

## **Mod 4 Job Aid: SAMPLE - VOTING TRUST AGREEMENT**

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**(NOTE: The text on any executed Agreement can vary from the sample text in this Agreement based on the specific circumstance involved)**

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### **SAMPLE**

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**VOTING TRUST AGREEMENT  
WITH RESPECT TO CAPITAL STOCK  
OF  
(CORPORATION)**

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**Reviewed 2/3/06**



**VOTING TRUST AGREEMENT  
WITH RESPECT TO CAPITAL STOCK  
OF  
(CORPORATION)  
(ADDRESS)**

This Voting Trust Agreement (Agreement) is made this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_ by and between [Ultimate Parent], a [country] corporation; [Intermediate Parent], a [State or country] Corporation; ; [Immediate Parent], a [State or country] Corporation (“Shareholder”); [Corporation], a [State] corporation (“Corporation”); [Name of Trustee], [Name of Trustee] and [name of Trustee] and their successors appointed as provided in the Agreement (each individually a “Voting Trustee” and collectively the “Voting Trustees”), and the United States Department of Defense (“DoD”), all of the above collectively “The Parties”.

• **RECITALS:**

**WHEREAS**, (the Corporation is duly organized and existing under the laws of the State of \_\_\_\_\_, and has an authorized capital of \_\_\_\_\_ shares, all of which are common voting shares, par value \$\_\_\_\_\_ per share, and of which \_\_\_\_\_ are issued and outstanding (“the shares”); and

**WHEREAS**, the Corporation’s business consists of the research, design, development, and manufacture (as applicable) of defense and defense-related items for various User Agencies<sup>1</sup> of the United States Government, including, without limitation, the DoD; and

**WHEREAS**, the offices and plants of the Corporation require facility security clearances<sup>2</sup> issued under the National Industrial Security Program (NISP) to conduct its business and the NISP requires that a corporation maintaining a facility security clearance be effectively insulated from foreign ownership, control or influence (FOCI); and

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<sup>1</sup> The Office of the Secretary of Defense (including all boards, councils, staffs, and commands), DoD agencies, and the Departments of Army, Navy, and Air Force (including all of their activities); Department of Commerce, General Services Administration, Department of State, Small Business Administration, National Science Foundation, Department of the Treasury, Department of Transportation, Department of the Interior, Department of Agriculture, Department of Labor, Environmental Protection Agency, Department of Justice, Federal Reserve System, Government Accountability Office, United States Trade Representative, United States International Trade Commission, United States Agency for International Development, National Aeronautics and Space Administration, Nuclear Regulatory Commission, Department of Education, Department of Health and Human Services, Department of Homeland Security and Federal Communications Commission (the "User Agencies").

<sup>2</sup> An administrative determination that a facility is eligible for access to classified information of a certain category.

**WHEREAS**, [Ultimate Parent] owns all the outstanding voting shares of (Intermediate Parent); and

**WHEREAS**, [Intermediate Parent] owns all the outstanding voting shares of the [Shareholder]; and

**WHEREAS**, [Shareholder] owns all the Shares of the Corporation; and

**WHEREAS**, the Under Secretary of Defense for Intelligence (USD(I)) has determined that the provisions of this Agreement are necessary to enable the United States to protect itself against the unauthorized disclosure of information relating to the National Security; and

**WHEREAS**, the DoD has agreed to grant or continue the Corporation's facility security clearance from and after the effective date of this Agreement in consideration for inter alia, the Parties' execution and compliance with the provisions of this Agreement, the purpose of which is to reasonably and effectively exclude the Shareholder; [Intermediate Parent], [Ultimate Parent]; and all entities that the aforementioned companies control, all of the above collectively the "Affiliates", from unauthorized access to classified<sup>3</sup> and controlled unclassified<sup>4</sup> information and influence over the Corporation's business or management; and

**WHEREAS**, The Defense Security Service (DSS) has oversight responsibilities of the NISP on behalf of the Department of Defense; and the NISP requires that a corporation maintaining such a facility clearance be effectively insulated from foreign ownership, control, or influence (FOCI), this Agreement dated \_\_\_\_\_ is entered into between the Parties in order to negate such FOCI, and to be submitted to the Defense Security Service for approval as required by applicable Department of Defense regulation and policy, and

**WHEREAS**, DSS required the Voting Trustees to have exclusive right, power, and authority to exercise all voting rights with respect to the Shares of the Corporation:

**NOW THEREFORE**, it is expressly agreed by and between the Parties that this Agreement in respect of the shares of the Corporation is hereby created and established,

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<sup>3</sup> "Classified information" is any information that has been determined pursuant to Executive Order 12356 or any predecessor order to require protection against unauthorized disclosure and is so designated. The classifications TOP SECRET, SECRET and CONFIDENTIAL are used to designate such information.

<sup>4</sup> "Unclassified Information", the export of which is controlled by the International Traffic in Arms Regulation (ITAR) and/or the Export Administration Regulation (EAR). The export of technical data which is inherently military in nature is controlled by the ITAR. The export of technical data which has both military and commercial uses is controlled by EAR.

subject to the following terms and conditions, to which all of the Parties expressly assent and agree:

## **ORGANIZATION**

### **ARTICLE I - Establishment of Voting Trust**

1.01. The establishment of this Agreement involves the selection of no less than three Voting Trustees with the qualifications set forth in Section 2.01. The Shares of the Corporation shall be delivered to the Voting Trustees by the Shareholder. DSS shall determine that all requirements of this Agreement have been satisfied including the necessary independence and separation of operation, lack of interdependence between the Affiliates on the one hand, and on the other, the Corporation and/or its subsidiaries, and the financial self-reliance and business viability of the Corporation.

### **ARTICLE II - Appointment of Voting Trustees**

2.01. Initial Voting Trustee nominees will be chosen by the Shareholder. The initial and successor Voting Trustees shall: be resident citizens of the United States; have had no prior contractual, financial, or employment relationships with the Affiliates, Shareholder or the Corporation; certify their willingness to accept their security responsibilities; and be eligible for the requisite personnel security clearance.<sup>5</sup> The appointment of initial and successor Voting Trustees shall not become effective until a statement of no objection is provided in writing by DSS.

2.02. The Shareholder may remove a Voting Trustee for two reasons, namely gross negligence or willful misconduct. For the Shareholder to implement a removal action of a Voting Trustee, the Shareholder must file a written statement, signed by the Shareholder, with the Corporation at its principal office in [city], [state] describing the act (s) upon which removal is based. The Shareholder must notify DSS 20 days prior to filing such instrument, and notice must be given pursuant to Section 18.01 of this Agreement.

2.03. Any Voting Trustee may at any time resign by submitting to the Corporation at its principal office in [city]. [state], a resignation in writing, with contemporaneous notice to DSS pursuant to Section 18.01. Such resignation shall be effective on the date of resignation stated by the voting Trustee. No formal acceptance of resignation by the Corporation is necessary to make the resignation effective. Upon resignation, a Voting Trustee's obligations and responsibilities under the Agreement are completed. However, if such resignation would result in only one remaining Voting Trustee, then the resignation shall not be effective until a successor Voting Trustee who is qualified to serve hereunder has accepted appointment.

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<sup>5</sup> An administrative determination that an individual is eligible for access to classified information of a certain category.

2.04. Nomination and appointment of successor Voting Trustees shall be accomplished as follows:

a. In the event of the death, resignation, removal or inability to act of any Voting Trustee, the Corporation shall give prompt written notice to DSS and the Shareholder. The remaining Voting Trustees shall nominate a successor Voting Trustee using their best efforts<sup>6</sup> and diligence, and shall notify the Shareholder and DSS of the nominee. In the event that a nominee is vetoed by the Shareholder pursuant to Section 2.05(b) below, the remaining Voting Trustees shall use their best efforts and diligence to nominate an alternate successor Voting Trustee.

b. The Shareholder shall not have the right to nominate or suggest any person for the position of a successor Voting Trustee. The Shareholder shall have the right to Veto without cause a nominee for the position of successor Voting Trustee. The Shareholder shall notify the remaining Voting Trustees and DSS of acceptance or veto within 20 days of receipt of the nomination of a successor Voting Trustee Failure by the Shareholder to notify the Voting Trustees within 20 days of notification of nomination shall be deemed to constitute acceptance. Absent a veto by the Shareholder of a nominee, and upon approval by DSS, the nominee may be appointed by the remaining Voting Trustees.

c. If the Shareholder has vetoed two successive nominees proposed by the remaining Voting Trustees, the third nominee, upon approval by DSS, shall be accepted absent an appeal submitted by the Shareholder to DSS setting forth reasons for said veto.

d. Any nomination and appointment of a successor Voting Trustee shall be made by an instrument in writing and signed by the remaining Voting Trustees. Counterparts of such instrument shall be delivered to the Corporation, DSS and the Shareholder as provided in Section 18.01.

2.05. Acceptance of appointment for all initial or successor Voting Trustees as provided above may only be accomplished by their agreement to be bound by the terms of this Agreement, as signified by their signature on the counterpart of this Agreement on file at the Corporation's principal office in [city] [state], with copies to the other Voting Trustees, the Shareholder and DSS. Upon acceptance of such appointment by the nominee and approval by DSS, the initial or successor Trustee shall be vested with all the rights, powers, authority and immunities herein conferred upon the Trustees by this Agreement.

2.06. On the death, resignation, removal or disability of a Voting Trustee, the remaining Voting Trustees may exercise all of the rights, powers and privileges of the Voting Trustees as set forth in this Agreement until a successor accepts appointment. If no Trustees remain,

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<sup>6</sup> For purposes of this Agreement, the term "best efforts," signifies performance of duties reasonably in good faith, in the manner believed to be in the best interests of the Corporation but consistent with the national security concerns of the United States, and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances.

the Chairman or Acting Chairman of the Board of Directors of the Corporation shall, upon written notice to DSS, be automatically vested with all rights, powers, authorities and immunities of the Voting Trustees for an interim period not to exceed 30 days, except that the Shareholder shall, under such circumstances, have the right to appoint two new Voting Trustees pursuant to Section 2.01. The two new Voting Trustees shall nominate the third Trustee pursuant to Section 2.04.

### **ARTICLE III - Acknowledgment of Obligations**

3.01. All Voting Trustees shall become Directors of the Corporation. Voting Trustees may appoint or remove other Directors in their sole discretion. The Board of Directors shall elect a Chairman, who may be one of the Voting Trustees.

3.02. The terms of compensation including any and all benefits for the Voting Trustees shall be negotiated between the Voting Trustees and Shareholder, paid by the and shall not be changed during the Voting Trustees' tenure as Voting Trustees, shall be provided to DSS.

3.03. The Voting Trustees agree to perform the duties and be bound by all provisions of this Agreement and to exercise the power and perform the duties set forth herein according to their best efforts.

3.04. a. Each Voting Trustees agrees that, in order to be qualified under the Agreement, he must have had no prior or existing contractual, financial or employment relationship with either the Corporation or the Affiliates prior to their appointment. Each Voting Trustee further agrees, in order to maintain his qualification as a Trustee, not to establish any relationships of any kind with the Shareholder, the Affiliates or the Corporation except as may be required or permitted by the Agreement;

b. to be processed for and remain eligible for a United States Government personnel security clearance and reside within the United States during the term of the Agreement as a Trustee;

3.05. Each of the Voting Trustees, in recognition of his obligations under the Agreement, agrees:

a. that the Shares are being placed in a Voting Trust Agreement as a security measure designed to insulate the Corporation from any foreign control or influence that may arise from the Shareholder's ownership of the Shares;

b. that the United States Government (represented by DSS) is placing its reliance upon each Voting Trustee as United States citizen to exercise independently all prerogatives of ownership of the Corporation;

c. that one year from the effective date of this Agreement and annually thereafter, the Voting Trustees shall assure that a report is submitted to DSS in accordance with Section 9.02;

d. that each Voting Trustee, upon acceptance of appointment, shall be briefed by a representative of DSS on his responsibilities under the NISP and this Agreement;

e. that one year from the effective date of the Agreement and annually thereafter, the Voting Trustees shall meet with representatives of DSS in accordance with Section 9.01; and

f. that each Voting Trustee, upon acceptance of appointment and annually thereafter, shall execute, for delivery to DSS, a certificate affirming his agreement to be bound by, and accept his responsibilities under this Agreement.

g. not to accept direction from the Shareholder on any matter before the Voting Trustees or the Board of Directors of the Corporation and not to permit the Shareholder to exercise any control or influence over the business or management of the Corporation except as provided in this Agreement; and,

h. to ensure that the management appointed by the Voting Trustees fully understands his responsibility to exercise all prerogatives of management with complete independence from any foreign influence or control.

i. that each principal officer of the Corporation shall be furnished a policy statement on foreign ownership, control or influence (FOCI), stating that management has complete independence from the Shareholder; that they are barred from taking any action that would countermand this Agreement; and that any suspected violation of this Agreement shall be reported immediately to the Chairman of the GSC; and

j. to maintain records, journals and minutes of meetings and copies of all communications sent or received by them in the execution of their duties. Such data and copies of all information furnished to the Shareholder by the Corporation or the Voting Trustees shall be made available upon request for review by DSS at the office of the Trustees or the office of the Corporation.

3.06. The Voting Trustees shall appoint an independent financial auditor to conduct an annual audit of the Corporation's books and records. The Trustees shall advise DSS and the Shareholder of their action. Upon completion of the audit and review by the Trustees, and subject to the removal of any information not releasable under the Agreement, the audit report shall be forwarded to the Shareholder.



#### **ARTICLE IV - Indemnification and Compensation of Trustees**

4.01. The Voting Trustees in voting the Shares and in their capacity as directors of the Corporation shall vote and act on all matters in accordance with their best efforts.

4.02. The Corporation and the Shareholder jointly and severally shall indemnify and hold each Voting Trustee harmless from any and all claims arising from or in any way connected to his performance as a Voting Trustee or director of the Corporation under this Agreement except for his own individual gross negligence or willful misconduct. The Corporation and the Shareholder shall advance fees and costs as incurred in connection with the defense of any such claim.

4.03. The compensation, reasonable and necessary travel expenses and other expenses paid or incurred by the Voting Trustees in the administration of their Voting Trustee duties shall be borne and promptly paid by the Corporation upon submission to it of reasonably detailed documentation as appropriate. The Corporation hereby agrees to promptly pay such compensation, travel expenses and other expenses.

#### **ARTICLE V - Restrictions Binding on Subsidiaries of the Corporation**

5.01. The Parties here to agree that the provisions of the Agreement shall apply to; and shall be made to be binding upon; all present and future subsidiaries of the Corporation. The Corporation hereby agrees to undertake any and all measures, and provide such authorizations, as may be necessary to effectuate this requirement. The sale of, or termination of the Corporation's control over any such subsidiary shall terminate the applicability to it of the Agreement.

5.02. If the Corporation proposes to form a subsidiary, or to acquire ownership or control of another company, it shall give notice of such proposed action to DSS and shall advise DSS again immediately upon consummation of such formation or acquisition.

#### **• OPERATIONS**

#### **ARTICLE VI – Actions by the Voting Trustees**

6.01. The Voting Trustees shall adopt written standard operating procedures which shall be followed by the Voting Trustees in discharging their responsibilities under this Agreement. Said procedures shall state how the Voting Trustees will independently assess and monitor compliance by the Parties to this Agreement. Said procedures and any changes thereto shall be subject to prior approval by DSS. The operating procedures shall be maintained at the Corporation.

6.02. Voting Trustees shall hold quarterly meetings to be attended by the Voting Trustees. These meetings may be held at such time and at such place within the United States as shall be decided, from time to time, by a majority of the Voting Trustees; provided however, that

two of the meetings must be held at the Corporation. The Voting Trustees shall establish the agenda for these quarterly meetings, which shall include such items requested by Shareholder as are submitted to the Voting Trustees in advance in writing. Minutes of such meetings shall be prepared and retained by the Voting Trustees for review by DSS. Attendance by representatives of the Shareholder and management personnel if deemed appropriate by the Voting Trustees is permitted in accordance with the terms of paragraph 11.10a of this Agreement.

6.03. For the purpose of conducting the Corporation's business, a majority of the Voting Trustee present at an official meeting, either in person or by written proxy, shall have the right to cast, either in person or by written proxy, one vote on each question. Any voting Trustee may vote or may act in person or written proxy. In lieu of a meeting, action may also be taken on the business of the Corporation by a written instrument signed by all the Voting Trustees. Each Voting Trustee agrees to attend, except for good cause shown, all official meetings held in one year's time at which his attendance is formally requested pursuant to the Voting Trustees' procedures; provided however, that under no circumstances shall the Voting Trustees attend less than three of the quarterly meetings referenced in paragraph 6.02.

6.04. No proxy to vote the Shares may be given to, or voted by, any person other than one of the Voting Trustees.

6.05. Subject at all times to the responsibility to ensure compliance by the Corporation with NISP requirements and this Agreement, the Voting Trustees shall act in good faith as reasonably prudent persons to protect the legitimate economic interests of the Shareholder in the Corporation as an ongoing business concern.

6.06. The Government Security Committee (see Section 8.01 below) shall establish written policies and procedures and maintain oversight to provide assurance to itself and DSS that electronic communications between the Corporation and its subsidiaries and the Affiliates do not disclose classified or export controlled information without proper authorization. (Note: as used in this Agreement, the term "electronic communications" means the transfer of information via, including but not limited to, telephone conversations, facsimiles, teleconferences, video conferences or electronic mail.) Policies and procedures will also provide assurance that electronic communications are not used by the Parent(s) and/or any of its Affiliates to exert influence or control over the Corporation's business or management in a manner which could adversely affect the performance of classified contracts.

## **ARTICLE VII - Voting Discretion**

7.01. Except as otherwise provided in this Agreement, the Voting Trustees shall possess and shall be entitled to exercise in their sole and absolute discretion, with respect to any and all of the Shares at any time covered by this Agreement, the right to vote the same or to consent to any and every act of the Corporation in the same manner and to the same extent as if they were the absolute owners of such Shares in their own right. All decisions and

actions by the Voting Trustees pursuant to this Agreement shall be based on their independent judgment. All decisions and actions by the Voting Trustees shall be free of any control or influence from the Shareholder in any manner whatsoever except as specifically permitted in this Agreement. Communication of any nature and by any means from the Shareholder deemed by the Voting Trustees to be an attempt to assert any influence or control precluded by this Agreement, shall be reported immediately by the Voting Trustees to DSS.

7.02. The Shareholder shall have the right, at any time, to forward to the Voting Trustees written suggestions for their consideration, except that no such written suggestions may be made concerning persons to be nominated pursuant to Article V hereof, as successor Voting Trustees. Written notice of each such action shall be immediately provided to DSS; and copies of all such correspondence shall be retained for review by DSS.

7.03. In addition to the general authorities conferred by Section 7.01 above, the Voting Trustees are specifically authorized in the exercise of their sole and absolute discretion with respect to any and all of the Shares to vote for or consent to:

- a. the election of directors of the Corporation;
- b. any increase, reduction or reclassification of the capital stock of the Corporation;
- c. any changes or amendments to the Articles of Incorporation or Bylaws of the Corporation<sup>7</sup> involving matters other than those necessary pursuant to Section 7.04 below;
- d. the sale or disposal of the property, assets or business of the Corporation other than that prohibited in Section 7.03 below;
- e. the pledging, mortgaging or encumbering of any assets of the Corporation, except as described in Section 7.03 below, which any Shareholder might lawfully exercise; and
- f. any action with respect to the foregoing, or any other matter affecting the Corporation and not specifically described in Section 7.04 which any Shareholder might lawfully exercise.

7.04. Any action of the Voting Trustees with respect to the matters specified in this paragraph 7.04 which is taken without the approval of the Shareholder shall be void and shall have no effect. The Voting Trustees are not authorized to take any of the following actions without the express written approval of the Shareholder.

- a. the sale or disposal, in any manner, of capital assets or business of the Corporation;

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<sup>7</sup> The Bylaws and Articles of Incorporation of the Corporation shall be reviewed by DSS at the time of establishment of this Agreement and at least annually thereafter.

- b. the pledging, mortgaging or encumbering of the assets of the Corporation for purposes other than obtaining working capital or funds for capital improvements;
- c. the pledging, mortgaging or other encumbrances on the capital stock that they hold in trust;
- d. any merger, consolidation, reorganization or dissolution of the Corporation; or
- e. the filing or making of any petition under the federal bankruptcy laws or any similar law or statute of any state or any foreign country.

7.05. The Voting Trustees agree that they shall, upon written request by the Shareholder, take such action or actions as are necessary to recommend, authorize or approve the actions specified in paragraphs 7.04(d) and 704(e). The Trustees shall consult with the Shareholder concerning such action so that the Shareholder may have sufficient information to ensure that all such actions will be taken in accordance with applicable United States laws and regulations.

7.06. Anything in this Agreement to the contrary notwithstanding, the Voting Trustees may, upon the petition of Shareholder, authorize the sale of all or substantially all of the assets of the Corporation or any division thereof to a person (being a U.S. citizen) or non-foreign owned or controlled entity domiciled in the United States.

#### **ARTICLE VIII – Government Security Committee (GSC)**

8.01. There shall be established a permanent committee of the Corporation’s Board of Directors, to be known as the Government Security Committee (“GSC”), consisting of all Trustees/Directors and those officers of the Corporation who are also directors and who hold personnel security clearances at the level of the Corporation’s facility security clearance. The members of the GSC shall exercise their best efforts to ensure that the Corporation maintains policies and procedures to safeguard classified information in the possession of the Corporation and to ensure that the Corporation complies with this Agreement, the International Traffic in Arms Regulation (ITAR), Export Administration Regulation (EAR), and the National Industrial Security Program Operating Manual (“NISPOM”).

8.02. The members of the GSC shall exercise their best efforts to ensure the implementation within the Corporation of all procedures, organizational matters and other aspects pertaining to the security and safeguarding of classified and controlled unclassified information called for by this Agreement, including the exercise of appropriate oversight and monitoring of the Corporation’s operations to ensure that the protective measures contained in the Agreement are effectively maintained and implemented through its duration.

8.03. The GSC shall designate one of the Voting Trustee members to serve as Chairman of the GSC.

8.04. The Chairman of the GSC shall designate a member of the GSC to be Secretary of the GSC. The Secretary's responsibility shall include ensuring that all records, journals, and minutes of GSC meetings and other documents sent to or received by the GSC are prepared and retained for review by DSS.

8.05. A Facility Security Officer ("FSO") shall be appointed by the Corporation and shall be the principal advisor to the GSC concerning the safeguarding of classified information. The FSO's responsibility includes the operational oversight of the Corporation's compliance with the requirements of the NISP.

8.06. The members of the GSC shall exercise their best efforts to ensure that the Corporation develops and implements a Technology Control Plan ("TCP"), which shall be subject to review by DSS. The GSC shall have authority to establish the policy for the Corporation's TCP. The TCP shall prescribe measures to prevent unauthorized disclosure or export of controlled unclassified information consistent with applicable United States laws and regulations.

8.07. A Technology Control Officer ("TCO") shall be appointed by the Corporation and shall be the principal advisor to the GSC concerning the protection of controlled unclassified information and other proprietary technology and data subject to regulatory or contractual control by the U. S. Government. The TCO's responsibilities shall include the establishment and administration of all intracompany procedures, including employee training programs to prevent the unauthorized disclosure or export of controlled unclassified information and to ensure that the Corporation otherwise complies with the requirements of the ITAR and EAR.

8.08. Discussions of classified and controlled unclassified information by the GSC shall be held in closed sessions and accurate minutes of such meetings shall be kept and shall be made available only to such authorized individuals as are so designated by the GSC.

8.09. Upon taking office, the GSC members, the FSO and the TCO shall be briefed by a DSS representative on their responsibilities under the NISP and this Agreement.

8.10. Each member of the GSC shall exercise his best efforts to ensure that all provisions of the Agreement are carried out; that the Corporation's directors, officers, and employees comply with the provisions of this Agreement; and that DSS is advised of any known violation of, or known attempt to violate, any provision of this Agreement, appropriate contract provisions regarding security, United States Government export control laws and regulations, and the National Industrial Security Program Operation Manual.

8.11. Each member of the GSC shall execute, for delivery to DSS upon accepting his appointment and thereafter at each annual meeting of the Corporation with DSS as

established by this Agreement, a certificate acknowledging the protective security measures taken by the Corporation to implement this Agreement; and further acknowledging his agreement to be bound by and acceptance of his responsibilities under this Agreement and acknowledging that the United States Government (USG) has placed its reliance on him as United States (US) citizen and as the holder of a personnel security clearance to exercise his best efforts to ensure those matters set forth herein.

#### **ARTICLE IX - Annual Review and Certification**

9.01. Representative(s) of DSS, the Voting Trustees, other members of the GSC, the FSO, the Corporation's Chief Executive Officer (CEO), the Corporation's Chief Financial Officer (CFO) and the Shareholder shall meet annually to review the purpose and effectiveness of this Agreement and to establish a common understanding of the operating requirements and how they will be implemented. These meetings shall include a discussion of the following:

- a. whether this Agreement is working in a satisfactory manner;
- b. compliance or acts of noncompliance with the Agreement, NISPOM, or other applicable laws and regulations;
- c. necessary guidance or assistance regarding problems or impediment associated with the practical application or utility of the Agreement; and
- d. whether security controls, practices or procedures warrants adjustment.

9.02. The Voting Trustees shall jointly submit to DSS one year from the effective date of the Agreement and annually thereafter an implementation and compliance report. Such reports shall include the following information:

- a. a detailed description of the manner in which the Corporation is carrying out its obligation under the Agreement;
- b. changes to security procedures, implemented or proposed, and the reasons for those changes;
- c. a detailed description of any acts of noncompliance, whether inadvertent or intentional, with a discussion of what steps were taken to prevent such acts from occurring in the future;
- d. any changes or impending changes in the organizational structure of the Affiliates including any acquisitions, mergers, consolidations, reorganizations or divestitures

e. any changes or impending changes, to any of the Corporation's management<sup>8</sup> including reasons for such changes;

f. a statement, as appropriate, that a review of the records concerning all visits and communications between representatives of the Corporation and the Affiliates have been accomplished and the records are in order;

g. a detailed chronological summary of all transfers of classified and/or controlled unclassified information, if any, from the Corporation to the Affiliates, complete with an explanation of the United States Government authorization relied upon to effect such transfers. Copies of approved export licenses covering the reporting period shall be appended to the report; and

h. a list of current classified contracts of which the Corporation (to include its cleared divisions and cleared subsidiaries) is a party, including the percentage of income derived from each classified contract; and,

i. any other issues that could have a bearing on the effectiveness or implementation of this Agreement.

#### **ARTICLE X - Duty to Report Violations of the Agreement**

10.01. The Parties to this Agreement, agree to report promptly to DSS all instances in which the term and obligations of the Agreement may have been violated.

#### **• CONTACTS AND VISITS**

#### **ARTICLE XI - Regulated Meetings, Visits and Communications**

11.01. The Parties to the Agreement hereby agree to abide by the following procedures regarding meetings, visits, and communications between the Corporation or its subsidiaries and divisions and the Affiliates.

a. The Voting Trustees shall meet once each year with the Shareholder. Meetings with the Shareholder may be held more frequently than once each year if a majority of the Voting Trustees agree. Representatives of the Shareholder and management personnel of the Corporation may attend the quarterly meetings described in paragraph 6.02, if deemed appropriate by the Voting Trustees. Minutes of said meetings (to include a copy of the agenda) shall be prepared and retained by the GSC for review by DSS.

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<sup>8</sup> The term "management" for purposes of this agreement, is defined as those individuals in a position to develop, direct, or control the implementation of corporate policy.

(1) The Voting Trustees shall establish the agenda for any meetings with the Shareholder. Said agenda will include such Trustees in writing and received by the Voting Trustees sufficiently in advance of said meeting to afford consideration by the Voting Trustees.

(2) Any suggestions or requests by the Shareholder shall not be binding upon the Voting Trustees or the Corporation if the Voting Trustees shall determine that compliance with such suggestion or request is inconsistent with the provisions or purposes of this Agreement.

(3) Moreover, at said meetings, neither classified information shall be disclosed nor shall export-controlled technical data be disclosed except as authorized by law or regulation.

b. All proposed visits to the Corporation and its subsidiaries by any person who represents the Affiliates (including all of the directors, officers, officers, representatives, and agents of each) and all proposed visits to the Affiliates by any person who represents the Corporation or its subsidiaries (including all directors, officers, employees, representatives, and agents of each) as well as visits between such persons at other locations, must be approved in advance by the Voting Trustee designated to act on such requests. All requests for such approval shall be submitted in writing to the Corporation's FSO for routing to the designated Voting Trustee. Although strictly social contacts at other locations between the Corporation's personnel and any individual representing the Affiliates are not prohibited, written reports of such visits must be submitted after the fact to the FSO for filing with, and review by, the designated Voting Trustee.

c. A written request for approval of a visit must be submitted to the FSO not less than seven (7) calendar days prior to the date of the proposed visit. If any unforeseen exigency precludes compliance with this requirement, such request may be communicated via telephone or other electronic means to the FSO and promptly confirmed in writing. The exact purpose and justification for the visit must be set forth in detail sufficient to make a reasonable and prudent evaluation of the proposed visit. Each proposed visit must be individually justified and separate approval request must be individually justified and a separate approval request must be submitted for each. Representatives of DoD shall have the right to be present and to monitor all visits described in Section 11.01(b) above, no matter where they occur.

d. Upon receipt of a written request for approval of a visit, the FSO will promptly relay the information to the designated Voting Trustee, who, as soon as possible after being so advised, will indicate approval or disapproval of the request telephonically or by other expeditious means to the visiting parties. Such approval or disapproval will be promptly confirmed in writing. The GSC shall review periodically the records of any proposed and consummated visits that have occurred since the last review to ensure proper adherence to approved procedures and to verify that sufficient and proper justification was furnished.



11.02. Visits and other communications between the Corporation and its subsidiaries and the Affiliates on such commercial matters as proposed contracts, subcontracts, joint ventures, partnerships, and teaming arrangements shall be approved in advance by a majority of the Voting Trustees.

11.03. Nothing in this Agreement shall be construed to prevent the Corporation from supplying to the Shareholder financial data relating to the financial condition and financial operations of the Corporation. The Corporation shall also respond in writing through the Voting Trustees to written questions that the Shareholder may have concerning information contained in such reports. The Voting Trustees and the Shareholder shall engage in discussions to determine the format of such reporting. The format must be acceptable to DSS.

11.04. Chronological file of all documentation associated with meetings, visitations and communications, together with appropriate approvals or disapprovals and reports, required pursuant to this Article XI, shall be maintained by the GSC for review by DSS.

## **ARTICLE XII – DoD Remedies**

12.01. DoD reserves the right to impose any security safeguard not expressly contained in the Agreement that it believes is necessary to ensure that unauthorized access by the Affiliates to classified and controlled unclassified information is effectively precluded.

12.02. DSS may remove any Voting Trustee for acts in violation of this Agreement. Written notification of the proposed removal shall be sent by DSS to the Voting Trustee by certified mail. Any response to DSS' notice of proposed removal must be filed with the Director, DSS within thirty days of receipt of the proposed removal. The Director, DSS shall render a final decision on the proposed removal within thirty days of receipt of the response. During the pendency of the response process, the Voting Trustee shall continue to serve as a Trustee. However, if the Director, DSS upholds the proposed removal, the Voting Trustee, the Corporation and the Shareholder shall be notified that the Voting Trustee has been immediately removed as a Trustee and a Party to this Agreement.

12.03. Nothing contained in the Agreement shall limit or affect the authority of the head of United States Government agency<sup>9</sup> to deny or revoke the Corporation's access to classified and controlled unclassified information under its jurisdiction if it is determined by the User Agency that the national security so requires.

12.04. The Parties hereby assent and agree that the United States Government has the right, obligation and authority to require any or all of the following remedies in the event of a material breach of the Agreement:

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<sup>9</sup> The term "agency" has the meaning provided at 5 United States Code 552(f).

- a. The novation of the Corporation's classified contracts to a company not under FOCI. The costs of the novation to a qualified successor-in-interest will be borne by the Corporation;
- b. The termination of the Corporation's classified contracts and the denial of new classified contracts for the Corporation;
- c. The revocation of the Corporation's facility security clearance; and
- d. The suspension and/or debarment of the Corporation from participation in all Federal Government contracts, in accordance with the provisions of the Federal Acquisition Regulation.

12.05 Nothing in the Agreement limits the right of the United States Government to pursue criminal sanctions against the Corporation, or the Shareholder, or any Affiliates, or any director, officer, employee, representative, or agent of any of these companies, for violations of the criminal laws of the United States in connection with their performance of any of the obligations imposed by this Agreement, including but not limited to any violations of the False Statements Act 18 U.S.C. 287, or of federal criminal statutes pertaining to the unauthorized disclosure of classified information.

## • ADMINISTRATION

### ARTICLE XIII – Deposit of Shares

13.01. The Shareholder represents that it has transferred and assigned to the Voting Trustees all of the Shares of the Corporation, which shall be registered in the names of the Voting Trustees.

13.02. Additional Shares of the Corporation may be issued to the Voting Trustees. The certificates for such Shares, registered in the names of the Voting Trustees, shall be deposited with the Voting Trustee subject to the terms and conditions of this Agreement. During the term of this Agreement, no shares of the Corporation shall be held by the Shareholder, but all Shares shall be deposited with the Voting Trustees.

### ARTICLE XIV – Voting Trust Certificates

14.01. The Voting Trustees shall issue from time to time in respect of the Shares of the Corporation, Voting Trust Certificates for a like number of Shares of the Corporation. The Voting Trust Certificates shall incorporate or refer to this Agreement and shall be registered in the name of the Shareholder or in such name as the Shareholder shall specify in writing.

14.02. The Voting Trust Certificates shall be in a form approved by the Voting Trustees and shall be signed by the Voting Trustees. Subject to approval by DSS, the Voting Trust Certificates may be transferred by the Voting Trustees in accordance with rules established for that purpose by the voting Trustees and in accordance with this Agreement.

#### **ARTICLE XV - Replacement of Voting Trust Certificates**

15.01. In the event any Voting Trust Certificate becomes mutilated, destroyed, lost or stole, the Voting Trustees may, in their sole discretion, issue and deliver a new Voting Trust Certificate representing a like number of the Shares of the cleared Corporation. In the case of mutilated Voting Trust Certificates, the mutilated voting Trust Certificates shall be exchanged and canceled. In the case of destroyed, lost or stolen Voting Trust Certificates, new Voting Trust Certificates shall be issued upon production of evidence of such destruction, loss or theft that is satisfactory to the Voting Trustees, and upon receipt of indemnity satisfactory to them.

#### **ARTICLE XVI - Shares held by Voting Trustees**

16.01. The Certificates for the Shares of the Corporation deposited with the Voting Trustees that are not registered in the name of the Voting Trustees shall be surrendered and canceled, and new certificates shall be issued in the name of the voting Trustees. All certificates issued in the name of the Voting Trustees shall include on their face a statement that the certificates are issued pursuant to this Agreement. The entry of the ownership in the books of the Corporation shall also reflect that the certificates are issued pursuant to this Agreement.

16.02. The Shares of the Corporation shall be held, by the Voting Trustees and their successors for the purposes of and in accordance with this Agreement.

16.03. The Voting Trustees may cause any Shares of the Corporation held by them under this Agreement to be transferred to any name or names other than the Voting Trustees identified in this Agreement, if such transfer is necessary by reason of any Change in the individuals holding the office of Voting Trustee. Said individual(s) shall be successor Voting Trustee(s) and shall be approved in accordance with Article II of this Agreement.

16.04. Additional Shares of the Corporation acquired by, or issued to, the Shareholder shall be issued in the name of the Voting Trustees. The certificates shall be annotated and reflected in the books of the Corporation (reference Section 16.01).

16.05. Nothing in this Agreement shall restrict the right of the Shareholder or any successor owner of the Shares of the Corporation from selling, transferring, pledging or otherwise encumbering, all or a portion thereof, subject to the terms and conditions of this Agreement, as appropriate. However, DSS shall be advised in writing of any proposed sale of the Shares of the Corporation or assets of the Corporation prior to execution of any sales agreement.

## **ARTICLE XVII - Dividends**

17.01. During the term of this Agreement, the Shareholder, or any successor Shareholder, shall be entitled from time to time to receive from the Voting Trustees payments equal to cash dividends if any, collected by, or for, the account of the Voting Trustees based upon the Shares of the Corporation represented by the Voting Trust Certificates.

17.02. In the event the Voting Trustees receive any shares of capital stock of the Corporation held pursuant to this Agreement, the Voting Trustees shall accept such Shares of the Corporation and issue Voting Trust Certificates against such new Shares of the Corporation.

## **ARTICLE XVIII - Notices**

18.01. All notices referenced in this Agreement shall be given by mailing the same in a sealed postpaid envelope, by first class mail, or if the sending Party prefers, send the same by registered or certified mail, by courier or facsimile, addressed to the addresses shown below, or to such other addresses as the Parties may designate from time to time pursuant to this Section:

For the Corporation:

For the Shareholder:

For [Intermediate Parent]:

For [Ultimate Parent]:

For the Voting Trustees:

For DSS: (DSS Headquarters)

## **ARTICLE XIX - Inconsistencies with Other Documents**

19.01. In the event that any resolution, regulation or bylaws(s) of any of the Parties to this Agreement is found to be inconsistent with any provision hereof, the terms of this Agreement shall control.

## **ARTICLE XX - Governing Law; Construction**

20.01. This Agreement shall be construed so as to comply with all applicable United States statutes, executive orders and regulations. To the extent consistent with the rights of the United States the laws of the State of [JURISDICTION] shall apply to questions concerning

the rights, powers, and duties of the Corporation, the Shareholder, [Intermediate Parent], and [Ultimate Parent] under, or by virtue of, this Agreement.

20.02. In all instances consistent with the context, nouns and pronouns of any gender shall be construed to include the other gender.

• **TERMINATION**

**ARTICLE XXI** - Termination, Amendment and Interpretations of this Agreement.

21.01. Unless extended in accordance with the law applicable hereto, this Agreement shall terminate without any action of or notice by the Voting Trustees, the Corporation or the Shareholder, ten (10) years from the effective date of this Agreement.

21.02. This Agreement may be terminated by DSS as follows:

- a. in the event of a sale of the business or all of the Shares of the Corporation to a company, partnership, joint venture, person or other legal entity not under FOCI;
- b. when the existence of this Agreement is no longer necessary to maintain a Facility Security Clearance for the Corporation.
- c. when the continuation of a Facility Security Clearance for the Corporation is no longer necessary;
- d. when there has been a breach of this Agreement that requires it to be terminated; or when DSS otherwise determines that termination is in the interest of the national security of the United States; or,
- e. when the Shareholder and the Corporation for any reason and at any time, jointly petition DSS to terminate this Agreement; however, DSS has the right to full disclosure of the reason or reasons therefor, and has the right to determine, in its sole discretion, whether such petition should be granted.

21.03. If DSS determines that this Agreement should be terminated for any reason, it shall provide the Corporation and the Shareholder with thirty (30) days written advance notice of its intent and the reasons therefor.

21.04. DSS may refuse to terminate this Agreement when continuance is necessary in the interest of the national security of the United States.

21.05. This Agreement constitutes full and complete understanding between the Parties hereto as set out in full detail herein, and any changes, modifications, or amendments affecting this Agreement will be binding and valid only if in writing, signed and dated by all parties hereto.

21.06. The Voting Trustees are authorized to consult with the Shareholder concerning any proposed amendments to, or termination of this Agreement. Documentation concerning such consultations shall be prepared and retained by the Voting Trustees for review by DSS.

21.07. The Parties to this Agreement agree that, with respect to any questions concerning interpretations of this Agreement, or whether a proposed activity is permitted hereunder, shall be referred to DSS and DoD shall serve as final arbiter/interpreter of such matters.

**ARTICLE XXII - Actions Upon Termination of the Agreement**

22.01. Upon termination of this Agreement, the Voting Trust Certificates shall be returned to the Shareholder, or such other registered owner as might then exist, and the entry of ownership in the books of the Corporation shall reflect the termination of this Agreement.

22.02. DSS shall furnish the Corporation and the Shareholder written notice of the termination of this Agreement.

22.03. Upon termination of this Agreement, all further obligations or duties of the Voting Trustees under this Agreement shall cease.

**ARTICLE XXIII - Place of Filing**

23.01. Upon execution and until the termination of this Agreement, one original counterpart shall be filed at the principal office of the Corporation, located in [city], [state].

**• EXECUTION**

24.01. This Agreement may be executed in several counterparts, each of which shall be deemed to be an original, and all of such counterparts shall together constitute but one and the same instrument. All Parties to this Agreement are entitled to retain an executed counterpart of this Agreement.

IN WITNESS WHEREOF, the Parties hereto have duly executed this Agreement which shall not become effective until duly executed by DSS.

\_\_\_\_\_  
Signature of Witness/Date

By \_\_\_\_\_  
Signature and Date

\_\_\_\_\_  
Name Printed or Typed & Title  
FOR THE CORPORATION

\_\_\_\_\_  
Signature of Witness/Date

By \_\_\_\_\_  
Signature and Date

\_\_\_\_\_  
Name Printed or Typed/Title  
FOR THE SHAREHOLDER

\_\_\_\_\_  
Signature of Witness/Date

\_\_\_\_\_  
Name Printed or Typed & Title  
VOTING TRUSTEE

\_\_\_\_\_  
Signature of Witness/Date

By \_\_\_\_\_  
Signature and Date

\_\_\_\_\_  
Name Printed or Typed & Title  
VOTING TRUSTEE

\_\_\_\_\_  
Signature of witness/Date

\_\_\_\_\_  
Name Printed or typed & Title  
VOTING TRUSTEE

\_\_\_\_\_  
Signature of Witness/Date

By \_\_\_\_\_  
Signature and Date

\_\_\_\_\_  
Name Printed or typed & Title  
FOR [Intermediate Parent]

\_\_\_\_\_  
Signature of witness/Date

By \_\_\_\_\_  
Signature and Date

\_\_\_\_\_  
Name Printed or Typed & Title  
FOR [Ultimate Parent]

\_\_\_\_\_  
Signature of Witness/Date

By \_\_\_\_\_  
Signature and Date

\_\_\_\_\_  
DREW R. WINNEBERGER  
Acting Director, Industrial Security  
Policy and Programs  
DEFENSE SECURITY SERVICE  
FOR THE DEPARTMENT OF DEFENSE

Effective Date \_\_\_\_\_  
(Date of DSS signature)



**VOTING TRUSTEE CERTIFICATE**

Pursuant to the provisions of the National Industrial Security Program Operating Manual and the Voting Trust Agreement among \_\_\_\_\_, Inc., \_\_\_\_\_ Inc., and the Voting Trustees for the stock of \_\_\_\_\_, Inc., under which I will be one of the Voting Trustees, the following assurances are provided:

1. I am a United States citizen currently residing within the continental United States, capable of assuming full responsibility for voting the stock of \_\_\_\_\_, Inc., and exercising the management prerogative relating thereto in such a way as to insure that \_\_\_\_\_, Inc., and any of its parent companies will be effectively insulated from \_\_\_\_\_, Inc., the cleared facility.
2. I agree to be processed for a personnel security clearance to the same level as the \_\_\_\_\_, Inc., facility clearance. I understand that my personnel clearance must be maintained while serving as a Voting Trustee for \_\_\_\_\_, Inc.
3. I am a completely disinterested individual with no prior involvement with either (insert name of cleared company) or any of its affiliates or the corporate body in which it is located or the (insert name of foreign interest) or any of its affiliates.
4. I fully understand the functions and the responsibilities of a Voting Trustee under the proposed proxy agreement and I am willing to accept those responsibilities.

Signed: \_\_\_\_\_

Dated: \_\_\_\_\_

Witness: \_\_\_\_\_

GOVERNMENT SECURITY COMMITTEE MEMBER CERTIFICATE

By execution of this Certificate, I acknowledge the protective security measures that have been taken by \_\_\_\_\_ through resolutions dated \_\_\_\_\_, to implement the Voting Trust Agreement (the "Agreement"), copies of which are attached.

I further acknowledge that the United States Government has placed its reliance on me as a United States citizen and as a holder of a personnel security clearance to exercise all appropriate aspects of the Agreement; to assure that members of the \_\_\_\_\_ Board of Directors, \_\_\_\_\_ officers, and \_\_\_\_\_ employees comply with the provisions of the Agreement; and to assure that the Defense Security Service is advised of any violation of, or attempt to violate, any undertaking in the Agreement, appropriate contract provisions regarding security or the National Industrial Security Program Operating Manual, DoD 5220.22-M of which I am aware.

Dated: \_\_\_\_\_

Signature: \_\_\_\_\_

\_\_\_\_\_  
Name Printed or Typed