

**MASSACHUSETTS INSTITUTE OF TECHNOLOGY
LINCOLN LABORATORY**

**ATTACHMENT D
SPECIAL PROVISIONS
FOR
IN-HOUSE LABOR SUBCONTRACTORS AND CONSULTANTS
(FEBRUARY 2018)**

The following provisions are applicable in the performance of the work scope identified in the Subcontract or subcontract specification.

1. ORDER OF PRECEDENCE

In the event of an inconsistency in this subcontract, unless otherwise provided herein, the inconsistency shall be resolved by giving precedence in the following order:

- (a) subcontract;
- (b) these Attachment D Special Provisions, as identified in the Request For Proposal (RFP) and incorporated by reference herein;
- (c) Attachment A clauses, as identified in the Request For Proposal (RFP) and incorporated by reference herein;
- (d) MIT Lincoln Laboratory statement of work/technical specification; and
- (e) Subcontractor's proposal to the extent it is incorporated by reference into the subcontract.

2. CLAUSES INCORPORATED BY REFERENCE

This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically at this address: <http://farsite.hill.af.mil/>

3. DEFINITIONS

- (a) "Contracted Labor Personnel" as used in these Special Provisions means an individual who is subcontracted to supplement the MIT Lincoln Laboratory workforce. If this Subcontract is for consultant services, the term Contracted Labor Personnel shall be replaced with the term "Consultant" throughout unless otherwise indicated and shall refer to an individual engaged by MIT Lincoln Laboratory to provide services in his/her individual capacity and the individual's employer.
- (b) "Subcontractor" as used in these Special Provisions means the vendor company providing the Contracted Labor Personnel or the Consultant.
- (c) "MIT Lincoln Laboratory" means the Federally Funded Research and Development Center owned and operated by the Massachusetts Institute of Technology.
- (d) "MIT LL" means MIT Lincoln Laboratory.
- (e) "Subcontract" as used in these Special Provisions means the contract between MIT LL and Subcontractor and includes the purchase order, the attachment(s) made part of the purchase order, the MIT LL statement of work and the Subcontractor proposal to the extent it is incorporated by reference into the purchase order.
- (f) "Compensated Consultant" means any Consultant who is reimbursed at the consulting fee rate stipulated in this Subcontract.

Contracted Labor Personnel are bound by the following contract provisions and it is the responsibility of the Subcontractor to coordinate these conditions of employment with the Contracted Labor Personnel *prior* to the initiation of the contract work assignment.

4. COMPENSATED CONSULTANTS

This section 4 applies only to Compensated Consultants.

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- (a) MIT LL will reimburse Consultant for subsistence, transportation, and communication expenses necessarily incurred in connection with the work hereunder up to the amount specified in this Subcontract.
- (b) Consultant agrees to keep accurate records of time worked and expenses incurred hereunder and such records shall be made available for inspection by MIT LL upon request.
- (c) Payment shall be made against invoices submitted bearing reference to this Subcontract. Any invoice submitted for payment shall set forth the amount of hours worked, the period covered on the invoice, the rate, the total amount, and include bills covering disbursement receipts for approved travel expenses.
- (d) The total amount specified in this Subcontract may be increased only by a written amendment thereto. Consultant shall not be bound to take action in performance of this Subcontract that would cause the total amount of this Subcontract to be exceeded, and the performance of the consulting services shall be limited accordingly. MIT LL shall not be obligated to pay Consultant any amount in excess of that stipulated in this Subcontract, which amount includes the consulting fee and all other allowable charges.
- (e) All invoices submitted by Consultant must reference the associated Subcontract number for that specific individual, the dates of work performed, and other information required to process payment. MIT LL shall be notified in advance of any contemplated accounting systems changes that may affect invoicing and payment of Consultant labor and travel reimbursement charges.
- (f) Consultant agrees to provide requests for payment no later than one (1) year from the date of completion of the applicable work period. Payment requests submitted after one year shall be considered null and void. MIT LL, at its sole discretion may agree to accept payment requests after expiration of this period.
- (g) Payment terms will be Net 30 from the date of invoice receipt as indicated by the date stamp affixed by MIT LL Accounts Payable personnel. All invoices will be date stamped on the day they are received. In order to receive payment for services completed all invoices shall be submitted to the following address:

MIT Lincoln Laboratory Fiscal Office
244 Wood Street, FR1-216
PO Box 9184
Lexington, MA 02420-9108
- (h) Consultant agrees that it shall be paid at a minimum on a monthly basis for services provided. Consultant must possess, or have the ability to obtain, the financial resources required for performance of this Subcontract.

5. HEAD OF THE CONTRACTING SERVICES DEPARTMENT'S AUTHORITY

The MIT Lincoln Laboratory Head of the Contracting Services Department (CSD), or the CSD designee, shall be the only individual authorized to direct and/or redirect the efforts or in any way amend any of the items or requirements of this subcontract. Direction received by the Subcontractor from any other MIT Lincoln Laboratory official or individual is only to be complied with if authorized in writing by the Head of the Contracting Services Department (CSD), or the CSD designee.

6. USE OF THE NAME OF MIT LINCOLN LABORATORY

The Subcontractor agrees not to use the name of MIT Lincoln Laboratory or any member of its staff in sales promotion work, advertising, or in any form of publicity without the written permission of MIT Lincoln Laboratory.

7. RISK OF LOSS

Risk of loss shall not pass to MIT Lincoln Laboratory until goods called for in this subcontract have been actually received, inspected, and accepted by MIT Lincoln Laboratory at the destination specified herein. The Subcontractor assumes full responsibility for packing, crating, marking, transportation, and liability for loss or damage in transit, notwithstanding any agreement by MIT Lincoln Laboratory to pay freight, express, or other transportation charges.

8. INDEMNIFICATION

The Subcontractor agrees to indemnify MIT and to hold MIT harmless from and against all claims, liability, loss, damage, and expenses, including legal fees, arising from or due to any actual or claimed trademark, patent, or

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copyright infringement and any litigation based thereon, with respect to any part of the goods and work covered by the Subcontract. The Subcontractor shall defend any such litigation brought against MIT provided that MIT notifies the Subcontractor promptly of any such suit. The Subcontractor's obligation hereunder shall survive acceptance of the goods and payment therefore by MIT Lincoln Laboratory.

9. HOLD HARMLESS

From and after the date of this agreement, the Subcontractor agrees to indemnify and hold harmless MIT from any and all claims, regardless of by whom such claim or claims may be asserted, for personal injury or property damage or otherwise that may result directly or indirectly from the use, possession, or ownership of the goods or services provided by the Subcontractor pursuant to this agreement. If this order covers labor, a condition of this order is that the Subcontractor will protect and save harmless MIT from any liability for Workers' Compensation or any other claims due to accidents to such labor or from liability for damages to others or their property which this labor may cause. The Subcontractor shall carry and maintain insurance coverage satisfactory to cover the above and, upon request, shall furnish to MIT appropriate evidence of such insurance.

10. INSURANCE

Each Subcontractor shall maintain such insurance as specified in FAR 28.307-2 to include the items listed below. A copy of all applicable certificates of such insurance shall be filed with the MIT Lincoln Laboratory Head of the Contracting Services Department.

- (a) Workers' compensation and employer's liability. Subcontractors are required to comply with applicable Federal and State workers' compensation and occupational disease statutes. If occupational diseases are not compensable under those statutes, they shall be covered under the employer's liability section of the insurance policy, except when subcontract operations are so commingled with a subcontractor's commercial operations that it would not be practical to require this coverage. Employer's liability coverage of at least \$100,000 shall be required, except in States with exclusive or monopolistic funds that do not permit workers' compensation to be written by private carriers.
- (b) General liability. The contracting officer shall require comprehensive general liability insurance, including, but not limited to, contractor's liability coverage and contractual liability coverage, of not less than One Million Dollars (\$1,000,000) with respect to personal injury or death, and Five Hundred Thousand Dollars (\$500,000) with respect to property damage per occurrence.
- (c) Automobile liability. The contracting officer shall require automobile liability insurance written on the comprehensive form of policy. The policy shall provide for bodily injury and property damage liability covering the operation of all automobiles used in connection with performing the contract. Policies covering automobiles operated in the United States shall provide coverage of at least \$200,000 per person and \$500,000 per occurrence for bodily injury and \$20,000 per occurrence for property damage. The amount of liability coverage on other policies shall be commensurate with any legal requirements of the locality and sufficient to meet normal and customary claims.

11. TAX EXEMPT STATUS AND APPLICABLE LAW

- (a) The article or articles shown on this subcontract are purchased for the exclusive use of MIT Lincoln Laboratory, a Massachusetts Institute of Technology facility operated with the support of the Department of Defense and other Government agencies. Massachusetts Institute of Technology, employer identification number 04-2103594, is exempt under Section 501(c)(3) of the Internal Revenue Code as an educational and scientific research organization.
- (b) This subcontract is exempt from Massachusetts Sales and Use Tax. Certificate Number E-042103-594.
- (c) This subcontract shall be construed and enforced in accordance with the laws of the Commonwealth of Massachusetts.

12. ASSIGNMENT OF PROPERTY

Government property either furnished under or acquired in the performance of this Subcontract shall not be assigned by or transferred to another source or location by the subcontractor without the prior written permission of the MIT

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Lincoln Laboratory Head of the Contracting Services Department.

13. SECURITY AND FACILITY ACCESS REQUIREMENTS

In performing any work under this subcontract or purchase order, the Subcontractor agrees to follow all security requirements as specified by MIT Lincoln Laboratory in the subcontract or purchase order, take all necessary steps to protect MIT Lincoln Laboratory technical data, information, and materials that have not been approved for Public Release. Further subcontracting of MIT LL work is expressly prohibited. Questions regarding MIT Lincoln Laboratory security policies and procedures should be directed to the MIT Lincoln Laboratory Security Services Department (SSD), Lexington, Massachusetts.

MIT Lincoln Laboratory is strongly committed to a safe and secure working environment for all personnel to include its on-site subcontractors, vendors, consultants, and other personnel requiring access to MIT Lincoln Laboratory. Subcontractors assigned work at MIT Lincoln Laboratory must be U.S. Citizens and have a bona fide business need for physical access.

Assignment and Facility Access at MIT Lincoln Laboratory is contingent upon the following:

- Favorable adjudication of a Commercial Background Investigation (CBI)
- The Subcontractor Company owning the DOD security clearance shall send a letter to MIT LL CSO certifying the Subcontractor has completed the Electronic Questionnaire for Investigative Processing (e-QIP) application and it has been submitted through the DoD Joint Personnel Adjudication System (JPAS) SSD will verify the action through JPAS

With an approved CBI, the letter confirming JPAS submission and SSD validating clearance was submitted through JPAS, the subcontractor will be approved for facility access and communicated a firm start date. If at any time during this process, there is a clearance status update/change in JPAS that is negative (i.e., denied interim) the start date will be delayed and a security clearance assessment will be conducted by SSD. The Chief Security Officer will evaluate risk and determine if the start date will be approved/denied.

The CBI is accomplished by a third party consumer reporting agency and coordinated through the MIT Lincoln Laboratory Security Services Department Personnel Security Services Center (PSSC). MIT Lincoln Laboratory at its sole discretion reserves the right to deny access to any individual based on the results of the CBI or other adverse information that negatively reflects on the integrity or character of the subject.

MIT Lincoln Laboratory PSSC will provide the required consent, release and authorization forms for completion of the CBI for unescorted access to the Laboratory facilities. CBI's will be completed at the MIT Lincoln Laboratory Security Services Department expense and delegated to one of MIT Lincoln Laboratory's consumer reporting agencies. Failure to submit to the required background investigation will result in denial of unescorted access to MIT Lincoln Laboratory. Completed consent, release and authorization forms shall be forwarded in sealed envelopes to MIT Lincoln Laboratory, 244 Wood Street, A-130, Lexington, MA 02420-9108, Attn: Personnel Security Services Center. These materials are available through the MIT Lincoln Laboratory Security Services Department. MIT Lincoln Laboratory reserves the right to terminate the subcontract or purchase order without penalty in the event the Subcontractor is unable or unwilling to comply with the requirements of this provision.

The Subcontractor must update and maintain all Contracted Labor Personnel records to include: initial clearance processing, changes in eligibility, periodic reinvestigations, and employment terminations. The Subcontractor must immediately notify MIT LL Security of all security clearance updates and status changes.

14. PROTECTION OF PERSONAL INFORMATION

The subcontractor acknowledges its responsibility to protect any personal information it receives directly or indirectly in accordance with applicable state and federal laws and regulations, including Massachusetts General Law c. 93H effective March 1, 2010 and the implementing regulation 201 CMR 17.00 "Standards for the Protection of Personal Information of Residents of the Commonwealth." Appropriate precautions shall include implementing and maintaining appropriate security measures and complying with state and federal requirements. The Subcontractor

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agrees to indemnify and hold harmless MIT Lincoln Laboratory for any and all liability, damages, claims, or proceedings arising from Subcontractors failure to protect personal information in accordance with applicable state and federal laws.

In performance of a subcontract or purchase order, MIT Lincoln Laboratory sensitive information may be provided in performance of the subcontract. Sensitive information is information that requires safeguarding or dissemination controls as set forth in law, regulation, Government-wide or MIT Lincoln Laboratory policy. In performance of a subcontract or purchase order, the Subcontractor agrees to follow all data security requirements. Sensitive information includes, but is not limited to, location of network distribution facilities, site specific building drawings, specifications, diagrams, sketches, maps or photographs that substantially represent design features of the physical and automated protection systems, references to the characteristics (vulnerabilities, limitations or performance) of security systems, technical data, personally identifiable information and any other caveats identified by MIT Lincoln Laboratory.

Subcontractors in possession of sensitive information or material must protect the information by employing appropriate safeguards that prevent casual viewing and unauthorized disclosure. When no longer required, materials and devices containing sensitive information must be promptly destroyed or sanitized. The Subcontractor will validate the destruction or sanitization of such material or devices which will be conducted by methods which assure the prevention of unauthorized retrieval of any sensitive data or printed material. The Subcontractor may at any time return sensitive material to MIT Lincoln Laboratory for proper destruction or sanitization. Any MIT Lincoln Laboratory Sensitive information stored on digital media or devices within the Subcontractor's facility must be either encrypted at rest or stored in a password protected manner, with appropriate access controls, allowing only authorized individuals access to the information. The Subcontractor will protect sensitive Laboratory data in transit by the appropriate means, including, but not limited to the use of encryption, password protected files (i.e. zip file) or any other secure means that protects the confidentiality of MIT Lincoln Laboratory information. MIT Lincoln Laboratory data must be accessible only by personnel performing work on the subcontract. The Subcontractor agrees to immediately report the unauthorized disclosure of MIT Lincoln Laboratory sensitive information to the MIT Lincoln Laboratory Chief Security Officer.

15. NOTIFICATION OF GOVERNMENT SECURITY ACTIVITY AND VISITOR GROUP SECURITY AGREEMENTS

The USAF prime contract contains a DD Form 254, DOD Contract Security Classification Specification, and requires performance at a government location in the U.S. or overseas. Prior to beginning operations involving classified information on an installation identified on the DD Form 254, the subcontractor shall take the following actions:

- (a)** At least thirty days prior to beginning operations, notify the security police activity shown in the distribution block of the DD Form 254 as to:
 - (1)** The name, address, and telephone number of this subcontract company's representative and designated alternate in the U.S. or overseas area, as appropriate;
 - (2)** The subcontract number and military contracting command;
 - (3)** The highest classification category of defense information to which subcontractor employees will have access;
 - (4)** The Air Force installations in the U.S. (in overseas areas, identify only the APO number(s)) where the subcontract work will be performed;
 - (5)** The date subcontractor operations will begin on base in the U.S. or in the overseas area;
 - (6)** The estimated completion date of operations on base in the U.S. or in the overseas area; and
 - (7)** Any changes to information previously provided under this clause. This requirement is in addition to visit request procedures contained in DOD 5220.22-M, National Industrial Security Program Operating Manual.
- (b)** Prior to beginning operations involving classified information on an installation identified on the DD Form 254 where the subcontractor is not required to have a facility security clearance, the subcontractor shall enter into a Visitor Group Security Agreement (or understanding) with the installation commander to ensure that the subcontractor's security procedures are properly integrated with those of the installation. As a minimum, the agreement shall identify the security actions that will be performed:
 - (1)** By the installation for the subcontractor, such as providing storage and classified reproduction facilities,

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guard services, security forms, security inspections under DOD 5220.22-M, classified mail services, security badges, visitor control, and investigating security incidents; and

- (2) Jointly by the subcontractor and the installation, such as packaging and addressing classified transmittals, security checks, internal security controls, and implementing emergency procedures to protect classified material.

16. HEALTH AND SAFETY ON GOVERNMENT INSTALLATIONS

In performing work under this contract on a Government installation, the subcontractor shall:

- (a) Comply with the specific health and safety requirements established by this subcontract;
- (b) Comply with the health and safety rules of the Government installation that concern related activities not directly addressed in this subcontract;
- (c) Take all reasonable steps and precautions to prevent accidents and preserve the health and safety of subcontractor and Government personnel performing or in any way coming in contact with the performance of this subcontract; and
- (d) Take such additional immediate precautions as the contracting officer may reasonably require for health and safety purposes.
- (e) The contracting officer may, by written order, direct Air Force Occupational Safety and Health (AFOSH) Standards and/or health/safety standards as may be required in the performance of this contract and any adjustments resulting from such direction will be in accordance with the Changes clause of this subcontract.
- (f) Any violation of these health and safety rules and requirements, unless promptly corrected as directed by the contracting officer, shall be grounds for termination of this subcontract in accordance with the Default clause of this subcontract.

17. COMMON ACCESS CARDS (CACs) FOR CONTRACTOR PERSONNEL

For installation(s)/location(s) cited in the subcontract, subcontractors shall ensure Common Access Cards (CACs) are obtained by all subcontract personnel who meet one or both of the following criteria:

- (a) Require logical access to Department of Defense computer networks and systems in either:
 - (1) the unclassified environment; or
 - (2) the classified environment where authorized by governing security directives.
- (b) Perform work, which requires the use of a CAC for installation entry control or physical access to facilities and buildings.
- (c) Subcontractors and their personnel shall use the following procedures to obtain CACs:
 - (1) Subcontractors shall provide a listing of personnel authorized a CAC to the contracting officer. The contracting officer will provide a copy of the listing to the government representative in the local organization designated to authorize issuance of subcontractor CACs (i.e., "authorizing official").
 - (2) Subcontractor personnel on the listing shall each complete and submit a DD Form 1172-2 or other authorized DoD electronic form to the authorizing official. The authorizing official will verify the applicant's name against the subcontractor's listing and return the DD Form 1172-2 to the subcontractor personnel.
 - (3) Subcontractor personnel will proceed to the nearest CAC issuance workstation (usually the local Military Personnel Flight (MPF) with the DD Form 1172-2 and appropriate documentation to support their identification and/or citizenship. The CAC issuance workstation will then issue the CAC.
- (d) While visiting or performing work on installation(s)/location(s), subcontractor personnel shall wear or prominently display the CAC as required by the governing local policy.
- (e) During the performance period of the subcontract, the subcontractor shall:
 - (1) Within 7 working days of any changes to the listing of the subcontract personnel authorized a CAC, provide an updated listing to the contracting officer who will provide the updated listing to the authorizing official;
 - (2) Return CACs in accordance with local policy/directives within 7 working days of a change in status for subcontractor personnel who no longer require logical or physical access;
 - (3) Return CACs in accordance with local policy/directives within 7 working days following a CACs expiration date; and

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- (4) Report lost or stolen CACs in accordance with local policy/directives.
- (f) Within 7 working days following completion/termination of the subcontract, the subcontractor shall return all CACs issued to their personnel to the issuing office or the location specified by local policy/directives.
- (g) Failure to comply with these requirements may result in withholding of final payment.

18. CYBER INCIDENT REPORTING AND ASSESSMENT

In the performance of this contract, the Subcontractor shall execute the following:

- (a) Reporting requirement
 - (1) The Subcontractor shall report to MIT Lincoln Laboratory immediately upon the discovery of any cyber incident as described in paragraph (d)(2), Section 252.204–7012 (NOV 2013) of DFARS Subpart 204.73 – “Safeguarding Unclassified Controlled Technical Information” that, pursuant to the contract with MIT Lincoln Laboratory, affects unclassified controlled technical information resident on or transiting through the Subcontractor’s unclassified information systems. Incidents must be reported to the MIT Lincoln Laboratory Chief Security Officer (CSO) or Information Security Manager (ISM) by calling MIT Lincoln Laboratory’s Information Security Hotline at 781-981-1291.
 - (2) Subcontractors must also notify the MIT Lincoln Laboratory Contracting Services Department (CSD) via email or formal correspondence within 24 hours of discovery of any cyber incident. The Subcontractor must provide to MIT Lincoln Laboratory as much of the following information as can be obtained
 - i. MIT Lincoln Laboratory Subcontract numbers affected
 - ii. Location of the event if different than the prime subcontractor location
 - iii. Point of contact
 - iv. Platforms or systems involved
 - v. Date incident discovered
 - vi. Location(s) of compromise
 - vii. Date incident discovered
 - viii. Type of compromise (e.g., unauthorized access, inadvertent release, other)
 - ix. Description of technical information compromised
 - x. Any additional information relevant to the information compromise
- (b) Reportable cyber incidents include the following:
 - (1) A cyber incident involving possible exfiltration, manipulation, or other loss or compromise of any unclassified controlled technical information resident on or transiting through subcontractor’s, or its subcontractors’, unclassified information systems.
 - (2) Any other activities not included in the above list that allow unauthorized access to the subcontractor’s unclassified information system on which unclassified controlled technical information is resident on or transiting.
- (c) Subcontractor actions to support MIT Lincoln Laboratory Security Services Department (SSD) damage assessment.
 - (1) In response to the reported cyber incident, the subcontractor shall:
 - i. Conduct further review of its unclassified network for evidence of compromise resulting from a cyber incident to include, but is not limited to, identifying compromised computers, servers, specific data and users accounts. This includes analyzing information systems that were part of the compromise, as well as other information systems on the network that were accessed as a result of the compromise;
 - ii. Review the data accessed during the cyber incident to identify specific unclassified controlled technical information associated with MIT Lincoln Laboratory and/or government programs, systems or contracts, including military programs, systems and technology; and
 - iii. Preserve and protect images of known affected information systems and all relevant monitoring/packet capture data for at least 90 days from the cyber incident to allow MIT Lincoln Laboratory and/or government sponsor to request information or decline interest.
- (d) The substance of this clause shall be included in subcontracts at all tiers.

19. PROTECTION OF THIRD PARTY PROPRIETARY INFORMATION

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- (a) The Subcontractor agrees that it will use all reasonable diligence in protecting proprietary data received by it and its Contracted Labor Personnel through performance under this Subcontract, whether or not specifically covered by a nondisclosure agreement (NDA) as explained in paragraph below. The Subcontractor further agrees it will not disclose proprietary data to unauthorized parties without the prior written permission of MIT LL, the Government, or other owner of the proprietary data, and that proprietary data shall not be duplicated, used or disclosed, in whole or part, for any purpose other than to accomplish the contracted effort. This restriction does not limit the Subcontractor's right to use, duplicate or disclose such information if such information was lawfully obtained by the Subcontractor from other sources and the Subcontractor is not under an obligation of confidentiality.
- (b) The Subcontractor acknowledges that its Contracted Labor Personnel may be required to sign NDA acknowledgements that were negotiated and prepared by MIT LL in cooperation with third party owners of proprietary data. The Subcontractor agrees that it will honor these acknowledgements and further agrees that it will protect data received by its Contracted Labor Personnel under any NDA from unauthorized use or disclosure as long as it remains proprietary. The Subcontractor agrees to protect the proprietary data and rights of other organizations disclosed to the Subcontractor during performance of this Subcontract with the same caution that a reasonably prudent company would use to safeguard highly valuable property.
- (c) If a Contracted Labor Personnel, either negligently or willfully, makes an unauthorized disclosure or otherwise fails to comply with MIT LL NDA obligations, the Subcontractor will defend, hold harmless and indemnify MIT LL for any liability, loss, claims, or damage of any kind, including reasonable attorney's fees, resulting from its or its Contracted Labor Personnel's unauthorized disclosure or use of any proprietary data in violation of the provisions of this clause or any executed NDA.
- (d) In the event that the Subcontractor does not agree to paragraphs (b) and (c) above, the Subcontractor agrees to enter into NDAs with all companies whose proprietary data its Contracted Labor Personnel shall have access. In the event that a company requires the Subcontractor to enter into a NDA directly with the company in order to receive access to its proprietary information, the Subcontractor agrees to do so. The Subcontractor shall furnish to the MIT LL Technology and Contracts Office (TCO) copies of these NDAs. The Subcontractor agrees to protect the proprietary data and rights of other organizations disclosed to the Subcontractor during performance of this Subcontract with the same caution that a reasonably prudent company would use to safeguard highly valuable property.

20. PROTECTION OF MIT LINCOLN LABORATORY PROPRIETARY INFORMATION

- (a) Any confidential and proprietary information which MIT LL discloses or has disclosed to the Subcontractor, whether in oral, written, graphic, machine recognizable or other form, which in any way relates or pertains to MIT LL, or any information generated by the Subcontractor in the course of performing under this Subcontract, or any information about MIT LL shall be deemed "Proprietary Information" for purposes of this paragraph. Without the prior written consent of MIT LL, the Subcontractor shall not disclose Proprietary Information to any person or use Proprietary Information for any purpose other than performance under this Subcontract. The Subcontractor shall take all reasonable steps to minimize the risk of disclosure of Proprietary Information. Upon written request by MIT LL, the Subcontractor shall immediately return to MIT LL all Proprietary Information and all copies thereof.
- (b) Proprietary Information shall not include any information which: (a) was in the Subcontractor's possession before receipt from MIT LL as shown by the Subcontractor's prior written records; (b) is already available or becomes available to the public through no fault of the Subcontractor; (c) is received by the Subcontractor from a third party who rightfully possesses the information, has the lawful right to disclose such information and the information does not contain restrictive markings; or (d) is disclosed by the Subcontractor with MIT LL's prior written approval.

21. CONFLICTS OF INTEREST

- (a) The Subcontractor's work on behalf of MIT LL must be characterized by unquestioned objectivity, divorced from even the appearance of competing interests. The Subcontractor must ensure that its other activities or relationships do not render itself or any of its Contracted Labor Personnel unable to provide objective technical advice or assistance to the Government or to MIT LL, or that such other activities or relationships do not provide the Subcontractor with an unfair competitive advantage during the performance of this Subcontract. Such relationships or activities are considered Conflicts of Interest ("COI").

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- (b) The Subcontractor must avoid or eliminate all COI, including Organizational and Personal, and may not mitigate a conflict.
- (c) Examples of situations that create Organizational Conflicts of Interest (“OCI”) include:
 - i. The Subcontractor, in its performance of the contract, has access to nonpublic information (including proprietary, source selection, and classified information) that may provide it an unfair competitive advantage over other offerors in seeking another federal contract.
 - ii. The Subcontractor, in its performance of the contract, is required to provide subjective analysis or evaluation on a matter that it, or its competitor(s), has a financial interest, thereby impairing its objectivity.
 - iii. The Subcontractor, in its performance of the contract, prepares a work statement, or material leading substantially to a work statement, to be used in a future competitive acquisition where the Subcontractor is a potential offeror. Such a position would allow the Subcontractor, intentionally or not, favor itself in the future acquisition.
- (d) A Personal Conflict of Interest (“PCOI”) may occur if an interest or activity of a Contracted Labor Personnel staff member impairs, or appears to impair, their ability to exercise objectivity or impartially discharge employment responsibilities in the best interest of MIT LL. So as to avoid any PCOI on the part of its Contracted Labor Personnel, the Subcontractor shall not receive payment under this Subcontract to perform any task involving a matter in which Contracted Labor Personnel, Contracted Labor Personnel’s spouse, or Contracted Labor Personnel’s dependent children has/have a financial interest.
 - i. Financial interests include but are not limited to: employment; investments such as stocks and bonds; loans or other financial arrangements; employment offers; and gifts.
 - ii. The Subcontractor shall forfeit any right to receive any payment for services provided by said Contracted Labor Personnel while in violation of this prohibition. Direct and indirect costs allocable to the expended hours for which payment has been forfeited shall be accounted for as unallowable costs and shall not be charged to this Subcontract or any other contract.
- (e) The restrictions described herein shall apply to performance or participation by the Subcontractor and any of its affiliates or their successors in interest in the activities covered by this clause as Subcontractor, joint venture, consultant, or in any similar capacity.
- (f) The Subcontractor represents to MIT LL that:
 - i. The Subcontractor will disclose to MIT LL, prior to award, all facts relevant to the existence of or potential existence of an OCI as defined in this clause and as that term is defined in FAR subpart 2.101 and used in subpart 9.5.
 - ii. Subcontractor will monitor and resolve any PCOI issues with its Contracted Labor Personnel
 1. The Subcontractor shall obtain, review, and maintain for its records a financial disclosure statement from Laboratory Identified Contracted Labor personnel assigned to perform technical support to a MITLL program(s). Subcontractor may use the Laboratory’s Activities Statements and Financial Interests (ASFI) form, or its own form provided it covers at least the same information.
 2. The Subcontractor shall provide an annual report that documents COI and Ethics training provided to its employees and the results of Laboratory Identified Employee financial disclosure statement reviews. When applicable, those results will include detailed summaries of any potential COIs using the, “Conflict of Interest Disclosure Form.”
 3. For all new or first term Subcontractor employees, COI and Ethics training, as well as the initial ASFI review for any Laboratory Identified Employees must be accomplished and the report, “Conflict of Interest Certification for First Term Laboratory Identified Employees,” and sent to MITLL prior to the issuance of a purchase order for those services.
 4. For all new or first term Subcontractor employees, an “Intellectual Property and Proprietary Information (~~IP~~) Agreement,” (IPIA) and a COI/Ethics Training and Post Government Employment (PGE) Restriction certificate must be sent to MITLL prior to the issuance of a purchase order for those services.
- (g) The Subcontractor represents that if it discovers an actual or potential COI, PCOI, or OCI after award, a prompt and full disclosure shall be made in writing to the TCO.
- (h) The Subcontractor will defend, hold harmless and indemnify MIT LL for any liability, loss, claims, or damage of any kind, including reasonable attorney’s fees, resulting from its failure to neutralize any impediments to its performance of work under this Subcontract that may have existed as a result of any prior consulting or

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employment agreements of the Contracted Labor Personnel (s) who has (have) been assigned to perform services under this Subcontract.

- (i) For breach of any of the above restrictions or for nondisclosure or misrepresentation of any material facts required to be disclosed concerning this Subcontract, MIT LL may:
 - i. Terminate this Subcontract for default or convenience, in its sole discretion;
 - ii. Disqualify the Subcontractor from consideration or solicitation of future MIT LL technical support requirements; and
 - iii. Pursue such other remedies as may be permitted by law or by this Subcontract.
- (j) If the Subcontractor, in compliance with this clause, discovers and promptly discloses an actual or potential Conflict of Interest, organizational or personal, subsequent to award, MIT LL may terminate this Subcontract for convenience if such termination is deemed to be in the best interest of MIT LL.

22. INVENTION AND COPYRIGHT AGREEMENT

- (a) In consideration of either (i) the assignment of the Subcontractor to a Government or third-party sponsored project, or (ii) making available to the Subcontractor opportunities or facilities at MIT LL, the Subcontractor hereby agrees to promptly communicate to the TCO, all discoveries, inventions or other form of intellectual property made by the Subcontractor in performance of this Subcontract and/or using the facilities at MIT LL.
- (b) Notwithstanding any other term or provision, the Subcontractor hereby assigns and agrees to assign to MIT all of the Subcontractor's right, title and interest in and to all inventions, discoveries or other form of intellectual property, including patent applications and resulting patents, and any and all copyrights in such copyrightable materials. The Subcontractor also agrees to do whatever is necessary to enable MIT to apply for patents on such discoveries or inventions, including the preparation of patent applications, and to register any copyrights, trademarks or any other regulatory registrations or approvals in the United States or elsewhere in connection with any invention, discovery or other form of intellectual property, all of which shall be at no cost to the Subcontractor.
- (c) Subcontractors and its Contracted Labor Personnel are required to sign an Intellectual Property and Proprietary Information Agreement before performing any work under this Subcontract.

23. PUBLICATIONS

The Subcontractor may publish the results of research performed by its Contracted Labor Personnel under this Subcontract provided the material is furnished to MIT for prior review and approval by the appropriate Government agency.

Proposed oral or written publications shall be furnished to the MIT LL office to which the Contracted Labor Personnel is assigned for submission to MIT LL's Release Review Process. A copy of the complete text, including an abstract, are required by MIT for oral presentations and for articles to be submitted for publication. When meeting sponsors require only an abstract of a meeting speech as a basis for acceptance, the abstract alone may be submitted for review. However, before presentation of an accepted meeting speech, the full text must be reviewed whether or not it is required by the meeting sponsor.

Subcontractor publications shall include a disclaimer plus appropriate acknowledgment of contractual support. Processing of requests for review will normally require twenty working days.

24. SAFETY ACCIDENT PREVENTION

In performing any work under this Subcontract on premises, which are under the direct control of the Government or MIT, the Subcontractor shall (i) conform to all safety rules and requirements prescribed by MIT and (ii) take such additional precautions as MIT may reasonably require for safety and accident prevention purposes. The Subcontractor agrees to take all reasonable steps and precautions to preserve the life and health of Contracted Labor Personnel and Government and MIT personnel with whom contact is made in performance of this Subcontract on such premises. Any violation of such rules and requirements unless promptly corrected as directed by MIT shall be grounds for termination of this Subcontract in accordance with the default provisions hereof. Questions regarding the MIT safety rules and requirements should be directed to the MIT LL Environmental, Health and Safety Office,

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Lexington, Massachusetts 02420-9108.

25. HARASSMENT

Harassment of any kind on the basis of color, race, religion, national origin, sex, or sexual orientation may violate the law of both the United States and the Commonwealth of Massachusetts. In addition, such harassment is counterproductive and in opposition to the desired working atmosphere of MIT LL. Such actions are, therefore, not permissible as a matter of law and policy and will not be tolerated. Any violation of this policy will be considered adequate cause for MIT LL to cancel this Subcontract for the Subcontractor's services.

26. COMPLIANCE WITH REGULATIONS AND MIT LL POLICIES AND PROCEDURES

Subcontractor will comply with all applicable regulations of the US Government and the Commonwealth of Massachusetts. Furthermore, Subcontractor recognizes that MIT LL is a cleared facility and Subcontractor will comply with MIT LL Security policies. In addition, Subcontractor will adhere to the MIT LL Code of Conduct and its ethics policies. The Subcontractor will also comply with MIT LL's policies on intellectual property. These policies are provided to the Subcontractor and additional trainings are provided by MIT LL to Subcontractor from time to time.

27. DIRECT CHARGES AND TIME CARDS/INVOICES (not applicable to Consultants)

- (a) Direct charges on Contracted Labor Personnel timecards must reflect hours of billable effort actually worked and accurately represent the time allocated to each of the programs supported by the individual Contracted Labor Personnel. Time taken for meal breaks should not be considered as time worked for pay purposes. Time should be recorded at the beginning and end of each day.
- (b) Unless specifically authorized by the MIT LL point of contact designated in this Subcontract, no direct charges or hours of billable effort will be incurred on this Subcontract during MIT LL holidays, emergency closings or other period of MIT LL closing. Contracted Labor Personnel compensation during these times or for any other period of time not worked at MIT LL is the responsibility of, and shall be managed by the Subcontractor. Contracted Labor Personnel shall be made aware of this policy by the Subcontractor during the hiring process.
- (c) Contracted Labor Personnel will be required to complete timecards in a format acceptable to MIT LL. In order to facilitate prompt payment and reduce administrative conversion errors, all invoices submitted to MIT LL for payment for Contracted Labor Personnel services under the referenced Subcontract must be submitted utilizing a Monday – Sunday workweek. All invoices must reference the associated subcontract number for that specific individual, the dates of work performed and other information required to process payment. MIT LL shall be notified in advance of any contemplated accounting systems changes that may affect invoicing and payment of Contracted Labor Personnel labor and travel reimbursement charges.
- (d) The Subcontractor agrees to provide requests for payment no later than one (1) year from the date of completion of the applicable work period. Payment requests submitted after one year shall be considered null and void. MIT LL, at its sole discretion may agree to accept payment requests after expiration of this period.
- (e) Payment terms will be Net 30 from the date of invoice receipt as indicated by the date stamp affixed by MIT LL Accounts Payable personnel. All invoices will be date stamped on the day they are received. In order to receive payment for services completed all invoices shall be submitted to the following address:

MIT Lincoln Laboratory Fiscal Office
244 Wood Street, A-281
PO Box 9184
Lexington, MA 02420-9108
- (f) The Subcontractor agrees that all Contracted Labor Personnel shall be paid at a minimum on a monthly basis for services provided. The Subcontractor must possess, or have the ability to obtain, the financial resources required for performance of this Subcontract.

28. LABOR CATEGORIES (not applicable to Consultants)

Contracted Labor Personnel must possess the minimum education and experience levels to be eligible for

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classification at any category. MIT LL reserves the right to offer the assignment at any category level. An equivalent combination of education and experience may be substituted, as appropriate.

29. PERFORMANCE REVIEWS (not applicable to Consultants)

The Subcontractor is prohibited from contacting MIT LL to request completion of a performance review for Contracted Labor Personnel.

30. REQUIREMENTS (not applicable to Consultants)

- (a) All Subcontractor personnel performing technical support and services under this Subcontract are required to be “employees” of the Subcontractor, as defined by both the Internal Revenue Service of the United States and the Department of Revenue of the Commonwealth of Massachusetts.
- (b) Failure to comply with this requirement will be grounds for immediate termination of this Subcontract, and may result in any further action as permitted by law or contract. In the case of such failure, the Subcontractor agrees to defend and indemnify MIT and MIT LL for any claim or action for damages or other losses and hold MIT and MIT LL harmless from such claims, actions, or damages.

31. INDEPENDENT CONTRACTOR

- (a) The Subcontractor, and its Contracted Labor Personnel, are a contractor to MIT LL, and as such are at no time operating as an agent or employee of MIT LL or the Massachusetts Institute of Technology and at no time have the authority to make commitments on behalf of or bind MIT LL or the Massachusetts Institute of Technology.
- (b) No agency or employment relationship is implied nor should be inferred between Subcontractor and Contracted Labor Personnel, and MIT LL or the Massachusetts Institute of Technology.

32. TAXPAYER ID

The Subcontractor must provide a valid Taxpayer Identification Number as defined by the Internal Revenue Services of the United States and the Department of Revenue of the Commonwealth of Massachusetts upon request.

33. TRAINING

Contracted Labor Personnel should arrive prepared to perform without additional training. All costs for training are the responsibility of the Subcontractor. MIT LL mandates certain MIT LL provided training (including but not limited to Annual Ethics Training and Annual Security Training), which may be charged to MIT LL. Subcontractor will be notified in writing of any training requirement which is approved. Non-approved trainings are not reimbursable by MIT LL. It is expected that all Subcontractor trainings will comply with all applicable laws and regulations (including the Fair Labor Standards Act). The costs for any membership or other professional organization fees/dues will be the responsibility of the Subcontractor. The costs for any certifications or accreditations will be the responsibility of the Subcontractor.

34. EXPORT CONTROL

- (a) The Subcontractor recognizes that technical data received or generated through performance under this Subcontract, regardless of form/media (including but not limited to hard-copy materials; software; electronic files whether stored on laptop/PC hard drives, CD/DVD, or other external storage devices; etc.) may be subject to United States export regulations, including the Arms Export Control Act or the Export Administration Act. The Subcontractor agrees to comply with all United States export control requirements, including taking all reasonable precautions to ensure that such technical data will not be:
 - i. transferred by any means to a non-U.S. person whether in the United States or abroad, or
 - ii. carried, shipped or otherwise transferred abroad, regardless of whether or not the technical data will actually be viewed/handled by a non-U.S. person.

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35. TRAVEL

- (a)** Travel costs subject to reimbursements are limited to travel occurring at the direction of MIT LL and performed in conjunction with a specific requirement, for a trip authorized by the MIT LL point of contact designated on this Subcontract.
- (b)** Only allowable travel expenses authorized by the MIT LL supervisor designated on this Subcontract will be eligible for reimbursement by the Laboratory on a direct basis. Contracted Labor Personnel travel will be provided on a cost reimbursement basis, subject to the limitations set forth in FAR Part 31. Reimbursements for travel (or any other direct charges) are limited to those required in the performance of this Subcontract. The Subcontractor shall be responsible for obtaining all required passenger transportation, lodging, and subsistence, both domestic and overseas. Local travel or the relocation of Contracted Labor Personnel from other geographic areas, for the purpose of performing customary work under this Subcontract will not be reimbursed, nor will travel to and from the Contracted Labor Personnel's home and MIT LL, or to and from one MIT LL building to another.
- (c)** No profit or fee will be paid on travel costs. Billable travel costs are air fare, ground transportation, and per diem costs. Billable hours for a travel day will not exceed eight (8) hours. Labor hours associated with travel will be billed separately and will be charged to the labor hour line item on this Subcontract. Travel costs that have been invoiced and paid by the Laboratory shall not be subject to any year-end rate adjustments.
- (d)** Allowable travel costs not specifically covered in FAR 31.205-46 may be addressed on an as needed basis. MIT LL reserves its right to audit travel documentation and receipts for Contracted Labor Personnel travel at any time during or after the contract period of performance.
- (e)** Travel costs must be reasonable, and should not include first class airfare or luxury hotel accommodations. Questions regarding what is reasonable should be directed to MIT LL prior to purchase or the date of travel.

36. RECORDS

The Subcontractor shall, upon written request by MIT LL, and at no increase in this Subcontract price, make such financial disclosure statements, and any other documentation relative to conflicts of interest, available to MIT LL, or its agents, for inspection and review.