

CUSTOMER CONTRACT REQUIREMENTS
Small Advanced Capabilities Missile (SACM)
CUSTOMER CONTRACT 2016-305-7

CUSTOMER CONTRACT REQUIREMENTS

The following customer contract requirements apply to this contract to the extent indicated below. If this contract is for the procurement of commercial items under a Government prime contract, as defined in FAR Part 2.101, see Section 3 below.

1. DoD FAR Supplement Clauses DoD Contracts. The following contract clauses are incorporated by reference from the Department of Defense Federal Acquisition Regulation Supplement and apply to the extent indicated. In all of the following clauses, "Contractor" and "Offeror" mean Seller except as otherwise noted.

252.223-7002 Safety Precautions for Ammunition and Explosives (MAY 1994). This clause applies only if this contract involves ammunition or explosives. "Government" means Government or Buyer in paragraph (b)(2), each time it appears in (e), (f)(1), (f)(2), the first time it appears in (g)(1)(i), and in (g)(3). "Government" means Buyer in paragraphs (c)(3), (c)(4), (c)(5), and the second time it appears in (g)(1)(i). "Contracting Officer" means Contracting Officer and Buyer in paragraph (g)(4). "Contracting Officer" means Buyer in paragraphs (c)(1), (c)(2), (c)(3), (c)(4), (c)(5), and each time it appears in (d).

252.223-7003 Change in Place of Performance-Ammunition and Explosives (DEC 1991). This clause applies only if DFARS 252.223-7002 is applicable to this contract. The term "Contracting Officer" means Buyer.

252.223-7006 Prohibition on Storage, Treatment, And Disposal of Toxic Or Hazardous Materials (SEP 2014). This clause applies if the contract requires, may require, or permits Seller access to a DoD installation. Seller shall include this clause in any of their subcontracts.

252.223-7007 Safeguarding Sensitive Conventional Arms, Ammunition, and Explosives (SEP 1999). This clause applies only if (1) this contract, or a subcontract at any tier, is for the development, production, manufacture, or purchase of arms, ammunition, and explosives (AA&E) or (2) AA&E will be provided to Seller, or to a subcontractor at any tier, as Government-furnished property. "Arms, ammunition, and explosives (AA&E)" means those items within the scope (chapter 1, paragraph B) of DoD 5100.76-M, Physical Security of Sensitive Conventional Arms, Ammunition, and Explosives.

2. Prime Contract Special Provisions The following prime contract special provisions apply to this purchase order

Article I. INTELLECTUAL PROPERTY*Definitions*

- (a) i°Consortium Management Firm (CMF)i± refers to the third party corporation or organization acting on behalf of the National Armaments Consortium (NAC) to execute and administer the efforts under the Ordnance Technology Base Agreement.
- (b) i°Datai± means recorded information, regardless of form, the media on which it may be recorded, or the method of recording. The term includes, but is not limited to, data of a scientific or technical nature, computer software, and documentation thereof.
- (c) i°Developmenti± or i°Developedi± means the systematic use, under whatever name, of scientific and technical knowledge in the design, development, test, or evaluation of an existing or potential new technology, product or service (or of an improvement in an existing technology, product or service) for the purpose of meeting specific performance requirements or objectives. Development includes the research functions of design engineering, prototyping, and engineering testing.
- (d) i°National Armaments Consortium (NAC)i± is a consortium made up of members from industry, academia, non-profit organizations, and not-for-profit organizations.

- (e) "NAC Member Organization" refers to the members participating in the NAC.
- (f) "Ordnance Technology Initiative" means an activity proposed by an Ordnance Technology Initiative Recipient (as defined below) and selected by the Government for award under the Ordnance Technology Base Agreement. An Ordnance Technology Initiative will be conducted by a NAC Member Organization either individually or among and between NAC Member Organizations for the agreed upon period of performance.
- (g) "Ordnance Technology Initiative Agreement" means the agreement between the CMF and the Ordnance Technology Initiative Recipient(s) whose initiative proposal was evaluated and competitively selected by the Government for funding.
- (h) "Ordnance Technology Initiative Recipient" means the NAC Member Organization(s) issued an Ordnance Technology Initiative Agreement by the CMF, and includes Buyer.
- (i) "Ordnance Technology Base Agreement" or "Agreement" means the agreement between the NAC, CMF and the NAC Member Organization or a team of NAC Member Organizations.

Section 1.0 CONFIDENTIAL INFORMATION

The "CONFIDENTIAL, PROPRIETARY, AND TRADE SECRET INFORMATION AND MATERIALS" article in The Boeing Company General Provisions is hereby deleted and replaced by the following:

Section 1.01 *Definitions*

- (a) "Disclosing Party" means either the Buyer, Seller, the CMF, other NAC Member Organizations or the Government who discloses Confidential Information as contemplated by the subsequent Paragraphs.
- (b) "Receiving Party" means the Buyer, Seller, CMF, other NAC Member Organizations or the Government who receives Confidential Information disclosed by a Disclosing Party.
- (c) "Confidential Information" means information and materials of a Disclosing Party which are designated as confidential or as a Trade Secret (as defined below) in writing by such Disclosing Party, whether by letter or by use of an appropriate stamp or legend, prior to or at the same time any such information or materials are disclosed by such Disclosing Party to the Receiving Party. Notwithstanding the foregoing, materials and other information which are orally, visually or electronically disclosed by a Disclosing Party, or are disclosed in writing without an appropriate letter, stamp, or legend, shall constitute Confidential Information or a Trade Secret if such Disclosing Party, within ten (10) calendar days after such disclosure, delivers to the Receiving Party a written document or documents describing the material or information and indicating that it is confidential or a Trade Secret, provided that any disclosure of information by the Receiving Party prior to receipt of such notice shall not constitute a breach by the Receiving Party of its obligations under this Paragraph. "Confidential Information" includes any information and materials considered a Trade Secret by the NAC or NAC member organizations. "Trade Secret" means all forms and types of financial, business, scientific, technical, economic, or engineering information, including patterns, plans, compilations, program devices, formulas, designs, prototypes, methods, techniques, processes, procedures, programs, or codes, whether tangible or intangible, and Buyer-provided specifications and information pertaining to qualification, certification, manufacturing, and/or quality testing and procedures, and Buyer-provided tangible items and software containing, conveying or embodying such information, whether or how stored, compiled, or memorialized physically, electronically, graphically, photographically, or in writing if "C
 - (i) The owner thereof has taken reasonable measures to keep such information secret; and
 - (ii) The information derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable through proper means by, the public.

Section 1.02 *Exchange of Information*

The Government may from time to time disclose Government Confidential Information to Buyer, Seller, or other NAC Member Organizations in connection with the Ordnance Technology Initiatives and Buyer, Seller and other NAC member organizations may from time to time disclose Ordnance Technology Initiative Recipient Trade Secrets to each other and to the Government in connection with the

Ordnance Technology Initiatives.

Section 1.03 *Confidentiality and Authorized Disclosure*

The Receiving Party agrees, to the extent permitted by law, that Confidential Information and Trade Secrets shall remain the property of the Disclosing Party (no Party shall disclose Confidential Information unless they have the right to do so), and that, unless otherwise agreed to by the Disclosing Party, Confidential Information and Trade Secrets shall not be disclosed, divulged or otherwise communicated by a Receiving Party to third parties (including without limitation, other NAC Member Organizations) or used by it for any purposes other than in connection with the performance of this Contract or the Ordnance Technology Initiative Agreement under which this Contract was awarded, or in connection with the licenses granted in the Section 3 (PATENT RIGHTS) and Section 4 (DATA RIGHTS AND COPYRIGHTS), provided that the terms "Confidential Information" and "Trade Secrets" shall exclude materials or information that:

- (a) Are received or become available without restriction to the receiving party under separate agreement,
- (b) Are not identified with a suitable notice or legend per Paragraph 1.01 herein,
- (c) Are in possession of the Receiving Party at the time of disclosure thereof as demonstrated by prior written records,
- (d) Are or later become part of the public domain through no fault of the Receiving Party,
- (e) Are received by the Receiving Party from a third party having no obligation of confidentiality to the Disclosing Party that made the disclosure,
- (f) Are developed independently by the Receiving Party without use of Confidential Information or Trade Secrets as evidenced by written records,
- (g) Are required by subpoena, court order, law or regulation to be disclosed; provided, however, that the Receiving Party has provided written notice to the Disclosing Party promptly so as to enable such Disclosing Party to seek a protective order or otherwise prevent disclosure of such information.

However, despite any other obligations or restrictions imposed by this Article or any prior agreement, Buyer shall have the right to use and reproduce Seller's Confidential Information internal to Buyer, regardless of when disclosed. Buyer shall further have the right to use, disclose, reproduce and make derivative works of Seller's Confidential Information (i) to fulfill Buyer's obligations under, and (ii) for the purposes of testing, certification, use, sale or support of any goods delivered under, this Contract, other contracts with Seller and Buyer's contract with its customer, if any. Any such use, disclosure, reproduction or derivative work by Buyer shall, whenever appropriate, include a restrictive legend suitable for the particular circumstances.

In addition, Seller may disclose Confidential Information provided by Buyer hereunder to its subcontractors as required for the performance of this Contract, provided that each such subcontractor first agrees in writing to obligations no less restrictive than those imposed upon Seller under this Article. Seller shall be liable to Buyer for any breach of such obligation by such subcontractor.

Section 1.04 *Return of Proprietary Information*

Upon Buyer's request at any time, and in any event upon the completion, termination or cancellation of this Contract, Seller shall return to Buyer all of Buyer's, any other NAC Member Organization's or the Government's Confidential Information and all materials derived therefrom, unless specifically directed otherwise in writing by Buyer. Seller shall not at any time (i) dispose of (as scrap or otherwise) any goods, parts or other materials containing, conveying, embodying or made in accordance with or by reference to any Buyer, NAC Member Organization or Government Confidential Information without the prior written authorization of Buyer or (ii) make, use, or sell any goods, parts or other materials containing, conveying, embodying or made in accordance with or by reference to any such Confidential Information without notifying Buyer in writing before any such planned making, using, or selling activity and, with respect to Buyer Confidential Information, executing an agreement between the Parties requiring payment by Seller of a reasonable license fee to Buyer as consideration for each use of Buyer's Confidential Information, unless Buyer has provided prior written authorization to Seller. Prior to disposing of such goods, parts or other materials as scrap, Seller shall render them unusable. Buyer shall have the right to audit Seller's compliance with this Article.

Section 1.05 *Term*

The obligations of the Receiving Party under this Article shall continue for a period of five (5) years after the expiration or termination of this Agreement. The provisions of this Article shall survive the performance, completion, termination or cancellation of this Contract.

Section 2.0 PUBLICATION AND ACADEMIC RIGHTS**Section 2.01 Use of Information**

Subject to the provisions of Section 1 (CONFIDENTIAL INFORMATION), and Section 2 (PUBLICATION AND ACADEMIC RIGHTS) at paragraph 2.02, the Ordnance Technology Initiative Recipients (and their employees) and the Government shall have the right to publish or otherwise disclose information and/or data developed by the Government and/or the respective Ordnance Technology Initiative Recipients, including data developed by Buyer working on behalf of Seller, under an Ordnance Technology Initiative Agreement. The Ordnance Technology Initiative Recipients and the Government (and its employees) shall include an appropriate acknowledgement of the sponsorship of the Ordnance Technology Initiative Agreements by the Government and the Ordnance Technology Initiative Recipients in such publication or disclosure. The Ordnance Technology Initiative Recipients, the CMF and the Government shall have only the right to use, disclose, and exploit any such data and Confidential Information or Trade Secrets in accordance with the rights held by them pursuant to this Contract. Notwithstanding the above, the Ordnance Technology Initiative Recipients, the CMF and the Government shall not be deemed authorized to disclose any Confidential Information or Trade Secrets of the Government or the NAC Member Organizations on behalf of other Ordnance Technology Initiative Recipients or the CMF.

Section 2.02 Publication or Public Disclosure of Information

For purposes of this Article, Government Technical Manager means the representative designated by the Government for the Ordnance Technology Initiative Agreement(s) under which the information and/or data whose publication or disclosure at issue was developed

- (a) *Classified Research Initiatives.* If a release of Confidential Information or Trade Secrets is for a classified Ordnance Technology Initiative Agreement, the provisions of the DoD Security Agreement (DD Form 441) and the DoD Contract Security Classification Specification (DD Form 254) apply.
- (b) *Review or Approval of Technical Information for Public Release.*
 - (i) If Seller determines that it wishes to publish any information under this Contract, at least 45 days prior to the scheduled release date, Seller shall submit to the Buyer's Authorized Procurement Representative two copies of the information to be released. The Buyer's Authorized Procurement Representative will then forward the information to CMF, who will in turn, forward the information to Government Technical Manager, who is hereby designated as the approval authority for such releases.
 - (ii) If Seller is an academic research institution who is performing fundamental research on a campus, the CMF shall require Seller to provide papers and publications for provision to the Government technical manager for review and comment 30 days prior to formal paper/publication submission. However, if Seller incorporates into its research results or publications artifacts produced by and provided to these institutions by the CMF and on behalf of other (non-educational institution) Ordnance Technology Initiative Recipients (or has authors listed on the paper who are not employees or students of Seller then the procedures in PARAGRAPH (1) ABOVE must be followed.
 - (iii) Seller shall be responsible for assuring that an acknowledgment of Government support will appear in any publication of any material based on or developed under this Contract using the following acknowledgement terms:

i°Effort sponsored by the U.S. Government under Other Transaction number W15QKN-09-9-1001/W15QKN-12-9-0001/W15QKN-14-9-1001 between the National Armaments Consortium and the Government. The US Government is authorized to reproduce and distribute reprints for Governmental purposes notwithstanding any copyright notation thereon.i±
 - (iv) Seller shall also ensure that every publication of material based on or developed under this Contract contains the following disclaimer:

i°The views and conclusions contained herein are those of the authors and should not be interpreted as necessarily representing the official policies or endorsements, either expressed or implied, of the U.S. Government.i±
 - (v) Seller shall flow down these requirements to all of its suppliers or other Ordnance Technology Initiative Subrecipients, at all tiers.

- (c) *Notices.* To avoid disclosure of Confidential Information or Trade Secrets belonging to a NAC Member Organization, Buyer and/or the Government and the loss of patent rights as a result of premature public disclosure of patentable information, if Seller is proposing to publish or disclose such information, Seller shall provide advance notice to Buyer's Authorized Procurement Representative and identify such other parties as may have an interest in such Confidential Information or Trade Secrets. The CMF shall then notify such parties at least ninety (90) calendar days prior to Seller's submission for publication or disclosure, together with any and all materials intended for publication or disclosure relating to technical reports, data, or information developed by the parties during the term of and pursuant to this Agreement. The Government must notify the CMF of any objection to disclosure within this ninety (90) day period, or else Seller shall be deemed authorized to make such disclosure.
- (d) *Filing of Patent Applications.* During the course of any such ninety (90) calendar day period, the Ordnance Technology Initiative Recipient or Subrecipient to whom such Confidential Information or Trade Secrets belong, and/or the Government, shall provide notice to the CMF as to whether it desires that a patent application be filed on any invention disclosed in such materials. In the event that an Ordnance Technology Initiative Recipient or Subrecipient to whom such Confidential Information or Trade Secrets belongs and/or the Government desires that such a patent be filed, Seller agrees to withhold publication and disclosure of such materials until the occurrence of the first of the following:
- (i) Filing of a patent application covering such invention, or
 - (ii) Written agreement, from the Ordnance Technology Initiative Recipient or Subrecipient to whom such Confidential Information or Trade Secrets belong that no patentable invention is disclosed in such materials.
 - (iii) Further, during the course of any such ninety (90) calendar day period, the Ordnance Technology Initiative Recipient or Subrecipient shall notify the CMF, who will notify the Government, if it believes any of its Confidential Information or Trade Secrets have been included in the proposed publication or disclosure and shall identify the specific Confidential Information or Trade Secrets that need to be removed from such proposed publication. Seller agrees to remove from the proposed publication or disclosure all such Confidential Information or Trade Secrets so identified by the Ordnance Technology Initiative Recipient or Subrecipient.

Section 3.0 PATENT RIGHTS

Section 3.01 *Definitions*

Patent Rights for work funded by this Contract shall be as specified in FAR 52.227-11 (i°Patent Rights-Ownership by the Contractor (DEC 2007)i±), which is hereby incorporated by reference with the following modifications:

- (a) As appropriate, replace "Contractor" with "Seller" throughout; and replace "Contracting Officeri±, i°the agency" and "the Federal Agency" with "Government" throughout.
- (b) Add the following to Subclause (b) "Selleri's rights":
 - (i) Government Employee Inventions. The parties agree that the U.S. Government shall have the initial option to retain title to each Subject Invention made only by its employees. The Government shall promptly notify the applicable NAC Member Organization(s) upon making this election, and in the event that the Government retains title to said Subject Inventions, the Government agrees to timely file patent applications thereon at its own expense and agrees to grant to NAC Member Organizations a non-exclusive, irrevocable paid-up license to practice such Subject Invention throughout the world. The Government may release the rights provided for by this paragraph to its employee inventors subject to a license in the NAC Member Organization(s) as described above.
 - (ii) Joint Employee Inventions. The parties agree that the U.S. Government shall have the initial option to retain title to each Subject Invention Made jointly by Seller and Government employees. The Government is obligated to promptly notify Buyer upon making this election, and Buyer shall promptly inform Seller of the Governmenti's election. In the event that the Government elects to retain title to such joint Subject Invention, Seller agrees to assign to the Government whatever right, title and interest Seller has in and to such joint Subject Invention. The Government has agreed to timely file patent applications on such Subject Invention at its

own expense and agrees to grant to Seller a non-exclusive, irrevocable paid-up license to practice such Subject Invention throughout the world.

Section 3.02 *Patent Reports*

Seller shall file Invention (Patent) Reports at the close of the performance year and at the end of the term of this Contract. Annual reports are due thirty (30) calendar days after the expiration of the final performance period. Seller shall use the DD Form 882, Report of Inventions and Subcontracts, to file an invention report. Negative reports are also required. Seller shall contact Buyer's Authorized Procurement Representative to obtain the name and address of the Government representative for the required reports. Seller shall also submit one copy to Buyer's Authorized Procurement Representative.

Section 3.03 *Final Payment*

Final payment cannot be made, nor can this Contract be closed out, until Seller delivers all disclosures of subject inventions required by this Contract, an acceptable final report pursuant to the article entitled "Reports", and all confirmatory instruments.

Section 3.04 *Cooperation*

The Government, the CMF, Buyer and Seller shall keep the others informed as to the status of joint patent matters. The Government and Seller through the CMF shall each reasonably cooperate with and assist the other at its own expense in connection with such activities, at the other Party's request during the term of this Agreement.

Section 3.05 *Lower Tier Agreements*

Seller shall include this Article, suitably modified, to identify the parties, in all subcontracts or lower tier agreements, regardless of tier, for experimental, developmental, or research work performed under the Ordnance Technology Initiatives awarded pursuant to this Contract.

Section 4.0 DATA RIGHTS AND COPYRIGHTS

Section 4.01 *General*

The Government rights in technical data under this Contract shall be determined in accordance with the provisions of DFARS Part 227, DFARS 252.227-7013, Rights in Technical Data -- Noncommercial Items and related clauses in DFARS Part 252.227. With respect to both unlimited and Government purpose license rights provided for in those regulations, the Government acknowledges and agrees that it shall obtain such rights pursuant to this Contract only to the extent that its financial contributions toward the Development of the technical data is equal to or greater than 50% of the total costs of such Development. Seller reserves the right to protect by copyright original works developed under this Contract. All such copyrights will be in the name of the Seller. Seller hereby grants to the U.S. Government a non-exclusive, non-transferable, royalty-free, fully paid-up license to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, for Governmental purposes, any copyrighted materials developed under this Contract and to authorize others to do so.

In the event Data is exchanged with a notice indicating that the Data is protected under copyright as a published, copyrighted work and it is also indicated on the Data that such Data existed prior to, or was produced outside of this Contract, Buyer, the Government, the CMF, or other NAC Member Organization receiving the Data and others acting on its behalf may reproduce, distribute, and prepare derivative works for the purpose of carrying out its responsibilities under this Contractor other Agreement between the CMF and the NAC Member Organization.

Seller is responsible for affixing appropriate markings indicating the rights of the Government on all data and technical data delivered under this Contract.

Section 4.02 *Data First Produced by the Government*

As to Data first produced by the Government in carrying out the Government's responsibilities under this Contract or the Ordnance Technology Initiative Agreement under which this Contract was awarded, and which Data would embody Trade Secrets or would comprise commercial or financial information that is privileged or confidential if obtained from Seller, such Data will, to the extent permitted by law, be appropriately marked with a suitable notice or legend and maintained in

confidence for a period of five (5) years after the development of the information, with the express understanding that during the aforesaid period such Data may be disclosed and used (under suitable protective conditions) by or on behalf of the Government for Government purposes only.

Section 4.03 *Government Prior Technology*

In the event it is necessary for the Government to furnish Seller, through Buyer's Authorized Procurement Representative, with Data which existed prior to, or was produced outside of this Contract, the applicable Ordnance Technology Initiative Agreement or the Ordnance Technology Base Agreement,, and such Data is so identified with a suitable notice or legend, the Data will be maintained in confidence and disclosed and used by Seller only for the purpose of carrying out Seller's responsibilities under this Contract. Data protection shall include proprietary markings and handling, and the signing of non-disclosure agreement by Seller and/or Seller's subcontractors. Upon completion of activities under this Contract, such Data will be disposed of as requested by Buyer's Authorized Procurement Representative.

Section 4.04 *Seller's Prior Technology*

In the event it is necessary for Seller to furnish the Government with Data which existed prior to, or was produced outside of this Contract, and such Data embodies Trade Secrets or comprises commercial or financial information which is privileged or confidential, and such Data is so identified with a suitable notice or legend, the Data will be maintained in confidence and disclosed and used by the Government and such Government Contractors or contract employees that the Government may hire on a temporary or periodic basis only for the purpose of carrying out the Government's responsibilities under the Agreement. Data protection will include proprietary markings and handling, and the signing of non-disclosure agreements by such Government Contractors or contract employees. With respect to the use of such technical data or software by other NAC Member Organizations, Seller may offer to license such rights for use exclusively in the performance of the relevant Ordnance Technology Initiative Agreement being performed by other NAC Member Organizations, on reasonable terms and conditions under a non-exclusive license. If Seller furnishes Data which existed prior to, or was produced outside of this Contract Seller may license such Data to other NAC Member Organizations or to entities not a party to NAC for a fee and/or royalty payments as determined by Seller. Seller shall not be obligated to provide Data that existed prior to, or was developed outside of this Agreement to other NAC Member Organization or the Government. Upon completion of activities under the applicable Ordnance Technology Initiative Agreements, such Data will be disposed of as requested by Seller.

Section 4.05 *Oral and Visual Information*

If information which Seller considers to embody Trade Secrets or to comprise commercial or financial information which is privileged or confidential is disclosed orally or visually to Buyer or the Government, such information must be reduced to tangible, recorded form (i.e., converted into Data as defined herein), identified and marked with a suitable notice or legend, and furnished to the Government and CMF within 10 calendar days after such oral or visual disclosure, or the Government shall have no duty to limit or restrict, and shall not incur any liability for, any disclosure and use of such information.

Section 4.06 *Disclaimer of Liability*

Notwithstanding the above, Buyer, the Government and the CMF shall not be restricted in, nor incur any liability for, the disclosure and use of:

- (a) Data not identified with a suitable notice or legend as set forth in Section 1.01 herein; nor
- (b) Information contained in any Data for which disclosure and use is restricted under Section 1.01, if such information is or becomes generally known without breach of the above, is known to or is generated by Buyer, the Government or CMF independently of carrying out responsibilities under the Ordnance Technology Initiative Agreement under which this Contract was awarded, is rightfully received from a third party without restriction, or is included in Data which the NAC Member Organizations have, or are required to furnish to the Government without restriction on disclosure and use.

Section 4.07 *Marking of Data*

Any Data delivered under this Contract by Seller shall be marked with a suitable notice or legend.

Section 4.08 *Lower Tier Agreements*

Seller shall include this Article suitably modified to identify the parties, in all subcontracts, lower tier agreements, regardless of tier, for experimental, Development, or research work performed under this Contract.

Section 4.09 *Other Instances*

Notwithstanding Paragraphs in this Article, differing rights in data may be negotiated between Seller and the Government through CMF and Buyer's Authorized Procurement Representative on a case by case basis.

Article II. EXPORT COMPLIANCE

Seller agrees to comply with U.S. Export regulations including, but not limited to, the requirements of the Arms Export Control Act, 22 U.S.C. §§ 2751-2794, including the International Traffic in Arms Regulation (ITAR), 22 C.F.R. § 120 et seq.; and the Export Administration Act, 50 U.S.C. app. §§ 2401-2420. Seller is responsible for obtaining from the Government export licenses or other authorizations/approvals, if required, for information or materials provided from one party to another under this Agreement. Accordingly, Seller shall not export, directly, or indirectly, any products and/or technology, Confidential Information, Trade Secrets, or Classified and Unclassified Technical Data in violation of any U.S. Export laws or regulations. Seller shall include this clause, suitably modified to identify the parties, in all subcontracts or lower tier agreements, regardless of tier.

Article III. GOVERNMENT FURNISHED PROPERTY

FAR 52.245-1 Government Property (APR 2012) Alternate I (APR 2012) is incorporated by reference from the Federal Acquisition Regulation. This clause applies if Government property is acquired or furnished for contract performance. "Government" shall mean Government throughout except the first time it appears in paragraph (g)(1) when "Government" shall mean the Government or the Buyer. Contractor and Offeror mean Seller except as otherwise noted.

Article IV. ANTITERRORISM (AT)/OPERATIONS SECURITY (OPSEC)

(a) *AT Level I Training.* All Seller employees, to include subcontractor employees at all tiers, requiring access to DOD installations, facilities and controlled access areas shall complete AT Level I awareness training within 30 calendar days after effective date of the Contract. The Seller shall submit certificates of completion for each affected employee and subcontractor employee, to the Buyer's Authorized Procurement Agent, within 10 calendar days after completion of training by all employees and subcontractor personnel. AT level I awareness training is available at the following website: <https://atlevel1.dtic.mil/at>.

(b) *Access and General Protection/Security Policy and Procedures.* If this Contract requires Seller employees or subcontractor employees at all tiers with an area of performance within a DOD installation, facility or area, Seller and all associated subcontractor employees shall comply with applicable installation, facility and area commander installation/facility access and local security policies and procedures (provided by government representative). Seller shall also provide all information required for background checks to meet installation access requirements to be accomplished by installation Provost Marshal Office, Director of Emergency Services or Security Office. Seller workforce must comply with all personal identity verification requirements as directed by DOD, HQDA and/or local policy. In addition to the changes otherwise authorized, should the Force Protection Condition (FPCON) at any individual facility or installation change, the Government may require changes in the Seller security matters or processes.

(c) *AT Awareness Training for the Seller's Personnel Traveling Overseas.* If this Contract requires US based Seller employees and associated subcontractor employees to travel overseas, they are to make available and to receive government provided area of responsibility specific AT awareness training as directed by AR 525-13. Specific area of responsibility training content is directed by the combatant commander with the unit ATO being the local point of contact.

(d) *iWATCH Training.* If this Contract requires Seller employees or subcontractor employees at all tiers with an area of performance within a DOD installation, facility or area, Seller and all associated subcontractors shall brief all employees on the local iWATCH program (training standards provided by the requiring activity ATO). This local developed training will be used to inform employees of the types of behavior to watch for and instruct employees to report suspicious activity to the AOR. This training shall be completed within 30 calendar days of contract award and within 30 calendar days of new employees commencing performance with the results reported to Buyer's Authorized Procurement Representative 10 calendar days after contract award.

(e) *Seller Employees Who Require Access to Government Information Systems.* All Seller employees and subcontractor employees at all tiers with access to a government info system must be registered in the ATCTS (Army Training Certification Tracking System) at commencement of services, and must successfully complete the DOD Information Assurance Awareness prior to access to the IS and then annually thereafter.

(f) Seller employees and subcontractor employees at all tiers must complete the DoD IA awareness training before issuance of network access and annually thereafter. All Seller employees working IA/IT functions must comply with DoD and Army training requirements in DoD 8570.01, DoD 8570.01-M and AR 25-2 within six months of employment.

(g) This Contract requires information assurance (IA)/information technology (IT) certification, per DoD 8570.01-M , DFARS 252.239.7001 and AR 25-2, Seller employees supporting IA/IT functions shall be appropriately certified upon Contract award. The baseline certification as stipulated in DoD 8570.01-M must be completed upon Contract award.

(h) If this Contract requires authorized Seller personnel to accompany US Armed Forces deployed outside the US in contingency operations; humanitarian or peacekeeping operations; or other military operations or exercises, when designated by the combatant commander, DFARS Clause 252.225-7040 (OCT 2015), Contractor Personnel Authorized to Accompany U.S. Armed Forces Deployed Outside the United States is applicable.

(i) If this Contract requires Performance or Delivery in a Foreign Country, DFARS Clause 252.225-7043 (JUN 2015), Antiterrorism/Force Protection for Defense Contractors Outside the US is applicable. This clause applies to both contingencies and non-contingency support. The key AT requirement is for non-local national Seller personnel to comply with theater clearance requirements and allows the combatant commander to exercise oversight to ensure Seller's compliance with combatant commander and subordinate task force commander policies and directives.

(j) This Contract requires an OPSEC Standing Operating Procedure/Plan. Seller shall develop and provide to Buyer's Authorized Procurement Representative an OPSEC Standing Operating Procedure (SOP)/Plan within 60 calendar days of contract award. Buyer shall forward said plan to be reviewed and approved by the responsible Government OPSEC officer, per AR 530-1, Operations Security. This SOP/Plan will include the government's critical information, why it needs to be protected, where it is located, who is responsible for it, and how to protect it. In addition, the Seller shall identify an individual who will be an OPSEC Coordinator. The Seller will ensure this individual becomes OPSEC Level II certified per AR 530-1.

(k) This Contract requires OPSEC Training, per AR 530-1, Operations Security, new Seller employees must complete Level I OPSEC training within 30 calendar days of their reporting for duty. All Seller employees must complete annual OPSEC awareness training.

Article V. WAIVER OF LIABILITY

With regard to the activities undertaken pursuant to this Contract, neither Seller, the U.S. Government, Consortium Management Firm (CMF), nor Buyer or any other National Armaments Consortium (NAC) member organization shall make any claim against the others, employees of the others, the others' related entities (e.g., contractors, subcontractors, etc.), or employees of the others' related entities for any injury to or death of its own employees or employees of its related entities, or for damage to or loss of its own property or that of its related entities, whether such injury, death, damage or loss arises through negligence or otherwise, except in the case of willful misconduct or with respect to intellectual property claims.

Notwithstanding the foregoing, claims for contribution toward third-party injury, damage, or loss are not limited, waived, released, or disclaimed.

Seller agrees to extend the waiver of liability as set forth above to subcontractors at all tiers by requiring them, by contract or otherwise, to agree to waive all claims against the U.S. Government, CMF, and NAC member organization.

Article VI. SAFETY

(a) Seller shall adhere to all local, state, and federal rules and regulations required in order to maintain a safe and non-hazardous occupational environment throughout the duration of this contract. At Buyer's request and at a minimum, Seller shall provide the following reports and materials:

- (1) For the purchase of energetic materials or energetic items made in the United States of

America, Seller is responsible for obtaining Hazard Classification from the Department of Transportation prior to shipment of energetic material. All U.S. manufacturers shall make certain that the material is tested in accordance with Part 173, Subpart C, Section 173.58(a) of Title 49 CFR Parts 106-180 to assign proper class and division for all explosives (Division 1.1, 1.2, 1.3, & 1.4 explosives). Registration with the Associate Administrator of Hazardous Materials Safety is required in accordance with Part 173, Subpart C, Section 173.56(b)(1) or 173.56(c) of Title 49 CFR so that markings in accordance with 172, Subpart D, Section 172.301(a) and 172.32(a) are met. Hazard classification documents shall be forwarded to the U.S. Army RDECOM-ARDEC, ATTN: RDAR-EIQ-SF, Picatinny Arsenal, NJ 07806-5000 in accordance with DI-MISC-80508, Technical Report.

(2) *Accident/Incident Report*: Seller shall report immediately to Buyer's Authorized Procurement Representative any major accident/incident (including fire) resulting in any one or more of the following: causing one or more fatalities or one or more disabling injuries; damage of Government property exceeding \$10,000; affecting program planning or production schedules; degrading the safety of equipment under contract, such as personnel injury or property damage may be involved; identifying a potential hazard requiring corrective action.

Article VII. ENVIRONMENTAL REQUIREMENTS

(a) *Hazardous Waste Report*. Seller shall evaluate the environmental consequences and identify the specific types and amounts of hazardous waste being generated during this Contract and provide such information to Buyer's Authorized Procurement Representative.

(b) *Disposal Instructions for Residual/Scrap Materials*. Seller shall dispose of all residual and scrap materials generated from this Contract. Seller shall specify the anticipated quantities, methods, and disposal costs and provide such information to Buyer's Authorized Procurement Representative.

Article VIII. SECURITY

(a) Work by Seller under this Contract may involve access to Controlled Unclassified Information (CUI) as well as information classified as i°Confidentiali±, i°Secreti±, or i°Top Secreti±. Seller, their employees and all subcontractors at all tiers shall comply with (1) the Security Agreement (DD Form 441), including the National Industrial Security Program Operation Manual (DOD 5220.22M), (2) any revisions to that manual that may be issued, and (3) the security classification specification (DD form 254) if included, and all security requirements including but not limited to OPSEC plans and those security requirements specific to the Contract. During the course of this Contract the Parties may determine that information developed by the Seller, Buyer, and/or the Government pursuant to this Contract shall be treated as classified. Such information shall be classified in accordance with DOD 5220.22M.

Upon Contract completion or termination, Seller must:

- (1) Return ALL classified received or generated under the Contract;
- (2) Destroy all of the classified; or,
- (3) Request retention for a specified period of time

(b) Security requirements shall be in accordance with paragraph (a). Seller shall be required to obtain and maintain a Facility Clearance from the Defense Security Service. The contractor shall only receive classified material at the actual performance location(s) as identified in the DD254.

(c) All classified information and/or material will be hand carried, mailed via authorized carriers, or transmitted electronically via appropriate methods.

(d) *Information Disclosure*: Seller shall not release any information or data without the approval of the Government and Buyer.

(e) *Personnel*: Seller personnel shall have the appropriate level of investigation and/or security clearance for each site of performance of work. Seller shall observe and comply with all security provisions in effect at each selected site. Only U.S. Citizens are authorized to work on this Agreement. Seller personnel that require access to classified information and/or material shall be required to have the appropriate security clearance under this contract and must maintain the level of security clearance for the life of this Contract. Seller shall notify Buyer's Authorized Procurement Agent the same day as an employee receives notice that they will be released, have been fired, or have had their security clearance revoked or suspended.

(f) *Place of Performance (Government Locations)*: If Seller is required to access a Government location, Seller shall obtain a visitor badge to access the installation and will be required to have the

appropriate clearance to access the government facility.

(g) *For Official Use Only Information (FOUO) and Controlled Unclassified Information (CUI)*: Seller shall be capable of accessing, handling, receiving, and storing UNCLASSIFIED documents, equipment, hardware, and test items, using the applicable standards of FOUO information. All Controlled Unclassified Information (documents designated as FOR OFFICIAL USE ONLY and/or LIMITED DISTRIBUTION) shall be submitted and electronically transmitted by a controlled means via USPS mail, AMRDEC SAFE website <https://safe.amrdec.army.mil/SAFE/> and/or an approved application that is Certified for Networthiness such as the Encryption Wizard.

(h) *Receive and Generate Classified Material*: In performance of the agreement, Seller will be required to receive, generate, modify, and store classified material and hardware.

Article IX. ARMS, AMMUNITION, & EXPLOSIVES (AA&E)

In accordance with Department of Defense regulations, this effort includes Arms, Ammunition, & Explosives (AA&E) and therefore requires that a safety and security survey be conducted by DCMA on Seller. Seller is hereby instructed that no work pertaining to any task dealing with Arms, Ammunition, & Explosives (AA&E) shall be started for Seller's locations until the compliant survey has been received by the Government. Seller will be notified when it is allowed to start work on all tasks related to AA&E.

ARTICLE X. PROHIBITION ON THE USE OF CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT.

This Article is to ensure compliance with Section 889 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232).

Based on the information provided below, the Government may be unable to enter into a new initiative, exercise an option under an existing project, bilaterally modify the Agreement to extend the term of an Agreement, execute an additional phase or incrementally fund an existing project with the NAC Consortium Member.

(a) Definitions.

Backhaul means intermediate links between the core network, or backbone network, and the small subnetworks at the edge of the network (e.g., connecting cell phones/towers to the core telephone network). Backhaul can be wireless (e.g., microwave) or wired (e.g., fiber optic, coaxial cable, Ethernet).

Covered foreign country means The People's Republic of China.

Covered telecommunications equipment or services means "C

- (1) Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities);
- (2) For the purpose of public safety, security of Government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities);
- (3) Telecommunications or video surveillance services provided by such entities or using such equipment; or
- (4) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

Critical technology means "C

- (1) Defense articles or defense services included on the United States Munitions List set forth in the International Traffic in Arms Regulations under subchapter M of chapter I of title 22, Code of

Federal Regulations;

- (2) Items included on the Commerce Control List set forth in Supplement No. 1 to part 774 of the Export Administration Regulations under subchapter C of chapter VII of title 15, Code of Federal Regulations, and controlled-
 - (i) Pursuant to multilateral regimes, including for reasons relating to national security, chemical and biological weapons proliferation, nuclear nonproliferation, or missile technology; or
 - (ii) For reasons relating to regional stability or surreptitious listening;
- (3) Specially designed and prepared nuclear equipment, parts and components, materials, software, and technology covered by part 810 of title 10, Code of Federal Regulations (relating to assistance to foreign atomic energy activities);
- (4) Nuclear facilities, equipment, and material covered by part 110 of title 10, Code of Federal Regulations (relating to export and import of nuclear equipment and material);
- (5) Select agents and toxins covered by part 331 of title 7, Code of Federal Regulations, part 121 of title 9 of such Code, or part 73 of title 42 of such Code; or
- (6) Emerging and foundational technologies controlled pursuant to section 1758 of the Export Control Reform Act of 2018 (50 U.S.C. 4817).

Interconnection arrangements means arrangements governing the physical connection of two or more networks to allow the use of another's network to hand off traffic where it is ultimately delivered (e.g., connection of a customer of telephone provider A to a customer of telephone company B) or sharing data and other information resources.

Reasonable inquiry means an inquiry designed to uncover any information in the entity's possession about the identity of the producer or provider of covered telecommunications equipment or services used by the entity that excludes the need to include an internal or third-party audit.

Roaming means cellular communications services (e.g., voice, video, data) received from a visited network when unable to connect to the facilities of the home network either because signal coverage is too weak or because traffic is too high.

Substantial or essential component means any component necessary for the proper function or performance of a piece of equipment, system, or service.

(b) Prohibition.

- (1) Section 889(a)(1)(A) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits the head of an executive agency on or after August 13, 2019, from procuring or obtaining, or extending or renewing a contract to procure or obtain, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. Seller is prohibited from providing to Buyer or the Government any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, unless Seller is providing (i) a service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or (ii) telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles or the covered telecommunication equipment or services. A waiver, for a period not exceeding August 13, 2021, may be requested.
- (2) Implementation guidance issued by The Office of the Undersecretary of Defense on 13 August 2020 for Section 889(a)(1)(B) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits the head of an executive agency on or after August 13, 2020, from entering into a new project agreement, exercise an option under an existing project, bilaterally modify the Agreement to extend the term of an Agreement, execute an additional phase or incrementally fund an existing project with the member or with an entity that uses any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, unless Seller is providing (i) a service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or (ii) telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles or the covered telecommunication equipment or services

or services are covered by a waiver. This prohibition applies to the use of covered telecommunications equipment or services, regardless of whether that use is in performance of work under a Federal contract or agreement.

(c) Representation. (to be completed upon Agreement Officer Request)

Seller shall review the list of excluded parties in the System for Award Management (SAM) (<https://www.sam.gov>) for entities excluded from receiving federal awards for covered telecommunications equipment or services.

Based on that review:

- (1) Seller represents that it does not provide covered telecommunications equipment or services as a part of its offered products or services to Buyer or the Government in the performance of any contract, subcontract, other transaction agreement, or other contractual instrument.
- (2) If Seller does provide covered telecommunications equipment or services as a part of its offered products or services to Buyer or the Government in the performance of any contract, subcontract, other transaction agreement, or other contractual instrument as described in paragraph (c)(1), Seller represents that it will not provide covered telecommunications equipment or services to the Government in the performance of any contract, subcontract, other transaction agreement, or other contractual instrument resulting from this solicitation. If Seller will provide covered telecommunications equipment or services to Buyer or the Government in the performance of any contract, subcontract, other transaction agreement, or other contractual instrument resulting from this solicitation, Seller shall provide the additional disclosure information required at paragraph (d)(1) of this Article.
- (3) Seller represents, after conducting a reasonable inquiry, for purposes of this representation, that it does not use covered telecommunications equipment or services, or use any equipment, system, or service that uses covered telecommunications equipment or services. If Seller does use covered telecommunications equipment or services, or use any equipment, system, or service that uses covered telecommunications equipment or services as described under this paragraph (c)(3), Seller shall provide the additional disclosure information required at paragraph (d)(2) of this Article.

(d) Disclosures.

- (1) Disclosure for the representation in paragraph (c)(2) of this Article. If Seller has responded in the representation in paragraph (c)(2) of this Article, Seller shall provide the following information as part of the offer:
 - (i) For covered equipment^a
 - (A) The entity that produced the covered telecommunications equipment (include entity name, unique entity identifier, CAGE code, and whether the entity was the original equipment manufacturer (OEM) or a distributor, if known);
 - (B) A description of all covered telecommunications equipment offered (include brand; model number, such as OEM number, manufacturer part number, or wholesaler number; and item description, as applicable); and
 - (C) Explanation of the proposed use of covered telecommunications equipment and any factors relevant to determining if such use would be permissible under the prohibition in paragraph (b)(1) of this Article.
 - (ii) For covered services^a
 - (A) If the service is related to item maintenance: A description of all covered telecommunications services offered (include on the item being maintained: Brand; model number, such as OEM number, manufacturer part number, or wholesaler number; and item description, as applicable); or
 - (B) If not associated with maintenance, the Product Service Code (PSC) of the service being provided; and explanation of the proposed use of covered telecommunications services and any factors relevant to determining if such use would be permissible under the prohibition in paragraph (b)(1) of this Article.
- (2) Disclosure for the representation in paragraph (c)(3) of this Article. If Seller has responded in the representation in paragraph (c)(3) of this Article, Seller shall provide the following information as part of the offer:
 - (i) For covered equipment^a
 - (A) The entity that produced the covered telecommunications equipment (include entity name, unique entity identifier, CAGE code, and whether the entity was the OEM or a distributor, if known);

(B) A description of all covered telecommunications equipment offered (include brand; model number, such as OEM number, manufacturer part number, or wholesaler number; and item description, as applicable); and

(C) Explanation of the proposed use of covered telecommunications equipment and any factors relevant to determining if such use would be permissible under the prohibition in paragraph (b)(2) of this Article.

(ii) For covered services^a

(A) If the service is related to item maintenance: A description of all covered telecommunications services offered (include on the item being maintained: Brand; model number, such as OEM number, manufacturer part number, or wholesaler number; and item description, as applicable); or

(B) If not associated with maintenance, the PSC of the service being provided; and explanation of the proposed use of covered telecommunications services and any factors relevant to determining if such use would be permissible under the prohibition in paragraph (b)(2) of this Article.

(e) Reporting requirement.

(1) In the event Seller identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during agreement performance, or Seller is notified of such by a subcontractor at any tier or by any other source, Seller shall report the information in paragraph (e)(2) of this Article to Buyer and to the Department of Defense website at <https://dibnet.dod.mil>. Seller must notify Buyer that a report has been made.

(2) Seller shall report the following information pursuant to paragraph (e)(1) of this Article

(i) Within one business day from the date of such identification or notification: the agreement number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.

(ii) Within 10 business days of submitting the information in paragraph (e)(2)(i) of this clause: any further available information about mitigation actions undertaken or recommended. In addition, Seller shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.

(f) Subcontracts. Seller shall insert the substance of this Article, including this paragraph (f) and excluding paragraph (b)(2), in all subcontracts and other contractual instruments, including subcontracts for the acquisition of commercial items.
