

Terms and Conditions:

**1. Definitions.**

- a. **Affiliate.** "Affiliate," for the purposes of the Terms and Conditions, shall include any domestic or foreign company, firm or entity (i) that either Party has or acquires an ownership interest in during the term of the subcontract; (ii) that directly or indirectly through one or more intermediaries, either controls, is controlled by, or is under common control with a Party; or (iii) that assumes all obligations and liabilities of the respective Party relating to the Subcontract during the term of the Subcontract. Notwithstanding, and in addition to the foregoing, for all purposes herein, the term Affiliates includes subsidiaries, sister companies, parent companies, and affiliates of parent companies of the Parties.
- b. **Deliverables.** "Deliverables," for the purposes of these Terms and Conditions, shall include any reports, files, papers, or other items, whether physical or information, specifically identified in the Subcontract to be provided by the Subcontractor to the Prime Contractor.
- c. **Rated Order.** If a Rating is identified on this Purchase Order the following statement applies: This is a rated order certified for national defense use and you are required to follow all the provisions of the Defense Priorities and Allocations System regulations ([15 CFR part 700](#)).
- d. **Services.** "Services," for the purposes of these Terms and Conditions, shall include the furnishing of all materials, tools, equipment, labor, superintendence, and facilities necessary therefore, excepting, however, any items which are to be specifically furnished or performed by Prime Contractor as provided in the Subcontract.
- e. **Shall and Must.** "Shall and Must" mean required.
- f. **Should and May.** "Should and May" mean optional or to be considered during performance.

**2. Nature of Services.** Subcontractor shall undertake the performance of all Services called for in the Subcontract, pursue the same on a best effort basis, and complete the same within the specified Period of Performance.

**3. Deliverables.** Subcontractor shall provide Deliverables to Prime Contractor's Technical Representative according to the Purchase Order.

**4. Contract Price, Invoicing, and Payments.** This is a Firm Fixed Price Subcontract. Subcontractor shall be compensated for all Services performed in connection with the accepted Subcontract according to the Purchase Order. All invoices must be received within 45 days from the end of the month in which Deliverable is received. Invoices submitted after this date will not be paid by Prime Contractor. Subcontractor must clearly identify the final invoice as "final" and submit it no later than 45 days after either expiration or earlier termination of this Subcontract. Retroactive charges will not be allowed after submission of the final invoice.

a. Subcontractor shall submit invoices to the following office:

Cornerstone Research Group Inc  
Attn: Purchasing  
510 Earl Boulevard  
Miamisburg, OH 45342  
Telephone: (937) 320-1877  
Fax: (937) 320-1886  
E-mail: [purchasing@crgrp.com](mailto:purchasing@crgrp.com)

b. **Travel Expenses.** The Subcontract Firm Fixed Price includes Subcontractor travel expenses, if any.

c. **Packing and Shipping Costs.** Subcontract Price includes packing and shipping cost for Deliverables, if any. Subcontractor shall pack Deliverables to prevent damage and deterioration. The risk of loss shall not pass to Prime Contractor until Prime Contractor receipt and acceptance of a Deliverable. Prime Contractor shall accept all Deliverables or give Subcontractor notice of rejection within a reasonable time after delivery, notwithstanding any payment or prior inspection. No Prime Contractor inspection, delay, or failure to inspect or failure to discover any nonconformance shall relieve Subcontractor of any of its obligations under the Subcontract or impair any rights or remedies of Prime Contractor. Special provisions pertaining to shipment of Hazardous Materials are specified in the section entitled "Hazardous Materials."

- d. **Taxes.** The Firm Fixed Price of the Subcontract includes, and Subcontractor is liable for and shall pay, all taxes, impositions, charges, and exactions imposed on or measured by the Subcontract.
5. **Gratuities.** Subcontractor warrants that neither it nor any of its employees, agents, or representatives have offered or given, or will offer or give, any gratuities to Prime Contractor's employees, agents, or representatives for the purpose of securing the Subcontract or securing favorable treatment under the Subcontract.
6. **Quality of Work.** All services performed under this Subcontract shall be in strict accordance with the requirements of this Subcontract. Subcontractor shall use only the employees appropriate to meet these requirements and shall ensure all services performed are of sufficient quality to meet these requirements.
7. **Books, Records, and Inspection.**
  - a. **Books and Records.** Subcontractor shall maintain complete and accurate records of costs incurred in connection with the Subcontract, including, but not be limited to, records related to labor, supplies, equipment, material, or services purchased and/or used to perform effort under this Subcontract. Subcontractor shall retain, for four (4) years following final payment by Prime Contractor, all books, records, accounting procedures and practices, and other data related to the performance of effort under the Subcontract, regardless of type of data and regardless of whether such items are in written form, in the form of computer data, or in any other form.
  - b. **Inspection.** Prime Contractor shall not have the right to inspect or audit, the Subcontractor's books and records. Cognizant Government agencies shall have the right to inspect and audit the Subcontractor's books and records pertaining to this Subcontract.
8. **Independent Contractor.** Subcontractor shall at all times be an independent contractor of Prime Contractor. Subcontractor shall have complete control over the performance of, and the details for accomplishing, the Services. In no event shall Subcontractor or its agents, representatives, or employees be deemed to be agents, representatives, or employees of Prime Contractor. Subcontractor's employees shall be paid exclusively by Subcontractor for all Services performed. Neither Subcontractor nor its agents, representatives, or employees shall be entitled to participate in, or receive the benefits of, any pension, retirement, medical insurance, or other employee benefit plan of Prime Contractor. Subcontractor shall compute its employees' wages and withhold all applicable federal, state and local taxes and federal social security payments. Subcontractor shall remit its employee withholdings to the proper government authorities and make employer contributions for FICA and federal and state unemployment insurance payments.
9. **Insurance.**
  - a. **Commercial General Liability.** Subcontractor shall carry and maintain, and ensure that all lower tier subcontractors carry and maintain, throughout the period when work is performed and until final acceptance by Prime Contractor, Commercial General Liability insurance with available limits of not less than two million dollars (\$2,000,000) per occurrence for bodily injury and property damage combined. Such insurance shall contain coverage for all premises and operations, broad form property damage, contractual liability and goods and completed-operations insurance with limits of not less than two million dollars (\$2,000,000) per occurrence. Such insurance shall not be maintained on a per-project basis unless the respective Subcontractor does not have blanket coverage.
  - b. **Automobile Liability.** If licensed vehicles will be used in connection with the Services or delivery of Deliverables, Subcontractor shall carry and maintain and ensure that all lower tier subcontractors carry and maintain throughout the period when work is performed and until final acceptance by Prime Contractor, Business Automobile Liability insurance covering all vehicles, whether owned, hired, rented, borrowed or otherwise, with available limits of not less than one million dollars (\$1,000,000) per occurrence combined single limit for bodily injury and property damage.
  - c. **Workers' Compensation.** Subcontractor shall cover and maintain, and ensure that all lower tier subcontractors carry and maintain throughout the period when work is performed and until final acceptance by Prime Contractor, insurance in accordance with the applicable laws relating to workers' compensation with respect to all their respective employees working on or about Prime Contractor's premises. If Prime Contractor is required by any applicable law to pay any workers' compensation premiums with respect to any employee of Subcontractor, Subcontractor shall reimburse Prime Contractor for such payment.

**d. Certificates of Insurance.** Upon request by Prime Contractor, Subcontractor shall provide for Prime Contractor's review copies of certificates, endorsements, or other proof of insurance coverage substantiating compliance with the requirements set forth in this Section entitled "Insurance." Failure of Subcontractor to furnish proof of coverage, or failure to procure and maintain the insurance required herein, or failure of Prime Contractor to request proof of coverage, shall not constitute a waiver of Subcontractor's obligations hereunder.

**10. Protection of Property.** Subcontractor assumes, and shall ensure that all lower tier subcontractors thereof and their respective employees, assume the risk of loss or destruction of or damage to any property of such parties whether owned, hired, rented, borrowed or otherwise, brought to a facility owned or controlled by Prime Contractor or Prime Contractor's customer. Subcontractor waives, and shall ensure that any lower tier subcontractor thereof and their respective employees waive, all rights of recovery against Prime Contractor, its subsidiaries and their respective directors, officers, employees and agents for any such loss, destruction or damage. At all times Subcontractor shall, and ensure that any lower tier subcontractor thereof shall, use suitable precautions to prevent damage to Prime Contractor's property. If any such property is damaged by the fault or negligence of Subcontractor or any lower tier subcontractor thereof, Subcontractor shall, at no cost to Prime Contractor, promptly and equitably reimburse Prime Contractor for such damage or repair or otherwise make good such property to Prime Contractor's satisfaction. If Subcontractor fails to do so, Prime Contractor may do so and recover from Subcontractor the cost thereof.

## **11. Subcontractor's Representations.**

- a.** Subcontractor represents, certifies and covenants that it shall perform all activities required under the Contract in compliance with all applicable international, national, state, and local laws, including, but not limited to environmental, health and safety laws and regulations.
- b.** Subcontractor represents, certifies, and covenants that no Deliverables or Services have been or will be produced or performed using forced, indentured, or convict labor, or the labor of persons in violation of the minimum working age laws of the country of manufacture, or in violation of minimum wage, hour of service, or overtime laws of the country of manufacture.
- c.** Subcontractor certifies to Prime Contractor that it has (i) confirmed the identity of each individual assigned to work on Subcontractor's purchase orders; (ii) verified that such individuals are legally entitled to work in the U.S. and are employees of Subcontractor; and (iii) preserved such records as required by any State or Federal Agency. Subcontractor shall make such records supporting said certification available to cognizant government authorities upon their request.
- d.** Subcontractor represents, certifies and covenants that all activities and Services shall be performed by employees or agents of Subcontractor who are experienced and skilled in their profession and in accordance with industry standards.
- e.** Subcontractor certifies that it shall comply with all applicable security classification laws and regulations of the United States Government.
- f.** Subcontractor certifies that it shall comply with all U. S. Government export regulations and the International Traffic In Arms Regulations (ITAR). Subcontractor further certifies that it shall not permit any foreign person or foreign citizen to conduct any Subcontractor effort nor have access to Subcontract-specific information without prior written approval of the Government Contracting Officer as obtained by the Prime Contractor as provided herein:
  - (1)** "Foreign person" Foreign person means any natural person who is not a lawful permanent resident as defined by 8 U.S.C. 1101(a)(20) or who is not a protected individual as defined by 8 U.S.C. 1324b(a)(3). It also means any foreign corporation, business association, partnership, trust, society or any other entity or group that is not incorporated or organized to do business in the United States, as well as international organizations, foreign governments and any agency or subdivision of foreign governments (e.g., diplomatic missions).
  - (2)** "Foreign citizen" Foreign citizen is defined as any person who is not exclusively a citizen of the United States of America. A person of dual citizenship is defined as a "foreign citizen." A person with permanent legal residence status is also defined as a "foreign citizen."
  - (3)** The Subcontractor shall not allow any foreign person to conduct any Subcontractor effort unless the Government Contracting Officer has given prior written approval. The Subcontractor shall submit requests for such approval through the Prime Contractor (Cornerstone Research Group Inc) to the Government Contracting Officer. The Prime Contractor

recipient for such Subcontractor requests is the Contracting Representative in paragraph 2(b) of these Terms and Conditions. Such Subcontractor requests for approval shall identify each foreign person for which approval is requested, a photocopy of that person's U. S. Government authorization to be present in the United States (e.g., visa or permanent residency credentials), and the nature of the effort to be performed by that person.

- (4) If Government Contracting Officer approval is granted, such permission does not grant an exception to U.S. export law(s), and the Subcontractor is responsible for obtaining necessary export licenses.
  - (5) If the Subcontractor has foreign persons as employees for whom Government Contracting Officer approval has not been granted for performing Subcontractor effort, the Subcontractor shall prevent all such foreign persons from having access to Subcontract-specific information, materials, and work product.
- g. Subcontractor certifies that is not an entity controlled by a foreign government. "Entity controlled by a foreign government" means (1) any domestic or foreign organization or corporation that is effectively owned or controlled by a foreign government or (2) any individual acting on behalf of a foreign government. "Effectively owned or controlled" means that a foreign government or any entity controlled by a foreign government has the power, either directly or indirectly, whether exercised or exercisable, to control or influence the election or appointment of the Subcontractor's officers, directors, partners, regents, trustees, or a majority of the Subcontractor's board of directors.

## 12. Property Rights.

- a. **Property.** All tangible property; including but not limited to tools, tool drawings, materials, drawings, computer software, and documents, furnished to Subcontractor by Prime Contractor; or by Prime Contractor's affiliates, subsidiaries, or contractors; or paid for in whole or in part by Prime Contractor; and any replacement thereof; or any materials affixed or attached thereto; shall be and remain the personal property of Prime Contractor, and, unless otherwise agreed to in writing by Prime Contractor, shall be used by Subcontractor solely to render Services or provide Deliverables to Prime Contractor. Such property, and whenever practical each individual item thereof, shall be plainly marked or otherwise adequately identified by Subcontractor as being property of Prime Contractor and shall be safely stored. Subcontractor shall not substitute any property for Prime Contractor's. Such property while in Subcontractor's custody or control shall be held at Subcontractor's risk and shall be insured by Subcontractor for replacement cost with loss payable to Prime Contractor. Subcontractor shall notify Prime Contractor if Prime Contractor's property is lost, damaged or destroyed. Such property shall be subject to removal at Prime Contractor's written request, in which event Subcontractor shall prepare such property for shipment and shall deliver it as directed by Prime Contractor in the same condition as originally received by Subcontractor, reasonable wear and tear excepted, at Subcontractor's expense.

In the event Subcontractor is notified by Prime Contractor that goods or Deliverables ordered under the Subcontract are patented, Subcontractor shall mark such goods or Deliverables with patent numbers or other markings designated by Prime Contractor, including updates to such numbers or markings.

b. **Access to Premises.**

- (1) Subcontractor shall comply with requirements established by Prime Contractor for access to and activities in and around premises controlled by Prime Contractor. Prime Contractor shall not be responsible for losses relating to Subcontractor's property used in and around Prime Contractor's premises in connection with the Subcontract.
- (2) Subcontractor shall permit Prime Contractor or its representatives to have reasonable access to sites where the work under the Subcontract is performed and to its employees in order to assess conformance with Subcontract requirements.

13. **Assignment, Delegation, and Subcontracting.** Subcontractor shall not assign any of its rights or interests in the Subcontract, nor subcontract at a lower tier, any of its obligations under the Subcontract without prior written approval by Prime Contractor's President or a Prime Contractor's Vice President with signature authority for the Prime Contract. No assignment, delegation, or subcontracting by Subcontractor shall relieve Subcontractor of any of its obligations under the Subcontract or prejudice any of Prime Contractor's rights against Subcontractor whether arising before or after the date of any assignment. Subcontractor may assign its right to monies due or to become due. This Section does not limit Subcontractor's ability to purchase standard commercial supplies or raw materials. All requirements of all Sections and Attachments of these Terms and Conditions apply to all lower tier subcontractors in the same manner as they apply to Subcontractor.

## 14. Intellectual Property, Proprietary and Trade Secret Information, and Inventions.

a. **Non-Disclosure.** . The non-disclosure agreement or proprietary information exchange agreement (hereinafter referred to as "NDA") executed between Prime Contractor and Subcontractor is incorporated into the Terms and Conditions herein, and supplemented by the following:

- (1) Unless having obtained the Prime Contractor signatory's prior written authorization for a specific disclosure, Subcontractor shall protect from disclosure to any entity other than the Prime Contractor all Subcontract-specific and all Prime Contract-specific information and physical articles received from the Prime Contractor or received from a Government agency.
- (2) Unless having obtained the other Party's signatory's prior written authorization for a specific disclosure, Prime Contractor and Subcontractor shall each protect from disclosure all Proprietary Information identified by the other Party as being subject to nondisclosure and obtained, directly or indirectly, from the other Party in connection with the Subcontract, with such information typically being (but not limited to) intellectual property and trade secrets, tangible and intangible items, electronic media, and software containing, conveying, or embodying such information. Prime Contractor and Subcontractor shall each use Proprietary Information of the other only in the performance of and for the purpose of the Prime Contract or Subcontract, respectively. Subcontractor shall not reverse engineer or analyze for composition the Proprietary Information of the Prime Contractor, without written permission of the Prime Contractor.
- (3) Subcontractor may disclose Proprietary Information of Prime Contractor to its authorized lower tier subcontractors as required for the performance of the Subcontract, provided that each such lower tier subcontractor first agrees in writing to the same obligations imposed upon Subcontractor under the NDA and this Non-Disclosure Section 14(a). Subcontractor shall be liable to Prime Contractor for any breach of nondisclosure, as required by the NDA and the Non-Disclosure Section 14(a) herein, by its authorized lower tier subcontractors.
- (4) Upon Prime Contractor's request at any time, and in any event upon the completion, termination, or cancellation of the Subcontract, Subcontractor shall return to Prime Contractor all of Prime Contractor's Proprietary Information, unless specifically directed otherwise in writing by Prime Contractor's authorized signatory. Upon Subcontractor's request at any time, and in any event upon the completion, termination, or cancellation of the Subcontract, Prime Contractor shall return to Subcontractor all of Subcontractor's Proprietary Information unless specifically directed otherwise in writing by Subcontractor's authorized signatory. The foregoing shall not require the return of any Subcontractor Proprietary Information licensed to Prime Contractor under the Subcontract.
- (5) The provisions of this Section 14(a) shall survive the performance, completion, termination, or cancellation of the Subcontract.

b. **Intellectual Property.**

- (1) **Intellectual Property.** "Intellectual Property" or "IP" shall mean: ideas, inventions, patents, patent applications, copyrights, trademarks, mask works, trade secrets, works of authorship, and symbols, names, images, and designs embodied in for example, technical data, designs, information, material, material compositions, software programs, drawings, formulae, specifications, diagrams, processes, know-how, procedures and technology and all legal rights in such IP.
- (2) **Background Intellectual Property.**
  - i) **Background Intellectual Property.** "Background Intellectual Property" shall mean IP that is (i) in existence prior to the effective date of this Purchase Order or (ii) is designed, developed or licensed by a party after the effective date of this Purchase Order independently of both (a) the work undertaken or in connection with this Purchase Order and (b) the proprietary information and IP of the other party to this Purchase Order.
  - ii) **Ownership of Background Intellectual Property.** Background Intellectual Property shall remain the sole property of the developing party. Background Intellectual Property shall be used solely for the Purpose of this Agreement herein, and no right to any Background Intellectual Property or proprietary information shall be transferred by this Agreement. Neither party shall copy or duplicate the Background Intellectual Property of the other party and shall not sell or transfer Background Intellectual of the other party to any other person, firm, distributor or corporation.
  - iii) **No Warranty.** Prime Contractor provides no warranty, express or implied, including warranty of merchantability or fitness for a particular purpose for experimental Background Intellectual Property provided to Subcontractor.

- iv) Background Intellectual Property Licensing.** It is possible that one or both Parties may possess rights in background intellectual property, that is, intellectual property not otherwise subject to this Subcontract, which would be useful or essential to the practice or commercialization of the results of this Subcontract. For example, the Subcontractor might own a patent, which would be infringed by the Prime Contractor when it attempted to commercialize the results of this Subcontract unless a license was obtained from the Subcontractor. Where the Parties determine that such background intellectual property may exist, they shall negotiate in good faith for the license rights which will allow the practice and commercialization of the results of this Subcontract.
- (3) Project Intellectual Property.** "Project Intellectual Property" shall mean the legal rights relating to all Intellectual Property conceived, created, acquired or initially reduced to practice in connection with the Subcontract. Subcontractor and Prime Contractor rights in Project Intellectual Property arising in the course of or resulting from the Subcontract shall be governed by the provisions of the Prime Contract as supplemented by the terms and conditions herein. Subcontractor shall disclose to Prime Contractor, in writing, every Project Intellectual Property which may be patentable or otherwise protectable under the United States patent laws in Title 35, United States Code. All such disclosures shall contain sufficient detail of the invention, identification of any statutory bars, and shall be marked proprietary. Subcontractor shall accomplish such disclosure to Prime Contractor within two (2) months after Subcontractor's inventor(s) first discloses the invention to the Subcontractor's person(s) responsible for patent matters. The Prime Contract also grants the U.S. Government certain rights in the Project Intellectual Property.
- (4) Follow-on Research or Development.** All follow-on work, including any licenses, contracts, subcontracts, sublicenses, or arrangements of any type, shall contain appropriate provisions to implement the Project Intellectual Property rights provisions of this Subcontract and insure that the Parties and the Government obtain and retain such rights granted herein in all future resulting research, development, or commercialization work.
- (5) Intellectual Property Ownership.** Each party shall retain and exclusively own all rights in its Background Intellectual Property and in all Project Intellectual Property that it creates. Project Intellectual Property jointly generated by employees of more than one party shall be jointly owned. Prime Contractor shall have the first option to perfect the rights in jointly made or generated Project Intellectual Property unless otherwise agreed to in writing, and Subcontractor agrees to execute such documents as necessary, and provide reasonable support for prosecution of patent applications to perfect joint title to the joint Project Intellectual Property. Neither party shall have any obligation to account to the other party for income arising from use of the jointly owned Project Intellectual Property. Each Party hereto may use Project Intellectual Property of the other nonexclusively and without compensation in connection with research or development activities for this Subcontract or the Prime Contract, including inclusion in project reports to the Federal Agency and proposals to the Federal Agency for continued funding of this project through additional phases. Nothing in this clause shall modify or alter any rights that the U.S. Government may have in any products and/or services, including data or software Deliverables to the U.S. Government.
- (6) Deliverables Grant of Use Rights.** Subcontractor hereby grants to the Prime Contractor and to Prime Contractor's subcontractors, suppliers, and customers an irrevocable, paid-up, non-exclusive, worldwide, right and license to copy, modify, use, sell, offer for sale and disclose any results of the Subcontract or other Deliverable delivered by the Subcontractor under this Subcontract, including any patents, copyrights, industrial designs, and mask works (whether domestic or foreign) owned or controlled by Subcontractor at any time and existing prior to or during the term of these Terms and Conditions, for the performance of this Subcontract and any higher tier contract. . If the results of the Subcontract or other Deliverable contains third-party intellectual property, Subcontractor agrees to obtain the rights from the third-party that are sufficient for the Subcontractor to grant the Prime Contractor the rights in the above license, at no additional cost to the Prime Contractor. The Subcontractor represents that it has the rights in the results of the Subcontract or other deliverable sufficient to grant to Prime Contractor the above license.
- (7) Commercialization Option.** Prime Contractor shall have an option to commercialize the Project Intellectual Property of Subcontractor, subject to any rights of the Government therein. Expenses, including patent expenses, and other liabilities associated with the development and marketing of any product, process, or other innovation employing Project Intellectual Property shall be negotiated between the parties in good faith. The following terms apply unless other provisions are negotiated:
- i)** Where Project Intellectual Property of Subcontractor is a potentially patentable invention, Prime Contractor shall have an option for an exclusive license to such invention, for an initial option period of four (4) months after such invention has been reported to Prime Contractor. At any time prior to the expiration or termination of an option, Prime Contractor may exercise such option by giving written notice to Subcontractor whereupon the Parties shall promptly and in good faith enter into negotiations for a license under Subcontractor's patent rights in the invention for Prime Contractor to make, use and/or sell products and/or services that embody, or the development, manufacture and/or use of which involves employment of the invention of Subcontractor. Such

option for exclusive license shall continue during negotiation of license agreement. The terms of such license shall include:

- (A) payment of reasonable royalties to Subcontractor on sales of products or services which embody, or the development, manufacture or use of which involves employment of, the invention;
  - (B) reimbursement by Prime Contractor of expenses incurred by Subcontractor in seeking and maintaining patent protection for the invention in countries covered by the license (reimbursement shall be negotiated between the parties in good faith within two years of termination of this Subcontract); and, in the case of an exclusive license;
  - (C) reasonable commercialization milestones and/or minimum royalties.
- ii) Where Project Intellectual Property of Subcontractor is other than a potentially patentable invention, Prime Contractor shall have an option for an exclusive license to such Project Intellectual Property for an option period extending until four (4) months following completion of Subcontractor's performance of that phase of this Prime Contractor project in which such Project Intellectual Property of Subcontractor was developed by Subcontractor. Prime Contractor may exercise such option by giving written notice to Subcontractor, whereupon the parties shall promptly and in good faith enter into negotiations for an appropriate license under Subcontractor's interest in the subject matter for Prime Contractor to make, use and/or sell products or services which embody, or the development, manufacture and/or use of which involve employment of, such Project Intellectual Property of Subcontractor. Such option for exclusive license shall continue during negotiation of license agreement. The terms of such license shall include:
- (A) payment of reasonable royalties to Subcontractor on sale of products or services that embody, or the development, manufacture or use of which involves employment of, the Project Intellectual Property of Subcontractor and, in the case of an exclusive license; and
  - (B) reasonable commercialization milestones and/or minimum royalties.
- iii) Where more than one royalty might otherwise be due in respect of any unit of product or service under a license pursuant to this Subcontract, the Parties shall in good faith negotiate to ameliorate any effect thereof that would threaten the commercial viability of the affected products or services by providing in such license(s) for a reasonable discount or cap on total royalties due in respect of any such unit.
- (8) Infringement.** The owner of all Intellectual Property subject to this Subcontract shall not permit or suffer any party to infringe, any inventions, patents or other intellectual property rights in or to the inventions in order to make, have made, use, import, offer for sale, sell or otherwise dispose of the inventions. If a third party infringes any Intellectual Property subject to this Subcontract, the owner shall promptly notify the other Party thereof and attempt to end such infringement. The owner of the Intellectual Property shall provide the other Party with copies of all related correspondence. The owner of the Intellectual Property shall have the right to commence an infringement action against the third party at its own expense and shall retain any recovery from such litigation. The other Party shall cooperate with the owner of the Intellectual Property in such action at the owner of the Intellectual Property's request and expenses, and the other Party shall be entitled to be represented in such action, at the other Party's expense, by counsel of its own choosing. The owner of the Intellectual Property shall consult with the other Party throughout the litigation and shall not enter into any settlement without the other Party's consent.
- If the owner of the Intellectual Property does not commence action against the third party within thirty (30) days after the other Party's request for the owner of the Intellectual Property to do so, the other Party shall have the right to bring an infringement action at the other Party's own expense and with counsel of its own choosing. The owner of the Intellectual Property agrees to join such suit as a party and to cooperate with the other Party, at the other Party's own expense, in connection with the conduct of such litigation. The other Party shall retain all recovery from such litigation.

**15. Hazardous Materials.** If any Deliverables transferred to Prime Contractor hereunder contain hazardous materials, Subcontractor shall identify hazardous materials contained in Deliverables to Prime Contractor, provide Material Safety Data Sheets ("MSDS") for such Deliverables and, where applicable, (a) comply with the OSHA Hazard Communication Standard, 29 CFR 1910.1200 ("HAZCOM"); or (b) similar EU MSDS/labeling requirements; or (c) any similar requirements in any jurisdictions to which Prime Contractor informs Subcontractor the Deliverables are likely to be shipped. Hazardous materials include, but are not limited to, materials embedded in a Deliverable in such a manner as to present a potential for personal injury or harm or property damage in the course of normal use, repair, accident or disposal. All MSDS forms and hazard warning labels required under this Section shall be provided to the Prime Contractor as prescribed by the paragraph entitled "Notices" of the Section entitled "Miscellaneous."

**16. Release of Information, Publicity and Publishing.** Neither Subcontractor nor its agents, representatives, subcontractors, or affiliates shall make any announcement or release descriptive and informative photographs or any other information concerning the Subcontract or any part thereof or with respect to its business relationship with Prime Contractor, to any third party member of the

public, press, business entity, or any official body (except as required by applicable law, rule, injunction, or administrative order) without written consent from a duly authorized representative of Prime Contractor. Only the Prime Contractor's President or a Prime Contractor's Vice President with signature authority for the Prime Contract shall be deemed such an authorized representative. Further, neither Party nor its agents or subcontractors, shall use the other Party's name, photographs, logo, trademark, or other identifying characteristics or that of any of its subsidiaries or affiliates without the other Party's prior written approval from a duly authorized representative. Neither Subcontractor nor its agents, representatives, subcontractors, or affiliates shall publish or otherwise disclose information relating to the subcontract or Deliverables, such as data and/or research results, without prior review by Prime Contractor. Subcontractor shall provide to Prime Contractor a copy of any manuscript or abstract disclosing such information prior to submission of such information to a publisher or to any third party and, in any case, not less than thirty (30) days prior to any public disclosure, solely for the purpose of data validity review and protection or removal of proprietary information or intellectual property of Prime Contractor which may be contained in such information. As requested by Prime Contractor, if publication results from research using the Subcontract Deliverables, Subcontractor agrees to acknowledge and/or give credit to Prime Contractor, as scientifically appropriate, based on any direct contribution Prime Contractor may make to the research as the source of the Subcontract Deliverables. If required, Subcontractor shall submit a request in accordance with Prime Contract flowdowns for U.S. Government approval prior to publishing or otherwise disclosing information relating to the subcontract or Deliverables.

## **17. Indemnification.**

- a. Subcontractor shall indemnify and hold harmless Prime Contractor, Prime Contractor's Customers, insurers, Affiliates and their employees, agents, officers, and directors from and against all suits, claims, judgments, awards, losses, damages, costs, or expenses (including attorneys' fees) the cost of enforcing any right to indemnification hereunder, and the cost of pursuing any insurance providers relating to, arising out of, or caused by (i) the performance hereunder, (ii) any act or omission of Subcontractor, or (iii) the Deliverables hereunder (a "Claim"). Subcontractor's indemnification obligation hereunder covers, without limitation, injuries, sickness, diseases (including occupational disease whenever occurring), or death of Subcontractor employees.
- b. Subcontract shall, upon written notice from Prime Contractor, promptly assume and diligently conduct the entire defense of a Claim at its own expense. Insofar as Prime Contractor's interests are affected, Prime Contractor shall have the right, at its own expense and without releasing any obligation of Subcontractor, to participate and intervene in a Claim. Prime Contractor shall have the right to reasonably reject counsel selected by Subcontractor. Subcontractor shall not enter into any settlement without Prime Contractor's prior written consent, which shall not be unreasonably withheld.
- c. Prime contractor may supersede Subcontractor in the defense of any Claim, and assume and conduct the defense at Prime Contractor's sole discretion. In such an event, Subcontractor shall be released from any obligation to pay for attorneys' fees and court costs, but not settlement or damages, and any such release is expressly conditioned on Subcontractor's complete cooperation with Prime Contractor in Prime Contractor's defense of such Claim at Prime Contractor's expense. Prime Contractor shall not enter into any settlement without Subcontractor's prior written consent, which shall not be unreasonably withheld.
- d. Prime Contractor shall indemnify and hold harmless Subcontractor and its Affiliates, their successors, and assigns and their respective directors, officers, shareholders, and employees from and against all suites, claims, judgments, awards, losses, damages, costs, or expenses (including attorneys' fees), the cost of enforcing any right to indemnification hereunder, and the cost of pursuing any insurance providers ("Claims") relating to, arising out of or caused by or caused by with the gross negligence or willful misconduct of Prime Contractor or its employees or agents, including but not limited to: (i) any misuse of the Deliverables by Prime Contractor, its employees or agents, (ii) any act (or failure to act) by Prime Contractor or its employees or agents in contravention of any safety procedures or instructions that Subcontractor provides to Prime Contractor or its employees or agents, or (iii) the failure to store, install, operate, or maintain the Deliverables in accordance with instructions provided by Subcontractor.

## **18. Warranty.**

- a. Subcontractor warrants that the Deliverables and Services shall be free from defects in workmanship and conform to the requirements of this Subcontract; and
- b. To the extent Subcontractor's Deliverables and Services includes materials or goods, Subcontractor further warrants that:
  - (1) The materials or goods shall conform to all specifications and requirements under this Subcontract and shall be free from defects in materials;
  - (2) To the extent the materials or goods are not manufactured pursuant to detailed designs and specifications furnished by Prime Contractor, such materials or goods shall be free from design and specification defects;
  - (3) The materials or goods shall be free from liens or encumbrances;
  - (4) The materials or goods shall not contain any viruses, malicious code, trojan horse, worm, time bomb, self-help code, back door, or other software code or routine designed to: (a) damage, destroy or alter any software or hardware; (b) reveal,



- damage, destroy, or alter any data; (c) disable any computer program automatically; or (d) permit unauthorized access to any software or hardware; and
- (5) The materials or goods shall not contain any third-party software (including software that may be considered free software or open source software) that: (a) may require any software to be published, accessed or otherwise made available without the consent of Prime Contractor; (b) may require distribution, copying or modification of any software free of charge; (c) may require disclosure, license or redistribution of source code; (d) may require the grant of rights in excess of those granted by Prime Contractor in its standard end user license agreements; (e) may require that others have the right to modify the code; or, (f) may impose additional requirements on redistribution such as inclusion of additional license agreements for specific code modules.
- c. This warranty shall begin upon Prime Contractor's final acceptance of the Deliverables and Services and shall survive inspection, test and payment for the Deliverables and Services. This warranty shall extend for a period of one (1) year or such other period as set forth elsewhere in this Subcontract, and Prime Contractor shall give Subcontractor notice after discovery of any defect or nonconformance in the Deliverables and Services. This warranty shall run to Prime Contractor and its successors, assigns and customers. In the event of defective or non-conforming Deliverables and Services, Prime Contractor may, at its option and at Subcontractor's expense, either (i) require correction, replacement or re-performance of any defective or nonconforming Deliverables and Services, or (ii) make an equitable adjustment in the price of this Subcontract. Any Deliverables and Services corrected, replaced or re-performed shall be subject to the requirements of this Subcontract to the same extent as Deliverables and Services initially performed.

## 19. Miscellaneous.

- a. **Force Majeure.** If either Party is prevented from complying, either totally or in part, with any of its obligations under the Subcontract by reason of fires, explosions, floods, earthquakes, unusually severe weather, act of God, war, invasion, acts of terrorism, acts of the government in either its sovereign or contractual capacity, epidemics or pandemics, quarantine restrictions, labor strikes, or freight embargoes, then upon prompt written notice to the other Party, such obligations shall be suspended during the period of such disability. The disabled Party shall make all reasonable efforts to remove such disability within 10 days (or such other period as may be agreed by the parties in writing) of giving such notice. If the disability is not removed within such time period, the non-disabled Party shall have the right to immediately terminate the Subcontract upon written notice. In addition, during the period of disability, the non-disabled Party may seek to have its needs met by others without either liability to the disabled Party or an extension of the Term of the Contract.
- b. **Delays.** Subcontractor shall notify Prime Contractor in writing within ten (10) days of learning of any significant event that may delay or otherwise affect Subcontractor's ability to comply with its obligations under the Subcontract. Notice shall be provided as prescribed by the paragraph entitled "Notices" of this Section.
- c. **Governing Law.** The Subcontract shall be governed by and construed in accordance with the laws of the state of Ohio.
- d. **Dispute Resolution.** Any dispute that may arise between the Prime Contractor and Subcontractor under this Subcontract shall be adjudicated through binding arbitration in accordance with the Rules of the American Arbitration Association.
- e. **English Language.** Except as Parties may otherwise agree, the Subcontract and all related reports, text data, notices, shipping invoices, correspondence, and other writings shall be written in the English language. In the event of any inconsistency between any terms of the aforementioned documents and any translation thereof into another language, the English language meaning shall control.
- f. **Severability.** If any provisions of the Subcontract or any part hereof are invalid, unlawful, or incapable of being enforced by reason of any rule of law or public policy, all conditions and provisions of the Subcontract which can be given effect without such invalid, unlawful, or unenforceable provision shall, nevertheless, remain in full force and effect.
- g. **Waiver.** Any failures, delays, or forbearances of either Party in insisting upon or enforcing any provisions of the Subcontract, or in exercising any rights or remedies under the Subcontract, shall not be construed as a waiver or relinquishment of any such provisions, rights or remedies; rather, the same shall remain in full force and effect. Except as otherwise limited in this Subcontract, the rights and remedies set forth herein are cumulative and in addition to any other rights or remedies that the parties may have at law or in equity.

- h. Identification.** All Deliverables (or their delivery documentation) and all written communication (whether via electronic transmission or hard copy) relating to this Subcontract shall bear the Prime Contract number and the Prime Contractor's Purchase Order Number.
- i. Notices.** All demands, requests, or other official notices which may be or are required to be given, served, or sent by any Party to any other Party pursuant to the Subcontract shall be in writing and shall be either (i) sent by email, (ii) mailed postage prepaid by certified or registered mail, return receipt requested, or (iii) delivered by personal or courier delivery (to the Party's address provided on the signature page of the Subcontract. (This paragraph does not apply to routine telephonic or electronic communication conducted in the normal course of business.)

**20. Termination.** The rights and remedies of Parties provided in this Section shall not be exclusive and shall be in addition to any other rights and remedies provided by law.

**a.** Prime Contractor may terminate the Subcontract in any one of the following ways:

- (1) effective immediately, with no advance notice to Subcontractor, if Subcontractor makes an assignment for the benefit of creditors, is the subject of bankruptcy, becomes insolvent, suspends business, is the subject of appointment of a receiver for Subcontractor's property or business, or files a petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, or similar relief under any statute, law, or regulation; or
- (2) for default, upon the giving of ten (10) days prior written notice to Subcontractor, if Subcontractor breaches any covenant, obligation, or term of the Subcontract and the breach described in such notice is not cured to the satisfaction of Prime Contractor by the end of the ten (10) day notice period; or
- (3) effective immediately, with no advanced notice to the Subcontractor, if the U. S. Government terminates the Prime Contract for which this is a subcontract.
- (4) for convenience of the Prime Contractor, upon the giving of thirty (30) days prior written notice to Subcontractor.

**b.** Prime Contractor shall provide Subcontractor notice of termination in the manner prescribed by the paragraph entitled "Notices" of the Section entitled "Miscellaneous."

**c.** In lieu of termination for default, Prime Contractor, at its sole discretion, may elect (i) to extend the Subcontract schedule and/or (ii) to waive deficiencies in Subcontractor's performance, in which case an equitable adjustment in the Subcontract price shall be proposed and negotiated in good faith in accordance with the Section entitled "Changes."

**d.** Upon receipt of notice to terminate, the Subcontractor shall thereupon cease work under the Subcontract. Subcontractor shall turn over to Prime Contractor all completed work and work in process, including all the designs, drawings, specifications, plans, lists, and other material required or produced in connection with the Subcontract. Upon receipt thereof, Prime Contractor shall reimburse the Subcontractor for costs and noncancellable commitments incurred in the conduct of the Subcontract up to the date of Subcontractor's receipt of notice of termination.

**e.** In the event of such termination as defined in a.(1) and (2) herein above, Buyer shall be free to purchase similar supplies elsewhere or secure the manufacture and delivery of such supplies by contract or otherwise, and Supplier shall be liable to Buyer for any excess cost to Buyer, provided, however, Supplier shall not be liable to Buyer for such excess cost when the default of Supplier is due to causes beyond its control, i.e., Force Majeure as defined herein above, provided further, Supplier shall not be excused from liability unless Supplier has notified Buyer in writing of the existence of such Force Majeure cause within ten (10) days from the beginning thereof.

**21. Integration.** These Terms and Conditions constitute the entire agreement of the Parties pertaining to this Subcontract and supersede any and all prior agreements, understandings, and communications between Prime Contractor and Subcontractor related to the Subcontract.

**22. Flow-Down Clauses from Prime Contract.** Prime Contract requirements specified by clauses presented in the Attachment entitled "Prime Contract Flow-Down Clauses" apply to the Subcontract and require Subcontractor compliance. Prime Contract clauses flowed down to Subcontractor are superior to and replace any conflicting language otherwise contained in these Terms and Conditions.

**23. Changes.** Prime Contractor, at any time upon written notice to Subcontractor, shall have the right to make changes in the Statement of Work, quantities or schedule for Deliverables, or any other requirements of these Terms and Conditions. Any such change, including equitable adjustment of the Firm Fixed Price as negotiated by the Parties in good faith, shall only take effect upon Prime Contractor presentation of and Subcontractor Acceptance of a written amendment to these Terms and Conditions. Information, such as technical direction or items provided to Subcontractor by representatives of the Prime Contractor in connection with the Subcontractor's performance of this Subcontractor, shall not be construed either as a change within the meaning of this provision or as direction to proceed outside the scope of these Terms and Conditions.