

CUSTOMER CONTRACT REQUIREMENTS
AMTC Base Agreement
CUSTOMER CONTRACT 2021-429

CUSTOMER CONTRACT REQUIREMENTS

The following customer contract requirements apply to this Contract to the extent indicated below. Please note, the requirements below are developed in accordance with Buyer's prime contract and are not modified by Buyer for each individual Seller or statement of work. Seller will remain at all times responsible for providing to any government agency, Buyer, or Buyer's customer, evidence of compliance with the requirements herein or that such requirements are not applicable to the extent satisfactory to the requesting party.

1. FAR Clauses The following contract clauses are incorporated by reference from the Federal Acquisition Regulation and apply to the extent indicated. In all of the following clauses, "Contractor" and "Offeror" mean Seller.

52.204-2 Security Requirements (AUG 1996). The reference to the Changes clause means the changes clause of this Contract. This clause applies only if the Contract involves access to classified material.

52.223-3 Hazardous Material Identification and Material Safety Data (JAN 1997). This clause applies only if Seller delivers hazardous material under this contract.

52.227-1 Authorization and Consent (DEC 2007).

52.227-1 Authorization and Consent Alternate I (APR 1984).

52.227-2 Notice and Assistance Regarding Patent and Copyright Infringement (DEC 2007). A copy of each notice sent to the Government shall be sent to Buyer.

52.227-9 Refund of Royalties (APR 1984). This clause applies only if the amount of royalties reported during negotiation of this contract exceeds \$250.

52.227-10 Filing of Patent Applications - Classified Subject Matter (DEC 2007).

52.236-13 Accident Prevention (NOV 1991). The term "Contracting Officer" shall mean Buyer.

2. 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.

252.204-7012 Safeguarding Covered Defense Information and Cyber Incident Reporting (OCT 2016). This clause applies if the Contract is for operationally critical support or where performance will involve a covered contractor information system. The term "contractor" retains its original meaning wherever the word is not capitalized. In the terms "Contractor attributional/proprietary information," "Contractor information system" and "covered contractor information system," the term "contractor" also retains its original meaning. In paragraph (b)(2), the applicable security standard that applies to this Contract is NIST SP 800-171, Revision 1. In paragraphs (d) and (g), "Contracting Officer" shall mean "Contracting Officer or Buyer." In paragraph (m)(2), the term "prime Contractor" retains its original meaning. In accordance with paragraph (m)(2)(i), Seller shall notify Buyer when submitting a request to the Contracting Officer to vary from NIST SP 800-171, Revision 1. Reporting to Buyer in accordance with (m)(2)(ii) shall be accomplished via abuse@Boeing.com with a copy to the Buyer's Authorized Procurement Representative. The Boeing 1st tier subcontractor promptly shall report lower tier subcontractor information it receives.

Seller represents and warrants that (i) it is in compliance with the requirements of DFARS Clause 252.204-7012 as modified by the preceding paragraph, or (ii) that, pursuant to paragraph (b)(2)(ii)(B), it has submitted a request applicable to this Contract for a variance from the requirements of NIST SP 800-171, Revision 1 to the US Government Contracting Office and that Seller's request for such variance was approved by an authorized representative of the DoD CIO.

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.

252.223-7007 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.

252.225-7040 Contractor Personnel Supporting U.S. Armed Forces Deployed Outside the United States (OCT 2015). This clause, including this paragraph (q), applies if, in performance of this contract, Seller personnel are supporting U.S. Armed Forces deployed outside the United States in (1) contingency operations; (2) peace operations consistent with Joint Publication 3-07.3; or (3) other military operations or military exercises, when designated by the Combatant Commander or as directed by the Secretary of Defense.

252.225-7043 Antiterrorism/Force Protection Policy for Defense Contractors Outside the United States (JUN 2015). This clause applies only if this contract requires Seller to perform or travel outside the United States and Seller is not (1) a foreign government, (2) a representative of a foreign government, or (3) a foreign corporation wholly owned by a foreign government.

252.227-7013 Rights In Technical Data -- Noncommercial Items (FEB 2014). This clause applies when technical data for noncommercial items, or for commercial items developed in any part at Government expense, is to be obtained from Seller or Seller's subcontractors for delivery to the Government.

252.227-7014 Rights In Noncommercial Computer Software And Noncommercial Computer Software Documentation (FEB 2014). This clause applies when noncommercial computer software or computer software documentation is to be obtained from Seller or Seller's subcontractors for delivery to the Government.

252.227-7015 Technical Data -- Commercial Items (FEB 2014). This clause applies whenever any technical data related to commercial items is developed in any part at private expense and will be obtained from Seller or its subcontractors for delivery to the Government.

252.227-7016 Rights in Bid or Proposal Information (JAN 2011).

252.227-7018 Rights in Noncommercial Technical Data and Computer Software -- Small Business Innovative Research (SBIR) Program Deviation (MAR 2020). (DEVIATION 2020-O0007). This clause applies whenever any noncommercial technical data or computer software is to be obtained from Seller or a subcontractor for delivery to the Government.

252.227-7019 Validation of Asserted Restrictions - Computer Software (SEP 2016).

252.227-7025 Limitations on the Use or Disclosure of Government-Furnished Information Marked With Restrictive Legends (MAY 2013). In paragraph (c)(1), the term "Government" shall mean "Government and Buyer".

252.227-7026 Deferred Delivery of Technical Data or Computer Software (APR 1988). This clause applies only if the delivery of data is required or if computer software may be originated, developed or delivered under this contract.

252.227-7027 Deferred Ordering of Technical Data or Computer Software (APR 1988). This clause applies only if technical data or computer software may be generated as part of the performance of

this contract.

252.227-7030 Technical Data -- Withholding of Payment (MAR 2000). In this clause, "Government" and "Contracting Officer" shall mean Buyer. This clause applies only if the delivery of technical data is required under this contract.

252.227-7037 Validation of Restrictive Markings on Technical Data (SEP 2016).

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

ARTICLE VIII: CONFIDENTIAL AND/OR PROPRIETARY INFORMATION

This clause shall apply to the oral or written communication between the parties, including the Government, AMTC Members, Buyer, and Seller; however, Article XI, Data Rights and Copyrights, shall control the rights in data for all data delivered and to be delivered in the performance of this Agreement and each Project Agreement.

A. Definitions

"Disclosing Party" means the Buyer, Seller, or the Government who discloses Confidential and/or Proprietary Information as contemplated by the subsequent paragraphs.

"Receiving Party" means the Buyer, Seller, or the Government who receives Confidential and/or Proprietary Information disclosed by a Disclosing Party.

"Confidential and/or Proprietary Information" means information and materials of a Disclosing Party which are designated as confidential and/or proprietary or as a Trade Secret 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 and/or Proprietary Information or a Trade Secret if such Disclosing Party, within thirty (30) 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 and/or proprietary 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 and/or Proprietary Information does not mean data, software, or software documentation delivered and to be delivered in performance of this Agreement and each Project Agreement, which would be governed by ARTICLE XI: DATA RIGHTS AND COPYRIGHTS.

"Trade Secret" means all forms and types of financial, business, scientific, technical, economic or engineering or otherwise proprietary information, including, but not limited to, patterns, plans, compilations, program devices, formulas, designs, prototypes, methods, techniques, processes, procedures, programs or codes, whether tangible or intangible, and whether or how stored, compiled, or memorialized physically, electronically, graphically, photographically, or in writing if:

- (1) The owner thereof has taken reasonable measures to keep such information secret; and
- (2) 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.

Trade Secret does not mean data, software, or software documentation delivered and to be delivered in performance of this Agreement and each Project Agreement, which would be governed by ARTICLE XI: DATA RIGHTS AND COPYRIGHTS.

B. Exchange of Information

The Government may from time to time disclose Government Confidential and/or Proprietary Information to the Buyer or Seller for use by the Buyer or Seller in connection with particular Prototype Projects; and the Buyer or Government may from time to time disclose information that is Confidential and/or Proprietary Information to the Government in connection with a Whitepaper, Project Proposal, TDL, Project Agreement or performance thereunder.

C. Confidentiality and Authorized Disclosure

The Receiving Party agrees, to the extent permitted by law, that Confidential and/or Proprietary Information shall remain the property of the Disclosing Party, and that, unless otherwise agreed to by the Disclosing Party, Confidential and/or Proprietary Information shall not be disclosed, divulged or otherwise communicated by it to third parties or used by it for any purposes other than in connection with specified

Project efforts and the licenses granted in Article X, Patent Rights, and Article XI, Data Rights and Copyrights. However, the duty to protect such Confidential and/or Proprietary Information shall not extend to materials or information that:

- (1) Are received or become available without restriction to the Receiving Party under a proper, separate agreement,
- (2) Are not identified with a suitable notice or legend (subject to the cure procedures described in the definition of "Confidential and/or Proprietary Information" above),
- (3) Are lawfully in possession of the Receiving Party without such restriction to the Receiving Party at the time of disclosure thereof as demonstrated by prior written records,
- (4) Are or later become part of the public domain through no fault of the Receiving Party,
- (5) Are received by the Receiving Party from a third party having no obligation of confidentiality to the Disclosing Party that made the disclosure,
- (6) Are developed independently by the Receiving Party without use of Confidential and/or Proprietary Information as evidenced by written records,
- (7) Are required by 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.

D. Return of Confidential and/or Proprietary Information

Upon the request of the Disclosing Party, the Receiving Party will promptly return all copies and other tangible manifestations of the Confidential and/or Proprietary Information. As used in this Section, tangible manifestations include human readable media as well as magnetic and digital storage media. In the event that return of all tangible manifestations is not practicable, the Party may propose an alternative process to ensure the verifiable destruction of such tangible manifestations. Such alternative process must be agreed upon in writing by both Parties prior to implementation.

E. 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 the Project Agreement under which the information was provided.

F. Flowdown

The Seller shall flow down the requirements of this Article VIII to their respective personnel, agents and subcontractors at all levels receiving such Confidential and/or Proprietary Information under this Agreement.

ARTICLE IX: PUBLICATION AND ACADEMIC RIGHTS

A. Use of Information

For the purposes of this Article, "Parties" means the Buyer, Seller, and the Government where collectively identified and "Party" where each entity is individually identified.

Subject to the provisions of Article VIII, Confidential and/or Proprietary Information, and this Article IX, the Buyer, Seller, and the Government shall have the right to publish or otherwise disclose information and/or data developed by the Government, Buyer, and/or the respective Seller under the Prototype Project. The Parties shall have only the right to use, disclose and exploit any such information or data in accordance with the rights held by them pursuant to this Agreement. Notwithstanding the above, the Parties shall not be deemed authorized by this paragraph alone to disclose any Confidential and/or Proprietary Information of the Government or the Buyer.

B. Classified Research Projects

If a release of Confidential Information is for a classified Research Project, the provisions of the DoD Security Agreement (DD Form 441) and the DoD Contract Security Classification Specification (DD Form 254) apply.

C. Publication or Public Disclosure of Information

1. Review or Approval of Information and Data for Public Release

(a) The Seller must receive Buyer and written Government approval (through Buyer) prior to Public Release of data developed by the Government and/or respective AMTC member(s) under the Prototype Projects. At least sixty (90) days prior to the scheduled release date, the Seller shall submit to the Buyer at least one (1) copy of the information to be released.

The Buyer will route the information to the USG ALO (Acquisition Liaison Office). The ALO will route the information to the cognizant Public Affairs Office for review and approval. The ALO and Redstone Arsenal Public Affairs Office are hereby designated as the approval authorities for the USG for such releases

(b) Where the Seller is an Academic Research Institution performing fundamental research on campus, the Buyer shall require such Sellers to provide papers and publications for provision to the ALO for review and comment 90 days prior to formal paper/publication submission in accordance with the procedures in paragraph (a) above must be followed.

(c) The Parties to this Agreement are responsible for assuring that an acknowledgment of Government support will appear in any publication of any material based on or developed under this Agreement, using the following language: "Effort sponsored by the U.S. Government under Other Transaction number W9124P-19-9-0001 between AMTC and the Government. The U.S. Government is authorized to reproduce and distribute reprints for Governmental purposes notwithstanding any copyright notation thereon."

(d) The Parties to this Agreement are also responsible for assuring that every publication of material based on or developed under this Agreement contains the following disclaimer: "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."

The Seller shall flow down these requirements to its subagreement recipients at all tiers.

2. Notices

To avoid disclosure of Confidential and/or Proprietary Information belonging to the Buyer and/or the Government and the loss of patent rights as a result of premature public disclosure of patentable information, any Seller that is proposing to publish or disclose such information shall provide advance notice to the Buyer and identify such other parties that may have an interest in such Confidential and/or Proprietary Information. The Buyer shall notify such parties at least sixty (90) calendar days prior to Seller submission for publication or disclosure by the publishing party, together with any and all materials intended for publication or disclosure relating to technical reports, data, or information developed during the term of and pursuant to this Agreement. The Government will notify the Buyer, who will in turn notify the Seller, of any objection to disclosure within this sixty (90) day period, or else the Seller publishing party shall be deemed authorized to make such disclosure, as long as the publishing party has complied with the other provisions of this Article IX as well as Article VIII, Confidential and/or Proprietary Information.

3. Filing of Patent Applications

During the course of the sixty (90) calendar day period discussed above, the Seller shall provide notice to the Buyer as to whether the Seller desires that a patent application be filed on any invention disclosed in such materials. In the event that the Seller to whom such Confidential and/or Proprietary Information belongs desires that such a patent application be filed, the Seller or the Government proposing to publish or disclose such materials agrees to withhold publication and disclosure of such materials until the occurrence of the first of the following:

- (a) Filing of a patent application covering such invention, or
- (b) Written agreement, from the USG and the Buyer that no patentable invention is disclosed in such materials.

Further, during the course of any such sixty (90) calendar day period, the Seller shall notify the USG, through the Buyer, if the Seller believes any of its Confidential and/or Proprietary Information has been included in the proposed publication or disclosure and shall identify the specific Confidential and/or Proprietary Information that needs to be removed from such proposed publication. The Buyer agrees to remove from the proposed publication or disclosure all such Confidential and/or Proprietary Information so identified by the Seller.

4. Public Announcements

Any public announcements (including press releases, website postings or other public statements) by any party regarding this Agreement or Project Agreements awarded thereunder shall follow the procedures set forth in this Article IX.

ARTICLE X: PATENT RIGHTS

A. Definitions

"Invention" means any invention or discovery which is or may be patentable or otherwise protectable under Title 35 of the United States Code.

"Made" when used in relation to any invention means the conception or first actual reduction to practice of such invention.

"Practical Application" means to manufacture, in the case of a composition of product; to practice, in the case of a process or method, or to operate, in the case of a machine or system; and in each case, under such conditions as to establish that the invention is capable of being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.

"Subject Invention" means any invention of a Seller conceived or first actually reduced to practice in the performance of work under this Agreement.

"Background Invention" means any invention made by Seller (or its subcontractors of any tier) prior to performance of the Project Agreement or outside the scope of work performed under the Project Agreement.

B. Allocation of Principal Rights

The Seller shall retain the entire right, title and interest throughout the world to each subject invention consistent with the provisions of this Article and 35 U.S.C § 202. With respect to any Subject Invention in which the Seller retains title, the Government shall have a non-exclusive, nontransferable, irrevocable, paid-up license to practice or have practiced on behalf of the United States the Subject Invention throughout the world. The Seller may elect to provide full or partial rights that it has retained to other parties.

C. Invention Disclosure, Election of Title, and Filing of Patent Application

1. The Seller shall disclose each Subject Invention to Buyer within two (2) months after the inventor discloses it in writing to his company personnel responsible for patent matters. The disclosure to the Buyer, or with prior authorization from the Buyer, to the Government, shall be in the form of a written report and shall identify the Project Agreement under which the Invention was Made and the identity of the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding to the extent known at the time of the disclosure, of the nature, purpose, operation, and the physical, chemical, biological or electrical characteristics of the invention. The disclosure shall also identify any publication, sale, or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure.

2. If the Seller determines that it does not intend to retain title to any such Invention, the Seller shall notify the Government, through the Buyer, in writing, within nine (9) months of the disclosure pursuant to Paragraph 1 above. However, in any case where publication, sale or public use has initiated the one (1) year statutory period wherein valid patent protection can still be obtained in the United States, the period for such notice may be shortened the Government to a date that is no more than six (6) months prior to the end of the statutory period.

3. The Seller shall file its initial patent application (whether provisional or non-provisional) on a Subject Invention to which it elects to retain title within one (1) year after election of title or, if earlier, prior to the end of the statutory period wherein valid patent protection can be obtained in the United States after a publication, or sale or public use. The Seller may elect to file patent applications in additional countries (including with the European Patent Office and under the Patent Cooperation Treaty) within either ten (10) months of the corresponding initial patent application (whether provisional or non-provisional) or six (6) months from the date permission is granted by the Commissioner of Patents and Trademarks to file foreign patent applications, where such filing has been prohibited by a Secrecy Order.

4. After considering the position of the Buyer on behalf of the Seller, a request for extension of the time for disclosure election and filing under this Article X, Paragraph C, may be approved by USG, and USG approval shall not be unreasonably withheld.

D. Conditions When the Government May Obtain Title

Upon written request from the Government, the Seller shall convey to the Government, title to any Subject Invention under any of the following conditions:

- (1) If the Seller fails to disclose or elects not to retain title to the Subject Invention within the times specified in Paragraph C of this Article X; provided, that the Government may only request title within sixty (60) days after learning of the failure of the Seller to disclose or elect within the specified times.
- (2) In those countries in which the Seller fails to file patent applications within the times specified in Paragraph C of this Article X; provided, that if the Seller has filed a patent application in a country after the times specified in Paragraph C of this Article X, but prior to its receipt of the written request by the Government, through the Buyer, the Seller shall continue to retain title in that country; or
- (3) In any country in which the Seller decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in reexamination or opposition proceedings on, a patent on a Subject Invention.

E. Minimum Rights to the Seller and Protection of the Seller's Right to File

The Parties agree that:

- (1) The Seller shall retain a non-exclusive, royalty-free license throughout the world in each Subject Invention to which the Government obtains title. The Seller's license extends to the domestic (including Canada) subsidiaries and affiliates, if any, of the Seller and includes the right to grant sublicenses of the same scope to the extent that the Seller was legally obligated to do so at the time the Project under the Agreement was funded. The license is transferable only with the approval of the Government, except when transferred to the successor of that part of the Seller's business to which the Invention pertains. Government approval for license transfer shall not be unreasonably withheld.
- (2) The Seller's domestic license may be revoked or modified by the Government to the extent necessary to achieve expeditious Practical Application of the Subject Invention pursuant to an application for an exclusive license submitted consistent with appropriate provisions at 37 CFR Part 404. The Seller's license shall not be revoked or modified in that field of use or in the geographical areas in which the Seller has achieved Practical Application and continues to make the benefits of the Invention reasonably accessible to the public. The Seller's license in any foreign country may be revoked or modified at the discretion of the Government to the extent the Seller, its licensees, or its subsidiaries or affiliates have failed to achieve Practical Application in that foreign country.
- (3) Before revocation or modification of the Seller's license, the Government must furnish the Buyer under the prime OTA, and the Buyer shall forward to the Seller, a written notice of the Government's intention to revoke or modify the license, and shall be allowed thirty (30) calendar days (or such other time as may be authorized for good cause shown) after the notice to show cause why the license should not be revoked or modified.

F. Action to Protect the Government's Interest

1. The Seller shall execute or have executed and promptly deliver to the Government via the Buyer all instruments necessary to (i) establish or confirm the rights the Government has throughout the world in those Subject Inventions to which the Seller elects to retain title, and (ii) convey title to the Government when requested under Paragraph D of this Article X, and to enable the Government to obtain patent protection throughout the world in that Subject Invention.
2. The Seller agrees to require, by written agreement, that its employees working on Projects, other than clerical and non-technical employees, agree to disclose promptly in writing to personnel identified as responsible for the administration of patent, each Subject Invention Made under this Agreement. Buyer and Seller must comply with the disclosure provisions of the

prime OTA's Paragraph C of Article X, and to execute all papers necessary to file the patent applications on the Subject Invention, and establish the Government's rights in the Subject Invention. The Seller acknowledges and shall instruct its employees through employee agreements or other suitable educational programs, on the importance of reporting Inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.

3. The Seller shall notify the Government of any decision not to continue the prosecution of a patent application, pay maintenance fees or defend in a reexamination or opposition proceeding on a patent, in any country, not less than thirty (30) days before the expiration of the response period required by the relevant patent office.

4. The Seller shall include, within the specification of any United States patent application and any patent issuing thereon covering a Subject Invention, the following statement: "This invention was made with U.S. Government support under Agreement No. W9124P-19-9-0001 awarded by the Army Contracting Command-Redstone Arsenal to the AMTC. The Government has certain rights in the invention."

G. Lower-Tier Agreements

The Seller shall include this Article X, Patent Rights, suitably modified to identify the parties, in all lower-tier agreements, regardless of tier, for experimental, development or research work.

H. Reporting on Utilization of Subject Inventions

Upon request, the Seller agrees to submit, during the term of this contract/agreement, periodic reports no more frequently than annually on the utilization of a Subject Invention or on efforts at obtaining such utilization that are being made by the Seller or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the Seller and such other data and information as the Government may reasonably specify. The Seller also agrees to provide additional reports as may be requested by the Government, the Buyer, in connection with any march-in proceedings undertaken by the Government in accordance with Paragraph J of this Article X. Consistent with 35 U.S.C. § 205, the Buyer agrees it shall not disclose nor grant permission for the Government to disclose such information to persons outside the Government without the permission of the Seller.

I. Preference for American Industry

Notwithstanding any other provision of this Article X, the Seller shall not grant to any person the exclusive right to use or sell any Subject Invention in the United States or Canada unless such person agrees that any product embodying the Subject Invention or produced through the use of the Subject Invention shall be manufactured substantially in the United States or Canada. However, in individual cases, the requirements for such an agreement may be waived by the Government upon a showing by the Seller that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that, under the circumstances, domestic manufacture is not commercially feasible.

J. March-in Rights

March-in Rights will follow the procedures set forth in 37 CFR 401.6.

The Seller agrees that, with respect to any Subject Invention in which the Seller has retained title, the Government has the right to require the Seller (through the Buyer) to grant a non-exclusive license to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the

Seller refuses such a request, the Government has the right to grant such a license itself if the Government determines that:

(1) Such action is necessary because the Seller, assignee or licensees have not taken effective steps, consistent with the intent of this Agreement, to achieve Practical Application of the Subject Invention;

(2) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the Seller, assignee, or their licensees;

(3) Such action is necessary to meet requirements for public use and such requirements are not reasonably satisfied by the Seller, assignee, or licensees; or

(4) Such action is necessary because the agreement required by Paragraph (I) of this Article X,

Patent Rights, has not been obtained or waived or because a licensee who has the exclusive right to use or sell any Subject Invention in the United States is in the breach of such agreement.

The Government shall notify the Buyer as soon as practicable, but no later than five (5) calendar days following the exercise of any rights under this Paragraph J.

K. Opportunity to Cure

Certain provisions of Article X provide that the Government may gain title or a license to a Subject Invention by reason of the Seller's action, or failure to act, within the times required by this Article. Prior to claiming such rights (including any rights under Article X, Paragraph J), the Government will give written notice to the Seller, through the Buyer, of the Government's intent, and afford the Seller a reasonable time to cure such action or failure to act. The length of the cure period will depend on the circumstances, but in no event will be more than sixty (60) days. The Seller may also use the cure period to show good cause why the claiming of such title or right would be inconsistent with the intent of this Agreement in light of the appropriate timing for introduction of the technology in question, the relative funding and participation of the parties in the development of the Invention, and other factors.

L. Background Inventions

In no event shall the provisions set forth in this Article X apply to any Background Inventions or patents. The Seller or its subcontractors shall retain the entire right, title, and interest throughout the world to each such Background Invention and patent that each Party has brought, through the Buyer, to the Project issued under this Agreement, and the Government shall not have any rights under this Agreement to such Background Inventions and patents. Projects to be funded under this Agreement will list Background Inventions and patents anticipated to be used on the Project; such listing may be amended by the Parties as appropriate to reflect changes in such plans.

M. Survival Rights

Provisions of this Article X shall survive termination of this Agreement under Article II.

N. Patent Rights Clauses

Rights in patents under this Agreement shall be determined in accordance with the following FAR Part 27 clauses and provisions:

- FAR 52.227-1 Authorization and Consent and Alt I (APR 1984)
- FAR 52.227-2 Notice and Assistance Regarding Patent and Copyright Infringement
- FAR 52.227-3 Patent Indemnity
- FAR 52.227-6 Royalty Information
- FAR 52.227-9 Refund of Royalties
- FAR 52.227-10 Filing of Patent Applications- Classified Subject Matter

FAR 52.227-3, Patent Indemnity, FAR 52.227-6, Royalty Information, and FAR 52.227-9, Refund on Royalties will be listed in the Project award documentation if applicable to a given Project on a case-by-case basis only to the extent that the applicable circumstances, the terms of the clause, or the prescribing conditions are met.

ARTICLE XI: DATA RIGHTS AND COPYRIGHTS

A. General

Rights in Technical Data and computer software under this Agreement shall be determined in accordance with the following DFARS Part 227 clauses:

- DFARS 252.227-7013 Rights in Technical Data – Noncommercial Items
- DFARS 252.227-7014 Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation
- DFARS 252.227-7015 Technical Data – Commercial Items
- DFARS 252.227-7016 Rights in Bid or Proposal Information
- DFARS 252.227-7018 Rights in Noncommercial Technical Data and Computer Software – Small Business Innovation Research (SBIR) Program (DEVIATION 2020-O0007)
- DFARS 252.227-7019 Validation of Asserted Restrictions – Computer Software
- DFARS 252.227-7020 Rights in Special Works
- DFARS 252.227-7021 Rights in Data-Existing Works
- DFARS 252.227-7025 Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends

DFARS 252.227-7026 Deferred Delivery of Technical Data or Computer Software
DFARS 252.227-7027 Deferred Ordering of Technical Data or Computer Software
DFARS 252.227-7030 Technical Data – Withholding of Payment
DFARS 252.227-7037 Validation of Restrictive Markings on Technical Data

FAR or DFARS clauses are incorporated by reference but only to the extent that the applicable circumstances, the terms of the clause, or the prescribing conditions are met. The specific clauses applicable to a given Project/contract will be listed in the Project award documentation.

The Seller reserves the right to protect by copyright original works developed under this Agreement. All such copyrights will be in the name of the Seller. The Seller shall grant to the U.S. Government a non-exclusive, non-transferable, royalty-free, fully paid-up, perpetual 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 Agreement, and to authorize others to do so. However, notwithstanding the above, proprietary or otherwise protected information (including technical data and software) shall not be disclosed or released unless such release or disclosure is allowed under at least one of the above cited DFARS clauses.

In the event Technical Data are 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, the relevant Project, the Party receiving the data and others acting on its behalf may only reproduce, distribute and prepare derivative works for the purpose of carrying out that Party's responsibilities under this Agreement. The Seller is responsible for affixing appropriate markings indicating the rights of the Government on all technical data delivered under this Agreement.

Nothing in this Agreement shall preclude the Seller from having status and data rights afforded under a Small Business and Innovation Research ("SBIR") funding agreement for SBIR Phase III for work funded under this Agreement, if otherwise properly qualified, and provided that the work derives from, extends, or logically concludes effort(s) performed under prior SBIR funding agreements.

B. Data First Produced by the Government

To the extent that Data first produced by the Government during the performance of Agreement is used by or on behalf of the Seller in the performance of any Project, the Government shall retain its preexisting rights in such data, including modifications or changes, made by either Government or the Seller, to such data as part of the performance under the Project. Such data will, to the extent permitted by law, be appropriately marked with a suitable notice or legend and maintained in confidence by the Seller for a period of ten (10) 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.

C. Prior Technology

In the event it is necessary for the Government to furnish the Seller with data which existed prior to, or was produced outside of this 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 the Seller only for the purpose of carrying out the responsibilities under this Agreement. Data protection will include proprietary markings and handling, and the signing of non-disclosure agreements by the Seller's employees and/or its subcontractors' employees. Upon completion of activities under this Agreement, such data will be disposed of as requested by the Government.

D. Project Agreement Holder's Prior Technology

In the event it is necessary for the Seller to furnish the Buyer or Government with data which existed prior to, or was produced outside of, this Agreement, 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 this Agreement consistent with the provisions of Article VIII of this Agreement. Data protection will include proprietary markings and handling, and the signing of non-disclosure agreements by such Government Contractors or contract employees. The Seller, if furnishing data which existed prior to, or was produced outside of this Agreement, has the right to license such data to other parties or to entities not a party to this Agreement for a fee and/or royalty payments as

determined by the Seller furnishing such data.

E. Lower-Tier Agreements

The Seller shall include this Article suitably modified to identify the Parties, in all subcontracts and lower-tier agreements, regardless of tier, for experimental, development or research work performed under the Prototype Projects.

F. Other Instances

Notwithstanding the terms in this Article, differing rights in data may be negotiated among the Parties to each individual Project Agreement on a case-by-case basis.

G. Survival Rights

Provisions of this Article shall survive termination of this Agreement under Article II.

H. Government Direction for Alternate Language

Should the Government provide alternate Data Rights language in a Technical Direction Letter, the alternate language will be incorporated into the resulting Project Agreement and will supersede the language provided in this Article.

ARTICLE XII: EXPORT CONTROL

A. Export Compliance

Each Party agrees to comply with U.S. Export regulations including, but not limited to, the requirements of the Arms Export Control Act, as amended 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 of 1979, 50 U.S.C. app. § 2401-2420. Each party 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, the 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.

B. Flowdown

The Seller shall include this Article, suitably modified to identify all parties, in all lower-tier agreements. This Article shall, in turn, be included in all sub-tier subcontracts or other forms of lower-tier agreements, regardless of tier.

ARTICLE XIII: TITLE AND DISPOSITION OF PROPERTY

A. Definitions

In this Article, "property" means any tangible personal property other than property actually consumed during the execution of work under this Agreement.

B. Title to Property

No significant items of property are expected to be acquired under this agreement by Buyer or Seller. Title to any item of property valued at \$10,000 or less, or property with an acquisition value greater than \$10,000 that was included in the final cost proposal selected by the Government, that is acquired by the Seller pursuant to this contract or Project Agreement shall vest with the Seller upon acquisition with no further obligation of the Parties unless otherwise stated in the Contract, or otherwise determined by the Buyer. Should any item of property with an acquisition value greater than \$10,000 be required after the final cost proposal, the Buyer, at the request of the Seller and on its behalf, shall obtain prior written approval from the Government, if the final cost proposal did not specifically identify the proposed acquisition in the cost proposal. Upon written approval of the Government (obtained through Buyer), title to this property also shall vest in the Seller upon acquisition, unless otherwise stated in the Contract. The Seller shall be responsible for the maintenance, repair, protection and preservation of all such property at its own expense. Property acquired pursuant to this clause shall not be considered as in exchange for services in performance of the Project, but shall be considered a Government contribution to the Project.

C. Government Furnished Property

The Government may provide the Seller Government Furnished Property (GFP) to facilitate the performance of individual Prototype Agreements under this Agreement. Such GFP will be specifically identified to a particular Project via a modification to the OTA and subsequently incorporated into a resulting Prototype Project Agreement. The GFP shall be utilized only for the performance of that individual Project unless a specific exception is made in writing by the Government.

If used outside of the performance of the Contract, the Government and Buyer make no warranty whatsoever that Seller's use of Government Furnished Property, technical data, or computer software will be free from infringement of third-party rights. Seller shall hold the Government and Buyer harmless from, and defend and indemnify the Government and Buyer for, any and all liabilities that arise from or relate to Seller's use of any Government Furnished Property, technical data, or computer software outside the performance of this Contract.

Except for Sellers who have an adequate property management system as defined in FAR 52.245-1 (Jan 2017) and are using this system to manage the GFP provided in this Agreement (whose risk and responsibilities are defined therein), Sellers who receive GFP for a Project Agreement shall assume the risk of and be responsible for any loss or destruction of, or damage to, any GFP while in its possession or control, with the exception of reasonable wear and tear or reasonable and proper consumption.

The Seller shall obtain explicit written authorization for any transfer or disposition of Government Furnished Property.

ARTICLE XIV: SAFETY

A Safety Survey will be conducted by the Government prior to the handling of explosives, production of any hardware or fire testing under any Contract.

If the Contract involves Arms, Ammunition and Explosives (AA&E) or other Hazardous Material, the following clauses shall be incorporated into the Contract and subcontracts. See Attachment I for the DEVCOM AvMC Safety Requirements and full text of below clauses. Seller and Seller's subcontractors are to ensure that all facilities that will house AA&E comply with DoD 5100-76-M Physical Security of Sensitive Conventional Arms, Ammunition and Explosives.

DFARS 252.223-7002 - Safety Precautions for Ammunition and Explosives
DFARS 252.223-7003 - Change in Place of Performance – Ammunition and Explosives
DFARS 252.223-7007 - Safeguarding Sensitive Conventional Arms, Ammunition and Explosives
FAR 52.223-3 – Hazardous Material Identification and Material Safety Data
FAR 52.236-13 – Accident Prevention

The 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 the Project Agreements. The listed Department of Defense Directives, Federal Acquisition Regulation (FAR) and the Defense Federal Acquisition Regulation Supplement (DFARS), and DEVCOM AvMC clauses will be incorporated into the Project Agreements by reference with the same force and effect as if they were given in full text.

ARTICLE XV: OPSEC & SECURITY

A. OPSEC / Security Requirements

The Seller shall comply with the requirements of the applicable DoD Contract Security Classification Specification (DD Form 254) and shall utilize the Security Classification Guides (SCG) provided by the U.S. Government for classification guidance. As required, the SCGs will be provided by the Government specific to the Project.

Work performed by a Seller under a Project Agreement may involve access to Communications Security (COM-SEC) Information; Restricted Data; Formerly Restricted Data; SCI and Non-SCI Intelligence information; Special Access Information; NATO Information; Foreign Government Information; For Official Use Only Information (FOUO); and Secure Internet Protocol Router Network (SIPRNET). In performing Project Agreements under this Agreement, the Seller may Receive and Generate Classified Material; Fabricate, Modify, and/or Store Classified Hardware; Have Access to US Classified Information outside the US, Puerto Rico, US Possessions and Trust Territories; Require a COMSEC Account; Have Operations Security (OPSEC) Requirements; Be Authorized to use the Defense Courier System; and/or Process Classified Information at Redstone Arsenal, AL following AR 25-2 for guidance on classified computer processing.

As required by the specific DD254 associated with individual Project Agreements, the Seller shall

maintain a TOP SECRET (TS) facility clearance and have sufficient number of employees with a Personnel Security Clearance at the TS / (Sensitive Compartmented Information) SCI / (Special Access Information) SAP and SECRET levels to meet the requirements of the Projects requested.

The below listed Department of Defense Directives, Federal Acquisition Regulation (FAR) and the Defense Federal Acquisition Regulation Supplement (DFARS) clauses will be incorporated into the Project Agreements by reference with the same force and effect as if they were given in full text.

- a) DoDM 5200.01 DoD Information Security Program, 24 Feb 12
- b) DoD 5200.2-R Personnel Security Regulation, Jan 87
- c) DoD 5220.22-M National Industrial Security Program, 28 Feb 06
- d) DoDI 5200.01, Information Security Program and Protection of Sensitive Compartmented Information, Vol. 1-4 Mar 13
- e) DoD 5400.7-R, DOD Freedom of Information Act, 25 Jan 17
- f) DoDI 2000.12, Antiterrorism Program, 1 Mar 12
- g) FAR Clause 4.402, Safeguarding Classified Information Within Industry
- h) FAR Clause 52.204-2, Security Requirements, Aug 1996

1. Each Prototype Project Scope of Work will be provided by the Government, via the Buyer.
2. Specific applicable policies, instructions, and regulations will be identified in each Prototype Project. Throughout the life of the Agreement, if any policy, instruction, or regulation is replaced or superseded, the replacement or superseding version shall apply.
3. Security Incidents and Violations. The Seller shall immediately notify the Buyer and Cognizant Security Office of any actual security violation, security incident, or of any indication of a potential unauthorized disclosure or compromise of classified or sensitive but unclassified information.
4. Anti-Terrorism (AT) Level I Training. This provision is for Seller employees with an area of performance within an Army controlled installation, facility or area. All Seller employees requiring access to Army installations, facilities and controlled access areas shall complete AT Level I awareness training within thirty (30) calendar days after Project start date or effective date of incorporation of this requirement into the Project, whichever is applicable. Seller shall submit certificates of completion for each affected employee and Seller employee to the Buyer within twenty (20) calendar days after completion of training by all employees or personnel. AT level I awareness training is available at the following website: <https://jkodirect.jten.mil>.
5. Anti-Terrorism Awareness Training for Seller Personnel Traveling Overseas. Seller employees shall be made available to receive Government provided area of responsibility specific AT awareness training as directed by AR 525-13. Specific AOR training content is directed by the combatant commander, with the unit Anti-terrorism Officer (ATO) being the local point of contact.
6. iWATCH Training. Seller employees with an area of performance within an Army controlled installation, facility or area 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 Government. This training shall be completed within twenty (20) calendar days of a Project Agreement award and within twenty (20) calendar days of new employees' commencing performance with the results reported to the Buyer NLT twenty (20) calendar days after Project completion.
7. Seller Employees that Require Handling or Access to Classified Information. Seller employees shall comply with FAR 52.204-2, Security Requirements. This clause involves access to information classified "Confidential," "Secret," or "Top Secret" and requires Seller employees to comply with—
 - (1) The Security Agreement (DD Form 441), including the National Industrial Security Program Operating Manual (DoD 5220.22-M); any revisions to DOD 5220.22-M, notice of which will be furnished to the Seller.
8. Threat Awareness Reporting Program Training. For all Seller employees performing under a Prototype Project Agreement subject to DoD Contract Security Specifications (DD 254), as required by the Government. Per AR 381-12 Threat Awareness and Reporting Program (TARP), Seller employees must receive annual TARP training presented by a Counterintelligence Special Agent. Contact the Redstone Arsenal MI Detachment at 256-313-5186 for scheduling.
9. Seller Employees Requiring Common Access Card (CAC). Before CAC issuance, the Seller employee requires, at a minimum, a favorably adjudicated National Agency Check with Inquiries (NACI) or an equivalent or higher investigation in accordance with Army Directive 2014-05. The

Seller employee will be issued a CAC only if duties involve one of the following:

- (1) Both physical access to a DoD facility and access, via logon, to DoD networks on-site or remotely;
- (2) Remote access, via logon, to a DoD network using DoD-approved remote access procedures; or
- (3) Physical access to multiple DoD facilities or multiple non-DoD federally controlled facilities on behalf of the DoD on a recurring basis for a period of 6 months or more. At the discretion of the sponsoring activity, an initial CAC may be issued based on a favorable review of the FBI fingerprint check and a successfully scheduled NACI at the Office of Personnel Management.

10. Seller Employees that do not Require CAC, but Require Access to a DoD Facility or Installation. Seller employees and all associated sub-contractors employees shall comply with adjudication standards and procedures using the National Crime Information Center Interstate Identification Index (NCIC-III) and Terrorist Screening Database (TSDB) (Army Directive 2014-05/AR 190-13), applicable installation, facility and area commander installation/facility access and local security policies and procedures (provided by government representative), or, at OCONUS locations, in accordance with status of forces agreements and other theater regulations.

11. Identification of Seller Employees. This provision is for Seller employees with an area of performance within an Army controlled installation, facility or area. The Seller (to include subcontractors) shall provide each employee a Redstone Arsenal Identification (ID) Badge, which includes at a minimum, the Company Name, Employee Name and a color photo of the employee. ID Badges for Key Personnel shall also indicate their job title. ID Badges shall be worn at all times during which the employee is performing work under this Agreement. Each Seller employee shall wear the ID Badge in a conspicuous place on the front of exterior clothing and above the waist except when safety or health reasons prohibit. The Seller employees shall be responsible for collection of ID Badges upon completion of the Project or termination of employee. A listing of issued identification cards shall be furnished to the Agreements Officer via the Buyer prior to the Project performance date and updated as needed to reflect Seller personnel changes. Foreign owned companies and foreign national contractors will only be permitted to perform under this Agreement when there are no qualified U.S. companies and /or U.S. contractors unless otherwise approved by the Government (obtained through Buyer). All Seller personnel attending meetings, answering Government telephones, and working in other situations where their contractor status is not obvious to third parties are required to identify themselves as such to avoid creating an impression in the minds of members of the public that they are Government officials. They shall also ensure that all documents or reports produced by Seller employees are suitably marked as contractor products or that contractor participation is appropriately disclosed.

12. Security Education, Training & Awareness (SETA) Training. This provision is for Seller employees with an area of performance within an Army controlled installation, facility or area. All Seller employees requiring access to government installations, facilities and controlled access areas shall complete annual mandatory SETA awareness training within 30 calendar days after Project start date or effective date of incorporation of this requirement into the Project, whichever is applicable. The following URL is made available for your training: <https://www.lms.army.mil>. Upon completion of the training, you must provide certification to the Information Security Officer. Security Education, Training & Awareness covers Information Security, Personnel Security and Industrial Security Programs.

13. Combating Trafficking in Persons, Cyber Awareness Challenge, Personal Identification Information (PII) and Sexual Harassment Assault Response Program (SHARP) Training. This provision is for Seller employees with an area of performance within an Army controlled installation, facility or area. All Seller employees requiring access to government installations, facilities and controlled access areas shall complete Combating Trafficking in Persons, Cyber Awareness Challenge, Personal Identification Information (PII), and Sexual Harassment Assault Response Program (SHARP). The Seller employees shall submit certificates of completion for each affected Seller employee and subcontractor employee, to the AOR or to the Agreements Officer, if an AOR is not assigned, via the Buyer within 20 calendar days after completion of training by all Seller employees.

14. For Projects that Require OPSEC Training. Level I OPSEC Awareness Training: Per AR 530-1, Operations Security, all Seller employees shall complete Level I OPSEC Awareness Training within 20 calendar days of starting work under the Project. All Seller employees shall take the Level 1 OPSEC Awareness Training located at the below website and print the certificates demonstrating completion. The Seller employee shall submit certificates of completion for each affected Seller employee to the AOR via the Buyer, within 5 calendar days after completion of training by all Seller employees.

Note: after the first screen, select User Type: Civilian/Contractor, then Service: Army, then Grade N/A. OPSEC awareness training is available at the following website:

<https://securityawareness.usalearning.gov/opsec/index.htm>. The Seller must follow the AMRDEC OPSEC Plan in the performance of each Project.

15. Government Information Systems and Information Awareness Requirements. All Seller employees with access to a government information system must be registered in the ATCTS (Army Training Certification Tracking System) at commencement of services, and must successfully complete the DOD Cyber Awareness Challenge Training prior to access to the IS and then annually thereafter, and must sign an Acceptable Use Policy (AUP).

16. Information Assurance (IA)/Information Technology (IT) Training and/or Certification. Per DoD 8570.01-M , DFARS 252.239.7001 and AR 25-2, the Seller employees supporting IA/IT functions shall be appropriately trained and/or certified, as required upon Project award. The baseline certification as stipulated in DoD 8570.01-M must be completed upon Project award. Additional training for IA workforce positions must be completed within six months.

17. Access and General Protection/Security Policy and Procedures. Seller employees with an area of performance within an Army controlled installation, facility or area. Seller employees shall comply with applicable installation, facility and area commander installation/facility access and local security policies and procedures (provided by Government representative). The Seller also shall 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. In addition to the changes otherwise authorized by the Changes clause of this Contract, should the Force Protection Condition at any individual facility or installation change, the Government may require changes in Seller security matters or processes. The Seller Human Resources/Security Officer is responsible for the collection of all Redstone Badges and CAC cards issued to their employees. The Human Resources/ Security Officer will then turn over these credentials to the AOR or Buyer. This applies when the Project expires; as well as, when a Seller employee resigns or is terminated. After accounting for all badges/ CACs, the AOR will turn in the credentials at the One Stop Badging Office or CAC Office (MILPO). All Seller employees who are not in possession of the appropriate security clearance or access privileges, will be escorted in areas where they may be exposed to classified and/or sensitive materials and/or sensitive or restricted area.

18. Key Control. The Seller shall establish and implement methods of making sure all keys/key cards issued to the Seller by the Government are not lost or misplaced and are not used by unauthorized persons. NOTE: All references to keys include key cards. No keys issued to the Seller by the Government shall be duplicated. The Seller shall develop and follow procedures covering key control that shall be included in the Standard Operating Procedures. Such procedures shall include turning in of any issued keys by personnel who no longer require access to locked areas. The Seller shall immediately report any occurrences of lost or duplicate keys/key cards to the Agreements Officer.

In the event keys, other than master keys, are lost or duplicated, the Seller shall, upon direction of the Government, re-key or replace the affected lock or locks; however, the Government, at its option, may replace the affected lock or locks or perform re-keying. When the replacement of locks or re-keying is performed by the Government, the total cost of re-keying or the replacement of the lock or locks shall be deducted from Seller payments. In the event a master key is lost or duplicated, all locks and keys for that system shall be replaced by the Government and the total cost deducted from the Seller. The Seller shall prohibit access to Government issued keys/key cards by unauthorized personnel other than the Seller's employees. The Seller shall prohibit entry into controlled areas by unauthorized personnel other than the Seller's employees engaged in the performance of assigned work in those areas, or personnel authorized entrance by the USG Agreements Officer.

19. Lock Combinations. The Seller shall establish and implement methods of ensuring that all lock combinations are not revealed to unauthorized persons. The Seller shall ensure that lock combinations are changed when personnel having access to the combinations no longer have a need to know such combinations. These procedures shall be included in the Seller's Standard Operating Procedures.

20. For Seller personnel Authorized to Accompany U.S. Armed Forces. DFARS Clause 252.225-7040, Contractor Personnel Supporting U.S. Armed Forces Deployed Outside the United States, shall be used in Projects that authorize Seller personnel to accompany U.S. Armed Forces deployed outside the U.S. in contingency operations; humanitarian or peacekeeping operations; or other military operations or exercises, when designated by the combatant commander. The clause discusses the following AT/ OPSEC related topics: required compliance with laws and regulations, predeployment requirements, required training (per combatant command guidance) and personnel data required.

21. For Projects Requiring Performance or Delivery in a Foreign Country. DFARS Clause 252.225-7043, Antiterrorism/Force Protection Policy for Defense Contractors Outside the U.S., shall be used in Projects that require performance or delivery in a foreign country. 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 the Seller's compliance with combatant commander and subordinate task force commander policies and directives.

22. Project Awards Involving Storing of HAZMAT and/or Arms, Ammunition and Explosives (AA&E). For Projects requiring storage of Hazardous Material, use FAR Clause 52.223-3 and/or Arms, Ammunition and Explosives (AA&E), use DFARS Clause 252.223-7007. AA&E as used in this clause, means those items within the scope (chapter 1, paragraph B) of DoD 5100.76-M, Physical Security of Sensitive Conventional Arms, Ammunition, and Explosives.

23. Privacy Act. The Seller shall ensure that employees assigned to the Project understand and comply with DoD 5400.7, DoD Freedom of Information Act Program, and Privacy Act Program. These directives set policy and procedures for the disclosure of records to the public and for making, handling, transmitting, and safeguarding For Official Use Only (FOUO) material. In addition, they set guidelines for collecting, safeguarding, maintaining, using, accessing, amending, and disseminating personal data kept in systems of records.

24. Cybersecurity (CS). The Seller shall adhere to all applicable CS regulations and security policies including Executive Order 13556, Controlled Unclassified Information, National Institute of Standards and Technology (NIST) 800 Series Special Publications, and the Federal Information Security Management Act (FISMA). The Seller will work with the Program Manager (PM) and Original Equipment Manufacturer (OEM), as specified in the individual project's SOW, to support the creation and sustainment of the Risk Management Framework (RMF) packages and all the contents therein. The Seller shall obtain and maintain required clearances up to TS/SCI to obtain Government provided access to critical threat information. The Seller shall perform vulnerability assessments (e.g. scan systems for vulnerabilities), and apply technical/non-technical remediations in collaboration with the Government customer to support accreditation decisions. The Seller shall be certified or trained at the level required to conduct the cyber mission. The Seller shall ensure it is knowledgeable on current and emerging vulnerabilities and mitigation strategies for the tactical system. The Seller shall participate in technical and non-technical meetings, as defined in the individual project's SOW, to identify the tailored set of security controls and ensure they are implemented appropriately into any developmental efforts.

25. Hazardous Materials. All Seller activities shall be in compliance with applicable federal, state and local environmental laws and regulations. For this Agreement, "Tracked HAZMATs" in NAS 411 should be defined as Emergency Planning and Community Right-To-Know Act (EPCRA) 302/313 listed chemicals. The Seller shall report the data elements found in MIL-STD-882E, Task 108, section 108.2.4 a, b, and d for Tracked HAZMATs. The Seller shall report coatings (identified by MIL SPEC), functional fluids (e.g. coolant, hydraulic fluid, lubricants, etc), and energetics/solid rocket motor components (including Explosives Class Number) with the same 108.2.4 a, b, and d data elements. The Seller shall provide Material Safety Data Sheets (MSDSs) or Safety Data Sheets (SDSs) for all reported materials. The Seller shall not use any Class I or Class II Ozone Depleting Chemical/Ozone Depleting Substance (ODC/ODS), identified by the lists at <http://www.epa.gov/ozone-layer-protection/ozone-depleting-substances>, in the manufacture or support of items required by the Project Award unless approved IAW Army ODS policy and/or Title 10 U.S.C. § 2402. All ODS alternatives must be in compliance with the U.S. Environmental Protection Agency (EPA) Significant New Alternatives Policy (SNAP) program and identified as approved – per the specific application – in the lists at <http://www.epa.gov/ozone/snap/lists/>. All ODS alternatives must also receive a Toxicity Clearance for the specific application from the US Army Public Health Center. The Seller shall list any hazardous material, as defined NAS 411-1, to be used for the maintenance, sustainment, and demilitarization of the end item under the Project Award. The hazardous material shall be properly identified and include any applicable identification number, such as National Stock Number or Special Item Number. The Seller hazardous materials list shall be updated during performance of the Project whenever the Seller determines that any other material to be used in the maintenance, sustainment, and demilitarization of the end item under the Project Award is hazardous.

26. Section 508 Compliance. All electronic and information technology (EIT) procured or developed through an awarded Project Agreement must meet the applicable accessibility standards at 36 CFR 1194, unless an agency exception to this requirement exists. 36 CFR 1194 implements Section 508 of the Rehabilitation Act of 1973, as amended, and is viewable at <http://www.accessboard.gov/sec508/508standards.htm>.

B. Safeguarding Covered Defense Information and Cyber Incident Reporting

Project Agreements shall include DFARS 252.204-7012, Safeguarding Covered Defense Information and Cyber Incident Reporting (OCT 2016), as it pertains to each Project.

C. Flowdown for OPSEC/Security Requirements

Each Prototype Project will include specific OPSEC / Security requirements within each SOW and RWP. The requirements delineated within each Project Agreement, in turn, shall be included in all sub-tier subcontracts or other forms of lower-tier agreements, regardless of tier.

ARTICLE XVI: CIVIL RIGHTS ACT

This Agreement is subject to the compliance requirements of Title VI of the Civil Rights Act of 1964 as amended (42 U.S.C. § 2000d et seq.) relating to nondiscrimination in Federally assisted programs. The Seller agrees, upon request, to sign an Assurance of Compliance with the nondiscriminatory provisions of the Act.

ARTICLE XVIII: ANTITRUST

The Seller agree to comply with all applicable U.S. laws, including U.S. antitrust laws

ARTICLE XX: LIABILITY OF THE PARTIES**A. Waiver of Liability**

For the purposes of this Article, "Parties" means the CAO, Buyer, Seller, and the Government where collectively identified and "Party" where each entity is individually identified. With regard to the activities undertaken pursuant to this Agreement, no Party shall make any claim against the other, employees of the other, the other's related entities (e.g., contractors or subcontractors), or employees of the other's contractors or subcontractors for any injury to or death of its own employees or employees of its contractors or subcontractors, or for damage to or loss of its own property or that of its contractors or subcontractors, whether such injury, death, damage or loss arises through negligence or otherwise, except in the case of willful misconduct.

B. Damages

The Parties shall not be liable to each other for consequential, punitive, special and incidental damages or other indirect damages, whether arising in contract (including warranty), tort (whether or not arising from the negligence of a Party) or otherwise, except to the extent such damages are caused by a Party's willful misconduct.

C. Extension of Waiver of Liability

Seller agrees to extend the waiver of liability set forth above to subcontractors at any tier under a Project Agreement by requiring them, by contract or otherwise, to agree to waive all claims described above against the Government and CAO. Seller also agrees to flow down the damages limitation set forth above to subcontractors at any tier.

D. Applicability

Notwithstanding the other provisions of this article, this Waiver of Liability shall not be applicable to:

- (1) Claims between the CAO, Buyer, Seller, and/or the Government regarding a breach, noncompliance, or nonpayment of funds;
- (2) Claims for damage caused by willful misconduct; and
- (3) Intellectual property claims.

E. Limitation of Liability

In no event shall the liability of the Government, the CAO, Buyer, or Seller, or any other entity performing research activities under a Project Agreement exceed the amount obligated by the Government for that Project Agreement. If cost-sharing occurs, the liability of the Buyer or Seller under a specific Project Agreement is limited to the amount committed as a Cash Contribution or In-Kind Contribution by the Buyer or Seller. Notwithstanding the foregoing, claims for contribution toward third-party injury, damage, or loss are not limited, waived, released, or disclaimed.

Article XI, General Provisions

A. "Organizational Conflict of Interest (OCI)" means that because of other contractual activities or relationships with the Government or other persons, a person is unable or potentially unable to render

impartial assistance or advice to the Government, or the person's objectivity in performing the project work is or might be otherwise impaired, or a person has an unfair competitive advantage. Relevant other contractual activities or relationships may include those which exist outside of the OTA construct, such as in Program Office support contracts, or other research, development or engineering contracts involving the Government. "Person" as used herein includes Corporations, Partnerships, Joint Ventures, Teaming Arrangements, and other business enterprises.

The two underlying OCI principles are:

- (a) Preventing the existence of conflicting roles that might bias a Person's judgment; and
- (b) Preventing unfair competitive advantage. An unfair competitive advantage exists where an AMTC Member competing for award possesses-
 - (1) Proprietary information that was obtained from a Government official without proper authorization; or
 - (2) Source selection information that is relevant to the prototype project but is not available to all competitors, and such information would assist the Seller in obtaining the award.

An AMTC Member that provides systems engineering and technical assistance (SETA) support for a system, but does not have overall contractual responsibility for its development, its integration, assembly, and checkout, or its production shall not:

- (1) Be awarded a prototype project to supply the system or any of its major components; or
- (2) Be a subcontractor or consultant to a supplier of the system or any of its major components.

Systems engineering includes a combination of substantially all of the following activities: determining specifications, identifying and resolving interface problems, developing test requirements, evaluating test data, and supervising design. Technical assistance includes a combination of substantially all of the following activities: developing work statements, determining parameters, directing other PAHs' operations, and resolving technical controversies.

The exercise of common sense, good judgment, and sound discretion is required in determining whether a potential conflict exists.

OCI concerns could lead the Government to decide against award of a particular prototype project. An AMTC Member's submission of an Enhanced Whitepaper under an RWP designates no known actual, potential, or perceived conflict of interest exists at the time of EWP submission. The AMTC Member agrees that if, after award, it discovers a potential organizational conflict of interest, a prompt and full disclosure shall be made in writing to the AO, through the CAO. This disclosure shall include a description of the actions the AMTC Member has taken or proposes to take, to avoid or mitigate such conflicts.