

KLAS

GTC 2 IVAS SUPPLEMENT

(GTC 2 KMS PROGRAM 1 SUPPLEMENT - GENERAL PROVISIONS FOR SUBCONTRACTS/PURCHASE ORDERS
FOR COMMERCIAL ITEMS UNDER KMS PROGRAM 1)

SUPPLEMENTAL PROVISIONS FOR SUBCONTRACTS/PURCHASE ORDERS IN SUPPORT OF IVAS PROJECT

1. ACCEPTANCE OF SUPPLEMENTAL TERMS AND CONDITIONS

- a. This GTC 2 IVAS SUPPLEMENT supplements the GTC applicable to this Contract. To the extent there is a conflict or inconsistency between this GTC 2 IVAS SUPPLEMENT and the GTC, this GTC 2 IVAS SUPPLEMENT shall prevail.
- b. This Contract is for the express benefit of the United States Government and Microsoft Corporation, a company incorporated under the laws of the State of Washington, having its address at One Microsoft Way, Redmond, WA, 98052 ("Microsoft"), including Microsoft Corporation and its Affiliates.
- c. SELLER (sometimes hereinafter referred to as "Company") has the sole responsibility and liability for the performance and non-performance of the Subcontractors, including conformance with the Supplier Manual. SELLER shall ensure that the agreement with its possible Subcontractors is consistent with all of its obligations under this Contract.
- d. Unless expressly accepted in writing by KLAS, additional or differing terms or conditions proposed by SELLER or included in SELLER's acknowledgement are objected to by KLAS and have no effect.
- e. The headings used in this Contract are inserted for the convenience of the parties and shall not define, limit, or describe the scope or the intent of the provisions of this Contract.

2. CONFIDENTIALITY AND PUBLIC STATEMENTS; PERSONAL INFORMATION

- a. This Contract's specific terms, and the information shared under or in connection with the performance of this Contract are Confidential Information. The parties' disclosures and activities in connection with this Contract are subject to a Non-Disclosure Agreement ("NDA"). The NDA's terms will continue to apply pursuant to this Contract even if the NDA expires or terminates. A party's breach of the NDA will be a material, non-curable breach of this Contract. The parties will enforce equivalent confidentiality requirements on all of their employees and approved Subcontractors for the Work. SELLER will not issue any press releases or make any other disclosures that relate to the company's relationship with KLAS or this Contract without KLAS's prior written consent.
- b. This Agreement is not intended to cover any data exchanges of Personal Information, but to the extent it happens, Company will comply with the most current Supplier Data Protection Requirements at <http://www.microsoft.com/about/companyinformation/procurement/process/en/us/contracting.aspx>. "Personal Information" means any information relating to an identified or identifiable natural person; an identifiable natural person is one who can be identified, directly or indirectly,

in particular by reference to an identifier such as a name, an identification number, location data, an online identifier to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person.

3. DEFINITIONS

The following terms shall have the meanings set forth below:

- a. "Affiliate" of a party means an entity (i) which is directly or indirectly controlling such party; (ii) which is under the same direct or indirect ownership or control as such party; or (iii) which is directly or indirectly owned or controlled by such party. For these purposes, an entity shall be treated as being controlled by another if that other entity has fifty percent (50%) or more of the votes in such entity, is able to direct its affairs and/or to control the composition of its board of directors or equivalent body.
- b. "Contract" means the instrument of contracting, such as "Purchase Order", "PO", "Subcontract", or other such type designation, including these terms and conditions, all referenced documents, exhibits and attachments. If these terms and conditions are incorporated into a "master" agreement that provides for releases, (in the form of a Purchase Order or other such document) the term "Contract" shall also mean the Release document for the Work to be performed.
- c. "Claim" means any demand, assertion, or legal proceeding brought by any third party and all resulting judgments, settlements and expenses (including reasonable attorneys' fees and costs).
- d. "Subcontractor(s)" means a third-party to whom SELLER delegates its obligations under this Agreement including a SELLER Affiliate not contracting directly with KLAS.
- e. "Supplier Manual" means the most recent version of the documents contained in the Microsoft Supply Chain Portal or otherwise made available to SELLER and notified to SELLER, which may include, but are not limited to, the Microsoft Supplier Component Requirements, Microsoft Supplier Code of Conduct, and Social and Environmental Accountability Program Manual and Supply Chain Security Policies and Requirements (in paper, electronic or other format). Supplier Manual shall be deemed incorporated into this Agreement by reference.
- f. "Supply Chain Portal" means an extranet site, where Microsoft provides third parties with access to various tools and documentation.

4. INDEMNITY

- a. Company will defend, indemnify, and hold harmless Microsoft and its directors, officers, employees, Affiliates, agents, distributors, and customers from all Claims that:
 1. SELLER or Work (i) infringes or misappropriates a third party's Intellectual Property Rights, or contributes to such infringement; (ii) caused danger of bodily injury or property damage, bodily harm, death, or property damage; or (iii) does not comply with an applicable law or regulation;
 2. The Work infringes or misappropriates a third party's Intellectual Property Rights and that misappropriation or infringement arises from the Work; or

3. Company has breached any of its warranties or obligations under this Contract.
- b. KLAS will give SELLER reasonable notice of each Claim. KLAS will also give reasonable cooperation in SELLER's defense of the Claim. KLAS has the right to approve the counsel that SELLER selects to defend Claims (not to be unreasonably withheld). KLAS may also have its own counsel participate in the defense at KLAS's own expense. Neither party will settle a Claim without the other's written consent (not to be unreasonably withheld). But, if after consultation with SELLER, KLAS believes that SELLER is unreasonably withholding its consent to a settlement, KLAS may settle the Claim without SELLER's consent. In that case, SELLER's indemnification obligation will be limited to the reasonable amount that SELLER would have been responsible for if it had consented. SELLER's defense obligations will not be affected. KLAS will be entitled to use its own counsel without SELLER's consent to control the defense of any Claim, and to settle that Claim, if SELLER does not acknowledge its full responsibility to indemnify KLAS for that Claim when KLAS demands. The previous sentence does not change SELLER's indemnity obligations.
- c. Duty to Correct
 1. If an infringement Claim is made, SELLER will also, at KLAS's option and SELLER's risk and cost:
 - (i) secure KLAS's right to keep directly and indirectly using, importing, selling, offering for sale and otherwise disposing of the Work subject to the Claim;
 - (ii) replace the Work with a non-infringing Work, or change or reperform the applicable Work in a non-infringing manner; or
 - (iii) change the Work so that it becomes non-infringing.Each time, KLAS will choose the remedy that SELLER provides.
 2. A replacement or changed Work must still meet the warranties in this Contract and provide equivalent performance. Also, in complying with this Contract, Company must not:
 - (i) require a change to the Work;
 - (ii) interfere with the schedule for use of the Work; or
 - (iii) require a recall of any Work or offering.
 3. If an infringement Claim is made, Microsoft may return the Microsoft Device or Company Part to Company at Company's risk and expense. Within 30 days of the return, Company will refund the purchase price of the Microsoft Device or Company Part plus all associated shipping and insurance charges.
- d. SELLER covenants that it will not assert against KLAS, Microsoft, or their distributors or customers a Claim of direct or indirect patent infringement arising from the manufacture, sale, import, use, distribution or other disposal of the Work.

5. INSURANCE

- a. SELLER and its Subcontractors shall maintain for the performance of this Contract the following insurances:
 - 1. Commercial General Liability (occurrence form) including contractual, and product liability with limits of at least \$5,000,000 per occurrence;
 - 2. Workers' compensation that satisfies all statutory limits; and
 - 3. Employer's liability with limits of at least \$500,000 per occurrence.
- b. SELLER will purchase and maintain professional liability/errors and omissions insurance if its obligations under this Contract create exposures generally covered by such a policy. The policy will:
 - 1. Have limits of at least \$5,000,000 each claim;
 - 2. Cover infringement of third-party proprietary rights (including, for example, copyright, and trademark) if such coverage is reasonably commercially available; and
 - 3. Have a retroactive coverage date no later than the effective date of this Agreement.
- c. SELLER will maintain either active policy coverage or an extended reporting period providing coverage for claims first made and reported to the insurance company within 24 months after termination or expiration of this Contract.
- d. SELLER shall have its' insurers name KLAS and Microsoft, and their respective directors, officers and employees as additional insureds on the CGL and AL policies for the duration of this Contract.

6. INTELLECTUAL PROPERTY

- a. SELLER warrants that the Work performed or delivered under this Contract will not infringe or otherwise violate the intellectual property rights of any third party in the United States or any foreign country. SELLER shall defend, indemnify, and hold harmless KLAS, its officers, directors, employees, consultants, agents, affiliates, successors, permitted assigns and customers from and against all losses, costs, claims, causes of action, damages, liabilities, and expenses, including attorney's fees, all expenses of litigation and/or settlement, and court costs, arising out of any action by a third party that is based upon a claim that the Work performed or delivered under this Contract infringes or otherwise violates the intellectual property rights of any person or entity.
- b. In addition to the Government's rights in data and inventions, SELLER agrees that KLAS, in the performance of its prime or higher tier contract obligations, shall have a limited, irrevocable, nonexclusive, world-wide, royalty-free license to: (i) make, have made, sell, offer for sale, use, execute, reproduce, display, perform, distribute (internally or externally) copies of, transfer computer software to the Government and the Government's end customer, and prepare derivative works of any inventions, discoveries, improvements, maskworks and patents as well as any and all data, copyrights, reports and works of authorship delivered in performance of this Contract, to the limited extent necessary for KLAS to make use of the Work performed or items delivered under this Contract in the performance of its contract obligations with its customer; and (ii) authorize others to do any, some or all of the foregoing.

- c. The tangible medium storing copies of all reports, memoranda or other materials in written form including machine readable form, prepared by SELLER and furnished to KLAS pursuant to this Contract shall become the sole property of KLAS. Nothing in this paragraph (c) assigns ownership of SELLER's intellectual property included on such medium to KLAS.
- d. No other provision in this Contract, including but not limited to the Indemnity clause, shall be construed to limit the liabilities or remedies of the parties under this clause.

7. PAYMENTS, TAXES, AND DUTIES

All invoices must contain enough detail to allow KLAS to determine their accuracy. Correct and undisputed invoices will be paid within 60 days after receipt of invoice. KLAS may reject invoices received more than 120 days after the date of delivery or completed performance. Payment of an invoice without asserting a dispute does not waive any claim or right.

8. REPORTS

SELLER will give KLAS weekly reports (in an electronic format as reasonably required) of all supply chain data that KLAS reasonably requests. That data may include levels and status of Work in-transit and open Work.

9. RETENTION OF RECORDS

- a. SELLER will maintain industry standard written records for its business for at least three (3) years after the events being recorded or longer as required by applicable laws or regulations. This provision does not nullify the SELLER from maintaining industry standard written records for its own legal compliance purposes. SELLER will give KLAS and Microsoft (or their authorized representative) reasonable access to and copies of records about SELLER's performance under this Contract (including quality programs and test documentation) and compliance with its obligations under this Contract, as KLAS or Microsoft may reasonably request. KLAS or Microsoft (or their authorized representative) may make reasonable inspections and audits of SELLER's manufacturing facilities for the Work and other facilities in order to verify compliance by SELLER with its obligations under this Contract, including to verify SELLER's compliance with the Supplier Manual.
- b. SELLER shall ensure that its agreements with Subcontractors are consistent with SELLER's obligations under this Contract, including granting KLAS or Microsoft (or their authorized representatives) the right to conduct reasonable inspections and audits of its Subcontractor's manufacturing facilities associated with the Work or components for the Work and other facilities in order to verify compliance by Subcontractor with its obligations under Subcontractor's agreement with SELLER, including Subcontractor's compliance with the Supplier Manual.
- c. SELLER shall pay the costs and expenses incurred in conducting any audits or inspections where such audits or inspections are to address corrective actions, in each case as provided in the Supplier Manual. SELLER agrees at its expense to correct any errors or deficiencies found during such audits or inspections. The performance by KLAS or Microsoft of any review, inspection, audit, or testing shall not relieve SELLER from its obligations under the Agreement.

10. WARRANTIES

- a. SELLER warrants that all Work furnished pursuant to this Contract shall strictly conform to applicable specifications, drawings, samples, descriptions, and other requirements of this Contract and be free from defects in design, material, and workmanship. This warranty shall begin upon final acceptance and extend for a period of eighteen (18) months.
- b. Upon delivery, all Work will:
 - 1. Comply with all applicable laws and regulations;
 - 2. Conform to the Supplier Manual, and SELLER's own literature;
 - 3. Be new, unused, and not subject to any encumbrances (unless KLAS requests repaired or refurbished Work, which will be clearly marked as such);
 - 4. Not infringe or misappropriate any third party's Intellectual Property Rights; and
 - 5. Not be subject to a Source Disclosure License, unless KLAS agrees in writing to take delivery of the Product Software under an agreed Source Disclosure.
- c. SELLER will comply with the quality documents listed in the Supplier Manual ("Microsoft Quality Documents").
- d. DISCLAIMER. EXCEPT AS STATED IN THIS AGREEMENT (INCLUDING THE SERVICE MODULES, SOWS, EXHIBITS AND ATTACHMENTS HERETO), EACH PARTY EXPRESSLY DISCLAIMS ALL EXPRESS, IMPLIED, OR STATUTORY WARRANTIES. THIS INCLUDES THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

11. TERMINATION

- a. KLAS may terminate this Contract for cause (i) by written notice to SELLER if SELLER breaches this Contract and does not cure the breach within 30 days after such notice from KLAS; or (ii) by at least 30 days' written notice to SELLER if SELLER becomes the subject of a proceeding under a bankruptcy or similar law that is not resolved favorably to SELLER within 60 days. KLAS may also terminate this Contract without cause by at least 90 days written notice to SELLER.
- b. If KLAS terminates this Contract for cause, KLAS will have no liability or obligation to SELLER other than payment of any balance due for Work KLAS accepts before the effective date of the termination. If this Contract is terminated other than by KLAS for cause, KLAS's only liability and SELLER's only remedy is payment for:
 - 1. Purchase Orders outstanding on the effective date of termination;
 - 2. Any balance due for Work provided through the effective date of termination; and
 - 3. in the case of a Company Part Supply Exhibit Set, the Buffer Inventory (as defined in Service Module 2) that Company cannot use to manufacture other Products or divert for another purpose, despite its best efforts.

- c. SELLER will cooperate with KLAS in the orderly wind-down of Work after termination. If KLAS terminates for cause, KLAS will have no obligation to pay SELLER for raw materials, parts, components or Work in progress. SELLER will deliver all Work that KLAS pays for as well as all Work in progress that KLAS pays for.
- d. SELLER will provide reasonable and timely assistance to transition terminated Work to other vendors. Unless the SOW provides otherwise, KLAS will pay for this transition assistance at customary and reasonable rates.

12. TERMS AND CONDITIONS APPLICABLE TO GOVERNMENT CONTRACT WORK

- a. This GTC 2 IVAS SUPPLEMENT is in support of an award by the United States Government to Microsoft (“Prime Contract”). SELLER must comply with certain requirements as specifically set forth in this Contract.
- b. The referenced Prime Contract Articles, Federal Acquisition Regulation (“FAR”) clauses, and Defense Federal Acquisition Regulation Supplement (“DFARS”) clauses and requirements referenced below apply to the extent indicated below. The full text of the Prime Contract Articles are included at Attachment A to this GTC 2 IVAS SUPPLEMENT. The full text of the FAR and DFARS clauses may be found at Title 48 of the Code of Federal Regulations or at www.acquisition.gov.
- c. The Prime Contract Articles and FAR and DFARS clauses below are applicable in their entirety except to the extent indicated below, and shall, where required, be included in the SELLER’s agreements with its Subcontractors and suppliers. The referenced Prime Contract Article and FAR and DFARS clauses shall be deemed modified to the extent necessary for their requirements to apply to the SELLER; e.g., COMPANY, contractor, or Microsoft shall mean SELLER, and KLAS shall be substituted for Government or Agreements Officer (“AO”) or Contracting Officer where applicable.
- d. The following are applicable in their entirety:
 - 1. Prime Contract ARTICLE XIV, *Comptroller General Access to Information*
 - 2. DFARS 252.204-7000, *Disclosure of Information* (OCT 2016)
 - 3. DFARS 252.225-7007, *Prohibition on Acquisition of Certain Items from Communist Chinese Military Companies* (DEC 2018)
- e. To the extent that the SELLER will perform developmental or experimental work in support of the Prime Contract, or otherwise possess data or other information specific to the Prime Contract, the Prime Contract Articles referenced directly below are applicable.
 - 1. Prime Contract ARTICLE VIII.A.3 *Use of Information/Publicity*
 - 2. Prime Contract ARTICLE IX.G, *Intellectual Property Rights*
 - 3. Prime Contract ARTICLE X, *Foreign Access to Technology and Export Control*

- f. To the extent that the SELLER is providing non-commercial item electronic parts or end items, components, parts, or materials containing electronic parts for use in Prime Contract deliverables, Attachment A, Section 5 (Reporting Non-Conforming Items) is applicable.

Attachment A to Schedule 1

1. ARTICLE VIII: PUBLICATION

A. Use of Information/Publicity:

- (1) If either Party plans to publish any information relating to this Agreement, it shall provide the proposed information to the other Party for review and approval at least fourteen (14) business days prior to the publication date, which approval or disapproval shall be provided to the other party no less than five (5) business days prior to publication. The AO shall be the person receiving the publication for review and approval for the Government and shall route the publication to any other appropriate parties for review and approval. If an approval or disapproval is not received by the requesting party within the stated fourteen (14) day period, the approval shall be considered as given.
- (2) The COMPANY shall not state or imply that the Government endorses COMPANY or COMPANY's products or services. Where publicity references the Government, the publicity will be accompanied by a disclaimer that no Government endorsement is intended.
- (3) The COMPANY shall include the substance of this Article VIII: PUBLICATION in its agreements with Subcontractors who will possess information and/or data relating to this Agreement.

2. ARTICLE IX: INTELLECTUAL PROPERTY RIGHTS

Success of the IVAS efforts is dependent on the transition of intellectual property generated under this Agreement to specific military or commercial applications. Intellectual property is defined to include, but is not limited to, inventions, reports, and data (including but not limited to technical data, software, firmware, computer codes, know-how, and trade secrets).

A. Definitions.

"Compromises" means to disclose information in which Microsoft has rights, including intellectual property rights, in a manner that could negatively affect or impair the value or use of such information by Microsoft.

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

- (i) 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
- (ii) Receives access to Technical data or computer software for performance of a Government contract, subcontract, or agreement that contains the clause at 252.227-7025, Limitations on the Use or Disclosure

of Government-Furnished Information Marked with Restrictive Legends, and is subject to the non-disclosure agreement at Attachment 13.

“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.

“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.

“IVAS Government Purpose Rights” means the rights to (i) use, modify, reproduce, release, perform, display, or disclose delivered data within the Government without restriction; and (ii) subject to the non-disclosure agreement at Attachment 13 and notice to Microsoft, release or disclose data 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. IVAS Government Purpose Rights will allow the Government the right to practice, obtain, reproduce, publish, or otherwise use in any part of the world for purposes of the Government (including competitive procurements and Foreign Military Sales), and to authorize others to do so for Government purposes. For clarity, Government purposes do not include the right to use, modify, reproduce, release, perform, display, or disclose data or data derived therefrom for commercial purposes or authorize others to do so. The Government shall have IVAS Government Purpose Rights for a five-year period (*“GPR Period”*) commencing from the delivery of the IVAS Government Purpose Rights data delivered in accordance with this Agreement and the attachments thereto; provided that such GPR Period will be extended up to a maximum of ten years to the extent that the period of performance for production extends. Upon expiration of the GPR Period, the Government shall have Unlimited Rights in the data. During the GPR Period, Microsoft has the exclusive right, including the right to license others, to use such IVAS Government Purpose Rights data and data derived therefrom for any commercial purpose after which the Government shall have Unlimited Rights.

“IVAS Limited Rights” means the rights to use, modify, reproduce, release, perform, display, or disclose delivered Technical data, in whole or in part, within the Government. The Government may not, without the written permission of Microsoft, 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, subject to the non-disclosure agreement at Attachment 13 and notice to Microsoft, the Government may: (i) release or disclose such Technical data to persons outside the Government for emergency repair or overhaul; (ii) release or disclose such Technical data to a covered Government support contractor; or (iii) release or disclose such Technical data to a foreign government for evaluation or informational purposes when use of such Technical data by the foreign government is in the interest of the Government. Microsoft has the exclusive right, including the right to license others, to use such Limited Rights data and data derived therefrom for any commercial purpose.

“Microsoft Background Intellectual Property” means any inventions, discoveries, developments and improvements; know-how; technical data, drawings, specifications, process information, reports and documented information; computer software, cloud services, computer programs, source code, object code, source code listings, object code listings, design details, algorithms, processes, flow charts, and

formulae, as well as related material that would enable computer software to be reproduced, created, or recompiled; all worldwide common law and statutory rights to the foregoing, including but not limited to, patents, industrial designs, trade secrets, copyrights, mask work registrations, and the like (i) owned or controlled by Microsoft prior to the execution of this Agreement; or (ii) generated or acquired by Microsoft at any time independently from the performance of this Agreement; or (iii) licensed to Microsoft by third parties, and which are required for the performance of this Agreement. For clarity, Microsoft Background Intellectual Property specifically includes Atlas and Azure and any improvements, developments, or modifications thereto. Microsoft grants no rights to Background Intellectual Property unless explicitly set forth in this Agreement.

“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 data incidental to contract administration, such as financial and/or management information.

“Unlimited rights” means rights to use, modify, reproduce, perform, display, release, or disclose delivered data in whole or in part, in any manner, and for any purpose whatsoever, and to have or authorize others to do so.

B. Data Rights:

1. All data delivered by Microsoft, while performing under this Agreement, shall be provided to the Government with the rights provided for in the Data Rights Assertions table included as Attachment 10 to this Agreement.
 - a. Microsoft grants the Government a royalty-free, worldwide, nonexclusive, irrevocable license for IVAS Government Purpose Rights data delivered to the Government in accordance with this Agreement and the attachments thereto and identified with an IVAS Government Purpose Rights legend. No other rights to IVAS Government Purpose Rights data or data derived therefrom are granted. All rights with respect to IVAS Government Purpose Rights data not granted to the Government are retained by Microsoft.
 - b. Microsoft grants the Government a royalty-free, worldwide, nonexclusive, irrevocable license for IVAS Limited Rights data delivered to the Government in accordance with this Agreement and the attachments thereto and identified with an IVAS Limited Rights legend. No other rights to IVAS Limited Rights data are granted. All rights with respect to IVAS Limited Rights data not granted to the Government are retained by Microsoft.
 - c. Microsoft grants the Government a royalty-free, worldwide, nonexclusive, irrevocable license for Unlimited Rights data delivered to the Government in accordance with this Agreement and the attachments thereto and identified with an Unlimited Rights legend.
2. Any data developed outside of this Agreement with Government funding in whole or in part under a Government agreement, contract or subcontract shall have the rights negotiated under such prior agreement, contract or subcontract; the Government shall get no additional rights in such data under this Agreement nor lose any rights such owned under previous agreements, contracts or subcontracts.

C. Data Rights Assertions and Restrictive Markings

1. Microsoft is required to specifically identify Data Rights Assertions related to Data deliverables. Microsoft's Data Rights Assertions table shall list all data and software deliverable items that Microsoft intends to furnish to the Government with the associated license rights and restrictions applicable to each item.
2. Further, Microsoft shall apply the restrictive markings consistent with the Data Rights Assertions table.
3. Except as provided in paragraph (D) (Products, Additional Products, Hardware, and Service) below, all data delivered to the Government under this Agreement, shall be marked in accordance with the following legends as applicable:

a. IVAS GOVERNMENT PURPOSE RIGHTS DATA –

"This data is being delivered as IVAS Government Purpose Rights data, as defined in Agreement W91CRB-21-9-P002. Use, duplication, release, or disclosure is subject to IVAS Government Purpose Rights in accordance with Agreement W91CRB-21-9-P002 between Microsoft and the Government. No restrictions apply after ----- (Expiration Date) ----- . Any reproduction of this data or portions thereof marked with this legend must also reproduce this marking."

b. IVAS LIMITED RIGHTS DATA –

"This data is being delivered as IVAS Limited Rights data, as defined in Agreement W91CRB-21-9-P002. Use, duplication, release, or disclosure is subject to IVAS Limited Rights in accordance with Agreement W91CRB-21-9-P002 between Microsoft and the Government. Any reproduction of this data or portions thereof marked with this legend must also reproduce this marking."

c. UNLIMITED RIGHTS DATA –

"This data is being delivered as Unlimited Rights data, as defined in Agreement W91CRB-21-9-P002. No restriction on use, duplication, release, or disclosure apply to this data in accordance with Agreement W91CRB-21-9-P002 between Microsoft and the Government. Any reproduction of this data or portions thereof marked with this legend must also reproduce this marking."

4. Attachment 10, as negotiated by the Parties, shall govern the Government's rights in Technical Data and computer software delivered under this Agreement.
5. The Government's use of certain Microsoft software deliverables is governed by the terms and conditions of the attached IVAS End User License Agreement (and informed by the Data Rights Assertions table), appended hereto as Attachment 11. The Government reserves the right to review and approve any terms and conditions that may violate federal law including those included in third party software licensing agreements.

D. Products, Additional Products, Hardware, and Service

All Products, Additional Products, Hardware, and Services are provided subject to and in accordance with Attachment 11, Microsoft End User License Agreement. All such Products, Additional Products and Hardware are not governed by the rights set forth above in Paragraph C (Data Rights Assertions and Restrictive Markings) and therefore are not required to be marked in accordance with Paragraph C.

E. Patents:

1. Authorization and Consent / Notice and Assistance Regarding Patent and Copyright Infringement

a.

- (i) The Government authorizes and consents to all use and manufacture of any invention described in and covered by a United States patent in the performance of this Agreement or any subcontract at any tier.
- (ii) The COMPANY shall include the substance of this clause, including this paragraph (a), in all subcontracts that are expected to exceed the simplified acquisition threshold, as defined in Federal Acquisition Regulation (FAR) 2.101 on the date of subcontract award. However, omission of this clause from any subcontract, including those at or below the simplified acquisition threshold, as defined in FAR 2.101 on the date of subcontract award, does not affect this authorization and consent.

b. FAR 52.227-2, Notice and Assistance Regarding Patent and Copyright Infringement (June 2020) is hereby incorporated by reference under this Agreement. Relative to this FAR clause, the term “*contract*” shall read “*Agreement*”, the term “*contractor*” shall read “*COMPANY*”, and the term “*Contracting Officer*” shall read “*Agreements Officer*.”

2. Patent Rights—Ownership by the COMPANY

a. Definitions. As used in this clause—

“*Invention*” means—

- (i) Any invention or discovery that is or may be patentable or otherwise protectable under Title 35 of the United States Code.

“*Made*” means—

- (i) When used in relation to any invention means the conception or first actual reduction to practice of the invention.

“*Subject Invention*” means—

- (i) Any invention of the COMPANY, and/or any of its subcontractors, affiliates, and/or suppliers, made in the performance of a Technology Insertion Engineering Change Proposal (“*TIECP*”) awarded pursuant to Statement of Work (“*SOW*”) § 3.6 (which may include SiVT) and which invention has no application outside the deliverables specified in the TIECP.

b. COMPANY’s rights.

- (i) Ownership. The COMPANY shall retain the entire right, title and interest throughout the world of each Subject Invention throughout the world unless otherwise provided

in accordance with the provisions of this clause, Article IX.E.2 (Intellectual Property, Patent Rights – Ownership by COMPANY).

(ii) License.

A. The COMPANY shall retain a nonexclusive, irrevocable, perpetual, paid-up, royalty-free license to practice, or have practiced for or on behalf of the COMPANY, the Subject Invention throughout the world, in each Subject Invention to which the Government obtains title. The COMPANY's license—

- (1) Extends to any domestic (including Canada) subsidiaries and affiliates within the corporate structure of which the COMPANY is a part;
- (2) Includes the right to grant sublicenses to the extent the COMPANY was legally obligated to do so at the time of contract award; and
- (3) Is transferable only with the approval of the agency, except when transferred to the successor of that part of the COMPANY's business to which the Subject Invention pertains. The Government approval for license transfer shall not be unreasonably withheld.

c. COMPANY's obligations.

(i) The COMPANY shall—

A. Disclose, in writing, each Subject Invention, whether as a result of the COMPANY's, or its subcontractors, affiliates, or suppliers' sole efforts, or as a result of joint efforts by any of them with the COMPANY, to the AO (in a format determined by the COMPANY and acceptable to the agency) within four (4) months after the inventor discloses it in writing to COMPANY personnel responsible for patent matters.

B. Include in the disclosure—

- (1) The inventor(s) and the TIECP under which the invention was made;
- (2) Sufficient technical detail to convey a clear understanding of the nature, purpose, operation, and the physical, chemical, biological, or electrical characteristics of the invention;
- (3) To the inventor(s)' knowledge, any publication, on sale (i.e., sale or offer for sale), or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication; and
- (4) Countries which COMPANY intends to file a patent application.

(ii) After submission of the disclosure, promptly notify the AO of the acceptance of any manuscript describing the invention for publication and of any on sale or public use.

- (iii) If the COMPANY elects to not retain title of any Subject Invention the COMPANY shall do so by notify the AO in writing within nine (9) months of the Subject Invention disclosure to the AO. 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 such notice shall be no less than 60 days prior to the end of the statutory period, unless COMPANY receives disclosure of the Subject Invention within this 60 day period then COMPANY shall notify the AO promptly and file a provisional application prior to the end of the statutory period. The COMPANY has sole discretion whether or not to file a patent application on the Subject Invention and its decision to not file shall not be deemed as an election to not retain title of the Subject Invention.
 - (iv) If the COMPANY decides to file a patent application on a Subject Invention, the COMPANY shall—
 - A. File either a provisional or a non-provisional patent application on the Subject Invention within one (1) year after any publication, sale, or public use of the Subject Invention, provided that in all cases the application is filed prior to the end of any statutory period wherein valid patent protection can be obtained in the United States after a publication, on sale, or public use;
 - B. File a non-provisional application within 10 months of the filing of any provisional application; and
 - C. The COMPANY may, in its sole discretion, decide to file patent applications in additional countries or international patent offices within the time frames required by those countries and subject to any time requirements where permission is granted by the Commissioner of Patents to file foreign patent applications where such filing has been prohibited by a Secrecy Order.
 - (v) The COMPANY may request extensions of time for disclosure or filing under paragraph (c) (COMPANY's obligations) of this clause with the AO, which extension of time shall not be unreasonably withheld.
 - (vi) The Government agrees to execute or to have executed and promptly deliver to the COMPANY all instruments necessary to establish or confirm the rights the COMPANY has throughout the world, and to obtain patent protection throughout the world, in inventions of the COMPANY conceived or first actually reduced to practice in the performance of work under this Agreement, including, but not limited, to assignments and declarations.
- d. Government's rights.
- (i) *Ownership.* The COMPANY shall assign to the Government, upon written request, title to any Subject Invention —
 - A. If the COMPANY expressly elects in writing not to retain title to a Subject Invention;

- B. If the COMPANY fails to disclose or elect the disclosed Subject Invention within the times specified in paragraph (c) (COMPANY's obligations): COMPANY's obligations and the agency requests title within 60 days after learning of the COMPANY's failure to report or elect within the specified times; or
 - C. In any country in which the COMPANY 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.
- (ii) *License.* If the COMPANY, or any of its subcontractors, suppliers, or affiliates, retains title of any Subject Invention, the Government shall have a nonexclusive, nontransferable, irrevocable, perpetual, paid-up, royalty-free license to practice, or have practiced for or on behalf of the United States, the Subject Invention throughout the world.
- e. COMPANY action to protect the Government's interest in Subject Inventions.
- (i) The COMPANY shall execute or have executed and promptly deliver to the Government all instruments necessary to—
 - A. Establish or confirm the rights the Government has throughout the world in those Subject Inventions in which the COMPANY has title; and
 - B. Assign title to the Government when requested under this Article to enable the Government to obtain patent protection for that Subject Invention in any country.
 - (ii) With respect to the Subject Invention, the COMPANY shall—
 - A. Establish a process so that its employees, other than clerical and nontechnical employees, can—
 - (1) Disclose potential Subject Inventions identified by the inventors promptly to personnel identified as responsible for the administration of patent matters, so that the COMPANY can comply with the disclosure provisions in paragraph (c) (COMPANY's obligations); and
 - (2) Provide the disclosure in the COMPANY's format, which should require, as a minimum, the information required by paragraph (c)(i) (COMPANY's obligations) (except for the countries as that will be determined by the personnel responsible for the administration of patent matters).
 - B. Instruct its employees, through employee agreements or other suitable educational programs, as to the importance of reporting Subject Inventions in sufficient time to permit the filing of patent applications prior to U.S. or statutory foreign bars.
 - C. Execute all papers necessary to file patent applications on Subject Inventions and to establish the Government's rights in the Subject Inventions.

- (iii) With respect to the disclosed Subject Invention, the COMPANY shall notify the AO of any decisions not to file a non-provisional 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.
 - (iv) Where applicable, the COMPANY shall include, within the specification of any United States provisional and/or non-provisional patent application and any patent issuing thereon covering a Subject Invention, the following statement: *“This invention was made with Government support under Agreement No. W91CRB-21-9-P002 awarded by the United States of America. The Government has certain rights in this invention.”*
 - (v) With respect to the Subject Invention, the COMPANY shall maintain records of conception and/or reduction to practice like it does for its own inventions, and will, furnish what it has maintained in accordance with, a proper subpoena or at AO’s request.
 - (vi) For each TIECP, the COMPANY shall furnish to the AO interim reports every 12 months (or any longer period as may be specified by the AO) from the date of the Agreement, listing the Subject Inventions disclosed to the AO during that period. A final report, within 3 months after completion of the TIECP, listing all the disclosed Subject Inventions or stating that there were no disclosed Subject Inventions.
 - (vii) The COMPANY shall provide to the AO, upon request, the following information for any Subject Invention for which the COMPANY has retained title:
 - A. Filing date.
 - B. Serial number and title.
 - C. A copy of any patent application materials filed in the United States Patent and Trademark office and/or any foreign patent offices/regions/PCT.
 - D. Patent number and issue date.
 - (viii) The COMPANY shall furnish to the Government, upon request, an irrevocable power to inspect and make copies of any patent application on the Subject Invention filed in patent offices/regions/PCT.
- f. Reporting on licensing or divestiture of Subject Inventions.
- (i) The COMPANY shall--
 - A. Submit upon request periodic reports no more frequently than annually if a Subject Invention has been specifically enumerated in a contract with a third-party;

- B. Include in the reports information regarding the licensing or divestiture, which information shall include the enumerated Subject Invention and the name of the party the subject of the license or divestiture; and
 - C. Additional information as requested by the AO, subject to mutual agreement between the COMPANY and the Government.
- (ii) To the extent permitted by law, the Government shall not disclose the information provided under paragraph (f)(i) of this clause to persons outside the Government without the COMPANY's permission, if the data or information is considered by the COMPANY or its licensee or assignee to be privileged or confidential (see 5 U.S.C. 552(b)(4)) and is so marked.
- g. *Preference for United States industry.* Notwithstanding any other provision of this clause, if a Subject Invention has been enumerated in an exclusive license or divestiture, the COMPANY agrees that neither the COMPANY nor any assignee shall grant to any person or entity the exclusive right to use or sell any Subject Invention in the United States unless the person or entity 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 agency may waive the requirement for an exclusive license agreement upon a showing by the COMPANY or its assignee that—
- (i) 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
 - (ii) Under the circumstances, domestic manufacture is not commercially feasible.
- h. *Withholding of payment (this paragraph does not apply to subcontracts).*
- (i) Any time before final payment under a TIECP, the AO may, in the Government's interest, withhold payment of the TIECP until a reserve not exceeding \$50,000 or 5 percent of the amount of the TIECP, whichever is less, is set aside if, in the AO's opinion, the COMPANY fails to—
 - A. Establish, maintain, and follow effective procedures for identifying and disclosing Subject Inventions pursuant to paragraph (e)(ii) (COMPANY action to protect the Government's interest in Subject Inventions);
 - B. Disclose any Subject Invention pursuant to paragraph (c)(i) (COMPANY's obligations);
 - C. Deliver acceptable interim reports pursuant to paragraph (e)(vi) (*COMPANY action to protect the Government's interest in Subject Invention*).
 - (ii) The reserve or balance shall be withheld until the AO has determined that the COMPANY has rectified whatever deficiencies exist and has delivered all reports, disclosures, and other information required by this clause.

- (iii) The Government will not make final payment under the TIECP before the COMPANY delivers to the AO—
 - A. All disclosures of Subject Inventions required by paragraph (c)(i) (COMPANY's obligations);
 - B. An acceptable final report pursuant to paragraph (e)(vi) (COMPANY action to protect the Government's interest in Subject Invention); and
 - C. All past due confirmatory instruments.
- (iv) The AO may decrease or increase the sums withheld up to the maximum authorized in paragraph (h)(i) (Withholding of payment). No amount shall be withheld under this paragraph while the amount specified by this paragraph is being withheld under other provisions of the TIECP. The withholding of any amount or the subsequent payment thereof shall not be construed as a waiver of any Government right.

F. Joint Subject and Feedback Inventions

Title to a Subject Invention made jointly by a Government employee and a Microsoft employee, or a joint invention made from a Government employee's Feedback, ("*Joint Subject and Feedback Invention*") shall be held jointly by the Government and Microsoft. Microsoft shall have the initial option to file a patent application on a Joint Subject and Feedback Invention at its own expense. If Microsoft declines to file or complete prosecution of a patent application, Microsoft shall offer the Government the option to file or complete prosecution of the patent application. For the sake of clarity, both parties shall have a fully-paid up, royalty-free, nonexclusive, irrevocable, worldwide license, with the right to sublicense, and without an obligation of accounting to the other, to the Joint Subject and Feedback Invention.

G. Copyright

- (1) Works Created Solely by Microsoft:** Microsoft retains all ownership to copyrights for original works of authorship created solely by Microsoft's employee(s) in the course of performance of work under this Agreement. Government rights with respect to such works shall be in accordance with the Data Rights provisions of this Agreement.
- (2) Jointly Created Works:** Ownership to copyrights for original works of authorship created jointly by a Government employee and a Microsoft employee in the course of performance of work under this Agreement is vested in Microsoft. Microsoft grants to the Government a fully-paid up, royalty-free, nonexclusive, irrevocable, worldwide license to all jointly created works. To the extent that jointly created works are contemplated in a TIECP or Statement of Work, such jointly created works must be specifically identified in the applicable TIECP or Statement of Work under which the work will be created.
- (3) Copyright Statement:** Microsoft shall include the following statement on any text, drawing, mask work or other work of authorship that may be copyrighted under Title 17 of the US Code, which is created in the performance of this Agreement: "*The U.S. has a copyright license in this work pursuant to Other Transaction Agreement No. W91CRB-21-9-P002*".

(4) Flow Down: The COMPANY shall include the substance of this Article IX: INTELLECTUAL PROPERTY RIGHTS in its agreements with Subcontractors who will develop data under this Agreement.

H. Commercial-Off-The-Shelf Manuals:

The Government shall have the same right to use, reproduce and distribute any commercial off-the-shelf manuals provided as part of this Agreement as the applicable manufacturer customarily provides to commercial purchasers of such manuals.

I. Survival Rights:

Provisions of this Article shall survive termination of this Agreement.

3. ARTICLE X: FOREIGN ACCESS TO TECHNOLOGY AND EXPORT CONTROL

A. Foreign Access to Technology:

This Article X shall remain in effect during the term of this Agreement.

B. Definitions:

"*Foreign Firm or Institution*" means a firm or institution organized or existing under the laws of a country other than the United States, its territories, or possessions. The term includes, for purposes of this Agreement, any agency or instrumentality of a foreign government; and firms, institutions or business organizations which are owned or substantially controlled by foreign governments, firms, institutions, or individuals.

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

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

C. General:

The Parties agree that research findings and technology developments arising during performance of a TIECP under this Agreement may constitute a significant enhancement to the national defense, and to the economic vitality of the United States. Accordingly, access to important technology developments under this Agreement by Foreign Firms or Institutions must be carefully controlled. The controls contemplated in this Article are in addition to, and are not intended to change or supersede, the provisions of the International Traffic in Arms Regulation (22 CFR Part 121 et seq.), the Department of Defense Industrial Security Regulation (DoD 5220.22-R) and the Department of Commerce Export Regulation (15 CFR Part 770 et seq.).

D. Restrictions on Sale or Transfer of Technology to Foreign Firms or Institutions:

- (1)** In order to promote the national security interests of the United States and to effectuate the policies that underlie the regulations cited above, the procedures stated in subparagraphs D(2), D(3), and D(4) below shall apply to any transfer of Technology. For purposes of this paragraph, a transfer includes a sale of the COMPANY, and sales or licensing of Technology. Transfers do not include:

 - (a)** Sales of products or components, or
 - (b)** Licenses of software or documentation related to sales of products or components, or
 - (c)** Transfer to foreign subsidiaries of the COMPANY member entities for purposes related to this Agreement, or
 - (d)** Transfer which provides access to Technology to a Foreign Firm or Institution which is an approved source of supply or source for the conduct of research under this Agreement provided that such transfer shall be limited to that necessary to allow the firm or institution to perform its approved role under this Agreement, or
 - (e)** Releases pursuant to Article VIII Publication hereof ("*Publication*").
- (2)** The COMPANY shall provide timely notice to the Government of any proposed transfers of Technology developed under this Agreement to Foreign Firms or Institutions. If the Government determines that the transfer may have adverse consequences to the national security interests of the United States, the COMPANY and the Government shall jointly endeavor to find alternatives to the proposed transfer which obviate or mitigate potential adverse consequences of the transfer but which provide substantially equivalent benefits to the COMPANY.
- (3)** In any event, the COMPANY shall provide written notice to the Government AO's Representative and AO of any proposed transfer to a Foreign Firm or Institution at least sixty (60) calendar days prior to the proposed date of transfer. Such notice shall cite this Article and shall state specifically what is to be transferred and the general terms of the transfer. Within thirty (30) calendar days of receipt of the COMPANY's written notification, the Government AO shall advise the COMPANY whether it consents to the proposed transfer. In cases where the Government does not concur or if within sixty (60) calendar days after its receipt the Government has provided no decision, the COMPANY may utilize the procedures under Article V Disputes. No transfer shall take place until a decision is rendered.
- (4)** In the event a transfer of Technology to Foreign Firms or Institutions, which are NOT approved by the Government, takes place, the COMPANY shall (a) refund to the Government those funds paid under this Agreement for the development of the Technology and (b) provide to the Government a non-exclusive, nontransferable, irrevocable, paid-up license to practice or have practiced on behalf of the United States the Technology throughout the world for Government and any and all other purposes,

particularly to effectuate the intent of this Agreement. Upon request of the Government, the COMPANY shall obtain and provide written confirmation of such licenses.

E. Lower Tier Agreements:

The COMPANY shall include this Article, suitably modified, to identify the Parties, in all Subcontracts and supplier agreements issued in support of TIECP SOWs which involve experimental, developmental, or research work.

F. Export Control:

Export Compliance. Each Party agrees to comply with U.S. Export regulations including, but not limited to, the requirements of the Arms Export Control Act, 22 U.S.C. §§ 2751-2794, including the International Traffic in Arms Regulation (ITAR), 22 C.F.R. § 120 et seq.; and the Export Administration Act, 50 U.S.C. app. § 2401-2420. Each Party is responsible for obtaining from the Government or any agency of the US Government, including the US Patent and Trademark Office (USPTO), export licenses or other authorizations/approvals, if required, for any information or materials, including but not limited to Technology, provided from one Party to another, including any Foreign Firm or Institution, under this Agreement. Accordingly, and without the intent of limiting any of its other obligations under applicable export control laws, the COMPANY agrees that it shall not export, directly, or indirectly, any products and/or technology, Confidential Information, Trade Secrets, Classified and Unclassified Technical Data, or Technology, in violation of any U.S. Export laws or regulations.

4. ARTICLE XIV: COMPTROLLER GENERAL ACCESS TO INFORMATION

A. Comptroller General Access to Records:

To the extent that the total Government payments under this Agreement exceed \$5,000,000.00, the Comptroller General, at its discretion, shall have access to and the right to examine records of the COMPANY and its Subcontractors that directly pertain to, and involve transactions relating to, the Agreement for a period of three (3) years after final payment is made. This requirement shall not apply to the extent that the COMPANY or its Subcontractors or any subordinate element of the COMPANY or its Subcontractors, has not entered into any other agreement (contract, grant, cooperative agreement, or "*other transaction*") that provides for audit access by a government entity in the year prior to the date of this Agreement. This paragraph only applies to any record that is created or maintained in the ordinary course of business or pursuant to a provision of law. The terms of this paragraph shall be included in all sub-agreements with Subcontractors other than sub-agreements with a component of the U.S. Government.

B. Audit:

The right provided to the Comptroller General is limited as provided in paragraph A above in the case of the COMPANY, its Subcontractors, or a subordinate element of the COMPANY or its Subcontractors if the only agreements or other transactions that the COMPANY, its Subcontractors or subordinate element entered into with Government entities in the year prior to the date of that agreement are cooperative agreements or transactions that were entered into under this section or section 2371 of this title.

C. Financial Records and Reports:

COMPANY shall maintain adequate records consistent with the COMPANY's generally accepted accounting principles (which do not include the requirements of the government Cost Principles or the Cost Accounting Standards), to account for Federal funds received under this Agreement. The COMPANY's relevant financial records are subject to examination or audit on behalf of the Government for a period not to exceed three (3) years after expiration of the term of the Agreement. The Comptroller General and its representatives shall have direct access to sufficient records and information of the COMPANY to ensure full accountability for all funding under this Agreement. Such audit, examination or access shall be performed during business hours on business days upon prior written notice and shall be subject to the security requirements of the audited Party.

5. Reporting Nonconforming Items.

5.1 The Company shall:

- (a)** Screen Government-Industry Data Exchange Program (GIDEP) reports, available at www.gidep.org, as a part of the Company's inspection system or program for the control of quality, to avoid the use and delivery of counterfeit or suspect counterfeit items or delivery of items that contain a major or critical nonconformance.
- (b)** Provide written notification to the AO within seventy-two (72) hours of becoming aware or having reason to suspect, such as through inspection, testing, record review, or notification from another source (e.g., seller, Government, third party) that any end item, component, subassembly, part, or material contained in supplies purchased by the Company for delivery to, or for, the Government is counterfeit or suspect counterfeit;
- (c)** Retain counterfeit or suspect counterfeit items in its possession at the time of discovery until disposition instructions have been provided by the AO; and
- (d)** Except as provided in section 5.3 below, submit a report to GIDEP at www.gidep.org within seventy-two (72) hours of becoming aware or having reason to suspect, such as through inspection, testing, record review, or notification from another source (e.g., seller, Government, third party) that an item purchased by the Company for delivery to, or for, the Government is (i) a counterfeit or suspect counterfeit item; or (ii) a common item that has a major or critical nonconformance.

5.2 The Company shall not submit a report as required by section 5.1 above, if:

- (a)** The Company is a foreign corporation or partnership that does not have an office, place of business, or fiscal paying agent in the United States;
- (b)** The Company is aware that the counterfeit, suspect counterfeit, or nonconforming item is the subject of an on-going criminal investigation, unless the report is approved by the cognizant law-enforcement agency; or

- (c) For nonconforming items other than counterfeit or suspect counterfeit items, it can be confirmed that the organization where the defect was generated (e.g., original component manufacturer, original equipment manufacturer, aftermarket manufacturer, or distributor that alters item properties or configuration) has not released the item to more than one customer.

5.3 Reports submitted in accordance with section 5.1(d) above shall not include:

- (a) Trade secrets or confidential commercial or financial information protected under the Trade Secrets Act (18 U.S.C. 1905);
- (b) Any other information prohibited from disclosure by statute or regulation.

5.4 Additional guidance on the use of GIDEP is provided at <http://www.gidep.org/about/opmanual/opmanual.htm>

5.5 As provided in paragraph (c)(5) of section 818 of the National Defense Authorization Act for Fiscal Year 2012 (Pub. L. 112-81) for reference, the Company or Subcontractor that provides a written report or notification under this provision that the end item, component, part, or material contained electronic parts (i.e., an integrated circuit, a discrete electronic component (including, but not limited to, a transistor, capacitor, resistor, diode, or a circuit assembly) that are counterfeit electronic parts or suspect counterfeit electronic parts shall not be subject to civil liability on the basis of such reporting, provided that the Company or any Subcontractor made a reasonable effort to determine that the report was factual.

6. Subcontracts.

6.1 Except as provided in section 5.2 above, the Company shall insert section 5.4 above as a clause, including all subsections, in subcontracts that are for:

- (a) Items that the Company determines to be critical items for which use of the clause is appropriate;
- (b) Electronic parts or end items, components, parts, or materials containing electronic parts, whether or not covered in section 6.1(a) above, if the subcontract/Agreement exceeds the simplified acquisition threshold and this Agreement is by, or for, the Department of Defense (with paragraph (c)(4) of section 818 of the National Defense Authorization Act for Fiscal Year 2012 (Pub. L. 112-81) available as a reference); or
- (c) For the acquisition of services, if the subcontractor will furnish, as part of the service, any items that meet the criteria specified in section 6.1(a) of this clause.

6.2 The Company shall not insert the clause in subcontracts for:

- (a) Commercial items; or
- (b) Medical devices that are subject to the Food and Drug Administration reporting requirements at 21 CFR 803.

6.3 The Company shall not alter the clause other than to identify the appropriate parties.