# Terms and Conditions of Use

By logging into and using NIST Assist by RPTS, or any tenant controlled by NIST Assist or Readypool Technical Services, you enter into this Agreement to facilitate the disclosure and exchange of technical data and/or proprietary information relating to establishing a business relationship for Microsoft Office 365, Azure, NIST and related information security, cybersecurity IP, and Microsoft Partner Network resources.

All information accessed is considered proprietary and Intellectual Property, and cannot be shared without express consent.  Parties agree to the following:

1.      As used herein, "Proprietary Information" shall mean written or documentary, recorded, machine readable, or other information in relation to the Disclosing Party's products, or proposed products or the development, manufacture or processing thereof, or the Disclosing Party's business (including, without limitation, system designs, hardware and board level designs and layouts, software designs, algorithms and computer programs, trade secrets, unpublished financial information, technology, ideas, marks (whether protected under federal, state, provincial, local, or international law or international treaty), know-how, processes, procedures, data, techniques, improvements, inventions (whether patentable or not), works of authorship, business and product development plans, information about customers (including supplier lists, current and potential customer or client information and lists), and other information concerning the Disclosing Party's actual or anticipated business, and research or development), which to the extent previously, presently, or subsequently disclosed to the undersigned is hereinafter referred to as the "Proprietary Information".

2.      The Disclosing Party shall utilize good faith efforts to identify in writing for the Receiving Party the data or other information which the Disclosing Party deems to be Proprietary Information; provided, however, that the failure of the Disclosing Party to identify disclosed information as Proprietary Information shall not change the proprietary nature of such information.  Neither Party shall identify as Proprietary Information any information which is not in good faith believed by the Disclosing Party to be privileged, a trade secret, or otherwise entitled to confidential treatment.

3.      The Receiving Party shall treat all Proprietary Information provided by the Disclosing Party with the same degree of care with which the Receiving Party treats its own Proprietary Information.  In no case will the Receiving Party use less than a reasonable degree of care to maintain the confidentiality of the Proprietary Information received.
    a) Any employee or consultant given access to any such Proprietary Information must have a legitimate "need to know" and shall be similarly bound in writing.
    b) Each party shall take every reasonable precaution to prevent disclosure or unauthorized use of the Proprietary Information.
    c) If the Receiving Party discovers any inadvertent disclosure or unauthorized use of the Disclosing Party's Proprietary Information, the Receiving Party shall immediately notify the Disclosing Party of such inadvertent disclosure or unauthorized use, and shall take

reasonable efforts to prevent any further inadvertent disclosure or unauthorized use of such Proprietary Information.

4.      Neither party will, at any time, without the prior written permission of the other party, publish, disclose or divulge Proprietary Information to any person, firm or corporation, other than the party's own employees or consultants who have a need to receive such Proprietary Information.

5.      Neither party shall use the Proprietary Information of the other for any purpose other than the purpose of this Agreement and, if a contract is awarded as a result of this Agreement, other than in accordance with the terms and conditions of the subcontract between the parties that results from such Program proposals.

6.      Information shall not be deemed proprietary, and the Receiving Party shall have no obligation with respect to any such information, which:

    a)  Was in the public domain at the time it was disclosed; or
    b)  Becomes part of the public domain without breach of this Agreement; or
    c)  Is or becomes publicly known through no wrongful act of the Receiving Party; or
    d)  Is disclosed with the written approval of the other party; or
    e)  Is already known to the Receiving Party as evidenced by competent proof thereof; or
    f)  Is rightfully received by the Receiving Party from a third party without restriction and without breach of this Agreement; or
    g)  Is disclosed by the Disclosing Party to a third party without a similar restriction on the rights of such third party; or
    h)  Is independently developed by the Receiving Party without the use of the Proprietary Information.

7.      The Parties hereto acknowledge and agree that due to the unique nature of the Proprietary Information which may be disclosed by a Party to this Agreement, a breach or threatened breach by either party of the provisions of this Agreement would cause significant and substantial damages to the aggrieved party which could not be adequately remedied at law.  The Parties further agree that an aggrieved party shall be entitled to an injunction both preliminary and final and any other appropriate equitable relief to enforce its rights under the terms of this Agreement.  Such remedies shall be cumulative and non-exclusive, being in addition to any and all other remedies that the aggrieved party may have.  The party against whom equitable relief is sought hereby waives any requirement for securing or posting a bond in connection with the aggrieved party's obtaining any injunctive or other equitable relief.

8.      Should the Receiving Party be faced with judicial, U.S. Governmental action, or a third-party subpoena to disclose Proprietary Information received hereunder, Receiving Party must, to the extent permissible under applicable law, first provide the Disclosing Party with prompt written notice of such request and cooperate with the Disclosing Party to appropriately protect against, or limit, the scope of the requested disclosure.  Should the Disclosing Party decline to contest such disclosure, the Receiving

Party may proceed to disclose such information at its option, provided that the Receiving Party continues to treat the requested information as Proprietary Information to the greatest extent possible.

9.      Upon the request of RPTS, or after the term of this Agreement, whichever is sooner, the Receiving Party shall cease use of Proprietary Information received from the Disclosing Party, and shall destroy all such Proprietary Information, including copies thereof, and shall furnish the Disclosing Party with written certification of destruction, or, upon request of the Disclosing Party shall return such Proprietary Information to the Disclosing Party.

10.     Each party shall bear all costs and expenses incurred by it in complying with this Agreement.  This Agreement is only for the purpose of protecting Proprietary Information and shall not be construed as a teaming agreement, joint venture, or other contractual arrangement or as an obligation to enter into a contract, subcontract, or other business relationship.

11.     Nothing contained in this Agreement shall be construed (i) as requiring the Disclosing Party to disclose, or the Receiving Party to accept, any particular information or (ii) as granting to a party a license, either express of implied, under any patent, copyright, trade secret, or other intellectual property right now or hereafter owned, obtained, or licensable by the other party.

12.     The Parties acknowledge that diversion contrary to U.S. export laws, regulations, rulings, and/or advisory opinions is strictly prohibited.  The Parties represent and warrant that, except as allowed under applicable U.S. Government export laws, regulations, rulings, and advisory opinions, no technical data, hardware, software, technology, or other information furnished to it hereunder shall be disclosed or exported from the United States to any foreign person, firm, territory, or country, including foreign persons employed by or associated with such Party.  Furthermore, the Receiving Party shall not allow any re-export of any technical data, hardware, software, technology, or other information furnished, without first complying with all applicable U.S. Government export laws, regulations, rulings or advisory opinions.  Prior to disclosing to any foreign person or exporting from the United States any technical data, hardware, software, technology, or other information furnished hereunder, the Receiving Party shall obtain the advance written approval of the other Party.  The Receiving Party shall indemnify and hold the Disclosing Party harmless for all claims, demands, damages, costs, fines, penalties, attorney's fees, and all other expenses arising from the Receiving Party not complying with this clause or U.S. Government export laws, regulations, rulings, and advisory opinions.

13.     If an expressly stated purpose of this Agreement is for the Receiving Party to submit a proposal to the U.S. Government, the Receiving Party may disclose Proprietary Information of the Disclosing Party to the U.S. Government on a confidential basis provided that such Proprietary Information contains a restrictive legend in accordance with Federal Acquisition Regulation (FAR) 52.215-1(e).