and involve transactions relating to, the Order for a period of three (3) years after final payment is made. This requirement shall not apply with respect to any party to this Order or any entity that participates in the performance of the Order, or any subordinate element of such party or entity, that, in the year prior to the date of the Order, 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 Order. 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 the Order.</p>	
ARTICLE XI	INVENTIONS AND PATENTS	All Orders for Experimental, Developmental or Research Work
	<p>(a) Allocation of Principal Rights</p> <p>The Seller shall retain ownership throughout the world to each Subject Invention consistent with the provisions of this Article and 35 U.S.C. § 202, provided the Seller has timely pursued a patent application and</p>	

maintained any awarded patent and has not notified the Government through the Buyer (in accordance with paragraph (b) below) that the Seller does not intend to retain title.

The Seller shall retain ownership throughout the world to background inventions. Any invention conceived of or first actually reduced to practice in support of a Seller's internal development milestone outside the funded effort 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 actually reduced to practice under this Order in support of other than internal development milestones shall be considered a Subject Invention.

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

The Seller shall disclose each Subject Invention to the Buyer on a DD Form 882 within two (2) months after the inventor discloses it in writing to the Prototype Inventor's personnel responsible for patent matters.

If the Seller determines that it does not intend to retain title to any Subject Invention, the Seller shall notify the Buyer, who will then notify the Government, in writing, within eight (8) months of disclosure to the Buyer. 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 Government's written request through the Buyer, 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) of this Article 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 in paragraph (b) of this Article provided, that if the Seller has filed a patent application in a country after the times specified in 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

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 in paragraph (b) of this Article. The Seller's license extends to the domestic (including Canada) subsidiaries and affiliates, if any, within the corporate structure of which the Seller is a party and includes the right to grant sublicenses of the same scope to the extent that the Seller was legally obligated to do so at the time the Order was made. The license is transferable only with the approval of the Government, except when transferred to the 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.

The Seller's domestic license, as described above, may be revoked or modified by the Government to the extent necessary to achieve expeditious practical application of the Subject Invention pursuant to an application for an exclusive license submitted consistent with appropriate provisions at 37 CFR Part 404. This 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 the subsidiaries or affiliates have failed to achieve practical application in that foreign country. Before revocation or modification of the license, the Government through the 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.

(e) Action to Protect the Government's Interest

The Seller 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 Seller elects to retain title, and (ii) convey title to the Government when requested under paragraph (c) of this Article 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 Order 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 notify the Government through the Buyer of any decisions not to 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 thirty (30) calendar days before the expiration of the response period required by the relevant patent office.

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. The Government has certain rights in the Invention."

(f) 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 Seller, 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 Government determines that:

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

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

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

(g) 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 Order.

(h) Notice and Assistance

The Seller shall report to the Government through the Buyer, promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this Seller 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 Order or out of the use of any supplies furnished or work or services performed under this Order, the Seller shall furnish to the Government through the Buyer, when requested by the Government through the Buyer, 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.

(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, for experimental, developmental, or research work.

(j) Survival Rights

The obligations of the Government and the Seller under this Article shall survive after the expiration or termination of this Order.

ARTICLE XII	DATA RIGHTS	All Orders when Seller asserting Data Rights
<p>(a) General Definitions</p> <p>Business Data: Recorded information, regardless of the form or method of the recording, including specific business data contained in a computer database, of a financial, administrative, cost or pricing, or management nature, or other information incidental to agreement administration or protected from disclosure under the Freedom of Information Act, 5 U.S.C. § 552(b)(4).</p> <p>Commercial Computer Software License: The license terms under which commercial computer software is sold or offered for sale, lease or license to the general public.</p> <p>Computer Database: A collection of data recorded in a form capable of being processed and operated by a computer. The term does not include Computer Software</p> <p>Computer Program: A set of instructions, rules, or routines, recorded in a form that is capable of causing a computer to perform a specific operation or series of operations.</p> <p>Computer Software: Computer Programs, source code, source code listings, object code listings, design details, algorithms, processes, flow charts, formulae, and related material that would enable the software to be reproduced, recreated, or recompiled. The term does not include computer databases or computer software documentation.</p> <p>Computer Software Documentation: Owner's manuals, users' manuals, installation instructions, operating instructions, and other similar items, regardless of storage medium, that explain the capabilities of Computer Software or provide instructions for using or maintaining the Computer Software.</p> <p>Form, Fit and Function Data: For Technical Data, it means information that describes the required overall physical, functional, and performance characteristics (along with the qualification requirements, if applicable) of an item, component, or process to the extent necessary to permit identification of physically and functionally interchangeable items. For Computer Software, it means information identifying source, functional characteristics, and performance requirements, but specifically excludes the source code, algorithms, processes, formulas, and flow charts of the software.</p>		

Government Purpose: Any activity in which the United States Government is a party, including cooperative agreements with international or multi-national defense organizations, or sales or transfers by the United States Government to foreign governments or international organizations. Government Purposes include providing Technical Data and Computer Software for use in competitive procurements and/or other transaction agreements, but do not include the rights to use, modify, reproduce, release, perform, display, or disclose Technical Data and Computer Software for commercial purposes or the authorization of others to do so.

Government Purpose Rights: The rights of the United States Government to (a) use, modify, reproduce, release, perform, display, or disclose Technical Data or Computer Software within the Government without restriction; and (b) release or disclose Technical Data or Computer Software outside the Government, and to authorize persons to whom release has been made to use, modify, reproduce, perform, or display that technical data or computer software, provided that the recipient exercises such rights for Government purposes only.

Limited Rights: The rights of the United States Government to use, modify, reproduce, release, perform, display, or disclose Technical Data, in whole or in part, within the Government.

Specially Negotiated License Rights: Rights to Data that have been specifically negotiated between the Government and the Performer on behalf of the Performer whose proposal is selected by the Government under a call for proposals issued under the OTA.

Technical Data: Recorded information (regardless of the form or method of the recording, including Computer Databases) of a scientific or technical nature (including Computer Software Documentation). The term includes recorded information of a scientific or technical nature that is included in computer databases (See 41 U.S.C. § 403(8)). This term does not include Computer Software or Business Data.

Unlimited Rights: Rights to use, duplicate, release, or disclose, Data in whole or in part, in any manner and for any purposes whatsoever, and to have or permit others to do so.

(b) Data Category Definitions

Category A: Data developed and paid for totally by private funds, or the IR&D Funds of the Seller, or its subcontractor(s). Category A Data shall include, but not be limited to:

(1) Data or other material provided by the Seller used in performance of this Order which was not developed in the performance of work under that project, and for which the Seller retains all rights.

(2) Any initial Data or technical, marketing, or financial Data provided at the onset of the project by the Seller that was used in preparation of proposals or other items prior to Order award, including the proposal itself.

Category B: Data developed under this Order that was accomplished partially with funding attributable to the United States Government under this Order as well as other private sources (mixed funding). This does not include any Data developed under a previous Government agreement, contract or subcontract, in whole or in part.

Category C: Data developed exclusively with Government funds under this Order.

Category D: Data that is otherwise publicly available or that has been released or disclosed by the 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. This also includes Data in which the Government has obtained unlimited rights under another Government contract or agreement or as a result of negotiations.

(c) Allocation of Principal Rights

Any Data developed outside of this Order 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 under this Order.

The Seller grants the Government no rights to Category A Data, unless rights are specifically negotiated into this Agreement on a per-item basis, such as a Commercial Computer Software License, and set forth therein.

The Seller grants the Government a Government Purpose Rights license to all Category B and C Data that is also:

(1) Technical Data pertaining to an item, component, or process;

(2) Computer Software developed for direct performance of the Order that is required to be delivered under this Order;

- (3) Studies, analyses, test data, or similar data produced for this Order, when the study, analysis, test, or similar work was specified as an element of performance;
- (4) Technical Data created in the performance of the Order that does not require the development, manufacture, construction, or production of items, components, or processes;
- (5) Form, fit, and function data;
- (6) Data necessary for installation, operation, maintenance, or training purposes (other than detailed manufacturing or process data);
- (7) Computer software documentation required to be delivered under this Order;
- (8) Corrections or changes to technical data furnished to the Seller by the Buyer;

The Seller grants the Government an Unlimited Rights license to all Category D Data.

The Government's rights to Category B, C, and D data vest upon provision of the data item or project/Order completion (whichever is earlier), except that the Seller, may request a delay of the start of Government Purpose Rights in Category B Data for a period not to exceed five (5) years from project or Order completion (whichever is earlier). Such requests will only be made in those cases where the Seller has provided information from the affected actual or prospective Seller demonstrating the need for this additional restriction on Government use and shall be submitted to the Agreements Officer through the Buyer for approval, as applicable, 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 GA 1603 Article 31, "Disputes".

Under this Order, 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 Order during this five (5) year period, the Government Purpose Rights license shall be extended an additional five (5) years starting from completion of the subsequent project.

Data that will be delivered, furnished, or otherwise provided to the Government as specified in a specific project award funded under this Order, in which the Government has previously obtained rights, shall be

delivered, furnished, or provided with the pre-existing rights, unless (a) agreed otherwise, or (b) any restrictions on the Government's rights to use, modify, reproduce, release, perform, display, or disclose the data have expired or no longer apply.

The Seller shall maintain a list of the Category A, B, and C developed under this Order and shall regularly update the list to identify any additional or previously unidentified Data if such Data will be used or generated in the performance of the funded work. Rights in such Data shall be as established under the terms of this Order, unless otherwise asserted in a supplemental listing and agreed to by the Government.

(d) Marking of Data

The parties to this Order understand and agree that the Seller shall stamp all documents in accordance with this Article and that the Freedom of Information Act (FOIA) and Trade Secrets Act (TSA) apply to such Data. Data provided under this Order shall be marked in accordance with the following legends:

(1) Category A Data: The Seller must use a company proprietary statement for items where the Government has no rights. For items where rights have been negotiated, the Seller shall use Special License markings as specifically negotiated between the parties in lieu of a company proprietary statement.

(2) Category B and C Data: The Seller must use the following mark: "This data item is provided to the Government under the Government Purpose Rights license as stated in Seller [Insert Order #} with the Buyer's Customer. The Government's rights to use, modify, reproduce, release, perform, display, or disclose this data is restricted. Any reproduction of this data item, or portions thereof, must also reproduce this marking in whole."

(3) Category D Data: The Seller shall leave all data in this category unmarked. Unmarked also means that the data item is devoid of any marking that may resemble markings appropriate for Category A, B, and C data.

The Government shall presume that all unmarked Data provided to the Government through the Buyer by the Seller during performance is Category D Data. In the event that a Seller learns of a release to the Government of its unmarked Data that should have contained a restricted legend, the Seller will have the opportunity to cure such omission going forward by providing written notice to the Government within three (3) months of the erroneous release.

(e) Copyright

The Seller reserves the right to protect by copyright original works developed under this Order. All such copyrights will be in the name of the individual Seller. 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 and/or display publicly, for governmental purposes, any copyrighted materials developed under this agreement, and to authorize others to do so.

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 Order, 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 responsibilities under this Order with the written permission of the Copyright holder.

Copyrighted Data that existed or was produced outside of this Order and is unpublished - having only been provided under licensing agreement with restrictions on its use and disclosure - and is provided under this Order 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 provided under this Order.

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 Order 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 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

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 Order, 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 Order. Data protection will include proprietary markings and handling by the Seller & the Seller's subcontractors of any tier and their respective employees) to whom such Data is provided for use under the Order. Upon completion of activities under this Order, such Data will be disposed of as requested by the Government.

In the event it is necessary for the Seller to furnish Data which existed prior to, or was produced outside of this Order, and such Data embodies trade secrets or comprises commercial or financial information which is privileged or confidential, and such Data is so identified with a suitable notice or legend, the Data will be maintained in confidence and disclosed and used by the Buyer, 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 responsibilities under this Order. The Seller shall not be obligated to provide Data that existed prior to, or was developed outside of this Order to the Government. Upon completion of activities under this Order, such Data will be disposed of as requested by the Seller.

Oral and Visual Information: If information which the Seller (or 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.

(h) Disclaimer of Liability

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

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

	<p>(2) Information contained in any Data for which disclosure and use is restricted under Article X, "Protection of Non-Public Information", 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 Order, is rightfully received from a third party without restriction, or is included in Data which the Seller has furnished, or is required to furnish to the Government without restriction on disclosure and use.</p> <p>(i) Ordering of Additional Data Beyond Agreement Completion</p> <p>The Government may require the delivery of Data first produced under this Order where the request is made within two (2) years following the Order completion date. In the event the Government orders such Data, it shall pay the Seller 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.</p> <p>(j) Lower Tier Agreement/Order</p> <p>The Seller shall include this Article, suitably modified to identify the parties, in all subcontracts or lower tier orders regardless of tier or work type.</p> <p>(k) Survival Rights</p> <p>The obligations of the Government and the Seller under this Article shall survive after the expiration or termination of this Order.</p>	
ARTICLE XIII	PUBLICATION AND PUBLICITY	All Orders
	<p>(a) Non-Publicity</p> <p>Public announcement of the award of this agreement and subsequent modifications is prohibited. The Seller shall not use or allow to be used any aspect of this Order for publicity, advertisement, or any other public relations purpose without express permission of the Buyer. This obligation shall not expire upon completion or termination of this Order and shall continue until rescinded by the U.S. Government.</p> <p>(b) Use of Information</p> <p>There shall be no dissemination or publication, except within and between the Seller and any subcontractors, of information developed under this Order or contained in the reports to be furnished pursuant to</p>	

	<p>this Order without prior written approval of the Buyer. All technical reports will be given proper review by appropriate Buyer authority to determine which Distribution Statement is to be applied prior to the initial distribution of these reports by the Seller. Unclassified patent related documents are exempt from prepublication controls and this review requirement. There shall be no dissemination or publication, except within and between the Seller and any subcontractor(s), of information developed under this effort without first obtaining approval for public release from the Buyer's Customer.</p> <p>(c) Lower Tier Agreement/Order</p> <p>The Seller shall flow down these requirements to its partners and team members, at all tiers.</p>	
<p>ARTICLE XIV</p>	<p>FOREIGN OWNERSHIP, CONTROL, INFLUENCE, ACCESS TO TECHNOLOGY & EXPORT CONTROL</p>	<p>All Orders</p>
	<p>(a) Definition</p> <p>Effectively Owned or Controlled: A foreign government or any entity controlled by a foreign government has the power, either directly or indirectly, whether exercised or exercisable, to control the election, appointment, or tenure of the Seller's officers or a majority of the Seller's board of directors by any means, e.g., ownership, contract, or operation of law (or equivalent power for unincorporated organizations).</p> <p>Entity Controlled by a Foreign Government: Any domestic or foreign organization or corporation that is effectively owned or controlled by a foreign government, or any individual acting on behalf of a foreign government. It does not include an organization or corporation that is owned, but is not controlled, directly or indirectly, by a foreign government if the ownership of that organization or corporation by that foreign government was effective before 23 October 1992.</p> <p>Foreign Firm or institution: A firm or institution organized or existing under the laws of a country other than the United States, its territories, or possessions. The term includes, for purposes of this Agreement, any agency or instrumentality of a foreign government; and firms, institutions or business organizations, which are owned or substantially controlled by foreign governments, firms, institutions, or individuals.</p> <p>Foreign Government: The state and the government of any country (other than the United States and its outlying areas) as well as any political subdivision, agency, or instrumentality thereof.</p>	

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

Proscribed Information:

- (1) Top Secret information;
- (2) Communications Security (COMSEC) material, excluding controlled cryptographic items when un-keyed or utilized with unclassified keys;
- (3) Restricted Data as defined in the U.S. Atomic Energy Act of 1954, as amended;
- (4) Special Access Program (SAP) information; or
- (5) Sensitive Compartmented Information (SCI).

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

(b) General

The Seller agrees that research findings and technology developments arising under this Order 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 Order 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 Regulation (22 CFR Part 121 et seq.), the Department of Commerce Export Regulation (15 CFR Part 770 et seq.), and Article XV, "Security Requirements", of this Order.

If this Order requires access to proscribed information to perform the Order, the Seller shall disclose any interests a foreign government has in itself, its immediate parent, intermediate parent, and any ultimate parent corporation. This Order shall not be performed by entities controlled by a foreign government, unless the Director, Buyer's customer or a designee has waived application of 10 U.S.C. §2536(a).

(c) Disclosure of Foreign Government Control

The Seller shall disclose any interest a foreign government has in the Seller when that interest constitutes control by a foreign government as defined in this article. If the Seller is a subsidiary, it shall also disclose any reportable interest a foreign government has in any entity that owns or controls the subsidiary, including reportable interest concerning the Seller's immediate parent, intermediate parents, and the ultimate parent.

The Seller shall submit a current SF 328, Certificate Pertaining to Foreign Interests, prior to Agreement award. The SF 328 must include the following information:

- (1) Seller's point of contact for questions about disclosure (name and phone number with country code, city code, and area code, as applicable);
- (2) Name and address of the Seller;
- (3) Name and address of entity controlled by a foreign government; and
- (4) Description of interest, ownership percentage, and identification of foreign government.

If during performance of the agreement, foreign government ownership or control status of the Seller changes, the Seller shall submit an updated SF 328 to the Buyer within one week of the change.

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

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 paragraphs (d)(2), (d)(3), and (d)(4) below shall apply to any transfer of Technology. For purposes of this paragraph, a transfer includes a sale of the company, and sales or licensing of Technology. Transfers do not include:

- (1) Sales of products or components, or
- (2) Licenses of software or documentation related to sales of products or components, or
- (3) Transfer to foreign subsidiaries of the Seller member entities for purposes related to this Order, or

(4) 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 Order if such transfer shall be limited to that necessary to allow the firm or institution to perform its approved role under this Order, or

(5) Releases pursuant to Article XIII, "Publication and Publicity".

The Seller shall provide timely notice to the Buyer of any proposed transfers of Technology developed under this Order to Foreign Firms or Institutions. If the Buyer determines that the transfer may have adverse consequences to the national security interests of the United States, the Seller, Government, and the Buyer 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 Seller.

In any event, the Seller shall provide written notice to the Buyer of any proposed transfer to a foreign firm or institution at least ninety (90) 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 sixty (60) calendar days of receipt of the Seller's written notification, the Buyer shall have received advisement by Buyer's Customer and advised the Seller whether it consents to the proposed transfer. In cases where the Government does not concur or if within sixty (60) calendar days after its receipt the Buyer has provided no decision, the Seller may utilize the procedures under GA 1603 Article 31, "Disputes". No transfer shall take place until a decision is rendered.

In the event a transfer of Technology to Foreign Firms or Institutions which is NOT approved by the Government takes place, the Seller shall:

(1) Refund to the Buyer those funds paid under this Order for the development of the Technology; and

(2) Provide to the Government a non-exclusive, nontransferable, irrevocable, paid-up license to practice or have practiced on behalf of the United States the Technology throughout the world for Government and any and all other purposes, particularly to effectuate the intent of this Order.

Upon request of the Government through the Buyer, the Seller shall obtain and provide written confirmation of such licenses described in paragraph (d).

	<p>(e) Export Compliance</p> <p>Information subject to the Arms Export Control Act, 22 U.S.C. §§ 2751, et seq., the International Traffic in Arms Regulation (ITAR), 22 C.F.R. §§ 120, et seq., and the Export Administration Act, 50 U.S.C. app. §§ 2401, et seq., requires that all unclassified technical data with military application may not be exported lawfully without an approval, authorization, or license under Executive Order 12470 or the Arms Export Control Act, and that such data requires an approval, authorization, or license under Executive Order 12470 or the Arms Export Control Act. The Seller 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. All documents determined to contain export-controlled technical data shall be marked with the following notice:</p> <p>WARNING- this document contains technical data whose export is restricted by the Arms Export Control Act (Title 22, U.S.C., and Sec 2751, et seq.) or the Export Administration Act of 1979, as amended, Title 50, U.S.C., App. 2401 et seq. Violations of these export laws are subject to severe criminal penalties. Disseminate in accordance with provision of DOD Directive 5230.25.</p> <p>(f) Lower Tier Agreements</p> <p>The Seller shall include this Article, suitably modified, to identify all Parties, in all lower tier Subcontracts or Sub Agreements. This Article shall, in tum, be included in all Subcontracts or Sub Agreements.</p>	
ARTICLE XV	SECURITY REQUIREMENTS	Orders involving access to national security information and SCI
	<p>(a) Applicability</p> <p>This article applies to the extent that this Order involves access to national security information, up to and including sensitive compartmented information (SCI).</p> <p>(b) Requirements</p> <p>Security requirements are a material condition of this Order. Failure of the Seller to maintain and administer a security program compliant with the security requirements of this Order constitutes grounds for termination.</p>	

- The Seller shall maintain a comprehensive security program in accordance with the requirements of: (1) (U) Buyer's Customer Security Manual (NSM);
- (2) National Industrial Security Program Operating Manual (NISPOM);
 - (3) Buyer's Customer Personnel Security Instruction (PSI);
 - (4) Intelligence Community Directive (ICD) 704, Personnel Security;
 - (5) Committee for National Security Systems (CNSS) Directive 504, Directive on Protection of National Security Systems from Insider Threat;
 - (6) For agreements requiring SCI access, NISPOM Supplement 1 (NISPOMSUP); ICD 705, Sensitive Compartmented Information Facilities; ICD 710, Classification and Control Markings System; and the Integrated Buyer's Customer Classification Guide (INCG);
 - (7) Additional Intelligence Community and Buyer's Customer directives, instructions, policy guidance, standards, and special access program classification and program security guides as specified in the supplier DD Form 254.; and
 - (8) The latest revision to each document listed above, notice of which has been furnished to the Seller by the Buyer.

If, subsequent to the award of this Order, the security classification or security requirements of this Order are changed by the Government, and if the changes cause an increase or decrease in security costs or otherwise affect any other term or condition of this Order, the changes will be subject to the Article IV, "Modifications" listed above.

The Seller shall submit a Standard Operating Procedures (SOP) document to the cognizant Program Security Office (PSO) within 30 days of Order award unless otherwise specified in the Order. The SOP must be prepared in accordance with the NSM, NISPOM, and the requirements specified in the DD Form 254 and the IT-IA-IM CRD, if it is included in the Order

The Seller shall report security and compliance status as directed by the Buyer via the DD254 and the Order's Classification Guide.

Classification levels of the association, work, hardware, and reports under this Order and associated security requirements are set forth in the DD Form 254, attached to this Order. The Seller shall maintain all modified and/or fabricated hardware at the proper classification level(s) and physical security environment(s).

The Seller agrees to permit the necessary polygraph interview of Seller and subcontractor personnel requiring access to SCI information. It is understood that the polygraph interview will be limited to counter-intelligence issues.

The Government and Buyer shall be afforded full, free, and uninhibited access to all facilities, installations, technical capabilities, operations, documentation, records, and databases for the purpose of assessing the efficacy and efficiency of the Seller's safeguards against threats and hazards to the availability, integrity, and confidentiality of Buyer's Customer information.

The Seller is responsible for providing security oversight and ensuring an effective security program for all subcontractor relationships that are formed as the result of this Order. The Seller shall include provisions in all subcontracts that substantially conform to the requirements of this clause.

If any provision of the Order conflicts with the security instructions issued by the Buyer or its representatives, the Seller shall notify the Buyer who will resolve the conflicts. When security regulations are in conflict, the Seller shall follow the most restrictive guidance and immediately refer the matter to the Buyer for resolution.

The Seller shall not disseminate in any manner technology or other program information prior to Government evaluation and determination of appropriate security classification and control. Dissemination of classified program information to other Government agencies or to Seller's personnel other than those specifically assigned to this Order is prohibited unless approved in writing by the Buyer.

If a change in security requirements results in a change in the security classification of this Order or any of its elements from an unclassified status or a lower classification to a higher classification, or in more restrictive area controls than previously required, the Seller shall exert every reasonable effort compatible with the Seller's established policies to continue the performance of work under the Order in compliance with the change in security classification or requirements.

If, despite reasonable efforts, the Seller determines that the continuation of work under this Order is not practicable because of the change in security classification or requirements, the Seller shall notify the Buyer in writing. Until the Buyer resolves the problem, the Seller shall continue safeguarding all classified material as required by this Order. After receiving the written notification, the Buyer shall analyze the

	<p>circumstances surrounding the proposed change in security classification or requirements and shall endeavor to work out a mutually satisfactory method whereby the Seller can continue performance of the work under this Order. If, 15 days after receipt by the Buyer of the notification of the Seller's stated inability to proceed, the application to this Order of the change in security classification or requirements has not been withdrawn, or a mutually satisfactory method for continuing performance of work under this Order has not been agreed upon, the Buyer may terminate the Order, in part or in whole.</p> <p>The Seller agrees to insert this clause in any subcontract under this Order.</p> <p>(c) Term & Survival Rights</p> <p>Obligations to protect classified information continue indefinitely after the term of the Order is completed. Provisions of this Article shall survive termination of this Order.</p>	
<p>ARTICLE XVIII</p>	<p>INFORMATION TECHNOLOGY, ASSURANCE, AND MANAGEMENT REQUIREMENTS</p>	<p>Orders involving access to or processing of national security information and SCI</p>
	<p>(a) Definitions</p> <p>The terms used in this clause are defined in Committee on National Security Systems Instruction (CNSSI) 4009, Committee on National Security Systems Glossary.</p> <p>(b) Applicability</p> <p>This Article shall apply to any aspect of this Order involving access to or processing of national security information, up to and including sensitive compartmented information (SCI).</p> <p>(c) Requirements</p> <p>The Seller shall comply with the requirements of:</p> <p>(1) Buyer's Customer Information Technology-Information Assurance-Information Management Contract Requirements Document (CRD), which is incorporated in the Buyer's Customer OTSD;</p> <p>(2) For Orders involving IT system development and production, and/or</p>	

	<p>requiring access to classified Buyer’s Customer networks, ICD 503, Intelligence Community Information Technology Systems Security Risk Management, and CNSSI 1253, Security Categorization and Control Selection for National Security Systems;</p> <p>(3) Special Access Program classification and program security guidance specified in the Order; and</p> <p>(4) The latest revision to each document listed above, notice of which has been furnished to the Seller by the Buyer.</p> <p>If, subsequent to the award date of this Order, the CRD requirements of this Order are changed, and if the changes cause an increase or decrease in price or schedule or otherwise affect any other term or condition of this Order, the Order may be subject to an equitable adjustment.</p> <p>The Seller is responsible for providing CRD oversight for all subcontractor relationships that are formed as the result of this Order. The Seller shall include provisions in all subcontracts that substantially conform to the requirements of this clause.</p> <p>If any provision of the Order conflicts with instructions issued by the Buyer, the Seller shall notify the Buyer who will resolve the conflict. When CRD regulations are in conflict, the Seller shall follow the most restrictive guidance and immediately refer the matter to the Buyer for resolution.</p> <p>The Seller shall report security and compliance status and reconfigure national security systems as directed by the Government or Buyer.</p> <p>The requirements specified in this clause are a material condition of this Order. Failure of the Seller to maintain and administer an information security program compliant with the CRD requirements of this Order constitutes grounds for termination.</p>		
ARTICLE XIX	<table border="1" style="width: 100%;"> <tr> <td style="width: 50%;">NOTICE OF LITIGATION</td> <td style="width: 50%;">All Orders</td> </tr> </table>	NOTICE OF LITIGATION	All Orders
NOTICE OF LITIGATION	All Orders		
	<p>With respect to litigation to which the Seller is a party relating to this Order:</p> <p>(1) The Seller shall, within five business days, notify the Buyer of any litigation filed by a third party (including individuals, organizations, and federal, state, or local governmental entities) or subpoena involving or in any way relating to this Order and/or related subcontracts. Said notice shall include a copy of all documents filed with the court in connection with the litigation or subpoena to the extent such documents are not covered by a court-ordered seal or protective order.</p>		

	<p>(2) The Buyer shall have the right to examine any pertinent documents filed with the court during the conduct of the litigation, and any documents and records provided to the third party in response to the subpoena. The Buyer shall be given an opportunity to review any filing contemplated by Seller in advance to such filing, to include any coordination that might be required to accomplish a security review before filing.</p> <p>The Seller agrees to insert this clause in any subcontract under this Order.</p>	
<p>ARTICLE XX</p>	<p>DISCLOSURE OF BUYER'S CUSTOMER ASSOCIATION</p>	<p>All Orders</p>
	<p>(a) Acknowledgement and Approval</p> <p>The Government requires that all agreements with educational institutions, to include Federally Funded Research and Development Centers and University Affiliated Research Centers managed by an educational institution, require written acknowledgement and approval by a responsible official (e.g., president, chancellor, provost, director, or equivalent senior official) authorized to approve such agreements on behalf of the educational institution. The resulting agreement shall acknowledge the involvement of the Buyer's Customer or Intelligence Community with the educational institution and requires prior Government approval of the proposed agreement relationship.</p> <p>(b) Requirements</p> <p>If the Seller is of a type described in paragraph (a) of this article, then the Seller shall submit a signed letter to the Buyer prior to execution of this Order. The signed letter shall be addressed to the Buyer and include at least the following required language:</p> <p>Pursuant to Executive Order 12333, this letter acknowledges that I am an official of [name of educational institution] authorized to approve any Agreement that may be awarded by the Buyer in response to this educational institution's proposal [insert proposal number or title and date]. I further acknowledge that I am aware that the Buyer's Customer will be involved in any resulting Order and do hereby, on behalf of [name of educational institution], approve such a contractual relationship."</p> <p>(c) Subcontracts</p> <p>Prior to execution of any subcontracts or sub-agreements from third parties that are described in paragraph (a), the Seller shall obtain a signed letter from the prospective third party and submit it to the Buyer prior to the execution of the sub-Agreement. The signed letter shall be addressed</p>	

to the Buyer and include at least the following required language:

Pursuant to Executive Order 12333, this letter acknowledges that I am an official of [name of educational institution] authorized to approve any Agreement issued by [name of Seller] in support of the Buyer. I further acknowledge that I am aware that the Buyer's Customer will be involved in any resulting Agreement and do hereby, on behalf of [name of educational institution], approve such a contractual relationship."

The Seller agrees to insert this clause in any subcontract under this Agreement.