

**THE A-SQUARE
TECHNOLOGY GROUP &
NASCENT APPLIED
METHODS AND ENDEAVOR'S
R&D CONTRACT INITIATION
PROCESS & LEGAL
STRUCTURE INVOLVING
THE BUSINESS MODEL
DEVELOPMENT OF
STRATEGIC MACRO &
TACTICAL MICRO
ECONOMIC THOUGHT
WITHIN THE BOUNDARIES
OF GLOBAL MARKETING
WARFARE**

The Contracting Standards, Products and Specifications of Nascent Applied Methods & Endeavors, references a California-based company and network providing Electronic Commerce Applications (ECA), Enterprise Work Architectures (Business Models), Autonomous Knowledge Worker Systems (KWS) to combat global terrorism, and Distributed Artificial Life Programming (Avatars) technologies through a collaborative-networking strategy. NAME intends to capitalize on the opportunities in this area by being the first Company to introduce a collaborative internet-based operating system using high-concept theories such as genetic algorithms, biological suffix trees, and a host of other information-retrieval or monetary strategies in relation to artificial life (avatar) or virtual economic scenario programming involving global joint research & development through the use of the molecular sciences.

BY WILLIAM EARL FIELDS (GCNO)



(ANMESCL²RDWEF)

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Nascent Applied Methods & Endeavors Contract Initiation Process & Legal Structure

Welcome to the **Computerized Retrieval Systems** of Nascent Applied Methods & Endeavors. These introductory statements are composed of a computerized menu-driven process of becoming a Strategic Development & Education or Material Distribution Subcontractor for NAME.

The **FIRST PROCESS** is composed of partial systems entry in obtaining contract information, whereby which a Proposer will down-load an outline of opening statements regarding the types of services that NAME renders, in addition to an even more extensive discussion regarding the judicial status of NAME in the areas of **Contracting, Anti-Trust, Research & Development, Labor Laws (Benefits), Copyrights, Proprietary Information**, and NAME's Educational & Constitutional positions under the Internal Revenue Service codes & definitions of **Employment Related Education (PUB. #935)**. Furthermore, these briefs will reflect NAME's Constitutional Status as an Employment Related Strategic Development System, Competitive Investigation Service, and as an Institution of Freely Express Ideas under the Statutory Laws of the **United States** and the **State of California**.

The **SECOND PROCESS** consists of further systems entry whereby every Proposer must complete an application (resume, portfolio questionnaire, etc.), and attend an orientation session after paying the initial processing fees in order to acquire full systems access. So as to insure that the Proposer can access and manipulate the data within his/her databases, the Proposer's access accounts will include the **Request For Proposal**, the **Strategic Development, Consulting and Marketing Contracts**, as well as the **Users Guide** (Operations Manual) for systems keyword definitions, coding, decoding, accounting, records keeping and autonomous structuring. This same database system shall also be continuously updated and reviewed for the purposes of systems & users efficiency quotas. So please begin the menu-driven processes of ordering & scheduling the information concerning the proposal fees and contracting procedures for our reciprocal joint venture(s).

Menu Selection

(Special Note)

Users should take special care and notice that the following menu structure shall be and is included as part of a Proposer's contract for the purposes of data entry, data structuring and data implementation. (***) Password Required)

1. The Transmittal Letter
2. The Legal Status of NAME's Business Operations
3. The Operational Prerequisites of NAME
4. The Legal Status of Proprietary Documents used in Systems Development
5. The Evolution of Distributed Autonomous Systems
6. The Proposer's Secured Access Application
7. The Security Agreement
8. The Non-Competition Agreement
9. The Release Agreement
10. The Idea Agreement Form-I
11. The Idea Agreement Form-II
12. The Receivable Letterhead
13. The Draft Request For Proposal
14. The Online Meeting Arrangement & Agenda
15. The Contract Assessment System
16. The Draft Seller Assisted Marketing Contract Part - A (Subcontractors)
17. The Draft Seller Assisted Marketing Contract Part - B (Subcontractors)
18. The Draft Contract Document (Partnerships)
19. The Draft Contract Document (Employees)
20. The Draft Services Contract (Client Systems)



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Transmittal Letter

Date: _____

To: _____

Dear Subcontractors:

This is a Transmittal Letter on the web-site of **Nascent Applied Methods & Endeavors** for the purposes of relaying & obtaining contract information from potential Subcontractors (Proposers) who

wish to engage in business activities with NAME. Therefore, please read the following for systems access and contracting procedures.

Nascent Applied Methods & Endeavors is a personal and business information research & consulting firm that renders its services through the **World-Wide-Web**, computer intranets, and our networking assessment centers. The contracting procedures of NAME can only be accessed through a scheduled appointment process from which a Proposer will be evaluated as efficiently as possible.

Here as you continue to read is a partial list of the different types of businesses that NAME's services are rendered towards and can develop, and they are as follows:

1. Industrial and Commercial Properties
2. Schools (Private & Public)
3. Theaters (Acting, Dance, Music & Movie)
4. Ballroom or Dance Facilities
5. Sport Facilities
6. Grocery or Produce Stores
7. Manufacturing, Wholesaling & Retailing
8. Hotels and Motels
9. Apartment, Condominium & Townhouse Complexes
10. Estates
11. Restaurants or Cafes
12. Transportation Facilities or Vehicles
13. Religious Facilities
14. Laundromat or Laundry Cleaning Facilities
15. Recreational Facilities
16. Medical & Office Facilities (Private & Public)
17. Animal Care Facilities

In addition, a categorical list of the different types of personal & business related educational programs that NAME offers through its services are as follows:

1. Attorney's Service Bureaus
2. Association Management
3. Audio-Visual Production Designing, Procurement and Consulting
4. Automation Consulting (Robotics)
5. Business Consulting, Development, Management, Procurement & Designing
6. Business Records Storage & Destruction
7. Collection or Accounting System Designing, Implementation & Developing
Communication Systems Consulting, Managing, Designing Assessing &
Procurement Developing
8. Personal or Business Cybernetic Designing, Implementation & Developing
9. Computer Systems Designing, Consulting & Orientation Training
10. Data or Word Processing
11. Executive & Workman Search and Educational System Consulting, Designing,
Development & Procuring
12. Investigative System Designing & Implementation
13. Inventory Management & Systems Procurement
14. Management Consulting, Designing, Procurement and Education
15. Market Research, Analysis & Consulting
16. Manufacturing, Wholesaling & Retailing Agency System Designing,
Implementation & Development
17. Sales Promotion Consulting & Education
18. Technical and Manual Preparation & Electronic Publishing
19. Telemarketing Research & Selling services Consulting Designing,
Development & Systems Procurement
20. Special Subcategories:
 - A. Employee Application Processing
 - B. Computer Club Designing, Development, Implementation & Participation
Procurement

- C. Socioeconomic System Managing Consulting, Development, Implementation & Procurement
- D. Personal & Social System Consulting
- E. Relocation Processing
- F. Service Broker (General)

As you have just read NAME has a categorical system, that because of technology, is a multi-faceted strategic consulting and networking group. That not only performs the services that were previously stated, but as a value-added computer system, has additionally developed a specialized educational program that can turn a personal skill or one's knowledge of business facilitation into an individual consulting firm or assessment workshop, if applicable. What we mean at NAME is this -- a Proposer's knowledge of business management or facilitation, no matter what it is, has the potential to immediately qualify him/her to become a Subcontractor within the NAME network, so as to facilitate a hands-on knowledge of how a particular interdepartmental skill or business function affects other skills or functions within the same business structure as well as its competitors, in addition to the normal duties of a subcontractor within the NAME network for its client base.

The strategic development system of NAME needs a massive multitude of cooperative subcontractors who wish to meet the following operational requirements for the services within its newly developed **autonomous** methods of consulting, and they are as follows:

1. The ability to use your computer equipment (Hardware, Software, Printer and Communications Modem) to learn how to change a particular "**do**" operation involving one of these processes: Writing, Typing, Reproducing, Coding, Calculating, Posting (BBS), Listing, Sorting, Matching, and of course Error Checking.
2. The ability to learn how to change a particular "**move**" operation involving the direction and distance that parts or papers travel: To the next desk, to a machine or workbench, further down the aisle to a place on an upper or lower floor, or to some office in another site, city or person.

3. And finally, the ability to learn how to change a particular “**hold**” operation:
The temporary holding of parts or papers, or the temporary or permanent filing or storage of parts or papers.

In combination to the system requirements mentioned in the above text, the following duties are set forth in our methods programs, and they are to:

1.
 - a) Analyze policies, procedures, practices, forms and records.
 - b) Prepare charts and analyses of workflow & performances, distribution of forms, maintenance of records, and specific action take on such forms and records.
 - c) Ascertain the essentiality of current activities.
 - d) Determine improvements necessary to simplify reduce clerical and administrative work and processing time.
2.
 - a) Prepare a manual on new or improved methods.
 - b) Assist with the installation of such methods.
 - c) Arrange for employee training in required techniques.
3.
 - a) Coordinate studies of methods conducted at branch offices.
 - b) Keep informed of the progress of each study.
 - c) Disseminate the results to all interested Head Office departments and Branch Offices.
4.
 - a) Develop job performance standards as a tool of management and for comparative purposes when evaluating methods.
5.
 - a) Maintain studies of office equipment.
 - b) Develop new applications for existing, improved, or new equipment.
 - c) Keep all offices informed as to these matters.
 - d) Establish standards and recommend the use of equipment that will raise efficiency and improve control.

Additionally, as a systems subcontractor your cooperative method duties will be systematically implemented into the following programs of action:

1. **Office Systems.** To conduct surveys of procedural and organizational relationships, in terms of the practicable extent of standardization, simplification, and production measurement. To coordinate with all other programs.
2. **Equipment Standards.** To conduct detailed studies test machines and equipment, and make recommendations for their application, proper utilization and economic operation. To establish basic requirements for the justification of a purchase and for budgetary control.
3. **Records Management.** To develop filing systems and management standards of records. To develop recommendations on the retention of records. To coordinate with all other programs.
4. **Administrative Evaluation.** To follow up on new methods of installations and review periodically for effectiveness. To refer and use the data or production measurement. To coordinate with all other programs.
5. **Coordination.** To establish a systematic means for correlating forms and related administrative procedures. To coordinate the publications of information on policies and procedures.
 - Forms.** To develop and maintain a system for the review and clearance of paperwork analysis and its standardization prior to its use.
 - Reports.** To develop and maintain a system for review and clearance to avoid duplication and overlap.
 - Publication.** To develop and maintain a system for the review, clearance, form, standardization and consistency of the contents of manuals, instructions, and publications related to policies, procedures, organizations, reports, and forms.
6. **Research and Training.** To establish and maintain relations with professional societies and other companies for the purposes of continuing intelligence on a subject assigned to the methods staff. To develop laboratory

methods to test and evaluate systems applications, and to develop a bibliographical file of the data on the subject. To assist in the preparation of training materials involved in the phases of methods work, and to conduct seminars in methods, problems and techniques. To coordinate with other programs.

As you may have noticed your methods duties as a Cooperative Strategic Processing Service (Information Broker) or Material Distributor will require the best of your systems operational skills, and that's why the General Contractor of **Nascent Applied Methods & Endeavors** is offering a number of programs for the financial and educational compensation of the services that are rendered through you as a Subcontractor for the network.

As a subcontractor of **Nascent Applied Methods & Endeavors**. Your duties may appear to be over-burdensome & time-consuming. But they're not, because NAME has an extensive step-by-step instructive program that will insure that you, the Subcontractor, will be guided as effectively & efficiently as possible in the appropriation and handling of any client that registers through your web-site or the NAME network as a whole.

FINAL COMMENTS

Needless to say, **Nascent Applied Methods & Endeavors** is an Employment Related Educational & Strategic Development Service that is primarily of a computerized nature, and also tax deductible for registered clients of the Network. Also, all individual clients will receive on an evaluated basis only, NAME's Systems Benefits which are **Free Elder or Child Care Facilitation, Free Medical Care Compensation, Scholarships, Free Computer Hardware & Software Systems**. These benefits also include assistance from our **Volunteers Program of Computerized Strategies**, upon the retention of the services from NAME. While, business clients will only receive a portion of the Systems Benefits. Furthermore, we will guarantee that as a Team Organizer you will be one of the first subcontractors to

receive a free college scholarship upon meeting the minimum recruiting requirements stated during the probationary period.

So, if you are interested in becoming a Cooperative Educational Facilitator or Materials Distributor for **Nascent Applied Methods & Endeavors**, please initialize your user options.

Sincerely,

William E. Fields
General Contractor of Network Operations

FINAL DRAFT



(ANMESCL² QUO VADIS)

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Nascent Applied Methods & Endeavors Legal Status in the Areas of Strategic, Educational and Systems Development

The following legal citations are presented to assure Subcontractors and Clients that NAME has a legal contracting status complimentary to the **Internal Revenue Service Code** and publication booklet number **#508** under **Educational Expenses**, which must be retrieved from your nearest **Internal Revenue Department** or your local or private **Certified Public Accountant (CPA)** for reference purposes. Here now are the legal and contracting definitions of **Nascent Applied Methods & Endeavors** which are quoted from the books: **#1. WORDS AND PHRASES** - Permanent Edition; “All Judicial Constructions and Definitions of Words and Phrases by the State and Federal Courts from the Earliest Times, Alphabetically Arranged and Indexed.” St. Paul, Minn., West Publishing Co., Copyright 1952-87; and **#2. LEGAL THESAURUS** - William C. Burton, copyright 1980, Macmillan Publishing Co., Inc. 866 Third Avenue, New York, NY 10022; Collier Macmillan Canada, Ltd.; from within the Los Angeles County Law Library located at 301 West 1st Street L. A., CA. 90012.

Quote: **Book #1 - WORDS AND PHRASES** states:

“...Words “educational, literary, scientific, religious or charitable purposes”, as used in property tax exemption statute are to be defined and understood in their broad constitutional sense. Indianapolis Elks Bldg. Corp. v. State Bd. of Tax Com’rs, 251 N.E. 2d 673, 679, 145 Ind.App. 522, 39 A.L.R.3d 624.”

“Educational” within statute exempting from taxation real property used for educational purposes and owned by corporation organized exclusively for educational purposes must be taken in its broad sense and term contemplates not only mental and moral but physical training and welfare. Faculty-

Student Ass'n of Harpur College v. Dawson, 292 N.Y.S.2d 216, 227, 57 Misc.2d 112.”

“...With exception of basement apartment of caretaker, corporate woman's club building in which club had meetings to learn about government, had meetings concerning Bible, played bridge to raise funds for hospital, screened magazines for propaganda and sent them to foreign countries, etc., and distributed materials for garments to go to community emergency shop was owned and used exclusively for “educational,” “religious” and “charitable” purposes within tax exemption statute. Id.

Aims and purposes of corporate woman's club which donated food and money to a community center, donated books and money to convalescent ward of general hospital, provided scholarships, contributed money to cancer society and children's zoo, and gave garments to community emergency shop and Indian families were “religious,” “educational,” and “charitable” within tax exemption statute. Id.

The term “educational” is generic and could include “recreational”, and even if constitution of County Council Boy Scouts of America had not included recreation as well as education in purposes of organization, it would have been empowered to provide recreational program, and fact that its constitution specifically stated that one of its purposes was administering recreational program was not fatal to its claim of immunity from suits in negligence brought by its beneficiaries, even though statute defined charity as nonprofit organization organized “exclusively” for religious, charitable, educational or hospital purposes. *Stoolman v. Camden County Council Boy Scouts of America*, 185 A.2d 436, 440, 77 N.J.Super. 129.”

“...Evidence that religious association sought to use land for conducting highly specialized seminars for a select group of students relating to the Ukrainian Catholic tradition and Ukrainian culture which were not taught elsewhere, that a small private library containing rare books and manuscripts would be maintained on the premises, and that faculty would be drawn from the faculties of local institutions of higher learning on a volunteer basis demonstrated that the proposed use of the property was for “educational” purposes within meaning of zoning ordinance. *St. Sophia Religious Ass'n. of Ukrainian Catholics, Inc. v Cheltenham Tp.*, 365 A.2d 1389, 1390, 27 Pa.Cmwlth. 237.

Corporation which was engaged in publishing and distributing the Holy Bible but which had no corporate affiliation with any denomination, sect or organization having as its avowed purpose the furthering of a recognized religion was not entitled to have property removed from city tax rolls on theory that its purposes were “religious,” nor was corporation entitled to exemption under

the category of “educational” purpose. *American Bible Society v. Lewisohn*, 351 N.E.2d 697, 700, 40 N.Y.2d 78, 386 N.Y.S.2d 49.

Foundation engaged in disseminating religious and philosophical writings and teachings of eighteenth century Swedish theologian, philosopher and scientist did not constitute “educational” activity within Real Estate Tax Law exemption by reason of foundations efforts to “educate” people as to the writings and views of the philosopher or by the foundation's real property was not exempt from taxation by city. *Swedenborg Foundation, Inc. v. Lewisohn*, 351 N.E.2d 702, 706, 40 N.Y.S.2d 87, 386 N.Y.S.2d 54.”

“...”Educational purposes,” as used in constitutional and statutory provisions exempting property so used from taxation, includes systematic instruction in any and all branches of learning from which a substantial public benefit is derived, and is not limited to such school properties as would relieve some substantial educational burden from the state. *McKee v. Evans*, Alaska, 490 P.2a 1226, 1230.

Education must be primary purpose or function of corporation for corporation to be organized and operated exclusively for “educational purposes” within Internal Revenue Code, so that gift by taxpayer to corporation is deductible in computing income tax liability, and such of corporation's activities as do not serve to further education must be so minor in comparison as to be termed incidental. *Id.*”

“...The term “educational purposes” as used in constitutional and statutory provisions exempting from taxation property used exclusively for “educational purposes” is not defined in terms of common scholastic institutions of grammar school, high school, and university or college, and organizations for social, intellectual, physical, or religious welfare of children are exempt equally. *Id.*”

“...School, which was set up by nonprofit corporation for instruction in art of photography and business of operating portrait, commercial and other types of studies and which offered courses of a type and quality which were not readily available in state or in other parts of country, thus relieving state, to a limited extent, of some of its tax burdens by providing such courses, was operated for an educational purpose” within statute exempting those buildings from real and personal property taxes that have been set apart for educational purposes. *State Bd. of Tax Com'rs v. Professional Photographers of America, Inc.*, 268 N.E.2d 617, 622, 148 Ind.App. 601.”

EDUCATION AND RELIGIOUS USE

“...Non-profit religious and educational institution's “use” of property for married students' dormitories would be an

“educational and religious use” of same , with in purview of zoning ordinance permitting such use of property in single family residence district, and a building which might be used as an apartment house or 'multiple dwelling”, within ordinance definition of quoted term as “a building designed for or occupied by three or more families living independently of each other”, would not be so used when in fact it was being used as a married students' dormitory. *Schueller v. Board of Adjustment of City of Dubuque*, 95 N.W.2d 731, 733, 250 Iowa 782.”

EDUCATIONAL INSTITUTION

“...School for continuing education of businessmen was “educational institution” within meaning of Real Property Tax Law exemption. *American Management Associations v. Assessor of Town of Madison*, 406 N.Y.S.2d 583 585 , 63 A. D.2d 1102.”

“...A nondegree-conferring institution does not presumptively fail to qualify as an “educational institution” for purpose of real property tax exemption; qualifying *Kalamazoo Nature Center, Inc. v. Cooper Twp.*, 104 Mich.App. 657, 305 N.W.2d 283; *Circle Pines Center v. Orangeville Twp.* 103 Mich.App. 593, 302 N.W.2d 917. *Association of Little Friends, Inc. v. City of Escanaba*, 360 N.W.2d 602, 604, 138 Mich.App. 302.”

In civil rights action brought by discharged employee against her employer, district court properly found that employer, corporation which maintained 23 school facilities with classrooms located throughout neighborhoods serviced by corporation and which employed some 80 persons as teachers, was an “educational institution” and that discharged employee's work with parents in development of corporation's programs was “connected with” activities of corporation within meaning of Title VII of Civil Rights Act of 1964. *Faulkner v. Federation of Preschool & Community Ed. Centers, Inc.*, C.A.Cal., 564 F.2d 327, 328.”

“...Even though school of design was an institution of specialized higher education it was an “educational institution” within statutes exempting such institutions from real and personal property taxation, where if offered program similar to those offered at state colleges and universities and it was clear that burden imposed on art and design departments of state-supported increased if it were not for existence of the institution. *David Walcott Kendall Memorial school v. City of Grand Rapids*, 160 N.W.2d 778, 784, 11 Mich.App. 231.”

“...Charitable school established under testamentary trust for training, education, and maintenance of poor white male orphans was a “school” and an “educational institution” within

Pennsylvania Public Accommodations Act prohibiting racial discrimination. *Com. of Pa., v. Brown*, D.C.Pa., 260 F.Supp. 358, 364.”

EDUCATIONAL TRAINING

“...”Educational Training” is not confined to colleges, universities, or even the public schools, but consists, in the broadest sense, of acquiring information or inspirational suggestions which cause the individual to think and act along proper lines. *Jones v. Better Business Bureau of Oklahoma City*, C.C.A.Okl., 123 F.2d 767, 769.”

EDUCATION AND EDUCATIONAL USES

“Educational” is defined as the process of developing and training the powers and capabilities of human beings, as the preparing and fitting for calling or business, or for activity and usefulness in life, and may be particularly directed to either mental, moral, or physical powers and facilities, but in its broadest and best sense relates to them all. “Educational uses” include payment of additions to teachers' salaries, maintenance of manual or industrial training, provision for equipment, furnishing of lectures, and educational moving pictures, giving of prizes for proficiency, payment of transportation of pupils, and granting of scholarships. *Lyme High School Ass'n v. Alling*, 154 A. 439, 442, 113 Conn. 200.”

“...”Education” is the bringing up, physically and mentally, of a child, or the preparation of a person, by some due course of training, for a professional or business life or calling. *State ex rel. Henderson v. Lesueur*, 13 S.W.237, 238, 99 Mo.552, 7 L.R.A. 734.”

“...”Education” expenses provided for in a will mean more than acquisition of knowledge out of text-books, and included inculcation of precepts of respectable economy and just regard for rights and interests of others. *Simpson v. Watkins*, 139 So. 400, 402, 162 Miss.242.”

“...”Education” is a broad term and includes all knowledge if taken in its full and not in its legal or popular sense. Whatever is learned by observation, by conversation, or by other means, away from what has been implanted by nature, is “education.” In fact, everything not known intuitively and instinctively is “education.” *State v. Rowan*, 106 S.W.2d 861, 864, 171 Tenn. 612.”

“...”Education” is a broad term, and includes all knowledge.

If we take it in its full and not in its legal or popular sense, whatever we learn by observation, by conversation, or by other means away from what has been implanted by nature, is 'education.' In fact, everything not known intuitively and instinctively is .education.” Cook v. State, 16 S.W. 471, 472, 90 Tenn. (6 Pickle) 407, 13 L.R.A. 183.”

“Education” is defined as the process of developing and training the powers and capabilities of human beings, as the preparing and fitting for calling or business, or for activity and usefulness in life , and may be particularly directed to either mental, moral, or physical powers and facilities, but in its broadest and best sense relates to them all. “Educational uses” include payment of additions to teachers' salaries, maintenance of manual or industrial training, provision for equipment, furnishing of lectures, and educational moving pictures, giving of prizes for proficiency, payment of transportation of pupils, and the granting of scholarships. Lyme High School Ass'n v. Alling, 154 A. 439, 442, 113 Conn. 200.”

“...And, where an institution is incorporated for the education of boys, its trustees did not exceed their authority when they established an institution providing a place where young men whose early education had been neglected could be instructed, their physical welfare cared for, and a practical knowledge of work, especially agriculture, given them daily. Mount Herman Boys' School v. Town of Gill, 13 N.E. 354, 357, 145 Mass. 139, 146.”

“Education,” as understood to-day, connotes all those processes cultivated by a given society as means for the realization in the individual of the ideals of the community as a whole. It has for its aim the development of the powers of man (1) by exercising each along its particular line, (2) by properly coordinating and subordinating them, (3) by taking advantage of the law of habit, and (4) by appealing to human interest and enthusiasm. It includes not only the narrow conception of instruction, to which it was formerly limited, but embraces all forms of human experience, owing to the recognition of the fact that every stimulus with its corresponding reaction has a definite effect on character. It may be either mainly esthetic, ethical, intellectual, physical, or technical, but to be most satisfactory it must involve and develop all these sides of human capacity. Weyl v. Commissioner of Internal Revenue, C.C.A, 48 F.2d 811, 812.”

“Education” is a broad and comprehensive term with a variable and indefinite meaning , and in its broadest significance comprehends the acquisition of all knowledge tending to develop and train the individual, and, when used in this sense, is not limited to the years of adolescence or to instruction in schools, but is commonly associated with youth and the instruction received from their teachers, and is the general and formal word

for schooling, especially in an institution of learning. Where will provided that upon termination of widow's life estate \$4,000 should vest in testator's daughter in trust for grandsons, aged 2 and 4 when will was executed, principal and income to be used to assist in "education" of grandsons, and widow, 61 when will was executed, lived until grandsons were 27 and 29 and had received their schooling and established themselves in their employment, trust fund could not be used to improve present education of grandsons or for their adult education. *New Britain Trust Co. v. Stoddard*, 179 A.642, 643, 120 Conn.123."

The discipline of formal study and instruction is a part of "education," but so also are all the experiences of life, the aspects of nature, the humdrum and the unexpected happenings of a social existence among one's fellows. "Education" is the process of developing and training the powers and capabilities of human beings. To "educate" is to prepare and fit for any calling or business, or for activity and usefulness in life. "Education" may be particularly directed to either the mental, moral, or physical powers and faculties, but in its broadest and best sense relates to them all. Where one can distinguish the true from the false where a plausible argument may be made as well as for the wrong as for the right, he is endowed with the "illative sense," which must be present to some degree if an "education" has begun to come within sight of its completion. Under will creating trust of income from book rights and royalties to be invested and reinvested, with application of income or so much of principal as was necessary for proper "education" of testator's brother, trust was intended to continue during life of brother. In *re Wolfe's Estate*, 299 N. Y. S.99 , 102 , 164 , Misc . 504."

"...In a general sense, "education" is development of whole nature of man, physical, intellectual and moral, through interaction with every phase of his environment, but in a narrower sense it means development of the powers of capabilities of mind through special processes of training. In *re Everson's Will*, 52 N.Y.S.2d 365, 401, 265 App.Div. 425.

"Education" connotes all those processes cultivated by a given society as a means for realization in the individual of the ideals of the community as a whole and includes not only the narrow conception of instruction, to which it was formerly limited, but embraces all forms of human experience, owing to the recognition of the fact that every stimulus with its corresponding reaction has a definite effect upon character and may be either mainly esthetic, ethical, intellectually physical, or technical, but to be most satisfactory it must involve and develop all these sides of human capacity. *Langbein v. Board of Zoning Appeals of Town of Millford*, 67 A.2d 5, 8, 135 Conn. 575.

"Education" means the totality of the information and qualities acquired through instruction and training which further the development of an individual physically, mentally, and morally. The word "education" taken in its full sense is a broad, comprehensive term and may be particularly directed to either

mental, moral, or physical faculties, but in its broadest and best sense it embraces them all, and includes not merely the instructions received at school, college, or university, but the whole course of training -moral, intellectual, and physical. Jones v. Better Business Bureau of Oklahoma City, C.C.A.Okl., 123 F.2d 767, 769.

“Education,” in its broadest and best sense, embraces training of moral and physical, as well as mental, powers or faculties. McNair v. School Dist. No. I of Cascade County, 288 P. 188, 190, Mont.423, 69 A.L.R. 866.

“Education,” as used in relation to the law of charitable trusts, includes not only the training and development of the mind, but the training and development of the body. Gibson v. Frye Institute, 106 S.W.1059, 1062, 137 Tenn. 4b2. L.M.A.”

“...“Education” of a child means much more than merely communicating to it the contents of a book. The physical and mental powers of the individual are so interdependent that no system of education would be complete which ignored bodily health. State ex rel. Stoltenberg v. Brown, 128 N.W. 294, 295, 112 Minn.370.

The word “education,” in the statement of a father's duty toward a child to the effect that it is his duty to provide for the child's education, means not merely instruction in the pursuits of literature, but comprehends a proper attention to the moral and religious sentiments of the child. Commonwealth v. Armstrong, 1 Pa.Law J. 392-394.

“Education” is not confined to improvement and cultivation of mind, but may consist of cultivation of one's religious or moral sentiments, and likewise may consist in development of one's physical faculties. Commissioners of District of Columbia v. Shannon & Luchs Const. Co., 17 F.2d 219, 220, 57 App.D.C. 67.”

“...The purchase of athletic equipment by county board of education for use of pupils of county was not, ipso facto, an abuse of discretion warranting removal of members of board from office, since “education” is a broad term, embracing the development of both mind and body. Code 1931, 6-6-1 et seq. Wysong v. Walden, W.Va., 196 S.E. 573, 578. Helpers.”

“...“Education” contemplates not only mental and moral, but also physical training and welfare. Property which was employed exclusively for physical “education” in attainment of moral and mental improvement of members of corporation which had been organized for moral and mental improvement of its members held exempt from taxation. Buffalo Turn Verein v. Reuling, 281 N.Y.S.545, 155 Misc. 797.”

“...Recreational training” Term “education,” embraces recreational training. Dodge v. Jefferson County Board of Education, 181 S.W.2d 406, 408, 298 Ky.1.”

Quote: **Book #2 - LEGAL THESAURUS** states:

“... **Educate, verb**

brief, bring up, civilize, coach, cultivate, direct, discipline, drill, edify, educare, enlighten, erudire, explain, familiarize, give lessons, guide, implant, inculcate, indoctrinate, form, initiate, instituere, instruct, interpret, nurture, preach, prepare, prime, rear, school, show, teach, tutor, wipe out illiteracy.”

“...**Education, noun**

accomplishments, acquirements, acquisition of knowledge, body of knowledge, coaching, cultivation, culture, direction, edification, elucidation, enlightenment, erudition, explanation, general information, guidance, imparting of skill, improvement of the mind, inculcation, indoctrination, instruction, intellectuality, knowledge, learning, letters, literacy, pedagogy, preparation, propaedeutics, qualification, scholarship, schooling, science of teaching, store of knowledge, studies, system of knowledge, systematic training, teaching, training, tuition, tutelage, tutoring, upbringing.”



(ANMESCL² QUO VADIS)

ALPHA NUMEROUS MAXIMUS
EGREGION SUMMA CUM LAUDE

NASCENT APPLIED METHODS & ENDEAVORS
STATEMENTS REGARDING THE OPERATIONAL, STRATEGIC and EDUCATIONAL
PREREQUISITES of AUTONOMOUS SYSTEMS PROTOTYPES

The following statements are concerned with NAME's operational, strategic & educational requirements in the areas of economic, autonomous & theoretical replicative structures. Since NAME's strategic and educational format is based solely & conceptually on the philosophical means of economic and social intercourse. All applicants (Employees or Proposers) must contain the necessary skill items needed to write opinions or have the knowledge and/or experience, or contain the desire to investigate all acts concerned with the reflective conceptions of civil commerce in order to fully qualify for NAME's Service Benefits & Contracts. These contractual prerequisite will be established in compliance with City, State & Federal Law, which are as follows:

1. The Federal Regulations:

- A. Congressional Regulations under the Constitution and Bill of Rights of the United States.
- B. NAME's Contractual Rights and Procedural Regulations under U.S. Law.

2. The State Regulations:

- A. Associations Rights and Regulations under California Statutory Laws.
- B. Seller Assisted Marketing Plans under the California State Statute.

3. Trade Regulations:

- A. Channels of Trade in the State of California and under U.S. Laws.
- B. Commercial Definitions and Regulations in the State of California.



(ANMESCL² QUO VADIS)

ALPHA NUMEROUS MAXIMUS
EGREGION SUMMA CUM LAUDE

NASCENT APPLIED METHODS & ENDEAVORS
STATEMENTS REGARDING THE LEGAL & TEXT-BOOKS USED BY THIS NETWORK'S
SUBCONTRACTORS, EMPLOYEES AND CLIENTS

These statements are in regards to one or any of the legal or text-books used by **NAME** as a conceptual or procedural model. **NAME** will be applying some of these assets for the purposes of conducting and implementing its business services. Additionally, since **NAME** is an information-based business entity, it shall adopt some of these concepts & procedures as business related processes. Writers or publishers of these materials should pay special attention to the fact that **NAME**, nor any of its **Contractors**, **Subcontractors**, or **Employees** has no intention of violating or infringing upon any writer's or publisher's copyrights. But that **NAME** is simply employing these articles for the purposes of effectively performing its duties toward its client base, thereby promoting the purchase or sale of these materials, by making them a required acquisition for use by its **Contractors**, **Subcontractors**, or **Employees**. Writers or publishers should also understand that **NAME** shall adhere to all or any applicable laws of a regulatory & binding nature concerning the areas of **Copyrights**, **Patents**, **Products of the Mind**, etc. Furthermore, **NAME** has established these **Statutory** or **Constitutional** laws as its **Legal Knowledge-Base**, upon which these terms shall be used & incorporated into each and every subcontractor's contract that decides to become a part of this strategic educational network.



(ANMESCL² QUO VADIS)

ALPHA NUMEROUS MAXIMUS
EGREGION SUMMA CUM LAUDE

DISTRIBUTED COMPUTING (The Seller Assisted Marketing Plan)

The term distributed computing has become a crucible for network architectures ranging from rudimentary distributed databases to sophisticated cooperative processing. This is computing: a new-age, new-wave enterprisewide network, supporting intelligent applications that are interlaced like family histories in a small town-applications that will cooperate with each other, communicate with each other, support each other. Data and processing tasks will be distributed to multiple processors, made by multiple vendors, supporting multiple standards. And all of this will appear to be local, and it will be easy to the end user as well as lighting fast. But distributed computing is also the work done by a couple of workstations plugged into an old mainframe. It is LANs hitched to WANs, peers to peers and clients to servers.

Plato defined man as a "two-legged animal without feathers," a description that Diogenes proved woefully inadequate by plucking a cock and presenting it at the Academy as a form of "Plato's man." As a tag, distributed computing isn't quite so broad: CIOs have recast the term to exclude featherless fowl, stand-alone LANs and intelligent terminals struck dumb by mainframe emulation programs-what is referred to as "reducing two machines to their lowest common denominator." But discussions about distributed computing often lose their way in the particulars and variations. What some call cooperative processing (that starry-eyed future of distributed hardware, communications and applications), others refer to as coherent computing, or integrated network computing. A few CIOs consider distributed computing a synonym for client/server architectures; for others, it refers to peer-to-peer architectures.

The confusion arises from the nature of technology itself. Distributed computing environments are characterized by a lattice of multiple platforms (different size boxes, often bearing the imprint of different vendors) sharing data, applications and processing burdens across organizational functions. In other words, distributed computing strategies are pluralists, **interdisciplinary** and geographically dispersed-a melting pot of solutions.

One handy way to sort out the shades of distributed computing is to view them as neighborhoods in a rapidly changing city. Downtown, mainframes, minicomputers and workstations talk to each other frequently but live lives apart. Distributed computing in this neighborhood is rudimentary and is often used as a strategy intended to solve a single problem. In this neighborhood distributed computing may also involve communication between stand-alone networks and a corporate or departmental machine, such as call-up access to structured information in a mainframe or mini.

Distributed databases are also downtown **modus vivendi**. With distributed databases you will probably have a new application [on your intelligent workstation], but you may very well be accessing old data [on the mainframe]. It should be noted that there are four classic problems encountered when developing distributed databases. The first

is location, where is the data and how do you find it? How do you join tables on two different nodes? The second is partitioning, where you have one type of data one place and another type in another place.

The third issue is replication, for performance reasons, you may wish to have copies of certain data at certain locations. But if a user makes a change on some piece of the data, how soon and in what fashion is that change communicated to other nodes? And that gives rise to the fourth problem: data integrity. Integrity can be a complex issue when data partitioned on different nodes is updated at irregular intervals-or when one node's updates are lost.

But complex distributed database problems are tackled more earnestly a few blocks farther north.

The midtown neighborhood is faster, jazzier, looser-and distributed computing strategies are more sophisticated. The buzz phrases here are "client/server" and "peer-to-peer." There's a distinction between midtown's buzz phrases this way: A client/ server architecture divides an application into separate processes operating on separate CPUs connected over a network. Client/server computing is inherently one-way, unlike peer-to-peer communications in which both processors can send instructions to one another.

A similar description of client/server as a model of communication within a distributed environment, is basically defined as a request/response means of communicating between two processes. Basically, that could occur even within a single workstation-as in a client/server window application but it gets interesting when you distribute those processes across a network.

There are a variety of client/server strategies, whether you're just distributing the interface or whether you're distributing some of the application processing along the lines of the remote procedures call [RPC] mechanism, or whether you're distributing data. The way people intend to use [client/server] initially is for front-end data access.

Clients and servers can communicate in either a synchronous or asynchronous manner. When a client machine fires off a synchronous message, it then sits and waits for a response from the server. (RPC, a communications software technology that facilitates the extension of conventional procedures calls across a network, is synchronous communication). In asynchronous communication the client still expects a response, but it doesn't pause and wait for it-it keeps busy. Most networks will need both methodologies, addressed to different networking needs. File retrieval can be synchronous, but if you are doing real-time process monitoring in a manufacturing operation, you probably don't want a distributed computing solution that uses a remote procedure call. An asynchronous solution would be better.

Datapro notes that client/server architectures allow corporations to downsize applications from mainframes to less expensive processors. Because the client machines handle more users, and more users can access data concurrently without significantly degrading performance. On the other hand, start-up client/server costs can be high for companies that must incorporate new PCs into environments dominated by time-sharing systems and cheap, dumb terminals. Client/ server computing can also tax a corporation's network performance, Datapro noted, because clients and servers swap large quantities of data, interactively, file by file. Client/server architectures need much greater bandwidth than old-fashioned timesharing systems.

Finally, Datapro agrees that most client/server development is unfolding inside the large corporations that plan to use it-off-the-shelf distributed applications **aren't yet available**. "The people who will make (distributed computing) go are the people who are writing the applications in-house." Vendors such as IBM, Digital Equipment Corp., NCR and Hewlett-Packard are positioning themselves to deliver distributed solutions, and both the Open Software Foundation's Distributed Computer Environment and Sun Microsystems's Open Network Computing environment are intended to be distributed software architectures. As customer choose vendors for the hardware, software and communications wares to use in a distributed computer infrastructure, one of the criteria will have to be, "how much can I depend upon them for service and support?"

Many industry watchers state that the future of distributed computing is cooperative computing or processing. This is uptown computing: brash, forward-looking and distributed to the max. Cooperative processing will comprise enterprise-wide, heterogeneous networks; distributed databases and applications; distributed processing; common interfaces across the network; and distributed (and very complex) network management. "Cooperative processing allows the unit of business work to be created on any processor in the network." In this scenario, a mainframe is just another node on the network, not the data centerpiece, and at varying times clients may also be servers, or servers clients. In this way the applications and data can go where they are needed, throughout the network.

Cooperative applications will be designed to take advantage of a number of locations. A portion of such an application might run on the mainframe, another portion on a departmental system or a server, and a third portion on a PC.

The development of cooperative processing applications requires new skills. It is believed that in cooperative processing environments users will interact with the network through objects, similar to the way Macintosh users today call up a word processing program or a file by invoking onscreen objects.

For instance, a user might gain access to a facilities management application, and within that program another object may be linked to a graphic image or full-motion video. But such object-oriented systems will require design skills vastly different from those used to cobble together LAN client/server applications. It's a different art, when you go from client/ server to cooperative processing, [development of applications] is conceptually much more difficult. You're trying to design object-oriented applications like Lego blocks. So the more we go in this cooperative processing direction, we are upgrading the intellectual skills needed for design.

The other [problem] is that the sharp edge in development has been around the LAN and the workstation. Cooperative processing shifts the emphasis back to the powerful relational database management systems. Because the weakest area of all is that we are still very primitive yet on a true distributed relational database. It has been stated that network management of heterogeneous, multi-standard-based systems and security could prove to be the most complex hurdles companies will face as they move toward cooperative processing.

On the other hand, new communications technologies, such as frame relay, can only help to push the development of cooperative processing systems. The barrier to [cooperative processing] will not be the communication systems, the bandwidth we need will get to the desktop when there is an applications need for it. There will be nothing preventing us from doing this by bandwidth or by processor speed or by memory cost.

SHARING THE WEALTH

Distributed computing enables organizations to link all of their information resources and the people who use them. But getting there is no simple task. Sir Isaac Newton was an ill-tempered, jealous man who lacked the good sense to get out from under a falling apple. But to the Western world at the dawn of the scientific era, he was the shining symbol of Reason Triumphant, proof that mankind possessed the ability to find order in a previously unfathomable universe.

IS professionals- in fact, any executive in fair-sized computer-dependent company or organization-could use a Newton to show the way. Today we are leaving behind the age of centralized, mainframe computing and entering an age of distributed computing where intelligence can reside in many points in the network. Many companies are taking this path: About 76 percent of IS executives at 110 companies we surveyed said they have implemented distributed computing or are planning to do so soon.

Most of these CIOs aren't having an easy time. The laws of this new era still lay hid in night. Old technologies, old computing standards and rules, and old work habits are passing on, but it is not clear what new technologies, standards and methods will replace them and which old ones will survive. The phrase "distributed computing" itself is not so much a buzzword as a lint ball: an amorphous collection of fuzzily defined terms, concepts and computing architectures, including PC-to-host, peer-to-peer, client/server, cooperative processing, coherent computing and integrated network computing.

LAW AND DISORDER

The irony of distributed computing is that bringing power to the people also means bringing new problems of command, control and burden-sharing to CIOs. Distributed computing has brought change to its adopter's management infrastructures and styles just as surely as it has to their technical architectures. CIOs have learned that rigid hierarchies and linear organizational relationships don't hold up under flexible distributed technologies. They have also learned that politics and persuasion are more effective than authoritarian compulsion, and that providing guidance to empowered users is more time- and resource-consuming than imposing rigid solutions on submissive employees.

The organizational difficulties in making the transition can start early, especially when an essential distributed computing resource like telecommunications is controlled outside the IS group. Such control may be vital to the success of a distributed computing effort, adequate managerial purview cannot be commanded or foreordained; it has to be fought over with peers.

Basic organizational control is only one departmental turf issue encountered by CIOs moving from centralized to distributed computing management. As the new technological approach becomes more deeply entrenched in basic business practices, it spawns new struggles over the limits of IS- and user-controlled dominions. In response, CIOs have created new middle management structures or significantly altered their existing schemata to manage power sharing with users while at the same time maintaining data and applications integrity.

To enforce mandates or rules for interdepartmental IS harmony and to assure coordination among dispersed users and IS developers, the creation of new management units in a central IS department is crucial. This data administration group ensures that database and file structures remain consistent and that each database is up-to-date and accessible to all users. Also crucial to a IS department, is the assembly of a quality assurance group to review software before it is installed on the network and confirm that applications are kept current in all installations. These efforts are costly to undertake and tedious to implement because of the technical issues involved and the complex organizational structures that need to be created.

While the process of adapting to distributed computing has pressed CIOs to change the scale and scope of their IS infrastructures, it has also driven them to redefine IS's existing organizational relationships with users. Typical arrangements now include joint IS-end user decision-making on major questions and shared responsibility for routine matters. One result is that neither IS nor users have clear jurisdiction over distributed resources, and important issues sometimes slip between the cracks. Another is that many IS organizational boundaries are in what seems like permanent flux.

The shift to distributed computing dissolves once-clear organizational relationships and often leaves no obvious alternative. Security and integrity are regulated by corporate policy, while local matters are settled by the LAN or WAN managers and their users with little or no central IS governance. Joint decision-making and shared systems governance seem to be successful management strategies for making many judgments in distributed computing environments. But countless smaller issues also plague the IS-end user relationship, and for those CIOs have found that they cannot dictate every detail, only shape and guide the choices.

Software control raises similar issues, and many organizations have adopted the same tactic: using corporate standards to shape choice and preserve some user options. But even the bestrewn software standards and policies cannot force users to be rigorous, operations managers and supply forecasters rely heavily on Lotus programs for organizing and communicating their supply-and-demand data. With hundreds of individuals separated by thousands of miles, not everyone is working with the same version of the Lotus release. As a result, users find themselves with files that they or their electronic correspondents cannot read.

Empowering the users of new distributed systems often means teaching them how to use their new IS powers effectively. In many companies there is no one outside IS with the facility to manage such technical training for users; in some, CIOs have accepted the burden, not only by providing services, but by altering IS job descriptions and retraining IS staff to change the skills mix of the department.

The broad organizational changes that accompany distributed computing systems have reshaped some perennial corporate financial struggles by creating new opportunities to save money and new requirements to spend it. Senior managers and end users often favor distributed solutions because they appear on the surface to be less costly, but the eventual savings are often smaller than was first believed. Smaller computers are far cheaper than large ones when compared only on the basis of their cost per unit of raw processing power or data storage space. The loss-leader ads in daily newspapers for stripped-down hobbyists' PCs make knowledgeable executives think the price gap is even larger. To overcome such misperceptions, CIOs point out that distributed computing requires substantial outlays for networking, telecommunications, peripheral equipment, dispersed maintenance, LAN management, applications management and training. The true benefit of the architecture is in the new powers it unleashes. When you take into account all of the new functions that make users more productive, it becomes less expensive than mainframe computing.

In some organizations, users now own and pay for their desktop computers and local peripherals outright. As a result, those systems are no longer tallied as a part of the corporate information outlay. Some CIOs worry that this will conceal from senior management the impact of information systems on company operations. Others acquiesce because their companies are committed to giving profit center managers direct control over local costs, even though that cloaks the true scale of corporatewide expenditures on IT (Information Technologies). Those who think about it are uncomfortable because [senior executives] probably don't really comprehend how much [cost] is outside the IT budget. It might not be known about any good way to solve the problem, because every set of conditions, every set of personalities, are different.

The story of the organizational transition to distributed computing is dominated by tales of technologists adapting to institutionalized uncertainty and ambiguity. Managing uncertainty and ambiguity has always been the job of top executives; it distinguishes the upper levels of the corporate hierarchy from those where the responsibilities are more firmly defined. That line is now being crossed more often by CIOs as their information organizations shift to distributed architectures. Facing that transition may have seemed daunting at first for information executives, but now some find it stimulating. As a result, some corporate executives roles are being transformed from day-to-day managing to strategic thinking.

THE SHAPE OF THINGS TO COME (Building to Specs)

When designing a distributed computing structure, savvy CIOs know its folly to try to pound a square peg into a round hole. As businesses have matured in their IT use, corporate information systems have increasingly been modeled after the corporations themselves, reflecting organizational and business needs rather than the latest innovation. Businesses that have decentralized for competitive and cost reasons have invested in telecommunications and moved computing power outward to business units, while organizations with less complex or less time-sensitive operations have remained informationally centralized. In short, a computing system can only be as distributed as the company it serves. The fastest exodus from central to distributed systems has taken place among companies with structures that require analysis and decision-making at remote locations and the sharing of that analysis with a central location. The systems are often designed to address the competitive and quality problems that arise from delays and off-site decision-making. For example, a firm in Boise, Idaho, has been supporting remote decision-making since long before the introduction of PC-based distributed computing. In the 1970s, the company put minicomputers and even mainframes at construction sites to allow administrators, project managers and engineers to analyze financial, project management and engineering information across a broad range of computing platforms. Today, while the sites still sometimes use minis (large systems can be cost-effective when a project lasts several years), powerful PCs, LANs and multi-user systems are the norm.

In addition to giving on-site engineers access to plans, a distributed systems allows four major engineering offices and several smaller satellite offices to share design information during development. CAD [computer-aided design] used to be a big drag on the host computers, but a wide are network of powerful CAD workstations linked to a CAD server at each office has given engineers the power and fast communications they need to work effectively.

For some companies, the speed and accuracy with which remote sites manipulate a lot of information is critical to optimum performance. Said the head of MIS for one Northeastern retailer that linked LANs in stores to the corporate mainframe: "We have a large group of people [at stores] who need to look at, message extract and do projections of our merchandising needs based upon the transactions that are happening on a day-to-day basis. We're constantly looking to determine how [sales] will affect our gross margins. To try to do this in a strict mainframe environment is, at the very best, exceedingly difficult."

Speed and responsiveness are equally important. Crew scheduling is based on a complex mathematical modeling process involving work schedules, shift lengths and such real time information as delays and cancellations. The performance of this modeling process is limited on the mainframe, because it must compete with other applications. The solution is to install powerful networks that will handle the modeling applications and share the information with a central scheduling database system (i.e., NAME's EWA and ALP format and services).

The key lies in being able to handle large amounts of information where the work is being done. Advanced data collection via bar coding in a distributed environment has improved efforts by getting managers out of paperwork and into managing. Managers scan bar codes on reports and forms as they record their working conditions and work hours. Therefore, they obtain better information about the time it takes to do a specific type of task. They schedule better in other words. Bar coding also allows a manager track the use of procedures more efficiently and to effectively manage.

A distributed environment will also help a company to better track and manage inventories and production levels. While other CIOs agree technology limitations have often held them back, regardless of a corporate commitment to distributed computing. But they add that a mature technology will not sit well on a shortsighted technology plan of action.

CONCLUSION

It is generally believed that the business world as a whole, will eventually embrace distributed computing, but not until the software and development tools are good enough and available enough to make the transition as cost-effective as possible (i.e., NAME's EWA and ALP format and services).



(ANMESCL² QUO VADIS)

ALPHA NUMEROUS MAXIMUS
EGREGION SUMMA CUM LAUDE

**The Data Collection Sheet
for
Strategic, Educational and Systems Development**

NAME OF APPLICANT _____

CANDIDATE FOR _____
Service Title

PART 1. WORK HISTORY

1. Please describe in detail the kind of work you do.

2. How did you obtain the job?

3. What salary increases or promotions did you receive?

(Were these based on good work? Did you advance more quickly than others?)

4. (a) May we contact your former employers for references?

(b) Has a former employer ever refused to give you a recommendation?

5. What experiences have you had in handling people? In supervising others?

6. What part have you taken in your clubs or organizations?

7. What kind of books do you enjoy reading?

8. Which newspapers and magazines do you read regularly?

9. What do you usually do evenings at home?

10. What do you believe are your strongest qualities?

11. What are your weak points? In what areas are improvement needed?

12. (a) Why do you want to contract with our services?

(b) What do you know about our Company?

(c) Why do you want this service?

PART 2. COMPUTER INFORMATION

1. Name _____
2. Title _____
3. Organization _____
4. Address _____
5. City _____ 6. State _____
7. Zip Code _____ 8. Telephone _____
9. Number of employees at your location _____
10. What is your organization's specific or usual product or service at this location?

11. Your primary job functions or responsibilities (insert up to 3 letters corresponding to the choices on the facing page)

12. Do you have ready access to a computer?

Yes, at the office Yes, at home No

13. Do any of the computers to which you have access come equipped with a modem?

Yes No

14. Please indicate which (if any) database or electronic mail service you currently use (insert appropriate letters corresponding with the list of choices on the facing page); None

15. My primary interest in Nascent Applied Methods & Endeavors?

Business/Professional Personal

Both Personal and Business

16. How much money on average do you now spend accessing database and electronic mail services?

Nothing

Less than \$25 a month

\$26-\$50 a month

\$51-\$100 a month

\$101-\$150 a month

Over \$150 a month Not sure

17. How did you hear about Nascent Applied Methods & Endeavors?

Club or Association E-mail Internet

Came packaged with hardware or software

Computer store, etc. (name and address): _____

To the Client or Subcontractor:

The Civil Rights Act of 1964 prohibits discrimination in rendering this because of race, color, religion, sexual gender or national origin. Federal law also prohibits discrimination on the basis of age, with respect to certain individuals. The laws of most States also prohibit some or all of the above types of discrimination based upon ancestry, marital status or physical or mental handicap or disability.

Are you over the age of eighteen? ____ If no, admission is subject to verification that you are of minimum legal age.

How do you wish to be addressed? Mr. ____ Mrs. ____ Miss ____ Ms. ____

Sex: Male ____ Female ____ Height: ____ ft. in. ____ Weight: ____ lbs.

Marital Status: Single ____ Engaged ____ Married ____
Separated ____ Divorced ____ Widowed ____

Date of Marriage _____

Number of dependents including yourself ____

Are you a citizen of the USA? ____

What is your present Selective Service Classification? ____

Have you ever been bonded? ____ If yes, on what jobs? _____

Have you ever been convicted of a crime, excluding misdemeanors and summary of offenses, in the past ten years which has not been annulled or expunged or sealed by a court? ____ Yes ____ No If yes, describe in full. _____

Do you have any physical condition which may limit your ability to perform the particular service for which you are applying?

____ Yes ____ No

If yes, describe such condition and explain how you can perform the service for which you are applying in spite of it.

Do you have any physical defects which preclude you from performing certain kinds of services?

Yes No

If yes, describe such defects and specific work limitations.

What illnesses, accidents or operations have you had during the past ten years?

Have you ever received compensation for injuries?

Yes No

If yes, describe:

Do you have any debts other than those for current living expenses?

Yes No

If yes, explain:

Have you maintained a systemic savings program?

____ Yes ____ No

Do you have any other sources of income in addition to salary, e.g., earnings by your spouse, real estate, business interests, dividends on securities? If yes, explain:

Do you own your own home? If yes, describe:

Do you own a car(s)? If yes, describe:

FINAL DRAFT

PLEASE READ AND SIGN BELOW

The facts set forth in my application for contracting or services are true and complete. I understand that if admitted, false statements on this application shall be considered sufficient cause for rejection. You are hereby authorized to make any investigation of my personal history and financial and credit record through any investigative or credit agencies or bureaus of your choice.

In making this application for information services, I authorize you to make an investigative consumer report whereby information is obtained through personal interviews with my neighbors, friends, or others with whom I am acquainted. This inquiry, if made, may include information as to my character, general reputation, personal characteristics and mode of living. I understand that I have the right to make a written request within a reasonable period of time to receive additional, detailed information about the nature and scope of any such investigative report that is made.

Signature of Applicant

FINAL DRAFT



(ANMESCL² QUO VADIS)

ALPHA NUMEROUS MAXIMUS
EGREGION SUMMA CUM LAUDE

Agreement Relating to the Copyrights, Inventions and Confidentiality of NAME or Customer Information

In consideration of my or our Contract Agreement with NAME or any of its subsystems, subsidiaries, contractors and/or subcontractors, I or we agree to the following:

I. Copyright Agreement.

A. I or we agree that NAME shall be the copyright holder in all copyright works of any kind or description created or developed by me or us solely or in connection with others during the performance of my or our duties during my or our association with NAME.

B. I or we also agree, if requested, to execute any written acknowledgments or assignments of copyright ownership of any works covered by this agreement as may be necessary for NAME to preserve its worldwide proprietorship of the copyright, if applicable.

II. Assignment of Inventions.

A. I or we agree to disclose in writing and to assign on behalf of myself or ourselves or my or our heirs, executors, or administrators to NAME or its system and/or non-system successors any inventions, processes, diagrams, methods, or any improvements whatsoever that I or we may have discovered, conceived, or developed, either individually or in collaboration with others, during the course of my or our association with NAME and for a period thereafter, or with the use of NAME's time, data, facilities, or materials. This assignment includes any inventions of procedural processes that are based entirely or in part on ideas conceived through me or us during my or our association with NAME, provided the subject matter is within the system's field of interest. I or we agree to this assignment irrespective of whether the idea for the inventions, processes, or method(s) occurred to me or us at work,

at home, or anywhere else. I or we also agree that such inventions are NAME's exclusive property, regardless of whether NAME files a patent application on the inventions.

B. A subject matter within a field of interest to NAME would include any field of interest that has been worked on by NAME in the past, or in which there is work in progress at NAME during my or our association. Such field of interest also includes NAME's operation in the areas of research and development or the planning stages. I or we understand that this assignment of inventions or procedural processes does not cover any of my or our patents or patent applications that are filed or based exclusively on inventions or procedural processes made by me or us before my or our association with NAME, or to other matters that are partially not within NAME's field of interest and which are exclusively my or our own interests.

C. I or we agree to assist NAME at any time after my or our association is terminated in the preparation and completion of any disclosures, patent applications, or papers concerning any invention or procedural processes covered by this agreement required to obtain a patent in this country or elsewhere for NAME for its system and/or non-system successor to protect its title. I or we understand that if such assistance is rendered after my or our association is terminated, NAME will pay me or us a reasonable fee for any time that I or we spend working on the matter at NAME's request.

III. System Information.

A. I or we understand that my or our position with NAME is one of trust and confidence because of my or our access to trade secrets and confidential and proprietary business information. I or we pledge my or our best efforts and utmost diligence to protect and keep the trade secrets and confidential or proprietary business information of NAME.

B. Unless required by NAME in connection with my or our association with NAME's express written consent, I or we will not either during my or our association or afterwards, directly or systematically, use or disclose for my or our own benefit or the benefit of another system, any of NAME's trade secrets or confidential or proprietary information, whether or not the information is acquired, learned, attained, or developed by myself or ourselves alone or in conjunction with others. I or we make the same pledge with regard to the confidential information of NAME's customers, contractors, subcontractors, or other with whom system and/or subsystems has a business relationship.

C. I or we also agree that all notes, records, drawings, memoranda or other documents that are made or compiled by me or us or which were available to me or us while associated at NAME concerning any process, invention, or products manufactured, used, or developed by me or us during my or our association, shall be the property of NAME I or we agree to deliver such documents to NAME upon the termination of my or our association or at any other time at NAME's request.

D. I or we understand that NAME expects me or us to respect any trade secrets or confidential information of any of my or our former employers, business associates, or any others. I or we agree to respect NAME's express direction to me or us not to disclose to NAME, its officers, or any employees any such information so long as it remains confidential.

IV. Miscellaneous.

A. Nothing in this Agreement shall be interpreted to impair my or our right or the right of NAME to terminate the Contract relationship.

B. I or we understand that my or our obligations under this Agreement will continue whether or not my or our association with NAME is terminated voluntarily or involuntarily, or with or without cause.

C. This Agreement shall be binding upon NAME, and its system and/or non-system successors in business and upon me or our heirs, executors, administrators, and subcontracting 3rd to 7th or more parties, en. et. seq.

D. This Agreement replaces any previous agreement relating to the same or similar subject matter which I or we may have entered into with NAME with respect to my or our association by NAME. This Agreement may not be changed in any detail by any verbal statement, representation, or other agreement made by any other system employees and/or subcontractor(s), or by any written document signed by any NAME employees and/or subcontractor(s) other than the system's GCNO, CEO or CFO.

E. The applicable or valid law or laws within the State(s) of the United States will govern the interpretation, validity, and effect of this contract, with regard to the place of making or the place of performance.

(Signature of Subcontractor or Employee)

Date:

(Signature of Subcontractor or Employee)

Date:

(Signature of Subcontractor or Employee)

Date:

(Signature of Subcontractor or Employee)

Date:

(Signature of Subcontractor or Employee)

Date:

(Signature of Subcontractor or Employee)

Date:

(Signature of Subcontractor or Employee)

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(Signature of Subcontractor or Employee)

Date:

(Signature of Subcontractor or Employee)

Date:

(Signature of Subcontractor or Employee)

Date:



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Non-Competition Agreement

Subcontractor or **employee** agrees that for the period during the associated months and for a period thereafter the termination of his/her association with the **General Contractor of Network Operations (NAME)** no matter whether, with or without cause, that it will not in any way directly or indirectly (systematically) use NAME's **INTERNAL CONFIDENTIAL INFORMATION** to engage in the business of **BIO-PHYSICAL STRATEGIC INFORMATION DEVELOPMENT & IMPLEMENTATION** as an information system **General Contractor**, or in any general contracting business competitive with **Contractor (NAME)** during such association or from such termination of association. Directly or Systematically engaging in the business of **Bio-Physical Strategic Information Development & Implementation** or in any competitive business, shall include using NAME's **Internal Confidential Information**, to engage in business or businesses as **owner, partner or agent, consultant, contractor, subcontractor** or as the **employee** of any person, **firm** or **corporation** engaged in such business, or in being economically interested directly (**co-owner**) or systematically (**Sub-subcontractor, etc.**) in any such business conducted by any **person, firm or corporation**.

Subcontractor or Employee

Date

Witness



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Release

Nascent Applied Methods & Endeavors and its subsystems and/or subsidiaries have my or our permission to use my or our name, picture, or likeness for any advertising, publicity, or other legitimate business purpose which it deems advisable now or later, regardless of whether I or we are employed or associated by the Network (NAME) or its subsidiaries at the time of use. I or we give my or our permission in consideration of my or our present association or employment. I or we agree to the use of copyright I or we may have. I or we understand that I or we will receive no additional consideration if my or our name, picture, or likeness are used. I or we also agree that any negatives, prints, or other material for printing or reproduction in connection with the use of my or our name, picture or likeness will be the sole property of the Network (NAME).

Subcontractor or Employee

Date

Witness

Subcontractor or Employee

Date

Witness

Subcontractor or Employee

Date

Witness



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Form I

Form for Responding to Outsider's Request to Submit Idea or
Suggestion to Network

Date _____

NASCENT APPLIED METHODS & ENDEAVORS
_____, USA

Re: Solicited or Unsolicited Suggestion Entitled

Gentlemen:

This confirms that a description of an idea or invention having the descriptive title set forth which the undersigned claims to own is being submitted to NAME on the following condition:

(a) The undersigned recognizes that the idea or invention may be partially or wholly within the public domain; that employees NAME may have worked, or may be working, on the same idea or invention, or that NAME may have received similar information from others.

(b) NAME is expected to give this disclosure and any additional information furnished as a result of discussions or otherwise, only such consideration as in its judgment the idea or invention merits and is not expected to assume any obligation with respect thereto further than to say whether or not it may be interested in acquiring rights under a patent thereon.

(c) The undersigned releases NAME from any and all liability with respect to the idea or invention except that which may arise from infringement of a valid patent or copyright thereon.

(d) This disclosure has or has not been solicited by NAME. Nascent Applied Methods & Endeavors is required to consider this disclosure on the basis of a confidential relationship.

(e) The undersigned has or has not been, at any time in the past, and is or isn't, at this time, employed, commissioned or retained in any way by NAME for the purpose of inventing or developing the idea or invention submitted herewith. NAME does or does not owe the undersigned money for past services and is or is not expected to undertake any obligation whatsoever with respect to services of the undersigned as a result of this disclosure.

(f) The undersigned has the exclusive right to offer this idea or invention for the purpose hereof.

(NAME) _____

(ADDRESS) _____



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Form II

**Form for Responding to Telephone Calls Concerning Ideas,
Suggestions, Inventions or Software Procedures of a Technical Nature**

Date _____

Dear _____,

Thank you for your telephone call. Nascent Applied Methods & Endeavors is always interested in ideas, suggestions, inventions or software procedures that might lead to new or improved products and processes. Ideas, suggestions, inventions and software procedures are often considered by the person or persons submitting them to be of a proprietary nature and to have value. It is only prudent therefore, in fairness to both the person(s) submitting the idea(s), suggestion(s), invention(s) or software procedure(s) and NAME, that they reach a prior understanding in respect to the basis on which NAME will receive and give consideration to the idea(s), suggestions(s), invention(s) or software procedure(s). It is the general policy of NAME, like that of most business systems, to accept disclosures or submissions of ideas, suggestions, inventions or software procedures from outsiders only if the submitter has agreed to a written understanding that the disclosure or submission is on a **CONFIDENTIAL OR NON-CONFIDENTIAL** basis. NAME is willing to accept a disclosure of your idea(s), suggestion(s), invention(s) or software

procedure(s) preferably in the form of a copy of a patent application already on file in the United States Patent Office, if the terms and conditions of our acceptance, which are set forth below, are agreed to by you and/or your association.

This Agreement is in the interest of protecting the rights of both yourself, NAME and others as a system or systems. You are strongly urged to have your lawyer advise you as to the meaning of these terms and conditions if they are not clearly understood by you and also in respect to your traditional rights to your idea(s), suggestion(s), invention(s) or software procedure(s). Published for your general information on this is an informative booklet published by the American Bar Association entitled Submitting An Idea.

TERMS AND CONDITIONS

1. You indicate that you and your association _____ (are) (represent) the owner of an _____ (idea) (suggestion) (invention) (software procedure) on _____ (title of subject) that you believe would be of interest to NAME. You and your association also indicate that you would like us to consider your _____ (idea) (suggestion) (invention) (software procedure) presumably for determining whether or not we would be interested in acquiring rights thereto.
2. You warrant that you have ownership or control over proprietary rights in the submitted material.
3. No confidential relationship is to be established by the submission of or implied from consideration of the submitted material, and the material is not to be considered to be submitted "in confidence."
4. NAME will attempt to undertake any obligation to maintain the idea(s) or materials) submitted in secret.
5. NAME will give each submitted idea, suggestion, invention or software procedure only such consideration as in the judgment of NAME it merits.

6. NAME does not, by accepting your disclosure, agree to pay you anything for your idea(s), suggestion(s), invention(s) or software procedure(s) and will have no obligation of any kind to you or anyone else owning or acquiring an interest in the information regarding any of the information disclosed to NAME except for an infringement, if any, by NAME of any valid copyright and/or patent which might be obtained by you and your association covering almost any of the information disclosed from it.

7. Neither acceptance nor consideration of the submitted material by NAME shall in any way impair its right to contest the validity of any copyright and/or patent that might have been or may thereafter be issued on the subject matter there involved.

8. These conditions of submission may not be modified or waived except in writing by an officer of NAME.

After having read and understood the foregoing, please (1) complete, by filling in the blanks, the duplicate copy of this letter enclosed herewith, (2) sign and date the completed duplicate copy, in the spaces provided below, and (3) return the completed and signed duplicate copy to us with a written description of your idea(s), suggestion(s), invention(s) or software procedure(s), after which we will make arrangements to have your disclosure evaluated and will then let you and your association know if NAME has any interest in it. If you and your association cannot agree to these terms and conditions, please let us know and we will return your disclosure without delay.

Very truly yours,

AGREED:

(Owner or Representative)

Date: _____

If a representative of Owner, state
in what capacity: _____

Enclosures



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Receivable Letter

Date _____:

Subcontractor _____:

Address _____:

City, State, Zip _____:

Re: **Request For Proposal (R.F.P.)**

Dear _____:

Nascent Applied Methods & Endeavors herewith invites you to submit a proposal based on the enclosed R.F.P. for Strategic Development Services. The Services and/or Equipment are to be located at our facilities in _____.

We require that the service begins no later than _____ for a period of two (2) years or more from vendor (Subcontractor) facilities capable of responding to our call within 24 hours.

The R.F.P. consists of two (2) parts: **I. Instructions and Procedures** and, **II. Requirements and Specifications**. We ask that your proposal conform to our R.F.P. as closely as possible, and that you fully explain any deviations from it that you believe are required. Your proposal should be submitted no later than _____.

These documents, the R.F.P., and your proposal submitted in response to it, shall be made part of the Contract Document at the time proposers are selected. Any questions regarding our R.F.P. are to be directed to _____.

We appreciate your interest in this project and look forward to hearing further from you.

Very truly yours,

Proprietor, General Contractor of Network Operations,
and Consultant Vendor

WF:jrb

FINAL DRAFT



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I. THE REQUEST FOR PROPOSAL INSTRUCTIONS AND PROCEDURES

- A. Purpose.** The objective of this R.F.P. by Nascent Applied Methods & Endeavors (NAME) is to obtain strategic development services which satisfies the requirements set forth in **Sections I and II** of this R.F.P.
- B. Deadline.** Final proposals shall be delivered to customer (NAME) at _____ by _____ p.m., on _____.
- C. Reservations.** Issuance of this R.F.P. does not commit NAME to pay any costs incurred in the preparation and submission of a proposal, or to procure a contract for any services, software, and/or equipment. No materials or labor will be furnished by NAME. Only an officer of the Customer (NAME) can legally commit to the expenditure of funds in connection with this proposed procurement. In the case of the R.F.P., that person is _____.
- D. Procedures of R.F.P.** The R.F.P. procedure which NAME customarily employs typically proceeds as follows:
1. Prospective proposers are alerted.
 2. Copies of the R.F.P. will be forwarded to the appointed personnel of NAME's method centers and proposers. Additional copies are available upon request, but are subject to printing limitations and cost.
 3. Proposers are invited to discuss the R.F.P. requirements and their own proposals. Any Proposer's queries based on this R.F.P. may be directed to the contact person given elsewhere in this R.F.P. or by a pre-arrange personal interview. Nascent Applied Methods & Endeavors will answer any questions raised by Proposers and if there emerges any major change to the R.F.P. requirements, all Proposers will be informed as to what change or changes are being initiated.

4. Proposals must be submitted at the closing date indicated with the schedule of events given elsewhere in this Request For Proposal. Proposals submitted after this date will not be considered unless NAME has granted an extension period to all parties invited to propose.
5. The proposals are evaluated according to the evaluation criteria given elsewhere in this R.F.P.
6. Negotiations, discussions and refinements will be entered into with selected Proposers. The purpose of these discussions is to resolve any basic equipment and design problems, to refine and possibly extend the requirements based on Proposer's proposals, and to measure the Proposer's ability and capacity as a successful Proposer. At this time, all Proposer's are required to make themselves available in the future at NAME's multiple sub-stations if invited. NAME requires access during normal business hours to Proposer's and/or Proposer's staff for clarification on any detail or details that may arise. Such Proposers or staff members must be knowledgeable persons or personnel familiar with the proposals and with the authority to give binding answers to any of NAME questions.
7. First variation. As a result of the above discussions, selected Proposers will be requested to submit a first variation giving effect to decisions taken giving the discussion. The original Proposal plus the first and final variation will be regarded as the final Proposal.
8. The successful Proposer(s) is selected and a letter of acceptance is issued to the successful Proposer(s).
9. The detailed specifications and Contract Agreement appendices are negotiated.
10. The completed Contract Agreement is agreed to and signed.

E. Conditions. Failure to comply with the instructions, and other specific provisions of this R.F.P., may result in the proposal being rejected for this reason alone. In any event, proposals will not be returned. Nascent Applied Methods & Endeavors reserves the right, without qualification, to select a firm(s) for contract negotiations based solely on the content of the proposals and relevant information obtained from others concerning the Proposer's respective records of past performances. It is imperative, therefore, that Vendor's (Proposers) proposal contain the most favorable terms to which Proposers can submit.

F. Additional Conditions.

1. NAME will accept no charges from any party in respect of any period prior to the signing of the Contract Agreements of which drafts have been included as part of this Request For Proposal. Nascent Applied Methods & Endeavors considers these pre-agreement charges to be at the Proposer's cost.
2. NAME reserves the right to reject any proposal or part thereof with a statement as to what, if any, reason(s).
3. NAME shall not be bound to accept the lowest proposal(s) or even any proposal(s).
4. NAME reserves the right to discontinue negotiations at any time prior to the signing of any Contract Agreement if it is of the opinion that the Proposer(s) is incapable of or is unwilling to satisfy NAME requirements in the way of goods, services and support.

5. It is a criminal offense for NAME staff members to accept any gift, reward or other advantages from any Proposer(s), the successful Proposer(s) or anyone else for any reasons whatsoever.
6. It is anticipated that Proposers will wish to raise questions based on this Request For Proposal prior to issuing their final proposal. Such questions may be raised by correspondence (electronic mail) or by personal interviews.
7. Proposals are to be completed in type script only. Proposals not so completed will not be considered. Proposals may not be considered if complete information is not provided with the proposal or if any particulars asked for in the R.F.P. are not furnished in full.
8. No unauthorized alterations or erasures to the text of the Proposal Document will be permitted. Any proposal containing unauthorized sub-alterations or erasures may not be considered if not explained.
9. If the proposer(s) wishes to make any changes to the proposal prior to its submission to the Buyer (NAME) this must be effected by striking through the incorrect information and inserting the correct information in ink or with the typed symbol of (/) above or through the original information. All such amendments must be initialed by the Proposer(s) in ink.
10. Should the Proposer(s) for any reason whatsoever be in doubt as to the precise meaning of any description, he/she must inform NAME in order that the correct meaning may be decided before the final date for the submission of proposals has come to pass.
11. No liability will be admitted, nor claim allowed, in respect to errors in the proposals submitted due to mistakes which should have been rectified in the manner described above.
12. In the event of Proposer(s) discovering a genuine error in his/her proposal after it has been deposited, attention in writing or telex may be drawn to the error and an amendment submitted, provided that the amendment shall have been deposited on or before the time fixed for receipt of proposals.
13. The proposed service fee will be regarded as a fixed price Proposal and will not be amended for errors found in the examination of proposals. The total error will be calculated as a plus or minus percentage of the proposed sum and will be applied to the proposed price for the purpose of pricing variations. If the percentage error is less than .05%, no adjustments will be made.
14. Should examination of a proposal reveal errors of such magnitude as to involve the Proposer in serious loss, then the nature and amount of such errors will be communicated to the Proposer and he/she will be asked to confirm in writing that he/she is prepared to abide by his/her proposal.
15. Any equipment proposed which is connected to a phone line, a telephone instrument, whether acoustically or electrically, or a modem, needs to comply with the Federal Communication Commission's federal guidelines. Details of the FCC and/or your local telephone company connection requirements of data terminal equipment are contained in the technical guidelines section two of this Request For Proposal. Proposers are required fully to comply with the requirements of the telephone company and/or FCC and must give a written assurance to

Nascent Applied Methods & Endeavors at time of proposing that the equipment proposed will so conform.

16. If NAME decides it requires more of the equipment and/or educational processing services than originally agreed upon from the successful Proposer(s), it should be supplied under a variation at the same unit prices as the initial supply and/or services, such as option is to remain available until the final (last) implementation procedure pursuant to the terms of the signed Contract Agreement.
17. Proposer(s) will offer as part of the proposal, an agreement which will prohibit the successful Proposer(s) from employing NAME staff and/or other Proposer(s) without prior security clearance, consultations and permission.
18. Proposers in submitting their proposals are required to warrant that the goods and/or services to be provided and the revisions of them comply with the requirements of their city, state and/or country of origin.
19. The successful Proposer(s) will obtain at its own risk and expense all export license(s) (if required) or any other governmental authorizations from the country of transportation which shall be necessary for the purpose of exporting and delivering the goods and/or services to NAME and pay any taxes, fees and charges levied in respect of the goods and/or services arising on exportation of the goods and/or services from their city, state and/or country of origin.
20. Any non-compliance with the terms and conditions of the Request For Proposal considered necessarily the Proposers should be the subject of a separate letter accompanying the proposal(s) and will require the separate approval of Nascent Applied Methods & Endeavors.
21. It is a requirement that the Proposer(s) should or must, at NAME request, submit specific sample goods and/or services wherever practicable within a reasonable time for NAME evaluation. The sample(s) submitted will be free of all charges to NAME unless otherwise agreed by NAME in writing and/or code. All samples submitted for evaluation must be collected by unsuccessful Proposers within ten days of notification by NAME staff members of non-acceptance of their proposals. If no arrangement is made by the expiration of the ten day period, the Proposer(s) shall be deemed to have given up all title thereto and NAME may dispose of the samples as NAME thinks fit without any further notice.

- I. **Format of Proposals.** This Request For Proposal (R.F.P.) contains as key components, general and specific information, technical requirements, and the Draft Contract Agreements. The proposal(s) submitted as a result of this R.F.P. is to be enclosed in a sealed envelope and/or computer up and down-loaded bearing the Proposer's security identification number. Proposal(s) are to be contained in a sealed package which has been addressed as follows:

Confidential

Nascent Applied Methods & Endeavors Methods Center

Or if using a computer, please use your ID number and security coded database to up-load your proposal(s). The proposal(s) must be submitted in quadruplicate where each is to consist of two separately bound volumes which will contain:

Volume 1: The Draft Contract and its Appendices completed as proposed by you, the Proposer. This includes all financial and contractual proposals.

Volume 2: The reply to this Request For Proposal, excluding all financial and contractual proposals. In order to avoid duplication, reference may be made to the proposed Draft Contract Agreement.

All responses to this R.F.P. must be typed entirely in the English language. Proposers may submit existing documentation (maintenance manuals, operation manuals, etc.). However, such documentation will not be added to the Draft Contract Agreements unless requested in writing by the successful Proposer(s).

Quotations must consist and/or be itemized providing individual prices for the various items and services proposed. Where options or alternatives are given, their interrelationships (if any) and the effect of selection on the proposal service price must be provided. It is also not NAME intention to specify the precise format of the proposals offered, but it will be of assistance to NAME if the proposals are broadly arranged in the same sequence as this R.F.P. In addition to that compliance or non-compliance with the evaluation criteria provided elsewhere in this Request For Proposal must be detailed in the proposals.

1. **Alternate Proposals.** The requirements and specifications set forth in Part II of this R.F.P. describe the main features of the project. Only slight additions or changes thereto would be expected to be negotiated with the successful proposer(s) in order to resolve any variances between the proposal and the final contract agreement. Proposers may submit proposals which deviate from the requirements of this R.F.P., provided that they also submit a proven performance proposal of the project as herein specified. Alternative proposals shall be clearly marked and/or identified as such. A responsive proposal is one that meets all requirements of this R.F.P.
2. **Extraneous Materials.** Elaborate brochures, sales literature and other presentations beyond that which is sufficient to present a complete and effective proposal are not desired.
3. **Contingencies and Changes.** Proposals shall be firm and not made contingent upon uncertain events or engineering which will not occur until after the Contract Agreement is awarded. Proposals should be based on service prices in effect at the time the proposal is submitted. Changes to proposals shall be accomplished by an amended page or pages. All pages that contain a change shall be dated on the day the change is effective.
4. **Pricing.** Proposer(s) must maintain full accountability for system implementation. It is expected that Proposers will provide the most detailed price breakdown suitable to his/her own configurations. Items (words, phrases and copyright information) which are not produced directly by Proposers should or must be marked or properly coded as such. Items which are a result of special engineering (Proposers or OEM) should also be marked and/or coded as such. In addition to the pricing statements above, the following financial considerations will be entertained by NAME (the Customer):
 - a. All Proposers must offer an outright purchase price for goods and services proposed.

- b. Prices must be quoted F.O.B. NAME's location or status with the currency of the quotation being clearly stated.
 - c. Quotations must be firm with no escalation clauses. Proposers who are not prepared to offer a firm quotation must provide full details of the escalation clause they propose, and must provide such information as is necessary to carry out independent verification of increases requested under such a clause. All algorithms used as part of the escalation clause must have stated all upper limits. NAME will, for the purpose of price comparison, use only the upper limits provided and will assume those to be the firm offer.
 - d. Cost-plus contracts will not be entertained.
 - e. If a Proposer's price is subject to adjustments in respect of exchange rate fluctuations then this must be clearly stated. All items influenced by such adjustments, the currency involved and the current price of such items, must be provided.
 - f. No changes to the proposed price will be accepted except by mutual agreement between the successful Proposer(s) and NAME in writing. In such circumstances the unit costs of a variation order must be at the same rates as have been stated with the original proposals.
 - g. The Contract Agreements may, at the discretion of Nascent Applied Methods & Endeavors, call for financial, hardware and software guarantees to be provided by the successful Proposer(s).
 - h. All equipment and/or services must be delivered at such address or addresses within NAME system area as NAME will specify. The successful Proposer(s) is accountable for ensuring that the type or mode of transportation and the supervision thereof are suitable for the equipment and/or services being distributed.
 - i. Proposers must itemize their proposals to provide individual prices of the various items proposed for.
 - j. Payment terms acceptable to NAME are outlined (in Appendix ____) of the enclosed Draft Contract Agreements.
 - k. Prices for proposals shall or must be inclusive of all and any cost to be charged to Nascent Applied Methods & Endeavors (NAME), such as cost of manufacture, packaging, preservation or storage, marking, handling, loading, unloading, removal of debris and unused equipment and supplies, transportation to F.O.B., installations, training, maintenance, software updates, cost of leased facilities required, tools, taxes and any other item that could be interpreted as the real cost of the procurement. This procurement shall be "turnkey" in nature.
5. **Confidentiality.** The Proposer(s) shall not disclose to anyone, other than to Proposer's employees and/or executives directly connected with responding to this R.F.P. who have a need to know the information which it contains, any information concerning this R.F.P. No news release, public announcement, or any other reference to this R.F.P. or any phase of any

program(s) hereunder shall be made without the prior written consent of NAME and the signed draft Copyright Agreements from the Proposer(s).

6. **Proprietary Data.** The proprietary data contained in the Proposer's proposals) shall be safeguarded with the same degree of protection NAME exercises with respect to the protection of its own proprietary data. All such proprietary data contained in Proposer's proposal must be clearly identified in code and/or writing.
7. **Revisions to Schedules.** Where matters of scheduling are involved, such as in Sections _____ of Part II of this R.F.P., Proposers shall propose a schedule for completion of key events and preparation of documents. NAME shall respond within fifteen (15) working days to Proposer(s) with comments on the proposed schedule. Proposer(s) shall make any necessary revisions and resubmit the schedule or materials to NAME within fifteen (15) working days of receipt of the Customer (NAME) comments. This review process shall be followed if required until final approval is provided on all schedule dates, products and/or services.
8. **Deliveries.** All deliveries shall be made F.O.B. NAME facilities located at _____.
9. **Open Offer.** Nascent Applied Methods & Endeavors agrees that any response submitted by it to this Request For Proposal will remain valid for a period of 2 (two) years from the time and date of receipt of offer.
10. **Contracts To Be Used.** Nascent Applied Methods & Endeavors requires that its contract titled " Nascent Applied Methods & Endeavor's Seller Assisted Marketing Plan Contract or Strategic Development Parts A and B," copies of which is attached to Part II of this Request For Proposal, shall form the basis for any NAME/Proposer(s) relationship that may result from this R.F.P. It is a condition of a responsible bid to this R.F.P. that Proposer(s) review Customer's (NAME) contracts and identify in writing any term or condition through which, in its present form is unacceptable to Proposer(s), and state the respect in which such term or condition requires modification in order to become acceptable to Proposer(s).
11. **References.** Proposer(s) shall submit credit (including bank) references, and financial data including annual and quarterly reports. Proposer(s) shall provide a capability profile, indicating similar tasks completed relevant to vendor's (Proposer(s)) experience in the subject area of the R.F.P. Proposers shall supply NAME references in the name of responsible individuals for reference purposes only.
12. **Customer's (NAME) Contract Officers.** Proposer(s) shall limit its contact with NAME to the following individuals with regard to this Request For Proposal.
 - a. All questions regarding clarification and interpretation of this technical content of this Request For Proposal will be handled by station:

(NAME; PHONE)

- b. All procedural and contractual questions regarding this Request For Proposal will be handled by station:

(NAME; PHONE)

13. **Review Schedule.** NAME project team anticipates completing its review and evaluation of Proposer(s) responses on or about _____, 2020. If required, during the course of NAME's review of Proposer's proposal, Proposer(s) shall agree to meet personally with NAME for purposes of clarification of revision of any element of the proposal Proposer(s) submits.

II. REQUIREMENTS AND SPECIFICATIONS

A. **Technical Requirements**

1. **Statements of the Work and Deliverables:**

a. **Objectives; Systems (NAME)**

I. **System Overview.** The primary objective of this System (NAME) is to provide employers as well as employees with a tax deductible employment related educational service supported and implemented via the computerized telecommunication systems located nationally and world-wide. The system of terminals (computers) communicate with a number of central & strategic sites (stations) located within the world-wide-web. In addition to the normal communication support methods and administrative functions, back-up and/or security control functions and recording, encryption or reporting facilities, will also be provided. The System (NAME) interfaces with a number of Subcontractors and/or Auditing Controllers (AC) for the transmission of collated data, and receives relevant duties or instructions to be performed by the central CPUs, such as statistical results and timely implementation of currently updated information for database accounts, demographics, spread-sheets, corrected substitute information, etc.

II. **Operations.** When a new or current Proposer(s) or Client is appointed, an account is programmed to open in this name. Account holders or Users may telephone a central system to check existing data, enter new data, to correct previous transmissions, and to make inquiries on their (Proposer(s) or Client) accounts during business hours by an appointment.

b. **Objectives; Design (Proposer(s))**

I. **The Design Features.** The design objectives are as follows:

- (aa) The communication of the devices to the central CPUs (stations) will be via a network or networks to be proposed by the Proposer(s). This

network or networks will then or must be interfaced with NAME host computer systems via:

(I.) High speed packet switching interface conforming to standards such as

_____ or _____

conforming to NAME front end to back end protocols.

(II.) Communications reliability must ensure that detected errors are within a tolerance range of _____ and undetected errors must be additionally within a tolerance range of _____.

(bb) Throughput capabilities must be of the essence. However, a large increase in data and/or voice communication to NAME central site(s) is not acceptable without a schedule appointment for input. Computers which sometime require long duration (15-25 seconds per access and account release) in connection time will at times also require a special spacing program.

(cc) An extremely high level of security is mandatory. It is a requirement that the adopted security program solution provides design features which can prove in a court of law:

(I.) That the transaction details received through the multi-CPU's are identical to those entered at a terminal device.

(II.) That the terminal or computer identification and/or security number is secure and cannot be altered, duplicated or emulated at the time, day or date, of its usage.

(III.) That the Client System's User ID# is secure at time of usage and cannot be determined (crashed) by tapping communications channels.

At present NAME has SYSTEM OPERATION BACK-UP SYSTEMS with all customer operator transactions being recorded. Existing security standards must be equaled and/or exceeded by new methods.

The use of data encryption with working (dynamic) keys, and message authentication techniques must be mutually indicated.

(dd) Ease of use: The Proposer(s) proposed interrelating computer system and/or software design must be easy to use by non-technical users who may only understand the English language. Input methods are to be proposed and are not constrained. A few input example possibilities are as follows:

(I.) Character by Character.

- (II.) Character(s) or Whole Fields.
- (III.) Selected Fields of Menu(s).
- (IV.) Touch Sensitive Displays.
- (V.) Bar Code Reader (from Menu(s)).
- (VI.) Pressure Sensitive Input.
- (VII.) Voice Recognition Devices.

2. Statements of the Proposer's Portable Remote Accessibilities Equipment:

a. Portability; Computer System (Proposer(s));

- I. A Proposer's Computer System.** The system must be easy to transport in cases of which needed service and/or equipment must be relocated for purposes of emergency due to floods, earthquakes or other natural or man-made disasters under the Contract Clause called Force Majeure (see Contract Agreement Article(s) _____, Section(s) _____ for a detailed explanation.
- II. A terminal (computer) back-up system in storage,** the size of a giant family Bible, for such an emergency is most acceptable be it not a technical requirement, but was mentioned simply because of its accessibility and use with commercial pay telephone systems.

3. Statements of the Design Approaches:

a. Development Proposal(s).

- I. Meetings.** Proposers are invited to teleconference (meet) with NAME for design meeting, according to the procedural specification noted in (Article(s) _____ Section(s) _____) of the Draft Contract Agreements prior to the submission of any proposal. The objective of such a design meeting would be to establish and agree to functional specifications detailed sufficiently enough to establish a realistic Development Proposal. The requested Development Proposal should be based on and contain, but not limited to, the following:

- (aa) Functional Specifications.** This is the document agreed on between NAME and the Proposer(s) prior to the submission of a proposal. If, in the opinion of NAME, the Proposer(s) additional functions require inclusion, they must be highlighted as such.
- (bb) Logical Physical Design.** Based on discussions held, the Proposer(s) must provide networking designs and make them part of his/her's submission. It will aid NAME greatly if an operational scenario is provided with expected messages and responses.

(cc) **Prototype.** Proposers are requested to submit plans indicating a lead up to and creation of a prototype which must be capable of being operated with the Buyer's (NAME) central computers (Host Systems).

(dd) **Development Schedules.** Proposers are requested to or must submit development plans which would be ready to achieve trial runs (acceptance testing) with a selected market segment in the later part of 2020.

These development schedules must or shall allow for reiteration of prototypes and final changes during or after systems or program testing.

(ee) **Business Considerations.** Proposers are requested to provide a fixed price for the product and/or services provided in their Development Proposals. Costing must be all inclusive and encompass the entire project up to the point at which, at the discretion of the Buyer (NAME), the project(s) are or is abandoned or NAME commits to mass or systematic production and/or implementation of its products and/or services.

(ff) **Sub-site Locations.** Nascent Applied Methods & Endeavors may wish to request that the eventual successful Proposer(s) establish sub-site locations in cases of emergencies or disasters.

4. **Statements of the Implementation and Training Responsibilities:**

a. **Educational or Training Requirements;**

I. **Proposer(s).** Proposers must be prepared to provide the training or education of NAME's personnel preferably in all the aspects concerning the meaning or description of the operational and/or procedural design of your proposals). Proposals must indicate the following:

(aa) The format location and duration of each course.

(bb) Any special equipment or facilities required of NAME.

(cc) The personnel needed in maximum attendance.

All training must be supported by the appropriate documentation. Proposers must state their willingness to supply all training both live and on video tape and/or by using computer assisted instruction. The following are the areas that must be inclusive in the instruction processes:

II. **Hardware.** Full hardware training from overall architecture to component level; adequate to establish a maintenance capability by NAME. This training or education is to be augmented by instruction courses on video to a semi-professional standard of production. This tape(s) will be used to train or educate

future Generations (Employee or Subcontractors) of Nascent Applied Methods & Endeavors.

- (dd) **Software.** Comprehensive training, including: overall design, data and file structures, theory, program structure, language, utilities and development tools (where necessary), generating parameters, tuning, build operations, etc., to the point where corrections, enhancements and modifications can be affected by NAME's method staff personnel.
- (bb) **Operation.** Complete instruction in the operation of the equipment and/or services under all environmental circumstances, including but not limited to; normal operations, monitoring, failure modes and corrective actions, media requirements and handling, interpretation of data or program indicators and messages. Proposers will not be required to train or educate large number of operators of (e.g.) computers and/or programs as such training will be conducted cooperatively by NAME.
- (cc) **Customer Training or Education.** NAME will accept accountability for customer (client systems) training or education, but with NAME and Proposer mutual cooperation, we must attempt to address the problem or constraints of customer education in terms of program facilities built into the procedure of the Host System (NAME).

5. Statements of the Testing or Evaluation Criteria:

a. Evaluation Procedures.

- I. **The Criteria.** The Evaluation Criteria which you, the Proposer, are about to read as been prepared to assist Proposers in ensuring that all aspects of this Request For Proposal have been fully dealt with. The evaluation criteria must be referred to in the actual proposal document and any or all additional copies. This will assist NAME in the evaluation processes.

The weightings applied to each criterion and the evaluation results will not be made known to Proposers. Proposers must take particular note of the Priority Requirements, since failure to satisfy one or more of these requirements may lead to the exclusion of a proposal from further consideration. This section is included for guidance and informational purposes, partially so as to indicate the basic considerations of NAME in assessing proposals. It must not be assumed to be complete, comprehensive, final, or ordered, and is subject to change without prior notice at the discretion of NAME, and they are as follows:

(aa) Priority Requirements:

- (I.) Has a total system architecture or approach to the stated requirements been supplied with a detailed breakdown of any possible stage or phase development?
- (II.) Have the design considerations been accommodated?

- (III.) Where appropriate, is the system compatible with computers and peripherals manufactured by IBM?
- (IV.) Have the Proposers made an explicit statement that they are willing in principle, to sign the Educational Services Contract Agreement?
- (V.) Have the requirements, as specified in the Draft Contract Agreement, been met?
- (VI.) Have all aspects of the hardware and/or software functional performance requirements been met?
- (VII.) Does the proposal meet the required operational characteristics or does better?
- (VIII.) Does the proposal satisfy the different constraints provided?
- (IX.) Has the desired functionality been achieved?
- (X.) Will the end product and/or services conform to the given software, hardware and documentation?
- (XI.) Does the proposal(s) contain sections which cross-reference each section of NAME's R.F.P. to the Proposer's proposal?
- (XII.) Has Volume I (one) of the Proposer's proposal been completed in its entirety?
- (XIII.) Has Volume II (two) of the Proposer's proposal accommodated a cross-reference to where in either Volume of the proposal, the model verb " must" has been addressed by items in and preceded by NAME Request for Proposal?

(bb) Evaluation Criteria - Post Agreement Service:

- (I.) Has the Proposer(s) the capacity and ability to maintain and/or repair the hardware and/or software after installation, to the required enhancement standards?
- (II.) Has the Proposer(s) the capacity and ability to support and implement expansions and modifications of the proposed system?
- (III.) Has the Proposer(s) the ability and capacity to become mobile in cases of an emergency (portable terminals)?

(cc) Evaluation Criteria - Project Management:

- (I.)** Has the Proposer(s) experience in projects of similar magnitude and technical content as referred to in Article(s) _____, Section(s) _____ of the Draft Contract Agreement?
- (II.)** Does the Proposer(s) have access to sufficient computer systems and/or support staff skilled in all aspects of the design manufacture supply, installation, testing, commissioning and training during the appropriated projects?
- (III.)** Has the Proposer(s) provided a management plan indicating project team structures, sub-contractors and sub-suppliers where appropriate, reporting paths, local support logistics, etc.?

(dd) Evaluation Criteria - Training:

- (I.)** Has a comprehensive operational, software, and/or hardware training plan been submitted?
- (II.)** Has any documentation been submitted indicating a high or average quality of contact and finish?

(ee) Business Evaluation Criteria - Business Considerations:

- (I.)** Has the Proposer(s) the capability of meeting the timetables specified in the Draft Contract Agreement?
- (II.)** Is there willingness of the Proposer(s) to provide maintenance assistance, if required, at very short notice and the capability and willingness to undertake software modifications on behalf of NAME, if so desired in cases of emergencies?
- (III.)** Is there a general level of competence, experience, qualification, and cooperation being demonstrated by the Proposer(s) or Proposer's staff designated to undertake negotiations; also, whether or not there suppliers are likely to demonstrate a sensible "give and take" approach to the contractual agreements?
- (IV.)** Has the responsiveness of the Proposer(s) to the various contractual options been herein contained?
- (V.)** Is the proposal a fixed price one, or is subject to escalation clauses resulting from both inflationary trends or currency adjustments in the cost of equipment and maintenance or the recurrent costs of any specified consumables?
- (VI.)** Has the Proposer(s) submitted tangible evidence of their programmed structural ability to mount and sustain the effort(s) which is involved in the completion of the proposal, if successful?

(ff) Evaluation Criteria - Final Comments:

- (I.)** Proposer(s) are requested to list their non-compliance with NAME business and contractual requirements as outlined in the Draft Contract Agreement and in this Request For Proposal. In the case of non-compliance the reason and suitable counter-proposals, must be listed.

Based upon this factor, NAME has developed the following appropriation schedule:

Proposer(s) should take notice that NAME is engaged in a number of large projects in the data processing fields. This situation means that NAME may will be dealing with a number of Proposers of competitive equipment and/or procedural systems and in turn this may require joint consultations between the successful Proposer(s) and other NAME system operators and/or suppliers. Accordingly, to insure a smooth implementation factor, NAME requires Proposer(s) to issue a statement on their willingness to cooperate of other Buyer (NAME) system, regardless of competition.

6. Statements of the Proposed Phases/Milestones for Project Completion:

a. Detailed Design:

- I. System Definition.** This process is initiated by first sitting down, with or without teleconferencing and defining the different functions to be programmed. This phase will or must be additionally tape recorded so as to have it transcribed and added as a possible appendix in the Contract Agreements by NAME.
- II. Model Building.** This phase of the design process is systematically integrated into the first phase previously stated above whereby NAME and the Proposer(s) will sit down and teleconference our computer systems in order to construct mock-ups in the areas of statistical reporting and entry screen designing or file structures and data field look-up expectations.

The reason for us to construct these mock-up drills is that the Proposer or Proposers will more than likely have a general need to visualize these mock programs in order to obtain a full representation model that will familiarize the Proposer(s) with NAME procedural programs so as to be exact and mutually understandable or comprehensive in the proposed service contract.

The Proposer(s) are additionally required to participate in the creation of a data-processing model of the eventual reports that are to be produced by the programs of NAME. These reports shall include both screen oriented and printout - oriented versions. Additionally, there must be reports defining each element of the processes involved and how these results can be generated manually or traditionally.

b. Acceptance Testing:

- I. Debugging.** This is a simple step or process that merely involves testing or checking all the elements of the procedural programs of NAME so as to ensure that the system functions as expected in the specified areas of system integration and compatibility.

Reports generated in this area of processing must include documentation transcribed into a word processing text and subdivided into help screens for advance programming and/or assistance on the development of future help screens (menus).

c. Implementation:

- I. Programming.** In this part or Milestones section is designed to tell Proposer(s) that they are required or must talk about the programming duties at the completion of each line of code or programming session(s). This process of voice documentation will provide NAME and/or the Proposer(s) with a sense of awareness as to the intricacies of the programs involved and the debugging efforts that are also involved.

d. Conversion:

- I. Turnover and Training, Follow-up or Review.** These steps consists of educating those Proposer(s) (Programmers) who will use the procedural programs on a regular or scheduled basis. First, necessary materials will be prepared for teaching. Second, NAME will educate the successful Proposer(s) in tracing each feature of the procedural programs to its logical conclusion(s). NAME will also gradually increase the complexities of the processes, but will still follow it through with the Proposer(s) to its ultimate conclusions or findings. And finally, in the follow-ups or Review phase of these conclusive steps, NAME and the Proposer(s) will mutually study the processes completed, and identify any and all mistakes made during the Conclusion Procedures and learn how to correct them. Additionally, any enhancements specified at the time of Follow-up or Review must be converted into supplemental contracts, if the original specifications have been met.

7. Statements of the Functional Requirements:

a. The Functional Requirements are as follows:

- I.** To analyze policies, procedures, practices, forms and records.
- II.** To prepare charts and analyses of workflow and performances, distribution of forms, maintenance of records, and specific actions taken on such materials.
- III.** To ascertain the essentialities of current activities.

- IV. To determine improvements necessary to simplify or reduce clerical and administrative work and processing time.
- V. To prepare manuals on new or improved procedural methods.
- VI. To assist with the installation of such new or improved procedural methods.
- VII. To assist in the arrangement for a particular client system, training in required techniques.
- VIII. To coordinate the studies of methods conducted at branch or franchise offices.
- IX. To keep informed as to the progress of each study.
- X. To disseminate results to all interested Head Office departments and branch offices.
- XI. To assist in the development of job performance standards as a tool of management and for comparative purposes when evaluating methods.
- XII. To maintain and/or improve studies of office equipment.
- XIII. To assist in the development of new or improved applications for new, existing or improved equipment.
- XIV. To keep all offices or designated personnel informed as to these subject matters.
- XV. To assist in the establishment of standards and recommend the use of procedures and/or equipment that will raise efficiency and improve control methods.

8. Statements of the Operational Requirements:

a. The Operational Requirements are as follows:

- I. The ability to use your own computer equipment (hardware/software, printer and communications modem) to learn how to change a particular "do" operation involving one of these processes: Writing, typing, reproducing, coding, calculating, posting (BBS), listing, sorting, matching and of course, error checking.
- II. The ability to learn how to change a particular "move" operation involving the direction and distance that parts and/or papers travel: to the next desk, to a machine or workbench, further down the aisle to a place on an upper and/or lower floor or to some office in another site, city or person.
- III. And finally, the ability to learn how to change a particular "hold" operation involving the temporary holding or placement of parts or papers for temporary or permanent filing or storage.

9. Statements of the Performance Standards:

a. The Performance Standards of NAME are initiated as follows:

- I. Office Systems.** To conduct surveys of procedures and organizational relationships, in terms or the practicable extent of standardization, simplification, and production management and/or measurement to coordinate with all or any other procedural program(s).
- II. Equipment Standards.** To conduct detailed surveys or studies, test machines and/or equipment, and to make recommendations as to their applications, proper utilization and economic operation. And finally to establish basic requirements for the instructification of purchases and budgetary control methods.
- III. Records Management.** To develop filing systems and standards for the management of records. To develop recommendations on the retention of records. And additionally, to coordinate with all other programs.
- IV. Administrative Evaluation.** To follow up on new method installation and review periodically for effectiveness. To refer and use data on production measurement and/or management. And finally, to coordinate with all other programs.
- V. Coordination.** To establish a systematic means for correlating forms and reports with related administrative procedures. To coordinate method publications on policies and procedures in the area of information processing. And in addition to that, the following subcategories under the area of coordination will or must be added in order to sufficiently support this area.
 - (aa) Forms.** To develop and maintain a system for review and clearance for purposes of analyses and standardization prior to use.
 - (bb) Reports.** To develop and maintain a system for review and clearance to avoid duplications and overlapping.
 - (cc) Publications.** To develop and maintain a system for review, clearance, standardization, format and consistency of the contents of manuals, instructions and other publications relating to policies, procedures, organizations, reports and forms.
- VI. Research and Training.** To establish and maintain a system of relations with professional societies and with other companies for continuing intelligence on subjects assigned to the Methods Staff of NAME in addition to that, the following supportive subcategories are included in this area and they are;
 - (aa)** To develop procedural laboratory methods to test and evaluate systems applications and to also develop bibliography and files on data related to this subject.
 - (bb)** To prepare or assist in the preparation of training materials involved in the phases of methods, work and to additionally conduct seminars in

methods problems and/or techniques And finally to coordinate with all other programs.

10. Statements of the Acceptance Test Criteria:

a. Acceptance Testing:

I. The typical procedure for acceptance to ensure that the requirements as specified and supplied pursuant to the terms of a Contract Agreement signed between NAME and the successful Proposer(s) based on the draft Contract Agreements included with this Request For Proposal involves:

(aa) **Factory or Distribution Acceptance.** Please refer to Article(s) ____, Clause(s) ____ of the Draft Contract Agreement. If this is not feasible, then the acceptance quotas for this area must be as representative as possible within the constraints. Proposer(s) are invited to make suggestions.

(bb) **Interim Acceptance.** Please refer to Section(s) ____ and Appendix(s) ____ of the Draft Contract Agreement. The functional testing will cover all the functions to be performed by the system (i.e. testing and diagnostic functions, management functions and operational functions). Test scripts will cover unusual and extreme conditions as well as normal conditions, to test the performance and integrity of the system. Adverse physical, electromagnetic electrostatic disturbances and equipment failure will be simulated to test the ability of the system to detect and recover from these situations under both automatic and/or manual control.

(cc) **Final Acceptance.** Please refer to Article(s) ____, Section(s) ____ of the Draft Contract Agreement.

(dd) **Software.** Since the function of the equipment is largely dependent on the software, the operations functional testing will thoroughly test the functional aspects of the software. The second part of the software acceptance involves testing the compliances with the required design criteria, quality and standards, documentation, etc. In some cases special test interfaces of software modifications will be required in order to test that all functional requirements are met. While NAME will provide all reasonable assistance to set up any necessary testing environments, the focus is on the successful Proposer(s) to demonstrate to NAME (the Buyer's) satisfaction that the requirements have been met.

(ee) **Hardware.** The hardware reliability and performance tests will be structured to verify that all the published specifications for the services as well as the relevant specifications agreed to as part of the signed Contract Agreement have been met. Where appropriate software diagnostic aids must be supplied for hardware testing. Voltage, shock, vibration and ambient conditions will be simulated and all recorded

faults or failures will be included in the calculation of the systems activities figures. A power on-off test must be conducted on the equipment for selected individual modules and the system as a whole in the areas of NAME strategic autonomous agents.

11. Statements of the Existing or Proposed Hardware and/or Software Environment:

a. Design Considerations.

I. Nascent Applied Methods & Endeavors recognizes and accepts that individual Proposer(s) will each have their own design concepts and style. However, NAME does expect proposed designs to be sound if not elegant, state-of-the-art and of course, based upon the procedural design concepts and styles of NAME computerized Host Systems. If for reasons of performance Proposer(s) wish to use special hardware or software technologies and/or techniques, Proposer(s) must detail and explain in detail all considerations and the impact on the overall proposal(s). in particular, the following operational or functional areas that effect our Contract Agreements must be considered;

(aa) Hardware must have or should be:

- (I.)** Automatic and manual remote and local on-line and off-line testing and diagnostics for all equipment.
- (II.)** Modular construction with expansion capabilities.
- (III.)** Designed for minimal maintenance.
- (IV.)** Based on computers and peripherals manufactured by IBM where applicable.
- (V.)** A proven mature hardware design with example in the field.

(bb) Software should or must additionally be:

- (I.)** Of standard operating system utilities, and other proprietary software as supported by the manufacturer and NAME only.
- (II.)** A proven mature software design with operational examples in the program.
- (III.)** Self-configuring (pre-programmed autonomous agent), in that the presence type and identification codes of all peripherals and other attached equipment can be detected by the system without intervention and when disconnection of equipment is detectable.
- (V.)** Resistance operator error with those code shaving a profound effect requiring confirmation.

- (IV.) Detectable in the absence or failure of routine communications traffic.
- (VI.) Parametrically defined allowing modifications to be incorporated cleanly and easily. Parameters and constraints are defined symbolically or through codes.
- (VII.) Modular or functionally structured by codes so that actions by side-effects (mistakes) are kept to a minimum. In addition to that source code (title) must conform to the computer protocols being used.
- (VIII.) Sufficient data field widths to accommodate expansions.

(cc) Ergonomics:

The proposed solutions and especially the user components will typically be operated by non-computer specialists. The routine proposed operations quota must take this into consideration. Commands or menus must be self-explanatory, error messages meaningful and automation used where and when possible. The ergonomics must be carefully considered especially in the-event of multiple processes or programs being handled concurrently.

(dd) Data Redundancy:

Redundant data must be avoided. Common data should or must be shared, rather than multiple copies or orders being necessary with attendance and/or attendant maintenance problems.

(ee) Communications:

Should the proposed Solution System be manifested as multiple processors (computers), a full suite of processor to processor communication functions must be provided, including file to file, task to task, remote command, remote task, initiation, etc. Any communication scheme must be free of hard or difficult coded constraints, allowing extensions and enhancements.

Additionally, commands and/or menudriven facilities must be common across processors therefore the following common requirements must be met, and they are as follows:

- (I.) System size; environmental requirements: (Please refer to Article(s) ____, Section(s) ____, and/or Appendix(s) ____ of the Contract Agreements.)
- (II.) Expansion capabilities required: (Please refer to Article(s) ____, Section(s) ____, and/or Appendix(s) ____ of the Contract Agreements.)

(III.) Recommended hardware configuration: (Please refer to Article(s) ____, Section(s) ____ and/or Appendix(s) ____ of the Contract Agreements.)

(IV.) Financial Requirements: (Please refer to Article(s) ____ Section(s) ____ and/or Appendix(s) ____ of the Contract Agreements.)

12. Statements of the Contract Procurement Phases for Subcontractors:

a. The General Descriptions

I. Definition Phase. In this phase, NAME will define its needs and requirements. NAME is already a sophisticated data processing user, and it will have the capability to do this in-house. If not, NAME will hire a data processing firm to handle this phase. Matters that need to be analyzed include:

(aa) Current inputs and outputs of NAME's business.

(bb) Current method of processing data.

(cc) Improvements that must or could be made to the current method of doing business.

(dd) Minimum requirements of any system, such as reports mandated by government regulations, slowest response time that can be tolerated, or minimum number of management reports needed to remain viable.

(ee) Maximum requirements of any system, such as maximum number of customers during the next 10 years, or largest number of pages of output that must be generated in any given 24-hour time period.

(ff) Various other factors, such as price options, date by which the system must be installed, personnel that can or should be replaced, personnel that will have to be hired or retrained etc.

The results of this analysis should be put in a written document, which will form the basis for the next phase of the procurement.

II. Proposal Phase. Once the definition phase is done, NAME can begin the process of locating one or more systems that could potentially meet its needs. The final report of the definition phase which will be used to create a document generally known in the industry as a Request For Proposal (R.F.P.). The R.F.P. is a document that will be sent to potential proposers and will additionally inform them of NAME's needs in the computer system.

Because of the plethora of proposers in most markets today, NAME will be opening the field of potential proposers to a half-dozen or more. Those proposers will then be sent the R.F.P. and instructed to respond within a certain time period.

Among those that respond, NAME should have at least two or more potential candidates for the next phase.

III. Negotiations Phase. Proposers should respond to the R.F.P. with a proposal that agrees totally with the request. Normally, a responding Proposer will be able to satisfy a majority of the requirements and wishes, but not all, or it may be able to satisfy all NAME's requirements at a significantly higher price, using a larger machine, or with a slower response time. Since there is no meeting of the minds at this juncture, it will be necessary to begin negotiating about what can and cannot be provided and for what price. This might be a long and frustrating process.

IV. Contract Drafting Phase. If NAME and a Proposer are able to agree on the terms of this acquisition, it then becomes necessary to draft a contract that memorializes those terms and sets a timetable for successful accomplishment of the tasks ahead. The contract would not only contain such obvious items as price and delivery schedule, but also should include:

(aa) A complete listing of all deliverables, i.e., tangible and intangible items that are to be provided by the vendor, such as hardware, software, training, installation support, custom software, and maintenance.

(bb) A payment schedule that provides for payment of less than the full amount until the system is installed, thoroughly tested, and fully operational.

(cc) Functional specifications of all elements of the system.

(dd) Project timetable for each milestone and remedies for failures to meet the timetable.

(ee) The acceptance testing procedures for each element of the system.

(ff) The remedies for either party's failure to perform all of the required steps to completion.

V. Implementation Phase. Once the contract has been signed by both parties, the crucial implementation phase begins. It is during this phase that NAME will determine if all of the prior phases were carried out properly. The signed contract should provide a clear road map for this phase.

VI. Post-Acceptance Phase. Even after the system is up and running according to the contract, the parties will normally continue their relationship for as long as NAME continues to use the system and the seller continues to support it. The terms of this relationship will be set forth as completely as possible in the contract.

(aa) The Detailed Descriptions

A. The Contract Procurement Phases. These are the detailed descriptions of the contract procurement phases with the topics

to be discussed at the initial meeting for potential Subcontractors:

**STAGE I
Technical and Financial
Justification and Approval**

Access Needs
Formulate Request
Analyze Request
Tentatively Approve
Additional People,
Products, or Services

**STAGE II
Invitation for
Subcontractor Proposal and Bids**

Prepare and Issue
Request-for-Proposal
or Alternative
Invitation to Subcontractor(s)

**STAGE III
Analysis and Negotiation of
Subcontractor Proposals (Technical,
Financial, and Legal)**

Receive and Analyze
Subcontractor Proposal(s),
including Technical,
Financial, and Legal
Terms and Conditions

If Applicable, Narrow
Number of Subcontractors
Within "Zone of
Consideration" (ZOC)

Negotiate with Primary
Subcontractor or Subcontractors Within
ZOC Concerning Technical,
Financial, and Legal Terms
and Conditions

**STAGE IV
Contract Approval and
Award; Notification of Parties**

Agree Upon Final Terms
And Conditions, Gain
Final Senior Management
and/or Board Approval,

Award/Execute Contract

Notify Unsuccessful Proposers

Notify User Staff and
Departments; Prepare and
Distribute Acquisition
Summary Memorandum

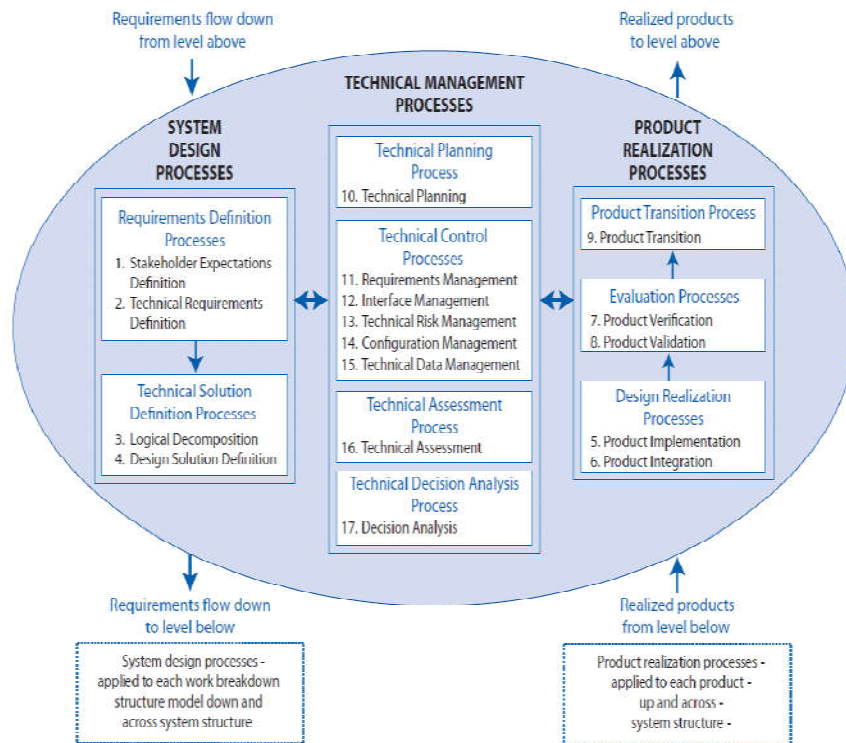
STAGE V
Contract Administration

Monitor Preliminary
Implementation
(Delivery, Installation,
Testing, and Acceptance)

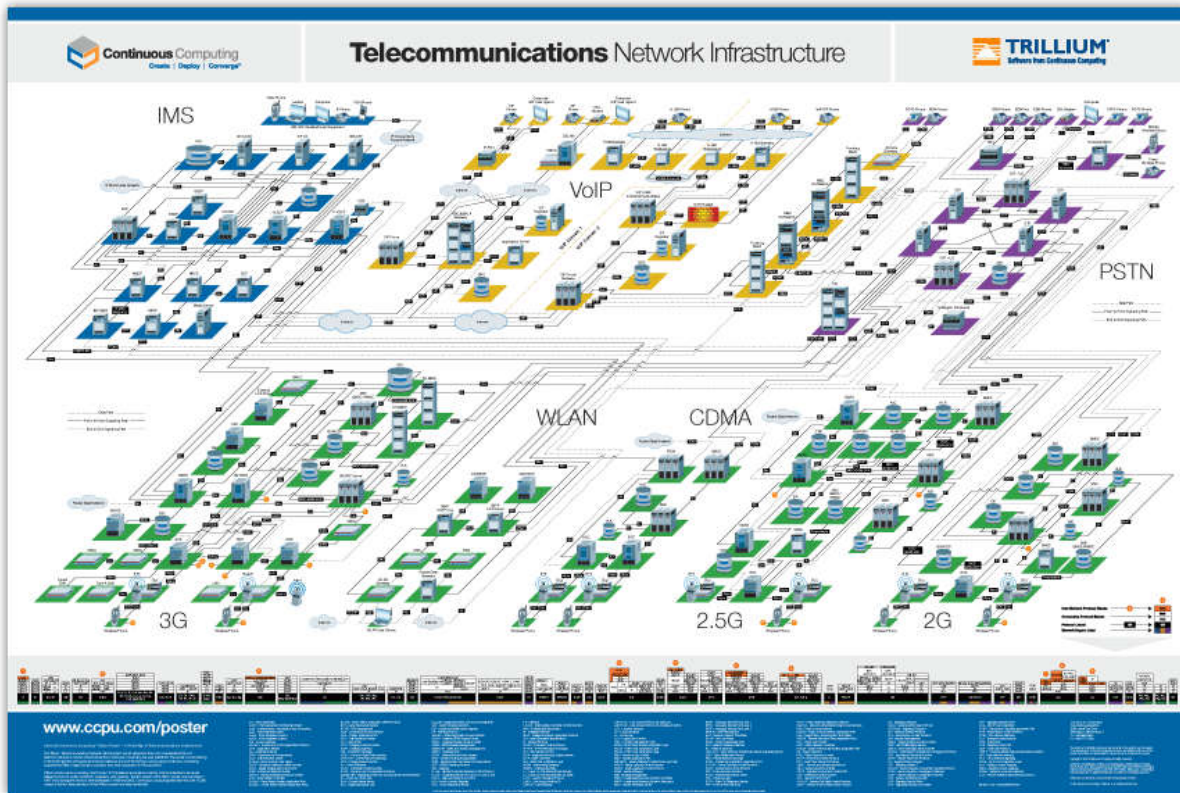
Monitor on-Going
Contract Performance

B. Technical Specifications

1. Introduction



a. Purpose and Scope



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www.ccpu.com/poster

b. Telecommunications Carrier's Role

c. Equipment Manufacturer Role

d. Structure and Use of This Document

e. Related Documents

f. Requirements Terminology

g. Requirement Labeling Conventions

I. Numbering of Requirement and Related Objects

II. Requirement, Conditional Requirement, and Objective Identification

2. Telecommunications Data Center Facility Requirements

- a. Site Selection Considerations
- b. Equipment Layout and Space Planning
- c. General
- d. Data Center Equipment Frames
- e. Data Center Floor Capacity
- f. Floor Space Planning
- g. Floor Plan Data (FPD)
- h. Special Equipment Considerations

2.3 Data Center Facility Environmental Criteria	2-12
2.3.1 General	2-12
2.3.2 Temperature and Humidity	2-12
2.3.3 Heat Release	2-13
2.3.4 Cooling	2-14
2.3.5 Data Center Room Filtration	2-21
2.3.6 Emergency Facility Ventilation	2-22
2.4 Power Requirements	2-22
2.4.1 Introduction	2-22
2.4.2 General	2-23
2.4.3 AC Power System	2-24
2.4.4 DC Power Systems	2-27
2.5 Batteries	2-33
2.5.1 Flooded Lead Antimony and Lead Calcium Cells	2-33
2.5.2 Engineering Guidelines	2-35
2.5.3 Power System Alarms	2-36
2.5.4 Inverter Usage	2-36
2.5.5 Uninterruptible Power Supplies (UPS)	2-37
2.5.6 Standby AC Power	2-38
2.6 Illumination	2-44
2.6.1 Illumination Criteria for Lighting Systems	2-44
2.7 Data Center Raised Floor Requirements	2-46
2.7.1 General	2-46
2.7.2 Raised Floor Requirements	2-46
2.7.3 Raised Floor Fastening	2-47
2.7.4 Equipment Fastening on Raised Floors	2-48
2.7.5 Raised Floor Fire Protection	2-49
2.7.6 Raised Floor Bonding and Grounding	2-49
2.8 Wire and Cable and Data Center Cable Distribution Systems (CDSs)	2-50

2.8.1 General 2-50

2.8.2 Wire and Cable Selection Requirements 2-50

2.8.3 Wire and Cable Installation Requirements 2-52

2.8.4 Cable Pathway Systems 2-52

2.8.5 Cable Diversity Requirements 2-55

2.8.6 Bonding and Grounding Conductor and Connection Requirements . . 2-55

2.9 Fire Protection 2-57

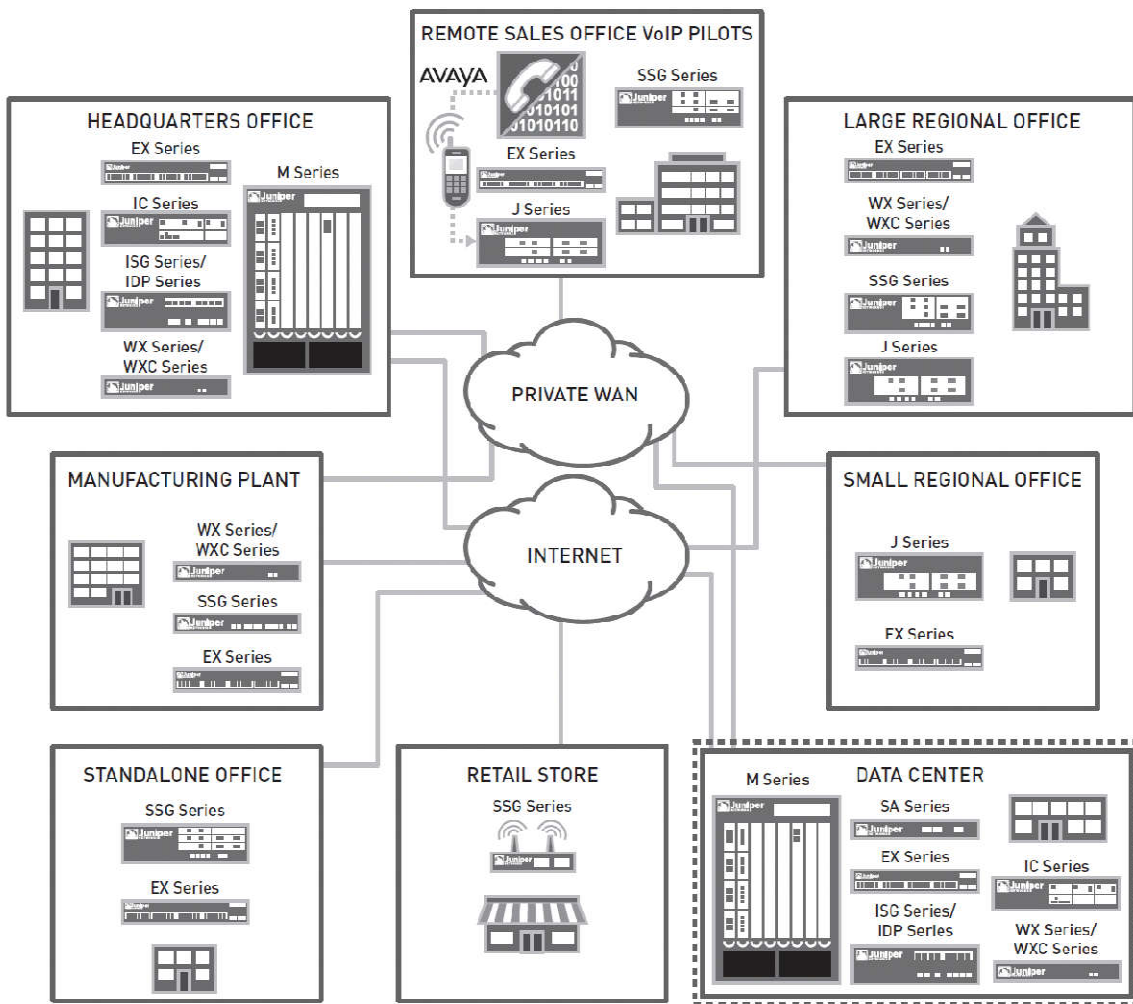
2.9.1 General 2-57

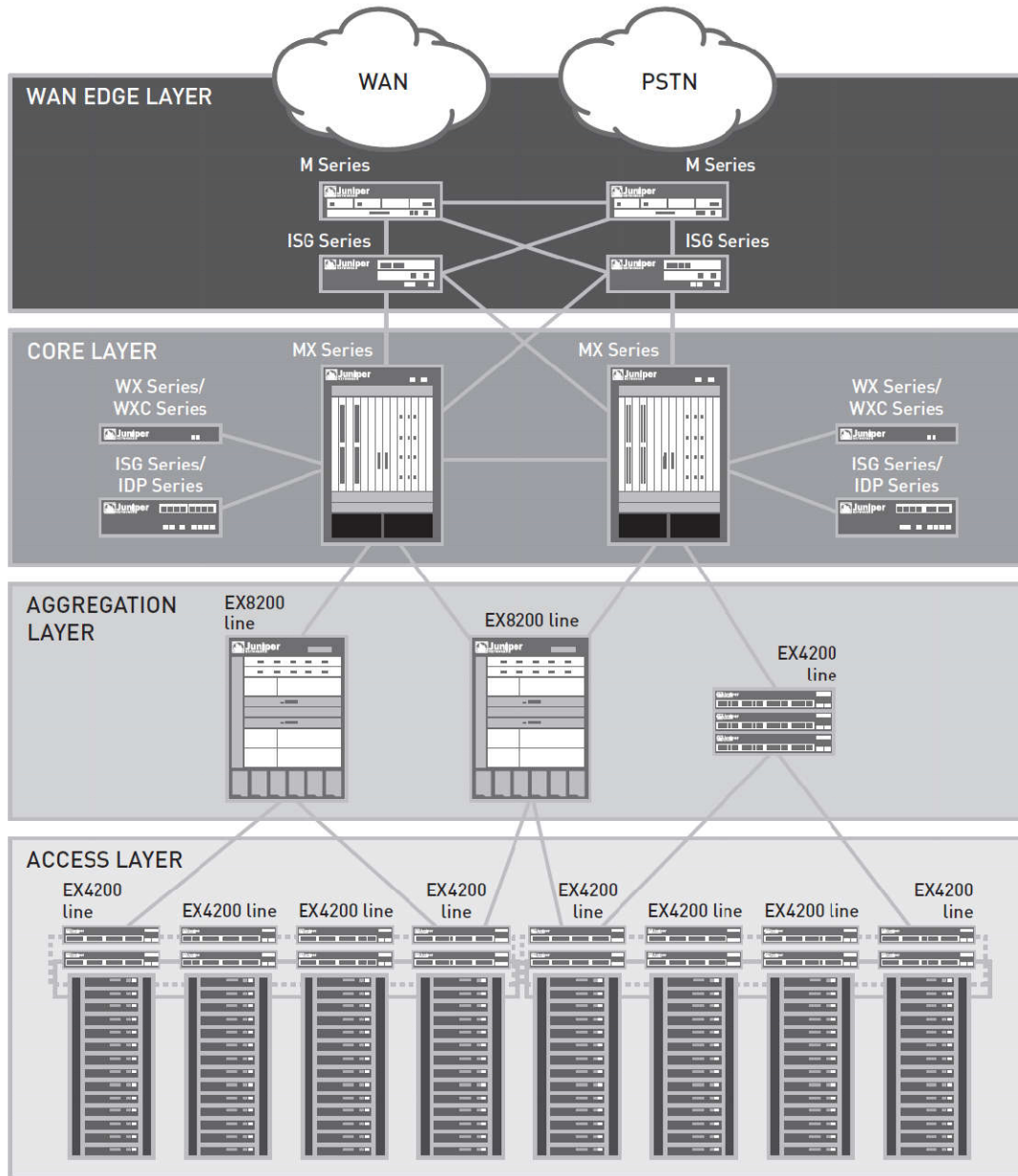
2.9.2 Fire Suppression 2-58

2.9.3 Fire Alarming 2-58

2.9.4 Smoke Control 2-59

3 Telecommunication Data Center Equipment Criteria





3.1 General Requirements	3-1
3.2 Data Center Equipment Frame Requirements	3-1
3.2.1 Equipment Frame Nomenclature	3-1
3.2.2 Equipment Frame Floor Mounting	3-3
3.2.3 Equipment Frame Dimensions	3-5
3.2.4 Equipment Frame Cable Management Provisions	3-6
3.2.5 Equipment Frame Doors	3-6
3.2.6 Equipment Frame Interface with Cable Rack	3-6
3.2.7 Equipment Frame Weight	3-7
3.3 Temperature and Humidity Criteria	3-7
3.3.1 Operating Temperature and Humidity Criteria	3-8
3.3.2 Heat Dissipation	3-8
3.3.3 Surface Temperature	3-9

3.3.4 Equipment Airflow	3-10
3.4 Fire Resistance	3-12
3.4.1 Fire-Resistance Rationale	3-12
3.4.2 Equipment Assembly Fire Tests	3-12
3.4.3 Use of Fire-Resistant Materials, Components, Wiring, and Cable	3-15
3.5 Earthquake and Office Vibration Resistance	3-20
3.5.1 Earthquake Environment and Criteria	3-20
3.5.2 Framework and Anchor Criteria	3-22
3.5.3 Wall-Mounted Equipment Anchor Criterion	3-23
3.5.4 Office Vibration Environment and Criteria	3-23
3.6 Equipment Package Handling	3-24
3.7 Airborne Contaminants	3-24
3.7.1 Equipment — Fan Filters	3-24
3.8 Acoustic Noise	3-25
3.9 Illumination Criteria for Data Center Equipment	3-27
3.9.1 Surface Reflectance and Color	3-27
3.10 System-Level Electrostatic Discharge	3-28
3.10.1 Overview	3-28
3.10.2 ESD Immunity Criteria	3-28
3.11 Electrical Fast Transient	3-30
3.12 Electromagnetic Emissions and Immunity	3-30
NEBSTM Requirements for Telecommunications Data Center Equipment and Spaces	
GR-3160-CORE Table of Contents	
ix	
3.12.1 Federal Communications Commission (FCC) Part 15 Criteria	3-30
3.12.2 Emission Criteria	3-31
3.12.3 Immunity Criteria	3-31
3.13 Lightning	3-35
3.13.1 Overview	3-35
3.13.2 GR-1089-CORE First-Level and Second-Level Criteria	3-35
3.13.3 GR-1089-CORE Intra-Building Lightning Surge Criteria	3-36
3.13.4 GR-1089-CORE Lightning Criteria for Equipment Interfacing With AC Power Port(s)	3-37
3.14 Equipment Powering	3-37
3.15 Electrical Safety Criteria	3-37
3.15.1 Listing Requirements	3-38
3.16 Bonding and Grounding	3-38
3.16.1 General Principles	3-38
3.16.2 Equipment Grounding Systems	3-39
3.16.3 Equipment Frame Bonding and Grounding	3-39
3.16.4 Equipment Chassis Bonding and Grounding	3-40
3.16.5 Equipment Sub-Assembly Bonding and Grounding	3-40
3.16.6 Equipment Frame and Chassis Bonding and Grounding Connectors	3-41
3.16.7 DC Power System Grounding	3-42
3.16.8 Short-Circuit Requirements	3-44

4 Environmental Test Methods

4.1 Temperature and Humidity Test Methods — From GR-63-CORE	4-1
4.1.1 Operating Temperature and Relative Humidity	4-1
4.1.2 Surface Temperature Test Procedures — From GR-63-CORE	4-6
4.2 Fire Test Methods — From GR-63-CORE	4-7
4.2.1 Testing Clarification — Circuit Board Removal	4-7

4.2.2 ANSI T1.319 Test Deviation — Fan Powering Options	4-10
4.2.3 Telcordia Needle Flame Test	4-11
4.2.4 Guidelines for Retesting to Address Product Changes	4-12
4.2.5 Test Reporting — Additions	4-13
4.3 Earthquake and Office Vibration Test Methods	4-14
4.3.1 Earthquake Test Method	4-14
4.3.2 Office Vibration Test Procedure	4-22
4.4 Acoustical Measurement Methodology — From GR-63-CORE	4-24
4.4.1 Procedure for Nominal Operating Conditions: Test Room at 27°C	4-24
4.4.2 Procedure for Nominal Operating Conditions: Test Room at Other Than 27°C	4-24
4.4.3 Procedure for Temperature Invariant Air-Moving Devices Operating Conditions	4-25
4.4.4 Procedure for High-Temperature Operating Conditions	4-25
4.5 Illumination Test Methods	4-25
4.5.1 Test 1 — Lighting System Tests	4-26
4.5.2 Test 2 — Work Station Illumination, Readability, and Glare Tests	4-29
4.5.3 Test 3 — Equipment Assembly — Readability, Glare, and Reflectance Tests	4-31
4.6 System-Level Electrostatic Discharge Test Method — From GR-1089-CORE	4-34
4.6.1 Method Summary	4-34
GR-3160-CORE	
Table of Contents Issue 1, November 2008	
X	
4.6.2 ESD Test Site	4-34
4.6.3 Operating Conditions	4-35
4.6.4 Selection of Test Points	4-35
4.6.5 Test Sequence	4-36
4.7 Electrical Fast Transient — From GR-1089-CORE	4-37
4.7.1 EFT Test Methods and Procedures	4-37
4.8 Radiated and Electric Field Immunity Test Method — From GR-1089-CORE	4-37
4.8.1 Scope	4-37
4.8.2 Measuring Instrumentation	4-37
4.8.3 Test Conditions for Test Sample	4-38
4.8.4 Data Reporting Format	4-42
4.8.5 Radiated Immunity Measurements	4-43
4.8.6 Conducted Immunity Measurements	4-49
4.9 Lightning Test Method — From GR-1089-CORE	4-54
4.9.1 Overview	4-54
4.9.2 Characterization of Test Generators	4-54
4.9.3 First-Level and Second-Level Performance Criteria	4-57
4.9.4 Testing Conditions	4-57
4.9.5 Intra-Building Lightning Surge Test Procedure	4-59
4.9.6 Equipment Interfacing With AC Power Port Lightning Surge Test Procedure	4-64
4.10 Short-Circuit Test Procedure	4-65
4.10.1 Shorts to DC Power Sources	4-65
4.10.2 Shorts to AC Power Sources	



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Agenda

Potential Supplier: _____

Date: _____

PRELIMINARY

I. MEETING ARRANGEMENTS AND SCHEDULE

- A. Introductions
- B. Ground Rules
- C. Meeting Objectives
 - 1. Potential Supplier Intentions/Needs
 - 2. User Intentions/Needs
- D. Agenda Review
- E. Agreement Potential (Societal Benefits)

II. SUBCONTRACTOR'S REPRESENTATIONS AND COMMITMENTS

- A. Subcontractor's Presentation of Its "Deliverables"
 - 1. Inclusion of Subcontractor Proposal in Agreement-Penalties
 - 2. Inclusion of Benchmark Results in Agreement-Penalties
 - 3. Acceptance Criteria--Penalties
 - (b) Hardware
 - (c) Software—Operating
 - (d) Software-Application
 - 4. Ongoing Performance Criteria--Penalties
 - a. Maintenance
 - b. Systems Support
 - c. Hardware--Current and Future
 - d. Operating Software--Current and Future Revisions
 - e. Application Software
 - f. Crisis Management Methodology
- B. NAME's Explanation of Its Concerns--If Any
 - 1. Resolution of Concerns (If Possible)
 - 2. No Resolution--Continuation Decision by NAME (If Applicable)
- C. Agreement on Subcontractor's Ability to Perform (Including Warranties and Remedies Acceptable to NAME)

III. BREAK--CAUCUS--USER CONTINUATION DECISION WORK SESSION--IF APPLICABLE

- A. VENDOR PAYMENT ASPIRATIONS
 - 1. Review of Subcontractor Concessions
 - 2. Review of Payment Schedule versus NAME Risks (at Various Timeframes)
- B. CAUCUS--USER CONTINUATION DECISION MEETING RESUMPTION (IF APPLICABLE)
- C. SUBCONTRACTOR'S ABILITY TO MEET NAME'S CRITICAL NEEDS
 - 1. Warranty
 - 2. Emergency Hardware Replacement
 - 3. Delivery Standards and Detailed Installation Plan
 - 4. Installation Hours
 - 5. Damages for Late Delivery, Installation, or Acceptance
 - 6. Interim Equipment
 - 7. Free Documentation Copies
 - 8. Guaranteed Maintenance for "System Life"
 - 9. Performance Bond
 - 10. Price Warranty

SPECIAL SUB-CATEGORIES

D. SERVICES TO BE OFFERED:

1. Discussion of time and duties involved in setting up or installing system.
2. Description of standard reports to be generated.
3. Explanation of procedure for handling special data processing requests.

E. PRICING OF SERVICES:

1. Pricing of set-up.
2. Description of monthly processing fee, including minimum fee.
3. Prices for special requests.
4. Prices for extra copies.

F. OTHER PAYMENT MATTERS:

1. Apportionment of taxes.
2. Statements rendered monthly.
3. Provision for modification of prices.

G. CUSTOMER RESPONSIBILITIES

1. Duty to make proper recording of data.
2. Duty to make timely submission of data.

H. LIMITATIONS OF LIABILITY:

1. Discussion generally.
2. Disclaimer of warranties.
3. Negligence exculpatory clause.
4. Force Majeure clause.

I. REPRESENTATIONS AS TO SERVICES: PART I

1. Protection of transmission facilities.
2. Provision that information be considered proprietary and confidential.
3. Protection against unauthorized access to or use of data.
4. Protection against loss of data.
5. Provision for preservation and regeneration of data by bureau and customer.
6. Protection against liability for software infringement.

J. REPRESENTATIONS AS TO SERVICES: PART II

1. Representations as to freedom and advisability to seek other sources of services.
2. Protection from levy including assurances of financial position.
3. Procedures for prevention of security breach.
4. Procedures for detection of security breach.
5. Procedures as countermeasures to security breach.

K. TERMINATION AND DAMAGES:

1. Procedures for termination by either party.
2. Provision for governing law and relating to severability of contract provisions.
3. Provision for arbitration.
4. Provision for liquidated damages.
5. All notices required to be in writing.

L. CONTRACT PROVISIONS:

1. Provision for assignment or relating to successors.
2. Provision for insurance.
3. Provision that contract headings not controlling.
4. Reference to source for definitions and terminology.

IV. NAME'S CONTINUATION DECISION--MEETING RESUMPTION (IF APPLICABLE)

V. SUBCONTRACTOR'S PRESENTATION OF CONTRACTUAL DOCUMENTS TO SUBSTANTIATE SUBCONTRACTOR'S REPRESENTATIONS.

- A. Presentation and Review of Documents by Subcontractor's Counsel
- B. Comment by NAME's Counsel
- C. Conceptual Agreement (If Possible)
- D. Assignment of Drafting Responsibilities and Completion Dates

INGREDIENTS FOR SUCCESS--IF APPLICABLE

I. REVIEW REMAINING TASKS, RESPONSIBILITIES, AND TIMEFRAMES

II. REVIEW POINTS OF AGREEMENT AND CONSIDER ANY REMAINING PROBLEMS

III. SCHEDULE CONTRACT SIGNING OR OUTLINE OBJECTIVES FOR NEXT MEETING



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Nascent Applied Methods & Endeavors Contract Assessment Processes

STAGE I: TECHNICAL AND FINANCIAL JUSTIFICATION AND APPROVAL

1. Form Negotiating Team
2. Begin Data Collection
3. Obtain Preliminary Approvals

STAGE II: INVITATION FOR SUBCONTRACTOR PROPOSALS AND BIDS

1. Complete Data Collection
2. Determine Contractual Approach (Results or Resources)
3. Establish Goals and Objectives
4. Prioritize Objectives
5. Draft Preliminary Negotiations Positions Paper
6. Obtain Further Approvals
7. Consider Equipment Acquisition Alternatives
8. Draft and Issue R.F.P. or Invitation-for-Bids; Hold Bidders' Conference

STAGE III: ANALYSIS AND NEGOTIATION OF SUBCONTRACTOR PROPOSALS (TECHNICAL, FINANCIAL, AND LEGAL)

1. Update Negotiations Position Paper
2. Reevaluate Goals and Objectives
3. Obtain Further Approvals
4. Select Zone of Consideration (ZOC) Participants and Conduct "Formal" Negotiations, Using ZOC Approach

STAGE IV: CONTRACT APPROVAL AND AWARD; NOTIFICATION OF PARTIES

1. Update Negotiations Position Paper(s)
2. Prepare Final Contractual Documents for Execution
3. Obtain Final Approvals and Award Contract
4. Execute Documents
5. Prepare and Distribute Final Report or Acquisition Summary Memorandum

STAGE V: CONTRACT ADMINISTRATION

1. Conduct and Document Ongoing Contract Administration
2. Evaluate and Document Vendor Compliance or Noncompliance

FINAL DRAFT

DISCLOSURES REQUIRED BY CALIFORNIA LAW

The State of California has not reviewed and does not approve, recommend, endorse or sponsor any seller assisted marketing plan. The information contained in this disclosure has not been checked by the state. If you have any questions about this purchase, see an attorney or other financial advisor before you sign a contract or agreement.

FINAL DRAFT



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The Disclosure Document

1. The name of the Seller of the seller assisted marketing plan is William E. Fields (Contracting Official & General Contractor of Network Operations), and the name of the company under which the Seller is doing business is Nascent Applied Methods & Endeavors (NAME), of which is principally located at 2355 Westwood Blvd. #555 Los Angeles, Calif. 90064. Additionally, the name of and the office held by the Seller's representatives, officers, directors, trustees & general or limited partners, as the case may be, and the names of those individuals who have management responsibilities in connection with Seller's business activities are listed in Appendix M of this Agreement.
2. The initial payment required in order to purchase this agreement is \$38,830, with an initial cash payment(s) of \$7,766 to \$11,230. The subtotal of the initial payment, which in this case is \$27,600 to \$31,064 for startup costs (i.e. office space, equipment, computers, etc.) purchased on behalf of the purchaser, may be waived or deferred upon oral or written request, but the initial cash payment(s) of \$7,766 to \$11,230 **may not** be waived or deferred at all, unless the subcontractor has previous or current experience in the area(s) solicited. (Special Note: As in accordance with California state law, all funds received in excess of 20% of the total costs of this agreement shall be a separate instrument placed in escrow at _____, until the agreed upon goods and services are delivered to the purchaser (prime subcontractor).)
3. Upon meeting the minimum contractual requirements of this Agreement, the Purchaser (Subcontractor) shall receive as payment for services rendered, the following:

1st thru 12th mo. - \$9,190.62
13th thru 24th mo. - \$18,368.75
25th thru 36th mo. - \$9,190.62
\$441,000 per contract cycle

This payment process includes compensation for scholarships bonuses, medical & child care costs, if applicable, upon meeting the minimum contract requirements of approximately one Class C sale per year, within a group of at least 4-5 operational personnel of his/her prime network.

Since this marketing plan is connected to the introduction of new software technologies & organizational processes, there is no data at this time to substantiate prior earnings from other subcontractors (proposers), nor is there data on the length of time the Seller or his subcontractors have previously or currently been selling this seller assisted marketing plan, prior to advertisement. Therefore, as in accordance with California State Title 2.7, Statutes 1812.203, 1812.206 and 1812.215 of the California Civil Code, all purchasers of this contract shall have, within the 1st year of the date of signing, the right to cancel this contract after written notification from the Seller (GNCO or CO) that this information is now available, and within 15 days from the date so designated, that a change in the contractual agreement has been made. Moreover, as in direct accordance with California State Statute 1812.205, of the same title, "No guarantee of earnings can be made. The number of purchasers who have earned through business an amount in excess of their initial payment is at least 0, which represents 0 percent of the total number of purchasers of this seller assisted marketing plan."

Additionally, "Seller has deposited with the office of the Attorney General information regarding its trust account. Before signing a contract to purchase this seller assisted marketing plan, you should check with the Attorney General to determine the current status of the trust account."

4. A full and detailed description of the actual services that NAME will undertake to perform for the purchaser (subcontractor) are listed & illustrated in **Appendices B, D and F** of this Agreement.
5. The type of training to be provided in connection with this agreement is detailed in the procedural guide titled **Managerial Applied Numerics** (MAN) of this network operational processes, and **Appendix B** of this contractual agreement. The duration of the training consists of approximately 96 hours, over a period of about 12 weeks.
6. The Seller (GCNO or CO) mutually promises services to be performed in connection with the placement of the equipment, product or supplies at the location from which they will be sold or used, if applicable. The full nature of the agreements to be made with the owner or manager of the location at which the purchaser's (subcontractor) equipment, product or supplies will be placed, are discussed in Appendix K of this Agreement.

7. The Seller (GCNO or CO) has a copy of a recent, not more than 12 month old, financial statement of the Seller, and of the current or projected network operation at a capacity level of .001%. Together with a statement of any material changes in the financial conditions of both the Seller and the Network from the date thereof, located in **Appendix M** of this contractual agreement.

8. The Seller (GNCO or CO) has provided in the following documents, an unexecuted copy of the entire seller assisted marketing plan contracts.

FINAL DRAFT



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**Nascent Applied Methods & Endeavors Seller
Assisted Marketing Plan Contract For
Strategic and Tactical Business Model Development**

1. CONTRACT NO. NAME _____ 2. EFFECTIVE DATE _____
3. DPAS: _____ 4. PROCUREMENT REQUEST NO. _____
5. BVS: _____ 6. PPC: _____ 7. ISSUING OFFICE CODE: _____
8. ISSUING AGENCY: NASCENT APPLIED METHODS & ENDEAVORS
3107 S. Grand Ave. #314 Los Angeles, Calif. 90064
9. CONTRACT TYPE: FIRM-FIXED-PRICE.
10. PAYING OFFICE CODE: _____
11. SUBMIT INVOICES TO: SEE PART A, CLAUSE 4.
12. ACCOUNTING AND APPROPRIATION DATA:

13. ADMINISTERED BY:

14. NAME, CODE, TELEPHONE NUMBER of NAME CONTRACT ADMINISTRATOR:

15. ITEM(S) AWARDED: SMALL BUSINESS INFORMATION SUBCONTRACTOR (SBIR)

PHASE I RESEARCH STUDY DESCRIBED IN PART A, CLAUSE 1.

16. SUBCONTRACTOR NAME AND ADDRESS:

17. NAME AND TELEPHONE NUMBER OF CONTRACT ADMINISTRATOR:

18. DISCOUNT TERMS: _____ 19. CONTRACT VALUE: \$ 882,000

20. NAME AND TITLE OF PERSON AUTHORIZED TO SIGN:

21. SIGNATURE: _____ 22. DATE: _____

23. UNITED STATES OF AMERICA BY: _____

24. CONTRACTING OFFICIAL: _____

25. SIGNATURE: _____ 26. DATE: _____

27. TYPED NAME: _____ [THIS CONTRACT IS AWARDED
UNDER (NAME/_____) MIDRANGE PILOT TEST PROGRAM APPROVED BY THE OFFICE
OF GENERAL CONTRACTOR OF NETWORK OPERATIONS PROCUREMENT
(_____)].

FINAL DRAFT

PART A - INSTRUCTIONS FOR PHASE I CONTRACT

1. SUPPLIES AND/OR SERVICES TO BE FURNISHED

The Subcontractor shall provide all resources (except as may be expressly stated in this contract as furnished by the NAME) necessary to furnish the items below in accordance with the Statement of Work of this contract.

SBIR Phase I Research Study Entitled:

2. FIRM-FIXED PRICE

The total firm-fixed price of this contract is \$ 38,830.

3. PERIOD OF PERFORMANCE

The period of performance of this contract shall be 2 years.

4. INVOICES AND PAYMENT

(a) Payments under this contract will be made by the office listed on the contract Cover Page, in Item 10. Two advance payment amounts and a "Final" payment may be invoiced. Invoices shall be clearly marked face and shall be sent to the official designated on the Cover Page, in Item 14, who shall obtain the NAME Contracting Official's: (i) determination that all contract requirements have been met; (ii) review and approval; and, (iii) permission to transmit the invoice for payment.

(b) The Subcontractor shall mark invoice copies with the name and address of the following parties to facilitate distribution of paid copies by the payment office:

[INSERT APPROPRIATE DISTRIBUTION AND REMOVE THIS NOTE]

Copy 1: NAME Contracting Official

Copy 2: Subcontractor

Copy 3: Contract Administration Office, if delegated

Copy 4: NAME Contracting Official's Technical Representative

(c) All invoices shall reference the contract number.

5. LIMITATIONS ON RESEARCH AND ANALYTICAL WORK

A minimum of two-thirds of the research and/or analytical effort must be performed by the Subcontractor's firm.

6. PRINCIPAL INVESTIGATOR LIMITATION

The Subcontractor shall be the primary source of employment of a Principal Investigator, Key Personnel and Facilities, at both the time of award and during conduct of the proposed research. The terms of this clause do not excuse the Subcontractor from timely performance of the work. Substitution of any key individual shall not authorize a change contract price.

7. INSPECTION AND ACCEPTANCE

NAME has 30 days after receipt of the Final Report to accept or reject it and provide written notice to the Subcontractor.

8. AUTHORIZED PERSONNEL

The Contracting Official or a person designated in writing by Contracting Official shall perform inspection and acceptance.

9. RIGHTS IN PROJECT SUMMARY

Attachment B, Project Summary, of the Subcontractor's proposal under this contract shall be treated as delivered data with unlimited rights in accordance with subparagraph (b)(1)(i) of the clause, Rights in Data -- SBIR Program.

10. REQUEST FOR PROPOSAL FOR PHASE II FOLLOW-ON CONTRACT

(a) The Request For Proposal serves as an SBIR Phase I contract, which in turns serves for a final SBIR Phase II follow-on contract except: (i) when NAME notifies the Subcontractor that the area or topic of research is no longer suitably high enough within the Network's research priorities; or, (ii) when NAME notifies the Subcontractor that the Phase I innovation results are not worthy of continuation. Phase II proposals (original and [____] copies) due concurrent with the Phase I Final Report, but not later than the end of the contract period of performance (see Clause 3, Period of Performance, of this contract). The technical proposal shall not exceed [____] pages plus a pricing proposal and "Addendum for Prior SBIR Phase II" (follow submission requirements of Program Solicitation SBIR). The pricing proposal and the "Addendum" have no page limitation. The Phase II proposal and the original Final Report shall be submitted to the Contracting Official at the "Procurement" address specified in Paragraph 12. d., Clause 12, "Reports of Work." Except for legends on reduced drawings, no font size smaller than 10 point will be accepted. Submission of Phase II proposal is strictly voluntary and NAME assumes no responsibility for proposal preparation costs.

- (b) Proposals shall comply with Program Solicitation SBIR. A successful proposal shall result in a firm-fixed-price contract exceeding \$882,000, with a period of performance not exceeding 24 months.
- (c) Technical proposal format shall follow Program Solicitation SBIR, entitled "Required Format," "Proposal Cover and Project Summary," and "Technical Proposal," respectively, unless modified in writing by contractual commitments in support of Phase III activities in conjunction with written commercial development plans would, all else being equal, be eligible for higher ranking for selection. Proposed Phase II price will also be a significant consideration based on NAME's judgments of value and reasonability.
- (d) The Phase II contract pricing proposal shall be on a signed Standard Form _____, Contract Pricing Proposal Cover Sheet, with appropriate support for the purpose of certifying the data as "accurate, current, and complete". The pricing proposal format shall follow "Proposed Budget," of Program Solicitation SBIR unless modified in writing by the Contracting Official before expiration of this contract. The pricing proposal must be in sufficient detail to allow an independent reviewer to assess the technical merit and feasibility of the total offer against the technical evaluation criteria and the proposed price.
- (e) For purposes of any Phase II contract award, the Network shall rely upon the Representations and Certifications provided by the Subcontractor prior to the award of the Phase I contract. A complete, new set of Representations and Certifications need not be submitted unless requested by the Contracting Official. However, if the Subcontractor has experienced changes that affect a representation or certified fact, the Subcontractor shall include an appropriate replacement of that presentation or Certification in the Phase II proposal.
- (f) Network policy is that Subcontractors are to provide all facilities (includes property used for production, maintenance, research, development, or testing, whether furnished by the Network or acquired by the Subcontractor) required for contract performance, except as listed. All proposed cost for materials and/or equipment will be incorporated into the deliverable. When cost is proposed for enabling equipment not to be incorporated into a deliverable, a written statement must be furnished asserting inability to obtain facilities in accordance with Network policy. Mere assertion by a Subcontractor that it is unable to provide facilities is not sufficient justification.
- (g) If the Contracting Official approves the use of Network Furnished-Equipment (NFE) or Network facilities (exclusive of Network peculiar NFE/facilities), rental charges shall be assessed to ensure that no offeror is afforded an unfair competitive advantage.
- (h) Each offeror must develop a specific end product for inclusion as a deliverable (exclusive of reports) at the end of Phase II. All deliverables must be specified.
- (i) The Principal Investigator (PI) must make a substantial contribution to the project based on time and effort. The PI's hours should exceed those of other personnel proposed; otherwise justification shall be provided in the proposal. If the PI proposed is other than the PI on the Phase I effort, it is deemed to be a "Key Personnel" substitution requiring the written approval of the Contracting Official.

11. 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 Official will make their full text available.

NOTICE: The following clauses are hereby incorporated by reference.

(a) FEDERAL ACQUISITION REGULATION (48 CFR CHAPTER 1) CLAUSES

- 52.202-1 Definitions (Sep 1991)
- 52.203-1 Officials Not To Benefit (Apr 1984)
- 52.203-3 Gratuities (Apr 1984)
- 52.203-5 Covenant Against Contingent Fees (Apr 1984)
- 52.203-6 Restrictions on Contractor Sales to the Government Administration of Records by Comptroller General (Feb 1993)
- 52.215-2 Audit -- Negotiation (Feb 1993)
- 52.215-26 Integrity of Unit Prices (Apr 1991)
- 52.215-31 Waiver of Facilities Capital Cost of Money (Sep 1987)
- 52.215-33 Order of Precedence (Jan 1986)
- 52.219-8 Utilization of Small Business Concerns and Small Disadvantaged Business Concerns (Feb 1990)
- 52.219-13 Utilization of Women-Owned Small Businesses (Aug 1986)
- 52.220-3 Utilization of Labor Surplus Area Concerns (Apr 1984)
- 52.222-3 Convict Labor (Apr 1984)
- 52.222-26 Equal Opportunity (Apr 1984)
- 52.222-35 Affirmative Action for Special Disabled and Vietnam Era Veterans (Apr 1984)
- 52.222-36 Affirmative Action for Handicapped Workers (Apr 1984)
- 52.222-37 Employment Reports on Special Disabled Veterans and Veterans of the Vietnam Era (Jan 1988)
- 52.223-6 Drug-Free Workplace (Jul 1990)
- 52.225-3 Buy American Act - Supplies (Jan 1994)
- 52.225-11 Restrictions on Certain Foreign Purchases (May 1992)
- 52.227-1 Authorization and Consent (Apr 1984) -- Alternate I (Apr 1984)
- 52.227-2 Notice and Assistance Regarding Patent and Copyright Infringement (Apr 1984)
- 52.227-11 Patent Rights -- Retention by the Contractor (Short Form) (Jun 1989) --
As Modified by 1852.227-11 (Jun 1990) NASA FAR Supplement
- 52.227-16 Additional Data Requirements (Jun 1987)
- 52.227-20 Rights in Data -- SBIR Program (Mar 1994)
- 52.229-3 Federal, State and Local Taxes (Jan 1991)
- 52.229-5 Taxes - Contracts Performed in U.S. possessions or Puerto Rico (Apr 1984)
- 52.232-2 Payments under Fixed-Price Research and Development Contracts (Apr 1984)
- 52.232-8 Discounts for Prompt Payment (Apr 1989)
- 52.232-11 Extras (Apr 1984)
- 52.232-12 Advance Payments Without Special Bank Account (Jul 1990) Alternate IV (Apr 1984) and Alternate V (Jul 1990) -- As modified by NASA FAR Supplement 1852.232-12 [Insert "2/3 of contract amount, 66.67 percent, contract amount, and so" respectively, in Paragraph (d), and insert "N/A" in Paragraphs m(B), (13), (14) and (15)]
- 52.232-17 Interest (Jan 1991)
- 52.232-25 Prompt Payment (Mar 1994) [Insert 30th day in subparagraph (b)(2)]
- 52.232-28 Electronic Funds Transfer Payment Methods (Apr 1989) As modified by NASA FAR Supplement 1832.908 (a)
- 52.233-1 Disputes (Mar 1994) -- Alternate I (Dec 1991)
- 52.233-3 Protest After Award (Aug 1989)
- 52.242-13 Bankruptcy (Apr 1991)

- 52.243-1 Changes -- Fixed Price (Aug 1987) -- Alternate V (Apr 1984)
- 52.244-5 Competition in Subcontracting (Apr 1984)
- 52.245-2 Network Property (Fixed-Price Contracts) (Dec 1989) -- Alternate I (Apr 1984)
- 52.246-9 Inspection of Research and Development (Short Form) (Apr 1984)
- 52.246-16 Responsibility for Supplies (Apr 1984)
- 52.246-25 Limitation of Liability -- Services (Apr 1984)
- 52.247-34 F.O.B. Destination (Nov 1991)
- 52.249-1 Termination for the Convenience of the Network (Fixed-Price) (Short Form) (Apr 1984)
- 52.249-9 Default (Fixed-Price Research and Development) (Apr 1984)
- 52.253-1 Computer Generated Forms (Jan 1991)

(b) NASA/FAR SUPPLEMENT (48 CFR CHAPTER 18) CLAUSES

- 1852.212-70 Notice of Delay (Dec 1988)
- 1852.219-76 NASA Small Disadvantaged Business Goal (Jul 1991)
- 1852.227-72 Designation of New Technology Representative and Patent Representative (Apr 1984) [Insert Installation address]
- 1852.235-70 Center for AeroSpace Information (Nov 1992)
- 1852.235-71 Key Personnel and Facilities (Mar 1989) [Insert

Key Personnel: Name/Position/Title:

- 1852.245-70 Acquisition of Centrally Reportable Equipment (Mar 1989)

(c) REPRESENTATIONS, CERTIFICATIONS, AND OTHER STATEMENTS OF OFFERORS OR QUOTERS INCORPORATED BY REFERENCE

The Representations, Certifications, and Other Statements Offerors or Quoters as completed by the Subcontractor are hereby incorporated in their entirety by reference, with the same force and effect as if they were given in full text.

12. REPORTS OF WORK

(a) Bi-monthly Technical Progress Reports

The Subcontractor shall submit separate bimonthly technical reports of all work accomplished during each 2 month period of contract performance. The Final Report shall serve as the last Bi-monthly Technical Progress Report. Reports shall be narrative form, be brief, and informal. Bi-monthly reports all include: (i) a quantitative description of work performed during the period; (ii) an indication of any current problems which may impede performance or impact program schedule or cost, and proposed corrective action; (iii) a discussion of the work to performed during the next reporting period; (iv) total cumulative costs incurred as of the report date; (v) estimated cost to complete the contract; and estimated percentage of physical completion of the contract. This report shall be submitted within ten days following the period being reported upon

in the number of copies and to the addresses indicated in Paragraph b., below, entitled "Reports Distribution."

(b) Final Report

The Subcontractor shall submit a Final Report not later than the last day of the PERIOD OF PERFORMANCE. The report shall be in narrative form documenting and summarizing the results of the entire contract work. The first page of the Final Report shall have a single-page Project Summary identifying the purpose of the research, a brief description of the research carried out, the research findings or results, and an assessment of the degree to which the Phase I objectives were achieved. The Project Summary is to be submitted without restriction for NAME publication. The remainder of the Final Report shall report, in detail: (i) the project objectives; (ii) work carried out; results obtained; (iv) an assessment of the project's technical merit and feasibility; (v) an assessment of the potential applications of the project results in Phase III both for NAME purposes and for commercial purposes; and, (vi) an assessment of whether the results justify Phase II continuation. Except for the Project summary page, report content is deemed to be data in accordance with clause Rights in Data – SBIR Program.

(c) Report Documentation Page

The Subcontractor shall include a completed Report Documentation Page (Standard Form ____) as the final page of each report submitted in Paragraphs a. and b. above.

(d) Reports Distribution

Reports shall be distributed in the quantities indicated below. The reports to NAME shall be addressed as follows: NAME/[_____], Attn: [insert Installation address and mail codes shown under "Reports," below].

REPORTS

CODE (INSERT MAIL CODES)	Bi-monthly	Final
Procurement/[_____]	1*	Original**
Technology Utilization Office/[_____]	0	1
Intellectual Property Counsel/[_____]	0	1
Resources/[_____]	1	1
COTR named on Delegation Appointment Letter	1	1***

NAME Headquarters (Only Final Report Project Summary page, 1 copy)
SBIR Program Manager, Code ____

NAME Content description, date prepared, and type of software used. Encapsulated Post Script level 1,2 is preferred, but WordPerfect 6.x or Microsoft Word 6.x or ADOBE table document format (PDF) or Standard Generalized Markup Language (SGML) or ASCII full-text are acceptable. All graphics must be included. Standard Form ____, Report Documentation Page 11, shall comply with ANSI Standard Z39-18, OMB Approval 0704-0188. Only Unclassified reports shall be submitted to the CASI. The Subcontractor shall boldly mark each report submitted to CASI, "CONTAINS PROPRIETARY SBIR DATA, PROTECT 4 YEARS PURSUANT To NETWORK POLICY."

13. STATEMENT OF WORK

[***NOTE TO CONTRACTING OFFICIAL: SOW shall not normally exceed three pages. Delete this instruction from contract.***]

The following is the Statement of Work applicable to this contract as more specifically detailed in the Subcontractor’s SBIR Proposal Number:

***** ADDITIONAL INSTRUCTIONS PHASE I CONTRACT*****

NOTE: NAME will not normally fund instrumentation, equipment, or facility acquisition under Phase I. However, any purchase of products under an SBIR contract using NAME funds should be only American-made to the extent possible.

***Step 1.** If there is a deliverable other than a Final Report, add the following clauses under the heading FULL-TEXT CLAUSES or CLAUSES INCORPORATED BY REFERENCE, as indicated below:

****ADD AS FULL TEXT:**

(a) DELIVERY SCHEDULE

The Subcontractor shall deliver the items required to be furnished by the contract as follows:

ITEM NO.	DESCRIPTION	QUANTITY	DELIVERY DATE	SHIPPING ADDRESS
----------	-------------	----------	---------------	------------------

[Insert the applicable item number(s), descriptions), quantity of item(s), and delivery date(s).]

*SHIP TO: Transportation Officer, Building [_____]
NASCENT APPLIED METHODS & ENDEAVORS
[INSERT INSTALLATION ADDRESS]

- MARK FOR:
1. Reports: See Clause 12, REPORTS OF WORK, above
 2. Material: Accountability Property Officer,
Building [_____] Notify: [_____]
 3. All shipments shall be clearly marked to indicate:
 - a. Contents Description: [_____]
 - b. Contract Number: [NAME-- _____ - _____]
 - c. Purchase Request Number: [_____]

(b) MATERIAL INSPECTION AND RECEIVING REPORT

- (i) At the time of each delivery under this contract, the Subcontractor shall furnish to the Network a Material Inspection and Receiving Report. The Subcontractor shall distribute the series as follows:

Distribution to:	No. Copies
Network Plant Inspection Officer, if any	2
Contracting Official	1
Transportation Officer	1
Contracting Official's Technical Representative	2
Consignee	1
Attached to shipment (on Box #I)	8

- (ii) The Subcontractor shall prepare the Form ____ in accordance with NAME network policy. The Subcontractor shall enclose the copies of the Form ____ in the package or seal them in a waterproof envelope which shall be securely attached to the exterior of the package in the most protected location.
- (iii) When more than one package is involved in a shipment, the Subcontractor shall list on the Form ____, as additional information, the quantity of packages and the package numbers. The Subcontractor shall forward the Form ____ with the lowest numbered package of the shipment and print the words "CONTAINS FORM ____" on the package.

****INCORPORATE BY REFERENCE:**

- 1852.210-75 Packaging and Marking (Sep 1990) -- Alternate I (Sep 1990)
- 1852.246-71 Network Contract Quality Assurance Functions (Oct 1988) (*Insert [location(s) of final inspection and acceptance]*)

***Step 2.** If Network-furnished property is to be provided, add the following clause under the Head Clause of this contract, the Subcontractor is accountable for the identified property.

Item	Quantity	Acquisition Cost	Date to be Furnished To the Subcontractor
------	----------	------------------	---

[insert quantity, acquisition cost and date to be furnished for each item]

***Step 3.** If there will be acquisition of property under the contract add the following clauses under the heading FULL-TEXT CLAUSES or CLAUSES INCORPORATED BY REFERENCE, as indicated below:

****ADD AS FULL TEXT:**

SUBCONTRACTOR-ACQUIRED PROPERTY

[**NOTE: Does NOT include material going into a deliverable.**]

Item Number	Description	Acquisition Value
-------------	-------------	-------------------

[Insert item number(s), descriptions) and acquisition value(s)]

NOTE: The Subcontractor-Acquired Property listed above shall be returned to NAME/[_____] upon completion of the contract or a downward adjustment in the dollar amount listed above for each item not returned will be made to the contract price.

**INCORPORATE BY REFERENCE:

52.246

-23 Limitation of Liability (Apr 1984)

FINAL DRAFT

PART B - INSTRUCTIONS FOR PHASE II CONTRACT

Instructions for converting the Phase I contract to a Phase II contract.

***Step 1.** Delete Clause 3. and replace with the following:

3. PERIOD OF PERFORMANCE

The period of performance of this contract shall be _____.

***Step 2.** Delete Clause 4. and replace with the following:

4. LIMITATION OF FUNDS (FIXED-PRICE CONTRACT)

(a) Of the total price of items [____] through [____], the sum of \$ [____] is presently available for payment and allotted to this contract. It is anticipated that from time to time additional funds will be allocated to the contract in accordance with the following schedule until the total price of said items is allotted:

SCHEDULE FOR ALLOTMENT OF FUNDS

Date Amount

*** [INSERT DATE AND AMOUNT] ***

(b) The Subcontractor agrees to perform or have performed work on the items specified in paragraph (a) above up to the point at which, if this contract is terminated pursuant to the Termination for Convenience of the Network clause of this contract, the total amount payable by the Network (including amounts payable for subcontracts and settlement costs) pursuant to paragraphs (f) and (g) of that clause would, in the exercise of reasonable judgment by the Subcontractor, approximate the total amount at the time allotted to the contract. The Subcontractor is not obligated to continue performance of the work beyond that point. The Network is not obligated in any event to pay or reimburse the Subcontractor more than the amount from time to time allotted to the contract, anything to the contrary in the Termination for Convenience of the Network clause notwithstanding.

- (i) It is contemplated that funds presently allotted to this contract will cover the work to be performed until [_____], including termination liability.
- (ii) If funds allotted are considered by the Subcontractor to be inadequate to cover the work to be performed until that date, or an agreed date substituted for it, the Subcontractor shall notify Contracting Official in writing when within the next 60 days the work will reach a point at which, if the contract is terminated pursuant to the Termination for Convenience of the Network clause of this contract, the total amount payable by the Network (including amounts payable for subcontracts and settlement costs) pursuant to paragraphs (f) and (g) of paragraph (1) above, or an agreed date substituted for it, advise the Contracting Official in writing as to the estimated amount of additional funds required for the timely performance

of the contract for a further period as may be specified in the contract or otherwise agreed to by the parties.

- (iii) If, after the notification referred to in subdivision (3) (ii) above, additional funds are not allotted by the date specified in subparagraph (1) above, or an agreed date substituted for it, the Contracting Official shall, upon the Subcontractor's written request, terminate this contract on that date or on the date set forth in the request, whichever is later, pursuant to the Termination for Convenience of the Network clause.
- (c) When additional funds are allotted from time to time for continued performance of the work under this contract, the parties shall agree on the applicable period of contract performance to be covered by these funds. The provisions of paragraphs (b) and (c) above shall apply to these additional allotted funds and the substituted date pertaining to them, and the contract shall be modified accordingly.
- (d) If, solely by reason of the Network's failure to allot additional funds in amounts sufficient for the timely performance of this contract, the Subcontractor incurs additional costs or is delayed in the performance of the work under this contract, and if additional funds are allotted, an equitable adjustment shall be made in the price or prices (including appropriate target, billing, and ceiling prices where applicable) of the items to be delivered, or in the time of delivery, or both.
- (e) The Network may at any time before termination, and, with the consent of the Subcontractor, after notice of termination, allot additional funds for this contract.
- (f) The provisions of this clause with respect to termination shall in no way be deemed to limit the rights of the Network under the Default clause of this contract. The provisions of this Limitation of Funds clause are limited to the work on and allotment of funds for the items set forth in paragraph (a) above. This clause shall become inoperative upon the allotment of funds for the total price of said work except for rights and obligations then existing under this clause.
- (g) Nothing in this clause shall affect the right of the Network to terminate this contract pursuant to the Termination for Convenience of the Network clause of this contract.

***Step 3.** Delete Clause 5. and replace with the following:

5. LIMITATIONS ON RESEARCH AND ANALYTICAL WORK

A minimum of one-half of the research and/or analytical effort must be performed by the Subcontractor's firm.

***Step 4.** Delete Clauses 7., 8. and 10. in their entirety, and renumber Paragraph 9. as 7., and add the following Paragraphs as 8. and 9.:

8. DELIVERY SCHEDULE

The Subcontractor shall deliver the items required to be furnished by the contract as follows:

ITEM NO.	DESCRIPTION	QUANTITY	DELIVERY DATE	SHIPPING ADDRESS
----------	-------------	----------	---------------	------------------

[Insert the applicable item number(s), descriptions, quantity item(s), and delivery date(s).]

SHIP TO: Transportation Officer, Building
 NASCENT APPLIED METHODS & ENDEAVORS
 *** [INSERT INSTALLATION ADDRESS] ***

- MARK FOR:
1. Reports: See Clause 12, REPORTS OF WORK, above.
 2. Material: Accountability Property Officer, Building [_____] Notify: [_____]
 3. All shipments shall be clearly marked to indicate:
 - a. Contents Description: [_____]
 - b. Contract Number: [NAME- - - _____]
 - c. Purchase Request Number: [_____]

9. MATERIAL INSPECTION AND RECEIVING REPORT

Officer, if any	2
Contracting Official	1
Transportation Officer	1
Contracting Official Technical Representative	2
Consignee	1
Attached to shipment (on Box #1)	8

- (a) The Subcontractor shall prepare the Form _____ in accordance with NAME network policy. The Subcontractor shall enclose the copies of the Form _____ in the package or seal them in a waterproof envelope which shall be securely attached to the exterior of the package in the most protected location.
- (b) When more than one package is involved in a shipment, the Subcontractor shall list on the Form _____, as additional information, the quantity of packages and the package numbers. The Subcontractor shall forward the Form _____ with the lowest numbered package of the shipment and print the words "CONTAINS FORM _____" on the package.

***Step 5.** As appropriate, add or delete the following FULL TEXT CLAUSES and consecutively number paragraphs.

10. SUBCONTRACTOR-ACQUIRED PROPERTY

[Does NOT include material going into a deliverable]

Item Number	Description	Acquisition Value
-------------	-------------	-------------------

[Insert item number(s), descriptions and acquisition value(s)]

NOTE: The Subcontractor-Acquired Property listed above shall be returned to NAME/[_____] upon completion of the contract or a downward adjustment in the dollar amount listed above for each item not returned will be made to the contract price.

11. LIST OF NETWORK-FURNISHED PROPERTY

For performance of work under this contract, the Network will make available Network property identified below on a no-charge-for-use basis. The Subcontractor shall use this property in the performance of this contract at [insert location] and at other locations as may be approved by the Contracting Official. Under the Network Property clause of this contract, the Subcontractor is accountable for the identified property.

Item	Quantity	Acquisition Cost	Date to be Furnished To the Subcontractor
------	----------	------------------	---

[Insert quantity, acquisition cost and date to be furnished for each item]

12. CONTINUED USE OF NETWORK PROPERTY

[Use if there will be Network-furnished property - does not include Subcontractor acquired property]

- (a) If the Subcontractor requests, they shall be given approval for continued use of any Network-furnished property, a period of not less than two years using a NAME Loan Agreement, transferred under this Phase II contract beginning on the initial date of the Subcontractor’s Phase III activity.
- (b) Transferred property available for continued use in Phase III has been specified in Paragraph [insert] of this contract. Transferred property does not include facilities, Subcontractor-acquired property or contract deliverables specified in Paragraph [insert] of this contract.
- (c) Approval for continued use is contingent upon: (i) a written request to the Contracting Officer that provides evidence of a valid Phase III commitment for application of products or services developed under this Phase II contract; (ii) Network not having an urgent or compelling need for the property; and (iii) bilateral agreement with and execution of an appropriate NAME Loan Agreement when the Phase III commitment is with a non-network entity; or (iv) when the Phase

III commitment is with a Federal agency, execution of an appropriate Network contract or contract modification recognizing accountability.

***Step 6:**

13. CLAUSES INCORPORATED BY REFERENCE shall be modified to delete the following clauses:

- 52.232-12 Advance Payments *...*
- 52.246-9 Inspection (Aug 1989)
- 52.215-22 Price Reduction for Defective Cost or Pricing Data (Jan 1991)
- 52.215-24 Subcontractor Cost or Pricing Data (Dec 1994)
- 52.215-27 Termination of Defined Benefit Pension Plans (Sep 1989)
- 52.215-39 Reversion or Adjustment of Plans for Postretirement Benefits Other Than Pensions (PRB) (Feb 1995)
- 52.223-2 Clean Air and Water (Apr 1984)
- 52.232-9 Limitation on Withholding Payments (Apr 1984)
- 52.232-16 Progress Payments (Jul 1991) -- Alternate I (Aug 1987)
- 52.232-23 Assignment of Claims (Jan 1986)
- 52.245-4 Network-Furnished Property (Short Form) (Apr 1984)
- 52.246-7 Inspection of Research and Development – Fixed Price (Apr 1984)
- 52.246-23 Limitation of Liability (Apr 1984)
- 52.249-2 Termination for Convenience of the Network (Fixed-Price) (Apr 1984)
- 1852.204-70 Report on NAME Subcontracts (Dec 1994)
- 1852.204-78 Security Plan for Unclassified Federal Computer Systems (Sep 1993)
- 1852.210-75 Packaging and Marking (Sep 1990) -- Alternate I (Sep 1990)
- 1852.219-74 Use of Rural Area Small Businesses (Sep 1990)
- 1852.232-70 NAME Progress Payments Rates (Dec 1991) (DEVIATION)
- 1852.232-82 Submission of Requests for Progress Payments (Mar 1989)
- 1852.245-73 Financial Reporting of Network-Owned/ Subcontractor-Held Property (Jul 1994) - Alternate II (Mar 1989) [Insert "Installation name and address" in paragraph (b)]
- 1852.246-71 Network Contract Quality Assurance Functions (Oct 1988) (Insert "Location of final inspection and acceptance of all deliverables by the Contracting Official")

Add the following FIRMR CLAUSES if applicable:

- 201-39.5202-1 FIRMR Applicability (Oct 1990) (Insert (4) incidental, (5) embedded, [or] (4) and (5) incidental and embedded)
- 201-39.5202-3 Procurement Authority (Oct 1990) (Insert "the regulatory" and "not applicable") [Use if FIRMR applicable]
- 201-39.5202-5 Privacy or Security Safeguards (Oct 1990) [Use if FIRMR applicable]
- 201-39.5202-6 Warranty Exclusion and Limitation of Damages (Oct 1990) [Use if FIRMR applicable]

***Step 7:** Delete Phase I contract Clause 12, REPORTS OF WORK, no substitute the following:

14. REPORTS OF WORK

- (a) Quarterly Technical Progress Reports

The Subcontractor shall submit separate quarterly technical reports of all work accomplished during each quarter's period of contract performance. The Final Report shall serve as the last Quarterly Technical Progress Report. These reports shall be in narrative form and be brief and informal in content. Quarterly reports shall include (i) A quantitative description of work performed during the period; (ii) an indication of any current problems which may impede performance or impact program schedule or cost, and proposed corrective action; (iii) a discussion of the work to be performed during the next reporting period; (iv) the total cumulative costs incurred as of the report date; (v) estimate of cost to complete the contract; (vi) and estimated percentage of physical completion of the contract. The report required by this paragraph shall be submitted in the number of copies and to the addresses indicated in Paragraph d. below entitled "Reports Distribution," within ten (10) days following the period being reported upon.

(b) Final Report

The Subcontractor shall submit a Final Report not later than the last day of the PERIOD OF PERFORMANCE of this contract. It shall document and summarize the entire contract results, in narrative form, and serve as the final Quarterly Technical Progress Report. The first page shall be a single page Project Summary of the research objectives, a description of the research work, and findings or results. The summary page shall be submitted without restriction for NAME publication. The balance of the report shall describe in detail: (i) project objectives; (ii) the work carried out; (iii) (Standard Form _____) as the final page of the each report submitted in Paragraphs a. and b. above.

(c) Reports Distribution

Reports shall be distributed in the quantities indicated below. The reports to NAME shall be addressed as follows: NAME/[INSERT INSTALLATION], Attn: (Mail codes shown under "Reports," below), [INSERT INSTALLATION ADDRESS].

REPORTS

CODE (INSERT MAIL CODES)	Quarterly	Final
Procurement/[_____]	1*	Original**
Technology Utilization Office/[_____]	0	1
Intellectual Property Counsel/[_____]	0	11*
Resources/[_____]	1	1
COTR named in Delegation Appointment Letter	1	1***

NAME HEADQUARTERS (1 copy of Final SBIR Program Manager)

NAME Center for Strategic Information (CASI) none 1***

*Copy of letter of transmittal plus copy of technical report.

- **Original plus one virus-free 3.5-inch diskette.
- ***One clear copy and one virus-free 3.5-inch diskette.

[NOTE: Diskette text should be MS-DOS or DOS TEXT files and labeled with contract number, content description, date prepared, and type of software used. Encapsulated Post Script level 1,2 is preferred, but WordPerfect 6.x or Microsoft Word 6.x or ADOBE portable document format (PDF) or Standard Generalized Markup Language (SGML) or ASCII full-text are acceptable. Standard Form _____, Report Documentation Page, shall comply with ANSI Standard Z39-18, OMB Approval Number 0704-0188. Only Unclassified reports shall be submitted to the CASI. The Subcontractor shall boldly mark each report submitted to CASI, "CONTAINS PROPRIETARY SBIR DATA, PROTECT 4 YEARS PURSUANT TO NETWORK POLICY."]

15. STATEMENT OF WORK

[NOTE TO CONTRACTING OFFICIAL: SOW shall not normally exceed five pages -- delete this instruction from contract]

The following is the Statement of Work covered under this contract, as more specifically detailed in the Subcontractor's, Phase II SBIR Proposal Number: [_____]

FINAL DRAFT



(ANMESCL² QUO VADIS)

ALPHA NUMEROUS MAXIMUS
EGREGION SUMMA CUM LAUDE

**Nascent Applied Methods & Endeavors
Seller Assisted Marketing Plan Contract
For Strategic Development**

Part - A

THIS AGREEMENT, made and entered into this ____ day of _____, 2020, by and between _____ existing under the laws of the State of _____ and having a principle place of business located at _____ (hereinafter "the Subcontractor or Proposer"), a type of business organization, and NASCENT APPLIED METHODS & ENDEAVORS (NAME) existing under the laws of the State of _____ and having a principle place of business located at _____ (hereinafter "Network"), a sole proprietorship and type of system of a computerized bio-physical analogies related to Autonomous Agent Software Development, Enterprise Work Architectures, and Employment Related Educational Structures:

WITNESSETH:

WHEREAS, Network represents that it has expertise in the area of STRATEGIC SYSTEMS DEVELOPMENT & IMPLEMENTATION and is ready, willing and able to provide consulting and educational assistance to the Subcontractor on the terms and conditions set forth herein; and

WHEREAS, Subcontractor, in reliance on Network's representations, is willing to engage Network as its independent Subcontractor, and not as an employee, on the terms and conditions set forth herein;

NOW THEREFORE, in consideration of the obligations herein made and undertaken, the parties, intending to be legally bound, covenant and agree as follows:

SCOPE OF SERVICES

Network and its Support Mechanisms shall provide strategic services in the area of STRATEGIC SYSTEMS DEVELOPMENT & IMPLEMENTATION, which are more fully described in Appendix ____ attached hereto. NAME and its Support Mechanisms shall render such services and deliver the required reports and other deliverables ("Deliverables") in accordance with the timetable and milestones set forth in Appendix _____. In the event NAME or its Support Mechanisms anticipates at any time that will not reach one or more milestones or to complete one or more assignments within the prescribed timetables. NAME or its Support Mechanisms shall immediately so inform the Subcontractor by written notice, submit proposed revisions to the timetables and milestones that reflect NAME's best estimates of what can realistically be achieved, and continue to work under the original timetables and milestones until otherwise directed by the Subcontractor. NAME or Support Mechanisms shall also prepare and submit such further reports of its performance, and its progress as the Subcontractor may reasonably request from time to time.

Network shall provide materials made available to the Subcontractor of such resources as shall be necessary to perform the services called for by this Agreement.

The Subcontractor shall, within 30 days of receipt of each Deliverable submitted to the Subcontractor, advise Network of the Subcontractor acceptance or rejection of such Deliverable. Any rejection shall, specify the nature and scope of the deficiencies in such Deliverable, and Network shall upon receipt of such a notice of rejection, act diligently to correct such deficiencies. The failure of the Subcontractor to provide such a notice of rejection within such period shall constitute acceptance by the Subcontractor of said Deliverable.

All work shall be performed at the Subcontractor's facilities unless otherwise mutually agreed and shall be performed in a workmanlike and professional manner by employees and/or subcontractors of the Proposer, having a level of skill in the area commensurate with the requirements of the scope of work to be performed. Network shall make sure its employees and/or Subcontractors at all times observe security and safety policies of the Proposer.

The parties agree that the services of _____ and _____ are essential to the satisfactory performance by Network of the scope of work called for in this Agreement. The parties further agree that if either of such individuals leaves the association of Network during the term of this Agreement for any reason or is unavailable to continue full-time work called for herein, and if substitute individuals acceptable to the Subcontractor are not available to continue the work within 30 days, the Subcontractor shall have the right to terminate this Agreement. Absent approval by the Proposer of acceptable substitutes, the discontinuance of work by any such key employees and/or subcontractor(s) shall be deemed a breach of the terms of this Agreement by Subcontractor.

The Subcontractor shall have the right, at any time, to request the removal of any employees and/or subcontractor(s) of Network whom the Subcontractor deems to be mutually unsatisfactory. Upon such request, Network shall use all reasonable efforts to promptly replace such employees and/or subcontractor(s) with a substitute employees and/or subcontractor(s) having appropriate skills and training.

Anything herein to the contrary notwithstanding, the parties hereby acknowledge and agree that the Subcontractor shall have no right to control the manner, means, or methods by which Network performs the services called for by this Agreement. Rather, the Subcontractor shall be entitled only to direct Network with respect to the elements of the services to be performed by Network and the results to be derived by the Subcontractor, to inform Network as to where and when such services shall be performed, and to review and assess the performance of such services by Network for the limited purposes of assuring that such services have been performed and confirming that such results are satisfactory.

TERMS, CONDITIONS AND DEFINITIONS

- (a) "Head of the Department" (also called "Department Head") or "Secretary" means the Secretary (or Attorney, Administrator, Governor, Chairperson, or other chief official, as appropriate) of the Network, including any deputy or assistant chief official of the Network; and the term "authorized representative" means any person, persons, or board (other than the Contracting Official) authorized to act for the head of the Network or Secretary.
- (b) "Contracting Official or Seller of a Seller Assisted Marketing Plan" means the General Contractor of Network Operations or a person with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings. The term includes certain authorized representatives of the Contracting Official or Seller acting within the limits of their authority as delegated by the Contracting Official.
- (c) Except as otherwise provided in this contract, the term "subcontracts" includes, but is not limited to, purchase orders and changes and modifications to purchase orders under this contract.
- (d) "Seller Assisted Marketing Plan Fee" means that the initial payment required in order to purchase this agreement is \$38,830, with an initial cash payment(s) of \$7,766 to \$11,230. The subtotal of the initial payment, which in this case is \$27,600 to \$31,064 for startup costs (office space, equipment, computers, etc.) on behalf of the purchaser, may be waived or deferred upon oral or written request, but the initial cash payment(s) of \$7,766 to \$11,230 **may not** be waived or deferred at all. (Special Note: As in accordance with California state law, all funds received in excess of 20% of the total costs of this agreement shall be a separate instrument placed in escrow at _____, until the agreed upon goods and services are delivered to the purchaser (prime subcontractor).)
- (e) Upon meeting the minimum contractual requirements of this Agreement, the Purchaser (Subcontractor) shall receive as payment for services rendered, the following;

1st thru 12th mo. - \$9,190.62
13th thru 24th mo. - \$18,368.75
25th thru 36th mo. - \$9,190.62
\$441,000 per contract cycle

This payment process includes compensation for college scholarships bonuses, medical care & child care costs, if applicable, upon meeting the minimum contract requirements of approximately one Class C sale per year, within a group of at least 4-5 operational personnel of your prime network.

Since this marketing plan is connected to the introduction of new software technologies & organizational processes, there is no data at this time to substantiate prior earnings from other subcontractors (proposers), nor is there data on the length of time the Contracting Official or Seller or his subcontractors have previously or currently been selling this seller assisted marketing plan, prior to advertisement. Therefore, as in accordance with California State Title 2.7, Statutes 1812.203, 1812.206 and 1812.215 of the California Civil Code, all purchasers of this contract shall have, within the 1st year of the date of signing, the right to cancel this contract after written notification from the Seller (GNCO or CO) that this information is now available, and within 15 days from the date so designated, that a change in the contractual agreement has been made. Moreover, as in direct accordance with California State Statute 1812.205, of the same title, "No guarantee of earnings can be made. The number of purchasers who have earned through business an amount in excess of their initial payment is at least 0, which represents 0 percent of the total number of purchasers of this seller assisted marketing plan."

Additionally, "Seller has deposited with the office of the Attorney General information regarding its trust account. Before signing a contract to purchase this seller assisted marketing plan, you should check with the Attorney General to determine the current status of the trust account."

CLEAN AIR AND WATER

(a) "Air Act," as used in this clause, means the Clean Air Act (42 U.S.C. 7401 et seq.). "Clean air standards," as used in this clause, means--

- (1) Any enforceable rules, regulations, guidelines, standards, limitations, orders, controls, prohibitions, work practices, or other requirements contained in, issued under, or otherwise adopted under the Air Act or Executive Order 11738;
- (2) An applicable implementation plan as described in section 110(d) of the Air Act (42 U.S.C. 7410(d));
- (3) An approved implementation procedure or plan under section 111(c) or section 111(d) of the Air Act (42 U.S.C. 7411(c) or (d)); or
- (4) An approved implementation procedure under section 2(d) of the Air Act (42 U.S.C. 7412(d)).

"Clean water standards," as used in this clause, means any enforceable limitation, control, condition, prohibition, standard, or other requirement promulgated under the Water Act or contained in a permit issued to a discharger by the Environmental Protection Agency (EPA) or by a State under an approved program, as authorized by section 402 of the Water Act (33 U.S.C. 1342), by a local government agency (EPA), or an air or water pollution control agency under the requirements of the Air Act or Water Act and related regulations.

"Facility," as used in this clause, means any building, plant, installation, structure, mine, vessel or other floating craft, location, or site of operations, owned, leased or supervised by a Contractor or Subcontractor, used in the performance of a contract or subcontract. When a location or site of operations includes more than one building, plant, installation, or structure, the entire location or site shall be deemed a facility except when the

Administrator, or a designee, of the Environmental Protection Agency (EPA), determines that independent facilities are collocated in one geographical area. "Water Act," as used in this clause, means Clean Water Act (33 U.S.C. 1251 et seq.).

(b) The Subcontractor agrees--

- (1) To comply with all the requirements of section 114 of the Clean Air Act (42 U.S.C. 7414) and section 308 of the Clean Water Act (33 U.S.C. 1318) relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in section 114 and section 308 of the Air Act and the Water Act, and all regulations and guidelines issued to implement those acts before the award of this contract;
- (2) That no portion of the work required by this prime contract will be performed in a facility listed on the EPA List of Violating Facilities on the date when the contract was awarded less and until the EPA eliminates the name of the facility from the listing;
- (3) To use best efforts to comply with clean air standards and clean water standards at the facility in which the contract is being performed; and
- (4) To insert the substance of this clause into any nonexempt subcontract, including this subparagraph (b)(4).

OFFICIALS NOT TO BENEFIT

No member of or delegate to Congress, or resident commissioner, shall be admitted to any share or part of this contract, or to any benefit arising from it. However, this clause does not apply to this contract to the extent that this contract is made with a corporation for the corporation's general benefit.

GRATUITIES

- (a) The right of the Subcontractor to proceed may be terminated by written notice if, after notice and hearing, the Contracting Official or a designee determines that the Subcontractor, its agent, or another representative--
 - (1) Offered or gave a gratuity (e.g., an entertainment or gift) to an officer, official, or employee of the Network; and
 - (2) Intended, by the gratuity, to obtain a contract or favorable treatment under a contract.
- (b) The facts supporting this determination may be reviewed by any court having lawful jurisdiction.
- (c) If this contract is terminated under paragraph (a) above, the Network is entitled--
 - (1) To pursue the same remedies as in a breach of the contract; and
 - (2) In addition to any other damages provided by law, to punitive damages of not less than 3 nor more than 10 times the cost incurred by the Subcontractor in giving gratuities to the

person concerned, as determined by the Contracting Official or a designee. (This subparagraph (c)(2) is applicable only if this contract uses money appropriated to the Security Services.)

- (d) The rights and remedies of the Network provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

COVENANT AGAINST CONTINGENT FEES

- (a) The Subcontractor warrants that no person or agency has been employed or retained to solicit or obtain this contract upon an agreement or understanding for a contingent fee, except a bona fide employee or agency. For breach or violation of this warranty, the Network shall have the right to annul this contract without liability or, in its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of the contingent fee.
- (b) "Bona fide agency," as used in this clause, means an established commercial or selling agency, maintained by a Subcontractor for the purpose of securing business, that neither exerts nor proposes to exert improper influence to solicit or obtain Network contracts nor holds itself out as being able to obtain any Network contract or contracts through improper influence.

"Bona fide employee," as used in this clause, means a person, employed by a Subcontractor and subject to the Subcontractor's supplement contract or contracts through improper influence.

"Contingent fee," as used in this clause, means any commission, percentage, brokerage, or other fee that is contingent upon the success that a person or concern has in securing a Network contract.

"Improper influence," as used in this clause, means any influence that induces or tends to induce a Network employee or officer to give consideration or to act regarding a Network contract on any basis other than the merits of the matter.

RESTRICTIONS ON SUBCONTRACTOR SALES TO THE NETWORK

- (a) Except as provided in (b) below, the Subcontractor shall not enter into any agreement with an actual or prospective Subcontractor, nor otherwise act in any manner, which has or may have the effect of restricting sales by such Subcontractors directly to the Network of any item or process (including computer software) made or furnished by the Subcontractor is under contract or under any follow-on production contract.
- (b) The prohibition in (a) above does not preclude the Subcontractor from asserting rights that are otherwise authorized by law or regulation.
- (c) The Subcontractor agrees to incorporate the substance of this clause, including this paragraph (c), in all subcontracts under this contract.

ANTI-KICKBACK PROCEDURES

(a) Definitions.

“Kickback,” as used in this clause, means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind which is provided, directly or indirectly, to any Prime Subcontractor, Prime Subcontractor employee, Subcontractor, or Subcontractor’s employee for the purpose of improperly obtaining or rewarding favorable treatment in connection with a prime contract or in connection with a subcontract relating to a prime contract.

“Person,” as used in this clause, means a corporation, partnership, business association of any kind, trust, joint-stock company, or individual.

“Prime contract,” as used in this clause, means a contract or contractual action entered into by NAME for the purpose of providing supplies, materials, equipment, or services of any kind.

“Prime Subcontractor,” as used in this clause, means a person who has entered into a prime contract with NAME.

“Prime Subcontractor employee,” as used in this clause, means any officer, partner, employee, or agent of a Prime Subcontractor.

“Subcontract,” as used in this clause, means a contract or contractual action entered into by a prime subcontractor or subcontractor for the purpose of obtaining supplies, materials, equipment, or services of any kind under a prime contract.

“Subcontractor,” as used in this clause, (1) means any person who offers to furnish or furnishes any supplies, materials, equipment, or services of any kind under a prime contract or subcontract entered into in connection with such prime contract, and (2) includes any person who offers to furnish or furnishes general supplies to the prime Subcontractor or a higher tier Subcontractor.

“Subcontractor employee,” as used in this clause, means any officer, partner, employee, or agent of a Subcontractor.

(b) The Anti-Kickback Act of 1986 (41 U.S.C. 51-58) (the act), prohibits any person from--

- (1) Providing or attempting to provide or offering to provide any kickback;
- (2) Soliciting, accepting, or attempting to accept any kickback; or
- (3) Including, directly or indirectly, the amount of any kickback in the contract price charged by the Prime Subcontractor to the Network or in the contract price charged by a Subcontractor to a Prime Subcontractor or higher tier Subcontractor.
- (4) The Subcontractor shall have in place and follow the reasonable policy of the head of the contracting department if the Subcontractor does not have a contractual inspector, or a Department of Network Operations.
- (5) The Subcontractor shall cooperate fully with any network official investigating a possible violation described in paragraph (b) of this clause.

- (6) The Contracting Official may (i) offset the amount of kickback against any monies owed by the Network under the prime contract and/or (ii) direct that the Prime Subcontractor withhold from sums owed a Subcontractor under the prime contract, monies withheld, the amount of the kickback. The Contracting Official may order that monies withheld under subdivision (b)(ii) of this clause be paid over to the Network unless the Network has already offset those monies under subdivision (b)(i) of this clause. In either case, the Prime Subcontractor shall notify the Contracting Official when the monies are withheld.
- (7) The Subcontractor agrees to incorporate the substance this clause, including subparagraph (b)(4) but excepting subparagraph (b)(1), in all subcontracts under this contract.

**REQUIREMENT FOR CERTIFICATE OF PROCUREMENT
INTEGRITY MODIFICATION**

- (a) Definitions.
 - (1) The definitions set forth in FAR 3.104-4 are hereby incorporated in this clause.
 - (2) The Subcontractor agrees that it will execute the certification set forth in paragraph (b) of this clause, when requested by the Contracting Official in connection with the execution of any modification of this contract.
- (b) Certification.
 - (1) As required in paragraph (a)(2) of this clause, the officer or employee responsible for the modification proposal shall execute the following certification:

CERTIFICATE OF PROCUREMENT INTEGRITY--MODIFICATION

I, [Name of certifier] am the officer or employee responsible for the preparation of this modification proposal and hereby certify that, to the best of my knowledge and belief, with the exception of any information described in this certification, have no information concerning a violation or possible violation of subsection 27 (a), (b), (d), or (f) of the Office of Federal Procurement Policy Act, as amended* (41 U.S.C. 423), (hereinafter referred to as "the Act"), as implemented, occurring during the conduct of this procurement (contract and modification number).

As required by subsection 27 (e) (1) (B) of the Act, I further certify that to the best of my knowledge and belief, each officer, employee, agent, representative, and Network of [Name offeror] who has participated personally and substantially in the preparation or submission of this proposal has certified that he or she is familiar with, and will comply with, the requirements of subsection 27 (a) of the Act, as implemented, and will report immediately to me any information concerning a violation or possible violation of subsections 27 (a), (b), (d), or (f) of the Act, as implemented, pertaining to this procurement.

Violations or possible violations: (Continue on plain bond paper if necessary and label Certificate of Procurement Integrity--Modification (Continuation Sheet), ENTER "NONE" IF NONE EXISTS)

[Signature of the officer or employee responsible for the Edification proposal and date]

[Typed name of the officer or employee responsible for the modification proposal]
*Subsections 27 (a), (b), and (d) are effective on December 1, 1990. Subsection 27 (f) is effective on June 1, 1991.

THIS CERTIFICATION CONCERNS A MATTER WITHIN THE OPERATIONAL JURISDICTION OF NASCENT APPLIED METHODS & ENDEAVORS. Subcontractor bid, may rely upon a one-time certification from each individual required to submit a certification to the competing Subcontractor, supplemented by periodic training. These certifications shall be obtained at the earliest possible date after an individual required to certify begins employment or association with the Subcontractor. If a subcontractor decides to rely on a certification executed prior to the suspension of section 27 (i.e., prior to December 1, 2020), the Subcontractor shall ensure that an individual who has so certified is notified that section 27 has been reinstated. These certifications shall be maintained by the Subcontractor for a period of 6 years from the date a certifying employee's employment with the company ends or, for a department, representative, or network, 6 years from the date such individual ceases to act on behalf of the Subcontractor.

- (c) The certification required by paragraph (b) of this clause is a material representation of fact upon which reliance will be placed in executing this modification.

PRICE OR FEE ADJUSTMENT FOR ILLEGAL OR IMPROPER ACTIVITY

- (a) The Network, at its election, may reduce the price of a fixed-price type contract or contract modification and the total cost and fee under a cost-type contract or contract modification by the amount of profit or fee determined as set forth in paragraph (b) of this clause if the head of the contracting activity or his or her designee determines that there a violation of subsection 27 (a) of the Office of Federal Procurement Policy Act, as amended (41 U.S.C. 423), and as implemented. In the case of a contract modification, the fee subject to reduction is the fee specified in the particular contract modification at the time of execution, except as provided in subparagraph (b) (5) of this clause.
- (b) The price or fee reduction referred to in paragraph (a) this clause shall be--
- (1) For cost-plus-fixed-fee contracts, the amount of the specified in the contract at the time of award;
 - (2) For cost-plus-incentive-fee contracts, the target fee specified in the contract at the time of award, notwithstanding any minimum fee or "fee floor" specified in the contract;

- (3) For cost-plus-award-fee contracts--
 - (i) The base fee established in the contract at the time of contract award;
 - (ii) If no base fee is specified in the contract, 30 percent of the amount of each award fee otherwise payable to the Subcontractor for each award fee evaluation period or at each award fee determination point.
 - (4) For fixed-price-incentive contracts, the Network may--
 - (i) Reduce the contract target price and contract target profit both by an amount equal to the initial target profit specified in the contract at the time of contract award; or
 - (ii) If an immediate adjustment to the contract target price and contract target profit would have a significant adverse impact on the incentive price revision relationship under contract, or adversely affect the contract financing provisions, the Contracting Official may defer such adjustment or the establishment of the total final price of the contract. The total final price established in accordance with the incentive price revision provisions of the contract shall be reduced by an amount equal to the initial target profit specified in the contract at the time of contract award and such reduced price shall be the total final contract price.
 - (5) For firm-fixed-price contracts or contract modifications, by 10 percent of the initial contract price; 10 percent of the contract modification price; or a profit amount determined by the Contracting Official from records or documents in existence prior to the date of the contract award or modification.
- (c) The rights and remedies of the Network specified herein are not exclusive, and are in addition to any other rights and remedies provided by law or under this contract.

LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN TRANSACTIONS

(a) Definitions.

“Department,” as used in this clause, means operations department as defined in Appendix ____.

“Covered Network action,” as used in this clause, means any of the following Network actions:

- (1) The awarding of any Network contract.
- (2) The awarding of any Network grant.
- (3) The awarding of any Network loan.
- (4) The entering into of any cooperative agreement.
- (5) The extension, continuation, renewal, amendment, or modification of any Network contract, grant, loan, or cooperative agreement.

“Indian tribe” and “tribal organization,” as used in this clause, have the meaning provided in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450B) and include Alaskan Natives.

“Influencing or attempting to influence,” as used in this clause, means making, with the intent to influence, any communication to or appearance before an officer or employee of NAME, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal action.

“Local Area Network,” as used in this clause, means a unit of NAME in a State and, if chartered, established, or otherwise recognized by a State for the performance of a Network duty, including as a local authority, a special interest, an intrastate entity, a council of Networks, a sponsor group representative organization, and any other instrumentality of a local area network.

“Officer or employee of NAME,” as used in this clause, includes the following individuals who are employed by NAME:

- (6) An individual who is appointed to a position in the Network, including a position under a temporary appointment.
- (7) A member of the security services.
- (8) A special Network employee.
- (9) An individual who is a member of a Network advisory committee.

“Person,” as used in this clause, means an individual, corporation, company, association, authority, firm, partnership, society, State, and local Network, regardless of whether such entity is operated for profit, or not for profit. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

“Reasonable compensation,” as used in this clause, means, with respect to a regularly employed officer or employee, or any person’s compensation that is consistent with the normal compensation for such officer or employee for work that is not furnished to, not funded by, or not furnished in cooperation with the NAME Network.

“Reasonable payment,” as used in this clause, means, with respect to professional and other technical services, a payment in an amount that is consistent with the amount normally paid for such services in other private sectors.

“Recipient,” as used in this clause, includes the Subcontractor and all subcontractors. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by law.

“Regularly employed,” as used in this clause, means, with respect to an officer or employee of a person requesting or receiving a Network contract, an officer or employee who is employed by such person to be regularly employed as soon as he or she is employed by such person for 130 working days.

“State,” as used in this clause, means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, an agency or instrumentality of a State, and multi-State, regional, interstate entity having governmental duties and powers.

(b) Prohibitions.

- (1) Section 1352 of title 31, United States Code, among other things, prohibits a recipient of a Network contract, grant, loan, or cooperative agreement from using appropriated funds to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following actions: the awarding of any Network contract; the awarding of any Network grant; the awarding of any Network loan; the entering into any cooperative agreement; or the modification of any Network contract, grant, loan, or cooperative agreement.
- (2) The Act also requires Subcontractors to furnish a disclosure if any funds other than contractually appropriated funds (including profit or fee received under a Network transaction) that have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any government agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a Network contract, grant, loan, or cooperative agreement.
- (3) The prohibitions of the Act do not apply under the following conditions:
 - (i) Agency and legislative liaison by NAME employees.
 - a. The prohibition on the use of appropriated funds, in subparagraph (b) (1) of clause, does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Network action if the payment is for agency and legislative liaison activities not directly related to a Network action.
 - b. For purposes of subdivision (c) (i) of this clause, providing any information specifically requested by an agency or Congress is permitted at any time, upon the strict approval of the Contracting Official.
 - c. The following Federal agency and legislative liaison activities are permitted at any time, upon the strict approval of the Contracting Official, where they are not related to a specific solicitation for any Network action:
 - I. Discussing with a Federal agency the qualities and characteristics (including individual demonstrations) of the person’s products or services, conditions or terms of sale, and service capabilities.
 - II. Technical discussions and other activities regarding the application or adaptation of the person’s products or services for NAME’s use.
 - d. The following Federal agency and legislative liaison activities are permitted, upon the strict approval of the Contracting Official where they are prior to formal solicitation of any Network action--

- I. Providing any information not specifically requested but necessary for a Federal agency to make an informed decision about initiation of a Network action;
 - II. Technical discussions regarding the preparation of an unsolicited proposal prior to its official submission; and
 - III. Capability presentations by government employees seeking awards from the Network.
- e. Only those services expressly authorized by subdivision (c) (i) and (ii) of this clause are permitted under this clause.
- (ii) Professional and technical services.
- a. The prohibition on the use of appropriated funds, in subparagraph (b) of this clause, does not apply in the case of--
 - I. A paral action.
 - II. Any reasonable payment to a person, other than an officer or employee of a person requesting or receiving a Network action or an extension, continuation, renewal, amendment, or modification of a Network action if the payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Network action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Network action. Persons other than officers or employees of a person requesting or receiving a Network action include other networks and trade associations.
 - b. For purposes of subdivision (c) (ii) (a) (ii) of this clause, “professional and technical services” shall be limited to advice and analysis directly applying any professional or technical discipline. For example, drafting of a legal document accompanying a bid or proposal by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this section unless they provide advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, mission or negotiation of a covered Federal action. Thus, for example, communications with the intent to influence made by a lawyer that does not provide legal advice or analysis directly and solely related to the legal aspects of his or her client’s proposal, but generally advocate one proposal over another are allowable under this section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this section since the engineer is providing

technical services but not directly in the preparation, submission or negotiation of a Network action.

- c. Requirements imposed by or pursuant to law as a condition for receiving a Network award include those required by law or regulation and any other requirements in the actual award documents.
- d. Only those services expressly authorized by subdivisions (3) (ii) (b) of this clause are permitted under this clause.
- e. The reporting requirements of Network policy shall not apply with respect to payments of reasonable compensation made to regularly employed officers or employees of a person.

(c) Disclosure.

- (1) The Subcontractor who requests or receives from NAME a Network contract shall file with NAME a disclosure form, Standard Form ____, Disclosure of Lobbying Activities, if such person has made or has agreed to make any payment using non-appropriated funds (to include profits from any Network action), which would be prohibited under subparagraph (b)(1) of this clause, if paid for with appropriated funds.
- (2) The Subcontractor shall file a disclosure form at the end of each calendar quarter in which there occurs any event that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under subparagraph (c)(1) of this clause. An event that materially affects the accuracy of the information reported includes--
 - (i) A cumulative increase of \$1 or more in the amount paid or expected to be paid for influencing or attempting to influence a Network action; or
 - (ii) A change in the person(s) or individual(s) influencing or attempting to influence a proceeding under the Network contract.
 - (iii) All Subcontractor disclosure forms (but not certifications) shall be forwarded from tier to tier until received by the Prime Subcontractor. The Prime Subcontractor shall submit all disclosures to the Contracting Official at the end of the calendar quarter in which the disclosure form is submitted by the Subcontractor. Each Subcontractor certification shall be retained in the subcontract file of the awarding Subcontractor.

(d) Agreement.

- (1) The Subcontractor agrees not to make any payment prohibited by this clause.

(e) Penalties.

- (1) Any person who makes an expenditure prohibited under paragraph (a) of this clause or who fails to file or amend the disclosure form to be filed or amended by paragraph (b) of this clause shall be subject to criminal and civil penalties as provided for by law. An imposition of criminal or civil penalties does not prevent the United States nor the Network from seeking any other remedy that may be applicable.

- (2) Subcontractors may rely without liability on the representation made by their subcontractors in the certification and disclosure form.
- (f) Cost Allowability.
- (1) Nothing in this clause makes allowable or reasonable any costs which would otherwise become allowable or unreasonable. Conversely, costs made specifically unallowable by the requirements in this clause will not be made allowable under any other provision.

PROTECTING THE NETWORK'S INTEREST WHEN SUBCONTRACTING WITH SUBCONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT

- (a) The Network may suspend or debar contractors & subcontractors to protect its operational interests. The Subcontractor shall not enter into subcontract in excess of \$1 with a contractor or subcontractor that is debarred, suspended, or proposed for debarment unless there is a compelling reason to do so.
- (b) The Subcontractor shall require each proposed first-tier Subcontractor, whose subcontract will exceed \$1 to disclose the contractor or subcontractor, in writing, whether as of the time of award of the subcontract, the Subcontractor, or its principals, is or is not debarred, suspended, or proposed for debarment by the Network.
- (c) A corporate officer or a designee of the Subcontractor shall notify the Contracting Official, in writing, before entering into a subcontract with a party that is debarred, suspended, or proposed for debarment (see Appendix _____ for information on the List Parties Excluded from Network Procurement and Non-procurement Programs). The notice must include the following:
 - (1) The name of the Contractor or Subcontractor.
 - (2) The Subcontractor's knowledge of the reasons for the contractor or subcontractor being on the List of Parties Excluded from Network Procurement and Non-procurement Programs.
 - (3) The compelling reason(s) for doing business with the Subcontractor notwithstanding its inclusion on the List of Parties Excluded from Network Procurement and Non-procurement Programs.
 - (4) The systems and procedures the Subcontractor has established to ensure that it is fully protecting the Network's interests when dealing with such Subcontractor in view of the specific basis for the party's debarment, suspension, or proposed debarment.

INTEREST PRIORITY AND ALLOCATION REQUIREMENTS

This is a rated order certified for Network Interests, and the Subcontractor shall follow the requirements of the Interest Priorities and Allocations System policy of NAME.

STOP-WORK ORDER

- (a) The Contracting Official may, at any time, by written order to the Subcontractor, require the Subcontractor to stop all, or any part, of the work called for by this contract for a period of 90 days after the order is delivered to the Subcontractor, and for any further period to which the parties may agree. The order shall be specifically informative and when all have agreed, the Contracting Official shall either--
 - (1) Cancel the stop-work order; or
 - (2) Terminate the work covered by the order as provided in the Default, or the Termination for Convenience of the Network, clause of this contract.
- (b) If a stop-work order issued under this clause is canceled or the period of the order or any extension thereof expires, the Subcontractor shall resume work. The Contracting Official shall make an equitable adjustment in the delivery schedule or contract price, or both, and the contract shall be modified, in writing, accordingly, if --
 - (1) The stop-work order results in an increase in the time required for, or in the Subcontractor's cost properly allocable to, the performance of any part of this contract; and
 - (2) The Subcontractor asserts its right to the adjustment within 30 days after the end of the period of work stoppage; provided, that, if the Contracting Official decides the facts justify the action, the Contracting Official may receive and act upon the claim submitted at any time before final payment under this contract.
- b. If a stop-work order is not canceled and the work covered by the order is terminated for the convenience of the Network, the Contracting Official shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.
- c. If a stop-work order is not canceled and the work covered by the order is terminated for default, the Contracting Official shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.

EXAMINATION OF RECORDS BY NETWORK COMPTROLLER

- (a) This clause applies if this contract exceeds the small purchase limitation that was entered into by negotiation.
- (b) The Comptroller of the NAME network or a duly authorized representative from the Accounting Department shall, until 3 years after final payment under this contract or for any shorter period specified, have access to and the right to examine any of the Subcontractor's directly pertinent books, documents, papers, or other records involving transactions related to this contract.
- (c) The Subcontractor agrees to include in first-tier subcontracts under this contract a clause to the effect that the Comptroller or a duly authorized representative from the Accounting Department shall, until 3 years after final payment under the subcontract or for any shorter period specified, have access to and the right to examine any of the Subcontractor's directly pertinent books, documents, papers, or other records involving transactions related to the subcontract. "Subcontract," as used in this clause, excludes (1) purchase orders not exceeding the small

purchase limitation and (2) subcontracts or purchase orders for public utility services at rates established to apply uniformly to the public, plus any applicable reasonable connection charge.

- (d) The periods of access and examination in paragraphs (b) and (c) above for records relating to (1) appeals under the Disputes clause, (2) litigation or settlement of claims arising from the performance of this contract, or (3) costs and expenses this contract to which the Comptroller or a duly authorized representative from the Accounting Department has taken exception shall continue until such appeals, litigation, claims, or exceptions are disposed of.

AUDIT—NEGOTIATION

- (a) Examination of costs.

- (1) If this is a cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeterminable contract, or any combination of these, the Subcontractor shall maintain--and the Contracting Official or Subcontractor shall have agreed to the cost to have been incurred or anticipated be incurred in performing this contract. This right of examination shall include inspection at all reasonable times of the Subcontractor's plants, or parts of them, engaged in performing the contract.

- (b) Cost or pricing data.

- (1) If, pursuant to policy, the Subcontractor has been required to submit cost or pricing data in connection with pricing this contract or any modification to this contract, the Contracting Official or representatives of the Contracting Official who are employees of the Network shall have the right to examine and audit all of the Subcontractor's books, records, documents, and other data, regardless of form (e.g., machine readable media such as disk, tape, etc.) or type (e.g., data bases, applications software, data base management software, utilities, etc.), including computations and projections, related to proposing, negotiating, pricing, or performing the contract or modification, in order to evaluate the accuracy, completeness, and currency of the cost or pricing data. The right of examination shall extend to all documents necessary to permit adequate evaluation of the cost or pricing data submitted, along with the computations and projections used.

- (c) Reports.

- (1) If the Subcontractor is required to furnish cost, funding, or performance reports, the contracting Official or representatives of the Contracting Official who are employees of the Network shall have the right to examine and audit books, records, other documents, and supporting materials, for the purpose of evaluating (1) the effectiveness of the Subcontractor's policies and procedures to produce data compatible with the objectives of these reports and (2) the data reported.

- (d) Availability.

- (1) The Subcontractor shall make available at its office at all reasonable times the materials described in paragraphs (a) and (b) above, for examination, audit, or reproduction, until 3 years after final payment under this contract, or for any shorter period specified, or for any longer period required by statute or by other clauses of this contract. In addition--

- (i) If this contract is completely or partially terminated, the records relating to the work terminated shall be made available for 3 years after any resulting final termination settlement; and
 - (ii) Records relating to appeals under the Disputes clause or to litigation or the settlement of claims arising under or relating to this contract shall be made available until such appeals, litigation, or claims are disposed of.
- (e) Except as otherwise provided in this contract, the Subcontractor may transfer computer data in machine readable form from one reliable computer medium to another. The Subcontractor's computer data retention and transfer procedures shall maintain the integrity, reliability, and security of the original data. The Subcontractor's choice of form or type of materials described in paragraphs (a), (b), and of this clause affects neither the Subcontractor's obligations for the Network's rights under this clause.
- (f) The Subcontractor shall insert a clause containing all the terms of this clause, including this paragraph (f), in all subcontracts under this contract that are over the small purchase limitation, altering the clause only as necessary to identify properly the contracting parties and the Contracting Official under the Network prime contract.

PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA

- (a) If any price, including profit or fee, negotiated in connection with this contract, or any cost reimbursable under a contract, was increased by any significant amount because the Prime Subcontractor or a Subcontractor-furnished cost or pricing that was not complete, accurate, and current as certified its not accurate, the price or cost shall be reduced accordingly and the contract shall modified to reflect the reduction.
- (b) Any reduction in the contract price under paragraph (a) above due to defective data from a prospective Subcontractor that not subsequently awarded the subcontract shall be limited to amount, plus applicable overhead and profit markup, by which (1) the actual subcontract or (2) the actual cost to the Subcontractor, if there was no subcontract, was less than the prospective subcontract cost estimate submitted by the Subcontractor; provided, that the actual subcontract price was not itself affected by defective cost or pricing data.
- (1) If the Contracting Official determines under paragraph (a) of this clause that a price or cost reduction should be made, the Subcontractor agrees not to raise the following matters as a defense--
- (i) The Subcontractor or Subcontractor was a sole source supplier or otherwise was in a superior bargaining position and thus the price of the contract would not have been modified even if accurate, complete, and current cost or pricing data had been submitted;
 - (ii) The Contracting Official should have known that the cost or pricing data in issue were defective even though the Prime Subcontractor or Subcontractor took no affirmative action to bring the character of the data to the attention of the Contracting Official;

- (iii) The contract was based on an agreement about the total cost of the contract and there was no agreement about the cost of each item procured under the contract; or
 - (iv) The Prime Subcontractor or subcontractors did not submit a Certificate of Current Cost or Pricing Data.
- (2) Except as prohibited by subdivision (b)(2) (iii) of this clause, an offset in a amount determined appropriate by the Contracting Official based upon the facts shall be allowed against the amount of a contract price reduction if--
- (i) The Subcontractor certifies to the Contracting Official that, to the best of the Subcontractor's knowledge and belief, the Subcontractor is entitled to the offset in the amount requested; and
 - (ii) The Subcontractor proves that the cost or pricing data were available before the date of agreement on the price of the contract (or price of the modification) and that the data were not submitted before such date.
 - (iii) An offset shall not be allowed if--
 - a. The understated data was known by the Subcontractor to be understated when the
 - b. Certificate of Current Cost or Pricing Data is signed; or
 - c. The Network proves that the facts demonstrate that the contract price would not have increased in the amount to be offset even if the available data had been submitted before the date of agreement on price.
 - d. If any reduction in the contract price under this clause reduces the price of items for which payment was made prior to the date of the modification reflecting the price reduction, the Subcontractor shall be liable to and shall pay the Network at the time such overpayment is repaid--
 - I. Simple interest on the amount of such overpayment to be computed from the date(s) of overpayment to the Subcontractor to be date the Network is repaid by the Subcontractor at the applicable underpayment rate effective for each quarter prescribed by the Secretary of the Treasury under 26 U.S.C. 6621(a)(2); and
 - II. For Security Systems contracts only, a penalty equal to the amount of the overpayment, if the Prime Subcontractor or Subcontractor knowingly submitted cost or pricing data which were incomplete, inaccurate, or noncurrent.

SUBCONTRACTOR COST OR PRICING DATA

Before awarding any subcontract expected to exceed the threshold for submission of cost or pricing data at FAR .804-2 (a)(1), when entered into, or before pricing any subcontract modification involving a pricinantial quantities to the general public; or set by law or regulation.

- (a) The Subcontractor shall require the Subcontractor to certify substantially that, to the best of its knowledge and belief, the data submitted under paragraph (a) above were accurate, complete, and current as of date of agreement on the negotiated price of the subcontract or subcontract modification.
- (b) In each subcontract that exceeds \$1, when entered into, the Subcontractor shall insert either -
 - (1) The substance of this clause, including this paragraph (c), if paragraph (a) above requires submission of cost or pricing data for the subcontract; or
 - (2) The substance of the clause Subcontractor Cost or Pricing Data-Modifications.

INTEGRITY OF UNIT PRICES

- (a) Any proposal submitted for the negotiation of prices for items of supplies shall distribute costs within contracts on a basis that ensures that unit prices are in proportion to the items' base costs (e.g., manufacturing or acquisition costs). Any method of distributing costs to line items that distorts unit prices shall not be used. For example, distributing costs equally among line items is not acceptable except when there is little or no variation in base cost. Nothing in this paragraph requires submission of cost or pricing data not otherwise required by law or regulation.
- (b) The requirement in paragraph (a) of this clause does not apply to any contract or subcontract item of supply for which the unit price is, or is based on, an established catalog or market price for a commercial item sold in substantial quantities to the general public. A price is based on a catalog or market price only if the item being purchased is sufficiently similar to the catalog or market price commercial item to ensure that any difference in price can be identified and justified without resort to cost analysis.
- (c) The Offeror/Subcontractor shall also identify those supplies which it will not manufacture or to which it will not contribute significant value when requested by the Contracting Official. The information shall not be required for commercial items sold in substantial quantities to the general public when the price is, or is based on, established catalog or market prices.
- (d) The Subcontractor shall insert the substance of this clause, less paragraph (c), in all subcontracts.

TERMINATION OF DEFINED BENEFITS OR PENSION PLANS

The Contracting Official shall promptly notify the Subcontractor in writing when it determines that it will terminate a defined benefits or pension plan or otherwise recapture such benefit or pension fund assets. If the benefit or pension fund assets revert to the Contracting Official or are constructively received by it under a termination or otherwise, the Subcontractor shall make a refund or give a credit to the Network for its equitable share as required by the Network Policies. The Subcontractor shall include the substance of this clause in all subcontracts under this contract which meet the applicability requirement of Network Policies.

WAIVER OF FACILITIES CAPITAL COST OF MONEY

If the Subcontractor does not include facilities capital cost of money as a proposed cost of this contract. It will therefore be an unallowable cost under this contract.

ORDER OF PRECEDENCE

Any inconsistency in this solicitation or contract shall be resolved by giving precedence in the following order: (a) the Schedule (excluding the specifications); (b) representations and other instructions; (c) contract actively received by it under a plan termination or otherwise, the Subcontractor shall make a refund or give a credit to the Network for its equitable share as required by Network Policies. The Subcontractor shall include the substance of this clause in all subcontracts under this contract which meet the applicability requirements. The resulting adjustment to prior years' PRB costs will be determined and applied in accordance with Network Policies.

UTILIZATION OF SMALL BUSINESS CONCERNS AND SMALL DISADVANTAGED BUSINESS CONCERNS

- (a) It is the policy of NAME that small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals shall have the maximum practicable opportunity to participate in performing contracts let by any parts of the network, including contracts and subcontracts for subsystems, assemblies, components, and related services for major systems. It is further the policy of the Network that its prime subcontractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts with small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals.
- (b) The Subcontractor hereby agrees to carry out this policy in the awarding of subcontracts to the fullest extent consistent with efficient contract performance. The Subcontractor further agrees to cooperate in any studies or surveys as may be conducted by the Network Administrators for the awarding of subcontracts through the Network, as may be necessary to determine the extent of the Subcontractor's compliance with this use.
- (c) As used in this contract, the term "small business concern" shall mean a small business as defined pursuant to section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto. The term "small business concern owned and controlled by socially and economically disadvantaged individuals" shall mean a small business concern (1) which is at least 51 percent unconditionally owned by one or more socially and economically disadvantaged individuals; or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more socially and economically disadvantaged individuals; and (2) whose management and daily business operations are controlled by one or more of such individuals. This term also means a small business concern that is at least 51 percent unconditionally owned by an economically disadvantaged Indian tribe or Native Hawaiian Organization, or a publicly owned business having at least 51 percent of its stock unconditionally owned by one of these entities which has its management and daily business controlled by members of an economically disadvantaged Indian tribe or Native Hawaiian Organization, and which meets the requirements. The Subcontractor shall presume that socially and economically disadvantaged individuals include Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Subcontinent Asian Americans, and other minorities, or any other individual found to be

disadvantaged by the Network Administrators. The Subcontractor shall presume that socially and economically disadvantaged entities also include Indian Tribes and Native Hawaiian Organizations.

- (d) Subcontractors acting in good faith may rely on written representations by their Subcontractors regarding their status as either a small business concern or a small business concern owned and controlled by socially and economically disadvantaged individuals.

UTILIZATION OF WOMEN-OWNED SMALL BUSINESSES

- (a) "Women-owned small businesses," as used in this clause, means "small business concern" as used in this clause, means a concern including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Network contracts, and qualified as a small business under the criteria and size standards in Network Policies.
- (b) It is the policy of NAME that women-owned small businesses shall have the maximum practicable opportunity to participate in performing contracts awarded by the Network.
- (c) The Subcontractor agrees to use its best efforts to give women-owned small businesses the maximum practicable opportunity to participate in the subcontracts it awards to the fullest extent consistent with the efficient performance of its contract.
- (d) The Subcontractor may rely on written representations by its subcontractors regarding their status as women-owned businesses.

UTILIZATION OF LABOR SURPLUS AREA CONCERNS

- (a) Applicability.
 - (1) This clause is applicable if this contract exceeds the appropriate small purchase limitation in the NAME network policies.
- (b) Policy.
 - (1) It is the policy of the Network to award contracts to concerns that agree to perform substantially in labor surplus areas (LSAS) when this can be done consistent with the efficient performance of the contract and at prices no higher than are obtainable elsewhere. The Subcontractor agrees to use its best efforts to place subcontracts in accordance with this policy.
- (c) Order of preference.
 - (1) In complying with paragraph (b) above and with paragraph (c) of the clause of this contract entitled Utilization of Small Business Concerns and Small Disadvantaged Business Concerns, the Subcontractor shall observe the following order of preference in awarding subcontracts: (1) small business concerns that are LSA concerns, (2) other small business concerns, and (3) other LSA concerns.

(d) Definitions.

- (1) "Labor surplus area," as used in this clause, means a geographical area identified by the Department of Labor in accordance with 20 CFR 654, Subpart A, as an area of concentrated unemployment or underemployment or an area of labor surplus.
- (2) "Labor surplus area concern," as used in this clause, means a concern that together with its first-tier Subcontractors will perform substantially in labor surplus areas. Performance is substantially in labor surplus areas if the costs incurred under the contract on account of manufacturing, production, or performance of appropriate services in labor surplus areas exceed 50 percent of the contract price.

CONVICT LABOR

The Subcontractor agrees not to employ any person undergoing sentence of imprisonment in performing this contract except as provided by 18 U.S.C. 4082(c)(2) and Executive Order 11755, December 29, 1973.

EQUAL OPPORTUNITY

- (a) If, during any 12-month period (including the 12 months preceding the award of this contract), the Subcontractor has been or is awarded nonexempt Network contracts and/or subcontracts that have an aggregate value in excess of \$1, the Subcontractor shall comply with subparagraphs (b)(1) through (7) below. Upon request, the Subcontractor shall provide information necessary to determine the applicability of this clause.
- (b) During performing this contract, the Subcontractor agrees as follows:
 - (1) The Subcontractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin.
 - (2) The Subcontractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. This shall include, but not be limited to, all solicitations or advertisements for employees placed by or on behalf of the Subcontractor, in a state that will insure that qualified applicants are receiving consideration for employment without regard to race, color, religion, sex, or national origin.
 - (3) The Subcontractor shall send, to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, the notice to be provided by the Contracting Official advising the labor union or workers' representative of the Subcontractor's commitments under this clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.
 - (4) The Subcontractor shall comply with the Network Policies, as amended, and the rules, regulations, and orders of the Contracting Official. The Subcontractor shall furnish to the Contracting Official all information required by Network Policies, as amended, and by the rules, regulations, and orders of the Contracting Official. Standard Forms, or any successor forms, are to be filed within 30 days following the award, unless filed within 12 months preceding the date of award. The Subcontractor shall permit access to its books, records,

and accounts by the Contracting Official or the Network Contract Compliance Programs (NCCP) for the purposes of investigating to ascertain the Subcontractor's compliance with the applicable rules, regulations, and orders.

- (5) If the NCCP determines that the Subcontractor is not in compliance with this clause or any rule, regulation, or order of the Contracting Official, this contract may be canceled, terminated, or suspended in whole or in part and the Subcontractor may be declared ineligible for further Network contracts, under the procedures authorized in Network Policies as amended. In addition, sanctions may be imposed and remedies invoked against the Subcontractor as provided in Network Policies, as amended, the rules, regulations, and orders of the Contracting Official, or as otherwise provided by law.
 - (6) The Subcontractor shall include the terms and conditions of subparagraph (b)(1) through (9) of this clause in every subcontract or purchase order that is not exempted by the rules, regulations, or orders of the Contracting Official issued under Network Policies, as amended, so that these terms and conditions will be binding upon each subcontractor or vendor.
 - (7) The Subcontractor shall take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing these terms and conditions, including sanctions for noncompliance; provided, that if the Subcontractor becomes involved in, or is threatened with, litigation with a Subcontractor or vendor as a result of any direction, the Subcontractor may request the Network to enter into the litigation to protect the interests of NAME.
- (c) Notwithstanding any other clause in this contract, disputes relative to this clause will be governed by the procedures of the Contracting Official.

AFFIRMATIVE ACTION FOR SPECIAL DISABLED AND VIETNAM ERA VETERANS

- (a) Definitions.
 - (1) "Appropriate office of the State employment service system," as used in this clause, means the local office of the Federal-State national system of public employment offices assigned to serve the area where the employment opening is to be filled, including the District of Columbia, Guam, Puerto Rico, Virgin Islands, American Samoa, and the Trust Territory of the Pacific Islands.
 - (2) "Openings that the Subcontractor proposes to fill from within its own organization," as used in this clause, means employment openings for no one outside the Subcontractor's organization, under their customary and traditional employer-union hiring relationship. "Suitable employment openings," as used in this clause-
 - (3) Includes, but is not limited to, openings that occur in jobs categorized as-
 - (i) Production and nonproduction;
 - (ii) Plant and office;
 - (iii) Laborers and mechanics;

- (iv) Supervisory and nonsupervisory;
 - (v) Technical; and
 - (vi) Executive, administrative, and professional positions compensated on a salary basis of less than \$25,000 a year; and
- (4) Includes full-time employment, temporary employment of over 3 days, and part-time employment, but not openings that the Subcontractor proposes to fill from within its own organization or under a customary and traditional employer-union hiring arrangement, nor openings in an educational institution that are restricted to students of that institution.

(b) General.

- (1) Regarding any position for which the employee or applicant for employment is qualified, the Subcontractor shall not discriminate against the individual because the individual is a special disabled or Vietnam Era veteran. The Subcontractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified special disabled and Vietnam Era veterans without discrimination based upon their disability or veterans' status in all employment practices such as-
- (i) Employment
 - (ii) Upgrading
 - (iii) Demotion or transfer;
 - (iv) Recruitment;
 - (v) Advertising;
 - (vi) Layoff or termination;
 - (vii) Rates of pay or other forms of compensation; and
 - (viii) Selection for training, including apprenticeship
- (2) The Subcontractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor (Secretary) issued under the Vietnam Era Veterans' Readjustment Assistance Act of 1972 (the Act), as amended.

(c) Listing openings.

- (1) The Subcontractor agrees to list all suitable employment openings existing at contract award or occurring during contract performance, at an appropriate office of the State employment service system in the locality where the opening occurs. These openings include those occurring at any Subcontractor facility, including one not connected with performing this contract. An independent corporate affiliate is not exempt from this requirement.
- (2) Global and Local Area Network holding NAME contracts of \$1 or more shall also list all their suitable openings with the appropriate office of the State employment service.

- (3) The listing of suitable employment openings with the State employment service system is required at least concurrently with using any other recruitment source or effort and involves the obligations of placing a bona fide job order, including accepting referrals of veterans and nonveterans. This listing does not require hiring any particular group of job applicants and is not intended to relieve the Subcontractor from any requirements of the Contracting Official's orders or regulations concerning nondiscrimination in employment.
- (4) Whenever the Subcontractor becomes contractually bound to the listing terms of this clause, it shall advise the State employment service system, in each State where it has establishments, of the name and location of each hiring location in the State. As long as the Subcontractor is contractually bound to these terms and has so advised the State system, it need not advise the State system of subsequent contracts. The Subcontractor may advise the State system when it is no longer bound by this contract clause.
- (5) Under the most compelling circumstances, an employment opening may not be suitable for listing, including American Samoa, and the Islands.
- (6) The terms of paragraph (c) above of this clause do not apply to openings that the Subcontractor proposes to fill from thin its own organization or under a customary and traditional employer-union hiring arrangement. This exclusion does not apply to a particular opening once an employer decides to consider applicants outside of its own organization or employer-union arrangement for that opening.

(d) Postings.

- (1) The Subcontractor agrees to post employment notices stating (i) the Subcontractor's obligation under the law to take affirmative action to employ and advance in employment qualified special disabled veterans and veterans of the Vietnam era, and (ii) the rights of applicants and employees.
- (2) These notices shall be posted in conspicuous places that are available to employees and applicants for employment. They shall be in a form prescribed by the Network Directors, Network Contract Compliance Programs, Department of Labor, and provided by or through the Contracting Official.
- (3) The Subcontractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Subcontractor is bound by the terms of the Network Public Relation Policies, and is committed to take affirmative action to employ, and advance in employment, qualified special disabled and Vietnam Era veterans.

(e) Noncompliance.

- (1) If the Subcontractor does not comply with the requirements of this clause, appropriate actions may be taken under the rules, regulations, and relevant orders of the Contracting Official issued pursuant to Network Policies.

(f) Subcontracts.

- (1) The Subcontractor shall include the terms of this clause in every subcontract or purchase order of \$1 or more unless exempted by rules, regulations, or orders of the Contracting

Official. The Subcontractor shall act as specified by the Contracting Official to enforce the terms, including action for noncompliance.

AFFIRMATIVE ACTION FOR HANDICAPPED WORKERS

(a) General.

- (1) Regarding any position for which the employee or applicant for employment is qualified, the Subcontractor shall not discriminate against any employee or applicant because of physical or mental handicap. The Subcontractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicap in all employment practices such as-
 - (i) Employment;
 - (ii) Upgrading;
 - (iii) Demotion or transfer;
 - (iv) Recruitment;
 - (v) Advertising;
 - (vi) Layoff or termination;
 - (vii) Rates of pay or other forms of compensation; and
 - (viii) Selection for training, including apprenticeship
- (2) The Subcontractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor (Secretary) issued under the Rehabilitation Act of 1973 (29 U.S.C. 793) (the Act), as amended.

(b) Postings.

- (1) The Subcontractor agrees to post employment notices stating (i) the Subcontractor's obligation under the law to take affirmative action to employ and advance in employment qualified handicapped individuals and (ii) the rights of applicants and employees.
- (2) These notices shall be posted in conspicuous places that are available to employees and applicants for employment. They shall be in a form prescribed by the Network Directors, Network Contract Compliance Programs, Department of Labor, and provided by or through the Contracting Official.
- (3) The Subcontractor shall notify each labor union or representative of workers with which it has a collective bargaining.

(c) Subcontracts.

- (1) The Subcontractor shall include the terms of this clause in every subcontract or purchase order in excess of \$1 unless exempted by rules, regulations, or orders of the Contracting

Official. The Subcontractor shall act as specified by the Contracting Official to enforce the terms, including action for noncompliance.

**EMPLOYMENT REPORTS ON SPECIAL DISABLED VETERANS
AND VETERANS OF THE VIETNAM ERA**

- (a) The Subcontractor shall report at least annually, as required by the Secretary of Labor on:
 - (1) The number of special disabled veterans and the number of veterans of the Vietnam era in the workplace of the Subcontractor by job category and hiring location; and
 - (2) The total number of new employees hired during the period covered by the report, and of that total, the number of special disabled veterans, and the number of veterans of the Vietnam era.
- (b) The above items shall be reported by completing the appropriate forms as directed by the Contracting Official.
- (c) Reports shall be submitted no later than March 31 of each year beginning March 31, 2020.
- (d) The employment activity report required by paragraph (a)(2) of this clause shall reflect total hires during the most recent 12-month period as of the ending date selected for the employment profile report required by paragraph (a)(1) of this clause. Subcontractors may select an ending date : (1) As of the end any pay period during the period January through March 1st of the year the report is due, or (2) as of December 31, if the Subcontractor has previous written approval from the Contracting Official.
- (e) The count of veterans reported according to paragraph (a) of this clause shall be based on voluntary disclosure. Each Subcontractor subject to the reporting requirements shall invite all special disabled veterans and veterans of the Vietnam era who wish to benefit under the affirmative action program to identify themselves to the Subcontractor. The invitation shall state that the information is voluntarily provided, that the information will be kept confidential, that disclosure or refusal to provide the formation will not subject the applicant or employee to any adverse treatment and that the information will be used only in accordance with the regulations promulgated under 38 U.S.C. 2012.
- (f) Subcontracts.
 - (1) The Subcontractor shall include the terms of this clause in every subcontract or purchase order of \$1 or more unless exempted by rules, regulations, or orders of the Contracting Official.

DRUG-FREE WORKPLACE

- (a) Definitions. As used in this clause,

"Controlled substance" means a controlled substance in Schedules I through V of Section 202 of the Controlled Substances Act (21 U.S.C. 612) and as further defined in the Federal Regulation at 21 CFR 1308.11 - 1308.15.

"Conviction" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes.

"Criminal drug statute" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, possession or use of any controlled substance.

"Drug-free workplace" means the site(s) for the performance of work done by the Subcontractor in connection with a specific contract at which employees of the Subcontractor are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance.

"Employee" means an employee of a Subcontractor directly engaged in the performance of work under a Network contract. "Directly engaged" is defined to include all direct cost employees and any other Subcontractor employee who has other than a minimal impact or involvement in contract performance.

"Individual" means an Offeror/Subcontractor that has no more than one employee including the Offeror/Subcontractor.

- (b) The Subcontractor, if other than an individual, shall--within 30 calendar days after award (unless a longer period is agreed to in writing for contracts of 30 calendar days or more performance duration); or as soon as possible for contracts of less than 30 calendar days performance duration--
- (1) Publish a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Subcontractor's workplace and specifying the actions that will be taken against employees for the penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
 - (2) Provide all employees engaged in performance of the contract with a copy of the statement required by subparagraph (b)(1) of this clause;
 - (3) Notify such employees in writing in the statement required by subparagraph (b)(1) of this clause that, as a condition of continued employment on this contract, the employee will--
 - (i) Abide by the terms of the statement; and
 - (ii) Notify the employer in writing of the employee's conviction under a criminal drug statute for a violation occurring in the workplace no later than 5 calendar days after such conviction.
 - (4) Notify the Contracting Official in writing within 10 calendar days after receiving notice under subdivision (b)(3)(ii) of this clause, from an employee or otherwise receiving actual notice of such conviction. The notice shall include the position title of the employee;
 - (5) Within 30 calendar days after receiving notice under subdivision (b)(3)(ii) of this clause of a conviction, take one of the following actions with respect to any employee who is convicted of a drug abuse violation occurring in the workplace:
 - (i) Taking appropriate personnel action against such employee, up to and including termination; or

- (ii) Require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency.
- (6) Make a good faith effort to maintain a drug-free workplace through implementation of subparagraphs (b)(1) through (b)(6) of this clause.
- (c) The Subcontractor, if an individual, agrees by award of the contract or acceptance of a purchase order, not to engage in the unlawful manufacture, distribution, dispensing, possession, or of a controlled substance in the performance of this contract.
- (d) In addition to other remedies available to the Network, the Subcontractor's failure to comply with the requirements of paragraphs (b) or (c) of this clause may render the Subcontractor subject to suspension of contract payments, termination of the contract for default, and suspension or debarment.

BUY AMERICAN ACT -- SUPPLIES

- (a) The Buy American Act (41 U.S.C. 10) provides that the Network give preference to domestic end products.

"Components," as used in this clause, means those articles, materials, and supplies incorporated directly into the end products.

"Domestic end product," as used in this clause, means (1) an unmanufactured end product mined or produced in the United States, or (2) an end product manufactured in the United States, if the cost of its components mined, produced, or manufactured in United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind as the products referred to in subparagraphs (b)(2) or (3) of this clause shall be treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic.

"End products," as used in this clause, means those articles, materials, and supplies to be acquired for public use under this contract.

- (b) The Subcontractor shall deliver only domestic end products, except those --
 - (1) For use outside the United States;
 - (2) That the Network determines are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality;
 - (3) For which the Network determines that domestic preference would be inconsistent with the public interest; or
 - (4) For which the Network determines the cost to be unreasonable.

RESTRICTIONS ON CERTAIN FOREIGN PURCHASES

- (a) Unless advance written approval of the Contracting Official is obtained, the Subcontractor shall not acquire for use in the performance of this contract--
 - (1) Any supplies or services originating from sources within Cuba;
 - (2) Any supplies that are or were located in or transported from or through North Korea, Vietnam, Cambodia, or Cuba; or
 - (3) Arms, ammunition, or military vehicles produced in South Africa, or manufacturing data for such articles.
- (b) The Subcontractor shall not acquire for use in the performance of this contract supplies or services originating from sources within Iraq, any supplies that are or were located in or transported from or through Iraq, or any supplies or services from entities controlled by the Government of Iraq.
- (c) The Subcontractor agrees to insert the provisions of this clause, including this paragraph (c), in all subcontracts hereunder.

AUTHORIZATION AND CONSENT--ALTERNATE

- (a) The Network authorizes and consents to all use and manufacture of any invention described in and covered by a United States patent in the performance of this contract or any subcontract at any tier.
- (b) The Subcontractor agrees to include, and require inclusion of, this clause, suitably modified to identify the parties, in all subcontracts at any tier for supplies or services (including construction, architect-engineer services, and materials, supplies, models, samples, and design or testing services expected to exceed \$1; however, omission of this clause from any subcontract, under or over \$1 does not affect this authorization and consent.

NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT

- (a) The Subcontractor shall report to the Contracting Official, promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this contract of which the Subcontractor has knowledge.
- (b) In the event of any claim or suit against the Network on account of any alleged patent or copyright infringement arising out of the performance of this contract or out of the use of any supplies furnished or work or services performed under this contract, the Subcontractor shall furnish to the Network, when requested by the Contracting Official, all evidence and information in possession of the Subcontractor pertaining to such it or claim. Such evidence and information shall be furnished at the expense of the Network except where the Subcontractor has agreed to indemnify the Network.
- (c) The Subcontractor agrees to include, and require inclusion of, this clause in all subcontracts at any tier for supplies or services (including construction and architect-engineer subcontracts and

those for material, supplies, models, samples, or design or testing services) expected to exceed the \$1 dollar amount.

PATENT RIGHTS--RETENTION BY THE SUBCONTRACTOR (SHORT FORM)

(a) Definitions.

- (1) "Invention" means any invention or discovery which is or may be patentable or otherwise protectable under title 35 of the United States Code, or any novel variety of plant which is may be protected under the Plant Variety Protection Act (7 U.S.C. 2321, et seq.).
- (2) "Made" when used in relation to any invention means the conception of first actual reduction to practice of such invention.
- (3) "Nonprofit organization" means a university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)) and exempt from taxation under section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a)) or any nonprofit scientific or educational organization qualified under a state nonprofit organization statute.
- (4) "P Pub. L. 85-536 (15 U.S.C. 632) and implementing regulations of the Administrator of the Small Business Administration. For the purpose of this clause, the size standards for small business concerns involved in Network procurement and subcontracting will be used.
- (5) "Subject invention" means any invention of the Subcontractor conceived or first actually reduced to practice in the performance of work under this contract, provided that in the case of a variety of plant, the date of determination (as defined in section 41(d) of the Plant Variety Protection Act, 7 U.S.C. 2401(d) must also occur during the period of contract performance.

(b) Allocation of principal rights.

- (1) The Subcontractor may retain the entire right, title, and interest throughout the world to each subject invention subject to the provisions of this clause and 35 U.S.C. 203. With respect to any subject invention in which the Subcontractor retains title, the Federal Network shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the Network the subject invention throughout the world.

(c) Invention disclosure, election of title, and filing of patent application by Subcontractor.

- (1) The Subcontractor will disclose each subject invention to the NAME Network within 2 months after the inventor discloses it in writing to Subcontractor personnel responsible for patent matters. The disclosure to the agency shall be in the form of a written report and shall identify the contract under which the invention was made and the inventors. It shall be sufficiently complete in technical detail to convey a clear understanding to the extent known at the time of the disclosure, of the nature, purpose, operation, and the physical, chemical, biological, or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been

accepted for publication at the time of disclosure. In addition, after disclosure to the Network, the Subcontractor will promptly notify the Network of the acceptance of any manuscript describing the invention for publication or of any an sale or public use planned by the Subcontractor.

- (2) The Subcontractor will elect in writing whether or not to retain title to any such invention by notifying the Federal agency within 2 years of disclosure to the Network. However, in any case where publication, on sale or public use has initiated the 1-year statutory period wherein valid patent protection can still be obtained in the United States, the period of election of title may be shortened by the Network to a date that is no more than 60 days prior to the end of the statutory period.
 - (3) The Subcontractor will file its initial patent application on a subject invention to which it elects to retain title within 1 year after election of title or, if earlier, prior to the end of any statutory period wherein valid patent protection can be obtained in the United States after a publication, on sale, or public use. The Subcontractor will file patent applications in additional countries or international patent offices within either 10 months of the corresponding initial patent application or 6 months from the date permission is granted by the Commissioner of Patents and Trademarks to file foreign patent applications where such filing has been prohibited by a Secrecy Order.
 - (4) Requests for extension of the time for disclosure election, and filing under subparagraphs (c)(1), (2), and (3) of this clause may, at the discretion of the Network, be granted.
- (d) Conditions when the Network may obtain title.
- (1) The Subcontractor will convey to the Federal age or elect within the specified times.
 - (2) In those countries in which the Subcontractor fails to file patent applications within the times specified in paragraph (c) of this clause; provided, however, that if the Subcontractor has filed a patent application in a country after the times specified in paragraph (c) of this clause, but prior to its receipt of the written request of the Network, the Subcontractor shall continue to retain title in that country.
 - (3) In any country in which the Subcontractor decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in reexamination or opposition proceeding on, a patent on a subject invention.
- (e) Minimum rights to Subcontractor and protection of the Subcontractor right to file.
- (1) The Subcontractor will retain a nonexclusive royalty-free license throughout the world in each subject invention to which the Network obtains title, except if the Subcontractor fails to disclose the invention within the times specified in paragraph (c) of this clause. The Subcontractor's license extends to its domestic subsidiary and affiliates, if any, within the corporate structure of which the Subcontractor is a party and includes the right to grant sublicenses of the same scope to the extent the Subcontractor was legally obligated to do so at the time the contract was awarded. The license is transferable only with the approval of the Network, except when transferred to the successor of that part of the Subcontractor's business to which the invention pertains.

- (2) The Subcontractor's domestic license may be revoked or modified by the funding Network Department to the extent necessary to achieve expeditious practical application of subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions and licensing regulations (if any). This license will not be revoked in that field of use or the geographical areas in which the Subcontractor has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of the funding Federal agency to the extent the Subcontractor, its licensees, or its domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.
 - (3) Before revocation or modification of the license, the funding Network Department will furnish the Subcontractor a written notice of its intention to revoke or modify the license, and the Subcontractor will be allowed 30 days (or such other time as may be authorized by the funding Network Department for good cause shown by the Subcontractor) after the notice to show cause why the license should not be revoked or modified. The Subcontractor has the right to appeal, in accordance with applicable Network Policy and Government regulations, if any, concerning the licensing of Network-owned inventions, any decision concerning the revocation or modification of the license.
- (f) Subcontractor action to protect the Network's interest.
- (1) The Subcontractor agrees to execute or to have executed and promptly deliver to the Network all instruments necessary to (i) establish or confirm the rights the Network has throughout the world in those subject inventions to which the Subcontractor elects to retain title, and (ii) convey title to the Network when requested under paragraph (d) of this clause, and to enable the Network to obtain patent protection throughout the world in that subject invention.
 - (2) The Subcontractor agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the ads minimum, the information required by subparagraph (c)(1) of this clause. The Subcontractor shall instruct such employees, through employee agreements or other suitable educational programs, on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory laws.
 - (3) The Subcontractor will notify the Network of any decisions not to continue the prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceeding on a patent, in any country, not less than 30 days before the expiration of the response period required by the relevant patent office.
 - (4) The Subcontractor agrees to include, within the specification of any United States patent application and any patent issuing thereon covering a subject invention, the following statement, "This invention was made with Network support under (identify the contract) awarded by (identify the Network Department). The Network has certain rights in the invention."
 - (5) The Subcontractor shall provide the Contracting Official the following:
 - (i) A listing every 12 months (or such longer period as the Contracting Official may specify) from the date of the contract, of all subject inventions required to be disclosed during the period.

- (ii) A final report prior to closeout of the contract listing all subject inventions or certifying that there were none.
- (iii) Upon request, the filing date, serial number and title, a copy of the patent application, and patent number and issue date for any subject invention in any country in which the Subcontractor has applied for patents.
- (iv) An irrevocable power to inspect and make copies of the patent application file, by the Network, when a NAME employee is a convector.

(g) Subcontracts.

- (1) The Subcontractor will include this clause, suitably modified to identify the parties, in all subcontracts, regardless of tier, for experimental, developmental, or research work to be performed by a small business firm or domestic nonprofit organization. The Subcontractor will retain all rights provided for the Subcontractor in this clause, and the Subcontractor will not, as part of the consideration for awarding the subcontract, obtain rights in the Subcontractor's subject inventions.
- (2) The Subcontractor shall include the clause in the Federal Government's FAR Supplement at 18-52.227-70, New Technology, suitably modified to identify the parties, in all subcontracts, regardless of tier, for experimental, developmental, research, design, or engineering work to be performed by other than a small business firm or nonprofit organization.
- (3) In the case of subcontracts, at any tier, the agency, Subcontractor, and the Subcontractor agree that the mutual obligations of the parties created by this clause constitute a contract between the Subcontractor and the NAME network with respect to the matters covered by the clause; provided, however, that nothing in this paragraph is intended to confer any jurisdiction under the Contracts Disputes Law in connection with proceedings under paragraph (i) of this clause.

(h) Reporting on utilization of subject inventions.

- (1) The Subcontractor agrees to submit, on request, periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining such utilization that are being made by the Subcontractor or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the Subcontractor, and such other data and information as the agency may reasonably specify. The Subcontractor also agrees to provide additional reports as may be requested by the Network in that neither it nor any assignee will grant to any person the exclusive right to use or sell any subject invention in the United States unless such person agrees that any product embodying the subject invention or produced through the use of the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement for such an agreement may be waived by the Federal agency upon a showing by the Subcontractor or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

(i) March-in rights.

(1) The Subcontractor agrees that, with respect to any subject invention in which it has acquired title, the Network has the right in accordance with the procedures in Network Policy and any supplemental regulations of the Network to require the Subcontractor, an assignee or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the Subcontractor, assignee, or exclusive licensee refuses such a request the Network has the right to pursue such a license itself if the Network determines that--

- (i) Such action is necessary because the Subcontractor or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use;
- (ii) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the Subcontractor, assignee, or their licensees;
- (iii) Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the Subcontractor, assignee, or licensees; or
- (iv) Such action is necessary because the agreement required by paragraph (i) of this clause has not been obtained or waived or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.

(j) Special provisions for contracts with nonprofit organizations. If the Subcontractor is a nonprofit organization, it agrees that--

- (1) Rights to a subject invention in the United States may not be assigned without the approval of the Network, except where such assignment is made to an organization which has as one of its primary functions the management of inventions; provided, that such assignee will be subject to the same provisions as the Subcontractor;
- (2) The Subcontractor will share royalties collected on a subject invention with the inventor, including Network employee co-inventors (when the agency deems it appropriate) when the subject invention is assigned in accordance with 35 U.S.C. 202(e) and 37 CFR 401.10;
- (3) The balance of any royalties or income earned by the Subcontractor with respect to subject inventions, after payment of expenses (including payments to inventors) incidental to the administration of subject inventions will be utilized for the support of scientific research or education; and
- (4) It will make efforts that are reasonable under the circumstances to attract licensees of subject inventions that are small business firms, and that it will give a preference to a small business firm when licensing a subject invention if the Subcontractor determines that the small business firm has a plan or proposal for marketing the invention which, if executed, is equally as likely to bring the invention to practical application as any plans or small business applicants, and the Subcontractor will negotiate changes to its licensing policies, procedures, or practices with the Network when the Contracting Official's review discloses

that the Subcontractor could take reasonable steps to more effectively implement the requirements of this subparagraph (j)(4).

ADDITIONAL DATA REQUIREMENTS

- (a) In addition to the data (as defined in the clause, Rights in Data--General or other equivalent clauses included in this contract) specified elsewhere in this contract to be delivered, the Contracting Official may, at any time during contract performance or within a period of 3 years after acceptance of all items to be delivered under this contract, order any data first produced or specifically used in the performance of this contract.
- (b) The Rights in Data--General clause or other equivalent clauses included in this contract is applicable to all data ordered under this Additional Data Requirements clause. Nothing contained in this clause shall require the Subcontractor to deliver any data the withholding of which is authorized by the Rights in Data--General or other equivalent clause of this contract, or data which are specifically identified in this contract as not subject to this clause.
- (c) When data are to be delivered under this clause, the Subcontractor will be compensated for converting the data into the prescribed form, for reproduction, and for delivery.
- (d) The Contracting Official may release the Subcontractor from the requirements of this clause for specifically identified data items at any time during the 3-year period set forth in paragraph (a) of this clause.

RIGHTS IN DATA -- SBIR PROGRAM

- (a) Definitions.
 - (1) "Computer software," as used in this clause, means computer programs, computer data bases, and documentation thereof.
 - (2) "Data," as used in this clause, means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. The term does not include information incidental to contract administration, such as financial, administrative, cost or pricing or management information.
 - (3) "Form, fit, and function data," as used in this clause, means data as used in this clause, means data relating to items, components, or processes that are sufficient to enable physical and functional interchangeability as well as data identifying source, size, configuration, mating and attachment characteristics, functional characteristics, and performance requirements except that for computer software it means data identifying source, functional characteristics, and performance requirements but specifically excludes the source code, algorithm, process, formulae, and flow charts of the software.
 - (4) "Limited rights data," as used in this clause, means data (other than computer software) developed at private expense that embody trade secrets or are commercial or financial and confidential or privileged.

- (5) "Restricted computer software," as used in this clause, means computer software developed at private expense and that is a trade secret; is commercial or financial and confidential or privileged; or is published copyrighted computer software; including modifications of such computer software.
- (6) "SBIR data," as used in this clause, means data first produced by a Subcontractor that is a small business firm in the performance of a small business innovation research contract issued under the authority of 15 U.S.C. 638 (Pub. L. 9-7-219, Small Business Innovation Development Act of 1982), which data are not generally known, and which data without obligation as to its confidentiality have active works, distribute copies to the public, and perform publicly and display publicly, in any manner and for any purpose whatsoever, and to have or permit others to do so.

(b) Allocation of rights.

- (1) Except as provided in paragraph (c) of this clause regarding copyright, the Network shall have unlimited rights in --
 - (i) Data specifically identified in this contract as data to be delivered without restriction;
 - (ii) Form, fit, and function data delivered under this contract;
 - (iii) Data delivered under this contract (except for restricted computer software) that constitute manuals or instructional and training material for installation, operation, or routine maintenance and repair of items, components, or processes delivered or furnished for use under this contract; and
 - (iv) All other data delivered under this contract unless provided otherwise for SBIR data in accordance with paragraph (d) of this clause or for limited rights data or restricted computer software in accordance with paragraph (f) of this clause.
- (2) The Subcontractor shall have the right to --
 - (i) Protect SBIR rights in SBIR data delivered under this contract in the manner and to the extent provided in paragraph (d) of this clause;
 - (ii) Withhold from delivery those data which are limited rights data or restricted computer software to the extent provided in paragraph (g) of this clause;
 - (iii) Substantiate use of, add, or correct SBIR rights or copyrights notices and to take other appropriate action, in accordance with paragraphs (e) of this clause; and
 - (iv) Establish claim to copyright subsisting in data first produced in the performance of this contract to the extent provided in subparagraph (c)(1) of this clause.

(c) Copyright.

- (1) Data first produced in the performance of this contract. Except as otherwise specifically provided in this contract, the Subcontractor may establish claim to copyright subsisting in any data first produced in the performance of this contract. If claim to copyright is made, the Subcontractor shall affix the applicable copyright notice of 17 U.S.C. 401 or 402 and

acknowledgment of Network sponsorship (including contract number) to the data when such data are delivered to the Network, as well as when the data are published or deposited for registration as a published work in the U.S. Copyright Office. For data other than computer software the Subcontractor grants to the Network, and others acting on its behalf, paid-up nonexclusive, irrevocable, worldwide license to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Network, for all such data. For computer software, the Subcontractor grants to the Network, and others acting on its behalf, a paid-up, nonexclusive, irrevocable worldwide license for all such computer software to reproduce, prepare derivative works, and perform publicly and display publicly, by or on behalf of the Network.

(2) Data not first produced in the performance of this contract.

(i) The Subcontractor shall not, without prior written permission of the Contracting Official, incorporate in data delivered under this contract any data that are not first produced in the performance of this contract and that contain the copyright notice of 17 U.S.C. 401 or 402, unless the Subcontractor identifies such data and grants to the Network, or acquires on its behalf, a license of the same scope as set forth in subparagraph (c)(1) of this clause.

(3) Removal of copyright notices.

(i) The Network agrees not to remove any copyright notices placed on data pursuant to this paragraph (c), and to include furnished with SBTR rights under Contract No. [_____](and Subcontract, if appropriate). For a period of 4 years after acceptance of all items to be delivered under this contract, the Network agrees to use these data for Network purposes only, and they shall not be disclosed outside Network (including disclosure for procurement purposes) during such period without permission of the Subcontractor, except that, subject to the foregoing use and disclosure prohibitions, such data may be disclosed for use by support Subcontractors. After aforesaid the 4-year period the Network has a royalty-free license to use, and to authorize others to use on its behalf, these data for Network purposes, but is relieved of all disclosure prohibitions and assumes no liability for unauthorized use of these data by third parties. This Notice shall be affixed to any reproductions of these data, in whole or in part.

(d) The Network's sole obligation with respect to SBIR data shall be as set forth in this paragraph (c).

(e) Omitted or incorrect markings.

(1) Data delivered to the Network without any notice authorized by paragraph (c) of this clause, and without a copyright notice, shall be deemed to have been furnished with unlimited rights, and the Network assumes no liability for the disclosure, use, or reproduction of such data. However, to the extent the data have not been disclosed without restriction outside the Network, the Subcontractor may request, within six months (or a longer time approved by the Contracting Official for good cause shown) after delivery of such data, permission to have notices placed on qualifying data at the Subcontractor's expense, and the Contracting Official may agree to do so if the Subcontractor --

(i) Identifies the data to which the omitted notice is to be applied;

- (ii) Demonstrates that the omission of the notice was inadvertent;
 - (iii) Establishes that the use of the proposed notice is authorized; and
 - (iv) Acknowledges that the Network has no liability with respect to the disclosure or use of any such data made prior to the addition of the notice or resulting from the omission of the notice.
- (2) The Contracting Official may also (i) permit correction, at the Subcontractor's expense, of incorrect notices if the Subcontractor identifies the data on which correction of the notice is to be made and demonstrates that the correct notice is authorized, or (ii) correct any incorrect notices.
- (f) Protection of limited rights data.
- (1) When data other than that listed in subdivisions (b)(1)(i), (ii), and (iii) of this clause are specified to be delivered under this contract and such data qualify as either being limited rights data or restricted computer software the Subcontractor, if the Subcontractor desires to continue protection of such data, shall withhold such data and not furnish them to the Network under this contract. As a condition to this withholding the Subcontractor shall identify the data being withheld and furnish form, fit, and function data in lieu thereof.
- (g) Subcontracting.
- (1) The Subcontractor has the responsibility to obtain from its Subcontractors all data and rights therein necessary to fulfill the Subcontractor's obligations to the Network under this contract. If a Subcontractor refuses to accept terms affording the Network such rights, the Subcontractor shall promptly bring such refusal to the attention of the Contracting Official and not proceed with subcontract award without further authorization.
- (h) Relationship to patents.
- (1) Nothing contained in this clause shall imply a license to the Network under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Network.

FEDERAL, STATE, AND LOCAL TAXES

- (a) "Contract date," as used in this clause, means the date set for bid opening or, if this is a negotiated contract or a modification, the effective date of this contract or modification.

"All applicable Federal, State, and local taxes and duties," as used in this clause means the taxing authority imposing and collecting on the transactions or property covered by this contract.

"After-imposed Federal tax," as used in this clause, means any new or increased Federal excise tax or duty, or tax that was exempted or excluded on the contract date but whose exemption was later revoked or reduced during the contract period, on the transactions or property covered by this contract that the Subcontractor is required to pay or bear as the result of legislative, judicial, or administrative action taking effect after the contract date. It does not include social security tax or other employment taxes.

"After-relieved Federal tax," as used in this clause, means any amount of Federal excise tax or duty, except social security or other employment taxes, that would otherwise have been payable on the transactions or property covered by this contract, but which the Subcontractor is not required to pay or bear, or for which the Subcontractor obtains a refund or drawback, as the result of legislative, judicial, or administrative action taking effect after the contract date.

- (b) The contract price includes all applicable Federal, State, and local taxes and duties.
- (c) The contract price shall be increased by the amount of any after-imposed Federal tax, provided the Subcontractor warrants in writing that no amount for such newly imposed Federal excise tax or duty or rate increase was included in the contract price, as a contingency reserve or otherwise.
- (d) The contract price shall be decreased by the amount of any after-relieved Federal tax.
- (e) The contract price shall be decreased by the amount of any Federal excise tax or duty, except social security or other employment taxes, that the Subcontractor is required to pay or bear, or does not obtain a refund of, through the Subcontractor's fault, negligence, or failure to follow instructions of the Contracting Official.
- (f) No adjustment shall be made in the contract price under this clause unless the amount of the adjustment exceeds \$250.
- (g) The Subcontractor shall promptly notify the Contracting Official of all matters relating to any Federal excise tax or duty that reasonably may be expected to result in either an increase or decrease in the contract price and shall take appropriate action as the Contracting Official directs.
- (h) The Network shall, without liability, furnish evidence appropriate to establish exemption from any Federal, State, or local tax when the Subcontractor requests such evidence and a reasonable basis exists to sustain the exemption.

TAXES--CONTRACTS PERFORMED IN U.S. POSSESSIONS OR PUERTO RICO

The term "local taxes," as used in the Federal, State, and local taxes clause of this contract, includes taxes imposed by a possession of the United States or by Puerto Rico.

PAYMENTS UNDER FIXED-PRICE RESEARCH AND DEVELOPMENT CONTRACTS

The Network shall pay the Subcontractor, upon submission of proper invoices or vouchers, the prices stipulated in this contract for work delivered or rendered and accepted, less any deductions provided in this contract. Unless otherwise specified, payment shall be made upon acceptance of any portion of the work delivered or rendered for which a price is separately stated in the contract.

DISCOUNTS FOR PROMPT PAYMENT

- (a) Discounts for prompt payment will not be considered in the evaluation of offers. However, any offered discount will form a part of the award, and will be taken if payment is made within the discount period indicated in the offer by the offeror. As an alternative to offering a prompt

payment discount in conjunction with the offer, offerors awarded contracts may include prompt payment discounts on individual invoices.

- (b) In connection with contract, Subcontractor authorizes the temporary withholding of amounts otherwise payable to the Subcontractor for supplies delivered or services performed, the total of the amounts withheld at any one time shall not exceed the greatest amount that may be withheld under any one clause or Schedule term at that time; provided, that this limitation shall not apply to--
- (1) Withholdings pursuant to any clause relating to wages or hours of employees;
 - (2) Withholdings not specifically provided for by this contract;
 - (3) The recovery of overpayments; and
 - (4) Any other withholding for which the Contracting Official determines that this limitation is inappropriate.

EXTRAS

Except as otherwise provided in this contract, no payment for extras shall be made unless such extras and the price therefore have been authorized in writing by the Contracting Official.

ADVANCE PAYMENTS WITHOUT SPECIAL BANK ACCOUNT

- (a) Requirements for payment.
- (1) Advance payments will be made under this contract (1) upon submission of properly certified invoices or vouchers by the Subcontractor, and approval by administering office, _____, or;
 - (2) Under a letter of credit. The amount of the invoice or voucher submitted plus all advance payments previously approved shall not exceed \$_____. If a letter of credit is used, the Subcontractor shall withdraw cash only when needed for disbursements acceptable under this contract and report cash disbursements and balances as required by the administering office. The Subcontractor shall apply terms similar to this clause to any advance payments to its Subcontractors.
- (b) Use of funds.
- (1) The Subcontractor may use advance payment funds only to pay for properly allocable, allowable, and reasonable costs for direct materials, direct labor, and indirect costs. Determinations of whether costs are properly allocable, allowable, and reasonable shall be in accordance with generally accepted accounting principles, subject to any applicable subparts of Network Policies.

(c) Repayment to the Network.

- (1) At any time, the Subcontractor may repay all or any part of the funds advanced by the Network. Whenever requested in writing to do so by the administering office, the Subcontractor shall repay to the Network any part of unliquidated advance payments considered, by the administering office to exceed the Subcontractor's current requirements or the amount specified in paragraph (a) of this clause.

(d) Maximum payment.

- (1) Unliquidated advance payments shall not exceed \$[_____] at any time outstanding. In addition, when the sum of all unliquidated advance payments, unpaid interest charges, and other payments exceed [____] percent of the contract price, the Network shall withhold further payments to the Subcontractor. On completion or termination of the contract, the Network shall deduct from the amount due to the Subcontractor all unliquidated advance payments and all interest charges payable. If previous payments to the Subcontractor exceed the amount due, the excess amount shall be paid to the Network on demand. For purposes of this paragraph, the contract price shall be considered to be the stated contract price of \$[_____], less any subsequent price reductions under the contract, plus (1) any price increases resulting from any terms of this contract for price redetermination or escalation, and (2) any other price increases that do not, in the aggregate, exceed \$[_____]. Any payments withheld under this paragraph shall be applied to reduce the unliquidated advance payments. If full liquidation has been made, payments under the contract shall resume.

(e) Interest shall be computed at the end of each calendar month for the actual number of days involved. For the purpose of computing the interest charge --

- (1) Advance payments shall be considered as increasing the unliquidated balance as of the date of the advance payment check;
- (2) Repayments by Subcontractor check shall be considered as decreasing the unliquidated balance as of the date on which the check is received by the Network authority designated by the Contracting Official; and
- (3) Liquidations by deductions from Network payments to the Subcontractor shall be considered as decreasing the unliquidated balance as of the date of the check for the reduced payment.
- (4) Interest charges resulting from the monthly computation shall be deducted from payments, other than advance payments, due the Subcontractor. If the accrued interest exceeds the payment due, any excess interest shall be carried forward and deducted from subsequent payments. Interest carried forward shall not be compounded. Interest on advance payments shall cease to accrue upon satisfactory completion or termination of the contract for the convenience of the Network. The Subcontractor shall charge interest on advance payments to Subcontractors in the manner described above and credit the interest to the Network. Interest need not be charged on advance payments to nonprofit educational or research Subcontractors for experimental, developmental, or research work.
- (5) If interest is required under the contract, the Contracting Official shall determine a daily interest rate based on the rate established by the Secretary of the Treasury under Pub. L. 92-

41 [50 U.S.C. App., 1215(b)(2)]. The Contracting Official shall revise the daily interest rate during the contract period in keeping with any changes in the cited interest rate.

- (6) If the full amount of interest charged under this paragraph has not been paid by deduction or otherwise upon completion or termination of this contract, the Subcontractor shall pay the remaining interest to the Network on demand.

(f) Lien on property under contract.

- (1) All advance payments under this contract, together with interest charges, shall be secured, when made, by a lien in favor of the Network, paramount to all other liens, on the supplies or other things covered by this contract and on all material and other property acquired for or allocated to the performance of this contract, except to the extent that the Network by virtue of any other terms of this contract, or otherwise, shall have valid title to the supplies, materials, or her property as against other creditors of the Subcontractor.
- (2) The Subcontractor shall identify, by marking or segregation, all property that is subject to a lien in favor of the Network by virtue of any terms of this contract in such a way as to indicate that it is subject to a lien and that it has been acquired for or allocated to performing this contract. If, for any reason, the supplies, materials, or other property are not identified by marking or segregation, the Network shall be considered to have a lien to the extent of the Network's interest under this contract on any mass of property with which the supplies, materials, or other property are commingled. The Subcontractor shall maintain adequate accounting control over the property on its books and records.
- (3) If, at any time during the progress of the work on the contract, it becomes necessary to deliver to a third person any items or materials on which the Network has a lien, the Subcontractor shall notify the third person of the lien and shall obtain from the third person a receipt in duplicate acknowledging the existence of the lien. The Subcontractor shall provide a copy of each receipt to the Contracting Official.
- (4) If, under the termination clause advance payments.

(g) Insurance.

- (1) The Subcontractor represents and warrants that it maintains with responsible insurance carriers (i) insurance on plant and equipment against fire and other hazards, to the extent that similar properties are usually insured by others operating plants and properties of similar character in the same general locality; (ii) adequate insurance against liability on account of damage to persons or property; and (iii) adequate insurance under all applicable workers' compensation laws. The Subcontractor agrees that, until work under this contract has been completed and all advance payments made under the contract have been liquidated, it will maintain this insurance; maintain adequate insurance on any materials, parts, assemblies, subassemblies, supplies, equipment, and other property acquired for or allocable to this contract and subject to the Network lien under paragraph (f) of this clause; and furnish any certificates with respect to its insurance that the administering office may require.

(h) Default.

- (1) If any of the following events occur, the Network may, by written notice to the Subcontractor, withhold further payments on this contract:
 - (i) Termination of this contract for a fault of the Subcontractor.
 - (ii) A finding by the administering office that the Subcontractor has failed to --
 - a. Observe any of the conditions of the advance payment terms;
 - b. Comply with any material term of this contract;
 - c. Make progress or maintain a financial condition adequate for performance of this contract;
 - d. Limit inventory allocated to this contract to reasonable requirements; or
 - e. Avoid delinquency in payment of taxes or of the costs of performing this contract in the ordinary course of business.
 - (iii) The appointment of a trustee, receiver, or liquidator for all or a substantial part of the Subcontractor's property, or the institution of proceedings by or against the Subcontractor for bankruptcy, reorganization, arrangement, or liquidation.
 - (iv) The commission of an act of bankruptcy.
- (2) If any of the events described in subparagraph (h)(1) of this clause continue for 30 days after the written notice to the Subcontractor, the Network may take any of the following additional actions:
 - (i) Charge interest, in the manner prescribed in paragraph (e) of this clause, on outstanding advance payments during the period of any event described in subparagraph (h)(1) of this clause.
 - (ii) Demand immediate repayment by the Subcontractor of the unliquidated balance of advance payments.
 - (iii) Take possession of and, with or without advertisement, sell at public or private sale all or any part of the property on which the Network has a lien under this contract and, after deducting any expenses incident to the sale, apply the net proceeds of the sale to reduce the unliquidated balance of advance payments or other Network claims against the Subcontractor.
- (3) The Network may take any of the actions described in subparagraphs (h)(1) and (2) of this clause it considers appropriate at its discretion and without limiting any other rights of the Network.
 - (i) Prohibition against assignment.

- a. Notwithstanding any other terms of this contract, the Subcontractor shall not assign this contract, any interest therein, or any claim under the contract to any party.
- (i) Information and access to records.
 - (1) The Subcontractor shall furnish to the administering office monthly or at other intervals as required, signed or certified balance sheets and profit and loss statements, and;
 - (2) If requested, other information concerning the operation of the Subcontractor's extent that the security is available.
- (i) Representations and warranties.
 - a. The Subcontractor represents and warrants the following:
 - I. The balance sheet, the profit and loss statement, and any other supporting financial statements furnished to the administering office fairly reflect the financial condition of the Subcontractor at the date shown or the period covered, and there has been no subsequent materially adverse change in the financial condition of the Subcontractor.
 - II. No litigation or proceedings are presently pending or threatened against the Subcontractor, except as shown in the financial statements.
 - III. The Subcontractor has disclosed all contingent liabilities, except for liability resulting from the renegotiation of defense production contracts, in the financial statements furnished to the administering office.
 - IV. None of the terms in this clause conflict with the authority under which the Subcontractor is doing business or with the provision of any existing indenture or agreement of the Subcontractor.
 - V. The Subcontractor has the power to enter into this contract and accept advance payments, and has taken all necessary action to authorize the acceptance under the terms of this contract.
 - VI. The assets of the Subcontractor are not subject to any lien or encumbrance of any character except for current taxes not delinquent, and except as shown in the financial statements furnished by the Subcontractor. There is no current assignment of claims under any contract affected by these advance payment provisions.
 - VII. All information furnished by the Subcontractor to the administering office in connection with each request for advance payments is true and correct.
 - VIII. These representations and warranties shall be continuing and shall be considered to have been repeated by the submission of each invoice for advance payments.

(i) Covenants.

- (1) To the extent the Network considers it necessary while any advance payments made under this contract remain outstanding, the Subcontractor, without the prior written consent of the administering office, shall not --
 - (i) Mortgage, pledge, or otherwise encumber or allow to be encumbered, any of the assets of the Subcontractor now owned or subsequently acquired, or permit any preexisting mortgages, liens, or other encumbrances to remain on or attach to any assets of the Subcontractor which are allocated to performing this contract and with respect to which the Network has a lien under this contract;
 - (ii) Sell, assign, transfer, or otherwise dispose of accounts receivable, notes, or claims for money due or to become due;
 - (iii) Declare or pay any dividends, except dividends payable in stock of the corporation, or make any other distribution on account of any shares of its capital stock, or purchase, redeem, or otherwise acquire for value any of its stock, except as required by sinking fund or redemption arrangements reported to the administering office incident to the establishment of these advance payment provisions;
 - (iv) Sell, convey, or lease all or a substantial part of its assets;
 - (v) Acquire for value the stock or other securities of any corporation, municipality, or governmental authority, except under the direct obligations of the Network;
 - (vi) Make any advance or loan or incur any liability as guarantor, surety, or accommodation endorser for any party;
 - (vii) Permit a writ of attachment or any similar process to be issued against its property without getting a release or bonding the property within 30 days after the entry of the writ of attachment or other process;
 - (viii) Pay any remuneration in any form to its directors, officers, or key employees higher than rates provided in existing agreements of which notice has been given to the administering office, accrue excess remuneration within course of the Subcontractor's business as presently conducted;
 - (ix) Deposit any of its funds except in a bank or trust company insured by the Federal Deposit Insurance Corporation;
 - (x) Create or incur indebtedness for advances, other than advances to be made under the terms of this contract, or for borrowings;
 - (xi) Make or covenant for capital expenditures exceeding \$ [N/A] in total;
 - (xii) Permit its net current assets, computed in accordance with generally accepted accounting principles, to become less than \$ [N/A] ; or
 - (xiii) Make any payments on account of the obligations listed below, except in the manner and to the extent provided in this contract: None provided at this time.

PROGRESS PAYMENTS ALTERNATE I

Progress payments shall be made to the Subcontractor when requested as work progresses, but not more frequently than monthly in amounts approved by the Contracting Official, under the following conditions:

(a) Computation of amounts.

- (1) Unless the Subcontractor requests a smaller amount, each progress payment shall be computed as (i) 85 percent of the Subcontractor's total costs incurred under this contract whether or not actually paid, plus (ii) progress payments to Subcontractors (see paragraph (j) below), all less the sum of all previous progress payments made by the Network under this contract. Cost of money that would be allowable under Network Operational Policies shall be deemed an incurred cost for progress payment purposes.
- (2) Accrued costs of Subcontractor contributions under employee pension plans shall be excluded until actually paid unless--
 - (i) The Subcontractor's practice is to make contributions to the retirement fund quarterly or more frequently; and
 - (ii) The contribution does not remain unpaid 30 days after the end of the applicable quarter or shorter payment period (any contribution remaining unpaid shall be excluded from the Subcontractor's total costs for progress payments until paid).
- (3) The Subcontractor shall not include the following in total costs for progress payment purposes in subparagraph (a)(1) (i) above:
 - (i) Costs that are not reasonable, allocable to this contract, and consistent with sound and generally accepted accounting principles and practices.
 - (ii) Costs incurred by Subcontractors or suppliers.
 - (iii) Costs ordinarily capitalized and subject to depreciation or amortization except for the properly depreciated or amortized portion of such costs.
 - (iv) Payments made or amounts payable to Subcontractors or suppliers, except for--
 - a. Completed work, including partial deliveries, to which the Subcontractor has acquired title; and
 - b. Work under cost-reimbursement or time-and-material subcontracts to which the Subcontractor has acquired title.
- (4) The amount of unliquidated progress payments may exceed neither (i) the progress payments made against incomplete work (including allowable unliquidated progress payments to Subcontractors) nor (ii) the value, for progress payment purposes, of the incomplete work. Incomplete work shall be considered to be the supplies and services required by this contract, for which delivery and invoicing by the Subcontractor and acceptance by the Network are incomplete.

- (5) The total amount of progress payments shall not exceed 85 percent of the total contract price.
- (6) If a progress payment or the unliquidated progress payments exceed the amounts permitted by subparagraphs (a)(4) or (a)(5) above, the Subcontractor shall repay the amount of such excess to the Network on demand.

(b) Liquidation.

- (1) Except as provided in the Termination for Convenience of the Network clause, all progress payments shall be liquidated by deducting from any payment fund right to unilaterally change from the ordinary liquidation rate to an alternate rate when deemed appropriate for proper contract financing.

(c) Reduction or suspension.

- (1) The Contracting Official may reduce or suspend progress payments, increase the rate of liquidation, or take a combination of these actions, after finding on substantial evidence any of the following conditions:
 - (i) The Subcontractor failed to comply with any material requirement of this contract (which includes paragraphs (f) and below).
 - (ii) Performance of this contract is endangered by the Subcontractor's (i) failure to make progress or (ii) unsatisfactory financial condition.
 - (iii) Inventory allocated to this contract substantially exceeds reasonable requirements.
 - (iv) The Subcontractor is delinquent in payment of the costs of performing this contract in the ordinary course of business.
 - (v) The unliquidated progress payments exceed the fair value of the work accomplished on the undelivered portion of this contract.
 - (vi) The Subcontractor is realizing less profit than that reflected in the establishment of any alternate liquidation rate in paragraph (b) above, and that rate is less than the progress payment rate stated in subparagraph (a)(1) above.

(d) Title.

- (1) Title to the property described in this paragraph (d) shall vest in the Network. Vestiture shall be immediately upon the date of this contract, for property acquired or produced before that date. Otherwise, vestiture shall occur when the property is or should have been allocable or properly chargeable to this contract.
- (2) "Property," as used in this clause, includes all of the below-described items acquired or produced by the Subcontractor that are or should be allocable or properly chargeable to this contract under sound and generally accepted accounting principles and practices.
 - (i) Parts, materials, inventories, and work in process;

- (ii) Special tooling and special test equipment to which the Network is to acquire title under any other clause of this contract;
 - (iii) Nondurable (i.e., noncapital) tools, jigs, dies, fixtures, molds, patterns, taps, gauges, test equipment, and other similar manufacturing aids, title to which would not be obtained as special tooling under subparagraph (ii) above; and
 - (iv) Drawings and technical data, to the extent the Subcontractor or its subcontractors are required to deliver them to the Network by other clauses of this contract.
- (3) Although title to property is in the Network under this clause, other applicable clauses of this contract, e.g., the termination or special tooling clauses, shall determine the handling and disposition of the property.
- (4) The Subcontractor may sell any scrap resulting from production under this contract without requesting the Contracting Official's approval, but the proceeds shall be credited against the costs of performance.
- (5) To acquire for its own use or dispose of property to which title is vested in the Network under this clause, the Subcontractor must obtain the Contracting Official's advance approval of the action and the terms. The Subcontractor shall (i) exclude the allocable costs of the property from the costs of contract performance, and (ii) repay to the Network any amount of unliquidated progress payments allocable to the property. Repayment may be by cash or credit memorandum.
- (6) When the Subcontractor completes all of the obligations under this contract, including liquidation of all progress payments, title shall vest in the Subcontractor for all property (or the proceeds thereof) not--
- (i) Delivered to, and accepted by, the Network under this contract; or
 - (ii) Incorporated in supplies delivered to, and accepted by, the Network under this contract and to which title is vested in the Network under this clause.
- (7) The terms of this contract concerning liability for Network-furnished property shall not apply to property to which the Network acquired title solely under this clause.
- (e) Risk of loss.
- (1) Before delivery to and acceptance by the Network, title to which vests in the Network under this clause, except to the extent the Network expressly assumes the risk. The Subcontractor shall repay the Network an amount equal to the unliquidated progress payments that are based on costs allocable to property that is damaged, lost, stolen, or destroyed.
- (f) Control of costs and property.
- (1) The Subcontractor shall maintain an accounting system and controls adequate for the proper administration of this clause.

(g) Reports and access to records.

- (1) The Subcontractor shall promptly furnish reports, certificates, financial statements, and other pertinent information reasonably requested by the Contracting Official for the administration of this clause. Also, the Subcontractor shall give the Network reasonable opportunity to examine and verify the Subcontractor's books, records, and accounts.

(h) Special terms regarding default.

- (1) If this contract is terminated under the Default clause, (i) the Subcontractor shall, on demand, repay to the Network the amount of unliquidated progress payments and (ii) title shall vest in the Subcontractor, on full liquidation of progress payments, for all property for which the Network elects not to require delivery under the Default clause. The Network shall be liable for no payment except as provided by the Default clause.

(i) Reservations of rights.

- (1) No payment or vesting of title under this clause shall (i) excuse the Subcontractor from performance of obligations under this contract or (ii) constitute a waiver of any of the rights or remedies of the parties under the contract.
- (2) The Network's rights and remedies under this clause (i) shall not be exclusive but rather shall be in addition to any other rights and remedies provided by law or this contract and (ii) shall not be affected by delayed, partial, or omitted exercise of any right, remedy, power, or privilege, nor shall such exercise or any single exercise preclude or impair any further exercise under this clause or the exercise of any other right, power, or privilege of the Network.

(j) Progress payments to Prime Subcontractor's subcontractors.

- (1) The amounts mentioned in (a)(1)(ii) above shall be all progress payments to Subcontractors or divisions, if the following conditions are met:
 - (i) The amounts included are limited to (a) the unliquidated remainder of progress payments made plus (b) for small business concerns any unpaid Subcontractor requests for progress payments that the Prime Subcontractor has approved for current payment in the ordinary course of business.
 - (ii) The subcontract or interdivisional order is expected to involve a minimum of approximately 6 months between the beginning of work and the first delivery, or, if the Subcontractor is a small business concern, 4 months.
 - (iii) The terms of the subcontract or interdivisional order concerning progress payments--
 - a. Are substantially similar to the terms of the clause Progress Payments, for any Subcontractor that is a large business concern, or that clause with its Alternate I for any Subcontractor that is a small business concern;
 - b. Are at least as favorable to the Network as the terms of this clause;

- c. Are not more favorable to the Subcontractor or division than the terms of this clause are to the Prime Subcontractor;
 - d. Are in conformance with the requirements of Network Policies; and
 - e. Subordinate all Subcontractor rights concerning property to which the Network has title under the subcontract to the Network's right to require delivery of the property to the Network if (1) the Prime Subcontractor defaults or (2) the Subcontractor becomes bankrupt or insolvent.
- (iv) The progress payment rate in the subcontract is the customary rate used by the Prime Subcontractor.
 - (v) If no unliquidated progress payments to the Prime Subcontractor remain, but there are unliquidated progress payments that the Prime Subcontractor has made to any subcontractor, the Prime Subcontractor shall be subrogated to all the rights the Network obtained through the terms required by this clause to be in any subcontracts, as if all such rights had been assigned and transferred to the Subcontractor.
 - (vi) The Prime Subcontractor shall pay the Subcontractor's progress payment request under subdivision (j)(1)(ii) above, within a reasonable time after receiving the Network progress payment covering those amounts.
 - (vii) To facilitate small business participation in subcontracting under this contract, the Prime Subcontractor agrees to provide progress payments to small business concerns, in conformity with the standards for customary progress payments. The Subcontractor further agrees that the need for such progress payments shall not be considered as a handicap or adverse factor in the award of subcontracts.
- (k) Limitations on Undefined Contract Actions.
- (1) Notwithstanding any other progress payment provisions in this contract, progress payments may not exceed 80 percent of costs incurred on work accomplished under undefined contract actions. A "contract action" is any action resulting in a contract, as defined in law, including contract modifications for additional supplies or services, but not including contract modifications that are within the scope and under the terms of the contract, such as contract modifications issued pursuant to the Changes clause, or funding and other administrative changes. This limitation shall apply to the costs incurred, as computed in accordance with paragraph (a) of this clause, and shall remain in effect until the contract action is definitized. Costs incurred which are subject to this limitation shall be segregated on Subcontractor progress payment requests and invoices from those costs eligible for higher progress payment rates. For purposes of progress payment liquidation, as described in paragraph (b) of this clause, progress payments for undefined contract actions shall be liquidated at 80 percent of the amount invoiced for work performed under the undefined contract action as long as the contract action remains undefined. The amount of unliquidated progress payments for undefined contract actions shall not exceed 80 percent of the maximum liability of the Network under the undefined contract action or such lower limit specified elsewhere in the contract. Separate limits may be specified for separate actions.

INTEREST

- (a) Notwithstanding any other clause of this contract, all amounts, except amounts that are repayable and which bear interest under a Prime Reduction for Defective Cost or Pricing Data clause, that become payable by the Subcontractor to the Network under this contract (net of any applicable tax credit under the Internal Revenue Code (26 U.S.C. 1481)) shall bear simple interest from the date due until paid unless paid within 30 days of becoming due. The interest rate shall be the interest rate established by the Secretary of the Treasury of the United States as provided in Section 12 of the Contract Disputes Act of 1978 (Public Law 95-563), which is applicable to the period in which the amount becomes due, as provided in paragraph (b) of this clause, and then at the rate applicable for each six-month period as fixed by the Contracting Official until the amount is paid.
- (b) Amounts shall be due at the earliest of the following dates:
 - (1) The date fixed under this contract.
 - (2) The date of the first written demand for payment consistent with this contract, including any demand by contract modification.
- (c) The interest charge made under this clause may be reduced under the procedures prescribed in U.S. law in effect on the date of this contract.

ASSIGNMENT OF CLAIMS

- (a) The Subcontractor, under the Assignment of Claims Act, as amended, 31 U.S.C. 3727, 41 U.S.C. 15 (hereafter referred to as "the Act"), may assign its rights to be paid amounts due or to become due as a result of the performance of this contract to a bank, trust company, or other financing institution, including any Federal lending agency. The assignee under such an assignment may thereafter further assign or reassign its right under the original assignment to any type of financing institution described in the preceding sentence.
- (b) Any assignment or reassignment authorized under the Act and this clause shall cover all unpaid amounts payable under this contract, and shall not be made to more than one party, except that an assignment or reassignment may be made to one party as agent or trustee for two or more parties participating in the financing of this contract.
- (c) The Subcontractor shall not furnish or disclose to any assignee under this contract any classified document (including this contract) or information related to work under this contract until the Contracting Official authorizes such action in writing.

PROMPT PAYMENT

Notwithstanding any other payment clause in this contract, the Network will make invoice payments and contract financing payments under the terms and conditions specified in this clause. Payment shall be considered as being made on the day a check is dated or an electronic funds transfer is made. All days referred to in this clause are calendar days, unless otherwise specified.

- (a) Invoice Payments.

- (1) For purposes of this clause, "invoice payment" means a Network disbursement of monies to a Subcontractor under a contract or other authorization for supplies or services accepted by the Network. This includes payments for partial deliveries that have been accepted by the Network and final cost or fee payments where amounts owed have been settled between the Network and the Subcontractor.
- (2) Except as indicated in subparagraph (a)(3) and paragraph (c) of this clause, the due date for making invoice payments by the designated payment office shall be the later of the following two events:
 - (i) The 30th day after the designated billing office has received a proper invoice from the Subcontractor.
 - (ii) The 30th day after Network acceptance of supplies delivered or services performed by the Subcontractor. On a final invoice where the payment amount is subject to contract settlement actions, acceptance shall be deemed to have occurred on the effective date of the contract settlement. However, if the designated billing office fails to annotate the invoice with the actual date of receipt, the invoice payment due date shall be deemed to be the 30th day after the date the Subcontractor's invoice is dated, provided a proper invoice is received and there is no disagreement over quantity, quality, or Subcontractor compliance with contract requirements.
- (3) The due date on contracts for meat, meat food products, or fish; contracts for perishable agricultural commodities; contracts for dairy products, edible fats or oils, and food products prepared from edible fats or oils; and, contracts not requiring the submission of an invoice shall be as follows:
 - (i) The due date for meat and meat food products, as defined in Section 2(a)(3) of the Packers and Stockyard Act of 1921 (7 U.S.C. 182(3)) and further defined in Pub. L. 98-181 to include any edible fresh or frozen poultry meat, any perishable poultry after product delivery.
 - (ii) The due date for perishable agricultural commodities, as defined in Section 1(4) of the Perishable Agricultural Commodities Act of 1930 (7 U.S.C 499a(44)), will be as close as possible to, but not later than, the 10th day after product delivery, unless another date is specified in the contract.
 - (iii) The due date for dairy products, as defined in section 111(e) of the Dairy Production Stabilization Act of 1983 (7 U.S.C. 4502(e)), edible fats or oils, and food products prepared from edible fats or oils, will be as close as possible to, but not later than, the 10th day after the date on which a proper invoice has been received.
 - (iv) If the contract does not require submission of an invoice for payment (e.g., periodic lease payments), the due date will be as specified in the contract.
- (4) An invoice is the Subcontractor's bill or written request for payment under the contract for supplies delivered or services performed. An invoice shall be prepared and submitted to the designated billing office specified in the contract. A proper invoice must include the items listed in subdivisions (a)(4)(i) through (a)(4)(viii) of this clause. If the invoice does not comply with these requirements, then the Subcontractor will be notified of the defect

within 7 days after receipt of the invoice at the designated billing office (3 days for meat, meat food products or fish, and 5 days for perishable agricultural commodities, edible fats or oils, and food products prepared from edible fats or oils). Untimely notification will be taken into account in the computation of any interest penalty owed the Subcontractor in the manner described in subparagraph (a)(6) of this clause.

- (i) Name and address of the Subcontractor.
 - (ii) Invoice date.
 - (iii) Contract number or other authorization for supplies delivered or services performed (including order number and contract line item number).
 - (iv) Description, quantity, unit of measure, unit price, and extended price of supplies delivered or services performed.
 - (v) Shipping and payment terms (e.g., shipment number and date of shipment, prompt payment discount terms). Bill of lading number and weight of shipment will be shown for shipments on Network bills of lading.
 - (vi) Name and address of Subcontractor official to whom payment is to be sent (must be the same as that in the contract or in a proper notice of assignment).
 - (vii) Name (where practicable), title, phone number, and mailing address of person to be notified in event of a defective invoice.
 - (viii) Any other information or documentation required by other requirements of the contract (such as evidence shipment).
- (5) An interest penalty shall be paid automatically by the Network, without request from the Subcontractor, if payment is not made by the due date and the conditions listed in subdivision (a)(5)(i) through (a)(5)(iii) of this clause are met, if applicable.
- (i) A proper invoice was received by the designated billing office.
 - (ii) A receiving report or other Network documentation authorizing payment was processed and there was no disagreement over quantity, quality, or Subcontractor compliance with any contract term or condition.
 - (iii) In the case of a final invoice for any balance of funds due the Subcontractor for supplies delivered or services performed, the amount was not subject to further contract settlement actions between the Network and the Subcontractor.
- (6) The interest penalty shall be at the rate established by the Secretary of the Treasury under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611) that is in effect on the day after the due date, except where the interest penalty is prescribed, the end of any 30-day period will be added to the approved invoice payment amount and be subject to interest penalties if not paid in the succeeding 30-day period. If the designated billing office failed to notify the Subcontractor of a defective invoice within the periods prescribed in subparagraph (a)(4) of this clause, then the due date on the corrected invoice will be adjusted by subtracting the number of days taken beyond the prescribed notification of

defects period. Any interest penalty owed the Subcontractor will be based on this adjusted due date. Adjustments will be made by the designated payment office for errors in calculating interest penalties, if requested by the Subcontractor.

- (i) For the sole purpose of computing an interest penalty that might be due the Subcontractor, Network acceptance shall be deemed to have occurred constructively on the 7th day (unless otherwise specified in this contract) after the Subcontractor delivered the supplies or performed the services in accordance with the terms and conditions of the contract, unless there is a disagreement over quantity, quality, or Subcontractor compliance with a contract provision. In the event that actual acceptance occurs within the constructive acceptance period, the determination of an interest penalty shall be based on the actual date of acceptance. The constructive acceptance requirement does not, however, compel Network officials to accept supplies or services, perform contract administration functions, or make payment prior to fulfilling their responsibilities.
 - (ii) The following periods of time will not be included in the determination of an interest penalty:
 - a. The period taken to notify the Subcontractor of defects in invoices submitted to the Network, but this may not exceed 7 days (3 days for meat, meat food, products, or fish, and 5 days for perishable agricultural commodities, dairy products, edible fats or oils, and food products prepared from edible fats or oils).
 - b. The period between the defects notice and resubmission of the corrected invoice by the Subcontractor.
 - (iii) Interest penalties will not continue to accrue after the filing of a claim for such penalties under the clause Disputes, or for more than 1 year. Interest penalties of less than \$1.00 need not be paid.
 - (iv) Interest penalties are not required on payment delays due to disagreement between the Network and Subcontractor over the payment amount or other issues involving contract compliance or on amounts temporarily withheld or retained in accordance with the terms of the contract. Claims involving disputes, and any interest that may be payable, will be resolved in accordance with the clause at 52.233-1, Disputes.
- (7) An interest penalty shall also be paid automatically by the designated payment office, without request from the Subcontractor, if a discount for prompt payment is taken improperly. The interest penalty will be calculated as described in subparagraph (a)(6) of this clause on the amount of discount taken for the period beginning with the first day after the end of the discount period through the date when the Subcontractor is paid.
- (8) If this contract was awarded on or after October 1, 1999, a penalty amount, calculated in accordance with policies issued by the Network Official of Management and Budget, shall be paid in addition to the interest penalty amount if the Subcontractor--
- (i) Is owed an interest penalty;

- (ii) Is not paid the interest penalty within 10 days after the date the invoice amount is paid; and
 - (iii) Makes a written demand, not later than 40 days after the date the invoice amount is paid, that the agency pay such a penalty.
- (b) Contract Financing Payments.
- (1) For purposes of those payments made under the clause Payments Under Fixed-Price Construction Contracts, or the clause Payments Under Fixed-Price Architect-Engineer Contracts, and interim payments on cost type contracts.
 - (2) For contracts that provide for contract financing, requests for payment shall be submitted to the designated billing office as specified in this contract or as directed by the Contracting Official. Contract financing payments shall be made on the 30th day after receipt of a proper contract financing request by the designated billing office. In the event that an audit or other review of a specific financing request is required to ensure compliance with the terms and conditions of the contract, the designated payment office is not compelled to make payment by the due date specified.
 - (3) For advance payments, loans, or other arrangements that do not involve recurrent submissions of contract financing requests, payment shall be made in accordance with the corresponding contract terms or as directed by the Contracting Official.
 - (4) Contract financing payments shall not be assessed an interest penalty for payment delays.
- (c) If this contract contains the clause Fast Payment Procedure, payments will be made within 15 days after the date of receipt of the invoice.

ELECTRONIC FUNDS TRANSFER PAYMENT METHODS

Payments under this contract will be made by the Network either by check or electronic funds transfer (through the Treasury Fedline Payment System (FEDLINE) or the Automated Clearing House (ACH)), at the option of the Network. After award, but no later than 14 days before an invoice or contract financing request is submitted, the Subcontractor shall designate a financial institution for receipt of electronic funds transfer payments, and shall submit this designation to the Contracting Official or other Network official, as directed.

- (a) For payment through FEDLINE, the Subcontractor shall provide the following information:
- (1) Name, address, and telegraphic abbreviation of the financial institution receiving payment.
 - (2) The American Bankers Association 9-digit identifying number for wire transfers of the financing institution receiving payment if the institution has access to the Federal Reserve Communications System.
 - (3) Payee's account number at the financial institution where funds are to be transferred.
 - (4) If the financial institution does not have access to the Federal Reserve Communications System, name, address, and telegraphic abbreviation of the correspondent financial

institution through which the financial institution receiving payment obtains wire transfer activity. Provide the telegraphic abbreviation and American Bankers Association identifying number for the correspondent institution.

- (b) For payment through ACH, the Subcontractor shall provide the following information:
- (1) Routing transit number of the financial institution receiving payment (same as American Bankers Association identifying number used for FEDLINE).
 - (2) Number of account to which funds are to be deposited.
 - (3) Type of depositor account ("C" for checking, "S" for savings).
 - (4) The Subcontractor shall submit a Standard Form ____ to the installation awarding this contract. If a Standard Form ____ previously submitted to the installation awarding this contract is still valid, resubmittal is not necessary, unless requested by NAME.
- (c) In the event the Subcontractor, during the performance of this contract, elects to designate a different financial institution for the receipt of any payment made using electronic funds transfer procedures, notification of such change and the required information specified above must be received by the properly designated financial institution, or if the Subcontractor fails to provide an appropriate payee bank account information, this may delay payments of amounts otherwise properly due.

DISPUTES

- (a) This contract is subject to the Contract Disputes Act of 1978, as amended (41 U.S.C. 601-613).
- (b) Except as provided in the Act, all disputes arising under or relating to this contract shall be resolved under this clause.
- (c) "Claim," as used in this clause, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to this contract. A claim arising under a contract, unlike a claim relating to that contract, is a claim that can be resolved under a contract clause that provides for the relief sought by the claimant. However, a written demand or written assertion by the Subcontractor seeking the payment of money exceeding \$50,000 is not a claim under the Act until certified as required by subparagraph (d) below. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim under the Act. The submission may be converted to a claim under the Act, by complying with the submission and certification requirements of this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.
- (1) A claim by the Subcontractor shall be made in writing and submitted to the Contracting Official for a written decision. A claim by the Network against the Subcontractor shall be subject to a written decision by the Contracting Official.
 - (2) Subcontractors shall provide the certification specified in subparagraph (d) of this clause when submitting any claim --

- (i) Exceeding \$50,000; or
 - (ii) Regardless of the amount claimed, when using--
 - a. Arbitration conducted pursuant to 5 U.S.C. 575-580; or
 - b. Any other alternative means of dispute resolution (ADR) technique that the agency elects to handle in accordance with the Administrative Dispute Resolution Act (ADRA).
 - (iii) The certification requirement does not apply to issues in controversy that have not been submitted as all or part of a claim.
 - (iv) The certification shall state as follows: "I certify that the claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract adjustment for which the Subcontractor believes the Network is liable; and that I am duly authorized to certify the claim on behalf of the Subcontractor."
- (3) The certification may be executed by any person duly authorized to bind the Subcontractor with respect to the claim.
- (d) For Subcontractor claims of \$50,000 or less, the Contracting Official must, if requested in writing by the Subcontractor, render a decision within 60 days of the request. For Subcontractor-certified claims over \$50,000, the Contracting Official must, within 60 days, decide the claim or notify the Subcontractor of the date by which the decision will be made.
- (e) The Contracting Official's decision shall be final unless the Subcontractor appeals or files a suit as provided in the Act.
- (f) At the time a claim by the Subcontractor is submitted to the Contracting Official or a claim by the Network is presented to the Subcontractor, the parties, by mutual consent, may agree to use ADR. When using arbitration conducted pursuant to 575 U.S.C. 5-580, or when using any other ADR technique that the Network elects to handle in accordance with the ADRA, any claim, regardless of amount, shall be accompanied by the certification described, paid from the date that the Contracting Official initially receives the claim. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury as provided in the Act, which is applicable to the period during which the Contracting Official receives the claim and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim.
- (1) The Subcontractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the Contracting Official.

ALTERNATE I

If it is determined under Network procedures, that continued performance is necessary pending resolution of any claim arising under or relating to the contract, substitute the following paragraph (i) for the paragraph (i) of the basic clause:

- (i) The Subcontractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under or relating to the contract, and comply with any decision of the Contracting Official.

PROTEST AFTER AWARD

- (a) Upon receipt of a notice of protest the Contracting Official may, by written order to the Subcontractor, direct the Subcontractor to stop performance of work called for by this contract. The order shall be specifically identified as a stop-work issued under this clause. Upon receipt of the order, the Subcontractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Upon receipt of the final decision in the protest, the Contracting Official shall either--
 - (1) Cancel the stop-work order; or
 - (2) Terminate the work covered by the order as provided in the Default, or the Termination for Convenience of the Network, clause of this contract.
- (b) If a stop-work order issued under this clause is canceled either before or after a final decision in the protest, the Subcontractor shall resume work. The Contracting Official shall make an equitable adjustment in the delivery schedule or contract price, or both, and the contract shall be modified, in writing, accordingly, if--
 - (1) The stop-work order results in an increase in the time required for, or in the Subcontractor's cost properly allocable to, the performance of any part of this contract; and
 - (2) The Subcontractor asserts its right to an adjustment within 30 days after the end of the period of work stoppage; provided, that if the Contracting Official decides the facts justify the action, the Contracting Official may receive and act upon a proposal at any time before final payment under this contract.
- (c) If a stop-work order is not canceled and the work covered by the order is terminated for the convenience of the Network, the Contracting Official shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.
- (d) If a stop-work is not canceled and the work covered by the order is terminated for default, the Contracting Official shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.
- (e) The Network's rights to terminate this contract at any time are not affected by action taken under this clause.

BANKRUPTCY

In the event the Subcontractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the Subcontractor agrees to furnish, by certified mail, written notification of the bankruptcy to the Contracting Official responsible for administering the contract. This notification shall be furnished

within five days of the initiation of the proceedings relating to bankruptcy filing. This notification will be effective until final payment under this contract.

CHANGES--FIXED-PRICE ALTERNATE V

- (a) The Contracting Official may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in any one or more of the following:
 - (1) Drawings, designs, or specifications.
 - (2) Method of shipment or packing.
 - (3) Place of inspection, delivery, or acceptance.
- (b) If any such change causes an increase or decrease in the cost of, or time required for, performing this contract, whether or not changed by the order, the Contracting Official shall make an equitable adjustment in (1) the contract price, the time of performance, or both; and (2) other affected terms of the contract, and shall modify the contract accordingly.
- (c) The Subcontractor must assert its right to an adjustment under this clause within 30 days from the date of receipt of the written order. However, if the Contracting Official decides that the facts justify it, the Contracting Official may receive and act upon a proposal submitted before final payment of the contract.
- (d) If the Subcontractor's proposal includes the cost of property made obsolete or excess by the change, the Contracting Official shall have the right to prescribe the manner of the disposition of the property.
- (e) Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, nothing in this clause shall excuse the Subcontractor from proceeding with the contract as changed.

COMPETITION IN SUBCONTRACTING

The Contracting Official shall select Subcontractors (including suppliers) on a competitive basis to the maximum practical extent consistent with the objectives and requirements of the contract.

NETWORK PROPERTY (FIXED-PRICE CONTRACTS)

- (a) Network-furnished property.
 - (1) The Network shall deliver to the Subcontractor, for use in connection with and under the terms of this contract, the Network-furnished property described in the Schedule or specifications together with any related data and information that the Subcontractor may request and is reasonably required for the intended use of the property (hereinafter referred to as "Network-furnished property").
 - (2) The delivery or performance dates for this contract are based upon the expectation that Network-furnished property suitable for use (except for property furnished "as-is") will be

delivered to the Subcontractor at the times stated in the Schedule or, if not so stated, in sufficient time to enable the Subcontractor to meet the contract's delivery or performance dates.

- (3) If Network-furnished property is received by the Subcontractor in a condition not suitable for the intended use, the Subcontractor shall, upon receipt of it, notify the Contracting Official, detailing the facts, and, as directed by the Contracting Official and at Network expense, either repair, modify, return, or otherwise dispose of the property. After completing the directed action and upon written request of the Subcontractor, the Contracting Official shall make an equitable adjustment as provided in paragraph (h) of this clause.
- (4) If Network-furnished property is not delivered to the Subcontractor by the required time, the Contracting Official shall, upon the Subcontractor's timely written request, make a determination of the delay, if any, caused the Subcontractor and shall make an equitable adjustment in accordance with paragraph (h) of this clause.

(b) Changes in Network-furnished property.

- (1) The Contracting Official may, by written notice, (i) decrease the Network-furnished property provided or to be provided under this contract, or (ii) substitute other Network-furnished property and make an equitable adjustment to the contract in accordance with paragraph (h) of this clause, if the Network has agreed in the Schedule to make the property available for performing this contract and there is any --
 - (i) Decrease or substitution in this property pursuant to subparagraph (b)(1) above; or
 - (ii) Withdrawal of authority to use this property, if provided under any other contract or lease.

(c) Title in Network property.

- (1) The Network shall retain title to all Network-furnished property.
- (2) All Network-furnished property and all property acquired by the Subcontractor, title to which vests in the Network under this paragraph (collectively referred to as "Network property"), are subject to the provisions of this clause. However, special tooling accountable to this contract is subject to the provisions of the Special Tooling clause and is not subject to the provisions of this clause. Title to Network property shall not be affected by its incorporation into or attachment to any property not owned by the Network, nor shall Network property become a fixture or lose its identity as personal property by being attached to any real property.
- (3) Title to each item of facilities and special test equipment acquired by the Subcontractor for the Network under this contract shall pass to and vest in the Network when its use in performing this contract commences or when the Network has paid for it, whichever is earlier, whether or not title previously vested in the Network.
- (4) If this contract contains a provision directing the Subcontractor to purchase material for which the Network will reimburse the Subcontractor as a direct item of cost under this contract --

- (i) Title to material purchased from a vendor shall pass to and vest in the Network upon the vendor's delivery of such material; and
 - (ii) Title to all other material shall pass to and vest in the Network upon --
 - a. Issuance of the material for use in contract performance;
 - b. Commencement of processing of the material or its use in contract performance; or
 - c. Reimbursement of the cost of the material by the Network, whichever occurs first.
- (d) Use of Network property.
- (1) The Network property shall be used only for performing this contract, unless otherwise provided in this contract or approved by the Contracting Official.
- (e) Property administration.
- (1) The Subcontractor shall be responsible and accountable for all Network property provided under this contract, as in effect on the date of this contract.
 - (2) The Subcontractor shall establish and maintain a program for the use, maintenance, repair, protection, and preservation of Network property in accordance with sound industrial practice and the applicable provisions of this contract.
 - (3) If damage occurs to Network property, the risk of which has been assumed by the Network under this contract, the Network shall replace the items or the Subcontractor shall make such repairs as the Network directs. However, if the Subcontractor cannot effect such repairs within the time required, the Subcontractor shall dispose of the property as directed by the Contracting Official. When any property for which the Network is responsible is replaced or repaired, the Contracting Official shall make an equitable adjustment in accordance with paragraph of this clause.
 - (4) The Subcontractor represents that the contract price does not include any amount for repairs or replacement for which the Network is responsible. Repair aroused in this paragraph (g), means the Subcontractor's officers, and any of the Subcontractor's managers, superintendents, directors, or equivalent representatives who have supervision or direction of:
 - (i) All or substantially all of the Subcontractor's business;
 - (ii) All or substantially all of the Subcontractor's operation at any one plant or separate location at which the contract is being performed; or
 - (iii) A separate and complete major industrial operation connected with performing this contract.

- (5) The Subcontractor shall not be liable for loss or destruction of, or damage to, the Network property provided under this contract (or, if an educational or nonprofit organization, for expenses incidental to such loss, destruction, or damage), except as provided in subparagraphs (6) and (7) below.
- (6) The Subcontractor shall be responsible for loss or destruction of, or damage to, the Network property provided under this contract (including expenses incidental to such loss, destruction, or damage) --
- (i) That results from a risk expressly required to be insured under this contract, but only to the extent of the insurance required to be purchased and maintained, or to the extent of insurance actually purchased and maintained, whichever is greater;
 - (ii) That results from a risk that is in fact covered by insurance or for which the Subcontractor is otherwise reimbursed, but only to the extent of such insurance or reimbursement;
 - (iii) For which the Subcontractor is otherwise responsible under the express terms of this contract;
 - (iv) That results from willful misconduct or lack of good faith on the part of the Subcontractor's managerial personnel; or
 - (v) That results from a failure on the part of the Subcontractor, due to willful misconduct or lack of good faith on the part of the Subcontractor's managerial personnel, to establish and administer a program or system for the control, use, protection, preservation, maintenance, and repair of Network property as required by paragraph (e) of this clause.
- (7) If the Subcontractor fails to act as provided in subdivision (e)(6)(v) above, after being notified (by certified mail addressed to one of the Subcontractor's managerial personnel) of the Network's disapproval, withdrawal of approval, or nonacceptance of the system or program, it shall be conclusively presumed that such failure was due to willful misconduct or lack of good faith on the part of the Subcontractor's managerial personnel.
- (i) In such event, any loss or destruction of, or damage to, the Network property shall be presumed to have resulted from such failure unless the Subcontractor can establish by clear and convincing evidence that such loss, destruction, or damage --
 - a. Did not result from the Subcontractor's failure to maintain an approved program or system; or
 - b. Occurred while an approved program or system was maintained by the Subcontractor.
- (8) If the Subcontractor transfers Network property to the possession and control of a Subcontractor, the transfer shall not affect the liability of the Subcontractor for loss or destruction of, or damage to, the property as set forth above. However, the Subcontractor shall require the Subcontractor to assume the risk of, and be responsible for, any loss or destruction of, or damage to, the property while in the Subcontractor's possession or control, except to the extent that the subcontract, with the advance approval of the

Contracting Official, relieves the Subcontractor from such liability. In the absence of such approval, the subcontract shall contain appropriate provisions requiring the return of all Network property in as good condition as when received, except for reasonable wear and tear or for its use in accordance with the provisions of the prime contract.

- (9) Put all the affected Network property in the best possible order, and furnish to the Contracting Official a statement of --
 - (i) The lost, destroyed, or damaged Network property;
 - (ii) The time and origin of the loss, destruction, or damage;
 - (iii) All known interests in commingled property of which the Network property is a part; and
 - (iv) The insurance, if any, covering any part of or interest in such commingled property.
- (10) The Subcontractor shall repair, renovate, and take such other action with respect to damaged Network property as the Contracting Official directs. If the Network property is destroyed or damaged beyond practical repair, or is damaged and so commingled or combined with property of others (including the Subcontractor's) that separation is impractical, the Subcontractor may, with the approval of and subject to any conditions imposed by the Contracting Official, sell such property for the account of the Network. Such sales may be made in order to minimize the loss to the Network, to permit the resumption of business, or to accomplish a similar purpose. The Subcontractor shall be entitled to an equitable adjustment in the contract price for the expenditures made in performing the obligations under this subparagraph (e)(10) in accordance with paragraph (h) of this clause. However, the Network may directly reimburse the loss and salvage organization for any of their charges. The Contracting Official shall give due regard to the Subcontractor's liability under this paragraph (e) when making any such equitable adjustment.
- (11) The Subcontractor represents that it is not including in the price and agrees it will not hereafter include in any price to the Network any charge or reserve for insurance (including any self-insurance fund or reserve) covering loss or destruction of, or damage to, Network property, except to the extent that the Network may have expressly required the Subcontractor to carry such insurance under another provision of this contract.
- (12) In the event the Subcontractor is reimbursed or otherwise compensated for any loss or destruction of, or damage to, Network property, the Subcontractor shall use the proceeds to repair, renovate, or replace the lost, destroyed, or damaged Network property or shall otherwise credit the proceeds to or equitably reimburse the Network, as directed by the Contracting Official.
- (13) The Subcontractor shall do nothing to prejudice the Network's rights to recover against third parties for any loss or destruction of, or damage to, Network property. Upon the request of the Contracting Official, the Prime Subcontractor shall, at the Network's expense, furnish to the Network all reasonable assistance and cooperation (including the prosecution of suit and the execution of instruments of assignment in favor of the Network) in obtaining recovery. In addition, where a Subcontractor has not been relieved from liability for any loss destruction of, or damage to, Network property, the Prime

Subcontractor shall enforce for the benefit of the Network the liability of the Subcontractor for such loss, destruction, or damage.

(f) Equitable adjustment.

- (1) When this clause specifies an equitable adjustment, it shall be made to any affected contract provision in accordance with the procedures of the Changes clause. When appropriate, the Contracting Official may initiate an equitable adjustment in favor of the Network. The right to an equitable adjustment shall be the Subcontractor's exclusive remedy. The Network shall not be liable to suit for breach of contract for --
 - (i) Any delay in delivery of Network-furnished property;
 - (ii) Delivery of Network-furnished property in a condition not suitable for its intended use;
 - (iii) A decrease in or substitution of Network-furnished property; or
 - (iv) Failure to repair or replace Network property (including any resulting scrap) not consumed in performing this contract or delivered to the Network. The Subcontractor shall prepare for shipment, deliver f.o.b. origin, or dispose of the Network property as may be directed or authorized by the Contracting Official. The net proceeds of any such disposal shall be credited to the contract price or shall be paid to the Network as the Contracting Official directs.

(g) Abandonment and restoration of Subcontractor's premises. Unless otherwise provided herein, the Network --

- (1) May abandon any Network property in place, at which time all obligations of the Network regarding such abandoned property shall cease; and
- (2) Has no obligation to restore or rehabilitate the Subcontractor's premises under any circumstances (e.g., abandonment, disposition upon completion of need, or upon contract completion). However, if the Network-furnished property (listed in the Schedule or specifications) is withdrawn or is unsuitable for the intended use, or if other Network property is substituted, then the equitable adjustment under paragraph (h) of this clause may properly include restoration or rehabilitation costs .

(h) Communications.

- (1) All communications under this clause shall be in writing.

(i) Overseas contracts.

- (1) If this contract is to be performed outside of the United States of America, its territories, or possessions, the words "Network" and "Network-furnished" (wherever they appear in this clause) shall be construed as "United States Network" and "United States Network-furnished," respectively.

NETWORK-FURNISHED PROPERTY (SHORT FORM)

- (a) The Network shall deliver to the Subcontractor, at the time and locations stated in this contract, the Network-furnished property described in the Schedule or specifications. If that property, suitable for its intended use, is not delivered to the Subcontractor, the Contracting Official shall equitably adjust affected provisions of this contract in accordance with the Changes clause when -
- (1) The Subcontractor submits a timely written request for an equitable adjustment; and
 - (2) The facts warrant an equitable adjustment.
- (b) Title to Network-furnished property shall remain in the Network. The Subcontractor shall use the Network-furnished property only in connection with this contract. The Subcontractor shall maintain adequate property control records in accordance with sound industrial practice and will make such records available for Network inspection at all reasonable times, unless the clause Property Records, is included in this contract.
- (c) Upon delivery of Network-furnished property to the Subcontractor, the Subcontractor assumes the risk and responsibility for its loss or damage, except -
- (1) For reasonable wear and tear;
 - (2) To the extent property is consumed in performing this contract; or
 - (3) As otherwise provided for by the provisions of this contract.
- (d) Upon completing this contract, the Subcontractor shall follow the instructions of the Contracting Official regarding the disposition of all Network-furnished property not consumed in performing this contract or previously delivered to the Network. The Subcontractor shall prepare for shipment, deliver f.o.b. origin, or dispose of the Network property, as may be directed or authorized by the Contracting Official. The net proceeds of any such disposal shall be credited to the contract price or shall be paid to the Network as directed by the Contracting Official.
- (e) If this contract is to be performed outside the United States of America, its territories, or possessions, the words "Network" and "Network-furnished" (wherever they appear in this clause) shall be construed as "Nascent Applied Methods & Endeavors" during contract performance and for as long afterwards as the contract requires.
- (f) The Network has the right to inspect and test all work called for by the contract, to the extent practicable at all places and times, including the period of performance, and in any event before acceptance. The Network may also inspect the premises of the Subcontractor or any Subcontractor engaged in contract performance. The Network shall perform inspections and tests in a manner that will not unduly delay the work.
- (g) If the Network performs any inspection or test on the premises of the Prime Subcontractor or a second-tier subcontractor, the Prime Subcontractor shall furnish and shall require Subcontractors to furnish, without additional charge, all reasonable facilities and assistance for the safe and convenient performance of these duties. Except as otherwise provided in the contract, the Network shall bear the expense of Network inspections or tests made at other than the Prime Subcontractor's or subcontractor's premises.

- (h) The Network shall accept or reject the work as promptly as practicable after delivery, unless otherwise specified in the contract. Network failure to inspect and accept or reject the work shall not relieve the Subcontractor from responsibility, nor impose liability on the Network, for nonconforming work. Work is nonconforming when it is defective in material or workmanship or is otherwise not in conformity with contract requirements.
- (i) The Network has the right to reject nonconforming work. If the Subcontractor fails or is unable to correct or to replace nonconforming work within the delivery schedule (or such later time as the Contracting Official may authorize), the Contracting Official may accept the work and make an equitable price reduction. Failure to agree on a price reduction shall be a dispute.
- (j) Inspection and test by the Network does not relieve the Subcontractor from responsibility for defects or other failures to meet the contract requirements that may be discovered before acceptance. Acceptance shall be conclusive, except for latent defects, fraud, gross mistakes amounting to fraud, or as otherwise specified in the contract. If acceptance is not conclusive for any of these causes, the Network, in addition to any other rights and remedies provided by law, or under other provisions of this contract, shall have the right to require the Subcontractor (1) at no increase in contract price, to correct or replace the defective or nonconforming supplies (work) at the original point of delivery or at the Subcontractor's plant at the Contracting Official election, and in accordance with a reasonable delivery schedule as may be agreed upon between the Subcontractor and the Contracting Official; provided, the Contracting Official may require a reduction in contract price if the Subcontractor fails to meet such delivery schedule; or (2) within a reasonable time after the Subcontractor's receipt of notice of defects or nonconformance, to repayment of such portion of the contract price as is equitable under the circumstances if the Network elects not to require correction or replacement. When supplies (work) are (is) returned to the Subcontractor, the Subcontractor shall bear transportation costs from the original point of delivery to the Subcontractor's plant and return to the original point of delivery when that point is not the Subcontractor's plant.

INSPECTION OF RESEARCH AND DEVELOPMENT (SHORT FORM)

The Network has the right to inspect and evaluate the work performed or being performed under the contract, and the premises where the work is being performed, at all reasonable times and in a manner that will not unduly delay the work.

- (a) Unless the contract specifically provides otherwise, risk of loss of or damage to supplies shall remain with the Subcontractor until, and shall pass to the Network upon--
 - (1) Delivery of the supplies to a carrier, if transportation is f.o.b. origin; or
 - (2) Acceptance by the Network or delivery of the supplies to the Network at the destination specified in the contract, whichever is later, if transportation is f.o.b. destination.
- (b) Paragraph (a) above shall not apply to supplies that so fail to conform to contract requirements as to give a right of rejection. The risk of loss of or damage to such nonconforming supplies remains with the Subcontractor until cure or acceptance. After cure or acceptance, paragraph (a) above shall apply.

- (c) Under paragraph (a) above, the Subcontractor shall not be liable for loss of or damage to supplies caused by the negligence of officers, agents, or employees of the Network acting within the scope of their employment.

LIMITATION OF LIABILITY

- (a) Except as provided in paragraphs (b) and (c) below, and except for remedies expressly provided elsewhere in this contract, the Subcontractor shall not be liable for loss of or damage to property of the Network (excluding the supplies delivered under this contract) that (1) occurs after Network acceptance of the supplies delivered under this contract and (2) results from any defects or deficiencies in the supplies.
- (b) The limitation of liability under paragraph (a) above shall not apply when a defect or deficiency in, or the Network's acceptance of, the supplies results from willful misconduct or lack of good faith on the part of any of the Subcontractor's managerial personnel. The term "Subcontractor's managerial personnel," as used in this clause, means the Subcontractor's directors, officers, and any of the Subcontractor's managers, superintendents, or equivalent representatives who have supervision or direction of--
 - (1) All or substantially all of the Subcontractor's business;
 - (2) All or substantially all of the Subcontractor's operations at any one plant, laboratory, or separate location at which the contract is being performed; or
 - (3) A separate and complete major industrial operation connected with the performance of this contract.
- (c) If the Subcontractor carries insurance, or has established a reserve for self-insurance, covering liability for loss or damage suffered by the Network through purchase or use of the supplies required to be delivered under this contract, the Subcontractor shall be liable to the Network, to the extent of such insurance or reserve, for loss of or damage to property of the Network occurring after Network acceptance of, and resulting from any defects or deficiencies in, the supplies delivered under this contract.
- (d) The Subcontractor shall include this clause, including this paragraph (d), supplemented as necessary to reflect the relationship of the contracting parties, in all subcontracts.

LIMITATION OF LIABILITY -- SERVICES

- (a) Except as provided in paragraphs (b) and (c) below, and except to the extent that the Subcontractor is expressly responsible under this contract for deficiencies in the services required to be performed under it (including any materials furnished in conjunction with those services), the Subcontractor shall not be liable for loss of or damage to property of the Network that (1) occurs after Network acceptance of services performed under this contract and (2) results from any defects or deficiencies in the services performed or materials furnished.
- (b) The limitation of liability under paragraph (a) above shall not apply to --
 - (1) All or substantially all of the Subcontractor's business;

- (2) All or substantially all of the Subcontractor's operations at any one plant, laboratory, or separate location at which the contract is being performed; or
 - (3) A separate and complete major industrial operation connected with the performance of this contract.
- (c) If the Subcontractor carries insurance, or has established a reserve for self-insurance, covering liability for loss or damage suffered by the Network through the Subcontractor's performance of services or furnishing of materials under this contract, the Subcontractor shall be liable to the Network, to the extent of such insurance or reserve, for loss of or damage to property of the Network occurring after Network acceptance of, and resulting from any defects and deficiencies in, services performed or materials furnished under this contract.
- (d) The Prime Subcontractor shall include this clause, including this paragraph (d) supplemented as necessary to reflect the relationship of the contracting parties, in all subcontracts over \$1.

F.O.B. DESTINATION

- (a) The term "f.o.b. destination," as used in this clause, means --
- (1) Free of expense to the Network, on board the carrier's conveyance, at a specified delivery point where the consignee's facility (plant, warehouse, store, lot, or other location to which shipment can be made) is located; and
 - (2) Supplies shall be delivered to the destination consignee's wharf (if destination is a port city and supplies are for export), warehouse unloading platform, or receiving dock, at the expense of the Subcontractor. The Network shall not be liable for any delivery, storage, demurrage, accessorial, or other charges involved before the actual delivery (or "constructive placement" as defined in carrier tariffs) of the supplies to the destination, unless such charges are caused by an act or order of the Network acting in its contractual capacity. If rail carrier is used, supplies shall be delivered to the specified unloading platform of the consignee. If motor carrier (including "piggyback") is used, supplies shall be delivered to truck tailgate at the unloading platform of the consignee, except when the supplies delivered meet the requirements of Item 568 of the National Motor Freight Classification for "heavy or bulky freight." When supplies meeting the requirements of the referenced Item 568 are delivered, unloading (including movement to the tailgate) shall be performed by the consignee, with assistance from the truck driver, if requested. If the Subcontractor uses rail carrier or freight forwarded for less than carload shipments, the Subcontractor shall ensure that the carrier will furnish tailgate delivery, when required, if transfer to truck is required to complete delivery to consignee.
- (b) The Subcontractor shall --
- (1) Pack and mark the shipment to comply with contract specifications; or
 - (2) In the absence of specifications, prepare the shipment in conformance with carrier requirements;
 - (3) Prepare and distribute commercial bills of lading;

- (4) Deliver the shipment in good order and condition to the point of delivery specified in the contract;
- (5) Be responsible for any loss of and/or damage to the goods occurring before receipt of the shipment by the consignee at the delivery point specified in the contract;
- (6) Furnish a delivery schedule and designate the mode of delivering carrier; and
- (7) Pay and bear all charges to the specified point of delivery.

**TERMINATION FOR CONVENIENCE OF THE NETWORK
(FIXED-PRICE) (SHORT FORM)**

- (a) The Contracting Official, by written notice, may terminate this contract, in whole or in part, when it is in the Network's interest. This contract is terminated when, the rights, duties, and obligating part of the Contracting Official determines that a termination is in the Network's interest. The Contracting Official shall terminate by delivering to the Subcontractor a Notice of Termination specifying the extent of termination and the effective date.
- (b) After receipt of a Notice of Termination, and except as directed by the Contracting Official, the Subcontractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:
 - (1) Stop work as specified in the notice.
 - (2) Place no further subcontracts or orders (referred to as subcontracts in this clause) for materials, services, or facilities, except as necessary to complete the continued portion of the contract.
 - (3) Terminate all subcontracts to the extent they relate to the work terminated.
 - (4) Assign to the Network, as directed by the Contracting Official, all right, title, and interest of the Subcontractor under the subcontracts terminated, in which case the Network shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.
 - (5) With approval or ratification to the extent required by the Contracting Official, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts; the approval or ratification will be final for the purposes of this clause.
 - (6) As directed by the Contracting Official, transfer title and deliver to the Network (i) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated, and (ii) the completed or partially completed plans, drawings, information, and other property that, if the contract had been completed, would be required to be furnished to the Network.
 - (7) Complete performance of the work not terminated.

- (8) Take any action that may be necessary, or that the Contracting Official may direct, for the protection and preservation of the property related to this contract that is in the possession of the Subcontractor and in which the Network has or may acquire an interest.
 - (9) Use its best efforts to sell, as directed or authorized by the Contracting Official, any property of the types referred to in subparagraph (6) above; provided, however, that the Subcontractor (i) is not required to extend credit to any purchaser and (ii) may acquire the property under the conditions prescribed by, and at prices approved by, the Contracting Official. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the Network under this contract, credited to the price or cost of the work, or paid in any other manner directed by the Contracting Official.
- (c) After expiration of the plant clearance period, the Subcontractor may submit to the Contracting Official a list, certified as to quantity and quality, of termination inventory not previously disposed of, excluding items authorized for disposition by the Contracting Official. The Subcontractor may request the Network to remove those items or enter into an agreement for their storage. Within 15 days, the Network will accept title to those items and remove them or enter into a storage agreement. The Contracting Official may verify the list upon removal of the items, or if stored, within 45 days from submission of the list, and shall correct the list, as necessary before final settlement.
 - (d) After termination, the Subcontractor shall submit a final termination settlement proposal to the Contracting Official in the form and with the certification prescribed by the Contracting Official. The Subcontractor shall submit the payment determined, on the basis of information available, the amount, if any, due the Subcontractor because of the termination and shall pay the amount determined.
 - (e) Subject to paragraph (d) above, the Subcontractor and the Contracting Official may agree upon the whole or any part of the amount to be paid because of the termination. The amount may include a reasonable allowance for profit on work done. However, the agreed amount, whether under this paragraph (e) or paragraph (f) below, exclusive of costs shown in subparagraph (f)(3) below, may not exceed the total contract price as reduced by (1) the amount of payments previously made and (2) the contract price of work not terminated. The contract shall be amended, and the Subcontractor paid the agreed amount. Paragraph (f) below shall not limit, restrict, or affect the amount that may be agreed upon to be paid under this paragraph.
 - (f) If the Subcontractor and the Contracting Official fail to agree on the whole amount to be paid because of the termination of work, the Contracting Official shall pay the Subcontractor the amounts determined by the Contracting Official as follows, but without duplication of any amounts agreed on under paragraph (e) above:
 - (1) The contract price for completed supplies or services accepted by the Network (or sold or acquired under subparagraph (b)(9) above) not previously paid for, adjusted for any saving of freight and other charges.
 - (2) The total of--
 - (i) The costs incurred in the performance of the work terminated, including initial costs and preparatory expense allocable thereto, but excluding any costs attributable to supplies or services paid or to be paid under subparagraph (f)(1) above;

- (ii) The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the contract if not included in subdivision (i) above; and
 - (iii) A sum, as profit on subdivision (i) above, determined by the Contracting Official in effect on the date of this contract, to be fair and reasonable; however, if it appears that the Subcontractor would have sustained a loss on the entire contract had it been completed, the Contracting Official shall allow no profit under this subdivision (iii) and shall reduce the settlement to reflect the indicated rate of loss.
- (3) The reasonable costs of settlement of the work terminated, including--
 - (i) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;
 - (ii) The termination and settlement of subcontracts (excluding the amounts of such settlements); and
 - (iii) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory.
- (g) Except for normal spoilage, and except to the extent that the Network expressly assumed the risk of loss, the Contracting Official shall exclude from the amounts payable to the Subcontractor under paragraph (f) above, the fair value, as determined by the Contracting Official, of property that is destroyed, lost, stolen, or damaged so as to become undeliverable to the Network or to a buyer.
- (h) The cost principles and procedures in effect on the date of this contract, shall govern all costs claimed, agreed to, or determined under this clause.
- (i) The Subcontractor shall have the right of appeal, under the Disputes clause, from any determination made by the Contracting Official under paragraph (d), (f), or (k), except that if the Subcontractor failed to submit the termination settlement proposal within the time provided in paragraph (d) or this clause, there shall be deducted--
 - (1) All unliquidated advance or other payments to the Subcontractor under the termination portion of this contract;
 - (2) Any claim which the Network has against the Subcontractor under this contract; and
 - (3) The agreed price for, or the proceeds of sale of, materials, supplies, or other things acquired by the Subcontractor or sold under the provisions of this clause and not recovered by or credited to the Network.
- (j) If the termination is partial, the Subcontractor may file a proposal with the Contracting Official for an equitable adjustment of the price(s) of the continued portion of the contract. The Contracting Official shall make any equitable adjustment agreed upon. Any proposal by the Subcontractor for an equitable adjustment under this clause shall be requested within 90 days from the effective date of termination unless extended in writing by the Contracting Official.

- (k) The Network may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the Subcontractor for the terminated portion of the contract, if the Contracting Official believes the total of these payments will not exceed the amount to which the Subcontractor will be entitled.
- (l) If the total payments exceed the amount finally determined to be due, the Subcontractor shall repay the excess to the Network upon demand, together with interest computed at the rate established by the Secretary of the Treasury under 50 U.S.C. App. 1215(b)(2). Interest shall be computed for the period from the date the excess payment is received by the Subcontractor to the date the excess is repaid. Interest shall not be charged on any excess payment due to a reduction in the Subcontractor's termination settlement proposal because of retention or other disposition of termination inventory until 10 days after the date of the retention or disposition, or a later date determined by the Contracting Official because of the circumstances.
- (m) Unless otherwise provided in this contract or by statute, the Subcontractor shall maintain all records and documents relating to the terminated portion of this contract for 3 years after final settlement. This includes all books and other evidence bearing on the Subcontractor's costs and expenses under this contract. The Subcontractor shall make these records and documents available to the Network, at the Subcontractor's office, at all reasonable times, without any direct charge. If approved by the Contracting Official, photographs, microphotographs, or other authentic reproductions may be maintained instead of original records and documents.

DEFAULT (FIXED-PRICE RESEARCH AND DEVELOPMENT)

- (a) The Network may, subject to paragraphs (c) and (d) below, by written Notice of Default to the Subcontractor, terminate this contract in whole or in part if the Subcontractor fails to –
 - (1) Perform the work under the contract within the time specified in this contract or any extension;
 - (2) Prosecute the work so as to endanger performance of this contract (but see subparagraph (a)(4) below); or
 - (3) Perform any of the other provisions of this contract (but see subparagraph (a)(4) below).
 - (4) The Network's right to terminate this contract under subdivisions (a)(2) and (a)(3) of this paragraph may be exercised if the Subcontractor does not cure such failure within 10 days (or more if authorized in writing by the Contracting Official) after receipt of the notice from the Contracting Official specifying the failure.
- (b) If the Network terminates this contract in whole or in part, it may acquire, under the terms and in the manner the Contracting Official considers appropriate, work similar to the work terminated, and the Subcontractor will not be held responsible for failure due to (1) foreign enemies of the Network, (2) acts of the Network in either its sovereign or contractual capacity, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions, (7) strikes, (8) freight embargoes, and (9) unusually severe weather. In each instance the failure to perform must be beyond the control and without the fault or negligence of the Subcontractor.
- (c) If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is beyond the control of both the Prime Subcontractor and subcontractor, and without

the fault or negligence of either, the Prime Subcontractor shall not be liable for any excess costs for failure to perform, unless the subcontracted supplies or services were obtainable from other sources in sufficient time for the Prime Subcontractor to meet the required delivery schedule.

- (d) If this contract is terminated for default, the Network may require the Subcontractor to transfer title and deliver to the Network, as directed by the Contracting Official, any (1) completed work not previously delivered to, and accepted by, the Network and (2) other property, including contract rights, specifically produced or acquired for the terminated portion of this contract. Upon direction of the Contracting Official, the Subcontractor shall also protect and preserve property in its possession in which the Network has interest.
- (e) The Network shall pay contract price if separately stated, for completed work it has accepted and the amount agreed upon by the Subcontractor and Contracting Official for (1) completed work for which no separate price is stated, (2) partially completed work, (3) other property described above that it accepts, and (4) the protection and preservation of the property. Failure to agree will be a dispute under the Disputes clause. The Network may withhold from these amounts any sum the Contracting Official determines to be necessary to protect the Network against loss from outstanding liens or claims of former lien holders.
- (f) If, after termination, it is determined that the Subcontractor was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Network.
- (g) The rights and remedies of the Network in this clause are in addition to any other rights and remedies provided by law or under this contract.

COMPUTER GENERATED FORMS

- (a) Any data required to be submitted on a Standard or Optional Form prescribed by the Contracting Official may be submitted on a computer generated version of the form, provided there is no change to the name, content, or sequence of the data elements on the form, and provided the form carries the Standard or Optional Form number and edition date.
- (b) Unless prohibited by Government regulations, any data required to be submitted on an government agency unique form prescribed by Network Policy may be submitted on a computer generated version of the form provided there is no change to the name, content, or sequence of the data elements on the form and provided the form carries the government agency form number and edition date.
- (c) If the Subcontractor submits a computer generated version of a form that is different than the required form, then the rights and obligations of the parties will be determined based on the content of the required form.

REPORT ON NAME SUBCONTRACTS

- (a) The Subcontractor shall submit information on NAME Form ____ to NASCENT APPLIED METHODS & ENDEAVORS (Code ____), _____, substantially as follows with respect to each subcontract or subcontract modification exceeding \$1 within ten (10) working days after modification where the subcontract work is to be performed, if known.

- (b) The Prime Subcontractor and its subcontractors shall submit negative reports annually, if applicable, on each prime contract and first-tier subcontract subject to this reporting requirement. These negative reports shall be submitted not later than October 31 for the 12-month period ending September 30th of each year. The negative reporting shall be continued until the contract or subcontract has been physically completed and the Nascent Applied Methods & Endeavors (Code ____), _____, so notified by the Prime Subcontractor or subcontractor.
- (c) "Subcontract," as used in this clause, means procurement in excess of \$1 by the Prime Subcontractor or first-tier Subcontractor of articles, materials, or services for performing this contract (including facility leases), except purchases, regardless of amount, of stock items, materials, or services that cannot be specifically identified with this contract.
- (d) "Research and development," as used in this clause, means basic and applied research, and design and development of prototypes and processes, to (1) pursue a planned search for new knowledge, with or without reference to a specific application, (2) apply existing knowledge in the creation of new products or processes, or (3) apply existing knowledge in the improvement or modification of present products and processes. It excludes subcontracts for the purchase of standard commercial items and services.
- (e) The Subcontractor shall --
- (1) Insert the provisions of paragraphs (a), (b), (c), and (d) of this clause in each subcontract over \$1;
 - (2) Instruct its Subcontractors to submit their reports directly to the NASCENT APPLIED METHODS & ENDEAVORS (Code ____), _____; and
 - (3) Provide its Subcontractors with the number of the NAME prime contract.

SECURITY PLAN FOR UNCLASSIFIED FEDERAL COMPUTER SYSTEMS

In addition to complying with any functional and technical security requirements set forth in the Schedule and the clauses of this contract, the Subcontractor shall comply with the Security Plan for Unclassified Network Computer Systems submitted pursuant to Network Policies, Submission of Security Plan For Unclassified Network Computer Systems, as approved by the Contracting Official.

PACKAGING AND MARKING

- (a) The Subcontractor shall preserve, pack, and mark for shipment all items deliverable under this contract in accordance with good commercial practices and adequate to ensure both acceptance by common carrier and safe transportation at the most economical rate(s).
- (b) The Subcontractor's markings on shipping containers shall be clearly legible from a distance of 36 inches. The Subcontractor may mark by stencil, rubber stamp, or lacquer over a coated gummed label.
- (c) The Subcontractor shall place identical requirements on all subcontracts.

NOTICE OF DELAY

If, because of technical difficulties, the Subcontractor becomes unable to complete the contract work at the time specified, notwithstanding the exercise of good faith and diligent efforts in performing the work called for under this contract, the Subcontractor shall give the Contracting Official written notice of the anticipated delay and the reasons for it. The notice and reasons shall be delivered promptly after the condition creating the anticipated delay becomes known to the Subcontractor but in no event less than 45 days before the completion date specified in this contract, unless otherwise permitted by the Contracting Official. When notice is given, the Contracting Official may extend the time specified in the Schedule for such period as is deemed advisable.

USE OF RURAL AREA SMALL BUSINESSES

- (a) A Subcontractor identified as a small business under the criteria and size standards.
- (b) NAME Prime Subcontractors are encouraged to use their best efforts to award subcontracts to small business concerns located in rural areas.
- (c) Prime Subcontractors acting in good faith may rely on written representations by their Subcontractors regarding their status as small business concerns located in rural areas.
- (d) The Prime Subcontractor agrees to insert the provisions of this clause, including this paragraph (d), in all subcontracts hereunder that offer subcontracting possibilities.

NAME SMALL DISADVANTAGED BUSINESS GOAL

- (a) Definitions.
 - (1) "Historically Black colleges and Universities," as used in this clause, means institutions determined by the Secretary of Education to meet the requirements of 34 CFR Section 608.2 and listed therein.
 - (2) "Minority educational institutions," as used in this clause, means institutions meeting the criteria established in 34 CFR 607.2 by the Secretary of Education.
 - (3) "Small disadvantaged business concern," as used in this clause, means a small business concern owned or controlled by individuals who are both socially and economically disadvantaged (within the meaning of section 8(a)(5) and (6) of the Small Business Act (15 U.S.C. 637(a)(5) and (6)). For purposes of this clause, socially and economically disadvantaged individuals shall be deemed to include women.
- (b) The NAME Administrators are required to ensure, to the fullest extent possible, that at least 10% of the total value of prime subcontracts awarded in support of authorized programs, including the R & D programs by the time operational status is obtained, is made available to small business concerns or other organizations owned or controlled by socially and economically disadvantaged individuals (including women), Historically Black Colleges and Universities, and minority educational institutions.

- (c) The Prime Subcontractor hereby agrees to assist NAME in achieving this goal by using its best efforts to award subcontracts to small disadvantaged business concerns, Historically Black Colleges and Universities, and minority educational institutions, as defined in this clause, to the fullest extent consistent with efficient contract performance.
- (d) Prime Subcontractors acting in good faith may rely on written representations by their Subcontractors regarding their status as small disadvantaged business concerns, Historically Black Colleges and Universities, and minority educational institutions.

**DESIGNATION OF NEW TECHNOLOGY REPRESENTATIVE
AND PATENT REPRESENTATIVE**

- (a) For purposes of administration of the clause of this contract entitled "New Technology" or "Patent Rights -- Retention by the Subcontractor (Short Form)", whichever is included, the following named representatives are hereby designated by the Contracting Official to administer such clause:

New Technology Representative - Office Code:
Address:

Patent Representative - Office Code:
Address:

- (b) Reports of reportable items, and disclosure of subject inventions, interim reports, final reports, utilization reports, and other reports required by the clause, as well as any correspondence with respect to such matters, should be directed to the New Technology Representative unless transmitted in response to correspondence or request from the Patent Representative. Inquires or requests regarding disposition of rights, election of rights, or related matters should be directed to the Patent Representative. This clause shall be included in any subcontract hereunder requiring a "New Technology" clause or "Patent Rights -- Reliquidation rate (excepting paragraph (k), Limitation on Undefined Contract Actions) to 85 percent.
- (c) If the Subcontractor is a small business, the Progress Payment clause of this contract is modified to change each mention of the progress payment rate and the ordinary liquidation rate (excepting paragraph (k), Limitation on Undefined Contract Actions) to 90 percent.
- (d) If the Subcontractor is a small disadvantaged business, the Progress Payment clause of this contract is modified to change each mention of the progress payment rate and the ordinary liquidation rate (excepting paragraph (k), Limitation on Undefined Contract Actions) to 95 percent.
- (e) If this contract is an award made under the Small Business Innovation Research (SBIR) program, the Progress Payment clause of this contract is modified to change each mention of the progress payment rate and the ordinary liquidation rate (excepting paragraph (k)), Limitation on Undefined Contract Actions) to 100 percent.
- (f) The above rates are customary uniform progress payment rates for NAME contracts.

CENTER FOR AUTONOMOUS INFORMATION

- (a) The Subcontractor should register with and avail itself of the services provided by the NAME Center for Autonomous Information (CASI) for the conduct of research or research and development required under this contract. CASI provides a variety of services and products as a central NAME repository of research information which may enhance contract performance. The address is set out in paragraph (d) of this clause.
- (b) Should the CASI information or service requested by the Subcontractor be unavailable or not in the exact form necessary by the Subcontractor, neither CASI nor NAME is obligated to search for or change the format of the information. A failure to furnish information shall not entitle the Subcontractor to an equitable adjustment under the terms and conditions of this contract.
- (c) When the contract otherwise requires the submission of monthly progress, quarterly progress, or final reports, the last page of such reports shall be a completed Standard Form (SF) _____, Report Documentation Page.
- (d) When the contract requires the delivery of reports or data to CASI, a reproducible copy and a printed or reproduced copy of such reports or data shall be concurrently submitted to:

Center for Autonomous Information (CASI)
Attn: Ascensioning Department

KEY PERSONNEL AND FACILITIES

- (a) The personnel and/or facilities listed below (or specified in the contract Schedule) are considered essential to the work being performed under this contract. Before removing, replacing, or diverting any of the listed or specified personnel or facilities, the Subcontractor shall (1) notify the Contracting Official reasonably in advance and (2) submit justification (including proposed substitutions) in sufficient detail to permit evaluation of the impact on this contract.
- (b) The Subcontractor shall make no diversion without the Contracting Official's written consent; provided, that the Contracting Official may ratify in writing the proposed change, and that ratification shall constitute the Contracting Official's consent required by this clause.
- (c) The list of personnel and/or facilities (shown below or as specified in the contract Schedule) may, with the consent of the contracting parties, be amended from time to time during the course of the contract to add or delete personnel and/or facilities.

ACQUISITION OF CENTRALLY REPORTABLE EQUIPMENT

- (a) "Centrally reportable equipment," as used in this clause, means plant equipment, special test equipment (including components), special tooling, and non-flight acquiring by fabricating any item of centrally reportable equipment under this contract (unless for incorporation into flight-qualified or flight-monitoring deliverable end items), the Subcontractor shall provide the Contracting Official, at the earliest possible date, a description of the item sufficiently detailed to enable screening of existing Network inventories.

- (1) For this purpose, the Subcontractor shall (i) prepare a separate Form ____, Industrial or Technical Plant Equipment Requisition, for each item of centrally reportable equipment to be acquired and (ii) forward it through the Contracting Official to the NAME Equipment Management System (NEMS) Coordinator at the cognizant NAME installation at least 30 days in advance of the date the Subcontractor intends to acquire or begin fabricating the item. If a certificate of non-availability is not received within that period, the Subcontractor may proceed to acquire the item, subject to any other applicable provisions of this contract. Instructions for preparing the Form ____ are contained Appendix ____ of this contract. The same data may be provided in an alternate format when requesting other than Security Services Plan Equipment Center (SSPEC) controlled items.
- (2) Upon receiving the item described on the Form ____ (regardless of whether it is Subcontractor-acquired or Network-furnished), the Subcontractor shall prepare and submit a Form ____ or equivalent data, in accordance with NAME Network Policies.

**FINANCIAL REPORTING OF NETWORK
OWNED/SUBCONTRACTOR-HELD PROPERTY**

- (a) The Subcontractor shall prepare and submit annually a NAME Form ____, Report of Network-Owned/Subcontractor-Held Property, and the instructions on the form and in section ____ of the NAME Network Policies, except that the reporting of special hardware shall be required only as directed in the clause Special Hardware Reporting, of this contract, if applicable.
- (b) If administration of this contract has been delegated to the Security Section of NAME, the original of NAME Form ____ shall be submitted to the NAME installation Financial Management Officer and three copies shall be sent concurrently through the Property Administrator to the NAME office identified below. If the contract is administered by NAME, the original of NAME Form ____ shall be submitted to the installation Financial Management Officer and three copies shall be sent concurrently to the following NAME office:

Center for Autonomous Information (CASI)
Attn: Ascensioning Department

- (c) The annual reporting period shall be from October 1 of each year to September 30 of the following year. The report shall be submitted by October 31.
- (d) The Prime Subcontractor agrees to insert the reporting requirement in all first-tier subcontracts, except that such requirement shall provide for the submission of the subcontractor's reports to the Prime Subcontractor, not to the Network. The Subcontractor shall require the subcontractors' reports to be submitted in sufficient time to meet the reporting date in paragraph (c) above.
- (e) The Prime Subcontractor's report shall consist of a consolidation of subcontractors' reports and the Prime Subcontractor's own report.

**FINANCIAL REPORTING OF NETWORK
OWNED/SUBCONTRACTOR-HELD PROPERTY**

- (a) The Subcontractor shall prepare and submit quarterly a NAME Form ____, Report of Network-Owned/Subcontractor-Held Property, in accordance with Network Policies, except that the reporting of special hardware shall be required only as directed in clause Special Hardware Reporting, of this contract, if applicable.
- (b) If administration of this contract has been delegated to the Security Services, the original report is due no later than the last day of the month following the quarter being reported.
- (c) The Subcontractor agrees to insert the reporting requirement in all first-tier subcontracts, except that such requirement shall provide for the submission of the subcontractor's reports to the Prime Subcontractor, not to the Network. The Prime Subcontractor shall require the subcontractors' reports to be submitted in sufficient time to meet the reporting date in paragraph (b) above.
- (d) The Prime Subcontractor's report shall consist of a consolidation of subcontractors' reports and the Prime Subcontractor's own report.

NETWORK CONTRACT QUALITY ASSURANCE FUNCTIONS

In accordance with the inspection clause of this contract, the Network intends to perform the following functions at the locations indicated:

ITEM	QUALITY ASSURANCE FUNCTION	LOCATION
[Enter the applicable item number(s), Quality Assurance Function(s), and Location(s)].		

APPLICABILITY

This solicitation/contract requires the use or delivery of Network information processing resources.

PROCUREMENT AUTHORITY

This acquisition is being conducted under delegation of NGSAs' exclusive procurement authority for FIP resources. The specific NGSAs DPA case number is [_____].

PRIVACY OR SECURITY SAFEGUARDS

- (a) The details of any safeguards the Subcontractor may design or develop under this contract are the property of the Network and shall not be published or disclosed in any manner without the Contracting Official's express written consent.

- (b) The details of any safeguards that may be revealed to the Subcontractor by the Network in the course of performance under this contract shall not be published or disclosed in any manner without the Contracting Official's express written consent.
- (c) The Network shall be afforded full, free, and uninhibited access to all facilities, installations, technical capabilities, operations, documentation, records, and data bases for the purpose of carrying out a program of inspection to ensure continued efficacy and efficiency of safeguards against threats and hazards to data security, integrity, and confidentiality.
- (d) If new or unanticipated threats or hazards are discovered by either the Network or the Subcontractor, or if existing safeguards have ceased to function, the discoverer shall immediately bring the situation to the attention of the other party. Mutual agreement shall then be reached on changes or corrections to existing safeguards or institution of new safeguards, with final determination of appropriateness being made by the Network. The Network's liability is limited to an equitable adjustment of cost for such changes or corrections, and the Network shall not be liable for claims of loss of business, damage to reputation, or damages of any other kind arising from discovery of new or unanticipated threats or hazards, or any public or private disclosure thereof.

WARRANTY EXCLUSION AND LIMITATION OF DAMAGES

Except as expressly set forth in writing in this agreement and except for the implied warranty of merchantability, there are no warranties expressed or implied.

In no event will the Subcontractor be liable to the Network for consequential damages as defined in the Uniform Commercial Code, section 2-715, in effect in the District of Columbia as of January 1, 1973; i.e.:

Consequential damages resulting from the seller's breach include --

- (a) Any loss resulting from general or particular requirements and needs of which the seller at the time of contracting had reason to know and which could not reasonably be prevented by cover or otherwise; and
- (b) Injury to person or property proximately resulting from any breach of warranty.

VOIDABILITY OF CONTRACTS; REFUNDS; INADVERTENT DEFECTS; CANCELLATIONS; PERSONS AUTHORIZED TO RECEIVE SERVICE OF PROCESS

If any untrue or misleading statements are made by the Contracting Official, and are found to be inclusive of this contract agreement, or if this agreement fails to comply with Section 1812.203 of the California Civil Code, Title 2.7, then within one (1) year of the date of this contract at the election of the Subcontractor upon written notice to the Contracting Official, this contract shall be voidable by the Subcontractor and unenforceable by the Contracting Official or any assignee as being that this contract will be contrary to public policy. Under this title the Subcontractor shall be entitled to receive from the Network all sums paid to the Network when the Subcontractor is able to return all equipment, supplies or products and services delivered by the Network; when such a complete return cannot be made, the Subcontractor shall be entitled to receive from the Contracting Official all sums paid to the Network less the fair market value at the time of delivery of the equipment, supplies, products or services not returned

by the Subcontractor, but delivered by the Network. Upon receipt of such sums, the Subcontractor shall make available to the Network at the Subcontractor's address or at the places at which they are located at the time the Subcontractor gives notice pursuant to this contract, the products, equipment, supplies or services received by the Subcontractor from the Network. Furthermore, if the Network fails to deliver the equipment, supplies, products or services within 30 days of the delivery date stated in this contract, unless such delivery delay is beyond the control of the Network, then at any time prior to delivery or within 30 days after delivery, at the election of the Subcontractor upon written notice to the Contracting Official, this contract shall be voidable by the Subcontractor and subsequently unenforceable by the Network or any assignee as being that this contract will be contrary to public policy.

The rights of the Subcontractor set forth in this section shall be cumulative to all other rights inclusive to this contract and under California state law regarding this agreement.

The Contracting Official is authorized to receive service of process regarding all legal disputes under this agreement and the laws of the United States at _____.

You have three business days in which you may cancel this contract for any reason by mailing or delivering written notice to the seller assisted marketing plan seller. The three business days shall expire on:

(last date to mail or deliver notice)

and notice of cancellation should be mailed or delivered to:

(seller assisted marketing plan seller's name and business street address)

If you choose to mail your notice, it must be placed in the United States mail properly addressed, first-class postage prepaid, and postmarked before midnight of the above date. If you choose to deliver your notice to the seller directly, it must be delivered to him by the end of his normal business day on the above date. Within five business days of receipt of the notice of cancellation, the seller shall return to the purchaser all sums paid by the purchaser to the seller pursuant to this contract. Within five business days after receipt of all such sums, the purchaser shall make available at his address or at the place at which they were caused to be located, all equipment, products and supplies provided to the purchaser pursuant to this contract. Upon demand of the seller, such equipment, products and supplies shall be made available at the time the purchaser receives full repayment by cash, money order or certified check.

(Signature of Contractor, Subcontractor or Employee)

Date:

(Signature of Contractor, Subcontractor or Employee)

Date:

(Signature of Contractor, Subcontractor or Employee)

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**Nascent Applied Methods & Endeavors
Seller Assisted Marketing Plan Contract
For Tactical Involvement**

Part - B

TERMS AND CONDITIONS

1. The Parties

THIS AGREEMENT, made and entered into this ____ day of _____, 2020, by and between _____ existing under the laws of the State of _____ and having a principle place of business located at _____ (hereinafter "the Subcontractor or Proposer"), a type of business organization, and NASCENT APPLIED METHODS & ENDEAVORS (NAME) existing under the laws of the State of _____ and having a principle place of business located at _____ (hereinafter "Network"), a sole proprietorship and type of system of a computerized bio-physical analogies related to Autonomous Agent Software Development, Enterprise Work Architectures, and Employment Related Educational Structures:

ARTICLE I -- GENERAL PROVISIONS

1. The Entire Agreement

This Agreement together with any schedules, appendices, charts, models, programs, procedures, processes and graphs or other attachments hereto, all of which are hereby incorporated by reference herein and made a part of this Agreement, constitutes the entire agreement between

Subcontractor (Proposer) and NAME (Customer) and all proposals, verbal, oral, telephoned, telegraphed and written, and all other communications between the parties in relation to the subject matter(s) of this Agreement shall be effective until reduced to writing and executed by the parties hereto.

ARTICLE II -- USE OF SERVICES

1. The Services

- (a) **Description.** Subject to the terms and conditions contained herein vendor (Proposer) agrees to furnish the computer services and/or equipment to Customer (NAME) set forth in Appendix(s) ____ hereto. (The description of such services is referred to herein as the "Services.")
- (b) **Location and Terms.** Proposer (Vendor) agrees to provide the Services described herein at the location or locations set forth in Appendix(s) ____ beginning on the date and continuing during the period of performance (hereinafter referred to as the "Term") provided for in Appendix(s) ____ to this Agreement.
- (c) **Acceptance (Services).** Customer (NAME) shall have a trial period of ninety (90) working days from the date for commencement of Services set forth in Appendix(s) ____ in which to ascertain whether the Services meet all representations, warranties and specifications of this Agreement and that the Services contracted for are being performed to NAME's satisfaction. The date on which NAME notifies Vendor (Proposer or Subcontractor) in writing of such satisfactory performance, within the time period specified above, shall be the "Acceptance Date" for purposes of this Agreement. Specifications for acceptance tests to be performed and results to be met are set forth in Appendix(s) ____ to this Agreement.
- (d) **Payment.** Following the Acceptance Date, by accessing and using any of the Services of Vendor (Subcontractor), NAME agrees upon receipt of billings to pay the charges for such Services as set forth and specified in Appendix(s) ____ hereto.
- (e) **Limitations on Use.** NAME will pay for all the usage of Services accrued under its Systems identification Code(s) (see Section(s) ____). When NAME wishes to limit usage to a specific dollar and/or time amount, the responsibility for so doing rests with NAME.

2. Documentation to be Provided (Services)

The Subcontractor (Vendor) shall supply NAME with all relevant documents and procedures in use by the Vendor (Subcontractor) for the Customers (NAME) programs (the "Documentation") all of which are more fully described in Appendix(s) ____ hereto. Whenever such documentation is changed, the Subcontractor shall immediately supply copies of the changes to NAME. All related user manuals or handbooks are incorporated by reference into this Agreement and the Services will be performed in accordance therewith.

3. Changes in Services or Fees

Subcontractor shall have the right to make changes in the software used to perform the Services in hours of inter-operations, and in equipment utilized in performance of the Services by giving

NAME six (6) months written notice so long as such changes to all of Vendor's (Subcontractors') customers and do not result in deterioration of the Services; provided, however, that NAME shall have the right to terminate this Agreement as provided in Article(s) ____ Section(s) ____ hereof after receipt of such notice. Subcontractor shall have the right to make changes in the fees and charges set forth in this Agreement for any subsequent 12-month period by providing NAME nine months written notice so long as such new charges constitute no more than a five (5) percent increase and are generally applicable to all Customers, but in such event NAME shall have the right to terminate this Agreement as provided in Article(s) ____ Section(s) ____ hereof after receipt of notice from Vendor (Subcontractor).

4. Modification/Change Procedures (Services)

At any time during the term of this Agreement, should NAME desire Subcontractor to provide any additional services in the form of a modification of, or a change to Subcontractors' performance hereunder Subcontractor and NAME shall comply with the following administrative control procedures:

- (a)** Customer's (NAME) System Operator in Charge shall submit to Subcontractor on the form(s) known as Supplemental(s) " ____ " all requests by NAME for any such additional services which alter, amend, enhance, add to, or delete from the Minimum Specifications, the Detailed Design Specifications or the Supplemental Specifications, and/or the time and/or place of performance (hereinafter referred to as a "Modification/Change Request").
- (b)** Subcontractor will evaluate each such Modification/Change Request at no additional cost to NAME and return a copy of the same Modification/Change Request to NAME System Operator in Charge as soon as possible but not later than ten (10) working days following Subcontractors' receipt of the Request. Subcontractor's written response on said form shall include a statement of the availability of Subcontractor personnel and resources and the impact, if any, on the Project (Services), Completion Cost, the Project Completion Date or any Task Completion Time or Cost.
- (c)** Should NAME elect to authorize such Request, NAME will as soon as possible but not later than ten (10) working days, authorize Subcontractor to perform the requested Modification/Change Request by returning a duly authorized copy of the request package to Subcontractors' System Operator.
- (d)** Upon such authorization by NAME of the Modification/Change Request, Subcontractor will commence performance in accordance with such Request.
- (e)** Subcontractor shall not be obligated to perform any additional services in advance of written authorization from NAME on or in the required Modification/Change Request package. In the event that Subcontractor commits resources to the performance of a Modification/Change Request without such prior written authorization it shall be presumed that performance of such Modification/Change Request will have no effect on the Project (Services) Completion Date or any Task Completion Time or Cost.
- (f)** For the purposes of this Agreement, each Modification/ Change Request duly authorized in writing by NAME shall be deemed incorporated into and part of the Minimum Specification or Detail Design Specifications as the case may be and each such Request shall constitute a formal change to this Agreement adjusting the Project (Services) Completion Cost, Project (Services)

Completion Date and/or Task Completion Dates or Costs as finally agreed upon for each authorized Modification/Change Request. In no event shall the Minimum Specifications, the Detailed Design Specifications or any provision in this Agreement be deemed altered, amended, enhanced or otherwise modified except through written authorization by NAME of a Modification/Change Request in accordance with subsection 4 - (b) above.

5. Most Favored Customer

All of the prices, terms, and warranties granted by Subcontractor herein are at least equivalent to terms being offered by Subcontractor to any present or past customer for comparable services. If the Subcontractor shall, during the term of this Agreement, enter into arrangements with any other customer providing more favorable prices and terms for comparable services, the Agreement shall thereupon be deemed amended to provide the same to Nascent Applied Methods & Endeavors.

6. Warranties (Services)

(a) General Warranties. The Subcontractor is subject to the provisions of this section and warrants that the Services and support thereof provided hereunder shall be as described in this Agreement and any attachments hereto.

(b) Specific Warranties (Services). The Subcontractor warrants that in performing the services:

- (1) It will strictly comply with the descriptions and representations, as to the Services (including, without limitation, any and all performance capabilities accuracy, characteristics specifications, configurations, standards, functions, and requirements set forth herein or in any attachments hereto.
- (2) Output will be consistent with the data and other input supplied by NAME. Provided the data and other assumptions of such programs, the programs used to perform the Services will or must yield mathematically accurate results (situation measurements). Subcontractor must or will further warrant that the end products shall be uniform in appearance, clean and presentable in accordance with Customer's (NAME) acceptable standards in the area of general report classifications.
- (3) Subcontractor will or must not violate or in any way infringe upon the rights of third parties including, but not limited to property, contractual, employment trade secrets, proprietary information and non-disclosure rights, or any trademark, copyright or patent rights.
- (4) With the exception of those programs used to process the end-products (Reports) under this Agreement which are developed for and paid for by NAME and the ownership of which vest in NAME, Subcontractor is the lawful user of all programs used in the processing Services hereunder; such programs, including those programs owned by NAME have been lawfully acquired by the Subcontractor and Subcontractor has the absolute right to permit NAME access to or use of such programs.

7. System Availability; Turnaround Time; Entry

- (a) System UP-Time.** Subcontractor obligates itself to provide Services to NAME equal to or greater than ninety-eight percent (98%) of NAME requirements therefore in any given month during the Term of this Agreement. In the event Subcontractor does not fulfill its obligations with respect to providing Services availability during any calendar month, NAME shall have the right to terminate this Agreement upon thirty (30) days notice and to pursue any other appropriate remedies in law or in equity not expressly excluded by this Agreement.
- (b) Response Time.** Subcontractor warrants that the System will provide a response ("Turnaround") to any entry within the time period specified in Appendix(s) ____ hereto.

8. Customer (NAME) Identification Code(s)

- (a) Assignment of Codes.** Subcontractor (Vendor) will assign NAME any necessary user codes, identification numbers or codes, user numbers or other special identifying or system features (hereinafter "Customer (NAME) Identification Code(s)") as may be necessary to ensure that access to Subcontractors' computer and/or other data/word processing facilities chargeable to NAME, is confined to NAME and its authorized representatives or agents.
- (b) Security Code.** NAME shall take appropriate steps to protect the use of such Customer Identification Code(s), and Subcontractor will or must provide all assistance reasonably required including but not limited to changing such Customer (NAME) Identification Code(s) at the request of NAME (Customer). NAME shall be liable for most charges that might be incurred under any additional Identification Code(s) established mutually by NAME & Subcontractor in accordance with this section.

ARTICLE III -- USE OF CO-OPED EQUIPMENT

1. Recitals

Whereas, Subcontractor is engaged in the production, manufacturing and/or lending or leasing of computer equipment for information services, and

Whereas NAME desires to obtain or provide certain computer hardware, software and information services to enable NAME to undertake the project described in Appendix(s) ____ hereto; and

Whereas, Subcontractor desires to provide (lend or sell) NAME with a combination of hardware, software and information services designed to satisfy Customers' (NAME) requirements with respect to the project described in Appendix(s) ____ hereto; such provisions of hardware, software and/or information services to include the equipment ("the Equipment"), the already developed software ("the Licensed Software"), and development of the software system including relevant systems analysis programming and systems implementation ("the Developed Software") fully compatible with such systems (equipment software, etc.), all as described in Appendices ____ hereto; and additionally

Whereas, NAME to obtain such combination of system services (Equipment, Licensed Software and Developed Software) from Subcontractor;

Now therefore, the parties hereto agrees as follows to these additional article and/or provisions:

- (a) **The Equipment Used.** Subcontractor hereby (changes, lends or sells) to NAME the Hardware in accordance with the terms, conditions, warranties, covenants, and agreements set forth in Article(s) of this Agreement and Appendix(s) hereto.
- (b) **Software License.** Subcontractor hereby lends or sells to NAME: the License in accordance with the terms, conditions, warranties, covenants and agreements set forth in Article(s) ____ of this Agreement and Appendix(s) ____ hereto.
- (c) **Development of the Software.** Subcontractor agrees to provide the Developed Software in accordance with the provisions, specifications, conditions, warranties and agreements set forth in Article ____ and Appendix(s) ____ of this Agreement.
- (d) **Terms of Agreement.** The term(s) of this Agreement (the "Terms") with respect to the lending or selling of the Equipment and Licensed Software commences on the date this Agreement is executed, notwithstanding that payments, if applicable, for Equipment and fees, if also applicable for the Licensed Software shall commence as provided in Section(s) ____ hereof, and progress payments for the Developed Software shall be made as provided in Section(s) ____ hereof. The Term(s) extends for the duration(s) specified in the applicable appendices hereto; unless earlier terminated in accordance with other provisions of this agreement or unless extended by mutual agreement for additional terms.
- (e) **The Equipment Terminology.** Subcontractor hereby lends or sells to NAME the Equipment enumerated and described in Appendix(s) ____ and made a part of this agreement or in any schedule or schedules hereafter executed by the parties hereto and made a part of this Agreement. All said equipment, parts and other properties described in all said schedules is hereinafter collectively called the "Equipment" and all said schedules are hereinafter collectively set forth in Appendix(s) ____ . Where the context requires a piece of property that is individually enumerated and described in Appendix(s) ____ and which constitutes a part of the Equipment will be referred to individually as a "hardware component", or an "item of Equipment". Customer (NAME) shall or must have the right to use the Equipment during the term of this Agreement either at the location or locations set forth in Appendix(s) ____, or subject to the prior approval of Subcontractor (which approval shall not unreasonably be withheld), at any other location or locations at which NAME maintains a place of business. NAME shall be solely accountable for the costs of removing the Equipment from the location or locations at which the Equipment is or was originally delivered and installed by Subcontractor hereunder to one or more other business installations of NAME and for returning the Equipment to Subcontractor at the expiration of its lending or selling term.

2. Delivery and installation (Equipment)

- (a) **Delivery Schedule and Shipping or Packing Standards.** Subcontractor agrees, to deliver and install the Equipment so as to be ready for use by NAME in conformity with the schedule(s) and/or Shipping Standards set for in Appendix(s) ____ hereto.
- (b) **Installation (Equipment).** NAME shall be accountable at its own expense, for preparing the site informational foundation(s) in accordance with the installation specification set forth in Appendix(s) ____ . Subcontractor shall be accountable for overseeing or supervising the

- unpacking and installing of the Equipment for reasons of keeping cross-reference materials (reports), including making all cable connections and all connections with electrical power and communication services and upon completion of installation shall certify to NAME (Customer) that the Equipment is ready for use.
- (c) **Risk of Loss.** Prior to completion of installation and certification of the Equipment's readiness for use to NAME, all risk of loss shall be borne by Subcontractor (Proposer or Vendor).
- (d) **Access; Installation Period for Hardware System (Only if applicable).** Customer (NAME) shall allow Subcontractor, his/her's agents and other subcontractor's employees access to its facility or facilities for the purpose of installing the Equipment. To the extent reasonably requested by NAME, Subcontractor shall at its' expense furnish NAME with technical assistance and other support to complete installation of the Equipment and to render it operational. Subcontractor shall cause its, employees, agents and other subcontractors to comply with all reasonable requests by NAME with respect to the conduct of such personnel during the period of installation. Subcontractor shall comply with all applicable statutory provisions, regulations and orders of any governmental authority in connection with the installation of the Equipment.
- (e) **Delay in Delivery.** Subcontractor agrees that any failure on its part to deliver and install the Equipment or any item of Equipment to NAME ready for use within ten (10) days of the scheduled date as provided for in Appendix(s) shall be an irreparable delay and give NAME the right to terminate this Agreement.
- (f) **Acceptance of Equipment by Nascent Applied Methods & Endeavors.** NAME shall have a trial period of not less than thirty (30) days following the date on which Subcontractor certifies to NAME that the equipment has been delivered fully installed and is ready for use during which to determine whether the Equipment meets all representations, warranties and specifications made by Subcontractor. The acceptability of the Equipment shall be based upon its ability to complete successfully such acceptance tests as are set forth in Appendix(s) _____. In the event that the Equipment or any item of Equipment does not perform in accordance with the standards and specifications contained in Appendix(s) ____, Subcontractor shall or must take at its own expense all reasonable actions (including modifications, adjustments, repairs or replacements of the Equipment) necessary to make the Equipment perform in accordance with the specifications. After completion of any such adjustments the acceptance tests described in Appendix(s) _____ will be conducted again; if the Equipment still fails to pass the acceptance tests, NAME shall have the right to cancel this Agreement in the same manner as if there were an irreparable delay in delivery as provided for in subsection(s) _____ of Section(s) _____ hereof. The date upon which NAME notifies Subcontractor in writing within the time period specified above, of its acceptance of the Equipment or item of Equipment shall be called the "Acceptance Date" for purposes of this Agreement.
- (g) **Use.** NAME shall use the Equipment in a careful and proper manner and shall comply with and conform to all national, state municipal, police and other laws, ordinances and regulations in anyway relating to the possession, use or general or specific maintenance of the Equipment. If at any time during the term hereof, Subcontractor supplies NAME with labels, plates or other markings stating that the Equipment is owned by Subcontractor, NAME shall affix and keep the same upon a prominent place on the Equipment.

3. Prices, Rent or Changes in Financial Charges (Hardware)

- (a) All of the prices, terms, warranties and benefits granted by Subcontractor herein with respect to the Equipment and Software are at least as favorable to NAME as the terms being offered by Subcontractor to any present or past similar borrower or purchaser. If Subcontractor shall, during the Term of this Agreement enter into arrangements with any other borrower or purchaser, providing greater benefits or more favorable terms, the Agreement shall thereupon be deemed amended to provide the same to NAME, and Subcontractor agrees to abide by and perform this Agreement as so constructively amended.
- (b) NAME shall pay the initial payment on the Acceptance Date as specified in Section(s) --- and shall be subject to the termination provisions of Section(s) I and shall also thereafter make annual payments in the amount(s) and at the time(s) specified in Appendix(s) . NAME shall pay Subcontractor such increments at the location or locations of Subcontractor specified on the face of this Agreement, or to such other person and/or at such other place(s) as Subcontractor designates, such designation to be provided to NAME by or at least thirty (30) days prior written notice.
- (c) In the event that the price of the Equipment or any item of Equipment charged by Subcontractor to its customers generally is greater on the date of installation than the prices provided for herein the prices set forth herein shall prevail. The price of the Equipment provided for herein, and any charges for software pursuant to this Agreement including charges related to the furnishing of the Developed Software, shall not be increased for a period of five (5) years after the Commencement Date. Thereafter, Subcontractor shall have the right to make changes in the price or other charges set forth in this Agreement by providing NAME ninety (90) working days written notice of same, but in such event, NAME shall have the right to terminate this Agreement by providing thirty (30) working days written notice after receipt of notice from Subcontractor, should it deem such changes to be unreasonable. NAME shall have the right to deem unreasonable any increase of prices or other charges of over five (5) percent per annum.
- (d) The parties acknowledge that from time to time certain improvements, modifications or other changes in the Equipment may be developed by Subcontractor either at Subcontractors' expense, or if requested by NAME then at NAME's expense. In either event, Subcontractor shall have the right, subject to the terms and provisions of Section(s) ____ hereof, to offer all such changes and modifications to any of its customers on the basis of the prices and terms of Subcontractor then in effect; provided, however, that the terms offered and prices charged to NAME for such modifications shall comply with Section(s) ____ hereof.

4. Warranties of Subcontractor (Equipment)

- (a) **Equipment Design and Performance.** Subcontractor warrants that the Equipment is in good working order and condition free from defects in design, workmanship and material and that it conforms to any samples and drawings and to the performance capabilities characteristics specifications, functions and of its designs. If the software component of a configuration is not delivered or is determined to be not acceptable in accordance with Section(s) ____ hereof, the configuration and all components thereof will be deemed not to have been delivered.
- (b) **Warrants of Subcontractor.** Subcontractor warrants that the percentage of time during which the Equipment is available for normal operations during any month of the term of this Agreement, excluding time necessary for normal scheduled maintenance, shall equal or exceed

ninety-five percent (95%) of the total time available (the Operational Availability) or such other Operational Availability percentage as may be specifically set forth in Appendix(s) ____ . In the event that the operating characteristics of the Equipment or any item of Equipment fall below such Operational Availability percentages by five percent (5%) or more during any ninety (90) day period, or by ten percent (10%) or more during any thirty (30) day period, Subcontractor agrees at NAME's request to replace promptly such Equipment or item of Equipment with new equipment so as to attain ninety-five percent (95%) Operational Availability.

- (c) **Quiet Enjoyment.** Subcontractor further warrants and represents that the Equipment is the sole and exclusive property of Subcontractor and is not subject to any lien claim or encumbrance inconsistent with any of NAME (Customer's) rights under this Agreement and that NAME is entitled to and shall be able to enjoy quiet possession and use of the Equipment during the Term of this Agreement, without interruption by Subcontractor or any person claiming under or through Subcontractor or by right of paramount title.
- (d) **Compliance with Applicable Laws (Equipment).** Subcontractor warrants that the manufacture and production thereof and the sale or lending to and use thereof by NAME are in compliance with any and all applicable laws, rules and regulations.
- (e) **Right of Third Parties.** Subcontractor warrants that the Equipment, the manufacture and production thereof (if applicable), and the selling to and use thereof by NAME do not violate or in any way infringe upon the rights of Third Parties, including (but not limited to) contractual, employment, trade secrets, proprietary information and non-disclosure rights and any trademark, copyright, or patent right in the manufacture, production, sale, lease or use of the Equipment.
- (f) **Enforceability.** Each and every warranty of Subcontractor set forth in this Section shall be enforceable by NAME and its' assigns notwithstanding any inspection of the Equipment by NAME or its agents, subcontractors or assignees.

5. Maintenance

- (a) If Subcontractor agrees to provide maintenance of the Equipment, such service shall be performed as provided for under the Maintenance Agreement of even date herewith, and appended hereto, for a term coterminous with this purchase and/or license Agreement.

6. Power, Compatibility, Interface, Environmental and Cabling Requirements or Expansion

- (a) Subcontractor warrants that the electrical (power) requirements and range of ambient environmental parameters permitting satisfactory operation of the Equipment are those set forth in Appendix(s) ____.
- (b) Provided that the Equipment is installed substantially in accordance with the installation diagram (model), if applicable, set forth in Appendix(s) ____ , Subcontractor agrees to install at no additional cost to NAME all necessary cabling to connect properly the hardware components provided hereunder.

- (c) Subcontractor also warrants that the equipment that it has available for sale or loan to its customers generally is both data compatible and program compatible with the Equipment provided hereunder, without loss of efficiency or necessity for alteration.
- (d) Subcontractor additionally warrants that for a period of five (5) years from the Commencement Date, it will provide at NAME's request, additional units of each hardware component listed in Appendix(s) ____ or hardware components functionally equivalent thereto, at a price for each component equal to the lesser of (1) the price for such hardware component set forth in this Agreement plus a percentage per year of the price for each year from the Commencement Date applicable to such hardware component to the date of NAME's request for the additional component, or (2) a price for such component pursuant to Section(s) ____ of this Agreement.
- (e) NAME shall have the right to connect the Equipment to equipment provided by other manufacturers and/or system operators (Subcontractors) subject to Subcontractors' rights to supervise or make such connections and to supply any necessary interface devices, all prices in accordance with Section(s) ____ hereof. Notwithstanding any other provision(s) of this Section, NAME shall have the right to make changes and attachments to the Equipment, provided such changes or attachments do not prevent or unreasonably increase the costs of Subcontractor's maintenance thereof.

7. Provisions of Backup System

- (a) Subcontractor agrees that in the event the Equipment is unavailable for use for a continuous period of more than forty-eight (48) hours, it will make available to NAME within twenty-four (24) hours of NAME's request, hardware and/or software so as to enable NAME to continue operations performed by the Equipment. Such comparable configuration will be furnished to NAME without additional charge for the duration of the Equipment's unavailability and will or shall be located within five hundred (500) miles of the locations of the Equipment in the United States and/or fifteen-thousand (15,000) miles Internationally of the same or different Equipment.

8. Upgrades (Equipment)

- (a) NAME may at any time require Subcontractor to provide upgraded versions of the Equipment provided herein. In such event, NAME shall pay the difference between the price provided hereunder and the price for the upgraded Equipment pursuant to Section(s) ____ hereof.
- (b) Subcontractor agrees that in any where the Equipment or any item of Equipment can be upgraded or modified in the field or so modified in the field to permit connection with expansion equipment, such upgrading, modification and/or installation of expansion equipment will, at NAME's request, be undertaken at the location or locations of the Equipment at charges pursuant to Section(s) ____ hereof.

9. Documentation (Equipment)

- (a) Subcontractor shall provide NAME with original copies of all manuals, instruction books and other documents (the "Hardware Documentation") necessary for the effective operation of the Equipment, all at no additional expense to NAME. Whenever such Hardware Documentation

is amended, revised or otherwise changed, and whenever Subcontractor produces new Hardware Documentation which may be of use to NAME, Subcontractor shall immediately supply the original copies of the changes or new Hardware Documentation to NAME also at no additional expense to NAME Subject to the provisions of Section(s) ____ hereof, NAME shall have the right to reproduce all such Hardware Documentation, provided that the reproduction is solely for its internal use.

10. Option to Purchase Borrowed Equipment

- (a) NAME may at any time, but not later than the expiration date of the Terms of this Agreement, purchase all or a portion of the Equipment upon thirty (30) days prior written notice to Subcontractor provided that provisions, legalities, sections and terms of this Agreement have been met in full. The purchase price shall be the published prices for such Equipment in effect on the date of exercise of this option to purchase reduced by an amount equal to rate of deviation in depreciation.

11. Ownership, Title (Equipment)

- (a) Subject to the Option to Purchase provided for in Section(s) ____ the Equipment is and shall at all times be and remain the sole and exclusive property of Subcontractor and Subcontractor warrants that it has good and secure title, free of any liens or encumbrances except those provided for in this Agreement, and NAME has no right, title or interest therein or thereof except as expressly set forth in this Agreement.

12. Personal Property

- (a) The Equipment and/or Services is and shall, at all times by and remain personal property notwithstanding that the Equipment or any part thereof, may now be or hereafter become, in any manner affixed to or embedded in, or permanently resting upon, real property or any building thereon or attached in any manner to what is permanent as by means of cement or plaster.

ARTICLE IV -- SOFTWARE DEVELOPMENT

AGREEMENT (Supplemental)

1. Development of the Software Procedures

- (a) Subcontractor hereby agrees to provide the Developed Software Procedure in accordance with (a) the project, scope as described in Appendix(s) ____, (b) the nature, goals, order of performance and completion date of each task to be performed by Subcontractor within each of the phases of the development schedule ("Phase") described in Appendix(s) ____, and (c) the required products to be prepared and delivered by Subcontractor upon completion of each Phase and the form each product shall take.

2. Performance Standards; Utilization

Subcontractor hereby consents and warrants that:

- (a) The Developed Software Procedure is provided herein shall comply with the specifications and performance standards set forth in Appendix(s) ____ and shall be designed to operate on the Equipment, subject to the limits on times of operation and Equipment utilization stated anywhere in applicable Appendix(s) ____ interrelated to this Agreement.
- (b) The running time performance characteristics of the Developed Software sold or used hereunder are guaranteed by Subcontractor as indicated in Appendix(s) ____.

3. Delivery and Installation; Acceptance Support

- (a) **Program Testing by Subcontractor Prior to Delivery.** Prior to delivery to NAME of any program element of the Developed Software, Subcontractor shall test the Developed Software Procedure to assure itself that the programs are operating satisfactorily, are error free and are capable of performing in accordance with the provisions of Appendix(s) ____ as demonstrated by successful completion of all stages of the test plan therein set forth.
- (b) **Installation Deadline; Method Centers.** Subcontractor shall deliver and install the Software on the date specified in Appendix(s) ____ at NAME's method center or centers located at the site or sites identified in Appendix(s) ____ (hereinafter referred to as "Method Center(s)").
- (c) **Notification of Installation.** Immediately upon the completion of each Phase described in Appendix(s) delivery of all products, the Developed Software, documentation and other materials required to be delivered under each Phase including the Progress Report provided for in Section(s) ____ hereof, Subcontractor shall inform NAME of the delivery and installation of the Developed Software Procedure of its readiness for testing by NAME (the date of such notification hereinafter being referred to as the "Installation Date").
- (d) **Support During Installation and Delivery.** Subcontractor shall render at no additional charge to NAME, the installation and support services which are necessary to deliver and to enable NAME to make the Acceptance Tests referred to in this Agreement. Nascent Applied Methods & Endeavors shall or must furnish the Subcontractors and/or its junior contractors free of charge such computer time as is necessary to complete successfully the Acceptance Tests.
- (e) **Acceptance Tests; Commencement of Acceptance.** NAME shall be obligated promptly after the Installation Date to perform the tests specified in Appendix(s) ____ (hereinafter referred to as the "Acceptance Tests"), during the time period therein specified to determine whether: **(1)** the Developed Software Procedure(s) meets the specifications and performance standards described in Appendix(s) ____ and, **(2)** that the System performs repetitively on a variety of data without failure. Upon completion of the last Phase described in Appendix(s) ____, the Acceptance Tests shall be performed on the System (NAME and others) as a whole in order to determine whether the integration of the Developed Software Procedure(s) and the Equipment meets the specifications for the System set forth in Appendix(s) ____ and operates with internal and/or external consistency. In addition, within ten (10) business days of Subcontractor's notification to NAME that the program(s) has been installed, and that NAME's personnel have been trained to permit them to begin acceptance testing, as provided in subsection(s) ____

hereof, NAME shall commence performing the Acceptance Tests pursuant to the procedures, criteria and descriptions set forth in Appendix(s) ____, and shall complete such test as quickly as practicable.

- (f) Completion or Failure of Acceptance Test; Corrections (Retesting).** If, in NAME's sole discretion, NAME determines that the Developed Software Procedure(s) has not successfully completed the Acceptance Test(s), NAME shall promptly notify Subcontractor in writing or e-mail (hereinafter, "First Notice of Failure"), and shall specify with as much detail as possible in which respect the Developed Software Procedure(s) failed to pass the Acceptance Test(s). At NAME's option, NAME can either terminate this Agreement at that point (in which case the provisions of subsection(s) ____ of this Section shall apply) or request Subcontractor to make such necessary corrections and modifications in the Software Procedure(s) as will permit the Software Procedure(s) to be ready for retesting no later than ten (10) business days from the date of receipt of NAME's First (1st) Notice of Failure. Subcontractor shall notify NAME when such corrections and modifications have been made and NAME shall commence retesting the Developed Software Procedure(s) and complete such retesting as quickly as possible. If in NAME's sole discretion, the Procedure(s) still does not perform in accordance with such specifications and performance standards stated in Appendix(s) ____ or the System as a whole fails to satisfy performance specifications appropriate to its stage of completion when tested as set forth in Appendix(s) ____ hereto, NAME shall forthwith notify Subcontractor a second (2nd) time as to the failure of the retest or corrected Developed Software Procedure(s), and the provisions pursuant in subsection(s) ____ shall automatically apply unless NAME decides to grant further permission in regards to retesting and/or corrections.
- (g) Nascent Applied Methods & Endeavors' Rights Upon Termination After Failure of First, Second or Third Acceptance Tests.** Upon NAME's termination of this Agreement after failure of the Acceptance Tests, NAME shall promptly return the Developed Software (if applicable) and associated documentation and materials to Subcontractor at Subcontractor's expense and shall have the right, as his/her exclusive remedy for failure of the Developed Software Procedure(s) to pass the Acceptance Test(s), to receive prompt reimbursement of a part made to Subcontractor under this Agreement, and if Subcontractor fails to pay said reimbursement(s), NAME promptly seek legal action under all applicable laws.
- (h) Acceptance and Acceptance Date.** If and when, in NAME's sole discretion, the Acceptance Tests established that the Developed Software Procedure(s) is performing satisfactorily, NAME shall sign the Acceptance Certificate or supplemental, to be attached hereto and the date of execution of such certificate or supplemental shall be the date on which the term of the Agreement or Supplemental Agreement shall begin (hereinafter, the "Acceptance Date").

4. Upgrades and Other Modifications (Software-Development)

- (a) Upgrades.** Subject to the provisions of the subsection(s) of this or these Section(s), upgrades made by Subcontractor towards the Developed Software Procedure(s), at any time after the Effective Date shall be furnished to NAME at no additional charge. However, the upgrades shall not be made to the Developed Software Procedure(s) and installed at the site or sites set forth in Appendix(s) ____ until NAME has accepted in writing the upgrades offered by Subcontractor.
- (b) Other Modifications.** If, at any time after the Effective Date, NAME shall request or Subcontractor shall develop (other than in the performance of its obligations hereunder) any

modifications, improvements or other changes in the Developed Software Procedure(s) which change the basic program function(s) of the Developed Software Procedure(s), NAME shall have the right to obtain such changes at the lesser of (1) Subcontractors standard prices then in effect for installing such changes, or (2) the difference between the then current price of the Developed Software Procedures(s) including such changes for the Developed Software Procedure(s) reflected in Appendix(s) ____.

5. Documentation to be Provided (Develop Software Procedure(s))

- (a) As soon as practicable, Subcontractor must provide NAME with two sets of documentation relating to the version of the Developed Software Procedure(s) described in Appendix(s) ____ hereto (hereinafter referred to as "Documentation as specified in Appendix(s) ____ by title, date, identification and date of revision, if any. Subcontractor represents and warrants that the Documentation shall be sufficient to enable NAME to obtain the functional benefits of the Developed Software described in Appendix(s) ____ . Subcontractor shall, at NAME's request and at then published prices, furnished additional sets of Procedural Documentation, together with any revisions therein or additions thereto during the term of this Agreement. Furthermore, if NAME has accepted a new and more recent version of the Developed Software Procedure(s) it has been equipped to use, Subcontractor shall furnish two (2) sets of all documentation relating to the new version(s).

6. Progress Reports (Developed Software Procedure(s); System in General)

- (a) Upon completion of each Phase, Subcontractor shall submit to NAME a Progress Report certifying that Subcontractor has completed all tasks relating to development and testing of the Developed Software Procedure(s) required to be completed in such Phase as described in Appendix(s) ____ and certifying that the Developed Software Procedure(s) and all products, documentation and other materials delivered comply with the pertinent specifications and performance standards set forth in Appendix(s) ____ . The Progress Report, shall be signed by an authorized officer of Subcontractor, who shall certify that the representations contained therein are complete and accurate. The Progress Report shall also set forth in detail any recommended changes with respect to remaining phases of development in view of Subcontractor's experience with the completed phases(s).

7. Warranties (The Developed Software Procedure(s))

- (a) **Software and Services.** Subcontractor warrants that for twelve (12) months following acceptance of the total system, the Developed Software (and associated documentation) described in Appendix(s) ____ hereto, to be delivered to NAME hereunder, shall be free from programming errors and from defects in workmanship and materials; shall conform to the performance capabilities characteristics, specifications, functions and other descriptions and standards applicable thereto as originally set forth in Appendix(s) ____ ; and that in general, the services to be performed by Subcontractor shall or must be performed in a timely and professional manner by approved qualified technicians totally familiar with such Developed Software Procedure(s) in the event of defects at no additional expense to Nascent Applied Methods & Endeavors.

(b) Original Development. Subcontractor warrants that the Developed Software Procedure(s) and all products, documentation and other materials required to be delivered to NAME hereunder will be of original development by Subcontractor, and will be specifically developed for the fulfillment of this Agreement and that the use of the Developed Software Procedures infringe upon or violate any patent, copyright, trade secret, trademark, invention, proprietary information, nondisclosure, or other rights of any third party.

(c) Compliance with Applicable Laws. Subcontractor warrants that the Developed Software Procedure(s) and all other products, documentation, and other materials required to be delivered to NAME hereunder, the development and use by NAME thereof, and the performance by Subcontractor of its obligations hereunder shall be in compliance with all applicable laws, rules and regulations.

8. Progress Payments (Software Development)

(a) In addition to the Hardware and Services payments set forth in Section(s) ____ hereof, NAME hereby agrees to pay Subcontractor for the delivery of the Developed Software in accordance with this Section hereof and the schedule specified in Appendix(s) _____. Upon the acceptance of the Developed Software Procedure(s) and all products, documentation and other materials required to be delivered under each Phase and receipt of the Progress Report(s), provided for in Section(s) ____ hereof, NAME shall pay to Subcontractor the percentage of the price of such Phase as specified in Appendix(s) _____. The balance of such amount shall be retained by NAME unless and until the last Phase is completed and the System is accepted pursuant to Section ____ hereof. In the event development of the Developed Software Procedure(s) is terminated by NAME on account of Subcontractor's default pursuant to Section(s) hereof, prior to the delivery and acceptance of the entire System, NAME shall be under no obligation to make any further payments (including any amounts retained by NAME in accordance with this section as of the date of termination of the Agreement).

9. Noncompetition

(a) During the performance of this Agreement and for two (2) years thereafter, Subcontractor agrees not to perform the same or similar services as are described in Appendix(s) ____ for any person or entity who competes in the business described therein.

ARTICLE V -- MISCELLANEOUS PROVISIONS

of GENERAL APPLICABILITY

1. Compliance with Applicable Laws

(a) Subcontractor Obligations. Subcontractor warrants and agrees that it will comply with and be responsible for ensuring that its employees, agents or subcontractors comply with all applicable federal, state and local laws and regulations; and communications carrier tariffs relating to the carrying out of the Services; and that it will have obtained such permits, licenses, and other forms of documentation and authorization required to comply with such laws and regulations.

(b) NAME's Obligations. NAME represents and agrees that it will use the Services provided by Subcontractor hereunder only for its own proper business use in accordance with all applicable federal, state and local laws and regulations, and tariffs and that NAME shall use said Services in accordance with the conditions, rules and regulations which may be established or specified by Subcontractor from time to time in order to ensure compliance with such laws, regulations and tariffs.

2. Termination

(a) Default. Each party has the right to terminate this Agreement if the other party breaches or is in default of any obligation hereunder which default is incapable of cure or which being capable of cure has not been cured within three (3) days after receipt of notice of such default (or such additional cure period as the non-defaulting party may authorize).

(b) Price and Service Changes. NAME shall have the right to terminate this Agreement upon thirty (30) days written notice to Subcontractor in the event that Subcontractor exercises its right pursuant to Section(s) ____ hereof to change the nature of any of the Services or the amounts of any fees or charges set forth in this Agreement.

(c) Acts of Insolvency. Either party may terminate this Agreement by written notice to the other and to regard the other party as in default of this Agreement, if the other party becomes insolvent, makes a general assignment for the benefit of creditors, files a voluntary petition of bankruptcy, suffers or permits the appointment of a receiver for its business or assets, or becomes subject to any proceeding under any bankruptcy or insolvency law, whether domestic or foreign, or has wound up or liquidated its business, voluntarily or otherwise.

(d) Force Majeure; Suspension and Termination. In the event that either party is unable to perform any of its obligations under this Agreement or to enjoy its benefits because of (or if failure to perform the Services is caused by) natural disaster, actions or decrees of applicable governmental bodies, or communication line failure not the fault of the affected party (hereinafter referred to as "Force Majeure Event"), the party who has been so affected shall immediately give notice to the other party and shall do everything possible to resume performance. Upon receipt of such notice, all obligations under this Agreement shall be immediately suspended. If the period of nonperformance exceeds thirty (30) days from the receipt of notice, of the Force Majeure Event, the party whose to perform has not been so affected may, by giving written notice terminate this Agreement.

(e) Right and Obligations of the Parties on Termination. In the event that this Agreement is terminated as provided for herein, each party shall forthwith return to the other or certify to the other in writing as to the destruction of (if the other party in writing instructs that such be destroyed) all data, materials and other properties of the other party then in its possession. Upon the consummation of the exchange of such properties, Subcontractor shall return to NAME all payments received by Subcontractor up to and including the date of termination of this Agreement, reduced by the fair value of the Services previously delivered to and accepted by NAME and all provable costs and expenses incurred by Subcontractor up to the date of termination of the performance of this Agreement.

(f) Return of Equipment (Software and/or Hardware (if applicable)). Should this Agreement be terminated by Subcontractor on account of NAME's default pursuant to this Section(s) ____, Subcontractor may repossess the Equipment by directing NAME in writing to transport the

Equipment, entirely at Subcontractors expense, within ninety (90) days to Subcontractor at a location to be designated by Subcontractor. Failure of NAME to deliver the Equipment in timely fashion to Subcontractor after receipt of notice may give rise to an action by Subcontractor to secure a specific performance of such obligation of NAME. Notwithstanding anything to the contrary which may be stated anywhere in this Agreement, the method of repossession set forth in this Section(s) ____ shall constitute the sole means of repossession of the Equipment by Subcontractor upon termination of this Agreement., to the exclusion of any other methods, rights or remedies relating to such repossession which may otherwise be available to Subcontractor at law or in equity.

- (g) Return of Properties.** Upon the termination by either party, or its expiration, each party forthwith shall return to the other all papers, materials and other properties of the other half by if in connection with the performance of this Agreement; provided however, that if NAME terminates because Subcontractor is in default or unable to perform, NAME shall have the right to keep such papers, materials, or other properties until such time as NAME has found a comparable replacement for the System or Systems.
- (h) Assistance Upon Termination.** At the time of termination of this Agreement for whatever reason, Subcontractor agrees to render assistance to NAME if so requested, to the extent necessary in order to effect an orderly assumption by a replacement contractor of performance of the Services, including, without limitation, provision of files in the format defined and used by NAME, and the transfer and delivery of all properties of NAME. Nascent Applied Methods & Endeavors shall reimburse Subcontractor for such assistance at the rates then in effect for other customers of Subcontractor for comparable services.

3. Proprietary Information; Security; Publicity

- (a) Proprietary Information.** Each party acknowledges and agrees that any and all information, emanating from the other's business in any form, including any compilations of otherwise public information, is "Confidential and Proprietary Information", and each party agrees that it will not during or after the term of this Agreement, permit the duplication, use or disclosure of any such Confidential and Proprietary Information to any person (other than its own employee, agent or representative) who must have such information for the performance of the obligations hereunder, unless such duplication, use or disclosure is specifically authorized by the other party. Each party shall be responsible for any unauthorized disclosure made by any of its employees, servants or agents and each party shall take appropriate action with respect to its employees; servants or agents to ensure that the obligation of non-use and nondisclosure of Confidential and Proprietary Information under this Agreement. For the purposes of this subsection, the term "Confidential and Proprietary Information" is not meant to include any information which, at the time of disclosure, is generally known by the public and any competition of the Customer (NAME), information disclosed to the other party by third parties having a right to do so and who have not imposed upon the party's obligations of confidentiality in respect thereof; and information which is known to the other party prior to the disclosure.
- (b) File Security.** Subcontractor will provide reasonable Security provisions to protect NAME's computer-stored files and/or programs from unauthorized access by third parties. Subcontractor shall be responsible for incorporating those systems controls listed in Appendix(s) ____ into user programs and systems and shall provide no less than the security procedures set forth in Appendix(s) ____, or in Subcontractor's security manuals or comparable

documents in existence at the time of this Agreement and which are incorporated by reference herein. The Customer (NAME) shall have the unconditional right to make security inspections of Subcontractors information or operational organization at any time without notice to Subcontractor. If NAME shall request additional security provisions Subcontractor shall not unreasonably delay or refuse to issue same.

Except as required by applicable law, at the request or direction of NAME, or as required in the normal course of providing the Services to NAME hereunder, Subcontractor will not copy or endeavor to copy NAME's computer-stored files and/or programs except as backup media for data protection purposes in accordance with Subcontractor's standard security procedures, nor will Subcontractor make any attempt to translate or convert NAME's computer-stored files and/or programs or any copies thereof from machine readable form to human-readable form. It is understood that NAME assumes full responsibility for selection and use of any code or passwords as may be permitted or required by the particular service involved.

In the event that Subcontractor is served with a subpoena or any other order or request from an applicable governmental body or any other entity or person for any of NAME's computer-stored or backup files and/or programs. Subcontractor shall as soon as reasonably practicable, notify NAME of such subpoena, order or request and shall not, without NAME's prior written consent, accede to such subpoena, order or request unless required to do so under applicable laws and regulations or when otherwise necessary to avoid legal penalties, notwithstanding NAME's efforts, if any, to contest such subpoena, order or request.

- (c) **Destruction of Files.** The Subcontractor agrees to destroy all intermediate and work files used in the processing, immediately upon completion of their processing. The Subcontractor also agrees to destroy all carbons removed from reports produced for NAME or to deliver them separately to NAME, simultaneously with the production of such reports.
- (d) **Publicity Trademarks.** Neither party shall use the name(s), trademarks) or trade name(s) (whether registered or not) of the other party in publicity releases or advertising or in any other manner, including customer lists, without securing the prior written approval of the other.

4. Rights in Data

- (a) Subcontractor does not convey nor does NAME obtain any right in the programs, systems, data, or materials utilized or provided by Subcontractor in the ordinary course of business in the performance of this Agreement except that all files, software, programs, packages or systems (together with, but not limited to their source codes or related documentation and instructions), input materials and output materials, and the media upon which they are located (including without limitation, cards, tapes discs and other storage facilities) which are utilized or developed for and paid for by NAME in connection with the performance of the Services, and which may or may not be either confidential or proprietary, shall be the property of NAME, and Subcontractor shall place an appropriate plaque, emblem and/or decal thereon evidencing NAME's ownership of such property while it is in the possession of Subcontractor. Upon the termination of this Agreement for any reason, all such properties, together with, but not limited to their source codes, related documentation and instructions, which are in the possession of Subcontractor, shall be immediately delivered to NAME.

- (b) Nascent Applied Methods & Endeavors shall have unrestricted access to all of NAME's files from time to time in connection with the performance of the Services, and Subcontractor shall not deny access to NAME for any reason whatsoever.

5. Nonconforming Services; Regeneration of Data; Patent Rights, Trademarks; Transfer of Software; Ownership; Security Interest by Subcontractor

- (a) **Nonconforming Services.** With respect to those of the Services involving the processing or storage by Subcontractor equipment of data transmitted or furnished by NAME, Subcontractor shall, at its own expense, promptly perform or correct any Nonconforming Services which are due to error, omission, fault or negligence on the part of Subcontractor, its employees or the hardware, programs, software package and other equipment, materials and data utilized by the Subcontractor in the performance of the Services; provided, however, that Subcontractor shall not be responsible in any manner for any Nonconforming Services which are caused in whole, or in part, by inaccurate and incomplete input data, programs, or software systems supplied by NAME. Failure by NAME to give notice of Nonconforming Services within five (5) days after performance of such Services shall constitute final acceptance thereof.
- (b) **Regeneration of Data.** Should NAME's files, data, or programs be lost or destroyed directly due to any negligent act or omission of Subcontractor or any other breach of the security obligations of this Agreement, Subcontractor will be responsible at its own expense for the prompt reconstruction of NAME's files, data, programs with the high priority allocation of time and resources to complete the regeneration as quickly as possible, provided NAME furnishes the data required or the data is available to Subcontractor on storage, media, in Subcontractor's possession; provided further, however, that if Subcontractor cannot or will not accomplish said reconstruction within a reasonable period of time for reasons other than Force Majeure, NAME shall be entitled to reconstruct said files, data or programs and Subcontractor shall be liable for the reasonable costs thereof. Subcontractor will, to a reasonable extent, cooperate to assist NAME (or its agents) with such reconstruction. In the event that Subcontractor's actions with respect to file destruction constitute a material breach of this Agreement, NAME shall have the right to terminate this Agreement for cause in accordance with Appendix(s) ____, Section(s) ____ hereof, and shall be entitled to assert all remedies at law or in equity to recover his losses due to this file and data destruction.
- (c) **Patent Rights, Trademarks.** Since Subcontractor, in response to a request by NAME, has carried out design or development work (Services) with respect to the Developed Software Procedure(s), Programming, etc., at NAME's sole expense, Subcontractor shall not seek patent registered design or other protection or in any way communicate to any third party the nature of or details relating to any such manufacturing or work, but shall promptly communicate all information or knowledge regarding the same to NAME. All rights and inventions and copyrights in design arising out of such design or development (Services) shall be the property of NAME, who shall have the sole right to seek patent(s), registered design(s) or other protection in connection therewith. Subcontractor shall at NAME's expense do all things and execute all, such documents as NAME may reasonably require to vest in NAME the rights and protection herein referred to.
- (d) **Transfer of Software (Preprogrammed).** (1) Use of Software-at Other locations. Subject only to the restrictions on use, disclosure and reproduction of the Software contained in this Section and in Section(s) ____ hereof, the Developed Software may be used for any application or purpose on one processing unit at any location of NAME, or any of its divisions or

subsidiaries; **(2) Copies.** Nascent Applied Methods & Endeavors shall have the right to reproduce for internal use all of the Software and Documentation described in the Appendix(s) ____ hereto, provided that such reproduction shall be solely for this use of NAME on one processing unit at any location of NAME or any of its divisions or subsidiaries and that such reproduction shall be subject to the restrictions on use and disclosure of the Developed Software Procedure(s) set forth in this Agreement.

- (e) Ownership; Security Interest by Subcontractor. (1) Transfer of Title.** Upon completion of each Phase and the delivery and acceptance of the Developed Software Procedure(s) (and associated documentation as set forth in Appendix(s) ____) required to be delivered under such Phase and payment by NAME of the corresponding amount for such Phase pursuant to Section(s) ____ hereof, the Developed Software (and associated documentation as set forth in Appendix(s) ____) required to be delivered under such Phase shall be the sole and exclusive property of NAME, free from any claim, lien for balance due or rights of retention thereto on the part of Subcontractor, except as specifically provided in part two (2) of this section; title to such Developed Software and documentation shall pass to NAME upon successful completion of the applicable acceptance tests. Subcontractor shall have no rights to disclose or use any such Developed Software Procedure(s) required to be delivered hereunder for any purpose whatsoever, and Subcontractor acknowledges that such Developed Software (and associated documentation as set forth in Appendix(s) ____) is proprietary to NAME and has been secretly developed For NAME for its own and sole use, pursuant to the provisions of Section(s) ____ hereof. **(2) Security Interest.** The Developed Software Procedure(s) and associated documentation accepted by NAME upon completion of any phase shall be subject to a Security interest on the part of the Subcontractor to the extent of the difference between progress payments actually made by the Customer (NAME) for such phase and the price set forth in Appendix(s) ____ hereto for Software to be developed in such phase.

6. Indemnification

- (a)** The Subcontractor hereby indemnifies and shall hold harmless (including reasonable attorney's fees) NAME, its network, business or corporate affiliates, and any employee or agent thereof (each of the foregoing being hereinafter referred to individually as "Indemnified Party") against all liability to third parties (other than liability solely the fault of NAME) arising from or in connection with Subcontractor's performance of the Services provided for herein and accordingly shall on demand reimburse any Indemnified Party for any and all loss, liability (including and lost profits), fine(s), penalty(s), cost or expense(s) (including reasonable court fees) which may for any reason be imposed upon any indemnified Party by reason of any suit, claim, action, proceeding or demand by any third party which results from Subcontractor's performance of the Services.
- (b)** Subcontractor's obligation to indemnify any Indemnified Party will survive the expiration or termination of this Agreement by either party for any reason. Furthermore, Subcontractor shall be required to fully indemnify and Indemnified Party pursuant to this section notwithstanding the provisions of Section 7 regarding consequential damages.

7. Consequential Damages

- (a)** In no event shall either of the parties hereto be liable to the other for the payment of any consequential damages resulting from the default in the performance of their respective obligations under this Agreement. However, the provisions of this Section shall not apply in any way to the Subcontractor's obligation to indemnify any indemnified party pursuant to Section 6 hereof.

8. Taxes

- (a) Nascent Applied Methods & Endeavors shall be responsible for payment of some taxes imposed as a result of this Agreement, except for any tax based on Subcontractors gross income.

9. Right to Contest Taxes (Supplemental)

- (a) NAME may in good faith and by appropriate legal proceedings contest the validity, applicability or amount of any personal property or other taxes assessed or levied upon NAME for the Equipment (Services) or its use, and Subcontractor agrees to cooperate with NAME in any such contest and to permit NAME to contest the same in the name of Subcontractor or in the name of NAME as NAME may determine, all at NAME cost and expense. Notwithstanding anything to the contrary contained in this Contract Agreement, the nonpayment of any such taxes by NAME in connection with such contest shall not be deemed a default hereunder until final determination in such contest and expiration of any due date established therein, except that, in the event of such nonpayment, NAME shall take all steps necessary avoid foreclosure or attachment of the Equipment.

10. Applicable Law

- (a) This Agreement shall be governed by the applicable laws of the State of the Customer's (NAME) offices as listed in Article I, Section , of this Agreement, including any applicable provisions of such states Commercial Code, except to the extent that the provisions of this Agreement are clearly inconsistent therewith, in which case the provisions herein shall be controlling.

11. Limitation on Action

- (a) Any action of any kind by NAME against Subcontractor, or by Subcontractor against NAME, arising as a result of this Agreement must be commenced within two years from the date the right, claim, demand, or cause of action shall first accrue.

12. NAME's Instructions

- (a) During the course of the Services, the Subcontractor will, and will be responsible for ensuring that its employees, servants and agents will whenever on the Customer's (NAME) premises, obey all reasonable instructions and directions issued by NAME

13. Subcontractor Support to NAME; Training

- (a) **Support.** Subcontractor agrees promptly to provide NAME with all assistance reasonably required to permit NAME to use and operate the System. During the warranty period, such Subcontractor Support shall include, but not limited to, assistance with site planning, installation of equipment, training, design, programming, software support and modification, data base design and data conversion for the Developing Software Procedure(s). Subcontractor represents that any personnel it supplies to assist NAME pursuant to this Section 12 shall be fully qualified to provide the necessary assistance.

(b) Training. For the term of this Agreement, Subcontractor shall permit NAME's personnel to attend without charge all courses by Subcontractor to its customer's generally relating to use of the Equipment and Developed Software, and special training relating to the use thereof, up to and including a maximum of thirty (30) to sixty (60) student days. The cost of any such training above the maximum provided for in this Section 12 shall be equal to the maximum amount charged any of Subcontractor's other customers.

14. Insurance

- (a)** The Subcontractor shall insure against all losses, claims, demands, proceedings, damages, costs, charges and expenses for injuries or damage to any person or property which are the result of the fault or negligence of the Subcontractor in the carrying out of the Services, including without limitation, workman's compensation, public liability, property damage and automobile liability.
- (b)** The insurance will be effected with an insurer which at NAME's option, shall be subject to its approval and the Subcontractor, if the Customer (NAME) so directs shall ensure that either the policy is effected in the joint names of NAME and Subcontractor or the beneficial interest of NAME is noted on the face of the insurance policy. Nascent Applied Methods & Endeavors may, at its option, require proof of insurance as a condition precedent to the commencement of the Services. In the event the Subcontractor fails to comply with this section, NAME may, at its option, provide such insurance and the Subcontractor shall be obligated promptly to reimburse NAME thereof.

15. Loss and Damage; Stipulated Loss Value

- (a)** Nascent Applied Methods & Endeavors hereby assumes and shall bear the entire risk of loss and damage to the System for whatever cause, except that NAME shall retain the right to seek compensatory damages against Subcontractor or any third party whose fault or negligence causes any such loss or damage to the System or to any third parties. In the event of loss or damage of any kind for which NAME bears partial risk to any item of the System (Hardware and/or Software) NAME shall:
- (1) Place the same in good repair, condition and working order; or
 - (2) If in the reasonable judgment of Subcontractor or NAME the same is determined by either party to be lost, stolen, destroyed or damaged beyond repair, pay Subcontractor therefore in cash the "Stipulated Loss Value" under the schedule as set forth in Appendix(s) ____ to this Agreement. Upon such payment this contract shall be placed on probation and if applicable, terminate with respect, to such item or the System so paid for and NAME thereupon shall become entitled to such item of the System (Hardware and/or Software) as-is-where-is without warranty, express or implied, with respect to any matter whatsoever.

16. Team Organizers and Reports; Review Meetings

- (a) Team Organizers.** Nascent Applied Methods & Endeavors and Subcontractor shall each designate one individuals or subsystem(s) with authority to represent the designation party to serve as Team Organizer ("T.O."). Such individuals shall be identified in Appendix(s) ____ hereto. From time to

time either party may designate in writing a temporary alternate T.O. to which individual(s) and/or subsystem(s) shall be deemed to have equal authority to issue, execute, grant or provide any supplemental approvals, requests, notices or other communications required hereunder or requested by the other party hereto.

- (b) Status Report.** Commencing on week one of the implementation schedule, and thereafter during every second week (or more frequently, if requested by the other party) until such time as the System shall have been accepted in its entirety, Subcontractor and NAME Team Organizers, together with additional appropriate personnel involved in particular tasks, shall meet to discuss the progress made by the Subcontractor and NAME in the performance of their respective obligations hereunder. At each such meeting, Subcontractor and NAME shall provide each other with a written status report (statistical analyses) specifying in detail any problem or circumstance encountered since the last meeting (teleconference), or on-going at the time of the meeting (including the perceived inadequacy of any performance by NAME and Subcontractor) which might prevent the Subcontractor NAME from satisfying any of its obligations hereunder. Both parties shall maintain records of such reports and other communications issued in writing or e-mail during the course of contract performance.
- (c) Activities Report.** At the next regularly scheduled meeting after which either party has identified to the other through e-mail and/or writing a project problem in need of resolution, the party principally responsible for resolving the problem shall provide a report setting forth activities undertaken, or to be undertaken to resolve the problem, together with the anticipated completion dates of such activities. If appropriate, either party may recommend alternative courses of action and/or design changes that will permit the other party to meet its obligations hereunder. So long as the project remains outstanding, written or e-mailed reports shall or must identify **(1)** any event not within the control of or foreseeable by Subcontractor or NAME which accounts for difficulty or delay in the implementation schedule; **(2)** Adjustments required as the result of any authorized modification/change request agreed to by both parties; **(3)** additional burdens incurred as a result of either party's alleged failure to perform and of its obligations hereunder, and **(4)** any request or demand by either party for the performance of Services which the other party reasonably believes are outside the content or intent of the design specifications.
- (d) Alternatives.** Nascent Applied Methods & Endeavors may direct Subcontractor to proceed with any of the alternative services or actions recommended by Subcontractor without prejudice to NAME's right to claim that Subcontractor is not entitled to any adjustment in its obligations or payment therefore as a result. In that event, NAME shall notify Subcontractor of the same in writing and Subcontractor shall promptly proceed with such Services or actions. Similarly, Subcontractor's proceeding shall not prejudice its rights to claim that it is entitled to an adjustment of its obligations. Both parties in good faith within thirty (30) days of the acceptance of the System, shall promptly notify each other as to such claim or claims.
- (e) Disagreements.** Submission by the Subcontractor or NAME of the report specified in Section(s) _____ hereof shall not alter, amend or modify NAME's or Subcontractor's obligations pursuant to any other provision of this Agreement, and in the event that the parties cannot agree on how to proceed because of a project delay, the provision of Section(s) _____ hereof shall govern the continuance of the installation and the procedures to negotiate said disagreements.

17. Notices (Implementation Review); Waiver

- (a) At each regularly scheduled meeting of the T.O.'s (Team Organizers) each Subcontractor's T.O. required to attend such meeting shall initial and date an attachment to the implementation schedule, thereby indicating that, to the Subcontractor's knowledge, no event has occurred which requires an adjustment in the schedule so far as that Subcontractor is concerned. Any Subcontractor's T.O. who shall fail to indicate the need for an adjustment in the implementation schedule in a timely fashion shall be deemed to have waived any right, as elsewhere herein provided, to modification of the schedule as it affects that Subcontractor's own responsibilities.
- (b) If such Subcontractor's incomplete work subsequently shall cause loss or damage to the NAME or to another Subcontractor, the Subcontractor who failed to provide notice as herein specified shall be liable for liquidated damages in the amount of ___ % of that Subcontractor's contract price for its failure to provide timely notice of appropriate adjustments to the implementation schedule. Such liquidated damages shall be withheld by NAME from any final payment due to any Subcontractor owing such liquidated damages. The remedy of liquidated damages as provided for herein shall be construed as a specific remedy for failure to provide timely notice of necessary schedule adjustments and constitutes a remedy for the contracting performance to which NAME may otherwise be entitled under the terms of this Agreement.

18. Notices (Supplemental)

- (a) Any notice or other communication hereunder shall be telexed, e-mail and/or in writing, and if mailed by certified or registered mail, postage prepaid, return receipt requested, shall be deemed to have been duly provided or made on the date of receipt.

19. Waiver (Supplemental)

- (a) No term or provision hereof shall be deemed waived and no breach excused unless such waiver or consent shall be in telexed or e-mailed form and/or in writing and signed by the party claimed to have waived or consented.

20. Headings

- (a) The section headings contained herein are for convenience of reference only and shall not control the interpretation of any term or condition hereof.

21. Serviceability

- (a) Any invalidity, in whole or in part, of any provision of this Agreement shall not affect the validity of any other of its provisions.

22. Cumulation of Remedies

- (a) All remedies available to either party for breach of this Agreement are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

23. Independent Contractor(s)

- (a) It is expressly understood that Subcontractor and NAME are independent contractors of one another and that neither has the authority to bind the other to any third person or otherwise to act in any way as the representative of the other, unless otherwise expressly agreed to in email, telex and/or writing signed by both parties hereto.

24. Assignment

- (a) Neither party shall assign subcontract, transfer or otherwise dispose of this Agreement, or any interest therein, or the whole or any part of this Agreement, without the other party's prior written, e-mailed and/or telexed consent; however, NAME may assign, without the prior written consent but with notice to Subcontractor, its rights and obligations under this Agreement in whole or in part to a (non profit or profit making) corporate affiliate without the consent of the Subcontractor provided that NAME shall remain the guarantor of, and primarily liable for, any obligations, financial or otherwise, arising from this Agreement.

25. Acceptance

IN WITNESS THEREOF, the parties have caused this Agreement to be executed and do each hereby warrant and represent that their respective signatory, whose signature appears below, has been and is on the date of this Agreement duly authorized by all necessary and appropriate business action to execute this Agreement.

If any untrue or misleading statements are made by the Contracting Official, and are found to be inclusive of this contract agreement, or if this agreement fails to comply with Section 1812.203 of the California Civil Code, Title 2.7, then within one (1) year of the date of this contract at the election of the Subcontractor upon written notice to the Contracting Official, this contract shall be voidable by the Subcontractor and unenforceable by the Contracting Official or any assignee as being that this contract will be contrary to public policy. Under this title the Subcontractor shall be entitled to receive from the Network all sums paid to the Network when the Subcontractor is able to return all equipment, supplies or products and services delivered by the Network; when such a complete return cannot be made, the Subcontractor shall be entitled to receive from the Contracting Official all sums paid to the Network less the fair market value at the time of delivery of the equipment, supplies, products or services not returned by the Subcontractor, but delivered by the Network. Upon receipt of such sums, the Subcontractor shall make available to the Network at the Subcontractor's address or at the places at which they are located at the time the Subcontractor gives notice pursuant to this contract, the products, equipment, supplies or services received by the Subcontractor from the Network. Furthermore, if the Network fails to deliver the equipment, supplies, products or services within 30 days of the delivery date stated in this contract, unless such delivery delay is beyond the control of the Network, then at any time prior to delivery or within 30 days after delivery, at the election of the Subcontractor upon written

notice to the Contracting Official, this contract shall be voidable by the Subcontractor and subsequently unenforceable by the Network or any assignee as being that this contract will be contrary to public policy.

The rights of the Subcontractor set forth in this section shall be cumulative to all other rights inclusive to this contract and under California state law regarding this agreement.

The Contracting Official is authorized to receive service of process regarding all legal disputes under this agreement and the laws of the United States at _____.

You have three business days in which you may cancel this contract for any reason by mailing or delivering written notice to the seller assisted marketing plan seller. The three business days shall expire on:

_____ (last date to mail or deliver notice)

and notice of cancellation should be mailed or delivered to:

_____ (seller assisted marketing plan seller's name and business street address)

If you choose to mail your notice, it must be placed in the United States mail properly addressed, first-class postage prepaid, and postmarked before midnight of the above date. If you choose to deliver your notice to the seller directly, it must be delivered to him by the end of his normal business day on the above date. Within five business days of receipt of the notice of cancellation, the seller shall return to the purchaser all sums paid by the purchaser to the seller pursuant to this contract. Within five business days after receipt of all such sums, the purchaser shall make available at his address or at the place at which they were caused to be located, all equipment, products and supplies provided to the purchaser pursuant to this contract. Upon demand of the seller, such equipment, products and supplies shall be made available at the time the purchaser receives full repayment by cash, money order or certified check.

By: _____

By: _____

Date: _____

Date: _____



(ANMESCL² QUO VADIS)

ALPHA NUMEROUS MAXIMUS
EGREGION SUMMA CUM LAUDE

Nascent Applied Methods & Endeavors Partnership Agreement

WITNESSETH:

THAT, WHEREAS, Partner is engaged in or preparing to engage in the confidential contribution of monies, research, development, formulation, manufacture, marketing, distribution, licensing and sale of a variety of products, generally relating to the computer aided design and manufacture of informational procedures and now has and expects to develop Confidential Information relating thereto; and

WHEREAS, NAME is desirous of engaging Partner, and Partner is desirous of being engaged by NAME in the position of Silent Partner/Investor/Procedural Advisor, and as a result of such partnership Partner may have access to Confidential Information and may further contribute thereto;

NOW THEREFORE, NAME and Partner hereby agree as follows:

1. Definitions.

- (a) **Partnership Services.** The term "Partnership Services" shall refer to the services to be performed by Partner as mutually designated by NAME & Partner.
- (b) **New Developments.** The term "New Developments" means discoveries, concepts and ideas, whether patentable or not, including but not limited to proprietary or secret processes, designs, computer software, programs, algorithms, formulae, inventions, developments, modifications, procedures, methods, techniques, processes, adaptations, and applications, as well as improvements thereof or know-how related thereto, with respect to (i) any present or prospective activities of NAME with which Partner is or becomes acquainted as a result or consequence of the performance of the Partnership Services contemplated by this Agreement, or (ii) the use of any Confidential Information.

- (c) **Confidential Information.** The term "Confidential Information" shall refer to any information, not generally known in the relevant trade or industry, which was obtained from NAME or which was learned, discovered, developed, conceived, originated or prepared during or as a result of the performance of any Partnership Services on behalf of NAME and which falls within the following general categories:
- (i) Information relating to trade secrets of NAME or any Customer company;
 - (ii) Information relating to existing or contemplated products, services, technology, designs, processes, formulae, computer systems, computer software, algorithms and research or developments of NAME or any Customer Company;
 - (iii) Information relating to business plans, sales or marketing methods, methods of doing business, customer lists, customer usages and or requirements, and supplier information of NAME or any Customer Company;
 - (iv) Information relating to any New Developments;
 - (v) Any other confidential information which either NAME or any Customer Company may wish to protect by patent, copyright or by keeping it secret and confidential.
- (d) **Competitor.** The term "Competitor" shall refer to any person, firm, corporation, partnership or other business entity (network) engaged in or about to become engaged in the production, licensing, sale or marketing of any product or service:
- (i) Which is similar to or directly and/or systematically competitive with any product or service of NAME with whom Partner has been directly or systematically, concerned through his/her work for NAME during the preceding five (5) years; or
 - (ii) With respect to which the Partner has acquired Confidential Information.
2. **Services.** Partner agrees to perform any such full-time or part-time duties as may be mutually designated by NAME & Partner from time to time, holding the position of Silent Partner/Investor/Procedural Advisor.
3. **Warranty of Original Development.** Partner represents and warrants that all Partnership Services performed for NAME pursuant to this Agreement, and all work products produced thereby will be of original development by Partner, and will be specifically developed for the fulfillment of this Agreement and will not knowingly infringe upon or violate any patent, copyright, trade secret or other property right of third party.
4. **Use of Name.** Partner agrees, with prior notice, to allow NAME to use his/her name, and a summary of his/her experience and qualifications, in connection with NAME's efforts to obtain Consulting or Strategic Development Contracts, utilizing the services of NAME.
5. **Compensation.** NAME shall pay Partner the compensation specified on Exhibit - A.

- 6. Term.** This Agreement shall be for an initial term of 5 years or more, and shall be automatically renewed year-to-year thereafter unless mutually terminated in writing by Partner and NAME.
- (a) Termination for Cause.** NAME may terminate this Agreement for cause at any time. Cause for termination shall be deemed to include:
- (i) The breach by Partner of any material provision of this Agreement;
 - (ii) Theft by Partner;
 - (iii) Gross negligence by Partner in the performance of his/her duties;
 - (iv) Partner's inability to perform his/her agreed duties.
- (b) Termination for Other Reasons.** NAME may terminate this Agreement with cause, upon 5 days notice to Partner, provided that NAME pays Partner a severance pay of applicable monies.
- 7. Support Facilities and Expenses.**
- (a)** During the term of this Agreement, NAME will provide: **(i)** Database space, as appropriate, or a work area in which to perform the Partnership Services; and **(ii)** some of such equipment as NAME deems necessary for the performance of the Partnership Services.
- (b)** NAME will, on a bimonthly basis, reimburse Partner for all necessary and reasonable out-of-pocket expenses incurred by Partner in connection with the performance of the Partnership Services based upon NAME's policy for such expenditure. Partner will provide NAME with an itemized list of such expenses, and supporting receipts, at the end of each month.
- 8. Rights to New Developments.** With respect to New Developments made or conceived by Partner which result from the performance of the Partnership Services contemplated by this Agreement, or result from the use of any Confidential information, Partner and NAME agree that:
- (a)** Partner shall inform NAME promptly and fully of such New Developments by a written report in a form satisfactory to NAME setting forth in detail the procedures engaged and the results achieved and that a report will be submitted by Partner upon completion of any and all studies or research projects undertaken on NAME's behalf, whether or not Partner believes a given project has resulted in a New Development;
 - (b)** Partner shall apply, at NAME's request and expense, for United States and foreign letters patent, copyrights, and trademarks, for any New Developments either in the name of NAME or otherwise as NAME shall direct in writing;
 - (c)** Partner shall assign, to NAME or otherwise as NAME shall designate in writing, all of Partner's rights to such New Developments, including but not limited to United States and foreign letters patent, copyrights, trade names and trademarks granted upon such New Developments;

- (d) Partner shall execute all documents reasonably requested by NAME to formally assign any interest he/she may have in such New Developments to NAME or otherwise as NAME shall designate in writing; and
 - (e) Partner shall execute any other written instrument and shall do any other acts reasonably requested by NAME to assist NAME or such other party as NAME designates in writing to perfect or protect any or all of its rights in any New Development, including but not limited to trade secret, trademark, trade name, copyright and patent rights, both United States and foreign.
- 9. Rights to Work Product.** With respect to all work product which is not within the scope of the New Developments but which is conceived or produced by the Partner during the hours in which he/she is engaged by NAME or with the use or assistance of NAME's facilities, materials, or personnel, Partner and NAME agree that NAME shall own all rights, title and interest to such work product, and such product shall be considered as a "work made for partnership."
- 10. Protection of Trade Secrets.** Partner hereby acknowledges that the New Developments and the products developed under the terms of this Agreement, whether by Partner or by anyone else associated with NAME and the Confidential Information disclosed to Partner pursuant to this Agreement, are valuable trade secrets, and Partner hereby agrees to maintain and to protect them in the strictest confidence.
- 11. Nondisclosure and Nonuse of Confidential Information.** During Partner's term of partnership with NAME and thereafter, unless Partner shall first secure NAME's written consent, Partner agrees that he/she will not, at any time disclose to others, use for his/her own benefit or otherwise appropriate or copy any Confidential information, whether or not developed by Partner, except as required in Partner's duties to NAME; provided, however, that this paragraph shall apply only so long as the information in question is secret or confidential in the trade or industry.
- 12. Procedures for Preserving Confidentiality of Tangible and Intangible Items.** Partner agrees to comply with any and all Procedures which NAME may adopt from time to time to preserve the confidentiality of any Confidential Information. Certain materials will be affixed with a legend indicating their confidential nature. However, the absence of any such legend on any item containing or relating to Confidential Information will not give rise to any inference that the information contained therein or derived therefrom is not Confidential Information.
- 13. Covenant Not to Employ.** During the term of this Agreement, and for a period of years from the date of its termination, Partner agrees that he will not employ or solicit for himself or anyone else, the partnership or contracting of any NAME partner, contractor, subcontractor or any consulting member of NAME's Scientific Advisory Team(s).
- 14. Noncompetition Agreement.**
- (a) **Partnership with Competitors and Clients.** During the period of his/her partnership with NAME, and for a period of years after its termination, Partner agrees that he/she will not render, directly or indirectly, any services of an advisory or consulting nature or as a partner or otherwise to any business which is or maybe a Competitor of NAME.

- (b) **Ownership or Management of Competitors.** During his/her period of partnership with NAME and for a period of years thereafter, Partner agrees that he/she will not, either alone or as a member of a partnership or joint venture, or as an officer, director, stockholder or investor of or in any other corporation or enterprise, or otherwise (except as an investor in securities publicly held and listed on a national securities exchange), be engaged in the ownership or management of any business or activity which is, or intends to become, a competitor of NAME.

15. Duty Upon Termination of Association.

- (a) Upon termination of his/her partnership with NAME for any reason, Partner agrees to deliver to NAME all writings, designs, documents, records, data memoranda, computer source code listings, file layouts, record layouts, system design information, models, manuals, documentation, notes, and other material of any nature which are in his/her possession or control and which are or contain Confidential Information.
- (b) Partner further agrees to retain in the strictest confidence any Confidential Information he/she learned during or before his/her term of partnership unless and until such information has been made generally available to the trade other than by breach of this Agreement.
- (c) Partner recognizes that upon termination of his/her partnership NAME may deem it advisable to notify his/her new partner, employer or clients that Partner has had access to certain Confidential Information and that he/she is under a continuing obligation under the terms of this Agreement not to disclose such information. Partner agrees that NAME may serve such notice, provided only that Partner receive a timely copy thereof.

16. Other Agreements. Partner represents and warrants that his/her signing of this Agreement and the performance of his/her services hereunder is not and will not knowingly or unknowingly be in violation of any other contract, agreement or understanding to which he/she is a party.

17. Assignment. This Agreement and the rights and obligations of Partner hereunder may not be assigned or transferred in whole or in any part by Partner without the prior written consent of NAME and not such assignment or transfer or attempted assignment or transfer shall be effective for any purpose whatsoever without NAME's prior written consent. NAME shall have no obligation to recognize any assignee or transferee of this Agreement. The rights of NAME, however, may be assigned or transferred, at NAME's discretion.

18. Right to Injunctive Relief. Partner agrees and acknowledges as follows:

- (a) His/her compliance with the provisions of Paragraphs 8, 9, 10, 11, 12, 13, 14, and 15 hereof is necessary to preserve protect the goodwill and proprietary rights of NAME as a going concern and to prevent persons, firms, joint ventures, partnerships, corporations, institutions and enterprises engaged in businesses and activities which are competitive with the businesses and activities conducted or carried on by NAME from obtaining an unfair competitive advantage with and/or over the Network;

- (b) Any failure by him/her to comply the provisions of the above mentioned paragraphs hereof will result in irreparable and continuing damage to NAME for which there will be no adequate remedy at law; and
- (c) In the event that Partner fails to comply with the provisions of the above mentioned paragraphs hereof, NAME shall be entitled to injunctive relief and to such other and further relief as may be necessary or appropriate to cause him/her to comply with his/her duties and obligations under such paragraphs.

19. Contract Contingency. The parties acknowledge that this Agreement is contingent upon NAME obtaining the necessary financial backing to begin operations and to fulfill its obligations under any agreements with third parties, including but not limited to the Research and Development Agreement entered (or to be entered) into with. Except as provided in paragraphs 10, 11, and 12, neither party shall have any obligation under this Agreement until NAME obtains such financing.

20. Contract Severability. In the case that it may be determined by a court of competent jurisdiction that any provision herein contained is illegal or unenforceable, such determination shall solely affect such provision and shall not impair the remaining provisions of this Agreement.

21. Plurals; Gender. Any word in the text of this Agreement shall be read as the singular or plural and as the masculine, feminine or neuter gender as may be appropriate under the circumstances then existing.

22. Governing Law. This Agreement shall be governed by and construed in accordance with the applicable laws of the States of the United States covering strategic development and/or information brokerage contracts made and to be performed in that State.

23. Entire Agreement. The parties have read this Agreement and agree to be bound by its terms, and further agree that it constitutes the complete and exclusive statement of the Agreement between them which supersedes all proposals, oral or written, and all other communications between them relating to the subject matter of this Agreement.

Notices. Except as otherwise provided herein, notices, payments, or any other communication provided for herein shall be deemed to be given when mailed by first class mail, addressed to NAME as follows:

Nascent Applied Methods & Endeavors (NAME)

Attention: Mr./Ms./Mrs.

and to Partner as follows:

Mr./Ms./Mrs. _____

IN WITNESS WHEREOF, the parties have hereto executed this Agreement as of the month of _____,
_____ day, in the year _____.

By: _____

Partner's Signature (SEAL)

Title

Partner's Address

City State Zip

DRAFT

Exhibit – A

Partnership Agreement

1. This is a projected example of the economic ratio per **312** Subcontractors under Marketing Plan – **A** of this Agreement. In conjunction, with the establishment of a **\$65,000** educational trust fund for this **Silent Partnership Agreement**, during the initial marketing phases inclusive of Crowd Funding. In addition, Marketing Plan - **B** is an expanded business services supplement of Marketing Plan - **A**, which provides additional revenues for this Agreement:

The Seller Assisted Marketing Plan Fee (SAMP) - \$38,830 Itemized

- a) Password Registration & Subscription to the EINNS - \$69.95
- b) Systems Processing and Database Setup - \$129.95
- c) Business Website Development and Web Hosting - \$420
- d) ISP Integration and Intranet Implementation - \$840
- e) E-Commerce Marketing Research & Development - \$2,880
- f) Systems Training and Installation - \$6,900
- g) Systems Hardware and Software Expenditure - \$7,600
- h) International E-Commerce Facilitation - \$9,800
- i) Merchant Reserve Trust Account Deposit - \$10,200

Total Initial or Start-up revenues for this Agreement is \$12,114,960



(ANMESCL² QUO VADIS)

ALPHA NUMEROUS MAXIMUS
EGREGION SUMMA CUM LAUDE

Nascent Applied Methods & Endeavors Employment Agreement

WITNESSETH:

THAT, WHEREAS, Employee is engaged in or preparing to engage in the research, development, formulation, manufacture, marketing, distribution, licensing and sale of a variety of products, generally relating to the computer aided design and manufacture of informational procedures and now has and expects to develop Confidential Information relating thereto; and

WHEREAS, NAME is desirous of employing Employee, and Employee is desirous of being employed by NAME in the position of _____, and as a result of such employment Employee may have access to Confidential Information and may further contribute thereto;

NOW THEREFORE, NAME and Employee hereby agree as follows:

1. Definitions.

- (a) **Employment Services.** The term "Employment Services" shall refer to the services to be performed by Employee as designated by NAME.
- (b) **New Developments.** The term "New Developments" means discoveries, concepts and ideas, whether patentable or not, including but not limited to proprietary or secret processes, designs, computer software, programs, algorithms, formulae, inventions, developments, modifications, procedures, methods, techniques, processes, adaptations, and applications, as well as improvements thereof or know-how related thereto, with respect to (i) any present or prospective activities of NAME with which Employee is or becomes acquainted as a result or consequence

of the performance of the Employment Services contemplated by this Agreement, or **(ii)** the use of any Confidential Information.

(c) Confidential Information. The term "Confidential Information" shall refer to any information, not generally known in the relevant trade or industry, which was obtained from NAME or which was learned, discovered, developed, conceived, originated or prepared during or as a result of the performance of any Employment Services on behalf of NAME and which falls within the following general categories:

- (i) Information relating to trade secrets of NAME or any Customer company;
- (ii) Information relating to existing or contemplated products, services, technology, designs, processes, formulae, computer systems, computer software, algorithms and research or developments of NAME or any Customer Company;
- (iii) Information relating to business plans, sales or marketing methods, methods of doing business, customer lists, customer usages and or requirements, and supplier information of NAME or any Customer Company;
- (iv) Information relating to any New Developments;
- (v) Any other confidential information which either NAME or any Customer Company may wish to protect by patent, copyright or by keeping it secret and confidential.

(d) Competitor. The term "Competitor" shall refer to any person, firm, corporation, partnership or other business entity (network) engaged in or about to become engaged in the production, licensing, sale or marketing of any product or service:

- (i) Which is similar to or directly and/or systematically competitive with any product or service of NAME with whom Employee has been directly or systematically, concerned through his/her work for NAME during the preceding five (5) years; or
- (ii) With respect to which the Employee has acquired Confidential Information.

2. Services. Employee agrees to perform any such full-time or part-time duties as may be designated by NAME from time to time, holding the position of

_____.

3. Warranty of Original Development. Employee represents and warrants that all Employment Services performed for NAME pursuant to this Agreement, and all work products produced thereby will be of original development by Employee, and will be specifically developed for the fulfillment of this Agreement and will not knowingly infringe upon or violate any patent, copyright, trade secret or other property right of third party.

4. **Use of Name.** Employee agrees to allow NAME to use his/her name, and a summary of his/'her experience and qualifications, in connection with NAME's efforts to obtain Consulting or Strategic Development Contracts, utilizing the services of NAME.

5. **Compensation.** NAME shall pay Employee the compensation specified on Exhibit ____.

6. **Term.** This Agreement shall be for an initial term of 6 months or more, and shall be automatically renewed month-to-month, year-to-year thereafter unless terminated in writing by NAME.

(a) **Termination for Cause.** NAME may terminate this Agreement for cause at any time. Cause for termination shall be deemed to include:

(i) The breach by Employee of any material provision of this Agreement;

(ii) Theft by Employee;

(iii) Gross negligence by Employee in the performance by his duties;

(iv) Employee's inability to perform his assigned duties.

(b) **Termination for Other Reasons.** NAME may terminate this Agreement without cause, upon 5 days notice to Employee, provided that NAME pays Employee a severance pay of applicable salary.

7. **Support Facilities and Expenses.**

(a) During the term of this Agreement, NAME will provide: (i) Database space, as appropriate, or a work area in which to perform the Employment Services; and (ii) some of such equipment as NAME deems necessary for the performance of the Employment Services.

(b) NAME will, on a bimonthly basis, reimburse Employee for all necessary and reasonable out-of-pocket expenses incurred by Employee in connection with the performance of the Employment Services based upon NAME's policy for such expenditure. Employee will provide NAME with an itemized list of such expenses, and supporting receipts, at the end of each month.

8. **Rights to New Developments.** With respect to New Developments made or conceived by Employee which result from the performance of the Employment Services contemplated by this Agreement, or result from the use of any Confidential information, Employee and NAME agree that:

(a) Employee shall inform NAME promptly and fully of such New Developments by a written report in a form satisfactory to NAME setting forth in detail the procedures employed and the results achieved and that a report will be submitted by Employee upon completion of any and all studies or research projects undertaken on NAME's

behalf, whether or not Employee believes a given project has resulted in a New Development;

- (b) Employee shall apply, at NAME's request and expense, for United States and foreign letters patent, copyrights, and trademarks, for any New Developments either in the name of NAME or otherwise as NAME shall direct in writing;
- (c) Employee shall assign, to NAME or otherwise as NAME shall designate in writing, all of Employee's rights to such New Developments, including but not limited to United States and foreign letters patent, copyrights, trade names and trademarks granted upon such New Developments;
- (d) Employee shall execute all documents reasonably requested by NAME to formally assign any interest he/she may have in such New Developments to NAME or otherwise as NAME shall designate in writing; and
- (e) Employee shall execute any other written instrument and shall do any other acts reasonably requested by NAME to assist NAME or such other party as NAME designates in writing to perfect or protect any or all of its rights in any New Development, including but not limited to trade secret, trademark, trade name, copyright and patent rights, both United States and foreign.

9. Rights to Work Product. With respect to all work product which is not within the scope of the New Developments but which is conceived or produced by the Employee during the hours in which he/she is employed by NAME or with the use of assistance of NAME's facilities, materials, or personnel, Employee and NAME agree that NAME shall own all rights, title and interest to such work product, and such product shall be considered as a "work made for hire."

10. Protection of Trade Secrets. Employee hereby acknowledges that the New Developments and the products developed under the terms of this Agreement, whether by Employee or by anyone else associated with NAME and the Confidential Information disclosed to Employee pursuant to this Agreement, are valuable trade secrets, and Employee hereby agrees to maintain and to protect them in the strictest confidence.

11. Nondisclosure and Nonuse of Confidential Information. During Employee's term of employment with NAME and thereafter, unless Employee shall first secure NAME's written consent, Employee agrees that he/she will not, at any time disclose to others, use for his/her own benefit or otherwise appropriate or copy any Confidential information, whether or not developed by Employee, except as required in Employee's duties to NAME; provided, however, that this paragraph shall apply only so long as the information in question is secret or confidential in the trade or industry.

12. Procedures for Preserving Confidentiality of Tangible and Intangible Items. Employee agrees to comply with any and all Procedures which NAME may adopt from time to time to preserve the confidentiality of any Confidential Information. Certain materials will be affixed with a legend indicating their confidential nature. However, the

absence of any such legend on any item containing or relating to Confidential Information will not give rise to any inference that the information contained therein or derived therefrom is not Confidential Information.

13. Covenant Not to Employ. During the term of this Agreement, and for a period of 5 years from the date of its termination, Employee agrees that he will not employ or solicit for himself or anyone else, the employment or contracting of any NAME employee, contractor, subcontractor or any consulting member of NAME's Scientific Advisory Team(s).

14. Noncompetition Agreement.

- (a) **Employment with Competitors and Clients.** During the period of his/her employment with NAME, and for a period of 5 years after its termination, Employee agrees that he/she will not render, directly or indirectly, any services of an advisory or consulting nature or as an employee or otherwise to any business which is or maybe a Competitor of NAME.
- (b) **Ownership or Management of Competitors.** During his/her period of employment with NAME and for a period of 5 years thereafter, Employee agrees that he/she will not, either alone or as a member of a partnership or joint venture, or as an officer, director, stockholder or investor of or in any other corporation or enterprise, or otherwise (except as an investor in securities publicly held and listed on a national securities exchange), be engaged in the ownership or management of any business or activity which is, or intends to become, a competitor of NAME.

15. Duty Upon Termination of Association.

- (a) Upon termination of his/her employment with NAME for any reason, Employee agrees to deliver to NAME all writings, designs, documents, records, data memoranda, computer source code listings, file layouts, record layouts, system design information, models, manuals, documentation, notes, and other material of any nature which are in his/her possession or control and which are or contain Confidential Information.
- (b) Employee further agrees to retain in the strictest confidence any Confidential Information he/she learned during or before his/her term of employment unless and until such information has been made generally available to the trade other than by breach of this Agreement.
- (c) Employee recognizes that upon termination of his/her employment NAME may deem it advisable to notify his/her new employer or clients that Employee has had access to certain Confidential Information and that he/she is under a continuing obligation under the terms of this Agreement not to disclose such information. Employee agrees that NAME may serve such notice, provided only that Employee receive a timely copy thereof.

- 16. Other Agreements.** Employee represents and warrants that his/her signing of this Agreement and the performance of his/her services hereunder is not and will not knowingly or unknowingly be in violation of any other contract, agreement or understanding to which he/she is a party.
- 17. Assignment.** This Agreement and the rights and obligations of Employee hereunder may not be assigned or transferred in whole or in any part by Employee without the prior written consent of NAME and not such assignment or transfer or attempted assignment or transfer shall be effective for any purpose whatsoever without NAME's prior written consent. NAME shall have no obligation to recognize any assignee or transferee of this Agreement. The rights of NAME, however, may be assigned or transferred, at NAME's discretion.
- 18. Right to Injunctive Relief.** Employee agrees and acknowledges as follows:
- (a) His/her compliance with the provisions of Paragraphs 8, 9, 10, 11, 12, 13, 14, and 15 hereof is necessary to preserve protect the goodwill and proprietary rights of NAME as a going concern and to prevent persons, firms, joint ventures, partnerships, corporations, institutions and enterprises engaged in businesses and activities which are competitive with the businesses and activities conducted or carried on by NAME from obtaining an unfair competitive advantage with and/or over the Network;
 - (b) Any failure by him/her to comply the provisions of the above mentioned paragraphs hereof will result in irreparable and continuing damage to NAME for which there will be no adequate remedy at law; and
 - (c) In the event that Employee fails to comply with the provisions of the above mentioned paragraphs hereof, NAME shall be entitled to injunctive relief and to such other and further relief as may be necessary or appropriate to cause him/her to comply with his/her duties and obligations under such paragraphs.
- 19. Contract Contingency.** The parties acknowledge that this Agreement is contingent upon NAME obtaining the necessary financial backing to begin operations and to fulfill its obligations under any agreements with third parties, including but not limited to the Research and Development Agreement entered (or to be entered) into with . Except as provided in paragraphs 10, 11, and 12, neither party shall have any obligation under this Agreement until NAME obtains such financing.
- 20. Contract Severability.** In case it be determined by a court of competent jurisdiction that any provision herein contained is illegal or unenforceable, such determination shall solely affect such provision and shall not impair the remaining provisions of this Agreement.
- 21. Plurals; Gender.** Any word in the text of this Agreement shall be read as the singular or plural and as the masculine, feminine or neuter gender as may be appropriate under the circumstances then existing.

22. Governing Law. This Agreement shall be governed by and construed in accordance with the applicable laws of the State of covering strategic development and/or information brokerage contracts made and to be performed in that State.

23. Entire Agreement. The parties have read this Agreement and agree to be bound by its terms, and further agree that it constitutes the complete and exclusive statement of the Agreement between them which supersedes all proposals, oral or written, and all other communications between them relating to the subject matter of this Agreement.

Notices. Except as otherwise provided herein, notices, payments, or any other communication provided for herein shall be deemed to be given when mailed by first class mail, addressed to NAME as follows:

Attention: Mr./Ms./Mrs. _____

and to Employee as follows:

Mr./Ms./Mrs. _____

IN WITNESS WHEREOF, the parties have hereto executed this Agreement as of the day and year first above written.

By: _____ (SEAL)

Employee's Signature

Title

Employee's Address

City State Zip



(ANMESCL² QUO VADIS)

ALPHA NUMEROUS MAXIMUS
EGREGION SUMMA CUM LAUDE

Nascent Applied Methods & Endeavors Consulting Agreement

THIS AGREEMENT, made and entered into this ____ day of _____, 2020, by and between _____ (hereinafter "the Client System"), a type of personal or social organization, and NASCENT APPLIED METHODS & ENDEAVORS (NAME) (hereinafter "Consultant"), a type of system of a computerized bio-physical analogies related to Autonomous Agent Software Development, Enterprise Work Architectures, and Employment Related Educational Structures:

WITNESSETH:

WHEREAS, Consultant represents that it has expertise in the area of STRATEGIC SYSTEMSDEVELOPMENT & IMPLEMENTATION and is ready, willing and able to provide consulting and educational assistance to the Client System on the terms and conditions set forth herein; and

WHEREAS, Client System, in reliance on Consultant's representations, is willing to engage Consultant through its independent Subcontractors, and not as an employee, on the terms and conditions set forth herein;

NOW THEREFORE, in consideration of the obligations herein made and undertaken, the parties, intending to be legally bound, covenant and agree as follows:

Section I

SCOPE OF SERVICES

1.1 Consultant and its Subcontractors shall provide strategic consulting services in the area of STRATEGIC SYSTEMS DEVELOPMENT & IMPLEMENTATION, which are more fully described in Exhibit ____ attached hereto. NAME and its Subcontractors shall render such services and deliver the required reports and other deliverables ("Deliverables") in accordance with the timetable and milestones set forth in Exhibit _____. In the event NAME or its Subcontractors anticipates at any time that will not reach one or more milestones or to complete one or more assignments within the prescribed timetables. NAME or its Subcontractors shall immediately so inform the Client System by written notice, submit proposed revisions to the timetables and milestones that reflect NAME's best estimates of what can realistically be achieved, and continue to work under the original timetables and milestones until otherwise directed by the Client System.

NAME or its Subcontractors shall also prepare and submit such further reports of its performance, and its progress as the Client System may reasonably request from time to time.

1.2 Consultant shall provide and make available to the Client System such resources as shall be necessary to perform the services called for by this Agreement.

1.3 The Client System shall, within 30 days of receipt of each Deliverable submitted to the Client System, advise Consultant of the Client System acceptance or rejection of such Deliverable. Any rejection shall, specify the nature and scope of the deficiencies in such Deliverable, and Consultant shall upon receipt of such a notice of rejection, act diligently to correct such deficiencies. The failure of the Client System to provide such a notice of rejection within such period shall constitute acceptance by the Client System of said Deliverable.

1.4 All work shall be performed at the Client System's facilities unless otherwise mutually agreed and shall be performed in a workmanlike and professional manner by employees and/or subcontractors of Consultant, having a level of skill in the area commensurate with the requirements of the scope of work to be performed. Consultant shall make sure its employees and/or subcontractors at all times observe security and safety policies of the Client System.

1.5 The parties agree that the services of _____ and _____ are essential to the satisfactory performance by Consultant of the scope of work called for in this Agreement. The parties further agree that if either of such individuals leaves the association of Consultant during the term of this Agreement for any reason or is unavailable to continue full-time work called for herein, and if substitute individuals acceptable to the Client System are not available to continue the work Within 30 days, the Client System shall have the right to terminate this Agreement pursuant to Section 2.2 hereof. Absent approval by the Client System of acceptable substitutes, the discontinuance of work by any such key employees and/or subcontractor(s) shall, for purposes of Section 2.2 hereof, be deemed a breach of the terms of this Agreement by Consultant.

1.6 The Client System shall have the right, at any time, to request the removal of any employee(s) and/or subcontractor(s) of Consultant whom the Client System deems to be mutually unsatisfactory. Upon such request, Consultant shall use all reasonable efforts to promptly replace

such employees and/or subcontractor(s) with a substitute employees and/or subcontractor(s) having appropriate skills and training.

1.7 Anything herein to the contrary notwithstanding, the parties hereby acknowledge and agree that the Client System shall have no right to control the manner, means, or methods by which Consultant performs the services called for by this Agreement. Rather, the Client System shall be entitled only to direct Consultant with respect to the elements of the services to be performed by Consultant and the results to be derived by the Client System, to inform Consultant as to where and when such services shall be performed, and to review and assess the performance of such services by Consultant for the limited purposes of assuring that such services have been performed and confirming that such results are satisfactory.

Section 2

TERM OF AGREEMENT

2.1 This Agreement shall commence on the date and year first above written, and unless notified by mutual agreement of the parties or terminated earlier pursuant to the terms of this Agreement, shall continue until the earlier of (1) the satisfactory completion of the services set for the Exhibit ____ ; or (2) _____, 2020.

2.2 This Agreement may be terminated by either party upon 60 day's prior written notice, if the other party breaches any term hereof and the breaching party fails to cure such breach within a 30-day period ; provided that notwithstanding the foregoing, the cure period for any failure of the Client System to pay fees and charges due hereunder shall be 30 days from the date of receipt by the Client System of any notice of breach relating thereto.

2.3 Upon termination of this Agreement for any reason, Consultant shall promptly return to the Client System all copies of any of the Client System's data, records, or materials of whatever nature or kind, including all materials incorporating the proprietary information of the Client System. Consultant shall also furnish to the Client System all work in progress or portions thereof, including all incomplete work.

2.4 Within 30 days of termination of this Agreement for any reason, Consultant shall submit to the Client System an itemized invoice for any fees or expenses thereto accrued under this Agreement. The Client System, upon payment of accrued amounts so invoiced, shall thereafter have no further liability or obligation to Consultant whatsoever for any further fees, expenses, or other payments.

Section 3

FEES, EXPENSES, AND PAYMENT

3.1 In consideration of the services to be performed by Consultant, the Client System shall, within 30 days of acceptance of each of the Deliverables, pay Consultant that fees set forth in Exhibit ____ attached hereto with respect to each such Deliverable. In the event Consultant is unable to complete the services described in Exhibit ____ by _____, 2020,

unless otherwise mutually agreed, no further fees for continued performance of Consultant shall be owing.

3.2 In addition to the foregoing, the Client System shall pay Consultant its actual out-of-pocket expenses of the types set forth in Exhibit ____, which are reasonable and necessary for Consultant to insure the furtherance of its performance hereunder; provided, however, that payments for each category of expense shall not exceed the limits for each category set forth in Exhibit ____. Consultant agrees to provide the Client System with access to such original receipts, ledgers, and other records as may be reasonably appropriate for the Client System or its accountants to verify the amount and nature of any such expenses.

3.3 In the event Consultant terminates this Agreement because of the breach of the Client System, Consultant shall be entitled to a pro rata payment for work in progress based on the percentage of work then completed. No such pro rata payment shall be made if the Client System terminates this Agreement because of the breach of Consultant.

3.4 Consultant agrees that the fees and charges for any follow-on or additional work not covered in the scope of work described in Exhibit ____ shall be performed at the lesser of **(1)** The Consultant's then current rates for such work or **(2)** the rates applicable to the scope of work fixed by this Agreement, plus an inflation factor of not more than five (5%) percent per annum.

3.5 The Client System shall pay all fees and expenses owing to Consultant hereunder within 30 days after Consultant has submitted to the Client System an itemized invoice therefore.

Section 4

RIGHTS IN DATA

4.1 As between the Client System and Consultant, except as set forth below in this Section, all rights, titles, and interests in and to the programs, systems, data, or materials utilized or produced by Consultant in the performance of the Services called for in this Agreement shall remain the property of Consultant.

4.2 All rights, titles, and interests in and to all Deliverables, including all rights in copyright that may subsist therein, shall be held by the Client System, and all Deliverables shall be considered works made for hire. Consultant shall mark all Deliverables with the Client System's copyright or other proprietary notice as directed by the Client System and shall take all actions deemed necessary by the Client System to perfect the Client System's rights therein. In the event that Consultant should otherwise, by operation of law, be deemed to retain any rights to any Deliverables, Consultant does hereby assign all rights, titles, and interest in and to such Deliverables to the Client System. Consultant agrees to execute any documents of assignment or registration of copyright requested by the Client System respecting any and all Deliverables.

4.3 All rights, titles, and interests in and to any programs, systems, data, and materials furnished to Consultant by the Client System are and shall remain the property of the Client System.

Section 5

PROPRIETARY INFORMATION

5.1 Consultant acknowledges that in order to perform the services called for in this Agreement, it shall be necessary for the Client System to disclose to Consultant certain Trade Secret(s) that have been developed by the Client System at great expense and that have required considerable effort of skilled professionals. Consultant further acknowledges that the Deliverables will of necessity incorporate such Trade Secret(s). Consultant agrees that it shall not disclose, transfer, use, copy, or allow access to any such Trade Secret(s) to any employees or to any third parties, excepting those who have a need to know such Trade Secret(s) consistent with the requirements of this Agreement and who have undertaken an obligation of confidentiality and limitation of use. In no event shall Consultant disclose any such Trade Secret(s) to any competitors of the Client System.

5.2 As used herein, the term "Trade Secret(s)" shall mean any scientific or technical data, information, design, process, procedure, formula, or improvement that is commercially valuable to the Client System and not generally known in the industry. The obligations set forth in Section 5.1 as they pertain to Trade Secret(s) shall survive this Agreement and continue for so long as the material remains a Trade Secret(s).

Section 6

CONFIDENTIALITY OF AGREEMENT; PUBLICITY; USE OF MARKS

6.1 For a period of 5 years from the date of termination of this Agreement, Consultant shall not disclose the nature of the effort undertaken for the Client System or the terms of this Agreement to any other person or entity, except as may be necessary to fulfill Consultant's obligations hereunder.

6.2 Consultant shall not at any time use the Client System's name or the Client System's trademark(s) or trade name(s) in any advertising or publicity without the prior written consent of the Client System.

Section 7

WARRANTIES

7.1 The Client System warrants that it owns all rights, titles, and interests in and to any programs, systems, data, or materials furnished to Consultant hereunder.

7.2 Consultant warrants that:

- a.** Consultant's performance of the services called for by this Agreement do not and shall not violate any applicable law, rule, or regulation; any contracts with

third parties; or any third-party rights in any patents, trademark, copyright, trade secret(s), or similar right; and

- b. Consultant is the lawful owner or licensee of any software programs or other materials use by Consultant or its Subcontractors in the performance of the services called for in this Agreement, and has all rights necessary to convey to the Client System the unencumbered ownership of Deliverables.

Section 8

INDEMNIFICATION

8.1 Consultant hereby partially indemnifies and agrees to hold harmless the Client System from and against any and all claims, demands, and actions, and any liabilities, damages, or expenses resulting therefrom, including court costs and reasonable attorney fees, arising out of or relating to the services performed by Consultant or its Subcontractor hereunder or the warranties made by Consultant pursuant to Section 7.2 hereof. Consultant's obligations under this Section 8.1 shall survive the termination of this Agreement for any reason. The Client System agrees to give Consultant prompt notice of any such claim, demand, or action and shall, to extent the Client System is not adversely affected, cooperate fully with Consultant or its Subcontractors in the defense and settlement thereof.

Section 9

LIMITATION OF LIABILITY

9.1 Except as provided in Section 8.1 hereof, in no event shall either party be liable to the other for any consequential damages or lost profits of the other party.

Section 10

MISCELLANEOUS

10.1 Consultant shall assign, transfer, or subcontract this Agreement on any of its obligations hereunder with or without the prior written consent of the Client System; provided however, that Consultant may assign its right receive payments hereunder to such third parties as Consultant may designate upon advance written notice to the Client System of not less than 30 days.

10.2 This Agreement shall be governed and construed in all respects in accordance with the substantive laws of the State(s) of the United States and abroad.

10.3 The parties are and shall be independent contractors to one another, and nothing herein shall be deemed to cause this Agreement to create an agency, partnership, or joint venture between the parties. Except as expressly provided in this Agreement, the Client System shall not be liable for any debts, accounts, obligations, or other liabilities whatsoever of Consultants, including (without

limitation) Consultant's obligations to withhold Social Security and income taxes for itself or any of its employees.

10.4 Consultant shall, at its sole expense, obtain and carry in full force and effect, a data insurance network, during the term of this Agreement. Upon the request of the Client System, Consultant shall provide the Client System with evidence satisfactory to the Client System of such an insurance network.

10.5 All remedies available to either party for one or more breaches by the other party are and shall be deemed cumulative and may be exercised separately or concurrently without waiver of any other remedies. The failure of either party to act on a breach of this Agreement by the other shall not be deemed a waiver of such breach or a waiver of future breaches, unless such waiver shall be in writing and signed by the party against whom enforcement is sought.

10.6 All parties required or permitted hereunder shall be in writing addressed to the respective parties as set forth herein, unless another address shall have been designated, and shall be delivered by hand or by registered or certified mail, postage prepaid.

10.7 This Agreement constitutes the entire Agreement of the parties hereto and supersedes all prior representations, proposals, discussions, and communications, whether oral or in writing. This Agreement may be modified only in writing and shall be enforceable in accordance with its terms when signed by the party sought to be bound.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorize representatives on the date and year first above written.

[Client System]

By: _____

Title: _____

Date: _____, 2020

[Consultant]

By: _____

Title: _____

Date: _____, 2020