

CUSTOMER CONTRACT REQUIREMENTS NAMC Project Agreement 69-201701

Throughout this document, PAH (or Project Agreement Holder) shall mean the recipient of an award/agreement from The Boeing Company.

Throughout this document, NAMC, NCMS and CAO shall mean the Government customer of The Boeing Company.

ARTICLE I: PUBLICATION AND ACADEMIC RIGHTS

A. Use of Information

Subject to Confidential Information provisions, and Article I, Publication and Academic Rights at paragraph B below, the NAMC designated PAHs and the Government shall have the right to publish or otherwise disclose information and/or data developed by the Government and/or the respective NAMC PAHs under the specific Research Project. The NAMC through its designated PAHs and the Government (and its employees) shall include an appropriate acknowledgement of the sponsorship of the specific Research Projects by the Government and the NAMC PAHs in such publication or disclosure. The Parties shall have only the right to use, disclose, and exploit any such data and Confidential Information or Trade Secrets in accordance with the rights held by them pursuant to this Agreement and the Project Agreement. Notwithstanding the above, the Parties shall not be deemed authorized by this paragraph A, alone, to disclose any Confidential Information or Trade Secrets of the Government or the NAMC on behalf of other NAMC PAHs or NAMC member entities or the CAO.

B. Classified Research Projects

If a release of Confidential Information or Trade Secrets is for a specific classified Research Project, the provisions of the DoD Security Agreement (DD Form 441), Certificate Pertaining to Foreign Interests (SF 328), and the DoD Contract Security Classification Specification (DD Form 254) apply. These forms can be obtained through the CAO. The Government will be responsible for the completion of the DD Form 254. The NAMC member must complete the DD Form 441 and SF 328 and provide them to the Government through the CAO for review by the proper Government representatives, the Industrial Security Representative at the cognizant Defense Security Service (DSS) office for DD Form 441 and SF 328 and ACC-NJ's local Security office for the DD Form 254.

C. Review or Approval of Technical Information for Public Release

- (a) At least 60 days prior to the scheduled release date the PAH, through the NAMC CAO, shall submit to the AOR two copies of the information to be released.

Under the OTA, the AOR is hereby designated as the approval authority for the AO for such releases. The results of the review and approval process shall be forwarded to the PAH through the CAO.

- (b) Where the NAMC has Academic Research Institutions performing fundamental research on campus as PAHs, the NAMC shall require such PAHs to provide papers and publications for provision to the AOR, through the CAO, for review and comment 60 days prior to formal paper/publication submission. However, if that Academic Research Institution incorporates into its research results or publications artifacts produced by and provided to these institutions by the NAMC on behalf of other (non-educational institution) NAMC PAHs (or has authors listed on the paper who are not employees or students of the Academic Research Institution) then the procedures in PARAGRAPH (a) ABOVE must be followed.

- (c) Parties to this Project Agreement are responsible for assuring that an acknowledgment of government support will appear in any publication of any material based on or developed under this Project Agreement, using the following acknowledgement terms:

“This Project Agreement Holder (PAH) effort was sponsored by the U.S. Government under Other Transaction number W15QKN-14-9-1002 between the National Advanced Mobility Consortium and the Government. The U.S. Government is authorized to reproduce and distribute reprints for Governmental purposes notwithstanding any copyright notation thereon.”

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

“The views and conclusions contained herein are those of the authors and should not be interpreted as necessarily representing the official policies or endorsements, either expressed or implied, of the U.S. Government.”

The NAMC shall flowdown these requirements to its PAHs, at all tiers. The PAH is required to flowdown the same requirements of this Article I to its personnel, member entities, agents, lower-tier PAHs and consultants, including employees at all levels and tiers.

D. Notices

To avoid disclosure of Confidential Information or Trade Secrets belonging to an NAMC member entity or PAH and/or the Government and the loss of patent rights as a result of premature public disclosure of patentable information, the NAMC requires that any PAH proposing to publish or disclose such information provide advance notice to the NAMC, through the CAO, and identify such other parties as may have an interest in such Confidential Information or Trade Secrets. The NAMC, through the CAO, shall notify such parties at least thirty (30) calendar days prior to any PAH's submission for publication or disclosure, together with any and all materials intended for publication or disclosure relating to technical reports, data, or information developed by the parties during the term of and pursuant to this Project Agreement. The Government and other PAH-identified parties must notify the PAH, through the NAMC's Agent, the CAO, of any objection to disclosure within this thirty (30) day period, or else the PAH, shall be deemed authorized to make such disclosure.

E. Filing of Patent Applications

During the course of any such thirty (30) calendar day period, the NAMC by its CAO, on behalf of any NAMC member entities, including but not limited to the PAHs, to whom such Confidential Information or Trade Secrets belong, and/or the Government shall provide notice to the AO as to whether it desires that a patent application be filed on any invention disclosed in such materials. This information shall also be provided to the NAMC member entities and/or PAHs through the NAMC CAO. In the event that a NAMC member entity to whom such Confidential Information or Trade Secrets belong and/or the Government desires that such a patent be filed, the NAMC (and through it, the NAMC 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 NAMC (on behalf of the NAMC member entity to whom such Confidential Information or Trade Secrets belong) that no patentable invention is disclosed in such materials.
- (c) Further, during the course of any such thirty (30) calendar day period, the NAMC shall notify the AO and the Government if there is any NAMC member entity that believes any of its Confidential Information or Trade Secrets have been included in the proposed publication or disclosure and shall identify the specific

Confidential Information or Trade Secrets that need to be removed from such proposed publication. The Government and the NAMC on behalf of the PAH proposing the publication or disclosure of such materials agrees to remove from the proposed publication or disclosure all such Confidential Information or Trade Secrets so identified by the NAMC.

- (d) The NAMC Member Entities and/or PAHs are required to provide full cooperation and participation in the efficient and satisfactory resolution of this process for all parties involved, including but not limited to communications, written and oral, through the CAO.

ARTICLE II: PATENT RIGHTS

A. Definitions

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

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

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

"Subject invention" means any invention of the NAMC's PAH conceived or first actually reduced to practice in the performance of work under this Project Agreement.

"Background Invention" means any invention made by the NAMC's member entity or PAH (or their subcontractors and/or consultants of any tier) prior to performance of the Project Agreement or outside the scope of work performed under this Project Agreement.

B. Allocation of Principal Rights

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

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

1. The PAH shall disclose in writing each subject invention to the Government AO, within four (4) months after the inventor discloses it 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 and Project Agreement Task Assignment under which the invention was made and the identity of the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding to the extent known at the time of the disclosure, of the nature, purpose, operation, and the physical, chemical, biological or electrical characteristics of the invention. The disclosure shall also identify any publication, sale, or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure.

2. If the PAH determines that it does not intend to retain title to any such invention, the PAH shall notify the Government AO within nine (9) months of disclosure to the Government Contracting Activity. However, in any case where publication, sale or public use has initiated the one (1) year statutory period wherein valid patent protection can still be obtained in the United States, the period for such notice may be shortened by the Government Contracting Activity to a date that is no more than sixty (60) calendar days prior to the end of the Project Agreement.
3. The PAH shall 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, prior to the end of the statutory period wherein valid patent protection can be obtained in the United States after a publication, or sale, or public use. The PAH may elect to file patent applications in additional countries (including the European Patent Office and 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 of Patents and Trademarks to file foreign patent applications, where such filing has been prohibited by a Secrecy Order.
4. A PAH request for extension of the time for disclosure election, and filing under this Article I, paragraph C, may be approved by the Government Contracting Activity, which approval shall not be unreasonably withheld.

D. Conditions When the Government May Obtain Title

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

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

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

The Parties agree that:

1. The PAH shall retain a non-exclusive, royalty-free license throughout the world in each subject invention to which the Government obtains title, except if the PAH fails to provide the required information for, the invention within the times specified in paragraph C of this Article II, Patent Rights. PAH's license extends to the domestic (including Canada) subsidiaries and affiliates, if any, of the PAH within the corporate structure of which the PAH is a party and includes the right to grant licenses of the same scope to the extent that PAH was legally obligated to do so at the time the project under the Project Agreement was funded. The license is transferable only with the approval of the Government, except when transferred to the successor of that part of the business to which the invention pertains. Government approval for license transfer shall not be unreasonably withheld.

2. The PAH 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. This license shall not be revoked in that field of use or the geographical areas in which the PAH has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of the Government to the extent the PAH, its licensees, or the subsidiaries or affiliates have failed to achieve practical application in that foreign country.
3. Before revocation or modification of the license, the Government shall furnish the PAH, a written notice of the Government's intention to revoke or modify the license, and the PAH shall be allowed thirty (30) calendar days (or such other time as may be authorized for good cause shown) after the notice to show cause why the license should not be revoked or modified.

F. Action to Protect the Government's Interest

1. The PAH shall execute or have executed and promptly deliver 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 the PAH elects to retain title, and (ii) convey title to the Government when requested under paragraph D of this Article II, Patent Rights, and to enable the Government to obtain patent protection throughout the world in that subject invention.
2. The PAH shall require PAH employees working on program projects, other than clerical and non-technical employees, to agree to disclose promptly in writing, to personnel identified as responsible for the administration of patent matters, each subject invention made under this Project Agreement in order that the PAH can comply with disclosure provisions of paragraph C of the Article II, Patent Rights, and to execute all papers necessary to file the patent applications on the subject invention and to establish the Government's rights in the subject invention. The PAH shall instruct PAH employees, through employee agreements or other suitable educational programs, on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.
3. The PAH shall notify the Government of any decision not to continue the prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceedings 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. The PAH shall include, within the specification of any U. S. patent application and any patent issuing thereon covering a subject invention, the following statement: "This Project Agreement Holder (PAH) invention was made with U.S. Government support under Agreement No. W15QKN-14-9-1002 awarded by the U.S. Army Contracting Command – New Jersey (ACC-NJ) Contracting Activity to the National Advanced Mobility Consortium. The Government has certain rights in the invention."

G. Lower Tier Agreements

The PAH shall include the Article II, Patent Rights, suitably modified to identify the parties, in all Project Agreements or lower tier agreements, regardless of tier, for experimental, development, or research work. In modifying this Article, all references to the Government shall remain unchanged.

H. Reporting on Utilization of Subject Inventions

The PAH agrees to submit to the Government AO, during the term of the Project Agreement, periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining such utilization that are

being made by the PAH or its licensees or assignees. Such reports shall include information regarding the status of development date of first commercial sale or use, gross royalties received by the PAH, and such other data and information as the agency may reasonably specify. The PAH also agrees to provide additional reports as may be requested by the Government in connection with any march-in proceedings undertaken by the Government in accordance with paragraph J of this Article II, Patent Rights. Consistent with 35

U.S.C. § 205, the Government agrees it shall not disclose such information to persons outside the Government without permission of the PAH.

I. Preference for American Industry

Notwithstanding any other provision of the Article II, Patent Rights, the PAH shall not grant to any person the exclusive right to use or sell any subject invention in the United States or Canada unless such person agrees that any product embodying the subject invention or produced through the use of the subject invention shall be manufactured substantially in the United States or Canada. However, in individual cases, the requirements for such an agreement may be waived by the Government upon a showing by the PAH 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. The PAH is required to provide this corroborating and supporting information in writing to the Government AO.

J. March-in Rights

With respect to any subject invention in which the PAH has retained title, the Government has the right to require the PAH, to obtain and grant a non-exclusive license to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the PAH refuses such a request, the Government has the right to grant such a licensee itself if the Government determines that:

- i. Such action is necessary because the PAH or assignee has not taken effective steps, consistent with the intent of this Agreement, to achieve practical application of the subject invention;
- ii. Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the PAH, assignee, or their licensees;
- iii. Such action is necessary to meet requirements for public use and such requirements are not reasonably satisfied by the PAH, assignee, or licensees; or
- iv. Such action is necessary because the Agreement required by paragraph (I) of this Article II, Patent Rights, has not been obtained or waived or because a licensee who has the exclusive right to use or sell any subject invention in the United States is in breach of such Agreement.

K. Opportunity to Cure

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

L. Background Information

In no event shall the provisions set forth in this Article II apply to any Background Inventions or Patents. NAMC's member entities, PAHs or their subcontractors shall retain the entire right, title, and interest throughout the world to each such Inventions and Patents that each party has brought through NAMC to the specific project issued under this Project Agreement and the Government shall not have any rights under this Project Agreement. Projects to be funded under this specific Project Agreement will list Background Inventions and Patents anticipated to be used on the project; such listing may be amended by the parties as appropriate to reflect changes in such plans.

M. Survival Rights

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

ARTICLE III: DATA RIGHTS

This is a Data Rights Clause specifically tailored for Project Agreements issued under the OTA to address respective rights of the Government and NAMC PAHs to such Data that is owned, developed, to be developed or used by an actual or prospective NAMC member entity or PAH (1) as identified in a NAMC member entity(ies) proposal submitted to the Government through the NAMC CAO in response to a competitive Government OTA call for proposals, and (2) when such proposal is selected by the Government for funded performance through issuance to NAMC of a PMPPI under the OTA and the Project Agreement is issued by the NAMC to that NAMC member entity (PAH) for performance of such Government OTA project.

A. Definitions

1. "Commercial Computer Software" as used in the Article is defined in DFARS 252-227-7014(a)(1) (Jun 1995).
2. "Commercial Computer Software License" means the license terms under which commercial computer software and Data is sold or offered for sale, lease or license to the general public.
3. "Computer Data Base" as used in this Agreement, means a collection of data recorded in a form capable of being processed by a computer. The term does not include computer software.
4. "Computer program" as used in this Agreement means a set of instructions, rules, or routines in a form that is capable of causing a computer to perform a specific operation or series of operations.
5. "Computer software" as used in this Agreement means computer programs, source code, source code listings, object code listings, design details, algorithms, processes, flow charts, formulae and related material that would enable the software to be reproduced, recreated or recompiled. Computer software does not include computer data bases or computer software documentation.
6. "Computer software documentation" means owner's manuals, user's manuals, installation instructions, operating instructions, and other similar items, regardless of storage medium, that explain the capabilities of the computer software or provide instructions for using the software.
7. "NAMC PAH Data" as used in this Article means Data developed or made by and in the course of performing identified assigned tasks by any PAH.
8. "Data" as used in this Article of the Agreement, means computer software, computer software documentation, and technical data as defined in this Article.

9. "Form, fit and function data" means technical data that describes the required overall physical, functional and performance characteristics (along with the qualification requirements, if applicable) of an item, component, or process to the extent necessary to permit identification of physically and functionally interchangeable items.
10. "Government purpose rights" means the rights to use, modify, duplicate or disclose the "Data" licensed with such rights under this Project Agreement within the Government for United States Government purposes only; and to release or disclose data outside the Government to any authorized persons pursuant to an executed non-disclosure agreement for such persons use, modification, or reproduction for United States Government purposes only. United States Government purposes include Foreign Military Sales purposes. Under this Project Agreement, the period of Government purpose rights shall be no less than ten (10) years and shall commence upon project or Agreement completion (whichever is earlier) and during such time the NAMC member entity or PAH developing or providing such Data to the Government with government purpose rights shall have the sole and exclusive right to use such Data for commercial purposes. In the event this Data is used to perform another OTA project issued by NAMC to that NAMC member entity or PAH under this Project Agreement during this ten (10) year period, the period of government purpose rights shall be extended an additional ten (10) years starting with the date of completion of performance of the additional project.
11. "Limited rights" as used in this Article is as defined in DFARS 252.227-7013(a)(13) (Nov 1995).
12. "Restricted rights" as used in this Article is as defined in DFARS 252.227-7014(a)(14) (Jun 1995).
13. "Specially Negotiated License Rights" are those rights to Data that have been specifically negotiated between the Government and the NAMC on behalf of the member entity or PAH whose proposal is selected by the Government under a call for proposals issued under the OTA.
14. "Technical data" means recorded information, regardless of the form or method of the recording, of a scientific or technical nature (including computer software documentation). The term does not include computer software or data incidental to contract administration, such as financial and/or management information.
15. "Unlimited rights" means the rights to use, modify, duplicate, release, or disclose Data, in whole or in part, in any manner, and for any purpose whatsoever, and to have or authorize others to do so.

B. Data Categories

1. Category A is the Data developed and paid for totally by private funds, or the NAMC member entity's or PAH's (or its subcontractor's) IR&D funds and it is Data to which the NAMC member entity or PAH (or its subcontractor) retains all rights. Category A Data shall include, but not be limited to:
 - a) Data as defined in this Article and any designs or other material provided by the NAMC member entity or PAH for a project under this Project Agreement which was not developed in the performance of work under that specific project, and for which the NAMC member entity or PAH retains all rights.
 - b) Any initial Data or technical, marketing, or financial Data provided at the onset of the project by any of the NAMC member entities or PAHs. Such Data and information shall be marked "Category A" and any rights to be provided to the Government for such Data under a specific project shall be as identified in the proposal submitted to the Government and included into the Project Milestone and Payment Instruction and CAO issued Project Agreements.

2. Category B is any Data developed under a Project Agreement Task Assignment with mixed funding, i.e. development was accomplished partially with costs charged to a NAMC member entity(ies) or PAHs indirect cost pools and/or costs not allocated to the NAMC member entity(ies) or PAHs Project Agreement Task Assignment, and partially with Government funding provided under the Project Agreement Task Assignment issued to the PAH by the NAMC, through the CAO. Any Data developed outside of the Project Agreement Task Assignment whether or not developed with any Government funding in whole or in part under a Government agreement, contract or subcontract shall have the rights negotiated under such prior agreement, contract or subcontract; the Government shall get no additional rights in such Data.
3. Category C is any Data developed exclusively with Government funds provided under the Project Agreement Task Assignment issued to the PAH by the NAMC. Research and Development performed was not accomplished exclusively or partially at private expense. Under this category:
 - a) The Government will have Government Purpose License Rights in Data developed exclusively with Government funds under a project funded by the Government through the NAMC under this Project Agreement Task Assignment that is:
 - i. Data pertaining to an item, component, or process which has been or will be developed exclusively with Government funds;
 - ii. Studies, analyses, test data, or similar data produced for this Project Agreement, when the study, analysis, test, or similar work was specified as an element of performance;
 - iii. Data created in the performance of the Project Agreement that does not require the development, manufacture, construction, or production of items, components, or processes;
 - iv. Form, fit, and function data;
 - v. Data necessary for installation, operation, maintenance, or training purposes (other than detailed manufacturing or process data);
 - vi. Corrections or changes to technical data furnished to the PAH by the Government through the NAMC.

The Government, through the NAMC, can only order such Data as is developed under the specific project where the order request is made within 3 years following the Project Agreement Task Assignment completion. In the event the Government orders such Data, it shall pay the PAH, through the NAMC, the reasonable costs for all efforts to deliver such requested Data, including but not limited to costs of locating such Data, formatting, reproducing, shipping, and associated administrative costs.

- b) The Government shall have unlimited rights in Data:
 - i. Otherwise publicly available or that has been released or disclosed by the PAH without restrictions on further use, release or disclosure, other than a release or disclosure resulting from the sale, transfer, or other assignment of interest in the Data to another party or the sale or transfer of some or all of a business entity or its assets to another party;
 - ii. Data in which the Government has obtained unlimited rights under another Government contract or as a result of negotiations; or
 - iii. Data furnished to the Government, under this or any other Government contract or subcontract thereunder, with:

- 1) Government purpose license rights or limited rights and the restrictive condition(s) has/have expired; or
- 2) Government purpose rights and the PAH's exclusive right to use such Data for commercial purposes under such contract or subcontract has expired.

M. However, any Data developed outside of this Project Agreement whether or not developed with any Government funding in whole or in part under a Government agreement, contract or subcontract shall have the rights negotiated under such prior agreement, contract or subcontract; the Government shall get no additional rights in such Data.

N. Further, the Government's rights to Commercial Computer Software and Data licensed under a Commercial Computer Software License under this Project Agreement, and the treatment of Data relating thereto, shall be as set forth in the Commercial Computer Software License.

4. The parties to this Project Agreement understand and agree that the PAH shall stamp all documents in accordance with this Article and that the Freedom of Information Act (FOIA) and Trade Secrets Act (TSA) apply to Data.

C. Allocation of Principal Rights

1. The Government shall have no rights to Category A Data.

2. The Government, through the NAMC-PAH Project Agreement, shall normally have immediate Government Purpose License Rights to Category B or C Data upon project or Agreement completion (whichever is earlier), except that:

(a) Where the PAH whose Data it is, is a small business as defined under the Small Business Innovation research Program (SBIR) under 15 U.S.C. 638, and such data was developed under a project designated by the Government in the OTA RPP as an SBIR program project, such PAH automatically shall be entitled to a delay in the start of the Government Purpose Rights period for at least five (5) years from project completion, or such longer period as may be negotiated among the Government and NAMC on behalf of the PAH, and;

(b) NAMC, at the request of small business or an other than small business NAMC member entity or PAH, may request on such member entity's or PAH's behalf a delay of the start of Government Purpose Rights in Category B or C Data for a period not to exceed five (5) years from project or Agreement completion (whichever is earlier). Such requests will only be made in those cases where the NAMC has provided information from the affected actual or prospective PAH demonstrating the need for this additional restriction on Government use and shall be submitted to the Government AO, through the CAO, for approval, which approval shall not be unreasonably withheld.

(c) For Article III, B.3(c) Category C Data, the Government shall have only the rights established under prior agreements.

(d) For Article III.B.3(d) Category C Data, the Government shall only have the rights set forth in the Commercial Computer Software Data license agreement.

3. Data that will be delivered, furnished, or otherwise provided to the Government as specified in a specific project award funded under this Project Agreement, in which the Government has previously obtained rights, shall be delivered, furnished, or provided with the pre-existing rights, unless (a) the parties have agreed otherwise, or (b) any restrictions on the Government's rights to use, modify, reproduce, release, perform, display, or disclose the data have expired or no longer apply.

4. Each proposal submitted by the NAMC on behalf of an individual or team of NAMC member entities or PAH in response to a Government call for proposals under the OTA shall include a list of the Category A, B and C Data to be used or developed under the proposal if selected. Rights in such Data shall be as established under the terms of this Project Agreement, unless otherwise asserted in the proposal and agreed to by the Government, through the NAMC CAO. The NAMC CAO will incorporate the list of Category A, B and C Data and the identified rights thereof in the Project Agreement award document, as provided by the Government AO under the OTA.

Following issuance of the OTA Project Milestone and Payment Instruction and subsequent NAMC issuance of the Project Agreement Task Assignment to the Government-selected NAMC member entity(ies) (the PAH), the PAH shall prepare, develop, and/or update the list to identify any additional, previously unidentified, Data if such Data will be used or generated in the performance of the funded work. The NAMC, through the CAO, shall provide such updated list to the Government. Rights in such Data shall be as established under the terms of this Project Agreement, unless otherwise asserted in a supplemental listing by the PAH and agreed to by the NAMC under the Project Agreement Task Assignment, which agreement shall be conditioned on the express approval of the Government AO under the OTA.

D. Marking of Data

Except for Data delivered with unlimited rights, Data to be delivered under this Project Agreement subject to restrictions on use, duplication or disclosure shall be marked with the following legend:

“Use, duplication, or disclosure is subject to the restrictions as stated in the Agreement between the U.S. Government and the National Advanced Mobility Consortium, OT Agreement No. W15QKN-14-9-1002, and the supporting Project Agreement No. 69-201701 between the NAMC and The Boeing Company”

It is not anticipated that any Category A Data will be delivered to the Government under this Project Agreement.

In the event commercial computer software and Data is licensed under a commercial computer software license under this Project Agreement, a Special License rights marking legend shall be used as agreed to by the parties.

The Government shall have unlimited rights in all unmarked Data. In the event that an NAMC member entity or PAH learns of a release to the Government of its unmarked Data that should have contained a restricted legend, the NAMC on behalf of the member entity or PAH will have the opportunity to cure such omission going forward by providing written notice to the Government AO within 30 days of the erroneous release. The PAH is required to forward its written response to the Government through the NAMC CAO.

E. Copyright

The PAH, reserves the right to protect by copyright original works developed under this Project Agreement. All such copyrights will be in the name of the individual PAH(s). The PAH hereby grants to the U.S. Government a non-exclusive, non-transferable, royalty-free, fully paid-up license to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, for governmental purposes, any copyrighted materials developed under this Project Agreement, and to authorize others to do so for government purposes.

In the event Data is exchanged with a notice indicating that the Data is protected under copyright as a published, copyrighted work and it is also indicated on the Data that such Data existed prior to, or was produced outside of this Project Agreement, the Party receiving the Data and others acting on its behalf may reproduce, distribute, and prepare derivative works for the sole purpose of carrying out that Party's responsibilities under this Project Agreement with the written permission of the Copyright holder.

Except that copyrighted Data that existed or was produced outside of this Project Agreement and is unpublished - having only been provided under licensing agreement with restrictions on its use and disclosure - and is provided under this Project Agreement shall be marked as unpublished copyright in addition to the appropriate license

rights legend restricting its use, and treated in accordance with such license rights legend markings restricting its use.

The PAHs are solely responsible for affixing appropriate markings indicating the rights of the Government on all Data delivered under this Project Agreement, including marking to identify whether any published or unpublished copyrighted material is being delivered under this Agreement and identifying the rights of the Government to such material. Where copyrighted material is delivered, NAMC PAHs shall use the following legend for rights assertions:

“Data delivered under this Agreement contains [insert “unpublished” or “published”] copyrighted material. Use, duplication, or disclosure is subject to the restrictions stated in the Agreement between the U.S. Government and the National Advanced Mobility Consortium, Agreement No. W15QKN-14-9-1002 and Project Agreement ##### and Task Assignment ##### with [insert name of company].”

The NAMC, and the Government under the OTA, agrees not to remove any copyright notices placed on Data and to include such notices on all reproductions of the Data.

F. Data First Produced by the Government:

As to Data first produced by the Government in carrying out the Government’s responsibilities under the OTA under which NAMC issues this Project Agreement and Project Agreement Task Assignment(s) to PAH and which Data would embody trade secrets or would comprise commercial or financial information that is privileged or confidential if obtained from the NAMC on behalf of any NAMC member entity or PAH, such Data will, to the extent permitted by law, be appropriately marked with a suitable notice or legend and maintained in confidence by the NAMC and PAH, and any NAMC member entity or PAH to whom PAH discloses such Data in the performance of its Project Agreement, for a period of three (3) years after the development of the information, with the express understanding that during the aforesaid period such Data may be disclosed and used by the NAMC or PAH, or any NAMC member entity or PAH to whom PAH discloses such Data in performance of this Project Agreement, including its respective employees or subcontractors of any tier, (under suitable protective conditions) by or on behalf of the Government for Government purposes only.

G. Prior Technology

I. Government Prior Technology

In the event it is necessary for the Government to furnish the NAMC or any NAMC member entity or PAH, including their respective employees or their subcontractors of any tier, with Data which existed prior to, or was produced outside of this Project Agreement, and such Data is so identified with a suitable notice or legend, the Data will be maintained in confidence and disclosed and used only for the purpose of carrying out their responsibilities under this Project Agreement. Data protection will include proprietary markings and handling, and the signing of non-disclosure agreements by NAMC (their PAHs and PAH subcontractors of any tier) to whom such Data is provided for use under the Project Agreement. Upon completion of activities under this Project Agreement, such Data will be disposed of by the PAH as the NAMC CAO directs in accordance with the request by the Government.

II. PAH and NAMC Member Entity Prior Technology

In the event it is necessary for the NAMC, PAH or any NAMC member entity, to furnish the Government with Data which existed prior to, or was produced outside of this 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 to the Government with the proviso that it be used by the Government and such Government Contractors or contract employees that the

Government may hire on a temporary or periodic basis only for the purpose of carrying out the Government's responsibilities under the OTA under which this Project Agreement is issued. Data protection will include proprietary markings and handling, and the signing of non disclosure agreements by such Government Contractors or contract employees. Neither the NAMC nor any NAMC member entity nor PAH, shall be obligated to provide Data that existed prior to, or was developed outside of this Project Agreement to the Government. In accordance with the terms of the OTA, upon completion of activities under this Project Agreement, the Government shall dispose of such Data as requested by the NAMC on behalf of itself, the PAH or NAMC member entities.

III. Oral and Visual Information

If information which the NAMC (including NAMC member entities, PAHs, their subcontractors of any tier and their respective employees) 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, through the NAMC CAO, within thirty (30) calendar days after such oral or visual disclosure, or neither the Government, the NAMC nor the CAO shall have any duty to limit or restrict, and shall not incur any liability for any disclosure and use of such information. Upon Government request, through the NAMC CAO, additional detailed information about the exchange will be provided subject to restrictions on use and disclosure.

IV. Disclaimer of Liability

Notwithstanding the above, neither the Government nor the NAMC shall be restricted in, or 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 under Article VIII entitled "Confidential Information" above, if such information is or becomes generally known without breach of the above, is properly known to the Government or NAMC, or is generated by the Government or NAMC independent of carrying out responsibilities under this Project Agreement, is rightfully received from a third party without restriction, or is included in Data which the NAMC or any NAMC member entity of PAH has furnished, or is required to furnish to the Government without restriction on disclosure and use.

V. Marking of Data

Any Data delivered under this Project Agreement shall be marked with a suitable notice or legend.

H. Notwithstanding the Paragraphs in this Article, differing rights in Data may be negotiated among the Parties to each individual specific project on a case-by-case basis.

I. Lower Tier Agreements

The PAH shall include this Article III, suitably modified to identify the parties, in all Project Agreements, subcontracts or lower tier agreements, regardless of tier, or experimental, developmental, or research work..

J. Survival Rights

Provisions of this Article shall survive termination of this Project Agreement.

ARTICLE IV: FOREIGN ACCESS TO TECHNOLOGY AND EXPORT CONTROL

1. Foreign Access to Technology

This Article IV shall remain in effect during the term of this Project Agreement.

A. Definitions

- a) "Foreign Firm or Institution" means a firm or institution organized or existing under the laws of a country other than the United States, its territories, or possessions. The term includes, for purposes of this Project Agreement, any agency or instrumentality of a foreign government; and firms, institutions or business organizations which are owned or substantially controlled by foreign governments, firms, institutions, or individuals.
- b) "Know-How" means all information including, but not limited to discoveries, formulas, materials, inventions, processes, ideas, approaches, concepts, techniques, methods, software, programs, documentation, procedures, firmware, hardware, technical data, specifications, devices, apparatus and machines.
- c) "Technology" means discoveries, innovations, Know-How and inventions, whether patentable or not, including computer software, recognized under U.S. law as intellectual creations to which rights of ownership accrue, including, but not limited to, patents, trade secrets, mask works, and copyrights developed under this Project Agreement.

B. General

The Parties agree that research findings and technology developments arising under this Project Agreement may constitute a significant enhancement to the national defense, and to the economic vitality of the United States. Accordingly, access to important technology developments under this Project Agreement by Foreign Firms or Institutions must be carefully controlled. The controls contemplated in this Article are in addition to, and are not intended to change or supersede, the provisions of the International Traffic in Arms Regulation (22 CFR Part 121 et seq.), the DoD Industrial Security Regulation (DoD 5220.22-R) and the Department of Commerce Export Regulation (15 CFR Part 770 et seq.).

C. Restrictions on Sale or Transfer of Technology to Foreign Firms or Institutions

- a) In order to promote the national security interests of the United States and to effectuate the policies that underlie the regulations cited above, the procedures stated in the subparagraphs C(b), C(c), and C(d) below shall apply to any transfer of Technology. For purposes of this paragraph, a transfer includes a sale of the company, and sales or licensing of Technology. Transfers do not include:
 - i. Sales of products or components, or
 - ii. Licenses of software or documentation related to sales of products or components, or
 - iii. Transfer to foreign subsidiaries of the PAH member entities for purposes related to this Project Agreement, or
 - iv. Transfer which provides access to Technology to a Foreign Firm or Institution which is an approved source of supply or source for the conduct of research under a Project Agreement Task Assignment provided that such transfer shall be limited to that necessary to allow the firm or institution to perform its approved role under that Project Agreement Task Assignment
 - v. Releases pursuant to Article I hereof ("Publication and Academic Rights").

C. The PAH shall provide timely notice to the NAMC CAO, for notification to the Government, of any proposed transfers from PAH(s) of Technology developed under this Project Agreement to Foreign Firms or Institutions. If the Government determines that the transfer may have adverse consequences to the national security interests of the United States, the NAMC, its PAH(s), and the Government shall jointly endeavor to find

alternatives to the proposed transfer which obviate or mitigate potential adverse consequences of the transfer but which provide substantially equivalent benefits to the PAH(s).

D. In any event, the PAH, through the NAMC CAO, shall provide written notice to the Government AO's Representative and AO of any proposed transfer by a PAH to a foreign firm or institution at least sixty (60) calendar days prior to the proposed date of transfer. Such notice shall cite this Article and shall state specifically what is to be transferred and the general terms of the transfer. Within thirty (30) calendar days of receipt of the NAMC's written notification, the Government AO shall advise the PAH, through the NAMC CAO, whether it consents to the proposed transfer. In cases where the Government does not concur or if within sixty (60) calendar days after its receipt the Government has provided no decision, the NAMC at the request of the PAH may utilize the Disputes procedures, Disputes. No transfer shall take place until a decision is rendered.

E. In the event a transfer of Technology to Foreign Firms or Institutions which is NOT approved by the Government takes place, the PAH shall (a) refund to the Government, through the NAMC CAO, those funds paid under this Project Agreement for the development of the Technology and (b) the PAH shall willingly provide to the Government, through the NAMC CAO, a non-exclusive, nontransferable, irrevocable, paid-up license to practice or have practiced on behalf of the United States the Technology throughout the world for Government and any and all other purposes, particularly to effectuate the intent of this Project Agreement. Upon request of the Government, the PAH shall provide written confirmation of such licenses to the NAMC CAO for the Government.

D) Lower Tier Agreements

The PAH shall include this Article, suitably modified to identify the Parties, in all Project Agreements or lower-tier agreements including Consulting Agreements, regardless of tier, for experimental, developmental, or research work.

2. **Export Control**

A. Export Compliance

Each Party agrees to comply with U.S. Export regulations including, but not limited to, the requirements of the Arms Export Control Act, 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 Project Agreement. Accordingly, the PAH's shall not export, directly, or indirectly, any products and/or technology, Confidential Information, Trade Secrets, or Classified and Unclassified Technical Data in violation of any U.S. Export laws or regulations.

B. Flowdown

The PAH shall include this Article, suitably modified, to identify all Parties, in all Project Agreements or lower-tier agreements, including Consulting Agreements. This Article shall, in turn, be included in all sub-tier subcontracts or other forms of lower tier agreements, regardless of tier.

ARTICLE V: CIVIL RIGHTS ACT

This Project Agreement is subject to the compliance requirements of Title VI of the Civil Rights Act of 1964 as amended (42 U.S.C. 2000-d) relating to nondiscrimination in Federally assisted programs. Upon executing the Project Agreement, the PAH will provide written confirmation to the NAMC CAO that it has signed an Assurance of

Compliance with the nondiscriminatory provisions of the Act. The Parties recognize that compliance is the responsibility of the PAH and each NAMC Member, and shall be flowed down as appropriate.