

TIER II OTA Subcontracts Rev C

Where necessary, to identify the applicable parties under the below clauses, “Contractor” shall mean or has been changed to “Seller”, “Contracting Officer or Agreements Officer” shall mean or has been changed to “Tendeg”, “Contract, Agreement, or Purchase Order” shall mean or has been changed to “Subcontract”, and “Government” and shall mean or has been changed to Tendeg. 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 Agreement Performing Officer or duly authorized representative, including but not limited to (i) audit rights to Seller’s proprietary business records or (ii) any indemnification or limitation of liability obligation, which obligation shall remain with the Government; (2) when title to property is to be transferred directly to the Government, and (3) when the Government is granted ownership or other rights to Seller’s intellectual property or technical data.

If this Agreement carries a DPAS rating, FAR 52.211-15 Defense Priority and Allocation Requirements shall apply.

Article I - Definitions

In this Agreement, the following definitions apply. A word or term, defined in this section, has the same meaning throughout this Agreement unless the context in which the word or term is used clearly requires a different meaning or another Article provides a different definition for that particular Article:

Agreement: the body of this document, the Subcontract or Purchase Order, and all attachments which are expressly incorporated in and made a part of the Agreement.

Data: Recorded information, regardless of form or method of recording, which includes but is not limited to, technical data, software, mask works and trade secrets. The term does not include financial, administrative, cost, pricing or management information and does not include subject inventions, included in Article VIII.

Days: Calendar days.

Foreign Firm or Institution: A firm or institution organized or existing under the laws of a county 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.

Government: The United States of America

Government Purpose Rights: The rights to use, modify, repurpose, release, perform, display, or disclose technical data within the Government without restriction; and release or disclose technical data outside the Government and authorize persons to who release or disclosure has been made to use, modify, reproduce, release, perform, display, or disclose that data for the United States government purposes.

Invention: Any invention or discovery, which is or may be patentable or otherwise protectable under Title 35 of the United States Code.

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.

Made: When used in relation to any invention means the conception or firm actual reduction to practice of such invention.

Milestone: A scheduled, previously negotiated event, satisfying the completion of a major deliverable or set of related deliverables, with clearly defined success criteria. A milestone that has been completed will

be approved for payment by the Tendeg. The approved payable milestone will represent a predetermined dollar amount in relation to performance of a particular program.

Nontraditional defense contractor: Per 10 U.S.C. § 2302(9), “an entity that is not currently performing and has not performed, for at least the one-year period preceding the solicitation of sources by DoD for the procurement or transaction, any contract or subcontractor for DoD that is subject to full coverage under the cost accounting standards prescribed pursuant to 41 U.S.C. 1502 and the regulations implementing such subsection.

Party: Includes Tendeg, or the Seller, or both.

Practical Application: 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.

Property: Any tangible physical property, whether real or personal, other than property actually consumed during the execution of work under this agreement. For purposes of this Article, “property” does not include the deliverable prototype, which is the high-level and source code implementation of the advanced algorithm(s).

Prototype: A physical or virtual model used to evaluate the technical or manufacturing feasibility or military utility of a technology, process, concept, end item, or system.

Small Business: A small business concern as defined under section 3 of the Small Business Act (15 U.S.C § 632).

Subject Invention: Any invention conceived or first actually reduced to practice in the performance of work under this Agreement.

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.

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 other to do so.

Article II – Compliance with Laws of General Applicability

(a) Civil Rights Act

This Agreement 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 Agreement, Seller assures its compliance with the nondiscriminatory provisions of the Act.

(b) Procurement Integrity Act

This Agreement 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 Agreement, Seller assures its compliance the Act.

(c) Subcontracts

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,

Article III – Obligation and Payment

Tendeg may obligate funds to the Agreement incrementally. In instances where a program is not fully funded at the time of award, Tendeg's obligation will at all times be limited to the amount obligated for this Agreement. Tendeg will have no obligation to reimburse Seller for any expenditure in excess of the total funds allotted to this Agreement. Seller agrees to perform up to the point at which the total amount payable by Tendeg reflects the total amount currently obligated to the Agreement. Seller will not be obligated to continue work beyond that point. In this scenario, Seller may choose to continue performance under this Agreement even if all obligations are expended (work at risk). If funding is later obligated to the Agreement, and milestones(s) is successfully completed Tendeg will make associated milestone payment(s).

Upon request, Seller will also submit any additional documentation reasonably requested by Tendeg as necessary to support the agreement invoice process.

Seller agrees to establish and maintain an acceptable accounting system, which complies with Generally Accepted Accounting Principles and the requirements of this Agreement, and shall ensure that appropriate arrangements have been made for receiving, distributing and accounting for all funding under the Agreement. An acceptable accounting system is one in which all cash receipts and disbursements are controlled and documented properly.

To the extent that the total government payments under the Agreement exceed \$5,000,000, the Controller General of the United States, in its discretion, shall have access to and the right to examine financial records of any party to the Agreement of any entity that participates in the performance of this Agreement that directly pertain, to and involve transactions relating to, the Agreement for a period of three (3) years after final payment is made. This requirement shall not apply with respect to any party to this Agreement of any entity that participates in the performance of the Agreement, or any subordinate element of such party or entity, that, in the year prior to the date of the Agreement, has not entered into any other contract grant, cooperative agreement, or other transaction agreement that provides for audit access to its records by a government entity in the year prior to the date of this Agreement. This paragraph only applies to any financial 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 / contract under this Agreement.

Article IV - Disputes

In no event shall the liability of Seller exceed the funding received for their performance of this Agreement. In no event shall the liability of Tendeg exceed the amount obligated by Tendeg.

Any claim for damage pursued under this Agreement shall be limited to direct damages only up to the aggregate amount of Tendeg-disbursed funding as of the time the dispute arises. No Party shall be liable to any other Party for consequential, punitive, special and incidental damages or other indirect damages, whether arising in contract (including warranty), tort (whether or not arising from the negligence of a Party) or otherwise, except to the extent such damages are caused by a Party's willful misconduct.

Nothing in this Article shall be interpreted as a waiver of any defense, claims, or counterclaim by the Government, including a claim of sovereign immunity.

Article V – Publication and Publicity

(a) Public announcement of the award of this agreement and subsequent modifications is prohibited. Seller shall not use or allow to be used any aspect of this agreement for publicity, advertisement, or any other public relations purpose without express permission of Tendeg. This obligation shall not expire upon completion or termination of this agreement, and shall continue until rescinded by Tendeg.

(b) There shall be no dissemination of publication, except within and between Seller and any subcontractors, of information developed under this agreement or contained in the reports to be furnished pursuant to this

Agreement without prior written approval of Tendeg. All technical reports will be given proper review by the appropriate Tendeg authority to determine which Distribution Statement is to be applied prior to the initial distribution of these reports by 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 Seller and any subcontractor(s), of information developed under this effort without first obtaining approval for public release from Tendeg and the Government Information Management Services Office.

(c) Seller shall flow down these requirements to its partners and team members, at all tiers.

Article VI – Insurance

(a) Seller and its subcontractors shall maintain for the performance of this Agreement the following insurances:

- (1) Workers' compensation insurance meeting the statutory requirements where Work will be performed;
- (2) Employer's liability ("EL") in the amount of \$1 million per each accident or per each employee for disease;
- (3) Commercial general liability ("CGL") including Products Liability and Completed Operations liability in the amount of \$1 million per occurrence and \$2 million in the aggregate annually; and
- (4) In the event that SELLER, its employees, agents, or subcontractors enter the site(s) of Tendeg or its customers for any reason in connection with the Agreement, then Seller and its subcontractors shall maintain Automobile liability ("AL") insurance covering third party bodily injury and property damage with a minimum of \$1 million per occurrence limit.

(b) Seller shall provide Tendeg thirty (30) days' advance written notice prior to the effective date of any cancellation or change in the term or coverage of any of Seller's required insurance, provided however such notice shall not relieve Seller of its obligations to maintain the required insurance. Seller shall have its insurers name Tendeg as an additional insured on the CGL and if applicable AL policies for the duration of this Contract. If requested, Seller shall provide a "Certificate of Insurance" evidencing Seller's compliance with these requirements. Insurance maintained pursuant to this clause shall be considered primary as respects the interest of Tendeg and is not contributory with any insurance which Tendeg may carry. Seller's obligations herein for procuring and maintaining insurance coverage are freestanding and are not affected by any other language in this Contract.

Article VII - Protection of Non-Public Information

(1) Definitions

Confidential Information: All material, non-public, business-related information, written or oral, whether or not it is marked as such, that is disclosed or made available to the receiving party, directly or indirectly, through any means of communication or observation.

Disclosing Party: Seller, to include their subcontractors or suppliers, or Tendeg, it's Customer, or the Government if Agreement is Government funded, who discloses Non-Public Information as contemplated by the subsequent paragraphs.

Receiving Party: Seller, to include their subcontractors or suppliers, Tendeg, it's Customer, or the Government if Agreement is Government funded, who receives Non-Public Information disclosed by a Disclosing Party.

Non-Public Information: Information and materials of a Disclosing Party which are designated as Confidential Information 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.

Non-Public Information: includes any information and materials considered a Trade Secret by Seller on its own behalf or on behalf of their subcontractors or suppliers.

Trade Secret: All forms and types of financial, business, scientific, technical, economic, or engineering or otherwise proprietary information, including, but not limited to, patterns, plans, compilations, program devices, formulas, designs, prototypes, methods, techniques, processes, procedures, programs, or codes, whether tangible or intangible, and whether or how stored, compiled, or memorialized physically, electronically, graphically, photographically, or in writing if (a) The owner thereof has taken reasonable measures to keep such information secret; and (b) 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.

(2) Exchange of Information

The Government may from time to time disclose Government Non-Public Information to Seller and its subcontractors or suppliers, in connection with a particular project, and Seller and its subcontractors or suppliers, may from time to time disclose information that is a Trade Secret or Confidential Information to the Government in connection with the Agreement or performance thereunder. Neither the Government nor Seller or their subcontractors or suppliers shall be obligated to transfer Non-Public Information independently developed by the Parties, absent an express written agreement between the Parties providing the terms and conditions for such disclosure.

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 Non-Public Information 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 Non-Public Information, 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 Article.

(3) Confidentiality and Authorized Disclosure

The Receiving Party agrees, to the extent permitted by law, that Non-Public Information shall remain the intellectual property of the Disclosing Party (no one shall disclose unless they have the right to do so), and that, unless otherwise agreed to by the Disclosing Party, Non-Public Information and Trade Secrets shall not be disclosed, divulged, or otherwise communicated by it to third parties or used by it for any purposes other than in connection with specified project efforts and the licenses granted in Article VII, 'Inventions and Patents', and Article XIV, 'Data Rights', provided that the duty to protect such "Non-Public Information" and "Trade Secrets" shall not extend to materials or information that:

- (a) Are received or become available without restriction to the Receiving Party under a proper, separate agreement,
- (b) Are not identified with a suitable notice or legend per Article entitled "Non-Public Information" herein,
- (c) 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,
- (d) Are or later become part of the public domain through no fault of the Receiving Party,
- (e) Are received by the Receiving Party from a third party having no obligation of confidentiality to the Disclosing Party that made the disclosure,
- (f) Are developed independently by the Receiving Party without use of Confidential Information or Trade Secrets as evidenced by written records,
- (g) Are required by law or regulation to be disclosed; provided, however, that the Receiving Party has provided written notice to the Disclosing Party promptly to enable such Disclosing Party to seek a protective order or otherwise prevent disclosure of such information.

(4) Return of Proprietary Information

Upon the request of Seller, the Government shall promptly return all copies and other tangible manifestations of the Non-Public Information or Trade Secrets disclosed. Upon request by the Government, Seller shall promptly return all copies and other tangible manifestations of the Non-Public Information disclosed by the Government. As used in this section, tangible manifestations include human readable media as well as magnetic and digital storage media. In the event the return of all tangible manifestations is not practicable, a Party may propose an alternative process to ensure the verifiable destruction of such tangible manifestations. Both Parties must agree upon such alternative process in writing prior to implementation.

(5) Protection of Certain Information from Disclosure

Disclosure by the Government of the following information is not required, and may not be compelled under 5 U.S.C. § 552 (commonly known as the Freedom of Information Act) for five years after the date on which the information is received by the Government. Such information is a proposal, proposal abstract, and supporting documents; a business plan submitted on a confidential basis; or technical information submitted on a confidential basis. In any case, this provision applies to information that is in the records of the Government if the information was submitted by Seller in a competitive or noncompetitive process having the potential for resulting in an award authorized under 10 U.S.C. § 2371b.

(6) Term

Except to the extent covered by and subject to other provisions of this Agreement or the specific Project Agreement, the obligations of the Receiving Party under this Article shall continue for a period of five (5) years after the expiration or termination of this Agreement.

The Government and Seller shall flow down the requirements of this Article to their respective personnel, agents, partners, team members, subcontractors and suppliers receiving such Non- Public Information under this agreement.

Article VIII – Supply Chain Risk Management Plan

(a) Compliance requirements.

(1) Seller shall procure, to the maximum extent practicable, products, systems and critical components of those systems, which are Original Component Manufacturer (OCM) or Original Equipment Manufacturer (OEM) and competitively sourced. Procurement of products, systems and critical components must be compliant with the Buy American Act and Government Information Technology (IT) procurement policies.

(2) The Government may waive or tailor SCRM requirements for Advanced Research and Development projects involving experimental or demonstration projects that meet any of the following: (i) Projects/systems in Technology Readiness Level 1-3 with limited domestic-only supply chain exposure or without utilization of Government networks or supply chain exposure. (ii) Projects/systems that will have no physical or virtual connection with operational mission systems. (iii) Projects/systems without identified Critical Components or Information and Communications Technology (ICT).

(b) Supply Chain Risk Management Plan

(1) Seller shall submit a comprehensive Supply Chain Risk Management Plan to Tendeg as requested by Tendeg in accordance with the agreement scope.

(2) Contents of the plan shall include at a minimum

(i) A complete Supply Chain List (SLC) of ICT components and of subcontractors, hardware and software component suppliers, and vendors (including deliver, packaging, and warehousing vendors) used for performance of the agreement. The SCL shall be updated and accessible to the Government. This list shall be maintained as current throughout the acquisition lifecycle.

(ii) Seller's confirmation of compliance with the Government's policy requirements for purchases, components, CPI, ICT, materials, instruments, hardware, software or firmware regarding

(A) OEMs/OCMs

(B) US-made, US-only Suppliers/Vendors;

(C) Trade Agreement Act (TAA) compliance for parent level IT (e.g. Router, Switch, Server, Desktop); (Note: Component level IT does not require TAA compliance (e.g. Motherboards, RAM, internal hard drives, video card; and

(D) Competitively awarded suppliers.

(iii) All information available on suppliers Seller has already purchased from and/or used under this agreement, together with rationale for purchasing from sources, that are –

(A) Non-OEM/OCM

(B) Foreign-owned, operated, and/or controlled

(C) Unknown, or first-time use; and/or

(D) Sole Source

(iv) A complete description of its Supply Chain Risk Management System (SCRMS).

(v) A description of Seller's purchasing process or system, including security and vetting controls used in the selection and award of subcontractors, vendors and suppliers to comply with paragraphs (b)(2)(ii) – (iv).

(vi) The status of purchasing system review conducted by the Defense Contracts Management Agency (DCMA) or other Government Agency, to include Government POCs, dates of assessments and any outstanding corrective actions.

(vii) Subcontractor purchasing systems shall be compliant with Seller's SCRMS.

(c) SCRMS requirements

(1) Seller shall establish and maintain an acceptable SCRMS. Failure to maintain an acceptable SCRMS, as defined in this Article, may result in: disapproval of Seller's purchasing system; Contracting Officer determination of Non-Responsibility; negative past performance assessment; and/or termination of this agreement.

(2) Seller's SCRMS shall comply with the following –

(i) Seller shall have adequate systems in place to contribute to supply chain threat assessments to support its SCRMS in documenting, assessing, and dispositioning vulnerabilities in its supply chain, and that enable data exchange with the private and public

sector. Sellers will share data collected with Program Managers in accordance with section 2(ii), including the Government Industry Data Exchange Program (GIDEP).

(ii) Seller shall provide input to the Government SCRA and component assessments, criticality analysis, supply chain threat assessment, and vulnerability assessment – including due diligence research performed in selecting a supplier. Seller shall propose risk mitigation strategies for Government consideration.

(iii) Seller shall provide a description of its Supply chain Risk, defined in section (a), of process or system, addressing how risks are identified and mitigated to the supply chain relative to products, systems and/or critical components of those systems, or otherwise, to service providers to all levels in the supply chain of the agreement.

(iv) Seller shall receive and ship all equipment, software and hardware assets for final delivery using DoD approved carriers in accordance with the Defense Transportation Regulation (DTR).

(v) Seller shall track property from date of procurement or date of Government Furnished Equipment (GFE) transfer to disposal (if applicable) and shall make available, at the Government's request, an audit trail of such purchases and transfers. Seller shall obtain and track Destruction Certificates for serial numbered items when permanently removed from service.

(vi) Seller shall provide notification to Tendeg within 48 hours if any items are already purchased, and reflected in Seller's Supply Chain List (SCL) that are: not OEM/OCM; not US-made; not known suppliers (Government SCRA is nonexistent or older than 2 years), or sole source suppliers, including full information available to Seller regarding items purchased and their source.

(vii) Seller shall notify Tendeg within 48 hours of Seller's knowledge of any changes to Seller's supply chain, or to information on the SCL that was initially provided to the Government and reflected in its Supply Chain Surveillance Plan (SCSP), under this agreement.

(viii) Seller shall notify Tendeg within 48 hours, when discovering a supply chain compromise or anomaly, whether verified or suspected. Seller shall conduct a comprehensive investigation of the compromise and keep Tendeg informed throughout the process.

(ix) Seller shall select all parts, materials, and process for use in Space Systems to meet the program's Statement of Work.

(x) Seller shall develop and deliver its Software Bill of Materials (SBOM). The SBOM will be used to perform vulnerability or license analysis, both of which can be used to evaluate risk in the developed software capability. The SBOM shall be delivered in one of the data formats conformant to Software Data Package eXchange (SPDX), CycloneDX, Software Identification (SWID) tags are acceptable.

(xi) Seller shall identify CPI and document CPI measures in support of the PPP to address supply chain risks.

(d) Subcontracts

Seller shall insert the substance of this Article, including this paragraph (d), into all agreements /subcontracts except for Commercial Services and Commercial Off-the-shelf (COTS) items, that are not on Seller's government approved critical component list.

(e) Government sources

Seller and its subcontractors are required to comply with the requirements of the Article, as applicable, even when: Purchasing items(s) from the Federal Supply Schedule; purchasing electronic parts from suppliers accredited by the Defense Microelectronics Activity, or requisitioning electronic parts from Government inventory/stock under the authority of FAR Clause 52.251-1, Government Supply Sources. The Seller agrees to flow down the requirements set forth in this Article to any lower-tier subcontracts.

(f) Reporting Requirements

The reporting requirements of this Article shall be effective at the point in time when Seller has identified Critical Components on its Critical Component list through the end of the agreement performance.

(g) Exceptions

The requirements of this Article do not apply to Commercial Services and Commercial Off-the-Shelf (COTS) items, that are not on Seller's Government-approved critical component list.

Article IX – Termination

In the event of a termination of this Agreement, the Government shall have paid-up rights as described in Article XIII and rights in data as described in Article XIV. Failure of the Parties to agree to a mutually satisfactory settlement shall be resolved pursuant to Article IV.

Article X – Information Technology, Assurance, and Management Requirements

(a) Definitions. The terms used in this Article are defined in Committee on National Security Systems Instruction (CNSSI) 4009, Committee on National Security Systems Glossary.

(b) Applicability This Article shall apply to any aspect of this Agreement involving access to or processing of national security information, up to and including SCI.

(c) Requirements Seller shall comply with the requirements of:

(1) Information Technology-Information Assurance-Information Management Contract Requirements Document (CRD) which is incorporated in the OTSD;

(2) for Agreements involving IT system development and production, and/or requiring access to classified networks, ICD 503, Intelligence Community Information Technology Systems Security Risk Management, and CNSSI 1253, Security Categorization and Control Selection for National Security Systems;

(3) SAP classification and program security guidance specified in the Agreement; and

(4) The latest revision to each document listed above, notice of which has been furnished to Seller by the Government. If, subsequent to the award date of this Agreement, the CRD requirements of this Agreement are changed by the Government, and subsequently Seller's Subcontract with Tendeg, and if the changes cause an increase or decrease in price or schedule or otherwise affect any other term or condition of this Agreement, the Agreement may be subject to an equitable adjustment. Seller is responsible for providing CRD oversight for all subcontractor relationships that are formed as the result of this Agreement. Seller shall include provisions in all subcontracts that substantially conform to the requirements of this clause. If any provision of the Agreement conflicts with instructions issued by Tendeg, Seller shall notify Tendeg who will resolve the

conflict. When CRD regulations are in conflict, Seller shall follow the most restrictive guidance and immediately refer the matter to Tendegefor resolution. Seller shall report security and compliance status and reconfigure national security systems as directed by the Government. The requirements specified in this clause are a material condition of this Agreement. Failure of Seller to maintain and administer an information security program compliant with the CRD requirements of this Agreement constitutes grounds for termination.

The Seller agrees to flow down the requirements set forth in this Article to any lower-tier subcontracts

Article XI – Notice of Litigation

With respect to litigation to which Seller is a party relating to this Agreement:

(1) Seller shall, within five business days, notify Tendege 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 Agreement 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.

(2) Tendege 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. Tendege 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. Seller agrees to insert this clause in any subcontract under this Agreement.

Article XII – Enabling Prime and Support Contractor Relationships

(a) The Government currently has, or may enter into, contracts with one or more of the following companies, the primary purpose of which is to furnish independent and impartial advice or technical assistance directly to the Government in support of the Government's management and oversight of a program or effort. These companies (hereafter referred to as support contractors), are obligated to safeguard the sensitive and proprietary information of other contractors, subcontractors, suppliers, and vendors to which they have access.

List of Support Contractors to be provided upon Seller request.

(b) In the performance of this Agreement, Seller agrees to cooperate with the companies listed above. Cooperation includes, but not limited to, allowing the listed support contractors to attend meetings; observe technical activities; discuss with Seller technical matters related to this program at meetings or otherwise; and access Seller's integrated data environments and facilities used in the performance of this Agreement.

(c) Seller must provide the support contractors access to data such as, but not limited to, design and development analyses; test data, procedures, and results; research, development, and planning data; parts, equipment, and process specifications; quality control procedures; manufacturing and assembly procedures; schedule and milestone data; and other contract data. To fulfill contractual requirements to the Government, support contractors engaged in general systems engineering and integration efforts and technical support are normally authorized access to information pertaining to this contract. Exceptions, such as when Seller seeks to restrict access to Seller's trade secrets,

will be handled on the case-by-case basis. If Seller seeks to limit distribution of data to Government personnel only, Seller must submit this request in writing to the Tendeg to provide to the Contracting Officer.

(d) Seller further agrees to include in all subcontracts, except for those to provide only commercial and/or non-developmental items, a clause requiring the subcontractor and succeeding levels of subcontractors to comply with the response and access provisions of paragraph (b) above, subject to coordination with Seller. This Article does not relieve Seller of the responsibility to manage its teammates effectively and efficiently, nor is it intended to establish privity of contract between the Government or support contractors and such subcontractors.

(e) Seller and its teammates are not required to take direction from support contractors.

(f) Support contractors are required to protect data and software related to this contract, and are prohibited from using such data for any purpose other than performance of support contract.

(g) Support contractors shall protect the proprietary information of disclosing Seller and its teammates, suppliers, and vendors. Because such entities are intended to be third-party beneficiaries, all such disclosing parties agree that these terms satisfy the non-disclosure agreement requirements set forth in 10 U.S.C. 2320(f)(2)(B). Accordingly, Seller may only enter into a separate non-disclosure, confidentiality, proprietary information, or similar agreement with a disclosing party on an exception basis, and only after notifying the Tendeg, who will notify the Government through appropriate channels. The Government and the disclosing Seller's, teammates, suppliers, and vendors agree to cooperate to ensure that the execution of any non-disclosure agreement does not delay or inhibit performance of this Agreement, and the Government shall require support contractors to do the same. Such agreements shall not otherwise restrict any rights due the Government under this Agreement. Separate non-disclosure agreements may be executed only in the following exceptional circumstances:

(1) The support contractor is a direct competitor of the disclosing party in furnishing end items or services of the type developed or produced for the program or effort; (2) The support contractor will require access to extremely sensitive business data; or (3) Other unique business situations exist in which the disclosing party can clearly demonstrate that this Article does not adequately protect their competitive interests.

(h) Any proprietary information furnished to support contractors shall be:

(1) Disclosed in writing and clearly marked "proprietary" or with other words of similar meaning; or

(2) Disclosed orally or visually (for instance, during a plant tour, briefing, or demonstration) and identified as proprietary information at the time of the oral or visual disclosure by the Government or a disclosing party. The support contractors shall treat all such information as proprietary unless within fifteen (15) days the support contractor coordinates with the Government or disclosing party to obtain a written version of the proprietary information and determine the extent of the proprietary claims; or

(3) Disclosed by electronic transmission (e.g., facsimile, electronic mail, etc.) in either human readable form or machine readable form, and the contractor marks it electronically as proprietary within the electronic transmissions, such marking to be displayed in human readable form along with any display of the proprietary information; or

(4) Disclosed by delivery of an electronic storage medium or memory device, and the contractor marks the storage medium or memory device itself as containing proprietary information and electronically marks the stored information as proprietary, such marking to be displayed in human readable form along with any display of the proprietary information.

(i) Seller agrees not to hold the support contractor liable for unauthorized disclosure of proprietary information if it can be demonstrated in written documentation or other competent evidence that the information was:

(1) Already known to the support contractor without restriction on its use or disclosure at the time of its disclosure by the disclosing party;

(2) In the public domain or becomes publicly known through no wrongful act of the support contractor;

(3) Proprietary information disclosed by the support contractor with the contractor's prior written permission;

(4) Independently developed by the support contractor, subsequent to its receipt, without the use of any proprietary information;

(5) Disclosed to the support contractor by a third party who was legally entitled to disclose the same and who did not acquire the proprietary information from the disclosing party;

(6) Specifically provided in writing by the U.S. Government to the support contractor with an unlimited rights license; or

(7) Disclosed by the support contractor as required by law, regulatory or legislative authority, including subpoenas, criminal or civil investigative demands, or similar processes, provided the support contractor provides the disclosing party that originated the proprietary information with prompt written notice so that the disclosing party may seek a protective order or other appropriate remedy, and provided that, in the absence of a timely protective order, the support contractor furnishes only that minimum portion of the proprietary information that is legally required.

(j) Any notice to the support contractor(s) required or contemplated under the provisions of this Article shall be in writing and shall be deemed to have been given on:

(1) The date received if delivered personally or by overnight courier;

(2) The third day after being deposited in the U.S. mail, postage prepaid; or

(3) The date sent if sent by facsimile transmission or e-mail with a digital copy.

(k) The Government and Seller agree to cooperate in resolving any unauthorized disclosure or misuse of proprietary information by a support contractor. This shall not be construed as requiring the contractor to conduct an inquiry into an unauthorized disclosure or misuse, or as authorizing the allocation of costs for such an inquiry directly to this contract. Any costs incurred by the contractor in said fact-finding efforts may be allowable and allocable upon determination of the

Contracting Officer after adjudicating the circumstances related to any unauthorized disclosures or misuse.

Article XIII – Inventions and Patents

(a) Allocation of Principal Rights
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 Seller has timely pursued a patent application and maintained any awarded patent and has not notified the Government (in accordance with paragraph (b) below) that Seller does not intend to retain title.

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 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 Agreement 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
Seller shall disclose each Subject Invention to Tendeg 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 Seller determines that it does not intend to retain title to any Subject Invention, Seller shall notify Tendeg, in writing, within eight (8) months of disclosure to the Government. However, in any case where publication, sale, or public use has initiated the one (1)-year statutory period wherein valid patent protection can still be obtained in the United States, the period for such notice is shortened to at least sixty (60) calendar days prior to the end of the statutory period.

(c) Conditions When the Government May Obtain Title
Upon Tendeg's written request, Seller shall convey title to any Subject Invention to the Government under any of the following conditions:

- (1) If 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 Consortium Manager to disclose or elect within the specified times.
- (2) In those countries in which Seller fails to file patent applications within the times specified in paragraph (b) of this Article; provided, that if 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, Seller shall continue to retain title in that country; or
- (3) In any country in which 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 Seller's Right to File

Seller shall retain a nonexclusive, royalty-free license throughout the world in each Subject Invention to which the Government obtains title, except if 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 Seller is a party and includes the right to grant sublicenses of the same scope to the extent that Seller was legally obligated to do so at the time the Prototype Award 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.

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 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 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, Tendeg shall furnish Seller a written notice of its intention to revoke or modify the license, and Seller shall be allowed twenty (20) 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

Seller agrees to execute or to have executed and promptly deliver to Tendeg all instruments necessary to

(i) establish or confirm the rights the Government has throughout the world in those Subject Inventions to which 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.

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 Seller each Subject Invention made under this Agreement in order that Seller can comply with the disclosure provisions of paragraph (b) of this Article. 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.

Seller shall notify Tendeg 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.

Seller shall include, within the specification of any United States patent application and any patent issuing thereon covering a Subject Invention, the following statement: "This Invention was made with Government support under Agreement No. [Insert Agreement Number Here], awarded by the Government. The Government has certain rights in the Invention."

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

- (1) Such action is necessary because Seller 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 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 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 Agreement.

(h) **Notice and Assistance**
Seller shall report to Tendeg, promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this Agreement of which Seller has knowledge.

In the event of any claim or suit against the Government on account of any alleged patent or copyright infringement arising out of the performance of this Agreement or out of the use of any supplies furnished or work or services performed under this Agreement, Seller shall furnish to the Government, when requested by Tendeg or the Contracting Officer directly, 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 Seller has agreed to indemnify the Government.

(i) **Lower Tier Agreements**
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 Tendeg and Seller under this Article shall survive after the expiration or termination of this Agreement.

Article XIV – Data Rights

(a) **General Definitions**
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).

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.

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.

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.

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.

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.

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.

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 Seller on behalf of Seller 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 Seller, or its subcontractor(s). Category A Data shall include, but not be limited to:

- (1) Data or other material provided by Seller used in performance of this Agreement which was not developed in the performance of work under that project, and for which Seller retains all rights.
- (2) Any initial Data or technical, marketing, or financial Data provided at the onset of the project by Seller that was used in preparation of proposals or other items prior to Agreement award, including the proposal itself.

Category B: Data developed under this Agreement that was accomplished partially with funding attributable to the United States Government under this Agreement 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 Agreement.

Category D: Data that is otherwise publicly available or that has been released or disclosed by Seller without restrictions on further use, release or disclosure, other than a release or disclosure resulting from the sale, transfer, or other assignment of interest in the Data to another party or the sale or transfer of some or all of a business entity or its assets to another party. This also includes Data in which the Government has obtained unlimited rights under another Government contract or agreement or as a result of negotiations.

The parties to this Agreement understand and agree that 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.

(c) Allocation of Principal Rights
Any Data developed outside of this Agreement whether or not developed with any Government funding, in whole or in part, under a Government agreement, contract or subcontract shall have the rights negotiated under such prior agreement, contract or subcontract; the Government shall get no additional rights in such Data under this Agreement.

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.

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 Agreement that is required to be delivered under this Agreement;
- (3) Studies, analyses, test data, or similar data produced for this Agreement, when the study, analysis, test, or similar work was specified as an element of performance;
- (4) Technical Data created in the performance of the Agreement 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 Agreement;
- (8) Corrections or changes to technical data furnished to Seller by the Government; 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/Agreement completion (whichever is earlier), except that 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 Agreement completion (whichever is earlier). Such requests will only be made in those cases where 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 Tendeg, who shall in turn submit to the Contracting Officer 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 Article IV, 'Disputes'.

Under this Agreement, the period of a Government Purpose Rights license shall be no less than five (5) years. In the event that the Data subject to this Government Purpose Rights license is used to perform an additional Agreements 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 Agreement, in which the Government has previously obtained rights, shall be delivered, furnished, or provided with the pre-existing rights, unless (a) the Parties have agreed otherwise, or (b) any restrictions on the Government's rights to use, modify, reproduce, release, perform, display, or disclose the data have expired or no longer apply.

Seller shall maintain a list of the Category A, B, and C developed under this Agreement 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 Agreement, unless otherwise asserted in a supplemental listing and agreed to by the Government.

(d) Marking of Data
The parties to this Agreement understand and agree that 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 Agreement shall be marked in accordance with the following legends:

- (1) Category A Data: Seller must use a company proprietary statement for items where the Government has no rights. For items where rights have been negotiated, 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: Seller must use the following mark: "This data item is provided to the Government under the Government Purpose Rights license as stated in Agreement [Insert Agreement #] with the Government. 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: 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 by 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, 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
Seller reserves the right to protect by copyright original works developed under this Agreement. All such copyrights will be in the name of the individual Seller. 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 Agreement, the Party receiving the Data and others acting on its behalf may reproduce, distribute, and prepare derivative works for the sole purpose of carrying out that Party's responsibilities under this Agreement with the written permission of the Copyright holder.

Copyrighted Data that existed or was produced outside of this Agreement and is unpublished - having only been provided under licensing agreement with restrictions on its use and disclosure - and is provided under this Agreement shall be marked as unpublished copyright in addition to the appropriate license rights legend markings restricting its use. Seller is responsible for affixing appropriate markings indicating the rights of the Government on all Data provided under this Agreement. The Government agrees not to remove any copyright notices placed on Data and to include such notices on all reproductions of the Data.

(f) Data First Produced by the Government
As to Data first produced by the Government in carrying out the Government's responsibilities under this Agreement and which Data is privileged or confidential if obtained from Seller, such Data will, to the extent permitted by law, be appropriately marked with a suitable notice or legend and maintained in confidence by 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 Seller, including their respective employees or their subcontractors of any tier, with Data which existed prior to, or was produced outside of this Agreement, and such Data is so identified with a suitable notice or legend, the Data will be maintained in confidence and disclosed and used only for the purpose of carrying out their responsibilities under this Agreement. Data protection will include proprietary markings and handling, and the signing of Non-Disclosure Agreements (NDAs) by Seller & Seller's subcontractors of any tier and their respective employees) to whom such Data is provided for use under the Agreement. Upon completion of activities under this Agreement, such Data will be

disposed of as requested by the Government. In the event it is necessary for Seller to furnish the Government with Data which existed prior to, or was produced outside of this Agreement, and such Data embodies trade secrets or comprises commercial or financial information which is privileged or confidential, and such Data is so identified with a suitable notice or legend, the Data will be maintained in confidence and disclosed and used by the Government and such Government Contractors or contract employees that the Government may hire on a temporary or periodic basis only for the purpose of carrying out the Government's responsibilities under this Agreement. Data protection will include proprietary markings and handling, and the signing of NDAs by such Government Contractors or contract employees. Seller shall not be obligated to provide Data that existed prior to, or was developed outside of this Agreement to the Government. Upon completion of activities under this Agreement, such Data will be disposed of as requested by Seller.

Oral and Visual Information: If information which 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
- (2) Information contained in any Data for which disclosure and use is restricted under Article VII, "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 Agreement, is rightfully received from a third party without restriction, or is included in Data which Seller has furnished, or is required to furnish to the Government without restriction on disclosure and use.

(i) Ordering of Additional Data Beyond Agreement Completion
The Government may require the delivery of Data first produced under this Agreement where the request is made within two (2) years following the Agreement completion date. In the event the Government orders such Data, it shall pay 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.

(j) Lower Tier Agreements
Seller shall include this Article, suitably modified to identify the parties, in all subcontracts or lower tier agreements, regardless of tier or work type.

(k) Survival Rights
The obligations of Tendeg and Seller under this Article shall survive after the expiration or termination of this Agreement.

Article XV – Foreign Ownership, Control, Influence, Access to Technology & Export Control

(a) Definition
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 Seller’s officers or a majority of Seller’s board of directors by any means, e.g., ownership, contract, or operation of law (or equivalent power for unincorporated organizations).
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.
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.
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.
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 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 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 Agreement.

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

(c) Disclosure of Foreign Government Control
Seller shall disclose any interest a foreign government has in Seller when that interest constitutes control by a foreign government as defined in this Article. If 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. 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 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 Seller changes, Seller shall submit an updated SF 328 to the Tendeg to provide to the Government's Contracting Officer 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 Seller member entities for purposes related to this Agreement, 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 Agreement if such transfer shall be limited to that necessary to allow the firm or institution to perform its approved role under this Agreement, or
(5) Releases pursuant to Article XIII, "Publication and Publicity".

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

In any event, Seller shall provide written notice to the Government of any proposed transfer to a foreign firm or institution at least seventy (70) 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 Seller's written notification, Tendeg shall advise Seller whether the Government consents to the proposed transfer. In cases where the Government does not concur or if within sixty (60) calendar days after its receipt the Government has provided no decision, Seller may utilize the procedures under Article IV, '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, Seller shall:
(1) Refund to Tendeg those funds paid under this Agreement 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 Agreement.
Upon request of the Government, Seller shall obtain and provide written confirmation of such licenses described in paragraph (d).

(e) Export Compliance 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. 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: 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

(f) Lower Tier Agreements Seller 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

XVI. Counterfeit Parts Prevention

Definitions

(1) Authentic shall mean (A) genuine; (B) purchased from the Original Equipment Manufacturer ("OEM"), Original Component Manufacturer ("OCM") or through the OEM's/OCM's authorized dealers; and (C) manufactured by, or at the behest and to the standards of, the manufacturer that has lawfully applied its name and trademark for that model/version of the material.

(2) Authorized Dealer — A dealer or distributor that purchases directly from the OEM or OCM and is authorized or franchised by the OEM or OCM to sell or distribute the OEM's/OCM's products.

(3) Counterfeit Part — A part that is an unauthorized copy or substitute that has been identified, marked, and/or altered by a source other than the item's legally authorized source and has been misrepresented to be an authorized part of the legally authorized source. This definition includes used parts represented as new parts.

(4) Original Component Manufacturer (OCM), Original Equipment Manufacturer (OEM) — An organization that designs and/or engineers a part or equipment and is pursuing or has obtained the intellectual property rights to that part or equipment.

(5) Non-Franchised Source — Any source that is not authorized by the OEM or OCM to sell its product lines. Non-franchised sources may also be referred to as brokers or independent distributors.

(6) Suspect Counterfeit Part — A part that Seller becomes aware, or has reason to suspect, meets the definition of "counterfeit part", as defined above. For purposes of this document, the terms "counterfeit part" and "suspect counterfeit part" will be used interchangeably. If any individual part from a lot is determined to be counterfeit or suspect counterfeit, the entire lot of parts will be considered to be suspect counterfeit.

Terms and Conditions

(1) Seller represents and warrants that only new and authentic materials (including embedded software and firmware) are used in products required to be delivered to Tendeg and that the products delivered contains no Counterfeit Parts. No material, part, or component other than a new and authentic part is to be used unless approved in advance in writing by Tendeg. To further mitigate the possibility of the inadvertent use of Counterfeit Parts, Seller shall only purchase authentic parts/components directly from the Original

Equipment Manufacturers ("OEMs"), Original Component Manufacturers ("OCMs") or through the OEM's/OCM's authorized dealers. Seller represents and warrants to Tendeg that all parts/components delivered under this Agreement are traceable back to the OEM/OCM. Seller must maintain and make available to Tendeg at Tendeg's request, OEM/OCM documentation that authenticates traceability of the parts/components to the applicable OEM/OCM. Purchase of parts/components from Non-Franchised Sources is not authorized unless first approved in writing by Tendeg. Seller must present complete and compelling support for its request and include in its request all actions to ensure the parts/components thus procured are legitimate parts. Tendeg's approval of Seller request(s) does not relieve Seller's responsibility to comply with all Agreement requirements, including the representations and warranties in this Section.

(2) Seller shall maintain a documented system (policy, procedure, or other documented approach) that provides for prior notification and Tendeg's approval before parts/components are procured from sources other than OEMs/OCMs or the OEM's/OCM's authorized dealers. Seller shall provide copies of such documentation for its system for Tendeg's inspection upon Tendeg's request.

(3) Seller must maintain a counterfeit detection process that complies with SAE standard AS5553, Counterfeit Electronic Parts, Avoidance, Detection, Mitigation, and Disposition.

(4) If it is determined that counterfeit parts or suspect counterfeit parts were delivered to Tendeg by Seller, the suspect counterfeit parts will not be returned to Seller. Tendeg reserves the right to quarantine any and all suspect counterfeit parts it receives and to notify the Government Industry Data Exchange Program (GIDEP) and other relevant government agencies, as applicable. Seller shall promptly reimburse Tendeg for the full cost of the suspect counterfeit parts and Seller assumes responsibility and liability for all costs associated with the delivery of suspect counterfeit parts, including, but not limited to, costs for identification, testing, and any corrective action required to remove and replace the suspect counterfeit parts. The remedies in this section shall apply regardless of whether the warranty period or guarantee period has ended, and are in addition to any remedies available at law or in equity.

(5) If the procurement of materials under this Agreement is pursuant to, or in support of, a contract, agreement, or task order for delivery of a product to the Government, the making of a materially false, fictitious, or fraudulent statement, representation or claim or the falsification or concealment of a material fact in connection with this Agreement may be punishable, as a Federal felony, by up to five years' imprisonment and/or substantial monetary fines. In addition, trafficking in Counterfeit Parts, to include military goods or services, constitutes a Federal felony offense, punishable by up to life imprisonment and a fine of fifteen million dollars.

(6) Seller shall flow the requirements of this section ("COUNTERFEIT PARTS PREVENTION") to its subcontractors and suppliers at any tier for the performance of this Agreement.