

TEST AGREEMENT

between

MIT LINCOLN LABORATORY

and

<<CUSTOMER>>

Article 1—Preamble

This Test Agreement (“*Agreement*”) is made and entered into pursuant to 10 U.S.C. §2539b(a)(3) and DoD Instruction (DoDI) 5535.11, *Availability of Samples, Drawings, Information, Equipment, Materials, and Certain Services to Non-DoD Persons and Entities* (12 March 2012), by and between MIT Lincoln Laboratory (“*MIT LL*”), a Federally Funded Research and Development Center, located at 244 Wood Street, Lexington, Massachusetts 02421, and <<CUSTOMER>> (“*Customer*”), located at <<CUSTOMER LOCATION>>.

WITNESSETH:

WHEREAS *MIT LL* desires to make available, at a prescribed fee, certain services for the testing of materials, equipment, models, computer software or other items to *Customer*;

WHEREAS *MIT LL* has determined that the use of facilities contemplated under this *Agreement* will not degrade performance of its primary mission activities and will not divert *MIT LL* personnel or resources from scheduled tests or otherwise interfere with *MIT LL* mission requirements;

WHEREAS *MIT LL* has determined this *Agreement* to be in the interest of national defense and that the services do not involve expansion of the capabilities and capacities of *MIT LL*, even if *Customer* agrees to finance the expansion; and

WHEREAS *Customer* has established, to the satisfaction of *MIT LL*, that provisions of the services will not constitute undue competition with domestic private sector.

Article 2—Definitions

As used in this *Agreement*, the following terms shall have the following meanings and such meanings shall be applicable to both the singular and plural forms of the terms:

2.1. “*Test Laboratory Representative*” means the authorized *MIT LL* technical representative identified at Article 13, paragraph 13.2.

2.2. “*Government*” means the United States Government.

2.3. “*Equipment*” or “*Materials*” means personal property, including machinery, devices and apparatus, and components of such items.

2.4. “*Test Results*” means information generated by or resulting from tests performed with services made available by *MIT LL* under this *Agreement*.

2.5. “*Effective Date*” is the date of the last signature of the authorized representatives of the Parties designated under Article 13.

Article 3—Work Statement

3.1. The Work Statement at Appendix A sets forth the nature and scope of the work to be performed by both Parties, including all responsibilities of each Party under this *Agreement*.

Article 4—Statement of Capability

The Statement of Capability at Appendix B sets forth *MIT LL*’s technical capability, specific technical approach, detailed costs, other support, and any associated reporting requirements and any special conditions to the manner in which the testing services will be provided or delivered to *Customer*.

Article 5—Cost Reimbursement

5.1. Fees. The *Customer* must reimburse *MIT LL* for any and all costs incurred in rendering the services set forth at Appendix A. Such costs must include, at minimum, all direct costs incurred by *MIT LL*. Such costs will also include indirect costs, where applicable, such as the costs of modifying and restoring any test facility to its original configuration.

5.2. Total Not-To-Exceed (NTE) Cost Estimate. A flat rate per unit facility fee and any upfront setup (non-recurring engineering; NRE) estimate is included in Appendix B and shall be provided to *Customer* prior to the beginning of each approved test. The flat rate cost estimate may contain, as appropriate, Laboratory labor, contract services (e.g., contract labor, materials, travel) and facility overhead.

5.3. Total NTE Cost Estimate Exceeded. Unless otherwise indicated in the Work Statement, *MIT LL* will provide *Customer* written notice within ten (10) days or as soon as practicable before expending more than the NTE total costs. Such written notice will include a revised estimate of the NTE total cost for completion of the testing services and a due date for payment at or before the NTE total cost is expended. The *Customer* must pay the additional amount reflected in the revised

estimate of the NTE total cost before the due date, in which case this *Agreement* shall be modified accordingly. If no such payment is received, *MIT LL* will stop work immediately upon expenditure of the NTE total cost amount or on the due date, whichever is earlier.

5.5. Payments. Payments will reference this *Agreement* by MIT LL TA Number and by the names of the Parties and shall state the purpose of the payments. The *Customer* must also send, by ordinary mail, a copy of the payment documents to the *Test Laboratory Representative*. The *Customer* shall submit all payments by cashier's check, certified check, bank money order, postal money order or electronic funds transfer as follows:

For payments other than electronic funds transfers, payments shall be payable to MIT Lincoln Laboratory, to the following address:

Financial Services Department
MIT Lincoln Laboratory
Attn: Lisa Engler
244 Wood Street, Room FR1-216
Lexington, MA 02421

For payments via electronic funds transfer, payments shall be payable to MIT Lincoln Laboratory, using the following information:

Bank: Bank of America
100 Federal Street
Boston, MA 02110

Account Number: 009427777602
Routing # by Wire Payment: 026009593
Routing # by ACH Payment: 011000138
SWIFT Code: BOFAUS3N

5.6. Payment Required in Advance. *MIT LL* must receive payment of the estimated NTE total cost before conducting any testing.

Article 6—Confidentiality of Test Results

All *Test Results* under this *Agreement* are confidential pursuant to 10 U.S.C. § 2539b(b) and may not be disclosed outside *MIT LL* and the *Government* without written consent of *Customer*.

Article 7—Additional Test Limitations

7.1. Observers During Testing. MIT LL reserves the right to limit the number and term of visits of observers and/or test participants. In its discretion, MIT LL may allow no observers and/or test participants.

7.2. Removal of Test Items. Upon completion or termination of the test and/or test service, and receipt by the *Customer* of notification of such completion or termination, the *Customer* will promptly remove the test item from MIT LL's premises at its own cost. If *Customer* fails to remove the test item from MIT LL's premises in a timely manner, MIT LL will remove and/or dispose of the test item and *Customer* agrees to reimburse MIT LL for any and all costs associated with its removal and/or disposal to the *Customer*. The *Customer* agrees that MIT LL and *Government* shall not be liable for any loss (including loss of use) or damage of any kind, whether direct or consequential related to the removal of the test items, and that *Customer* will indemnify and hold MIT LL and *Government* harmless for any loss, claim, damage or liability of any kind arising out of or in connection with any property (to include, but not limited to MIT LL, *Government* and *Customer* property) or service provided by MIT LL.

Article 8—Term, Modification, Extension, and Termination

8.1. Term and Extension. The term of this *Agreement* shall commence on the *Effective Date* of this *Agreement* and shall expire on <<EXPIRATION>>, unless extended by written agreement of the authorized representatives of the Parties, or otherwise terminated in accordance with this article. The expiration of this *Agreement* shall not affect the rights and obligations of the Parties accrued prior to expiration.

8.2. Modification. Any modification must be by written agreement of the authorized representatives of the Parties and shall be incorporated into this *Agreement*.

8.3. Termination. Either Party may terminate this *Agreement* for any reason upon delivery of written notice to the other Party at least thirty (30) days prior to such termination. Termination of this *Agreement* shall not affect the rights and obligations of the Parties accrued prior to the date of termination. In the event of termination by *Customer*, *Customer* shall be responsible for all costs incurred by MIT LL through the date of termination. If MIT LL terminates this *Agreement*, it shall not be liable to *Customer* or its contractors or subcontractors for any costs resulting from or related to the termination, including, but not limited to, incidental or consequential damages.

8.4. Interruption or Cancellation of Services. National security and MIT LL mission requirements shall take precedence over *Customer's* requirements under this *Agreement*. The *Test Laboratory Representative* or any higher authority, may terminate, interrupt or delay *Customer's* testing services whenever such termination, interruption or delay is in the best interests of *Laboratory*. MIT LL will notify *Customer*, in writing, of the termination, interruption or delay. MIT LL will not be liable to

Customer, or any third Party, for any costs or consequences resulting from the termination, interruption or delay, including any direct or consequential damages.

Article 9—Representations and Warranties

9.1. The *Customer* hereby represents and warrants to *MIT LL*:

9.1.1. Corporate Organization. The *Customer*, as of the date hereof, is duly organized and validly existing in good standing under the laws of the State of <<STATE>>.

9.1.2. Statement of Ownership. The *Customer* is not foreign-owned or a subsidiary of a foreign-owned entity.

9.1.3. Authority. The official executing this *Agreement* on behalf of *Customer* has the requisite authority to do so.

9.2. *MIT LL* hereby represents to *Customer*:

9.2.1. Authority. The *MIT LL* official executing this *Agreement* has the requisite authority to do so.

9.2.2. Termination for Good Cause Only. *MIT LL* will seek termination, interruption, or delay of services for good cause only, ordinarily where mission requirements or national security concerns dictate.

9.3. The Parties make no other representation or warranty whatsoever.

Article 10—Liability

10.1. The Parties shall inform each other in writing of any claim, suit, loss or injury arising under this *Agreement*. The Parties further agree to consult promptly on the defense of such claims and to provide information, aid and cooperation to reasonably assist in the defense of such claims.

10.2. The *Customer* acknowledges that testing may occur on or using either *MIT LL* or *Government* owned property. The *Customer* assumes all liability for *Customer's* employees while performing work under this *Agreement* using or physically situated on *MIT LL* or *Government* owned property. The *Customer* is not authorized under this *Agreement* to allow any third Party access to *MIT LL* or *Government* owned property.

10.3. General Disclaimer. *MIT LL* AND THE *GOVERNMENT* MAKE NO EXPRESS OR IMPLIED WARRANTY AS TO THE CONDITION OF ANY RESEARCH TEST(S), TESTING EQUIPMENT, APPARATUS, OR FACILITIES, INTELLECTUAL PROPERTY, TEST

RESULTS, OR ANY RESULTING PRODUCT OR PROCESS, THE TRANSFER OF ANY PROPERTY OR SERVICE OF WHATEVER NATURE OR THE MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE OF THE ARTICLE(S) TESTED.

10.4. MIT LL and Government Assumes No Liability. The *Customer* agrees that *MIT LL* and *Government* shall not be liable for any loss (including loss of use) or damage of any kind, whether direct or consequential, and that *Customer* will indemnify and hold *MIT LL* and *Government* harmless for any loss, claim, damage or liability of any kind arising out of or in connection with any property (to include, but not limited to *MIT LL*, *Government* and *Customer* property) or service provided by *MIT LL* under this *Agreement*.

Article 11—General Terms and Provisions

11.1. Disposal of Toxic or Other Waste. The *Customer* shall be responsible for the proper removal and disposal from *MIT LL* and *Government* owned property of any and all toxic, hazardous, or solid waste, and the removal of any other material provided or generated in the course of performing this *Agreement* if specified for removal by *Customer* in Appendix A. The *Customer* shall obtain at its own expense all necessary permits and licenses as required by local, state and federal law and regulation.

11.2. Force Majeure. Neither Party shall be in breach of this *Agreement* for any failure of performance caused by any event beyond its reasonable control and not caused by the fault or negligence of that Party. Should a force majeure event occur, the Party unable to perform will promptly notify the other Party and shall in good faith resume performance as soon as is reasonably practicable.

11.3. Relationship of the Parties. The Parties to this *Agreement* and their employees are independent entities and are not agents of each other, joint venturers, or partners to any business organization. Neither Party is authorized or empowered to act on behalf of the other with regard to any contract, warranty or representation as to any matter, and neither Party will be bound by the acts or conduct of the other. Each Party will maintain sole and exclusive control over its own personnel and operations.

11.4. Publicity/Use of Name/Endorsement. Neither Party shall use the name, logo, insignia or trademarks of the other in any form of advertising, promotion or other form of publicity without written prior approval of the other. The Parties may however, make factual statements regarding the existence of this *Agreement*; in any such statement, the relationship of the Parties shall be accurately and appropriately described. The MIT Technology Licensing Office has sole authority to grant in writing any approved use of the MIT name, logo, insignia or trademarks. By entering into this *Agreement*, *MIT LL* does not directly or indirectly endorse any product or service provided, or to be provided, by *Customer*. The *Customer* shall not in any way imply that this *Agreement* is an endorsement of any such product or service.

11.5. Governing Law. This Agreement will be construed for all purposes in accordance with the laws of the United States and the Commonwealth of Massachusetts, United States of America, without regard to the conflict of law provisions or principles thereof.

11.6. Waiver of Rights. Any waiver shall be in writing and provided to the other Party. Failure to insist upon strict performance of any of the terms and conditions hereof, or failure to delay to exercise any rights provided herein or by law, shall not be deemed a waiver of any rights of either Party.

11.7. Severability. The illegality or invalidity of any provisions of this *Agreement* shall not impair, affect or invalidate the other provisions of this *Agreement*.

11.8. Assignment. Neither Party shall assign or transfer any rights or obligations derived from this *Agreement* without the prior written consent of the other Party.

11.9. Controlled Information. The Parties understand that information and materials provided pursuant to or resulting from this *Agreement* may be export controlled, classified, or unclassified sensitive and protected by law, executive order or regulation. This *Agreement* does not permit any disclosure in violation of these restrictions or other applicable law or regulation. Furthermore, MIT LL reserves the right to review the provided information and materials and any test results or materials generated therefrom to ensure compliance with any and all restrictions or other applicable law or regulation prior to release to the Customer.

Article 12—Notices

12.1. Send all formal and administrative notices under this *Agreement* by U.S. Mail to:

MIT LL
Technology & Contracts Office
Attn: Holly Becker
244 Wood Street
Lexington, MA 02421
(781)981-3760
holly.becker@ll.mit.edu

Customer
DIVISION/UNIT
Attn:
ADDRESS
ADDRESS
Phone:
Email Address

12.2. Send all correspondence on technical matters to:

MIT LL
Group/Facility
Attn:
244 Wood Street
Lexington, MA 02421
(781)981-XXXX
XXXXXXXX@ll.mit.edu

Customer
Attn:
ADDRESS
Phone:
Email Address

IN WITNESS WHEREOF, the Parties execute this *Agreement*, in duplicate, by their authorized representatives as follows:

MIT Lincoln Laboratory

<<CUSTOMER>>

Marc Bernstein
Associate Director

<<Name-Customer>>
<<Title>>

Date

Date

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Appendix A WORK STATEMENT

Title

[Insert Statement of Work that covers the nature and scope of work including responsibilities of MIT LL and Customer]

Additional Terms and Conditions

MIT Lincoln Laboratory Facility Access

Lincoln Laboratory is a Federally Funded Research and Development Center (FFRDC) operated by the Massachusetts Institute of Technology under a prime contract with the United States Air Force. Its mission is to conduct a program of research and development in advanced electronics for national defense and other interests in science and technology. MIT Lincoln Laboratory is a participant in the National Industrial Security Program (NISP) and must comply with specific access control and information protection government regulations.

Due to its location on Hanscom Air Force Base (HAFB), Massachusetts, all persons or property entering or exiting the installation are subject to random search. Additionally, the Department of Defense (DoD) has developed Force Protection Condition (FPCON) levels when an increased general and unpredictable terrorist threat against military facilities is observed. Currently, Hanscom Air Force Base is at FPCON Bravo.

Customers that require physical access to MIT Lincoln Laboratory facilities located on HAFB will be subject to the following security procedures:

- Must be preregistered in advance by Lincoln Laboratory host (7 day notice)
- A valid government/state photo identification required for access
- US Citizenship including Green Card holders (Foreign National access approved for the STRIVE Center located in Billerica, Massachusetts)
- All video, still photography and audio recording devices are prohibited
- Cellular telephones, laptops, tablets and/or other media storage devices must be approved in advance
- Customers will not be allowed to use or operate MIT LL information systems or have access to any Laboratory data that has not been approved for public release
- Customer access is restricted to Monday through Friday and between the hours of 7:00 a.m. to 7:00 p.m.
- Escorted by Lincoln Laboratory personnel with technical competence to supervise the activity being conducted
 - o Laboratory escorts will provide continuous control and escort directly to the designed place of work
 - o Visitors will be permitted access to specific and approved locations only

- Once approved for building access, all customers/visitors may be required to attend a mandatory security and safety briefing prior to commencement of test services and gaining access to the facilities
- Additional access requirements apply for the Autonomous Systems Development Facility (ASDF) located on Hanscom Air Force Base

The Customer also agrees to use due care while on MIT LL's premises, to comply with all posted environmental, safety, health and security rules and regulations during the term of this Agreement, and to enter only those areas so designated by MIT LL personnel. Specific training may be required depending on the area accessed and equipment utilized. MIT LL reserves the right to limit the number and term of visits of observers and/or test participants.

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Appendix B
MIT LL STATEMENT OF CAPABILITY

[Insert MIT LL technical capability, technical approach, any additional support, and special conditions. Cost Analysis to include the NTE should be included]

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**Appendix C
RATES & FEES**

[Insert flat rate as applicable.]

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