

## **ARV PPD FLOWDOWN PROVISIONS**

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## ***ARTICLE 1: SCOPE OF THE AGREEMENT***

### **A. Background**

This stand-alone Other Transaction Agreement (OTA) is between Army Contracting Command – Detroit Arsenal (ACC-DTA), herein referred to as the Government, and Textron Systems Corporation herein referred to as “Textron” or contractor. The principal purpose of this OTA is for the completed design maturation and development of pre-production vehicles (PPVs) for the Advanced Reconnaissance Vehicle (ARV). The ARV will be a purpose-built combat vehicle system, mobile on land and water, which can move, sense, communicate, and fight as the manned hub of an unmanned and autonomous systems-enhanced team. This OTA effort will cover the following ARV Family of Vehicles (FOV): ARV Command, Control, Communications, & Computers Unmanned Aerial Systems (ARV-C4UAS), Medium Caliber Autocannon (ARV-30), and ARV-Logistics (ARV-LOG).

The primary deliverables for this proposed prototype project will be the ARV-C4UAS, ARV-30, and ARV-LOG.

The OTA is executed under the authority of 10 U.S.C. § 4022, which authorizes the Secretary of the Army to carry out prototype projects that are directly relevant to enhancing the mission effectiveness of personnel of the Department of Defense or improving platforms, systems, components, or materials proposed to be acquired or developed by the Department of Defense, or to improvement of platforms, systems, components, or materials in use by the armed forces.

### **B. Definitions**

"Academic Research Institution" means accredited institutions (colleges, universities or other educational institutions) of higher learning in the U.S.

“Agreement” or "OTA" refers to the Other Transaction Agreement between the Government and contractor under the authority of 10 U.S.C. § 4022.

“Agreements Officer (AO)” is the United States Army Contracting Command – Detroit Arsenal (ACC-DTA) warranted individual authorized to enter into, administer, or terminate agreements or OTAs for the Government.

“Agreements Officer’s Representative (AOR)” is the individual designated by the Government to monitor all technical aspects. The AOR shall only assist in Agreement administration of the specific project to the extent expressly delegated in writing in the Appointment Letter by the responsible Agreements Officer, and cannot contractually bind the Government.

“Date of Completion” is the date on which all work is completed or the date on which the period of performance ends.

“Development” means the systematic use, under whatever name, of scientific and technical knowledge in the design, development, test, or evaluation of an existing or potential new technology, product or service (or of an improvement in an existing technology, product or service) for the purpose of meeting specific performance requirements or objectives. Development includes the research functions of design engineering, prototyping, and engineering testing.

“Effective Date” means the date when this Agreement is signed and executed by the Agreements Officer for the Government.

“Fiscal Year (FY)” means the Government Fiscal Year period commencing on October 1 and ending September 30 of the following calendar year.

“Milestone” means a scheduled event signifying the completion of a major deliverable or a set of related deliverables as identified in the Statement of Work.

“Nonprofit Research Institution” means a university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. & 501(c)) and exempt from taxation under section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a)), or any nonprofit scientific or educational organization qualified under a State nonprofit organization statute.

“Other Transactions Authority (OTA)” is the term commonly used to refer to the 10 U.S.C. § 4022 authority to enter into transactions other than contracts, grants or cooperative Agreements.

“Parties” means the Government and contractor where collectively identified, and “Party” where each entity is individually identified.

“Payable Milestone” means that once a milestone has been met, the Government can approve payment to the contractor of a predetermined dollar amount in relation to performance of a particular project under the Agreement.

“Signatory Authority” refers to the individual that has the authority to legally bind a party to an Agreement.

“United States Army Contracting Command – Detroit Arsenal (ACC-DTA)” means the Government contracting activity that is designated as the lead Government organization in charge of executing the contractual obligations of the OTA.

### C. Tailored Clauses

In addition to the terms and conditions set forth in this document, this agreement incorporates the tailored FAR and DFARS clauses of Attachment 0055 – Tailored FAR and DFARS Clauses Incorporated Into Agreement by reference, with the same force and effect as if they were given in full text.

#### D. Access to Subcontractors

The Government reserves the right to interface with and visit all suppliers and sub-suppliers of the prime contractor when a representative of the prime contractor is in attendance.

#### E. Government Access to Production and Test Facilities

The contractor and its subcontractors shall provide PM LAV and DCMA personnel unrestricted and unescorted access to all facilities which perform manufacturing or production tasks for products delivered under this agreement, from raw material receiving through to shipping of completed hardware and all processes in between. Any access provided shall be limited to only those areas of the facilities directly related to the performance of this agreement. If these facilities are protected with credentials or badges, the contractor or its subcontractor, as applicable, shall provide these credentials or badges with the required access privileges enabled to the Government personnel to allow them unescorted access to the required facilities while the facilities are producing products for this agreement.

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### ***ARTICLE 2: TERM OF THE AGREEMENT, STOP WORK, AND TERMINATION***

#### A. Stop Work Clause

As directed by the Agreements Officer (AO) by written order to the contractor, the AO may at any time, require it to stop all, or any part, of the work called for under this Agreement for a period of 90 days after the written stop-work order is delivered to the contractor, and for any further period as determined necessary by the AO to which the parties may agree. The contractor may in turn provide a written stop-work order to the subcontractor applicable to the Purchase Order. The order shall be specifically identified as a stop work order issued under this Article. Upon receipt of the stop work order, the subcontractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the stop work order during the period of work stoppage. Within the period of 90 days after the stop work order is delivered to the subcontractor, or within any extension of that period to which the parties have agreed, the contractor shall either:

- (1) Cancel the stop work order, or
- (2) Terminate, in whole or in part, the work covered by the Purchase Order.

If a stop work order issued under this Article is canceled, the subcontractor shall resume work. The contractor may make an equitable adjustment in the delivery schedule, and/or cost

of the Purchase Order. The contractor's share of the Purchase Order shall be modified, in writing, accordingly, if:

- (1) The stop work order results in an increase in the time required for, or in the subcontractor's cost properly allocable to, the performance of any part of the Purchase Order; and
- (2) The subcontractor asserts its right to the adjustment within 30 days after the end of the period of work stoppage; provided the contractor decides the facts justify the action, the contractor may receive and act upon a proposal submitted at any time before final payment under the Purchase Order.

If a stop work order is not canceled and the work covered by the Purchase Order is terminated in accordance with Article 2, the contractor will work with the subcontractor to negotiate an equitable reimbursement in accordance with Article 2.B, "Termination Provisions".

#### B. Termination Provisions

Subject to a reasonable determination that the prototype project will not produce beneficial results commensurate with the expenditure of resources, the Government, in its sole discretion, may terminate performance of work under this Agreement, in whole or in part, if the AO determines that a termination is in the Government's best interest. The AO shall terminate by delivering to the contractor a "Notice of Termination" specifying the extent of the termination and the effective date. The contractor may in turn provide a "Notice of Termination" to the subcontractor applicable to the Purchase Order.

After receipt of a "Notice of Termination", and except as directed by the contractor, the subcontractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due:

- (1) Stop work as specified in the notice.
- (2) Place no further orders (referred to as orders in this clause) for materials, services, or facilities, except as necessary to complete the continued portion of the Purchase Order.
- (3) Terminate all orders to the extent they relate to the work terminated.
- (4) Assign to the contractor, as directed by the contractor, all right, title, and interest of the subcontractor under the orders terminated, in which case the contractor shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.
- (5) With approval or ratification to the extent required by the contractor, settle all outstanding liabilities and termination settlement proposals arising from the

termination of orders; the approval or ratification will be final for purposes of this clause.

- (6) As directed by the contractor, the subcontractor shall:
- i. Transfer title of and deliver to the contractor the fabricated or un-fabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated; and
  - ii. Deliver to the contractor the completed or partially completed plans, drawings, information, and other technical data, computer software, and property that, if the order had been completed, would have been required to be furnished to the contractor, and grant to the Government and contractor license rights in such data in accordance with Article 9, Patent Rights, and Article 10, Data Rights.
- (7) Complete performance of any work not terminated, if applicable.
- (8) Take any action that may be necessary, or that the contractor may direct, for the protection and preservation of the property related to this project that is in the possession of any sub-tiers and in which the contractor has or may acquire an interest.
- (9) Use reasonable efforts to sell, as directed or authorized by the contractor, any property of the types referred to under Article 2.B, Termination Provisions, (6)(a) and (b); except, however, the subcontractor:
- i. Is not required to extend credit to any purchaser, and
  - ii. May arrange for any sub-tiers who were performing the terminated work to acquire the property under the conditions prescribed by, and at prices approved by, the contractor.

The proceeds of any transfer or disposition of Purchase Order property will be applied to reduce any payments to be made by the contractor, including credited to the price or cost of the work, or paid in any other manner directed by the contractor.

In the event of a Termination of the Purchase Order, the contractor and/or Government shall retain or assume all patent rights as described in Article 9, Patent Rights, and all rights in data as described in Article 10, Data Rights.

Failure of the parties to agree to an equitable adjustment shall be resolved pursuant to Article 6, Disputes.

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### ***ARTICLE 3: MODIFICATIONS***

At any time during the term of this Purchase Order that a change in this Purchase Order's SOW, deliverables, or attachments could be beneficial to program objectives, the subcontractor may submit written recommendations for modifications, including justifications to support any changes to the contractor. The subcontractor's written recommendations will detail the technical, chronological, and financial impact of the proposed modification. The contractor shall be responsible for the review and verification of any recommendations to revise or otherwise modify the Purchase Order. Only the contractor has the authority to approve a revision or modification of the Purchase Order's Terms and Conditions, SOW, or deliverables, which will be signed bilaterally between the contractor and the subcontractor.

For minor or administrative Purchase Order modifications the contractor will issue a unilateral Purchase Order modification in which no signature is required by the subcontractor. All other Purchase Order modifications, as identified above, shall be mutually agreed to and approved in writing by the contractor and the subcontractor.

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#### ***ARTICLE 4: FLOW DOWN OF PROVISIONS***

The subcontractor shall flow down all provisions under this document, including Attachment 0055 – Tailored FAR and DFARS Clauses Incorporated Into Agreement, to any and all subcontractors, agents, vendors, or lower tier arrangements that will be a part of accomplishing the requirements within their specific Subcontractor SOW.

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#### ***ARTICLE 5: OBLIGATION AND PAYMENT***

##### **A. Financial Records and Reports**

The subcontractor shall maintain adequate records to account for Federal Funds received under this Purchase Order. All its financial records are subject to examination or audit by the Government for a period not to exceed three (3) years after expiration of the term of the Purchase Order. The subcontractor shall ensure that their relevant financial records are available and subject to examination or audit for a period not to exceed three (3) years after final payment of the Purchase Order. The Government, or designee, shall have direct access to sufficient records and information of the subcontractor to ensure full accountability for all funding under this Purchase Order. Such audit, examination or access shall be performed during business hours on business days upon prior written notice and shall be subject to the security requirements of the audited party. Any audit required during the course of this Purchase Order may be conducted by the Government using Government auditors or, at the request of the subcontractor external CPA accounting firm at the expense of the subcontractor.

## A.1 Records

The term “records” as used in this Article shall include books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items.

## B. Comptroller General Access to Information

As the OTA is expected to result in payments in a total amount in excess of \$5,000,000, the Comptroller General, at the Comptroller General’s discretion, may examine the records of any party to the OTA or any entity that participates in the performance of the OTA.

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## ***ARTICLE 6: DISPUTES***

This Article shall apply only when a dispute arises between the contractor and subcontractor concerning questions of fact or law arising from or in connection with the subcontractor’s scope as directed by the Government, including but not limited to drawings or specifications incorporated into the Purchase Order, a stop-work notice or termination in accordance with Article 2 of this document, or a modification in accordance with Article 3 of this document.

The Parties shall communicate with one another in good faith and in a timely and cooperative manner when raising issues under this Article. Any disagreement, claim or dispute between the Government and contractor concerning questions of fact or law arising from or in connection with this Agreement, whether it involves an alleged breach of this Agreement, shall be raised only under this Article.

Whenever disagreements, disputes or misunderstandings arise, the Parties shall attempt to resolve the issues by discussion and mutual agreement as soon as practicable. In no event shall a disagreement, dispute or misunderstanding that arose more than three (3) months prior to the notification made under this Article constitute a basis for relief under this Article unless the ACC-DTA Director of Ground Combat Systems and Sustainment waives this requirement.

Failing resolution by mutual agreement, the aggrieved Party shall document the disagreement, dispute or misunderstanding by notifying the other Party in writing regarding the relevant facts, identifying unresolved issues, specifying the clarification or remedy sought, and documenting the rationale as to why the clarification/remedy is appropriate. Ten (10) business days after providing this written notice to the other Party, the aggrieved Party may, in writing, request a decision. The other Party shall submit a written position on the matters in dispute within thirty (30) calendar days after being notified that a decision has been requested. An ACC-DTA Director will conduct a review of the matter in dispute and render the decision in writing within thirty (30) calendar days of receipt of the other Party’s written position. Any such decision is final and binding, unless a Party shall, within thirty (30) calendar days of the decision request further review as provided by this Article.

If requested within thirty (30) calendar days of ACC-DTA Director's decision, further review will be conducted by the contractor's Executive Director and U.S. Government's Senior Contracting Official (SCO). In the event of a decision, or in absence of a decision within sixty (60) calendar days of referral to the contractor's Executive Director and SCO (or such other period as agreed to by the parties), either Party may pursue any right or remedy provided by law, including but not limited to the right to seek extraordinary relief under Public Law 85-804. Alternatively, the Parties may agree to explore and establish an Alternate Disputes Resolution procedure to resolve this dispute.

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## ***ARTICLE 7: CONFIDENTIAL INFORMATION***

### **A. Definitions**

“Confidential Information” means information and materials which are designated as Confidential or as a Trade Secret in writing, whether by letter or by use of an appropriate stamp or legend, prior to or at the same time any such information or materials are disclosed by such Disclosing Party to the Receiving Party. Notwithstanding the foregoing, materials and other information which are orally, visually, or electronically disclosed by a Disclosing Party, or are disclosed in writing without an appropriate letter, stamp, or legend, shall constitute Confidential Information or a Trade Secret if the Disclosing Party, within thirty (30) calendar days after such disclosure, delivers to the Receiving Party a written document or documents describing the material or information and indicating that it is confidential or a Trade Secret, provided that any disclosure of information by the Receiving Party prior to receipt of such notice shall not constitute a breach by the Receiving Party of its obligations under this Paragraph. “Confidential Information” also includes any information, and materials considered a Trade Secret by the contractor on its own behalf, or its subcontractors or suppliers.

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

- (1) The owner 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.

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

The Government may from time to time disclose Government Confidential Information to the contractor for use by itself or its subcontractors or suppliers. The contractor, or its subcontractors or suppliers, may from time to time disclose information that is Trade Secret or Confidential Information to the Government in connection with this Agreement, program plan, and payment instructions.

Neither Party shall be obligated to transfer Confidential Information or Trade Secrets independently developed by the Government or the contractor, or their subcontractors or suppliers, absent an express written Agreement between the Parties providing the terms and conditions for the disclosure.

#### C. Confidentiality and Authorized Disclosure

The Receiving Party agrees, to the extent permitted by law, that Confidential Information and Trade Secrets shall remain the property of the Disclosing Party, and that, unless otherwise agreed by the Disclosing Party, Confidential Information and Trade Secrets shall not be disclosed, divulged, or otherwise communicated to third parties or used by for any purposes other than in connection with specified project efforts and the licenses granted in Article 9, Patent Rights, and Article 10, Data Rights and Copyrights. The aforementioned shall not extend to information or materials 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;
- (3) Are lawfully in possession of the Receiving Party without such restriction to the Receiving Party at the time of disclosure, 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 Information or Trade Secrets, as evidenced by written records; or
- (7) Are required by law or regulation to be disclosed, provided, however, that the Receiving Party has given written notice to the Disclosing Party promptly to enable such Disclosing Party to seek a protective order or otherwise prevent further disclosure of such information.

#### D. Return of Proprietary Information

Upon the request of either Party, the other Party shall promptly return all copies and other tangible manifestations of the Confidential Information or Trade Secrets that were disclosed. As used in this section, tangible manifestations include human readable media as well as magnetic and digital storage media.

E. Term

Except to the extent covered by and subject to other provisions of this Agreement, the obligations of the Receiving Party under this Article shall continue for a period of five (5) years after the expiration or termination of this Agreement.

F. Lower Tier Agreements

The Government, the contractor, and the subcontractor shall flow down the requirements of this Article to their respective personnel, agents, and subcontractors at all levels.

G. Program Security

During performance of this agreement, the contractor shall provide protection as required by the DD Form 254, Contract Security Classification Specification, (Attachment 0002), ARV Security Classification Guide (Attachment 0007), and shall require appropriate levels of program security in subcontracts issued hereunder for performance of ARV work.

H. Protection and Disclosure of Information – Public Release

Except for ARV Program information previously approved for public release by the Government under the ARV Program, the subcontractor shall not release any ARV Program information regarding the work performed under this agreement, without first obtaining approval for Public Release as identified in the DD254 and per this clause, outside of (i) the United States Government, (ii) its own facility, (iii) its subcontractors performing ARV work at any tier, (iv) its associate contractors at any tier, and (v) any other individual or entity that is contractually bound to protect ARV Program Information from public release.

The subcontractor shall send all requests for public release approval to the contractor which will in turn submit such requests to the Agreement's Officer, in accordance with the clause at DFARS 252.204-7000. Requests will be reviewed for public release approval and the Agreement's Officer, or authorized representative, will, after appropriate review, either authorize or reject the request to disseminate ARV Program information publicly.

Authorization may be given contingent on specified changes being made to the material for which public release has been requested. Subcontractors and associate contractors shall submit such public release requests through the prime contractor.

In performing this agreement, contractors shall use computer and communications equipment that meets the requirements identified in the DD-254 (if applicable).

## ***ARTICLE 8: PUBLICATION AND ACADEMIC RIGHTS***

### **A. Use of Information**

Subject to the provisions of Article 7, Confidential Information, and other applicable provisions of this Agreement, the Government, the contractor, and the subcontractor shall have the right to publish or otherwise disclose information or data developed by the Government, the contractor, or the subcontractor. The contractor and subcontractor shall include an appropriate acknowledgement of the sponsorship of the projects by the Government in any such publications or disclosures.

### **B. Classified Research Projects**

If a desired publication includes information relating to a Classified project, the provisions of the DoD Security Agreement (DD Form 441), Certificate Pertaining to Foreign Interests (SF 328), and the DoD Contract Security Classification Specification (DD Form 254) apply. These forms can be obtained through the Government. The Government will be responsible for the completion of DD Form 254. The contractor and subcontractor must complete the DD Form 441 and SF 328 and provide them to the Government for review by the proper Government representatives, the Industrial Security Representative at the cognizant Defense Security Service (DSS) office for DD Form 441 and SF 328, and the AMO's local Security office for the DD Form 254.

### **C. Review of Technical Information for Public Release**

The contractor and subcontractor shall not publicly release technical information without written approval from the AO. The subcontractor shall submit to contractor which will in turn submit to the AO and AOR a request for approval to publicly release technical information via email at least thirty (30) calendar days prior to the desired release date. At a minimum, the request shall include the name of the publication or electronic resource that the technical information will appear in, the anticipated date that the information will first appear, a verbatim copy of the proposed text to be released, and any supporting information (technical or otherwise) to assist in the review. The Government reserves the right to request additional information from the contractor and subcontractor in order to evaluate the request. The AO will exercise best efforts to either approve or disapprove the public release of technical information prior to the desired release date; however, the Government makes no promise that the request will be resolved within 30 days.

Where the contractor or subcontractor has Academic Research Institutions performing fundamental research as lower-tier subcontractors, the contractor or subcontractor shall require such lower-tier subcontractors to provide papers and publications to the AO and AOR via email for review and comment at least thirty (30) days prior to the formal paper or publication submission. At a minimum, the request shall include the name of the publication or electronic resource that the technical information will appear in, the anticipated date that the information will first appear, a verbatim copy of the proposed text to be released, and any

supporting information (technical or otherwise) to assist in the review. The Government reserves the right to request additional information from the contractor, subcontractor, or the Academic Research Institution in order to evaluate the request. The Agreements Officer will exercise best efforts to either approve or disapprove the public release of technical information prior to the desired release date; however, the Government makes no promise that the request will be resolved within 30 days.

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 acknowledgement terms:

“This effort was sponsored by the U.S. Government under OTA (contractor to insert number) with (contractor to insert its entity name). The U.S. Government is authorized to reproduce and distribute reprints for Governmental purposes notwithstanding any copyright notation herein.”

Parties to this Agreement are also responsible for assuring that every publication of material based on or developed under this OTA 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.”

#### D. Notices

To avoid disclosure of Confidential Information or Trade Secrets belonging to the Government or the contractor or the loss of patent rights as a result of premature public disclosure of patentable information, the contractor agrees that any proposal to publish or disclose such information provide advance notice to the Government and identify such other parties as may have an interest in the information. The contractor shall notify such parties at least thirty (30) calendar days prior to any submission for publication or disclosure, together with any and all materials intended for publication or disclosure relating to technical reports, data, or information developed by the parties during the term of and pursuant to this Agreement. The Government must notify the contractor of any objection to disclosure within the thirty (30) day period, or the contractor shall be deemed authorized to make the disclosure.

#### E. Filing of Patent Applications

During the aforementioned thirty (30) calendar day period, the contractor shall provide notice to the AO as to whether it desires that a patent application be filed on any invention potentially disclosed in the materials. In the event that the contractor or the Government desires that such a patent be filed, the contractor shall ensure that the publication of the materials is withheld until the occurrence of the first of the following:

- (1) Filing of a patent application covering the invention;

- (2) Written Agreement from the AO and the contractor that no patentable invention is disclosed in such materials; or

Written Agreement from the AO and the contractor that all potentially patentable information is removed from the proposed publication.

F. Lower Tier Agreements

The Government, the contractor, and the subcontractor shall flow down the requirements of this Article to their respective personnel, agents, and subcontractors at all levels.

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***ARTICLE 9: PATENT RIGHTS***

A. Allocation of Principal Rights

Patent Rights under this Agreement shall be as specified in D.1. of Attachment 0055, Tailored FAR and DFARS Clauses Incorporated into Agreement with the following additional modifications:

- (1) As appropriate, replace “the agency” with “Government”; “contract” with “Agreement”; and “Contracting Officer” with “Agreements Officer”.
- (2) The contractor or subcontractor, as applicable, shall elect in writing whether to retain ownership of any subject invention by notifying the Agreements Officer within six (6) months of disclosure. In any case where publication, on sale, or public use has initiated the 1-year statutory period during which valid patent protection can be obtained in the United States, the period of election of title shall no later than 60 days prior to the end of the statutory period.
- (3) The contractor or subcontractor, as applicable, may request an extension to the six (6) month period for ownership election. The Agreements Officer may, in their discretion, extend the ownership election period, but the ownership election period shall not exceed two (2) years from the disclosure of the subject invention.

B. Final Payment

Final payment will not be made until the contractor or subcontractor, as applicable, delivers to the Government all disclosures of subject inventions and confirmatory instruments required by this Agreement and any Purchase Order thereunder.

C. Lower Tier Agreements

The contractor and its subcontractors shall include this Article, suitably modified to identify the parties, in all lower tier agreements (such as subcontracts), regardless of tier, for work

performed under this Agreement.

#### D. Survival

The provisions of this Article shall survive termination of this Agreement under Article 2.

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### ***ARTICLE 10: DATA RIGHTS AND COPYRIGHTS***

#### A. Definitions

Refer to Attachment 0055, Tailored FAR and DFARS Clauses Incorporated into Agreement, for definitions used in Article 10, in addition to those provided below.

“Background Patent” means any U.S. or foreign patent, or U.S. or foreign patent application, or international (PCT) patent application covering an invention or discovery which is not a subject invention (as defined in FAR 52.227-11 or Attachment 0055, D.1) and which is owned or controlled by the offeror/contractor at any time through the completion of this Agreement or to which the offeror/contractor has an interest through inventorship. The specific patent and application numbers and full titles are required to be provided in Attachment 0005, Technical Data, Computer Software Assertion of Restrictions.

“Independent Research and Development (IR&D)” means a contractor's cost that consists of research and development falling within the following areas: (1) basic research, (2) applied research, (3) development, or (4) systems and other concept formulation studies. The term does not include the costs of efforts sponsored by a grant or required in the performance of a contract or an Other Transaction Agreement.

“New information” means information that the offeror or its subcontractor(s) did not know prior to or at the time of award for reasons arising from causes beyond the control and without the fault or negligence of the offeror or its subcontractor(s). The term does not include information that was available to the offeror or its subcontractor(s) but was not known by the offeror's or its subcontractor(s)' failure to conduct reasonable due diligence to discover the information prior to award.

#### B. Allocation of Principle Rights

The Government shall have the level of rights specified in: D.2, D.3, D.9, and E.5 of Attachment 0055 – Tailored FAR and DFARS Clauses Incorporated Into Agreement; any Specifically Negotiated License Agreement attached to this Agreement; and for technical data and computer software necessary for Operations, Maintenance, Installation, and Training (OMIT), as provided in Article 14 of this Agreement.

The contractor and its subcontractors shall deliver the Technical Data and Computer Software required by Attachment 0051, Statement of Work and Attachment 0053, Data Requirements List (DRLs). The contractor and its subcontractors grant Unlimited Rights to

the Government in all Technical Data and Computer Software delivered under this Agreement, unless other restrictions are asserted in accordance with Attachment 0005, Technical Data, Computer Software Assertion of Restrictions, and Article 10.

For all items, components, processes, or computer software developed, enhanced, modified, etc. with Government funding under this OTA, such Government funding shall be considered the equivalent of direct funding allocated to a FAR- or DFARS-based Government contract for data rights purposes.

### B.1 Identification and Assertion of Restrictions

The contractor and its subcontractors shall not deliver or otherwise provide to the Government any technical data or computer software with restrictive markings (or otherwise subject to restrictions on access, use, modification, reproduction, release, performance, display, or disclosure) unless the technical data or computer software has been identified in accordance with the following requirements:

#### B.1.1 Identification and Assertion for Award

In Attachment 0005, Technical Data, Computer Software Assertion of Restrictions the contractor and its subcontractors (including its subcontractors or suppliers at any tier) shall identify all commercial and other than commercial technical data and computer software that it proposed to be delivered or otherwise provided including with unlimited rights.

#### B.1.2 Post-award Updates to the Pre-Award Identification and Assertions

##### Other than Commercial Technologies

Post-award identification and assertion of restrictions on other than commercial technical data and other than commercial computer software including firmware are governed by D.2 and D.3 of Attachment 0055 – Tailored FAR and DFARS Clauses Incorporated Into Agreement, respectively.

##### Commercial Technologies

The contractor and its subcontractors may supplement or revise its pre-award identification and assertion of restrictions in commercial technical data and commercial computer software, including firmware, only if such an expansion or revision would be permitted for other than commercial technical data or other than commercial computer software including firmware pursuant to the preceding paragraph (for example, based on new information or inadvertent omissions that would not have materially affected source selection).

When requested by the contractor, the subcontractor shall provide sufficient information to enable the contractor and/or the AO to evaluate the subcontractor's assertions. The AO reserves the right to add the subcontractor's assertions to Attachment 0055 – Tailored FAR and DFARS Clauses Incorporated Into Agreement, and except for commercial computer software, validate any listed assertion at a later date in accordance with the procedures of D.7 of Attachment 0055 – Tailored FAR and DFARS Clauses Incorporated Into Agreement.

### Modular System Interface

The contractor and its subcontractors shall identify whether the technical data or computer software pertains to a modular system interface.

### B.2 Specific Identification of Technical Data and Computer Software

When identifying and asserting restrictions on technical data and computer software pursuant to the paragraphs of B.1.1 and B.1.2 of Article 10, the contractor and its subcontractors shall-

Ensure that the technical data and computer software are identified by specific reference to the requirement to deliver or provide that technical data or computer software in Attachment 0051, Statement of Work and Attachment 0053, Data Requirements List (DRLs), for example, by referencing the associated DRLs.

Regarding any computer software that is re-hosted, modified, or developed exclusively or partially at Government expense, the asserted restrictions on the associated data license rights shall specifically address source code, object code, executable code, documentation, software support tools, Software/Systems Engineering Environment documentation, Systems/Software Requirement Documents, Interface Control Documents, etc.

Include any relevant information for all technical data and computer software that are or may be required to be delivered or otherwise provided under Attachment 0051, Statement of Work and Attachment 0053, Data Requirements List (DRLs) of this Agreement, including online or remote access to information, and firmware or other computer software to be embedded in hardware deliverables.

### B.3 Copies of Negotiated, Commercial, and Other Non-Standard Licenses

The contractor and its subcontractors shall provide copies of all existing and proposed specially negotiated licenses(s), commercial license(s) including open source software licenses, and any other asserted restrictions other than unlimited rights; Government purpose rights; limited rights; restricted rights; STTR data rights; SBIR data rights for which the protection period has not expired; or Government's minimum rights as specified in D.9 of Attachment 0055 – Tailored FAR and DFARS Clauses Incorporated Into Agreement.

### C. Copyrights

The contractor and its subcontractors reserve the right to protect by copyright original works developed under this Agreement, pursuant to 17 U.S.C. §§ 401 and 402. All such copyrights will be in the name of the contractor or subcontractor, as applicable. The contractor and subcontractor, as applicable, hereby grants to the 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 that information is exchanged with a notice indicating that it is protected under copyright as a published, copyrighted work, and it is also indicated that such information existed prior to, or was produced outside of this Agreement, the Party receiving the information 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.

#### D. Handling of Data

The contractor and subcontractor shall clearly identify the technical data and computer software (and the items, components or processes to which they pertain) that will have asserted restrictions prior to award in Attachment 0005, Technical Data, Computer Software Assertion of Restrictions.

Data First Produced by the Government: Technical data and computer software first produced by the Government under this Agreement that would embody trade secrets or would comprise commercial or financial information that is privileged or confidential if obtained from the contractor will, to the extent permitted by law, be appropriately marked with a suitable notice or legend and maintained in confidence and disclosed and used by the contractor only for the purpose of carrying out their responsibilities under this Agreement.

Prior Technology: If the Government furnishes the contractor or subcontractor with technical data or computer software that existed prior to or was produced outside of this Agreement, and that data or software is identified with a suitable notice or legend, then that data and software shall be maintained in confidence and disclosed and used by the contractor or subcontractor only for the purpose of carrying out their responsibilities under this Agreement. Data and software protection will include proprietary markings and handling, and the signing of non-disclosure Agreements by the contractor Upon completion of activities under this Agreement, the aforementioned data and software shall be disposed of as requested by the Government.

Oral and Visual Information: If information which the contractor or subcontractor considers to embody trade secrets or to comprise commercial or financial information which is privileged or confidential is disclosed orally or visually to the Government, the exchange of such information must be reduced to a tangible, recorded form and marked with a suitable notice or legend, and furnished to the Government within thirty (30) calendar days after such oral or visual disclosure, or the Government shall have no duty to limit or restrict, and shall not incur any liability for any disclosure and use of such information.

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

- (1) Data or software not identified with a suitable notice or legend as set forth in this Article; nor
- (2) Information contained in any data or software for which disclosure and use is restricted under Article 7, Confidential Information, if such information is or becomes generally known without breach of the above, is known to or is generated by the Government independently of carrying out responsibilities under this Agreement, is rightfully received from a third party without restriction, or is included in data or software which the contractor has or is required to furnish to the Government without restriction on disclosure and use.

#### E. Data Marking

Except for technical data and computer software developed or delivered with Unlimited Rights, all technical data and computer software developed or delivered under this Agreement shall have appropriate Data Rights Markings in accordance with D.2 and D.3 of Attachment 0055 – Tailored FAR and DFARS Clauses Incorporated Into Agreement. The Government shall have Unlimited Rights to all unmarked technical data or computer software. In the event that unmarked data or software should have contained a restrictive legend, the contractor can cure the omission by providing written notice to the AO within thirty (30) calendar days of the erroneous disclosure. The Government will not be responsible for any additional disclosures of the inappropriately marked data or software prior to that written notice.

#### F. Lower Tier Agreements

The contractor and its subcontractors shall include this Article, suitably modified to identify the parties, in all lower tier agreements (such as subcontracts), regardless of tier, for work performed under this Agreement.

The provisions of this Article shall survive termination of this Agreement under Article 2.

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## ***ARTICLE 11: FOREIGN ACCESS TO TECHNOLOGY AND EXPORT CONTROL***

### A. Definitions

“Foreign Firm or Institution” means a firm or institution organized or existing under the laws of a country other than the United States, its territories, or possessions. The term includes, for purposes of this Agreement, any agency or instrumentality of a foreign government; and firms, institutions or business organizations which are owned or substantially controlled by foreign governments, firms, institutions, or individuals.

“Technology” means discoveries, innovations, know-how and inventions, whether patentable or not, including computer software, recognized under United States law as intellectual creations to which rights of ownership accrue, including, but not limited to, patents, trade secrets, mask works, and copyrights developed under this Agreement.

#### B. Foreign Access to Technology

The Parties agree that research findings and technology developments arising under this Agreement may constitute a significant enhancement to the national defense, and to the economic vitality of the United States. Accordingly, access to important technology developments under this Agreement by Foreign Firms or Institutions must be carefully controlled. The controls contemplated in this Article are in addition to, and are not intended to change or supersede, the provisions of the International Traffic in Arms Regulations (ITAR), 22 CFR Parts 120 through 130, the DoD Industrial Security Regulation (DoD 5220.22-R), and the Export Administration Regulations (EAR), 15 CFR Parts 730 through 799.

- (1) In order to promote the national security interests of the United States and to effectuate the policies that underlie the regulations cited above, the procedures stated in subparagraphs 2, 3, and 4 below shall apply to any transfer of Technology. For purposes of this Article, a transfer includes a sale of the company, and sales or licensing of Technology. Transfers do not include:
  - (a) Sales of products or components;
  - (b) Licenses of software or documentation related to sales of products or components;
  - (c) Transfer which provides access to Technology to a Foreign Firm or Institution which is an approved source for research under this Agreement provided that such transfer shall be limited to that necessary to allow the firm or institution to perform its approved role under this Agreement; or
  - (d) Releases pursuant to Article 8, Publication and Academic Rights.
- (2) The contractor and subcontractors shall provide timely notice to the Government of any proposed transfers from the contractor and subcontractors of Technology developed under this Agreement to Foreign Firms or Institutions. If the Government determines that the transfer may have adverse consequences to the national security interests of the United States, the contractor, the subcontractor, and the Government shall jointly endeavor to find alternatives to the proposed transfer which obviate or mitigate potential adverse consequences of the transfer but which provide substantially equivalent benefits to contractor or subcontractor, as applicable

- (3) In any event, the subcontractor shall provide written notice to the contractor, to in turn provide notice to the AO and AOR, of any proposed transfer by subcontractor to a Foreign Firm or Institution at least sixty (60) calendar days prior to the proposed date of transfer. Such notice shall cite this Article and shall state specifically what is to be transferred and the general terms of the transfer. Within thirty (30) calendar days of receipt of the contractor's written notification to the AO and AOR, the AO shall advise the contractor whether it consents to the proposed transfer, and the contractor shall inform the subcontractor as soon as reasonably practicable. In cases where the Government does not concur or if within sixty (60) calendar days after its receipt the Government has provided no decision, the subcontractor, through the contractor, may utilize the procedures under Article 6, Disputes. No transfer shall take place until a decision is rendered.
- (4) In the event that a transfer of Technology to Foreign Firms or Institutions which is NOT approved by the Government takes place, the contractor or subcontractor shall (a) refund to the Government those funds paid under this OTA for the development of the Technology and (b) provide to the Government a non-exclusive, irrevocable, paid-up license to practice or have practiced on behalf of the United States the Technology throughout the world. Upon Government request, the contractor or subcontractor shall provide written confirmation of such licenses.

#### C. Export Control

Each Party agrees to comply with U.S. Export regulations. 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 contractor or subcontractor 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. The contractor and subcontractor shall comply with E.13 of Attachment 0055 – Tailored FAR and DFARS Clauses Incorporated Into Agreement.

#### D. Lower Tier Agreements

The contractor and its subcontractors shall include this Article, suitably modified to identify the parties, in all lower tier agreements (such as subcontracts), regardless of tier, for work performed under this Agreement.

The provisions of this Article shall survive termination of this Agreement under Article 2.

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### ***ARTICLE 12: CYBERSECURITY MATURITY MODEL CERTIFICATION (CMMC)***

Pursuant to 32 CFR Part 170, effective 16 Dec 2024, and 48 CFR Cybersecurity Maturity Model Certification (CMMC) acquisition rule, effective 10 November 2025, requires the contractor and its subcontractors to obtain CMMC 2.0 level 3 certification within the prescribed timeline

described in 32 CFR Part 170.3(e) and maintain level 3 certification throughout the period of performance of this agreement and any follow-on production contract/agreement awarded subsequent to completion of the ARV pre-production development phase.

The Government recognizes and acknowledges that costs associated with achieving and maintaining CMMC Level 3 certification are not included in this award. Once the Government requires the implementation of CMMC 2.0 Level 3 requirements as part of this agreement, the contractor will provide formal notice to the subcontractor.

The Government shall not hold the Contractor or its subcontractors in breach of the Agreement in obtaining CMMC 2.0 Level 3 certification for assessor-related delays that include, but are not limited to, Assessor Information Technology outages (website or email connectivity issues), lack of sufficient assessor personnel to process assessments, or assessment request backlogs, provided the contractor has submitted the appropriate request and supporting documentation to DIBCAC within a timeframe that represents the contractor or subcontractor took action to enter the queue for a DIBCAC assessment in a timeframe that would have resulted in compliance, except for delays beyond the control of the contractor or subcontractor, that would allow the process to be completed given no Government delays.

IL5 compliance is required within 12 months of award.. While the Contractor and the Government work jointly to establish IL5 compliance, the Contractor and its subcontractors shall maximize protections, including use the DOD email and encryption/SharePoint sites for storage.

CMMC Level 2 self-assessment is required at agreement award. CMMC Level 2 C3PAO compliance is required no later than September 28, 2026. Nothing in this Article 12 or Attachment 0051, Statement of Work, is intended to revise the requirements of 32 CFR 170.19 or 170.23 with respect to the CMMC Level applicable to FCI or CUI, as appropriate.

#### A. Lower Tier Agreements

The subcontractor shall include this Article, suitably modified to identify the parties and the applicable CMMC requirements in accordance with 32 CFR 170.23, in all lower tier agreements (such as subcontracts), regardless of tier, for work performed under this Agreement.

The provisions of this Article shall survive termination of this Agreement under Article 2.

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### ***ARTICLE 13: SECURITY AND OPERATIONS SECURITY (OPSEC)***

#### A. Security Requirements

The security classification level for this effort is up to and including Secret. The contractor shall have a Secret facility clearance with Secret safeguarding capabilities for receiving, generating, and storing classified information/material/hardware. To the extent classified

information is to be received or generated by a subcontractor, such subcontractor shall have a Secret facility clearance with Secret safeguarding capabilities for receiving, generating, and storing classified information/material/hardware. The contractor or subcontractor personnel with access to classified information under the agreement shall have a Secret security clearance. The level of security clearance is dependent on the level of access needed for employees to perform their duties. Classified information under this Agreement shall be handled in accordance with DoD Manual 5200.01 (DoD Information Security Program: Protection of Classified Information) and all appropriate measures shall be followed. The contractor shall also comply with DD Form 254 (Contract Security Classification Specification), DD Form 441 (DoD Security Agreement), 32 C.F.R. Part 117 (National Industrial Security Program Operating Manual), and all other security requirements including but not limited to OPSEC requirements.

The contractor and subcontractors shall comply with Distribution Statements, as mandated by DoDI 5230.24 (Distribution Statements on Technical Documents).

The Government will identify Covered Defense Information (CDI). The contractor, and subcontractors receiving or generating CDI, shall comply with DFARS 252.204-7012, “Safeguarding Covered Defense Information and Cyber Incident Reporting”, and shall on their enterprise level information systems processing CDI implement the security requirements specified by the National Institute of Standards and Technology (NIST) Special Publication (SP) 800-171, revision 2, IAW DFARS 252.204-7008, “Compliance with Safeguarding Covered Defense Information Controls”. As applicable, the contractor or subcontractor shall also make reasonable best efforts for any of their program’s unique systems, tools and subcontracts requiring flow down. The subcontractor shall notify the contractor within 30 days of award of the standards which are currently not in compliance or any additional security requirements that have not been implemented, including any areas still requiring analysis. The contractor can notify the AO of any security requirements that drive adverse cost or schedule impacts, and the AO can, in their sole discretion, and after coordination with appropriate Government authorities, decide to address those adverse impacts by equitable adjustment. Nothing in this paragraph shall be interpreted to foreclose the contractor from seeking alternate means of complying with the aforementioned CDI requirements.

#### B. Access and General Protection/Security Policy and Procedures

The contractor’s employees and subcontractor employees performing within a DoD installation, facility or area shall comply with applicable installation, facility and area commander installation/facility access and local security policies and procedures (provided by Government representatives). The contractor and subcontractor shall also 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 contractor or subcontractor employees must comply with all personal identity verification requirements as directed by DOD, HQDA and/or local policy. In addition to the changes otherwise authorized, should the Force Protection Condition (FPCON) at any individual facility or installation change, the Government may require

changes in the contractors' or subcontractors' security matters or processes.

For the contractor's or subcontractor's employees requiring Common Access Card (CAC). Before CAC issuance, the contractor or subcontractor employee requires, at a minimum, a favorably adjudicated National Agency Check with Inquiries (NACI) or an equivalent or higher investigation in accordance with Army Directive 2014-05, The contractor or subcontractor employee will be issued a CAC only if duties involve one of the following: (1) Both physical access to a DoD facility and access, via logon, to DoD networks on-site or remotely; (2) Remote access, via logon, to a DoD network using DoD-approved remote access procedures; or (3) Physical access to multiple DoD facilities or multiple non-DoD federally controlled facilities on behalf of the DoD on a recurring basis for a period of six (6) months or more. At the discretion of the sponsoring activity, an initial CAC may be issued on a favorable review of the FBI fingerprint check and a successfully scheduled NACI at the Office of Personal Management.

For the contractor's or subcontractor's employees that do not require CAC but require access to a DoD facility or installation. Contractor and all associated sub-contractors employees shall comply with adjudication standards, and procedures using the National Crime Information Center Interstate Identification Index (NCIC-III) and Terrorist Screening Database (TSDB) (Army Directive 2014-05/AR 190-13), applicable installation, facility and area commander installation/facility access and local security policies and procedures elsewhere in Section C titled as paragraph - Access to the Detroit Arsenal; Identifying Contractor Employees; Non-disclosure Statement; for OCONUS locations, refer to the Status of Forces Agreement and other theater regulations.

C. Notice of Elevated Threat Level Force Protection Condition (FPCON)

Contractor is hereby notified that there is a potential impact on contractor 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 level Bravo or lower.

D. Mission Partner Identity, Credential and Access Management (Mp-Icam)

RESERVED

E. Contractor Employees Who Require Access to Government Information Systems

RESERVED

F. Army Information System (Is) Security Requirement

CONTRACTOR INVESTIGATION/CLEARANCE. Reference AR25-2, AR 380-67, DoD 5200.2-R and Final Credentialing Standards for Issuing Personal Identity Verification Cards under HSPD-12 (31 Jul 2008). All contractors and consultants that access government owned or operated automated information systems, networks, or databases and to safeguard

controlled unclassified information shall have a favorable background investigation as required above references positions designated as IT-I, IT-II or IT-III to perform functions stipulated in contract/agreement scope of work. The minimum investigative requirements are as follows: ADP-I (AKA: IT-1 or Privileged Access) = Tier 5 (T5) / Tier 5 Reinvestigation (T5R)(AKA: Single Scope Background Investigation (SSBI), Single Scope Periodic Reinvestigation (SSPR) or Phased Period Reinvestigation (PPR)); ADP-II (AKA: IT-2 or Limited Privileged Access) = Tier 3 (T3) / Tier 3 Reinvestigation (T3R)(AKA : Access National Agency Check with Written Inquiries and Credit Check (ANACI) or National Agency Check with Law and Credit Check (NACLC)); or ADP-III (AKA: IT-3 or (Non-Privileged Access) = Tier 1 (T1) / Tier 2 with Subject Interview (T2S) or Tier 2 Reinvestigation with Subject Interview (T2RS) (AKA: National Agency Check with Inquiries (NACI)). A Common Access Card (CAC) may be issued on an interim basis based on favorable T1 or a Federal Bureau of Investigation (FBI) National Criminal History Check (fingerprint check) adjudicated by appropriate approved automated procedures or by a trained security or human resource (HR) specialist, and successful submission to the investigative service provider (ISP) of a T1 investigation or an investigation greater in scope than a T1. Investigations will be coordinated with the G2, TACOM LCMC (AMSTA-CSS / 586-282-6262) and investigations will be through the Personnel Security Investigations Portal Center of Excellence (PSIP COE). Non-U.S. citizens shall be Permanent Resident Aliens with requisite investigation. All personnel shall receive and certify to an Information Systems Security Briefing.

#### G. Notice of Random Antiterrorism Measures Program (RAMP)

In accordance with AR 525-13, Contractor or subcontractor personnel working on an Army installation, arsenal, base or other DoD facility (owned or leased by DoD/Department of the Army), are subject to participation in Installation RAMP security program (e.g. vehicle searches, wearing of ID badges, etc).

#### H. Information Assurance (IA)/Information Technology (IT) Training

All contractor employees and associated subcontractor employees must complete the DoD IA awareness training before issuance of network access and annually thereafter.

(a) The Contractor and subcontractor shall ensure that personnel accessing information systems have the proper and current information assurance certification to perform information assurance functions in accordance with DoD 8570.01-M, Information Assurance Workforce Improvement Program. The Contractor and subcontractor shall meet the applicable information assurance certification requirements, including—

- (1) DoD-approved information assurance workforce certifications appropriate for each category and level as listed in the current version of DoD 8570.01-M; and
- (2) Appropriate operating system certification for information assurance technical positions as required by DoD 8570.01-M.

(b) Upon request by the Government, the Contractor or subcontractor shall provide documentation supporting the information assurance certification status of personnel performing information assurance functions.

(c) Contractor or subcontractor personnel who do not have proper and current certifications shall be denied access to DoD information systems for the purpose of performing information assurance functions. Within 10 days of completing the training, the Contractor shall provide certificates/proof of completion to the AOR, if assigned to the agreement, or the AO.

#### I. Lower Tier Agreements

The contractor and its subcontractors shall include this Article, suitably modified to identify the parties, in all lower tier agreements (such as subcontracts), regardless of tier, for work performed under this Agreement.

The provisions of this Article shall survive termination of this Agreement under Article 2.

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### ***ARTICLE 14: DELIVERY AND LICENSE RIGHTS FOR TECHNICAL DATA AND COMPUTER SOFTWARE NECESSARY FOR OPERATION, MAINTENANCE, INSTALLATION, AND TRAINING (OMIT)***

#### A. Definitions

- (1) Installation means infrastructure such as facility planning, site surveys, maintenance facilities, supply chain management, test cells, test stands and benches, tools, support equipment, communications, data links, security, data information technology, and all other data and planning used in the initial standup and continued operations, training, sustainment, and maintenance at all operational sites as well as Field Level Maintenance (as defined below in A(5)) and Depot Level Maintenance (as defined below in A(4)) requirements in support of the ARV Mission Role Variant (MRVs).
- (2) Operation means all procedures, guidance, and instructions for operating, testing, utilization of, familiarization of, emergency use of, and functional use of the ARV MRVs to perform their intended functions. Operation also includes identifying, cataloging, stocking, sourcing, acquiring, procuring, replenishing, packaging, handling, storing, and transporting any of the ARV MRVs.
- (3) Maintenance means all activities to maintain, sustain, inspect, test, service, adjust, troubleshoot, analyze, remove, replace, repair, install, disassemble, reassemble, or overhaul (to maintain in, or restore to, an ARV MRV to a serviceable condition) and to update any changes to the required data. Maintenance includes Depot Level Maintenance (as defined below in A(4)) and Field Level Maintenance (as defined below in A(5)).

- (4) Depot Level Maintenance as used in this agreement includes:
- i. Installation, inspection, localization, isolation, disassembly, interchange, repair, reassembly, alignment, checkout;
  - ii. Maintenance performed, including modification, testing and reclamation, on material requiring repair, major overhaul, or complete rebuild of parts, assemblies, subassemblies, and end items;
  - iii. Computer software maintenance (as defined below in A(6));
  - iv. Prognostic and Predictive Maintenance;
  - v. Maintenance performed for continuous mission performance.
  - vi. Depot Level Maintenance does not include the manufacture of new items but may include the overhaul or refurbishment or remanufacture of existing items.
- (5) Field Level Maintenance is on-platform maintenance exclusively performed in the field. Field Level Maintenance includes inspection, service, lubrication, adjustment, calibration, preventive maintenance, repair, replacement, as well as the replacement of parts, minor assemblies, and subassemblies. Field Level Maintenance includes Prognostic and Predictive Maintenance.
- (6) Computer Software Maintenance as used in this agreement includes the repair of code to accomplish its original purpose, regardless of whether the maintenance results in a new software release version. Software Maintenance, however, does not include enhancement of the source code capability.
- (7) Training means formal and informal classroom, training aids, devices, simulations and simulators (TADSS), embedded training, supervised and unsupervised instruction in the operation, use, testing, supply chain management, or maintenance of the ARV MRVs.
- (8) Required OMIT Data includes all technical data, including development tools (including compilers); computer software (including source code and scripts and libraries used by the source code); computer software documentation; computer databases and graphics pertaining to the ARV MRVs that are required or used when conducting OMIT activities, regardless of whether such activities are performed by military, civilian, or third party agreement personnel.
- (9) Terms used in this Special Agreement Requirement (SAR) that are defined in the following tailored clauses and SAR have the same meaning as set forth in those clauses and this SAR:
- i. D.2 of Attachment 0055 – Tailored FAR and DFARS Clauses Incorporated Into Agreement;
  - ii. D.3 of Attachment 0055 – Tailored FAR and DFARS Clauses Incorporated Into Agreement;

- iii. D.9 of Attachment 0055 – Tailored FAR and DFARS Clauses Incorporated Into Agreement; and
- iv. Attachment 0035 (Specifically Negotiated License Agreement for Advanced Manufacturing).

B. License Rights in Required OMIT Data

- (1) In accordance with D.2 (c)(1)(v) of Attachment 0055 – Tailored FAR and DFARS Clauses Incorporated Into Agreement, the Government is granted unlimited rights in technical data that are necessary for installation, operation, maintenance, and training purposes (other than detailed manufacturing or process data). Similarly, in accordance with D.9 (c)(1)(iv) of Attachment 0055 – Tailored FAR and DFARS Clauses Incorporated Into Agreement, the Government is granted the unrestricted right to use, modify, reproduce, release, perform, display, or disclose technical data, and to permit others to do so, that are necessary for operation, maintenance, installation, or training (other than detailed manufacturing or process data). Pursuant to D.3 (c)(1)(ii) of Attachment 0055 – Tailored FAR and DFARS Clauses Incorporated Into Agreement, the Government is granted unlimited rights in non-commercial computer software documentation required to be delivered under this agreement.
- (2) Required OMIT Data that is commercial computer software shall be delivered to the Government subject to a commercial license.

C. Delivery of Required OMIT Data

- (1) Pursuant to CLIN 1000, the Contractor shall deliver all Required OMIT Data. For all Required OMIT Data, the Contractor shall deliver a complete package of all technical data and computer software to enable the Government (or third-party agreement personnel) to perform maintenance of the ARV MRVs without exception. This includes technical data and computer software used in the installation and deinstallation, and disassembly and reassembly, at the lowest practicable segregable level. Subcontractor shall in the same manner provide, to the Contractor, all such Required OMIT Data associated with the subcontractor's scope of work. Examples of Required OMIT Data that the Government needs to perform Maintenance includes, but is not limited to, the following:
  - i. Detailed technical data and information regarding all systems;
  - ii. Depot Level and Field Level Maintenance technical data (as defined above) and required data regarding all systems, subsystems, and components;
  - iii. Interface Control Documents (ICDs);
  - iv. Computer software source code necessary to perform maintenance of computer programs and scripts;
  - v. Computer software libraries used by source code necessary to perform maintenance of computer programs and scripts;

- vi. Computer software compilers and computer software tools necessary to perform maintenance of computer programs and scripts; and
- vii. Computer software and computer software documentation necessary to perform maintenance on computer programs and scripts.
- viii. For purposes of this agreement, Required OMIT Data includes:
  - a. Logistics analysis and related data
  - b. Prognostics and Predictive Maintenance data and software
  - c. Diagnostics data and software
  - d. Provisioning data
  - e. Packaging data
  - f. Technical Publications data
  - g. FIK and Tools data
  - h. Training data
  - i. Embedded Training data and software
  - j. States and Modes of Operation
  - k. System and sub-system faults
  - l. Raw sensor data
  - m. External communications data
  - n. Vehicle and system control signals

(2) Required OMIT Data of Subcontractors and Suppliers. The Contractor's obligations set forth in this special agreement requirement, Article 14, shall apply regardless of whether the Required OMIT Data is (was) developed, delivered, or otherwise provided by its subcontractors or suppliers at any tier, and regardless of the items commerciality. Therefore, the Contractor shall flow down the requirements set forth in this special agreement requirement, Article 14, and shall include these requirements in its subcontracts or other contractual or legal instruments with its subcontractors or suppliers at any tier.

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## ***ARTICLE 15: TITLE AND DISPOSITION OF PROPERTY***

In this Article, “property” means any tangible personal property other than property actually consumed during the execution of work under this Agreement.

### **A. Title to Property**

RESERVED

### **B. Government Furnished Property (GFP) and Government Furnished Information (GFI)**

The Government may provide the contractor or subcontractor with Government Furnished Property (GFP) and Government Furnished Information (GFI) to facilitate the performance of this Agreement. The GFP and GFI will be specifically identified and contractually inserted. Attachment 0021, Government Furnished Property, and Attachment 0039,

Government Furnished Information, identifies the GFP and GFI that will be provided by the Government during performance of this Agreement.

The GFP and GFI shall be utilized only for performance of this Agreement unless a specific exception is made in writing by the AO. The contractor, and any subcontractor receiving GFP or GFI, shall maintain a current and continuously updated spreadsheet of all GFP and GFI, being utilized under this Agreement.

The contractor, and any subcontractor receiving GFP or GFI, shall assume the risk of and be responsible for any loss or destruction of any GFP and GFI the contractor or subcontractor receives for this Agreement, or damage to, any GFP and GFI while in its possession or control, except for reasonable wear and tear or reasonable and proper consumption. All property shall be returned at the end of the Agreement in as good as condition as when received except for said reasonable wear and tear or in accordance with the provisions of the Agreement regarding its use. The contractor, and any subcontractor receiving GFP or GFI, shall obtain explicit written authorization by the AO for any transfer or disposition of GFP and GFI. The contractor, and any subcontractor receiving GFP or GFI, shall return all GFP or GFI at the end of the Agreement, unless the AO or AOR provides written permission for the contractor or subcontractor to retain the GFP and GFI beyond the end of the Agreement.

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***ARTICLE 16: ASSIGNMENT OF AGENCY***

Neither this Agreement nor any rights or obligations of any party hereunder shall be assigned or otherwise transferred by either Party without the prior written consent of the other Party.

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***ARTICLE 17: REPRESENTATIONS AND WARRANTIES***

Each Party to this Agreement represents and warrants to the other Party that (1) it is free to enter into this Agreement; (2) in doing so, it will not violate any other Agreement to which it is a party; and (3) it has taken all action necessary to authorize the execution and delivery of this Agreement and the performance of its obligations.

Except as expressly provided herein, no Party to this Agreement makes any warranty, express or implied, either in fact or by operation of law, by statute or otherwise, relating to (1) any research conducted under this Agreement; (2) any invention conceived and/or reduced to practice under this Agreement; or (3) any other intellectual property developed under this Agreement. Each Party to this Agreement specifically disclaims any implied warranty of merchantability or warranty of fitness for a particular purpose.

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***ARTICLE 18: LIABILITY OF THE PARTIES***

RESERVED

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***ARTICLE 19: ORDER OF PRECEDENCE***

The terms of this Attachment 0056, ARV Terms and Conditions, and Attachment 0055, Tailored FAR and DFARS, are equivalent in precedence. The terms of this Attachment 0056, ARV Terms and Conditions, and Attachment 0055, Tailored FAR and DFARS, are in addition to any terms and conditions attached to a Purchase Order, Non-Disclosure Agreement, or other agreement between contractor and subcontractor and should be read as consistent with such terms and conditions to the extent practicable.

***ARTICLE 20: EXECUTION***

RESERVED

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***ARTICLE 21: REGULATION REFERENCES***

The contractor and subcontractor shall adhere to the Defense Federal Acquisition Regulation Supplement (DFARS) clauses referenced in Attachment 0051, Statement of Work, during the performance of this agreement. In the event any of the DFARS clauses within Attachment 0051, Statement of Work, conflict with Attachment 0055, Tailored FAR and DFARS Clauses Incorporated into Agreement, Attachment 0055 shall take precedence.

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