



**E104 PART E, Alternate II, Flowdown Document  
ESAero**

**If E104 PART E, Alternate II, Flowdown Document is specified in this Purchase Order, the following terms apply to this order:**

**Flowdown Document  
2021-414**

**Prime Contract Number:**  
**DPAS Rating:**  
**Date of Creation:**

*The following customer contract requirements apply to this Purchase Order to the extent indicated below and are hereby incorporated into the Purchase Order by full text or by reference with the same force and effect as if they were given in full text. Upon Seller's request, Buyer's Purchasing Representative will make their full text available. Also, the full text of a FAR or DFARS provision or clause may be accessed electronically at these addresses: <http://farsite.hill.af.mil/> or <https://www.acquisition.gov/far/>:*

In all provisions and clauses listed herein, terms shall be revised to suitably identify the party to establish Seller's obligations to Buyer and to the Government, and to enable Buyer to meet its obligations under the Buyer's higher-tier subcontract under which this Purchase Order is a subcontract (the "Government Contract"). Without limiting the generality of the foregoing, and except where further clarified or modified below, the term "Government" and equivalent phrases shall mean "Buyer", the term "Contracting Officer" shall mean "Buyer's Purchasing Representative", the term "Contractor" or "Offeror" shall mean "Seller", "Subcontractor" shall mean "Seller's Subcontractor" under this Purchase Order, and the term "Contract" shall mean this "Purchase Order". For the avoidance of doubt, the words "Government" and "Contracting Officer" do not change: (1) when a right, act, authorization or obligation can be granted or performed only by the Government or the Government Contract Contracting Officer or duly authorized representative, such as in FAR 52.227-1 and FAR 52.227-2 or (2) when title to property is to be transferred directly to the Government. Seller shall incorporate into each lower tier contract issued in support of this Purchase Order all applicable FAR and DFARS provisions and clauses in accordance with the flow down requirements specified in such clauses.

Nothing in this Purchase Order grants Seller a direct right of action against the Government. If any of the following FAR or DFARS clauses do not apply to this Purchase Order, such clauses are considered to be self-deleting.

**CLAUSES INCORPORATED BY REFERENCE:**

Clause Number	Title
FAR 52.204-2	Security Requirements (Aug 1996)
FAR 52.204-25	Telecommunications and Video Surveillance Services or Equipment (Aug 2019)
FAR 52.223-3	Hazardous Material Identification and Material Safety Data (Jan 1997)



FAR 52.227-1	Authorization and Consent (Jul 1995)
FAR 52.227-2	Notice and Assistance Regarding Patent and Copyright Infringement (Aug 1996)
FAR 52.227-9	Refund of Royalties (Apr 1984)
FAR 52.227-10	Filing of Patent Applications -- Classified Subject Matter (Apr 1984)
FAR 52.236-13	Accident Prevention (Nov 1991)
FAR 52.245-1	Government Property (Apr 2012)

DFARS 252.204-7012	Safeguarding of Unclassified Controlled Technical Information (Nov 2013)
DFARS 252.223-7002	Safety Precautions for Ammunition and Explosives (May 1994)
DFARS 252.223-7003	Change in Place of Performance – Ammunition and Explosives (Dec 1991)
DFARS 252.223-7007	Safeguarding Sensitive Conventional Arms, Ammunition, and Explosives (Sep 1999)
DFARS 252.225-7040	Armed Forces Deployed Outside the United States (Aug 2015)
DFARS 252.227-7015	Technical Data— Commercial Items (Feb 2014)
DFARS 252.227-7016	Rights in Bid or Proposal Information (Jun 1995)
DFARS 252.227-7018	Computer Software— Small Business Innovation Research (SBIR) Program (Feb 2014)
DFARS 252.227-7019	Validation of Asserted Restrictions-Computer Software. (Jun 1995)
DFARS 252.227-7025	Limitations on the Use or Disclosure of Government- Furnished Information Marked with Restrictive Legends. (Jun 1995)
DFARS 252.227-7026	Deferred Delivery Of Technical Data Or Computer Software (Apr 1988)
DFARS 252.227-7037	Validation of Restrictive Markings on Technical Data. (Sep 1999)



## **CLAUSES INCORPORATED IN FULL TEXT:**

In all provisions and clauses listed below, terms shall be revised to suitably identify the party to establish Seller's obligations to Buyer, Buyer's Customer, and to the Government, and to enable Buyer to meet its obligations under the Buyer's higher-tier subcontract under which this Purchase Order is a subcontract (the "Government Contract"). Without limiting the generality of the foregoing, and except where further clarified or modified below, the term "Government" "CAO," "ALO," and "AOR," and equivalent phrases shall mean "Buyer." The term "PAH" shall mean Seller. The term "Agreement" and "Project Agreement" shall refer to this Purchase Order. The term "Prototype Project" shall mean the project this Purchase Order supports. The term "PAH(s)" shall mean Seller, Buyer, and other contractors also supporting the Prototype Project. For the avoidance of doubt, the words "Government" and "CAO" do not change when a right, act, authorization or obligation can be granted or performed only by the Government or the CAO or duly authorized representative.

## **ARTICLE VIII: CONFIDENTIAL AND/OR PROPRIETARY INFORMATION**

This clause shall apply to the oral or written communication between the parties, including the Government, the Government's Consortium Administrative Organization ("CAO"), Aviation & Missile Technology Consortium ("AMTC") Members, and PAHs; however, Article XI, Data Rights and Copyrights, shall control the rights in data for all data delivered and to be delivered in the performance of this Agreement and each Project Agreement.

### **A. Definitions**

"Disclosing Party" means the CAO, PAH, or the Government who discloses Confidential and/or Proprietary Information as contemplated by the subsequent paragraphs.

"Receiving Party" means the CAO, PAH, or the Government who receives Confidential and/or Proprietary Information disclosed by a Disclosing Party.

"Confidential and/or Proprietary Information" means information and materials of a Disclosing Party which are designated as confidential and/or proprietary or as a Trade Secret in writing by such Disclosing Party, whether by letter or by use of an appropriate stamp or legend, prior to or at the same time any such information or materials are disclosed by such Disclosing Party to the Receiving Party. Notwithstanding the foregoing, materials and other information which are orally, visually, or electronically disclosed by a Disclosing Party, or are disclosed in writing without an appropriate letter, stamp, or legend, shall constitute Confidential and/or Proprietary 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 and/or proprietary 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 and/or Proprietary Information does not mean data, software, or software documentation delivered and to be delivered in performance of this Agreement and each Project Agreement, which would be governed by ARTICLE XI: DATA RIGHTS AND COPYRIGHTS.

"Trade Secret" means all forms and types of financial, business, scientific, technical, economic or engineering or otherwise proprietary information, including, but not limited to, patterns, plans, compilations, program devices, formulas, designs, prototypes, methods, techniques, processes, procedures, programs or codes, whether tangible or intangible, and whether or how stored, compiled, or memorialized physically, electronically, graphically, photographically, or in writing if:

- (1) The owner thereof has taken reasonable measures to keep such information secret; and
- (2) 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.

Trade Secret does not mean data, software, or software documentation delivered and to be delivered in performance of this Agreement and each Project Agreement, which would be governed by ARTICLE XI: DATA RIGHTS AND COPYRIGHTS.

### **B. Exchange of Information**

The Government may from time to time disclose Government Confidential and/or Proprietary Information to the CAO for use by the CAO or the PAH(s) in connection with particular Prototype Projects; and the CAO or the PAH(s) may from time to time disclose information that is Confidential and/or Proprietary Information to the Government in connection with a Whitepaper, Project Proposal, TDL, Project Agreement or performance thereunder.



### **C. Confidentiality and Authorized Disclosure**

The Receiving Party agrees, to the extent permitted by law, that Confidential and/or Proprietary Information shall remain the property of the Disclosing Party, and that, unless otherwise agreed to by the Disclosing Party, Confidential and/or Proprietary Information shall not be disclosed, divulged or otherwise communicated by it to third parties or used by it for any purposes other than in connection with specified Project efforts and the licenses granted in Article X, Patent Rights, and Article XI, Data Rights and Copyrights. However, the duty to protect such Confidential and/or Proprietary Information shall not extend to materials or information that:

- (1) Are received or become available without restriction to the Receiving Party under a proper, separate agreement,
- (2) Are not identified with a suitable notice or legend (subject to the cure procedures described in the definition of "Confidential and/or Proprietary Information" above),
- (3) 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,
- (4) Are or later become part of the public domain through no fault of the Receiving Party,
- (5) Are received by the Receiving Party from a third party having no obligation of confidentiality to the Disclosing Party that made the disclosure,
- (6) Are developed independently by the Receiving Party without use of Confidential and/or Proprietary Information as evidenced by written records,
- (7) Are required by law or regulation to be disclosed; provided, however, that the Receiving Party has provided written notice to the Disclosing Party promptly so as to enable such Disclosing Party to seek a protective order or otherwise prevent disclosure of such information.

### **D. Return of Confidential and/or Proprietary Information**

Upon the request of the Disclosing Party, the Receiving Party will promptly return all copies and other tangible manifestations of the Confidential and/or Proprietary Information. As used in this Section, tangible manifestations include human readable media as well as magnetic and digital storage media. In the event that return of all tangible manifestations is not practicable, the Party may propose an alternative process to ensure the verifiable destruction of such tangible manifestations. Such alternative process must be agreed upon in writing by both Parties prior to implementation.

### **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 the Project Agreement under which the information was provided.

### **F. Flowdown**

The PAH shall flow down the requirements of this Article VIII to their respective personnel, agents and subcontractors at all levels receiving such Confidential and/or Proprietary Information under this Agreement.

### **C. Publication or Public Disclosure of Information**

#### **1. Review or Approval of Information and Data for Public Release**

(a) The PAH must receive written Government approval prior to Public Release of data developed by the Government and/or respective PAH(s) under the Prototype Projects. At least sixty (60) days prior to the scheduled release date, the PAH shall submit to the ALO and AOR at least one copy of the information to be released. The ALO will route the information to the cognizant Public Affairs Office for review and approval. The ALO and Redstone Arsenal Public Affairs Office are hereby designated as the approval authorities for the AO for such releases.

(b) Where the PAH is an Academic Research Institution performing fundamental research on campus, the CAO shall require such PAHs to provide papers and publications for provision to the ALO for review and comment 60 days prior to formal paper/publication submission in accordance with the procedures in paragraph (a) above must be followed.



(c) The Parties to this Agreement are responsible for assuring that an acknowledgment of Government support will appear in any publication of any material based on or developed under this Agreement, using the following language: "Effort sponsored by the U.S. Government under Other Transaction number W9124P-19- 9-0001 between AMTC and the Government. The U.S. Government is authorized to reproduce and distribute reprints for Governmental purposes notwithstanding any copyright notation thereon."

(d) The Parties to this Agreement are also responsible for assuring that every publication of material based on or developed under this Agreement contains the following disclaimer: "The views and conclusions contained herein are those of the authors and should not be interpreted as necessarily representing the official policies or endorsements, either expressed or implied, of the U.S. Government."

The PAH shall flow down these requirements to its subagreement recipients at all tiers.

## **ARTICLE X: PATENT RIGHTS**

### **A. Definitions**

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

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

"Subject Invention" means any invention of a PAH conceived or first actually reduced to practice in the performance of work under this Agreement.

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

### **B. Allocation of Principal Rights**

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

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

1. The PAH shall disclose each Subject Invention to the CAO within two (2) months after the inventor discloses it in writing to his company personnel responsible for patent matters. The disclosure to the CAO, or with prior authorization from the AO, to the Government, shall be in the form of a written report and shall identify the Project Agreement under which the invention was made and the identity of the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding to the extent known at the time of the disclosure, of the nature, purpose, operation, and the physical, chemical, biological or electrical characteristics of the invention. The disclosure shall also identify any publication, sale, or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure.

2. If the PAH determines that it does not intend to retain title to any such Invention, the PAH shall notify the Government, through the CAO, in writing, within nine (9) months of the disclosure pursuant to Paragraph 1 above. However, in any case where publication, sale or public use has initiated the one (1) year statutory period wherein valid patent protection can still be obtained in the United States, the period for such notice may be shortened the Government to a date that is no more than six (6) months prior to the end of the statutory period.



3. The PAH shall file its initial patent application (whether provisional or non-provisional) on a Subject Invention to which it elects to retain title within one (1) year after election of title or, if earlier, prior to the end of the statutory period wherein valid patent protection can be obtained in the United States after a publication, or sale or public use. The PAH may elect to file patent applications in additional countries (including with the European Patent Office and under the Patent Cooperation Treaty) within either ten (10) months of the corresponding initial patent application (whether provisional or non-provisional) or six (6) months from the date permission is granted by the Commissioner of Patents and Trademarks to file foreign patent applications, where such filing has been prohibited by a Secrecy Order.

4. After considering the position of the CAO on behalf of the PAH, a request for extension of the time for disclosure election and filing under this Article X, Paragraph C, may be approved by ACC-RSA, and ACC-RSA's approval shall not be unreasonably withheld.

#### **D. Conditions When the Government May Obtain Title**

Upon written request from the Government, the PAH shall convey to the Government, title to any Subject Invention under any of the following conditions:

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

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

The Parties agree that:

- (1) The PAH shall retain a non-exclusive, royalty-free license throughout the world in each Subject Invention to which the Government obtains title. The PAH's license extends to the domestic (including Canada) subsidiaries and affiliates, if any, of the PAH and includes the right to grant sublicenses of the same scope to the extent that the PAH was legally obligated to do so at the time the Project under the Agreement was funded. The license is transferable only with the approval of the Government, except when transferred to the successor of that part of the PAH's business to which the Invention pertains. Government approval for license transfer shall not be unreasonably withheld.
- (2) The PAH's domestic license may be revoked or modified by the Government to the extent necessary to achieve expeditious Practical Application of the Subject Invention pursuant to an application for an exclusive license submitted consistent with appropriate provisions at 37 CFR Part 404. The PAH's license shall not be revoked or modified in that field of use or in the geographical areas in which the PAH has achieved practical application and continues to make the benefits of the Invention reasonably accessible to the public. The PAH's license in any foreign country may be revoked or modified at the discretion of the Government to the extent the PAH, its licensees, or its subsidiaries or affiliates have failed to achieve Practical Application in that foreign country.
- (3) Before revocation or modification of the PAH's license, the Government must furnish the CAO under the OTA, and the CAO shall forward to the PAH, a written notice of the Government's intention to revoke or modify the license, and shall be allowed thirty (30) calendar days (or such other time as may be authorized for good cause shown) after the notice to show cause why the license should not be revoked or modified.

#### **F. Action to Protect the Government's Interest**

1. The PAH shall execute or have executed and promptly deliver to the Government all instruments necessary to (i) establish or confirm the rights the Government has throughout the world in those Subject Inventions to which the PAH elects to retain title, and (ii) convey title to the Government when requested under Paragraph D of this Article X, and to enable the Government to obtain patent protection throughout the world in that Subject Invention.





2. The PAH agrees to require, by written agreement, that its employees working on Projects, other than clerical and non-technical employees, agree to disclose promptly in writing to personnel identified as responsible for the administration of patent, each Subject Invention made under this Agreement. The PAH must then comply with the disclosure provisions of Paragraph C of this Article X, execute all papers necessary to file the patent applications on the Subject Invention, and establish the Government's rights in the Subject Invention. The PAH acknowledges and shall instruct its employees through employee agreements or other suitable educational programs, on the importance of reporting Inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.

3. The PAH shall notify the CAO of any decision not to continue the prosecution of a patent application, pay maintenance fees or defend in a reexamination or opposition proceeding on a patent, in any country, not less than thirty (30) days before the expiration of the response period required by the relevant patent office.

4. The PAH shall include, within the specification of any United States patent application and any patent issuing thereon covering a Subject Invention, the following statement: "This invention was made with U.S. Government support under Agreement No. W9124P-19-9-0001 awarded by the Army Contracting Command-Redstone Arsenal to the AMTC. The Government has certain rights in the invention."

### **G. Lower-Tier Agreements**

The PAH shall include this Article X, Patent Rights, suitably modified to identify the parties, in all lower-tier agreements, regardless of tier, for experimental, development or research work.

### **H. Reporting on Utilization of Subject Inventions**

Upon request, the PAH agrees to submit, during the term of this Agreement, periodic reports no more frequently than annually on the utilization of a Subject Invention or on efforts at obtaining such utilization that are being made by the PAH or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the PAH and such other data and information as the Government may reasonably specify. The PAH also agrees to provide additional reports as may be requested by the Government, the CAO, in connection with any march-in proceedings undertaken by the Government in accordance with Paragraph J of this Article X. Consistent with 35 U.S.C. § 205, the CAO agrees it shall not disclose nor grant permission for the Government to disclose such information to persons outside the Government without the permission of the PAH.

### **I. Preference for American Industry**

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

### **J. March-in Rights**

March-in Rights will follow the procedures set forth in 37 CFR 401.6. The PAH agrees that, with respect to any Subject Invention in which the PAH has retained title, the Government has the right to require the PAH (through the CAO) to grant a non-exclusive license to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the PAH refuses such a request, the Government has the right to grant such a license itself if the Government determines that:

- (1) Such action is necessary because the PAH, assignee or licensees have not taken effective steps, consistent with the intent of this Agreement, to achieve Practical Application of the Subject Invention;
- (2) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the PAH, assignee, or their licensees;
- (3) Such action is necessary to meet requirements for public use and such requirements are not reasonably satisfied by the PAH, assignee, or licensees; or
- (4) Such action is necessary because the agreement required by Paragraph (I) of this Article X, Patent Rights, has not been obtained



or waived or because a licensee who has the exclusive right to use or sell any Subject Invention in the United States is in the breach of such agreement. The Government shall notify the CAO as soon as practicable, but no later than five (5) calendar days following the exercise of any rights under this Paragraph J.

#### **K. Opportunity to Cure**

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

#### **L. Background Inventions**

In no event shall the provisions set forth in this Article X apply to any Background Inventions or patents. The PAH or its subcontractors shall retain the entire right, title, and interest throughout the world to each such Background Invention and patent that each Party has brought, through the CAO, to the Project issued under this Agreement, and the Government shall not have any rights under this Agreement to such Background Inventions and patents. Projects to be funded under this Agreement will list Background Inventions and patents anticipated to be used on the Project; such listing may be amended by the Parties as appropriate to reflect changes in such plans.

#### **M. Survival Rights**

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

#### **N. Patent Rights Clauses**

Rights in patents under this Agreement, including third parties, shall be determined in accordance with the following FAR Part 27 clauses and provisions:

FAR 52.227-1 Authorization and Consent and Alternate I (Apr 1984)

FAR 52.227-2 Notice and Assistance Regarding Patent and Copyright Infringement

FAR 52.227-3 Patent Indemnity FAR 52.227-6 Royalty Information

FAR 52.227-9 Refund of Royalties

FAR 52.227-10 Filing of Patent Applications – Classified Subject Matter

FAR 52.227-3, Patent Indemnity,

FAR 52.227-6, Royalty Information, and

FAR 52.227-9, Refund on Royalties will be listed in the Project award documentation if applicable to a given Project on a case-by-case basis only to the extent that the applicable circumstances, the terms of the clause, or the prescribing conditions are met.

### **ARTICLE XI: DATA RIGHTS AND COPYRIGHTS**

#### **A. General**

Rights in Technical Data and computer software under this Agreement shall be determined in accordance with the following DFARS Part 227 clauses:

DFARS 252.227-7013 Rights in Technical Data – Noncommercial Items

DFARS 252.227-7014 Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation

DFARS 252.227-7015 Technical Data – Commercial Items

DFARS 252.227-7016 Rights in Bid or Proposal Information

DFARS 252.227-7018 Rights in Noncommercial Technical Data and Computer Software – Small Business Innovation Research





(SBIR) Program (DEVIATION 2020-O0007)

DFARS 252.227-7019 Validation of Asserted Restrictions – Computer Software

DFARS 252.227-7020 Rights in Special Works

DFARS 252.227-7021 Rights in Data-Existing Works

DFARS 252.227-7025 Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends

DFARS 252.227-7026 Deferred Delivery of Technical Data or Computer Software

DFARS 252.227-7027 Deferred Ordering of Technical Data or Computer Software

DFARS 252.227-7030 Technical Data – Withholding of Payment

DFARS 252.227-7037 Validation of Restrictive Markings on Technical Data

FAR or DFARS clauses are incorporated by reference but only to the extent that the applicable circumstances, the terms of the clause, or the prescribing conditions are met. The specific clauses applicable to a given Project will be listed in the Project award documentation.

The PAH reserves the right to protect by copyright original works developed under this Agreement. All such copyrights will be in the name of the PAH. The PAH shall grant to the U.S. Government a non-exclusive, non-transferable, royalty-free, fully paid-up, perpetual 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 Agreement, and to authorize others to do so. However, notwithstanding the above, proprietary or otherwise protected information (including technical data and software) shall not be disclosed or released unless such release or disclosure is allowed under at least one of the above cited DFARS clauses.

In the event Technical Data are exchanged with a notice indicating that the data is protected under copyright as a published, copyrighted work, and it is also indicated on the data that such data existed prior to, or was produced outside of, the relevant Project, the Party receiving the data and others acting on its behalf may only reproduce, distribute and prepare derivative works for the purpose of carrying out that Party's responsibilities under this Agreement. The PAH is responsible for affixing appropriate markings indicating the rights of the Government on all Technical Data delivered under this Agreement. Nothing in this Agreement shall preclude the PAH from having status and data rights afforded under a Small Business and Innovation Research ("SBIR") funding agreement for SBIR Phase III work funded under this Agreement, if otherwise properly qualified, and provided that the work derives from, extends, or logically concludes effort(s) performed under prior SBIR funding agreements.

## **B. Data First Produced by the Government**

To the extent that Data first produced by the Government during the performance of Agreement is used by or on behalf of the PAH in the performance of any Project, the Government shall retain its preexisting rights in such data, including modifications or changes, made by either Government or the PAH, to such data as part of the performance under the Project. Such data will, to the extent permitted by law, be appropriately marked with a suitable notice or legend and maintained in confidence by the PAH for a period of ten (10) years after the development of the information, with the express understanding that during the aforesaid period such data may be disclosed and used (under suitable protective conditions) by or on behalf of the Government for Government purposes only.

## **C. Prior Technology**

In the event it is necessary for the Government to furnish the PAH with data which existed prior to, or was produced outside of this Agreement, and such data is so identified with a suitable notice or legend, the data will be maintained in confidence and disclosed and used by the PAH only for the purpose of carrying out the responsibilities under this Agreement. Data protection will include proprietary markings and handling, and the signing of non-disclosure agreements by the PAH's employees and/or its subcontractors' employees. Upon completion of activities under this Agreement, such data will be disposed of as requested by the Government.

## **D. Project Agreement Holder's Prior Technology**

In the event it is necessary for the PAH to furnish 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 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 consistent with the



provisions of Article VIII of this Agreement. Data protection will include proprietary markings and handling, and the signing of non-disclosure agreements by such Government Contractors or contract employees. The PAH, if furnishing data which existed prior to, or was produced outside of this Agreement, has the right to license such data to other PAH(s) or to entities not a party to this Agreement for a fee and/or royalty payments as determined by the PAH furnishing such data.

#### **E. Lower-Tier Agreements**

The PAH shall include this Article suitably modified to identify the Parties, in all subcontracts and lower-tier agreements, regardless of tier, for experimental, development or research work performed under the Prototype Projects.

#### **F. Other Instances**

Notwithstanding the terms in this Article, differing rights in data may be negotiated among the Parties to each individual Project Agreement on a case-by-case basis.

#### **G. Survival Rights**

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

#### **H. Government Direction for Alternate Language**

Should the Government provide alternate Data Rights language in a Technical Direction Letter, the alternate language will be incorporated into the resulting Project Agreement and will supersede the language provided in this Article.

### **ARTICLE XII: EXPORT CONTROL**

#### **A. Export Compliance**

Each Party agrees to comply with U.S. Export regulations including, but not limited to, the requirements of the Arms Export Control Act, as amended 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 of 1979, 50 U.S.C. app. § 2401-2420. Each party is responsible for obtaining from the Government export licenses or other authorizations/approvals, if required, for information or materials provided from one party to another under this Agreement. Accordingly, the PAH shall not export, directly, or indirectly, any products and/or technology, Confidential Information, Trade Secrets, or Classified and Unclassified Technical Data in violation of any U.S. Export laws or regulations.

#### **B. Flowdown**

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

#### **Flowdown for OPSEC/Security Requirements**

Each Prototype Project will include specific OPSEC / Security requirements within each SOW and RWP. The requirements delineated within each Project Agreement, in turn, shall be included in all sub-tier subcontracts or other forms of lower-tier agreements, regardless of tier.

#### **Waiver of Liability**

With regard to the activities undertaken pursuant to this Agreement, no Party shall make any claim against the other, employees of the other, the other's related entities (e.g., contractors or subcontractors), or employees of the other's contractors or subcontractors for any injury to or death of its own employees or employees of its contractors or subcontractors, or for damage to or loss of its own property or that of its contractors or subcontractors, whether such injury, death, damage or loss arises through negligence or otherwise, except in the case of willful misconduct.



## **Damages**

The Parties shall not be liable to each other for consequential, punitive, special and incidental damages or other indirect damages, whether arising in contract (including warranty), tort (whether or not arising from the negligence of a Party) or otherwise, except to the extent such damages are caused by a Party's willful misconduct.

## **Extension of Waiver of Liability**

The Buyer agrees to extend the waiver of liability set forth above to subcontractors at any tier under a Project Agreement by requiring them, by contract or otherwise, to agree to waive all claims described above against the Government, CAO, Seller, and Seller's customer. The Buyer also agrees to flow down the damages limitation set forth above to subcontractors at any tier.