

CUSTOMER CONTRACT REQUIREMENTS
Supersonic Propulsion Enabled Advanced Ramjet (SPEAR)
CUSTOMER CONTRACT N00421-20-9-0009

CUSTOMER CONTRACT REQUIREMENTS

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

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

ARTICLE I-CONFIDENTIAL AND/OR PROPRIETARY INFORMATION

A. Exchange of Information

Confidential and/or Proprietary Information includes information and materials of a Disclosing Party which are designated as confidential and/or proprietary or as a Trade Secret as defined in the Uniform Trade Secrets Act §1.4, 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.

Trade Secret covers 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.

The Government may disclose its own Confidential and/or Proprietary Information to CMG for use by NASC Member Entity(ies), PAH(s), Buyer, and Seller in connection with particular Prototype Projects, and CMG, NASC Member Entity(ies), PAH(s), Buyer and Seller may disclose information that is Confidential and/or Proprietary Information to the Government in connection with a white paper, project proposal, Project Agreement or performance thereunder.

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 III Patent Rights, and Article II - 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 to enable such Disclosing Party to seek a protective order or otherwise prevent disclosure of such information.

B. Return of Confidential and/or Proprietary Information

Upon request from CMG, PAHs, NASC Member Entity(ies), Buyer, or Seller, the Government shall promptly return all copies and other tangible manifestations of the Confidential and/or Proprietary Information disclosed to the Government by CMG, PAHs or NASC Member Entity(ies), Buyer, or Seller. Upon request by the Government, CMG, PAHs or NASC Member Entity(ies), Buyer, and Seller shall promptly return all copies and other tangible manifestations of the Confidential and/or Proprietary Information disclosed by the Government to CMG, PAHs or NASC Member Entity(ies), Buyer or Seller. As used in this Section, tangible manifestations include human readable media, as well as, magnetic and digital storage media. If the 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.

C. Term

The obligations of the Receiving Party under this Article shall continue for a period of three (3) years after the expiration or termination of this Agreement.

D. Requirements Flow-down

Seller shall flow-down the requirements of this Article to their respective personnel, (including employees and subcontractors) at all levels, receiving such Confidential and/or Proprietary Information under this Agreement.

ARTICLE II: DATA RIGHTS & COPYRIGHTS

This Article supplements Article XXII of the CMG Agreement.

A. Government Data Rights.

Minimum Rights in Technical Data and Computer Software to be delivered under this Project Agreement are outlined in the Statement of Work, if applicable. Data Rights Assertions for Technical Data and Computer Software to be provided with less than

Government Purpose Rights are set forth in the contract, if applicable.

(1) Definitions.

Government Purpose Rights: The rights to use, duplicate, or disclose Data, in whole or in part and in any manner, for Government purposes only, and to have or permit others to do so for Government purposes only. The Government may not use, or authorize other persons to use, Technical Data or Computer Software delivered with government purpose rights for commercial purposes. The Government shall not release or disclose Technical Data or Computer Software in which it has Government purpose rights to any person, or authorize others to do so, unless:

- (i) prior to release or disclosure, the intended recipient is subject to the use and non-disclosure agreement satisfactory to

both parties; or (ii) the intended recipient is a Government contractor receiving access to the data for performance of a Government contract that contains a clause regarding limitations on the use or disclosure of Government-Furnished Information marked with restrictive legends.

Limited Rights: Right to use, modify, reproduce, release, perform, display, or disclose technical data, in whole or in part, within the Government.

Restricted Rights: The right of the Government to i) use the software on one computer or terminal at a time, ii) transfer the software to another Government agency, iii) make minimum copies for backup, iv) modify the software only for its own use or backup, and v) allow its contractors to maintain the software, provided that such contractors are contractually required to use the software in accordance with the above restrictions and to protect such software as Seller's Proprietary Information.

Unlimited Rights: Rights to use, duplicate, release, or disclose, Technical Data or Computer Software in whole or in part, in any manner and for any purposes whatsoever, and to have or permit others to do so.

(2) Marking of Data

Any Data delivered under this Contract shall be marked with the following legend:

“Use, duplication, or disclosure is subject to the restrictions as stated in Agreement N00421-20-9-0009 between the Naval Air Warfare Center Aircraft Division and The Boeing Company”

If a PAH learns of a release to the NAWCAD of its unmarked data that should have contained a restricted legend, the PAH will have the opportunity to cure such omission going forward by providing written notice to the AO within six (6) months of the erroneous release.

Seller agrees the Government shall have no liability for any release or disclosure of technical data that is not marked to indicate that such data are licensed data subject to use, modification, reproduction, release, performance, display, or disclosure restrictions.

B. Limitation on charges for rights in technical data.

(1) Seller shall not charge any cost, including license fees, royalties, or similar charges, for rights in technical data delivered under this Contract when:

- (a) The Government has acquired, by any means, the same or greater rights in the data; or
- (b) The data are available to the public without restrictions.

(2) The limitation in paragraph (1)(a) of this paragraph:

(a) Includes costs charged by a subcontractor or supplier at any tier or costs incurred by the Seller to acquire rights in subcontractor or supplier technical data if the subcontractor or supplier has been paid for such rights under any other Government contract or under a license conveying the rights to the Government; and

(b) Does not include the reasonable costs of reproducing, handling, or mailing the documents or other media in which the technical data will be delivered.

C. Applicability to subcontractors or suppliers.

(1) Whenever a subcontractor or supplier may obtain for delivery to the Government under this Contract any technical data for noncommercial items or for commercial items that were developed in any part at Government expense, Seller shall use this Article in the subcontract or other contractual instrument, including subcontracts or other contractual instruments for commercial items, and require its subcontractors or suppliers to do so without alteration except to identify the parties. No other article shall be used to enlarge or diminish the Government's, the Buyer's, Seller's, or supplier's rights in a subcontractor's or supplier's technical data.

(2) RESERVED.

(3) Seller, a subcontractor or supplier normally delivers technical data to the next higher-tier contractor, subcontractor, or supplier. However, Seller, a subcontractor or supplier may fulfill its requirement to deliver technical data when the Contract requires Seller, a subcontractor or supplier to submit data with other than unlimited rights by submitting such data directly to the Government rather than through Buyer, a higher-tier contractor, subcontractor, or supplier.

(4) Buyer, Seller, and higher-tier subcontractors or suppliers shall not use their power to award Agreements or contracts as economic leverage to obtain rights in technical data from their subcontractors or suppliers.

(5) In no event shall Buyer or Seller use its obligation to recognize and protect subcontractor or supplier rights in technical data as an excuse for failing to satisfy its obligation to the Government.

D. Additional license rights.

Buyer, Seller, its subcontractors, and suppliers are not required to provide the Government additional rights to use, modify, reproduce, release, perform, display, or disclose technical data. However, if the Government desires to obtain additional rights in technical data, Seller agrees to promptly enter into negotiations with Buyer to determine whether there are acceptable terms for transferring such rights. All technical data in which the submitter has granted the Government additional rights shall be listed or described in a special license Agreement made part of this Contract. The license shall enumerate the additional rights granted the Government in such data.

E. Lower Tier Agreements

Seller shall include this Article, suitably modified to identify the Parties, in all subcontracts or Agreements for experimental, developmental, or research work, with a requirement that Seller's subcontractors flow it to their subcontractors, for experimental, developmental, or research work.

F. Identification of Principal Rights

All Prototype Projects (PP) shall include the following information as applicable: TYPE-PROPERTY NUMBER-RIGHTS ASSERTION

1) Application: provide date and type of application/title with brief description

2) Patent: provide patent no. and/or entity identifier/number

3) Rights: provide the type/category of right asserted

G. Prior Technology

1) If it is necessary for the PAH(s), Buyer, or Seller to furnish the Government with data which existed prior to, or was produced outside of a Project 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 a Project Agreement. Data protection will include proprietary markings and handling, and the signing of nondisclosure agreements by such Government Contractors or contract employees. The PAH(s), Buyer or Seller shall not be obligated to provide data that existed prior to or was developed outside of this OT Agreement to the Government. Upon completion of activities under this OT Agreement, such data will be disposed of as requested by the PAH(s), Buyer, or Seller.

2) Oral and Visual Information: If information which Seller, or their subcontractors considers to embody trade secrets or to comprise commercial or financial information which is privileged or confidential is expressly disclosed orally or visually directly to the Government, the exchange of such information must be memorialized in tangible, recorded form and marked with a suitable notice or legend, and furnished to the Government within thirty (30) calendar days after such oral or visual disclosure, or the Government shall have no duty to limit or restrict, and shall not incur any liability for any disclosure and use of such information. If the Government reasonably determines that the memorialization of the exchange is insufficient

detailed to enable it to identify the privileged or confidential information, PAH(s), Buyer, or Seller shall provide additional detail at the Government's request, subject to restrictions on use and disclosure.

3) Disclaimer of Liability: Notwithstanding the above, Buyer and the Government will not be restricted in, nor incur any liability for, the disclosure and use of:

- a) Data not identified with a suitable notice or legend as set forth in this Article; nor
- b) Information contained in any data for which disclosure and use is restricted, if such information is or becomes generally known without breach of the above, is properly known to the Government or is generated by the Government independent of carrying out responsibilities under this contract, is rightfully received from a third party without restriction, or is included in data which the PAH, Seller, or Buyer has furnished, or is required to furnish to the Government without restriction on disclosure and use.

If the PAH, Buyer, or Seller cures the omission of the suitable notice or legend, the restrictions, and related liability for disclosure and use of such information shall apply after cure unless it is then unrestricted under this Article.

H. Copyright

The PAH(s), Buyer, and Seller reserve the right to protect by copyright works developed under this contract. All such copyrights will be in the name of the PAH(s), Buyer, Seller or the author, as determined by the PAH's, Buyer or Seller policies. The PAH(s), Buyer and Seller hereby grants to the Government a non-exclusive, non-transferable, royalty-free, fully paid-up license to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, for governmental purposes, any copyrighted materials developed (excluding data) under this Contract to which it owns the copyright, and to authorize others to do so.

I. Survival Rights

This Article shall survive termination of this Contract.

ARTICLE III: PATENT RIGHTS

A. Allocation of Principal Rights

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 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. Seller may elect to provide full or partial rights that it has retained to other parties.

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

1. Seller shall disclose each Subject Invention to the Government through Buyer within two (2) months after the inventor discloses, orally or in writing to his company personnel responsible for patent matters. The disclosure 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). The disclosure 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 Seller determines that it does not intend to retain title to any such invention, Seller shall provide written notification to the AO through Buyer within nine (9) months of disclosure to the Government. However, in any case where publication, sale, or public use has initiated the one-year statutory bar period wherein valid patent protection can still be obtained in the United States, the period for such notice is shortened to a date that is no more than six (6) months prior to the end of the 1 year statutory bar period. In the event that the Government elects to file a patent application on the subject invention, Seller will prepare a proper assignment of title to the invention and will allow each and every inventor employee to give full support to the Government patent attorney as necessary to all preparation of a competent application and continued support during patent prosecution.

3. Seller shall be required to file its initial patent application on a subject invention to which it elects to retain title within

one (1) year after election of title or, if earlier if necessary to allow filing of the patent application 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. Seller may elect to file patent applications in additional countries (including the European Patent Office and under the Patent Cooperation Treaty) within either ten (10) months of the corresponding initial patent application or six (6) months from the date permission is granted by the Commissioner for Patents and Trademarks to file foreign patent applications, where such filing has been prohibited by a Secrecy Order.

4. Seller may request an extension of the time for disclosure election and filing under this Article to be approved by the Government. Approval shall not be unreasonably withheld.

C. Conditions When the Government May Obtain Title

Upon the AO's written request, Seller shall convey to the Government title to any subject invention under any of the following conditions:

1. If Seller fails to disclose or elects not to retain title to the subject invention within the times specified in this Article; provided, that the Government may only request title within three (3) years after learning of the failure of Seller to disclose or elect within the specified times.
2. In those countries in which Seller fails to file patent applications within the times specified in this Article; provided, that if Seller has filed a patent application in a country after the times specified in this Article, but prior to its receipt of the written request by the Government, Seller shall continue to retain title in that country; or
3. In any country in which 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. Seller shall ensure that timely notice is given to the Government to allow assignment of title to the application and timely response to any pending action required to any patent office to continue the viability of any pending patent application.

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

1. Seller shall retain a non-exclusive, royalty-free license throughout the world to any patent applicable or any issued patent for each subject invention to which the Government obtains title. Seller's license extends to its domestic and Canadian subsidiaries and affiliates, if any, of the Seller and includes the right to grant sublicenses of the same scope to the extent that Seller was legally obligated to do so at the time the Contract was funded. The license is transferable only with the approval of Government, except when transferred to the successor of that part of Seller's business to which the invention pertains. Government approval for license transfer shall not be unreasonably withheld.
2. 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. Seller's license shall not be revoked or modified in that field of use or in the geographical areas in which Seller has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. Seller's license in any foreign country may be revoked or modified at the discretion of the Government to the extent Seller, its licensees, or its subsidiaries or affiliates have failed to achieve practical application in that foreign country.
3. Before revocation or modification of Seller's license, the Government shall furnish written notice to Seller of the Government's intention to revoke or modify the license. Seller 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.

E. Action to Protect the Government's Interest

1. Seller shall execute or to have executed and promptly delivered to the Government all instruments necessary to (i) establish or confirm the rights the Government has throughout the world in those subject inventions to which Seller elects to retain title, and (ii) convey title to Government when requested under Paragraph D of this Article and to enable the Government to obtain patent protection

throughout the world in that subject invention.

2. Seller agrees to require, by written agreement, with its employees working on the Contract, other than clerical and non-technical employees, agree to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format acceptable to the Government, each subject invention made under this Contract in order the Seller can comply with the disclosure provisions of Paragraph B of this Article, execute all papers necessary to file the patent applications on the subject invention, and establish the Government's right in the subject invention. Seller shall instruct 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 United States or foreign statutory bars. Confirmation and details of such employee instructions shall be provided to the Government upon request.

3. Seller shall notify the Government if it decides 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) calendar days before the expiration of the response period required by the relevant patent office.

4. 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. N00421-20-9-0009, awarded by Naval Air Warfare Center Aircraft Division (NAWCAD). The Government has certain rights in the invention."

F. Lower Tier Agreements

Seller shall include this Article, suitably modified to identify the parties and the Agreement number in all subcontracts.

G. Reporting on Utilization of Subject Inventions

Seller agrees to submit, during the term of this Contract, 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 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 Seller and such other data and information as the Government may reasonably specify, through Buyer. Seller also agrees to provide additional reports as requested by the Government in connection with any march-in proceedings undertaken by the Government in accordance with Paragraph J of this Article. Consistent with 35 U.S.C. §205, the Government agrees it will not disclose such information to persons outside the Government without the permission of Seller.

H. Preference for American Industry

Notwithstanding any other provision of this Article, 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 Government upon a showing by 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.

I. March-in Rights

Seller agrees that, with respect to any subject invention in which it has retained title, the Government has the right to require Seller to obtain and grant a non-exclusive license to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if 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 Seller or assignee or licensees has not taken effective steps, consistent with the intent of this Contract, 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 Seller, assignee, or their licensees;

3. Such action is necessary to meet requirements for public use and such requirements are not reasonably satisfied by Seller, assignee, or licensees; or
4. Such action is necessary because the agreement required by Paragraph H of this Article has not been obtained or waived or because a licensee of the exclusive right to use or sell any Subject Invention in the United States is in breach of such Contract.

The Government shall notify the Seller (through Buyer) within five (5) calendar days following the exercise of any rights under this paragraph.

J. Opportunity to Cure

Certain provisions of this Article provide that the Government may gain title or a license to a subject invention by reason of Seller's action, or failure to act, within the times required by this Article. Prior to claiming such rights (including any rights under this Article), the Government will give written notice to Seller of its intent and afford Seller a reasonable time to cure such action or failure to act. The length of the cure period will depend on the circumstances but will not be more than sixty (60) calendar days. 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 the OT Agreement given 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.

K. Background Inventions

In no event shall the provisions set forth in this Article apply to any Background Inventions or Patents. NASC Member Entity(ies), Buyer, Seller, or their subcontractors shall retain the entire right, title, and interest throughout the world to each such Background Invention and Patent that each Party has brought to the PP awarded under this OT Agreement, and the Government shall not have any rights under this OT Agreement to such Background Inventions and Patents. Projects to be funded under this OT Agreement will list Background Inventions and Patents anticipated to be used on the Project; such listing is to be presented at least two weeks prior to execution of the Contract. Such listing may be amended by the Parties as appropriate to reflect changes in such plans, if the amended listing is presented to the Government within two weeks of such plan changes. Failure to present a timely listing will allow the Government to receive a royalty fee, non-exclusive, world-wide license to any Background Inventions and Patents as is necessary to allow the Government to receive the full benefit of the PA.

L. Survival Rights

Provisions of this Article shall survive termination of the OT Agreement.

M. Authorization and Consent

The Government authorizes and consents to all use and manufacture of any invention described in and covered by a United States patent in the performance of this Contract or any sub-award at any tier.

ARTICLE IV: COUNTERFEIT OR UNAUTHORIZED PRODUCTS

In order to minimize the risk of the Government purchasing counterfeit products or unauthorized secondary market equipment, which would not be supported by the Original Equipment Manufacturer (OEM), and to ensure that the Government purchases only equipment that is genuine (not counterfeit), authorized (e.g., not gray market, includes appropriate licenses, etc.), and supported (e.g., warranty and support services) by the OEM, Seller shall, for:

Hardware: Certify that they are a Manufacturer Authorized Partner/Reseller as of the date of this agreement and that they have the certification/specialization level required by the Manufacturer to support both the product sale and product pricing, in accordance with the applicable Manufacturer certification/specialization requirements. Unless otherwise specified, Seller warrants that all products are new and in their original box. By assenting to this Contract Seller confirms to have sourced all Manufacturer products submitted in any quote or proposal from Manufacturer or through Manufacturer Authorized Partners only, in accordance with Manufacturer's applicable policies in effect at the time of purchase. Seller certifies that it has notified the hardware OEM that the NAWCAD (Buyer's Customer) will be the owner and end user of any hardware procured under this agreement. If Seller assents to this agreement, then Seller agrees that, within two days after shipment of any asset(s), Seller will provide an Advance Shipment Report (ASR) with a list of serial numbers for all hardware provided to Buyer. Buyer may reject any assets if the Project Performer fails to provide this information.

Software: Certify that they are a Manufacturer Authorized Partner/Reseller as of the date of their assent to this Contract and certify that they have the certification/specialization level required by the Manufacturer to support both the product sale and product pricing, in accordance with the applicable Manufacturer certification/specialization requirements. Unless otherwise specified, Seller warrants that all products are new, in their original box or, in the case of downloadable software,

that all software is sourced from the OEM or Authorized Reseller. By assenting to this Contract Seller confirms to have sourced all Manufacturer products submitted in any quote or proposal from Manufacturer or through Manufacturer Authorized Partners only, in accordance with Manufacturer's applicable policies in effect at the time of purchase. Seller shall certify that it has notified the software Licensor that the NAWCAD (Buyer's Customer) will be the Licensee. As part of their proposal, Seller shall provide Buyer with a copy of any End User license Agreement (EULA), Terms of Service (TOS), or other similar legal instrument or agreement, and shall warrant that all Manufacturer software is or will be licensed originally to Buyer's Customer as the original Licensee authorized to use the Manufacturer Software. Buyer and the Government reserve the right to reject products that contain terms or conditions that violate federal law or regulation, or are otherwise objectionable to the Government, to include, but not limited to: any provision that subjects the Government to open ended indemnity; any provision that subjects the Government to resolution of disputes under state or foreign law any provision that provides Seller or the subcontractor a unilateral right of termination; and any provision that restricts the transfer or use of the product within the Program or successor programs.

Maintenance: If, during performance of any maintenance, Seller provides replacement hardware or software, then as applicable the above requirements, including all required certification and compliance requirements, apply. Seller shall ensure that the Government shall have full rights and entitlements to any software maintenance procured under this contract for software for which it has been identified as the original licensee or for which a license is subsequently transferred to the Government.

Hardware, Software, and/or Maintenance: If Seller is not a Manufacturer Authorized Partner as of the date of the submission of any quote or proposal, then Seller shall submit with their offer a document, from the Manufacturer, that identifies Seller Vendor by name and states the following:

- (1) that the products offered in response to the government's requirement (including hardware, software, and/or support services) are genuine (i.e., not counterfeit and not unauthorized secondary market/gray market products) (note: all items, including part numbers where applicable, shall be listed in the document);
- (2) that Vendor has the certification/specialization level required by the Manufacturer to support both the product sale and product pricing, in accordance with the applicable Manufacturer certification/specialization requirements;
- (3) that Vendor will be able to receive from Manufacturer, and that Manufacturer will not deny, the support services required to support the product(s);
- (4) that Vendor has the authority to transfer to the government all appropriate software licenses associated with the product(s); and
- (5) that Manufacturer will not deny required warranty support for the product(s).

ARTICLE V: FOREIGN ACCESS TO TECHNOLOGY

A. Exports of the articles and services (including technical data) developed or provided in accordance with this Contract shall be in accordance with the International Traffic in Arms Regulations, 22 C.F.R. pt 120 et seq., the DOD Industrial Security Regulation (DOD 5220.22-R), and the Department of Commerce Export Regulations (15 CFR pt 730 et seq.).

B. Seller shall include the provisions of this Article in all subcontracts.

ARTICLE VI: GOVERNMENT-SITE VISIT COORDINATION

This clause applies if Seller will be working on a government site.

(1) If Seller has previously been granted a facility clearance (FCL) through the Defense Industrial Security Clearance Office (DISCO), the Seller Facility Security Officer (FSO) shall submit visit notifications via Joint Personnel Adjudication System (JPAS) in the format prescribed and provided by the Government security office through the Government Agreements Officer Representative (AOR).

(2) If Seller is not cleared through DISCO, Seller shall submit a signed visit request on company letterhead stationary through the Government AOR, coordinated through Buyer. The request shall include the full name (last, first, middle), date of birth (MM/DD/YYYY), place of birth (city, state, country), citizenship, type of last investigation and date last

investigation was completed, if any, and shall be the subject of a National Crime Information Center (NCIC) check prior to beginning work.

(3) All Seller employees shall read all applicable security regulations, to be provided by the Government. Seller personnel shall familiarize themselves with the Government's regulations and policies and site-specific regulations regarding access to sensitive materials, computer facility/IT network access, and issue of access credentials which shall be provided as required by the Government.

(4) Whether work is performed off the Government site or on the Government site, Seller shall be responsible for safeguarding all Government information and property provided for Seller use based on direction from the AOR. At the close of each work period, Government facilities, equipment, and materials shall be secured.

ARTICLE VII: DEFERRED ORDERING OF TECHNICAL DATA

In addition to technical data or computer software specified elsewhere in this agreement to be delivered hereunder, the Government may, at any time during the performance of this agreement or within a period of three (3) years after acceptance of all items (other than technical data or computer software) to be delivered under this agreement or the termination of this agreement, order any technical data or computer software generated in the performance of this agreement or any subcontract hereunder. When the technical data or computer software is ordered, Seller shall be compensated by the Government, through Buyer, for converting the data or computer software into the prescribed form, for reproduction, for marking/re-marking of ordered data/software and delivery. The obligation to deliver the technical data of a subcontractor and pertaining to an item obtained from him shall expire three (3) years after the date Buyer accepts the last delivery of that item from Seller or that subcontractor under this agreement. The Government's rights to use said data or computer software shall be pursuant to the Data Rights article of this agreement. Seller shall deliver any such Seller data ordered by the Government to Buyer for delivery to the Government.

ARTICLE VIII: PROHIBITION ON CONTRACTING FOR CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT

In accordance with the Office of the Under Secretary of Defense (Acquisition and Sustainment) Memorandum entitled, "Implementation Guidance for Section 889(a)(1)(B) Prohibition on Contracting with Entities Using Certain Telecommunications and Video Surveillance Services or Equipment on Other Transactions for Prototype Projects," dated 13 August 2020, the following term, which contains the substance of Federal Acquisition Regulation clause 52.204-25 (Aug 2020), is hereby included:

(a) Definitions. As used in this Article—

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

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

Covered telecommunications equipment or services means—

(1) Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities);

(2) For the purpose of public safety, security of Government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities);

(3) Telecommunications or video surveillance services provided by such entities or using such equipment; or

(4) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered

foreign country.

Critical technology means—

- (1) Defense articles or defense services included on the United States Munitions List set forth in the International Traffic in Arms Regulations under subchapter M of chapter I of title 22, Code of Federal Regulations;
- (2) Items included on the Commerce Control List set forth in Supplement No. 1 to part 774 of the Export Administration Regulations under subchapter C of chapter VII of title 15, Code of Federal Regulations, and controlled-
 - (i) Pursuant to multilateral regimes, including for reasons relating to national security, chemical and biological weapons proliferation, nuclear nonproliferation, or missile technology; or
 - (ii) For reasons relating to regional stability or surreptitious listening;
- (3) Specially designed and prepared nuclear equipment, parts and components, materials, software, and technology covered by part 810 of title 10, Code of Federal Regulations (relating to assistance to foreign atomic energy activities);
- (4) Nuclear facilities, equipment, and material covered by part 110 of title 10, Code of Federal Regulations (relating to export and import of nuclear equipment and material);
- (5) Select agents and toxins covered by part 331 of title 7, Code of Federal Regulations, part 121 of title 9 of such Code, or part 73 of title 42 of such Code; or
- (6) Emerging and foundational technologies controlled pursuant to section 1758 of the Export Control Reform Act of 2018 (50 U.S.C. 4817).

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

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

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

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

(b) Prohibition.

(1) Section 889(a)(1)(A) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits the head of an executive agency on or after August 13, 2019, from procuring or obtaining, or extending or renewing a contract to procure or obtain, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. Seller is prohibited from providing to the Government any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, unless an exception at paragraph (c) of this clause applies or the covered telecommunication equipment or services are covered by a waiver described in FAR [4.2104](#).

(2) Reserved

(c) Exceptions. This article does not prohibit contractors from providing—

(1) A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or

(2) Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(d) Reporting requirement.

(1) In the event Seller identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or Seller is notified of such by a subcontractor at any tier or by any other source, Seller shall report the information in paragraph (d)(2) of this article to the Buyer.

(2) Seller shall report the following information pursuant to paragraph (d)(1) of this article

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

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

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

ARTICLE IX: 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.

ARTICLE X: ANTITRUST

NASC's Consortium Membership Agreement (CMA) obligates all members to comply with applicable U.S. laws, including U.S. antitrust laws. NASC's organizational structure is authorized under the National Cooperative Research and Production Act of 1993.

ARTICLE XI: COMPTROLLER GENERAL ACCESS TO INFORMATION

10 U.S. Code §2371b - Authority of the Department of Defense to carry out certain prototype projects and/or as amended by future legislation, paragraph (c) Comptroller General Access to Information, shall apply to this Agreement and all PAs.

ARTICLE XII: PUBLICATION AND ACADEMIC RIGHTS

A. Use of Information

Subject to the provisions of Article I, Confidential and/or Proprietary Information, and this Article, CMG, PAH(s), Buyer, Seller and the Government shall have the right to publish or otherwise disclose information and/or data developed by the Government and/or the respective PAH(s), Buyer, or Seller under the Contract. 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 Contract. Notwithstanding the above, the Parties shall not be deemed authorized by this paragraph alone to disclose any Confidential, Proprietary, Sensitive and/or Classified Information.

B. Publication or Public Disclosure of Information

1. Review or Approval of Information and Data for Public Release: At least thirty (30) calendar days prior to the scheduled

release date, Seller shall submit the information to be released through Buyer to the AOR. The AOR will obtain approval for release following the Clearance of Technical Information for Public Release procedures.

2. Notices: To avoid disclosure of Confidential and/or Proprietary Information belonging to NASC Member Entity(ies), Buyer, Seller 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 Government through Buyer and identify such other parties that may have an interest in such Confidential and/or Proprietary Information. If the Government is proposing to publish or disclose such information, the Government will provide notice to Seller through Buyer at least thirty (30) calendar days prior to publication or disclosure, identifying such other parties that may have an interest in the information.

Seller shall notify the Government through Buyer at least thirty (30) calendar days prior to submission for publication or disclosure by the publishing party, together with all materials intended for publication or disclosure relating to technical reports, data, or information developed during the term of and pursuant to the contract. The notified parties must advise of any objection to disclosure within this thirty (30) day period, or the Seller publishing party shall be deemed authorized to make such disclosure, so long as the publishing party has complied with the other provisions of this Article as well as Article I, Confidential and/or Proprietary Information.

3. Filing of Patent Applications: During the thirty (30) calendar day period discussed above, the PAH to whom such Confidential and/or Proprietary Information belongs, shall provide notice to the Government AO through Buyer, as to whether the NASC Member Entity desires that a patent application be filed on any invention disclosed in such materials. If a PAH to whom such Confidential and/or Proprietary Information belongs desires that such a patent application be filed, the PAH 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 AO and the PAH to whom such Confidential and/or Proprietary Information belongs that no patentable invention is disclosed in such materials.

During the thirty (30) calendar day period above, the PAH shall notify the AO through CMG if it 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. NAWCAD and the PAH proposing the publication or disclosure of such materials, agree to remove from the proposed publication or disclosure all such Confidential and/or Proprietary Information so identified.

4. Public Announcements: Any public announcements, including press releases, website postings or other public statements, by any party regarding this Agreement or PAs awarded thereunder shall follow the procedures for Publication Public Disclosure set forth in this Article.

ARTICLE XIII: EXPORT CONTROL

A. Export Compliance

Seller and their subcontractors shall comply with U.S. Export regulations including, but not limited to, the requirements of the Arms Export Control Act, 22 U.S.C. § § 2751-2794, including the International Traffic in Arms Regulation (ITAR), 22 C.F.R. § 120 et seq.; and the Export Administration Act, 50 U.S.C. app. §2401-2420. 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, Seller and their subcontractors 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. Flow down

Seller and their subcontractors 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 XIV: LIABILITY OF THE PARTIES

A. Waiver of Liability

With regard to the activities undertaken pursuant to the OT Agreement, no Party shall make any claim against the other, employees of the other, the other's NASC Member Entity(ies), the Government, PAH(s), Buyer, Seller, contractors, or subcontractors, or employees of the other's NASC Member Entity(ies), the Government, PAH(s), Buyer, Seller, contractors, or subcontractors for any injury to or death of its own employees or employees of its NASC Member Entity(ies), the Government, PAH(s), Buyer, Seller, contractors, or subcontractors, or for damage to or loss of its own property or that of its NASC Member Entity(ies), PAH(s), the Government, Buyer, Seller, 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. Notwithstanding the foregoing, claims for contribution toward third-party injury, damage, or loss are not limited, waived, released, or disclaimed.

C. Extension of Waiver of Liability

Seller agrees to extend the waiver of liability as set forth above to any tier under the Contract by requiring them, by contract or otherwise, to agree to waive all claims described above against the Parties to the OT Agreement. Seller shall 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 NASC Member Entity(ies), the Government, Buyer, and Seller 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, CMG, PAH(s), Buyer or Seller, or any other entity performing under the Contract exceed the amount obligated by the Government for that PP. If cost-sharing occurs, the liability of the PAH(s), Buyer, or Seller under the Contract is limited to the amount committed as a Cash Contribution or In-kind Contribution by the PAH(s), Buyer or Seller. Nothing in this Article shall be construed to create the basis of a claim or suit where none would otherwise exist.

The Government does not contemplate any unusually hazardous risks being associated with the awarded PPs, however, the Government will consider going forward with a request for special indemnification or the inclusion of specially negotiated liability provisions where a PP, as identified by the Government or by a PAH(s), Buyer or Seller, or proposing NASC Member Entity(ies), may pose a risk of such nature.

ARTICLE XV: DEFINITIONS

"Agreement Officer" (AO) is a warranted Agreement Officer authorized to sign and modify the OT Agreement, as well as execute project awards on behalf of NAWCAD.

"Agreement Officer Representative" is the individual designated by the Agreement Officer to manage all technical and programmatic aspects of each Prototype Project (PP).

"Background Invention" means any invention made by a NASC Member Entity(ies) or Project Agreement Holder(s) (PAH

prior to performance of the Project Agreement or outside the Scope of Work performed under the PP.

“Close-out” is the process by which all applicable administrative actions and required work have been completed by the PAH, CMG and NAWCAD.

“Consortium Management Group, Inc. (CMG)” is the nonprofit, tax-exempt Lead Member of the NASC.

“Consortium Membership Agreement (CMA)” means the agreement governing the rights and obligations between and among NASC Member Entities.

“Disclosing Party” means CMG, NASC Member Entity(ies), Government, Buyer, or Seller personnel who disclose Confidential and/or Proprietary Information as defined in the Contract.

“Government” means the Naval Air Warfare Center Aviation Division (NAWCAD).

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

“Lead Member” means NASC Member designated in the CMA to act on behalf of the consortium to manage the NASC, facilitate the project solicitation and award process and provide administrative support to both NAWCAD and NASC Member Entities. In order to maintain independence and serve as a Trusted Agent between NAWCAD and the NASC membership, the Lead Member will not be able to respond to project solicitations or participate on project teams.

“Library” is an electronic file containing White Papers that have been submitted by NASC Member Entities in response to Requests for White Papers (RWPs).

“Made” means the conception or first actual reduction to practice of such invention when used in relation to any invention as defined in 35 USC §201.

“NASC” means the Naval Aviation Systems Consortium.

“NASC Member Entity” means a member of the NASC and a signatory to the NASC CMA.

“Non-traditional Defense Contractor” means an entity that is not currently performing and has not performed, for at least the one-year period preceding the issuance of the Request for White Papers by the DoD, any contract or subcontract for the DoD that is subject to full coverage under the cost accounting standards prescribed pursuant to Section 1502 of Title 41 and the regulations implementing such section as defined in 10 U.S.C §2371b.

“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 as defined in 35 USC §201.

“Project Agreement” means the award to the NASC Member Entity(ies) by NAWCAD for the execution of a specific PP.

“Project Agreement Holder” means the NASC Member Entity responsible for executing a PP pursuant to a PA and a signatory to the PA with NAWCAD.

“Prototype Project” means an effort proposed by a NASC Member Entity(ies) and selected by the NAWCAD for award under this Agreement that is directly relevant to enhancing mission effectiveness of military personnel and supporting platforms, systems, components or materials proposed to be acquired or developed by the DoD, or to improvement of platforms, systems, components or materials in use by the armed forces as defined in 10 U.S.C §2371b.

“Receiving Party” means CMG, NASC Member Entity(ies), Government, Buyer, or Seller personnel who receive Confidential and/or Proprietary Information disclosed by a Disclosing Party.

“Request for White Papers” means the solicitation from NAWCAD to CMG requesting White Papers to be prepared by NASC Member Entity(ies) to address requirements contained in the Statement of Need (SON).

“Small Business” means a small business concern as defined under Section 3 of the Small Business Act (15 U.S.C. 632).

“Subject Invention” means any invention conceived or first actually reduced to practice in the performance of work under a PA as defined in 35 USC § 201.

“White Paper” means the proposed solution to a NAWCAD problem statement as identified in the SON.