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Name of Offeror or Contractor: AVNIK DEFENSE SOLUTIONS INC

SUBCONTRACT NUMBER: AVNIK\_AU\_2022-01

APPENDIX A

APPENDIX A

APPENDIX A

APPENDIX A-1

APPENDIX A-1

APPENDIX A-1

APPENDIX A-1

APPENDIX A-1

APPENDIX A-1

APPENDIX A-2

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Name of Offeror or Contractor: AVNIK DEFENSE SOLUTIONS INC

SUBCONTRACT AGREEMENT

Between

AVNIK DEFENSE SOLUTIONS, INC.

And AUBURN UNIVERSITY

SUBCONTRACT NUMBER: AVNIK\_AU\_2022-01

PRIME CONTRACT NUMBER: W58RGZ-22-C-0048

EFFECTIVE DATE: 06/23/2022

SUBCONTRACT TYPE: Firm Fixed Price

SUBCONTRACT CEILING: $42,847.75

SUBCONTRACT FOR: STTR, Phase I

PRIORITY RATING: DO-A1

SECURITY CLASSIFICATION: Unclassified

This Subcontract Agreement, effective 23 June 2022, is created between AVNIK Defense Solutions, Inc. (hereinafter known as “Buyer” or “AVNIK”), and Auburn University (hereinafter known as “Seller” or “Subcontractor”).

The effort to be performed by the Subcontractor under this Agreement is in support of the Buyer’s Prime Contract No.

W58RGZ-22-C-0048, which has been issued by the U.S. Government.

[POTENTIAL PROBLEMATIC LANGUAGE DETECTED]

The work, defined in the Statement of Work, will be performed on a FFP basis, in accordance with the terms and conditions of this Agreement.

Problem Category: Confidential Information

Common Problems: the terms of the agreement are also confidential

Preferred Language: ['Should it be necessary for either party to receive the other’s confidential Information, the disclosing party agrees to disclose such information in writing and marked “confidential”, or if given orally, reduced to writing and clearly marked as confidential within 30 days of the oral disclosure. The receiving party agrees to safeguard the disclosing party’s confidential material to the same extent it safeguards its own for a period of three (3) years from the end date or termination of this Agreement. Confidential Information does not include (a) information which is now or hereafter becomes a part of the public domain; (b) information known to the receiving party before disclosure to it by the disclosing party hereunder as evidenced by its records; (c) information given to the receiving party by a third party having a right to disclose the same; or (d) information which the receiving party is compelled to disclose by judicial or administrative process, or by other mandatory requirements of law.\nEach Party will retain all Project Invention disclosures submitted in confidence and will not disclose them to third parties. Either party will be relieved of this obligation only when this information becomes publicly available through no fault of the other party.']

Why: Undersirable. Becomes an administrative burden

1st response to Sponsor: None

Confidence: 0.20592388986602383

[END POTENTIAL PROBLEMATIC LANGUAGE]

Recitals

WHEREAS, AVNIK has entered into Contract Number W58RGZ-22-C-0048 (hereinafter referred to as the “Prime Contract”) with the United States Government to perform the work statement “intelligent Frequency Modulated Continuous Wave” (iFMCW); and

WHEREAS, in furtherance of the Prime Contract, AVNIK intends to acquire from Subcontractor or and on behalf of the Government the technical support services, items, data and reports set forth in Statement of Work of the Subcontract; and

WHEREAS, this Subcontract represents the definitive subcontract authorization to Subcontractor, based upon the mutual agreements reached during negotiations between the parties hereto:

NOW THEREFORE, in performance of this Agreement, the Parties mutually agree to the terms and conditions which are stipulated in the Sections marked above.

Each Party acknowledges that it (1) has read this entire Agreement; (2) has the full power and authority to enter this Agreement; (3) will perform all work under this Agreement in accordance with all applicable DPAS requirements as set forth in 15 CFR Part 700; (4) is not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal Agency; and (5) will comply with Federal Acquisition Regulation (FAR) 52.203-7.

AVNIK Defense Solutions, Inc. AUBURN University

Signed:

Signed:

Name:

Michele Platt

Name:

Title:

President & CEO

Title:

Date:

06/23/2022

Date:

SUBCONTRACT TERMS AND CONDITIONS

PARTIES.

Under Government Prime Contract No.

W58RGZ-22-C-0048 (the “Prime Contract”) with U.S. Army Contracting Command-Redstone (“Prime Sponsor”), AVNIK Defense Solutions, Inc. (the Buyer) enters into a binding contract with Auburn University (the Seller) in support of the Small Business Technology Transfer (STTR) Phase I effort “intelligent Frequency Modulated Continuous Wave” (iFMCW).

In accordance with the terms and conditions depicted in this Subcontract, the Seller independently and not as an agent of the Buyer, shall provide all necessary materials, labor, equipment, and facilities, except where specified herein to be to be furnished by the Buyer, and shall do all that which is necessary or incident to the satisfactory and timely performance of the Statement of Work.

[POTENTIAL PROBLEMATIC LANGUAGE DETECTED]

STATEMENT OF WORK.

Problem Category: Insurance

Common Problems: Statement of Self-Insurance

Preferred Language: []

Why: None

1st response to Sponsor: Risk Management

Confidence: 0.26055567105626243

[END POTENTIAL PROBLEMATIC LANGUAGE]

Seller agrees to execute the Project in accordance with the Proposal dated 26 September 2021 which constitutes the Statement of Work for this Subcontract and is incorporated herewith as Appendix A.

The Statement of Work (“SOW”) shall not be changed except by written modification to this Agreement signed by both Parties.

PROJECT DIRECTION.

Buyer’s Project Director is authorized to coordinate the technical aspects of the work within the SOW.

Any deviation directed in Project direction shall take effect under the Changes clause of this Purchase Order and incorporated to the contract through bilateral modification.

The Project Director for this Agreement is Ms. Michele K. Platt.

KEY PERSONNEL.

Seller shall assign Dr. Robert Dean (Principal Investigator), Dr. Lloyd Riggs (co-Principal Investigator), and Dr. Aubrey Beal (Consultant) as key personnel under Appendix A for the work to be performed under this Agreement.

No diversion or substitution of key personnel shall be made without the prior written approval of the Buyer.

PERIOD OF PERFORMANCE.

The work set forth in the SOW shall be conducted during the period commencing 23 June 2022 (the “Effective Date”) and, unless earlier terminated in accordance with this Agreement, ending 14 February 2023 (the “Completion Date”).

The Completion Date may be modified or extended only by written agreement of the Parties.

CONTRACT PRICE, INVOICING, AND PAYMENTS.

As compensation for the tasks described in the SOW, Buyer shall pay Seller the Firm-Fixed Price amount of

$42,847.75 in U.S. dollars excluding taxes or impost of any kind as depicted below:

CLIN 0001: Project Support Status Report, Month 1 $7,141.29 Delivery: 8 July 2022

CLIN 0002: Project Support Status Report, Month 2 $7,141.29 Delivery: 8 August 2022

CLIN 0003: Project Support Status Report, Month 3 $7,141.29 Delivery: 8 September 2022

CLIN 0004: Project Support Status Report, Month 4 $7,141.29 Delivery: 7 October 2022

CLIN 0005: Project Support Status Report, Month 5 $7,141.29 Delivery: 7 November 2022

CLIN 0006: Project Support Final Report, Month 8 $7,141.30 Delivery: 7 February 2023

TOTAL: $42,847.75

Seller shall be paid a fixed amount in arrears in response to submittal of deliverable and a properly prepared invoice submitted pursuant to the terms depicted herein.

Invoice not prepared in accordance to the foregoing shall be not be approved for payment and returned to the Seller.

Payment of invoice shall not signify acceptance of deliverables.

Any revision to the Fixed Price amounts or delivery date depicted by CLIN shall be considered a formal change and require a bilateral modification to this Purchase Order.

Invoice shall be submitted to the Buyer by not later than the 5th of the month subsequent to the Delivery Date; and the invoice submitted shall be identified with an invoice number and assigned Purchase Order number.

Buyer shall remit compensation to Seller’s invoice authorized for payment within 10 Days upon receipt of payment by the Government customer.

Seller shall submit invoices to the following office: AVNIK Defense Solutions, Inc.

7262 Governors West NW Ste 102

Huntsville, AL 35806-2378

Telephone: (256) 513-5292

Email: michele.platt@avnikdefense.com

DELIVERABLES.

Seller shall furnish Buyer with the project deliverable status reports and final report for the STTR Phase I as specified in the Appendix A-1.

All deliverables shall be subject to inspection and review by the Buyer, as necessary.

Noncompliance with the submittal of the Deliverables as depicted shall be considered a breach of the terms of this Subcontract.

PASSAGE OF TITLE.

Unless otherwise provided elsewhere in this Agreement, title to all deliverables (but not the Intellectual Property rights delivered hereunder, if applicable) shall pass to Buyer upon final acceptance, unless this Agreement specifically provides elsewhere for earlier passage of title, regardless of when or where Buyer takes physical possession.

The passage of any such title occurs only to the extent required for Buyer to fulfill its obligations under the Prime Contract.

[POTENTIAL PROBLEMATIC LANGUAGE DETECTED]

TERMINATION.

Problem Category: Termination

Common Problems: they want a hard stop date for reimbursements if there is an early termination

Preferred Language: ['Expiration. This Agreement will expire at the end of the Research Term, unless terminated prior to such date in accordance with this Section 11 or extended by written agreement of the parties.\n\nThis Agreement may be terminated by either party for a breach of any of the terms herein. Upon written notification, the breaching party shall have 30 days to cure such breach. If such breach is not cured, the non-breaching party may deliver a Notice of Termination to the breaching party terminating the Agreement. For a breach of non-payment of support by Sponsor, Auburn is under no obligation to continue work on the Project. During such non-payment period and/or a termination of this Agreement for a non-payment breach, Auburn is under no obligation to conform to any of the Agreement terms herein, except Section 10 (Confidential Information) and Section 12 (Publicity).\nEither party may terminate performance of the Project in whole or in part if it is in the best interest of either party. The terminating party shall deliver a Notice of Termination specifying the basis of the termination, extent of termination and effective date. Auburn will be paid for all services delivered and all non-cancelable commitments made prior to the date of termination. In the event that only a portion of effort is terminated, Auburn shall work diligently to continue all other efforts that remain active.\t']

Why: we routinely have non-cancelable commitments such as purchase orders that are not returnable/refundable, grad students who get paid quarterly, etc.

1st response to Sponsor: get the language "non-cancelable commitments" added

Confidence: 0.2789425453258252

[END POTENTIAL PROBLEMATIC LANGUAGE]

Buyer may terminate this Agreement, in whole or in part, for default, based upon any of the following default conditions:

Seller fails to fulfill any of its obligations hereunder;

Seller fails to make progress pursuant to the SOW, so as to endanger performance of this Agreement;

Seller or its employees or agents engage in conduct in violation of any applicable Federal or state criminal or civil anti-fraud statutes or regulations, or in violation of Federal statutes or regulations governing public contracting in the performance of this Agreement;

The cessation of Seller’s operations in the normal course of business;

Insolvency of Seller or the entering into or filing by or against Seller of a petition, arrangement, or proceeding seeking an order for relief under the bankruptcy laws of the United States, a receivership for any of the assets of Seller, a composition with or assignment for the benefit of creditors, a readjustment of debt, or the dissolution or liquidation of Seller;

Buyer's good faith determination that Seller has breached its Representations as set forth in this Agreement.

Buyer shall notify Seller in writing of any default condition and, to the extent such condition is curable, shall allow Seller thirty (30) calendar days within which to cure the default condition.

If the condition is cured within the allowed period, this Agreement shall remain in full force and effect.

If the default condition remains uncured beyond the allowed period or is otherwise deemed incurable, Buyer may

terminate this Agreement, in whole or in part, by written notice of termination to Seller.

[POTENTIAL PROBLEMATIC LANGUAGE DETECTED]

All notices of termination shall, at a minimum, state the basis for termination, and the date upon which such termination will become effective.

Problem Category: Termination

Common Problems: they want a hard stop date for reimbursements if there is an early termination

Preferred Language: ['Expiration. This Agreement will expire at the end of the Research Term, unless terminated prior to such date in accordance with this Section 11 or extended by written agreement of the parties.\n\nThis Agreement may be terminated by either party for a breach of any of the terms herein. Upon written notification, the breaching party shall have 30 days to cure such breach. If such breach is not cured, the non-breaching party may deliver a Notice of Termination to the breaching party terminating the Agreement. For a breach of non-payment of support by Sponsor, Auburn is under no obligation to continue work on the Project. During such non-payment period and/or a termination of this Agreement for a non-payment breach, Auburn is under no obligation to conform to any of the Agreement terms herein, except Section 10 (Confidential Information) and Section 12 (Publicity).\nEither party may terminate performance of the Project in whole or in part if it is in the best interest of either party. The terminating party shall deliver a Notice of Termination specifying the basis of the termination, extent of termination and effective date. Auburn will be paid for all services delivered and all non-cancelable commitments made prior to the date of termination. In the event that only a portion of effort is terminated, Auburn shall work diligently to continue all other efforts that remain active.\t']

Why: we routinely have non-cancelable commitments such as purchase orders that are not returnable/refundable, grad students who get paid quarterly, etc.

1st response to Sponsor: get the language "non-cancelable commitments" added

Confidence: 0.2482946073294489

[END POTENTIAL PROBLEMATIC LANGUAGE]

Upon termination of this Agreement, in whole or part, for any reason, and except as otherwise approved or directed by Buyer, Seller shall:

Stop work under this Agreement on the date and to the extent specified in the notice of termination;

Terminate all work of any lower-tier Sellers to the extent that such work relates to the performance of Seller’s work terminated by the notice of termination; and

Transfer all work in progress which is included in the terminated work to Buyer.

In the event of any termination, Buyer shall pay Seller a mutually agreed-upon price for a prorated portion of work set forth in the SOW, to the extent such work is performed prior to issuance of a stop-work notice or notice of termination, whichever is earlier, less any payments already made by Buyer.

Such an agreed-upon amount may not exceed the total Agreement price (as reduced by the amounts of payments previously made to Seller) and the contract price of the applicable services not terminated.

Buyer agrees to also pay for any non-cancelable commitments incurred prior to termination.

[POTENTIAL PROBLEMATIC LANGUAGE DETECTED]

CLAIMS RELATED TO PRIME AGREEMENT.

Problem Category: Penalties

Common Problems: •To the fullest extent permitted by law, and not withstanding any other provision of this Agreement, the total liability of Auburn, Auburn's officers, directors, partners, employees and subcontracts and anyone claiming by or through the Sponsor for all claims, losses, costs or damages, including attorneys’ fees and costs of any nature whatsoever or claims expenses resulting from or in any way related to the Project or the Agreement from any cause or causes.

Preferred Language: []

Why: Auburn University is generally prohibited from agreement to pay penalties given its status as an instrumentality of the State of Alabama

1st response to Sponsor: Strike

Confidence: 0.2504438032065651

[END POTENTIAL PROBLEMATIC LANGUAGE]

If a final decision is made by the Prime Sponsor, and such final decision pertains to the subject matter of this Agreement, then such final decision shall be binding upon Seller with respect to such matter, except that Seller’s rights of appeal through Buyer, which will not be unreasonably withheld, are available to Seller, at Buyer’s sole discretion and at Seller’s expense.

If, as a result of any final decision or appeal thereof, Buyer is unable to obtain payment, or reimbursement, from the Prime Sponsor, or is required to refund, or credit, to the Prime Sponsor any amount with respect to any item, or matter, for which Buyer has reimbursed, or paid, to Seller, then Seller shall, on demand, promptly repay such amount to Buyer.

Buyer’s maximum liability to Seller for any matter connected with, or related to, this Agreement which was properly the subject of a final decision, or appeal, thereof is the amount of Buyer’s recovery from the Prime Sponsor for that claim.

SELLER’S REPRESENTATIONS

Seller represents, certifies and covenants that it shall perform all activities required under the Contract in compliance with all applicable international, national, state, and local laws, including, but not limited to environmental, health and safety laws and regulations.

Seller represents, certifies, and covenants that no Deliverables or Services have been or will be produced or performed using forced, indentured, or convict labor, or the labor of persons in violation of the minimum working age laws of the country of manufacture, or in violation of minimum wage, hour of service, or overtime laws of the country of manufacture.

Seller certifies to Buyer that it has (i) confirmed the identity of each individual assigned to perform work under this Agreement; (ii) verified that such individuals are legally entitled to work in the U.S. and are employees of Seller; and (iii) preserved such records as required by any State or Federal agency.

Seller shall make such records supporting said certification available to cognizant government authorities upon their request.

Seller certifies that it shall comply with all applicable security classification laws and regulations of the United States Government.

Seller certifies that it shall comply with all U. S. Government export regulations and the International Traffic In Arms Regulations (ITAR).

Seller further certifies that it shall follow the instructions provided under Appendix A-2 regarding foreign nationals.

[POTENTIAL PROBLEMATIC LANGUAGE DETECTED]

PUBLICATIONS.

Problem Category: Publications

Common Problems: prior approval over the substantive content of information, data and/or results in publications or presentations,

Preferred Language: ["The parties agree that Auburn may publish the results of the work in its own form. In all publications, Sponsor will remain anonymous and proper confidentiality will be maintained, unless otherwise specified by Sponsor.\nAt Sponsor’s request, Auburn will provide a copy of any proposed publication sixty (60) days in advance of submission to review for confidential information and language which would affect any potential patent filings. Sponsor's review will be completed and any objections made within this period. Fair consideration shall be given to Sponsor’s comments."]

Why: Auburn, as a public educational institution of the State of Alabama, has the dissemination of knowledge and information as a primary mission. Requiring control or approval over the content of the publication is a deal breaker for Auburn. The University cannot accept agreement language that prohibits the publication of research results or allows for the sponsor to approve or disapprove the publication in whole or in part without an overriding reason.

Publication restrictions eliminate the fundamental research exemption from export control laws.

1st response to Sponsor: remove any prior approval language

Confidence: 0.24395572500006343

[END POTENTIAL PROBLEMATIC LANGUAGE]

Public release and disclosure of information and data from this Agreement is subject to 48 CFR 252.204-7000 Disclosure of Information (Oct 2016).

In the event Seller intends to publish any data, reports or research findings related to this Agreement, such publication will be subject to the approval of Buyer and the Client.

Seller shall provide Buyer with a sixty (60) day period in which to review each publication to identify patentable subject matter and to identify any inadvertent disclosure of information subject to protection under this Agreement.

[POTENTIAL PROBLEMATIC LANGUAGE DETECTED]

If necessary to permit the preparation and filing of U.S. patent applications, Seller may agree to an additional review period not to exceed an additional sixty (60) days.

Problem Category: Insurance

Common Problems: Additional Insured

Preferred Language: []

Why: . Auburn University is a public university supported (in-part) with State of Alabama funds. As a matter of public policy, state agencies are prohibited from pledging the assets of the State.  Thus, we cannot create a liability for the State by agreeing to indemnify and waive/release lability for an outside party.

1st response to Sponsor: Risk Management

Confidence: 0.2128312063057197

[END POTENTIAL PROBLEMATIC LANGUAGE]

Any further extension shall require agreement between the Buyer and Seller.

INDEPENDENT CONTRACTOR.

It is expressly understood and agreed that Seller is an independent contractor in the performance of this Agreement and is not acting as a partner, joint venture member, or agent of Buyer.

The employees, officers, or agents of Seller shall not be considered or deemed to be employees, officers, or agents of Buyer.

Seller shall have exclusive direction and control over the manner and method of carrying out the tasks for accomplishing the work to be performed pursuant to this Agreement; Buyer being interested only in the completed performance of the work contemplated.

Neither Party shall have authority to make any statements, representations or commitments of any kind, or to take any action which shall be binding on the other Party, except as may be explicitly provided for herein or authorized in writing.

SUBCONTRACT CLOSE OUT.

Entitlement to the total payment agreed upon herein is subject to Seller provided services in a satisfactory and acceptable manner in accordance with the SOW.

Prior to final payment and Subcontract closeout, Seller shall certify that:

final effort and reports provided are deemed satisfactory by the Buyer and the U.S. Government.

[POTENTIAL PROBLEMATIC LANGUAGE DETECTED]

CONTRACT CLAUSES.

Problem Category: Warranties

Common Problems: Best Effort Clauses

Preferred Language: ['AUBURN MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, REGARDING ITS PERFORMANCE UNDER THIS AGREEMENT. AUBURN DISCLAIMS ANY WARRANTY OF MERCHANTABILITY, USE OR FITNESS FOR ANY PARTICULAR PURPOSE AND NON-INFRINGEMENT OF ANY INTELLECTUAL PROPERTY RIGHTS WITH REGARD TO STUDY DATA, RESULTS, INVENTIONS, COPYRIGHTABLE WORKS, TANGIBLE RESEARCH PROPERTY, OR OTHER RESEARCH RESULTS PROVIDED BY AUBURN.\n']

Why: Clauses requiring “best efforts” leave the University open to non-payment or claims of reimbursement for dissatisfied clients. “Best efforts” is a vague concept best avoided. If it cannot be negotiated out of the contract completely, it should at least be changed to “reasonable efforts” or “good faith efforts.”

1st response to Sponsor: “best efforts” should be changed to “reasonable efforts” or “good faith efforts”

Confidence: 0.2605556710562624

[END POTENTIAL PROBLEMATIC LANGUAGE]

This Agreement is further governed by the Prime Contract with the Prime Sponsor, including any subsequent revisions, modification or amendments.

The Federal Acquisition Regulation (FAR) and Defense Federal Acquisition Regulation Supplement (DFARS) clauses, as amended and modified, and to the extent they are applicable, are incorporated by reference into this Agreement under Appendix B with the same force and effect as though set forth in full text.

The dates of the FAR and DFAR clauses incorporated by reference are the same as the corresponding clause in the Prime Contract or higher-tier subcontract, unless otherwise provided by law.

In all such clauses, unless the context of the clause requires otherwise, the term "Contractor" shall mean Seller, the term "Contract" shall mean this Agreement, and the terms "Government," "Contracting Officer" and equivalent phrases shall mean Buyer and its Subcontract Administrator, respectively.

It is intended that the referenced clauses shall apply to Seller in such manner as is necessary to reflect the position of Seller as a Seller to Buyer, to insure Seller's obligations to Buyer and to the United States Government, and to enable Buyer to meet its obligations under its Prime Contract (or subcontract).

Prime Contract clauses flowed down to Seller are superior to and replace any conflicting language otherwise contained in this Agreement.

NONDISCLOSURE.

[POTENTIAL PROBLEMATIC LANGUAGE DETECTED]

Confidential Information.

Problem Category: Use of Name

Common Problems: Acceptance of this Grant shall be deemed consent of the Grantee Institution to the publication of information, including the title of the project, the name and institutional affiliation of the Principal Investigator, the amount of the award and the non-technical project summary. The non-technical summary shall not contain confidential information.

Preferred Language: ["The parties will not use the name of the other or the other's Project staff in any publicity, advertising, or new release without the prior written consent of the other. Sponsor will not state or imply that Auburn has tested or approved any product or process. Auburn shall be free to announce receipt of funding in routine campus announcements."]

Why: "including" and the other part in red infers that additional information can be published

1st response to Sponsor: change "including" to "consisting of" and delete the other portion. Also add the above

Confidence: 0.24637114872417742

[END POTENTIAL PROBLEMATIC LANGUAGE]

[POTENTIAL PROBLEMATIC LANGUAGE DETECTED]

It is contemplated that the disclosing Party (“Disclosing Party”) may be disclosing certain confidential and/or proprietary information to the receiving Party (“Receiving Party”) unknown to the general public (hereinafter referred to as "Confidential Information").

Problem Category: Confidential Information

Common Problems: Auburn never investigates third parties’ rights to provide information to us. If they want a qualifier on information provided by a third party saying that we made sure the third party had the right to provide the information, get rid of it. You can say “to Auburn's knowledge…” or “an apparent right to…”

Preferred Language: ['Should it be necessary for either party to receive the other’s confidential Information, the disclosing party agrees to disclose such information in writing and marked “confidential”, or if given orally, reduced to writing and clearly marked as confidential within 30 days of the oral disclosure. The receiving party agrees to safeguard the disclosing party’s confidential material to the same extent it safeguards its own for a period of three (3) years from the end date or termination of this Agreement. Confidential Information does not include (a) information which is now or hereafter becomes a part of the public domain; (b) information known to the receiving party before disclosure to it by the disclosing party hereunder as evidenced by its records; (c) information given to the receiving party by a third party having a right to disclose the same; or (d) information which the receiving party is compelled to disclose by judicial or administrative process, or by other mandatory requirements of law.\nEach Party will retain all Project Invention disclosures submitted in confidence and will not disclose them to third parties. Either party will be relieved of this obligation only when this information becomes publicly available through no fault of the other party.']

Why: None

1st response to Sponsor: None

Confidence: 0.21624865659141768

[END POTENTIAL PROBLEMATIC LANGUAGE]

[POTENTIAL PROBLEMATIC LANGUAGE DETECTED]

The Parties agree the terms of this Article 16 shall apply to any confidential and/or proprietary information that may be disclosed under this Agreement, and that such Confidential Information shall be used solely for the benefit of the Disclosing Party.

Problem Category: Confidential Information

Common Problems: the terms of the agreement are also confidential

Preferred Language: ['Should it be necessary for either party to receive the other’s confidential Information, the disclosing party agrees to disclose such information in writing and marked “confidential”, or if given orally, reduced to writing and clearly marked as confidential within 30 days of the oral disclosure. The receiving party agrees to safeguard the disclosing party’s confidential material to the same extent it safeguards its own for a period of three (3) years from the end date or termination of this Agreement. Confidential Information does not include (a) information which is now or hereafter becomes a part of the public domain; (b) information known to the receiving party before disclosure to it by the disclosing party hereunder as evidenced by its records; (c) information given to the receiving party by a third party having a right to disclose the same; or (d) information which the receiving party is compelled to disclose by judicial or administrative process, or by other mandatory requirements of law.\nEach Party will retain all Project Invention disclosures submitted in confidence and will not disclose them to third parties. Either party will be relieved of this obligation only when this information becomes publicly available through no fault of the other party.']

Why: Undersirable. Becomes an administrative burden

1st response to Sponsor: None

Confidence: 0.34234340233953287

[END POTENTIAL PROBLEMATIC LANGUAGE]

Receiving Party acknowledges the above-described Confidential Information is confidential and/or proprietary to the Disclosing Party and is claimed to be a valuable, special, and unique asset of the Disclosing Party.

Subject to the limitations set forth in Article 16.D.

[POTENTIAL PROBLEMATIC LANGUAGE DETECTED]

below, all non-public information exchanged between the Parties shall be deemed to be Confidential Information.

Problem Category: Use of Name

Common Problems: Acceptance of this Grant shall be deemed consent of the Grantee Institution to the publication of information, including the title of the project, the name and institutional affiliation of the Principal Investigator, the amount of the award and the non-technical project summary. The non-technical summary shall not contain confidential information.

Preferred Language: ["The parties will not use the name of the other or the other's Project staff in any publicity, advertising, or new release without the prior written consent of the other. Sponsor will not state or imply that Auburn has tested or approved any product or process. Auburn shall be free to announce receipt of funding in routine campus announcements."]

Why: "including" and the other part in red infers that additional information can be published

1st response to Sponsor: change "including" to "consisting of" and delete the other portion. Also add the above

Confidence: 0.33146323719627285

[END POTENTIAL PROBLEMATIC LANGUAGE]

In order for the Parties to appreciate when non-public information is being conveyed, to the reasonable extent possible, information disclosed in tangible form shall be clearly identified at the time of disclosure as being Confidential Information by an appropriate and conspicuous marking.

Similarly, to the reasonable extent possible, information disclosed in intangible form (e.g., oral or visual) shall be identified as being Confidential Information at the time of

disclosure, and shall be confirmed as such in writing to the Receiving Party within 30 days after such disclosure.

Confidential Information shall include as examples, without limitation:

All information of a Disclosing Party which has been maintained as confidential, including draft publications, technical reports, research plans and results, processes, techniques, know-how, biological materials, computer source code, diagrams, electronic files, financial information, customer lists, trade secrets, invention disclosures, patent applications or test data; all existing and future plans of the Disclosing Party, which have been maintained as confidential, including plans relating to existing and planned products, research, development, engineering, manufacturing, marketing, servicing, or financing; all past, present and future business or commercial relationships of the Disclosing Party, which have been maintained as confidential, including suppliers, service providers, clients, customers, employees, or investors; or information that has generally been considered and treated by the Disclosing Party as confidential prior to the time of disclosure and is clearly identified as “Confidential” or “Proprietary” when disclosed to the other Party.

[POTENTIAL PROBLEMATIC LANGUAGE DETECTED]

Exclusions from Confidential Information: Confidential Information shall not be deemed to include information that the Receiving Party can demonstrate by competent written proof:

is now, or hereafter becomes, publicly known or available through no act or failure to act on the part of the Receiving Party;

was known by the Receiving Party at the time of receipt of such information as evidenced by its records;

is hereafter furnished to the Receiving Party by a third party as a matter of right and without violating any confidentiality obligation to the Disclosing Party; or

was independently developed by employees of the Receiving Party without use or knowledge of the Confidential Information of the Disclosing Party.

Problem Category: Confidential Information

Common Problems: Auburn never investigates third parties’ rights to provide information to us. If they want a qualifier on information provided by a third party saying that we made sure the third party had the right to provide the information, get rid of it. You can say “to Auburn's knowledge…” or “an apparent right to…”

Preferred Language: ['Should it be necessary for either party to receive the other’s confidential Information, the disclosing party agrees to disclose such information in writing and marked “confidential”, or if given orally, reduced to writing and clearly marked as confidential within 30 days of the oral disclosure. The receiving party agrees to safeguard the disclosing party’s confidential material to the same extent it safeguards its own for a period of three (3) years from the end date or termination of this Agreement. Confidential Information does not include (a) information which is now or hereafter becomes a part of the public domain; (b) information known to the receiving party before disclosure to it by the disclosing party hereunder as evidenced by its records; (c) information given to the receiving party by a third party having a right to disclose the same; or (d) information which the receiving party is compelled to disclose by judicial or administrative process, or by other mandatory requirements of law.\nEach Party will retain all Project Invention disclosures submitted in confidence and will not disclose them to third parties. Either party will be relieved of this obligation only when this information becomes publicly available through no fault of the other party.']

Why: None

1st response to Sponsor: None

Confidence: 0.30132367632024976

[END POTENTIAL PROBLEMATIC LANGUAGE]

[POTENTIAL PROBLEMATIC LANGUAGE DETECTED]

Use of Confidential Information: Each Party agrees it will use the Confidential Information of the other solely for the purposes of this Agreement and for no other purpose whatsoever.

Problem Category: Confidential Information

Common Problems: the terms of the agreement are also confidential

Preferred Language: ['Should it be necessary for either party to receive the other’s confidential Information, the disclosing party agrees to disclose such information in writing and marked “confidential”, or if given orally, reduced to writing and clearly marked as confidential within 30 days of the oral disclosure. The receiving party agrees to safeguard the disclosing party’s confidential material to the same extent it safeguards its own for a period of three (3) years from the end date or termination of this Agreement. Confidential Information does not include (a) information which is now or hereafter becomes a part of the public domain; (b) information known to the receiving party before disclosure to it by the disclosing party hereunder as evidenced by its records; (c) information given to the receiving party by a third party having a right to disclose the same; or (d) information which the receiving party is compelled to disclose by judicial or administrative process, or by other mandatory requirements of law.\nEach Party will retain all Project Invention disclosures submitted in confidence and will not disclose them to third parties. Either party will be relieved of this obligation only when this information becomes publicly available through no fault of the other party.']

Why: Undersirable. Becomes an administrative burden

1st response to Sponsor: None

Confidence: 0.2633067690042179

[END POTENTIAL PROBLEMATIC LANGUAGE]

In particular, the Receiving Party shall not file any patent application containing any claim to subject matter derived in whole or in part from the Disclosing Party’s Confidential Information.

[POTENTIAL PROBLEMATIC LANGUAGE DETECTED]

The Confidential Information, including any documents, drawings, sketches, designs, materials or samples supplied hereunder, shall remain the property of the Party disclosing the same and no rights or licenses are granted to the other Party in the same, whether patented or not, except the limited right to use the Confidential Information as set forth above.

Problem Category: Confidential Information

Common Problems: Auburn never investigates third parties’ rights to provide information to us. If they want a qualifier on information provided by a third party saying that we made sure the third party had the right to provide the information, get rid of it. You can say “to Auburn's knowledge…” or “an apparent right to…”

Preferred Language: ['Should it be necessary for either party to receive the other’s confidential Information, the disclosing party agrees to disclose such information in writing and marked “confidential”, or if given orally, reduced to writing and clearly marked as confidential within 30 days of the oral disclosure. The receiving party agrees to safeguard the disclosing party’s confidential material to the same extent it safeguards its own for a period of three (3) years from the end date or termination of this Agreement. Confidential Information does not include (a) information which is now or hereafter becomes a part of the public domain; (b) information known to the receiving party before disclosure to it by the disclosing party hereunder as evidenced by its records; (c) information given to the receiving party by a third party having a right to disclose the same; or (d) information which the receiving party is compelled to disclose by judicial or administrative process, or by other mandatory requirements of law.\nEach Party will retain all Project Invention disclosures submitted in confidence and will not disclose them to third parties. Either party will be relieved of this obligation only when this information becomes publicly available through no fault of the other party.']

Why: None

1st response to Sponsor: None

Confidence: 0.23024398070631624

[END POTENTIAL PROBLEMATIC LANGUAGE]

Confidential Obligations: For a period of five (5) years from the date any such Confidential Information is disclosed, the Parties agrees to exert reasonable efforts to maintain each other’s Confidential Information in confidence and to take all necessary and reasonable precautions to prevent its unauthorized disclosure and to ensure it does not fall into the public domain or the possession of unauthorized third parties.

[POTENTIAL PROBLEMATIC LANGUAGE DETECTED]

Each Party shall restrict access to the Confidential Information of the other Party to those officers, employees, consultants, agents, and students of the Receiving Party having a need to know the Confidential Information to fulfill the purposes of this Agreement, provided that each Party shall ensure that any individual having access to the Confidential Information is made expressly aware of the obligation of confidence according to the terms hereof prior to gaining access to the Confidential Information.

Problem Category: Confidential Information

Common Problems: the terms of the agreement are also confidential

Preferred Language: ['Should it be necessary for either party to receive the other’s confidential Information, the disclosing party agrees to disclose such information in writing and marked “confidential”, or if given orally, reduced to writing and clearly marked as confidential within 30 days of the oral disclosure. The receiving party agrees to safeguard the disclosing party’s confidential material to the same extent it safeguards its own for a period of three (3) years from the end date or termination of this Agreement. Confidential Information does not include (a) information which is now or hereafter becomes a part of the public domain; (b) information known to the receiving party before disclosure to it by the disclosing party hereunder as evidenced by its records; (c) information given to the receiving party by a third party having a right to disclose the same; or (d) information which the receiving party is compelled to disclose by judicial or administrative process, or by other mandatory requirements of law.\nEach Party will retain all Project Invention disclosures submitted in confidence and will not disclose them to third parties. Either party will be relieved of this obligation only when this information becomes publicly available through no fault of the other party.']

Why: Undersirable. Becomes an administrative burden

1st response to Sponsor: None

Confidence: 0.2753725882623823

[END POTENTIAL PROBLEMATIC LANGUAGE]

[POTENTIAL PROBLEMATIC LANGUAGE DETECTED]

To the extent that a Party perceives a need for disclosure of the Confidential Information it receives from the other Party to any third party, such third party shall be prospectively identified and written permission to disclose shall be obtained from Disclosing Party.

Problem Category: Confidential Information

Common Problems: Auburn never investigates third parties’ rights to provide information to us. If they want a qualifier on information provided by a third party saying that we made sure the third party had the right to provide the information, get rid of it. You can say “to Auburn's knowledge…” or “an apparent right to…”

Preferred Language: ['Should it be necessary for either party to receive the other’s confidential Information, the disclosing party agrees to disclose such information in writing and marked “confidential”, or if given orally, reduced to writing and clearly marked as confidential within 30 days of the oral disclosure. The receiving party agrees to safeguard the disclosing party’s confidential material to the same extent it safeguards its own for a period of three (3) years from the end date or termination of this Agreement. Confidential Information does not include (a) information which is now or hereafter becomes a part of the public domain; (b) information known to the receiving party before disclosure to it by the disclosing party hereunder as evidenced by its records; (c) information given to the receiving party by a third party having a right to disclose the same; or (d) information which the receiving party is compelled to disclose by judicial or administrative process, or by other mandatory requirements of law.\nEach Party will retain all Project Invention disclosures submitted in confidence and will not disclose them to third parties. Either party will be relieved of this obligation only when this information becomes publicly available through no fault of the other party.']

Why: None

1st response to Sponsor: None

Confidence: 0.21669236868509473

[END POTENTIAL PROBLEMATIC LANGUAGE]

[POTENTIAL PROBLEMATIC LANGUAGE DETECTED]

A written non-disclosure agreement shall be obtained from the third party contractor and a copy shall be promptly provided to the Party whose Confidential Information is being disclosed.

Problem Category: Assignment

Common Problems: UNIVERSITY shall not be entitled to assign or otherwise transfer its rights and/or obligations under this Agreement in whole or in part to any third party without the prior written consent of SPONSOR.

Preferred Language: ['Neither party may assign this Agreement without the prior written consent of the other party. Subject to the foregoing, this Agreement will be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns.']

Why: would not allow us to hire consultants, vendors, or issue subawards without prior approval

1st response to Sponsor: have it struck

Confidence: 0.2357081661742551

[END POTENTIAL PROBLEMATIC LANGUAGE]

Required Disclosure: If a Receiving Party is legally required by court order, law, or other governmental regulation or authority to disclose certain Confidential Information received from a Disclosing Party, such disclosure may be made only after giving written notice to the Disclosing Party and providing a reasonable opportunity for pursuit of appropriate process to prevent or limit such disclosure.

In any event, required disclosure shall be limited to only that portion of the Confidential Information which is legally required to be disclosed.

The Receiving Party is not, however, required to pursue any claim, defense, cause of action, or legal process or proceeding on the Disclosing Party’s behalf.

Return of Documents: It is understood that the Confidential Information disclosed by each Party shall remain the property of the Disclosing Party.

[POTENTIAL PROBLEMATIC LANGUAGE DETECTED]

All material or documents furnished by the Disclosing Party, including all copies, shall upon request of the Disclosing Party, or in any event at the termination of this Agreement, be promptly returned to the Disclosing Party or destroyed, except the Receiving Party may securely retain one copy in its files solely for record purposes of its obligations under this Agreement.

Problem Category: PI Signature

Common Problems: Sponsor will want the PI to sign the agreement as a Party.

Preferred Language: []

Why: Auburn faculty do not have signature authority and cannot be parties to agreements.

1st response to Sponsor: change it to acknowledges. They can sign as read & acknowledged if needed. Any language in the agreement requiring the PI to agree in writing should be edited to specify that the PI will agree or have agreed to follow the terms (not in writing)

Confidence: 0.2141793386896282

[END POTENTIAL PROBLEMATIC LANGUAGE]

Subject to the limitations set forth in Article 16.F.

above, the provisions of this Article 16 shall survive the performance, completion, termination, or cancellation of the Agreement.

INTELLECTUAL PROPERTY.

“Intellectual Property” means all intellectual property, including without limitation, electronic or otherwise, technical information, know-how, copyrights, patents and

trade secrets, ideas, thoughts, concepts, processes, techniques, data, development tools, models, drawings, specifications, prototypes, inventions and software.

Intellectual Property, as that term is used in this Agreement, also includes works of authorship that are subject to copyright protection under Chapters 1 through 8 of Title 17 of the United States Code.

“Project IP” or “Project Intellectual Property” shall mean all Intellectual Property that is authored or conceived and reduced to practice in the performance of this Agreement.

“Background Intellectual Property” means Intellectual Property owned or controlled by a Party as of the Effective Date, and any Intellectual Property a Party conceives, creates, develops, or otherwise acquires thereafter pursuant to activities independent of this Agreement.

Ownership of Project IP shall be as follows:

Title to any Project IP made or conceived solely by employees of Seller vests in Seller.

Title to any Project IP made or conceived solely by employees of Buyer vests in Buyer.

Title to any Project IP made or conceived jointly by employees of both Seller and Buyer (hereinafter called “Joint IP”) vests jointly in Seller and Buyer.

The Buyer shall have the first option to perfect the rights in jointly made or generated Project Intellectual Property unless otherwise agreed in writing.

[POTENTIAL PROBLEMATIC LANGUAGE DETECTED]

To the extent not prohibited by other obligations, Auburn hereby grants Sponsor an option to negotiate an exclusive or non-exclusive, worldwide, royalty-bearing license for a specific field(s) of use under Auburn's Intellectual Property rights arising from this Project which were made solely by Auburn or jointly by Auburn and Sponsor.

Problem Category: Dispute Resolution

Common Problems: Sponsor wants Auburn to agree to binding arbitration

Preferred Language: ["In the event of a dispute between the parties, the parties agree to negotiate a settlement in good faith. Should this fail to resolve the dispute, the parties shall be free to pursue resolution through mediation where a mutually agreed upon neutral third party assists the disputants in reaching a negotiated settlement but has not the authority to bind either party to any resolution. For any financial claim against Auburn which cannot be resolved through negotiation or mediation, Sponsor's sole option is to file a claim with the Alabama State Board of Adjustment per the Code of the State of Alabama §§41-9-60 through §§41-9-74."]

Why: Auburn University is an instrumentality of the State of Alabama and is therefore granted sovereign immunity under the Alabama Constitution and the United States Constitution. Alabama law provides that the exclusive venue for a claim for damages against Auburn is the Alabama State Board of Adjustment

1st response to Sponsor: Remove references to binding dispute resolution, like arbitration. Leave references to non-binding dispute resolution, like mediation.

Confidence: 0.2289164606053671

[END POTENTIAL PROBLEMATIC LANGUAGE]

Sponsor’s option shall extend for a period not to exceed six (6) months after the expiration or termination of this Agreement.

[POTENTIAL PROBLEMATIC LANGUAGE DETECTED]

Patent preparation, filing, and prosecution during the option period, if any, shall be at Sponsor's expense.

Problem Category: Intellectual Property

Common Problems: Sponsor wishes to split the costs of patent preparation, filing, and prosecution during the option period on a 50/50 basis.

Preferred Language: ["The parties agree that during the period of this Agreement and as a result of the Project certain intellectual property may be developed. Such intellectual property shall include, but not be limited to, patentable and un-patentable inventions, discoveries, technologies, enhancements, copyrights and copyrightable material, trademarks, trade secrets, data and results, and tangible research property, including but not limited to biological materials, cell lines, and monoclonal and polyclonal antibodies (“Intellectual Property”). In that event the following applies:\nAll rights and title to Intellectual Property developed solely by Auburn employees under this Agreement shall belong to Auburn. All rights and title to Intellectual Property developed solely by Sponsor employees under this Agreement shall belong to Sponsor.\nAll rights and title to Intellectual Property developed jointly by one or more Auburn employees and one or more Sponsor employees under this Agreement shall be jointly owned. It is understood by the parties that jointly developed Intellectual Property as contemplated in this Agreement includes any and all such Intellectual Property for which creation, conception and/or reduction to practice have been accomplished by joint efforts of employees of both Sponsor and Auburn in the course of performance under this Agreement.\nTo the extent not prohibited by other obligations, Auburn hereby grants Sponsor an option to negotiate an exclusive or non-exclusive, worldwide, royalty-bearing license for a specific field(s) of use under Auburn's Intellectual Property rights arising from this Project which were made solely by Auburn or jointly by Auburn and Sponsor. Sponsor’s option shall extend for a period not to exceed six (6) months after the expiration or termination of this Agreement. Patent preparation, filing, and prosecution during the option period, if any, shall be at Sponsor's expense. If Sponsor wishes to exercise its option hereunder, it shall so notify Auburn within the option period, and both parties shall negotiate in good faith the terms of the license within sixty (60) days following Sponsor’s exercise of its option, such period to be extended upon mutual written agreement of the parties. If Auburn and Sponsor cannot agree upon the terms of the license within ninety (90) days thereafter, Auburn shall be free to license the Intellectual Property to any third party without further obligation to Sponsor.\nAuburn grants Sponsor an irrevocable, royalty-free, non-transferable, non-exclusive license to use, display, distribute, and perform all registered copyrights and copyrightable material, including software, first produced or composed in the performance of this research for Sponsor’s non-commercial purposes.”", 'SCENARIO 1', 'The project is being driven by a theory or hypothesis and the protocol has been created by the PI. ', 'the PI intends to publish the results of the research', 'There is a moderate to high expectation that IP of value to Auburn will be generated as a result. ', 'sponsor funding may be combined with other sources of funding, including federal', 'SCENARIO 2', 'The project is being driven by a theory or hypothesis and the protocol has been created by the PI. ', 'the PI intends to publish the results of the research', 'There is a low expectation that IP of value to Auburn will be generated as a result. ', 'sponsor funding may be combined with other sources of funding, but only federal or other non-profit sources', 'SCENARIO 3', 'The project is being driven by a theory or hypothesis and the protocol has been created by the Company ', 'There is no expectation that IP of value to Auburn will be generated as a result. ', 'the PI intends to publish the results of the research', 'Sponsor funding is not combined with any other source of funding.', 'Company funding is the only viable source of funding that can be accessed for the specific research that is contemplated', 'SCENARIO 4', 'Research protocol is generated by the company and normally covers a discrete task', 'no expectation of IP arising from the funded research that could have any value to Auburn', 'PI does not intend to publish the results', 'Benefit of the project however may be for other associated purposes such as student training, utilizing available institutional infrastructure or as an initial engagement with a company. ', 'Company funding is not blended with any other sources of funding. ', 'Company funding is the only viable source of funding that can be accessed for the specific activity that is contemplated. ']

Why: If Auburn pays half the patent costs during the option period, and the Sponsor decides not to pursue a license, Auburn cannot recoup those costs. It is Auburn's standard procedure for potential licensees to cover the patent costs accumulated during an option period.

1st response to Sponsor: Delete

Confidence: 0.442980976025641

[END POTENTIAL PROBLEMATIC LANGUAGE]

[POTENTIAL PROBLEMATIC LANGUAGE DETECTED]

If Sponsor wishes to exercise its option hereunder, it shall so notify Auburn within the option period, and both parties shall negotiate in good faith the terms of the license within sixty (60) days following Sponsor’s exercise of its option, such period to be extended upon mutual written agreement of the parties.

Problem Category: Exclusive License

Common Problems: Sponsor wants right of first refusal/first option to negotiate an exclusive license.

Preferred Language: ['Auburn hereby agrees to grant to SPONSOR a non-exclusive, nontransferable, paid-up license, without the right to grant sublicenses, to use any Auburn Invention in SPONSOR’s internal research and development during the term of this Agreement. \n']

Why: This would harm our ability to negotiate licenses with other companies. Most companies are scared off when they find out that another has rights of first refusal.

1st response to Sponsor: delete

Confidence: 0.23546314744418717

[END POTENTIAL PROBLEMATIC LANGUAGE]

[POTENTIAL PROBLEMATIC LANGUAGE DETECTED]

If Auburn and Sponsor cannot agree upon the terms of the license within ninety (90) days thereafter, Auburn shall be free to license the Intellectual Property to any third party without further obligation to Sponsor.

Problem Category: Dispute Resolution

Common Problems: Sponsor wants Auburn to agree to binding arbitration

Preferred Language: ["In the event of a dispute between the parties, the parties agree to negotiate a settlement in good faith. Should this fail to resolve the dispute, the parties shall be free to pursue resolution through mediation where a mutually agreed upon neutral third party assists the disputants in reaching a negotiated settlement but has not the authority to bind either party to any resolution. For any financial claim against Auburn which cannot be resolved through negotiation or mediation, Sponsor's sole option is to file a claim with the Alabama State Board of Adjustment per the Code of the State of Alabama §§41-9-60 through §§41-9-74."]

Why: Auburn University is an instrumentality of the State of Alabama and is therefore granted sovereign immunity under the Alabama Constitution and the United States Constitution. Alabama law provides that the exclusive venue for a claim for damages against Auburn is the Alabama State Board of Adjustment

1st response to Sponsor: Remove references to binding dispute resolution, like arbitration. Leave references to non-binding dispute resolution, like mediation.

Confidence: 0.27642486568211655

[END POTENTIAL PROBLEMATIC LANGUAGE]

Expenses and other liabilities associated with the development and marketing of any product, process, or other innovation employing Project Intellectual Property shall be negotiated between the parties in good faith within one (1) year after the date of termination of this Subcontract.

IP Disclosures.

Seller shall disclose to Buyer, in writing, every Project Intellectual Property which may be patentable or otherwise protectable under the United States patent laws in Title 35, United States Code, in sufficient detail as to allow Buyer’s evaluation (“IP Disclosure(s)”).

Any such IP Disclosure shall be considered Confidential Information and shall be marked as proprietary when disclosed.

Seller shall provide such IP Disclosure to Buyer within two (2) months after Seller's inventor(s) first discloses the invention to Seller's person(s) responsible for intellectual property matters.

Additionally, IP Disclosures provided by Seller to Buyer shall state whether Seller believes that the Project Intellectual Property being disclosed should be treated as proprietary, as a trade secret, or may be subject to

review by the U.S. Government in accordance with FAR clause 52.227-10.

Pending response from Buyer, Seller shall protect such Project Intellectual Property accordingly, including all markings and other protections specified by the Prime Contract.

Within thirty (30) calendar days of receipt of Seller’s IP Disclosure, Buyer shall notify Seller whether Buyer requires Seller to continue such protection of the Project Intellectual Property or discontinue such protection as unnecessary.

Background Intellectual Property Rights.

[POTENTIAL PROBLEMATIC LANGUAGE DETECTED]

Each Party shall retain ownership of its Background Intellectual Property, and nothing in this Agreement shall be construed as granting a Party ownership rights to the other Party’s Background Intellectual Property.

Problem Category: Assignment

Common Problems: UNIVERSITY shall not be entitled to assign or otherwise transfer its rights and/or obligations under this Agreement in whole or in part to any third party without the prior written consent of SPONSOR.

Preferred Language: ['Neither party may assign this Agreement without the prior written consent of the other party. Subject to the foregoing, this Agreement will be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns.']

Why: would not allow us to hire consultants, vendors, or issue subawards without prior approval

1st response to Sponsor: have it struck

Confidence: 0.20695695552396703

[END POTENTIAL PROBLEMATIC LANGUAGE]

However, to the extent that it is necessary to perform the Project contemplated under this Agreement, Buyer hereby grants to Seller a non- exclusive, royalty-free, non-commercial license to use Buyer’s Background Intellectual Property, and Seller hereby grants to Buyer a non-exclusive, royalty- free, non-commercial license to use Seller’s Background Intellectual Property.

Where the Parties determine that the commercialization and practice of Project Intellectual Property by one Party requires the use of Background Intellectual Property of the other Party, the Parties shall negotiate in good faith for the license rights which will allow the practice and commercialization of the results of the Project Intellectual Property.

[POTENTIAL PROBLEMATIC LANGUAGE DETECTED]

The rights of the Parties to Project Intellectual Property made by their employees in the performance of this Agreement shall be further governed by the terms of the Prime Contract.

Problem Category: Equitable Remedies

Common Problems: The parties agree that irreparable damage would occur if any provision of this Agreement was not performed in accordance with the terms hereof and that the parties or either of them shall be entitled to an injunction or injunctions to prevent breaches of this Agreement or to enforce specifically the performance of the terms and provisions hereof.

Preferred Language: ['N/A']

Why: As an instrumentality of the State, Auburn falls under the purview of our State Constitution which states in Article I, Section 14 “That the State of Alabama shall never be made a defendant in any court of law or equity.”

1st response to Sponsor: delete

Confidence: 0.2443402322550753

[END POTENTIAL PROBLEMATIC LANGUAGE]

The Prime Contract also grants the U. S. Government certain rights in the Project Intellectual Property.

Each Party hereto may use Project Intellectual Property of the other Party nonexclusively and without compensation in connection with research or development activities for the Project, including inclusion in project reports to the Prime Sponsor and proposals to the Prime Sponsor for continued funding of this Project through additional phases.

[POTENTIAL PROBLEMATIC LANGUAGE DETECTED]

To the extent Seller has the legal right to do so, Buyer shall have an option to negotiate a commercial license(s) to the Project Intellectual Property of Seller, subject to any rights of the Prime Sponsor or U.S. Government therein.

Problem Category: Exclusive License

Common Problems: Sponsor wants right of first refusal/first option to negotiate an exclusive license.

Preferred Language: ['Auburn hereby agrees to grant to SPONSOR a non-exclusive, nontransferable, paid-up license, without the right to grant sublicenses, to use any Auburn Invention in SPONSOR’s internal research and development during the term of this Agreement. \n']

Why: This would harm our ability to negotiate licenses with other companies. Most companies are scared off when they find out that another has rights of first refusal.

1st response to Sponsor: delete

Confidence: 0.25001576995785607

[END POTENTIAL PROBLEMATIC LANGUAGE]

DEBARMENT AND SUSPENSION.

In accepting this Agreement, Seller certifies that, to the best of its knowledge, it and its principals:

are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any Federal department or agency.

Any change in the debarred or suspended status of Seller during the life of this Agreement must be reported immediately to Buyer.

have not within a three year period preceding this Agreement been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction, such as: violation of Federal law or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property.

are not presently indicted for or otherwise criminally or civilly charged by a government entity (federal, state or local) with commission of any of the offenses listed in paragraph (b) of this Article 19.

have not within a three-year period preceding this Agreement had one or more public transactions (federal, state, or local) terminated for cause or default.

DISPUTE RESOLUTION.

The Parties must make every reasonable attempt to resolve in an amicable manner all disputes concerning the interpretation of this Agreement.

[POTENTIAL PROBLEMATIC LANGUAGE DETECTED]

If the Parties are unable to agree, then disputes shall be adjudicated through binding arbitration in accordance with the Rules of the American Arbitration Association.

Problem Category: Dispute Resolution

Common Problems: Sponsor wants Auburn to agree to binding arbitration

Preferred Language: ["In the event of a dispute between the parties, the parties agree to negotiate a settlement in good faith. Should this fail to resolve the dispute, the parties shall be free to pursue resolution through mediation where a mutually agreed upon neutral third party assists the disputants in reaching a negotiated settlement but has not the authority to bind either party to any resolution. For any financial claim against Auburn which cannot be resolved through negotiation or mediation, Sponsor's sole option is to file a claim with the Alabama State Board of Adjustment per the Code of the State of Alabama §§41-9-60 through §§41-9-74."]

Why: Auburn University is an instrumentality of the State of Alabama and is therefore granted sovereign immunity under the Alabama Constitution and the United States Constitution. Alabama law provides that the exclusive venue for a claim for damages against Auburn is the Alabama State Board of Adjustment

1st response to Sponsor: Remove references to binding dispute resolution, like arbitration. Leave references to non-binding dispute resolution, like mediation.

Confidence: 0.274564300906118

[END POTENTIAL PROBLEMATIC LANGUAGE]

However, Seller shall proceed with the work under the SOW without interruption and without awaiting settlement of any such claim.

In the event of a dispute between the parties, the parties agree to negotiate a settlement in good faith.

Should this fail to resolve the dispute, the parties shall be free to pursue resolution through mediation where a mutually agreed upon neutral third party assists the disputants in reaching a negotiated settlement but has not authority to bind either party to any resolution.

For any financial claim against Auburn University which cannot be resolved through negotiation or mediation, SUBRECIPIENT's sole option is to file a claim with the Alabama State Board of Adjustment per the Code of the State of Alabama §§41-9-60 through §§41-9-74.

[POTENTIAL PROBLEMATIC LANGUAGE DETECTED]

RESPONSIBILITY AND LIMITATION OF LIABILITY.

Problem Category: Insurance

Common Problems: Cyber Liability

Preferred Language: []

Why: None

1st response to Sponsor: Risk Management

Confidence: 0.26055567105626243

[END POTENTIAL PROBLEMATIC LANGUAGE]

[POTENTIAL PROBLEMATIC LANGUAGE DETECTED]

To the extent allowable by Alabama law:

Seller agrees to be responsible for all third-party claims (including Prime Sponsor claims and/or Seller employee claims), liability, loss, expenses, suits, damages, judgments, demands, credits, fines, penalties and costs arising from:

The acts or omissions of Seller, its employees, officers, directors, agents or its Sellers, including violations of any applicable Federal or state statutory or regulatory obligations;

Injury or death to persons, including officers, directors, employees, agents and Sellers of Seller, or loss of or damage to property, or fines and penalties resulting from, related to, or due to the performance of this Agreement, except to the extent that such injury, death, or damage is due to the acts or omissions of Buyer;

False claims submitted, or caused to be submitted, or misrepresentation of fact or fraud, or violation of law, by Seller, its employees, officers, directors, agents, or its Sellers;

Violation by Seller, its employees, officers, directors, agents or its Sellers, of nondisclosure obligations under of this Agreement; or

Violation by Seller, its employees, officers, directors, agents or its Sellers, of Export Control obligations under this Agreement.

Problem Category: Penalties

Common Problems: •To the fullest extent permitted by law, and not withstanding any other provision of this Agreement, the total liability of Auburn, Auburn's officers, directors, partners, employees and subcontracts and anyone claiming by or through the Sponsor for all claims, losses, costs or damages, including attorneys’ fees and costs of any nature whatsoever or claims expenses resulting from or in any way related to the Project or the Agreement from any cause or causes.

Preferred Language: []

Why: Auburn University is generally prohibited from agreement to pay penalties given its status as an instrumentality of the State of Alabama

1st response to Sponsor: Strike

Confidence: 0.24677634615229835

[END POTENTIAL PROBLEMATIC LANGUAGE]

Seller shall not settle, compromise or discharge any pending or threatened suit, claim or litigation, arising out of, based upon, or in any way related to this Agreement and to which Buyer is or may reasonably be expected to be a party, unless and until Seller has provided written notice of the proposed settlement, compromise or discharge to Buyer.

[POTENTIAL PROBLEMATIC LANGUAGE DETECTED]

Neither Party shall be liable for any special, incidental, consequential, or indirect damages, including, but not limited to, lost profits and business interruption, claimed in relation to its performance under this Agreement.

Problem Category: Limitation of Liability

Common Problems: IN NO EVENT SHALL COMPANY BE LIABLE TO AUBURN OR TO ANY OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, OR DAMAGES FOR LOST PROFITS OR LOSS OF BUSINESS, HOWEVER CAUSED AND UNDER ANY THEORY OF LIABILITY, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES, WHETHER BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHER THEORY OF LIABILITY, REGARDLESS OF WHETHER COMPANY WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. IN NO EVENT SHALL COMPANY’S LIABILITY ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT EXCEED THE AMOUNTS PAID

Preferred Language: ['AUBURN SHALL NOT BE LIABLE TO SPONSOR FOR INDIRECT, SPECIAL, CONSEQUENTIAL, PUNITIVE, INCIDENTAL OR OTHER DAMAGES (INCLUDING LOST REVENUE, PROFITS, USE, DATA OR OTHER ECONOMIC LOSS OR DAMAGE) HOWEVER CAUSED AND REGARDLESS OF THEORY OF LIABILITY (WHETHER FOR BREACH OR IN TORT, INCLUDING NEGLIGENCE) ARISING FROM, RELATED TO, OR CONNECTED WITH SPONSOR’S USE OF RESEARCH DATA, RESULTS, INVENTIONS, COPYRIGHTABLE WORKS, TANGIBLE RESEARCH PROPERTY, OR ANY OTHER RESEARCH RESULTS PROVIDED BY INSTITUTION, EVEN IF SPONSOR WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.\n']

Why: Auburn University does not have the authority to prejudice the rights of the State of Alabama to sue or otherwise enforece a contract by agreeing to a limit on or a waiver of liabiity

1st response to Sponsor: Propose that both parties be liable for their own acts or omissions. "Each party shall be responsible for its own acts or omissions and for any and all claims and injuries which may result or arise out of any alleged malfeasance or neglect caused or alleged to have been caused by that party or its employees in the performance or omission of any act or responsibility of that party under this agreement or any purchase order issued pursuant to this agreement."

Confidence: 0.3338980737089845

[END POTENTIAL PROBLEMATIC LANGUAGE]

[POTENTIAL PROBLEMATIC LANGUAGE DETECTED]

The limitation of liability set forth in this paragraph C shall not apply with respect to any of the following: 1) intentional torts or gross negligence; 2) unlawful conduct or violations of law; 3) fraud or misrepresentation; 4) any confidentiality requirements contained in this Agreement; 5) breach by the other Party of any intellectual property rights provided for in this Agreement; and 6) any indemnity obligations for third party claims provided in this Agreement.

Problem Category: Assignment

Common Problems: UNIVERSITY shall not be entitled to assign or otherwise transfer its rights and/or obligations under this Agreement in whole or in part to any third party without the prior written consent of SPONSOR.

Preferred Language: ['Neither party may assign this Agreement without the prior written consent of the other party. Subject to the foregoing, this Agreement will be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns.']

Why: would not allow us to hire consultants, vendors, or issue subawards without prior approval

1st response to Sponsor: have it struck

Confidence: 0.2021848325749989

[END POTENTIAL PROBLEMATIC LANGUAGE]

EXPORT ADMINISTRATION.

All Parties shall comply with all applicable laws and regulations regarding export-controlled items, including, but not limited to the U.S. International Traffic in Arms Regulations (ITAR) and the Export Administration Regulations (EAR).

[POTENTIAL PROBLEMATIC LANGUAGE DETECTED]

Non-U.S. parties shall comply with U.S. re-export regulations for U.S. export controlled items.

Problem Category: Export Controls

Common Problems: Sponsor will or may provide export controlled information

Preferred Language: ["(If receiving export-controlled info):\n“It is Auburn’s policy to remain fully in compliance at all times with all U.S. export control regulations, including but not limited to the Export Administration Regulations; International Traffic in Arms Regulations; and embargo sanctions under the Office of Foreign Assets Control (OFAC).\tTherefore, in the event that SPONSOR wishes to provide export controlled data or information to Auburn during the course of activity under this Agreement, SPONSOR must first notify Auburn of its intention to provide this data at least thirty (30) days in advance of actually providing this data or information and provide the Export Control classification of such data under the ITAR or EAR. Auburn will then determine whether Auburn can accept such data, as well as the conditions for such receipt if agreed upon. Auburn will then communicate this determination back to SPONSOR within seven (7) days of such determination.”\n \n(If not receiving export-controlled info):\n“It is Auburn's policy to remain fully in compliance at all times with all U.S. export control regulations, including but not limited to the Export Administration Regulations; International Traffic in Arms Regulations; and embargo sanctions under the Office of Foreign Assets Control (OFAC). No export controlled information will be provided to Auburn by the SPONSOR.”"]

Why: If we accept export control language, we are no longer operating in a Fundamental research environment so we would not have the exclusion to export controls.

1st response to Sponsor: add the following statement: "Therefore, in the event that SPONSOR wishes to provide export controlled data or information to Auburn during the course of activity under this Agreement, SPONSOR must first notify Auburn of its intention to provide this data at least thirty (30) days in advance of actually providing this data or information and provide the Export Control classification of such data under the ITAR or EAR. Auburn will then determine whether Auburn can accept such data, as well as the conditions for such receipt if agreed upon. Auburn will then communicate this determination back to SPONSOR within seven (7) days of such determination.”

Confidence: 0.25957847761100483

[END POTENTIAL PROBLEMATIC LANGUAGE]

Export controlled items, as used in this clause, means items subject to either the EAR (15 CFR Parts 730-774), or to the ITAR (22 CFR Parts 120-130).

The term includes defense items, defined in the Arms Export Control Act, 22 U.S.C.

2778(j)(4)(A), as defense articles, defense services, and related technical data, and further defined in the ITAR, 22 CFR part 120, and Items as defined in the EAR as “commodities, software, and technology,” terms that are also defined in the EAR, 15 CFR 772.1.

Nothing in this provision is intended to add, change or supersede the Parties’ responsibilities to comply with DFAR 252.225-7048.

SECURITY REQUIREMENTS.

The security classification level for this effort is UNCLASSIFIED.

However, ITAR regulations may apply.

Distribution Statement and Warnings: All project technical data and reports transmitted to third parties including the Prime Sponsor shall be marked with the following: “Distribution E - Distribution authorized to Department of Defense components only, 22 Jan 2019.

Refer other requests for this document to AFRL/RWMWS, Eglin AFB Florida 32542-6810".

Likewise, all project technical data and reports shall be marked with the following: “WARNING - This document contains technical data whose export is restricted by the Arms Export Control Act (Title 22, U.S.C.

Sec.

2751, et seq.)

or the Export Administration Act of 1979 (Title 50, U.S.C., App.

2401, et seq.

), as amended.

Violations of these export laws are subject to severe criminal penalties.

Disseminate in accordance with the provisions of DoD Directive 5230.25.”

GOVERNING LAW.

[POTENTIAL PROBLEMATIC LANGUAGE DETECTED]

The validity, interpretation, and enforcement of this Agreement shall be governed and determined by the laws of the State of Alabama without regard to its conflicts of laws principles.

Problem Category: Insurance

Common Problems: Workers' Compensation Laws of Alabama

Preferred Language: []

Why: Auburn University is exempt from the Workers’ Compensation laws of Alabama; however, Auburn does have in place an on-the-job injury program that conforms to the statutory limits of the Work Comp statute.

1st response to Sponsor: Auburn University maintains an on the job injury program that conforms to the statutory limits of the Workers' Compensation law

Confidence: 0.23787564800407074

[END POTENTIAL PROBLEMATIC LANGUAGE]

NOTICES.

All notices to Parties under this Agreement shall be in writing and sent to the names and addresses stated below under NOTICES.

[POTENTIAL PROBLEMATIC LANGUAGE DETECTED]

Either Party to the Agreement may change such name and address by notice to the other in accordance herewith, and any such change shall take effect immediately upon receipt of such notice.

Problem Category: Insurance

Common Problems: Notice of Cancellation

Preferred Language: []

Why: None

1st response to Sponsor: Auburn University does not issue 30 days’ notice of cancellation.

Confidence: 0.21283120630571967

[END POTENTIAL PROBLEMATIC LANGUAGE]

Other communications between the Parties can be addressed as stated below under COMMUNICATIONS.

NOTICES to Seller:

Auburn University

182 South College Street ATTN: Dr. Robert Dean Auburn, AL 36849 Telephone:

Electronic Mail:

COMMUNICATIONS to Seller:

CONTRACT NEGOTIATIONS:

Auburn University

182 South College Street ATTN: Dr. Robert Dean Auburn, AL 36849 Telephone:

Electronic Mail:

PROJECT ADMINISTRATION:

Auburn University

182 South College Street ATTN: Dr. Robert Dean Auburn, AL 36849 Telephone:

TECHNICAL:

Auburn University

Department of Electrical & Computer Engineering 182 South College Street

ATTN: Dr. Robert Dean Auburn, AL 36849 Telephone:

Electronic Mail:

NOTICES to Buyer:

AVNIK Defense Solutions, Inc. 7262 Governors West NW Ste 102 Michele K. Platt

Huntsville, AL 35806-2378

Telephone: (256) 513-5292

Electronic mail: michele.platt@avnikdefense.com

COMMUNICATIONS to Buyer:

CONTRACT NEGOTIATIONS:

AVNIK Defense Solutions, Inc. 7262 Governors West NW Ste 102 Michele K. Platt

Huntsville, AL 35806-2378

Telephone: (256) 513-5292

Electronic mail: michele.platt@avnikdefense.com

TECHNICAL:

AVNIK Defense Solutions, Inc. 7262 Governors West NW Ste 102 Michele K. Platt

Huntsville, AL 35806-2378

Telephone: (256) 513-5292

Electronic mail: michele.platt@avnikdefense.com

FORCE MAJEURE.

Neither Party shall be liable for any unforeseen event beyond its reasonable control not caused by the fault or negligence of such Party, which causes such Party to be unable to perform its obligations under this Agreement and which it has been unable to overcome by the exercise of due diligence.

Such unforeseen events include, but are not limited to, fire, storm, flood, earthquake or other natural catastrophes, accidents, acts of civil disturbance or disobedience, war, rebellion, insurrection, labor strikes or disputes, compliance with any laws, requirements, rules, regulations, or orders of any governmental authority or instrumentality thereof, sabotage, invasion, quarantine, and embargoes, or because of any act of God.

NON-USE OF NAMES.

[POTENTIAL PROBLEMATIC LANGUAGE DETECTED]

Neither Party shall use the names of the other Party, nor of any of its employees or components, nor any adaptation thereof, in any advertising, promotional or sales literature without the prior written consent obtained from the other

Party, as applicable in each case.

Problem Category: Assignment

Common Problems: UNIVERSITY shall not be entitled to assign or otherwise transfer its rights and/or obligations under this Agreement in whole or in part to any third party without the prior written consent of SPONSOR.

Preferred Language: ['Neither party may assign this Agreement without the prior written consent of the other party. Subject to the foregoing, this Agreement will be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns.']

Why: would not allow us to hire consultants, vendors, or issue subawards without prior approval

1st response to Sponsor: have it struck

Confidence: 0.24677390125415682

[END POTENTIAL PROBLEMATIC LANGUAGE]

Neither Party may imply endorsement by, employment at, or express opinions as those of any components of the other Party.

STOP WORK.

Buyer may, at any time, by written notice to Seller, require Seller to stop all, or any part, of the work called for under this Agreement for a period of up to 90 days after the written notice is delivered to Seller, and for any further period to which the Parties may agree.

The notice shall be specifically identified as a stop-work order issued under this provision.

Upon receipt of the notice, Seller shall immediately comply with its terms to the reasonable extent possible and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the stop-work order during the period of work stoppage.

Within a period of 90 days after a stop-work order is delivered to Seller, or within any extension of that period to which the Parties shall have agreed, Buyer shall either: 1.)

Cancel the stop-work order; or 2.)

terminate the work covered by the Agreement in accordance with Article 9 above.

[POTENTIAL PROBLEMATIC LANGUAGE DETECTED]

INSURANCE.

Problem Category: Insurance

Common Problems: Statement of Self-Insurance

Preferred Language: []

Why: None

1st response to Sponsor: Risk Management

Confidence: 0.4494364165239821

[END POTENTIAL PROBLEMATIC LANGUAGE]

[POTENTIAL PROBLEMATIC LANGUAGE DETECTED]

Commercial General Liability Insurance

If Seller performs Services on Buyer’s premises, Seller shall carry and maintain Commercial General Liability insurance with available limits of not less than one million dollars ($1,000,000) per occurrence for bodily injury and property damage combined.

Problem Category: Insurance

Common Problems: Commercial Automobile Liability

Preferred Language: []

Why: None

1st response to Sponsor: Auburn University has a self-insured fund equivalent to that of auto liability insurance coverage with limits of $1,000,000.

Confidence: 0.23450893153276597

[END POTENTIAL PROBLEMATIC LANGUAGE]

Such insurance shall contain coverage for all premises and operations, broad form property damage, contractual liability and goods and completed-operations insurance with limits of not less than one million dollars ($1,000,000) per occurrence.

Such insurance shall not be maintained on a per- project basis unless the respective Seller does not have blanket coverage.

[POTENTIAL PROBLEMATIC LANGUAGE DETECTED]

Automobile Liability Insurance

If licensed vehicles will be used in connection with the Services or delivery of Deliverables, Seller shall carry and maintain Business Automobile Liability insurance covering all vehicles, whether owned, hired, rented, borrowed or otherwise, with available limits of not less than one million dollars ($1,000,000) per occurrence combined single limit for bodily injury and property damage.

Problem Category: Insurance

Common Problems: Commercial Automobile Liability

Preferred Language: []

Why: None

1st response to Sponsor: Auburn University has a self-insured fund equivalent to that of auto liability insurance coverage with limits of $1,000,000.

Confidence: 0.21507032570577075

[END POTENTIAL PROBLEMATIC LANGUAGE]

[POTENTIAL PROBLEMATIC LANGUAGE DETECTED]

Workers’ Compensation

Seller shall, cover and maintain insurance in accordance with the applicable laws relating to workers’ compensation with respect to all Seller employees working on or about Buyer’s premises.

Problem Category: Insurance

Common Problems: Workers' Compensation Laws of Alabama

Preferred Language: []

Why: Auburn University is exempt from the Workers’ Compensation laws of Alabama; however, Auburn does have in place an on-the-job injury program that conforms to the statutory limits of the Work Comp statute.

1st response to Sponsor: Auburn University maintains an on the job injury program that conforms to the statutory limits of the Workers' Compensation law

Confidence: 0.3517770668115142

[END POTENTIAL PROBLEMATIC LANGUAGE]

If Buyer is required by any applicable law to pay any workers’ compensation premiums with respect to any employee of Seller, Seller shall reimburse Buyer for such payment.

Protection of Property

Seller shall use suitable precautions to prevent damage to Buyer’s property.

If any such property is damaged by the fault or negligence of Seller, Seller shall, at no cost to Buyer, promptly and equitably reimburse Buyer for such damage or repair or otherwise make good such property to Buyer satisfaction.

If Seller fails to do so, Buyer may do so and recover from Seller the cost thereof.

Certificates of Insurance

Upon request by Buyer, Seller shall provide for Buyer’s review copies of certificates, endorsements, or other proof of insurance coverage substantiating compliance with the requirements set forth in this Section entitled “Insurance.” Failure of Seller to furnish proof of coverage, or failure to procure and maintain the insurance required herein, or failure of Buyer to request proof of coverage, shall not constitute a waiver of Seller’s obligations hereunder.

MISCELLANEOUS.

This Agreement constitutes the entire agreement between the Parties relative to the subject matter, superseding and cancelling all prior and contemporaneous oral or written agreements, discussions or understandings related to the subject matter, and may be modified or amended only by a written amendment signed by both Parties.

[POTENTIAL PROBLEMATIC LANGUAGE DETECTED]

This Agreement will not be assigned, in whole or in part, by either Party without the prior written consent of the other Party.

Problem Category: PI Signature

Common Problems: Sponsor will want the PI to sign the agreement as a Party.

Preferred Language: []

Why: Auburn faculty do not have signature authority and cannot be parties to agreements.

1st response to Sponsor: change it to acknowledges. They can sign as read & acknowledged if needed. Any language in the agreement requiring the PI to agree in writing should be edited to specify that the PI will agree or have agreed to follow the terms (not in writing)

Confidence: 0.26543445496171714

[END POTENTIAL PROBLEMATIC LANGUAGE]

Any attempt to do so shall be void.

This Agreement is binding upon and will inure to the benefit of the Parties, their representatives, successors in interest and permitted assigns.

The failure of either Party at any time to require performance by the other Party of any provision of this Agreement will in no way affect the right to require such performance at any time thereafter, nor will the waiver by either Party of a breach of any provision be taken or held to be a waiver of any succeeding breach of such provision or as a waiver of the provision itself.

If any provision of this Agreement is held to be invalid, illegal or unenforceable, then such provision will be severed and will not affect the remainder of this Agreement.

ATTACHMENTS

Appendix A – Statement of Work Appendix A-1 – CDRL Reports

Appendix A-2 – Foreign National Instructions Appendix B – Contract Clauses

Project Title: Army STTR Phase I Avnik Subcontract

Statement of Work

Background

Avnik Defense Solution, Inc. (ADS) has requested that Auburn University (AU) team with them on a proposal to the U.S. Army on a Phase I STTR (A21C-T013, Novel Cable Fault Detector, Locator, Classifier, and Predictor).

AU is currently working with ADS on a related project, and this will be a follow-on effort to continue that work.

Auburn University Requirements

Auburn University shall provide the personnel, expertise, resources, facilities, and materials necessary to accomplish the following tasks.

Task 1: Design (Hardware and/or Software)

AU will assist ADS in hardware and/or software design activities in support of this effort.

Task 2: Data Analysis

AU will assist ADS in data analysis activities in support of this effort.

Task 3: Signal Processing Routines

AU will assist ADS in developing and using signal processing routines in support of this effort.

Task 4: Access to Literature Review

AU will use their access to open source publications to support ADS in this effort.

Task 5: Simulations

AU will assist ADS in performing relevant simulations in support of this effort.

Task 6: Final Report

AU will support preparation and internal review of the project final report (A001).

Task 7.

Kickoff Meeting

AU will support preparation for Kickoff Meeting

Task 8.

Monthly Reports

AU will support development of monthly reports (CDRL A002)

Project Duration

The period of performance for the base effort is anticipated to be from 23 June 2022 to 14 February 2023.

Deliverables

Data and reports as required by ADS.

Key Personnel

AU shall provide personnel that have the critical job skills and expertise to successfully complete this project.

Dr. Robert Dean (PI)

Robert Dean is a McWane Endowed Professor in the Auburn University Department of Electrical and Computer Engineering.

He has over 30 years of experience in developing and evaluating complex engineered systems, in both industrial and academic environments.

His expertise and recent research efforts have involved printed electronics, mixed-signal chaos electronics, PCB and ASIC development, MEMS, environmental sensors, instrumentation, and power electronics.

Dr. Dean is a co-inventor on three awarded U.S. patents and has over 100 publications in journals, conference proceedings, and book chapters.

Dr. Dean teaches undergraduate and graduate courses in electronics, sensors, MEMS, and photovoltaics.

He is a Fellow of IMAPS, and a Senior Member of both IEEE and SPIE.

Dr. Lloyd Riggs (co-PI)

Professor Riggs has been a member of the Electrical and Computer Engineering faculty at Auburn University since 1985.

Dr. Riggs teaches undergraduate and graduate courses in electromagnetics.

Prior to becoming a member of the faculty at Auburn he worked as an antenna design engineer at Harris Corporation in Melbourne, FL.

In this capacity he was tasked with developing frequency selective surfaces (FSS) for dual and multiband reflector antennas.

He developed multi-beam satellite reflector antenna configurations for broadcast applications (now Direct TV).

He has worked with the Night Vision Laboratories at Fort Belvoir, Virginia to develop antennas suitable for ground penetrating radar.

He contributed to the development of the

U. S. Army’s standard issue AN/PSS-14 hand held mine detection unit that combines a ground penetrating radar with a metal detector.

Dr. Riggs is co-inventor on Patent Number 9,842,484 and 9,556,500 for Waste Receptacle and Detecting Passing of Unintended objects through throat of under-sink disposal.

He is co-inventor on patent pending 523842761 for a wearable metal

detector.

Dr. Riggs is the primary author on more than 30 refereed publications pertaining to antenna design, electromagnetic modelling, radar, and mine detection.

Dr. Riggs is a senior Member of IEEE.

Dr. Aubrey Beal (Consultant)

Aubrey Beal is an Assistant Professor in the University of Alabama in Huntsville (UAH) Department of Electrical and Computer Engineering.

He has 11 years of research, development and engineering experience in industry, academia and government.

His expertise and recent research efforts have involved mixed-signal chaos electronics, PCB and ASIC development, machine learning, signal processing and sensors for radar and sonar systems.

He is a co-inventor on nine awarded U.S. patents related to metal detection, 9 refereed journal publications, 1 book chapter and over 30 conference proceedings and symposia presentations.

Dr. Beal advises undergraduate senior design courses and teaching courses in electronics, signal processing, radar and nonlinear dynamics.

He is a member of IEEE and the faculty advisor of UAH’s electrical engineering honor society Eta Kappa Nu (HKN).

Facilities

The proposed effort will be conducted at Auburn University within the Department of Electrical & Computer Engineering in Auburn, AL.

All equipment and personnel needed for the program are available and will be provided to the project.

Auburn University has a variety of workstations, electronic design and simulation tools, system design and simulation tools, and digital signal processing and software development tools that are available for use on this effort.

Budget

The budget for this project is presented below.

SALARIES

MA

N MONTHS

RATE/MONTH

TOTAL

R. Dean (PI)

L. Riggs (Co-PI)

Benefits

Total

0.5

$15,266.67

$7,633.34

0.5

$15,208.89

$7,604.44

31.00%

$4,723.71

Labor

TRAVEL

Travel:

$572.50

Huntsville (2-day trip)

500 miles

$272.50

1 trips, 2 people

per diem

$150.00

per trip:

$572.50

CONSULTANT

$7,842.00

Dr. Aubrey Beal

OVERHEAD

Overhead:

51.00%

$14,471.76

Total: $42,847.75

CONTRACT DATA REQUIREMENTS LIST

(1 Data Item)

Form Approved OMB No.

0704-0188

Public reporting burden for this collection of information is estimated to average 110 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Defense, Washington Headquarters Services, Directorate for Information Operations and Reports, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA. 22202-4302, and to the Office of Management and Budget, Paperwork Reduction Project (0704-0188), Washington, DC 20503.

Please DO NOT RETURN your form to either of these addresses.

Send completed form to the Government Issuing Contracting Officer for Contract/PR No.

listed in Block E.

A.

CONTRACT LINE ITEM NO.

B. EXHIBIT

A

C. CATEGORY:

TDP TM OTHER MISC

D. SYSTEM/ITEM

STTR

E. CONTRACT/PR NO.

PHASE I A21C-T013-0022

F. CONTRACTOR

AVNIK DEFENSE SOLUTIONS

1.

DATA ITEM NO.

A001

2.

TITLE OF DATA ITEM

Scientific and Technical Reports

3.

SUBTITLE

Final Report

4.

AUTHORITY (Data Acquisition Document No.)

DI-MISC-80711A

5.

CONTRACT REFERENCE

Section C

6.

REQUIRING OFFICE

FCDD-AMR-MR

7.

DD 250 REQ

LT

9.DIST STATEMENT REQUIRED

B

10.

FREQUENCY

1TIME

12.

DATE OF FIRST SUBMISSION

See Block 16

14.

DISTRIBUTION

a. ADDRESSEE

b.

COPIES

8.

APP CODE

A

11.

AS OF DATE

N/A

13.

DATE OF SUBSEQUENT SUBMISSION

N/A

Draft

Final

Reg

Repro

16.

REMARKS

Block 8: The contractor shall deliver one draft report 15 days prior to contract end.

The COR will review the draft report and return it to the Contractor within 7 days of receipt with comments.

The Contractor shall submit one final report within 8 days after receipt of comments.

Block 9: Distribution Statement B: Distribution Authorized to US Government Agencies only; Proprietary Information; Date of Determination: 13JAN22.

Other requests for this document shall be referred to Commander, US Army Aviation and Missile Command, ATTN: CCAM-RDA, Redstone Arsenal, AL 35898-5000.

Export-Control Act Warning – Not Required.

Block 12: The report is due at the end of the contract.

FINAL TECHNICAL REPORTS

A final technical report is required for each project.

Per DFARS clause 252.235- 7011 (http://www.acq.osd.mil/dpap/dars/dfars/html/current/252235.htm#252.235- 7011), each contractor shall (a) submit two copies of the approved scientific or technical report delivered under the contract to the Defense Technical Information Center, Attn: DTIC-O, 8725 John J. Kingman Road, Fort Belvoir, VA 22060-6218; (b) Include a completed Standard Form 298, Report Documentation Page, with each copy of the report; and (c) For submission of reports in other than paper copy, contact the Defense Technical Information Center or follow the instructions at http://www.dtic.mil.

Block 14.a: Addressee –

Point of Contact: Jessica Glover

Email Address: jessica.t.glover.civ@army.mil

Block 14.b: Submit electronic copies in PDF format via https://safe.apps.mil/.

See Block 16

1

2

0

15.

TOTAL >

1

2

0

G. PREPARED BY

Dawn M. Gratz

H. DATE

13JAN22

I.

APPROVED BY

Jessica Glover

J.

DATE

14Jan22

18.

ESTIMATED TOTAL PRICE

17.

PRICE GROUP

DATA ITEM DESCRIPTION

Form Approved OMB No.

0704-0188

The public reporting burden for this collection of information is estimated to average 110 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to Department of Defense, Washington Headquarters Services, Directorate for Information Operations and Reports (0704-0188), 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302.

Respondents should be aware that notwithstanding any other provision of law, no person shall be subject to any penalty for failing to comply with a collection of information if it does not display a currently valid OMB control

number.

PLEASE DO NOT RETURN YOUR FORM TO THE ABOVE ADDRESS.

1.

TITLE

Scientific and Technical Reports

2.

IDENTIFICATION NUMBER

DI-MISC-80711A

DESCRIPTION/PURPOSE

Scientific and Technical Reports document and disseminate the precise nature and results of analytical studies, research, development, test and evaluation (RDT&E) on an assigned task(s) to the analytical, scientific, technical and management community.

Scientific and Technical Reports, may be definitive for the subject presented, exploratory in nature, or an evaluation of critical subsystem or of technical problems.

4.

APPROVAL DATE 5.

OFFICE OF PRIMARY RESPONSIBILITY (OPR) 6a.

DTIC APPLICABLE 6b.

GIDEP APPLICABLE (YYYYMMDD)

20000121 L/DD X

APPLICATION/INTERRELATIONSHIP

This DID contains the format requirements and preparation instructions for the information product generated by the specific and discrete task requirement as delineated in the contract.

This DID is applicable to the elements, organization and design of technical publications.

This DID supersedes UDI-S-23272C, DI-S-4057, DI-S-3591A, and DI-MISC-80711.

Defense Technical Information Center (DTIC), 8725 John J. Kingman Rd., Ste.

0944, Ft. Belvoir, VA 22060- 6218

8.

APPROVAL LIMITATION 9a.

APPLICABLE FORMS 9b.

AMSC NUMBER

SF 298 L7382

PREPARATION INSTRUCTIONS

Reference document.

The applicable issue of the documents cited herein, including their approval dates and dates of any applicable amendements, notices, and revisions, shall be as specified in the contract.

Document format shall be in accordance with ANSI/NISO Z39.18 Scientific and Technical Reports -- Elements, Organization, and Design.

Document content shall be clearly written, describe accomplishments and other facts adequately with no technical errors, and be acceptable for release.

If marked unclassified, unlimited, they should be accompanied by a letter certifying that the documents have been cleared for public release and sale, to include foreign nationals.

11.

DISTRIBUTION STATEMENT

Distribution Statement A: Approved for public release; distribution is unlimited.

DD FORM 1664, AUG 96 (EG)

PREVIOUS EDITION MAY BE USED.

Page 1 of 1 Pages

CONTRACT DATA REQUIREMENTS LIST

(1 Data Item)

Form Approved OMB No.

0704-0188

Public reporting burden for this collection of information is estimated to average 110 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Defense, Washington Headquarters Services, Directorate for Information Operations and Reports, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA. 22202-4302, and to the Office of Management and Budget, Paperwork Reduction Project (0704-0188), Washington, DC 20503.

Please DO

NOT RETURN your form to either of these addresses.

Send completed form to the Government Issuing Contracting Officer for Contract/PR No.

listed in Block E.

A.

CONTRACT LINE ITEM NO.

B. EXHIBIT

A

C. CATEGORY:

TDP TM OTHER MGMT

D. SYSTEM/ITEM

STTR

E. CONTRACT/PR NO.

PHASE I A21C-T013-0022

F. CONTRACTOR

AVNIK Defense Solutions Inc

1.

DATA ITEM NO.

A002

2.

TITLE OF DATA ITEM

Status Report

3.

SUBTITLE

4.

AUTHORITY (Data Acquisition Document No.)

DI-MGMT-80368A

5.

CONTRACT REFERENCE

Section C

6.

REQUIRING OFFICE

FCDD-AMR-MR

7.

DD 250 REQ

LT

9.DIST STATEMENT REQUIRED

B

10.

FREQUENCY

MTHLY

12.

DATE OF FIRST SUBMISSION

See Block 16

14.

DISTRIBUTION

a. ADDRESSEE

b.

COPIES

8.

APP CODE

N/A

11.

AS OF DATE

N/A

13.

DATE OF SUBSEQUENT SUBMISSION

See Block 16

Draft

Final

Reg

Repro

16.

REMARKS

Block 9: Distribution Statement B: Distribution Authorized to US Government Agencies only; Proprietary Information; Date of Determination: 13JAN22.

Other requests for this document shall be referred to Commander, US Army Aviation and Missile Command, ATTN: CCAM-RDA, Redstone Arsenal, AL 35898-5000.

Export-Control Act Warning – Not Required.

Block 12: The first reporting is one month after contract start.

The report is due no later than 15 days after reporting period.

Block 13: The date for submission of subsequent reports is no later than 15 days after the reporting period.

The reporting period is every month.

Block 14.a: Addressee –

Point of Contact: Jessica Glover

Email Address: jessica.t.glover.civ@army.mil

Block 14.b: Submit electronic copies in PDF format via https://safe.apps.mil/.

See Block 16

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TOTAL >

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G. PREPARED BY

Dawn M. Gratz

H. DATE

13Jan22

I.

APPROVED BY

Jessica Glover

J.

DATE

14Jan22

18.

ESTIMATED TOTAL PRICE

17.

PRICE GROUP

DD Form 1423-1, Feb 2001

DATA ITEM DESCRIPTION

Title: Status Report

Number: DI-MGMT-80368A Approval Date: 30 OCT 2006

AMSC Number: 7619 Limitation: N/A

Office of Primary Responsibility: NS/DA02

Applicable Forms: N/A

Use/relationship:

The Status Report documents the status of contractor effort towards achieving contract objectives.

It identifies accomplishments to date and difficulties encountered, and compare the status achieved to planned goals and the resources expended.

It is used by the Government to monitor and evaluate contractor performance.

This Data Item Description (DID) contains format and content preparation instructions for the data product generated by the specific and discrete task requirement as delineated in the contract.

It is not intended that all requirements herein should be applied to every program.

Portions of the DID are subject to tailoring by deletion depending on the specific status reporting requirements of the project.

This DID is related to DI-FNCL-80331, Funds and Man-Hour Expenditure Report which can be used in conjunction with this report if paragraph 3.2.3 below is deleted.

This DID supersede DI-MGMT-80368.

Reference documents.

None.

Format.

The Status Report shall be in contractor format.

Identification.

The data indicated below shall be contained on a title page or on the first page of the report.

Title/identification of the system/component/program/project.

Type of report (e.g., monthly, interim, final).

Period covered by the report.

Contract number.

Preparing activity or contractor’s title.

Security classification, when required.

[POTENTIAL PROBLEMATIC LANGUAGE DETECTED]

Distribution Statement.

Problem Category: Insurance

Common Problems: Statement of Self-Insurance

Preferred Language: []

Why: None

1st response to Sponsor: Risk Management

Confidence: 0.26055567105626243

[END POTENTIAL PROBLEMATIC LANGUAGE]

Page size.

The report shall be on 8 ½ by 11 inch (metric A4) paper.

[POTENTIAL PROBLEMATIC LANGUAGE DETECTED]

Content.

Problem Category: Publications

Common Problems: prior approval over the substantive content of information, data and/or results in publications or presentations,

Preferred Language: ["The parties agree that Auburn may publish the results of the work in its own form. In all publications, Sponsor will remain anonymous and proper confidentiality will be maintained, unless otherwise specified by Sponsor.\nAt Sponsor’s request, Auburn will provide a copy of any proposed publication sixty (60) days in advance of submission to review for confidential information and language which would affect any potential patent filings. Sponsor's review will be completed and any objections made within this period. Fair consideration shall be given to Sponsor’s comments."]

Why: Auburn, as a public educational institution of the State of Alabama, has the dissemination of knowledge and information as a primary mission. Requiring control or approval over the content of the publication is a deal breaker for Auburn. The University cannot accept agreement language that prohibits the publication of research results or allows for the sponsor to approve or disapprove the publication in whole or in part without an overriding reason.

Publication restrictions eliminate the fundamental research exemption from export control laws.

1st response to Sponsor: remove any prior approval language

Confidence: 0.24395572500006343

[END POTENTIAL PROBLEMATIC LANGUAGE]

[POTENTIAL PROBLEMATIC LANGUAGE DETECTED]

The report shall contain the following:

Summary.

Problem Category: Use of Name

Common Problems: Acceptance of this Grant shall be deemed consent of the Grantee Institution to the publication of information, including the title of the project, the name and institutional affiliation of the Principal Investigator, the amount of the award and the non-technical project summary. The non-technical summary shall not contain confidential information.

Preferred Language: ["The parties will not use the name of the other or the other's Project staff in any publicity, advertising, or new release without the prior written consent of the other. Sponsor will not state or imply that Auburn has tested or approved any product or process. Auburn shall be free to announce receipt of funding in routine campus announcements."]

Why: "including" and the other part in red infers that additional information can be published

1st response to Sponsor: change "including" to "consisting of" and delete the other portion. Also add the above

Confidence: 0.22629717570276026

[END POTENTIAL PROBLEMATIC LANGUAGE]

The summary shall include a brief statement of the overall project status

, covering the accomplished technical activities and development, objectives of efforts, summary results of efforts, identification of major problems/deficiencies with impact, and recommended solutions.

Body of report.

The Status Report shall contain the following items, where applicable:

Milestone/task status.

The status of each milestone/task as defined by the statement of work or contract, as applicable:

A statement as to whether or not the program/project/task is on schedule; if not, the effort planned to meet the schedule shall be indicated.

Include an overall status of each milestone, task, or unit of work.

Include update schedule sheets, milestone charts, or task synopsis sheets identifying phase of task and percentage of completion of each task, technical instruction, or order.

A comparison of achieved end-product performance capabilities projected against contract baseline values, requirements, or allocations.

Effort expended on each task to date, and a brief description of technical developments and accomplishments.

Key dates in any testing program and description of tests performed and significant test results.

If applicable, a description of the amount and type of down time on the equipment or system under test.

A list of all designs completed and a brief description of each item.

For designs in process, provide estimated dates for design and drawing completion.

A narrative of outstanding problems existing as of the previous status report, and their resolution status.

2

New problem areas encountered or anticipated, their effect on the overall work effort/project and steps being taken to remedy problem situations.

Significant results of conferences, trips, or directives for the Contracting officer’s representatives.

Any other information which may cause significant changes in the program schedule.

Future plans.

Summary of future plans, recommendations and proposals both for the next reporting period and for any long term plans.

Itemized man-hours and costs.

Itemized man-hour and cost expenditure incurred for the reporting period by category and task, total contractual expenditures, and funds remaining as of the reporting date.

Contract deliveries status.

The status of each deliverable end item, including data deliverables, as required by the contract.

Provide item and contract identification, shipping/transmittal data, acceptance status, security classification, and schedule due date information.

Report preparer.

Name of person(s) preparing report and telephone number(s).

Appendices.

Appendices where applicable, for tables, references, charts, or other descriptive material.

Each appendix shall be identified and referenced in the appropriate area of the report.

END OF DI-MGMT-80368A

FOREIGN NATIONALS INSTRUCTION

Prior review of Foreign Nationals to perform on this contract, at either the prime or sub- contract level, is required by the Contracting Officer.

This review does not grant an exception to U.S. export law(s) and the contractor is responsible for obtaining necessary export licenses.

Foreign nationals (also known as Foreign Persons) means any person who is NOT:

a. a citizen or national of the United States; or

b. a lawful permanent resident; or

c. a protected individual as defined by 8 U.S.C.

1324b(a)(3).

"Lawful permanent resident" is a person having the status of having been lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws and such status not having changed.

"Protected individual" is an alien who is lawfully admitted for permanent residence, is granted the status of an alien lawfully admitted for temporary residence under 8 U.S.C.

1160(a) or 8 U.S.C.

1255a(a)(1), is admitted as a refugee under 8 U.S.C.

1157, or is granted asylum under Section 8 U.S.C.

1158; but does not include (i) an alien who fails to apply for naturalization within six months of the date the alien first becomes eligible (by virtue of period of lawful permanent residence) to apply for naturalization or, if later, within six months after November 6, 1986, and (ii) an alien who has applied on a timely basis, but has not been naturalized as a citizen within 2 years after the date of the application, unless the alien can establish that the alien is actively pursuing naturalization, except that time consumed in the Service's processing the application shall not be counted toward the 2-year period.

This clause does not apply to U.S. persons, including U.S. citizens and lawful permanent residents.

The use of foreign nationals in the performance of this contract requires the contractor to provide by letter, addressed to the contracting officer, the following:

Method Foreign National will be utilized, i.e., as a subcontractor or as an employee of the contractor.

If a subcontractor, identify company, country of origin, and tasks to be performed, and provide employer's verification of work authorization.

If a company employee, identify country of origin and tasks to be performed, and provide employer's verification of work authorization.

In either case (items b and c above) identify the technology involved and what type information, Classified, Controlled Unclassified Information (CUI), or Unclassified, will be released to the Foreign National to enable satisfactory performance on the contract.

If the contractor currently possesses a munitions export license to export the data to Foreign Nationals (whether the Foreign National is an employee of the company or a subcontractor) provide the license number.

Provide justification as to why the Foreign National is needed to perform the contract.

Company point of contact name and phone number.

The above clause shall not flow down to subcontracts with Universities.

The following replacement text shall be inserted into subcontracts with Universities:

Prior notice of the use of Foreign Nationals to perform on this prime contract at the University subcontract level must be provided through the Prime Contractor to the Contracting Officer.

[POTENTIAL PROBLEMATIC LANGUAGE DETECTED]

This notice does not grant an exception to U.S.

Problem Category: Insurance

Common Problems: Notice of Cancellation

Preferred Language: []

Why: None

1st response to Sponsor: Auburn University does not issue 30 days’ notice of cancellation.

Confidence: 0.22028815056182974

[END POTENTIAL PROBLEMATIC LANGUAGE]

Export Law(s) and the Contractor and/or Subcontractor are responsible for obtaining necessary Export Licenses.

Prior notice shall be provided by the Subcontractor, through the Prime Contractor, to the Contracting Officer, by letter addressed to the Contracting Officer, containing the following:

Individual's Name;

Country of Origin;

Tasks to be performed; and,

Employer's verification of work authorization.

APPENDIX B

CONTINUATION SHEET

Reference No.

of Document Being Continued

W58RGZ-22-C-0048

PIIN/SIIN MOD/AMD

Page 23 of 48

Name of Offeror or Contractor:

AVNIK DEFENSE SOLUTIONS INC

SECTION I - CONTRACT CLAUSES

This document incorporates one or more clauses by reference, with the same force and effect as if they were given in full text.

Upon request, the Contracting Officer will make their full text available.

Also, the full text of a clause may be accessed electronically at these addresses:

For FAR clauses: https://www.acquisition.gov/

For DFARS clauses: https://www.acq.osd.mil/dpap/dars/dfarspgi/current/index.html

If the clause requires additional or unique information, then that information is provided immediately after the clause title.

Regulatory Cite Title Date I-1 52.202-1 DEFINITIONS JUN/2020

I-2 52.203-12 LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS JUN/2020 I-3 52.203-19 PROHIBITION ON REQUIRING CERTAIN INTERNAL CONFIDENTIALITY AGREEMENTS JAN/2017

OR STATEMENTS

I-4 52.204-2 SECURITY REQUIREMENTS MAR/2021 I-5 52.204-10 REPORTING EXECUTIVE COMPENSATION AND FIRST-TIER SUBCONTRACT AWARDS JUN/2020 I-6 52.204-13 SYSTEM FOR AWARD MANAGEMENT MAINTENANCE OCT/2018 I-7 52.204-23 PROHIBITION ON CONTRACTING FOR HARDWARE, SOFTWARE, AND SERVICES NOV/2021

DEVELOPED OR PROVIDED BY KASPERSKY LAB AND OTHER COVERED ENTITIES

52.209-6 PROTECTING THE GOVERNMENT'S INTEREST WHEN SUBCONTRACTING WITH NOV/2021 CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT

52.209-10 PROHIBITION ON CONTRACTING WITH INVERTED DOMESTIC CORPORATIONS NOV/2015 I-10 52.211-15 DEFENSE PRIORITY AND ALLOCATION REQUIREMENTS APR/2008

52.215-8 ORDER OF PRECEDENCE--UNIFORM CONTRACT FORMAT OCT/1997

52.215-17 WAIVER OF FACILITIES CAPITAL COST OF MONEY OCT/1997

52.219-6 NOTICE OF TOTAL SMALL BUSINESS SET-ASIDE NOV/2020

52.222-3 CONVICT LABOR JUN/2003

52.222-21 PROHIBITION OF SEGREGATED FACILITIES APR/2015

52.222-26 EQUAL OPPORTUNITY SEP/2016

52.222-37 EMPLOYMENT REPORTS ON VETERANS JUN/2020

52.222-50 COMBATING TRAFFICKING IN PERSONS NOV/2021

52.222-54 EMPLOYMENT ELIGIBILITY VERIFICATION MAY/2022 I-20 52.223-18 ENCOURAGING CONTRACTOR POLICIES TO BAN TEXT MESSAGING WHILE DRIVING JUN/2020 I-21 52.225-13 RESTRICTIONS ON CERTAIN FOREIGN PURCHASES FEB/2021 I-22 52.227-1 AUTHORIZATION AND CONSENT (JUN 2020) -- ALTERNATE I (APR 1984) APR/1984 I-23 52.227-2 NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT JUN/2020 I-24 52.227-3 PATENT INDEMNITY APR/1984

52.227-9 REFUND OF ROYALTIES APR/1984

52.228-7 INSURANCE--LIABILITY TO THIRD PERSONS MAR/1996 I-27 52.232-2 PAYMENTS UNDER FIXED-PRICE RESEARCH AND DEVELOPMENT CONTRACTS APR/1984 I-28 52.232-23 ASSIGNMENT OF CLAIMS MAY/2014

52.232-25 PROMPT PAYMENT JAN/2017

52.232-33 PAYMENT BY ELECTRONIC FUNDS TRANSFER--SYSTEM FOR AWARD MANAGEMENT OCT/2018 I-31 52.232-39 UNENFORCEABILITY OF UNAUTHORIZED OBLIGATIONS JUN/2013 I-32 52.232-40 PROVIDING ACCELERATED PAYMENTS TO SMALL BUSINESS SUBCONTRACTORS NOV/2021 I-33 52.233-1 DISPUTES MAY/2014

52.233-3 PROTEST AFTER AWARD AUG/1996

52.233-4 APPLICABLE LAW FOR BREACH OF CONTRACT CLAIM OCT/2004

52.243-1 CHANGES--FIXED PRICE AUG/1987 I-37 52.244-6 SUBCONTRACTS FOR COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES JAN/2022 I-38 52.245-1 GOVERNMENT PROPERTY SEP/2021

52.245-9 USE AND CHARGES APR/2012

52.249-1 TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (FIXED-PRICE) (SHORT APR/1984 FORM)

52.249-9 DEFAULT (FIXED-PRICE RESEARCH AND DEVELOPMENT) APR/1984

52.253-1 COMPUTER GENERATED FORMS JAN/1991

252.201-7000 CONTRACTING OFFICER'S REPRESENTATIVE DEC/1991 I-44 252.203-7000 REQUIREMENTS RELATING TO COMPENSATION OF FORMER DOD OFFICIALS SEP/2011 I-45 252.203-7002 REQUIREMENT TO INFORM EMPLOYEES OF WHISTLEBLOWER RIGHTS SEP/2013 I-46 252.204-7000 DISCLOSURE OF INFORMATION OCT/2016

Regulatory Cite Title Date I-47 252.204-7003 CONTROL OF GOVERNMENT PERSONNEL WORK PRODUCT APR/1992 I-48 252.204-7012 SAFEGUARDING COVERED DEFENSE INFORMATION AND CYBER INCIDENT REPORTING DEC/2019 I-49 252.204-7015 NOTICE OF AUTHORIZED DISCLOSURE OF INFORMATION FOR LITIGATION SUPPORT MAY/2016 I-50 252.204-7020 NIST SP 800-171 DOD ASSESSMENT REQUIREMENTS MAR/2022

252.225-7001 BUY AMERICAN AND BALANCE OF PAYMENTS PROGRAM--BASIC MAR/2022

252.225-7002 QUALIFYING COUNTRY SOURCES AS SUBCONTRACTORS MAR/2022 I-53 252.225-7016 RESTRICTION ON ACQUISITION OF BALL AND ROLLER BEARINGS JUN/2011 I-54 252.225-7048 EXPORT-CONTROLLED ITEMS JUN/2013

I-55 252.227-7013 RIGHTS IN TECHNICAL DATA--NONCOMMERCIAL ITEMS FEB/2014 I-56 252.227-7014 RIGHTS IN NONCOMMERCIAL COMPUTER SOFTWARE AND NONCOMMERCIAL COMPUTER FEB/2014

SOFTWARE DOCUMENTATION

252.227-7015 TECHNICAL DATA--COMMERCIAL ITEMS FEB/2014

252.227-7016 RIGHTS IN BID OR PROPOSAL INFORMATION JAN/2011 I-59 252.227-7019 VALIDATION OF ASSERTED RESTRICTIONS--COMPUTER SOFTWARE SEP/2016 I-60 252.227-7025 LIMITATIONS ON THE USE OR DISCLOSURE OF GOVERNMENT-FURNISHED MAY/2013

INFORMATION MARKED WITH RESTRICTIVE LEGENDS

I-61 252.227-7027 DEFERRED ORDERING OF TECHNICAL DATA OR COMPUTER SOFTWARE APR/1988 I-62 252.227-7030 TECHNICAL DATA--WITHHOLDING OF PAYMENT MAR/2000 I-63 252.227-7037 VALIDATION OF RESTRICTIVE MARKINGS ON TECHNICAL DATA SEP/2016 I-64 252.227-7039 PATENTS--REPORTING OF SUBJECT INVENTIONS APR/1990 I-65 252.232-7003 ELECTRONIC SUBMISSION OF PAYMENT REQUESTS AND RECEIVING REPORTS DEC/2018 I-66 252.232-7010 LEVIES ON CONTRACT PAYMENTS DEC/2006 I-67 252.232-7017 ACCELERATING PAYMENTS TO SMALL BUSINESS SUBCONTRACTORS--PROHIBITION APR/2020

ON FEES AND CONSIDERATION

I-68 252.235-7011 FINAL SCIENTIFIC OR TECHNICAL REPORT DEC/2019 I-69 252.245-7001 TAGGING, LABELING, AND MARKING OF GOVERNMENT-FURNISHED PROPERTY APR/2012 I-70 252.245-7002 REPORTING LOSS OF GOVERNMENT PROPERTY JAN/2021 I-71 252.245-7003 CONTRACTOR PROPERTY MANAGEMENT SYSTEM ADMINISTRATION APR/2012

52.219-14 LIMITATIONS ON SUBCONTRACTING (DEVIATION 2021-O0008) SEP/2021

This clause does not apply to the unrestricted portion of a partial set-aside.

Definition.

Similarly situated entity, as used in this clause, means a first-tier subcontractor, including an independent contractor, that--

Has the same small business program status as that which qualified the prime contractor for the award (e.g., for a small business set-aside contract, any small business concern, without regard to its socioeconomic status); and

Is considered small for the size standard under the North American Industry Classification System (NAICS) code the prime contractor assigned to the subcontract.

Applicability.

This clause applies only to--

Contracts that have been set aside for any of the small business concerns identified in 19.000(a)(3);

Part or parts of a multiple-award contract that have been set aside for any of the small business concerns identified in 19.000(a)(3);

Contracts that have been awarded on a sole-source basis in accordance with subparts 19.8, 19.13, 19.14, and 19.15;

Orders expected to exceed the simplified acquisition threshold and that are--

Set aside for small business concerns under multiple-award contracts, as described in 8.405-5 and 16.505(b)(2)(i)(F); or

Issued directly to small business concerns under multiple-award contracts as described in 19.504(c)(1)(ii);

Orders, regardless of dollar value, that are--

Set aside in accordance with subparts 19.8, 19.13, 19.14, or 19.15 under multiple-award contracts, as described in 8.405-5 and 16.505(b)(2)(i)(F); or

Issued directly to concerns that qualify for the programs described in subparts 19.8, 19.13, 19.14, or 19.15 under multiple-

award contracts, as described in 19.504(c)(1)(ii); and

Contracts using the HUBZone price evaluation preference to award to a HUBZone small business concern unless the concern waived the evaluation preference.

Independent contractors.

An independent contractor shall be considered a subcontractor.

Limitations on subcontracting.

By submission of an offer and execution of a contract, the Contractor agrees that in performance of a contract assigned a North American Industry Classification System (NAICS) code for--

Services (except construction), it will not pay more than 50 percent of the amount paid by the Government for contract performance, excluding certain other direct costs and certain work performed outside the United States (see paragraph (e)(1)(i)), to subcontractors that are not similarly situated entities.

Any work that a similarly situated entity further subcontracts will count towards the prime contractors 50 percent subcontract amount that cannot be exceeded.

When a contract includes both services and supplies, the 50 percent limitation shall apply only to the service portion of the contract.

The following services may be excluded from the 50 percent limitation:

Other direct costs, to the extent they are not the principal purpose of the acquisition and small business concerns do not provide the service.

Examples include airline travel, work performed by a transportation or disposal entity under a contract assigned the environmental remediation NAICS code 562910), cloud computing services, or mass media purchases.

Work performed outside the United States on awards made pursuant to the Foreign Assistance Act of 1961, or work performed outside the United States required to be performed by a local contractor.

Supplies (other than procurement from a nonmanufacturer of such supplies), it will not pay more than 50 percent of the amount paid by the Government for contract performance, excluding the cost of materials, to subcontractors that are not similarly situated entities.

Any work that a similarly situated entity further subcontracts will count towards the prime contractors 50 percent subcontract amount that cannot be exceeded.

When a contract includes both supplies and services, the 50 percent limitation shall apply only to the supply portion of the contract;

General construction, it will not pay more than 85 percent of the amount paid by the Government for contract performance, excluding the cost of materials, to subcontractors that are not similarly situated entities.

Any work that a similarly situated entity further subcontracts will count towards the prime contractors 85 percent subcontract amount that cannot be exceeded; or

Construction by special trade contractors, it will not pay more than 75 percent of the amount paid by the Government for contract performance, excluding the cost of materials, to subcontractors that are not similarly situated entities.

Any work that a similarly situated entity further subcontracts will count towards the prime contractors 75 percent subcontract amount that cannot be exceeded.

The Contractor shall comply with the limitations on subcontracting as follows:

(1) For contracts, in accordance with paragraphs (c)(1), (2), (3) and (6) of this clause--

[ ] By the end of the base term of the contract and then by the end of each subsequent option period; or [ ] By the end of the performance period for each order issued under the contract.

(2) For orders, in accordance with paragraphs (c)(4) and (5) of this clause, by the end of the performance period for the order.

A joint venture agrees that, in the performance of the contract, the applicable percentage specified in paragraph (e) of this clause will be performed by the aggregate of the joint venture participants.

(End of clause)

52.227-11 PATENT RIGHTS--OWNERSHIP BY THE CONTRACTOR MAY/2014

As used in this clause--

Invention means any invention or discovery that is or may be patentable or otherwise protectable under title 35 of the U.S. Code, or any variety of plant that is or may be protectable under the Plant Variety Protection Act (7 U.S.C.

2321, et seq.)

Made means--

When used in relation to any invention other than a plant variety, the conception or first actual reduction to practice of the invention; or

When used in relation to a plant variety, that the Contractor has at least tentatively determined that the variety has been reproduced with recognized characteristics.

Nonprofit organization means a university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C.

501(c)) and exempt from taxation under section 501(a) of the Internal Revenue Code (26 U.S.C.

501(a)), or any nonprofit scientific or educational organization qualified under a State nonprofit organization statute.

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

Subject invention means any invention of the Contractor made in the performance of work under this contract.

Contractor's rights.

[POTENTIAL PROBLEMATIC LANGUAGE DETECTED]

(1) Ownership.

Problem Category: Equipment

Common Problems: sponsor retains ownership of equipment provided or purchased

Preferred Language: ['Title to equipment provided under this Agreement, or purchased or made by Auburn in the performance of the Research will vest with Auburn']

Why: Auburn wants it

1st response to Sponsor: ask to have it vest with Auburn

Confidence: 0.3032160644503863

[END POTENTIAL PROBLEMATIC LANGUAGE]

The Contractor may retain ownership of each subject invention throughout the world in accordance with the provisions of this clause.

[POTENTIAL PROBLEMATIC LANGUAGE DETECTED]

(2) License.

Problem Category: Exclusive License

Common Problems: Sponsor wants right of first refusal/first option to negotiate an exclusive license.

Preferred Language: ['Auburn hereby agrees to grant to SPONSOR a non-exclusive, nontransferable, paid-up license, without the right to grant sublicenses, to use any Auburn Invention in SPONSOR’s internal research and development during the term of this Agreement. \n']

Why: This would harm our ability to negotiate licenses with other companies. Most companies are scared off when they find out that another has rights of first refusal.

1st response to Sponsor: delete

Confidence: 0.25969799324016246

[END POTENTIAL PROBLEMATIC LANGUAGE]

(i) The Contractor shall retain a nonexclusive royalty-free license throughout the world in each subject invention to which the Government obtains title, unless the Contractor fails to disclose the invention within the times specified in paragraph (c) of this clause.

The Contractor's license extends to any domestic subsidiaries and affiliates within the corporate structure of which the Contractor is a part, and includes the right to grant sublicenses to the extent the Contractor was legally obligated to do so at contract award.

The license is transferable only with the written approval of the agency, except when transferred to the successor of that part of the Contractor's business to which the invention pertains.

(ii) The Contractor's license may be revoked or modified by the agency to the extent necessary to achieve expeditious practical application of the subject invention in a particular country in accordance with the procedures in FAR 27.302(i)(2) and 27.304-1(f).

Contractor's obligations.

(1) The Contractor shall disclose in writing each subject invention to the Contracting Officer within 2 months after the inventor discloses it in writing to Contractor personnel responsible for patent matters.

The disclosure shall identify the inventor(s) and this contract under which the subject invention was made.

It shall be sufficiently complete in technical detail to convey a clear understanding of the subject invention.

The disclosure shall also identify any publication, on sale (i.e., sale or offer for sale), or public use of the subject invention, or whether a manuscript describing the subject invention has been submitted for publication and, if so, whether it has been accepted for publication.

In addition, after disclosure to the agency, the Contractor shall promptly notify the Contracting Officer of the acceptance of any manuscript describing the subject invention for publication and any on sale or public use.

The Contractor shall elect in writing whether or not to retain ownership of any subject invention by notifying the Contracting Officer within 2 years of disclosure to the agency.

However, in any case where publication, on sale, or public use has

initiated the 1-year statutory period during which valid patent protection can be obtained in the United States, the period for election of title may be shortened by the agency to a date that is no more than 60 days prior to the end of the statutory period.

The Contractor shall file either a provisional or a nonprovisional patent application or a Plant Variety Protection Application on an elected subject invention within 1 year after election.

However, in any case where a publication, on sale, or public use has initiated the 1-year statutory period during which valid patent protection can be obtained in the United States, the Contractor shall file the application prior to the end of that statutory period.

If the Contractor files a provisional application, it shall file a nonprovisional application within 10 months of the filing of the provisional application.

The Contractor shall file patent applications in additional countries or international patent offices within either 10 months of the first filed patent application (whether provisional or nonprovisional) or 6 months from the date permission is granted by the Commissioner of Patents to file foreign patent applications where such filing has been prohibited by a Secrecy Order.

The Contractor may request extensions of time for disclosure, election, or filing under paragraphs (c)(1), (c)(2), and (c)(3) of this clause.

Government's rights--(1) Ownership.

The Contractor shall assign to the agency, on written request, title to any subject invention--

If the Contractor fails to disclose or elect ownership to the subject invention within the times specified in paragraph (c) of this clause, or elects not to retain ownership; provided, that the agency may request title only within 60 days after learning of the Contractor's failure to disclose or elect within the specified times.

In those countries in which the Contractor fails to file patent applications within the times specified in paragraph (c) of this clause; provided, however, that if the Contractor has filed a patent application in a country after the times specified in paragraph (c) of this clause, but prior to its receipt of the written request of the agency, the Contractor shall continue to retain

ownership in that country.

In any country in which the Contractor decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in reexamination or opposition proceeding on, a patent on a subject invention.

[POTENTIAL PROBLEMATIC LANGUAGE DETECTED]

(2) License.

Problem Category: Exclusive License

Common Problems: Sponsor wants right of first refusal/first option to negotiate an exclusive license.

Preferred Language: ['Auburn hereby agrees to grant to SPONSOR a non-exclusive, nontransferable, paid-up license, without the right to grant sublicenses, to use any Auburn Invention in SPONSOR’s internal research and development during the term of this Agreement. \n']

Why: This would harm our ability to negotiate licenses with other companies. Most companies are scared off when they find out that another has rights of first refusal.

1st response to Sponsor: delete

Confidence: 0.25969799324016246

[END POTENTIAL PROBLEMATIC LANGUAGE]

If the Contractor retains ownership of any subject invention, the Government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice, or have practiced for or on its behalf, the subject invention throughout the world.

Contractor action to protect the Government's interest.

(1) The Contractor shall execute or have executed and promptly deliver to the agency all instruments necessary to--

Establish or confirm the rights the Government has throughout the world in those subject inventions in which the Contractor elects to retain ownership; and

Assign title to the agency when requested under paragraph (d) of this clause and to enable the Government to obtain patent protection and plant variety protection for that subject invention in any country.

The Contractor shall require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in the Contractor's format, each subject invention in order that the Contractor can comply with the disclosure provisions of paragraph (c) of this clause, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions.

The disclosure format should require, as a minimum, the information required by paragraph (c)(1) of this clause.

The Contractor shall instruct such employees, through employee agreements or other suitable educational programs, as to the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.

The Contractor shall notify the Contracting Officer of any decisions not to file a nonprovisional patent application, continue the prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceeding on a patent, in any country, not less than 30 days before the expiration of the response or filing period required by the relevant patent office.

The Contractor shall include, within the specification of any United States nonprovisional patent or plant variety protection application and any patent or plant variety protection certificate issuing thereon covering a subject invention, the following statement, "This invention was made with Government support under (identify the contract) awarded by (identify the agency).

The Government has certain rights in the invention."

Reporting on utilization of subject inventions.

The Contractor shall submit, on request, periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining utilization of the subject invention that are being made by the Contractor or its licensees or assignees.

The reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the Contractor, and other data and information as the agency may reasonably specify.

The Contractor also shall provide additional reports as may be requested by the agency in connection with any march-in proceeding undertaken by the agency in accordance with paragraph (h) of this clause.

The Contractor also shall mark any utilization report as confidential/proprietary to help prevent inadvertent release outside the Government.

As required by 35 U.S.C.

202(c)(5), the agency will not disclose that information to persons outside the Government without the Contractor's permission.

Preference for United States industry.

Notwithstanding any other provision of this clause, neither the Contractor nor any assignee shall grant to any person the exclusive right to use or sell any subject invention in the United States unless the person agrees that any products embodying the subject invention or produced through the use of the subject invention will be manufactured substantially in the United States.

However, in individual cases, the requirement for an agreement may be waived by the agency upon a showing by the Contractor or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States, or that under the circumstances domestic manufacture is not commercially feasible.

March-in rights.

The Contractor acknowledges that, with respect to any subject invention in which it has retained ownership, the agency has the right to require licensing pursuant to 35 U.S.C.

203 and 210(c), and in accordance with the procedures in 37 CFR 401.6 and any supplemental regulations of the agency in effect on the date of contract award.

Special provisions for contracts with nonprofit organizations.

If the Contractor is a nonprofit organization, it shall--

Not assign rights to a subject invention in the United States without the written approval of the agency, except where an assignment is made to an organization that has as one of its primary functions the management of inventions, provided, that the assignee shall be subject to the same provisions as the Contractor;

Share royalties collected on a subject invention with the inventor, including Federal employee co-inventors (but through their agency if the agency deems it appropriate) when the subject invention is assigned in accordance with 35 U.S.C.

202(e) and 37 CFR 401.10;

Use the balance of any royalties or income earned by the Contractor with respect to subject inventions, after payment of expenses (including payments to inventors) incidental to the administration of subject inventions for the support of scientific research or education; and

Make efforts that are reasonable under the circumstances to attract licensees of subject inventions that are small business concerns, and give a preference to a small business concern when licensing a subject invention if the Contractor determines that the small business concern has a plan or proposal for marketing the invention which, if executed, is equally as likely to bring the invention to practical application as any plans or proposals from applicants that are not small business concerns; provided, that the Contractor is also satisfied that the small business concern has the capability and resources to carry out its plan or proposal.

The decision whether to give a preference in any specific case will be

at the discretion of the Contractor.

Allow the Secretary of Commerce to review the Contractor's licensing program and decisions regarding small business applicants, and negotiate changes to its licensing policies, procedures, or practices with the Secretary of Commerce when the Secretary's review discloses that the Contractor could take reasonable steps to more effectively implement the requirements of paragraph (i)(4) of this clause.

Communications.

N/A

Subcontracts.

(1) The Contractor shall include the substance of this clause, including this paragraph (k), in all subcontracts for experimental, developmental, or research work to be performed by a small business concern or nonprofit organization.

The Contractor shall include in all other subcontracts for experimental, developmental, or research work the substance of the patent rights clause required by FAR Subpart 27.3.

At all tiers, the patent rights clause must be modified to identify the parties as follows: references to the Government are not changed, and the subcontractor has all rights and obligations of the Contractor in the clause.

The Contractor shall not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions.

In subcontracts, at any tier, the agency, the subcontractor, and the Contractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and the agency with respect to the matters covered by the clause; provided, however, that nothing in this paragraph is intended to confer any jurisdiction under the Contract Disputes statute in connection with proceedings under paragraph (h) of this clause.

(End of clause)

252.235-7010 ACKNOWLEDGMENT OF SUPPORT AND DISCLAIMER MAY/1995

The Contractor shall include an acknowledgment of the Government's support in the publication of any material based on or developed under this contract, stated in the following terms: This material is based upon work supported by the Army STTR Program Office under Contract No.

W58RGZ-22-C-0048.

All material, except scientific articles or papers published in scientific journals, must, in addition to any notices or disclaimers by the Contractor, also contain the following disclaimer: Any opinions, findings and conclusions or recommendations expressed in this material are those of the author(s) and do not necessarily reflect the views of the the Army STTR Program Office.

(End of clause)

252.245-7004 REPORTING, REUTILIZATION, AND DISPOSAL (DEVIATION 2022-O0006) NOV/2021

Definitions.

As used in this clause--

Demilitarization means the act of eliminating the functional capabilities and inherent military design features from DoD personal property.

Methods and degree range from removal and destruction of critical features to total destruction by cutting, tearing, crushing, mangling, shredding, melting, burning, etc.

Export-controlled items means items subject to the Export Administration Regulations (EAR) (15 CFR parts 730-774) or the International Traffic in Arms Regulations (ITAR) (22 CFR parts 120-130).

The term includes--

Defense items, defined in the Arms Export Control Act, 22 U.S.C.

2778(j)(4)(A), as defense articles, defense services, and related technical data, etc.

; and

Items, defined in the EAR as commodities, software, and technology, terms that are also defined in the EAR, 15 CFR 772.1.

Ineligible transferees means individuals, entities, or countries--

Excluded from Federal programs by the General Services Administration as identified in the System for Award Management Exclusions

located at https://sam.gov ;

Delinquent on obligations to the U.S. Government under surplus sales contracts;

Designated by the Department of Defense as ineligible, debarred, or suspended from defense contracts; or

Subject to denial, debarment, or other sanctions under export control laws and related laws and regulations, and orders administered by the Department of State, the Department of Commerce, the Department of Homeland Security, or the Department of the Treasury.

Scrap means property that has no value except for its basic material content.

For purposes of demilitarization, scrap is defined as recyclable waste and discarded materials derived from items that have been rendered useless beyond repair, rehabilitation, or restoration such that the item's original identity, utility, form, fit, and function have been destroyed.

Items can be classified as scrap if processed by cutting, tearing, crushing, mangling, shredding, or melting.

Intact or recognizable components and parts are not scrap.

Serviceable or usable property means property with potential for reutilization or sale as is or with minor repairs or alterations.

Inventory disposal schedules.

Unless disposition instructions are otherwise

included in this contract, the Contractor shall complete the Plant Clearance Inventory Schedule using the Plant Clearance capability of the Government Furnished Property (GFP) Module of the Procurement Integrated Enterprise Environment (PIEE), an electronic equivalent of the SF form 1428, Inventory Disposal Schedule.

Users may register for access and obtain training on the PIEE home page https://wawf.eb.mil/piee-landing .

The Plant Clearance Inventory Schedule requires the following:

If known, the applicable Federal Supply Code (FSC) for all items, except items in scrap condition.

If known, the manufacturer name for all aircraft components under Federal Supply Group (FSG) 16 or 17 and FSCs 2620, 2810, 2915, 2925, 2935, 2945, 2995, 4920, 5821, 5826, 5841, 6340, and 6615.

The manufacturer name, make, model number, model year, and serial number for all aircraft under FSCs 1510 and 1520.

Appropriate Federal Condition Codes.

See Appendix 2.5 of Volume 2 of DLM 4000.25-2, Supply Standards and Procedures, edition in effect as of the date of this contract.

Information on Federal Condition Codes can be obtained at https://www.dla.mil/Portals/104/Documents/DLMS/manuals/dlm/v2/Volume2Change13Files.pdf .

If the schedules are acceptable, the plant clearance officer shall confirm acceptance in the GFP Module Plant Clearance capability, which will transmit an acceptance email to the contractor.

The electronic acceptance is equivalent to the DD Form 1637, Notice of Acceptance of Inventory.

Proceeds from sales of surplus property.

Unless otherwise provided in the contract, the proceeds of any sale, purchase, or retention shall be--

Forwarded to the Contracting Officer;

Credited to the Government as part of the settlement agreement;

Credited to the price or cost of the contract; or

Applied as otherwise directed by the Contracting Officer.

Demilitarization, mutilation, and destruction.

If demilitarization, mutilation, or destruction of contractor inventory is required, the Contractor shall demilitarize, mutilate, or destroy contractor inventory, in accordance with the terms and conditions of the contract and consistent with Defense Demilitarization Manual, DoDM 4160.28-M, edition in effect as of the date of this contract.

The plant clearance officer may authorize the purchaser to demilitarize, mutilate, or destroy as a condition of sale provided the property is not inherently dangerous to public health and safety.

Classified Contractor inventory.

The Contractor shall dispose of classified contractor inventory in accordance with applicable security guides and regulations or as directed by the Contracting Officer.

Inherently dangerous Contractor inventory.

Contractor inventory dangerous to public health or safety shall not be disposed of unless rendered innocuous or until adequate safeguards are provided.

Contractor inventory located in foreign countries.

Consistent with contract terms and conditions, property disposition shall be in accordance with foreign and U.S. laws and regulations, including laws and regulations involving export controls, host nation requirements, Final Governing Standards, and Government-to-Government agreements.

[POTENTIAL PROBLEMATIC LANGUAGE DETECTED]

The Contractor's responsibility to comply with all applicable laws and regulations regarding export-controlled items exists independent of, and is not established or limited by, the information provided by this clause.

Problem Category: Export Controls

Common Problems: Sponsor will or may provide export controlled information

Preferred Language: ["(If receiving export-controlled info):\n“It is Auburn’s policy to remain fully in compliance at all times with all U.S. export control regulations, including but not limited to the Export Administration Regulations; International Traffic in Arms Regulations; and embargo sanctions under the Office of Foreign Assets Control (OFAC).\tTherefore, in the event that SPONSOR wishes to provide export controlled data or information to Auburn during the course of activity under this Agreement, SPONSOR must first notify Auburn of its intention to provide this data at least thirty (30) days in advance of actually providing this data or information and provide the Export Control classification of such data under the ITAR or EAR. Auburn will then determine whether Auburn can accept such data, as well as the conditions for such receipt if agreed upon. Auburn will then communicate this determination back to SPONSOR within seven (7) days of such determination.”\n \n(If not receiving export-controlled info):\n“It is Auburn's policy to remain fully in compliance at all times with all U.S. export control regulations, including but not limited to the Export Administration Regulations; International Traffic in Arms Regulations; and embargo sanctions under the Office of Foreign Assets Control (OFAC). No export controlled information will be provided to Auburn by the SPONSOR.”"]

Why: If we accept export control language, we are no longer operating in a Fundamental research environment so we would not have the exclusion to export controls.

1st response to Sponsor: add the following statement: "Therefore, in the event that SPONSOR wishes to provide export controlled data or information to Auburn during the course of activity under this Agreement, SPONSOR must first notify Auburn of its intention to provide this data at least thirty (30) days in advance of actually providing this data or information and provide the Export Control classification of such data under the ITAR or EAR. Auburn will then determine whether Auburn can accept such data, as well as the conditions for such receipt if agreed upon. Auburn will then communicate this determination back to SPONSOR within seven (7) days of such determination.”

Confidence: 0.20552275500990563

[END POTENTIAL PROBLEMATIC LANGUAGE]

Disposal of scrap.

Contractor with scrap procedures.

The Contractor shall include within its property management procedure, a process for the accountability and management of Government-owned scrap.

The process shall, at a minimum, provide for the effective and efficient disposition of scrap, including sales to scrap dealers, so as to minimize costs, maximize sales proceeds, and, contain the necessary internal controls for mitigating the improper release of non-scrap property.

The Contractor may commingle Government and contractor-owned scrap and provide routine disposal of scrap, with plant clearance officer concurrence, when determined to be effective and efficient.

Scrap warranty.

The plant clearance officer may require the Contractor to secure from scrap buyers a DD Form 1639, Scrap Warranty.

Sale of surplus Contractor inventory.

The Contractor shall conduct sales of contractor inventory (both useable property and scrap) in accordance with the requirements of this contract and plant clearance officer direction.

Any sales contracts or other documents transferring title shall include the following statement:

The Purchaser certifies that the property covered by this contract will be used in (name of country).

In the event of resale or export by the Purchaser of any of the property, the Purchaser agrees to obtain the appropriate U.S. and foreign export or re-export license approval.

Restrictions on purchase or retention of Contractor inventory.

The Contractor may not knowingly sell the inventory to any person or that person's agent, employee, or household member if that person--

Is a civilian employee of the DoD or the U.S. Coast Guard;

Is a member of the armed forces of the United States, including the U.S. Coast Guard; or

Has any functional or supervisory responsibilities for or within the DoD's property disposal/disposition or plant clearance programs or for the disposal of contractor inventory.

The Contractor may conduct Internet-based sales, to include use of a third party.

If the Contractor wishes to bid on the sale, the Contractor or its employees shall submit bids to the plant clearance officer prior to soliciting bids from other prospective bidders.

The Contractor shall solicit a sufficient number of bidders to obtain adequate competition.

Informal bid procedures shall be used, unless the plant clearance officer directs otherwise.

The Contractor shall include in its invitation for bids, the sales terms and conditions provided by the plant clearance officer.

The Contractor shall solicit bids at least 15 calendar days before bid opening to allow adequate opportunity to inspect the property and prepare bids.

For large sales, the Contractor may use summary lists of items offered as bid sheets with detailed descriptions attached.

In addition to mailing or delivering notice of the proposed sale to prospective bidders, the Contractor may (when the results are

expected to justify the additional expense) display a notice of the proposed sale in appropriate public places, e.g., publish a sales notice on the Internet in appropriate trade journals or magazines and local newspapers.

The plant clearance officer or representative will witness the bid opening.

The Contractor shall submit, either electronically or manually, two copies of the bid abstract.

The following terms and conditions shall be included in sales contracts involving the demilitarization, mutilation, or destruction of property:

Demilitarization, mutilation, or destruction on Contractor or subcontractor premises.

Item(s) -1- require demilitarization, mutilation, or destruction by the Purchaser.

Demilitarization shall be witnessed and verified by a Government representative using DRMS Form 145 or equivalent.

Demilitarization, mutilation, or destruction off Contractor or subcontractor premises.

Item(s) -2- require demilitarization, mutilation, or destruction by the Purchaser.

Demilitarization shall be witnessed and verified by a Government representative using DRMS Form 145 or equivalent.

Property requiring demilitarization shall not be removed, and title shall not pass to the Purchaser, until demilitarization has been accomplished and verified by a Government representative.

Demilitarization will be accomplished as specified in the sales contract.

Demilitarization shall be witnessed and verified by a Government representative using DRMS Form 145 or equivalent.

The Purchaser agrees to assume all costs incident to the demilitarization and to restore the working area to its present condition after removing the demilitarized property.

Failure to demilitarize.

If the Purchaser fails to demilitarize, mutilate, or destroy the property as specified in the contract, the Contractor may, upon giving 10 days written notice from date of mailing to the Purchaser--

Repossess, demilitarize, and return the property to the Purchaser, in which case the Purchaser hereby agrees to pay to the Contractor, prior to the return of the property, all costs incurred by the Contractor in repossessing, demilitarizing, and returning the property;

Repossess, demilitarize, and resell the property, and charge the defaulting Purchaser with all costs incurred by the Contractor.

The Contractor shall deduct these costs from the purchase price and refund the balance of the purchase price, if any, to the Purchaser.

In the event the costs exceed the purchase price, the defaulting Purchaser hereby agrees to pay these costs to the Contractor; or

Repossess and resell the property under similar terms and conditions.

In the event this option is exercised, the Contractor shall charge the defaulting Purchaser with all costs incurred by the Contractor.

The Contractor shall deduct these costs from the original purchase price and refund the balance of the purchase price, if any, to the defaulting Purchaser.

Should the excess costs to the Contractor exceed the purchase price, the defaulting Purchaser hereby agrees to pay these costs to the Contractor.

(End of clause)

52.204-19 INCORPORATION BY REFERENCE OF REPRESENTATIONS AND CERTIFICATIONS DEC/2014

The Contractor's representations and certifications, including those completed electronically via the System for Award Management (SAM), are incorporated by reference into the contract.

(End of clause)

52.204-25 PROHIBITION ON CONTRACTING FOR CERTAIN TELECOMMUNICATIONS AND VIDEO NOV/2021 SURVEILLANCE SERVICES OR EQUIPMENT

Definitions.

As used in this clause--

"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).

"Covered foreign country" means The Peoples Republic of China.

"Covered telecommunications equipment or services" means--

Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities);

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);

Telecommunications or video surveillance services provided by such entities or using such equipment; or

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.

"Critical technology" means--

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;

Items included on the Commerce Control List set forth in Supplement No.

1 to part 774 of the Export Administration Regulations under subchapter C of chapter VII of title 15, Code of Federal Regulations, and controlled-

Pursuant to multilateral regimes, including for reasons relating to national security, chemical and biological weapons proliferation, nuclear nonproliferation, or missile technology; or

For reasons relating to regional stability or surreptitious listening;

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);

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);

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

Emerging and foundational technologies controlled pursuant to section 1758 of the Export Control Reform Act of 2018 (50 U.S.C.

4817).

"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.

"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.

"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.

"Substantial or essential component" means any component necessary for the proper function or performance of a piece of equipment, system, or service.

Prohibition.

(1) Section 889(a)(1)(A) 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, 2019, from procuring or obtaining, or extending or renewing a contract 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 Contractor is prohibited from providing to the Government 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, unless an exception at paragraph (c) of this clause applies or the covered telecommunication equipment or services are covered by a waiver described in FAR 4.2104.

(2) 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 a contract, or extending or renewing a contract, 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, unless an exception at paragraph (c) of this clause

applies or the covered telecommunication equipment or services are covered by a waiver described in FAR 4.2104.

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.

Exceptions.

This clause does not prohibit contractors from providing--

A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or

Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.

Reporting requirement.

(1) In the event the Contractor 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 contract performance, or the Contractor is notified of such by a subcontractor at any tier or by any other source, the Contractor shall report the information in paragraph (d)(2) of this clause to the Contracting Officer, unless elsewhere in this contract are established procedures for reporting the information; in the case of the Department of Defense, the Contractor shall report to the website at https://dibnet.dod.mil .

For indefinite delivery contracts, the Contractor shall report to the Contracting Officer for the indefinite delivery contract and the Contracting Officer(s) for any affected order or, in the case of the Department of Defense, identify both the indefinite delivery contract and any affected orders in the report provided at https://dibnet.dod.mil .

The Contractor shall report the following information pursuant to paragraph (d)(1) of this clause:

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; 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.

Within 10 business days of submitting the information in paragraph (d)(2)(i) of this clause: Any further available information about mitigation actions undertaken or recommended.

In addition, the Contractor 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.

Subcontracts.

The Contractor shall insert the substance of this clause, including this paragraph (e) and excluding paragraph (b)(2), in all subcontracts and other contractual instruments, including subcontracts for the acquisition of commercial products or commercial services.

(End of clause)

52.215-19 NOTIFICATION OF OWNERSHIP CHANGES OCT/1997

The Contractor shall make the following notifications in writing:

When the Contractor becomes aware that a change in its ownership has occurred, or is certain to occur, that could result in changes in the valuation of its capitalized assets in the accounting records, the Contractor shall notify the Administrative Contracting Officer (ACO) within 30 days.

The Contractor shall also notify the ACO within 30 days whenever changes to asset valuations or any other cost changes have occurred or are certain to occur as a result of a change in ownership.

The Contractor shall --

Maintain current, accurate, and complete inventory records of assets and their costs;

Provide the ACO or designated representative ready access to the records upon request;

Ensure that all individual and grouped assets, their capitalized values, accumulated depreciation or amortization, and remaining useful lives are identified accurately before and after each of the Contractors ownership changes; and

Retain and continue to maintain depreciation and amortization schedules based on the asset records maintained before each Contractor ownership change.

The Contractor shall include the substance of this clause in all subcontracts under this contract that meet the applicability requirement of FAR 15.408(k).

(End of Clause)

52.219-28 POST-AWARD SMALL BUSINESS PROGRAM REREPRESENTATION SEP/2021

Definitions.

As used in this clause--

"Long-term contract" means a contract of more than five years in duration, including options.

However, the term does not include contracts that exceed five years in duration because the period of performance has been extended for a cumulative period not to exceed six months under the clause at 52.217-8, Option to Extend Services, or other appropriate authority.

"Small business concern"--

Means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the criteria in 13 CFR part 121 and the size standard in paragraph (d) of this clause.

Such a concern is ``not dominant in its field of operation'' when it does not exercise a controlling or major influence on a national basis in a kind of business activity in which a number of business concerns are primarily engaged.

In determining whether dominance exists, consideration shall be given to all appropriate factors, including volume of business, number of employees, financial resources, competitive status or position, ownership or control of materials, processes, patents, license agreements, facilities, sales territory, and nature of business activity.

Affiliates, as used in this definition, means business concerns, one of whom directly or indirectly controls or has the power to control the others, or a third party or parties control or have the power to control the others.

In determining whether affiliation exists, consideration is given to all appropriate factors including common ownership, common management, and

contractual relationships.

SBA determines affiliation based on the factors set forth at 13 CFR 121.103.

If the Contractor represented that it was any of the small business concerns identified in 19.000(a)(3) prior to award of this contract, the Contractor shall rerepresent its size and socioeconomic status according to paragraph (f) of this clause or, if applicable, paragraph (h) of this clause, upon occurrence of any of the following:

Within 30 days after execution of a novation agreement or within 30 days after modification of the contract to include this clause, if the novation agreement was executed prior to inclusion of this clause in the contract.

Within 30 days after a merger or acquisition that does not require a novation or within 30 days after modification of the contract to include this clause, if the merger or acquisition occurred prior to inclusion of this clause in the contract.

For long-term contracts--

Within 60 to 120 days prior to the end of the fifth year of the contract; and

Within 60 to 120 days prior to the date specified in the contract for exercising any option thereafter.

If the Contractor represented that it was any of the small business concerns identified in 19.000(a)(3) prior to award of this contract, the Contractor shall rerepresent its size and socioeconomic status according to paragraph (f) of this clause or, if applicable, paragraph (h) of this clause, when the Contracting Officer explicitly requires it for an order issued under a multiple-award contract.

The Contractor shall rerepresent its size status in accordance with the size standard in effect at the time of this rerepresentation that corresponds to the North American Industry Classification System (NAICS) code(s) assigned to this contract.

The small business size standard corresponding to this NAICS code(s) can be found at https://www.sba.gov/document/support--table-size-standards .

The small business size standard for a Contractor providing an end item that it does not manufacture, process, or produce itself, for a contract other than a construction or service contract, is 500 employees if the acquisition--

Was set aside for small business and has a value above the simplified acquisition threshold;

Used the HUBZone price evaluation preference regardless of dollar value, unless the Contractor waived the price evaluation preference; or

Was an 8(a), HUBZone, service-disabled veteran-owned, economically disadvantaged women-owned, or women-owned small business set- aside or sole-source award regardless of dollar value.

Except as provided in paragraph (h) of this clause, the Contractor shall make the representation(s) required by paragraph (b) and

(c) of this clause by validating or updating all its representations in the Representations and Certifications section of the System for Award Management (SAM) and its other data in SAM, as necessary, to ensure that they reflect the Contractor's current status.

The Contractor shall notify the contracting office in writing within the timeframes specified in paragraph (b) of this clause, or with its offer for an order (see paragraph (c) of this clause), that the data have been validated or updated, and provide the date of the validation or update.

If the Contractor represented that it was other than a small business concern prior to award of this contract, the Contractor may, but is not required to, take the actions required by paragraphs (f) or (h) of this clause.

If the Contractor does not have representations and certifications in SAM, or does not have a representation in SAM for the NAICS code applicable to this contract, the Contractor is required to complete the following rerepresentation and submit it to the contracting office, along with the contract number and the date on which the rerepresentation was completed:

The Contractor represents that it [ ] is, [ ] is not a small business concern under NAICS Code assigned to contract number .

[Complete only if the Contractor represented itself as a small business concern in paragraph (h)(1) of this clause.]

The Contractor represents that it [ ] is, [ ] is not, a small disadvantaged business concern as defined in 13 CFR 124.1002.

[Complete only if the Contractor represented itself as a small business concern in paragraph (h)(1) of this clause. ]

The Contractor represents that it [ ] is, [ ] is not a women-owned small business concern.

Women-owned small business (WOSB) concern eligible under the WOSB Program.

[Complete only if the Contractor represented itself as a women-owned small business concern in paragraph (h)(3) of this clause.]

The Contractor represents that--

It [ ] is, [ ] is not a WOSB concern eligible under the WOSB Program, has provided all the required documents to the WOSB Repository, and no change in circumstances or adverse decisions have been issued that affects its eligibility; and

It [ ] is, [ ] is not a joint venture that complies with the requirements of 13 CFR part 127, and the representation in paragraph (h)(4)(i) of this clause is accurate for each WOSB concern eligible under the WOSB Program participating in the joint venture.

[ The Contractor shall enter the name or names of the WOSB concern eligible under the WOSB Program and other small businesses that are participating in the joint venture: .]

Each WOSB concern eligible under the WOSB Program participating in the joint venture shall submit a separate signed copy of the WOSB representation.

Economically disadvantaged women-owned small business (EDWOSB) concern.

[Complete only if the Contractor represented itself as a women-owned small business concern eligible under the WOSB Program in (h)(4) of this clause. ]

The Contractor represents that--

It [ ] is, [ ] is not an EDWOSB concern eligible under the WOSB Program, has provided all the required documents to the WOSB Repository, and no change in circumstances or adverse decisions have been issued that affects its eligibility; and

It [ ] is, [ ] is not a joint venture that complies with the requirements of 13 CFR part 127, and the representation in paragraph (h)(5)(i) of this clause is accurate for each EDWOSB concern participating in the joint venture.

[The Contractor shall enter the name or names of the EDWOSB concern and other small businesses that are participating in the joint venture:

.]

Each EDWOSB concern participating in the joint venture shall submit a separate signed copy of the EDWOSB representation.

[Complete only if the Contractor represented itself as a small business concern in paragraph (h)(1) of this clause. ]

The Contractor represents that it [ ] is, [ ] is not a veteran-owned small business concern.

[Complete only if the Contractor represented itself as a veteran-owned small business concern in paragraph (h)(6) of this clause.]

The Contractor represents that it [ ] is, [ ] is not a service-disabled veteran-owned small business concern.

[Complete only if the Contractor represented itself as a small business concern in paragraph (h)(1) of this clause. ]

The Contractor represents that--

It [ ] is, [ ] is not a HUBZone small business concern listed, on the date of this representation, on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration, and no material changes in ownership and control, principal office, or HUBZone employee percentage have occurred since it was certified in accordance with 13 CFR part 126; and

It [ ] is, [ ] is not a HUBZone joint venture that complies with the requirements of 13 CFR part 126, and the representation in paragraph (h)(8)(i) of this clause is accurate for each HUBZone small business concern participating in the HUBZone joint venture.

[The Contractor shall enter the names of each of the HUBZone small business concerns participating in the HUBZone joint venture: .]

Each HUBZone small business concern participating in the HUBZone joint venture shall submit a separate signed copy of the HUBZone representation.

[Contractor to sign and date and insert authorized signer's name and title.]

(End of clause)

52.222-35 EQUAL OPPORTUNITY FOR VETERANS JUN/2020

Definitions.

As used in this clause--

"Active duty wartime or campaign badge veteran," "Armed Forces service medal veteran," "disabled veteran," "protected veteran," "qualified disabled veteran," and "recently separated veteran" have the meanings given at Federal Acquisition Regulation (FAR) 22.1301.

Equal opportunity clause.

The Contractor shall abide by the requirements of the equal opportunity clause at 41 CFR 60-300.5(a), as of March 24, 2014.

This clause prohibits discrimination against qualified protected veterans, and requires affirmative action by the Contractor to employ and advance in employment qualified protected veterans.

Subcontracts.

The Contractor shall insert the terms of this clause in subcontracts valued at or above the threshold specified in FAR 22.1303(a) on the date of subcontract award, unless exempted by rules, regulations, or orders of the Secretary of Labor.

The Contractor shall act as specified by the Director, Office of Federal Contract Compliance Programs, to enforce the terms, including action for noncompliance.

Such necessary changes in language may be made as shall be appropriate to identify properly the parties and their undertakings.

(End of clause)

52.222-36 EQUAL OPPORTUNITY FOR WORKERS WITH DISABILITIES JUN/2020

Equal opportunity clause.

The Contractor shall abide by the requirements of the equal opportunity clause at 41 CFR 60-741.5(a), as of March 24, 2014.

This clause prohibits discrimination against qualified individuals on the basis of disability, and requires affirmative action by the Contractor to employ and advance in employment qualified individuals with disabilities.

Subcontracts.

The Contractor shall include the terms of this clause in every subcontract or purchase order in excess of the threshold specified in Federal Acquisition Regulation (FAR) 22.1408(a) on the date of subcontract award, unless exempted by rules, regulations, or orders of the Secretary, so that such provisions will be binding upon each subcontractor or vendor.

The Contractor shall act as specified by the Director, Office of Federal Contract Compliance Programs of the U.S. Department of Labor, to enforce the terms, including action for noncompliance.

Such necessary changes in language may be made as shall be appropriate to identify properly the parties and their undertakings.

(End of clause)

52.252-2 CLAUSES INCORPORATED BY REFERENCE FEB/1998

This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text.

Upon request, the Contracting Officer will make their full text available.

Also, the full text of a clause may be accessed electronically at this/these address:

For FAR clauses: https://www.acquisition.gov/

For DFARS clauses: https://www.acq.osd.mil/dpap/dars/dfarspgi/current/index.html

(End of Clause)

52.252-6 AUTHORIZED DEVIATIONS IN CLAUSES NOV/2020

The use in this solicitation or contract of any Federal Acquisition Regulation (48 CFR Chapter 1) clause with an authorized deviation is indicated by the addition of "(DEVIATION)" after the date of the clause.

The use in this solicitation or contract of any DoD Federal Acquisition Regulation Supplement (48 CFR Chapter 2) clause with an authorized deviation is indicated by the addition of "(DEVIATION)" after the name of the regulation.

(End of Clause)

252.227-7018 RIGHTS IN NONCOMMERCIAL TECHNICAL DATA AND COMPUTER SOFTWARE--SMALL MAR/2020 BUSINESS INNOVATION RESEARCH (SBIR) PROGRAM (DEVIATION 2020-O0007)

Definitions.

As used in this clause--

"Commercial computer software" means software developed or regularly used for nongovernmental purposes which--

Has been sold, leased, or licensed to the public;

Has been offered for sale, lease, or license to the public;

Has not been offered, sold, leased, or licensed to the public but will be available for commercial sale, lease, or license in time to satisfy the delivery requirements of this contract; or

Satisfies a criterion expressed in paragraph (a)(1)(i), (ii), or (iii) of this clause and would require only minor modification to meet the requirements of this contract.

"Computer database" means a collection of recorded data in a form capable of being processed by a computer.

The term does not include computer software.

"Computer program" means 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" means 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.

Computer software does not include computer databases or computer software documentation.

"Computer software documentation" means owner's manuals, user's manuals, installation instructions, operating instructions, and other similar items, regardless of storage medium, that explain the capabilities of the computer software or provide instructions for using the software.

"Covered Government support contractor" means a contractor (other than a litigation support contractor covered by 252.204-7014) under a contract, the primary purpose of which is to furnish independent and impartial advice or technical assistance directly to the Government in support of the Governments management and oversight of a program or effort (rather than to directly furnish an end item or service to accomplish a program or effort), provided that the contractor--

Is not affiliated with the prime contractor or a first-tier subcontractor on the program or effort, or with any direct competitor of such prime contractor or any such first-tier subcontractor in furnishing end items or services of the type developed or produced on the program or effort; and

Receives access to the technical data or computer software for performance of a Government contract that contains the clause at 252.227-7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends.

"Data" means recorded information, regardless of the form or method of the recording.

The term includes technical data and computer software.

The term does not include information incidental to contract administration, such as financial, administrative, cost or pricing, or management information.

"Detailed manufacturing or process data" means technical data that describe the steps, sequences, and conditions of manufacturing, processing or assembly used by the manufacturer to produce an item or component or to perform a process.

"Developed" means--

(Applicable to technical data other than computer software documentation.)

An item, component, or process, exists and is workable.

Thus, the item or component must have been constructed or the process practiced.

Workability is generally established when the item, component, or process has been analyzed or tested sufficiently to demonstrate to reasonable people skilled in the applicable art that there is a high probability that it will operate as intended.

Whether, how much, and what type of analysis or testing is required to establish workability depends on the nature of the item, component, or process, and the state of the art.

To be considered "developed," the item, component, or process need not be at the stage where it could be offered for sale or sold on the commercial market, nor must the item, component or process be actually reduced to practice within the meaning of Title 35 of the United States

Code;

A computer program has been successfully operated in a computer and tested to the extent sufficient to demonstrate to reasonable persons skilled in the art that the program can reasonably be expected to perform its intended purpose;

Computer software, other than computer programs, has been tested or analyzed to the extent sufficient to demonstrate to reasonable persons skilled in the art that the software can reasonably be expected to perform its intended purpose; or

Computer software documentation required to be delivered under a contract has been written, in any medium, in sufficient detail to comply with requirements under that contract.

"Developed exclusively at private expense" means development was accomplished entirely with costs charged to indirect cost pools, costs not allocated to a government contract, or any combination thereof.

Private expense determinations should be made at the lowest practicable level.

Under fixed-price contracts, when total costs are greater than the firm-fixed-price or ceiling price of the contract, the additional development costs necessary to complete development shall not be considered when determining whether development was at government, private, or mixed expense.

"Developed exclusively with government funds" means development was not accomplished exclusively or partially at private expense.

"Developed with mixed funding" means development was accomplished partially with costs charged to indirect cost pools and/or costs not allocated to a government contract, and partially with costs charged directly to a government contract.

"Form, fit, and function data" means technical data that describe 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.

"Generated" means technical data or computer software first created in the performance of this contract.

"Government purpose" means 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 competitive procurement, but do not include the rights to use, modify, reproduce, release, perform, display, or disclose technical data or computer software for commercial purposes or authorize others to do so.

"Government purpose rights" means the rights to--

Use, modify, reproduce, release, perform, display, or disclose technical data or computer software within the Government without restriction; and

Release or disclose technical data or computer software outside the Government and authorize persons to whom release or disclosure has been made to use, modify, reproduce, release, perform, display, or disclose that data for United States Government purposes.

"Limited rights" means the rights to use, modify, reproduce, release, perform, display, or disclose technical data, in whole or in part, within the Government.

The Government may not, without the written permission of the party asserting limited rights, release or disclose the technical data outside the Government, use the technical data for manufacture, or authorize the technical data to be used by another party, except that the Government may reproduce, release, or disclose such data or authorize the use or reproduction of the data by persons outside the Government if--

The production, release, disclosure, or use is--

Necessary for emergency repair and overhaul; or

A release or disclosure to--

A covered Government support contractor in performance of its covered Government support contracts for use, modification, reproduction, performance, display, or release or disclosure to a person authorized to receive limited rights technical data; or

A foreign government, of technical data other than detailed manufacturing or process data, when use of such data by the foreign government is in the interest of the Government and is required for evaluational or informational purposes;

The recipient of the technical data is subject to a prohibition on the further reproduction, release, disclosure, or use of the technical data; and

The Contractor or subcontractor asserting the restriction is notified of such reproduction, release, disclosure, or use.

"Minor modification" means a modification that does not significantly alter the nongovernmental function or purpose of computer software or is of the type customarily provided in the commercial marketplace.

"Noncommercial computer software" means software that does not qualify as commercial computer software under paragraph (a)(1) of this clause.

"Restricted rights" apply only to noncommercial computer software and mean the Government's rights to--

Use a computer program with one computer at one time.

The program may not be accessed by more than one terminal or central processing unit or time shared unless otherwise permitted by this contract;

Transfer a computer program to another Government agency without the further permission of the Contractor if the transferor destroys all copies of the program and related computer software documentation in its possession and notifies the licensor of the transfer.

Transferred programs remain subject to the provisions of this clause;

Make the minimum number of copies of the computer software required for safekeeping (archive), backup, or modification purposes;

Modify computer software provided that the Government may--

Use the modified software only as provided in paragraphs (a)(20)(i) and (iii) of this clause; and

Not release or disclose the modified software except as provided in paragraphs (a)(20)(ii), (v), (vi), and (vii) of this clause;

Permit contractors or subcontractors performing service contracts (see 37.101 of the Federal Acquisition Regulation) in support of this or a related contract to use computer software to diagnose and correct deficiencies in a computer program, to modify computer software to enable a computer program to be combined with, adapted to, or merged with other computer programs or when necessary to respond to urgent tactical situations, provided that--

The Government notifies the party which has granted restricted rights that a release or disclosure to particular contractors or subcontractors was made;

Such contractors or subcontractors are subject to the non-disclosure agreement at 227.7103-7 of the Defense Federal Acquisition Regulation Supplement or are Government contractors receiving access to the software for performance of a Government contract that contains the clause at 252.227-7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends;

The Government shall not permit the recipient to decompile, disassemble, or reverse engineer the software, or use software decompiled, disassembled, or reverse engineered by the Government pursuant to paragraph (a)(20)(iv) of this clause, for any other purpose; and

Such use is subject to the limitations in paragraphs (a)(20)(i) through (iii) of this clause;

Permit contractors or subcontractors performing emergency repairs or overhaul of items or components of items procured under this or a related contract to use the computer software when necessary to perform the repairs or overhaul, or to modify the computer software to reflect the repairs or overhaul made, provided that--

The intended recipient is subject to the non-disclosure agreement at 227.7103-7 or is a Government contractor receiving access to the software for performance of a Government contract that contains the clause at 252.227-7025, Limitations on the Use or Disclosure of Government Furnished Information Marked with Restrictive Legends;

The Government shall not permit the recipient to decompile, disassemble, or reverse engineer the software, or use software decompiled, disassembled, or reverse engineered by the Government pursuant to paragraph (a)(20)(iv) of this clause, for any other purpose; and

Such use is subject to the limitations in paragraphs (a)(20)(i) through (iii) of this clause; and

Permit covered Government support contractors in the performance of Government contracts that contain the clause at 252.227- 7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends, to use, modify,

reproduce, perform, display, or release or disclose the computer software to a person authorized to receive restricted rights computer software, provided that--

The Government shall not permit the covered Government support contractor to decompile, disassemble, or reverse engineer the software, or use software decompiled, disassembled, or reverse engineered by the Government pursuant to the paragraph (a)(20)(iv) of this clause, for any other purpose; and

Such use is subject to the limitations in paragraphs (a)(20)(i) through (iv) of this clause.

"SBIR data" means all data developed or generated in the performance of a SBIR contract.

"SBIR data protection period" means the period of time during which the Government is obligated to protect SBIR data against unauthorized use and disclosure in accordance with SBIR data rights.

The SBIR protection period begins on the date of award of the contract under which the SBIR data are developed or generated and ends 20 years after that date.

This protection period is not extended by any subsequent SBIR contracts under which any portion of that SBIR data is used or delivered.

The SBIR data protection period of any such subsequent SBIR contract applies only to the SBIR data that are developed or generated under that subsequent contract.

"SBIR data rights" means the Governments rights, during the SBIR data protection period, in SBIR data covered by paragraph (b)(5) of this clause, as

follows:

Limited rights in such SBIR technical data; and

Restricted rights in such SBIR computer software.

"Technical data" means recorded information, regardless of the form or method of the recording, of a scientific or technical nature (including computer software documentation).

The term does not include computer software or information incidental to contract administration, such as financial and/or management information.

"Unlimited rights" means rights to use, modify, reproduce, release, perform, display, or disclose, technical data or computer software in whole or in part, in any manner and for any purpose whatsoever, and to have or authorize others to do so.

Rights in technical data and computer software.

The Contractor grants or shall obtain for the Government the following royalty- free, world-wide, nonexclusive, irrevocable license rights in technical data or noncommercial computer software.

All rights not granted to the Government are retained by the Contractor.

Unlimited rights.

The Government shall have unlimited rights in technical data, including computer software documentation, or computer software, including such data generated under this contract, that are--

Form, fit, and function data;

Necessary for installation, operation, maintenance, or training purposes (other than detailed manufacturing or process data);

Corrections or changes to Government-furnished technical data or computer software;

Otherwise publicly available or have been released or disclosed by the Contractor or a subcontractor 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 technical data or computer software to another party or the sale or transfer of some or all of a business entity or its assets to another party;

Data in which the Government has acquired previously unlimited rights under another Government contract or as a result of negotiations;

Data furnished to the Government, under this or any other Government contract or subcontract thereunder, with--

Government purpose license rights, limited rights, or restricted rights, and the restrictive condition(s) has/have expired;

or

Government purpose rights and the Contractors exclusive right to use such data for commercial purposes has expired; and

Computer software documentation generated or required to be delivered under this contract.

Government purpose rights.

The Government shall have government purpose rights for the period specified in paragraph (b)(2)(ii) of this clause in data

that are--

Not SBIR data, and are--

Technical data pertaining to items, components, or processes developed with mixed funding, or computer software developed with mixed funding, except when the Government is entitled to unlimited rights in such data as provided in paragraph (b)(1) of this clause; or

Created with mixed funding in the performance of a contract that does not require the development, manufacture, construction, or productions of items, components, or processes; or

SBIR data, upon expiration of the SBIR data protection period.

(ii)(A) For the non-SBIR data described in paragraph (b)(2)(i)(A) of this clause, the Government shall have Government purpose rights for a period of five years, or such other period as may be negotiated.

This period shall commence upon execution of the contract, subcontract, letter contract (or similar contractual instrument), or contract modification (including a modification to exercise an option) that required development of the items, components, or processes, or creation of the data described in paragraph (b)(2)(i)(A)(2) of this clause.

Upon expiration of the five-year or other negotiated period, the Government shall have unlimited rights in the data.

(B) For the SBIR data described in paragraph (b)(2)(i)(B) of this clause, the Government shall have Government purpose rights perpetually, or for such other period as may be negotiated.

This period commences upon the expiration of the SBIR data protection period.

Upon expiration of any such negotiated period, the Government shall have unlimited rights in the data.

The Government shall not release or disclose data in which it has government purpose rights unless--

Prior to release or disclosure, the intended recipient is subject to the nondisclosure agreement at 227.7103-7 of the Defense Federal Acquisition Regulation Supplement (DFARS); or

The recipient is a Government contractor receiving access to the data for performance of a Government contract that contains the clause at DFARS 252.227-7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends.

The Contractor has the exclusive right, including the right to license others, to use technical data in which the Government has obtained government purpose rights under this contract for any commercial purpose during the time period specified in the government purpose rights legend prescribed in paragraph (f)(2) of this clause.

Limited rights.

The Government shall have limited rights in technical data, that were not generated under this contract, pertain to items, components or processes developed exclusively at private expense, and are marked, in accordance with the marking instructions in paragraph (f)(1) of this clause, with the legend prescribed in paragraph (f)(3) of this clause.

Restricted rights in computer software.

The Government shall have restricted rights in noncommercial computer software required to be delivered or otherwise furnished to the Government under this contract that were developed exclusively at private expense and were not generated under this contract.

SBIR data rights.

Except for technical data, including computer software documentation, or computer software in which the Government has unlimited rights under paragraph (b)(1) of this clause, the Government shall have SBIR data rights, during the SBIR data protection period of this contract, in all SBIR data.

Specifically negotiated license rights.

The standard license rights granted to the Government under paragraphs (b)(1) through (b)(5) of this clause may be modified by mutual agreement to provide such rights as the parties consider appropriate but shall not provide the Government lesser rights in technical data, including computer software documentation, than are enumerated in paragraph (a)(17) of this clause or lesser rights in computer software than are enumerated in paragraph (a)(20) of this clause.

Any rights so negotiated shall be identified in a license agreement made part of this contract.

[POTENTIAL PROBLEMATIC LANGUAGE DETECTED]

Prior government rights.

Problem Category: Assignment

Common Problems: UNIVERSITY shall not be entitled to assign or otherwise transfer its rights and/or obligations under this Agreement in whole or in part to any third party without the prior written consent of SPONSOR.

Preferred Language: ['Neither party may assign this Agreement without the prior written consent of the other party. Subject to the foregoing, this Agreement will be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns.']

Why: would not allow us to hire consultants, vendors, or issue subawards without prior approval

1st response to Sponsor: have it struck

Confidence: 0.20592388986602383

[END POTENTIAL PROBLEMATIC LANGUAGE]

Technical data, including computer software documentation, or computer software that will be delivered, furnished, or otherwise provided to the Government under this contract, in which the Government has previously obtained rights shall be delivered, furnished, or provided with the pre-existing rights, unless--

The parties have agreed otherwise; or

Any restrictions on the Government's rights to use, modify, release, perform, display, or disclose the technical data or computer software have expired or no longer apply.

[POTENTIAL PROBLEMATIC LANGUAGE DETECTED]

Release from liability.

Problem Category: Insurance

Common Problems: Professional Liability / Errors & Omissions

Preferred Language: []

Why: None

1st response to Sponsor: Risk Management

Confidence: 0.22028815056182974

[END POTENTIAL PROBLEMATIC LANGUAGE]

The Contractor agrees to release the Government from liability for any release or disclosure of

technical data, computer software, or computer software documentation made in accordance with paragraph (a)(15), (a)(19), or (b)(5) of this clause, or in accordance with the terms of a license negotiated under paragraph (b)(6) of this clause, or by others to whom the recipient has released or disclosed the data, software, or documentation and to seek relief solely from the party who has improperly used, modified, reproduced, released, performed, displayed, or disclosed Contractor data or software marked with restrictive legends.

Covered Government support contractors.

The Contractor acknowledges that--

Limited rights technical data and restricted rights computer software are authorized to be released or disclosed to covered Government support contractors;

The Contractor will be notified of such release or disclosure;

The Contractor may require each such covered Government support contractor to enter into a non-disclosure agreement directly with the Contractor (or the party asserting restrictions as identified in a restrictive legend) regarding the covered Government support contractors use of such data or software, or alternatively that the Contractor (or party asserting restrictions) may waive in writing the requirement for an non-disclosure agreement; and

Any such non-disclosure agreement shall address the restrictions on the covered Government support contractor's use of the data or software as set forth in the clause at 252.227-7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends.

[POTENTIAL PROBLEMATIC LANGUAGE DETECTED]

The non-disclosure agreement shall not include any additional terms and conditions unless mutually agreed to by the parties to the non-disclosure agreement.

Problem Category: Equitable Remedies

Common Problems: The parties agree that irreparable damage would occur if any provision of this Agreement was not performed in accordance with the terms hereof and that the parties or either of them shall be entitled to an injunction or injunctions to prevent breaches of this Agreement or to enforce specifically the performance of the terms and provisions hereof.

Preferred Language: ['N/A']

Why: As an instrumentality of the State, Auburn falls under the purview of our State Constitution which states in Article I, Section 14 “That the State of Alabama shall never be made a defendant in any court of law or equity.”

1st response to Sponsor: delete

Confidence: 0.21098647705541082

[END POTENTIAL PROBLEMATIC LANGUAGE]

Rights in derivative computer software or computer software documentation.

The Government shall retain its rights in the unchanged portions of any computer software or computer software documentation delivered under this contract that the Contractor uses to prepare, or includes in, derivative software or documentation.

Third party copyrighted technical data and computer software.

The Contractor shall not, without the written approval of the Contracting Officer, incorporate any copyrighted technical data, including computer software documentation, or computer software in the data or software to be delivered under this contract unless the Contractor is the copyright owner or has obtained for the Government the license rights necessary to perfect a license or licenses in the deliverable data or software of the appropriate scope set forth in paragraph (b) of this clause and, prior to delivery of such--

Technical data, has affixed to the transmittal document a statement of the license rights obtained; or

Computer software, has provided a statement of the license rights obtained in a form acceptable to the Contracting Officer.

Identification and delivery of technical data or computer software to be furnished with restrictions on use, release, or disclosure.

This paragraph does not apply to technical data or computer software that were or will be generated under this contract or to restrictions based solely on copyright.

Except as provided in paragraph (e)(3) of this clause, technical data or computer software that the Contractor asserts should be furnished to the Government with restrictions on use, release, or disclosure is identified in an attachment to this contract (the Attachment).

The Contractor shall not deliver any technical data or computer software with restrictive markings unless the technical data or computer software are listed on the Attachment.

In addition to the assertions made in the Attachment, other assertions may be identified after award when based on new information or inadvertent omissions unless the inadvertent omissions would have materially affected the source selection decision.

Such identification and assertion shall be submitted to the Contracting Officer as soon as practicable prior to the scheduled date for delivery of the technical data or computer software, in the following format, and signed by an official authorized to contractually obligate the Contractor:

Identification and Assertion of Restrictions on the Government's Use, Release, or Disclosure of Technical Data or Computer Software.

The Contractor asserts for itself, or the persons identified below, that the Government's rights to use, release, or disclose the following technical data or computer software should be restricted:

Technical Data or

Computer Software

to be Furnished

Basis for

Asserted Rights

Name of Person

Asserting

With Restrictions\*

Assertion\*\*

Category\*\*\*

Restrictions\*\*\*\*

(LIST)

(LIST)

(LIST)

(LIST)

\*If the assertion is applicable to items, components, or processes developed at private expense, identify both the technical data and each such item, component, or process.

\*\*Generally, development at private expense, either exclusively or partially, is the only basis for asserting restrictions on the Government's rights to use, release, or disclose technical data or computer software.

Indicate whether development was exclusively or partially at private expense.

If development was not at private expense, enter the specific reason for asserting that the Government's rights should be restricted.

\*\*\*Enter asserted rights category (e.g., limited rights, restricted rights, government purpose rights, or government purpose license rights from a prior contract, SBIR data rights under another contract, or specifically negotiated licenses).

\*\*\*\*Corporation, individual, or other person, as appropriate.

Date

Printed Name and Title

Signature

(End of identification and assertion)

When requested by the Contracting Officer, the Contractor shall provide sufficient information to enable the Contracting Officer to evaluate the Contractor's assertions.

The Contracting Officer reserves the right to add the Contractor's assertions to the Attachment and validate any listed assertions, at a later date, in accordance with the procedures of the Validation of Asserted RestrictionsComputer Software and/or Validation of Restrictive Markings on Technical Data clauses of this contract.

Marking requirements.

The Contractor, and its subcontractors or suppliers, may only assert restrictions on the Government's rights to use, modify, reproduce, release, perform, display, or disclose technical data or computer software to be delivered under this contract by marking the deliverable data or software subject to restriction.

Except

as provided in paragraph (f)(7) of this clause, only the following markings are authorized under this contract: the limited rights legend at paragraph (f)(3) of this clause; the restricted rights legend at paragraph (f)(4) of this clause, the SBIR data rights legend at paragraph (f)(5) of this clause, or the special license rights legend at paragraph (f)(6) of this clause; and/or a notice of copyright as prescribed under 17

U.S.C.

401 or 402.

[POTENTIAL PROBLEMATIC LANGUAGE DETECTED]

General marking instructions.

Problem Category: Insurance

Common Problems: Commercial General Liability

Preferred Language: []

Why: None

1st response to Sponsor: Auburn University is has a self-insured fund equivalent to that of comprehensive general liability insurance coverage for bodily injury liability and property damage with limits of at least $1,000,000 for each occurrence.

Confidence: 0.20199309249791833

[END POTENTIAL PROBLEMATIC LANGUAGE]

The Contractor, or its subcontractors or suppliers, shall conspicuously and legibly mark the appropriate legend to all technical data and computer software that qualify for such markings.

The authorized legends shall be placed on the transmittal document or storage container and, for printed material, each page of the printed material containing technical data or computer software for which restrictions are asserted.

When only portions of a page of printed material are subject to the asserted restrictions, such portions shall be identified by circling, underscoring, with a note, or other appropriate identifier.

Technical data or computer software transmitted directly from one computer or computer terminal to another shall contain a notice of asserted restrictions.

However, instructions that interfere with or delay the operation of computer software in order to display a restrictive rights legend or other license statement at any time prior to or during use of the computer software, or otherwise cause such interference or delay, shall not be inserted in software that will or might be used in combat or situations that simulate combat conditions, unless the Contracting Officer's written permission to deliver such software has been obtained prior to delivery.

Reproductions of technical data, computer software, or any portions thereof subject to asserted restrictions shall also reproduce the asserted restrictions.

Government purpose rights markings.

Data delivered or otherwise furnished to the Government with government purpose rights shall be marked as follows:

GOVERNMENT PURPOSE RIGHTS

Contract No:

Contractor Name:

Contractor Address:

Expiration Date:

The Governments rights to use, modify, reproduce, release, perform, display, or disclose these data are restricted by paragraph (b)(2) of the Rights in Noncommercial Technical Data and Computer SoftwareSmall Business Innovation Research (SBIR) Program clause contained in the above identified contract.

No restrictions apply after the expiration date shown above.

Any reproduction of data or portions thereof marked with this legend must also reproduce the markings.

(End of legend)

Limited rights markings.

Technical data not generated under this contract that pertain to items, components, or processes developed exclusively at private expense and delivered or otherwise furnished with limited rights shall be marked with the following legend:

LIMITED RIGHTS

Contract No.

Contractor Name:

Contractor Address:

The Government's rights to use, modify, reproduce, release, perform, display, or disclose these technical data are restricted by paragraph (b)(3) of the Rights in Noncommercial Technical Data and Computer SoftwareSmall Business Innovation Research (SBIR) Program clause contained in the above identified contract.

Any reproduction of technical data or portions thereof marked with this legend must also reproduce the markings.

Any person, other than the Government, who has been provided access to such data must promptly notify the above named Contractor.

(End of legend)

Restricted rights markings.

Computer software delivered or otherwise furnished to the Government with restricted rights shall be marked with the following legend:

RESTRICTED RIGHTS

Contract No.

Contractor Name

Contractor Address

The Government's rights to use, modify, reproduce, release, perform, display, or disclose this software are restricted by paragraph (b)(4) of the Rights in Noncommercial Technical Data and Computer SoftwareSmall Business Innovation Research (SBIR) Program clause contained in the above identified contract.

Any reproduction of computer software or portions thereof marked with this legend must also reproduce the markings.

Any person, other than the Government, who has been provided access to such software must promptly notify the above named Contractor.

(End of legend)

SBIR data rights markings.

Except for technical data or computer software in which the Government has acquired unlimited rights under paragraph (b)(1) of this clause, or negotiated special license rights as provided in paragraph (b)(6) of this clause, technical data or computer software generated under this contract shall be marked with the following legend.

The Contractor shall enter the expiration date for the SBIR data protection period on the legend:

SBIR DATA RIGHTS

Contract No.

Contractor Name

Contractor Address

Expiration of SBIR Data

Protection Period

The Government's rights to use, modify, reproduce, release, perform, display, or disclose technical data or computer software marked with this legend are restricted during the period shown as provided in paragraph (b)(5) of the Rights in Noncommercial Technical Data and Computer SoftwareSmall Business Innovation Research (SBIR) Program clause contained in the above identified contract.

After the expiration date shown above, the Government has perpetual government purpose rights as provided in paragraph (b)(5) of that clause.

Any reproduction of technical data, computer software, or portions thereof marked with this legend must also reproduce the markings.

(End of legend)

Special license rights markings.

Technical data or computer software in which the Government's rights stem from a specifically negotiated license shall be marked with the following legend:

SPECIAL LICENSE RIGHTS

The Government's rights to use, modify, reproduce, release, perform, display, or disclose this technical data or computer software are restricted by Contract No.

(Insert contract number) , License No.

(Insert license

identifier) .Any reproduction of technical data, computer software, or portions thereof marked with this legend must also reproduce the markings.

(End of legend)

For purposes of this clause, special licenses do not include government purpose license rights acquired under a prior contract (see paragraph (b)(7) of this clause).

Pre-existing data markings.

If the terms of a prior contract or license permitted the Contractor to restrict the Government's rights to use, modify, reproduce, release, perform, display, or disclose technical data or computer software, and those restrictions are still applicable, the Contractor may mark such data or software with the appropriate restrictive legend for which the data or software qualified under the prior contract or license.

The marking procedures in paragraph (f)(1) of this clause shall be followed.

Contractor procedures and records.

Throughout performance of this contract, the Contractor, and its subcontractors or suppliers that will deliver technical data or computer software with other than unlimited rights, shall--

Have, maintain, and follow written procedures sufficient to assure that restrictive markings are used only when authorized by the terms of this clause; and

Maintain records sufficient to justify the validity of any restrictive markings on technical data or computer software delivered under this contract.

Removal of unjustified and nonconforming markings.

Unjustified markings.

The rights and obligations of the parties regarding the validation of restrictive markings on technical data or computer software furnished or to be furnished under this contract are contained in the Validation of Restrictive Markings on Technical Data and the Validation of Asserted RestrictionsComputer Software clauses of this contract, respectively.

Notwithstanding any provision of this contract concerning inspection and acceptance, the Government may ignore or, at the Contractor's expense, correct or strike a marking if, in accordance with the applicable procedures of those clauses, a restrictive marking is determined to be unjustified.

Nonconforming markings.

A nonconforming marking is a marking placed on technical data or computer software delivered or otherwise furnished to the Government under this contract that is not in the format authorized by this contract.

Correction of nonconforming markings is not subject to the Validation of Restrictive Markings on Technical Data or the Validation of Asserted RestrictionsComputer Software clause of this contract.

If the Contracting Officer notifies the Contractor of a nonconforming marking or markings and the Contractor fails to remove or correct such markings within sixty (60) days, the Government may ignore or, at the Contractor's expense, remove or correct any nonconforming markings.

Relation to patents.

Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government under any patent.

Limitation on charges for rights in technical data or computer software.

The Contractor shall not charge to this contract any cost, including but not limited to, license fees, royalties, or similar charges, for rights in technical data or computer software to be delivered under this contract when--

The Government has acquired, by any means, the same or greater rights in the data or software; or

The data are available to the public without restrictions.

The limitation in paragraph (j)(1) of this clause--

Includes costs charged by a subcontractor or supplier, at any tier, or costs incurred by the Contractor to acquire rights in subcontractor or supplier technical data or computer software, if the subcontractor or supplier has been paid for such rights under any other Government contract or under a license conveying the rights to the Government; and

Does not include the reasonable costs of reproducing, handling, or mailing the documents or other media in which the technical data or computer software will be delivered.

Applicability to subcontractors or suppliers.

The Contractor shall assure that the rights afforded its subcontractors and suppliers under 10 U.S.C.

2320, 10 U.S.C.

2321, and the identification, assertion, and delivery processes required by paragraph (e) of this clause are recognized and protected.

Whenever any noncommercial technical data or computer software is to be obtained from a subcontractor or supplier for delivery to the Government under this contract, the Contractor shall use this same clause in the subcontract or other contractual instrument, and require its subcontractors or suppliers to do so, without alteration, except to identify the parties.

The Contractor shall use the Technical DataCommercial Items clause of this contract to obtain technical data pertaining to commercial items, components, or processes.

No other clause shall be used to enlarge or diminish the Government's, the Contractor's, or a higher tier subcontractor's or supplier's rights in a subcontractor's or supplier's technical data or computer software.

Technical data required to be delivered by a subcontractor or supplier shall normally be delivered to the next higher tier contractor, subcontractor, or supplier.

However, when there is a requirement in the prime contract for technical data which may be submitted with other than unlimited rights by a subcontractor or supplier, then said subcontractor or supplier may fulfill its requirement by submitting such technical data directly to the Government, rather than through a higher tier contractor, subcontractor, or supplier.

The Contractor and higher tier subcontractors or suppliers shall not use their power to award contracts as economic leverage to obtain rights in technical data or computer software from their subcontractors or suppliers.

In no event shall the Contractor use its obligation to recognize and protect subcontractor or supplier rights in technical data or computer software as an excuse for failing to satisfy its contractual obligation to the Government.

(End of clause)

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