

CUSTOMER CONTRACT REQUIREMENTS
Base Vertical Lift Consortium (VLC) Project Agreement
CUSTOMER CONTRACT 2015-325

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

Special Provisions .

ARTICLE II: TERM

A. The Term of this Agreement

This Agreement commences upon the date of the last signature hereon and terminates on April 28, 2017. Provisions of this Agreement that, by their express terms or by necessary implication, apply for periods of time other than specified in Article II herein, shall be given effect, notwithstanding this Article. Project Task Assignments awarded prior to April 28, 2017 may continue past this date and will be governed by the period of performance of the Project Task Assignment.

B. Termination Provisions

In the event that the Government terminates performance of work under the OTA or under a specific project pursuant to Article II.B of the OTA, Buyer may terminate this Agreement. The Buyer shall terminate by delivering to Seller through its designated agent a Notice of Termination specifying the extent of termination and the effective date.

After receipt of a Notice of Termination, and except as directed by Buyer, the Seller through its designated agent shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due:

- (1) Stop work and direct its subcontractors to stop work as specified in the notice.
- (2) Place no further subcontracts or orders (referred to as orders in this clause) for materials, services, or facilities, except as necessary to complete the continued portion of the project.
- (3) Terminate all orders to the extent they relate to the work terminated.
- (4) Assign to the Government, as directed by Buyer, all right, title, and interest of Seller under the orders terminated, in which case the Buyer shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.
- (5) With approval or ratification to the extent required by the Buyer, settle all outstanding liabilities and termination settlement proposals arising from the termination of orders; the approval or ratification will be final for purposes of this clause.
- (6) Provide Buyer, and/or obtain from sellers as appropriate, under the terminated portion of the Agreement a transfer of title to the following where applicable and deliver to Buyer

- (i) The fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated; and
- (ii) The completed or partially completed plans, drawings, information, and other property that, if the order had been completed, would have been required to be furnished to Buyer.

- (7) Complete performance of any work not terminated, if applicable.
- (8) Take any action that may be necessary, or that Buyer may direct, for the protection and preservation of the property related to this project that is in the possession of Seller or any seller and in which the Government has or may acquire an interest.
- (9) Use its commercially reasonable efforts to sell, as directed or authorized by Buyer, any property of the types referred to under Article II.B. Termination Provisions, (6)(i) and (ii); provided, however, that Seller by its agent

- (i) is not required to extend credit to any purchaser and
- (ii) may arrange for a seller who was performing the terminated work to acquire the property under the conditions prescribed by, and at prices approved by, Buyer.

(iii) will in no event be required to continue with such efforts for more than 100 days after notice by Buyer to sell or dispose of such property.

The proceeds of any transfer or disposition of project property will be applied to reduce any payments to be made by the Government under that particular project, including credited to the price or cost of the work, or paid in any other manner directed by the Government through the Buyer.

In the event of a termination of the Agreement as a result of a termination of the OTA, the Government shall have patent rights as described in Article X, Patent Rights.

C. Material Breach by Seller

If Seller materially fails to comply with the provisions of this Agreement with respect to a project, Buyer, after issuance of a Cure Notice, may take one or more of the following actions as appropriate, to the extent the Government has initiated similar action against Buyer or VLC:

- (1) Temporarily withhold payments pending correction of the deficiency by Seller,
- (2) Disallow all or part of the cost of the activity or action not in compliance,
- (3) Wholly or partly suspend or terminate the project,
- (4) Withhold further funding for the Seller,
- (5) Take any other legally available remedies.

D. Termination Costs

Seller will work with Buyer to negotiate in good faith with the Government an equitable reimbursement for work performed toward accomplishment of the milestones identified within each Project Task Assignment. Under the OTA, the Government must allow full credit for the Government share of the obligations properly incurred by Seller prior to termination. Costs incurred by Seller during a suspension or after termination of a Milestone are not allowable, except for allowable termination settlement expenses consistent with FAR Part 49, unless the Agreements Officer expressly authorizes them in either the notices of suspension, termination, or subsequently. Other costs incurred by Seller during a suspension or after termination that are necessary and not reasonably avoidable are allowable if:

- (1) The costs result from obligations that were properly incurred by Seller before the effective date of the suspension or termination, are not in anticipation of it, and in the case of a termination, are non-cancellable; and
- (2) The costs would be allowable if the Milestone was not suspended or this Agreement expired normally at the end of the funding period in which the termination takes effect.

E. Stop Work Clause

As directed by the Government Agreements Officer, the Buyer may, at any time, by written order to the Seller, require the Seller to stop all, or any part, of the work called for under any Project Task Assignment for a period of 90 days after the written order is delivered to the Seller, and for any further period to which the parties may agree. The order shall be specifically identified as a stop-work order issued under this Article. Upon receipt of the order, the Seller shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within a period of 90 days after a stop-work is delivered to the Seller, or within any extension of that period to which the parties shall have agreed, the Buyer shall either:

- (a) Cancel the stop-work order; or
- (b) Terminate the work covered by the Project Task Assignment.

If a stop work order issued under this clause is canceled, the Seller shall resume work. The Government, through the Buyer, shall make an equitable adjustment in the delivery schedule or Project Task Assignment estimated cost/price, or both, and the Government's share of the Project Task Assignment shall be modified, in writing, accordingly, if:

- (1) The stop-work order results in an increase in the time required for, or in the Seller's cost properly allocable to, the performance of any part of the Project Task Assignment; and
- (2) The Seller asserts its right to the adjustment within 30 days after the end of the period of work stoppage; provided that, if the Government decides the facts justify the action, the Government through the Buyer may receive and act upon a proposal submitted at any time before final payment under this Project Agreement. The Buyer would receive a summary version of the proposal to include all non-proprietary cost information. Any supporting proprietary cost information would be submitted directly to the Government.

If a stop work order is not canceled and the work covered by the Project Task Assignment is terminated in accordance with Article II, the Buyer shall work with the Seller to negotiate an equitable reimbursement in accordance with Article II (D) Termination Costs.

F. Lower Tier Agreements: Seller shall include Article II, Term, suitably modified to identify the parties, in all lower tier agreements,

regardless of tier.

ARTICLE VIII: CONFIDENTIAL INFORMATION

8.1 Definitions

8.1.1 "Disclosing Party" means VLC, Buyer, Seller, or the Government who discloses Confidential Information as contemplated by the subsequent Paragraphs.

8.1.2 "Receiving Party" means VLC, Buyer, Seller, or the Government who receives Confidential Information disclosed by a Disclosing Party.

8.1.3 "Confidential Information" means information and materials of a Disclosing Party which are designated as confidential or as a Trade Secret in writing by such Disclosing Party, whether by letter or by use of an appropriate stamp or legend, prior to or at the same time any such information or materials are disclosed by such Disclosing Party to the Receiving Party. Notwithstanding the foregoing, materials and other information which are orally, visually, or electronically disclosed by a Disclosing Party, or are disclosed in writing without an appropriate letter, stamp, or legend, shall constitute Confidential Information or a Trade Secret if such Disclosing Party, within twenty-five (25) calendar days after such disclosure, delivers to the Receiving Party a written document or documents describing the material or information and indicating that it is confidential or a Trade Secret, provided that any disclosure of information by the Receiving Party prior to receipt of such notice shall not constitute a breach by the Receiving Party of its obligations under this Paragraph. "Confidential Information" includes any information and materials considered a Trade Secret by Seller. "Trade Secret" means all forms and types of financial, business, scientific, technical, economic, or engineering or otherwise proprietary information, including, but not limited to, patterns, plans, compilations, program devices, formulas, designs, prototypes, methods, techniques, processes, procedures, programs, or codes, whether tangible or intangible, and whether or how stored, compiled, or memorialized physically, electronically, graphically, photographically, or in writing if:

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

8.2 Exchange of Information: The Government may from time to time disclose Government Confidential Information to VLC for use by the Buyer, VLC member entities or Seller in connection with this Agreement or particular projects, and VLC or the Buyer, VLC member entities or Seller may from time to time disclose information that is Trade Secret or Confidential Information to the Government in connection with the OTA, an OTA project proposal, Technical Direction Letter, Project Agreement, or performance thereunder. Neither the Government nor VLC on behalf of the VLC member entities or Seller nor the Buyer shall be obligated to transfer Confidential Information or Trade Secrets independently developed by the Government or the VLC member entities or Seller or the Buyer absent an express written agreement between the Parties providing the terms and conditions for such disclosure.

8.3 Confidentiality and Authorized Disclosure: The Receiving Party agrees, to the extent permitted by law, that Confidential Information and Trade Secrets shall remain the property of the Disclosing Party (no one shall disclose unless they have the right to do so), and that, unless otherwise agreed to by the Disclosing Party, Confidential Information and Trade Secrets shall not be disclosed, divulged, or otherwise communicated by it to third parties or used by it for any purposes other than in connection with specified project efforts and the licenses granted in Article X, Patent Rights, provided that the duty to protect such "Confidential Information" and "Trade Secrets" shall not extend to materials or information that:

- (a) Are received or become available without restriction to the Receiving Party under a proper, separate agreement,
- (b) 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,
- (c) Are or later become part of the public domain through no fault of the Receiving Party,
- (d) Are received by the Receiving Party from a third party having no obligation of confidentiality to the Disclosing Party that made the disclosure, and who lawfully had permission to share such documents
- (e) Are developed independently by the Receiving Party without use of Confidential Information or Trade Secrets as evidenced by written records,
- (f) Are required by law or regulation to be disclosed; provided, however, that the Receiving Party has provided written notice to the Disclosing Party promptly so as to enable such Disclosing Party to seek a protective order or otherwise prevent disclosure of such information.

8.4 Return of Proprietary Information: Upon the request of Seller, Buyer shall promptly make reasonable efforts to obtain from the Government, and return to Seller, all copies and other tangible manifestations of the Confidential Information or Trade Secrets

disclosed. Upon request by Buyer, Seller shall promptly return all copies and other tangible manifestations of the Confidential Information disclosed by Buyer. As used in this section, tangible manifestations include human readable media as well as magnetic and digital storage media.

8.5 Term: The obligations of the Receiving Party under this Article shall continue for a period of ten (10) years after the expiration or termination of this Agreement.

8.6 Seller shall flow down the requirements of this Article VIII to their respective personnel, member entities, agents, and subcontractors (including employees) at all levels, receiving such Confidential Information or Trade Secrets under this Agreement. None of the Confidential Information or Trade Secrets will be provided to any person unless such person has a need to know the Confidential Information or Trade Secrets.

ARTICLE IX: PUBLICATION AND ACADEMIC RIGHTS

9.1 Use of Information.

Subject to the provisions of Article IX, Publication and Academic Rights at paragraph 9.1.2, Seller, Buyer and the Government shall have the right to publish or otherwise disclose information and/or data developed by the Government/Buyer and/or Seller under the Research Project. Seller, Buyer and the Government (and its employees) shall include an appropriate acknowledgement of the sponsorship of the Research Projects by the Government, Buyer and Seller 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 OTA. Notwithstanding the above, the Parties shall not be deemed authorized by this paragraph 9.1, alone, to disclose any Confidential Information or Trade Secrets of the Government, Buyer or Seller.

9.1.1 Classified Research Projects.

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

9.1.2 Review or Approval of Technical Information for Public Release.

- (a) At least 40 days prior to the scheduled release date, Seller shall submit to Buyer two copies of the information to be released. In turn, the Buyer shall submit to the Government Technical Manager the information to be released.

The Government Technical Manager is hereby designated as the approval authority for the AO for such releases.

- (b) Where Seller is an Academic Research Institution performing fundamental research on campus, Seller shall provide papers and publications to Buyer for provision to the Government Technical Manager for review and comment 40 days prior to formal paper/publication submission. However, if Seller incorporates into its research results or publications artifacts produced by and provided to Seller by Buyer on behalf of other (non-educational institution) VLC members (or has authors listed on the paper who are not employees or students of Seller) then the procedures in paragraph(a) above must be followed

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

"Effort sponsored by the U.S. Government under Other Transaction number W15QKN-10-9-0003 between Vertical Lift Consortium, Inc. and the Government. The US Government is authorized to reproduce and distribute reprints for Governmental purposes notwithstanding any copyright notation thereon."

- (d) Parties to this 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."

Seller shall flow down these requirements to its subcontractors, at all tiers.

9.1.3 Notices. To avoid disclosure of Confidential Information or Trade Secrets, if Seller is proposing to publish or disclose such information, it will provide notice to the Government through the Buyer, and identify such other parties as may have an interest in such Confidential Information or Trade Secrets, at least fifty (50) days prior to Seller's submission for publication or disclosure. The Government through the Buyer must notify Seller of any objection to disclosure within this fifty (50) day period, or else Seller shall be deemed authorized to make such disclosure.

9.1.4 Filing of Patent Applications. During the course of any such fifty (50) calendar day period, Seller shall provide notice to the Government through VLC as to whether it desires that a patent application be filed on any invention disclosed in such materials, and/or the Government shall provide notice to the AO as to whether the Government desires that a patent application be filed on any invention disclosed in such materials. In the event that Seller and/or the Government desires that such a patent be filed, Seller or the Government proposing to publish or disclose such materials agrees to withhold publication and disclosure of such materials until the occurrence of the first of the following:

- (a) Filing of a patent application covering such invention, or
- (b) Written agreement, from the Agreements Officer and Seller that no patentable invention is disclosed in such materials.
- (c) Further, during the course of any such fifty (50) calendar day period, Seller shall notify the Government through Buyer if Seller believes any of its Confidential Information or Trade Secrets have been included in the proposed publication or Base VLC Project Agreement disclosure and shall identify to the Government the specific Confidential Information or Trade Secrets that need to be removed from such proposed publication. The Government and Seller 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 under this provision.

ARTICLE X: PATENT RIGHTS

A. Definitions

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

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

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

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

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

B. 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 Sec. 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, if fifty percent or more of the cost of the project was funded by the Government pursuant to this Agreement. Seller may elect to provide to other parties full or partial rights that it has retained.

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

1. Seller shall notify VLC of the intent to disclose each Subject Invention within 110 days after the inventor discloses it in writing to his company personnel responsible for patent matters, and shall disclose each Subject Invention to the Government within the same 110 days. The disclosure to the Government shall be in the form of a written report and shall identify the Agreement under which the invention was made and the identity of the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding to the extent known at the time of the disclosure, of the nature, purpose, operation, and the physical, chemical, biological or electrical characteristics of the invention. The disclosure shall also identify any publication, sale, or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure.

2. If Seller determines that it does not intend to retain title to any such invention, Seller shall notify the Government through VLC in writing, within nine (9) months of the disclosure pursuant to Paragraph 1 above. However, in any case where publication, sale or public use has initiated the one (1) year statutory period wherein valid patent protection can still be obtained in the United States, the period for such notice may be shortened by the Government through the Buyer to a date that is no more than sixty-five (65) calendar days prior to the end of the project.

3. Seller 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. Seller may elect to file patent applications in additional countries (including but not limited to 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. After considering the position of Buyer on behalf of the Seller, a request for extension of the time for disclosure election, and filing under this Article X, paragraph C, may be approved by Army Contracting Command] New Jersey, which Army Contracting Command approval shall not be unreasonably withheld.

D. Conditions When the Government May Obtain Title

Upon request from the Government, Seller shall convey to the Government through the Buyer 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 paragraph C of this Article X, Patent Rights; provided, that the Government may only request title within sixty (60) calendar days 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 paragraph C of this Article X, Patent Rights; provided, that if Seller has filed a patent application in a country after times specified in paragraph C of this Article X, Patent Rights, but prior to its receipt of the written request by the Government through Buyer, 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.

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

The Parties agree that:

1. Seller shall retain a non-exclusive, royalty]free license throughout the world in each Subject Invention to which the Government obtains title, except if Seller fails to disclose the invention within the times specified in paragraph C of this Article X, Patent Rights. Seller's license extends to the domestic (including Canada) subsidiaries and affiliates, if any, of Seller within the corporate structure of which Seller is a party and includes the right to grant licenses of the same scope to the extent that Seller was legally obligated to do so at the time the project under the Agreement was funded. The license is transferable only with the approval of the Government, except when transferred to the successor of that part of the business to which the invention pertains.

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. This license shall not be revoked in that field of use or the geographical areas in which Seller 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 Seller, 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 must furnish Buyer under the OTA, and Buyer shall forward to the Seller, a written notice of the Government's intention to revoke or modify the license, and Seller shall be allowed twenty (20) 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. Seller 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 Buyer elects to retain title, and (ii) convey title to the Government when requested under paragraph D of this Article X, Patent Rights, and to enable the Government to obtain patent protection throughout the world in that Subject Invention.

2. Seller agrees to require, by written agreement, that its employees working on program projects, other than clerical and non-technical employees, agree to disclose promptly in writing, to personnel identified as responsible for the administration of patent matters each Subject Invention made under this Agreement in order that the Buyer, the Seller, or other authorized agents on behalf of the Seller can comply with disclosure provisions of paragraph C of this Article X, 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. Seller acknowledges, and shall instruct itsf 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. Seller shall notify the Government through Buyer 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 twenty-five (25) 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. W15QKN-10-9-0003 awarded by the U.S. Army, Army Contracting Command, Joint Munitions and Lethality Life Contracting Center to Vertical Lift Consortium, Inc. The Government has certain rights in the invention."

G. Lower Tier Agreements

Seller shall include the Article X, Patent Rights, suitably modified to identify the parties, in all lower tier agreements, regardless of tier, for experimental, development, or research work. A higher tier subcontractor shall not as part of the consideration for awarding the subcontract, be required to obtain rights in the subcontractor's Subject Invention.

H. Reporting on Utilization of Subject Inventions

Seller agrees to submit, during the term of the 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 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 agency may reasonably specify. Seller also agrees to provide additional reports as may be requested by the Government through Buyer in connection with any march-in proceedings undertaken by the Government in accordance with paragraph J of this Article X, Patent Rights. The Government shall not disclose such information to persons outside the Government without permission of Seller.

I. Preference for American Industry

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

J. March-in Rights

Seller agrees that, with respect to any Subject Invention in which Seller has retained title, the Government, through the Buyer has the right to require Seller to 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 has not taken effective steps, consistent with the intent of this Agreement, to achieve practical application of the Subject Invention;
2. Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by Seller, assignee, or their licensees;
3. Such action is necessary to meet requirements for public use and such requirements are not reasonably satisfied by VLC's Project Agreement, Seller, assignee, or licensees; or
4. Such action is necessary because the Agreement required by paragraph (I) of this Article X, Patent Rights, has not been obtained or waived or because a licensee who has the exclusive right to use or sell any Subject Invention in the United States is in the breach of such Agreement.

K. Opportunity to Cure

Certain provisions of this Article X, Patent Rights, provide that the Government may gain title or license to a Subject Invention by reason of Seller's action, or failure to act, within the times required by this Article X, Patent Rights. Prior to claiming such rights (including any rights under Article X, Paragraph J. March-In Rights), the Government will give written notice to Buyer, and Buyer will convey such written notice to Seller, of the Government's 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 in no event will be less than fifty (50) 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 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 X apply to any Background Inventions or Patents. Seller or its subcontractors shall retain the entire right, title, and interest throughout the world to each such Inventions and Patents that each party has brought through VLC to the project issued under this Agreement and the Government shall not have any rights under this Agreement. Projects to be funded under this Agreement will list Background Inventions and Patents anticipated to be used on the project; such listing may be amended by the parties as appropriate to reflect changes in such plans.

M. Survival Rights

Provisions of this Article shall survive termination of this Agreement.

ARTICLE XII: FOREIGN ACCESS TO TECHNOLOGY AND EXPORT CONTROL

1. Foreign Access to Technology

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

A. Definition

- 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 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, maskworks, and copyrights developed under this Agreement.

B. General

- a) The Parties agree that research findings and technology developments arising under this 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 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 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 Seller for purposes related to this 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 this Agreement provided that such transfer shall be limited to that necessary to allow the firm or institution to perform its approved role under this Agreement.
 - (v) releases pursuant to Article IX hereof ("Publication and Academic Rights")
- b) Seller shall provide timely notice to Buyer of any proposed transfers from Seller of Technology developed under this Agreement to Foreign Firms or Institutions. If the Government notifies Buyer that the transfer may have adverse consequences to the national security interests of the United States, Buyer on behalf of the VLC, Seller, 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 Seller.
- c) In any event, Seller shall provide written notice to Buyer of any proposed transfer by a Seller 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. In cases where the Government does not concur or if within sixty (60) calendar days after its receipt the Government has provided no decision, Seller may utilize the procedures under Article VI, Disputes. No transfer shall take place until a decision is rendered.

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

D. Lower Tier Agreements

Seller shall include this Article, suitably modified, to identify the Parties, in all lower tier 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 Agreement. Accordingly, Seller shall not export, directly, or indirectly, any products and/or technology, Confidential Information, Trade Secrets, or Classified and Unclassified Technical Data in violation of any U.S. Export laws or regulations.

B. Flow down.

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

15. INTELLECTUAL PROPERTY

RIGHTS IN DATA, SOFTWARE, AND COPYRIGHTS

A. Definitions. For the purposes of this Agreement, the following terms have the meanings indicated:

1. "Background Data" means Technical Data produced by Seller at private expense prior to performance of or outside the scope of this Agreement and is considered by Seller to be proprietary. Such Background Data may include any modifications, derivatives to previously conceived, designed, developed, and resultant revisions to software, processes, qualification data, and manufacturing plans.
2. "Background Software" means any Software developed by Seller at private expense prior to the performance of this Agreement or outside the scope of work performed under this Agreement and is considered by Seller to be proprietary.
3. "Computer Software" and "Computer Software Documentation" as defined in DFARS 252.227-7014, Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation.
4. "Government Data" means Data that has been delivered to the Government prior to or outside the terms of this Agreement. The Government's pre-existing rights in that Data govern disclosure and use of such Government Data.
5. "Government Purpose" as defined in DFARS 252.227-7013, Rights in Technical Data-Noncommercial Items, and 252.227-7014, Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation.
6. "Government Purpose Rights" as defined in DFARS 252.227-7013, Rights in Technical Data-Noncommercial Items, and 252.227-7014, Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation.
7. "Limited Rights" as defined in DFARS 252.227-7013, Rights in Technical Data-Noncommercial Items.
8. "Proprietary Information" means information which embodies trade secrets or which is privileged or confidential technical, business or financial information provided that such information:
 - a. is not generally known, or is not available from other sources without obligations concerning its confidentiality;
 - b. has not been made available by the owners to others without obligation concerning its confidentiality;

- c. is not described in an issued patent or a published copyrighted work or is not otherwise available to the public without obligation concerning its confidentiality; or
- d. can be withheld from disclosure under 15 U.S.C. 3710a(c)(7)(A) & (B) and the Freedom of Information act, 552 et seq; and
- e. is identified as such by labels or markings designating the information as proprietary.

9. "Restricted Rights" as defined in DFARS 252.227-7014, Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation.

10. "Subject Technical Data", "Subject Computer Software", and "Computer Software Documentation", as used in this article, means any Technical Data, Computer Software, or Computer Software Documentation first developed and/or modified during performance of this Agreement.

11. "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.

12. "Unlimited Rights" as defined in DFARS 252.227-7013, Rights in Technical Data-Noncommercial Items, and 252.227-7014, Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation.

B. Allocation of Principal Rights

Projects under this Agreement shall be performed with either Government funding or a mix of Government and Seller funding. Any Technical Data, Computer Software, and/or Computer Software Documentation developed with agreement funding shall be considered as either "Developed exclusively with Government funding" or "Developed with mixed funding" as defined in DFARS clauses 252.227-7013 and 252.227-7014, depending upon whether the Government fully funds a project or the Government and the Seller cost share the project. In consideration of Government funding, the Parties agree as follows:

1. Background Data provided to the Government shall be limited to that information normally shared with commercial customers and shall be subject to Limited Rights. Seller retains all right, title, and interest in such Background Data. Certain project deliverable reports/documentation may, by necessity, incorporate Background Data. If so, such report/documentation will be supplied with Limited Rights. Furnishing of "Background Data" by incorporating it into a deliverable report/documentation shall not affect any preexisting Government Rights in such Technical Data. Seller's Background Data will be identified in an attachment to the Project Proposal.

In addition to the items identified in the project proposal, other assertions meeting the definition of Background Data/Background Software may be identified after award of the project. Such identification shall be submitted to the Grants/Agreements Officer as soon as practical, but in no case shall the additional Background Data be included in any data deliverable until the project is bilaterally amended to reflect such addition.

2. The following project reports are administrative/management documentation and not considered technical data. They contain Seller proprietary information and may be marked "Proprietary": Business/Financial Status Report and Program Management Plan, if applicable.

3. The Government shall obtain an Unlimited Rights version of any Final Reports prepared under individual projects.

4. To the extent that Government Data is used in the performance of projects issued under this Agreement, the Government shall retain its preexisting rights in such Data, including modifications or changes made to such Data as part of the performance under this Agreement.

5. For projects that the Government cost shares with the VLC member, the Government shall obtain Government Purpose Rights in Technical Data, Computer Software, and Computer Software Documentation developed under the projects issued under this Agreement. For all projects the Government fully funds, the Government shall obtain Unlimited Rights.

6. For projects that the Government cost shares with VLC member(s) performed as part of the NRTC, which are by definition precompetitive technology developments, the Government shall obtain Government Purpose or Unlimited Rights in Technical Data, Computer Software, and Computer Software Documentation developed under the projects issued under this Agreement. For all projects the Government fully funds, the Government shall obtain Unlimited Rights.

C. Seller shall include the obligations of the Seller under this Article, suitably modified to identify the Parties, in all subcontracts or lower-tier agreements, regardless of tier, for experimental, developmental, or research work.

D. Marking of Data

1. Pursuant to paragraph B above, technical data required to be delivered under this Agreement shall be marked appropriately with the

following appropriate legend:

Government Purpose Rights

Agreement Number:

Seller Name: Seller Name

Seller Address: Seller Address

Expiration Date: XX Month Year

The Government's rights to use, modify, reproduce, release, perform, display or disclose these Technical Data are restricted as stated in Agreement 2015-325 between the Government through the VLC Buyer and Seller. Any reproduction of technical data or portions thereof marked with this legend must also reproduce the markings. Any person other than the Government, who has been provided access to such Technical Data, must promptly notify Seller.

Limited Rights

Agreement Number:

Seller Name: Seller Name

Seller Address: Seller Address

The Government's rights to use, modify, reproduce, release, perform, display, or disclose these technical data are restricted as stated in Agreement 2015-325 between the Government through the VLC Buyer and Seller. Any reproduction of technical data or portions thereof marked with this legend must also reproduce the markings. Any person, other than the Government, who has been provided access to such data, must promptly notify the above named Seller.

2. Further, the deliverable proprietary non-technical data information (namely the Business Status Report and Program Management Plan, if applicable) not subject to Unlimited Rights, Government Purpose Rights or Limited Rights, shall be marked with the proprietary notice customarily used by Seller to identify data and information that is subject to restrictions regarding disclosure and/or use. The proprietary notice shall however, also include notation of this Agreement Number "W15QKN-10-9-0003" and a right for the Government to use the report for purpose of administration of this Agreement.

3. Except for Technical Data or Proprietary Information developed and/or modified under this Agreement, the parties agree that Seller will appropriately advise the Government regarding any limitation or restriction to Technical Data or Computer Software to which the Government may have access. Limitations and restrictions will be subject to the appropriate Seller or third party markings and legends including a copyright notice to assure proper handling and shall bear notation to this Agreement Number "W15QKN-10-9-0003".

E. Disclosure to Government Support Contractors

The Government may utilize contractor support, as required, for the duration of the Agreement. Information, including business sensitive/confidential or proprietary data, the Seller provides to the Government with restrictions may be viewed and utilized by the support contractor in the course of its contract performance. The Seller's consent to a release of their business sensitive/confidential, proprietary, and/or restricted data to the Government's support contractor. The Government will require the support contractor to protect Seller information and to enter into a nondisclosure agreement to maintain this confidential information.

F. Disclosure of Unmarked Data.

The United States Government is not responsible for any disclosure or transfer of proprietary data or software that was not marked by the data owner in accordance with this Agreement.

G. Government Right to Obtain Subject Technical Data, Computer Software, and Computer Software Documentation.

In addition to the agreement deliverables specified in any project, the Government may order from the VLC member, including such materials developed by any of its members, Subject Technical Data, Computer Software, and Computer Software Documentation at any time during the performance of this Agreement or within a period of fifteen (15) years after Agreement termination or closeout. If the Government orders such Subject Technical Data, Computer Software, and Computer Software Documentation, the Seller shall be reasonably compensated for the costs of converting the data or computer software into the prescribed form, for reproduction and delivery. The Government's rights to use said data or computer software shall be pursuant to this Article.

H. Copyrights

Ownership to copyrights for original works of authorship created by employees of Seller or for hire by Seller in the course of performance of work under this Agreement is retained by Seller. Seller grants to the Government a royalty-free, nonexclusive, irrevocable license to use, modify, prepare derivative works, reproduce, distribute, perform, and display worldwide copyrighted works delivered under this Agreement, by or on behalf of the Government for Government purposes. Notwithstanding the foregoing, the Seller grant a license to the Government for the technical data and computer software addressed in this article.