

CUSTOMER CONTRACT REQUIREMENTS
DOTC-19-01-INIT0543- Extended Range Artillery Projectile
CUSTOMER CONTRACT 2019-316

CUSTOMER CONTRACT REQUIREMENTS

The following customer contract requirements apply to this Contract to the extent indicated below. Please note, the requirements below are developed in accordance with Buyer's prime contract and are not modified by Buyer for each individual Seller or statement of work. Seller will remain at all times responsible for providing to any government agency, Buyer, or Buyer's customer, evidence of compliance with the requirements herein or that such requirements are not applicable to the extent satisfactory to the requesting party.

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

DEFINITIONS

(a) "Consortium Management Firm (CMF)" refers to the organization acting on behalf of the National Armaments Consortium (NAC) to help in the execution and administration of the projects under the Ordnance Technology Base Agreement. The current CMF is Advanced Technology International (ATI).

(b) "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.

(c) "National Armaments Consortium (NAC)" refers to the consortium formed by industry and academia, which is comprised of Traditional and Nontraditional Defense Contractors, including small and large businesses, for profit and non-profit entities, and academic research institutions. The NAC was established to facilitate the collaborative effort between the Government, industry and academia for the research and development of advances to ordnance related prototypes and technologies. As directed by the Government, membership in the NAC shall be limited to U.S. companies, firms, organizations, institutions or other entities organized or existing under the laws of the United States, its territories, or possessions (as defined in Section 120.15 of International Traffic in Arms Regulations, 22 C.F.R. §120 *et seq.*).

(d) "NAC Members" refers to the Nontraditional and Traditional Defense Contractors, including small and large businesses, for profit and non-profit entities, and academic research institutions that are members of the NAC.

(e) "DOTC Base Agreement" or "Agreement" means the agreement between the NAC's CMF and the NAC Member that serves as the baseline agreement for all future OTIAs, and flows down applicable terms and conditions from this Agreement.

(f) "Ordnance Technology Initiative Agreement (OTIA)" refers to the agreement between the CMF, on behalf of the NAC, and the NAC Member, which is awarded against the base agreement and contains contractual information regarding the scope of work, project specific terms and conditions and payment information for the project. The OTIA is initiated by the CMF based on the TDL sent by the Government to the CMF. Each OTIA will be assigned a unique identification number.

ARTICLE I: 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:

A. Definitions

(a) "Disclosing Party" means either the Buyer, Seller, the CMF, other NAC Member Organizations or the Government who

discloses Confidential Information as contemplated by the subsequent Paragraphs.

(b) "Receiving Party" means the Buyer, Seller, CMF, other NAC Member Organizations or the Government who receives Confidential Information disclosed by a Disclosing Party.

(c) "Confidential Information" means information and materials which are designated as Confidential or as a Trade Secret (as defined below) in writing 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 thirty (30) calendar days after such disclosure, delivers to the Receiving Party a written document or documents describing the material or information and indicating that it is confidential 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" also includes any information and materials considered a Trade Secret by the NAC on its own behalf or on behalf of the CMF or NAC Members, or their subcontractors or suppliers.

(d) "Trade Secret" means all forms and types of financial, business, scientific, technical, economic, 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, regardless of how it is stored, compiled, or memorialized, including 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.

B. Exchange of Information

The Government may from time to time disclose Government Confidential Information to the NAC for use by the CMF or NAC Members awarded OTIAs, their subcontractors, or suppliers, in connection with the Annual Technology Plan and similar processes or particular projects. The CMF, on behalf of the NAC, NAC Members, their subcontractors or suppliers, may from time to time disclose information that is Trade Secret or Confidential Information to the Government in connection with this Agreement, a project proposal, DOTC Base Agreements, or performance under an OTIA. No party shall be obligated to transfer Confidential Information or Trade Secrets independently developed by the Parties, absent an express written agreement between the Parties providing the terms and conditions for the disclosure.

C. 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, and that, unless otherwise agreed by the Disclosing Party, Confidential Information and Trade Secrets shall not be disclosed, divulged or otherwise communicated to third parties or used for any purposes other than in connection with specified project efforts under which this Contract was awarded, or in connection with the licenses granted in Article III (PATENT RIGHTS) and Article IV (DATA RIGHTS AND COPYRIGHTS). The aforementioned shall not extend to information or materials that:

(a) Are received or become available without restriction to the Receiving Party under a proper, separate agreement;

(b) Are not identified with a suitable notice or legend

(c) 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,

(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, or

(g) Are required by law or regulation to be disclosed; provided, however, that the Receiving Party has given written notice to the Disclosing Party promptly so as to enable such Disclosing Party to seek a protective order or otherwise prevent further 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,

reformat 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 (or Buyer's products containing such Goods), 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.

Seller agrees that any technical data and computer software furnished to Buyer as a required deliverable under this Contract will be free from confidential, proprietary, or restrictive-use markings that are not expressly permitted by applicable FAR or other U.S. Government agency FAR supplement clauses incorporated in this Contract ("Nonconforming Markings"). Buyer may notify Seller of a Nonconforming Marking, and if Seller fails to remove or correct such marking within sixty (60) days after such notification, Buyer may, at Seller's expense, correct any such Nonconforming Marking.

D. 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 Consortium member organization's or the Government's Confidential Information, copies, other tangible manifestations, and all materials derived therefrom, unless specifically directed otherwise in writing by Buyer. As used in this section, tangible manifestations include human readable media as well as magnetic and digital storage media. 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, Consortium 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.

E. Term

The obligations of the Receiving Party under this Article shall continue for a period of five (5) years after the expiration or termination of this Agreement. The provisions of this Article shall survive the performance, completion, termination or cancellation of this Contract.

Seller shall flow down the requirements of this Article to their respective personnel, member entities, and agents at all levels.

Article II: PUBLICATION AND ACADEMIC RIGHTS

A. Use of Information

Subject to the provisions of Article I (CONFIDENTIAL INFORMATION), and other applicable provisions of this Contract, the Government and the NAC Members awarded OTIAs, shall have the right to publish or otherwise disclose information and/or data developed by the Government and/or the respective NAC Members under OTIAs. The NAC Members awarded OTIAs shall include an appropriate acknowledgement of the sponsorship of the projects by the Government in any such publications or disclosures.

B. Classified Research Projects

If a desired publication includes information relating to a Classified Project, the provisions of the DoD Security Agreement (DD Form 441), Certificate Pertaining to Foreign Interests (SF328), and the DoD Contract Security Classification Specification (DD Form 254) apply.

C. Review or Approval of Technical Information for Public Release

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 one (1) copy of the information to be released, along with the required public release form. The Buyer's Authorized Procurement Representative will then forward the information to the

cognizant Public Affairs Office for review and approval.

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 review and comment at least 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 other (non-educational institution) NAC Members (or has authors listed on the paper who are not employees or students of Seller then the procedures in preceding paragraph must be followed.

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:

“This effort was sponsored by the U.S. Government under the DoD Ordnance Technology Consortium (DOTC) Other Transaction Agreement (OTA) (W15QKN-18-9-1008) with the National Armaments Consortium (NAC). The U.S. Government is authorized to reproduce and distribute reprints for Government purposes notwithstanding any copyright notation herein”

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.”

Seller shall flow down these requirements to all of its suppliers at all tiers.

D. Notices

To avoid disclosure of Confidential Information or Trade Secrets belonging to the Buyer, Government or a NAC Member, 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 at least forty-five (45) calendar days advance notice to Buyer's Authorized Procurement Representative and identify such other parties, including the Government, as may have an interest in the information. The CMF shall then notify such parties at least thirty (30) 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 thirty (30) day period, or else Seller shall be deemed authorized to make the disclosure.

E. Filing of Patent Applications

During the course of the aforementioned thirty (30) calendar day period, the NAC Member or the Government, shall provide notice to the Agreements Officer if either desires that a patent application be filed on any invention potentially disclosed in the materials. In the event that the NAC Member or the Government desires that such a patent be filed, Seller shall ensure that the publication of the materials is withheld until the occurrence of the following:

1. Filing of a patent application covering the invention, or
2. Written agreement, from the Agreements Officer and the CMF, with the authorization of the cognizant NAC Member that no patentable invention is disclosed in such materials; or
3. Written agreement, from the Agreements Officer and the CMF, with the authorization of the cognizant NAC Member, that all potentially patentable information is removed from the proposed publication.

ARTICLE III: PATENT RIGHTS

A. Allocation of Principal Rights

Patent Rights under this Contract shall be determined in FAR 52.227-11 (“Patent Rights- Ownership by the Contractor (May 2014)”), which is hereby incorporated by reference with the following modifications:

1. As appropriate, replace "Contractor" with "Seller" throughout; “the agency” and “the Federal Agency” with “Government”, and “Contracting Officer” with “Agreements Officer” throughout.
2. The Government shall have the initial option to retain title to each subject invention made only by Government employees or made jointly by the NAC Member and Government employees. The Government shall promptly notify

the applicable NAC Member upon making this election, and agrees to timely file patent applications thereon at its own expense and agrees to grant the NAC Member a non-exclusive, irrevocable paid-up license to practice the subject Invention throughout the world.

3. The NAC Member shall elect in writing whether or not to retain ownership of any subject invention by notifying the Agreements Officer within six (6) months of disclosure. In any case where publication, on sale, or public use has initiated the one (1) year statutory period during which valid patent protection can be obtained in the United States, the period of election of title shall no later than sixty (60) calendar days prior to the end of the statutory period.
4. The CMF, on behalf of the NAC Member, may request an extension to the six (6) month period for ownership election. The Agreements Officer may, in their discretion, extend the ownership election period, but the ownership election period shall not exceed two (2) years from the disclosure of the subject invention.

FAR 52.227-1 (Authorization and Consent (Dec 2007)) and Alternate I (Apr 1984) and FAR 52.227-2 (Notice and Assistance Regarding Patent and Copyright Infringement (Dec 2007)) are also incorporated by reference under this Agreement. If FAR 52.227-3 3 (Patent Indemnity (Apr 1984)) is applicable, it shall be incorporated into the OTIA.

B. Patent Reports

Seller shall use the DD Form 882, Report of Inventions and Subcontracts, to file an invention report for the Contract. 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. Seller shall provide the CMF with an Annual Invention Report at the close of performance year of each Contract and the end of the term of the Contract.

C. Final Payment

Final payment cannot be made until Seller delivers all disclosures of subject inventions and all confirmatory instruments required by the Contract.

D. Lower Tier Agreements

Seller shall include this Article, suitably modified in all lower-tier agreements, regardless of tier, for experimental, developmental, or research work performed under the Contract.

The provisions of this Article shall survive termination of the Contract.

ARTICLE IV: DATA RIGHTS AND COPYRIGHTS

Technical Data and Computer Software Rights under this Contract shall be determined in accordance with DFARS 252.227-7013, Rights in Technical Data -- Noncommercial Items (Feb 2014), and DFARS 252.227-7014, Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation (Feb 2014), except as otherwise specified in the Contract. The definitions included in this Articles shall replace the definitions found in the referenced DFARS clauses.

A. Definitions

“Government Purpose” means any activity in which the Government is a party. Government purposes include competitive procurement, but do not include the rights to use, modify, reproduce, release, perform, display, or disclose technical data for commercial purposes or authorize others to do so.

“Government Purpose Rights” means the right to use, modify, reproduce, release, perform, display, or disclose technical data within the Government without restriction; and to release or disclose technical data outside the Government and authorize persons to whom release or disclosure has been made to use, modify, reproduce, release, perform, display, or disclose that data for Government purposes. This is a middle path unique to

defense contracts that allows contractors to have the exclusive right to use the technical data in the commercial market. Unless otherwise agreed, Government Purpose Rights convert to Unlimited Rights five years after execution of the Contract.

“Limited Rights” means the right to use, modify, reproduce, release, perform, display, or disclose technical data, in whole or in part, within the Government. The Government may not, without the written permission of the party asserting limited rights, release or disclose the technical data outside the Government, use the technical data for manufacture, or authorize the technical data to be used by another party. However, the Government may reproduce, release, or disclose such data or authorize the use or reproduction of the data by persons outside the Government if it is necessary for emergency repair and overhaul, or a release or disclosure to a covered Government support contractor in performance of its covered Government support contract (management and administrative support). The recipient of the technical data is subject to prohibition on the further reproduction, release, disclosure, or use of the technical data, and the contractor or subcontractor asserting the restriction shall be notified of such reproduction, release, disclosure, or use.

“Restricted Rights” applies only to noncommercial computer software and means the Government’s right to use a computer program on a limited number of computers, and make the minimum number of copies of the computer software required for safekeeping (archive), backup, or modification purposes. However, the Government may allow the use of the noncommercial computer software outside of the Government under a limited set of circumstances, including use by a covered Government support contractor in performance of its covered Government support contract (management and administrative support), and after the contractor or subcontractor asserting the restriction is notified.

“SBIR Data Rights” refers to a Small Business Innovation Research contract and applies to both technical data and computer software. The contractor is entitled the SBIR data protection to all technical data and computer software developed during performance of a SBIR Phase III agreement, regardless of the funding source. SBIR Data Rights are generally equivalent to Limited Rights for technical data and Restricted Rights for computer software. In the DOD, SBIR Data Rights survive for five years from the completion of the project, at which point they will convert to Unlimited Rights. SBIR efforts are divided into three successive phases (I, II, III), with the ultimate goal of commercializing the technology in question. The Government can award an unlimited number of SBIR Phase III agreements as long as they are a logical follow-on to the technology being developed, and with the understanding that the five-year clock restarts with every award.

“Specifically Negotiated License Rights” means any modification by mutual agreement to the standard DFARS noncommercial data rights categories (Unlimited Rights, Government Purpose Rights, Limited/Restricted Rights) laid out in this Article that the Government and NAC Member consider appropriate to the specific contract action, but shall not provide rights less than that provided by Limited Rights. Any rights so negotiated shall be identified in a license agreement written into or made part of the OTIA.

“Technical Data” means recorded information, regardless of the form or method of 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 or management information.

“Unlimited Rights” means the right to use, modify, reproduce, perform, display, release, or disclose technical data in whole or in part, in any manner, and for any purpose whatsoever, and to have or authorize others to do so.

B. Allocation of Principle Rights

The Government shall receive a Government Purpose Rights license or an Unlimited Rights license to all technical data and computer software developed and delivered under this Contract, except for the technical data and computer software that was previously developed exclusively at private expense and identified in the Contract. To the maximum extent practicable, segregable portions of

deliverables that will be restricted shall be clearly identified and labeled by Seller.

The Government, Buyer, and Seller can negotiate for a specific level of rights to all, or a distinct subset of the technical data and computer software that is developed and delivered for the Contract which will have the full force and effect of an executed license.

If the Government, Buyer, and Seller agree to engage in a Cost Share OTIA, and Seller desires to contribute more than 50% of the total costs of the project, the Government may agree to a Limited or Restricted Rights license to all technical data and computer software developed and delivered under the Contract, or any other mutually agreed upon level of rights to a distinct subset of the technical data and computer software developed and delivered under the Contract.

C. Copyrights

Seller reserves the right to protect by copyright original works developed under this Contract and any subsequent Contract, pursuant to 17 U.S.C. §§ 401 and 402. All such copyrights will be in the name of the individual Seller. Seller hereby grants to the Government and Buyer 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 that information is exchanged with a notice indicating that it is protected under copyright as a published, copyrighted work, and it is also indicated that such information existed prior to, or was produced outside of this Contract, or subsequent Contract, the Government or Buyer, receiving the information and others acting on its behalf may reproduce, distribute, and prepare derivative works for the sole purpose of carrying out its responsibilities under this Agreement

D. Handling of Data

Seller shall clearly identify, prior to award, the technical data and computer software (and the items, components or processes to which they pertain) that will have asserted restrictions in the Contract. If, after award, Seller wishes to use any other internally developed technical data or computer software, or any other pre-existing proprietary information not previously identified in the Contract, then Seller shall disclose its intent in writing to Buyer prior to its use, and shall receive written approval from the Agreements Officer through Buyer prior to its use or incorporation. The asserted restrictions in the Contract are the unilateral claims of Seller and the inclusion of those restrictions in the Contract does not equate to the Government's agreement to those claims. At any time, the Government has the right to request substantiating information supporting those claims, and can challenge or reject those claims if they are unsupported.

Technical Data and Computer Software Provided by the Government:

Technical data and computer software provided by the Government under this Contract shall be appropriately marked with a suitable notice or legend and maintained in confidence and disclosed and used by Seller only for the purpose of carrying their responsibilities under the contract. At no time will technical data and computer software provided by the Government under this Contract become the property of Seller nor does its use in carrying out their responsibilities grant any form of license to Seller to disclose or use that technical data or computer software for any other purpose, unless specifically agreed to in writing by the Agreements Officer. This includes all technical data and computer software first produced by the Government under the Contract. If the Contract contains technical data or computer software provided by the Government, it shall have appropriate non-disclosure agreements signed by Seller. Upon completion of the Contract, the aforementioned technical data and computer software shall be disposed of as requested by the Government.

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, the exchange of such information must be reduced to a tangible, recorded form and marked with a suitable notice or legend, and furnished to the Government within ten (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.

Disclaimer of Liability:

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

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

E. Marking of Data

Except for technical data and computer software developed or delivered with Unlimited Rights, all technical data and computer software developed and delivered under this Agreement shall have appropriate Data Rights Markings in accordance with DFARS 252.227-7013(f) and 252.227-7014(f). The Government will have Unlimited Rights to all unmarked technical data or computer software. In the event that unmarked technical data or computer software should have contained a restrictive legend, Buyer, on behalf of the Seller can cure the omission by providing written notice to the Agreements Officer within thirty (30) calendar days of the erroneous disclosure. The Government will not be responsible for any additional disclosures of the inappropriately marked technical data or computer software prior to that written notice.

F. Lower Tier Agreements

Seller shall include this Article suitably modified in all lower tier agreements, regardless of tier, for subcontracts awarded pursuant to this Contract.

The provisions of this Article shall survive termination of this Agreement.

Article V. EXPORT CONTROL:

A. Export Control

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 Contract. Accordingly, Seller shall not export, directly, or indirectly, any products or technology, Confidential Information, Trade Secrets, or Classified and Unclassified Technical Data in violation of any U.S. Export laws or regulations.

B. Lower Tier Agreements

Seller shall include this clause, suitability in all lower tier agreements, regardless of tier. For work performed under the Contract.

The provisions of this Article shall survive termination of this Agreement.

Article VI: SECURITY:

This Contract may require access to Classified Information, including but not limited to information classified as Controlled Unclassified Information (CUI), Confidential, Secret, or Top Secret. As such, DoD Manual 5200.01 (DoD Information Security Program: Protection of Classified Information) shall apply and all appropriate measures shall be followed. Seller shall also comply with DD Form 254 (Contract Security Classification Specification), DD Form 441 (DoD Security Agreement), DoD 5220.22-M (National Industrial Security Program Operating Manual), and all other security requirements including but not limited to OPSEC requirements.

Seller shall comply with Distribution Statements, as mandated by DoDI 5230.24 (Distribution Statements on Technical Documents).

Covered Defense Information (CDI) will be identified at the OTIA level. Seller shall comply with DFARS 252.204-7012 (Oct 2016): Safeguarding Covered Defense Information and Cyber Incident Reporting, which includes implementing on its covered contractor information systems the security requirements specified by DFARS 252.204-7012. 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) (Oct 2016) and DFARS 252.204-7012 (Safeguarding Covered Defense Information and Cyber Incident Reporting (Oct 2016)).

ARTICLE VII. SAFETY AND ENVIRONMENTAL:

If the Contract involves the handling of Arms, Ammunition and Explosives (AA&E), Seller shall be subject to all appropriate FAR and DFARS clauses, as well as all Federal, State and local rules and regulations required in order to maintain a safe and non-hazardous occupational environment. A Safety Survey will be conducted by the Government prior to handling of explosives, production of any hardware or fire testing under the Contract.

If the Contract will involve AA&E or other Hazardous Material, the following clauses with their prescribed usages **MUST** be reviewed for applicability to the procurement action. The following Federal Acquisition Regulation Supplement (FARS), Defense Federal Acquisition Regulation Supplement (DFARS) clauses by reference, and local clauses with the same force and effect as if they were given in full text shall be incorporated into the Contract if applicable.

DFARS 252.223-7001	Hazard Warning Labels
DFARS 252.223-7002	Safety Precautions for Ammunition and Explosives
DFARS 252.223-7003	Change in Place of Performance
DFARS 252.223-7006	Prohibition on Storage and Disposal of Toxic and Hazardous Materials
DFARS 252.223-7007	Safeguarding Sensitive Conventional Arms, Ammunition and Explosives
FAR 52.223-3	Identification and Material Safety Data
FAR 52.247-29	F.O.B. Origin
ARDEC 18	Physical Security Standards for Sensitive Items
ARDEC 169	Explosive Material Handling
ARDEC 66	Safety Requirements for Hazardous Items
ARDEC 77	Material Safety Data Sheets

At a minimum, Seller shall provide the following reports and materials on an as needed basis:

1. Accident/Incident Report: Seller shall report immediately 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 initiative, such as personnel injury or property damage may be involved; and identifying a potential hazard requiring corrective action. Seller shall prepare a DI-SAFT-81563 report for each incident.
2. Material Safety Data Sheets (MSDS) or Safety Data Sheets (SDS): Seller shall prepare and maintain MSDS for all materials used and generated under this Contract.
3. Explosive Hazard Classification Report: Seller shall submit an explosive hazard classification report (DI-SAFT-81299A) for each item that requires utilizing ARDEC capabilities to obtain Interim Hazard Classification (IHC) for shipment of R&D quantities of energetic materials and items in support of this Contract. Seller shall utilize the capability of ARDEC to obtain IHC for shipment of R&D quantities of energetic materials and items only on an as needed basis. In order to use this support, Seller shall provide technical data (Explosive Hazard Classification Data) to ARDEC System Safety Group at least sixty (60) calendar days prior to shipment of the energetic materials or items. This will include the necessary data explained in Army Technical Bulletin (TB) 700-2 and DI-SAFT-81299A. DOT and UN Serial number information, along with packaging methods, will be based on Title 49, Code of Federal regulations (CFR). Seller shall determine the explosive weight for quantity-distance determination in accordance with the guidance of paragraph 15.4C of AMC-R 385-100.
4. 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.
5. 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 projects under this Agreement.
6. Hazardous Waste Report: Seller shall evaluate the environmental consequences and identify the specific types and amounts of hazardous waste being generated during this Agreement. Seller shall submit a Hazardous Waste Report in accordance with DI-MGMT-80899.
7. Disposal Instructions for Residual/Scrap Materials: Seller shall dispose of all residual and scrap materials generated from this Contract, including high explosives. Seller shall specify the anticipated quantities, methods, and disposal costs.

Article VIII. GOVERNMENT FURNISHED PROPERTY

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The clauses listed below apply if Government property is acquired or furnished in performance of the Contract. In the following clauses, "Contractor" and "Offeror" mean Seller.

FAR 52.245-1 Government Property (Jan 2017) 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.

DFARS 252.245-7001 Tagging, Labeling, and Marking of Government-Furnished Property (APR 2012)

DFARS 252.245-7004 Reporting, Reutilization, and Disposal (DEC 2017) This clause applies if this contract contains FAR 52.245-1, Government Property. The term "Contracting Officer" shall mean "Buyer".

Article IX. OPSEC:

Antiterrorism (AT) Awareness Level I Training: (Seller employees with an area of performance within a Department of War controlled installation, facility, or area) All Seller employees, including subcontractor employees, requiring access to Department of War installations, facilities, or controlled access areas shall complete AT Awareness Level I training within 45 calendar days after agreement start date or effective date of incorporation of this requirement into the agreement, whichever applies and within 12 months prior to travel outside of the U.S., then annually thereafter. The Seller shall submit certificates of completion for each affected Seller employee and subcontractor employee to the AOR (or to the Agreements Officer, if an AOR is not assigned), through the Buyer, within 14 calendar days after completion of training by all employees and subcontractor personnel. AT Awareness Level I training is available at the following website: <https://jkodirect.jten.mil/> for CAC holders (Course number "US007"). Non-CAC holders may go to: <https://jko.jten.mil/courses/ATlevel1/launch.html>.

Antiterrorism (AT) Awareness Training for Contractor Personnel Traveling Overseas: This standard language requires U.S.-based Seller employees and associated subcontractor employees to make available and to receive Government-provided area of responsibility- specific AT Awareness training within 3 months prior to Outside Continental United States (OCONUS) travel as directed by AR 525-13, or other Combatant Command (COCOM) specific requirements, as necessary. Government provided awareness training specific to an area of responsibility traveled is provided to Seller personnel upon request by contacting the DEVCOM Armaments Center AT Officer at usarmy.pica.devcom-ac.mbx.ardec-operations-center@army.mil.

Access and General Protection / Security Policy and Procedures: (Seller employees with an area of performance within a Department of War controlled installation, facility, or area) Seller and all associated subcontractor employees shall provide all information required for background checks to meet installation access requirements to be accomplished by the installation Provost Marshal Office, Director of Emergency Services, or Security Office. Seller workforce must comply with all personal identity verification requirements (FAR clause **52.204-9**, Personal Identity Verification of Contractor Personnel) as directed by DoW, HQDA and / or local policy. In addition to the changes otherwise authorized by the changes clause of this agreement, should the Force Protection Condition (FPCON) at any individual facility or installation change, the Government may require changes in Seller security matters or processes. During FPCONs CHARLIE and DELTA, services / installation access may be discontinued / postponed due to higher threat. Services will resume when FPCON level and / or threat is reduced to an acceptable level as determined by the Installation Commander. Seller personnel working on an installation are required to participate in the Installation Random Antiterrorism Measures Program as directed. Seller may be subject to and must comply with vehicle searches, wearing of ID badges, etc. Failure to comply with policies and procedures could result in barred access onto the installation.

iWATCH Training: (Seller employees with an area of performance within an Army controlled installation, facility, or area) The Seller and all associated subcontractors shall brief all employees on the local iWATCH program (training standards provided by the requiring activity Antiterrorism Officer). This local developed training will be used to inform employees of the types of behavior to watch for and instruct employees to report suspicious activity to the AOR. This training shall be completed within 30 calendar days of agreement award and within 5 calendar days of new employees commencing performance, then annually thereafter. The Seller shall submit certificates of completion for each affected Seller employee and subcontractor employee to the AOR (or to the Agreements Officer, if an AOR is not assigned), via the Buyer, within 14 calendar days after completion of training by all employees and subcontractor personnel. Slides available to AOR at https://armyetaas.sharepointmil.us/sites/AFC-DEVCOM-AC-HQ/SitePages/G3%20and%20G5/G3_G5-Home.aspx.

Contractors Requiring Common Access Card (CAC): If Seller employee requires a CAC, before CAC issuance, the Seller employee requires, at a minimum, a favorably adjudicated National Agency Check with Inquiries T1 or an equivalent or higher investigation in accordance with Army Directive 2014-05. The Seller employee will be issued a CAC only if duties involve one of the following: (1) both physical access to a DoW facility and access, via logon, to DoW networks on-site or remotely; (2) remote access, via logon, to a DoW network using DoW-approved remote access procedures; or (3) physical access to multiple DoW facilities or multiple non-DoW federally controlled facilities on behalf of the DoW on a recurring basis for a period of 6 months or more. At the discretion of the sponsoring activity, an initial CAC may be issued based on a favorable review of the FBI fingerprint check and a successfully scheduled National Awareness Check with Inquiries T1 at the Office of Personnel Management.

Contractors that do not Require Common Access Card (CAC) but Require Access to a DoW Facility or Installation:

Seller and all associated subcontractor employees shall comply with adjudication standards and procedures using the National Crime Information Center Interstate Identification Index (NCIC-III) and Terrorist Screening Database (Army Directive 2014-05 / AR 190-13); applicable installation, facility and area commander installation and facility access and local security policies and procedures (provided by Government representative); or, at Outside Continental United States (OCONUS) locations, in accordance with status-of-forces agreements and other theater regulations.

Contractors Authorized to Accompany the Force: DFARS Clause **252.225-7040**, Seller Personnel Supporting U.S. Armed Forces Deployed Outside the United States, shall be used in solicitations and agreements that authorize Seller personnel to accompany U.S. Armed Forces deployed outside the U.S. in contingency operations; humanitarian or peacekeeping operations; or other military operations or exercises, when designated by the combatant commander. The clause discusses the following Antiterrorism (AT) / Operations Security (OPSEC) related topics: required compliance with laws and regulations, pre-deployment requirements, required training (per combatant command guidance), and personnel data required.

Performance or Delivery in a Foreign Country: DFARS Clause **252.225-7043**, Antiterrorism / Force Protection for Defense Contractors Outside the United States. The clause shall be used in solicitations and agreements that require performance or delivery in a foreign country. This clause applies to both contingencies and noncontingency support. The key Antiterrorism (AT) requirement is for non-local national Seller personnel to comply with theater clearance requirements and allows the combatant commander to exercise oversight to ensure the Seller's compliance with combatant commander and subordinate task force commander policies and directives.

Counterintelligence Awareness and Reporting (CIAR): (For all Sellers) Per AR 381-12, Counterintelligence Awareness and Reporting (CIAR), Seller employees must receive CIAR training within 30 days of assignment or employment and every 12 months thereafter as specified in Chapter 3. Seller employees shall complete 'Counterintelligence Awareness and Reporting for DoD Employees' - CI116.16, located at <https://www.cdse.edu/>, to satisfy initial and annual training requirements. The Seller shall submit documentation of completion for each affected Seller employee and subcontractor employee to the AOR (or to the Agreements Officer, if an AOR is not assigned) within 14 calendar days after completion of training by all employees and subcontractor personnel. Seller personnel identified in chapter 5 of AR 381-12 shall receive a special CIAR briefing directly (for example, in person, via DoW communications systems) from an ACI Special Agent or a CI-experienced person in addition to their annual training requirement. (NOTE: Contact the DEVCOM AC AT Officer at usarmy.pica.devcom-ac.mbx.ardec-operations-center@army.mil or local CI agent for additional information on in-person requirements.)

SRC I-IV or CAT-U Arms, Ammunition, and Explosives (AA&E): DFARS **252.223-7002 (Safety Precautions for Ammunition and Explosives)**, DFARS **252.223-7003 (Change in Place of Performance-Ammunition and Explosives)**, DFARS Clause **252.223-7007**, Safeguarding Sensitive Conventional Arms, Ammunition, and Explosives, apply to this effort.

Physical Access to AA&E on a Military Installation / GOCO: Sellers shall be required to be enrolled in the Personal Reliability Program and complete DA Form 7708 (Personnel Reliability Screening and Evaluation Form) every three years, and DD Form 2760 (Qualification to Possess Firearms or Ammunition) (Gun Control Act of 1968(18 USC 44-921) at least annually or upon receiving a qualifying conviction of domestic violence.

Physical Access to AA&E at a Contractor Facility: Sellers must ensure compliance with the Domestic Violence Amendment to the Gun Control Act of 1968(18 USC 44-921). Nothing in this clause shall relieve the Seller of its responsibility for complying with other applicable Federal, State, and local laws, ordinances, codes, and regulations (including requirements for obtaining licenses and permits) in

connection with the performance of this agreement.

Classified AA&E: Sellers manufacturing, storing, transporting, or in possession of classified AA&E shall be cleared in accordance with DoD Manual 5200.02, Procedures for the DoD Personnel Security Program. All other classified AA&E not categorized according to Enclosure 7 shall be protected in accordance with 32 CFR Part 117, National Industrial Security Program Operating Manual.

Hazardous Material: FAR Clause **52.223-3**, Hazardous Material Identification and Material Safety Data, applies to this agreement.

Information Assurance (IA) / Information Technology (IT) Training: All Seller employees, including subcontractor employees, must complete the DoD Cyber awareness training before issuance of network access and annually thereafter. All Seller employees working IA / IT functions must comply with DoW and Army training requirements in DoDD 8570.01, DoD 8570.01-M, and AR 25-2.

Information Assurance (IA) / Information Technology (IT) Certification: Per IA best business practices, DFARS **252.239-7001**, Information Assurance Contractor Training and Certification and AR 25-2, all Seller employees, including subcontractor employees, supporting IA / IT functions shall be appropriately certified upon agreement award. The baseline certification as stipulated in DoD 8570.01-M must be completed upon agreement award.

Government Furnished Equipment: All Seller employees, including subcontractor employees, shall return all issued U.S. Government owned equipment which includes travel laptops, mobile devices, Common Access Cards, installation badges, and / or access passes to the AOR when the agreement is completed or when a Seller employee no longer requires access to the installation or facility.

Information Management Army Information Technology / Information Assurance: The Seller shall be capable of accessing, handling, receiving, and storing UNCLASSIFIED documents, equipment, hardware, and test items, using the applicable standards of Controlled Unclassified Information (CUI). Controlled Unclassified Information (documents designated as CUI and / or LIMITED DISTRIBUTION) shall be submitted by a controlled means using USPS mail, DoD Safe Access File Exchange (SAFE) website and / or DoW Army approved encryption software as per AR 25-1.

Handling or Access to Classified Information: The Contractor shall comply with FAR **52.204-2**, Security Requirements. This clause involves access to information classified "Confidential," "Secret," or "Top Secret" and requires Sellers to comply with: (1) the Security Agreement (DD Form 441), including the 32 CFR Part 117, National Industrial Security Program Operating Manual and (2) any revisions to 32 CFR Part 117, notice of which has been furnished to the Seller.

Secure Communications at Contractor Facilities: DFARS Clause **252.239-7016** Telecommunications Security Equipment, Devices, Techniques, and Services applies to this effort. The Seller shall comply with DFARS clause 252.239-7016 and follow guidance at DFARS subpart 239.74.

Covered System at Contractor Facility: DFARS Clause **252.239-7018** Supply Chain Risk applies to this effort. The Seller shall comply with DFARS clause 252.239-7018 (or provision 252.239-7017 for solicitation) and follow guidance at DFARS subpart 239.73.

Export Control Laws / International Traffic in Arms Regulation: DFARS Clause **252.225-7048**, Export-Controlled Items applies to this effort. All documents determined to contain export controlled technical data shall be marked with the following notice: WARNING - This document contains technical data whose export is restricted by the Arms Export Control Act (Section 2751 of Title 22, United States Code) or the Export Control Reform Act of 2018 (Chapter 58 Sections 4801-4852 of Title 50, United States Code). Violations of these export laws are subject to severe criminal penalties. Disseminate in accordance with provisions of DoD Directive 5230.25 and DoD Instruction 2040.02.

Science and Technology Development Projects and Programs: All Seller employees, including subcontractor employees, shall comply with all applicable Security Classification Guides (SCGs) and / or Science and Technology Protection Plans (S&TPPs). The Seller shall request all applicable SCGs and S&TPPs from the AOR or technical lead, via the Buyer, within 30 days of agreement start date. The Seller shall comply with DoW and DA Technology Protection requirements per DODI 5200.39, DODI 5000.83, AR 70-1, AR 70-77 and DA PAM 70-3.

Access to Controlled Unclassified Information (CUI): DFARS **252.204-7012** applies to this effort. The Seller shall comply with DFARS 252.204-7012 Safeguarding Covered Defense Information and

Cyber Incident Reporting and NIST SP 800-171.

Access to Controlled Unclassified Information (CUI): Compliance to NIST SP 800-171, as amended. Seller employees that will require access to CUI shall follow all DoW (DoDI 5200.48) and Army policies regarding access to CUI, and the handling, storage, transmission, and destruction of CUI. Seller employees are required to complete initial CUI training (Found at: <https://securityawareness.dcsa.mil/cui/index.html>) within 30 days of start of performance on the agreement, and then annually thereafter. All CUI must be transmitted via encrypted email channels or DoD Safe Access File Exchange (SAFE) website <https://safe.apps.mil/>.

Contractor OPSEC Plan: The Seller shall have an identified certified Level II OPSEC coordinator to perform OPSEC duties for the agreement in a supporting capacity IAW AR 530-1. This individual is responsible for ensuring the Seller's compliance with OPSEC requirements throughout the performance of the agreement. The Seller shall develop an OPSEC Standard Operating Procedure (SOP) / Plan within 90 calendar days of agreement award, to be reviewed and approved by the responsible Requiring Activity's OPSEC officer through coordination of the AOR. This plan shall include a process to identify critical information, where it is located, who is responsible for it, how to protect it, and why it needs to be protected. Submit Seller OPSEC Plans to the AOR, via the Buyer.

OPSEC Program: This agreement requires the application of Operations Security (OPSEC) IAW AR 530-1, and / or the Requiring Activity's policies and programs (CTI). Classified material must be handled IAW 32 CFR Part 117. Requiring Activity will provide OPSEC guidance / requirements. The Seller must receive an Initial OPSEC Brief within 30 calendar days of reporting for duty. All Seller employees must complete annual OPSEC Level I training. (OPSEC Awareness for Military Members, DoD Employees and Contractors GS130.16) website: <https://www.cdse.edu/Training/Operations-Security/>. (NOTE: This course only meets the agreement requirement when the Requiring Activity provides the agreement / program Critical Information List to the Seller or Buyer to provide to Seller.)

OPSEC Training: IAW AR 530-1 (or 32 CFR Part 117), new Seller employees, including subcontractor employees, must complete initial (Level I) OPSEC training within 30 calendar days of reporting for duty and annually thereafter. Level I OPSEC training (Course# GS130.16) is available at the following website: <https://www.cdse.edu/Training/Operations-Security/>. (NOTE: This course only meets the agreement requirement when the Requiring Activity provides the agreement / program Critical Information List to the Contractor and/or Seller.)

Public Release of Information: IAW AR 530-1 (or 32 CFR Part 117), an OPSEC review is required prior to all public releases. All Government information intended for public release by a Seller will undergo a Buyer and Government OPSEC review prior to release.

Article X. LIABILITY OF THE PARTIES

A. Waiver of Liability

With regard to the activities undertaken pursuant to this Contract, neither Seller, the US Government, Consortium Management Firm (CMF), nor Buyer or any other National Armaments Consortium (NAC) member organization shall make any claim against the other, employees of the other, 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.

B. Extension of Waiver of Liability

Seller agrees to extend the waiver of liability as set forth above to subcontractors or sub entities at any tier under the Contract, by requiring them, by contract or otherwise, to agree to waive all claims to the extent set forth in paragraph A above, against the US Government, Buyer, CMF, and NAC member organizations.

C. Applicability

Notwithstanding the other provisions of this Article, this Waiver of Liability shall not be applicable to (1) claims between the Buyer, Seller, Government and the CMF regarding a material breach of contract or nonpayment of funds; (2) claims for damage caused by willful misconduct; and (3) intellectual property claims.

D. Limitation of Liability

In no case shall Buyer's financial liability exceed the amount obligated by the Government through the CMF or committed as a Cash Contribution or In-Kind Contribution by a NAC Member under an OTIA. Nothing in this Article shall be construed to create the basis of a claim or suit where none would otherwise exist.