

CUSTOMER CONTRACT REQUIREMENTS
Adaptive Guarding for Intelligent Safety (AEGIS)
CUSTOMER CONTRACT ARM T-25-C20-01-07

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

ARM T-25-C20-01-07 Special Provisions .

2.2. Cost Principles

2.2.A. The Cost Principles contained in 2 CFR 200, Subpart E, will apply to the Seller. The Seller's financial management system must comply with the standards identified in 2 CFR 200 § 302.

2.2.B. 2 CFR 200, Subpart E, Cost Principles will apply and describes the cost principles for determining allowability of costs applicable to lower tier performing, cost type contracts or awards under this contract.

2.4. Financial Management

2.4.A. For Profit Sellers are to apply the standards at 32 CFR §34.11.

2.4.B. Institutes of Higher Education or Nonprofit Sellers are to apply the standards at Subpart D of 2 CFR Part 200.

2.5. Purchasing System Standards

2.5.A. For Profit Sellers are to apply the standards at 32 CFR §34.31.

2.5.B. Institutes of Higher Education or Nonprofit Sellers are to apply the standards at Subpart D of 2 CFR Part 200.

2.8 Financial Records and Retention

The Seller shall maintain adequate records to account for all funding received under this contract and shall maintain adequate records to account for all subcontracts and subawards made by Seller for the funding provided for under this contract. Upon completion or termination of this contract, whichever occurs earlier, the Seller shall furnish to Buyer a copy of the Final Reports.

Seller's financial records, supporting documents, statistical records, and all other records pertinent to an award will be retained for a period of three years after submission of the final financial report except as follows:

- (i) Seller must keep records longer than three (3) years after submission of the final financial status report if the records related to an audit, claim, or dispute that begins, but does not reach its

conclusion, within the three-year period. In that case, Seller must keep the records until the matter is resolved and final action taken.

(ii) Records for any real property or equipment acquired with funds under this contract must be kept for three years after final disposition.

For-Profit Sellers are to grant standard access-to-records in accordance with 32 CFR 34.42(e).

Institutes of Higher Education or Nonprofit Sellers are to grant standard access-to-records in accordance with Subpart D of 2 CFR Part 200.

2.9. Audit Requirements

2.9.A. The Seller will comply with the audit requirements at 32 CFR §34.16, which requires that if the Seller expends more than \$750,000 under Federal awards, it shall have an audit made for that year by an independent auditor as part of its regularly scheduled annual audits. The independent auditor shall determine and report:

- (i) Whether the Seller has an internal control structure that proves reasonable assurance that it is managing Federal awards in compliance with all applicable Federal laws, regulations, terms, and conditions.
- (ii) Whether, through sampling Federal award expenditures, the Seller has complied with all applicable laws, regulations, and award terms.
- (iii) The Seller shall make the auditor's report available to the Buyer and DoD whose awards are affected.

2.9.B. The Seller's relevant financial records are subject to examination or audit by the Government for a period not to exceed three (3) years after payment of the final invoice. The Buyer and the Government shall have direct access to sufficient records and information of the Seller, to ensure full accountability for all funding under this contract. Such audit, examination, or access will be performed during business hours on business days upon prior written notice and shall be subject to the security requirements of the audited party.

2.9.C. Subaward(s) or subcontract(s) made by the Seller will comply with the audit requirements appropriate for the type of entity receiving the award as required:

- (i) For-profit entities:
 - (a) A for-profit entity that, at time of the Subaward / subcontract, grants access to its records to Buyer, Buyer's customer, DCAA, or other Federal Government auditors, will provide standard access-to records requirements at 2 CFR 200, Subpart F Audit Requirements and 32 CFR 34.16;
 - (b) A for-profit entity that does not, at time of the Subaward / subcontract, grant Buyer, Buyer's customer, or the Federal Government direct access to their records and is not willing to provide this information, will allow ARM and the Government to examine its independent auditor's audit report and working papers for three years after final payment. Unless notified otherwise, Buyer, Buyer's customer, or the Government may have access to records concerning technical performance.
- (ii) Institutes of Higher Education or Nonprofit Sellers will comply with the audit requirements of 2 CFR 200, Subpart F Audit Requirements.

2.10 Closeout Requirements

The following items are required for contract Closeout ("Closeout Documents") and shall be submitted to Buyer upon the end of the contract:

- (i) Invention Disclosures
- (ii) Release of Claims and Final Invoice

(iii) Property Disposition form

4.6. Intellectual Property Policies

Subrecipient means Seller. Agreement means contract. ARM means Buyer's customer. Submissions to and communications to ARM shall be made via the Buyer.

4.6.A. Certain Intellectual Property rights flow down from the Prime Agreement as specified in Section 5.2 Intellectual Property Rights.

4.6.B. The Subrecipient acknowledges that Consortium Developed Intellectual Property ("CDIP"), as defined within the ARM Consortium Membership Policies, may be generated during the course of the work under this Agreement ("Project CDIP") and is available to ARM Consortium Members ("Members") in accordance with the terms of the ARM Consortium Membership Policies.

4.6.C. In addition to the rights and obligations set forth in the Membership Policies, each Party agrees that Project CDIP created and owned solely by Subrecipient or jointly with any Member and any relationship concerning Background Intellectual Property ("BIP") as discussed in Section 4.6.D shall be subject to the terms set forth in the IPP - Intellectual Property Management Plan attached hereto as Exhibit C.

4.6.D. The Subrecipient shall declare to ARM any intention to use BIP, as defined within the ARM Consortium Membership Policies, within the Project as soon as known. BIP known at the time of Agreement must be declared in Exhibit C - IPP - Intellectual Property Management Plan. If BIP constrains the use of CDIP, then licensing of the BIP must be made available to the Government, ARM and Members. The Subrecipient must find an alternative solution if such BIP licensing is not available.

4.6.E. ARM shall coordinate activities under CDIP policy and play a key role in conjunction with the owners of the Project CDIP in facilitating access to the technology. The Subrecipient agrees to designate a technology licensing officer or equivalent representative from their organizational entity to serve as the principal point of contact with respect to Project CDIP. Said individual shall have the responsibility of direct communication with ARM and other ARM Consortium Members in regard to access to Project CDIP.

4.6.F. Subrecipient and parties under all subcontracts or lower tier agreements, regardless of tier, that solely or jointly create CDIP are required to disclose the creation of Project CDIP to their respective technology transfer, licensing office or equivalent responsible office as soon as practicable during the performance of the Project. Subrecipient shall notify ARM in writing of the existence of agreements among the Project CDIP owners governing jointly developed Project CDIP.

4.6.G. The Subrecipient shall provide a summary of the disclosed Project CDIP within 30 days to ARM for addition to the ARM CDIP database to inform Members as required under the ARM Consortium Membership Agreement. The summary shall disclose the nature of the CDIP to ARM Members in specific enough terms so that readers can assess their interest in learning more, but in general enough terms that the disclosure does not reveal valuable proprietary information and is thus releasable to the Members.

4.6.H. Members interested in learning more about the Project CDIP may sign a Proprietary Information Agreement with the CDIP owner(s) to allow signatories to discuss the Project CDIP in sufficient detail so that they can determine whether or not they wish to negotiate a license to use the Project CDIP, and on what terms including royalties. Licensing terms and conditions shall be in a legally binding agreement among the respective parties, separate from this Agreement and the Membership Agreement. Subrecipient shall notify ARM in writing of the existence of agreements among the Project CDIP owners and Members governing such licensing.

Buyer may terminate this contract by written notice to the Seller upon a finding that the Seller has failed to comply with the material provisions of this contract, provided that such written notice is preceded by consultation between the Parties and a reasonable time period for Seller to cure such non-compliance. In the event of a termination of the contract, it is agreed that disposition of Data developed under this contract, will be in accordance with the provisions set forth in Section 5.3, Data Rights. The Parties will negotiate in good faith a reasonable and timely adjustment of all outstanding issues between the Parties as a result of termination.

Subject to a reasonable determination that the contract will not produce beneficial results commensurate with the expenditure of resources, either Buyer may terminate this contract by written notice to the Seller. Such written notice shall be preceded by consultation between the Parties. The notification shall state the reasons for the termination, the requested effective date, and, if a partial termination, the portion to be terminated.

In addition to any other rights set forth in this contract, this contract may be terminated in whole or in part upon the occurrence of one or more of the following events:

- (i) Seller defaults in performing its obligations under this contract, and fails to cure the default within 30 days (unless extended by Buyer) after receiving a notice specifying the nature, including specifics, of the default. Default includes, but is not limited to, a failure to make progress in the work so as to endanger performance;
- (ii) Seller enters into or files a petition, arrangement, or proceeding seeking an order for relief under the bankruptcy laws of the United States, a receivership for any of the assets, an assignment for the benefit of creditors, or the dissolution, liquidation, or insolvency of the Seller;
- (iii) The Seller is sanctioned, suspended, or debarred by the federal government;
- (iv) Seller has an institutional conflict of interest that, in the conclusive opinion of Buyer, cannot be mitigated.
- (v) The Prime Agreement is terminated in whole or in part by the Government, in which case Buyer may terminate within 30 days' notice to Seller and upon such notification, Seller shall proceed in an orderly fashion to limit or terminate any outstanding commitments, and to conclude the contract.

Notwithstanding the above, for security or safety reasons or in the case of a serious breach that could lead to irreparable damage, the federal government or Buyer may order immediate termination of work, in whole or in part.

In the event that this contract in whole or in part is terminated in accordance with the terms hereunder, the Seller shall continue to perform its obligations hereunder diligently to the extent this contract is not terminated. Seller shall also protect and preserve property in its possession in which Buyer, or USG has a security interest under the Prime Agreement this contract supports.

At Buyers direction, Buyer may require Seller to transfer title and deliver to Buyer, any

- (1) completed or partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information and equipment; and
- (2) contract rights (collectively referred to as "manufacturing materials" in this Article) that Seller has specifically produced, configured, or acquired for the terminated portion of this contract.

The rights and remedies of Buyer in this clause are in addition to any other rights and remedies provided by law or under this contract

4.22. Non-Use of Names

ARM and Subrecipient may not use each other's name or trademarks in any promotion, statement,

advertisement, press release or communications to the general public or any third party without each other's express written consent, except for the limited purpose already agreed to in the ARM Membership Agreement.

4.27. Protection of Human Subjects

Seller agrees that no research involving human subjects will be conducted under this Agreement.

4.28. Vertebrate Animals

Seller agrees that no research involving the use of vertebrate animals will be conducted under this Agreement.

SECTION 5 - FEDERAL REQUIREMENTS

Subrecipient means Seller. Agreement means contract. ARM means Buyer's customer. Submissions to and communications to ARM shall be made via the Buyer.

The items listed in this Section are from the Federal Technology Investment Agreement (TIA) W911NF- 17-3-0004 and have been modified, as applicable, based on the identity and nature of the Subrecipient.

5.1. Flowdown to Lower Tier Agreements

The Subrecipient shall include this Section 5 - Federal Requirements, suitably modified to identify the parties, in all subcontracts or lower tier agreements, regardless of tier, for experimental, development, or research work.

5.2. Intellectual Property Rights

5.2.A. Standard Patent Rights Clauses

The Subrecipient shall comply with the standard patent rights clauses in 37 CFR 401.14, entitled "Patent Rights (Small Business Firms and Nonprofit Organizations)," which are hereby incorporated by reference with the following modifications:

- (i) The term "contractor" shall read "Subrecipient".
- (ii) The term "contract" shall read "Agreement".
- (iii) The terms "agency," "Federal Agency" and "funding Federal Agency" shall read "U.S. Department of Defense" for all paragraphs except (c) and (f)(3).
- (iv) The terms "agency," "Federal Agency" and "funding Federal Agency" shall read "U.S. Department of Defense" and provide a courtesy copy of the transmittal letter to Advanced Robotics for Manufacturing Institute " for paragraphs (c)(1) and (C)(3) and (f)(3).
- (v) RESERVED.
- (vi) The time "thirty days" shall read "sixty (60) days" for paragraph (e)(3).
- (vii) The statement in paragraph (f)(4) shall be replaced with "This invention was made with U.S. Government support under Technology Investment Agreement W911NF-17- 3-0004 awarded by U.S. Army Contracting Command - Aberdeen Proving Ground. The Government has certain rights in the invention."
- (viii) Paragraphs (g)(2) and (g)(3) shall be deleted.
- (ix) Flowdown to lower tier agreements in lieu of 37 CFR 401.14 paragraph (g)(2) are addressed by section 5.1.
- (x) Paragraph (j) (March-in Rights) shall be replaced by the March-in

Rights in the TIA Article 9 with modification that the terms "RIME-MII" and "Participant" shall read "Subrecipient".

- (xi) Paragraph (1), entitled "Communication": The point of contact on matters relating to the patent rights clauses will be the servicing Staff Judge Advocate's office.
- 5.2.B. Definitions - For the purposes of the patent rights clauses, definitions of "Invention", "Subject Invention", "Practical Application", and "Made" are provided in 37 CFR 401.14(a) as modified where the term "contractor" shall read "Subrecipient" and where the term "contract" shall read "Agreement".
- 5.2.C. Reporting
 - (i) The Subrecipient agrees to report to the U.S. Department of Defense and ARM on invention disclosures, election of title, and filing and maintenance of patent applications as specified in 37 CFR 401.14(c) and (f) with the modifications in section 5.2.A Standard Patent Rights Clauses.
 - (ii) Reporting on Utilization of Subject Inventions (augmenting 37 CFR 401.14(h)) - The Subrecipient agrees to submit to ARM, for five years beyond the date of this Agreement, the Subrecipient agreed to submit to ARM upon ARM's written request, an annual report on the utilization of a Subject Invention or on efforts at obtaining such utilization that are being made by the Subrecipient or its licensees or assignees. The information in such reports is specified in 37 CFR 401.14(h).
 - (iii) Interim and Final Invention Reports - The Subrecipient shall send Invention (Patent) Reports to U.S. Department of Defense and ARM as of the close of each performance year and at the end of the term for this agreement. Annual reports are due 60 days after the end of each year of performance and final reports are due 60 days after the expiration of the final performance period. The reports shall 1) list subject invention(s) and state that all Subject Inventions have been disclosed, or 2) state that there are no such inventions; i.e., negative reports are also required annually. Invention disclosure(s), patent application(s), and patent(s) for any subject invention for which the Subrecipient has retained ownership shall be listed with 1) the name(s) of inventor(s), 2) title of invention(s), 3) disclosure number, patent application serial number, or patent number as applicable, 4) filing date, 5) a copy of the patent application and 6) patent number(s) and issue date(s) in any country in which the Subrecipient has applied for patent(s). The Subrecipient may report in the format that the Subrecipient normally prepares for its own internal purposes. Alternatively, the Subrecipient may use the DO Form 882, Report of Inventions and Subcontracts for reporting.
- 5.2.D. Joint Subject Inventions (between the Government and the Subrecipient) - The Subrecipient shall comply with paragraph entitled "Joint Subject Inventions" in Article 9 of the TIA where the term "Participant" shall read "Subrecipient".
- 5.2.E. Confidentiality - Invention reporting information is confidential to ARM and the respective inventing organizations.
- 5.2.F. Scope - The provisions set forth in this section 5.2 Intellectual Property Rights apply only to Subject Inventions.
- 5.2.G. Survival Rights - Provisions of this section 5.2 Intellectual Property Rights shall survive termination of this Agreement.

5.3. Data Rights

5.3.A. Definitions

- (i) "Commercial Computer Software", "Computer Data Base", "Computer Program", "Computer Software", "Computer Software Documentation", "Restricted Rights" and "Unlimited Rights" as used in this section 5.3 is defined in Title 48 (DFARS) 252.227- 7014(A) (Jun 1995).
- (ii) "Form, Fit and Function Data", "Limited Rights" and "Technical Data" as used in this section 5.3 Data Rights is defined in Title 48 (DFARS) 252.227-7013(A) (Nov 1995).
- (iii) "Commercial Computer Software License" as used in this section 5.3 Data Rights means the license terms under which Commercial Computer Software is sold or offered for sale, lease or license to the general public.
- (iv) "Data" as used in this section 5.3 Data Rights means Computer Software, Computer Software Documentation, Form, Fit and Function Data, and Technical Data.
- (v) "Government Purpose Rights" is defined in the paragraph entitled "Data" in Article 9 of the TIA.
- (vi) "ARM Purpose Rights" as used in this section 5.3 Data Rights means the rights to use Data as stipulated in the Intellectual Property Rights and Access section of the Membership Policies.
- (vii) "Specially Negotiated License Rights" are those rights to Data that have been specifically negotiated between the Government and the Subrecipient.

5.3.B. Data Categories

- (i) Category A is Data developed and paid for totally by non-governmental funds, whether pre-existing or concurrently developed proprietary data, trade secret data, or data related to Subrecipient products. The Subrecipient retains all rights to Category A Data.
- (ii) Category B is any Subrecipient generated Data developed during the performance of work under this Agreement, which cannot be disclosed without compromising the Category A Data.
- (iii) Category C is any Subrecipient generated Data, excluding Category A and B Data, developed during the performance of work under this Agreement.
- (iv) Category D is third-party proprietary data used in performance of work under this Agreement, including but not limited to, Technical Data, Computer Software, trade secrets and mask works.

5.3.C. Allocation of Principal Rights

- (i) Any Data developed outside of this Agreement with Government funding in whole or in part under a Government agreement, contract or subcontract shall have the rights negotiated under such prior agreement, contract or subcontract; the Government shall get no additional rights in such Data under this Agreement.
- (ii) As specified as flowdown from the TIA, all Data generated while performing under this Agreement (Category B and C Data) will be provided to the Government with Government Purpose Rights.
- (iii) The Subrecipient agrees that in consideration for the Government's funding, and in lieu of any Government rights to Category A, B or D data

(except as contained in paragraph (vi) below), the Subrecipient intends to reduce to practical application materials and processes developed under this Agreement.

- (iv) No deliveries to ARM or the Government of Category A and B data are contemplated or required under this Agreement. ARM and the Government reserve the right to negotiate certain rights in Category A and B data with the owner of the data. The existence and use of Category A or B data will be disclosed in each SOW.
- (v) ARM shall have immediate and irrevocable ARM Purpose Rights to all Category C Data.
- (vi) Subject to the IPP - Intellectual Property Management Plan in Exhibit C, particularly relating to access to BIP, the Subrecipient shall provide access to ARM any third-party Computer Software, Category D Data, as required for the performance or operation of other Computer Software required to be delivered in the SOW, with such rights as it is able to negotiate with the software vendor. The Subrecipient shall use reasonable efforts in such negotiations to obtain rights adequate to fulfill Government Purpose Rights and ARM Purpose Rights and shall provide to ARM the details as part of the SOW.
- (vii) Data that will be delivered, furnished, or otherwise provided to ARM under this section 5.3.C Allocation of Principal Rights, in which the Government has previously obtained rights, shall be delivered, furnished, or provided with the pre-existing rights, unless (a) the parties have agreed otherwise, or (b) any restrictions on the Government's rights to use, modify, reproduce, release, perform, display, or disclose the Data have expired or no longer apply.

5.3.D. Marking of Data

- (i) Any Data delivered under this Agreement shall be marked with the following legend: "This data is being delivered as Category (insert category) Data, as defined in Agreement W911NF-17-3-0004. Use, duplication, or disclosure is subject to the restrictions as stated in Agreement W911NF-17-3-0004 between ARM and the Government."
- (ii) In the event that the Subrecipient learns of a release to ARM of its unmarked Data that should have contained a restricted legend, the Subrecipient will have the opportunity to cure such omission going forward by providing written notice to ARM within six (6) months of the erroneous release.

5.3.E. Prior Technology

- (i) The Subrecipient shall not be obligated to provide Data that existed prior to, or was developed outside of this Agreement to ARM or the Government. However, in the event it is necessary for the Subrecipient to furnish to ARM or the Government with Data which existed prior to, or was produced outside of this Agreement, and such Data embodies trade secrets or comprises commercial or financial information which is privileged or confidential, and such Data is so identified with a suitable notice or legend, the Data will be maintained in confidence and disclosed and used by ARM, the Government, and such Government Contractors or contract employees that the Government may hire on a temporary or periodic basis only for the purpose of carrying out the Government's responsibilities under this Agreement. Data protection will include proprietary markings and handling, and the signing of nondisclosure agreements by ARM, such Government Contractors, or contract employees. Upon completion of activities under this Agreement, such Data will be disposed of as requested by the Subrecipient.

- (ii) Oral and Visual Information: If information which the Subrecipient considers to embody trade secrets or to comprise commercial or financial information which is privileged or confidential is expressly disclosed orally or visually directly to ARM, the exchange of such information must be memorialized in tangible, recorded form and marked with a suitable notice or legend, and furnished to ARM within thirty (30) calendar days after such oral or visual disclosure, or ARM shall have no duty to limit or restrict, and shall not incur any liability for any disclosure and use of such information.
If ARM reasonably determines that the memorialization of the exchange is insufficiently detailed to enable it to identify the privileged or confidential information, Subrecipient shall provide additional detail at ARM's request, subject to restrictions on use and disclosure.
- (iii) Disclaimer of Liability: Notwithstanding the above, ARM and the Government 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 this section 5.3 Data Rights; nor
 - (b) Information contained in any Data for which disclosure and use is restricted, if such information is or becomes generally known without breach of the above, is properly known to ARM or the Government or is generated by ARM or the Government independent of carrying out responsibilities under this Agreement, is rightfully received from a third party without restriction, or is included in Data which the Subrecipient has furnished, or is required to furnish to ARM or the Government without restriction on disclosure and use.
 - (c) Notwithstanding 5.3.F(iii)(a) above, if the Subrecipient cures the omission of the suitable notice or legend, the restrictions, and related liability for disclosure and use of such information shall apply after cure unless it is then unrestricted under 5.3.F(iii)(b) above.

5.3.F. Copyright

- (i) The Subrecipient reserves the right to protect by copyright works developed under this Master Agreement. All such copyrights will be in the name of the Subrecipient or the author, as determined by Subrecipient policies.
- (ii) Government Rights - The Subrecipient shall comply with paragraphs under the section entitled "Copyright" in Article 9 of the TIA where the terms "Recipient" and "Participant" shall read "Subrecipient".
- (iii) The Subrecipient hereby grants to ARM a limited 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, all copyrighted works developed under this Agreement (excluding Data) to which it owns the copyright, and to authorize others to do so for non-commercial purposes.

5.3.G. Survival Rights - Provisions of this section 5.3 Data Rights shall survive termination of this Agreement.

5.4. Public Release or Dissemination of Information

- 5.4.A. Open Publication Policy - Notwithstanding the reporting requirements of this Agreement, the Parties favor an open-publication policy to promote the public acceptance of the research developed under this award, but simultaneously recognize the necessity to protect identified proprietary information.
- 5.4.B. Publication or Disclosure - It is herein agreed that except for the disclosure of basic information regarding this Agreement such as purpose and a general description of the technical work under this Agreement, the Subrecipient agrees to furnish copies to the ARM Program Manager prior to publication or other disclosure of the results of the fundamental research under this award. Publication or other disclosures include press releases, specific publicity or advertisement, and articles for proposed publication or presentation. The requirement to furnish advance copies of publications or other disclosures does not constitute any restriction on the conduct or reporting of the fundamental research. Publications under this Agreement shall be in accordance with Section 5 Publications of the ARM Membership Policies.
- 5.4.C. Prior Review of Public Releases - It is herein agreed that except for the disclosure of basic information regarding this Agreement, such as purpose and a general description of the technical work under this award, the Subrecipient will submit all proposed public releases to the ARM Project Manager in accordance with Section 5 Publications of the ARM Membership Policies for review and comment prior to release. Public releases include press releases, specific publicity or advertisement, and articles for proposed publication or presentation.
- 5.4.D. Publication Legend - Articles for publication or presentation will contain an acknowledgement of support and a disclaimer. These statements may be placed either at the bottom of the first page or at the end of the paper and should read as follows:

"Research was sponsored by the Office of the Secretary of Defense and was accomplished under Agreement Number W911NF-17-3-0004. The views and conclusions contained in this document are those of the authors and should not be interpreted as representing the official policies, either expressed or implied, of the Office of the Secretary of Defense or the U.S. Government. The U.S. Government is authorized to reproduce and distribute reprints for Government purposes notwithstanding any copyright notation herein."

5.5. Export Controls

- 5.5.A. Each party acknowledges that certain information or technology provided by the other party under this Agreement may be subject to United States export control laws and regulations (collectively, "Export Control Laws") which include, without limitation, the International Traffic in Arms Regulations (ITAR), Export Administration Regulations (EAR) and regulations and orders administered by the Office of Foreign Assets Control (OFAC). Each party agrees to comply with all Export Control Laws. The disclosing party shall provide the receiving party with written notice containing the nature of any such export controlled information, including Export Control Classification Number (ECCN) or United States Munitions List (USML) category, prior to any exchange of such export controlled Confidential Information. The disclosing party shall not disclose any information subject to Export Control Laws unless and until the disclosing party has been notified in writing that a plan for the transfer and control of the information has been created by the receiving party.

- 5.5.B. Subrecipient further agrees if U.S. export control laws and regulations are applicable to this Agreement, Subrecipient will not disclose or re-export any technical data under this Agreement to any country or end-user or for any end-use, for which U.S. government requires an export license at the time of export or transfer, unless Subrecipient has obtained authorization from the U.S. agency responsible for such matters.

5.6. Representations and Certifications

- 5.6.A. The Representations and Certifications, which have been executed by Subrecipient prior to award of this Agreement are either on file with the issuing office and hereby incorporated herein by reference, or are attached and incorporated into this Agreement in Exhibit E - Representations and Certifications.
- 5.6.B. General - Subrecipient represents and certifies that it has filed and will maintain all assurances or other documentation with the appropriate government agencies to the extent such assurances are required, including any applicable national policy requirements as listed in and incorporated by reference from DoD R&D General Terms and Conditions dated JULY 2016, Part 8: National Policy Requirements, which may be found at <https://www.onr.navy.mil/Contracts-Grants/submit-proposal/grants-proposal/grants-terms-conditions.aspx>.
- 5.6.C. Debarment - Subrecipient certifies that neither Subrecipient nor any of its employees or agents performing any service under this Agreement (including the Project Director) are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction, under investigation for a crime or otherwise engaged in conduct for which a person can be debarred by any federal agency, and Subrecipient will immediately notify ARM upon any inquiry concerning commencement of any such proceeding concerning Subrecipient or such person referred to in this subparagraph.
- 5.6.D. Drug-Free Workplace - by signing this Agreement, the Subrecipient assures that it is in compliance with the requirements in the "*Drug-Free Workplace*" (41 U.S.C. chapter 81).
- 5.6.E. Lobbying - Subrecipient certifies that no federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of an Member of Congress in connection with this Agreement, and that if any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of an Member of Congress in connection with the Prime Award, grant loan or cooperative agreement the Subrecipient will complete and submit standard Form-LLL, "*Disclosure Form to Report Lobbying*."

5.7. Controlled Unclassified Information

- 5.7.A. Applicability - This Section 5.7 applies only if a determination is made by the Government that access to CUI by Subrecipient is needed for performance under this Agreement. If such a determination is made by the Government and the Subrecipient agrees to the need for CUI access, the Parties agree to negotiate a modification to this Agreement to address the specifics of the requirement. CUI access will not be granted until the specifics for the

requirement are addressed in this Agreement, as an additional modification and executed by both Parties. The Parties acknowledge that Boeing has not agreed to accept CUI or that CUI access will be needed in relation to the performance of this Subaward.

- 5.7.B Discussion - There are types of information that are not classified but require application of access and distribution controls and protective measures for a variety of reasons. This information is known as controlled unclassified information ("CUI") and serves as the authoritative reference for all CUI categories and markings. When handling CUI material as required by this Agreement, all non-federal entities ("NFE") and their representatives are to comply with applicable protection requirements. For purposes of this Agreement, NFE means ARM, Subrecipient, and any parties to subcontracts or lower tier agreements, regardless of tier.

E.O. 13556 established the CUI program to standardize and simplify the way the Executive Branch handles unclassified information that requires safeguarding or dissemination controls pursuant to and consistent with applicable laws, regulations, and government-wide policies. The federal regulations which implement the CUI Program are at 32 CFR Part 2002. NIST Special Publication (SP) 800-171(rev 2) provides recommended security requirements for protecting the confidentiality of CUI when this information is resident in nonfederal systems and organizations.

The National Archives and Records Administration ("NARA") is the CUI Executive Agent ("EA") responsible for developing policy and providing oversight for the CUI program. The NARA has a CUI Registry on its website (<http://www.archives.gov/cui>) that serves as the authoritative reference for all CUI categories and markings.

- 5.7.C Requirements - These requirements are incorporated into this Agreement if this Section 5.7 is triggered due to the need for CUI access by the Subrecipient. The Subrecipient must comply with these requirements, as applicable, for CUI access.

- E.O. 13556, Controlled Unclassified Information;
- 32 CFR 2002;
- DFARS 252.204-70121 - Safeguarding Covered Defense Information and Cyber Incident Reporting;
- NIST Special Publication (SP) 800-171 (rev 2) or most current version; and
- DoDI 5200.48, Controlled Unclassified Information

- 5.7.D Identification of CUI - The Agreements Officer Representative ("AOR") for the Prime Agreement, in coordination with Government Security, is the authority for designating what information is CUI. If during performance of this Agreement, research results are determined to be CUI, by the Government, ARM, or Subrecipient, work under this Agreement will cease until the Government, ARM, and Subrecipient can determine a path forward. The Subrecipient will need to complete a DD2345 prior to receipt or access of any CUI. The DD2345 provides instructions on processing. The completed DD2345 is to be provided to the AOR for file purposes.

- 5.7.E Markings - All technical documents containing CUI will be marked with CUI markings in accordance with DoDI 5200.48. Legacy or other markings is not permitted or included in either the DOD CUI Registry or DoDI 5200.48 Marking of Technical Information will include the Distribution Statement in accordance with DoDI 5230.24 and any applicable Security Classification Guide. If the contents of the technical

document require more than one Distribution Statement, in coordination with the AOR, apply the most restrictive statement. This does not preclude additional mandated markings as may be required by the Agreement.

- 5.7.F Training - All individuals requiring access to CUI under this agreement will complete initial and annual CUI training by taking the DOD Mandatory Controlled Unclassified Information (CUI) Training IF 141.06 through the Center for Development of Security Excellence located at <https://securityawareness.usalearning.gov/cui/index.html> or another medium approved by the Agreements Officer. Certification of completion will be kept on file by the

1 For purposes of this Agreement, the term "Contractor" means Subrecipient.

EXHIBIT E – REPRESENTATIONS AND CERTIFICATIONS

Recipient means Seller. Government may mean US Government, Buyer, or both.

PROHIBITION ON USING FUNDS UNDER GRANTS AND COOPERATIVE AGREEMENTS WITH ENTITIES THAT REQUIRE CERTAIN INTERNAL CONFIDENTIALITY AGREEMENTS

- A. The Recipient may not require its employees, contractors, or subrecipients seeking to report fraud, waste, or representative abuse to sign or comply with internal confidentiality agreements or statements prohibiting or otherwise restricting them from lawfully reporting that waste, fraud, or abuse to a designated investigative or law enforcement of a Federal department or agency authorized to receive such information.
- B. The Recipient must notify its employees, contractors, or subrecipients that the prohibitions and restrictions of any internal confidentiality agreements inconsistent with paragraph (a) of this award provision are no longer in effect.
- C. The prohibition in paragraph (a) of this award provision does not contravene requirements applicable to Standard Form 312, Form 4414, or any other form issued by a Federal department or agency governing the nondisclosure of classified information.
- D. If the Government determines that the Recipient is not in compliance with this award provision, it:
 - 1. Will prohibit the Recipient's use of funds under this award, in accordance with section 743 of Division E of the Consolidated and Further Continuing Resolution Appropriations Act, 2015, (Pub. L. 113-235) or any successor provision of law; and
 - 2. May pursue other remedies available for the Recipient's material failure to comply with award terms and conditions.