

PROPRIETARY DATA PROTECTION AGREEMENT

The parties to this Agreement are:

Insert Name of Company
OWNER OF PROPRIETARY INFORMATION
Street Address
City, State Zip Code

or "Owner"

And

Insert Name of Company
GOVERNMENT SUPPORT CONTRACTOR
Street Address
City, State Zip Code

Or "Recipient" or "you"

Each of Owner and Recipient, hereinafter a "Party" and collectively the "Parties", agree to be bound as follows:

1. For the purpose of facilitating those tasks to be undertaken by Recipient and its individual employees or agents under the direction of and/or on behalf of the U. S. Government (hereinafter, collectively and in each instance, the "Transaction") in support of and/or in connection with the Owner's response to the Space and Naval Warfare Systems Command's ("SPAWAR") Request for Proposal (RFP) N00039-09-R-0028 issued in support of Program Executive Officer – Command, Control, Communications, Computers and Intelligence (PEO-C4I) and any successor Request for Proposal, if any, and/or in connection with any successor contract, if any, awarded to Owner as a result of its response to SPAWAR's RFP, that require certain knowledge of and/or access to Owner's Proprietary Information as described below (the "purpose"), Owner and Recipient have determined to establish terms governing the use and protection of certain information disclosed to Recipient (either by Owner directly or indirectly by the Government) who is bound to maintain the confidentiality of such information in connection with such Transaction.

2. "Proprietary Information"¹ means (a) such non-public information of an Owner or its Affiliates such as its business plans, financial information, current or new product, service or capability information, practices, methodologies and processes which relates to transaction and which is disclosed by Owner or one of its contractors, agents, or Affiliates directly or indirectly

¹ Proprietary Information may include, by way of example and without limitation, trade secrets, new ideas, other technical information, commercial plans, data, know-how, processes, research, designs, sketches, photographs, plans, drawings, contacts and other technical information relating to an Owner's business, financial information, studies, findings, and information not generally known to the public or within the industry or trade in which the Owner competes, including, without limitation, the fact of these discussions, whether tangible or intangible, and whether or how stored, compiled or memorialized physically, electronically, graphically, photographically or in writing.

by the Government or one of its other contractors or vendors to Recipient or its Affiliates, or which, although not related to the Transaction, is nevertheless disclosed as a result of the Parties' discussions in that regard; and (b) such other information developed by the Parties during the course of their discussions, and which, in any case, is disclosed by Owner or one of its contractors, agents or Affiliates directly or indirectly by the Government or one of its other contractors or vendors to the Recipient or its Affiliate(s) in documentary, electronic media, or other form bearing an appropriate legend indicating its proprietary nature, or which, if initially disclosed orally or visually or in writing but without a legend, is identified as proprietary at the time of disclosure, and thereafter a written summary thereof, also marked with such a legend, is provided to the Recipient within thirty (30) days of the initial disclosure. The term "Affiliate" means any person or entity controlling, controlled by, or under common control with a Party. Prior to disclosure, Recipient agrees to have all of its employees or agents to whom Proprietary Information is to be disclosed execute a copy of this Agreement in the space provided below agreeing to be bound by this Agreement to the same extent as Recipient and returning a copy to Owner and the designated SPAWAR Contracting Officer.

3. Effective Date: **Fill-In** .

4. As the Recipient of Proprietary Information disclosed hereunder, you agree that:

(a) Proprietary Information will be held in strictest confidence and will not be disclosed to third parties outside of SPAWAR or PEO-C4I without the Owner's prior written consent;

(b) Your disclosure and use of Proprietary Information will be limited to the Purpose of this Agreement and to facilitate discussions contemplated by this Agreement in connection with the proposed Transaction;

(c) You will take such steps as may be necessary to prevent disclosure of the Proprietary Information to others;

(d) You will use and copy the Proprietary Information only for the Purpose and as described in, Paragraph 4(b), above;

(e) You will not utilize the Proprietary Information either commercially or otherwise except as provided herein without having obtained Owner's prior written consent;

(f) Owner in disclosing Proprietary Information makes no representation whatsoever or agrees to any undertaking with regard to the Information or otherwise or incurs any liability for any damages, whether direct, indirect, consequential, special or otherwise arising out of this Agreement or your use of the Proprietary Information so disclosed or developed as a result of these discussions or your performance of any services under this agreement;

(g) Owner shall not have any liability or responsibility for errors or omissions in, or any decisions made by you in reliance on any Proprietary Information disclosed or developed under this Agreement; and

(h) You will promptly return all originals and any copies of Proprietary Information upon the earlier of termination or receipt of Owner's request. All Proprietary Information disclosed under this Agreement (including information in computer software or held in electronic storage media) shall be and remain the property of Owner whether received by Recipient or its Affiliates (i) directly from Owner or one of its contractors, agents, or Affiliates or (ii) indirectly from the Government.

5. No licenses or any rights under any patent, copyright, trademark, trade secret, Proprietary Information, or other information are granted or are to be implied by this Agreement or by the Owner's disclosing any Proprietary Information under this Agreement. You agree not to use any service or trademark of Owner or its Affiliates nor will you refer to Owner or its contractors or agents, except with the prior written approval of Owner. Neither Party is obligated under this Agreement to enter into any business arrangement, purchase from or provide to the other Party any service, product or information. You agree not to export, directly or indirectly, any Proprietary Information to any country which the U.S. Government at the time of export requires an export license or other Government approval without first obtaining such license or approval. You shall first obtain the written consent of Owner prior to submitting any request for authority to export any such Proprietary Information.

6. Notwithstanding you may be receiving Proprietary Information indirectly from Owner by its disclosure either by or on behalf of the U.S. Government, you agree that: (a) your use thereof shall only be in connection with the Purpose and for the Transaction completed under this Agreement; (b) such Proprietary Information is trade secret or confidential commercial or financial information of the Owner which you acknowledge is exempt from disclosure under the Freedom of Information Act and the Trade Secrets Act; and (c) your use, duplication and disclosure of which is subject only to the terms of this Agreement notwithstanding that the Government may have the rights, if any, to duplicate, use or disclose the Proprietary Information different from or greater than the rights granted to you under this agreement, to the extent provided in any pertinent contract or subcontract between the Government and the Owner.

7. This Agreement shall become effective as of the Effective Date and shall terminate one year after the effective date *provided, however*, that prior to such expiration or termination, either party may terminate this Agreement at any time by written notice to the other with a copy provided to the SPAWAR Contracting Officer. Notwithstanding such expiration or termination, all obligations hereunder shall survive with respect to the disclosed Proprietary Information.

8. If any provision of this Agreement is found to be unenforceable, the remainder shall be enforced as fully as possible, and the unenforceable provision shall be deemed modified to the limited extent required to permit its enforcement in a manner most closely representing the intention of the parties as expressed herein. The parties hereto acknowledge and agree that the terms and provisions of this Agreement shall be construed fairly in accordance with the plain meaning of its terms, regardless of which party was generally responsible for the preparation of this Agreement.

9. No failure or delay in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power or privilege hereunder.

10. This Agreement is the complete and final agreement of the parties which supersedes all prior or contemporaneous agreements or representations, written or oral, with respect to the subject matter hereof, may not be assigned or transferred by you, may not be extended, amended or in any manner modified except in writing signed by us both, and shall be interpreted in accordance with the laws of the State of to be inserted based upon the mutual agreement of the Parties and without reference to its conflict of laws provisions. Any and all proceedings relating to the subject matter hereof shall be maintained in the local and Federal courts sitting in the State of **to be inserted based upon the mutual agreement of the Parties**, which courts shall have exclusive jurisdiction for such purpose, and you hereby consent to the jurisdiction and venue of such courts. Further, you acknowledge that Proprietary Information is unique and valuable to Owner, and that disclosure in breach of this Agreement will result in irreparable injury to Owner for which monetary damages alone would not be an adequate remedy. Therefore, you agree that in the event of a breach or threatened breach of either the nondisclosure or use restrictions of this Agreement, Owner shall be entitled to specific performance and injunctive or other equitable relief as a remedy for any such breach or anticipated breach without the necessity of posting a bond. In any action to enforce this Agreement, the prevailing party shall be entitled to recover its reasonable attorney's fees, court costs, and related expenses from the other Party.

IN WITNESS WHEREOF, the parties have executed this Agreement in duplicate effective as of the date specified in paragraph 3.

OWNER²

RECIPIENT³

BY:

BY:

Signature/Date

Signature/Date

Name: _____
Type or Print

Name: _____
Type or Print

Position: _____

Position: _____

The employees of the Recipient company who will have access to the Owner-company's proprietary data shall complete the following:

Signature of Employee/Agent

Signature of Employee/Agent

NAME: _____
Type or Print

NAME: _____
Type or Print

² This shall be individual with the authority to sign on behalf of the "Owner" company.
³ This shall be individual with the authority to sign on behalf of the "Recipient" company.

DATE: _____

DATE: _____

Signature of Employee/Agent

Signature of Employee/Agent

NAME: _____
Type or Print

NAME: _____
Type or Print

DATE: _____

DATE: _____

*****Continue with Additional Signatures as Necessary*****

1 Proprietary Information may include, by way of example and without limitation, trade secrets, new ideas, other technical information, commercial plans, data, know-how, processes, research, designs, sketches, photographs, plans, drawings, contacts and other technical information relating to an Owner's business, financial information, studies, findings, and information not generally known to the public or within the industry or trade in which the Owner competes, including, without limitation, the fact of these discussions, whether tangible or intangible, and whether or how stored, compiled or memorialized physically, electronically, graphically, photographically or in writing.

2 This shall be individual with the authority to sign on behalf of the "Owner" company.

3 This shall be individual with the authority to sign on behalf of the "Recipient" company.