

Mod 4 Job Aid: PROXY AGREEMENT

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

**PROXY AGREEMENT
WITH RESPECT TO CAPITAL STOCK
OF
(CORPORATION)**

Reviewed 2/3/06

Table of Contents
PROXY AGREEMENT
WITH RESPECT TO CAPITAL STOCK
OF
(CORPORATION)

<u>Topic</u>	<u>Page</u>
• RECITALS	1
• ORGANIZATION	2
ARTICLE I Establishment of Proxy.....	
ARTICLE II Appointment of Proxy Holders.....	
ARTICLE III Acknowledgement of Obligations.....	
ARTICLE IV Indemnification and Compensation of Proxy Holders.....	
ARTICLE V Restrictions Binding on Subsidiaries of the Corporation....	
• OPERATIONS	
ARTICLE VI Actions by the Proxy Holders.....	
ARTICLE VII Voting Discretion.....	
ARTICLE VIII Government Security Committee.....	
ARTICLE IX Annual Review and Certification.....	
ARTICLE X Duty to Report Violations of the Agreement.....	
• CONTACTS AND VISITS	
ARTICLE XI Regulated Meetings, Visits and Communications.....	
ARTICLE XII DoD Remedies.....	
• ADMINISTRATION	
ARTICLE XIII Grants of Proxy, Restrictive Legend and Sale of Stock....	
ARTICLE XIV Dividends.....	
ARTICLE XV Notices.....	
ARTICLE XVI Inconsistencies with Other Documents.....	
ARTICLE XVII Governing Law and Construction.....	
• TERMINATION	
ARTICLE XVIII Termination, Amendment and Interpretations of the Agreement.....	
ARTICLE XIX Actions Upon Termination of the Agreement.....	
ARTICLE XX Place of Filing.....	
• EXECUTION	

**PROXY AGREEMENT
WITH RESPECT TO CAPITAL STOCK
OF
(CORPORATION)**

(Address)

This Proxy Agreement (Agreement) is made this _____ day of _____ 20____ by and between [Ultimate Parent], a [country] corporation; [Intermediate Parent], a [State or country] Corporation (the Shareholder); [Corporation], a [State} corporation (the Corporation); [Name of Proxy Holder], [Name of Proxy Holder] and [Name of Proxy Holder] and their successors appointed as provided in the Agreement (each individually a Proxy Holder” and collectively the “Proxy Holders”), 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, [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, the Shareholder, [the Immediate Parent] owns all the Shares of the Corporation; 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 ¹ of the United States Government , including, without limitation, the DoD; and

¹ 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").

WHEREAS, the offices and plants of the Corporation require facility security clearances ² 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

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 ³and controlled unclassified⁴ 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, in order to comply fully with the NISP, the parties hereto have agreed that the voting control of the shares should be vested in citizens of the United States:

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

³ "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.

⁴ "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.

NOW THEREFORE, in consideration of the premises and of the mutual undertakings of the Parties hereinafter set forth, a Proxy Agreement in respect of the shares is hereby created and established, subject to the following terms and conditions, to all and every one of the Parties expressly assent and agree:

ORGANIZATION

ARTICLE I - Establishment of Proxy Agreement

1.01. The establishment of this Agreement involves the selection of no less than three Proxy Holders with the qualifications set forth in Section 2.01. The Proxy shall be granted by the Shareholder to the Proxy Holders pursuant to Article XIII. DoD 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 Proxy Holders

2.01. Initial Proxy Holder nominees will be chosen by the Shareholder. The initial and successor Proxy Holders 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.⁵ The appointment of initial and successor Proxy Holders shall not become effective until approved by DSS.

2.02. Except as authorized by Section 2.03 below, the Shareholder may not remove a Proxy Holder except for acts of gross negligence or willful misconduct while in office. The Shareholder may remove a Proxy Holder for such acts by an instrument signed by or on behalf of the Shareholder and filed with the Corporation at its principal office in [city], [state]. The Shareholder must notify DSS 20 days prior to filing such instrument, and notice must be given pursuant to Section 15.01 of this Agreement. However, if such removal would result in only one remaining Proxy Holder, then such an instrument of removal shall not be effective until a successor Proxy Holder who is qualified to serve hereunder has accepted appointment.

2.03 With the approval of DoD, the Shareholder may also remove a Proxy Holder for acts in violation of the Agreement, including the inability to protect the legitimate economic interest of the Shareholder pursuant to Section 6.05. The Shareholder must petition DoD for permission to remove a Proxy Holder for acts in violation of the Agreement. However, DoD has the right to determine, in its sole discretion, whether such petition should be granted.

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

2.04. Any Proxy Holder may at any time resign by submitting to the Corporation at its principal office in [city], [state], a resignation in writing, with notice to the Shareholder and DSS pursuant to Section 15.01. Such resignation shall be effective on the date of resignation stated by the Proxy Holder. No formal acceptance of resignation by the Corporation is necessary to make the resignation effective. Upon resignation, a Proxy Holder's obligations and responsibilities under the Agreement are completed. However, if such resignation would result in only one remaining Proxy Holder, then the resignation shall not be effective until a successor Proxy Holder who is qualified to serve hereunder has accepted appointment.

2.05. Nomination and appointment of successor Proxy Holders shall be accomplished as follows:

a. In the event of the death, resignation, removal or inability to act of any Proxy Holder, the Corporation shall give prompt written notice to DSS and the Shareholder. The remaining Proxy Holders shall nominate a successor Proxy Holder using their best efforts⁶ 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 Proxy Holders shall use their best efforts and diligence to nominate an alternate successor Proxy Holder.

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

c. If the Shareholder vetoed three successive nominees proposed by the remaining Proxy Holders, the third nominee, upon approval by DSS, shall be accepted absent an appeal submitted by the Shareholder to DSS for reasonable cause.

d. Any nomination and appointment of a successor Proxy Holder shall be made by an instrument in writing signed by the remaining Proxy Holders. Counterparts of such instrument shall be delivered to the Corporation, DSS and the Shareholder as provided in Section 15.01.

⁶ 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.

2.06. Acceptance of appointment for all initial or successor Proxy Holders 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 Proxy Holders the Shareholder and DSS. Upon acceptance of such appointment by the nominee and approval by DSS, the initial or successor Proxy Holder shall be vested with all the rights, powers, authority and immunities herein conferred upon the Proxy Holders by this Agreement.

2.07. On the death, resignation, removal or disability of a Proxy Holder, the remaining Proxy Holders may exercise all of the rights, powers and privileges of the Proxy Holders as set forth in this Agreement until a successor accepts appointment. If no Proxy Holders remain, 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 Proxy Holders for an interim period not to exceed 30 days, except that the Shareholder shall, under such circumstances, have the right to appoint two new Proxy Holders pursuant to Section 2.01. The two new Proxy Holders shall nominate the third Proxy Holder pursuant to Section 2.05.

ARTICLE III - Acknowledgment of Obligations

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

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

3.03. The Proxy Holders 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 Proxy Holder 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 Proxy Holder further agrees, in order to maintain his qualification as a Proxy Holder, 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 Proxy Holder;

3.05. Each of the Proxy Holders, in recognition of his obligations under the Agreement, agrees:

a. that the Shares are being placed in a Proxy 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 is placing its reliance upon each Proxy Holder as United States citizen to exercise independently all prerogatives of ownership of the Corporation;

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

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

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

f. that each Proxy Holder, 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 the Agreement;

g. not to accept direction from the Shareholder on any matter before the Proxy Holders 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 the Agreement;

h. to ensure that the management appointed by the Proxy Holders 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 the 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 Proxy Holders shall be made available upon request for review by DSS at the office of the Proxy Holders or the office of the Corporation.

3.06. The Proxy Holders shall appoint an independent financial auditor to conduct an annual audit of the Corporation's books and records. The Proxy Holders shall advise DSS and the Shareholder of their action. Upon completion of the audit and review by the Proxy Holders, 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 Proxy Holders

4.01. The Proxy Holders 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 Proxy Holder harmless from any and all claims arising from or in any way connected to his performance as a Proxy Holder or director of the Corporation under the 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 Proxy Holders in the administration of their Proxy Holder 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 Proxy Holders

6.01. The Proxy Holders shall adopt written standard operating procedures which shall be followed by the Proxy Holders in discharging their responsibilities under this Agreement. The operating procedures shall be maintained by the Proxy Holders for review by DSS. The

Shareholder may review the operating procedures only with the advanced written approval of DoD. Shareholder appeals of any provision of the operating procedures shall be forwarded to DSS. DoD has the right to determine, in its sole discretion, whether such appeal should be favorably considered.

6.02. Proxy Holders shall hold regularly scheduled meetings. 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 Proxy Holders. At least four meetings shall be held each year. Minutes of such meetings shall be prepared and retained by the Proxy Holders for review by DSS.

6.03. For the purpose of conducting the Corporation's business, a majority of the Proxy Holder 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, shall have the right to cast one vote on each question. In lieu of a meeting, action may also be taken on the business of the Corporation by a writing signed by all the Proxy Holders. Each Proxy Holder agrees to attend, except for good cause shown, not less than 50% of all official meetings held in one year's time at which his attendance is formally requested pursuant to the Proxy Holders' procedures.

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

6.05. Subject at all times to the responsibility to ensure compliance by the Corporation with NISP requirements and the Agreement, the Proxy Holders 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 Proxy Holders 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 the 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 Proxy Holders pursuant to this Agreement shall be based on their independent judgment. All decisions and actions by the Proxy Holders shall be free of any control or influence from the Shareholder in any manner whatsoever except as specifically permitted in the Agreement. Communication of any nature and by any means from the Shareholder deemed by the Proxy Holders to be an attempt to assert any influence or control precluded by the Agreement, shall be reported immediately by the Proxy Holders to DSS.

7.02. In addition to the general authorities conferred by Section 7.01 above, the Proxy Holders 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 Corporation⁷ 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.
- f. any action with respect to the foregoing, or any other matter affecting the Corporation and not specifically described in Section 7.03 which any Shareholder might lawfully exercise.

7.03. The Proxy Holders 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;
- 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. any merger, consolidation, reorganization or dissolution of the Corporation; or
- d. 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 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.

7.04. The Proxy Holders 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 Section 7.03. The Proxy Holders 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. Any action of the Proxy Holders with respect to the matters specified in Section 7.03 which is taken without the approval of the Shareholder shall be void and shall have no effect.

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 Proxy Holders/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 the 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 the 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 Proxy Holder 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 the 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 the Agreement; and that DSS is advised of any known violation of, or known attempt to violate, any provision of the 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 Proxy Holders, other members of 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 Chief Executive Officer of the Corporation and the Chairman of the GSC 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, to any of the Corporation's management including reasons for such changes;
- e. 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;
- f. 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
- g. 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,
- h. 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 the 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 and its subsidiaries and divisions and the Affiliates.

a. The Proxy Holders shall schedule a meeting once each year with the Shareholder. Meetings with the Shareholder may be held more frequently than once each year if a majority of the Proxy Holders agree. Representatives of Corporation may attend these meetings if requested by the Proxy Holders. The Proxy Holders may convene a meeting with the Shareholder at any time as long as the agenda is limited to the matters described in Section 7.03 of the Agreement. For any meetings to be attended by Shareholder representatives, a written agenda shall be prepared and submitted to DSS for approval. The meeting shall not be consummated until the Proxy Holders receive the approval of DSS. Classified and controlled unclassified information shall not be disclosed to the Shareholder except as specifically authorized by applicable law or regulation. Suggestions or requests of the Shareholder representatives present at these meetings shall not be binding on the Proxy Holders or the Corporation. Minutes of meetings in which Shareholder representatives are in attendance shall be prepared and retained by the GSC for review by DSS.

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 Proxy Holder 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 Proxy Holder. 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 Proxy Holder.

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 Proxy Holder, 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 Proxy Holders.

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 Proxy Holders to written questions that the Shareholder may have concerning information contained in such reports. The Proxy Holders 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. Nothing contained in the Agreement shall limit or affect the authority of the head of United States Government agency⁸ to deny or revoke the Corporation's access to classified

⁸ The term "agency" has the meaning provided at 5 United States Code 552(f).

and controlled unclassified information under its jurisdiction if it is determined by the User Agency that the national security so requires.

12.03. 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:

- 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.

12.04. Nothing in the Agreement limits the right of the USG 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 – Grant of Proxy, Restrictive Legend and Sale of Stock

13.01. The Shareholder hereby appoints the Proxy Holders as its proxies, to have all rights, powers and authority to exercise all voting rights with respect to the Shares, subject to the terms and conditions set forth in the Agreement.

13.02. It is the essence of the Agreement that none of the rights, powers and authority which the agreement confers on the Proxy Holders may be terminated at any time or in any manner other than as provided in the Agreement.

13.03. Concurrently with the execution and delivery of the Agreement, the Shareholder shall annotate all certificates representing the Shares with the legend set out below to reflect that the Shares are subject to a proxy which is terminable only at such time or times, and in such manners, as are provided in the Agreement

The shares represented by this certificate are subject to a Proxy Agreement dated _____, under which the owner of these Shares has granted to the Proxy Holders named therein, and to their successors, those voting rights with respect to the shares represented hereby that are set forth in said agreement, which rights are terminable only at such time or times, and in such manner as are provided in said agreement. The purpose of said agreement is to meet the requirements of the Department of Defense so that the facility security clearances of the Corporation will be continued.

13.04. All certificates representing the Shares shall be deposited with the Proxy Holders at their office in trust for the Shareholder and available for review by DSS and the Shareholder. Receipts for such certificates shall be provided to the Shareholder.

13.05. If additional Shares of the Corporation are issued to the Shareholder, it shall be a condition of such issuance that the Shareholder execute a supplemental Proxy Agreement, containing the same terms and conditions set forth in the Agreement, appointing the Proxy Holders as its proxies to exercise all voting rights with respect to such shares; and the certificates for such shares shall be annotated in the same manner as provided in Section 13.03 above.

13.06. Nothing in the Agreement shall restrict the right of the Shareholder or any successor owner of the Shares from selling, transferring, pledging or otherwise encumbering, all or a portion thereof, subject to the terms and conditions of the Agreement, as appropriate, and the aforementioned restrictive legend shall not purport nor be construed to limit any owner's ability to effect any such sale, transfer or encumbrance. However, DSS shall be advised in writing of any proposed sale of the Shares or assets of the Corporation prior to the execution of any sales agreement. Conversely, the Proxy Holders shall not have the power to sell or otherwise transfer or pledge or otherwise encumber the Shares.

ARTICLE XIV - Dividends

14.01. During the term of the Agreement, the Shareholder, or any successor Shareholder, shall be entitled from time to time to receive from the Proxy Holders payments equal to cash dividends, if any, collected by or for the account of the Proxy Holders upon the Shares.

14.02. In the event the Proxy Holders receive any shares as a dividend upon the Shares, the Proxy Holders shall accept such shares.

ARTICLE XV - Notices

15.01. All notices required or permitted to be given to the Parties to the Agreement shall be given by mailing the same in a sealed post paid envelope, via registered or certified mail, or sending the same 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 DSS:

ARTICLE XVI -Inconsistencies with Other Documents

16.01. In the event that any resolution, regulation or bylaw of any of the Parties to the Agreement is found to be inconsistent with any provisions hereof, the terms of the Agreement shall control.

ARTICLE VII - Governing Law; Construction

17.01. The Agreement shall be construed so as to comply with all applicable United States laws, regulations, and Executive Orders except that, to the extent not inconsistent with the right of the United States hereunder, 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, the Agreement.

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

ARTICLE XVIII - Termination, Amendment and Interpretations of the Agreement.

18.01. Unless it is terminated earlier under the provisions of paragraph 18.02, this agreement shall expire ten (10) years from the date of execution without any action being required of any of the parties to the agreement. However, if the Parent Corporation and the Corporation together request that DSS continue the agreement past the expiration date, DSS may extend the term of the agreement while a new agreement is being negotiated. Any request to extend the term of the agreement made under this paragraph shall be submitted to DSS no later than ninety (90) days prior to the expiration date of the agreement.

18.02. The Agreement may only 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 or person not under FOCI;

b. when the existence of the 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 the Agreement that requires it to be terminated; or when DoD otherwise determines that termination is in the national interest; or

e. when the Shareholder and the Corporation for any reason and at any time, petition DSS to terminate this Agreement; however, DSS has the right to receive full disclosure of the reason or reasons therefor, and has the right to determine, in its sole discretion, whether such petition should be granted.

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

18.04. DoD may only refuse to terminate this Agreement when continuance is necessary in the interest of the national security of the United States.

18.05. The Agreement may be amended by an agreement in writing executed by all parties.

18.06. The Proxy Holders 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 Proxy Holders for review by DSS.

18.07. 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 XIX - Actions Upon Termination of the Agreement

19.01. Upon termination of the Agreement in any manner as above provided, the restrictive legend affixed to the certificates representing the Shares will be removed.

19.02. The DSS shall furnish the Corporation and the Shareholder with written notice of the termination of this Agreement.

19.03. Upon termination of the Agreement, all further obligations or duties of the Proxy Holders under the Agreement shall cease.

ARTICLE XX - Place of Filing

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

• **EXECUTION**

The 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 the Agreement which shall not become effective until duly executed by the DoD.

Signature of Witness/Date

By:_____
Signature and Date

Name Printed or Typed & Title
FOR THE CORPORATION

Signature of Witness/Date

By:_____

Name Printed or Typed/Title
FOR THE SHAREHOLDER

Signature of Witness/Date

Name Printed or Typed & Title
PROXY HOLDER

Signature of Witness/Date

By:_____
Signature & Date

Name Printed or Typed & Title
PROXY HOLDER

Signature of witness/Date

Name Printed or Typed & Title
PROXY HOLDER

Signature of Witness/Date

By: _____
Signature & Date

Name Printed or Typed & Title
FOR [Intermediate Parent]

Signature of witness/Date

By: _____
Signature & Date

Name Printed or Typed & Title
FOR [Ultimate Parent]

Signature of Witness/Date

By: _____
Signature & 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)

PROXY HOLDER CERTIFICATE

Pursuant to the provisions of the National Industrial Security Program Operating Manual and the proposed Proxy Agreement among _____, Inc., _____ Inc., and the proxy holders for the stock of _____, Inc., under which I will be one of the proxy holders, 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 proxy holder 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 proxy holder 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 Proxy 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