

TEST AND EVALUATION AGREEMENT

NAME AND ADDRESS OF COMPANY: **[FILL IN]**

NAME OF TEST OR NATURE OF TEST SERVICES: **[FILL IN NAME/TITLE]**.

SPECIFIC DEVICE TO BE TESTED (“TEST ITEM”):

- **[LIST ITEM(S)]**

PURPOSE:

WHEREAS, 10 USC §2539b(a)(3) gives the Secretaries of the Military Departments authority to make available to any person or entity, at an appropriate fee, the services of any government laboratory, center, range or other testing facility for testing materials, equipment, models, computer software and other items; and

WHEREAS, **[FILL IN COMPANY NAME]**, hereinafter referred to as the “COMPANY,” and the United States of America, hereinafter referred to as the “GOVERNMENT,” have agreed to conduct and/or furnish, certain test services as described herein;

NOW, THEREFORE, the COMPANY and the GOVERNMENT do now hereby agree to the following terms and conditions governing the conduct and/or furnishing of such tests and/or test services:

1. It is understood that the GOVERNMENT will accept the above-listed TEST ITEM to be tested for the specified tests and any information submitted for use in such test shall not be disclosed outside the GOVERNMENT without the consent of the COMPANY.
2. The test and/or test services shall be conducted and/or furnished at the U.S. Army Information Systems Engineering Command (USAISEC), Technology Integration Center, Bldg. 53302 of Ft. Huachuca, Arizona, to begin on a date and time convenient to the GOVERNMENT and agreed to by both parties. The beginning and estimated completion dates are set forth below for planning purposes. The GOVERNMENT may, in its discretion, change such test dates or terminate the test prior to completion, with or without notice to COMPANY, based upon Army testing needs and other factors. The GOVERNMENT shall not be liable to the COMPANY as a result of, or because of such changes or termination of testing.

TEST BEGINNING DATE: **[FILL IN]**

TEST COMPLETION DATE: **[FILL IN]**

The GOVERNMENT and COMPANY will cooperatively test, evaluate, and analyze the TEST ITEM supplied by COMPANY. The GOVERNMENT will provide the appropriate facilities and the test instrumentation, as well as test personnel, when required to perform the test(s). The COMPANY will provide the specific device or software to be tested, any required support equipment and documentation, and their own test personnel, if agreed to by the GOVERNMENT.

3. The USAISEC Facility is located in a GOVERNMENT secured area. The COMPANY shall not bring any video, audio, cell phones, laptop computers, handheld computers or similar devices within the secured area without the inspection and approval of appropriate security personnel. The COMPANY will provide any documentation necessary for entrance in the

secured areas, be escorted within the secured area at all times, and only have access to specified designated areas. Any COMPANY personnel so admitted must be U.S. citizens and provide proof of said citizenship. The COMPANY agrees to use due care while on the GOVERNMENT'S premises, to comply with all posted environmental, safety, health, and security rules and regulations during the term of this Agreement, and to enter only those areas so designated by GOVERNMENT personnel.

4. It is further agreed by the GOVERNMENT and the COMPANY that:

A. The COMPANY shall:

1. Provide, install, interface, and system familiarization for the TEST ITEM and related necessary equipment at no cost to the GOVERNMENT.
2. Be responsible for the transportation, installation, interface, and system familiarization of all equipment at the specified location at Ft. Huachuca, Arizona.
3. Bear all costs for transportation, packing, crating, and drayage, including that which the GOVERNMENT may, for its own convenience, perform or cause to be performed.
4. Promptly remove the TEST ITEM and any related equipment from the GOVERNMENT'S premises upon completion or termination of the test and/or test services. Upon the COMPANY'S failure to do within a reasonable time, the GOVERNMENT is authorized the removal of the TEST ITEM and any related equipment and bill the COMPANY accordingly.
5. Be responsible for all maintenance and repair of the TEST ITEM and any related equipment and system(s) while under test and while located at the GOVERNMENT'S facility.
6. Convey no ownership rights, entitlements or title to any TEST ITEM and/or related equipment.
7. Not circulate, refer to, or otherwise use for publicity or advertising purposes (including press releases and the like) the results of the test conducted by the GOVERNMENT in any manner that will state or imply that the GOVERNMENT endorses any product or TEST ITEM.
8. Reimburse the GOVERNMENT for any losses or damages arising out of or in conjunction with the use of government property.

B. The GOVERNMENT shall:

1. Provide all test site facilities and utilities which are required for the conduct of all tests under this agreement.
2. Acquire no ownership rights, entitlements or title to any TEST ITEM and/or equipment described herein.
3. Interface or connect any equipment furnished to applicable test sets/equipment as necessary to perform the required tests.

4. Not modify the equipment/software provided by the COMPANY. Any modifications to the equipment/software provided for testing purposes shall be accomplished only by the COMPANY unless otherwise explicitly authorized by written addendum to this agreement, signed by both the GOVERNMENT and the COMPANY.
 5. Not assume any responsibility for, or be liable for any loss or destruction of, or damage to COMPANY'S TEST ITEM and/or related equipment or system(s), or for any other damages, whether direct, consequential, for delays or otherwise.
 6. Protect and safeguard information that the COMPANY has identified in writing as proprietary, confidential, or as a COMPANY trade secret. The GOVERNMENT may divulge such information only to those GOVERNMENT personnel directly involved in the tests and evaluation and the supervision of that personnel and then only on a bona fide need –to-know basis.
 7. Have the sole and unilateral decision whether to release any information or data generated as a result of tests and evaluation to GOVERNMENT personnel.
 8. Not release information or data generated under this Agreement outside the GOVERNMENT without the written consent of the COMPANY.
 9. Not be obligated to purchase any equipment, materials, or services from the COMPANY as a result of the test and evaluation activity.
5. The COMPANY agrees to hold harmless and indemnify the GOVERNMENT against the following insofar as they may result from the performance and/or furnishing of the test and/or test services described above:
- a. Claims (including reasonable expense of litigation or settlement) by third persons (including COMPANY'S servants, agents, or employees) for any loss, death, bodily injury (including sickness or disease) or property damage, including loss of, or damage to, or use of property (including software or the TEST ITEM and any related equipment), except as may be caused by gross negligence or willful misconduct on the part of any GOVERNMENT officers or employees who have supervision or direction of all, or substantially all, of the test facilities or services in the execution of this Agreement;
 - b. Loss of or damage to GOVERNMENT property, or property in its custody, and loss of use of such property; and
6. The GOVERNMENT reserves the right to limit the number and terms of visits of observers and other participants.
7. In consideration of the test and/or test services to be conducted and furnished by the GOVERNMENT, the COMPANY agrees to pay to the GOVERNMENT the cost thereof as determined by the GOVERNMENT. The cost will include the amount necessary to recoup both the direct and indirect costs involved that are incurred by the GOVERNMENT to provide for the test and/or test services, in accordance with policies, accounting procedures, and GOVERNMENT regulations in effect at the time of this agreement.

8. The GOVERNMENT estimates that the cost of the test and/or test services to be provided by the GOVERNMENT will not exceed the sum of **\$(FILL IN)**, which sum includes performing the tasks as outlined in the COMPANY'S testing plan.
9. The COMPANY will pay to the GOVERNMENT prior to commencement of the test and/or test services the sum of **\$(FILL IN)** by cashier's check, certified check, or bank money order made payable to: **U.S. Treasury**. Mail payments, with a copy of this signed Agreement, to:

ATTN: Connie Lucas
CECOM G8 Management Accounting Division
BLDG 6001 Combat Drive, Room 129
Aberdeen Proving Ground, MD 21005

Phone number (Connie Lucas): (443) 861-4398

Please provide the COMPANY'S Tax ID number with the payment documentation. When mailing the payment, please reference the ISEC-TIC Budget Analyst, Betty Andrews, email: betty.j.andrews24.civ@mail.mil, phone: 520-538-2676.

10. It is understood and agreed that the GOVERNMENT will not incur costs in excess of the estimated amount without notice to the COMPANY of a revised estimated cost amount, and deposit with the GOVERNMENT by the COMPANY of such additional sum as may be required to cover the additional estimated costs.
11. The GOVERNMENT will notify the COMPANY at such time as 80% of the deposited funds have been obligated. The GOVERNMENT will also return to the COMPANY, upon completion or termination of the test or test services any funds which the COMPANY has deposited with the GOVERNMENT on account of the test or test services and which the GOVERNMENT has not obligated.
12. In order to assure the GOVERNMENT that there will be no issue of direct competition between the GOVERNMENT and domestic private industry because of the conducting or furnishing of this test and/or test services, the COMPANY warrants that:
 - a. No non-governmental organization is known which presently has facilities that can be made available to perform the test or test services with comparable quality, and breadth, or on a more timely basis; and
 - b. The conduct of the test or test services requires the specialized facilities and skills located at the U.S. Army Information Systems Engineering Command Technology Integration Center.
13. All transfers of property or services performed, of whatever nature, made pursuant to this Agreement shall be without any express or implied warranties by the GOVERNMENT.
14. This Agreement may not be modified except by an appropriate writing signed by both parties and upon approval of GOVERNMENT legal counsel.
15. This Agreement is the entire agreement between the parties, and any oral discussions are hereby superseded by the terms and conditions contained in this written document.

16. As both parties have had the opportunity to have this Agreement reviewed by legal representatives of their choosing, there shall be no presumption against the drafter of this document.

17. The obligations imposed by this Agreement shall survive the completion or termination of the test and/or test services.

IN WITNESS WHEREOF, the parties hereto have executed this TEST AND EVALUATION AGREEMENT as of the date last below written.

COMPANY:

USAISEC:

SIGNED: _____ SIGNED: _____

PRINTED NAME: _____ PRINTED NAME: _____

TITLE: _____ TITLE: _____

NAME OF FIRM: _____ COMMAND & ORGANIZATION: TIC

DATE: _____ DATE: _____