

U. Disclosure Regarding Payments to Influence Certain Federal Transactions

(a) Definitions.

(1) "The Act," as used in this clause, means section 1352, title 31, United States Code.

(2) "Agency," as used in this clause, means executive agency, within the meaning of 5 U.S.C. 101, 102, and 104(I), and any wholly owned Government corporation within the meaning of 31 U.S.C. 9101.

(3) "Covered Federal action," as used in this clause, means any of the following Federal actions:

(i) The awarding of any Federal contract.

(ii) The making of any Federal grant.

(iii) The making of any Federal loan.

(iv) The entering into of any cooperative agreement.

(v) The extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(4) "Indian tribe" and "tribal organization," as used in this clause, have the meaning provided in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304) and include Alaskan Natives.

(5) "Influencing or attempting to influence," as used in this clause, means making, with the intent to influence, any communication to or appearance before an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal action.

(6) "Local government," as used in this clause, means a unit of government in a State and, if chartered, established, or otherwise recognized by a State for the performance of a governmental duty, including a local public authority, a special district, an intrastate district, a council of governments, a sponsor group representative organization, and any other instrumentality of a local government.

(7) "Officer or employee of an agency," as used in this clause, includes the following individuals who are employed by an agency:

(i) An individual who is appointed to a position in the Government under title 5, United States Code, including a position under a temporary appointment.

(ii) A member of the uniformed services, as defined in subsection 101(3), title 37, United States Code.

(iii) A special Government employee, as defined in section 202, title 18, United States Code.

(iv) An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, title 5, United States Code, appendix 2.

(8) "Person," as used in this clause, means an individual, corporation, company, association, authority, firm, partnership, society, State, and local government, regardless of whether such entity is operated for profit, or not for profit. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

(9) "Reasonable compensation," as used in this clause, means, with respect to a regularly employed officer or employee of any person, compensation that is consistent with the normal compensation for such officer or employee for work that is not furnished to, not funded by, or not

furnished in cooperation with the Federal Government.

(10) "Reasonable payment," as used in this clause, means, with respect to professional and other technical services, a payment in an amount that is consistent with the amount normally paid for such services in the private sector.

(11) "Recipient," as used in this clause, includes the Participant and all subcontractors. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

(12) "Regularly employed," as used in this clause, means, with respect to an officer or employee of a person requesting or receiving a Federal contract, an officer or employee who is employed by such person for at least 130 working days within 1 year immediately preceding the date of the submission that initiates agency consideration of such person for receipt of such contract. An officer or employee who is employed by such person for less than 130 working days within 1 year immediately preceding the date of the submission that initiates agency consideration of such person must be considered to be regularly employed as soon as the officer or employee is employed by such person for 130 working days.

(13) "State," as used in this clause, means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, an agency or instrumentality of a State, and multi-State, regional, or interstate entity having governmental duties and powers.

(b) Prohibitions. The offeror, by signing its offer, hereby certifies to the best of his or her knowledge and belief that:

(1) No Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan, or cooperative agreement;

(2) If any funds other than Federal appropriated funds (including profit or fee received under a covered Federal action) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with the screening information request (SIR), the offeror must complete and submit, with its offer, OMB Standard Form LLL, Disclosure of Lobbying Activities, to the Contracting Officer; and

(3) The offeror will include the language of this clause in all subcontract awards at any tier and require that all recipients of subcontract awards in excess of \$150,000 must disclose accordingly.

(4) This certification and disclosure is a prerequisite for making or entering into the Agreement imposed by the Act. Any person who makes a prohibited expenditure or fails to file or amend a disclosure form, must be subject to a civil penalty of not less than \$10,000 and not more than \$100,000, for each such failure.

(c) The prohibitions of the Act do not apply under the following conditions:

(1) Agency and legislative liaison by its own employees.

(i) The prohibition on the use of appropriated funds, in subparagraph (b)(1) of this clause, does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action if the payment is for agency and legislative liaison activities not directly related to a covered Federal action.

(ii) For purposes of subdivision (c)(1)(i) of this clause, providing any information specifically requested by an agency or Congress is permitted at any time.

(iii) The following agency and legislative liaison activities are permitted at any time where they are not related to a specific solicitation for any covered Federal action:

(A) Discussing with an agency the qualities and characteristics (including individual demonstrations) of the person's products or services, conditions or terms of sale, and service capabilities.

(B) Technical discussions and other activities regarding the application or adaptation of the person's products or services for an agency's use.

(iv) The following agency and legislative liaison activities are permitted where they are prior to the Screening Information Request (SIR) of any covered Federal action:

(A) Providing any information not specifically requested but necessary for an agency to make an informed decision about initiation of a covered Federal action;

(B) Technical discussions regarding the preparation of an unsolicited proposal prior to its official submission; and

(C) Capability presentations by persons seeking awards from an agency pursuant to the provisions of a law authorizing such actions;

(2) Professional and technical services.

(i) The prohibition on the use of appropriated funds, in subparagraph (b)(1) of this clause, does not apply in the case of:

(A) A payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action, if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of submittal/offer or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action.

(B) Any reasonable payment to a person, other than an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action if the payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any submittal/offer or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action. Persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade associations.

(ii) For purposes of subdivision (c)(2)(i) of this clause, 'professional and technical services' must be limited to advice and analysis directly applying any professional or technical discipline. For example, drafting of a legal document accompanying a submittal/offer by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this section unless they provide advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission or negotiation of a covered Federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her client's submittal/offer, but generally advocate one proposal over another are not allowable under this section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a submittal/offer are not allowable under this section since the engineer is providing technical services but not directly in the preparation, submission or negotiation of a covered Federal action.

(iii) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation and

any other requirements in the actual award documents.

(iv) The reporting requirements herein must not apply with respect to payments of reasonable compensation made to regularly employed officers or employees of a person.

(3) Only those communications and services expressly authorized by paragraphs (c)(1) and (2) of this clause are permitted under this clause.

(d) Disclosure.

(1) If the Participant, who requests or receives from an agency a Federal contract, has made or has agreed to make any payment using non-appropriated funds (to include profits from any Covered Federal action), to any person for the purpose of influencing or attempting to influence an officer or employee of any Agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with a Covered Federal action, the Participant must file with that agency a disclosure form, OMB Standard Form LLL, Disclosure of Lobbying Activities..

(2) The Participant must file a disclosure form at the end of each calendar quarter in which there occurs any event that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under subparagraph (d)(1) of this clause. An event that materially affects the accuracy of the information reported includes:

(i) A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or

(ii) A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or

(iii) A change in the officer(s), employee(s), or Member(s) contacted to influence or attempt to influence a covered Federal action.

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(3) The Participant must require the certification, and if required, a disclosure form by any person who requests or receives any subcontractor exceeding \$150,000 under the Federal contract.

(4) All subcontractor disclosure forms must be forwarded from tier to tier until received by the prime Participant. The prime Participant must submit all disclosures to the Contracting Officer at the end of the calendar quarter in which the disclosure form is submitted by the subcontractor.

(e) Agreement. The Participant agrees not to make any payment prohibited by this clause.

(f) Penalties.

(1) Any person who makes an expenditure prohibited under paragraph (b) of this clause or fails to file or amend the disclosure form to be filed or amended by paragraph (b) must be subject to civil penalties as provided for by 31 U.S.C. 1352. An imposition of a civil penalty does not prevent the Government from seeking any other remedy that may be applicable.

(2) Participants may rely without liability on the representations made by their subcontractors in the certification and in the disclosure form.

(g) Cost allowability. Nothing in this clause makes allowable or reasonable any costs which would otherwise be unallowable or unreasonable. Conversely, costs made specifically unallowable by the requirements in this clause will not be made allowable under any other provision.

V. Reimbursement for Travel and Subsistence

- (a) Travel and subsistence are authorized for work performed under the Agreement. The Participant will be reimbursed for allocable, allowable, and reasonable travel expenses only at the per diem rates specified in applicable Federal travel regulations and in accordance with 2 CFR § 200.475, Travel Costs.
- (b) The Participant must conduct a cost analysis prior to the start of travel to determine the most cost-effective means of travel. Alternate airports must be used where available and within a reasonable commuting distance if it will result in lower costs.
- (c) The Participant must summarize the travel (date and place of the expenses, purpose of the trip, name of person(s) of trip, and title or relationship to Participant) and submit the information in accordance with the invoicing instructions in the Agreement. The Participant must submit its travel expense report to the Contracting Officer at the same time the Participant submits its invoice for payment.
- (d) Travel will be reimbursed in accordance with the above and the Participant's provisional G&A rate applicable to the time the travel occurred.

X. Patent Rights – Ownership by the Participant

(a) Definitions. 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 United States 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 -

- (1) When used in relation to any invention other than a plant variety, the conception or first actual reduction to practice of the invention; or
- (2) When used in relation to a plant variety, that the Participant 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 Participant made in the performance of work under the Agreement.

(b) Participant's rights

(1) Ownership.

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

(2) License.

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

to any domestic subsidiaries and affiliates, within the corporate structure of which the Participant is a part, and includes the right to grant sublicenses to the extent the Participant was legally obligated to do so at agreement award. The license is transferable only with the written approval of the agency, except when transferred to the successor of that part of the Participant's business to which the invention pertains.

(ii) The Participant's license may be revoked or modified by the agency to the extent necessary to achieve expeditious practical application of subject invention in a particular country, in accordance with procedures at 37 CFR Part 404.

(c) Participant's obligations.

(1) The Participant must disclose in writing each subject invention to the Contracting Officer within 2 months after the inventor discloses it in writing to Participant personnel responsible for patent matters. The disclosure must identify the inventor(s) and the agreement under which the invention was made. It must be sufficiently complete in technical detail to convey a clear understanding of the subject invention. The disclosure must 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 invention has been submitted for publication and, if so, whether it has been accepted for publication. In addition, after disclosure to the agency, the Participant must promptly notify the Contracting Officer of the acceptance of any manuscript describing the invention for publication, and any on sale or public use.

(2) The Participant must 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.

(3) The Participant must file either a provisional or 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, sale, or public use has initiated the 1-year statutory period during which valid patent protection can be obtained in the United States, the Participant must file the application prior to the end of the statutory period. If the Participant files a provisional application, it must file a nonprovisional application within 10 months of the filing of the provisional application. The Participant must 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.

(4) The Participant may request extensions of the time for disclosure, election, or filing under subparagraphs (c) (1), (c)(2), and (c)(3) of this clause.

(5) The Participant may establish and maintain active and effective procedures to ensure that subject inventions are promptly identified and timely disclosed, and must submit a description of the procedures to the Contracting Officer so that the Contracting Officer may evaluate and determine their effectiveness.

(d) Government rights –

(1) Ownership. The Participant must assign to the agency, upon written request, title to any subject invention-

(i) If the Participant 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 Participant's failure to disclose or elect within the specified times.

(ii) In those countries in which the Participant fails to file patent applications within the times specified in paragraph (c) of this clause; provided,

however, that if the Participant 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 Participant must continue to retain ownership in that country.

(iii) In any country in which the Participant 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.

(2) License. If the Participant retains ownership of any subject invention, the Government must have a nonexclusive, nontransferable, irrevocable, paid-up license to practice, or have practiced for or on its behalf, the subject invention throughout the world.

(e) Participant action to protect the Government's interest.

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

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

(ii) 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.

(2) The Participant must 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 Participant's format, each subject invention in order that the Participant 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 subparagraph (c)(1) of this clause. The Participant must 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.

(3) The Participant must 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.

(4) The Participant must 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, "The invention was made with Government support under (identify the agreement) awarded by (identify the agency). The Government has certain rights in the invention."

(f) Reporting on utilization of subject inventions.

The Participant must 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 Participant or its licensees or assignees. The reports must include information regarding the status of development, date of first commercial sale or use, gross royalties received by the Participant, and such other data and information as the agency may reasonably specify. The Participant also must 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 Participant must also 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 such information to persons outside the Government without the Participant's permission.

(g) Preference for United States industry.

Notwithstanding any other provision of this clause, neither the Participant nor any assignee must grant to any person the exclusive right to use or sell any subject invention in the United States unless such 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 Participant 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.

(h) March-in rights.

The Participant 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 agreement award.

(i) Special provisions for agreements with nonprofit organizations.

If the Participant is a nonprofit organization, it must -

(1) 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 will be subject to the same provisions as the Participant;

(2) 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;

(3) Use the balance of any royalties or income earned by the Participant 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,

(4) 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 Participant 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 Participant 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 Participant.

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

(j) Communications. [Complete according to agency instructions]

(k) Subcontracts.

(1) The Participant must 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.

(2) The Participant must include in all other subcontracts for experimental, developmental, or research work the substance of the patent rights

clause required to adequately protect the Government's interests consistent with section 3.5 of the FAA Acquisition Management System.

(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 Participant in the clause. The Participant must not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions.

(4) In subcontracts, at any tier, the agency, subcontractor, and the Participant agree that the mutual obligations of the parties created by this clause constitute an agreement 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 FAA disputes resolution process, or any board or judicial proceeding, in connection with proceedings under paragraph (h) of this clause, dealing with march-in rights.

Y. Rights in Data – General

(a) Definitions. As used in this clause -

"Commercial Computer Software" means -

(1) Computer software, that is of a type customarily used by the general public or by non-governmental entities for purposes other than governmental purposes, and -

(i) Has been sold, leased, or licensed to the general public; or,

(ii) Has been offered for sale, lease, or license to the general public;

(2) Any computer software that evolved from computer software described in paragraph (1) of this definition through advances in technology or performance and that is not yet

available in the commercial marketplace, but will be available in the commercial marketplace in time to satisfy the delivery requirements under a Government solicitation;

(3) Any item that would satisfy a criterion expressed in paragraphs (1) or (2) of this definition, but for -

(i) Modifications of a type customarily available in the commercial marketplace; or

(ii) Minor modifications of a type not customarily available in the commercial marketplace made to meet Federal Government requirements. "Minor modifications" means modifications that do not significantly change the purpose of the computer software. Factors to be considered in determining whether a modification is minor include the value and size of the modification and the comparative value and size of the final product. Dollar values and percentages may be used as guideposts, but are not conclusive evidence that a modification is minor;

(4) Any combination of items meeting the requirements of paragraphs (1), (2), (3), of this definition that are of a type customarily combined and sold in combination to the general public; or

(5) Restricted Computer Software, if the procuring agency determines the restricted computer software is sold in substantial quantities, on a competitive basis, to multiple State and local governments.

"Computer database" or "database means" a collection of recorded information in a form capable of, and for the purpose of, being stored in, processed, and operated on by a computer. The term does not include computer software.

"Computer software" means -

- (i) Computer programs that comprise a series of instructions, rules, routines, or statements, regardless of the media in which they are recorded, that allow or cause a computer to perform a specific operation or series of operation, and
- (ii) Recorded information comprising source code listings, design details, algorithms, processes, flow charts, formulas, and related material that would enable the computer program to be produced, created or compiled.

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 explains the capabilities of the computer software or provide instructions for using the software.

"Data" means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. The term does not include information incidental to agreement administration, such as financial, administrative, cost or pricing, or management information.

"Form, fit, and function data" means data relating to items, components, or processes that are sufficient to enable physical and functional interchangeability, and data identifying source, size, configuration, mating, and attachment characteristics, functional characteristics, and performance requirements. For computer software it means data identifying source, functional characteristics, and performance requirements but specifically excludes the source code, algorithms, processes, formulae, and flow charts of the software.

"Limited rights" means the rights of the Government in limited rights data as set forth in the Limited Rights Notice of subparagraph (g)(2) if included in this clause.

"Limited rights data" means data, other than computer software, that embody trade secrets or are commercial or financial and confidential or privileged, to the extent that such data pertain to items, components, or processes developed at private expense, including minor modifications.

"Restricted computer software," means computer software developed at private expense and that is a trade secret, is commercial or financial and is confidential or privileged, or is copyrighted computer software, including minor modifications of the computer software.

"Restricted rights" means the rights of the Government in restricted computer software, as set forth in a Restricted Rights Notice of subparagraph (g) if included in this clause, or as otherwise may be provided in a collateral agreement incorporated in and made part of this agreement, including minor modifications of such computer software.

"Technical data" means recorded information (regardless of the form or method of the recording) of a scientific or technical nature (including computer databases and computer software documentation). This term does not include computer software or financial, administrative, cost or pricing, or management data or other information incidental to agreement administration. The term includes recorded information of a scientific or technical nature that is included in computer databases.

"Unlimited rights" means the rights of the Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, in any manner and for any purpose, and to have or permit others to do so.

(b) Allocations of rights.

(1) Except as provided in paragraph (c) of this clause, the Government must have unlimited rights in-

- (i) Data first produced in the performance of this agreement;
- (ii) Form, fit, and function data delivered under this agreement;
- (iii) Data delivered under this agreement (except for restricted computer software) that constitute manuals or instructional and training material for

installation, operation, or routine maintenance and repair of items, components, or processes delivered or furnished for use under this agreement; and

(iv) All other data delivered under this agreement unless provided otherwise for limited rights data or restricted computer software in accordance with paragraph (g) of this clause.

(2) The Participant must have the right to -

(i) Assert copyright in data first produced in performance of this agreement to the extent provided in paragraph (c)(1) of this clause;

(ii) Use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Participant in the performance of this agreement, unless provided otherwise in paragraph (d) of this clause;

(iii) Substantiate use of, add or correct limited rights, restricted rights, or copyright notices and to take other appropriate action, in accordance with paragraphs (e) and (f) of this clause; and

(iv) Protect from unauthorized disclosure and use those data which are limited rights data or restricted computer software to the extent provided in paragraph (g) of this clause;

(c) Copyright.

(1) Data first produced in the performance of this agreement. Except as otherwise specifically provided in this agreement, the Participant may assert copyright in any data first produced in the performance of this agreement. When asserting copyright, the Participant must affix the applicable copyright notice of 17 U.S.C. 401 or 402 and an acknowledgment of Government sponsorship (including agreement number), to the data when such data are delivered to the Government, as well as when the data are published or deposited for registration as a published work in the U.S. Copyright Office. For data other than computer software, the Participant grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable, worldwide license for all such data to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government. For computer software, the Participant grants to the Government and others acting on its behalf, a paid up, nonexclusive, irrevocable, worldwide license for all such computer software to reproduce, prepare derivative works, and perform publicly and display publicly (but not to distribute copies to the public), by or on behalf of the Government.

(i) Unless provided otherwise in paragraph (d) of this clause, the Participant may, without prior approval of the Contracting Officer, assert copyright in scientific and technical articles based on or containing data first produced in the performance of this agreement and published in academic, technical or professional journals, symposia proceedings or similar works. The prior, express written permission of the Contracting Officer is required to assert copyright subsisting in all other data first produced in the performance of this agreement.

(ii) When authorized to assert copyright to the data, the Participant must affix the applicable copyright notices of 17 U.S.C. 401 or 402 and acknowledgment of Government sponsorship (including agreement number).

(iii) For data other than computer software, the Participant grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable worldwide license in such copyrighted data to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government. For computer software, the Participant grants to the Government and others acting in its behalf, a paid-up nonexclusive, irrevocable worldwide license in such copyrighted computer software to reproduce, prepare derivative works, and perform publicly and display publicly (but not to distribute copies to the public) by or on behalf of the Government.

(2) Data not first produced in the performance of this agreement. The Participant must not, without prior written permission of the Contracting

Officer, incorporate in data delivered under this agreement any data not first produced in the performance of this agreement unless the Participant

- (i) Identifies such data, and

- (ii) Grants to the Government, or acquires on its behalf, a license of the same scope as set forth in subparagraph (c)(1) of this clause or, if such data are computer software, the Government must acquire a copyright license as set forth in subparagraph (g)(4) of this clause (if included in this agreement) or as otherwise may be provided in a collateral agreement incorporated in or made part of this agreement.

(3) Removal of copyright notices. The Government will not remove any authorized copyright notices placed on data pursuant to this paragraph (c), and will include such notices on all reproductions of the data.

(d) Release, publication and use of data. The Participant must have the right to use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Participant in the performance of this agreement, except

- (1) As prohibited by Federal law or regulation (e.g., export control or national security laws or regulations);

- (2) As expressly set forth in this agreement; or,

- (3) If the Participant receives or is given access to data necessary for the performance of this agreement that contain restrictive markings, the Participant must treat the data in accordance with such markings unless specifically authorized in writing by the Contracting Officer.

(e) Unauthorized marking of data.

- (1) Notwithstanding any other provisions of this agreement concerning inspection or acceptance, if any data delivered under this agreement are marked with the notices specified in paragraph (g)(3) or (g)(4) if included in this clause, and use of the notices is not authorized by this clause, or if the data bears any other restrictive or limiting markings not authorized by this agreement, the Contracting Officer may at any time either return the data to the Participant, or cancel or ignore the markings. While the FAA is not subject to the requirements of 41 U.S.C. § 4703, nor to the procedures of the Contract Disputes Act at 41 U.S.C. §§ 7101-7109, the following procedures must apply prior to canceling or ignoring the markings.

- (i) The Contracting Officer must make written inquiry to the Participant affording the Participant 60 days from receipt of the inquiry to provide written justification to substantiate the propriety of the markings;

- (ii) If the Participant fails to respond or fails to provide written justification to substantiate the propriety of the markings within the 60-day period (or a longer time

approved in writing by the Contracting Officer for good cause shown), the Government must have the right to cancel or ignore the markings at any time after said period and the data will no longer be made subject to any disclosure prohibitions.

- (iii) If the Participant provides written justification to substantiate the propriety of the markings within the period set in paragraph (e)(1)(i) of this clause, the Contracting Officer will consider such written justification and determine whether or not the markings are to be canceled or ignored. If the Contracting Officer determines that the markings are authorized, the Participant will be so notified in writing. If the Contracting Officer determines, with concurrence of the Chief of the Contracting Office [COCO], that the markings are not authorized, the Contracting Officer must provide a written determination to the Participant. If the Participant disagrees with the Contracting Officer determination, the Participant may seek adjudication of that determination under AMS 3.9.1-1 "Contract Dispute." The decision of the Office of Dispute Resolution [ODRA] must be final regarding the appropriateness of the markings unless the Participant files an appeal pursuant to 49 U.S.C. 46110 in a court of competent jurisdiction within 90 days of receipt of the ODRA decision. This is the Participant's sole remedy to an adverse decision of the ODRA.

The Government must continue to abide by the markings under this paragraph (e)(1)(iii) until final resolution of the matter either by ODRA (in which

instance the Government will thereafter have the right to cancel or ignore the markings at any time and the data will no longer be made subject to any disclosure prohibitions), or by final disposition of the matter by court decision if the ODRA's decision is appealed.

(2) The time limits in the procedures set forth in paragraph (e)(1) of this clause may be modified in accordance with agency regulations implementing the Freedom of Information Act (5 U.S.C. 552) if necessary to respond to a request thereunder.

(f) Omitted or incorrect markings.

(1) Data delivered to the Government without any restrictive markings must be deemed to have been furnished with unlimited rights. The Government is not liable for the disclosure, use, or reproduction of such data.

(2) If the unmarked data has not been disclosed without restriction outside the Government, the Participant may request, within 6 months (or a longer time approved by the Contracting Officer for good cause shown) after delivery of such data, permission to have authorized notices placed on the data at the Participant's expense. The Contracting Officer may agree to do so if the Participant-

(i) Identifies the data to which the omitted notice is to be applied;

(ii) Demonstrates that the omission of the notice was inadvertent; and,

(iii) Establishes that the use of the proposed notice is authorized;

(iv) Acknowledges that the Government has no liability for the disclosure, use, or reproduction of any such data made prior to the addition of the notice or resulting from the omission of the notice.

(3) If data has been marked with an incorrect notice, the Contracting Officer may -

(i) Permit correction of the notice at the Participant's expense if the Participant identifies the data and demonstrates that the correct notice is authorized, or

(ii) Correct any incorrect notices.

(g) Protection of limited rights data and restricted computer software.

(1) The Participant may withhold from delivery qualified limited rights data or restricted computer software that are not identified in paragraphs (b)(1)(i), (ii), and (iii) of this clause. As a condition to this withholding, the Participant must -

(i) Identify the data being withheld; and

(ii) Furnish form, fit, and function data instead.

(2) Limited rights data that are formatted as a computer data base for delivery to the Government are to be treated as limited rights data and not restricted computer software.

(3) Notwithstanding subparagraph (g)(1) of this clause, the agreement may identify and specify the delivery of limited rights data, or the Contracting Officer may require by written request the delivery of limited rights data that has been withheld or would otherwise be entitled to be withheld. If delivery of such data is required, the Participant must affix the following "Limited Rights Notice" to the data and the Government will treat the data, subject to the provisions of paragraphs (e) and (f) of this clause, in accordance with the notice:

LIMITED RIGHTS NOTICE (January 2009)

(a) These data are submitted with limited rights under Government Agreement No. XXXXXX (and subcontract N/A, if appropriate). These data may be reproduced and used by the Government with the express limitation that they will not, without written permission of the Participant, be used for purposes of manufacture nor disclosed outside the Government; except that the Government may disclose these data outside the Government for

the following purposes, if any; provided that the Government makes such disclosure subject to prohibition against further use and disclosure: Further study of the data by a Government contractor, educational or non-profit institution under provisions of a properly executed non-disclosure agreement for independent assessment; provisions of this non-disclosure agreement would extend to works and products derived from original limited rights data.

(b) This Notice must be marked on any reproduction of these data, in whole or in part.

(h) Subcontracting. The Participant must obtain from its subcontractors all data and rights therein necessary to fulfill the Participant's obligations to the Government under this agreement. If a subcontractor refuses to accept terms affording the Government those rights, the Participant must promptly notify the Contracting Officer of the refusal and must not

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proceed with subcontract award without authorization in writing from the Contracting Officer.

(i) Relationship to patents or other rights. Nothing contained in this clause must 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.

Z. Confidentiality of Data and Information

(a) In performance of this agreement, the Participant and any of its subcontractors, may need access to and use various data and information in the possession of the Government. This data and information may have been obtained under conditions which restrict the Government's right to use and disclose this data and information or which may be adverse to the interests of the Government or other parties if it is disseminated or used in a capacity other than in performance of this agreement. Therefore, the Participant and its subcontractors agree to abide by any restrictive use conditions on such data and not to: (1) knowingly disclose such data and information to others without written authorization from the Contracting Officer, unless it is already publicly available; or (2) use for any purpose other than the performance of this agreement any data or information which bears a restrictive marking or legend which the Participant has gained access to through the performance of this agreement, or information that should be marked according to FAA Order 1600.75 "Protecting Sensitive Unclassified Information (SUI)". For the sole purpose of this clause, "information" means any communication or representation of knowledge such as facts, data, or opinions in any medium or form, including textual, numerical, graphic, cartographic, narrative or visual form.

(b) In the event the work required to be performed under this agreement requires access to proprietary data and information of other companies, the Participant must obtain agreement from such other companies for such use unless such data are provided or made available to the Participant by the Government. Two copies of such company-to-company agreements must be furnished promptly to the Contracting Officer for information only. These agreements must prescribe the scope of authorized use and disclosure of the proprietary data and information as well as any other terms and conditions to be agreed upon between the parties thereto. It is agreed by the Participant that any such data or information, whether obtained by the Participant pursuant to the aforesaid agreement or from the Government, must be protected from unauthorized use by or unauthorized disclosure to any individual, corporation, or organization so long as it remains proprietary.

(c) The Participant agrees to conduct formal training to make employees aware of the requirement to maintain confidentiality of data and information

as required above. The Participant must obtain from each employee in connection with this agreement a signed Non-Disclosure Agreement. This agreement must provide that the employee will not, during employment or anytime thereafter, disclose or use for current or future benefit of any party any of the data (to include any form of Sensitive Unclassified Information (SUI) described in FAA Order 1600.75) or information not publically available received in connection with the work under the agreement.

(d) The Participant agrees to hold the Government harmless and indemnify the Government as to any cost/loss resulting from the unauthorized use or disclosure of third party data or

software by the Participant, its employees, subcontractors, or agents.

(e) The Participant agrees to include the substance of this clause in all subcontracts awarded under this agreement. The Contracting Officer will consider case-by-case exceptions to this requirement for individual subcontracts in the event that: (1) the Participant considers this clause to be inappropriate and unnecessary in the case of a particular subcontract; (2) the Participant provides a written statement affirming absolute unwillingness of a subcontractor to perform, absent some relief from the substance of this prohibition and the reason why; (3) use of an alternate subcontract source would unreasonably detract from the quality of effort; and (4) the Participant provides the Contracting Officer timely written advance notice of these and any other extenuating circumstances.

(f) Except as the Contracting Officer specifically authorizes in writing, upon completion of all work under this agreement, the Participant must return all such data and information described above obtained from the Government, including all copies, modifications, adaptations, or combinations thereof, to the Contracting Officer. Data obtained from another company must be disposed of in accordance with the Participant's agreement with that company, or if the agreement makes no provision for disposition, must be returned to that company. The Participant must further certify in writing to the CO that all copies, modifications, adaptations, or combinations of such data or information which cannot reasonably be returned to the Contracting Officer (or to the appropriate company), have been deleted from the Participant's (and any subcontractor's) records and destroyed. The FAA reserves the right to audit the deletion. The FAA must provide notice of the audit 10 calendar days prior to the audit.

(g) These restrictions do not limit the Participant's (or subcontractor's) right to use and disclose any data and information obtained from another source without restriction.

VI.I INTELLECTUAL PROPERTY AND DATA RIGHTS

A. Rights in Data

1. The data rights of the parties are governed by Article X, Special Provisions, Subparagraph Y, Rights in Data - General. For purposes of the Limited Rights Notice, the following notice shall apply:

LIMITED RIGHTS NOTICE (January 2009)

a. These data are submitted with limited rights under Government Agreement No. XXXXXXXX (and subcontract N/A, if appropriate). The Government may use, modify, reproduce, release, perform, display or disclose these data within the Government without restriction; however, these data will not, without written permission of the Company, be used for purposes of manufacture nor disclosed outside the Government; except that the Government may disclose these data outside the Government for the following purposes; provided that the Government makes such disclosure subject to prohibition against further use and disclosure:

Further study of the data by a Government contractor, educational or non-profit institution under provisions of a properly executed non-disclosure agreement for independent assessment; provisions of this non-disclosure agreement would extend to works and products derived from original limited rights data.

2. This Notice must be marked on any reproduction of these data, in whole or in part.

The parties acknowledge that the Government must have limited rights, as defined in Article X, Subparagraph Y, in all deliverables marked as such in Article V of this Agreement. The Government shall have unlimited rights, as also defined in Article X, Subparagraph Y, in all other deliverables in Article V of this Agreement, unless appropriately marked otherwise in accordance with Article X, Subparagraph Y. Deliverables marked in Article V with unlimited rights must not contain any limited rights data. All deliverables must be clearly marked with notices in accordance with Article X, Subparagraph Y.

[Company name] will provide the applicable licenses/data rights as part of the Deliverables as specified in Article V. If the FAA requires additional or different licenses and/or data rights to any of the deliverables, the FAA and [Company name] will negotiate the data rights and/or license rights. The FAA will incorporate the modifications into Article V.

B. Rights to Intellectual Property Generated with Government Funding [Company name] hereby grants to the Government, in advance, a limited license in Intellectual Property, including any inventions or works, made or otherwise developed by the [Company name] or its employees and funded by the Government under this Agreement. Such limited license conveys to the Government a nonexclusive, nontransferable, irrevocable, worldwide, royalty-free license to practice and have practiced such inventions for or on behalf of the Government for research or other government purposes and conveying a nonexclusive, nontransferable, irrevocable, worldwide, royalty-free license to use, duplicate, prepare derivative works, distribute or disclose such copyrighted works or Proprietary Information in whole or in part and in any manner, and to have or permit others to do so, for research or other government purposes. Research or other government purposes include competitive procurement, but do not include the right to have or permit others to practice an Invention or use, duplicate, prepare derivative works, distribute or disclose copyrighted works or Proprietary Information for commercial purposes.

C. Ownership

All Intellectual Property owned or developed by a Party prior to the effective date of this Agreement or developed or acquired outside of the performance of this Agreement ("Background Intellectual Property") will remain the property of the owning or developing Party.

IX. LIABILITY AND INDEMNIFICATION

Except as specifically provided in this Agreement, the FAA, for itself and its contractors, assumes no liability under this Agreement for loss arising out of the conduct or activities undertaken by [Company Name], affiliates, associates, or its contractors, or any third party in connection with this Agreement. The FAA will not indemnify [Company Name], affiliates, associates, its contractors, or any third party against any third party claims or third party liability. [Company Name] must obtain appropriate insurance and take other appropriate steps to protect itself or others for any loss it may incur in connection with performance under this Agreement. The substance of Article IX must be included in all contracts and other agreements with third parties at any tier. The provisions of Article IX survive termination or expiration of this Agreement.

B. Audit

The General Accounting Office, the Department of Transportation, and the FAA or its designee will have the right to review and audit the books and records of [Company Name] and cognizant contractors (see pass-down requirement below) to the extent necessary to verify the allowability of costs under this Agreement and as otherwise required by law.

[Company name] must maintain for the term of this Agreement and three (3) complete calendar years thereafter, such books and records as are reasonably necessary to accurately reflect its operations under this Agreement. The periods of access and examination shall continue, however, for the time necessary to dispose of appeals, litigation, claims, disputes, or exceptions arising from performance or costs/expenses incurred under this Agreement. [Company Name] must include in contracts and agreements with other parties for the purpose of effectuating the intent of this Agreement, a provision granting the U.S. Government access to contractor or agreement party records for the same purposes in this subparagraph concerning audits. The provisions of this subparagraph survive termination or expiration of this Agreement.

F. Lobbying Certification

[Company Name] must comply with the provisions of 31 USC 1352 prohibiting the recipient of a Federal cooperative agreement from using appropriated funds to pay any person to influence or attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any transaction enumerated in the foregoing Code. [Company Name] must include a provision mandating compliance with 31 U.S.C. 1352 in all contracts or agreements which it enters under Article X, Special Provisions, Subparagraph M, Contracting by [Company Name].

[Company Name] hereby declares that it has neither made nor agreed to make any payment with respect to this Agreement, using funds other than appropriated funds, which would be prohibited by 31 U.S.C. 1352 if the payment were made using appropriated funds.

CC. AMS Clause 3.6.2-50 Addressing DEI Discrimination by Other Transaction Agreements Participants (Executive Order 14398) (INTERIM April 2026) a) Definitions. As used in this clause: “Program participation” means membership or participation in, or access or admission to: training, mentoring, or leadership development programs; educational opportunities; clubs; associations; or similar opportunities that are sponsored or established by the agreement Participant or sub-participant.

“Racially discriminatory DEI activities” means disparate treatment based on race or ethnicity in the recruitment, employment (e.g., hiring, promotions), entering into agreements (e.g., vendor agreements), program participation, or allocation or deployment of an entity’s resources.

b) In connection with the performance of work under this agreement, the Participant agrees as follows: 1) The Participant will not engage in any racially discriminatory DEI activities;

2) The Participant will furnish all information and reports, including providing access to books, records, and accounts, as required by the Agreement/Contracting Officer, for purposes of ascertaining compliance with this clause;

3) In the event of the Participant’s or a sub-participant’s noncompliance with this clause, this Agreement may be canceled, terminated, or suspended in whole or in part, and the Participant or sub-participant may be declared ineligible for further Government Agreements;

- 4) The Participant will report any sub-participant's known or reasonably knowable conduct that may violate this clause to the agreement/contracting officer and take any appropriate remedial actions directed by the agreement/Contracting Officer;
 - 5) The Participant will inform the Agreements/Contracting Officer if a sub-participant sues the Participant and the suit puts at issue, in any way, the validity of this clause; and
 - 6) The Participant recognizes that compliance with the requirements of this clause are material to the Government's payment decisions for purposes of section 31 U.S.C. 3729(b)(4).
- c) Sub-agreements. The Participant must include the substance of this clause, including this paragraph c), in sub-agreements at any tier, including those for commercial products and commercial services, except those where the place of delivery or performance is outside the United States. (End of Clause)