

**CUSTOMER CONTRACT REQUIREMENTS**  
**ARA A5K (Task Order One)**  
**CUSTOMER CONTRACT PO18-0112**

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

**52.203-7 Anti-Kickback Procedures** (MAY 2014). Buyer may withhold from sums owed Seller the amount of any kickback paid by Seller or its subcontractors at any tier if (a) the Contracting Officer so directs, or (b) the Contracting Officer has offset the amount of such kickback against money owed Buyer under the prime contract. This clause, excluding subparagraph (c)(1), applies only if this contract exceeds \$150,000.

**52.203-11 Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions** (SEP 2007). This clause applies only if this contract exceeds (i) \$100,000 if included in Buyer's customer RFP or customer contract issued before October 1, 2010 or (ii) \$150,000 if included in Buyer's customer RFP issued on or after October 1, 2010, or if the prime contract was issued prior to October 1, 2010 but was amended after October 1, 2010 to increase the Simplified Acquisition Threshold.

**52.203-12 Limitation on Payments to Influence Certain Federal Transactions** (OCT 2010). This clause applies only if this contract exceeds \$150,000. Paragraph (g)(2) is modified to read as follows: "(g)(2) Seller will promptly submit any disclosure required (with written notice to Boeing) directly to the PCO for the prime contract. Boeing will identify the cognizant Government PCO at Seller's request. Each subcontractor certification will be retained in the subcontract file of the awarding contractor."

**52.203-13 Contractor Code of Business Ethics and Conduct** (DEC 2008). This clause applies only if this contract is in excess of \$5,000,000 and has a period of performance of more than 120 days.

**52.204-10 Reporting Executive Compensation And First-Tier Subcontract Awards** (OCT 2016). Delete all paragraphs and replace with the following: "If Seller meets the executive compensation reporting requirements of 52.204-10, Seller shall provide the required executive compensation information by maintaining an active registration in the U.S. government System for Award Management (SAM) in accordance with 52.204-7. The required information of 52.204-10 will be made public."

**52.222-21 Prohibition of Segregated Facilities** (APR 2015).

**52.222-26 Equal Opportunity** (SEP 2016).

**52.222-27 Affirmative Action Compliance Requirements for Construction** (FEB 1999). This clause applies only if this contract exceeds \$10,000.

**52.222-35 Equal Opportunity for Veterans.** (OCT 2015). This clause applies only if this contract is \$150,000 or more.

**52.222-36 Equal Opportunity for Workers with Disabilities** (JUL 2014). This clause applies only if this contract exceeds \$15,000.

**52.225-1 Buy American - Supplies** (MAY 2014). The term "Contracting Officer" shall mean Buyer the first time it is used in paragraph (c). In paragraph (d), the phrase "in the provision of the solicitation entitled 'Buy American Certificate' is deleted and replaced with "in its offer."

**52.244-6 Subcontracts for Commercial Items** (JAN 2017). Clauses in paragraph (c) (1) are applicable to Seller for commercial items ordered by Buyer from Seller under this contract.

**52.245-1 Government Property** (APR 2012). This clause applies if Government property is acquired or furnished for contract performance. "Government" shall mean Government throughout except the first time it appears in paragraph (g)(1) when "Government" shall mean the Government or the Buyer.

**2. DoD FAR Supplement Clauses** DoD Contracts. The following contract clauses are incorporated by reference from the Department of Defense Federal Acquisition Regulation Supplement and apply to the extent indicated. In all of the following clauses, "Contractor" and "Offeror" mean Seller except as otherwise noted.

**252.223-7002 Safety Precautions for Ammunition and Explosives** (MAY 1994). This clause applies only if this contract involves ammunition or explosives. "Government" means Government or Buyer in paragraph (b)(2), each time it appears in (e), (f)(1), (f)(2), the first time it appears in (g)(1)(i), and in (g)(3). "Government" means Buyer in paragraphs (c)(3), (c)(4), (c)(5), and the second time it appears in (g)(1)(i). "Contracting Officer" means Contracting Officer and Buyer in paragraph (g)(4). "Contracting Officer" means Buyer in paragraphs (c)(1), (c)(2), (c)(3), (c)(4), (c)(5), and each time it appears in (d).

**252.223-7003 Change in Place of Performance-Ammunition and Explosives** (DEC 1991). This clause applies only if DFARS 252.223-7002 is applicable to this contract. The term "Contracting Officer" means Buyer.

**252.225-7048 Export-Controlled Items** (JUN 2013).

**252.227-7038 Patent Rights—Ownership By The Contractor (Large Business)** (JUN 2012). This clause applies only if this contract is for experimental, developmental, or research work and Seller is not a small business firm or nonprofit organization.

**252.246-7007 Contractor Counterfeit Electronic Part Detection and Avoidance System** (AUG 2016). This clause applies to contracts for electronic parts or assemblies containing electronic parts or for contracts for the performance of authentication testing. The term "Contractor" means "Buyer" in the first sentence. In paragraph (c)(6), "Contracting Officer" means "Buyer." The introductory text at the beginning of the clause is deleted and only paragraphs (a) through (e) apply.

**3. Commercial Items** If goods or services being procured under this contract are commercial items and Clause H203 is set forth in the purchase order, the foregoing Government clauses in Sections 1 above are deleted and the following FAR clauses are inserted in lieu thereof:

**52.203-13 Contractor Code of Business Ethics and Conduct** (DEC 2008). This clause applies only if this contract is in excess of \$5,000,000 and has a period of performance of more than 120 days.

**52.203-15 Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009** (JUN 2010). This clause applies if this contract is funded in whole or in part with Recovery Act funds.

**52.203-19 Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements** (JAN 2017).

**52.204-21 Basic Safeguarding of Covered Information Systems** (JUN 2016).

**52.219-8 Utilization of Small Business Concerns** (NOV 2016).

**52.222-21 Prohibition of Segregated Facilities** (APR 2015).

**52.222-26 Equal Opportunity** (SEP 2016).

**52.222-35 Equal Opportunity for Veterans.** (OCT 2015). This clause applies only if this contract is \$150,000 or more.

**52.222-36 Equal Opportunity for Workers with Disabilities** (JUL 2014). This clause applies only if this contract exceeds \$15,000.

**52.222-37 Employment Reports on Veterans** (FEB 2016). This clause applies if the Contract is \$150,000 or more.

**52.222-40 Notification of Employee Rights Under the National Labor Relations Act.** (DEC 2010).

**52.222-50 Combating Trafficking in Persons** (MAR 2015). The term “contractor” shall mean “Seller”, except in the paragraph (a) definition of Agent, and except when the term “prime contractor” appears, which shall remain unchanged. The term “Contracting Officer” shall mean “Contracting Officer, Buyer's Authorized Procurement representative” in paragraph (d)(1). Paragraph (d)(2) shall read as follows: “If the allegation may be associated with more than one contract, the Seller shall inform the Buyer's Authorized Procurement Representative for each affected contract.” The term “the Government” shall mean “the Government and Buyer” in paragraph (e). The term “termination” shall mean “Cancellation” and “Cancellation for Default”, respectively, in paragraph (e)(6). The term “Contracting Officer” shall mean “Contracting Officer and Buyer” in paragraph (f), except in paragraph (f)(2), where it shall mean “Contracting Officer or Buyer”. Paragraph (h)(2)(ii) shall read as follows: “To the nature and scope of the activities involved in the performance of a Government subcontract, including the number of non-United States citizens expected to be employed and the risk that the contract or subcontract will involve services or supplies susceptible to trafficking in persons.” The term “Contracting Officer” shall mean “Contracting Officer or Buyer” in paragraph (h)(4)(ii). The term “Contracting Officer” shall mean “Buyer” in paragraph (h)(5).

**52.222-50 Combating Trafficking in Persons (Feb 2009) Alternate I** (AUG 2007). In paragraph (d), the term “Contracting Officer” means Buyer, and in paragraph (e), the term “the Government” means Buyer.

**52.222-55 Minimum Wages Under Executive Order 13658** (DEC 2015). This clause applies if this contract is subject to the Service Contract Labor Standards statute or the Wage Rate Requirements (Construction) statute, and is to be performed in whole or in part in the United States. "Contracting Officer" shall mean "Buyer" except for paragraphs (e)(2), (4) and (g). If the Government exercises a withhold identified in the paragraph (g) against Buyer as a result of the Seller's violation of its obligations under this clause, Buyer may impose that withhold against the Seller.

**52.222-62 Paid Sick Leave Under Executive Order 13706** (JAN 2017). This clause applies if the Contract is subject to the Service Contract Labor Standards statute or the Wage Rate Requirements (Construction) statute, and are to be performed in whole or in part in the United States.

**52.224-3 Privacy Training Alternate I** (JAN 2017). The term "Contracting Officer" shall mean "Contracting Officer or Buyer".

**52.224-3 Privacy Training** (JAN 2017). The term "Contracting Officer" shall mean "Contracting Officer or Buyer".

**52.225-26 Contractors Performing Private Security Functions Outside the United States** (OCT 2016). This clause applies if the Contract will be performed outside the United States in areas of (1) combat operations, as designated by the Secretary of Defense; or (2) other significant military operations, upon agreement of the Secretaries of Defense and State that the clause applies in that area. In paragraph (d)(1), Contracting Officer shall mean "Contracting Officer or Buyer" and in paragraph (d) (3), Contracting Officer shall mean Buyer.

**52.232-40 Providing Accelerated Payments to Small Business Subcontractors.** (DEC 2013). This clause applies to contracts with small business concerns. The term "Contractor" retains its original meaning.

**52.247-64 Preference for Privately Owned U.S.-Flag Commercial Vessels** (FEB 2006). This clause does not apply if this contract is for the acquisition of commercial items unless (i) this contract is a contract or agreement for ocean transportation services; or a construction contract; or (ii) the supplies being transported are (a) items the Seller is reselling or distributing to the Government without adding value (generally, the Seller does not add value to the items when it subcontracts items for f.o.b. destination shipment); or (b) shipped in direct support of U.S. military (1) contingency operations; (2) exercises; or (3) forces deployed in connection with United Nations or North Atlantic Treaty Organization humanitarian or peacekeeping operations.

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

#### **ARTICLE I INTELLECTUAL PROPERTY**

*Definitions*

- (a) "Consortium Management Firm (CMF)" refers to the third party corporation or organization acting on behalf of the National Warheads and Energetics Consortium (NVEC) to execute and administer the efforts under the Ordnance Technology Base Agreement.
- (b) "Data" means recorded information, regardless of form, the media on which it may be recorded, or the method of recording. The term includes, but is not limited to, data of a scientific or technical nature, computer software, and documentation thereof.
- (c) "Development" or "Developed" means the systematic use, under whatever name, of scientific and technical knowledge in the design, development, test, or evaluation of an existing or potential new technology, product or service (or of an improvement in an existing technology, product or service) for the purpose of meeting specific performance requirements or objectives. Development includes the research functions of design engineering, prototyping, and engineering testing.
- (d) "National Warheads and Energetics Consortium" (NVEC) is a consortium made up of members from industry, academia, non-profit organizations, and not-for-profit organizations.
- (e) "NVEC Member Organization" refers to the members participating in the NVEC.
- (f) "Ordnance Technology Initiative" means an activity proposed by an Ordnance Technology Initiative Recipient (as defined below) and selected by the Government for award under the Ordnance Technology Base Agreement. An Ordnance Technology Initiative will be conducted by a NVEC Member Organization either individually or among and between NVEC Member Organizations for the agreed upon period of performance.
- (g) "Ordnance Technology Initiative Agreement" means the agreement between the CMF and the Ordnance Technology Initiative Recipient(s) whose initiative proposal was evaluated and competitively selected by the Government for funding.
- (h) "Ordnance Technology Initiative Recipient" means the NVEC Member Organization(s) issued an Ordnance Technology Initiative Agreement by the CMF, and includes Buyer.
- (i) "Ordnance Technology Base Agreement" or "Agreement" means the agreement between the NVEC, CMF and the NVEC Member Organization or a team of NVEC Member Organizations.

**Section 1.0 CONFIDENTIAL INFORMATION**

**The "CONFIDENTIAL, PROPRIETARY, AND TRADE SECRET INFORMATION AND MATERIALS" article in The Boeing Company General Provisions is hereby deleted and replaced by the following:**

*Section 1.01 Definitions*

- (a) "Disclosing Party" means either the Buyer, Seller, the CMF, other NVEC Member Organizations or the Government who discloses Confidential Information as contemplated by the subsequent Paragraphs.
- (b) "Receiving Party" means the Buyer, Seller, CMF, other NVEC Member Organizations or the Government who receives Confidential Information disclosed by a Disclosing Party.
- (c) "Confidential Information" means information and materials of a Disclosing Party which are designated as confidential or as a Trade Secret (as defined below) 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 ten (10) 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 the NVEC or NVEC member organizations. "Trade Secret" means all forms and types of financial, business, scientific, technical, economic, or engineering information, including patterns, plans, compilations, program devices, formulas, designs, prototypes, methods, techniques, processes, procedures, programs, or

codes, whether tangible or intangible, and Buyer-provided specifications and information pertaining to qualification, certification, manufacturing, and/or quality testing and procedures, and Buyer-provided tangible items and software containing, conveying or embodying such information, whether or how stored, compiled, or memorialized physically, electronically, graphically, photographically, or in writing if –

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

#### Section 1.02 *Exchange of Information*

The Government may from time to time disclose Government Confidential Information to Buyer, Seller, or other NWECC Member Organizations in connection with the Ordnance Technology Initiatives and Buyer, Seller and other NWECC member organizations may from time to time disclose Ordnance Technology Initiative Recipient Trade Secrets to each other and to the Government in connection with the Ordnance Technology Initiatives.

#### Section 1.03 *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 Party shall disclose Confidential Information 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 a Receiving Party to third parties (including without limitation, other NWECC Member Organizations) or used by it for any purposes other than in connection with the performance of this Contract or the Ordnance Technology Initiative Agreement under which this Contract was awarded, or in connection with the licenses granted in the Section 3 (PATENT RIGHTS) and Section 4 (DATA RIGHTS AND COPYRIGHTS), provided that the terms "Confidential Information" and "Trade Secrets" shall exclude materials or information that:

- (a) Are received or become available without restriction to the receiving party under separate agreement,
- (b) Are not identified with a suitable notice or legend per Paragraph 1.01 herein,
- (c) Are in possession of the Receiving Party at the time of disclosure thereof as demonstrated by prior written records,
- (d) Are or later become part of the public domain through no fault of the Receiving Party,
- (e) Are received by the Receiving Party from a third party having no obligation of confidentiality to the Disclosing Party that made the disclosure,
- (f) Are developed independently by the Receiving Party without use of Confidential Information or Trade Secrets as evidenced by written records,
- (g) Are required by subpoena, court order, 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.

However, despite any other obligations or restrictions imposed by this Article or any prior agreement, Buyer shall have the right to use and reproduce Seller's Confidential Information internal to Buyer, regardless of when disclosed. Buyer shall further have the right to, use, disclose, reproduce and make derivative works of Seller's Confidential Information (i) to fulfill Buyer's obligations under, and (ii) for the purposes of testing, certification, use, sale or support of any goods delivered under, this Contract, other contracts with Seller and Buyer's contract with its customer, if any. Any such use, disclosure, reproduction or derivative work by Buyer shall, whenever appropriate, include a restrictive legend suitable for the particular circumstances.

In addition, Seller may disclose Confidential Information provided by Buyer hereunder to its subcontractors as required for the performance of this Contract, provided that each such subcontractor first agrees in writing to obligations no less restrictive than those imposed upon Seller under this Article. Seller shall be liable to Buyer for any breach of such obligation by such subcontractor.

#### Section 1.04 *Return of Proprietary Information*

Upon Buyer's request at any time, and in any event upon the completion, termination or cancellation of this Contract, Seller shall return to Buyer all of Buyer's, any other NWECC Member Organization's or the Government's Confidential Information and all materials derived therefrom, unless specifically directed otherwise in writing by Buyer. Seller shall not at any time (i) dispose of (as scrap or otherwise) any goods, parts or other materials containing, conveying, embodying or made in accordance with or by reference to any Buyer, NWECC Member Organization or Government Confidential Information without the prior written authorization of Buyer or (ii) make, use, or sell any goods, parts or other materials containing, conveying, embodying or made in accordance with or by reference to

any such Confidential Information without notifying Buyer in writing before any such planned making, using, or selling activity and, with respect to Buyer Confidential Information, executing an agreement between the Parties requiring payment by Seller of a reasonable license fee to Buyer as consideration for each use of Buyer's Confidential Information, unless Buyer has provided prior written authorization to Seller. Prior to disposing of such goods, parts or other materials as scrap, Seller shall render them unusable. Buyer shall have the right to audit Seller's compliance with this Article.

The Parties agree that any breach of the confidentiality provisions of this Section may cause serious and irreparable harm to the Disclosing Party and that the Disclosing Party may have the right to immediate injunctive relief in the form of a court order enjoining the Recipient from any action or threatened action that constitutes or would constitute a breach of such confidentiality provisions, without the necessity for posting bond, in addition to other rights or remedies to which the disclosing Party is or may be entitled at law or in equity or under this Subcontract.

## **Section 2.0 PUBLICATION AND ACADEMIC RIGHTS**

### *Section 2.01 Use of Information*

Subject to the provisions of Section 1 (CONFIDENTIAL INFORMATION), and Section 2 (PUBLICATION AND ACADEMIC RIGHTS) at paragraph 2.02, the Ordnance Technology Initiative Recipients (and their employees) and the Government shall have the right to publish or otherwise disclose information and/or data developed by the Government and/or the respective Ordnance Technology Initiative Recipients, including data developed by Buyer working on behalf of Seller, under an Ordnance Technology Initiative Agreement. The Ordnance Technology Initiative Recipients and the Government (and its employees) shall include an appropriate acknowledgement of the sponsorship of the Ordnance Technology Initiative Agreements by the Government and the Ordnance Technology Initiative Recipients in such publication or disclosure. The Ordnance Technology Initiative Recipients, the CMF and the Government 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 Contract. Notwithstanding the above, the Ordnance Technology Initiative Recipients, the CMF and the Government shall not be deemed authorized to disclose any Confidential Information or Trade Secrets of the Government or the NVEC Member Organizations on behalf of other Ordnance Technology Initiative Recipients or the CMF.

### *Section 2.02 Publication or Public Disclosure of Information*

For purposes of this Article, Government Technical Manager means the representative designated by the Government for the Ordnance Technology Initiative Agreement(s) under which the information and/or data whose publication or disclosure at issue was developed

- (a) *Classified Research Initiatives.* If a release of Confidential Information or Trade Secrets is for a classified Ordnance Technology Initiative Agreement, the provisions of the DoD Security Agreement (DD Form 441) and the DoD Contract Security Classification Specification (DD Form 254) apply.
  - (b) *Review or Approval of Technical Information for Public Release.*
- (i) If Seller determines that it wishes to publish any information under this Contract, at least 45 days prior to the scheduled release date, Seller shall submit to the Buyer's Authorized Procurement Representative two copies of the information to be released. The Buyer's Authorized Procurement Representative will then forward the information to CMF, who will in turn, forward the information to Government Technical Manager, who is hereby designated as the approval authority for such releases.
  - (ii) If Seller is an academic research institution who is performing fundamental research on a campus, the CMF shall require Seller to provide papers and publications for provision to the Government technical manager for review and comment 30 days prior to formal paper/publication submission. However, if Seller incorporates into its research results or publications artifacts produced by and provided to these institutions by the CMF and on behalf of other (non-educational institution) Ordnance Technology Initiative Recipients (or has authors listed on the paper who are not employees or students of Seller then the procedures in PARAGRAPH (1) ABOVE must be followed.
  - (iii) Seller shall be responsible for assuring that an acknowledgment of Government support will appear in any publication of any material based on or developed under this Contract using the following acknowledgement terms:

"Effort sponsored by the U.S. Government under Other Transaction number W15QKN-09-9-1001/W15QKN-12-9-0001/W15QKN-14-9-1001 between the National Armaments Consortium and the Government. The US Government is authorized to reproduce and distribute reprints for Governmental purposes notwithstanding any copyright notation thereon."

- (iv) Seller shall also ensure that every publication of material based on or developed under this Contract 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.”
- (v) Seller shall flow down these requirements to all of its suppliers or other Ordnance Technology Initiative Subrecipients, at all tiers.
  - (c) *Notices.* To avoid disclosure of Confidential Information or Trade Secrets belonging to a NWEAC Member Organization, Buyer and/or the Government and the loss of patent rights as a result of premature public disclosure of patentable information, if Seller is proposing to publish or disclose such information, Seller shall provide advance notice to Buyer’s Authorized Procurement Representative and identify such other parties as may have an interest in such Confidential Information or Trade Secrets. The CMF shall then notify such parties at least ninety (90) calendar days prior to Seller’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 Agreement. The Government must notify the CMF of any objection to disclosure within this ninety (90) day period, or else Seller shall be deemed authorized to make such disclosure.
  - (d) *Filing of Patent Applications.* During the course of any such ninety (90) calendar day period, the Ordnance Technology Initiative Recipient or Subrecipient to whom such Confidential Information or Trade Secrets belong, and/or the Government, shall provide notice to the CMF as to whether it desires that a patent application be filed on any invention disclosed in such materials. In the event that an Ordnance Technology Initiative Recipient or Subrecipient to whom such Confidential Information or Trade Secrets belongs and/or the Government desires that such a patent be filed, Seller agrees to withhold publication and disclosure of such materials until the occurrence of the first of the following:
    - (i) Filing of a patent application covering such invention, or
    - (ii) Written agreement, from the Ordnance Technology Initiative Recipient or Subrecipient to whom such Confidential Information or Trade Secrets belong that no patentable invention is disclosed in such materials.
    - (iii) Further, during the course of any such ninety (90) calendar day period, the Ordnance Technology Initiative Recipient or Subrecipient shall notify the CMF, who will notify the Government, if it 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. Seller agrees to remove from the proposed publication or disclosure all such Confidential Information or Trade Secrets so identified by the Ordnance Technology Initiative Recipient or Subrecipient.

### **Section 3.0 PATENT RIGHTS**

#### Section 3.01 *Definitions*

Patent Rights for work funded by this Contract shall be as specified in FAR 52.227-11 (“Patent Rights- Ownership by the Contractor (DEC 2007)”), which is hereby incorporated by reference with the following modifications:

- (a) As appropriate, replace "Contractor" with "Seller" throughout; and replace "Contracting Officer", "the agency" and "the Federal Agency" with "Government" throughout.
- (b) Add the following to Subclause (b) "Seller’s rights":
  - (i) Government Employee Inventions. The parties agree that the U.S. Government shall have the initial option to retain title to each Subject Invention made only by its employees. The Government shall promptly notify the applicable NWEAC Member Organization(s) upon making this election, and in the event that the Government retains title to said Subject Inventions, the Government agrees to timely file patent applications thereon at its own expense and agrees to grant to NWEAC Member Organizations a non-exclusive, irrevocable paid-up license to practice such Subject Invention throughout the world. The Government may release the rights provided for by this paragraph to its employee inventors subject to a license in the

NWEC Member Organization(s) as described above.

- (ii) **Joint Employee Inventions.** The parties agree that the U.S. Government shall have the initial option to retain title to each Subject Invention Made jointly by Seller and Government employees. The Government is obligated to promptly notify Buyer upon making this election, and Buyer shall promptly inform Seller of the Government's election. In the event that the Government elects to retain title to such joint Subject Invention, Seller agrees to assign to the Government whatever right, title and interest Seller has in and to such joint Subject Invention. The Government has agreed to timely file patent applications on such Subject Invention at its own expense and agrees to grant to Seller a non-exclusive, irrevocable paid-up license to practice such Subject Invention throughout the world.

#### Section 3.02 *Patent Reports*

Seller shall file Invention (Patent) Reports at the close of the performance year and at the end of the term of this Contract. Annual reports are due thirty (30) calendar days after the expiration of the final performance period. Seller shall use the DD Form 882, Report of Inventions and Subcontracts, to file an invention report. Negative reports are also required. Seller shall contact Buyer's Authorized Procurement Representative to obtain the name and address of the Government representative for the required reports. Seller shall also submit one copy to Buyer's Authorized Procurement Representative.

#### Section 3.03 *Final Payment*

Final payment cannot be made, nor can this Contract be closed out, until Seller delivers all disclosures of subject inventions required by this Contract, an acceptable final report pursuant to the article entitled "Reports", and all confirmatory instruments.

#### Section 3.04 *Cooperation*

The Government, the CMF, Buyer and Seller shall keep the others informed as to the status of joint patent matters. The Government and Seller through the CMF shall each reasonably cooperate with and assist the other at its own expense in connection with such activities, at the other Party's request during the term of this Agreement.

#### Section 3.05 *Lower Tier Agreements*

Seller shall include this Article, suitably modified, to identify the parties, in all subcontracts or lower tier agreements, regardless of tier, for experimental, developmental, or research work performed under the Ordnance Technology Initiatives awarded pursuant to this Contract.

### **Section 4.0 DATA RIGHTS AND COPYRIGHTS**

#### Section 4.01 *General*

The Government rights in technical data under this Contract shall be determined in accordance with the provisions of DFARS Part 227, DFARS 252.227-7013, Rights in Technical Data -- Noncommercial Items and related clauses in DFARS Part 252.227. With respect to both unlimited and Government purpose license rights provided for in those regulations, the Government acknowledges and agrees that it shall obtain such rights pursuant to this Contract only to the extent that its financial contributions toward the Development of the technical data is equal to or greater than 50% of the total costs of such Development. Seller reserves the right to protect by copyright original works developed under this Contract. All such copyrights will be in the name of the Seller. Seller 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 Contract and to authorize others to do so.

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 Contract, Buyer, the Government, the CMF, or other NWEC Member Organization receiving the Data and others acting on its behalf may reproduce, distribute, and prepare derivative works for the purpose of carrying out its responsibilities under this Contractor other Agreement between the CMF and the NWEC Member Organization.

Seller is responsible for affixing appropriate markings indicating the rights of the Government on all data and technical data delivered under this Contract.



#### Section 4.02 *Data First Produced by the Government*

As to Data first produced by the Government in carrying out the Government's responsibilities under this Contract or the Ordnance Technology Initiative Agreement under which this Contract was awarded, and which Data would embody Trade Secrets or would comprise commercial or financial information that is privileged or confidential if obtained from Seller, such Data will, to the extent permitted by law, be appropriately marked with a suitable notice or legend and maintained in confidence for a period of five (5) years after the development of the information, with the express understanding that during the aforesaid period such Data may be disclosed and used (under suitable protective conditions) by or on behalf of the Government for Government purposes only.

#### Section 4.03 *Oral and Visual Information*

If information which Seller considers to embody Trade Secrets or to comprise commercial or financial information which is privileged or confidential is disclosed orally or visually to Buyer or the Government, such information must be reduced to tangible, recorded form (i.e., converted into Data as defined herein), identified and marked with a suitable notice or legend, and furnished to the Government and CMF within 10 calendar days after such oral or visual disclosure, or the Government shall have no duty to limit or restrict, and shall not incur any liability for, any disclosure and use of such information.

#### Section 4.04 *Disclaimer of Liability*

Notwithstanding the above, Buyer, the Government and the CMF shall not be restricted in, nor incur any liability for, the disclosure and use of:

- (a) Data not identified with a suitable notice or legend as set forth in Section 1.01 herein; nor
- (b) Information contained in any Data for which disclosure and use is restricted under Section 1.01, if such information is or becomes generally known without breach of the above, is known to or is generated by Buyer, the Government or CMF independently of carrying out responsibilities under the Ordnance Technology Initiative Agreement under which this Contract was awarded, is rightfully received from a third party without restriction, or is included in Data which the NWECA Member Organizations have, or are required to furnish to the Government without restriction on disclosure and use.

#### Section 4.05 *Marking of Data*

Any Data delivered under this Contract by Seller will, to the extent permitted by law, be appropriately marked with a suitable notice or legend and maintained in confidence for a period of five (5) years after the development of the information, with the express understanding that during the aforesaid period such Data may be disclosed and used (under suitable protective conditions) by or on behalf of the Government for Government purposes only.

#### Section 4.06 *Lower Tier Agreements*

Seller shall include this Article suitably modified to identify the parties, in all subcontracts, lower tier agreements, regardless of tier, for experimental, Development, or research work performed under this Contract.

#### Section 4.07 *Other Instances*

Notwithstanding Paragraphs in this Article, differing rights in data may be negotiated between Seller and the Government through CMF and Buyer's Authorized Procurement Representative on a case by case basis.

### **Article II. EXPORT COMPLIANCE**

Seller 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. Seller 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. Seller shall include this clause, suitably modified to identify the parties, in all subcontracts or lower tier agreements, regardless of tier.

**Article III. GOVERNMENT FURNISHED PROPERTY**

FAR 52.245-1 Government Property (APR 2012) Alternate I (APR 2012) is incorporated by reference from the Federal Acquisition Regulation. This clause applies if Government property is acquired or furnished for contract performance. "Government" shall mean Government throughout except the first time it appears in paragraph (g)(1) when "Government" shall mean the Government or the Buyer. "Contractor" and "Offeror" mean Seller except as otherwise noted.

**Article IV. WAIVER OF LIABILITY**

With regard to the activities undertaken pursuant to this Contract, neither Seller, the U.S. Government, Consortium Management Firm (CMF), nor Buyer or any other National Warheads and Energetics Consortium (NWEC) member organization shall make any claim against the others, employees of the others, the others' related entities (e.g., contractors, subcontractors, etc.), or employees of the others' related entities for any injury to or death of its own employees or employees of its related entities, or for damage to or loss of its own property or that of its related entities, whether such injury, death, damage or loss arises through negligence or otherwise, except in the case of willful misconduct or with respect to intellectual property claims.

Notwithstanding the foregoing, claims for contribution toward third-party injury, damage, or loss are not limited, waived, released, or disclaimed.

Seller agrees to extend the waiver of liability as set forth above to subcontractors at all tiers by requiring them, by contract or otherwise, to agree to waive all claims against the U.S. Government, CMF, and NWEC member organization.

**Article V. SAFETY**

(a) Seller shall adhere to all local, state, and federal rules and regulations required in order to maintain a safe and non-hazardous occupational environment throughout the duration of this contract. At Buyer's request and at a minimum, Seller shall provide the following reports and materials:

(1) *Accident/Incident Report*: Seller shall report immediately to Buyer's Authorized Procurement Representative any major accident/incident (including fire) resulting in any one or more of the following: causing one or more fatalities or one or more disabling injuries; damage of Government property exceeding \$10,000; affecting program planning or production schedules; degrading the safety of equipment under contract, such as personnel injury or property damage may be involved; identifying a potential hazard requiring corrective action.

(2) *Material Safety Data Sheets (MSDS)*: Seller shall prepare and maintain MSDS for all materials used and generated under this Contract only if/when hazardous materials are being delivered under this Contract. Otherwise this clause is considered not applicable.

**Article VI. ENVIRONMENTAL REQUIREMENTS**

(a) *Hazardous Waste Report*. Seller shall evaluate the environmental consequences and identify the specific types and amounts of hazardous waste being generated during this Contract and provide such information to Buyer's Authorized Procurement Representative.

(b) *Disposal Instructions for Residual/Scrap Materials*. Seller shall dispose of all residual and scrap materials generated from this Contract. Seller shall specify the anticipated quantities, methods, and disposal costs and provide such information to Buyer's Authorized Procurement Representative.

(c) *Pollution Prevention*: Consideration should be given to alternative materials and processes in order to eliminate, reduce, or minimize hazardous waste being generated. This is to be accomplished while minimizing item cost and risk to item performance.

(d) *Environmental Compliance*: All activities must be in compliance with Federal, State, and local environmental laws and regulations, Executive orders, treaties, and agreements.

Seller shall evaluate the environmental consequences and identify the specific types and amounts of hazardous waste being generated during the conduct of efforts undertaken under this Contract.

**Article VII. SECURITY**

(a) Work by Seller under this Contract may involve access to Controlled Unclassified Information (CUI) as well as information classified as "Confidential", "Secret", or "Top Secret". Seller, their employees and all subcontractors at all tiers shall comply with (1) the Security Agreement (DD Form 441), including the National Industrial Security Program Operation Manual (DOD 5220.22M), (2) any revisions to that manual that may be issued, and (3) the security classification specification (DD form 254) if included, and all security requirements including but not limited to OPSEC plans and those security requirements specific to the Contract. During the course of this Contract the Parties may determine that information developed by the Seller, Buyer, and/or the Government pursuant to this Contract shall be treated as classified. Such information shall be classified in accordance with DOD 5220.22M.

Upon Contract completion or termination, Seller must:

- (1) Return ALL classified received or generated under the Contract;
- (2) Destroy all of the classified; or,
- (3) Request retention for a specified period of time

(b) Security requirements shall be in accordance with paragraph (a). Seller shall be required to obtain and maintain a Facility Clearance from the Defense Security Service. The contractor shall only receive classified material at the actual performance location(s) as identified in the DD254.

(c) All classified information and/or material will be hand carried, mailed via authorized carriers, or transmitted electronically via appropriate methods.

(f) *Place of Performance (Government Locations)*: If Seller is required to access a Government location, Seller shall obtain a visitor badge to access the installation and will be required to have the appropriate clearance to access the government facility.

**ARTICLE VIII. SAFEGUARDING COVERED DEFENSE INFORMATION AND CYBER INCIDENT REPORTING**

Buyer will identify Covered Defense Information (CDI) and Seller will (a) implement the security requirements specified by National Institute of Standards and Technology (NIST) Special Publication (SP) 800-171 not later than December 31, 2017 per the requirements of Interim Rule DFARS Clause 252.204-7012 (DEC 2015), and (b) make reasonable best efforts regarding the same for those other areas still requiring analysis, specifically contractor's program unique systems/tools and subcontracts requiring flowdown, as applicable. After completion of such additional analysis, Seller shall notify Buyer within 20 days of award of this Contract of the standards which are currently not in compliance at the time of award, and immediately thereafter of any additional security requirements which have not been implemented. Seller will implement such security requirements as do not drive adverse cost or schedule impact. Implementation of requirements that will result in adverse impacts to cost or schedule shall be addressed at the government's discretion by equitable adjustment.

Nothing in this paragraph shall be interpreted to foreclose Seller's right to seek alternate means of complying with the security requirements in National Institute of Standards and Technology (NIST) Special Publication (SP) 800-171 (as contemplated in DFARS 252.204-7008 (Compliance with Safeguarding Covered Defense Information Controls) and/or DFARS 252 204-7012 (Safeguarding Covered Defense Information and Cyber Incident Reporting)).