

CUSTOMER CONTRACT REQUIREMENTS**Arrow 3****CUSTOMER CONTRACT ATP-AL-201****CUSTOMER CONTRACT REQUIREMENTS**

The following customer contract requirements apply to this contract to the extent indicated below.

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

Arrow 3 .

DEFINITIONS OF THE CONTRACT

For the purposes of this Contract, the following terms shall have the meanings hereinafter set forth:

Term	Definition
Arrow 3 Program Property	Means all the supplies, Project Equipment, components, systems, sub-systems, equipment, tools, materials, (except items acquired or developed through Boeing's or a Boeing subcontractor's/vendor's internal capital investment), work-in-process, finished work, the Boeing Items, and all other tangible, which Boeing and/or its subcontractors acquire, manufacture, create, construct, obtain, compile, or establish for the purposes of this Contract and/or the Arrow 3 Program.
Boeing Items	The items and work share under this Contract for which Boeing is responsible for their development and production of initial quantity/lot.
Boeing Property	Physical property and information data acquired by Boeing or its subcontractor without using funds from the Arrow Program.
Classified Information	Official Information that required protection in the interests of national security and is so designated by the application of a security classification marking. This information may be in oral, visual, magnetic or documentary form, or in the form of equipment or technology.
Contractor Project Background Information (CPBI)	Project Background Information (including information subject to proprietary rights) generated and delivered by a contractor (including its subcontractors).
Contractor Project Foreground Information (CPFI)	Project Foreground Information generated and delivered by a contractor (including its subcontractors).
Controlled Unclassified Information	Unclassified Information to which access or distribution limitations have been applied in accordance with applicable national laws or regulations. It could include information that has been declassified but remains controlled.
Defense Purposes	Manufacture or other use in any part of the world by or for the armed forces of either Government Party.

DoD	Means the Department of Defense of the United States of America.
Effective Date	Means the date this Contract becomes effective
Engineering Drawings	A type of technical drawing used to clearly define requirements for engineered items. Engineering Drawings are a major component of a technical data package. Engineering Drawings disclose the physical and functional requirements for an item using graphic and/or textual presentations. An engineering drawing conveys the required information that a manufacturer needs to produce an item.
General Security of Information Agreement (GSOIA)	Agreement between the Governments of the United States of America and Israel relating to the storage, handling, transmittal and safeguarding of Classified Information generated or used under the RDT&E Agreement and the Upper Tier Interceptor Project Agreement.
Government Project Foreground Information (GPMI)	Information generated in part or in whole by Government (US or Israeli) military or civilian employees in the performance of the PA (including subcontracts there under).
IAI Property	Physical property and information data acquired by IAI or with funds provided by IAI.
IAI Information	Means all drawings, data, designs, specifications and other documentation and information provided by IAI (including such items originating from Rafael and/or IMI) to Boeing and/or its subcontractors.
IMOD	Means the Israeli Ministry of Defense.
Israeli Upper Tier Interceptor Project Liaison Officer	An official/representative of the Israeli government who, upon approval or certification by the Israeli Ministry of Defense, is authorized to act as its official representative in connection with the PA, including its appendices.
Patent	Grant by a government of the right to exclude others from making, using, or selling an invention. The term refers to any and all Patents, including, but not limited to, Patent of implementation, improvement, or addition, petty Patents, utility models, appearance design Patents, registered designs, and inventor certificates or like statutory protections as well as divisions, reissues, continuations, renewals, and extensions of any of these.
Product Definition Data	Data that encompasses data elements required to define a product. Product Definition Data includes specifications, performance requirements, quality assurance plans, geometry, topology, interfaces and features necessary to completely define a component part or an assembly of parts for the purpose of design, analysis, modeling, test, and evaluation.
Project Agreement (PA)	The Project Agreement between the Governments of the United States of America and Israel issued under the framework of the RDT&E Agreement, for the development, test, initial lot production, and integration of the Upper Tier Interceptor Arrow 3 with the Arrow Weapon System.
Project Background Information	Information not generated in the performance of this Contract and/or the Arrow 3 Program.

Project Classification Guide	A document that describes the methods by which Project Information shall be classified.
Project Foreground Information	Information generated in the performance of this Contract (including subcontracts there under) and/or the PA. For avoidance of doubt, the term Project Foreground Information includes both Government Project Foreground Information (GPMI) and Contractor Project Foreground Information (CPFI)
Project Information	Any information provided to, generated in, or used in the performance of a PA regardless of form or type, including, but not limited to, that of a scientific, technical, business, or financial nature, and also including photographs, reports, manuals, threat data, experimental data, test data, designs, specifications, processes, techniques, inventions, drawings, technical writings, sound recordings, pictorial representations, and other graphical presentations, whether in magnetic tape, computer memory, or any other form and whether or not subject to copyright, Patent, or other legal protection.
Project Invention	Any product, process, invention or discovery formulated or made (conceived or first actually reduced to practice) in the course of work performed under a PA in any field of technology, provided it is new, involves an inventive step and is capable of industrial application. The term "first actually reduced to practice" means the first demonstration sufficient to establish to one skilled in the art to which the invention pertains, of the operability of an invention for its intended purpose and in its intended environment.
Project Security Instruction (PSI)	A document that describes the methods by which Project Information and material shall be marked, used, transmitted and safeguarded.
Research, Development, Testing and Evaluation Agreement ('RDT&E')	Means the Agreement between the Department of Defense of the United States of America and the Ministry of Defense of the State of Israel for Research, Development, Test and Evaluation Projects, dated September 13, 2006.
Subcontractors	Means the subcontractors of Buyer or Seller
Technical Data Package	Description of an item suitable for supporting manufacturing, production, and logistics throughout an item's lifecycle. Technical Data Packages define design configuration and procedures required to ensure adequacy of item performance. Technical Data Package data includes Product Definition Data, Engineering Drawings, quality assurance, specifications, reliability data and packaging details.
Third Party	A government other than the government of a Party and any person or other entity whose government is not the government of a Party.
Upper Tier Interceptor	A defensive missile for exo-atmospheric interception of ballistic missiles in defense of Israel. The Arrow 3 interceptor is the primary and intended interceptor for the Upper Tier Interceptor Project.
Upper Tier Interceptor Project	The development, test, initial lot production, and integration of the Upper Tier Interceptor with the Arrow Weapon System. Block 5 enhancements will be conducted under the Arrow System Improvement Program Agreement.

U.S. Upper Tier Interceptor Project Liaison Officers	US Government officials who, upon approval or certification by the Missile Defense Agency (MDA), are authorized to act as official representatives in connection with the PA, including its appendices.
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ARTICLE 1 - QUALITY CONTROL, PROGRAM MANAGEMENT, TESTING, ACCEPTANCE

1.1 Seller shall, subject to reasonable security considerations and applicable laws, regulations and export licenses, grant Buyer/IAI access to its and its subcontractors' premises in accordance with the Contract. Seller and its subcontractors shall provide, at no additional cost, all reasonable facilities and assistance for the safety and convenience of Buyer/IAI visits in accordance with the Contract. Seller shall provide Buyer/IAI's personnel, upon request, with written and other information required for performance of Contract- required reviews, tests, meetings, etc.

ARTICLE 2 – IAI AND ARROW 3 PROGRAM PROPERTY

This article applies if Seller will have IAI and/or Arrow 3 Program Property.

2.1 Title and Use

(a) Seller hereby acknowledges and agrees that:

(i) it has no right, title or interest in IAI Property and/or Arrow 3 Program Property other than the rights to possess and use such property for the purposes of performing this Contract;

(ii) Buyer/IAI is the owner and/or sole authorized representative of the owner/s of the IAI Property and the Arrow 3 Program Property. Without derogating from the foregoing, title to Arrow 3 Program Property shall vest in IMOD upon the earliest to occur of acquisition, manufacture, creation, construction, obtaining, compilation, or establishment (as applicable) of the relevant item of the Arrow 3 Program Property by Seller and/or its subcontractors;

(iii) it shall look to and follow Buyer's directions with respect to all matters relating to the IAI Property and Arrow 3 Program Property (including, but not limited to, its use, handling, transfer and safeguarding);

(iv) it shall not create or permit to be created, suffer any lien upon or encumber, and shall discharge promptly at Seller's sole expense, any liens, charges, pledges, claims or demands that may attach to any of the IAI Property and Arrow 3 Program Property while such IAI Property and Arrow 3 Program Property is in the possession or control of Seller and/or its subcontractors;

(v) title to IAI Property and/or Arrow 3 Program Property shall not be affected by their incorporation into or attachment to any property not owned by IAI, nor shall any item of the IAI Property and/or Arrow 3

Program Property that is personal property become a fixture or lose its identity as personal property by being attached to any real property; and

(vi) none of the IAI Property and/or Arrow 3 Program Property shall be used for any purpose other than performance by Seller and its subcontractors of this Contract.

(b) Facilities modified (fixed improvements or structural alterations that cannot be removed without loss of value or damage to the premises) to accommodate the Arrow 3 Program will be the property of Seller and its sub- contractors, provided that (i) Seller provides Buyer/ with a written facility item list detailing such planned modifications and obtains Buyer's written approval that title shall vest in Seller, and (ii) such change is necessary to the performance of the Contract.

2.2 Notice of Loss - Seller shall be responsible for the risk of loss, destruction or damage to the IAI Property and Arrow 3 Program Property while in Seller's or its subcontractors' care, custody or control. Seller shall obtain and maintain insurance coverage for the IAI Property and Arrow 3 Program Property. In the event of any loss of or destruction or damage to the IAI Property and/or the Arrow 3 Program Property (or any part thereof), Seller shall immediately notify Buyer in writing of any such loss, destruction or damage.

2.3 (a) Marking - Seller shall clearly mark and identify each item of IAI Property and Arrow 3 Program Property as such (including, if applicable, the provider of such items) and Seller and its subcontractors shall only use IAI Property and Arrow 3 Program Property for the purpose of performing its obligations under this Contract. Seller and its subcontractors shall maintain written records of all IAI Property and Arrow 3 Program Property that is in its care, custody or control.

(b) Maintenance – Seller shall perform normal maintenance, as applicable, on the IAI Property and Arrow 3 Program Property in accordance with sound industrial practice, including protection, preservation, and repair and normal parts replacement. Seller shall perform any maintenance work directed by Buyer/ IAI in writing.

(c) Transfer - Seller and its subcontractors shall not sell, lease, lend or otherwise transfer title to or possession of, or disclose, (as applicable) any of the IAI Property and Arrow 3 Program Property to any third party except as authorized by Buyer/ IAI. Buyer/IAI shall have the sole authority for permitting such transfers of IAI Property and Arrow 3 Program Property, as applicable, specifying the methods and conditions for implementing such transfers. Seller shall, in accordance with Buyer's instructions, return the IAI Property and Arrow 3 Program Property to Buyer or transfer the IAI Property and Arrow 3 Program Property to another entity or location as directed by Buyer, in the condition in which same was received, acquired or manufactured, except for normal wear and tear. Costs for transfer/disposition of IAI Property and Arrow 3 Program Property shall be borne by Buyer and reimbursed to Seller and or its subcontractors, to the extent such transfer/disposition occurs in the context of a termination.

(d) License - Buyer/IAI, in its own right and as the sole authorized representative of the owner/s, hereby grants Seller a royalty-free license to use the IAI Information and ARROW3 Information for the purposes of performing its obligations under this Contract. Seller may, subject to obtaining Buyer/ IAI's prior written approval, sub-license such BIAI Information and ARROW3 Information to its subcontractors.

(e) Warranties – Seller shall ensure that any purchased item for the Arrow3 Program which has a standard warranty from its subcontractors, Seller shall pass the benefit of such warranties to Buyer/IAI.

ARTICLE 3 - CONFIDENTIALITY AND SECURITY

Provisions 3.1-3.6 only apply if Seller will receive, handle, use, etc., Classified Information.

3.1 Seller shall act in accordance with the security and confidentiality provisions established set forth in Addendum A and other security guidelines and classifications formulated on the basis of these provisions.

3.2 All Classified Information of material (as determined under the relevant laws/regulations of Israel and the United States of America) transferred or provided to, or generated by, either Party with respect to this Contract shall be stored, handled, transmitted, and safeguarded in accordance with the relevant security agreements between the Governments of Israel and the United States of America.

3.3 Classified Information and material shall be transferred only through official government-to-government channels or through channels approved by the relevant governmental security authorities. Such information and material shall bear a label designating the level of classification; denote the country of origin, the conditions of release, and the fact that the information relates to this Contract.

3.4 Seller shall take all steps to ensure that all classified information and materials transferred or provided to, or generated by, it with respect to this Contract shall be used only in accordance with the relevant laws/regulations, for the purposes permitted in this Contract and shall ensure that access to such classified information and materials is limited to those persons who possess the requisite security clearances and have a specific need for access to such information and materials in order to participate in the Arrow 3 Program. Seller shall flow down to its subcontractors and vendors these measures for safeguarding the use, handling, disclosure, storage, and transmittal of information and materials

3.5 Seller shall not disclose or transfer classified information and/or materials to any third party whatsoever without the prior written approval of Buyer/IAI and the relevant governmental authorities.

3.6 The Parties shall jointly establish a secured process for the transfer of Classified Information. Use of the said secured process shall be subject to the approval of appropriate governmental authorities.

3.7 Controlled Unclassified Information provided or generated under this Contract shall be handled in accordance with the provisions Non-Disclosure Agreements (NDAs) executed between Buyer and Seller, and controlled as follows:

- (a) Such information shall be used only for the purposes provided in this Contract.
- (b) Access to such information shall be limited to personnel whose access is necessary for the permitted use in the Arrow 3 Program.
- (c) Seller shall not further disclose or transfer such information unless Buyer/IAI consents in writing to such disclosure.

- (d) Seller shall provide immediate notification of any unauthorized disclosure or any disclosure under any legislative provision.
- (e) Nothing contained herein shall be construed to derogate in any way the obligations or responsibilities of the Parties as set forth in the NDA.

ARTICLE 4— WARRANTY

This article does not apply if the Contract is a Firm Fixed Price Contract.

4.1 Notwithstanding inspection, reviews, tests, approvals and/or acceptance by Buyer of the Seller Items that are delivered to Buyer, Seller warrants that for a period of twelve (12) months after delivery to Buyer/IAI of the [hardware deliveries], the Seller Items (and every sub-part, sub-system or unit thereof) shall be free from all defects in materials or workmanship and shall conform with the requirements of the Contract. Seller shall be notified within 30 calendar days after a defect is identified and shall effect repairs as an allowable cost under this contract. Failures arising from defects in Buyer/IAI Property and Information are excluded.

4.2 At any time during the above-referenced warranty period, Buyer/IAI may require Seller to replace or correct any non-conforming Seller Items. Except as otherwise provided in this article below, the cost of replacement or correction shall be included in allowable cost, determined in Article 8 below, but no additional Fee (defined therein) shall be paid. Seller shall not tender for acceptance Seller Items required to be replaced or corrected without disclosing the former requirement for replacement or correction, and, when required, shall disclose the corrective action taken.

4.3 If Seller fails to proceed promptly to perform required replacement or correction, Buyer may, upon sixty (60) days written notice,

- (a) By contract or otherwise, perform the replacement or correction and charge to Seller any increased cost or make an equitable reduction in the Fee;
- (b) Require delivery of undelivered Seller Items at an equitable reduction in the Fee; or
- (c) Terminate this Contract

Failure by the Parties to agree on the amount of increased cost to be charged to Seller or to the reduction of the Fee shall be a dispute.

4.4 Notwithstanding Sections 4.2 and 4.3 above, Buyer/IAI may at any time require Seller to correct or replace, without cost to Buyer/IAI, non-conforming Seller Items, if the non-conformance is due to (a) fraud, lack of good faith or willful misconduct on the part of Seller's managerial personnel or (b) the conduct of one or more of Seller's employees selected or retained by Seller after Seller's managerial personnel has reasonable grounds to believe that the employee is habitually careless or unqualified. For the avoidance of doubt, Seller's managerial personnel shall be determined at the Missile Defense Systems business segment level.

4.5 Notwithstanding inspection, reviews, tests, approvals, and/or acceptance by Buyer/IAI with respect to any of the activities/tasks/services performed by Seller or its subcontractors pursuant to this Contract, Seller warrants that such activities/tasks/ services shall be performed in a professional and workmanlike manner.

4.6 The applicable warranty period specified in Article 4.1 above shall be extended in the case of any repair or replacement of an item by the time required to effect such repair. The contractual period of performance for allowable warranty cost will be extended to the end of the last warranty item covered by this clause. For items repaired or replaced pursuant to this provision, the repaired item shall be warranted:

- (a) until the end of the original 12-month warranty period, plus the period commencing upon the date of Buyer/IAI's notification to Seller of the warranty claim and ending upon the receipt by Buyer/IAI of the relevant repaired or replaced item (the "Tolling Period"), if Buyer/IAI receives the repaired or replaced item during the first nine (9) months of the warranty period for such item; and
- (b) until the end of the third month following Buyer/IAI's receipt of the repaired or replaced item, plus the Tolling Period, if Buyer/IAI receives the repaired or replaced items after the first nine (9) months of the warranty period for such item.

4.7 Buyer/IAI will return the warranted item to Seller within 30 days of notification that the item requires warranty repair. Any disassembly beyond normal acceptance inspection, maintenance, and or attempt to repair by Buyer/IAI without prior approval of Seller shall void this warranty.

4.8 Seller will perform a warranty claim investigation and provide a written disposition of its findings to Buyer. If Seller rejects Buyer's warranty claim, Seller will provide reasonable substantiation of its rejection with the disposition. If Seller determines that Buyer's warranty claim is valid, Seller shall proceed with corrective action. The Buyer shall be responsible for the cost of removal of the defective part, transportation of the defective part to the Seller, and reinstallation of the repaired or replacement part.

4.9 Seller shall ensure that Buyer/IAI will receive from Seller's Arrow 3 subcontractors, the same warranty proposed and negotiated with Seller from their subcontractors.

ARTICLE 5 – TERMINATION FOR CONVENIENCE

This article does not apply if the Contract is a Firm Fixed Price Contract.

5.1 Buyer shall have the right, at its convenience and discretion, to terminate this Contract, in whole or in part, from time to time, by giving Seller a Notice of Termination for Convenience given in accordance with the provisions of this contract, specifying the extent to which this Contract is terminated, and the date upon which such termination shall become effective. Such termination for convenience shall be subject to the terms and procedures for termination set forth below. Costs included in Seller's termination claim may be verified by the Auditor and/or the U.S. Government. In addition, in the event of such termination, any licenses granted to Seller and its subcontractors hereunder shall be automatically revoked and cancelled, as applicable. In such event (and without limiting any of Buyer's/IAI's rights under this Contract) the provisions of Article 6 shall apply.

5.2 Seller shall not have any contention and/or claim (other than as set forth in this Article) against Buyer/IAI, IMOD and/or the United States Government in respect of the termination, for any reason whatsoever, of the ARROW 3 Program, and/or the ARROW 3 Project Agreement between the U.S. Government and IMOD, and/or this Contract and/or any purchase order canceled in consequence thereof.

5.3 Seller acknowledges that Buyer/IAI and the IM OD do not warrant that production by Seller will take place. Seller shall not have any claim and/or contention against Buyer/IAI, the IMOD and/or the United States Government for the absence of such production.

5.4 After receipt of the Notice of Termination, Seller shall act immediately according to the provisions in the Notice of Termination for Convenience. Following such Notice, Seller shall not enter into any additional commitments/ engagements in the framework of this Contract without Buyer's/ prior written authorization and except as directed by Buyer. Seller shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this Article:

- (a) Stop work as specified in the notice.
- (b) Place no further subcontracts or orders (referred to as "subcontracts" in this Article), except as necessary to complete the continued portion of the Contract (if applicable).
- (c) Terminate all subcontracts to the extent they relate to the work terminated.
- (d) Assign to Buyer/, as directed by Buyer, all right, title, and interest of Seller under the subcontracts terminated, in which case Buyer\ shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.
- (e) With approval of Buyer settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts, the cost of which would be reimbursable in whole or in part, under this Contract.
- (f) Transfer title (if not already transferred) and, as directed by Buyer deliver to Buyer:
 - (i) the fabricated or unfabricated parts, work in process, completed work supplies, and other material produced or acquired for the work terminated;
 - (ii) the completed or partially completed plans, drawings, information, and other property that, if the Contract had been completed, would be required to be furnished to Buyer; and
 - (iii) the jigs, dies, fixtures, and other special tools and tooling acquired or manufactured for this Contract, the cost of which Seller has been or will be reimbursed under this Contract.
 - (iv) For the avoidance of doubt, to the extent not covered in (i) to (iii) above, Seller's obligations under the provisions of this Article shall also apply to all items of Boeing/IAI Property and Information and all ARROW3 Property and Information.
- (g) Complete performance of the work not terminated.
- (h) Take any action that may be necessary, or that Buyer may direct, for the protection and preservation of the Buyer/IAI Property and Information and ARROW3 Property and Information that is in the possession of Seller (and/or its subcontractors).
- (i) Use its best efforts to sell, as, and to the extent, directed or authorized by Buyer any property of the types

referred to in subparagraph 5.4(f); provided, however, that Seller (i) is not required to extend credit to any purchaser and (ii) may acquire the property under the conditions prescribed by, and at prices approved by, Buyer. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by Buyer under this Contract, credited to the price or cost of the work, or paid in any other manner directed by Buyer.

5.5 Seller shall submit complete termination inventory schedules no later than 120 days from the effective date of termination, unless extended in writing by Buyer upon written request of Seller within such 120-day period.

5.6 After termination, Seller shall submit a final termination settlement proposal to Buyer in the form and with the certification prescribed by the United States Government for termination of cost-reimbursement contracts. Seller shall submit the proposal promptly, but no later than 180 days from the effective date of termination, unless extended in writing by Buyer upon written request of Seller within this 180-day period. However, if Buyer determines that the facts justify it, a termination settlement proposal may be received and acted on after 180 days or any extension. If Seller fails to submit the proposal within the time allowed, Buyer may determine, on the basis of information available, the amount, if any, due Seller because of the termination and shall pay the amount determined.

5.7 Subject to paragraph 5.6 above, Buyer and Seller may agree on the whole or any part of the amount to be paid (including an allowance for the Fee) because of the termination. In such event, the Contract shall be amended, and Seller paid the agreed amount.

5.8 If Seller and Buyer fail to agree in whole or in part on the amount of costs and/or Fee to be paid because of the termination of work, Buyer shall determine, on the basis of information available, the amount, if any, due Seller, and shall pay that amount, which shall include the following:

- (a) All costs reimbursable under this Contract, not previously paid, for the performance of this Contract (excluding costs reimbursable under paragraphs (b) and (c) below) before the effective date of the termination, and those costs that may continue for a reasonable time with the approval of or as directed by Buyer; however, Seller shall discontinue these costs within 75 days of the effective date of termination.
- (b) The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the Contract if not included in subparagraph 5.8(a) above.
- (c) The reasonable costs of settlement of the work terminated, including --
 - (i) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;
 - (ii) The termination and settlement of subcontracts (excluding the amounts of such settlements); and
 - (iii) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory.

(d) A portion of the Fixed Fee payable under the Contract equal to the percentage of completion of work contemplated under the Contract, but excluding any portion of the fee allocable to costs to be reimbursed in accordance with Article 5.8(b), less previous payments for fee.

5.9 The cost principles and procedures in Part 31 of the Federal Acquisition Regulation, in effect on the date of this Contract, shall govern all costs claimed, agreed to, or determined under this Article.

5.10 Seller shall have the right of dispute, under the Disputes clause, from any determination made by Buyer under paragraphs 5.6, 5.8, or 5.12 of this Article, except that if Seller failed to submit the termination settlement proposal within the time provided in paragraph 5.6 and failed to request a time extension, there is no right to dispute. If the Buyer has made a determination of the amount due under paragraphs 5.6, 5.8, or 5.12, Buyer shall pay Seller (1) the amount determined by Buyer if there is no right to dispute or if no timely dispute has been commenced, or (2) the amount finally determined after the dispute is resolved.

5.11 In arriving at the amount due Seller under this Article, there shall be deducted --

- (a) All unliquidated advance or other payments to Seller, under the terminated portion of this Contract;
- (b) Any claim which Buyer has against Seller under this Contract; and
- (c) The agreed price for, or the proceeds of sale of materials, supplies, or other things acquired by Seller or sold under this Article and not recovered by or credited to Buyer.

5.12 Seller and Buyer must agree to any equitable adjustment in the Fixed Fee for the continued portion of the Contract when there is a partial termination. Buyer shall amend the Contract to reflect such agreement.

5.13 (a) Buyer shall, under the terms and conditions prescribed herein, make partial payments and payments against costs incurred by Seller for the terminated portion of the Contract, if Buyer believes the total of these payments will not exceed the amount to which Seller will be entitled.

(b) If the total payments exceed the amount finally determined to be due, Seller shall repay the excess to Buyer upon demand, together with interest computed at the rate of then annual LIBOR plus 2%. Interest shall be computed for the period from the date the excess payment is received by Seller to the date the excess is repaid. Interest shall not be charged on any excess payment due to a reduction in the Seller's termination settlement proposal because of retention or other disposition of termination inventory until 10 days after the date of the retention or disposition, or a later date determined by the Buyer because of the circumstances.

5.14 If following the payment of the costs referred to in this Article, Seller acquires any asset or right, the title to such asset or right shall be vested in Buyer.

5.15 To eliminate doubt, it is emphasized that Seller shall not be entitled to any remedy, compensation and/or additional payment due to the termination of the Contract according to this Article, apart from the payments specified in this Article.

ARTICLE 6 - TERMINATION FOR DEFAULT

6.1 In addition to the provisions in the Cancellation for Default article of the General Provisions, upon receipt of notice from Buyer specifying the nature of Seller's failure, the Parties shall meet (in person or by telephone) to discuss possible solutions to resolve the default and Seller's proposed plan to cure the failure.

ARTICLE 7 – GOVERNMENT MANAGEMENT, OVERSIGHT AND CONTROL

7.1 The IMOD and U.S. Government Israeli Cooperative Program Office ("ICPO") have management, oversight and control powers with respect to the ARROW 3 Program. Seller shall extend to the IMOD and MDA any assistance required for the exercise of its management, oversight and control powers.

7.2 For said purpose, IMOD'S and MDA'S representative in all that pertains to and derives from this Contract shall be the CCP's, the Israeli Upper Tier Interceptor Project Liaison Officer(s), and the US Upper Tier Interceptor Project Liaison Officers, or anyone acting on their behalf. Seller shall cooperate with the IMOD and MDA representatives and to aid them in the performance of their function.

7.3 Seller undertakes to enable IMOD to perform any act that is required, in IMOD'S judgment, for fulfilling IMOD'S undertakings to the U.S. Government and/or for verifying Seller and/or Buyer's/IAI's compliance with its undertakings to the IMOD according to this Contract. Without derogating from the general nature of the foregoing, Seller shall place at IMOD'S disposal, for this purpose, all the information and/or documents and/or data (excluding accounting records required by IMOD).

7.4 Without derogating from the other provisions of this Contract, Seller shall include in its agreements with the Subcontractors provisions establishing that any right granted to IAI/IMOD and/or to the DoD by virtue of this Contract vis-à-vis Seller, shall vest in the IAI/IMOD and/or in the DoD vis-à-vis Seller'S Subcontractors. Seller shall incorporate in its agreements with non-Principal Subcontractors provisions establishing that any right granted to the Buyer/IAI/IMOD and/or to the DoD by virtue of this clause vis-à-vis Seller, shall vest in Buyer/IAI/IMOD and/or in the DoD vis-à-vis those non-Principal Subcontractors of Seller.

7.5 Without derogating from the foregoing IMOD and DoD shall have the following rights with regard to this Contract:

- (a) to review performance, technical, cost and schedule aspects of this Contract, including receiving copies of technical data, engineering drawings, computer software and listing and test data.
- (b) to approve, monitor and update the Contract Master Schedule.
- (c) to manage and control transfer of Buyer/IAI and/or Arrow 3 Program Property whether furnished by Buyer/ IAI or acquired.
- (d) to maintain an oversight of the security aspects of the Contract, including reviewing and obtaining approval for transfer of Classified Information.
- (e) full access and insight to Seller and Seller's sub contractor'S facilities, subject to Seller'S and Seller'S sub contractor'S security policies and U.S. law relating to the export of Defense ArticleS and/or Services. This access is limited to

Seller's major suppliers and will be limited to only that area where work for this Contract is performed.

(f) DoD shall have access to all financial data related to this Contract.

7.6 IMOD shall be entitled, at its discretion, to send a representative as an observer at any material meeting between Buyer/ IAI and Seller, including meetings for the purpose of negotiations.

ARTICLE 8 – PROJECT INFORMATION

8.1 Seller shall immediately notify Buyer if they are subject to any license or agreement that will restrict their freedom to disclose information or permit its use as required for the Program. Seller shall submit all subcontractor intellectual property terms for Buyer's review and approval.

8.2. Contractor Project Background Information ("CPBI")

Seller hereby agrees that all Contractor Project Background Information may be:

(a) Disclosed to Buyer, IAI, IMOD, MDA and other parties working on the Project, without additional charge, provided that:

(i) the CPBI is necessary to or useful in the Project;

(ii) such disclosure of CPBI may be made available without incurring liability to holders of proprietary rights;

(iii) disclosure is consistent with the applicable national disclosure policies and regulations; and

(iv) any disclosure or transfer to other contractors is consistent with the applicable export control laws and regulations.

(b) Used by IMOD, MDA and their contractors and subcontractors, without charge for Purposes of fulfilling this Contract and to perform obligations under the prime contract giving rise to this subcontract only, and may be subject to further restrictions by holders of proprietary rights. Any such restrictions shall be identified to Buyer.

(c) Seller (and/or its subcontractors) shall retain all of its rights, if any, with respect to CPBI. Seller shall prepare a list of all its CPBI, which shall indicate, with respect to each item of CPBI, the country of origin, security classification, proprietary information, use and disclosure restrictions and the parties to which the restrictions apply. Such list shall be a living document which shall be updated on a continuous basis throughout the term of the Contract.

8.3. Project Foreground Information

(a) Seller hereby agrees that title to all Project Foreground Information, whether CPFI or GPFI, and including Project

Inventions shall belong to IAI and/or IMOD and/or MDA. For avoidance of doubt, Seller shall not sell, transfer title to, disclose or transfer possession of Project Foreground Information to any third party without the prior written consent of Buyer.

- (b) Seller may use Project Foreground Information for purposes of performing the Contract.
- (c) Seller shall not sell, transfer title to, disclose or transfer possession of Project Foreground Information to any third party without the prior written consent of Buyer.
- (d) Project Foreground Information shall be prepared and delivered as a Technical Data Package (TDP) (or a Product Definition Data (PDD) if a TDP is unavailable), all as set forth in [TBD annex (list of data deliverables)].

8.4. Security, Export Laws and Regulations

- (a) Seller agrees that all Project Information (classified and unclassified) shall be identified and marked and shall be handled in accordance with the requirements in Addendum A, as applicable. Transfer of Project Information shall be consistent with and subject to all applicable export control laws and regulations.
- (b) Seller further agrees that:
 - (i) Project Foreground Information shall not be used in offensive ballistic missile systems;
 - (ii) Use of Project Foreground Information for other missile systems, rocket systems, or unmanned air vehicles shall be in accordance with US law, regulation and policy; and
 - (iii) Upon request of Buyer, IAI, IMOD and/or MDA, and/or their authorized representatives, Seller shall provide visibility into the identity of prospective contractors and subcontractors receiving export -controlled information.
- (c) Classified Information- (Applies if Seller will receive, handle, use, etc., Classified Information.)
 - (i) Seller agrees that all Classified Information provided or generated pursuant to the Contract and that comes within its possession or control shall be stored, handled, transmitted and safeguarded as outlined in Article 3. In addition, Classified Information shall be transferred through official government-to-government channels only, or other channels approved by the government. All Classified Information shall be marked to indicate the level of classification, country of origin, conditions of release, and that it relates to the Contract.
 - (ii) Seller further agrees that Classified Information:
 - (a) Shall be safeguarded against unauthorized disclosure;
 - (b) Shall not be released to any third party without the prior written authorization, in accordance with applicable laws and regulations, of the government have authority over such information;

- (c) Shall be used only for the purposes authorized in the Contract; and
 - (d) Shall comply with any distribution and access restrictions on such information;
- (iii) Seller shall promptly and fully inform Buyer and IAI and cooperate in investigating any cases of known or suspected loss or unauthorized disclosure or use of Classified Information.
- (iv) Seller shall comply with the security instructions issued by the US and/or Israeli (as applicable) Designated Security Authority (DSA) for the Program, including:
- (a) Having the required Contractor and facilities security clearances (including at all subcontractor levels);
 - (b) Ensure that all persons with access to Classified Information have been briefed of their responsibilities; and
 - (c) Limiting access on a "need to know" basis.
- (d) Controlled Unclassified Information (CUI) (Applies if Seller will receive, handle, use, etc., Controlled Unclassified Information.)
- (i) Seller agrees that, unless otherwise agreed in writing, Controlled Unclassified Information shall be controlled as follows:
- (a) Used only for the purposes authorized for use of Project Information;
 - (b) Access limited to persons whose access is necessary for the permitted use;
 - (c) Access/use shall be in accordance with all applicable laws and regulations and security instructions; and
 - (d) Seller shall provide immediate notification to Buyer and IAI of any unauthorized disclosure or any disclosure required under any laws, statutes, regulations, and/or court orders or directives.
- (ii) Controlled Unclassified Information shall be appropriately marked to ensure its "in confidence" nature and also to indicate export control regulations (e.g. "ITAR-controlled", "EAR-controlled", "For Official Use Only", etc.) as all as set forth in the Project Security Instruction.
- (e) Government Security Oversight
- (i) Seller shall permit visits to its facilities and laboratories, by employees of IAI, Buyer, IMOD, and MDA, and their authorized representatives, provided such persons have all necessary and appropriate security clearances and a need to know.

(ii) Seller hereby represents that it has and shall maintain all required facility and personal security clearances and security compliance systems and procedures as needed to comply with all applicable laws and regulations.

(iii) Seller shall allow the DSA's to conduct periodic inspections to ensure that Classified Information is properly protected.

(f) IAI Information

(i) Seller hereby acknowledges and agrees that:

(a) It has no right, title or interest in IAI Information other than the right to possess and use such property for the purpose of performing this Contract; and

(b) IAI is the owner and/or sole authorized representative of the owner/s of the IAI Information.

(c) None of the IAI Information shall be used for any purpose other than performance by Seller and its subcontractors of this Contract.

Addendum A

1. Controlled Unclassified Information

- a. Except as otherwise provided in the Contract, or as authorized in writing by the Buyer, Controlled Unclassified Information provided or generated pursuant to this Contract shall be controlled as follows:

i. Such information shall be used only for the purposes authorized by the Contract

ii. Access to such information shall be limited to personnel whose access is necessary for the permitted use under subparagraph 1.a.i. and shall be subject to the provisions of the Contract

iii. Each Party shall take all lawful steps, which may include national classification, available to it to keep such information free from further disclosure (including requests under any legislative provisions), unless the originating Party consents in writing to such disclosure. In the event of unauthorized disclosure, or if it becomes probable that the information may have to be further disclosed under any legislative provision, immediate notification shall be given to the originating Party.

- b. To assist in providing the appropriate controls, the originating Party shall ensure that Controlled Unclassified Information is appropriately marked to ensure its "in confidence" nature. U.S. export-controlled information shall be marked as "International Traffic in Arms Regulations (ITAR)-Controlled," "Export Administration Control Regulations (EAR)- Controlled," as appropriate. Israel export-controlled information shall be marked as "For Official Use Only.". The Parties shall decide, in advance and in writing, on the markings to be placed on the Controlled Unclassified Information.
- c. Controlled Unclassified Information provided or generated pursuant to this Contract shall be handled in a manner that ensures control as provided for in paragraph 1.
- d. Prior to authorizing the release of Controlled Unclassified Information to subcontractors, the Parties shall ensure that the subcontractors are legally bound to control such information in accordance with the Contract.

2. Security

- a. All Classified Information provided or generated pursuant to this Contract shall be stored, handled, transmitted, and safeguarded in accordance with the GSOIA.
- b. Classified information shall be transferred only through official government-to government channels or through channels approved by the Designated Security Authorities (DSAs) of the Parties. Such Classified Information shall bear the level of classification, denote the country of origin, the conditions of release, and the fact that the information relates to the Contract.
- c. Each Party shall take all lawful steps available to it to ensure that Classified Information provided or generated pursuant to this Agreement is protected from further disclosure, except as permitted by paragraph 2.i. unless the other Party consents in writing to such disclosure. Accordingly, each Party shall ensure that:
 - i. The recipient shall not release the Classified Information to any government, national, organization, or other entity of a Third Party without the prior written consent of the originating Party.
 - ii. The recipient shall not use the Classified Information for other than the purposes provided for in this Agreement.
 - iii. The recipient shall comply with any distribution and access restrictions on information that is provided under this Contract.
- d. The Parties shall investigate all cases in which it is known or where there are grounds for suspecting that Classified Information provided or generated pursuant to this Contract has been lost or disclosed to unauthorized persons. Each Party also shall promptly and fully inform the other Party of

the details of any such occurrences, and of the final results of the investigation and of the corrective action taken to preclude recurrences.

e. If the Contract requires exchange of Classified Information, the Parties shall prepare Project Security Instructions and a Classification Guides for the Contract. The Project Security Instruction and the Classification Guide shall describe the methods by which Project Information and material shall be classified, marked, used, transmitted and safeguarded and will require that markings for all export-controlled classified information also include the applicable export control markings identified in paragraph 1. (Controlled Unclassified Information). The Project Security Instruction and Classification Guide shall be developed within three months. They shall be reviewed and forwarded to the Parties DSAs for approval and shall be applicable to all Buyer and Seller personnel participating in the Project. The Classification Guide shall be subject to regular review and revision with the aim of downgrading the classification whenever this is appropriate. The Project Security Instruction and the Classification Guide shall be approved by the appropriate DSA prior to the transfer of any Classified Information or Controlled Unclassified Information.

f. The DSA of a Party that awards a classified Contract shall assume responsibility for administering within its territory security measures for the protection of the Classified Information, in accordance with its laws and regulations. Prior to the release to a subcontractor, or prospective subcontractor of any Classified Information received under this Contract, the DSAs shall:

- i. Ensure that such subcontractor and its facilities have the capability to protect the Classified Information adequately.
- ii. Grant a security clearance to the facilities, if appropriate.
- iii. Grant a security clearance for all personnel whose duties require access to the Classified Information, if appropriate.
- iv. Ensure that all persons having access to the Classified Information are informed of their responsibilities to protect the Classified Information in accordance with national security laws and regulations, and the provisions of this Contract.
- v. Ensure that access to the Classified Information is limited to those persons who have a need-to-know for purposes of this Contract.

g. The DSAs may carry out periodic security inspections of cleared facilities to ensure that the Classified Information is properly protected.

h. Subcontractors that are determined by DSAs to be under financial, administrative, policy or management control of nationals or entities of a Third Party, may participate in a Contract or subcontract requiring access to Classified Information provided or generated pursuant to this Contract only when enforceable measures are in effect to ensure that nationals or other entities of a Third Party shall not have access to Classified Information. If enforceable measures are not in effect to preclude access by nationals or other entities of a Third Party, the other Party shall be consulted for written approval prior to permitting such access.

i. For any facility where Classified Information is to be used, the responsible Party shall approve the appointment of a person or persons to exercise effectively the responsibilities for safeguarding at such facility the information pertaining to this Contract. These officials shall be responsible for limiting access to Classified Information involved in this Contract to those persons who have been properly approved for access and have a need-to-know.

j. Each Party shall ensure that access to Classified Information is limited to those persons who possess requisite security clearances and have a specific need for access to the information in order to participate in the Contract.

k. Information or material provided or generated pursuant to this Contract may be classified as high as SECRET. The existence of this Contract is UNCLASSIFIED and the contents are UNCLASSIFIED.