

Flowdown Attachment
FDA-2019.204

OTA / Prime Contract Number: W15QKN-15-9-1004
RFP / Contract No.: NSC-19-9010
DPAS Rating: None
SAS DUNS number: 799855812

The following customer contract requirements apply to this Purchase Order to the extent indicated below and are hereby incorporated into the Purchase Order by reference:

In all 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 its prime 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 prime contract Contracting Officer or duly authorized representative, such as in FAR 52.227-1 and FAR 52.227-2 and (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 clauses in accordance with the flow down requirements specified in such clauses.

The following clauses apply to all Purchase Orders, including those for “Commercial Item(s)”, as defined in FAR 2.101:

DFARS 252.204-7012	Safeguarding Covered Defense Information and Cyber Incident Reporting (Oct 2016)	Applicable to all subcontracts, or similar contractual instruments, for operationally critical support, or for which subcontract performance will involve covered defense information, including subcontracts for commercial items, without alteration, except to identify the parties.
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Article VII Confidential Information

Section 8.01 Definitions

“Disclosing Party” means the CMF, NSC PAH, or the Government who discloses Confidential Information as contemplated by the subsequent Paragraphs.

“Receiving Party” means the CMF, NSC PAH, or the Government who receives Confidential Information disclosed by a Disclosing Party.

“Confidential Information” means information and materials of a Disclosing Party which are designated as confidential or as a Trade Secret in writing by such Disclosing Party, whether by letter or by use of an appropriate stamp or legend, prior to or at the same time any such information or materials are disclosed by such Disclosing Party to the Receiving Party. Notwithstanding the foregoing, materials and other information which are orally, visually, or electronically disclosed by a Disclosing Party, or are disclosed in writing without an appropriate letter, stamp, or legend, shall constitute Confidential Information or a Trade Secret if such Disclosing Party, within 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" includes any information and materials considered a Trade Secret by the PAHs. "Trade Secret" means all forms and types of financial, business, scientific, technical, economic, or engineering or otherwise proprietary information, including, but not limited to, patterns, plans, compilations, program devices, formulas, designs, prototypes, methods, techniques, processes, procedures, programs, or codes, whether tangible or intangible, and whether or how stored, compiled, or memorialized physically, electronically, graphically, photographically, or in writing if -

(a) The owner thereof has taken reasonable measures to keep such information secret; and (b) The information derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable through proper means by, the public.

Section 8.02 Exchange of Information

The Government may from time to time disclose Government Confidential Information to the NSC for use by the CMF, NSC member entities or PAHs in connection with the TRQ process or particular projects, and the NSC or CMF on behalf of the CMF, NSC member entities or PAHs may from time to time disclose information that is Trade Secret or Confidential Information to the Government in connection with a project proposal, TDL, Project Agreement, or performance there under. Neither the Government nor NSC on behalf of the NSC member entities or PAHs nor the CMF shall be obligated to transfer Confidential Information or Trade Secrets independently developed by the Government or the NSC member entities or PAHs or the CMF absent an express written agreement between the Parties providing the terms and conditions for such disclosure.

Section 8.03 Confidentiality and Authorized Disclosure

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

- (a) Are received or become available without restriction to the Receiving Party under a proper, separate agreement,
- (b) Are not identified with a suitable notice or legend per Article entitled "Confidential Information" herein,
- (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,
- (g) 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.

Section 8.04 Return of Proprietary Information

Upon request by a Disclosing Party that made a disclosure of Trade Secrets to the Government, the CMF or another PAH, the Government or the other NSC Member Organization shall promptly return all copies and other tangible manifestations of the Confidential Information or Trade Secrets disclosed. Upon request by the Government, the Receiving Party shall promptly return all copies and other tangible manifestations of the Confidential Information disclosed by the Government. As used in this section, tangible manifestations include human readable media as well as magnetic and digital storage media.

Section 8.05 Term

The obligations of the Receiving Party under this Article shall continue for five (5) years from the conveyance of the Confidential Information.

Section 8.06 Flow Down

The PAH shall flow down the requirements of this Article VIII to their respective personnel, member entities, agents, sub-recipients at all levels, receiving such Confidential Information or Trade Secrets under this OTA.

Article X Patent Rights

Section 10.01 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 the NSC's PAH or its sub-recipients of any tier conceived or first actually reduced to practice in the performance of work on a Project Agreement under this Agreement.

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

Section 10.02 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, paid-up 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.

Section 10.03 Invention Disclosure, Election of Title, and Filing of Patent Application

(a) The PAH shall disclose each Subject Invention to the CMF, who will forward the disclosure to the Government, within four (4) months after the inventor discloses it in writing to his company personnel responsible for patent matters. The disclosure to the CMF shall be in the form of a written report and shall identify the Agreement under which the invention was made and the identity of the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding to the extent known at the time of the disclosure, of the nature, purpose, operation, and the physical, chemical, biological or electrical characteristics of the invention. The disclosure shall also identify any publication, sale, or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure.

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

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

(d) After considering the position of the CMF on behalf of the PAH, a request for extension of the time for disclosure election, and filing under this Article X, Section 10.03, may be approved by ACC-NJ, which ACC-NJ approval shall not be unreasonably withheld.

Section 10.04 Conditions When the Government May Obtain Title

Upon written request to the CMF, the PAH shall convey to the Government title to any Subject Invention under any of the following conditions: (a) If the PAH fails to disclose or elects not to retain title to the Subject Invention within the times specified in Section 10.03 of this Article X, Patent Rights; provided, that the 30 July 2016 Government may only request title within 60 (60) days after learning of the failure of the PAH to disclose or elect within the specified times.

(b) In those countries in which the PAH fails to file patent applications within the times specified in Section 10.03 of this Article X, Patent Rights; provided, that if the PAH has filed a patent application in a country after times specified in Section 10.03 of this Article X, Patent Rights, but prior to its receipt of the written request by the Government through the NSC, the PAH shall continue to retain title in that country; or (c) 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.

Section 10.05 Minimum Rights to the NSC PAH and Protection of the NSC PAH's Right to File

The Parties agree that: (a) The PAH shall retain a non-exclusive, royalty-free license throughout the world in each Subject Invention to which the Government obtains title, except if the PAH fails to disclose the invention within the times specified in Section 10.03 of this Article X, Patent Rights. PAH's license extends to the domestic (including Canada) subsidiaries and affiliates, if any, of the PAH within the corporate structure of which the PAH is a party and includes the right to grant licenses of the same scope to the extent that NSC 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 business to which the invention pertains. Government approval for license transfer shall not be unreasonably withheld. (b) The PAH domestic license may be revoked or modified by the Government to the extent necessary to achieve expeditious practical application of the Subject Invention pursuant to an application for an exclusive license submitted consistent with appropriate provisions

at 37 CFR Part 404. This license shall not be revoked in that field of use or the geographical areas in which the PAH has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of the Government to the extent the PAH, its licensees, or the subsidiaries or affiliates have failed to achieve practical application in that foreign country. (c) Before revocation or modification of the license, the Government shall furnish the CMF, and the CMF shall forward to the PAH, a written notice of the Government's intention to revoke or modify the license, and the PAH 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.

Section 10.06 Action to Protect the Government's Interest

(a) Inventing PAHs are required to execute or have executed and promptly deliver to the CMF 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 Section 10.04 of this Article X, Patent Rights, and to enable the Government to obtain patent protection throughout the world in that Subject Invention. (b) The PAH agrees to require, by written agreement, that its employees working on program Project Agreements, other than clerical and non-technical employees, agree to disclose promptly in writing, to personnel identified as responsible for the administration of patent matters and in a format acceptable to the CMF, each Subject Invention made under this Agreement in order that the CMF on behalf of the PAH can comply with disclosure provisions of Section 10.03 of the Article X, Patent Rights, and to execute all papers necessary to file the patent applications on the Subject Invention and to establish the Government's rights in the subject invention. The PAHs and 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. (c) The PAH shall notify the CMF of their decision not to continue the prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceedings on a patent, in any country, not less than thirty (30) days before the expiration of the response period required by the relevant patent office. (d) 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. W15QKN-15-9-1004 awarded by the ACC-NJ to the NSC. The Government has certain rights in the invention."

Section 10.07 Lower Tier Agreements

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

Section 10.08 Reporting on Utilization of Subject Inventions

The PAH agrees to submit, during the term of the Agreement, periodic reports no more frequently than annually on the utilization of a Subject Invention or on efforts at obtaining such utilization that are being made by 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 agency may reasonably specify. The PAH also agrees to provide additional reports as may be requested by the Government, through CMF, in connection with any march-in proceedings undertaken by the Government in accordance with Section 10.10 of this Article X, Patent Rights. Consistent with 35 U.S.C. § 205, the Government agrees it shall not disclose such information to persons outside the Government without permission of the NSC on behalf of the PAHs.

Section 10.09 Preference for American Industry

Notwithstanding any other provision of the Article X, Patent Rights, the PAH agrees not to 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.

Section 10.10 March-in Rights

The PAH agrees that, with respect to any Subject Invention in which it has retained title, the Government, through CMF, has the right to require the PAH to obtain and 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 licensee itself if the Government determines that: (a) Such action is necessary because the PAH or assignee has not taken effective steps, consistent with the intent of this Agreement, to achieve practical application of the Subject Invention; (b) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the PAH, assignee, or their licensees; (c) Such action is necessary to meet requirements for public use and such requirements are not reasonably satisfied by the PAH, assignee, or licensees; or (d) Such action is necessary because the Agreement required by Section 10.09 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.

Section 10.11 Opportunity to Cure

Certain provisions of this Article X, Patent Rights, provide that the Government may gain title or license to a Subject Invention by reason of PAH's action, or failure to act, within the times required by this Article X, Patent Rights. Prior to claiming such rights (including any rights under Article X, Section 10.10 March-In Rights), the Government will give written notice to the NSC, through its CMF, and CMF will convey such written notice to PAH 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 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, and other factors.

Section 10.12 Background Information

In no event shall the provisions set forth in this Article X apply to any Background Inventions or Patents. PAHs or their subcontractors shall retain the entire right, title, and interest throughout the world to each such Inventions and Patents that each party has brought through NSC to the project issued under this Agreement and the Government shall not have any rights under this Agreement. Projects to be funded under this Agreement will list Background Inventions and Patents anticipated to be used on the project; such listing may be amended by the parties as appropriate to reflect changes in such plans.

Section 10.13 Survival Rights

Provisions of this Article X shall survive termination of this Agreement under Article II. Notwithstanding the terms of this in this Article, differing rights in patents may be negotiated among the Parties to each individual NSC Project Agreement on a case-by-case basis.

Article XI Data Rights

This is a Data Rights Clause specifically tailored for this OTA to address respective rights of the Government and NSC on behalf of its actual or prospective NSC PAHs to such Data as is owned, developed, to be developed or used by an actual or prospective PAH (1) as identified in a NSC member entity(ies) proposal submitted to the Government through the CMF in response to a competitive Government OTA call for proposals, and (2) when such proposal is selected by the Government for funded performance and the NSC Project Agreement is issued by the CMF to that NSC member entity for performance of such Government OTA project.

Section 11.01 Definitions

"Commercial Computer Software" as used in the Article is defined in DFARS 252-227-7014(a)(1) (Jun 1995).

"Commercial Computer Software License" means the license terms under which commercial computer software and Data (as defined in this OTA) is sold or offered for sale, lease or license to the general public.

"Computer Data Base" as used in this Agreement, means a collection of data recorded in a form capable of being processed by a computer. The term does not include computer software.

"Computer program" as used in this Agreement means a set of instructions, rules, or routines in a form that is capable of causing a computer to perform a specific operation or series of operations.

"Computer software" as used in this Agreement means computer programs, source code, source code listings, object code listings, design details, algorithms, processes, flow charts, formulae and related material that would enable the software to be reproduced, recreated or recompiled. Computer software does not include computer data bases or computer software documentation.

"Computer software documentation" means owner's manuals, user's manuals, installation instructions, operating instructions, and other similar items, regardless of storage medium, that explain the capabilities of the computer software or provide instructions for using the software.

"Data" as used in this Article of the Agreement, means computer software, computer software documentation, form, fit and function data, and technical data as defined in this Article.

"Form, fit and function data" means technical data that describes the required overall physical, functional and performance characteristics (along with the qualification requirements, if applicable) of an item, component, or process to the extent necessary to permit identification of physically and functionally interchangeable items.

"Government purpose rights" means the rights to use, modify, duplicate or disclose the "Data" licensed with such rights under this OTA within the Government for United States Government purposes only; and to release or disclose data outside the Government to any authorized persons pursuant to an executed nondisclosure agreement for such persons use, modification, or reproduction for United States Government purposes only. United States Government purposes include Foreign Military Sales purposes. Under this Agreement, the period of Government purpose rights shall be no less than ten (10) years and during such time the PAH developing or providing such Data to the Government with government purpose rights shall have the sole and exclusive right to use such Data for commercial purposes. In the event this Data is used to perform another project issued to that PAH under this OTA during this ten (10) year period, the period of government purpose rights shall be extended an additional ten (10) years starting with the date of completion of performance of the additional project.

"Limited rights" as used in this Article is as defined in DFARS 252.227-7013(a)(13) (Nov 1995).

"Restricted rights" as used in this Article is as defined in DFARS 252.227-7014(a)(14) (Jun 1995).

“Specially Negotiated License Rights” are those rights to Data that have been specifically negotiated between the Government and the NSC on behalf of the member entity or PAH whose proposal is selected by the Government under a call for proposals issued under the OTA.

“Technical data” means recorded information, regardless of the form or method of the recording, of a scientific or technical nature (including computer software documentation). The term does not include computer software or data incidental to contract administration, such as financial and/or management information.

“Unlimited rights” means the rights to use, modify, duplicate, release, or disclose Data, in whole or in part, in any manner, and for any purpose whatsoever, and to have or authorize others to do so.

Section 11.02 Data Categories

1. Category A is the Data developed and paid for totally by private funds, or the PAH's (or its subcontractor's) IR&D funds and it is Data to which the PAH (or its subcontractor) retains all rights. Category A Data shall include, but not be limited to, (a) Data as defined in this Article and any designs or other material provided by the PAH for a project under this Agreement which was not developed in the performance of work under that project, and for which the PAH retains all rights.

(b) Any initial Data or technical, marketing, or financial Data provided at the onset of the project by any of the PAHs. Such Data shall be marked “Category A” and any rights to be provided to the Government for such Data under a specific project shall be as identified in the proposal submitted to the Government and included into the Government OT TDL and CMF issued NSC Project Agreements.

2. Category B is any Data developed under this OTA with mixed funding, i.e. development was accomplished partially with costs charged to a PAH's indirect cost pools and/or costs not allocated to a PAH's Project Agreement under this OTA, and partially with Government funding under this OTA. Any Data developed outside of this OTA whether or not developed with any 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.

3. Category C is any Data developed exclusively with Government funds under this OTA. Research and Development performed was not accomplished exclusively or partially at private expense. Under this category, (a) the Government will have Government Purpose License Rights in Data developed exclusively with Government funds under a project funded by the Government under this OTA that is: (i) Data pertaining to an item, component, or process which has been or will be developed exclusively with Government funds; (ii) Studies, analyses, test data, or similar data produced for this contract, when the study, analysis, test, or similar work was specified as an element of performance; (iii) Data created in the performance of the OTA that does not require the development, manufacture, construction, or production of items, components, or processes; (iv) Form, fit, and function data; (v) Data necessary for installation, operation, maintenance, or training purposes (other than detailed manufacturing or process data); (vi) Corrections or changes to technical data furnished to the Contractor by the Government; The Government can only order such Data as is developed under the OTA project where the order request is made within one (1) year following OTA project completion. In the event the Government orders such Data, it shall pay the PAH the reasonable costs for all efforts to deliver such requested Data, including but not limited to costs of locating such Data, formatting, reproducing, shipping, and associated administrative costs. (b) The Government shall have unlimited rights in Data (i) Otherwise publicly available or that has been released or disclosed by PAH without restrictions on further use, release or disclosure, other than a release or disclosure resulting from the sale, transfer, or other assignment of interest in the Data to another party or the sale or transfer of some or all of a business entity or its assets to another party; (ii) Data in which the Government has obtained unlimited rights under another Government contract or as a result of negotiations; or (iii) Data furnished to the Government, under this or any other Government contract or subcontract thereunder, with— (1) Government purpose license rights or limited rights and the restrictive condition(s) has/have expired; or (2) Government purpose rights and the PAH's exclusive right to use such Data for commercial purposes under such contract or subcontract has expired. (c) However, any Data developed outside of this OTA whether or not developed with any 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. (d) Further, the Government's rights to Commercial Computer Software and Data licensed under a Commercial Computer Software License under this OTA, and the treatment of Data relating thereto, shall be as set forth in the Commercial Computer Software License. 4. The parties to this Agreement understand and agree that the CMF shall require PAHs stamp all documents in accordance with this Article and that the Freedom of Information Act (FOIA) and Trade Secrets Act (TSA) apply to Data.

Section 11.03 Allocation of Principal Rights

1. The Government shall have no rights to Category A Data.

2. The Government shall normally have immediate Government Purpose License Rights to Category B or C Data upon project or Agreement completion (whichever is earlier), except that (a) where the PAH whose Data it is, is a small business as defined under the Small Business Innovation Research Program (SBIR) under 15 U.S.C. 638, and such data was developed under a project designated by the Government in the RPP as an SBIR program project, such PAH automatically shall be entitled to a delay in the start of the Government Purpose Rights period for at least five (5) years from project completion, or such longer period as may be negotiated among the Government and NSC on behalf of the PAH, and (b) An PAH may request a delay of the start of Government Purpose Rights in Category B or C Data for a

period not to exceed five (5) years from project or Agreement completion (whichever is earlier). Such requests will only be made in those cases where the PAH has provided information from the affected actual or prospective PAH demonstrating the need for this additional restriction on Government use and shall be submitted to the CMF who will forward the request to the ACC-NJ AO for approval, which approval shall not be unreasonably withheld. In the event of any dispute regarding approval of this request, the parties agree to treat this as a dispute and shall follow the provisions of Article VII, Disputes. (c) for Article XI, Section 11.02.3(c) Category C Data, the Government shall have only the rights established under prior agreements.

(d) for Article XI, Section 11.02.3(d) Category C Data, the Government shall only have the rights set forth in the Commercial Computer Software Data license agreement. 3. Data that will be delivered, furnished, or otherwise provided to the Government as specified in a specific project award funded under this Agreement, 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. 4. Each proposal submitted by the PAH in response to a Government call for proposals under this OTA shall include a list of the Category A, B and C Data to be used or developed under the proposal if selected. Rights in such Data shall be as established under the terms of this Agreement, unless otherwise asserted in the proposal and agreed to by the Government. The CMF will incorporate the list of Category A, B and C Data and the identified rights therefor in the award document. Following issuance of an OT TDL and subsequent NSC CMF issuance of the Project Agreement to the Government selected NSC member entity(ies) (the PAH), the PAH shall update the list to identify any additional, previously unidentified, Data if such Data will be used or generated in the performance of the funded work. Rights in such Data shall be as established under the terms of this Agreement, unless otherwise asserted in a supplemental listing and agreed to by the Government.

Section 11.04 Marking of Data

Except for Data delivered with unlimited rights, Data to be delivered under this Agreement subject to restrictions on use, duplication or disclosure shall be marked with the following legend: Use, duplication, or disclosure is subject to the restrictions as stated in the Agreement between the U.S. Government and the NSC, Agreement No. W15QKN-15-9-1004, Project Title and the NSC Project Agreement with [insert name of company] No. _____. It is not anticipated that any Category A Data will be delivered to the Government under this Agreement. In the event commercial computer software and Data is licensed under a commercial computer software license under this OTA, a Special License rights marking legend shall be used as agreed to by the parties. The Government shall have unlimited rights in all unmarked Data. In the event that an PAH learns of a release to the Government of its unmarked Data that should have contained a restricted legend, the PAH will have the opportunity to cure such omission going forward by providing written notice to the CMF who will forward the notice to the AO within three (3) months of the erroneous release.

Section 11.05 Copyright

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 individual PAH(s). The PAH(s) hereby grant to the U.S. Government a non-exclusive, non-transferable, royalty-free, fully paid-up license to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, for governmental purposes, any copyrighted materials developed under this agreement, and to authorize others to do so.

In the event Data is exchanged with a notice indicating that the Data is protected under copyright as a published, copyrighted work and it is also indicated on the Data that such Data existed prior to, or was produced outside of this Agreement, the Party receiving the Data and others acting on its behalf may reproduce, distribute, and prepare derivative works for the sole purpose of carrying out that Party's responsibilities under this Agreement with the written permission of the Copyright holder. Except that copyrighted Data that existed or was produced outside of this Agreement and is unpublished - having only been provided under licensing agreement with restrictions on its use and disclosure - and is provided under this Agreement shall be marked as unpublished copyright in addition to the appropriate license rights legend restricting its use, and treated in accordance with such license rights legend markings restricting its use. The PAH is responsible for affixing appropriate markings indicating the rights of the Government on all Data delivered under this Agreement. The Government agrees not to remove any copyright notices placed on Data and to include such notices on all reproductions of the Data.

Section 11.06 Data First Produced by the Government:

As to Data first produced by the Government in carrying out the Government's responsibilities under this OTA and which Data would embody trade secrets or would comprise commercial or financial information that is privileged or confidential if obtained from the PAH, such Data will, to the extent permitted by law, be appropriately marked with a suitable notice or legend and maintained in confidence by the CMF and PAH to whom disclosed for three (3) years after the development of the information, with the express understanding that during the aforesaid period such Data may be disclosed and used by the CMF or PAH, including its respective employees or subcontractors of any tier, (under suitable protective conditions) by or on behalf of the Government for Government purposes only.

Section 11.07 Prior Technology

Government Prior Technology: In the event it is necessary for the Government to furnish the CMF or any PAH, including their respective employees or their subcontractors of any tier, 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 only for the purpose of carrying out their responsibilities under this Agreement. Data protection will include proprietary markings and handling, and the signing of non-disclosure agreements by the CMF, PAHs, PAH subcontractors of any tier and their respective employees to whom such Data is provided for use under the OTA. Upon completion of activities under this Agreement, such Data will be disposed of as requested by the Government.

CMF and PAH Prior Technology: In the event it is necessary for the CMF or any 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. Data protection will include proprietary markings and handling, and the signing of nondisclosure agreements by such Government Contractors or contract employees. Neither the CMF nor PAH shall be obligated to provide Data that existed prior to, or was developed outside of this Agreement to the Government. Upon completion of activities under this Agreement, such Data will be disposed of as requested by the CMF on behalf of itself or PAHs.

Oral and Visual Information: If information which the PAHs, their subcontractors of any tier and their respective employees) 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 the Government and/or CMF, the exchange of such information must be memorialized in tangible, recorded form and marked with a suitable notice or legend, and furnished to the Government and/or CMF within ten (10) calendar days after such oral or visual disclosure, or the Government and/or CMF shall have no duty to limit or restrict, and shall not incur any liability for any disclosure and use of such information. Upon Government and/or CMF request, additional detailed information about the exchange will be provided subject to restrictions on use and disclosure. Disclaimer of Liability: Notwithstanding the above, neither the Government nor the CMF shall be restricted in, nor incur any liability for, the disclosure and use of: I. Data not identified with a suitable notice or legend as set forth in this Article; nor II. Information contained in any Data for which disclosure and use is restricted under Article VIII entitled "Confidential Information" above, if such information is or becomes generally known without breach of the above, is properly known to the Government or CMF or is generated by the Government or CMF independent of carrying out responsibilities under this Agreement, is rightfully received from a third party without restriction, or is included in Data PAH has furnished, or is required to furnish to the Government or CMF without restriction on disclosure and use. Marking of Data: Any Data delivered under this Agreement shall be marked with a suitable notice or legend. Notwithstanding the Paragraphs in this Article, differing rights in Data may be negotiated among the Parties to each individual project on a case-by-case basis.

Section 11.08 Lower Tier Agreements

The PAH shall include this Article, suitably modified to identify the parties, in all subcontracts or lower tier agreements, regardless of tier, or experimental, developmental, or research work.

Section 11.09 Survival Rights

Provisions of this Article shall survive termination of this Agreement under Article II. Notwithstanding the terms of this in this Article, differing rights in data may be negotiated among the Parties to each individual NSC Project Agreement on a case-by-case basis.

Article XII. Export Control

Section 12.01 Export Control

A. Information subject to Export Control Laws/International Traffic in Arms Regulation (ITAR): Public Law 90-629, « Arms Export Control Act, » as amended (22 U.S.C. 2751 et. seq.) requires that all unclassified technical data with military application may not be exported lawfully without an approval, authorization, or license under EO 12470 or the Arms Export Control Act and that such data require an approval, authorization, or license under EO 12470 or the Arms Export Control Act. For purposes of making this determination, the Military Critical Technologies List (MCTL) shall be used as general guidance. All documents determined to contain export controlled technical data will be marked with the following notice: WARNING- this document contains technical data whose export is restricted by the Arms Export Control Act (Title 22, U.S.C., and Sec 2751, et seq.) or the Export Administration Act of 1979, as amended, Title 50, U.S.C., App. 2401 et seq. Violations of these export laws 40 July 2016 are subject to severe criminal penalties. Disseminate in accordance with provision of DOD Directive 5230.25.

B. Flowdown.

The PAH shall include this Article, suitably modified, to identify all Parties, in all Project Agreements or 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.

Article XVII. Security & Opsec

Work performed by the PAH under an NSC Project Agreement may involve access to Controlled Unclassified Information (CUI). All Controlled Unclassified Information (CUI) developed under this Agreement will be managed in accordance with DoD Manual 5200.01, Volume 4 dated February 24, 2012. Contractor personnel shall comply with

applicable Technology Protection Plans (TPP), Interim Program Protection Plans (IPPP) and/or Program Protection Plans (PPP). If a Technology Project involves a Controlled Unclassified Information (CUI) effort, the below listed Department of Defense Directives, Federal Acquisition Regulation (FAR) and the Defense Federal Acquisition Regulation Supplement (DFARS), and ARDEC clauses will be incorporated into the NSC Project Agreements by reference with the same force and effect as if they were given in full text.

1. Each Technology Project Scope of Work will be provided by the Agreement Officer Representative (AOR) to their local Security Office prior to award for review.

2. Specific applicable policies, instructions, and regulations will be identified in each Technology Project. Throughout the life of the Agreement, if any policy, instruction, or regulation is replaced or superseded, the replacement or superseding version shall apply. The following is a snapshot of key regulatory documents, policies, regulations, etc. applicable at time of award.

a) DoDM 5200.01 DoD Information Security Program, 24 Feb 12

b) DoD 5200.2-R Personnel Security Regulation, Jan 87

c) DoDD 5220.22 National Industrial Security Program, 28 Feb 06

d) DoDI 5200.01, Information Security Program and Protection of Sensitive Compartmented Information, 9 Oct 08

e) DoD 5400.7-R, DOD Freedom of Information Act, Sept 98

f) DoDD 2000.12, Antiterrorism Program, 18 Aug 03

g) ARDEC Clause 68, Identification of Contractor Employees (requirement is only applicable to contractor employees working on Picatinny Arsenal)

h) ARDEC Clause 18, Physical Security Standards for Sensitive Items (Required when AA&E apply)

i) ARDEC Clause 70, (FOUO) Release of Information Research and Development (reference FAR 2.101)

j) FAR Clause 4.402, Safeguarding Classified Information Within Industry

k) FAR Clause 52.204-2, Security Requirements, Aug 1996 42 July 2016

3. For all NSC Project Agreements, the following statement shall be flowed to the NSC member entities unless otherwise stated within the NSC Project Agreements.

a) Classification guidance for requirement – “The security level for this agreement is UNCLASSIFIED.”

4. Anti-Terrorism Level I Training. This provision is for PAH employees with an area of performance within an Army controlled installation, facility or area. All PAH employees requiring access to Army installations, facilities and controlled access areas shall complete AT Level I awareness training within sixty (60)-calendar- days after Project start date or effective date of incorporation of this requirement into the Project, whichever is applicable. PAH shall submit certificates of completion for each affected employee and PAH employee, to the AOR or to the Agreements Officer, if an AOR is not assigned, within thirty (30)-calendar-days after completion of training by all employees or personnel. AT level I awareness training is available at the following website: <https://atlevel1.dtic.mil/at>.

5. Access and General Protection/Security Policy and Procedures. This standard language text is for PAH employees with an area of performance within an Army controlled installation, facility or area. PAH employees shall comply with applicable installation, facility and area commander installation/facility access and local security policies and procedures (provided by government representative). The PAH also shall provide all information required for background checks to meet installation access requirements to be accomplished by installation Provost Marshal Office, Director of Emergency Services or Security Office. The PAH workforce must comply with all personal identity verification requirements as directed by DOD, 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 PAH security matters or processes.

6. Anti-Terrorism Awareness Training for PAH Personnel Traveling Overseas. This standard language text requires U.S.-based PAH employees to make available and to receive Government provided area of responsibility (AOR) specific AT awareness training as directed by AR 525-13. Specific AOR training content is directed by the combatant commander with the unit Antiterrorism Officer (ATO) being the local point of contact.

7. iWATCH Training. This standard language is for PAH employees with an area of performance within an Army-controlled installation, facility or area. The PAH shall brief all employees on the local iWATCH program (training standards provided by the requiring activity ATO). 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 sixty (60)-calendar-days of an NSC Project Agreement award and within sixty (60)-calendar- days of new employees' commencing performance with the results reported to the AOR NLT thirty (30)-calendar-days after NSC Project Agreement award.

8. Impact on PAH performance during increased FPCON during periods of increased threat. During FPCONs Charlie and Delta, services may be discontinued / postponed due to higher threat. Services will resume when FPCON level is reduced to Bravo or lower.

9. Random Antiterrorism Measures Program (RAMP) participation. PAH personnel working on an installation are subject to participation in Installation RAMP security program (e.g. vehicle searches, wearing of ID badges, etc.).

10. PAH Employees Who Require Access to Government Information Systems. All PAH employees with access to a government information system must be registered in the ATCTS (Army Training Certification Tracking System) at commencement of services, and must successfully complete the DOD Information Assurance Awareness prior to access to the IS and then annually thereafter.

11. For Projects that Require an OPSEC Standing Operating Procedure/Plan. The PAH shall develop an OPSEC Standing Operating Procedure (SOP)/Plan within ninety (90)-calendar-days of Project award to be reviewed and approved by the responsible Government OPSEC officer, per AR 530- 1, Operations Security. This plan will be submitted by the PAH to the CMF who will submit it, on behalf of the PAH, to the AO for coordination of approvals. This SOP/Plan will include the Government's critical information, why it needs to be protected, where it is located, who is responsible for it and how to protect it. In addition, the PAH shall identify an individual who will be an OPSEC Coordinator. The PAH will ensure this individual becomes OPSEC Level II certified per AR 530-1.

12. For Projects that Require OPSEC Training. Per AR 530-1, Operations Security, new PAH employees assigned by the PAH(s) to perform under a NSC Project Agreement must complete Level I OPSEC awareness training within thirty (30)-calendar-days of their reporting for duty. All PAH employees performing under an OPSEC-designated Technology Project must complete annual Level I OPSEC awareness training. Level I OPSEC awareness training is available at the following website: <http://cdsetrain.dtic.mil/opsec/>.

13. For Information assurance (IA)/information technology (IT) training. All PAH employees must complete the DoD IA awareness training before issuance of network access and annually thereafter. All PAH(s) working IA/IT functions must comply with DoD and Army training requirements in DoDD 8570.01, DoD 8570.01-M and AR 25-2 within six (6) months of employment.

14. For information assurance (IA)/information technology (IT) certification. Per DoD 8570.01-M, DFARS 252.239-7001 and AR 25-2, the PAH employees supporting IA/IT functions shall be appropriately certified upon Project Agreement award. The baseline certification as stipulated in DoD 8570.01-M must be completed upon NSC Project Agreement award.

15. For PAH personnel Authorized to Accompany the Force. DFARS Clause 252.225-7040, Contractor Personnel Authorized to Accompany U.S. Armed Forces Deployed Outside the United States. The clause shall be used in Projects that authorize PAH 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 AT/OPSEC related topics: required compliance with laws and regulations, pre-deployment requirements, required training (per combatant command guidance) and personnel data required.

16. For Projects Requiring Performance or Delivery in a Foreign Country, DFARS Clause 252.225-7043, Antiterrorism/Force Protection for Defense Contractors Outside the U.S. The clause shall be used in Projects that require performance or delivery in a foreign country. This clause applies to both contingencies and non-contingency support. The key AT requirement is for non-local national PAH personnel to comply with theater clearance requirements and allows the combatant commander to exercise oversight to ensure the PAH's compliance with combatant commander and subordinate task force commander policies and directives.

17. For Projects requiring the PAH to obtain U.S. Government Common Access Cards, installation badges, and/or access passes, the PAH shall return all issued U.S. Government Common Access Cards, installation badges, and/or access passes to the COR when the Project is completed or when the PAH employee no longer requires access to the installation or facility.

18. For Projects that require access to Potential Critical Program Information (PCPI) / Critical Program Information (CPI): a) The PAH shall comply with the associated Interim Program Protection Plan (IPPP) / Program Protection Plan (PPP) / or Technology Protection Plan (TPP). The PAH shall comply with DOD, DA and AMC technology protection requirements in DODI 5200.39, AR 70-1, DA PAM 70-3 and AMC-R-380-13.

19. Work by the NSC Project Agreement Holder/Consortium Member (PAH) under NSC Project Agreements may involve access to Controlled Unclassified Information (CUI) as well as information classified as "Confidential", "Secret", or "Top Secret". The PAH and their employees who work on such NSC Project Agreements shall comply with (1) the Security Agreement (DD Form 441), including the National Industrial Security Program Operation Manual (DOD 5220.22M), (2) any revisions to that manual that may be issued, and (3) the Agreement security classification specification (DD form 254) if included, and all security requirements including but not limited to OPSEC plans and those security requirements specific to the individual projects. During the course of this Agreement the Parties may determine that information developed by the PAH and/or the Government pursuant to this Agreement shall be treated as classified. Such information shall be classified in accordance with DOD 5220.22M. a) Each Project Scope of Work will be provided by the AOR to the AOR's local Security Office prior to award for review. For classified efforts that Security Office will provide the overall Security Classification Specification (DD Form 254). The PAH will be responsible for providing a copy of any Subcontract Security Classification Specification (DD Form 254) to lower tier awards. b) If an NSC Project Agreement involves a classified effort or a Controlled Unclassified Information (CUI) effort, the following Department of Defense Directives, Federal Acquisition Regulation (FAR) and the Defense Federal Acquisition Regulation Supplement (DFARS) clauses by reference, and local clauses will be incorporated with the same force and effect as if they were given in full text shall be incorporated into this agreement. c) Specific applicable policies, instructions, and regulations will be identified in each NSC Project Agreement. Throughout the life of the agreement, if any policy, instruction, or regulation is replaced or superseded, the replacement or superseding version shall apply. The following is a snapshot of key regulatory documents, policies, regulations, etc. applicable at time of award.

i) DoD 5200.01 DoD Information Security Regulation, 24 Feb 12

ii) DoD 5200.2-R Personnel Security Regulation, Jan 87

- iii) DoDD 5220.22 National Industrial Security Program, 28 Feb 06
 - iv) DoDI 5200.01 Vol 4, Information Security Program and Protection of Sensitive Compartmented Information, 24 Feb 12
 - v) DoD 5400.7-R, DOD Freedom of Information Act, Sept 98
 - vi) DODD 2000.12, Antiterrorism Program, 18 Aug 03
45 July 2016
 - vii) FAR Clause 4.402, Safeguarding Classified Information Within Industry
 - viii) FAR Clause 52.204-2, Security Requirements, Aug 1996
- d) Agreement Structure
- i) Research and Development under these NSC Project Agreements will be in accordance with the Other Transaction Agreement (OTA) between the United States Army Contracting Command – New Jersey (ACC-NJ) and the NSC in care of its Consortium Management Firm (CMF), Advanced Technology International.
 - ii) Within the NSC Project Agreements, sharing of classified information will be on a need to know basis as directed in required NSC Project Agreements.
 - iii) Upon NSC Project Agreement completion or termination, the PAH must:
 - (1) Return ALL classified information received or generated under the Project Agreement;
 - (2) Destroy all of the classified information; or,
 - (3) Request retention for a specified period of time

For all NSC Project Agreements, the following statement shall be flowed to the NSC consortium members unless otherwise stated within the NSC Project Agreements. Classification guidance for requirement – “The security level for this agreement is UNCLASSIFIED.”

Flowdown for OPSEC/Security Requirements:

The PAH shall include the aspects of this Article as they pertain to each Project requirement. Each Technology Project will include specific OPSEC / Security requirements within each SOW and RPP. The requirements delineated within each Technology Project, in turn, shall be included in all sub-tier subcontracts or other forms of lower-tier agreements, regardless of tier.