Where necessary, to identify the applicable parties under the following clauses, “Project Agreement Holder” shall mean “Seller/Subcontractor,” “Agreement Officer (AO)” shall mean “Lockheed Martin Procurement Representative,” “Project Agreement” means this purchase order/subcontract, “Subagreements” mean “lower-tier agreements,” and “Government” means “Lockheed Martin.” However, the words “Government” do not change: (1) when a right, act, authorization or obligation can be granted or performed only by the Government or the Prime Contract Agreement Officer or duly authorized representative, including but not limited to (i) audit rights to Seller’s proprietary business records or (ii) any indemnification or limitation of liability obligation, which obligation shall remain with the Government; (2) when title to property is to be transferred directly to the Government, and (3) when the Government is granted ownership or other rights to Seller’s intellectual property or technical data.

# Mandatory Flowdown Provisions

# ARTICLE VIII: CONFIDENTIAL INFORMATION

1. 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 NAC on its own behalf or on behalf of the CMF or NAC Members, or their 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.
3. Exchange of Information

The Government may from time to time disclose Government Confidential Information to the NAC for use by the CMF or NAC Members awarded OTIAs, their subcontractors or suppliers, in connection with the Annual Technology Plan and similar processes or particular projects. The CMF, on behalf of the NAC, NAC Members, their subcontractors or suppliers, may from time to time disclose information that is Trade Secret or Confidential Information to the Government in connection with this Contract, a project proposal, DOTC Base Agreements, or performance under an OTIA. Neither Party shall be obligated to transfer Confidential Information or Trade Secrets independently developed by the Parties, absent an express written agreement between the Parties providing the terms and conditions for the disclosure.

1. 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 X, Patent Rights, and Article XI, 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 so as to enable such Disclosing Party to seek a protective order or otherwise prevent further disclosure of such information.
8. 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.

1. Term

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

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

# ARTICLE IX: PUBLICATION AND ACADEMIC RIGHTS

1. Use of Information

Subject to the non-disclosure agreement the Government and the Seller awarded OTIAs shall have the right to publish or otherwise disclose information or data developed by the Government or the respective Seller under OTIAs. The Seller awarded OTIAs shall include an appropriate acknowledgement of the sponsorship of the projects by the Government in any such publications or disclosures.

1. 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.

1. Review or Approval of Technical Information for Public Release

At least thirty (30) calendar days prior to the scheduled release date, the Seller, shall submit to the AOR at least one (1) copy of the information to be released along with the required public release form. The AOR will route the information to the cognizant Public Affairs Office for review and approval. The AOR is hereby designated as the approval authority for the Agreements Officer for such releases.

Where an Academic Research Institution is awarded an OTIA, who is performing fundamental research on campus the CMF shall require such Seller to provide papers and publications to the AOR for review and comment at least thirty (30) calendar days prior to the formal paper or publication submission. However, if that Academic Research Institution incorporates into its research results or publications artifacts produced by and provided to these institutions by other (non-educational institution) Seller (or has authors listed on the paper who are not employees or students of the Academic Research Institution), then the procedures in the preceding paragraph shall be followed.

Parties to this Contract are responsible for assuring that an acknowledgment of Government support will appear in any publication of any material based on or developed under the awarded OTIA, using the following acknowledgement terms:

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

Parties to this Contract are also responsible for assuring that every publication of material based on or developed under an OTIA contains the following disclaimer:

“The views and conclusions contained herein are those of the authors and should not be interpreted as necessarily representing the official policies or endorsements, either expressed or implied, of the U.S. Government.”

The Seller shall flow down these requirements to at all tiers.

1. Notices

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

1. Filing of Patent Applications

During the course of the aforementioned thirty (30) calendar day period, the Seller or the Government shall provide notice to the Agreements Officer if either desires that a patent application be filed on any invention potentially disclosed in the materials. In the event that the Seller or the Government desires that such a patent be filed, the NAC 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 Agreements Officer and the CMF, with the authorization of the cognizant Seller, that no patentable invention is disclosed in such materials; or
3. Written agreement, from the Agreements Officer and the CMF, with the authorization of the cognizant Seller, that all potentially patentable information is removed from the proposed publication.

# ARTICLE X: PATENT RIGHTS

1. Allocation of Principal Rights

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

1. As appropriate, replace “Contractor” with “Seller”; “the agency” and “the Federal Agency” with “Government”; “contract” with “Agreement”; and “Contracting Officer” with “Agreements Officer”.
2. The Government shall have the initial option to retain title to each subject invention made only by Government employees or made jointly by the Seller and Government employees. The Government shall promptly notify the Seller upon making this election, and agrees to timely file patent applications at its own expense and agrees to grant to the Seller a non-exclusive, irrevocable paid-up license to practice the subject invention throughout the world.
3. The Seller shall elect in writing whether or not to retain ownership of any subject invention by notifying the Agreements Officer within six (6) months of disclosure. In any case where publication, on sale, or public use has initiated the one (1) year statutory period during which valid patent protection can be obtained in the United States, the period of election of title shall no later than sixty (60) calendar days prior to the end of the statutory period.
4. The CMF, on behalf of the Seller, may request an extension to the six (6) month period for ownership election. The Agreements Officer may, in their discretion, extend the ownership election period, but the ownership election period shall not exceed two (2) years from the disclosure of the subject invention.

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

1. Patent Reports

All DOTC Base Agreements shall require the use of DD Form 882, Report of Inventions and Subcontracts, to file an invention report for every OTIA. Negative reports are also required. The Seller shall provide the CMF, with an Annual Invention Report at the close of each performance year of each OTIA and at the end of the term of each OTIA.

1. Final Payment

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

1. Lower Tier Agreements

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

The provisions of this Article shall survive termination of this Contract under Article II, Section C.

#

# ARTICLE XI: DATA RIGHTS AND COPYRIGHTS

Although this Article shall serve as the default and overarching terms and conditions for the handling of Data Rights and Copyrights, every OTIA is individually negotiated, and any specific Data Rights or Copyright terms and conditions in the OTIA Statement of Work will control over this Article.

Technical Data and Computer Software Rights under this Contract shall be determined in accordance with DFARS 252-227-7013 (Rights in Technical Data—Noncommercial Items (Feb 2014)) and DFARS 252.227-7014 (Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation (Feb 2014)), except at otherwise specified in this Article or the OTIA. The definitions included in this Article shall replace the definitions found in the referenced DFARS clauses.

1. Definitions

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

“Government Purpose Rights” means the right to use, modify, reproduce, release, perform, display, or disclose technical data within the Government without restriction; and to release or disclose technical data outside the Government and authorize persons to whom release or disclosure has been made to use, modify, reproduce, release, perform, display, or disclose that data for Government purposes. This is a middle path unique to defense contracts that allows contractors to have the exclusive right to use the technical data in the commercial market. Unless otherwise agreed, Government Purpose Rights convert to Unlimited Rights five years after execution of the OTIA.

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

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

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

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

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

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

1. Allocation of Principle Rights

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

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

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

1. Copyrights

The Seller reserves the right to protect by copyright original works developed under this Contract and any subsequent OTIA, pursuant to 17 U.S.C. §§ 401 and 402. All such copyrights will be in the name of the individual Seller. The Seller, 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 Contract, and to authorize others to do so.

In the event that information is exchanged with a notice indicating that it is protected under copyright as a published, copyrighted work, and it is also indicated that such information existed prior to, or was produced outside of this Contract or any subsequent OTIA, the Government, the CMF or the Seller receiving the information and others acting on its behalf may reproduce, distribute, and prepare derivative works for the sole purpose of carrying out its responsibilities under this Contract.

1. Handling of Data

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

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

Oral and Visual Information: If information which the NAC or any Seller 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 ten (10) calendar days after such oral or visual disclosure, or the Government shall have no duty to limit or restrict, and shall not incur any liability for any disclosure and use of such information.

Disclaimer of Liability: Notwithstanding the above, 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 VIII, 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 Contract, is rightfully received from a third party without restriction, or is included in data or software which the Seller have or is required to furnish to the Government without restriction on disclosure and use.
3. Marking of Data

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

1. Lower Tier Agreements

The Seller shall include this Article, suitably modified, in all lower tier agreements, regardless of tier, for work performed under the OTIAs awarded pursuant to this Contract.

The provisions of this Article shall survive termination of this Contract under Article II, Section C.

# ARTICLE XII: EXPORT CONTROL

1. Export Control

The Parties shall comply with U.S. Export regulations including, but not limited to, the requirements of the Arms Export Control Act, 22 U.S.C. § § 2751-2794, including the International Traffic in Arms Regulation (ITAR), 22 C.F.R. § 120 et seq.; and the Export Administration Act, 50 U.S.C. app. § 2401-2420. 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 Contract. Accordingly, the NAC Member shall not export, directly or indirectly, any products or technology, Confidential Information, Trade Secrets, or Classified and Unclassified Technical Data in violation of any U.S. Export laws or regulations.

1. Lower Tier Agreements

The Seller shall include this Article, suitably modified in all lower tier agreements, regardless of tier, for work performed under the OTIAs awarded pursuant to this Contract.

The provisions of this Article shall survive termination of this Contract under Article II, Section C.

**ARTICLE XIII: SECURITY**

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

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

Covered Defense Information (CDI) will be identified at the OTIA level. The Seller shall comply with DFARS 252.204-7012 (Oct 2016): Safeguarding Covered Defense Information and Cyber Incident Reporting, which includes implementing on its covered contractor information systems the security requirements specified by DFARS 252.204-7012. Nothing in this paragraph shall be interpreted to foreclose the Seller's right to seek alternate means of complying with the security requirements in National Institute of Standards and Technology (NIST) Special Publication (SP) 800-171 (as contemplated in DFARS 252.204-7008 (Compliance with Safeguarding Covered Defense Information Controls) (Oct 2016) and DFARS 252.204-7012 (Safeguarding Covered Defense Information and Cyber Incident Reporting (Oct 2016)).

**ARTICLE XIV: SAFETY AND ENVIRONMENTAL**

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

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

DFARS 252.223-7001 Hazard Warning Labels

DFARS 252.223-7002 Safety Precautions for Ammunition and Explosives

DFARS 252.223-7003 Change in Place of Performance

DFARS 252.223-7006 Prohibition on Storage and Disposal of Toxic and Hazardous Materials

DFARS 252.223-7007 Safeguarding Sensitive Conventional Arms, Ammunition and Explosives

FAR 52.223-3 Identification and Material Safety Data

FAR 52.247-29 F.O.B. Origin

ARDEC 18 Physical Security Standards for Sensitive Items

ARDEC 169 Explosive Material Handling

ARDEC 66 Safety Requirements for Hazardous Items

ARDEC 77 Material Safety Data Sheets

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

1. Accident/Incident Report: The Seller shall report immediately any major accident/incident (including fire) resulting in any one or more of the following: causing one or more fatalities or one or more disabling injuries; damage of Government property exceeding $10,000; affecting program planning or production schedules; degrading the safety of equipment under initiative, such as personnel injury or property damage may be involved; and identifying a potential hazard requiring corrective action. The Seller shall prepare a DI-SAFT-81563 report for each incident.
2. Material Safety Data Sheets (MSDS): The Seller shall prepare and maintain MSDS for all materials used and generated under this Contract.
3. Explosive Hazard Classification Report: The Seller shall submit an explosive hazard classification report (DI-SAFT-81299A) for each item that requires utilizing ARDEC capabilities to obtain Interim Hazard Classification (IHC) for shipment of R&D quantities of energetic materials and items in support of this Contract. The Seller shall utilize the capability of ARDEC to obtain IHC for shipment of R&D quantities of energetic materials and items only on an as needed basis. In order to use this support, the Seller shall provide technical data (Explosive Hazard Classification Data) to ARDEC System Safety Group at least sixty (60) calendar days prior to shipment of the energetic materials or items. This will include the necessary data explained in Army Technical Bulletin (TB) 700-2 and DI-SAFT-81299A. DOT and UN Serial number information, along with packaging methods, will be based on Title 49, Code of Federal regulations (CFR). The Seller shall determine the explosive weight for quantity-distance determination in accordance with the guidance of paragraph 15.4C of AMC-R 385-100.
4. Pollution Prevention: Consideration should be given to alternative materials and processes in order to eliminate, reduce, or minimize hazardous waste being generated. This is to be accomplished while minimizing item cost and risk to item performance.
5. Environmental Compliance: All activities must be in compliance with Federal, State, and local environmental laws and regulations, Executive orders, treaties, and agreements. The Seller shall evaluate the environmental consequences and identify the specific types and amounts of hazardous waste being generated during projects under this Contract.
6. Hazardous Waste Report: The Seller shall evaluate the environmental consequences and identify the specific types and amounts of hazardous waste being generated during this Contract. Seller shall submit a Hazardous Waste Report in accordance with DI-MGMT-80899.
7. Disposal Instructions for Residual/Scrap Materials: The Seller shall dispose of all residual and scrap materials generated from this Contract, including high explosives. The Seller shall specify the anticipated quantities, methods, and disposal costs.

# ARTICLE XV: OPSEC

Antiterrorism (AT) Level I Training. If a project requires the Seller employees to perform technical activities, e.g., activities other than administrative tasks, program reviews, demonstrations, or meetings, under this Contract in a designated area of performance within a DoD installation, facility or area (herein referred to as “an area of performance”), then all the Seller employees, to include subcontractor employees, requiring access to DOD installation, facilities and controlled access areas shall complete AT Level I awareness training within thirty (30) calendar days after effective date of the award. The Seller shall submit certificates of completion for each affected Seller employee and subcontractor employee, to the AOR, within fifteen (15) calendar days after completion of training by all employees and subcontractor personnel. AT level I awareness training is available at the following website: https://securityawareness.usalearning.gov/opsec/index.htm.

Access and General Protection/Security Policy and Procedures. If a project requires the Seller employees to have an area of performance within a DoD installation, facility or area, the Seller employees and all associated sub-contractor employees shall comply with applicable installation, facility and area commander installation/facility access and local security policies and procedures (provided by Government representatives). The Seller 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 Seller 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 Seller’s security matters or processes.

AT Awareness Training for the project Seller personnel traveling overseas. If a project requires Seller employees or associated subcontractor employees to travel overseas, then Seller personnel and the Seller’s United States based Seller employees and associated sub-contractor employees shall be made available to receive Government provided area of responsibility specific AT awareness training as directed by AR 525-13. Specific area of responsibility training content is directed by the combatant commander with the unit ATO being the local point of contact.

iWATCH Training. If a project requires the Seller employees to have an area of performance within a DoD installation, facility or area, all of the employees of the Seller and all associated sub-contractors shall be briefed on the local iWATCH program (training standards provided by the requiring activity ATO). This locally developed training will be used to inform employees of the types of behavior to watch for and to instruct employees to report suspicious activity to the AOR. This training shall be completed within thirty (30) calendar days of project award and within thirty (30) calendar days of new employees commencing performance with the results reported to the AOR NLT fifteen (15) calendar days after project award.

Project Recipient Employees Who Require Access to Government Information Systems. All Seller 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 training prior to access to the IS, and then annually thereafter.

If a project requires an OPSEC Standard Operating Procedure/Plan, the Seller shall develop an OPSEC Standard 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 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 Seller shall identify an individual within its organization who will be an OPSEC Coordinator. The Seller will ensure this individual becomes OPSEC Level II certified per AR 530-1.

If a project requires OPSEC Training, per AR 530-1, Operations Security, the Seller employees must complete Level I OPSEC training within thirty (30) calendar days of their reporting for duty. All the Seller employees must complete annual OPSEC awareness training.

If a project requires Information Assurance (IA)/information technology (IT) training, all Seller employees and associated sub-contractor employees must complete the DoD IA awareness training before issuance of network access and annually thereafter. All Seller employees working IA/IT functions must comply with DoD and Army training requirements in DoD 8570.01, DoD 8570.01-M and AR 25-2 within six (6) months of employment.

If a project requires information assurance (IA)/information technology (IT) certification, per DoD 8570.01-M, DFARS 252.239.7001 and AR 25-2, the Seller employees supporting IA/IT functions shall be appropriately certified upon contract award. The baseline certification as stipulated in DoD 8570.01-M must be completed upon project award.

If a project requires authorizing the Seller’s personnel to accompany United States Armed Forces deployed outside the United States in contingency operations; humanitarian or peacekeeping operations; or other military operations or exercises, when designated by the combatant commander, DFARS Clause 252.225-7040, Contractor Personnel Authorized to Accompany US Armed Forces Deployed Outside the United States is applicable.

If a project requires Performance or Delivery in a Foreign Country, DFARS Clause 252.225-7043, Antiterrorism/Force Protection for Defense Contractors outside the United States is applicable. This clause applies to both contingencies and non-contingency support. The key AT requirement is for non-local national personnel to comply with theater clearance requirements and allows the combatant commander to exercise oversight to ensure the Seller’s compliance with combatant commander and subordinate task force commander policies and directives.

# ARTICLE XVI: TITLE AND DISPOSITION OF PROPERTY

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

1. Title to Property

No significant items of property are expected to be acquired under this Contract or subsequent OTIA by the Seller. Title to any item of property valued at $10,000 or less or property with an acquisition value greater than $10,000 that was included in the final proposal selected by the Government and that is acquired by the Seller pursuant to performance under an OTIA shall remain with the Seller upon acquisition with no further obligation of the Parties unless otherwise determined by the Agreements Officer. If an item of property with an acquisition value greater than $10,000 is required after award, the Seller shall obtain prior written approval, if not included in the final proposal selected by the Government, from the Agreements Officer prior to acquisition. Title to this property shall remain with the Government unless the Agreements Officer grants title to the Seller prior to acquisition. The Seller shall be responsible for the maintenance, repair, protection, and preservation of all property acquired under this Contract at its own expense. Property acquired pursuant to this Article shall not be considered as in exchange for services in performance of the project, but shall be considered a Government contribution to the project.

**Attachment D**

**PROHIBITION ON THE USE OF CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES AND EQUIPMENT**

A. Background

This Article is to ensure compliance with Section 889 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232).

Based on the information provided below, the Government may be unable to enter into a new project agreement/initiative, exercise an option under an existing project, bilaterally modify the Agreement to extend the term of an Agreement, execute an additional phase or incrementally fund an existing project with the Member.

1. Definitions

“Backhaul” means intermediate links between the core network, or backbone network, and the small subnetworks at the edge of the network (e.g., connecting cell phones/towers to the core telephone network). Backhaul can be wireless (e.g., microwave) or wired (e.g., fiber optic, coaxial cable, Ethernet).

“Covered foreign” country means The People’s Republic of China.

“Covered telecommunications equipment or services” means–

(1) Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities);

(2) For the purpose of public safety, security of Government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities);

(3) Telecommunications or video surveillance services provided by such entities or using such equipment; or

(4) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

“Critical technology” means–

(1) Defense articles or defense services included on the United States Munitions List set forth in the International Traffic in Arms Regulations under subchapter M of chapter I of title 22, Code of Federal Regulations;

(2) Items included on the Commerce Control List set forth in Supplement No. 1 to part 774 of the Export Administration Regulations under subchapter C of chapter VII of title 15, Code of Federal Regulations, and controlled-

(i) Pursuant to multilateral regimes, including for reasons relating to national security, chemical and biological weapons proliferation, nuclear nonproliferation, or missile technology; or

(ii) For reasons relating to regional stability or surreptitious listening;

(3) Specially designed and prepared nuclear equipment, parts and components, materials, software, and technology covered by part 810 of title 10, Code of Federal Regulations (relating to assistance to foreign atomic energy activities);

(4) Nuclear facilities, equipment, and material covered by part 110 of title 10, Code of Federal Regulations (relating to export and import of nuclear equipment and material);

(5) Select agents and toxins covered by part 331 of title 7, Code of Federal Regulations, part 121 of title 9 of such Code, or part 73 of title 42 of such Code; or

(6) Emerging and foundational technologies controlled pursuant to section 1758 of the Export Control Reform Act of 2018 (50 U.S.C. 4817).

“Interconnection arrangements” means arrangements governing the physical connection of two or more networks to allow the use of another's network to hand off traffic where it is ultimately delivered (e.g., connection of a customer of telephone provider A to a customer of telephone company B) or sharing data and other information resources.

“Reasonable inquiry” means an inquiry designed to uncover any information in the entity's possession about the identity of the producer or provider of covered telecommunications equipment or services used by the entity that excludes the need to include an internal or third-party audit.

“Roaming” means cellular communications services (e.g., voice, video, data) received from a visited network when unable to connect to the facilities of the home network either because signal coverage is too weak or because traffic is too high.

“Substantial or essential component” means any component necessary for the proper function or performance of a piece of equipment, system, or service.

1. Prohibition

(1) The Member is prohibited from providing to the Government any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, unless the Member is providing (i) a service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or (ii) telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles or the covered telecommunication equipment or services. A waiver, for a period not exceeding August 13, 2021, may be requested.

(2) The Member acknowledges and accepts that the Government is prohibited from entering into a new project agreement, exercise an option under an existing project, bilaterally modify the Agreement to extend the term of an Agreement, execute an additional phase or incrementally fund an existing project with the member or with an entity that uses any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, unless an exception at paragraph (b)(1) of this article applies, regardless of whether that use is in performance of work under a Federal contract or agreement.

1. Certification (to be completed upon Agreement Officer Request)

The Member shall review the list of excluded parties in the System for Award Management (SAM) (<https://www.sam.gov>) for entities excluded from receiving federal awards for “covered telecommunications equipment or services.”

Based on that review:

1. □ The Member certifies that it does □ does not □ provide covered telecommunications equipment or services as a part of its offered products or services to the Government in the performance of any contract, subcontract, other transaction agreement, or other contractual instrument.
2. If the Member does provide covered telecommunications equipment or services as a part of its offered products or services to the Government in the performance of any contract, subcontract, other transaction agreement, or other contractual instrument as described in paragraph (c)(1), the Member certifies that it will □ will not □ provide covered telecommunications equipment or services to the Government in the performance of any contract, subcontract, other transaction agreement, or other contractual instrument resulting from this solicitation. If the Member will provide covered telecommunications equipment or services to the Government in the performance of any contract, subcontract, other transaction agreement, or other contractual instrument resulting from this solicitation (c)(2), the Member shall provide the additional disclosure information required at paragraph (d)(1) of this Article.

(3) The Member certifies, after conducting a reasonable inquiry, for purposes of this certification, that it does □ does not □ use covered telecommunications equipment or services, or use any equipment, system, or service that uses covered telecommunications equipment or services. If the Member does use covered telecommunications equipment or services, or use any equipment, system, or service that uses covered telecommunications equipment or services as described under this paragraph (c)(3), the Member shall provide the additional disclosure information required at paragraph (d)(2) of this Article.

1. Disclosures

(1) Disclosure for the certification in paragraph (c)(2) of this Article. If the Member does provide covered telecommunications equipment or services to the Government in the performance of any contract, subcontract, other transaction agreement, or other contractual instrument in in paragraph (c)(2) of this provision, the Member shall provide the following information:

(i) For covered equipment—

(A) The entity that produced the covered telecommunications equipment (include entity name, unique entity identifier, CAGE code, and whether the entity was the original equipment manufacturer (OEM) or a distributor, if known);

(B) A description of all covered telecommunications equipment offered (include brand; model number, such as OEM number, manufacturer part number, or wholesaler number; and item description, as applicable); and

(C) Explanation of the proposed use of covered telecommunications equipment and any factors relevant to determining if such use would be permissible under the prohibition in paragraph (b)(1) of this Article.

(ii) For covered services—

(A) If the service is related to item maintenance: A description of all covered telecommunications services offered (include on the item being maintained: Brand; model number, such as OEM number, manufacturer part number, or wholesaler number; and item description, as applicable); or

(B) If not associated with maintenance, the Product Service Code (PSC) of the service being provided; and explanation of the proposed use of covered telecommunications services and any factors relevant to determining if such use would be permissible under the prohibition in paragraph (b)(1) of this Article.

(2) If the Member does use covered telecommunications equipment or services, or use any equipment, system, or service that uses covered telecommunications equipment or services in in paragraph (c)(3) of this Article, the Member shall provide the following information:

(i) For covered equipment—

(A) The entity that produced the covered telecommunications equipment (include entity name, unique entity identifier, CAGE code, and whether the entity was the OEM or a distributor, if known);

(B) A description of all covered telecommunications equipment offered (include brand; model number, such as OEM number, manufacturer part number, or wholesaler number; and item description, as applicable); and

(C) Explanation of the proposed use of covered telecommunications equipment and any factors relevant to determining if such use would be permissible under the prohibition in paragraph (b)(2) of this Article.

(ii) For covered services—

(A) If the service is related to item maintenance: A description of all covered telecommunications services offered (include on the item being maintained: Brand; model number, such as OEM number, manufacturer part number, or wholesaler number; and item description, as applicable); or

(B) If not associated with maintenance, the PSC of the service being provided; and explanation of the proposed use of covered telecommunications services and any factors relevant to determining if such use would be permissible under the prohibition in paragraph (b)(2) of this Article.

F. Reporting requirement

(1) In the event the Member identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during agreement performance, or the Member is notified of such by a subcontractor at any tier or by any other source, the Member shall report the information in paragraph (e)(2) of this Article to the Agreements Officer and to the Department of Defense website at https://dibnet.dod.mil. The Member must notify the CMF that a report has been made.

(2) The Member shall report the following information pursuant to paragraph (e)(1) of this clause

(i) Within one business day from the date of such identification or notification: the agreement number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.

(ii) Within 10 business days of submitting the information in paragraph (e)(2)(i) of this clause: any further available information about mitigation actions undertaken or recommended. In addition, the Member shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.

G. Subcontracts

The Member shall insert the substance of this article, including this paragraph (f) and excluding paragraph (b)(2), in all subcontracts and other contractual instruments, including subcontracts for the acquisition of commercial items